



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Social Wellbeing Committee: Period Ended 12 March 2021

On 15 March 2021, Cabinet made the following decisions on the work of the Cabinet Social Wellbeing Committee for the period ended 12 March 2021:

Out of scope

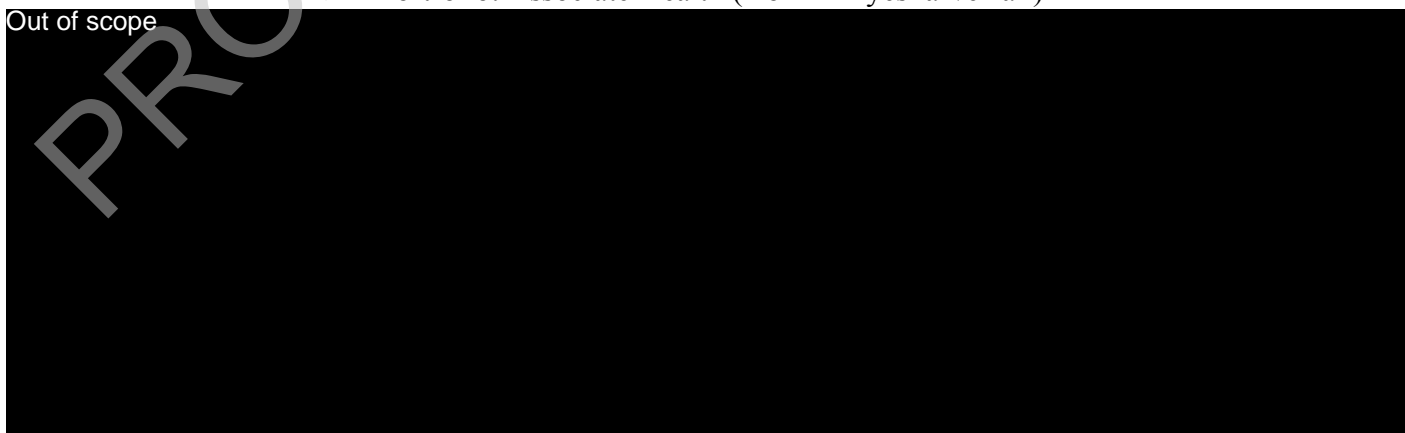


SWC-21-MIN-0012

**Health (Fluoridation of Drinking Water)
Amendment Bill: Proposed Amendment**
Portfolio: Associate Health (Hon Dr Ayesha Verrall)

CONFIRMED

Out of scope



Out of scope

Michael Webster
Secretary of the Cabinet

PROACTIVELY RELEASED



Cabinet Social Wellbeing Committee

Minute of Decision

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Health (Fluoridation of Drinking Water) Amendment Bill: Proposed Amendment

Portfolio Associate Health (Hon Dr Ayesha Verrall)

On 10 March 2021, the Cabinet Social Wellbeing Committee:

- 1 **noted** that the Health (Fluoridation of Drinking Water) Amendment Bill is currently awaiting its second reading in the House of Representatives;
- 2 **noted** that the Health (Fluoridation of Drinking Water) Amendment Bill as currently drafted would give District Health Boards (DHBs) the authority to direct local authorities to add fluoride to community water supplies in their area;
- 3 **authorised** the Associate Minister of Health (Hon Dr Ayesha Verrall) to issue drafting instructions to the Parliamentary Counsel Office to prepare a Supplementary Order Paper to amend the Health (Fluoridation of Drinking Water) Amendment Bill, to:
 - 3.1 give the authority to direct fluoridation of community drinking water supplies to the Director-General of Health rather than DHBs;
 - 3.2 include the Director-General's of Health's power to direct fluoridation of community drinking water supplies in the Health Act 1956;
 - 3.3 make such other technical drafting changes to the Health (Fluoridation of Drinking Water) Amendment Bill as are needed to ensure that the power to direct that fluoride to be added to water supplies is not repealed by the Water Services Bill;
- 4 **agreed** that the Health Committee be provided with the opportunity to further consider the proposed amendments.

Rachel Clarke
Committee Secretary

Present: (see over)

Present:

Rt Hon Jacinda Ardern
Hon Grant Robertson
Hon Kelvin Davis
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Carmel Sepuloni (Chair)
Hon Poto Williams
Hon Damien O'Connor
Hon Kris Faafoi
Hon Peeni Henare
Hon Willie Jackson
Hon Dr Ayesha Verrall
Hon Aupito William Sio
Hon Meka Whaitiri
Hon Priyanca Radhakrishnan

Officials present from:

Office of the Prime Minister
Officials Committee for SWC

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In Confidence

Office of the Associate Minister of Health
Chair, Cabinet Social Wellbeing Committee

Proposed amendment to the Health (Fluoridation of Drinking Water) Amendment Bill

Proposal

1. This paper seeks approval to instruct the Parliamentary Counsel Office to draft a Supplementary Order Paper to amend the Health (Fluoridation of Drinking Water) Amendment Bill (the Fluoridation Bill) to give decision-making authority on the fluoridation of community drinking water supplies to the Director-General of Health rather than district health boards (DHBs).
2. This paper seeks approval that the Health Committee be provided with the opportunity to consider the proposed amendments.

Relation to government priorities

3. This proposal aligns with the Government's health priorities of achieving equity and child well-being. The proposal also aligns with the focus in the Labour Party's health policy on improving the oral health of New Zealanders.

Executive Summary

4. Extending community water fluoridation coverage is critical to improving oral health outcomes across all age groups. Currently only 54 percent of New Zealanders are receiving fluoridated drinking water.
5. In 2016, the Fluoridation Bill was introduced into the House. The Fluoridation Bill currently proposes to shift decision-making authority on community water fluoridation from local authorities to DHBs in recognition that it is a health-related matter.
6. The Fluoridation Bill passed its first reading on 6 December 2016. The Health Committee presented its report to the House on 29 May 2017. The Fluoridation Bill has been awaiting its second reading since this time.
7. I propose that a Supplementary Order Paper be prepared that includes proposed amendments to the Fluoridation Bill to give decision-making authority on community water fluoridation to the Director-General of Health rather than DHBs. This new power will be in the Health Act 1956. I also propose that this Fluoridation Bill be referred back to the Health Committee for consideration of the proposed changes.
8. Community water fluoridation has been evidentially established as safe, effective and affordable. I suggest there is an advantage to having one central

decision-maker to ensure a nationally consistent approach based on these well-established findings.

Background

Oral Health in New Zealand

9. Good oral health matters to everyone's well-being, including basics such as being able to eat, speak, smile and socialise.
10. A body of evidence links poor oral health to several risk factors and determinants that are common to other chronic diseases, such as cardiovascular disease and cancer.
11. New Zealand's oral health outcomes have improved over the last 30 to 40 years, across all communities. There have been particular improvements in oral health outcomes among children since 2007. However, we still have high rates of preventable tooth decay, particularly among Māori and Pacific children and adults, and those living in deprived areas. In 2019, for example, over 40 percent of five-year olds and over 60 percent of Maori and Pacific five-year olds had already experienced tooth decay.
12. Tooth decay is one of the leading causes of preventable hospital admissions for children, with around 6485 children aged 0-9 years being admitted to hospital for treatment of tooth decay and associated infection in 2019. The total cost to DHBs of inpatient dental treatment under General Anaesthetic for children and adolescents was \$23.2 million in 2018/19.

Benefits of Community Water Fluoridation

13. Community water fluoridation is endorsed by the World Health Organization as the most effective population health measure to prevent dental decay. The Ministry of Health supports community water fluoridation as a safe, effective and affordable public health measure to improve oral health.
14. Fluoridation offers greater potential gains at lower cost than other interventions. The benefits of fluoridation are broadly spread, but the research evidence indicates that they are proportionately greater for the groups least likely to use oral health services, for Māori, and those living in deprived communities.
15. In 2016, the Ministry commissioned an independent report *Review of the Benefits and Costs of Community Water Fluoridation in New Zealand* (the Sapere Report). The findings suggest that for people living in areas with fluoridated drinking-water there is a:
 - 15.1 40 percent lower lifetime incidence of tooth decay among children and adolescents
 - 15.2 48 percent reduction in hospital admissions for the treatment of tooth decay among children aged 0-4 years
 - 15.3 21 percent reduction in tooth decay among adults aged 18-44 years

- 15.4 30 percent reduction in tooth decay among adults aged 45 years and over.

Current situation

16. Currently only 54 percent of New Zealanders receive fluoridated drinking water. The level of coverage has not increased substantially in the past 20 years.
17. Decision-making on community water fluoridation currently sits with local authorities. The Ministry and DHBs presently have no direct role in the process.
18. Several local authorities have decided not to fluoridate or have introduced water fluoridation and then reversed their decision. In the past, local authorities have called for either the Director-General of Health or DHBs to take responsibility for decision-making on water fluoridation on the basis that it is a health issue.

Legislative history

19. In 2016, the Fluoridation Bill was introduced into the House. The Fluoridation Bill would enable DHBs rather than local authorities to decide whether community water supplies are fluoridated in their areas. This change in the decision-making process would recognise that water fluoridation is a health-related issue.
20. The Fluoridation Bill passed its first reading on 6 December 2016. The Health Committee presented its report to the House on 29 May 2017, with significant cross-party support from Health Committee members. The Fluoridation Bill has been awaiting its second reading since this time. Following the formation of the Labour-led Government in 2017 the Fluoridation Bill was retained on the Parliamentary order paper.

Proposed policy change

Shifting decision-making from DHBs to the Director-General of Health

21. In 2016 Cabinet agreed to give decision-making authority on community water fluoridation to DHBs in recognition that this is a health-related matter.
22. Shifting decision-making from DHBs to the Director-General of Health would continue to recognise that fluoridation decision-making is a health matter, while also having several further advantages.
23. The strong scientific evidence that community water fluoridation is safe, effective and affordable applies across New Zealand. Decision-making on community water fluoridation by the Director-General of Health would enable these key factors and evidence to be considered and given weight in a nationally consistent manner. It would be harder for multiple DHB decision processes to achieve this.
24. Giving decision-making authority to the Director-General of Health aligns with the Government's expectation of strong central public health leadership and sector stewardship. It is also consistent with that role's other current statutory

public health responsibilities (eg under the Health Act 1956, overarching responsibility for public health sits with the Director-General of Health).

25. Under the Fluoridation Bill as currently drafted, each DHB would have to be ready to respond to opponents of fluoridation and face legal challenges to their decisions (court rulings in recent years have, however reduced the grounds available for future challenges). This would be burdensome for DHBs and could potentially impact their willingness to exercise decision-making authority.
26. Moving to a single decision-making process through the Director-General of Health, rather than through multiple DHB processes, would also make it easier to address potential legal challenges in a unified manner.
27. For the above reasons, I propose the Fluoridation Bill be amended to allocate decision-making authority on the fluoridation of public drinking water supplies to the Director-General of Health rather than DHBs.
28. The Fluoridation Bill as drafted provides clear evidence-based decision-making criteria. Under the present proposals to amend the Bill, the Director-General of Health would be required to consider the scientific evidence on the effectiveness of adding fluoride to drinking water in reducing the prevalence and severity of dental decay, and the matter of whether the benefits of adding fluoride to the drinking water supply would outweigh the financial costs.
29. The Ministry of Health would develop a regulatory framework to support Director-General decision-making.
30. I expect that the framework would include a requirement for the Director-General of Health to engage with the relevant DHBs, public health units and local authorities when considering fluoridation of a particular water supply. This would enable decisions of the Director-General of Health to be informed by local factors including water supply circumstances, oral health status (including inequalities), and the views and health priorities of the affected community.

Interface with the Water Services Bill

31. The Water Services Bill is part of a significant reform of stormwater, wastewater and drinking water service delivery. The Water Services Bill proposes a new regulatory regime for drinking water.
32. In December 2020, the Water Services Bill passed its first reading and was referred to the Health Committee. Submissions close on 2 March 2021. The Health Committee intends to report back to the House on the Water Services Bill on 8 June 2021.
33. The Fluoride Bill currently proposes to amend and add sections in Part 2A of the Health Act 1956, which specifies matters relating to the regulation of drinking water. The Water Services Bill proposes to repeal Part 2A of the Health Act 1956 entirely.

34. I have considered whether fluoride provisions should be included in the Water Services Bill, or should be placed within the Health Act 1956, given that both Bills relate to the regulation of drinking water.
35. I consider that there are advantages to keeping fluoride provisions in the Fluoride Bill (ie amending the Health Act, rather than the Water Services Bill) for the following reasons:
 - 35.1 giving the Director-General of Health decision-making authority through the Health Act aligns well with the role's existing statutory public health responsibilities under the Act
 - 35.2 the Director-General of Health currently does not have a role under the Water Services Bill as this gives powers to Taumata Arowai, a stand-alone Crown entity responsible for regulating drinking water quality and safety
 - 35.3 the functions and objectives of Taumata Arowai are predominantly about drinking water quality and safety, and not oral health improvement
 - 35.4 keeping the responsibilities of the Director-General of Health and Taumata Arowai separate and distinct with regard to drinking water will ensure clear lines of accountability.
36. I propose to instruct the Parliamentary Counsel Office to make technical drafting changes to the Bill to ensure that the power to direct addition of fluoride to water supplies is not repealed by the Water Services Bill.

Health Committee consideration

37. I propose that following Cabinet approval, the amendments be referred back to the Health Committee for further consideration.
38. Consideration will be given to the timing of the referral of the Fluoridation Bill to Health Committee, to minimise any impact on the progression of the Water Services Bill, which the Health Committee is due to report back on in June 2021.

Financial Implications

39. Amendment of the Fluoridation Bill so that decision-making on community water fluoridation sits with the Director-General of Health rather than DHBs would be unlikely to have a significant impact on costs of implementation.
40. The Sapere report estimated that if the Fluoridation Bill is passed, fluoridated water supplies could be extended to cover an additional 1.45 million people. It is estimated that net savings of more than \$600 million over 20 years could result, with most of these savings to consumers and a small amount to Vote Health.
41. The Sapere report estimated the total capital and operating costs of extending fluoridation to populations not receiving fluoridated water to be \$144 million

over a 20 year period (or an average of \$7.2 million per year), including a significant upfront capital investment and smaller annual operating costs. The true cost may now be slightly higher than this due to the time since publication of the report.

42. Currently, the direct operating and capital costs of fluoridating water sit with the local authorities. The Fluoridation Bill does not propose to change this. Local authorities with areas that are not currently fluoridated would incur the additional costs.
43. In Budget 2017, \$3 million per annum for 10 years was allocated to support local authorities with fluoridation-related capital works that would have been required were the Fluoridation Bill to have been passed at that time.
44. Due to the delay in passing the Fluoridation Bill, \$6.7 million of the \$9 million available for the first three years was reprioritised by the Minister of Health in 2019. A total of \$23.3 million consequently remains available for support of local authorities with the cost of their fluoridation-related capital costs.

Legislative Implications

45. A Supplementary Order Paper will be prepared by the Parliamentary Counsel Office to support the Health Committee's consideration of the Fluoridation Bill. Amendments agreed to by the Health Committee would be included in the version of the Fluoridation Bill that would be reported back to the House for second reading.

Regulatory Impact Statement

46. A regulatory impact statement was provided to Cabinet in 2016 and was assessed in 2016 as meeting the quality assurance criteria. An addendum statement will be published alongside the existing regulatory impact statement to reflect the updated analysis.

Climate Implications of Policy Assessment

47. This proposal has no climate change implications.

Population Implications

48. Māori and Pacific populations have significantly poorer oral health outcomes than other population groups. Research suggests that extending community water fluoridation would have a proportionately larger benefit for Māori and those living in deprived communities.
49. A move to Director-General of Health decision-making on community water fluoridation coverage would align with the Te Tiriti o Waitangi principle of equity, by strengthening Crown action to improve health outcomes for Māori.
50. Health, including oral health, is a taonga, a treasure to be nurtured, developed and grown. Government action that supports Māori people's ability to maintain

their oral health, would align with the Te Tiriti o Waitangi principle of active protection.

51. The Māori Oral Health Quality Improvement Group, representing Māori oral health providers and Te Ao Mārama (the Māori Dental Association) strongly support community water fluoridation. So too do other key Māori health leaders.
52. In drafting the proposed regulatory framework, the Ministry of Health would have regard to Māori contribution to fluoridation decision-making in accord with Te Tiriti o Waitangi.

Human Rights

53. The Supreme Court has held that adding fluoride to drinking water engages section 11 of the New Zealand Bill of Rights Act 1990, which gives people the right to refuse medical treatment. In the case in question, the Supreme Court also held that the local authority's power to add fluoride to drinking water was a justified limitation on this right.
54. The Ministry of Justice concluded that the Bill as introduced appeared to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.
55. The Ministry of Health considers it to be likely too that the proposed shift of decision-making from DHBs to the Director-General of Health is consistent with the Bill of Rights Act and the Human Rights Act 1993.

Consultation

56. The Ministry of Health has consulted with Treasury, the Department of Internal Affairs, the Department of Prime Minister and Cabinet, Ministry for Pacific Peoples, Ministry for Social Development, Oranga Tamariki and Te Puni Kokiri.
57. All agencies that provided feedback were supportive of the proposal. The Department of Internal Affairs strongly support putting fluoride provisions in the Health Act rather than the Water Services Bill and wish to see the Fluoridation Bill referred to the Health Committee following enactment of the Water Services Bill.
58. The Ministry of Health has sought feedback from the lead DHB Chief Executives for public health. Both Chief Executives strongly support the proposal to shift decision making on fluoridation to the Director-General of Health rather than DHBs.

Communications

59. The Ministry of Health will work with my office to develop a communications strategy regarding the Bill, including regarding the proposed amendments.

Proactive Release

60. This Cabinet paper would be proactively released in due course with any required redactions made consistent with the Official Information Act 1982.

Recommendations

The Associate Minister of Health recommends that the Committee:

- 1 **note** that the Health (Fluoridation of Drinking Water) Amendment Bill is currently awaiting its second reading
- 2 **note** that the Health (Fluoridation of Drinking Water) Amendment Bill as currently drafted would give DHBs the authority to direct local authorities to add fluoride to community water supplies in their area
- 3 **authorise** the Associate Minister of Health to issue drafting instructions to the Parliamentary Counsel Office to prepare a Supplementary Order Paper to amend the Health (Fluoridation of Drinking Water) Amendment Bill, to:
 - 3.1 give the authority to direct fluoridation of community drinking water supplies to the Director-General of Health rather than DHBs
 - 3.2 include the Director-General's of Health's power to direct fluoridation of community drinking water supplies in the Health Act 1956
 - 3.3 make such other technical drafting changes to the Health (Fluoridation of Drinking Water) Amendment Bill as are needed to ensure that the power to direct that fluoride to be added to water supplies is not repealed by the Water Services Bill
- 4 **agree** that the Health Committee be provided with the opportunity to further consider the proposed amendments.

Authorised for lodgement

Hon Dr Ayesha Verrall

Associate Minister of Health