

Auckland Council Submission to the
Health Committee

**Health (Fluoridation of Drinking Water)
Amendment Bill**

02 February 2017

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Amendment Bill**

1. This is Auckland Council's submission on the Health (Fluoridation of Drinking Water) Amendment Bill.
2. The address for service is Auckland Council, Private Bag 92300, Victoria Street West, Auckland 1142.
3. Auckland Council wishes to appear before the Health Committee to discuss this submission.
4. This submission has been approved by a political working party of councillors and will be formally considered by the Environment and Community Committee of Auckland Council at their meeting of 14 February 2017.

Introduction

1. Auckland Council recognises and appreciates that the amendments proposed in the Health (Fluoridation of Drinking Water) Amendment Bill (the Bill) intend to transfer decision-making responsibilities about fluoridation of drinking water from territorial local authorities to District Health Boards.
2. Auckland Council supports the submission from Local Government New Zealand and voted in support of the 2014 remit passed at the 2014 Local Government New Zealand Annual General Meeting.
3. Auckland Council supports the intention of the Bill, as framed in the explanatory note, to remove decision-making responsibility for drinking water fluoridation from territorial local authorities. Fluoridation of drinking water is clearly a matter of public health and territorial local authorities are not experts in this field. A territorial local authority is not the most appropriate body to make decisions on a matter which is fundamentally one of public health.
4. However, the Bill as drafted does not fully give effect to this intention. This submission focusses on two particular matters and recommends amendments to the Bill as drafted.
5. We would like to be heard in relation to this submission.

Discussion – Director General of Health to have decision-making responsibility

6. Auckland Council agrees with the Local Government New Zealand submission and their 2014 remit that responsibility for decision-making on drinking water fluoridation should sit with the Director General of Health. It is a matter of public health affecting all New Zealanders and decisions should be made at a national level. The Director General of Health has the technical expertise and resources to consider the scientific and public health aspects of fluoridation – territorial local authorities are not set up for this role.
7. In the event that the Select Committee does not agree with this recommendation, then decision-making responsibility should fall to district health boards.

Recommendation

Auckland Council:

8. Seeks replacement of “district health boards” with “Director General of Health” and any consequential amendments throughout the Bill.
9. In the event that the recommendation above is not accepted, then the Bill should remain as drafted with the district health boards.

Discussion – Transfer of decision-making responsibility

10. Auckland Council is concerned that the explanatory note of the Bill and the amendments to Section 69A (Purpose) are inconsistent and that there is no full transfer of decision-making responsibility from territorial local authorities.
11. The explanatory note states:

“The Health (Fluoridation of Drinking Water) Bill amends Part 2A of the Health Act 1956 by inserting a power for DHBs to make decisions and give directions about the fluoridation of local government drinking water supplies in their areas.

This power replaces territorial local authorities’ decision-making responsibilities about fluoridation of drinking water. Transferring decision-making to DHBs is expected to enable extended fluoridation coverage, which would improve the status of oral health in New Zealand. [emphasis added]

12. The Regulatory Impact Statement accompanying the Bill, prepared by the Ministry of Health, recommends at paragraph 77:

“... On balance, the Ministry of Health’s preference is to transfer decision-making to DHBs” [emphasis added]

13. Proposed clause 5, amending Section 69A (Purpose) states:

(3) *This Part also—*

(a) *enables district health boards to direct a local government drinking-water supplier to add fluoride or not add fluoride to drinking water supplied by that supplier; and*

(b) *requires the local government drinking-water supplier to comply with the direction* [emphasis added]

14. The Bill as drafted provides district health boards with a choice as to whether or not to make a decision on fluoridation of drinking water. It does not transfer decision-making from local authorities - it only enables district health boards to consider the fluoridation issue, it does not require them to do so.

15. Case law¹ has confirmed that local authorities have implied power to fluoridate drinking water from the Local Government Act 2002 and the Health Act 1956. The Bill as drafted does not remove this implied power.

16. Proposed clause 8 inserts a new Section 69ZJA entitled “*District health boards may direct local government drinking-water supplier to add fluoride or not to add fluoride to drinking water*” [emphasis added]. This new section does not require a direction to be made. If district health boards decide not to make a direction, then the implied decision-making responsibility still remains with territorial local authorities. The current drafting will result in confusion for the public as to who is actually the decision-maker.

17. In addition, the decision making responsibility is not explicitly transferred from territorial local authorities to district health boards. There is an inconsistency with the explanatory note and Regulatory Impact Statement and the Bill as drafted. Auckland Council supports a full transfer of power from territorial local authorities and recommends amendments below.

Recommendation

Auckland Council:

18. Seeks clear and unequivocal wording that ensures that decision-making on fluoridation of drinking water is transferred to the Director General of Health (or, if this is not supported, district health boards) and that all decision-making obligation on territorial local authorities is removed.

19. Suggested amendments to proposed clause 8:

69ZJA (1) ~~*A district health board may*~~ ***The Director General of Health shall direct a local government drinking-water supplier...***

(2) ~~*In deciding whether to make a direction, the district health board must consider*~~ ***In making a direction, the Director General of Health shall consider...***

(3) ***For the avoidance of doubt, the Director General is the sole decision maker for directions under this section.***

¹ *New Health New Zealand Inc v South Taranaki District Council* [2014] NZHC 395, [2014] 2 NZLR 834.