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Health (Fluoridation of Drinking Water) Amendment Bill

Local Government New Zealand's submission to the Health
Committee

26 January 2017

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We are. LGNZ.

LGNZ is the national organisation of local authorities in New Zealand and all 78 councils are members. We represent the national interests of councils and lead best practice in the local government sector. LGNZ provides advocacy and policy services, business support, advice and training to our members to assist them to build successful communities throughout New Zealand. Our purpose is to deliver our sector's vision: "Local democracy powering community and national success."

This final submission was endorsed under delegated authority by Lawrence Yule, President, Local Government New Zealand.

We would like to be heard in relation to this submission.

Introduction

Thank you for this opportunity to submit on the Health (Fluoridation of Drinking Water) Amendment Bill.

This submission has been prepared on behalf of New Zealand's local authorities but it is the territorial authorities who have the leading role in this area.

LGNZ seeks the removal of the responsibility for making decisions on fluoridation in drinking water from territorial authorities, as per the Government's stated policy direction.

LGNZ has a strong mandate for this submission. At LGNZ's AGM in 2014 a remit was passed that:

"LGNZ urges the Government to amend the appropriate legislation so that the addition of fluoride to drinking water supplies is not a decision that is left to the local authority and instead should be made by the Director General of Health."

The passage of the remit, and the level of support it received, reflects the litigious environment confronting councils when determining whether or not to continue to fluoridate their water supplies or begin fluoridating them. Councils are increasingly being asked to make judgements on the validity or otherwise of complex scientific research concerning the value of fluoride to dental and general health, and evaluate claims about potential harm.

These are judgements best made at the national level as the Ministry of Health is one of the few organisations with the scientific capability to properly assess claims and counter-claims.

The Bill in its current form falls short of the remit endorsed by the membership of LGNZ, nor does it meet the Government's stated policy direction. Consequently LGNZ opposes the Bill as drafted.

Specific comments

The LGNZ remit seeks national leadership in relation to the fluoridation of drinking water. Shifting the decision-making from territorial authorities to District Health Boards (DHBs), with an opt out clause, does not achieve this and creates ambiguity and uncertainty about the role of city and district councils.

Decision-maker

The Bill empowers DHBs to introduce or cease fluoridation of drinking water, however, under the Bill DHBs are not **required** to consider fluoridation. Consequently, local authorities could remain the de-facto decision-makers on the issue should the relevant DHB elect not to use the Bill's new powers.

The Departmental Disclosure Statement accompanying the Bill makes the general policy statement that the Bill “replaces territorial authorities’ decision-making responsibilities about fluoridation of drinking water”. However, the proposed Bill does not make a full transfer of decision-making responsibility from territorial authorities to DHBs. The Bill **empowers** DHBs to direct territorial authorities to add fluoride to water supplies DHBs rather than **requiring** the DHB to consider the pros and cons of fluoridation and make a decision. This will continue the current practice throughout New Zealand where some water supplies are fluoridated and some are not.

If the decision sits with the DHB and it chooses to consider the issue, as the Regulatory Impact Statement (RIS) acknowledges, DHBs will face exactly the same opposition to their fluoridation proposals as local authorities are currently facing. The RIS states:

“The boards of DHBs would face the same scrutiny that territorial authorities have experienced at election time, and the election of anti-fluoride advocates could lead to a stalemate or a reversal of fluoridation in some areas. Secondly, DHB decision-making would not rule out a series of locally-fought campaigns over fluoridation.”

This brings into question whether the Government’s stated policy objectives can be achieved by the Bill as currently drafted.

In order for the Government’s objectives for fluoride to be met the decision-maker on fluoride should be the Director General of Health. The Director General should be directed to decide on the issue, not merely be empowered. This would also enhance accountability as it would become very clear as to where responsibility actually sits. The Bill’s provisions create a “diffuse” form of accountability as councils may continue to be held responsible for fluoridation issues even though it would be DHBs that exercise the authority.

Costs

LGNZ acknowledges the costs of fluoridation of drinking water are not great, but they still have to be borne by ratepayers. The Bill creates situations where DHBs may not have to bear the costs of their decision, and where territorial authorities may be forced in those circumstances to pass on the costs of fluoridation of drinking water to ratepayers without having any control of the decision.

LGNZ’s position is that the costs should be covered by the decision-maker. Territorial authorities should only be a service provider. Any other position is inconsistent with one of the basic principles of public finance, namely that agencies that are responsible for the expenditure of public finance are also held accountable for that expenditure. Where accountability is unclear, or diffuse, a moral hazard problem is created as there are few incentives on the principal agency to make responsible allocation decisions.

Penalties

The penalty provisions of the Health Act 1956 (section 69ZZV) will apply to a local authority which commits an offence against section 69ZZR(1). These provisions provide for a fine not exceeding \$200,000 and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues.

Plants are, from time to time, required to be shut down for scheduled maintenance or to deal with unforeseen operational matters. The penalty provisions should be amended so they do not apply to this maintenance work.

Consultation

As drafted DHBs have no duty to either consult with affected communities prior to making a decision to fluoridate a water supply, or to inform them (and the relevant council) prior to a decision to fluoridate. Given community sensitivity to the issue, LGNZ recommends that the Bill is amended to provide a requirement for the Director General or the DHB (whichever is the decision-maker) to at least inform councils and communities that it is considering fluoridation and seek comments on any such proposal.

Conclusion

As drafted the Bill fails to meet LGNZ's and indeed the Government's stated objective to remove local government from any form of decision-making about whether or not to add fluoride to a drinking water supply. Without some form of duty on the decision-maker to actively consider the case the Bill creates a policy vacuum that may expose councils to ongoing pressure from interest groups to consider the fluoridation option.

LGNZ is happy to provide drafting to the Health Committee which reflects our recommendations.

Recommendations

1. Amend the Bill to remove obligations for DHBs and instead require the Director General of Health to decide the issue of fluoridation of drinking water supplies.
2. Confirm that the costs of fluoridation will rest with the decision-maker.
3. Amend the Bill so the penalty provisions in section 69ZZV of the Health Act 1956 do not apply when a plant is required to be shut down for maintenance purposes.
4. Amend the Bill to require the decision-maker to at least inform councils and communities that it is considering fluoridation and seek comments on any such proposal.