

Health (Drinking Water) Amendment Bill

Government Bill

As reported from the Health Committee

Commentary

Recommendation

The Health Committee has examined the Health (Drinking Water) Amendment Bill and recommends that it be passed with the amendments shown.

About the bill as introduced

This is a Government bill that seeks to amend Part 2A of the Health Act 1956 to improve its effectiveness and efficiency. The bill draws on recommendations made by the Government Inquiry into Havelock North Drinking Water that followed a contamination incident in August 2016.

The bill would:

- remove requirements for the Ministry of Health to consult for 3 years and gazette changes for 2 years before making any changes to drinking-water standards
- clarify that water safety plans must include timetables to implement measures that mitigate risks to drinking water
- streamline processes for the appointment of drinking-water assessors
- remove unnecessary references to designated ports and airports.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Regard to relevant matters when taking all practicable steps

Section 69H of the Act as it stands specifies how the phrase “all practicable steps” should be interpreted throughout Part 2A of the Act. We note that section 69H(1)

gives greater emphasis to the availability and affordability of any steps, by requiring a person to give them “particular regard”. Other matters such as the nature and severity of the potential harm, and knowledge of the likely harm, must simply be given “regard”.

We share some concern that the way section 69H(1) is structured gives greater priority to the availability and affordability of steps than to the protection of public health.

We therefore recommend inserting clause 4A to replace section 69H. Our proposal would retain the existing components of section 69H(1) but change the structure of the section so that all relevant matters are given equal regard.

Evidence of affordability

Under section 69H(3)(b) of the Act at present, a person who wishes to use affordability as a reason for a step not being practicable only needs to tell a drinking water assessor or designated officer that it is not affordable. We recommend replacing this section to require a person who wants to use unaffordability as a reason for not undertaking a step to provide evidence showing that the step is not affordable, and to justify why it is not practicable to take the step.

Removing all practicable steps

Section 69S of the Act sets out the duty of suppliers in relation to the provision of drinking water, and section 69V specifies the duty of a water supplier to comply with drinking-water standards. Both these sections qualify the duties by referring to “all practicable steps”. We recommend inserting clauses 6A and 7A to amend these sections by removing the words “all practicable steps to”. This would make the responsibilities of water suppliers clearer. These changes would not affect the entitlement of suppliers to the defence provided for in section 69ZZS.

Water safety plans

As section 69V stands, it can be argued that suppliers comply with drinking-water standards if they have implemented their water safety plan to their own satisfaction. We agree with the view that this test of compliance lacks scrutiny. We recommend inserting clause 7A(3) to amend section 69V(2) so that the implementation of the water safety plan must be to the satisfaction of a drinking-water assessor, not the drinking-water supplier.

Notification of changes to standards

Section 69P of the Act requires a Minister to ensure there has been adequate consultation and notice before issuing, adopting, or amending drinking-water standards.

We recommend inserting clause 5(3), section 69P(3) to update the public notice provisions so they reflect current practice and allow publication on an internet site.

Currently, section 69P(1)(a) states that notice of the intention to issue, adopt, or amend the standards must be published in a daily newspaper in each of the cities of Auckland, Wellington, Christchurch, and Dunedin.

We recommend amending this section to replace the reference to specified daily newspapers with reference to new section 69P(3), so that public notice provisions are consistent with current practice.

Management and control of critical points

As introduced, clause 8 of the bill would amend section 69Z of the Act. This section relates to the duty to prepare and implement a water safety plan.

We consider that the section should also refer to the management of critical points identified in the water safety plan. We understand that, under the current legislative framework, it has been challenging to take regulatory action against a drinking-water supplier who is not fully compliant.

We therefore recommend amending clause 8, which would insert new section 69Z(8)(c), to ensure that the “management and control” of critical points is included in the duty to prepare and implement a water safety plan. This would strengthen the provision for water safety plans that have a critical impact on public health.

Appendix

Committee process

The Health (Drinking Water) Amendment Bill was referred to the committee on 8 November 2018. The closing date for submissions was 21 December 2018. We received and considered 30 submissions from interested groups and individuals. We heard oral evidence from 7 submitters.

We received advice from the Ministry of Health.

Committee membership

Louisa Wall (Chairperson)

Dr Liz Craig

Matt Doocey

Jenny Marcroft

Dr Shane Reti

Hon Nicky Wagner

Angie Warren-Clark

Hon Michael Woodhouse

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Dr David Clark

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Health (Drinking Water) Amendment Act **2018**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 5

3 Principal Act

This Act amends the Health Act 1956 (the **principal Act**).

Part 1

Amendments to Part 2A of principal Act

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4 Section 69C amended (Application of sections 69S to 69ZC generally)

In section 69C(2) to (7), delete “or operator of a designated port or airport”.

4A Section 69H replaced (All practicable steps)

Replace section 69H with:

69H All practicable steps

- (1) In this Part, **all practicable steps**, in relation to the achievement of any particular result by a person, means all steps to achieve that result that it is reasonably practicable to take in the circumstances, taking into account and weighing up all relevant matters, including— 5
- (a) the nature and severity of the harm that may be suffered if the result is not achieved; and
 - (b) the current state of knowledge about the likelihood that harm of that nature and severity will be suffered if the result is not achieved; and
 - (c) the current state of knowledge about harm of that nature; and 10
 - (d) the current state of knowledge about the means available to achieve the result, and about the likely efficacy of each; and
 - (e) their availability; and
 - (f) their affordability, in light of the person’s financial position.
- (2) To avoid doubt, a person required by this Part to take all practicable steps is required to take those steps only in respect of circumstances that the person knows or ought reasonably to know about. 15
- (3) A person who wishes to rely on **subsection (1)(f)** as a reason for not taking any step or steps to achieve a result—
- (a) must keep a full and complete record of that person’s financial position and those of any associated person (as defined in section YA 1 of the Income Tax Act 2007); and 20
 - (b) must, as soon as practicable and in any event not more than 28 days after being so requested by a drinking-water assessor or designated officer,—
 - (i) produce evidence that the step or steps are not affordable, including a copy of the records referred to in **paragraph (a)**; and 25
 - (ii) justify to the assessor or officer why it was not practicable to take the step or steps.

5 Section 69P amended (Minister must consult before issuing, adopting, or amending drinking-water standards) 30

- (1) In section 69P(1), delete “over a period of at least 3 years”.
- (2) In section 69P(1)(a), replace “in a daily newspaper in each of the cities of Auckland, Wellington, Christchurch, and Dunedin” with “in accordance with **subsection (3)**”.
- (3) After section 69P(2), insert: 35
- (3) The notice under subsection (1)(a) must be published—
- (a) on an Internet site to which the public has free access; or

	(b) <u>in 1 or more newspapers circulating in the area likely to be affected by the matter to which the notice relates.</u>	
	(4) <u>The Minister may also publish the notice in any other way the Minister considers desirable.</u>	
6	Section 69R replaced (Commencement of drinking-water standards)	5
	Replace section 69R with:	
69R	Commencement of drinking-water standards	
	Drinking-water standards (and any amendments to those standards) come into force on a day specified in a notice under section 69Q(1) that is at least 28 days after the date of publication of that notice in the <i>Gazette</i> .	10
6A	Section 69S amended (Duty of suppliers in relation to provision of drinking water)	
	In section 69S(1), delete “take all practicable steps to”.	
7	Section 69U amended (Duty to take reasonable steps to contribute to protection of source of drinking water)	15
	Repeal section 69U(4).	
7A	Section 69V amended (Duty to take all practicable steps to comply with drinking-water standards)	
	(1) <u>In the heading to section 69V, delete “take all practicable steps to”.</u>	
	(2) <u>In section 69V(1), delete “take all practicable steps to”.</u>	20
	(3) <u>In section 69V(2), after “standards”, insert “to the satisfaction of a drinking-water assessor”.</u>	
8	Section 69Z amended (Duty to prepare and implement water safety plan)	
	(1) In section 69Z(8)(b), delete “risk management”.	
	(2) After section 69Z(8)(b), insert:	25
	(e) take all reasonable steps to comply with the timetable set out in the supplier’s water safety plan in accordance with subsection (2)(a)(v) and (b)(iv).	
	(c) <u>take all reasonable steps to—</u>	
	(i) <u>comply with the timetable set out in the supplier’s water safety plan in accordance with subsection (2)(a)(v) and (b)(iv); and</u>	30
	(ii) <u>manage and control the critical points identified in the supplier’s water safety plan.</u>	

- 8A Section 69ZF amended (Duty to take remedial action if drinking-water standards breached)**
- After section 69ZF(b), insert as subsection (2):
- (2) If a drinking-water supplier implementing provisions of an approved water safety plan for the purpose of section 69V(2) becomes aware of a risk to the drinking-water supply, the supplier must take all practicable steps to correct the problem. 5
- 9 Section 69ZK amended (Director-General may appoint drinking-water assessors)**
- (1) In section 69ZK(1), replace “persons or agencies” with “individuals”. 10
- (2) In section 69ZK(2), replace “a person or agency” with “an individual”.
- (3) In section 69ZK(2), replace “the person or agency” with “the individual”.
- (4) Repeal section 69ZK(2)(b) and (3).
- (5) In section 69ZK(4), replace “person” with “individual”.
- 10 Section 69ZP amended (Powers of drinking-water assessors and designated officers)** 15
- Replace section 69ZP(1)(a) with:
- (a) exercise the powers in sections 128 and 128A for that purpose in their own right (whether or not they hold any office or authorisation referred to in section 128), as long as they comply with sections 69ZR (which restricts the exercise of their powers) and 69ZS (which requires a warrant to enter a dwellinghouse); and 20
- 11 Section 69ZZZB amended (Director-General must publish annual report)**
- Replace section 69ZZZB(1) with:
- (1) The Director-General must ensure that a report on drinking water is prepared and published, by or on behalf of the Director-General, before 1 July in each year. 25

Part 2

Further amendments to principal Act

- 12 Section 69E amended (Application of sections 69S to 69ZC to water carriers)** 30
- In section 69E(1) and (2), delete “or operator of a designated port or airport”.

- 13 Section 69F amended (Bulk suppliers, networked suppliers, water carriers, and designated ports or airports may elect earlier compliance)**
- (1) In the heading to section 69F, replace “**water carriers, and designated ports or airports**” with “**and water carriers**”.
- (2) In section 69F(1) and (2), replace “water carrier, or designated port or airport” with “or water carrier” in each place. 5
- 14 Section 69G amended (Interpretation)**
- (1) In section 69G, definition of **critical points**, repeal paragraph (b)(v) and (vi).
- (2) In section 69G, repeal the definitions of **designated port or airport** and **medical officer of health**. 10
- (3) In section 69G, replace the definition of **drinking-water assessor** with:
drinking-water assessor means an individual appointed under section 69ZK as a drinking-water assessor
- (4) In section 69G, definition of **drinking-water supplier**, repeal paragraph (b)(iii). 15
- (5) In section 69G, definition of **rural agricultural drinking-water supply**, paragraph (a)(i), delete “commercial”.
- (6) In section 69G, definition of **rural agricultural drinking-water supply**, paragraph (b), replace “a drinking-water supply using” with “that part of a drinking-water supply that uses”. 20
- 15 Section 69J amended (Drinking-water register)**
- (1) In section 69J(1)(a), delete “operators of designated ports or airports,”.
- (2) In section 69J(3)(e), delete “the operator of a designated port or airport,”.
- 16 Section 69K amended (Applications for registration)**
- Repeal section 69K(4)(a)(iii). 25
- 17 Section 69O amended (Minister may issue, adopt, amend, or revoke drinking-water standards)**
- In section 69O(3)(b), delete “designated port or airport,”.
- 18 Section 69ZR amended (Restrictions on exercise of powers)**
- In section 69ZR(1)(c), delete: 30
- (a) “or designated officer who is not a medical officer of health”; and
- (b) “or officer”.
- 19 Section 69ZX replaced (Register of drinking-water assessors)**
- Replace section 69ZX with:

69ZX Register of drinking-water assessors

- (1) The Director-General must maintain a register of individuals who have been appointed as drinking-water assessors.
- (2) The following particulars must be recorded in the register in respect of every individual registered as a drinking-water assessor:
 - (a) the individual's name and any business contact details; and
 - (b) the date and term of the individual's appointment; and
 - (c) any conditions on the individual's appointment; and
 - (d) any other particulars that may be required by or under this Part or regulations made under section 69ZZY.
- (3) The register may also include any other information relevant to an individual's appointment as a drinking-water assessor that the Director-General considers appropriate.

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Legislative history

5 July 2018
8 November 2018

Introduction (Bill 69–1)
First reading and referral to Health Committee