



Health (Fluoridation of Drinking Water) Amendment Act 2021

Public Act 2021 No 44
Date of assent 15 November 2021
Commencement see section 2

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Part 5A

Fluoridation of drinking water

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Health (Fluoridation of Drinking Water) Amendment Act 2021.

2 Commencement

This Act comes into force on the 28th day after the date on which it receives the Royal assent.

3 Principal Act

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

Part 1

Amendments relating to drinking water

4 New section 2A inserted (Transitional, savings, and related provisions)

After section 2, insert:

2A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

5 New Part 5A inserted

After Part 5, insert:

Part 5A
Fluoridation of drinking water

116C Purpose

The purpose of this Part is to—

- (a) enable the Director-General to direct a local authority to add fluoride or not to add fluoride to drinking water supplied through its local authority supply; and
- (b) require the local authority to comply with the direction.

116D Interpretation

In this Part,—

drinking water—

- (a) means water that is used for—
 - (i) human consumption; or
 - (ii) oral hygiene; or
 - (iii) preparing food, drink, or other products for human consumption; or
 - (iv) washing utensils that are used for eating and drinking, or for preparing, serving, or storing food or drink for human consumption; but
- (b) does not include bottled water that is prepared or manufactured by a food business, and is regulated, under the Food Act 2014

local authority has the same meaning as in section 5(1) of the Local Government Act 2002

local authority supply means the infrastructure and processes that—

- (a) are used by a local government organisation to abstract, store, treat, transmit, or transport drinking water for supply to consumers; and
- (b) are controlled by a local authority

local government organisation means a local authority, council-controlled organisation, or subsidiary of a council-controlled organisation that provides water services.

Subpart 1—Direction relating to fluoridation of drinking water supply

116E Director-General may direct local authority to add or not to add fluoride to drinking water

- (1) The Director-General may direct a local authority to add or not to add fluoride to drinking water supplied through its local authority supply.
- (2) The Director-General must seek and consider advice from the Director of Public Health on the matters in subsection (3)(a) and (b)(i) before deciding whether to make a direction.
- (3) Before making a direction, the Director-General must consider—
 - (a) scientific evidence on the effectiveness of adding fluoride to drinking water in reducing the prevalence and severity of dental decay; and
 - (b) whether the benefits of adding fluoride to the drinking water outweigh the financial costs, taking into account—
 - (i) the state or likely state of the oral health of a population group or community where the local authority supply is situated; and
 - (ii) the number of people who are reasonably likely to receive drinking water from the local authority supply; and
 - (iii) the likely financial cost and savings of adding fluoride to the drinking water, including any additional financial costs of ongoing management and monitoring.
- (4) For the purpose of subsection (3)(b)(i), the Director-General may take into account any evidence that the Director-General considers relevant.
- (5) As soon as practicable after making a direction, the Director-General must publish the direction and the reasons for the decision to make the direction on the Ministry of Health’s Internet site.

116F Contents of direction

- (1) A direction must specify a date by which the local authority must comply with the direction, which must not be earlier than the date by which the Director-General considers it would be reasonably practicable for the local authority to comply.
- (2) A direction to add fluoride to drinking water must specify the level at which fluoride must be added.
- (3) A direction to add fluoride to drinking water may allow the local authority to supply, at 1 or more specified sites, water to which fluoride has not been added.

116G Engagement with local authority

- (1) Before making a direction to add fluoride to drinking water, the Director-General must invite written comments from the relevant local authority on—

- (a) the estimated financial cost of adding fluoride to the drinking water, including any additional costs of ongoing management and monitoring; and
 - (b) the date by which the local authority would be able to comply with a direction.
- (2) The Director-General must give the local authority at least 40 working days from the issuing of the invitation to provide its comments.
- (3) If the local authority provides comments within the specified time, the Director-General must—
 - (a) have regard to the comments; and
 - (b) if the Director-General decides to make a direction, summarise and respond to the comments in the reasons for the decision published under section 116E(5).

116H Local authority not required to consult

A local authority that receives a direction under section 116E or an invitation to comment under section 116G is not required to consult on any matter related to the direction or invitation.

116I Local authority must comply with direction

- (1) A local authority that receives a direction under section 116E must comply with the direction. (*See* Part 1 of Schedule 1AA for the obligations of a local authority that does not receive a direction.)
- (2) If the direction requires fluoride to be added to drinking water, the local authority must take all practicable steps to ensure that the specified level of fluoride is present in the water immediately before it is available for consumption.
- (3) Subsection (2) does not apply to a site specified under section 116F(3).

Subpart 2—Offences**116J Offence to contravene or permit contravention of section 116I**

- (1) A local authority that contravenes or permits the contravention of section 116I—
 - (a) commits an offence; and
 - (b) is liable on conviction to a fine not exceeding \$200,000; and
 - (c) if the offence is a continuing one, is liable to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues.
- (2) The continued existence of any thing, or the intermittent repetition of any action, that constitutes an offence under this section is a continuing offence for the purposes of this section.

116K Strict liability and defence to offence

- (1) In a prosecution for an offence against section 116J, it is not necessary to prove that the defendant intended to commit the offence.
- (2) It is a defence to a prosecution if the defendant proves—
 - (a) that the defendant did not intend to commit the offence; and
 - (b) that the defendant took all practicable steps to prevent the commission of the offence.

116L Time for filing charging document

Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period for filing a charging document in respect of an offence against section 116J ends on the date that is 3 years after the date on which the offence was committed.

116M Additional penalty for certain offences for commercial gain

- (1) If a person is convicted of an offence against section 116J, the court may (in addition to any penalty it may impose under that section) impose an order under subsection (2) if satisfied that the offence was committed in the course of producing a commercial gain.
- (2) The court may order the person to pay an amount not exceeding—
 - (a) 3 times the value of any commercial gain resulting from the commission of the offence; or
 - (b) if the person is a body corporate, and the value of any gain cannot be readily ascertained, 10% of the turnover of the body corporate and all of its interconnected bodies corporate (if any).
- (3) For the purposes of subsection (1), the value of any gain (if readily ascertainable) must be assessed by the court, and any amount ordered to be paid under subsection (2)(a) or (b) is recoverable in the same manner as a fine.
- (4) In this section, **interconnected** and **turnover** have the same meanings as in section 2 of the Commerce Act 1986.

116N Liability of principal for acts of agents

- (1) If an offence is committed against section 116J by any person (**person A**) acting as the agent (including any contractor) or employee of another person (**person B**), person B is, without prejudice to the liability of person A, liable under that section in the same manner and to the same extent as if they personally committed the offence.
- (2) Despite subsection (1), if proceedings are brought under that subsection, it is a good defence if the defendant proves,—
 - (a) in the case of a natural person (including a partner in a firm), that—

- (i) they did not know, and could not reasonably be expected to have known, that the offence was to be or was being committed; or
 - (ii) they took all practicable steps to prevent the commission of the offence; or
 - (b) in the case of a body corporate, that—
 - (i) neither the directors nor any person concerned in the management of the body corporate knew, or could reasonably be expected to have known, that the offence was to be or was being committed; or
 - (ii) the body corporate took all practicable steps to prevent the commission of the offence; and
 - (c) in all cases, that the defendant took all practicable steps to remedy any effects of the act or omission giving rise to the offence.
- (3) If any body corporate is convicted of an offence against section 116J, every director and every person concerned in the management of the body corporate is also guilty of that offence if it is proved—
- (a) that the act that constituted the offence took place with their authority, permission, or consent; and
 - (b) that they knew, or could reasonably be expected to have known, that the offence was to be or was being committed and failed to take all practicable steps to prevent or stop it.

6 New Schedule 1AA inserted

Insert the Schedule 1AA set out in the Schedule of this Act as the first schedule to appear after the last section of the principal Act.

Part 2

Miscellaneous amendments

7 Section 3 amended (Power of Governor-General in Council to amend Schedules)

In section 3(b), delete “, or the list of chemical works set out in Schedule 4, or the list of noxious or offensive gases set out in Schedule 5, the name or description of any trade, business, manufacture, undertaking, works, gas, or fumes,”.

8 Section 22C amended (Disclosure of health information)

In section 22C(2)(g)(i), delete “or the Hospitals Act 1957”.

9 Section 74B amended (Medical laboratories may be required to give notice of cases of disease during epidemic)

In section 74B(1), after “section 8”, insert “of the Health Amendment Act 2006”.

Schedule
New Schedule 1AA inserted

s 6

Schedule 1AA
Transitional, savings, and related provisions

s 2A

Part 1
Provisions relating to Health (Fluoridation of Drinking Water)
Amendment Act 2021

1 Local authority must continue to add fluoride to drinking water

- (1) This clause applies to a local authority that, before this clause commences, adds fluoride to drinking water supplied through its local authority supply.
- (2) The local authority must continue to add fluoride to the water unless directed not to by the Director-General.
- (3) A local authority that contravenes or permits the contravention of subclause (2) commits an offence and is liable to the same penalty as if it had contravened or permitted the contravention of section 116I.
- (4) Subpart 2 of Part 5A applies to an offence against subclause (3) as if it were an offence against section 116J.

2 Local authority may add fluoride to drinking water in absence of direction

- (1) This clause applies to a local authority that,—
 - (a) before this clause commences, does not add fluoride to drinking water supplied through its local authority supply; and
 - (b) has never received a direction to add fluoride or not to add fluoride to drinking water supplied through its local authority supply.
- (2) The local authority may, at its discretion, add fluoride to drinking water supplied through its local authority supply.

Legislative history

17 November 2016	Introduction (Bill 208–1)
6 December 2016	First reading and referral to Health Committee
29 May 2017	Reported from Health Committee (Bill 208–2)
8 June 2021	Second reading
26 October 2021	Committee of the whole House (Bill 208–3)
9 November 2021	Third reading
15 November 2021	Royal assent

This Act is administered by the Ministry of Health.