

House of Representatives

# Supplementary Order Paper

Tuesday, 1 June 2021

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

*Proposed amendments for the consideration of the Committee of the whole House*

**Key:**

- **this is inserted text**
- **~~this is deleted text~~**

**Note:** This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT have official status in terms of unamended text**
- **NOT have the status of an as-reported version of the Bill.**



### **Explanatory note**

This Supplementary Order Paper amends the Health (Fluoridation of Drinking Water) Amendment Bill. Currently, the Bill confers on a district health board a power to direct a local authority drinking-water supplier to add or not to add fluoride to drinking water supplied from a drinking water supply—

- owned by the local authority drinking-water supplier; and
- from which drinking water is supplied to the district health board’s resident population.

This Supplementary Order Paper would instead confer a power on the Director-General of Health to direct a local authority to add or not to add fluoride to drinking water supplied through its local authority supply. (Local authority supply is defined as the infrastructure and processes that—

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

Amendments are proposed to the matters that the Director-General must take into account when considering whether the benefits of adding fluoride to the drinking water outweigh the financial costs. *New section 116E(2)(b)(i)* would require the Director-General to take into account the state or likely state of the oral health of a population group or community where the local authority supply is situated.

Consequential amendments are proposed for the purposes of internal consistency and for consistency with the Water Services Bill. That Bill would repeal Part 2A of the Health Act 1956. The relevant provisions of that Part are retained in a *new Part 5A*.

### **Departmental disclosure statement**

The Ministry of Health is required to prepare a disclosure statement to assist with the scrutiny of this Supplementary Order Paper. It provides access to information about any material policy changes to the Bill and identifies any new significant or unusual legislative features of the Bill as amended.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2021&no=38&>

### **Regulatory impact statement**

The Ministry of Health produced a regulatory impact statement in May 2021 to help inform the new policy decisions taken by the Government relating to the contents of this SOP.

A copy of this regulatory impact statement can be found at—

- <https://www.health.govt.nz/about-ministry/information-releases/regulatory-impact-statements/regulatory-impact-statement-transferring-decision-making-fluoridation-community-water-supplies>

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SOP No 38

- <http://www.treasury.govt.nz/publications/informationreleases/ris>

**The Honourable Dr Ayesha Verrall, in Committee, to propose the amendments shown in the following document.**

*Hon Dr Ayesha Verrall*

# Health (Fluoridation of Drinking Water) Amendment Bill

Government Bill

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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 **2016**.

**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.

**4A 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

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Part 1 cl 4A

**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) 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.
- (3) For the purpose of **subsection (2)(b)(i)**, the Director-General may take into account any evidence that the Director-General considers relevant.
- (4) 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(4)**.

**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.

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Part 1 cl 4A

- (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.

**5 Section 69A amended (Purpose)**

After section 69A(2), insert:

- (3) This Part also—
- (a) ~~enables district health boards to direct a local authority drinking-water supplier to add fluoride or not to add fluoride to drinking water supplied by that supplier; and~~
  - (b) ~~requires the local authority drinking-water supplier to comply with the direction.~~

**6 Section 69G amended (Interpretation)**

In section 69G, insert in its appropriate alphabetical order:

**local authority drinking-water supplier** means a drinking-water supplier who is, or is controlled by, a local authority (as defined in section 5(1) of the Local Government Act 2002)

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Part 1-cl 7

**7 Section 69O amended (Minister may issue, adopt, amend, or revoke drinking-water standards)**

- (1) In section 69O(3)(b), delete “; but”.
- (2) Repeal section 69O(3)(c).

**8 New sections 69ZJA to 69ZJE and cross-heading inserted**

After section 69ZJ, insert:

*Fluoridation*

**69ZJA District health boards may direct local authority drinking-water suppliers to add fluoride or not to add fluoride to drinking-water supplies**

- (1) A district health board may direct a local authority drinking-water supplier—
  - (a) to add fluoride to drinking water supplied from a drinking-water supply—
    - (i) that is owned by the local authority drinking-water supplier; and
    - (ii) from which drinking water is supplied to the district health board’s resident population (or part of that population); or
  - (b) not to add fluoride to that drinking water.
- (2) Before making a direction, the district health board 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 of the oral health of its resident population; and
    - (ii) the number of its resident population who receive water from the drinking-water 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.
- (3) If the drinking-water supply also supplies drinking water to the resident population of another district health board (or part of that population),—
  - (a) all affected district health boards must consider the matters in **subsection (2)** together, as if the resident population of each district health board were 1 resident population; and
  - (b) an affected district health board must not make a direction unless all affected district health boards agree.
- (4) A district health board’s decision to consider, or not to consider, making a direction in respect of a drinking-water supply is not relevant to whether the

~~district health board should consider making a direction in respect of a different drinking water supply.~~

- ~~(5) A district health board must publish a direction and the reasons for the decision to make the direction on the district health board's Internet site as soon as practicable after making the direction.~~
- ~~(6) A direction is not a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act.~~
- ~~(7) In this section, **resident population** has the meaning given in section 6(1) of the New Zealand Public Health and Disability Act 2000.~~

**69ZJB Contents of directions**

- ~~(1) A direction must specify a date by which the local authority drinking water supplier must comply with the direction, which must not be earlier than the date by which the district health board considers it would be reasonably practicable for the supplier 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 drinking water supplier to supply, at 1 or more specified sites, water to which fluoride has not been added.~~

**69ZJC Engagement with local authority**

- ~~(1) Before making a direction to add fluoride to drinking water, a district health board 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 drinking water supplier would be able to comply with a direction.~~~~
- ~~(2) The district health board 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 district health board must—
  - ~~(a) have regard to the comments; and~~
  - ~~(b) if the district health board decides to make a direction, summarise and respond to the comments in the reasons for the decision published under **section 69ZJA(5)**.~~~~

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Part 1-cl-9

**69ZJD No duty for local authority to consult**

A local authority who receives a direction under **section 69ZJA** or an invitation to comment under **section 69ZJC** is not required to consult on any matter related to the direction or invitation.

**69ZJE Local authority drinking water supplier must comply with direction**

- (1) A local authority drinking water supplier who receives a direction under **section 69ZJA** must comply with the direction. (See Part 1 of Schedule 1AA for the obligations of local authority drinking water suppliers who do not receive a direction.)
- (2) If the direction requires the local authority drinking water supplier to add fluoride to drinking water, the local authority drinking water supplier must take all practicable steps to ensure that the specified level of fluoride is present in the water immediately before it reaches the point of supply.
- (3) **Subsection (2)** does not apply to a point of supply that is a site specified under **section 69ZJB(3)**.

**9 Section 69ZZR amended (Offences against sections in this Part)**

After section 69ZZR(1)(f), insert:

- (fa) **section 69ZJE** (local authority drinking water supplier must comply with direction):

**10 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

**11 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,”.

**12 Section 22C amended (Disclosure of health information)**

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

**13 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 10

**Schedule 1AA**  
**Transitional, savings, and related provisions**

s 2A

**Part 1**  
**Provisions relating to Health (Fluoridation of Drinking Water)**  
**Amendment Act 2016**

- 1 ~~Suppliers~~ Local authority must continue to add fluoride to drinking water**
- (1) This clause applies to a local authority ~~drinking water supplier who, immediately that,~~ before this clause commences, adds fluoride to drinking water ~~in a drinking water supplied through its local authority supply.~~
- (2) The local authority ~~drinking water supplier~~ must continue to add fluoride to the water unless directed not to by the ~~Director-General relevant district health board.~~
- (3) A local authority ~~drinking water supplier who~~ 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) ~~Sections 69ZZS and 69ZZU to 69ZZX apply to an offence against this section as if it were an offence against section 69ZZR(1).~~
- (4) **Subpart 2 of Part 5A** applies to an offence against **subclause (3)** as if it were an offence against **section 116J.**
- 2 ~~Suppliers~~ Local authority may add fluoride to drinking water in absence of direction**
- (1) This clause applies to a local authority ~~drinking water supplier who~~ that,—
- (a) ~~immediately~~ before this clause commences, does not add fluoride to drinking water ~~supplied by that supplier through its local authority supply;~~ and
- (b) has never received a direction to add fluoride or not to add fluoride to the drinking water supplied through its local authority supply.
- (2) The local authority ~~drinking water supplier~~ may, at its discretion, add fluoride ~~to the water~~ drinking water supplied through its local authority supply.

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Wellington, New Zealand:

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