

Legal alert - Bill to transfer fluoridation decisions to DHBs introduced in Parliament

Alastair Hercus, Peter Chemis, Hamish Kynaston, Alastair Sherriff, Natasha Wilson, Nicola Ridder, Catherine Miller, Amy de Joux

22 November 2016

On 17 November 2016 the [Health \(Fluoridation of Drinking Water\) Amendment Bill](#) was introduced in Parliament by Associate Health Minister Peter Dunne. The Bill amends the Health Act 1956 to give District Health Boards (DHBs) the power to direct local authorities to fluoridate their drinking water supplies.

We set out below some points of interest in the proposed new drinking water fluoridation regime:

- The Bill provides that a DHB may direct a local government drinking water supplier in the DHB's region to add, or not add, fluoride to drinking water (section 69ZJA(1)). The DHB can only direct local government drinking water suppliers – it has no power to direct any other drinking water suppliers
- The Bill does not require DHBs to decide whether or not to direct local government suppliers within any particular timeframe. However, the Bill does provide that if drinking water supplied by local government is fluoridated at the time the Bill becomes law, the supplier must continue to add fluoride to the water unless directed not to by the relevant DHB (clause 1(2) of new Schedule 1AA)
- The Bill requires DHBs to consider scientific evidence on the effectiveness of fluoridation in reducing the prevalence and severity of dental decay when making fluoridation decisions (section 69ZJA(2)(a)). We expect that the body of scientific evidence that DHBs will rely on will be the same across New Zealand. However, it will be interesting to see if different DHBs form different views on that evidence
- The Bill also requires DHBs to consider whether the benefits of fluoridation outweigh the financial costs of fluoridation (section 69ZJA(2)(b)). In considering financial costs, each DHB has to take into account the state of the oral health of its resident population, the proportion of the population that receives drinking water, and the likely financial cost and savings of fluoridation (including ongoing management and monitoring). These factors will, of course, vary across DHBs, which may lead to different DHBs making different decisions about fluoridation, even if the body of scientific evidence is expected to be the same across New Zealand
- While DHBs have to take into account financial costs in making fluoridation decisions, it is in fact the local government drinking water supplier that will have to bear the costs of drinking water fluoridation. In contrast, the benefits of fluoridation will be enjoyed by individuals (in the form of reduced dental costs for adults) and by DHBs (through reduced dental care costs for children and other health benefits) rather than local authorities.

The government has indicated that the Bill will go through the normal Parliamentary process, including select committee consideration, and that it expects DHBs will be able to start making decisions about drinking water fluoridation in 2018 (once the Bill is passed). Given the contentiousness of the issue of drinking water fluoridation, we will follow developments with interest.

Auckland

PwC Tower
188 Quay Street
Auckland 1010

PO Box 1433
Auckland 1140
New Zealand

P: +64 9 358 2555
F: +64 9 358 2055

Wellington

Aon Centre
1 Willis Street
Wellington 6011

PO Box 2694
Wellington 6140
New Zealand

P: +64 4 499 4242
F: +64 4 499 4141

Christchurch

83 Victoria Street
Christchurch 8013

PO Box 322
Christchurch 8140
New Zealand

P: +64 3 379 1747
F: +64 3 379 5659