

Supreme Court releases two decisions dismissing fluoride challenges

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

28 June 2018

After a series of cases that have been running since 2014, the Supreme Court has released two decisions dismissing New Health New Zealand Inc's various challenges to drinking-water fluoridation.

The Court dealt with the claims in two separate judgments. In the [first judgment](#), the Court addressed New Health's challenge to South Taranaki District Council's decision to fluoridate drinking-water supplies in Patea and Waverley. In particular, the Court addressed New Health's claims:

- That the Council did not have the necessary statutory powers to fluoridate drinking-water supplies
- That mass water fluoridation breached the right to refuse medical treatment, as set out in section 11 of the New Zealand Bill of Rights Act (BORA).

Although their reasoning sometimes differed, all of the Justices except Elias CJ agreed that the Council did have the necessary statutory powers to fluoridate drinking-water supplies.

On the BORA point, the analysis was complex. William Young J agreed with the Court of Appeal's finding that water fluoridation is not a medical treatment for the purpose of section 11. In contrast, the other Justices found that drinking-water fluoridation is a medical treatment. However, O'Regan and France JJ concluded that, despite engaging section 11: "the provisions authorising the fluoridation of drinking water limit the s 11 right only to an extent that is demonstrably justified in a free and democratic society for the purposes of s 5 of [the BORA]". Glazebrook J also agreed section 11 was engaged, but in contrast, noted that satisfaction of section 5 would depend on local conditions and declined to analyse the point further. Overall, while the Justices were divided in their reasoning, the majority agreed that the appeal must be dismissed. Elias CJ differed, giving a minority judgment which concluded that "an interpretation of the legislation which recognises an implied power to add fluoride to water is inconsistent with s 11 of the [BORA]".

In the [second judgment](#), the Court addressed New Health's challenge to the validity of the Medicines Amendment Regulations 2015, which had declared that fluoridating agents for use in water supply were not medicines for the purposes of the Medicines Act. The Court was united in dismissing this appeal, finding, in essence, that because the Regulations were made for a lawful purpose (clarity) and were prospective in nature, they were valid. The Court also agreed with the Court of Appeal that New Health's other challenges to the Medicines Act were moot, and the appeal was dismissed.

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