



Inquiry into Supplementary Order Paper No. 38 on the Health (Fluoridation of Drinking Water) Amendment Bill

Report of the Health Committee

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Dr Liz Craig
Chairperson

Inquiry into Supplementary Order Paper No. 38 on the Health (Fluoridation of Drinking Water) Amendment Bill

Recommendation

The Health Committee has considered an inquiry into Supplementary Order Paper No. 38 on the Health (Fluoridation of Drinking Water) Amendment Bill, and recommends that the House take note of its report.

Background to our inquiry

The Health (Fluoridation of Drinking Water) Amendment Bill was referred to the Health Committee of the 51st Parliament on 6 December 2016. The bill would empower district health boards (DHBs) to decide and direct territorial authorities whether or not to fluoridate drinking water supplies in their area. At present, territorial authorities make this decision, resulting in inconsistent decisions about fluoridation around New Zealand.

The Health Committee of the 51st Parliament presented its report to the House on 29 May 2017.¹ The bill passed its second reading on 8 June 2021 and is now with the Committee of the whole House.

On 8 June 2021, the Associate Minister of Health wrote to us, noting that Cabinet had approved a policy change in March 2021. The Director-General of Health would instead be authorised to make decisions about the fluoridation of community drinking water supplies. Supplementary Order Paper (SOP) No. 38 was drafted to give effect to this policy change.

The Associate Minister of Health invited us to hold a brief inquiry into the policy change as set out in SOP No. 38. She also asked us to call for and consider public submissions. We initiated our inquiry on 9 June 2021 in response to this request.

About the fluoridation bill

As introduced, the bill would amend Part 2A of the Health Act 1956. It would insert a power for DHBs to make decisions and give directions about the fluoridation of local government drinking water supplies in their areas. This power would replace the decision-making responsibilities of territorial local authorities.

When deciding whether to make a direction, DHBs would need to consider scientific evidence about the effectiveness of adding fluoride to drinking water to reduce the prevalence and severity of dental decay. They would also need to consider whether the benefits of adding fluoride to drinking water outweighed the financial costs. DHBs would

¹ A copy of the report is available on the [Parliament website](#).

need to take into account a population's oral health status, population numbers, and the financial costs and savings, including ongoing management and monitoring.

The Health Committee of the 51st Parliament's recommended amendments

The Health Committee of the 51st Parliament recommended that the bill be passed with a range of minor and technical amendments. They included:

- clarifying that a local authority drinking-water supplier could still choose to add fluoride to the water, in the absence of a direction from a DHB
- specifying that a DHB direction could allow the drinking-water supplier to supply, at one or more specified sites, water to which fluoride has not been added
- requiring local authority drinking-water suppliers to take reasonable steps to ensure that the specified level of fluoride was present in the water before it reached the point of supply
- requiring DHBs to invite written comments from the local authority about the estimated cost of providing fluoride and when it would be able to comply with the direction
- making it clear that local authorities would not be required to consult their communities about a DHB's direction to fluoridate or its invitation to comment.

About Supplementary Order Paper No. 38

SOP No. 38, in the name of Hon Dr Ayesha Verrall, was released on 8 June 2021. The SOP would confer on the Director-General of Health, instead of DHBs, the power to direct a local authority supply to fluoridate. The director-general would still need to consider the scientific evidence about the effectiveness of fluoridation in reducing dental decay. They would also need to consider whether the benefits of adding fluoride to the drinking water outweighed the financial costs and oral health status of the local community.

The SOP contains consequential amendments for consistency with the Water Services Bill, which would repeal Part 2A of the Health Act. The relevant provisions from the fluoridation bill would be retained in a proposed new Part 5A of the Act. This is to ensure that the legislative provisions implemented if the fluoridation bill is enacted would not be affected by the proposed repeal of Part 2A of the Health Act.

Main themes raised in submissions

We called for public submissions with a closing date of 18 June 2021. We were particularly interested in hearing people's views on the changes that the SOP proposes and the shift of powers from DHBs to the director-general. We received submissions from 2,384 individuals and organisations and heard oral evidence from 42 submitters.

We set out below the main themes from submissions. We acknowledge the large number of submitters who shared their views about fluoridation. However, in our report we have not commented on submissions that were supportive of, or opposed to, fluoridation generally, but that did not provide specific feedback on changes to the bill proposed by the SOP. This is because the bill as introduced had already been through a full select committee process and, in the time available, we wanted to focus on the changes proposed by the SOP.

Of the 93 written submissions that discussed the change proposed by the SOP, 59 agreed with conferring the power on the director-general rather than DHBs, while 29 did not agree with the proposed changes. These people mostly noted a preference for DHBs to be the decision maker. Five submitters neither agreed nor disagreed with the proposed changes. Instead, they provided overall comments and an assessment of the SOP and the bill.

The Director-General of Health as the decision maker

The majority of submitters who discussed the change proposed by the SOP agreed with conferring the power to make decisions about fluoridation on the director-general. These submitters consider that having one decision maker would strengthen the bill and ensure better national consistency, reducing gaps in equity. They also believe that community water fluoridation is a public health matter so the decision should be made by people with health expertise.

One-third of the submitters who discussed the change proposed by the SOP did not agree with transferring the power to the director-general and suggested that DHBs would be more appropriate decision makers. These submitters suggested that this is because DHBs represent their communities, are appointed through a democratic process, and are better placed to understand community needs and voices.

Consultation for decisions about public health

We understand that the director-general consults with a range of people when making decisions about public health. They include medical officers of health and the Director of Public Health.² We also note that the director-general or the Director of Public Health may use existing clinical advisory networks and relationships to input into decision-making processes as required.

Further, we observed that public health decisions are not generally made with democratic input. For example, the director-general is not obliged to undertake consultation when they use their powers under the Health Act to direct local authorities in relation to public health. This recognises the priority of public health objectives and the importance of evidence-based decisions. We note that the changes proposed by the SOP align with this approach.

Requirement to consult with the Director of Public Health

A number of submitters suggested that the director-general should be required to consult with the Director of Public Health when making a decision. They consider that this would be consistent with the functions of the Director of Public Health. Given that community water fluoridation is a public health matter, the Director of Public Health could already provide advice about fluoridation. However, we consider that the requirement should be explicit. We therefore recommend amending the SOP's proposed new section 116E. Our proposed amendment would require the director-general, when considering issuing a direction, to seek and receive certain advice from the Director of Public Health. The advice would be about the scientific evidence on the effectiveness of adding fluoride to drinking water in reducing the

² Under Section 3B of the Health Act, the director-general must appoint a Director of Public Health to advise them about matters relating to public health.

prevalence and severity of dental decay. It would also be about the state or likely state of the oral health of a population group or community where the local authority supply is situated.

Therefore, we recommend that the SOP be amended by adding the following subsection after section 116E(1):

(1A) The Director-General must seek and consider advice from the Director of Public Health on the matters in **subsection (2)(a)** and **(b)(i)** before deciding whether to make a direction.

Requirements for community and local engagement

About 20 percent of the submitters who discussed the change proposed by the SOP commented on the need for local input into decision making. Some of these submitters consider that they would have more say if DHBs were the decision maker. They believe that local input would result in more robust discussions and ensure a more democratic process.

Most councils agreed that they should be exempt from public consultation. However, some suggested that the director-general should directly consult the public and allow appropriate time for feedback.

We understand that the proposed SOP does not remove any consultation duties from the bill. As introduced, the bill does not explicitly require the decision maker to publicly consult with local communities before issuing a direction to fluoridate. Further, we recognise that the bill contains several mechanisms by which local input could still be sought, which are detailed below.

Proposed new section 116E(2)(b)(i) would require the director-general to consider the state of the oral health of a population group or community where a local authority supply was situated. As the Ministry of Health would not necessarily hold all this information, it might need to obtain some information from DHBs.

The Health Committee of the 51st Parliament recommended amending the bill to ensure that DHBs engaged with the local authority drinking-water supplier when considering whether to fluoridate. Before making a direction, the decision maker would need to invite written comments from the local authority about the estimated cost of providing fluoride and when it could comply with the direction. The decision maker would have to consider any comments from the local authority and summarise and respond to them in the reasons for the decision. The proposed SOP does not change this recommendation.

Further, the wording of the SOP does not prevent the director-general from considering additional local factors or views. These views could be obtained by engaging with the local community, iwi, or specific local groups if it was considered appropriate.

Funding for community water fluoridation

Of the submitters who discussed the change proposed by the SOP, 20 expressed concern that local authorities would need to meet the capital and operating costs of fluoridation. Some of these submitters suggested that the ministry should make funding available to meet these costs because fluoridation is a public health initiative. Several submitters also

proposed that the ministry or decision maker provide financial support to councils to enable them to assess the costs of implementing fluoridation.

We understand that the total costs for the capital component of fluoridation are estimated at \$61 million. Some funding will be available to support local authorities to fluoridate their water supplies—\$8.3 million in 2021/22 and \$3 million a year in subsequent years. The funding will cover some, but not all, of the capital costs.

We were advised that implementing fluoridation may need to be phased because funding is limited each year. To help assess what communities should be prioritised, the ministry is developing funding criteria based on need. The criteria will focus on areas with poorer health outcomes and Māori and Pacific communities, and use information such as oral health outcome data.

We acknowledge that some funding will be provided. However, we observed that the legislation, if enacted, would involve costs for local authorities that are directed to fluoridate. We note that the SOP does not contain a provision for this because funding matters are not generally addressed in primary legislation. In its report to the House on the bill, the Health Committee of the 51st Parliament suggested that the Government consider whether it intends to contribute funding towards the costs of establishing fluoridated water supplies. We share this view and believe that extra assistance and funding will be necessary to help with the fluoridation of water supplies.

Long-term plans for councils

Some councils also highlighted the role of their long-term plans in preparing for this type of expense. They asked that they be advised in advance if a direction to fluoridate will be made. This would allow councils to prepare for fluoridation as part of their long-term plans and subsequent annual plans.

We acknowledge these concerns from councils. We sought reassurance that there would be a clear strategy, including time frames, to advise councils well in advance if they were in priority areas.

We were advised that, if the bill is enacted, the ministry will write to local authorities with information about what the new provisions will mean for them. It will also provide information about the intended processes and time frames for assessment and decision making. We strongly urge the ministry to provide as much notice and detail as possible.

How the bill and SOP relate to other reforms

Water Services Bill

At the time of this inquiry, we were also considering the Water Services Bill. The purpose of that bill is to ensure that drinking water suppliers provide safe drinking water to consumers. It would repeal Part 2A of the Health Act, which relates to drinking water, and replace it with a stand-alone Act.

Some submitters queried whether the SOP should be amended to align with the Water Services Bill and recognise private drinking water suppliers. We note that the definitions sometimes differ between the bills. This is because the supplies that the director-general could make directions about under the fluoridation bill are only a subset of the drinking water

suppliers that would be regulated under the Water Services Bill. We also understand that the fluoridation bill would only apply to drinking water supplies controlled by local authorities—the director-general would not be able to direct private providers to fluoridate.

As introduced, clause 198 of the Water Services Bill would amend section 127 of the Local Government Act 2002. It would place a duty on territorial authorities to ensure communities had access to drinking water if existing suppliers faced significant problems. We observed that ownership of private supplies could shift to local authorities and these authorities could be directed to fluoridate if it was considered cost-effective.

We understand that decisions about whether to fluoridate local authority-controlled supplies would be considered on a case-by-case basis. There would also be no distinction between supplies that a local authority had taken over and other local authority supplies. Factors such as the specific infrastructure and the small nature of a supply would all be relevant to the director-general's assessment of whether fluoridation would be appropriate and cost-effective.

Three Waters Reform Programme

In July 2020, the Government launched the Three Waters Reform Programme, a three-year programme to reform the provision of drinking water, wastewater, and stormwater services. Some submitters wondered how this programme would affect the fluoridation bill. In particular, they queried the shift from services provided by local authorities to several multi-regional water supply entities. We understand that the SOP is drafted to align with the status quo. If any changes were needed as a result of the reforms, they could be progressed at a later date.

Time frames for responding to invitations to provide comments

Proposed new section 116G(2) provides that the director-general would need to allow a local authority at least 40 working days to respond to an invitation to provide comments. The comments would relate to the estimated cost and timing of adding fluoride to drinking water supplies.

Some submitters considered that 40 days might not always be a reasonable time frame, depending on the complexity and location of the water supply. They suggested that between 60 and 90 days would be more reasonable. To enable the timely implementation of community water fluoridation, we do not consider that any changes are needed to the time frames. We note that the wording in the SOP would not prevent the director-general from extending the time frames depending on the case.

Appendix

Committee procedure

We met between 9 June and 4 August 2021 to consider this inquiry. We called for public submissions with a closing date of 18 June 2021. We received submissions from 2,384 organisations and individuals and heard oral evidence from 42 submitters. We received advice from the Ministry of Health. The Parliamentary Counsel Office assisted with advice about legal drafting.

Committee members

Dr Liz Craig (Chairperson)

Matt Doocey

Dr Elizabeth Kerekere

Dr Anae Neru Leavasa

Dr Tracey McLellan

Sarah Pallett

Dr Gaurav Sharma

Penny Simmonds

Brooke van Velden

Simon Watts

Advice and evidence received

The documents we received as advice and evidence in relation to this inquiry are available on the Parliament website, www.parliament.nz.