

30 January 2017

Submission to the Health Select Committee

Health (Fluoridation of Drinking Water) Amendment Bill

1. This submission from the Canterbury Mayoral Forum (the Forum) reflects the views of the nine district councils in the Canterbury region and Environment Canterbury.
2. The Christchurch City Council has formed a different view and will make its own submission. In discussion, the Forum also voiced support for the Christchurch submission, recognising its unique circumstances.
3. The Forum wishes to be heard in support of its submission.

Context

4. The Canterbury Mayoral Forum comprises the Mayors of the ten territorial local authorities in Canterbury and the Chair of Environment Canterbury, supported by our Chief Executives. The purpose of the Forum is to promote collaboration across the region and to increase the effectiveness of local government in meeting the needs of Canterbury's communities.
5. All Canterbury councils actively participate in the Forum: Kaikōura District Council, Hurunui District Council, Waimakariri District Council, Christchurch City Council, Selwyn District Council, Ashburton District Council, Mackenzie District Council, Timaru District Council, Waimate District Council, Waitaki District Council and the Canterbury Regional Council (Environment Canterbury). The chair of the Forum in 2017–19 is Lianne Dalziel, Mayor of Christchurch.
6. The Forum work programme is implemented by the Canterbury Chief Executives Forum and the Canterbury Policy Forum. For matters that impinge on water reticulation, the Policy Forum is supported by the Canterbury Engineering Managers Group.
7. The following submission has been developed by members of the Canterbury Policy Forum and approved by the Canterbury Mayoral Forum. There is a range of views across our member councils, and some individual Canterbury councils may separately provide their own submissions on the Bill. The Forum also supports the submission by Local Government New

Mayors standing together for Canterbury.

Secretariat, E: secretariat@canterburymayors.org.nz W: www.canterburymayors.org.nz
C/- Environment Canterbury, PO Box 345, Christchurch 8140 T: 03 345 9323

Zealand. This submission is not intended to replace or detract from any of those. However, this submission has the support of the nine district councils in Canterbury and Environment Canterbury.

General comments

8. The provision of water supplies to communities is a core network infrastructure service for Territorial Authorities (TAs) under section 11A of the Local Government Act 2002 (LGA). The Bill provides for some aspects of the management of drinking water (fluoridation) to be administered by District Health Boards (DHBs), while other public health issues for drinking water remain with TAs (bacteria and protozoal compliance).
9. A council's role and obligations under the LGA in relation to water is that it is required from time to time to assess water services (which includes water supply and wastewater services) and other sanitary services (s125) and it also has an obligation to maintain water services that it already provides to the community (s130).
10. As a drinking water supplier under Part 2A of the Health Act 1956, Councils also have obligations, including to:
 - take all practicable steps to ensure that an adequate supply of drinking water is provided
 - take reasonable steps to contribute to the protection from contamination of the source of drinking water and to test new sources
 - take all practicable steps to comply with and monitor drinking-water standards
 - take reasonable steps to supply wholesome drinking water and investigate complaints
 - detect and assess public health risks generally
 - prepare and implement public health risk assessment plans in relation to the supply of water
 - take remedial action if a breach of the drinking-water standards is detected.

Specific points of submission

11. Canterbury councils are generally in support of the policy intent of the Bill, however there are concerns that the Bill, as currently drafted, does not fully meet the policy intent, and does not adequately address all issues relevant to the fluoridation of drinking water.

Consistency of decision making

12. As there are three DHBs in the Canterbury region (Canterbury DHB, South Canterbury DHB and the Southern DHB which covers all of the Waitaki district, including the parts of Waitaki district within the Canterbury region), there is a possibility that decisions on fluoridation may not be applied consistently between the three DHBs across council water supplies.

Decision-making responsibilities

13. The policy intent of the Bill is to 'replace territorial local authorities' decision-making responsibilities about fluoridation of drinking water' and to transfer the decision-making to DHBs. This suggests there will not be any decision-making power left for TAs.

14. However, while section 5 of the Bill (the amendment to section 69A) empowers DHBs to make directions to local authorities to fluoridate or not fluoridate their drinking water, DHBs are not **required** to make directions (or not) on fluoridation, and there is no clear statement that TAs are not able to make decisions on fluoridation. Therefore it appears that if the DHB does not elect to use the Bill's new power, the relevant council will remain the decision-maker.
15. If the decision-making ability is removed from TAs an express statement to this effect should be made in the Bill. The Bill should also require the decision-maker to give clear direction to councils on whether fluoride should or should not be added to their water supplies. In light of the submission on funding below, this decision-making may need to occur over a number of years.
16. There are mixed views from Canterbury councils about which agency should be the decision-maker on this issue (including the status quo, DHBs, or the Director-General of Health) although the majority agree with councils no longer being the decision-maker. National leadership is required in relation to decisions on the fluoridation of drinking water. However it should also be noted that shifting responsibility to DHBs will not rule out a series of locally fought campaigns over fluoride, which could influence DHBs to reverse their decisions.

Funding fluoridation

17. The Cabinet paper proposal requires local authorities to continue to meet the direct costs of fluoridation for both existing and new schemes. This means that a TA will be required to fund and implement a decision it did not make. However the current drafting of the Bill does not make this clear. Where a decision is made by a DHB to fluoridate, the TA will then be forced to pass on the costs to ratepayers without having any control over the decision. This raises questions about consultation on funding with its community. This type of expense has to be planned for, and would usually be consulted on as part of a council's long term plan (and then annual plan).
18. To avoid these issues the Forum considers the decision-maker should be responsible for funding the costs associated with its decision to fluoridate the water supply. All councils in the Canterbury region are of a common mind on this point.
19. While the Government formerly provided funding assistance for water fluoridation through the Sanitary Works Subsidy Scheme, that scheme has now closed. Although the Ministry of Health website indicates some funding may be available to assist with the set-up costs of fluoridating local drinking-water supplies, there is a number of 'rules' around this possible funding and it appears it would not be available to larger councils that may be required to fluoridate.
20. Additionally, the Bill does not take into account the cost-effectiveness obligations of the LGA in relation to multiple smaller drinking water schemes (section 131 of the LGA uses a population of 200 persons to define small water supplies). Within the Canterbury region, individual Councils have a number of water supplies, ranging from four to 70 separate drinking water facilities.

Consultation

21. Decisions related to fresh water in Canterbury are important to our councils. One example is the Canterbury Water Management Strategy (CWMS), which is a collaborative framework for

all fresh water-related activity in our region, with extensive community engagement and close involvement of Ngāi Tahu rūnanga. The CWMS vision is:

To gain the greatest cultural, economic, environmental, recreational and social benefits from our water resources within a sustainable framework both now and for future generations.

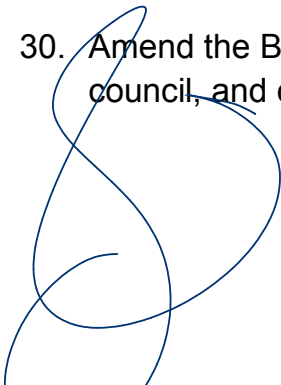
22. Section 8 of the Bill requires DHBs to consider scientific evidence of adding fluoride to drinking water, and whether the benefits of adding fluoride to drinking water outweigh the financial costs, taking into account local oral health status, population numbers, and financial cost and savings. However, the Bill does not have any requirement to consider the views of the local government drinking water supplier involved, or to consider community views. This is inconsistent with the LGA where TAs are bound to consider the views of their communities before making decisions
23. Further thought needs to be given to consultation requirements being included in the Bill, particularly for consultation with the relevant council itself, if not the wider community. An additional concern is that any decision made by a DHB is not challengeable through LGA-required Council consultation processes removing any ability for confusion or re-litigation.

Conclusion

24. The Canterbury Mayoral Forum appreciates the opportunity to provide comment on the proposed changes to the Health Act 1956.
25. The Forum considers that, while it supports the policy intention, the Bill does not currently achieve the objective of relieving TAs of having to make decisions about public health matters. We have concerns about the lack of consultation requirements and clear funding direction in the Bill, and given these concerns, suggest that a collaborative review and revision of the Bill with stakeholders would be more likely to achieve the intentions of the legislation.
26. The Canterbury Mayoral Forum wishes to be heard in support of this submission.

Recommendations

27. Amend the Bill to require the decision-maker to make clear directions on fluoridation of drinking water supplies.
28. If the decision-making ability is removed from Territorial Authorities, an express statement to this effect should be made in the Bill.
29. Confirm that the costs of fluoridation will rest with the decision-maker.
30. Amend the Bill to require the decision-maker to undertake consultation with the relevant council, and consider community views.



Damon Odey, Mayor, Timaru District Council
Deputy-Chair, Canterbury Mayoral Forum