

# Supplementary Departmental Disclosure Statement

## Health (Fluoridation of Drinking Water) Amendment Bill

A supplementary departmental disclosure statement for a Government Supplementary Order Paper (SOP) brings together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that SOP.

It highlights proposed material changes to previous disclosures relating to:

- the general policy intent of the Health (Fluoridation of Drinking Water) Amendment Bill (the Fluoride Bill) and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

The original disclosure statement for the Health (Fluoridation of Drinking Water) Amendment Bill, dated 2 November 2016, can be found at this link:

<http://disclosure.legislation.govt.nz/bill/government/2016/208>

This supplementary disclosure statement was prepared by the Ministry of Health.

The Ministry of Health certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

13 May 2021

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## **The Main Areas of Change to the Original Disclosures**

This is a supplementary disclosure statement for the Fluoride Bill SOP.

A supplementary disclosure statement supplements the original disclosure statement for the Fluoride Bill by reporting the additions and changes proposed by the SOP.

Where the Fluoride Bill now also incorporates changes made by a select committee of the House, the supplementary disclosure statement will note these if relevant but will not explain them further because these changes do not relate to this SOP.

The main area of change to the original disclosure statement is that this SOP proposes to amend the Fluoride Bill to give decision making authority on community water fluoridation to the Director-General of Health rather than district health boards (DHBs).

## Part One: General Policy Statement

This SOP amends the Health the Fluoride Bill.

As introduced, the Fluoride Bill would give DHBs authority to make decisions on the fluoridation of public drinking water supplies rather than local authorities. This SOP proposes to amend the Fluoride Bill to give decision making authority on community water fluoridation to the Director-General of Health rather than DHBs.

The policy rationale for the proposed amendments is:

- the strong scientific evidence that community water fluoridation is safe, effective and affordable applies across New Zealand. Decision-making on community water fluoridation by the Director-General of Health would enable these key factors and evidence to be considered and given weight in a nationally consistent manner, while still considering local input.
- giving decision-making authority to the Director-General of Health aligns with the Government's expectation of strong central public health leadership and sector stewardship.
- the amendments align with the health sector reform announcements, which include the disestablishment of DHBs.

The Fluoride Bill currently proposes to amend and add sections in Part 2A of the Health Act 1956, which specifies matters relating to the regulation of drinking water. The Water Services Bill proposes to repeal Part 2A of the Health Act 1956 entirely.

The SOP also proposes additional technical changes to ensure that the changes made by the Fluoride Bill are not affected by the proposed repeal of Part 2A of the Health Act 1956, which is proposed by the Water Services Bill.

The SOP also corrects a previous drafting error to clarify that all local authority drinking-water suppliers are able to add fluoride to drinking water in a drinking-water supply that has not been the subject of a direction to fluoridate.

Please note that the current version of the Fluoride Bill (that this SOP proposes to amend) now reflects changes made by the Health Committee, which considered the Bill in 2017.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this SOP?</b>	<b>NO</b>
<p>Please note the original disclosure statement for the Fluoride Bill refers to a number of scientific reviews and reports on the cost-effectiveness and safety of community water fluoridation.</p> <p>No inquiry, review or evaluation reports have informed the specific amendments proposed by the SOP.</p>	

### Relevant international treaties

<b>2.2. Does this SOP seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this SOP?</b>	<b>YES</b>
<p>A regulatory impact statement (RIS) for the Fluoride Bill was published in 2016 and is available in the link below. An addendum statement to the original RIS will be published alongside the existing regulatory impact statement to reflect the updated analysis, in advance of the SOP being tabled.</p> <p><a href="https://www.health.govt.nz/system/files/documents/information-release/ris-decision-making-on-fluoridation.pdf">https://www.health.govt.nz/system/files/documents/information-release/ris-decision-making-on-fluoridation.pdf</a></p>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
<p>The Ministry of Health's Papers and Regulatory Committee (PARC) reviewed the original RIS and concluded that the information and analysis met the criteria set out in the quality assurance guidance.</p> <p>PARC also reviewed the addendum statement to the original RIS.</p>	

<b>2.3.2. Are there aspects of the policy to be given effect by this SOP that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this SOP?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this SOP, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>NO</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
<p>Please note that the original disclosure statement for the Fluoride Bill refers to the report <i>The Review of Benefits and Costs of Community Water Fluoridation in New Zealand</i> which includes information on estimated benefits and costs of extending water fluoridation in New Zealand.</p> <p>This analysis is still relevant regardless of the amendments proposed by this SOP.</p> <p>There has been no specific analysis undertaken on the costs and benefits associated with the specific amendments proposed by the SOP.</p>	

<b>2.6. For the policy to be given effect by this SOP, are the potential costs or benefits likely to be affected by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this SOP is consistent with New Zealand's international obligations?</b>
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The SOP is consistent with New Zealand's international obligations. It does not impact on New Zealand's international obligations.
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### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by the SOP is consistent with the principles of the Treaty of Waitangi?</b>
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The SOP aligns with the Treaty of Waitangi principles of equity and active protection because it supports consistent decision making on community water fluoridation.
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Research suggests that extending community water fluoridation would have a proportionately larger benefit for Māori and those living in deprived communities.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this SOP appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>
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<b>NO</b>
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The Ministry of Justice advised the Attorney General in 2016 that the Fluoride Bill as currently drafted is consistent with the Bill of Rights Act 1990.
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The Supreme Court has subsequently held that adding fluoride to drinking water engages section 11 of the New Zealand Bill of Rights Act 1990, which gives people the right to refuse medical treatment. The Supreme Court also held that the local authority's power to add fluoride to drinking water was a justified limitation on this right.
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The specific amendments proposed by this SOP are unlikely to engage the Bill of Rights Act 1990. The amendments to the Fluoride Bill are to shift decision making on community water fluoridation from one health-related public body to another.
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## Offences, penalties and court jurisdictions

<b>3.4. Does this SOP create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>NO</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
<p>The Fluoride Bill as originally drafted provides that it is an offence for a local water supplier not to comply with directions on whether a water supply should be fluoridated. Details of the offence, and associated penalties are outlined in the original disclosure statement.</p> <p>The SOP replicates offence provisions which are currently contained in Part 2A of the Health Act 1956, as it is proposed that Part 2A of the Health Act 1956 will be repealed through the Water Services Bill. Otherwise, once Part 2A is repealed, failing to comply with a direction would not constitute an offence.</p> <p>As such, although the SOP contains offence provisions which were not in the Fluoride Bill as introduced, this is merely to ensure that failing to comply with fluoride-related directions will continue to be subject to the same offences and penalties that applied in relation to the Fluoride Bill as introduced, following the proposed repeal of Part 2A of the Health Act 1956.</p>	

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
The Ministry of Justice was provided with the opportunity to comment as part of the inter-departmental consultation on the SOP.	

## Privacy issues

<b>3.5. Does this SOP create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>NO</b>
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<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>NO</b>
The SOP does not have privacy implications.	

## External consultation

<b>3.6. Has there been any external consultation on the policy by the draft SOP?</b>	<b>YES</b>
<p>The Ministry of Health consulted with the Treasury, the Department of Internal Affairs, the Department of Prime Minister and Cabinet, Ministry for Pacific Peoples, Ministry for Social Development, Oranga Tamariki, and Te Puni Kokiri on the policy proposals that the SOP implements, prior to consideration by the Social Wellbeing Committee.</p> <p>The Ministry of Health consulted with the Treasury, the Department of Internal Affairs, the Department of Prime Minister and Cabinet, Ministry for Pacific Peoples, Ministry for Social Development, Oranga Tamariki, Ministry of Justice and Te Puni Kokiri on the draft SOP.</p>	

### Other testing of proposals

<b>3.7. Have the policy details to be given effect by this SOP been otherwise tested or assessed in any way to ensure the SOPs provisions are workable and complete?</b>	<b>NO</b>
<p>The Ministry of Health is currently developing a framework to support Director-General of Health decision making and intends to engage with key stakeholders on it. The framework will provide operational detail on how the decision-making process will work in practice.</p>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this SOP contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4.2. Does this SOP create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
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### Retrospective effect

<b>4.3. Does this SOP affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### Strict liability or reversal of the burden of proof for offences

<b>4.4. Does this SOP:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>
The Fluoride Bill in its original form creates a strict liability offence to not comply with a direction to fluoridate. The SOP does not change this offence.	

### Civil or criminal immunity

<b>4.5. Does this SOP create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
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### Significant decision-making powers

<b>4.6. Does this SOP create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>NO</b>
This SOP proposes to amend the Fluoride Bill to give decision making authority on community water fluoridation to the Director-General of Health rather than DHBs. However it will not have an impact on a person's rights, obligations and interests because its main effect would be to shift decision making from one health-related public body to another.	

### Powers to make delegated legislation

<b>4.7. Does this SOP create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>NO</b>
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<b>4.8. Does this SOP create or amend any other powers to make delegated legislation?</b>	<b>NO</b>
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### Any other unusual provisions or features

<b>4.9. Does this SOP contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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