

**REPORT 3**  
*(1215/52/IM)*

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## **SUBMISSION TO THE HEALTH (DRINKING WATER) AMENDMENT BILL**

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### **1. Purpose of Report**

The report seeks the Committee's agreement to the submission to the Health (Drinking Water) Amendment Bill attached as appendix 1.

### **2. Recommendations**

It is recommended that the Committee:

- 1. Receive the information.*
- 2. Agree to the submission to the Health (Drinking Water) Amendment Bill attached as appendix 1.*
- 3. Delegate to the Mayor, Social Portfolio leader and the Chief Executive the authority to approve minor changes.*

### **3. Background**

The Health (Drinking Water) Amendment Bill ('the Bill') is a Government Bill, under the auspices of the Ministry of Health (MH). It had its first reading in Parliament on 26 July and has been referred to the Health Select Committee which is expected to report back to the House by 20 December 2006. The Select Committee has called for submissions on the Bill with a closing date of 15 September 2006.

Implementation of the Bill's provisions are to be phased in over time, however most of its provisions would be operative from 1 April 2007. Large suppliers would be required to comply with the Bill's requirements by 1 April 2008, with smaller scale suppliers being subject to later dates (from 2009 – 2012) according to their size.

The sector has been expecting legislation to amend the Health Act for a long time and although MH has consulted with the local government sector and other stakeholders, there remain some issues of concern to the local government sector and to Wellington City Council.

## **4. Discussion**

### **4.1 Strategic Fit and Relevant Council Policy**

Council Infrastructure staff have not indicated any concerns with compliance with the Bill in so far as the requirements concerning Drinking Water Standards and Public Health Risk Management Plans as the Council already subscribes to the voluntary 2005 Drinking Water Standards and is developing Public Health Risk Management Plans for its drinking water supplies.

### **4.2 Summary of Key Recommendations in the Bill**

The purpose of the Bill is to require drinking water suppliers to maintain adequate supplies of safe and wholesome drinking water.

#### **Drinking Water Standards**

Compliance with Drinking Water Standards, which is currently voluntary, will be mandatory for all suppliers of drinking water to 25 or more people after 1 April 2012. The Bill adopts the 2005 Drinking Water Standards and, subject to due processes, empowers the Minister to amend Drinking Water Standards.

#### **Drinking Water Register**

A Drinking Water Register is proposed to assist with the dissemination of information between public agencies and drinking water suppliers and to make information available to the general public.

#### **Duties of Drinking Water Suppliers**

Drinking Water Suppliers will have specified public duties including:

- taking all practicable steps to maintain an uninterrupted supply (exceptions permitted for maintenance, improvements or emergencies)
- if the ability to maintain supply is at risk for any reason, notify nominated agencies and, if necessary, request any local authority with jurisdiction, to assist the supplier to maintain an adequate supply
- protecting the sources of drinking water from contamination and pollution
- complying with Drinking Water Standards (as mentioned above)
- monitoring drinking water to determine compliance with drinking water standards and assess risks to public health
- preparing and implementing Public Health Risk Management Plans. The Bill provides detail on the content of public health risk management plans.
- keeping records and making them available to officials. Drinking Water Suppliers shall provide information to Councils so that a Council can be aware of any restrictions that may affect / prevent new connections to that supply. Information held by the Council on drinking water would also need to be included in a Land Information Memorandum.
- taking remedial action upon becoming aware that drinking water does not meet the drinking water standards
- investigating complaints and responding appropriately, including taking remedial actions if a complaint highlights that a supply does not comply with the drinking water standards

### **Drinking Water Assessors and Designated Officers**

The Bill provides for Drinking Water Assessors and Designated Officers with powers to ensure compliance with the Act including undertaking monitoring and enforcement actions. Medical Officers of Health may also issue compliance orders. In addition to the duties shown above, drinking water suppliers will have a duty to assist these officials.

### **Emergencies**

The Bill provides for specific powers where there is serious risk of harm to public health or safety in connection with drinking water emergency (e.g. Civil Defence emergency).

## **4.3 Key Submission Points**

The Bill's purpose of promoting the adequate supply of safe and wholesome drinking water is undeniably worthy and, as already noted, has been expected for some years. However, it makes what is currently a voluntary regime for drinking water standards become a mandatory regime and, in doing so, gives rise to compliance concerns in connection with the costs that the Bill's prefacing policy statement acknowledges are significant. Some specific clauses raise issues of concern around contingent risks to Council from being subject to another entity exercising statutory powers. These concerns are explained below:

### **General Policy Statement**

The General Policy Statement states the policy of the Bill is to protect the health and safety of people by promoting the provision of adequate supplies of safe and wholesome drinking water. It recognises that compliance with drinking water standards is voluntary and proposes to make compliance with the standards mandatory. Enforcement of the standards and other parts of the Bill will be enabled through officials (drinking water assessors, designated officers and Medical Officers of Health).

The need for legislation is not well supported by the statement of problem and need for action, which is within the General Policy Statement. In this statement it is disclosed that 19% of people subject to a 1998 survey covering 85% of the population were supplied with drinking water that was not known to comply with E coli criteria of the drinking water standards. However, given that the statement shows 119,000 cases of infectious intestinal diseases occur per annum, it should have disclosed how many were caused by being outside the coverage of drinking water supplies that meet the drinking water standards. It does not do this. Instead it states that it is technically difficult to assess the proportion of cases attributable to substandard water supplies and concludes that the highest rates of cryptosporidium occurs in areas where water is ungraded or where grading is unsatisfactory.

Given that Local Government NZ has advised that a rough estimate of the cost of compliance ranges from \$50 - \$200 million<sup>1</sup> and the annual cost of infectious intestinal disease is \$55.1 million, it seems reasonable to expect a more accurate and definitive indication of the likely benefits of the Bill.

As there is no quantification of the likely reduction of infectious intestinal diseases, it undermines confidence in the Bill's intended effects.

#### **Duty to maintain adequate supply**

#### **Clause 69T**

Clause 69T requires a drinking water supplier to seek assistance from any local authority in the area where the water is supplied in the event that supply difficulties are being experienced or can be foreseen. While not explicitly stated, it is presumed that local authorities would be under some obligation to act, and such a request could effectively make local authorities guarantors of drinking water supplies that are not council owned or controlled. There may be numerous scenarios that could give rise to a request for assistance under clause 69T including:

- short-term water shortages
- inadequate system management / maintenance
- inadequate long term planning

The effect of this clause could require ratepayers to underwrite private supplies.

#### **Public Health Risk Management Plans**

#### **Clause 69Z**

Drinking water suppliers will have an obligation to prepare a public health risk management plan. Public health risk management plans will serve to identify, amongst other things, the public health risks associated with each drinking water supply and mechanisms for preventing risks from arising; and reducing and eliminating risks that are found to exist. The issue of concern for Council is that public health risk management plans must be submitted to a drinking water assessor for approval. There is potential for conflict between what Council considers to be reasonable in its public health risk management plans and what a drinking water assessor may require. Public Health Risk Management Plans must be revised and renewed at least four-yearly. It is notable that there is no similar review period for Water Assessments under section 126 of the Local Government Act 2002. The role of drinking water assessors and Medical Officers of Health in connection with service levels is potentially significant if the officials override or reprioritise a drinking water supplier's plans. Where the supplier is a Council, such an order could override a Council's intentions in its Annual Plan or Long Term Council Community Plan.

#### **Duty for Remedial Action**

#### **Clause 69ZF**

The importance of complying with drinking water standards has already been clearly demonstrated. However, when drinking water standards are breached or not being met clause 69ZF requires the drinking water supplier to take appropriate remedial actions to correct the problem. This seems to go beyond the requirement in clause 69V, which states the drinking water supplier shall take 'all

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<sup>1</sup> This figure is disclosed in the policy statement and attributed to Local Government NZ and, therefore is more of a sector concern. Note as per 4.1 of the report these compliance costs are not expected to affect Wellington City.

practicable steps' to comply with drinking water standards. 'All practicable steps' is a qualified term similar to 'all reasonable steps'. Clause 69H defines 'All practicable steps' as being steps that are reasonable in light of the nature and severity of harm that may be suffered, the current extent of knowledge held, the means (resources) that are available and the likely efficacy of improving the situation. The general policy statement that prefaces the Bill indicates that, 'reasonable steps' is defined in terms of benefit-cost considerations. Such ambiguities would be removed from the Bill if terms are consistently used and conflicts between clauses such as between 69V and 69ZF are addressed.

#### **Emergency Powers - Compensation**

#### **Clause 69ZZE**

The clauses that relate to emergency powers are generally regarded to be appropriate except for clause 69ZZE 4, which states:

The Director-General may

- (a) require a drinking water supplier who has caused or contributed substantially to an emergency to reimburse the crown for all or part of any compensation paid on behalf of the Crown under this section in relation to that emergency;
- (b) require 1 or more territorial authorities whose district or districts were affected by that emergency to reimburse the crown for any shortfall between the amount of compensation paid under this section and the amount of any reimbursement under paragraph (a).

Council's concern regarding these clauses are the same as for clause 69T, it seems unreasonable to put councils in the position of being required to act as guarantors for the actions of drinking water supplies they do not control.

## **5. CONCLUSION**

The Health (Drinking Water) Amendment Bill was recently introduced in Parliament on 26 July and the Bill has been referred to the Health Select Committee which has asked for submissions.

The report seeks the Committee's agreement to the submission to the Health (Drinking Water) Amendment Bill attached as appendix 1.

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## **Supporting Information**

**1) Strategic Fit / Strategic Outcome**

*The submission supports the outcome 10 of the Social and Recreation Strategy by promoting high standards of public health through appropriate regulations, advocacy and support.*

**2) LTCCP/Annual Plan reference and long term financial impact**

*Not applicable, as there is no funding requirement.*

**3) Treaty of Waitangi considerations**

*No significant Treaty implications.*

**4) Decision-Making**

*This is not a significant decision.*

**5) Consultation**

*Not required as Council is not making a decision or commencing an initiative that relates to Part 6 of the Local Government Act 2002.*

**6) Legal Implications**

*Not applicable.*

**7) Consistency with existing policy**

*This submission identifies inconsistencies between the proposals in the Bill and the Council's policies.  
The Committee has delegated authority to approve submissions to proposed legislation*

## **Appendix One**