

August, 26, 2024

TCC Ordinary Council Meeting. [Agenda.](#)

**Report: Fluoridation of Tauranga city's water supply. File Number: A16415420**

Tauranga City Council [Fluoride information page.](#)

# PSGR

## Physicians & Scientists for Global Responsibility

**Presentation: Jodie Bruning, Email: [info@PSGR.org.nz](mailto:info@PSGR.org.nz)**

### Context:

Is the Director-General misleading officials? Why? No risk assessment.

Does the new Health Act (1956) s116 contradict other relevant legislation, required to be considered by you, as a territorial authority, so as to protect public health?

Can TCC therefore cease capital works without financial penalty?

**Risk assessment: *Not a departure from the science – but being true to science.***

### Questions for Tauranga elected members, officials and residents to consider:

1. Is it appropriate that NZ's 'gold standard' for the safety of fluoride established by a politically-timed review from the OPMCSA?
2. Is it appropriate that risk assessment to judge pre-existing exposures in infants and children & risk from fluoride dosed into water, by developmental stage & bodyweight has not occurred in New Zealand?
3. Does the Ministry of Health and the D-G's s116 undermine the Local Government Act 2002?
4. Does the Ministry of Health and the D-G's s116 undermine the Water Services Act?
5. Does S.116 undermines public trust? The D-G charges you to put fluoride in municipal water:
  - (a) s116 does not grant permission to put HFA in municipal water.
  - (b) Evidence bar – scientific evidence 'reducing prevalence & severity tooth decay'.

### Questions for TCC Mayor and Councillors:

The DG has made clear he will not press for Hastings Council to conform to the fluoridation order they are under until further legal issues are resolved. [Hearing, June 26, 2024. Teleconference. J Radich. \[11\]](#)

1. PSGR formally request that TCC commit to writing to the DG, seeking assurance that the same applies to Tauranga (as the circumstances are effectively the same other than that the DG is not facing legal action with respect to Tauranga).
2. PSGR formally requests that TCC set up a process to further review the issues and options.

## Q.1 Is it appropriate that NZ's 'gold standard' for the safety of fluoride established by a politically-timed review from the OPMCSA?

1. [Politically timed in 2021](#) - 1 day after [Supp. Order paper 38](#) released.
  2. OPMCSA – politically associated with the Prime Minister's office.
  3. [2014/ 2021 Reviews](#) -No methodology, peer review panel oral/dental health.
  4. No: endocrinologists, toxicologists, impartial epidemiologists. [See PSGRNZ discussion.](#)
- D-G science: Limited to OPMCSA reviews & [Cochrane study \(2015– fluorosis only risk\).](#)
  - ✓ Medicines Act - Medical therapeutic – safety & efficacy. Full compound not assessed.
  - ✓ Health Act – Purpose 'health' – no risk assessment.
  - ✓ HSNO Act – Purpose 'health' no risk assessment. 40+ years emissions.

## Q.2 Is it appropriate that risk assessment to judge pre-existing exposures in infants and children & risk from fluoride dosed into water, by developmental stage & bodyweight has not occurred in New Zealand?

*Joseph on Constitutional and Administrative Law (5th Edition)*

### 10.8 Obedience to convention

Every primary rule of obligation, including conventions, risks being flouted from time to time. Politicians will be guided by their political instincts and may weigh up the advantages of breaching a convention and risk the political consequences.

Politicians may seek refuge in the uncertainty of conventional rules and stand their ground. It may be disputed whether a convention exists, or what obligation it prescribes, or whether an agreed convention is applicable.

### 23.2.3

The duty to weigh mandatory statutory considerations extends to facts so relevant that Parliament would have intended them to be taken into account. Decision-makers cannot accord appropriate weight to contesting considerations without being in receipt of the relevant facts.

## Public object to draft policy/legislation – officials refuse to engage

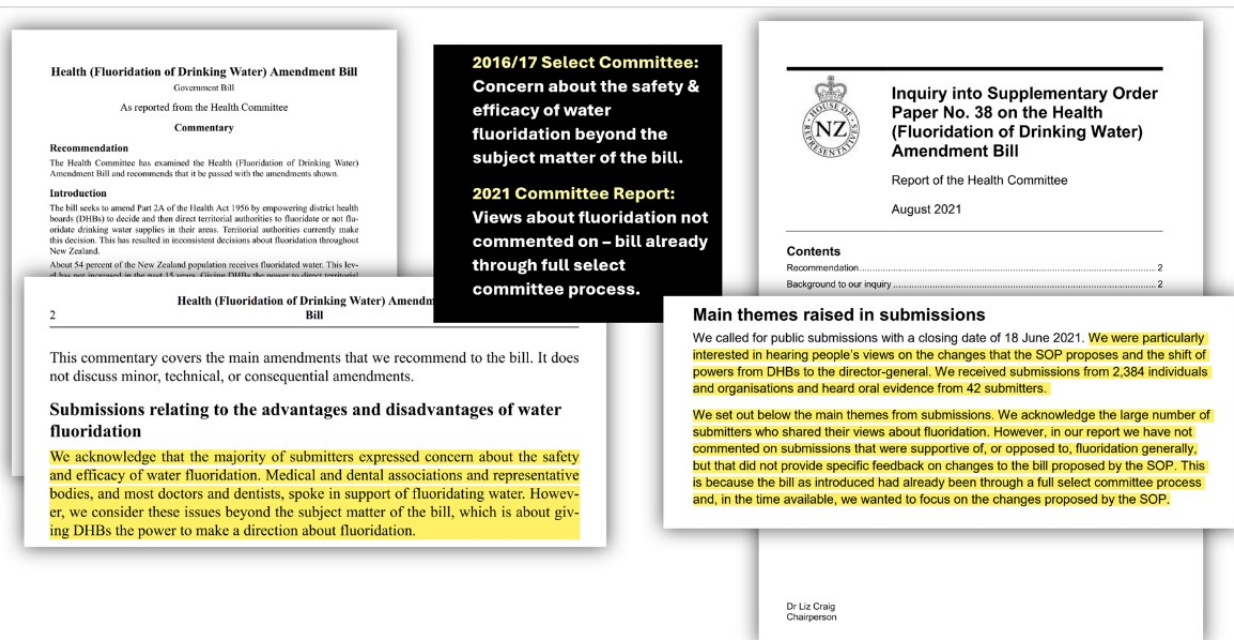
Select Committees (2016 & 2021) 'beyond subject matter of bill'

OPMCSA – 2021 peer reviewers oral/dental experts

Under 8 y.o.'s – consume more by bodyweight than adults, and retain more fluoride in their bones than adults. Idea of water fluoridation – only to benefit *enamel*. Multi-organ risk not assessed.

Han et al Chemical Aspects of Human and Environmental Overload with Fluorine. Chem. Rev. 2021, 121, 4678–4742. doi 10.1021/acs.chemrev.0c01263. Study states that less than 50% of fluoride ingested is excreted, with young children retaining up to 80% of fluoride.

Trust – based on fairness & impartiality



## Science showing IQ harm is not going away

NTP Review (2024) Concludes with moderate confidence: higher estimated fluoride exposures consistently associated with lower IQ in children.

Studies identified in the updated literature search had similar study designs and patterns of findings.

## Q.3 Does the Ministry of Health and the D-G's s116 undermine the Local Government Act 2002?

s125(f)- TA must 'identify and assess any other public health risks relating to the drinking water services supplied to the community'

126. Following assessment of community drinking water service –

(3) consider the findings and implications of the assessment in relation to —

(a) TA's broader duty to improve, promote, and protect public health within its district.

s245(a) A bylaw may be made for the purpose of 'protecting, promoting, and maintaining public health and safety'.

145. General bylaw-making power for TA's for:

(b) protecting, promoting, and maintaining public health and safety:

s153(3) – 'the Crown is bound by any bylaw if non-compliance with that bylaw by the Crown would be likely to have an adverse effect on public health or safety.

## Q.4 Does the Ministry of Health and the D-G's 116 undermine the Water Services Act?

### 7 Meaning of safe in relation to drinking water

- (1) In this Act, unless the context otherwise requires, **safe**, in relation to drinking water, means drinking water that is unlikely to cause a serious risk of death, injury, or illness,—
- (a) immediately or over time; and
  - (b) whether or not the serious risk is caused by—
    - (i) the consumption or use of drinking water; or
    - (ii) other causes together with the consumption or use of drinking water.

## TA legislation requires TCC to protect health

Navigating uncertainty is values-based.

Margin of error: Do cumulative exposures may exceed 1.5 mg/L for under 8 y.o.'s?

Challenges of risk governance: complexity, uncertainty and ambiguity.

Renn O, Klinke A, van Asselt M. [Coping with complexity, uncertainty and ambiguity in risk governance: a synthesis.](#) *Ambio*. 2011 Mar;40(2):231-46. doi: 10.1007/s13280-010-0134-0. PMID: 21446401; PMCID: PMC3357789.

1. Exceeding MAVs = common (maximum acceptable value)
2. Toothpaste
3. CPHR Report. Young NZ children have higher urinary levels of fluoride than are present in adults.

't Mannelje A, Coakley J, Douwes J. (2018) Report of the Biological Monitoring of Selected Chemicals of Concern. Results of the New Zealand biological monitoring programme, 2014-2016. Technical Report 2017-1. March. Centre for Public Health Research (CPHR). Massey University. Wellington.

We received **911** notifications from local and central government supplies in 2022. This included:

- » **387** notifications that determinand levels exceeded a MAV
- » **495** other risks to safety and compliance
- » **23** interruptions to supply
- » **6** concerns or complaints.
- » **37** councils found determinands (including *E. coli*) exceeding MAVs in **75** supplies throughout Aotearoa. Of these, **28** Councils notified *E. coli* exceedances across **51** supplies.
- » *E. coli* was found exceeding MAV in **45** schools, **6** DOC campsites and **1** NZDF facility.



## TCC: 'We value, protect and enhance the environment'

NZ EPA – never risk assessed HFA

- E.g. Children - Margin of safety 10x
- Not monitored by RCs
- No consents required
- Not in ESR's groundwater survey

## Q.5 Does S.116 undermines public trust? The D-G charges you to put fluoride in municipal water:

(a) s116 does not grant permission to put HFA in municipal water.

(b) Evidence bar – scientific evidence 'reducing prevalence & severity tooth decay'.

## S116 – terrible drafting?

- Hydrofluorosilicic Acid (HFA) not stated in legislation.
- Requirement to assess safety not stated in legislation 'prevalence and severity'.
- No legal obligation *ever* to conduct risk assessment to assess safety.
- D-G relies on two papers (2014 & 2021) by the Office of the Prime Ministers Chief Science Advisor (OPMCSA), to justify fluoridating New Zealand.
- No experts in toxicology, endocrinology and neurodevelopmental risk.

- Developmental Origins of Health and Disease (DOHaD) 'forgotten' by the MoH.

### **Court judgements ???**

The public have a legitimate expectation that decision-makers will conduct themselves fairly & properly.

The Courts have not 'twigged' that not undergoing risk assessment is outside administrative convention, & that safety is not drafted into legislation.

'The courts are concerned with not only the "actuality" but also the "perception": decisions must be reached "justly and fairly", & be seen to be so.'

Fairness is a guiding principle of administrative law.

What would a fair-minded lay observer think? With knowledge that:

- Medicine would traditionally undergo safety trials
- Hazardous substances would undergo risk assessment

### **Does s116 create manifold inconsistencies and/or absurdities when other legislation is taken into account?**

*Duty to Warn Joseph 25.4.3*

Decision-makers should warn of possible adverse findings where the decision-making has potentially significant consequences. They should err on the side of caution, or risk judicial challenge.

The "key elements" of the duty are "surprise" and "potential prejudice": "If an adverse finding is foreseeable there is no surprise."<sup>194</sup> Warnings of adverse credibility findings in such hearings will seldom be required, as the applicant's credibility will almost always be in issue.<sup>196</sup>

The duty to warn arises where the risk of adverse findings is neither implicit in the nature of the inquiry nor obvious from the conduct of the hearing. With some inquiries, the risk of adverse findings may not be obvious from the terms of reference or the conduct of the hearing.

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