

Tasman District Council

Health (Drinking Water) Amendment Bill - Briefing Report

August 2006

This document has been prepared for the benefit of Tasman District Council. No liability is accepted by this company or any employee or sub-consultant of this company with respect to its use by any other person.

This disclaimer shall apply notwithstanding that the report may be made available to other persons for an application for permission or approval to fulfil a legal requirement.

Quality Assurance Statement	
MWH New Zealand Ltd First Floor, 100 Warren Street South P O Box 1190 Hastings Tel: 64-6-873 8900 Fax: 64-6-873 8901	Project Manager: Richard Lester
	Prepared by: Peter Free
	Reviewed by: Jenipher Hubley
	Approved for issue by: Richard Lester

Tasman District Council

Health (Drinking Water) Amendment Bill - Briefing Report

Contents

1	Introduction	1
2	Scope.....	1
3	The purpose of the Bill	1
4	What are the methods used to achieve the Bill's purpose?.....	1
5	What is the current legislative framework?.....	2
6	What are the benefits expected to be delivered by the Bill?	2
7	Definition of "all practicable steps"	2
8	The contents of the Bill as it applies to TDC	3
9	In summary	9

1 Introduction

Over the last decade, the Ministry of Health has undertaken a strategic upgrade of drinking water standards, guidelines and various tools to bring about improvements to the quality of water used by New Zealanders. These tools form a varied list of barriers intended to prevent contamination of drinking water. The barriers include tools such as;

- The Register of community drinking water supplies in New Zealand
- The Water Information for New Zealand (WINZ) database
- The Guidelines for Drinking Water Management in New Zealand
- The Public Health Grading of Community Drinking Water Supplies 2003
- The Register of Ministry of Health recognised laboratories
- Public Health Risk Management Plans
- and Drinking Water Standards for New Zealand 2005 (DWSNZ 2005)

If passed into law, the Health (Drinking Water) Amendment Bill, (the Bill), will make compliance with many of the above tools mandatory for all but small (500 people or less) water suppliers in New Zealand.

2 Scope

The Tasman District Council (TDC) has requested MWH New Zealand Ltd to prepare a report covering the key elements of the Bill commenting on the positive and negative aspects as they may affect the TDC. This report will detail those aspects and will discuss the possible impacts on TDC's water supplies.

3 The purpose of the Bill

The stated purpose of the Bill "is to protect the health and safety of people and communities by promoting the provision of adequate supplies of safe wholesome drinking water from drinking water suppliers".

4 What are the methods used to achieve the Bill's purpose?

- All water suppliers (other than those serving less than 500 people) and tankered water carriers will be required to prepare and implement a public health risk management plan (PHRMP).

Note that supplies serving under 500 but over 25 persons may still wish to demonstrate compliance with the drinking water standards by preparing a PHRMP because by doing so, they can reduce their ongoing monitoring requirements.

- All water suppliers will be required to "take all practicable steps" to comply with the drinking water standards.
- Certified Drinking Water Assessors will engage in compliance verification of water suppliers.
- Water suppliers and laboratories will be required to provide appropriate information to the Ministry of Health (as detailed in the DWSNZ 2005) and provide a summary of that information which can be made public.

- Management methods will be determined for water supply emergencies by sections of the Bill and by the water supplier.

5 What is the current legislative framework?

Currently the Resource Management Act 1991, the Health Act 1956 and the Building Act 2004 principally control the provision of water supply in New Zealand. It is intended that the introduction of the Bill will consolidate and simplify the regulation of water supply activities for all water suppliers serving more than 25 persons for more than 60 days per year.

Note that for smaller water supplies (less than 25 people served) the Building Act 2004 will cover their legislative requirements.

6 What are the benefits expected to be delivered by the Bill?

It is intended that the legislation will:

- further reduce current and future risk of water borne disease, both due to increased world trade and tourism and possible impacts of global climate change.
- reduce rural and Maori health inequalities.
- reduce chemical contamination incidents.
- increase workplace productivity due to a reduction of absence from work due to water borne disease related illness.
- improve capability for water suppliers to proactively manage contamination incidents.
- improve the ability of water suppliers to manage emergency services as per the Civil Defence Emergency Act.

7 Definition of “all practicable steps”

An important term used in the Bill is “all practicable steps”. It has the following meaning as defined by the Bill:

As in relation to the achievement of a particular result, having regard to;

- *the nature and severity of harm.*
- *the understanding of the likelihood of that particular harm or general nature of harm.*
- *the general understanding of the means to alleviate a harm and the likely success of the alleviation.*
- *the availability and cost of those means.*

A summary of the above is that “all practicable steps” are those actions able to be taken bearing in mind the supplier’s reasonably expected knowledge, the cost and availability of the means to take action, the severity of harm compared to the likelihood and the likely efficacy of the action.

8 The contents of the Bill as it applies to TDC

The following is a summary of the key contents of the Bill (dated 21st of May 2006) as it relates to TDC. Comments have been made as to advantages or disadvantages to the TDC of any particular clause.

1. The Bill is proposed to come into effect on **1 April 2007**¹.
2. Territorial Authorities will be required to include on a land information memorandum any drinking water information that they hold on an individual building by **1 April 2008**².
3. A water supplier serving 10,000 or more people will need to comply with the majority of the Bill by **1 April 2008**³.
4. A water supplier serving 5,000 or more people and less than 10,000 persons will need to comply with the majority of the Bill by **1 April 2009**⁴.
5. A water supplier serving 500 or more people and less than 5,000 persons will need to comply with the majority of the Bill by **1 April 2010**⁵.
6. A water supplier serving 100 or more people and less than 500 persons will need to comply with the majority of the Bill by **1 April 2011**⁶.
7. A water supplier serving 50 or more people and less than 100 persons will need to comply with the majority of the Bill by **1 April 2012**⁷.
8. "Majority", in respect of these provisions is defined as all sections applying to the standards, penalties and compliance orders. Some minor provisions have different compliance dates.

The annual survey of community water supplies 2004 shows that of the seventeen water supplies serving the Tasman district area, eight complied with the bacteriological compliance in the standards and four complied with the protozoan compliance. It is expected that Richmond and Tapawera supplies will be proven secure and Collingwood, Hope/Brightwater and Kaiteriteri may achieve secure groundwater status upon collection of 5 years of E.coli compliance data and improvements to these source's wellhead security.

One of the supplies, Torrent Bay, is currently below the population limit for the Bill. Therefore, the above compliance issues, particularly protozoa compliance, will only be of key relevance to the Dovedale rural, Eighty Eight Valley rural, Motueka, Murchison, Pohara, Redwood Valley rural, Upper Takaka, Mapua/Ruby Bay, Waimea industrial and Wakefield communities. Improvements to these supplies have already been planned and budgeted for in TDC's Water Supply Activity Management Plan and Long Term Council Community Plan.

A key compliance date for TDC is **1 April 2008**, when the Council will be required to have in place a means for reporting self supplied water supply information on each LIM. This will also include the storage of new private water supply information on property files.

¹ Schedule 2 Commencement

² Schedule 2 Commencement

³ Part 2A, section 69C (2)

⁴ Part 2A, section 69C (3)

⁵ Part 2A, section 69C (4)

⁶ Part 2A, section 69C (5)

⁷ Part 2A, section 69C (6)

9. The Minister of Health may adopt, amend or revoke the drinking water standards. This could include alterations to the maximum amount of contaminants present in drinking water; the criteria for demonstrating compliance with the standards, monitoring and testing frequencies, remedial actions required for non-compliance, and “any other matters relating to raw water or drinking water that may affect public health.”⁸
10. However, the Minister of Health must consult with the water industry before issuing, adopting or amending drinking water standards.⁹

Currently MoH changes the drinking water standards approximately every 5 years as the need arises. The issue here is that the standards will become compulsory.

11. All drinking water suppliers are required to take “all practicable steps” to ensure an adequate supply of drinking water is provided to each point of supply.¹⁰
12. Drinking suppliers are required to provide an uninterrupted supply to all points of supply at all times with the exception of planned maintenance, network improvements or emergency repairs¹¹.
13. A drinking water supplier must not interrupt the provision of drinking water by more than 8 hours on any one occasion unless they have approval of the Medical Officer of Health and they have taken all practicable steps to warn affected persons¹².

Note that *this section is also subject to the provisions of the Civil Defence Emergency Management Act 2002.*

These first two provisions should only affect the TDC if it has areas within some communities where supply is not generally continuous. However, the last provision could have an affect on a few maintenance operations where the programmed shut down is longer than the 8 hours or if the supply is drought affected and rationing is required. This may mean that extra consultation and provision of an alternative source of water to customers may be required for these types of repairs.

14. Where a drinking water supplier considers that their ability to maintain adequate supply is at risk, they must notify the Medical Officer of Health, the Fire Service and any local authority and exercise powers to restrict water use except for essential purposes¹³.

Based on current operations practices, TDC already be carries out these sorts of notifications.

15. A drinking water supplier must take all *reasonable* steps to contribute to the protection of the water source from contamination¹⁴.

Again it is expected that the TDC is already be carrying out some of these sorts of actions. However extra measures may be required to protect against levels of intentional/criminal contamination and potential contamination for some agricultural practices within their water supply catchments.

⁸ Part 2A, section 69O

⁹ Part 2A, section 69P

¹⁰ Part 2A, section 69S (1)

¹¹ Part 2A, section 69S (2a & b)

¹² Part 2A, section 69S (3a, b & 4)

¹³ Part 2A, section 69T (a & b)

¹⁴ Part 2A, section 69U (1 & 2)

16. A water supplier must take “all practicable steps to comply with the drinking water standards, except for guideline values for aesthetic determinands¹⁵.

These steps include preparation and implementation of Public Health Risk Management Plans (PHRMPs) and general compliance with the standards. Due to the general non-compliance with the standards, especially the protozoa requirements, this clause will have a significant effect on TDC’s present water supply operation. Improvements including installation of filtration, ultra violet disinfection and additional monitoring requirements will need to be implemented.

17. A drinking water supplier must ensure that either raw water from a new source does not contain determinands that exceed the maximum acceptable values specified in the drinking water standards¹⁶, or that it is treated to ensure that no determinand exceeds the standards.
18. A drinking water supplier must monitor the water supplied to determine that it complies with the standards¹⁷. TDC is already be carrying out these sorts of actions.
19. Every drinking water supplier serving more than 500 people must prepare and implement a public health risk management plan, which must identify; public health risks; critical points; mechanisms for reducing or eliminating risks; and must present a timetable for managing risks.¹⁸
20. PHRMPs must be submitted to a Drinking Water Assessor for approval and once approved, must start to be implemented within 1 month of the approval¹⁹.
21. A PHRMP must remain in force for no longer than 4 years without full review.²⁰

TDC has prepared a PHRMP for the Richmond and Waimea water supplies. This provision will require that the PHRMPs for the remainder of TDC water supplies be completed and implemented. It is important that the PHRMP improvements are carried through into the LTCCP so that the recommendations of the PHRMPs can be completed.

22. Every drinking water supplier must keep sufficient records to allow a Drinking Water Assessor to ascertain whether a supplier is complying with the standards and with the PHRMP. Those records must be made available to the Drinking Water Assessor on request²¹.

TDC is already meeting these sorts of required obligations.

23. A water supplier must investigate all complaints in regard to water quality and take all practicable steps to improve the wholesomeness (being potable and not exceeding the aesthetic guideline values) of the water or take remedial action if a failure to meet the standards occurs²².

¹⁵ Part 2A, section 69V (1, 2 & 3)

¹⁶ Part 2A, section 69X (a & b)

¹⁷ Part 2A, section 69Y (1a & b)

¹⁸ Part 2A, section 69Z (1,2)

¹⁹ Part 2A, section 69Z (3,4 & 6)

²⁰ Part 2A, section 69ZB

²¹ Part 2A, section 69ZD

²² Part 2A, section 69ZE

This provision will have cost implications to TDC if there are recurring aesthetic issues with any of its water supplies. Instead of the phrase “all practicable steps”, perhaps the term “all reasonable steps” should be used for aesthetic issues. If this provision goes through as it stands, it effectively makes compliance with the aesthetic guidelines mandatory.

24. A water supplier must provide reasonable assistance to a Drinking Water Assessor to perform inspections, examinations or inquiries²³.

TDC already participates with these sorts of actions.

25. A temporary supplier as defined by the Bill must notify the Medical Officer of Health in writing of the source and quality of water of any temporary supply²⁴.

A temporary supply is one that is used for less than 60 days per year. Therefore, it is unlikely this provision will affect the TDC’s normal water supply operations.

26. A Drinking Water Assessor or designated officer may require a supplier to take immediate action to prevent any water related public health risk, require a supplier to use an alternative source, publish statements relating to serious health risks or provide information²⁵. The requirement imposed under this section ceases to have effect after 72 hours. An assessor may not use their powers unless they have taken all practicable steps to remedy the risk or obtain information from other sources first.

Currently the Medical Officer of Health already has these sorts of powers, however, they are rarely used and it is unlikely this provision will affect TDC’s normal water supply operations.

27. A water supplier may request a review by the Director General of any major determinations made by a Drinking Water Assessor²⁶.

This provision is useful to any water supplier as it gives a right of appeal to poor or misinformed water supply decisions made by a Drinking Water Assessor or the Medical Officer of Health.

28. The Minister may declare a drinking water emergency, for an initial period of 28 days, if, on reasonable grounds, there is a serious risk of harm to the health and safety of any people supplied by a water supply²⁷. *The drinking water emergency may be declared or continued even if another emergency has been declared.*

It is unlikely this provision will affect the TDC’s normal water supply operations.

29. During a water supply emergency, the Drinking Water Assessor may prevent, reduce or eliminate risk of harm by taking or requiring any person to take immediate action to prevent the public health risk. They may require emergency work to be done, forbid the discharge of any substance that might contaminate a water source, require any place, vessel or thing to be disinfected or isolated. They may close a public place, cancel a public event or require any person to leave any place²⁸ or “take any other action reasonably

²³ Part 2A, section 69ZG

²⁴ Part 2A, section 69ZI

²⁵ Part 2A, section 69ZO & ZR

²⁶ Part 2A, section 69ZW

²⁷ Part 2A, section 69ZZA,B & C

²⁸ Part 2A, section 69ZZD

necessary to control, reduce, or avoid the risk of harm to people". The costs of these actions could be recovered from the water supplier, and this could impact TDC.

30. Actions taken under emergency powers may be exempt from the requirements Part 3 of the Resource Management Act 1991²⁹.

This provision effectively strengthens the current situation and transfers some of the powers, which the Medical Officer of Health has, to the Drinking Water Assessor or another designated officer. The second provision is likely to be of benefit to TDC in the event of a water supply emergency. This could include perhaps, a lack of source water type of emergency where, i.e. a low flow limit could be ignored temporarily (up to 28 days with the Ministers approval).

31. A compliance order can be served on a water supplier by the Medical Officer of Health, requiring that person to stop, or prohibit a person from allowing anything to be done, which could create or worsen a particular health risk³⁰.
32. The compliance order must state the reasons for the order, the action required, the period within when the action must be taken, the consequences of not complying and the rights of appeal³¹.
33. If an appeal is made, the water supplier may apply to the District Court for a stay of the compliance order pending a decision on the appeal³².

The compliance order should be an advantage to water suppliers, as it provides an early warning system of a potential major water supply issue and a difference of opinion between the Drinking Water Assessor and the water supplier. There is an appeal process, whereby an independent party can review the pros and cons of each point of view prior to any action under the Bill.

34. Action can be taken against anyone committing an act that is likely to contaminate a water source for public drinking water³³. **The penalty for this act could be imprisonment for a term not exceeding 5 years or a fine up to \$200,000, or both.**

This provision will be useful to TDC as it allows them to take strong action against wilful vandalism or acts of sabotage.

35. The Medical Officer of Health may require a Local Authority to ensure an assessment is made as to whether drinking water is potable to a self-supplied building if they believe that the source is contaminated³⁴. **They may also require the Local Authority to warn users and take all practicable steps to exercise any other power to remedy the situation.**

This provision may have cost implications to the TDC. It is only likely to affect rural properties, however TDC could have substantial costs if a particular water source was found to have a water supply problem, Council could be directed to undertaken individual assessments and carry out an extensive public

²⁹ Part 2A, section 69ZZF

³⁰ Part 2A, section 69ZZH

³¹ Part 2A, section 69ZZI

³² Part 2A, section 69ZZL

³³ Part 2A, section 69ZZO

³⁴ Part 2A, section 69ZZP

awareness campaign. Instead of the phrase “all practicable steps” perhaps the term “all reasonable steps” should be used.

36. Offences against the Bill include failing to protect the source of water, failing to take all practicable steps to comply with standards, failing to monitor water, failing to prepare and implement PHRMPs, failing to take remedial action, failing to provide reasonable assistance to a Drinking Water Assessor or failing to adequately test new water sources prior to use³⁵. **It is also an offence if a person takes water from a fire hydrant without written permission from the water supplier.**

37. An allowable defence to an offence is that the person did not intend to commit the offence or took all practicable steps to prevent the offence³⁶.

TDC is already carrying out most of these sorts of actions voluntarily. As there appears to be an intermediate step of a compliance order and appeal process prior to penalties being applied, it is unlikely that the provision will affect TDC, as long as positive actions are taken to complete and implement PHRMPs.

The offence of unauthorised taking of water from a fire hydrant allows TDC greater control of its network and the potential for backflow.

38. It is an offence for a person to make a misleading statement, falsify information or tamper with samples³⁷.

It is unlikely this provision will affect TDC’s water supply operations.

39. Penalties for offences are separated into three levels. They are a fine not exceeding \$200,000 and /or \$10,000 per day while the offence continues; a fine not exceeding \$10,000 and/ or \$1,000 per day while the offence continues; or, a fine not exceeding \$5,000³⁸.

See comments above in regarding compliance orders (31,32 & 33).

40. An offence committed against the Bill by any person acting as an agent to a principal, allows for liability to the same extent over both parties if the principal could have been reasonably expected to have knowledge of the offence or could have taken all practicable steps to prevent the offence.³⁹

This provision could have an effect on how TDC runs its works contacts. It essentially means that TDC can not contract out of its responsibilities and that TDC should monitor the activities of its agents with due care.

41. The Governor General may make regulations under the Bill covering the quantity of drinking water available to a property, prescribing specifications for materials that may come into contact with water, and prescribing the required competencies in relation to management, operation or maintenance of drinking water systems⁴⁰.

³⁵ Part 2A, section 69ZZR

³⁶ Part 2A, section 69ZZS

³⁷ Part 2A, section 69ZZT

³⁸ Part 2A, section 69ZZV

³⁹ Part 2A, section 69ZZX

⁴⁰ Part 2A, section 69ZZY

These regulations may (in the future) become a minimum level of service provision, a list of approved water supply products and a requirement for a minimum level of qualification for a particular position. There are large cost implications for all of these provisions. Therefore, it is our opinion that the compulsory nature of these regulations is not appropriate. An “all reasonable steps” approach would be more suitable for these regulations.

42. A water supplier may install a backflow prevention system on the network side of the point of supply and require the owner of the property to pay the water suppliers for the cost of doing so, including ongoing maintenance costs⁴¹.

This provision will be useful to TDC in ensuring that backflow prevention is adequately completed with minimal cost to TDC.

43. The Director General must publish an annual report detailing the quality of drinking water supplied by each water supplier and compliance or non-compliance by those water suppliers⁴².

Currently the Ministry of Health already carries out this sort of reporting. It is unlikely this provision will affect the TDC’s normal water supply operations.

44. The power to restrict water supply under the LGA 2002 is subject to the Health Act 1956⁴³.

It is unlikely this provision will affect TDC’s normal water supply operations unless it restricts water supply (for non-payment) to such an extent that it is making a property unsanitary.

9 In summary

The requirement that suppliers take “all practicable steps” does not necessarily mean that if a supplier fails to comply with the DWSNZ 2005 they fail to comply with the legislation. If the water supplier can be shown to have an approved PHRMP that identifies remedial steps, then “all practicable steps” have been taken.

Key issues for TDC appear to be:

- The Bill provides a mechanism to keep raising the standards, which will mean an increasing work load for TDC and more liability on Territorial Local Authorities, however, TDC may have more cost implications than larger authorities, due to its large number of currently non complying water supplies.
- The water supply of Richmond will be required to be compliant with drinking water standards by **1 April 2008**. Hope/Brightwater, Motueka, Murchison, Mapua Ruby Bay and Wakefield will be required to be compliant with the requirements of DWSNZ 2005 by **1 April 2010**. Collingwood, Dovedale rural, 88 Valley rural, Kaiteriteri, Pohara, Redwood Valley rural, Tapawera and Waimea industrial Wakefield will be required to be compliant with the requirements of DWSNZ 2005 by **1 April 2011** and Upper Takaka by **1 April 2012**.
- Council will be required to have in place a means of storing and reporting information on self supplied water supplies for the Land Information Memorandum process by **1 April 2008**.

⁴¹ Part 2A, section 69ZZZ

⁴² Part 2A, section 69ZZB

⁴³ Part 2, amendments to LGA 2002

- Water supply repairs will need to be completed within eight hours or alternative sources of water may be required to be supplied to customers.
- PHRMPs will be required to be completed and implemented. The PHRMP improvements will need to be carried through into the LTCCP so that the implementation requirements are completed.
- If there are any recurring aesthetic issues with any of TDC's water supplies, the Bill could have cost implications if the phrase "all practicable steps" was used for this provision.
- The Bill will allow strong action against wilful vandalism or acts of sabotage against water supply facilities.
- If a water supply problem occurs in a number of rural self supplied properties, TDC could have substantial costs undertaking individual assessments and carrying out an extensive public awareness campaign.
- TDC will not be able to contract out of its responsibilities in regard to monitoring the activities of its agents. All due care with water supply operations will be required by both the Council and its agents.
- Regulations such as; minimum levels of service provision, a list of approved water supply products and a requirement for a minimum level of qualification for a particular position may mean large cost implications for TDC.
- Backflow prevention will be able to be more easily provided with minimal cost to Council.
- TDC will need to commit additional resources to protection and security of water supply sources and possibly catchments.