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26 July 2024

s 9(2)(a)

By email: s 9(2)(a)  
Ref: H2024043279

Tēnā koe s 9(2)(a)

### Response to your request for official information

Thank you for your request under the Official Information Act 1982 (the Act) to the Ministry of Health – Manatū Hauora (the Ministry) on 31 May 2024, which you refined on 21 June 2024. You requested:

*'Communications to and from the Director-General of Health relating to the content and the process for the NZBORA analysis of water fluoridation for the 14 local authorities that have been directed to fluoridate, as directed by the High Court on 2 February 2024.'*

The Ministry has identified 4 documents within scope of your request. All documents are itemised in Appendix 1 and copies of the documents are enclosed. Where information is withheld under section 9 of the Act, I have considered the countervailing public interest in release in making this decision and consider that it does not outweigh the need to withhold at this time.

At the time that your request was refined, you also asked:

*'Out of interest, of the over 600 emails identified can you please advise how many relate to her office and how many relate to the DGoH herself?'*

The emails identified as potentially within the original scope of your request related to both parts of your request. This included emails sent between officials within the Ministry, as well as to and from the Director-General or her office. The majority of the emails identified were between officials within the Ministry.

On 1 July 2024, the Ministry also received an email from you via its [info@health.govt.nz](mailto:info@health.govt.nz) email address. You expressed concern about the safety of fluoridation and asked about the rationale behind the Director-General of Health directions to fluoridate. I respond to these points below.

As you are aware, the Office of the Prime Minister's Chief Science Advisor and the Royal Society Te Apārangī carried out reviews of the scientific evidence on community water fluoridation in 2014 and 2021. These reviews included consideration of impacts on pregnant women and bottle-fed babies. You can find these reviews at [Fluoridation: an evidence update | Office of the Prime Minister's Chief Science Advisor \(pmcsa.ac.nz\)](#)

These reviews of the scientific evidence found that there are no significant health risks from fluoridation at the levels used in New Zealand. Taumata Arowai (the water services regulator) provides national-level oversight of drinking-water safety, including monitoring and enforcing compliance of the Drinking Water Standards of New Zealand. Taumata Arowai monitors compliance with the maximum acceptable value (MAV) for fluoride (1.5mg per litre) as part of this role.

You can find the rationale for the 14 directions to fluoridate made by the Director-General of Health in 2022 on the Ministry's website at: <https://www.health.govt.nz/about-ministry/information-releases/general-information-releases/director-general-health-decisions-direct-local-authorities-fluoridate-drinking-water-supplies>.

I trust this information fulfils your request. If you wish to discuss any aspect of your request with us, including this decision, please feel free to contact the OIA Services Team on: [oiagr@health.govt.nz](mailto:oiagr@health.govt.nz).

Under section 28(3) of the Act, you have the right to ask the Ombudsman to review any decisions made under this request. The Ombudsman may be contacted by email at: [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz) or by calling 0800 802 602.

Please note that this response, with your personal details removed, may be published on the Manatū Hauora website at: [www.health.govt.nz/about-ministry/information-releases/official-information-act-requests](http://www.health.govt.nz/about-ministry/information-releases/official-information-act-requests).

Nāku noa, nā



Jane Chambers  
**Group Manager, Public Health Policy and Regulation**  
**Public Health Agency | Te Pou Hauora Tūmatanui**

## Appendix 1: List of documents for release

#	Date	Document details	Decision on release
1	20 February 2024	Memo - High Court decision on validity of fluoridation directions	Released in full
2	2 April 2024	Memo – Proposed process for assessment of fluoridation directions against the Bill of Rights Act	
3	24 May 2024	Memo – Title withheld in full under section 9(2)(h) of the Act to maintain legal and professional privilege	Withheld in full under section 9(2)(h) of the Act to maintain legal and professional privilege
4	22 February 2024	Letters to LAs from DG re Feb court decisions	Released in full

# Memo

## High Court decision on validity of fluoridation directions

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<b>Date:</b>	20 February 2024
<b>To:</b>	Dr Diana Sarfati, Director-General of Health, Te Tumu Whakarae mō te Hauora
<b>From:</b>	Dr Andrew Old, Deputy Director-General, Public Health Agency   Te Pou Hauora Tūmatanui
<b>For your:</b>	Action

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### Purpose of report

1. New Health New Zealand Inc. filed for High Court judicial review of the Director-General of Health's directions to fluoridate. This memo provides an update on the most recent High Court decision as part of those legal proceedings.

### There is an ongoing judicial review of the Director-General of Health's directions to fluoridate

2. In July 2022, the Director-General of Health directed 14 local authorities to fluoridate some, or all, of their drinking water supplies. A list of these local authorities and water supplies is set out in Appendix 1 for your information.
3. As you are aware, in June 2023, New Health New Zealand Inc. (New Health) filed legal proceedings challenging the 2022 directions made by the Director-General of Health.
4. The applicants raised several grounds of review. The issue of whether the Bill of Rights was adequately considered was dealt with as a preliminary issue. The Judge found that the right to refuse medical treatment provided for in section 11 of the New Zealand Bill of Rights Act 1990 (NZBORA) (the right to be free from compulsory medical treatment) should have been expressly considered by the Director-General of Health when considering each direction. The Judge found that this is a procedural duty.
5. The Judge is yet to consider the second challenge raised by New Health which relates to the adequacy of the scientific evidence for fluoridation.
6. Following the judgment on the preliminary issue, a related second hearing was held on 2 February 2024 to decide on the validity of the directions and whether any relief should be granted by the Court.

## The Judge directed the Director-General of Health to assess the New Zealand Bill of Rights implications

7. Manatū Hauora received the Judge's decision on Friday 16 February. The Judge did not quash the directions, and as such they remain valid. However, the Judge directed the Director-General of Health to assess whether each of the 14 directions made in 2022 were, in terms of section 5 of the New Zealand Bill of Rights Act, reasonable limits on the right to refuse medical treatment prescribed by law as can be demonstrably justified in a free and democratic society. A copy of the judgment is attached.
8. The Public Health Agency (PHA) is working with Health Legal and Crown Law to inform further advice to you on the implications of this direction, including what would be needed to make this assessment against the Bill of Rights Act.

### Next steps

9. In early March 2024, the PHA will provide you with further advice on the proposed process and timing for the next steps in relation to the assessment the High Court has required the Director-General of Health make against the New Zealand Bill of Rights Act.
10. In the meantime, the PHA recommends that you update local authorities on the latest court decision, as you did previously after the first High Court decision. Attached (Appendix 2) is a draft letter the PHA proposes you send to the chief executives of the local authorities. The letter states your intention to carry out the assessment against the New Zealand Bill of Rights Act, for each of the directions, as directed by the Judge.
11. If you approve this letter, we will work with your office to send a copy to the chief executive of each of the 14 local authorities that received a direction to fluoridate after the most recent High Court decision is published.

### Nelson City Council is seeking an extension to its fluoridation compliance date

12. On 15 February 2024, the Mayor of Nelson, Hon Dr Nick Smith, wrote to the Minister of Health regarding the direction to the Nelson City Council to fluoridate the Nelson water supply. This letter was also copied to you. The memo *Extension to community water fluoridation compliance date for Nelson City Council* provides further detail on this matter, and recommends that you extend the compliance date for Nelson City Council.
13. In early March 2024, as part of the memo on next steps, the PHA will provide advice to you on whether the recent decision should lead to reconsideration of existing compliance dates for some further local authorities.

## Recommendations

It is recommended that you:

1.	Note	that in its 16 February 2024 judgment, the High Court did not quash the current 14 directions to fluoridate.	Noted ✓
2.	Note	that the Judge directed the Director-General of Health to assess whether each of the 14 directions were, in terms of section 5 of the New Zealand Bill of Rights Act, reasonable limits on the right to refuse medical treatment prescribed by law as can be demonstrably justified in a free and democratic society.	Noted ✓
3.	Sign	the attached letter to provide an update to each chief executive of an affected local authority. <i>- see notes/questions</i>	Yes/No
4.	Note	That the PHA is continuing to work with Health Legal and Crown Law on the implications of the Court's judgement, and in early March will provide you with further advice on the process and timing of next steps.	Noted ✓

Signature



Date:

21 / 2 / 24

Dr Diana Sarfati

**Director-General of Health**  
**Te Tumu Whakarae mō te Hauora**

## Appendix 1: List of local authorities and associated water supplies issued a direction to fluoridate in July 2022

Local authority	Water supply	Compliance date	Status
New Plymouth District Council	New Plymouth	Began fluoridating on 31 July 2023	Completed
Nelson City Council	Nelson	30 April 2024	In contract and on track to meet compliance date
Tararua District Council	Dannevirke	30 June 2024	In contract and on track to meet compliance date
Waitaki District Council	Oamaru	30 June 2024	In contract and on track to meet compliance date
Whangārei District Council	Whangārei	31 August 2024	In contract
	Bream Bay	30 June 2026	
Auckland Council	Onehunga	30 June 2024	On hold until 2025 - to coincide with other work at the treatment plants
	Waiuku	30 June 2026	
Far North District Council	Kaitaia	30 June 2024	Preliminary design due March 2024
	Kerikeri	30 June 2024	
Hastings District Council	Hastings Urban	30 June 2023	Design approved in principle
Horowhenua District Council	Levin	30 April 2024	Design approved in principle
Kawerau District Council	Kawerau	30 June 2023	Design approved in principle
Rotorua Lakes Council	Rotorua Central	30 April 2024	Design approved in principle
	Rotorua East	30 April 2024	
Tauranga City Council	Tauranga	31 July 2024	Negotiating final contract terms – design approved
Waipa District Council	Cambridge	31 July 2023	Design approved in principle
Western Bay of Plenty District Council	Athenree	31 July 2025	Design approved in principle
	Wharawhara	31 July 2025	

## Appendix 2: Draft update letter to local authorities who received a direction to fluoridate

Tēnā koe XX

### Community water fluoridation court decision update

I am contacting you to provide an update on the judicial review of the directions issued by the Director-General of Health in July 2022, that required 14 local authorities to fluoridate one or more of their drinking water supplies.

As you are aware, on 10 November 2023, the High Court issued its judgment on the preliminary issue, finding that the Director-General of Health made an error of law by not explicitly considering the rights under the New Zealand Bill of Rights Act 1990 in making a decision on each direction. There was a second hearing on 2 February 2024 to consider the validity of the current directions, and any relief.

The Judge decided that the directions remain in place. However, the Judge directed the Director-General of Health to assess whether each of the 14 directions made in 2022 were, in terms of section 5 of the New Zealand Bill of Rights Act, a justified limit on the right to refuse medical treatment that is provided for in section 11 of the New Zealand Bill of Rights Act.

As directed by the Judge, I will carry out this assessment against the New Zealand Bill of Rights Act, for each of the directions. Should you wish to read the judgment, you can find it on the Courts of New Zealand website, at [insert webpage once published].

I will continue to update you as this process progresses. Manatū Hauora is continuing to provide support to local authorities that are implementing their directions, including by providing funding for the capital works.

Thank you for your ongoing collaboration as we work together to improve the oral health of the communities we serve.

If you have any questions or would like to contact the team, please continue to use the email address: [fluoride@health.govt.nz](mailto:fluoride@health.govt.nz). The team is more than happy to respond to any inquiries.

Nāku noa, nā

Dr Diana Sarfati  
**Director-General of Health**  
**Te Tumu Whakarae mō te Hauora**

*I think we need to  
be clear that we  
expect them to  
continue (or not)  
- should we add a para  
that the supreme that  
court should that  
the threshold  
was met so now  
we will (not) do  
each LA*



# Memo

## Proposed process for assessment of fluoridation directions against the Bill of Rights Act

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<b>Date:</b>	2 April 2024
<b>To:</b>	Dr Diana Sarfati, Director-General of Health, Te Tumu Whakarae mō te Hauora
<b>From:</b>	Dr Andrew Old, Deputy Director-General, Public Health Agency   Te Pou Hauora Tūmatanui
<b>For your:</b>	Information

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### Purpose of report

1. This memo proposes a process for undertaking a New Zealand Bill of Rights Act 1990 (NZBORA) assessment of the 14 Director-General of Health directions to fluoridate that were made in July 2022. Such an assessment is a requirement, directed by the February 2024 High Court judgment.

### Background and context

2. In June 2023, New Health New Zealand Inc. (New Health) filed legal proceedings challenging the 2022 directions made by the Director-General of Health to 14 local authorities to fluoridate some, or all, of their drinking water supplies.
3. In November 2023 the Judge found that the right to refuse medical treatment that is provided for in section 11 of the NZBORA should have been expressly considered by the Director-General of Health when considering each direction. The Judge found that this is a procedural duty.
4. The Judge kept the directions in place. However, in February 2024, the Judge directed the Director-General of Health to assess whether each of the 14 directions made in 2022 was, in terms of section 5 of the NZBORA, a reasonable limit on the right to refuse medical treatment prescribed by law.
5. The Public Health Agency (PHA) is working with Health Legal and Crown Law to determine the implications of the February 2024 High Court direction, including identifying and delivering each element of the particular NZBORA assessment that is required. It is of particular significance here that the Judge ruled that the Director-General of Health's NZBORA analysis should take into account the views of New Health.

### Process for the NZBORA analysis

6. In 2018, the Supreme Court considered at judicial review the South Taranaki District Council's decision to fluoridate drinking water. It ruled that fluoridation of water does engage section 11 of the NZBORA (the right to refuse medical treatment). The judgment uses the common

framework applicable to any analysis of whether a particular limitation on a right is a justified limit, under section 5 of the NZBORA. That framework consists of the following:

- a. Does the limiting measure serve a purpose sufficiently important to justify curtailment of the right or freedom?
  - b. Is the limiting measure rationally connected with its purpose?
  - c. Does the limiting measure impair the right or freedom no more than is reasonably necessary for sufficient achievement of its purpose?
  - d. Is the limit in due proportion to the importance of the objective?
7. The PHA is using this framework to structure its analysis of whether each of the 14 directions made in 2022 is a justified limitation on the NZBORA.
  8. The PHA considers that adherence to the High Court Judge's direction that the Director-General of Health's NZBORA analysis should take into account the views of New Health requires consideration to be given to New Health's submission that the safety and efficacy of community water fluoridation is not supported by the scientific evidence.
  9. As you are aware the Royal Society Te Apārangi published a comprehensive review in 2014 assessing the health effects of community water fluoridation. This review found that there were no adverse effects of fluoride of any significance arising from fluoridation at the levels used in Aotearoa New Zealand. In 2021, the Office of the Prime Minister's Chief Science Advisor considered primary research and comprehensive reviews published subsequently and found that the conclusions of the 2014 review remain appropriate.
  10. Manatū Hauora's Chief Science Advisor, in collaboration with the PHA's Intelligence, Surveillance and Knowledge Group, is presently assessing whether, in light of the scientific evidence published since 2021, the conclusions reached by 2014 and 2021 reviews remain appropriate. As part of its process, the current Manatū Hauora evidence update will also seek independent expert peer review and will take that into account in making its findings.

## Next steps

11. The timeframe for the PHA to complete the NZBORA analysis for your consideration is largely dependent on the completion date of Manatū Hauora's current evidence update. The PHA's present estimate is that it will provide you with advice by the end of June 2024 to support your NZBORA assessment of each direction.

## Ongoing work with the local authorities directed to fluoridate

12. Given that the High Court has left in place the current directions to fluoridate, the PHA is continuing to provide support to local authorities that are implementing their directions. This includes by providing funding for the capital works. For example, Manatū Hauora signed funding contracts with Whangarei District Council in November 2023 and Tararua District Council in December 2023. The PHA is also currently finalising contracts with Tauranga District Council, Kawerau District Council, Hastings District Council and Horowhenua District Council.
13. The PHA is aware that a number of local authorities have passed or are close to reaching their compliance dates and may be unable to meet these dates due to circumstances outside of their control. The PHA's February 2024 memo to you outlining the recent High Court

decision, stated that we would provide you further advice on whether any compliance dates for other local authorities should be amended.

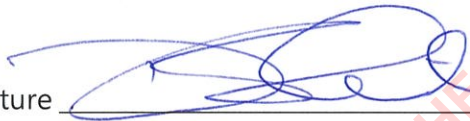
14. The PHA recommends you continue to consider any requests for changes to compliance dates on a case-by-case basis.

## Recommendations

It is recommended that you:

1.	Note	that the PHA has established a process for your reconsideration of the 14 directions to fluoridate, against the NZBORA	Noted ✓
2.	Note	that the PHA anticipates it will provide the related advice to you by the end of June 2024	Noted ✓
3.	Note	that the PHA will provide you with advice on any local authority requests to change to compliance dates as these arise	Noted ✓

Signature \_\_\_\_\_



Date: \_\_\_\_\_

4/4/24

Dr Diana Sarfati  
**Director-General of Health**  
**Te Tumu Whakarae mō te Hauora**

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

133 Molesworth Street  
PO Box 5013  
Wellington 6140  
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T+64 4 496 2000

22 February 2024

Gareth Green  
Chief Executive  
New Plymouth District Council  
gareth.green@npdc.govt.nz

Tēnā koe Gareth

### **Community water fluoridation court decision update**

I am contacting you to provide an update on the judicial review of the directions issued by the Director-General of Health in July 2022, that required 14 local authorities to fluoridate one or more of their drinking water supplies.

As you are aware, on 10 November 2023, the High Court issued its judgment on the preliminary issue, finding that the Director-General of Health made an error of law by not explicitly considering the rights under the New Zealand Bill of Rights Act 1990 in making a decision on each direction. There was a second hearing on 2 February 2024 to consider the validity of the current directions, and any relief.

The Judge decided that the directions remain in place. However, the Judge directed the Director-General of Health to assess whether each of the 14 directions made in 2022 were, in terms of section 5 of the New Zealand Bill of Rights Act, a justified limit on the right to refuse medical treatment that is provided for in section 11 of the New Zealand Bill of Rights Act.

As directed by the Judge I will carry out this assessment against the New Zealand Bill of Rights Act, for each of the directions. I will continue to update you as this process progresses.

Manatū Hauora is continuing to provide support to local authorities that are implementing their directions, including by providing funding for the capital works.

Thank you for your ongoing collaboration as we work together to improve the oral health of the communities we serve.

Nāku noa, nā



Dr Diana Sarfati  
**Director-General of Health**  
**Te Tumu Whakarae mō te Hauora**

133 Molesworth Street  
PO Box 5013  
Wellington 6140  
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T+64 4 496 2000

22 February 2024

Nigel Philpott  
Chief Executive  
Nelson City Council  
nigel.philpott@ncc.govt.nz

Tēnā koe Nigel

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Nāku noa, nā



Dr Diana Sarfati  
**Director-General of Health**  
**Te Tumu Whakarae mō te Hauora**

22 February 2024

Phil Wilson  
Chief Executive  
Auckland Council  
phil.wilson@aucklandcouncil.govt.nz

Tēnā koe Phil

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Nāku noa, nā



Dr Diana Sarfati  
**Director-General of Health**  
**Te Tumu Whakarae mō te Hauora**

22 February 2024

Guy Holroyd  
Chief Executive  
Far North District Council  
guy.holroyd@fndc.govt.nz

Tēnā koe Guy

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Nāku noa, nā



Dr Diana Sarfati  
**Director-General of Health**  
**Te Tumu Whakarae mō te Hauora**

22 February 2024

Nigel Bickle  
Chief Executive  
Hastings District Council  
nigelb@hdc.govt.nz

Tēnā koe Nigel

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Nāku noa, nā



Dr Diana Sarfati  
**Director-General of Health**  
**Te Tumu Whakarae mō te Hauora**



22 February 2024

Monique Davidson  
Chief Executive  
Horowhenua District Council  
moniqued@horowhenua.govt.nz

Tēnā koe Monique

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Nāku noa, nā



Dr Diana Sarfati  
**Director-General of Health**  
**Te Tumu Whakarae mō te Hauora**

22 February 2024

Russell George  
Chief Executive  
Kawerau District Council  
Russell.george@kaweraudc.govt.nz

Tēnā koe Russell

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Nāku noa, nā



Dr Diana Sarfati  
**Director-General of Health**  
**Te Tumu Whakarae mō te Hauora**

22 February 2024

Gina Rangī  
Chief Executive  
Rotorua Lakes Council  
Gina.Rangi@rotorualc.nz

Tēnā koe Gina

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As directed by the Judge, I will carry out this assessment against the New Zealand Bill of Rights Act, for each of the directions. I will continue to update you as this process progresses.

Manatū Hauora is continuing to provide support to local authorities that are implementing their directions, including by providing funding for the capital works.

Thank you for your ongoing collaboration as we work together to improve the oral health of the communities we serve.

Nāku noa, nā



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22 February 2024

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Tēnā koe Bryan

### **Community water fluoridation court decision update**

I am contacting you to provide an update on the judicial review of the directions issued by the Director-General of Health in July 2022, that required 14 local authorities to fluoridate one or more of their drinking water supplies.

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22 February 2024

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Chief Executive  
Tauranga City Council  
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Tēnā koe Marty

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22 February 2024

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Chief Executive  
Waipa District Council  
garry.dyet@waipadc.govt.nz

Tēnā koe Garry

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22 February 2024

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Tēnā koe Alex

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22 February 2024

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Tēnā koe John

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Simon Weston  
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Whangarei District Council  
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Tēnā koe Simon

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