
**GOVERNMENT INQUIRY INTO HAVELOCK NORTH
DRINKING-WATER**

UNDER THE

THE INQUIRIES ACT 2013

IN THE MATTER OF

**GOVERNMENT INQUIRY INTO
HAVELOCK NORTH DRINKING
WATER**

MEMORANDUM OF COUNSEL

22 September 2017

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MAY IT PLEASE THE INQUIRY:**Introduction**

1. This memorandum for the Havelock North Drinking Water Inquiry (**the Inquiry**) is filed by the Crown, in particular, the Ministry of Health (**MoH**).
2. During the 7-11 August 2017 hearing, the Inquiry asked the Director-General of Health, the Director of Public Health and the Manager, Environmental and Border Health to consider taking actions which, in the Inquiry's view, would improve the drinking-water regime. The Director-General agreed to seek advice on a range of matters. The Inquiry directed that MoH provide an update on actions by Friday 22 September 2017.
3. This memorandum describes the steps taken by MoH since the 7-11 August 2017 hearing and possible steps once the Inquiry has made its recommendations.¹

Context and scope

4. As noted in the Crown submission dated 23 July 2017, the provision of safe drinking-water is crucial to public health. The provision of safe drinking-water is one of the key public health issues, local government priorities and water quality issues for New Zealand.
5. Issues in the Stage Two Issues list are relevant not only to the Havelock North outbreak but to all New Zealand water supplies and the wide range of drinking-water suppliers, local authorities, statutory officers and different water sources.
6. The Crown acknowledges that to consider issues in the context of Havelock North requires awareness of how issues are dealt with elsewhere. This applies to future regulatory or legal change, as well as more immediate steps that the Inquiry asked the Director-General of Health to consider and report back on by 22 September 2017.

¹ The memorandum does not repeat the policy positions for reform of the drinking-water regime and areas where future policy development is required, or other matters addressed in the Crown memorandum dated 23 July 2017 and earlier fact papers.

Hearing

7. During the course of the 7-11 August hearing, the Inquiry Panel identified a range of steps described as being able to be implemented simply, easily or without difficulty. These steps included:
 - 7.1 Sampling and testing recommendations identified by the science and testing caucus;²
 - 7.2 Writing to drinking-water assessors throughout New Zealand and providing a template;³ and
 - 7.3 Adding details to the drinking-water register.⁴
8. The Inquiry Panel and expert panels also commented on other steps which would require policy and/or legislative change. These steps included consideration of the mandatory chlorination of drinking-water.⁵
9. The Crown submission dated 23 July 2017 described the process to develop policy. The Crown will consider the Inquiry's recommendations as part of the policy development process from here (including assessing the option of legislative change).

Updates on progress since 11 August 2017

10. MoH has considered the matters discussed in the hearing and provided information to Counsel Assisting on steps underway.⁶
11. An update (as at 22 September 2017) is attached to this memorandum as **Annexure A**.
12. The Director-General and Director of Public Health acknowledge that due to the focus on drinking-water, MoH has prioritised and brought forward projects

² Transcript, 8 August 2017 at p 387 and 10 August at p 630.

³ Transcript, 9 August 2017 at p 515.

⁴ Transcript, 11 August 2017 at pp 706 and 707.

⁵ Transcript, 10 August 2017 at p 628.

⁶ Email updates provided 18 August, 4 September and 8 September 2017, in addition to responses to separate email queries.

on its drinking-water work programme.⁷ In addition, MoH officials are considering a review of all drinking-water provisions in the Act.⁸

13. The key focus of the work to date has been to ensure that:
- 13.1 MoH's approach to enforcement is clear.⁹ During the hearing the Manager, Environmental and Border Health referred to training materials to describe a change in approach to enforcement. MoH acknowledges that the written training materials could have more clearly emphasised the importance of robust enforcement. The latest correspondence from MoH at Attachment 10 of Appendix A addresses compliance and enforcement policy and tools.
 - 13.2 Water suppliers receive updated nationally consistent guidance on water safety plans and use of samplers.¹⁰
 - 13.3 MoH and IANZ have clear lines of communication and work together to consider the range of options for accreditation of laboratories, including reference laboratories and adding supplementary criteria for laboratories.¹¹
 - 13.4 Public health managers encourage collaboration between district health boards, regional councils and territorial authorities.¹²
 - 13.5 The national network of drinking-water assessors have support to carry out their roles.¹³
 - 13.6 Water New Zealand is encouraged to continue its development of an Industry Certification framework.¹⁴
 - 13.7 An expert advisory committee is set up.¹⁵

⁷ For example, the review of the Environmental Health Protection Manual (also referred to as the technical manual) has now been completed.

⁸ Attachment 13. Note: final policy decisions have not yet been made.

⁹ Attachment 10.

¹⁰ Attachments 6-8.

¹¹ Attachments 1-6.

¹² Attachments 14, 16, 18.

¹³ Attachments 16 and 17.

¹⁴ MoH refers to the update from Water NZ dated 22 September 2017 filed by Atkins Holm Majurey.

- 13.8 Water suppliers are asked to explain non-compliances.¹⁶
- 13.9 MoH's leadership role is clear.¹⁷
14. The Director-General and Director of Public Health support and agree with the steps taken to date. The steps are also consistent with the MoH policy positions for reform of aspects of the drinking-water regime listed in the Crown submission dated 23 July 2017.

Process

15. The Director-General has a range of statutory powers under the Act, including the powers identified by the Inquiry to include information in the drinking-water register relevant to a drinking-water supplier, specified self-supplier, or a drinking-water supply that the Director-General considers appropriate.¹⁸
16. As the Director-General noted when appearing at the Inquiry, it is important that the Director-General (or his delegate) takes advice on the exercise of statutory powers, to ensure powers are exercised properly and appropriately.¹⁹ Advice can include information on options, costs, and the effect of the proposed exercise of the power. It is important to understand the urgency and importance of problems and proposed solutions before exercising statutory powers or making changes to a national system.
17. On that basis, some of the matters identified by the Inquiry are still under consideration – for example, the suggestions that the Director-General amend the requirements for the drinking-water register and the requirement that drinking-water assessors are health protection officers.²⁰
18. Once released, the Inquiry's recommendations will be an important matter for the Director-General to consider.

¹⁵ Attachment 12. In the process of making statutory decisions, or updating policy and regulatory documents, MoH may consider expert views from a range of sources, including and in addition to the experts that participated in the Inquiry process.

¹⁶ Attachments 11 and 16.

¹⁷ Attachments 10, 11, 16, 18 and 18B.

¹⁸ Health Act 1956, s 69J(5).

¹⁹ For example, see transcript, 10 August 2017, p 622.

²⁰ MoH Progress Report to Havelock North Inquiry Panel, 22 September 2017, Task 3.

Details

19. Filed with this memorandum are the following documents:
- 19.1 **Annexure A MoH actions post hearing:** Annexure A lists the tasks carried out as at 22 September 2017.
- 19.2 **MoH Progress Report to the Havelock North Inquiry Panel dated 22 September 2017:** The Progress Report contains details in respect of certain tasks listed in Annexure A.
- 19.3 **Attachments 1 – 20 of Annexure A:** Accompanying correspondence and memoranda referred to in Annexure A.

22 September 2017



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