MoH Progress Report to the Havelock North Inquiry Panel
22 September 2017

Task 2: Water safety plans

On 18 August 2017, public health managers and Water New Zealand were provided with a letter (copy attached) that outlined the Ministry of Health's expectation that the minimum statutory requirements relating to identifying critical points within water safety plans for networked supplies will include, or reference, the identification of preventative operational process controls that stop water becoming contaminated by substances identified as presenting a risk to the drinking-water supply. An illustrative example of a critical control point and process control summary was provided.

Since then Health officials have been developing a number of illustrative examples of critical control point process control summaries, covering coagulation, sand filtration, treated water storage, UV disinfection and membrane filtration. Draft documents have been reviewed by

- Dr Dan Deere and Dr Colin Fricker, the international experts advising the Inquiry
- Dr Jan Gregor (ESR scientist with experience in developing and implementing water safety plans in the Pacific)
- Dr Chris Nokes (ESR scientist who has analysed New Zealand water safety plans and had revised the Ministry's water safety plan framework)
- Dr Heather Uwins-England (former Director of Water Supply Regulation in Queensland) and Noel Roberts (Water New Zealand's technical expert).

The expert advice is being analysed and the illustrative examples are being redrafted. Once completed, the examples will be provided to Water NZ and to DHB public health units to work with water suppliers to ensure their water safety plans include appropriate critical control points and encourage the adoption of process control summaries.

Public health staff have been asked to inform the Ministry of Health if any water supplier refuses to adopt critical control points and/or develop appropriate process control summaries. The Director-General may then consider imposing additional requirements on the water supplier by notice in writing, as to the content and format of the water supplier's water safety plan, as provided in section 69U of the Health Act 1956.

In addition, Dr Gregor, Dr Nokes and Dr Uwins-England are revising the Ministry's water safety plan framework to ensure it meets international best practice. Consultation on the initial draft has been undertaken with Dr Deere and Dr Fricker.

Ministry of Health officials have contacted the Australian National Health and Medical Research Council (NHMRC), which is also reviewing its advice on water safety plans, to seek agreement to share information and work collaboratively and to see how New Zealand and Australia can develop consistent approaches to water safety planning while still allowing for each of our governance, cultural, legislative, environmental and hydro-geological factors. NHMRC staff have agreed to work with New Zealand where appropriate and Drs Nokes, Gregor and Uwins-England will be teleconferencing with relevant NHMRC staff to progress the arrangement.

Task 3: Criteria for appointment of drinking water assessors

Stage 1 of the 2017 Havelock North Drinking Water Inquiry found, amongst other things, that:

> *"... DWAs ... failed to adhere to the high levels of care and diligence necessary to protect public health and to avoid outbreaks of serious illness. A higher standard of*

care needed to be embraced, akin to that applied in the fields of medicine and aviation where the consequences of a failure could similarly be illness, injury or death."
"...DWAs were too hands-off in applying the Drinking-water Standards. "
"... DWAs failed to press the District Council sufficiently about the lack of risk assessment, analysis of key aquifer catchment risks... and a meaningful working relationship between it and the Regional Council. They also failed to require a deeper and more holistic investigation into the unusually high rate of transgressions in the Havelock North and Hastings reticulation systems."
"The DWAs contended that there are too few DWAs, they are under-resourced and underpowered, and to achieve the ideal standards implicit in the matters raised in relation to their conduct there would need to be legislative and resourcing changes to the DWA model"

During hearings for Stage 2 of the Inquiry, the Inquiry Panel discussed the criteria for appointing drinking-water assessors and whether, *"... given the shortage of drinking water assessors, is around the requirement that they are also a health protection officer. Has the Ministry given consideration to waving that requirement? ... How is that configured by the Ministry according to shortage, demand et cetera and might it change?"*

Health officials have initiated a review of the criteria for appointing drinking-water assessors.

In reviewing the rationale for the current criteria, Health officials note that as far back as 2007, capacity pressures regarding the drinking-water assessor role were identified. At that time, Health officials proposed an additional role that could provide service delivery but not be specifically appointed as a drinking-water assessor by the Director-General of Health ie that drinking water technicians could be employed to undertake drinking water activities.

In 2007, the Ministry also contracted public health units to employ appropriate staff to support the Drinking-water Subsidy Programme. These staff were not required to be health protection officers or drinking-water assessors but needed to understand the issues and concerns facing small water suppliers. Funding for this role has continued and evolved into contracts between the Ministry and public health units for drinking-water technical advice services for populations between 25 and 5000 people (ie targeting advice and support to neighbourhood, small and minor water supplies).

The prerequisite to be a health protection officer for appointment as a drinking-water assessor was to ensure that drinking-water assessor had the core competencies in relation to environmental health, including, microbiology, epidemiology, hazardous substances, the roles of local government, surveillance and control of communicable diseases etc. The requirement to be a health protection officer also ensured the drinking-water assessor was familiar with relevant legislative frameworks, the roles of different agencies in the wider field of environmental health and were experienced in the functions and accountabilities of statutory officers. The prerequisite to be a health protection officer required drinking-water assessors to understand and have first-hand experience of closely related public health functions, systems and practices (such as EpiSurv, hazardous substances injury reporting, outbreak investigation, contact tracing, emergency management and the use of legislative powers to protect public health). It also ensured they had a good knowledge of the multi-faceted relationships between the health sector and local government - of which water supply is just one.

In addition to these health protection and regulatory skill sets, as a matter of policy the Director-General of Health requires drinking-water assessors to have completed the NZQA diploma in drinking-water assessment.

However, while there was a strong rationale for drinking-water assessors to be health protection officers, the Director-General's criteria for appointment explicitly allow for this prerequisite to be waived where appropriate. Exceptions can be considered on a case by case basis. This means that if a particular candidate drinking-water assessor is not a health protection officer, but has other relevant skills, qualifications and experience, the Director-General may appoint them under the existing *Criteria for Appointment* document.

The review of the criteria for appointment is continuing, and once the analysis is completed the proposals will be provided to public health managers (and their staff) for consultation to ensure there are no unintended consequences from any proposed changes.

In the interim, a public health manager may still propose staff member for appointment as a drinking-water assessor who is not a health protection officer, including, for example, a drinking-water technician.

Task 7: Expert advisory panel

Drinking-Water Advisory Committee: Health officials drafted terms of reference and an indicative skill set for an expert committee to advise the Director-General of Health on improvements to the drinking-water system. Following consultation with Dr Dan Deere and Dr Colin Fricker, the international experts advising the Inquiry, as well as Dr Heather Uwins-England (former Director of Water Supply Regulation in Queensland) and John Pfahlert (Water New Zealand's chief executive) the terms of reference and skill set were redrafted and finalised (copy attached). Advice is being prepared for the Director-General of Health, recommending a Drinking-Water Advisory Committee be convened and providing invitations, conflict of interest declarations and terms of reference to be sent to potential committee members.

Weekly progress reports to DPH, copied to DG: During the hearings for Stage 2 of the Government Inquiry into Havelock North Drinking-Water, held from the 7 to 11 August 2017 in Hastings, the Chair of the Inquiry Panel suggested that Sally Gilbert (Manager, Environmental & Border Health) brief the Director of Public Health, and copy the Director-General of Health, on *"the list of matters that we would like looked at".* Sally Gilbert provided weekly briefings on progress on the list of tasks identified as arising from discussions at the Inquiry and instructions from Judge Stevens. The list of actions was also reviewed and updated following discussions between the Crown Law Solicitors supporting the Ministry of Health (and other agencies) and Counsel Assisting the Inquiry, to ensure all actions identified were included.

Task 8: Changes

Regulatory framework review: the Ministry of Health is in the process of scoping a review the regulatory framework mindful of the issues emerging from the inquiry. The review will seek to identify whether the regulatory framework is fit-for-purpose and meets expectations of modern best regulatory design and practice. The Ministry will engage with the Department of Internal Affairs in this work to ensure alignment with its work on infrastructure needs.

Recommendations for the Inquiry to consider/priorities for improving the drinking-water system: Ministry of Health officials have reviewed the information arising from the Inquiry including the submissions, reports and transcripts of Hearings. Health officials have considered how this information may most effectively be collated and used to inform improvements to the drinking-water system in New Zealand and have identified five areas of action:

- Establish an expert advisory committee to advise the Director-General of Health on improvements to the drinking-water system

- Review the drinking-water provisions of the Health Act 1956, as part of the wider review of the Health Act with the intention of replacing it with more modern legislation. Review the Drinking-Water Standards for New Zealand 2005 (Revised 2008)
- Review the contracts between the Ministry of Health and DHB public health units to clarify and strengthen the requirements for the delivery of health protection regulatory services, including drinking-water services in the core contracts and the drinking-water technical advice services contracts, and to ensure public health contract reports accurately and adequately describe the delivery of services
- Review and revise information provided to support the drinking-water system including (among other things)
    - the water safety plan framework and supply elements to ensure they reflect international best practice
    - the Guidelines for the Management of Drinking-Water in New Zealand on an as required basis rather than annual revisions
    - the drinking-water and regulatory environments sections of the Manual to ensure they are current and fit for purpose
    - the annual review of drinking-water quality to ensure it provides accessible and relevant information for the public to understand the state of their water supplies
    - the register of drinking-water supplies to ensure it provides useful and relevant information
    - the Ministry's website to ensure all information is appropriately linked and hyperlinked.

Task 9: Collaboration

On 28 August 2017, Ministry of Health officials emailed public health managers noting that during the hearings for Stage 2 of the Government Inquiry into Havelock North Drinking-Water, the Chair of the Inquiry Panel suggested that Ministry of Health officials emphasise the importance of collaborative arrangements between DHB public health staff and water suppliers. Judge Stevens suggested that the Joint Working Group, established by Dr Snee, CEO of the Hawke's Bay DHB, was a useful example of how effective these groups could be.

Health officials provided the terms of reference for the Joint Working Group but also observed that many public health units already had collaborative arrangements in place, established before the Havelock North WBI outbreak, or as a result of public health staff reading the transcripts, submissions and reports from Stage 1 of the Inquiry.

Health officials requested information about any formal or semi-formal collaborative arrangements in place, so examples of successful initiatives could be provided to the Inquiry Panel. Information has been provided by right (of twelve) public health units. The detailed analysis of the information has not been completed but arrangements include

- one public health unit described a network of collaborative arrangements that included:
    - a joint work programme established between the regional council and public health unit (that includes a joint water management strategy for drinking-water and recreational waterways) and covers governance, management and operations;
    - regional water committee to address regionally-significant water management issues such as infrastructure and environmental enhancement projects. The DHB has observer status in this forum and the members include regional council, territorial authorities, iwi, rūnanga, sectors (fisheries; energy; environmental/biodiversity; primary production/agriculture; recreation; and regional development, including tourism)
    - drinking-water reference group comprising representatives from the regional council, all territorial authorities, the Medical Officer of Health and Drinking Water

Assessors. Council representatives included water supply engineers, consents officers and water scientists.

- joint working groups similar to that operating in the Hawkes Bay but which include all council water suppliers in the region and report to each council and DHB chief executive
- joint working groups similar to that operating in the Hawkes Bay but which include all council water suppliers in the region and don't have formal terms of reference
- joint working groups that cover the 3 waters: wastewater, storm water and drinking-water and all relevant territorial authority, regional council and public health staff
- initial arrangements with individual councils and with the regional council but with the intention to develop these into collaborative arrangements
- no formal collaborative arrangements but existing good working relationships with territorial authorities and regional council across a range of shared issues and interests including drinking-water, recreational water, wastewater and resource management. Currently reviewing other arrangements with their councils to see what may be appropriate for their region
- no formal collaborative arrangements and concerns that collaborative arrangements may impact on the drinking-water assessor's impartiality.

A more detailed analysis of the information from public health units is underway. The results will be provided back to public health managers so they may consider successful initiatives elsewhere and whether their own arrangements could be improved. A copy of the report will be provided to Counsel Assisting the Inquiry.

Task 12: Funding

The Ministry of Health contracts advisory services to support smaller water suppliers (servicing up to 5000 people) separately to the core contracts with public health units. These services are mostly delivered by drinking-water technical staff in public health units but a private provider delivers the service in one region.

The service specifications have been redrafted to specifically include support for smaller water suppliers to introduce CCPs and process control summaries in their water safety plans. The services already include a requirement for the staff delivering the contract to attend training at least every three years to ensure staff are able to attend the Ministry's drinking-water training course even if the staff member is not a health protection officer or drinking-water assessor.

Task 15: Medical Officers of Health / Drinking-Water Assessors

Clarifying accountabilities of drinking-water assessors: Advice has been provided to public health managers and drinking-water assessors about their accountabilities as DHB employees, statutory officers appointed by the Director-General of Health and state servants. This advice is sent to each statutory officer with their warrant of appointment, and is included in the *Criteria for Appointment as a Public Health Statutory Officer (May 2016 Revised April 2017).* In summary, their primary accountability, through which their other accountabilities are generally managed, is to their employer via their line manager.

In any situation where an officer is unsure about the appropriate course of action, or is concerned about a potential conflict between their statutory roles and any other roles they have as employees and State servants (and health practitioners in some cases) these concerns must be discussed with their manager in the first instance. If the issue is unable to be resolved, the officer (preferably with their manager) may raise it with the relevant Ministry of Health official (in the first instance, usually the manager of the team that leads the issue

under discussion). Ministry of Health officials will seek advice and escalate the matter within the Ministry as required to provide advice to the officer and their manager.

When applying for a staff member to be appointed as a statutory officer, the manager must confirm that the manager and an experienced medical officer of health or clinical lead or senior staff member have discussed the accountabilities of statutory officers with the staff member. This includes discussing the requirement for the applicant to act in good faith and with reasonable care; to comply with the State Sector Standard of Integrity and Conduct; and to give effect to Government policy. The manager must confirm that the staff member has demonstrated an understanding of their accountabilities to the satisfaction of the manager and the senior staff member.

In annual reports to the Director-General of Health on each statutory officer, among other things, public health managers must verify that each officer demonstrates behaviour expected of a statutory public health officer, including taking a measured, balanced approach to issues based on the weight of evidence; is competent to exercise the statutory powers, including in emergencies; and that the manager is confident that, in the officer's performance of their duties, they have acted in good faith and with reasonable care; complied with the State Sector Standards of Integrity and Conduct; and gave effect to Government policy.

However, from some of the information presented to the hearings for Stage 2 of the Government Inquiry into Havelock North Drinking-Water, it appears that further clarification with public health managers on this issue may be helpful. Dr Caroline McElnay (Director of Public Health) will lead a discussion on this at the Health Protection Managers' meeting on 3 October and, if necessary, will write to all public health managers with further clarification.