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New legal advice puts council fluoridation programs on shaky ground

[ABC Mid North Coast Benjamin Shuhyta](#), [Luisa Rubbo](#) and [Gemma Sapwell](#)

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PHOTO Fluoride is widely credited for preventing tooth decay, but its legality is being questioned.
ABC NEWS

Australia's water providers may not have the proper approval to add fluoride, according to legal advice from a prominent lawyer.

Key points:

- A prominent lawyer says fluoridation is prohibited without approval from the Therapeutic Goods Administration
- Medical experts say water fluoridation programs are safe and reduce tooth decay
- Residents who have strong misgivings about the use of fluoride may be able to use the legal advice for their claims
- Tim Robertson SC, who specialises in environmental and constitutional law, warns fluoridation is prohibited without approval from the Therapeutic Goods Administration (TGA).
- "Supply of fluoridated water is in breach of the [Therapeutic Goods] Act, until fluoridated water is registered ... or excluded from the Act," Mr Robertson wrote in a report to the Port Macquarie Hastings Council, on the NSW Mid North Coast.

"Council is exposed to both criminal and civil penalties."

- The advice was provided to a confidential meeting of the council, but has now been [published on the Council's website](#).



PHOTO Dr Brendan White and Professor Wayne Smith speaking about fluoridation at a rally in Byron Bay.

ABC NEWS: BRUCE MACKENZIE

Port Macquarie Hastings Councillor Peter Alley said the legal advice surprised him.

"This will potentially impact on every water supply authority that supplies fluoridated water," he said.

"It's now up to the TGA, the Federal and State Health Ministers to work with us to try and find a way forward."

So what's the problem?



PHOTO Port Macquarie Hastings Council is questioning the legality of fluoridation in water supplies.

ABC NEWS

Councils are obliged to add fluoride to water by law, such as the NSW Fluoridation Act of 1957, and it is widely believed to prevent tooth decay.

According to the legal advice presented to Port Macquarie Hastings Council, that makes fluoridated water "an unregistered therapeutic good" under the Commonwealth's Therapeutic Goods Act.

According to Mr Robertson's advice, that overrides the state law.

"Section 109 of the Constitution operates and the Therapeutic Goods Act prevails to the extent that ... the Fluoridation Act is invalid," Mr Robertson wrote.

"[A council's] supply of fluoridated water is in breach of the Therapeutic Goods Act until fluoridated water is registered ... or excluded."

It is further complicated because the TGA does not agree.

"The TGA does not consider fluoridated reticulated drinking water to be therapeutic goods," the Federal Health Department said in a statement.

However, the Health Department said the TGA was now considering whether it needed to "clarify its position further".

Fluoridation of Australia's drinking water began in the 1950s.

Port Macquarie's water fluoridation program began in 2012, and some councils are still to introduce fluoridation.

Legal advice may aid those opposed to fluoridation

Byron Shire Council is one last remaining council in NSW to not fluoridate its water.

The shire's mayor, Simon Richardson, also sits on the board of Rous County Council, which is responsible for fluoridation across the Northern Rivers.

Mr Richardson said he believed the legal advice would have wide implications.

"It may be that just the advice alone will be enough for Rous or others to change our management practices, I guess we have to wait and see," he said.

He said the legal advice would also be of particular interest to those who opposed fluoridation.

"Residents who have serious misgivings and concerns about fluoride now have stronger ammunition to pursue a case if they've had legal advice there have been transgressions," he said.

No questions raised about fluoride effectiveness

The National Health and Medical Research Council of Australia's most recent review found that [community water fluoridation programs were considered a safe and effective way of reducing tooth decay](#).

It also confirmed that there was "no reliable evidence that water fluoridation at current Australian levels causes health problems".

Cr Alley said it was important to recognise that the legal advice said nothing about whether fluoridation was beneficial — only about whether it was currently legal.

Port Macquarie Hastings Council resolved to seek further advice from water and health authorities.

The ABC has contacted NSW Health and the NSW Local Government Association for comment.

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