



**Key Stakeholder Consultation  
to Complete the Evaluation of the Effectiveness of  
the WHO International Code of Marketing of Breast-  
Milk Substitutes in New Zealand**

Report prepared for the  
Ministry of Health  
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September 2012

ISBN 978-0-478-4023602 (online)  
HP 5609

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## 1. Executive Summary

In 1983 the New Zealand Government became a signatory to the 1981 World Health Organization International Code of Marketing of Breast-Milk Substitutes (the WHO Code). The WHO Code is implemented in New Zealand under three voluntary and self-regulatory codes and also the Australia New Zealand Food Standards Code. The Ministry of Health (the Ministry) administers a complaints process under two of the self-regulatory codes; the Infant Nutrition Council Code of Practice for the Marketing of Infant Formula, and the Code of Practice for Health Workers.

In 2009 Cabinet decided an evaluation of the effectiveness of the WHO Code in New Zealand should be conducted. The evaluation commenced in 2011 with a report by the Research Trust of Victoria University. In 2012 it was determined that the evaluation would be completed through consultation with key stakeholders.

The purpose of the consultation was twofold; to provide stakeholders with an opportunity to discuss some issues related to the implementation of the WHO Code and to generate new ideas on how implementation of the WHO Code might be made more effective in New Zealand.

Stakeholders included representatives from health professional and consumer groups and representatives from the infant formula and bottle and teat industries.

This report contains a summary of the consultation and concludes with the following areas for further consideration.

### **The marketing of follow-on formula**

The Ministry could progress, with the Infant Nutrition Council (INC), ideas related to the inclusion of follow on formula to 12 months in the INC Code. In particular:

- Discuss changing the term 'infant formula' to 'infant formula products', which would then include follow-on formula, within the INC Code.
- Seek a position from the Commerce Commission as to whether or not an agreement among INC members not to market follow-on formula would be viewed as anti-competitive and whether a decision, like the Australian Competition and Consumer Commission (ACCC) authorisation, would be possible in New Zealand.
- Seek information from the ACCC as to how the Marketing in Australia of Infant Formula (MAIF) Agreement was achieved.

### **Bottles and teats**

In relation to the marketing of bottles and teats; and, the quality of bottles and teats the Ministry could:

- Explore the extent to which marketing of bottles and teats is an issue in New Zealand.
- Meet with all bottle and teat manufacturers/marketers to seek their views on whether or not they would be willing to formalise their voluntary compliance through a Code of Practice or some other kind of agreement.
- Continue to explore options for addressing poor quality low-cost infant feeding bottles.

### **Compliance with INC Code**

The Ministry and the INC could:

- Explore the possibilities for advising new companies on the WHO Code and INC Code. It may be possible for this advice to be administered on a fee for service basis.
- Communicate with new companies to encourage them to join the INC.

### **The Ministry of Health as a signatory to the INC Code**

This was not supported by any of the stakeholder groups.

- The Ministry explore whether an Infant and Young Child Feeding Committee as a body independent of both the Ministry and industry could enhance the implementation of the WHO Code in New Zealand.

### **Improving the complaints process**

The Ministry could:

- Consider developing a system to apply a jurisdiction test to all complaints so only 'in scope' complaints are dealt with by the Compliance Panel.
- Instigate a system for recording and reporting out of scope complaints in order to inform government of these concerns.
- Explore the costs associated with appointing an advocate to assist complainants to see a complaint through the process.
- Discuss possible penalties/sanctions for complaints that are upheld to ensure sanctions are meaningful to both complainants and the industry and are sufficient to deter re-offending.
- Investigate the feasibility of using an expert group who would meet to consider complaints just when they arise to replace the standing Compliance Panel.
- Consider revising the Health Workers' Code to include a process for complaints against workers in which the first step is education about the Code and breastfeeding. It may also be relevant for health workers' employers to be part of this educative process to ensure they understand their responsibilities.

### **Donation of formula in emergency situations**

The Ministry could:

- Work with the INC to find appropriate wording which would strengthen the INC Code with regard to donations in emergencies.
- Instigate discussions with other government agencies as appropriate to determine how infant feeding might be included in emergency planning.
- Discuss with District Health Boards the feasibility of them being the agency to co-ordinate donation of formula during emergency situations.
- Carry out a search of overseas jurisdictions to see how they plan for infant feeding in emergencies.

### **Retail promotion of formula**

The Ministry could:

- Research, record and document instances where retailers are failing to comply with the INC Code and investigate avenues for educating retailers about their responsibilities around formula products.
- Investigate the feasibility of an ongoing monitoring of retail promotion of infant

formula.

**Other Ideas**

- The Ministry and the INC continue discussion with other relevant organisations about the risks associated with New Zealand-based companies not following the INC Code.

## 2. Introduction

### Background to the WHO Code in New Zealand

In 1983 the New Zealand Government became a signatory to the 1981 World Health Organization International Code of Marketing of Breast-Milk Substitutes (the WHO Code). The WHO Code is implemented in New Zealand by three codes that are self-regulatory and also the Australia New Zealand Food Standards Code<sup>1</sup> (on food safety, labelling and composition). The three self-regulatory codes are:

- Code of Practice for the Marketing of Infant Formula (INC Code) (2007)<sup>2</sup>
- Code of Practice for Health Workers (2007)<sup>3</sup>
- Code for Advertising of Food (2010)<sup>4</sup>

### Review of the effectiveness of the WHO Code in New Zealand

In 2009 Cabinet decided an evaluation of the effectiveness of the WHO Code in New Zealand should be conducted. This decision was in response to a petition by Lisa Ross and 15 others, calling on the Government to adopt and give regulatory force to the WHO Code, and to recognise the WHO Code as a minimum standard. The Health Select Committee considered the petition in 2008, and Government responded to the Committee's recommendations in 2009. Government decided an evaluation of the effectiveness of the WHO Code in New Zealand should commence in 2011.

The evaluation began in 2011 with a literature review and survey of key stakeholders conducted by the Research Trust of Victoria University. In March 2012 it was decided the evaluation would be completed with a consultation process through facilitated meetings with key stakeholders.

The meetings were held on 5 July 2012 at the Wellington Airport Conference Centre. The key stakeholders came from three different sectors; industry, health professionals and consumer organisations.

The purpose of the consultation was twofold. It was to provide stakeholders with an opportunity to discuss some issues related to the implementation of the WHO Code and to generate new ideas on how implementation of the WHO Code might be made more effective in New Zealand.

The results of the evaluation, which includes the stakeholder consultation meetings, will provide a basis for the Ministry of Health (the Ministry) to develop options for refinements that could be made to implementing the WHO Code in New Zealand.

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<sup>1</sup> <http://www.foodstandards.gov.au/foodstandards/foodstandardscode.cfm>

<sup>2</sup> <http://infantnutritioncouncil.com/wp-content/uploads/2009/03/infant-nutrition-council-code-of-practice-in-nz.pdf>

<sup>3</sup> <http://www.health.govt.nz/our-work/who-code-nz>

<sup>4</sup> [http://www.asa.co.nz/code\\_food.php](http://www.asa.co.nz/code_food.php)

## 3. Approach

### 3.1 Stakeholders

The Ministry drew up a list of potential stakeholders to attend the consultation meetings.

The stakeholders were sent an invitation to attend consultation meetings in Wellington. Thirty five people were invited to the meetings and 24 people attended.

Seventeen health professional and consumer organisation representatives attended the meetings, including representatives from Maori and Pacific organisations. Seven representatives from the infant formula and bottle and teat industries attended the meetings, including members and non-members of the Infant Nutrition Council (INC). Appendix 1 contains a list of stakeholder organisations that attended the meetings.

Three staff from the Ministry attended the meetings as observers.

### 3.2 Consultation Topics

The Ministry suggested the consultation should focus on five main areas:

- 1) Actions from a 2004 Review not yet implemented or partially implemented.
- 2) The changing nature of the infant formula industry.
- 3) Refinements to the complaints process based on recommendations from the Research Trust Report 2011.
- 4) Recent issues that have arisen around the Code such as donation of breast milk substitutes in emergencies.
- 5) Ways to make implementation of the WHO Code more effective.

A copy of the questions is included in Appendix 2.

### 3.3 Consultation Meetings

Three consultation meetings were held on the same day. Two simultaneous meetings were held in the morning, one with industry representatives and one with health professionals and representatives from consumer organisations. A combined meeting was held for all three stakeholder groups in the afternoon.

Each of the three meetings was facilitated by an independent facilitator and an independent note-taker was also present.

## 4. Consultation Summary

This section is structured under the key consultation topics. It summarises the views from stakeholders at the three consultation meetings. Where possible, the views are attributed to key stakeholder groups. However, this was not always possible for the combined stakeholder consultation meeting where small groups included representatives from a mixture of stakeholder groups.

### 4.1 Actions from the 2004 Review

In 2004 the Ministry published the Review of the New Zealand Interpretation of the World Health Organization's International Code of Marketing of Breast-milk Substitutes (the Review)<sup>5</sup>. The Review was completed using questionnaires and consultation with stakeholders.

The Review outlined 11 actions to refine and strengthen New Zealand's interpretation of the WHO Code. Many of these have already been implemented, however the Ministry invited attendees to discuss two of the actions from the review. These were:

- the marketing of follow-on formula become part of the New Zealand interpretation of the WHO Code; and
- a code of practice is developed for the marketing of bottles, teats and associated products in accordance with the WHO Code

#### 4.1.1 The marketing of follow-on formula

Stakeholders at the both the industry and health professional and consumer organisation meetings were asked:

- whether the INC should extend the INC Code to include follow-on formula
- whether the INC Code should apply to infants to 12 months as it does in Australia

Stakeholders expressed different views on both of these questions.

Industry representatives:

- Did not think it would be feasible to change the INC Code to restrict the promotion of follow-on formula to infants up to 12 months without changes being made to the Commerce Act. The Commerce Act forbids anti-competitive behaviour and the representatives thought the Commerce Commission would interpret all companies agreeing to restrict the promotion of follow-on formula to be collusion and anti-competitive. It was noted that in Australia, companies are allowed to restrict the marketing of follow-on formula because the Australian Competition and Consumer Commission (ACCC) has given authorisation for the implementation of the Code in Australia to be extended and deemed it not to be anti-competitive.
- However, agreed if they were required to restrict the marketing of follow-on formula, they would comply. The group noted any restriction should be driven by evidence of a need for change and they did not consider there was evidence of follow-on formula affecting breastfeeding rates nor of 'bad behaviour' on behalf on the marketing companies. They concluded there is no need for a change.

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<sup>5</sup> <http://www.health.govt.nz/our-work/who-code-nz/breast-milk-substitute-publications>



- Noted all of the companies who are members of the INC in New Zealand are global companies and bound by global company policies. They do not have the freedom to alter policies unless they are required to do so by specific requirements in the countries they are operating in.

Health professional and consumer representatives:

- Wanted the WHO Code, which recommends breast milk until at least two years of age, to be put into regulation in New Zealand. In the absence of such regulation the group recommended marketing of follow-on formula should not be permitted to infants/children less than 12 months.
- Suggested the marketing of follow-on formula normalised bottle-feeding. It was also described as a way of encouraging brand awareness of formula products and legitimising the advertising of formula brands to parents. Some stakeholders in this group said the marketing of any kind of formula should not be permitted.

#### **4.1.2 Bottles and teats**

Stakeholders at both the industry meeting and the health professional and consumer organisation meeting were asked to discuss if and how bottles and teats should be included in the INC Code.

They were asked to consider the following two possible options for including these industry groups in New Zealand's interpretation of the WHO Code:

- including them in an extended INC Code
- the bottle and teat industry developing their own self-regulatory code

Industry representatives:

- Did not consider there would be any benefit in including the bottle and teat companies as members of the INC or extending the INC Code to include bottles and teats. Making these changes would require a change to the INC's constitution.
- Did not support establishing a separate bottle and teat company organisation similar to the INC, or a self-regulatory code. They felt the large international bottle and teat companies market their products in a responsible manner and already voluntarily comply with the INC Code.
- The quality of bottles and teats arose in discussion. The industry group did not think the quality of bottles and teats was an issue related to the INC Code. They felt it would be unlikely to be solved by either extending membership of the INC or extending the INC Code to include bottles and teats. The quality of bottles and teats was considered to be a safety issue, not related to the marketing of formula and the responsibility of agencies such as the Ministry of Consumer Affairs and Customs.

Health professional and consumer representatives:

- Commented that bottles and teats are already covered in the WHO Code and that implementation of the full Code in New Zealand through regulation would mean that bottles and teats would be covered. This group did not consider it necessary or useful to develop another self-regulatory code for bottles and teats and indicated they had little confidence in self-regulation. One of the health professionals saw merit in including bottles and teats in an extended INC Code as it would avoid the necessity to create another process.

- Noted it was important bottle and teat marketing was controlled because there is evidence that breastfeeding is compromised if bottle and teat marketing is not 'managed'.
- Noted the poor quality of some bottles, particularly the inaccurate measuring scales, as a safety issue.

## 4.2 The changing nature of the infant formula industry

### 4.2.1 Compliance with INC Code

There are a number of new formula manufacturers who do not belong to the INC and therefore are not signatories to the INC Code. There have been several complaints about companies that do not belong to the INC because they have advertised formula for infants less than six months of age. The INC Code by definition only applies to those groups that belong to the INC and agree to comply with the INC Code.

Stakeholders at both meetings were asked to discuss how companies might be encouraged to comply with the INC Code.

This issue was considered important by all key stakeholders.

Industry representatives:

- Agreed it would be desirable to have all manufacturers and marketers of breast-milk substitutes be members of the INC and comply with the INC Code. However, they did not think it would be possible to make it mandatory for companies to join.
- Noted some concern about non-members who do not comply with the INC Code potentially damaging the reputation of the industry overall. The INC has approached non-member formula companies to invite them to join. It has also approached companies when it has been aware of non-members failing to meet the INC Code.
- One industry representative noted the fees to belong to the INC were prohibitive for some small new companies. New companies can also find compliance with the regulations and Code complex and need assistance. It was noted that while the INC was able to offer limited advice to new companies, it could not offer the full services it offered to members.
- Suggested the Ministry and/or the INC could set up an advisory group/service for new companies to advise them on the regulations and Code. Companies could pay on a 'fee for service' basis. It was noted the INC had limited resources to do this.
- Suggested both the Ministry and the INC could communicate with new companies to encourage them to join the INC.

Health professional and consumer representatives:

- Were critical of the self-regulation model and commented that the INC self-regulation model and INC Code are not effective. These groups said all companies that manufacture and/or market any kind of infant formula should be regulated and bound by the WHO Code and were critical that Government had not developed such regulation.

- Some health professional and consumer representatives felt the marketing of all formula products should be regulated up to two years of age to align with the WHO's recommendation to breastfeed to at least two years of age.

#### **4.2.2 The Ministry of Health as a signatory to the INC Code**

At present the INC Code is decided upon by the industry. One option posed for discussion at the meeting as a way of increasing the effectiveness of implementing the INC Code is for the Minister of Health (or the Ministry) to be involved in active negotiation by becoming a signatory to the Code.

There was no support for the Ministry becoming signatory to the INC Code from either industry representatives or health and consumer organisation representatives. The reasons given for this were:

- It would be a conflict of interest (all stakeholders).
  - The INC Code is already effective (industry representatives).
  - It be would be an endorsement of the INC Code (health professionals and consumer organisation representatives).
  - It would not be transparent or accountable (health professionals and consumer organisation representatives).
- One health practitioner supported a knowledgeable representative from the Ministry having involvement in negotiations if they were dedicated and interested in the Code.
  - Health professionals and consumer organisation representatives were critical of the effectiveness of the INC Code and there was strong support for implementing the WHO Code within legislation and strictly monitoring it in order to 'protect, promote and support breastfeeding'. These stakeholders gave strong support for the establishment of a government appointed and resourced Infant and Young Child Feeding Committee which would implement and monitor the Code. Stakeholders said this Committee would help protect consumers against commercial interests of the industry.

### **4.3 Actions from the Research Trust Report (2011)**

The Research Trust Report<sup>6</sup> recommended some refinements to the complaints procedure. Stakeholders were asked about their perceptions of the complaints process and to discuss the following recommendations made by the Research Trust:

- appointing an advocate to assist complainants
- adding a jurisdiction test
- outsourcing the handling of complaints
- new ways of handling complaints against health workers.

#### **4.3.1 Perceptions of the complaints process**

When asked about their perceptions of the complaints process, there was general agreement amongst stakeholders at the combined meeting the present complaints process is onerous. Health professionals and consumer representatives had the most to say on this issue.

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<sup>6</sup> <http://www.health.govt.nz/our-work/who-code-nz/breast-milk-substitute-publications>

- Health professionals and consumer organisation representatives said it is especially difficult for consumers who frequently did not know where to go to complain or do not have the confidence to do so. They also noted consumers need resources to make a complaint. The process was described as a barrier to making a complaint because it is ‘too hard, too long and eventually too fruitless’.
- Health professional and consumer organisation representatives noted there are many incidents which are ‘against the intent and spirit’ but not the ‘letter’ of the Code and were violations of the WHO Code but not the INC Code which applies in New Zealand. They said raising these made making a complaint feel ‘pointless’.
- The health professionals and consumer organisation representatives were critical of the whole process, in part because it operates under the self-regulation model which they do not have confidence in, and partly because they felt that despite a long and onerous process, there was no appropriate and meaningful sanction for transgressors.
- Some health professional and consumer organisation representatives suggested there should be a fine to penalise companies who fail to comply with the Code.
- One industry representative indicated loss of international reputation is paramount to the companies and is a more serious sanction than a fine.
- Health professional and consumer representatives noted loss of reputation of the company is not a meaningful sanction for a consumer who complains. Consumers were often left feeling the company had received no punishment for the transgression and this discourages people from complaining. The health professional and consumer representatives noted when complaints are made through the Health and Disability Commissioner’s Office, health consumers who complain want to know what will happen to the transgressor and that there will be a meaningful penalty. Consumer organisations commented the complaints process needs to be satisfying for the complainant with sanctions meaningful to both parties.

#### **4.3.2 Appointing a complaints advocate**

The Research Trust Report suggested the Ministry should ‘appoint an independent person’ as an advocate to help complainants prepare submissions, advocate on the complainant’s behalf, and decide if a decision should be appealed. If an advocate was appointed, complainants should only need to allege a breach and provide evidence to the overseeing authority. In addition, the Research Trust noted the current system advantages those who have ‘access to technical expertise, particularly legal representation,’ and that can ‘frustrate and overwhelm the concerned individual who complained’.

Stakeholders were asked whether they agreed with the appointment of such an advocate and how this could be funded

- The health professional and consumer representatives showed some support for the idea of appointing an advocate to assist complainants and/or to take a complaint through to the Compliance Panel.

- Several suggestions were made by the health professional and consumer organisation representatives regarding how this position might be funded. One suggestion was through a tax on sales of formula products and another was through the savings made by reducing the number of times the Compliance Panel meet.
- Some health professional and consumer representatives favoured an Infant and Young Child Feeding Committee that would be able to handle all issues related to the Code and complaints about it. They felt having this one single agency would 'save money'.

### **4.3.3 Adding a jurisdiction test**

The Research Trust Report suggested a jurisdiction test should be added to the complaints process. A jurisdiction test would mean that before a complaint went through the complaints process, it would first be determined whether the complaint was in scope. Complaints not in scope would not proceed through the complaints process.

Stakeholders were asked to comment on whether they thought a jurisdiction test is appropriate. They were also asked to comment on how the Ministry could continue to acknowledge and consider out-of-scope complaints and, who would determine whether complaints were in or out of scope.

It was agreed by stakeholders in both groups that complaints/concerns received that could not be dealt with by the Compliance Panel because they are out of scope should be collated and directed to another appropriate agency. The intent of recording these issues/concerns would be to make government aware of these concerns.

Industry representatives:

- Noted the Compliance Panel frequently received out of scope complaints and that it would be desirable to have a sorting process to separate compliance issues from other concerns about the Code. It was noted in Australia the Department of Health and Ageing decides if a complaint is in scope.

Health professional and consumer representatives:

- Some attendees from the health professional and consumer organisation disagreed with a jurisdiction test and suggested an Infant and Young Child Feeding Committee, possibly based in the Health Quality and Safety Commission, be established to handle the complaints process.

### **4.3.4 Outsourcing complaints**

The Research Trust Report suggested complaints under the INC Code should be outsourced to an independent body such as the Advertising Standards Authority (ASA) or a private disputes resolution provider such as Dispute Resolution Services Limited.

The Research Trust Report also noted that in their review of other complaints processes in New Zealand, it is 'standard practice' for industry to fund 'the third party operation of the process.'

Stakeholders were asked to comment on the possibility of outsourcing complaints to an independent body and how it might be funded.

Industry Representatives:

- Agreed in principle to the complaints process being outsourced but expressed misgivings as to how it would work in practice. They commented that the products and Code are both complex and any other body handling complaints would need special expertise and knowledge to be able to fairly adjudicate on complaints. It was not thought the 'usual' ASA panel would have the necessary expertise to deal with complaints appropriately.
- Questioned who would maintain the INC Code if the complaints process was outsourced and expressed the view that the INC would be unwilling to 'hand over' the INC Code to another agency.
- Noted concerns about the present Compliance Panel not following due process.
- Queried whether or not the complaints process would be considered to be independent if it was funded by the industry.
- An industry representative suggested that because there are only a few complaints one option might be to have an expert group who meet to consider complaints when they arise. This could be instead of a standing committee.
- Suggested following the Australian process where the Minister of Health appoints members of the Compliance Panel to increase the perception of independence.

Health professional and consumer representatives:

- Were not in agreement on this issue. While some agreed in principle with outsourcing complaints, others did not. Those who thought complaints should not be outsourced thought it better to have all issues related to the Code dealt with by a single organisation.
- Agreed specialist knowledge would be required to adjudicate on complaints.
- Noted dissatisfaction with the self-regulation model and said it was 'not working'.
- Some of the health professional and consumer representatives suggested the establishment of an Infant and Young Child Feeding Committee to monitor the Code and oversee complaints. However others had concerns that it would be a conflict of interest for this Committee to handle complaints.
- Suggested that a new system for handling complaints be developed with groups linked to WHO and UNICEF.

#### **4.3.5 New ways of handling complaints against health workers**

The Research Trust Report recommended the Ministry consider outsourcing work on complaints under the Health Workers' Code to an independent body, such as the Health and Disability Commissioner's Office. The Research Trust Report pointed out that industry members are aware of, and agree to, their Code of Practice, whereas health workers may not be aware of the Health Workers' Code, and have not explicitly agreed to the Code.

A second recommendation from the Research Trust Report was that only second complaints against a health worker should go through the complaints process (because a first time breach is likely to be inadvertent). The Research Trust suggested that first time breaches should be dealt with by drawing the health workers attention to the Code.

The health professional and consumer representatives were asked to comment on whether or not they supported complaints being handled by the Health and Disability Commissioner's Office and their view on how first time breaches should be dealt with. The industry group did not discuss this question.

Health professional and consumer representatives:

- Agreed an educative, rather than punitive, approach was appropriate for complaints against health workers.
- Suggested all health workers and those working in other social agencies, should receive training on their responsibilities with regard to the Code, ideally when they are students. A community based initiative that supports and encourages breastfeeding was seen as being able to deliver such training if it was funded to do so.
- Suggested there should be a mechanism to record and follow up all health worker breaches and for them to be dealt with on a case by case basis.
- There was general agreement the Health and Disability Commissioner's Office was not the appropriate agency to deal with complaints about health workers failing to comply with the Code. It was thought handling these complaints required particular expertise. Some attendees suggested establishing an Infant and Young Child Feeding Committee possibly within the Health Quality and Safety Commission to handle complaints. There was also a suggestion that a representative from the Health and Disability Commissioner's Office be a member of this new committee.
- One health professional suggested the first level of response should be via the Ministry with referral to the Health and Disability Commissioner's Office if not resolved. This kind of response would be consistent with addressing issues at the lowest level possible.
- Generally it was thought the Code needed to focus on industry transgressions rather than health workers, especially with regard to providing free samples to vulnerable communities and especially to Primary Health Organisations. It was suggested a community provider should work to educate staff in Primary Health Organisations about the Code and how to promote and support breastfeeding.
- It was also noted resources going to promote breastfeeding were not adequate, especially in vulnerable communities such as Maori and Pacific.

#### **4.4 Donation of formula in emergency situations**

In 2010, the 63<sup>rd</sup> World Health Assembly addressed child feeding in emergency response situations. The *Infant and Young Child Feeding in Emergencies: Operational Guidance for Emergency Relief Staff and*

*Programme Managers* (IFE Core Group, 2007)<sup>7</sup> document is now available. The IFE document is now part of WHO's commitment to the Code, and also a commitment for New Zealand as a signatory to the WHO Code. The IFE document specifies donated or subsidised infant formula, bottles and teats should be avoided in emergency situations. It also specifies 'any well-meant but ill-advised donations of breast milk substitutes, bottles and teats should be placed under the control of a single designated agency'.

Stakeholders were asked to discuss how donations of infant formula should be handled in emergency situations and if a designated agency should be in control of any donated infant formula in an emergency situation.

Industry representatives:

- Commented that the Christchurch earthquake was beyond anyone's experience and expectations. They did what they could to help with the intent of providing a service to needy people.
- Noted the donation of product is already covered in the INC Code but that, as already discussed with the Ministry, the INC is willing to consider any new wording for the INC Code the Ministry proposes. The group also noted companies would be willing to work with a single distributing company as long as it worked well.

Health professional and consumer representatives:

- Noted the experience of the Christchurch earthquake, when large quantities of formula were donated by the industry, highlighted some areas of concern about the donation of formula in emergency situations for the consumer and health professional representatives. They noted there is still old formula stored in some social agencies. This stored formula is no longer needed for an emergency but there is no accurate record of where it is because distribution records were not kept.
- It was noted emergency situations are covered in the WHO Code and World Health Assembly (WHA) resolutions and that full implementation of both the International WHO Code and the resolutions would cover emergency situations.
- Suggested infant feeding should be part of emergency planning and that Civil Defence should be 'educated' about the need to develop such a plan.

All stakeholders:

- Agreed it would be useful to have a single agency controlling the distribution of formula. Suggestions included:
  - the Ministry of Health
  - District Health Boards
  - UNICEF or similar NGO
  - an Infant and Young Child Feeding Committee

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<sup>77</sup> <http://www.enonline.net/resources/6>



- Responsibilities of such an agency should include receiving, distributing the product during the emergency and collecting unused formula once the emergency situation is over.

#### 4.5 Retail promotion of formula

The WHO Code places limitations on how retailers can promote breast-milk substitutes. However, the INC 'Information sheet for Retailers' states 'retailers are not members of the Infant Nutrition Council and the INC Code of Practice does not apply to retailers'.

The industry representatives were asked whether or not they considered retailers promoting product to be a problem and if so how it might be addressed. Health professionals and consumer organisation representatives did not discuss this question.

Industry representatives:

- Were not aware of any particular problems with retailers promoting or selling breast-milk substitutes inappropriately. They noted most promotions in retail related only to price. Generally the group considered consumer price reductions to be in consumers' best interests.
- Noted the INC provided retailers with an information sheet about the INC Code and the INC's obligations under the INC Code but had no power over retailers' activities.
- Noted the Commerce Act prevented manufacturers/marketing companies from fixing prices or restraining competition between retailers.

#### 4.6 New Ideas

Stakeholders at the combined meeting were asked to identify any new or different ways that would make implementation of the WHO Code in New Zealand more effective.

A list of some ideas (in general, these ideas were proposed by health practitioner and consumer organisation representatives) on ways to improve implementation of the Code in New Zealand follows. It should be noted the meeting as a whole did not arrive at a common view on these issues. Only new ideas not already discussed under other topics are listed below:

- development of consistent messages around breastfeeding
- restrict advertising of all follow-on formula, toddler milks and infant foods
- restrict or ban all sponsorship by formula companies
- ban all public displays and promotion of formula for example at supermarkets, Early Childhood Centres, Child and Parent Shows etc
- require formula products to carry a health warning like those on cigarette packets
- ensure 'breastfeeding is best' statement is applied to all internet and social media information
- ban promotional material on the internet and social media
- require all formula company information (including website information) to be checked for compliance by an Infant and Young Child Feeding Committee or breastfeeding advocates
- institute plain packaging of all formula products to remove idealising images
- use industry funding to support breastfeeding in the community
- cap formula production levels in New Zealand
- ensure information on safe use of infant formula is supplied to consumers when necessary

## 4.7 Other issues

- There was concern expressed about the quality, price and marketing of formula in overseas countries in ways which might jeopardise New Zealand's reputation and future access to overseas markets. All stakeholders agreed this was an area of concern and cited the need for some way of controlling how the New Zealand label and name is used overseas.
- Health professional and consumer representatives acknowledged the importance of responsible and affordable access to breast milk substitutes for those who need them for medical reasons.
- The industry group noted concerns about consumers who need it, having very limited access to appropriate information on the use of breast milk substitutes.

## 5. Discussion

The discussion identifies areas that could be taken forward to improve the effectiveness of the implementation of the WHO Code in New Zealand.

It should be noted that all three stakeholder groups represented at the consultation tended to represent their own views rather than to seek a compromise position.

Industry representatives were satisfied with the present INC Code and believed that for the most part the Code was working well.

On the other hand, the health professional and consumer representatives expressed dissatisfaction with the voluntary INC Code and the self-regulation model. These stakeholders were concerned about the implementation of the INC Code and believed the protection the present self-regulatory system affords is inadequate. They believed regulation that enforces the WHO Code in its entirety is the only viable option to improve this situation.

There was however agreement between the industry and health professional and consumer organisation representatives for an improved complaints process although how best to achieve this was not necessarily agreed on.

There was also agreement between the stakeholders that companies not currently members of the INC and those who were breaching the INC and WHO Codes were putting New Zealand's reputation at risk in the international arena.

The discussion is presented under the consultation topics and concludes with areas for further consideration.

### **The marketing of follow-on formula**

The INC Code defines infant as 'a person under the age of 12 months'. Infant formula is defined as 'a product represented as a breast-milk substitute for infants and which satisfies the nutritional requirements of infants aged from birth up to four to six months'.

The Ministry recommends exclusive breastfeeding to 6 months and breastfeeding to 12 months and beyond. It could therefore be interpreted that breast-milk substitute relates to substitutes for breast-milk up to at least the age of 12 months.

The definition of infant formula in the INC Code is inconsistent with the recommendation to breastfeed infants to 12 months and beyond.

The Ministry for Primary Industries uses the term 'infant formula products'<sup>8</sup>:

*Infant Formula Products has the same meaning as in the Australia New Zealand Food Standards Code and includes infant formula and follow-on formula.*

The term 'infant formula product' seems to better reflect the meaning of breast-milk substitute when related to the Ministry's advice for breastfeeding.

Given there is already a precedent set in Australia with the ACCC decision to authorise an industry agreement to restrict the marketing of follow-on formula through the *Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement (MAIF)* because it recognises breastfeeding as being 'for the public good', it may be worth the Ministry exploring this as a possibility for New Zealand.

Seeking such an agreement would be consistent with Article 11 Clause 1 of the WHO Code which states:

*'Governments should take action to give effect to the principles and aim of this Code, as appropriate to their social and legislative framework, including adoption of national legislation, regulations or other suitable measures...'*

Such an agreement would need to be reflected in the INC Code by including the marketing of follow-on formula.

Areas for further consideration:

The Ministry could progress, with the Infant Nutrition Council (INC), ideas related to the inclusion of follow on formula to 12 months in the INC Code. In particular:

- Discuss changing the term 'infant formula' to 'infant formula products', which would then include follow-on formula, within the INC Code.
- Seek a position from the Commerce Commission as to whether or not an agreement among INC members not to market follow-on formula would be viewed as anti-competitive and whether a decision, like the Australian Competition and Consumer Commission (ACCC) authorisation, would be possible in New Zealand.
- Seek information from the ACCC as to how the Marketing in Australia of Infant Formula (MAIF) Agreement was achieved.

### **Bottles and teats**

Two separate issues were considered around bottles and teats; the marketing of bottles and teats; and, the quality of bottles and teats.

<sup>8</sup> Animal Products Notice 2012 No.4 available at <http://www.foodsafety.govt.nz/elibrary/industry/infant-formula-products-exemption-notice.pdf>

With respect to the first issue of marketing of bottles and teats, the suggestion from the health professionals and consumer representatives of regulating the WHO Code (that would restrict the marketing of bottles and teats) is not consistent with a self-regulatory approach, so is unlikely to be enacted in the foreseeable future.

Industry representatives believed reputable bottle and teat companies already comply with the WHO Code, and were unwilling to make changes to the INC constitution or Code to include bottle and teat manufacturers because they saw no need to do so.

It would be useful to explore the extent to which the marketing of bottles and teats is an issue in New Zealand. If regulation is thought to be necessary to comply with the WHO Code then a method for self-regulation of bottles and teats could be explored outside of the INC Code.

As there was only limited representation of the bottle and teat industry present at the meetings, the Ministry may wish to talk with the other companies selling these products to seek their views on this issue.

Of concern are the poor quality low-cost infant feeding bottles in New Zealand. This is outside the scope of the WHO Code but the extent of the problem and ways it could be addressed require investigation.

Areas for further consideration:

In relation to the marketing of bottles and teats; and, the quality of bottles and teats the Ministry could:

- Explore the extent to which marketing of bottles and teats is an issue in New Zealand.
- Meet with all bottle and teat manufacturers/marketers to seek their views on whether or not they would be willing to formalise their voluntary compliance through a Code of Practice or some other kind of agreement.
- Continue to explore options for addressing poor quality low-cost infant feeding bottles.

### **Compliance with INC Code**

There was general concern from all representatives about new companies failing to comply with the WHO Code and/or the INC Code. Health professionals and consumer representatives were concerned these companies would market formula inappropriately and compromise breastfeeding rates. Industry representatives were concerned these companies put the whole industry reputation at risk.

Given that the INC Code is voluntary and self-regulatory, encouraging companies to voluntarily sign up to the INC Code and ensuring they know about the Code is the only option available at this stage.

Areas for further consideration:

The Ministry and the INC could:

- Explore the possibilities for advising new companies on the WHO Code and INC Code. It may be possible for this advice to be administered on a fee for service basis.
- Communicate with new companies to encourage them to join the INC.

### **The Ministry of Health as a signatory to the INC Code**

There is no support for the Ministry being party to the INC Code and participating in its decision making.

Throughout both meetings, the health professionals and consumer representatives expressed strong belief that an Infant and Young Child Feeding Committee which was independent of the Ministry and of industry would have value.

Areas for further consideration:

- The Ministry explore whether an Infant and Young Children Feeding Committee as a body independent of both the Ministry and industry could enhance the implementation of the WHO Code in New Zealand.

### **Improving the complaints process**

There was general agreement from all representatives that the complaints process would benefit from review.

The appointment of an advocate to assist complainants would likely give consumers more confidence to make a complaint. This combined with a jurisdiction test, to ensure complaints which are out of scope for the Compliance Panel but express valid concerns about the implementation of the Code are recorded, would give consumer organisations more confidence in the complaints process. Keeping a record of these issues may help the Ministry identify problems not currently heard or recorded.

While there was some agreement to the principle of outsourcing the complaints process, most stakeholders considered the complexity of the products and INC Code meant adjudicators would require specialist knowledge to hear the complaints and to manage and maintain the INC Code. Stakeholders did not seem confident that the ASA or Disputes Resolution Service were appropriate agencies.

Although there was support for an educative approach for health workers there was not support for complaints to be sent to the Health and Disability Commissioner's Office and it was suggested that each complaint about a health worker be dealt with on a case-by-case basis.

The Health Workers' Code places the responsibility for its implementation on relevant professional bodies and employer organisations to develop policies and to provide ongoing training for workers. Given that, it is possible health workers who breach this code may not have received adequate support from their employers. An educative process for organisations requires consideration.

Areas for further consideration:

The Ministry could:

- Consider developing a system to apply a jurisdiction test to all complaints so only 'in scope' complaints are dealt with by the Compliance Panel.
- Instigate a system for recording and reporting out of scope complaints in order to inform government of these problems.
- Explore the costs associated with appointing an advocate to assist complainants to see a complaint through the process.
- Discuss possible penalties/sanctions for complaints that are upheld to ensure sanctions are meaningful to both complainants and the industry and are sufficient to deter re-offending.
- Investigate the feasibility of using an expert group who would meet to consider complaints just

when they arise to replace the standing Compliance Panel.

- Consider revising the Health Workers' Code to include a process for complaints against workers in which the first step is education about the Code and breastfeeding. It may also be relevant for health workers' employers to be part of this educative process to ensure they understand their responsibilities

### **Donation of formula in emergency situations**

Although the industry representatives believe the present INC Code is adequate, the INC has expressed a willingness to negotiate new wording with the Ministry. At the meetings, it was generally agreed that planning for emergencies should include a plan for infant feeding and that a single agency receive and distribute donated formula is appropriate. Establishing such an agency would be consistent with the WHA 63 (2010) resolution to ensure national and international preparedness plans and emergency responses follow the evidence-based *Operational Guidance for Emergency Relief Staff and Programme Managers on Infant and Young Child Feeding in Emergencies*.

Areas for further consideration:

The Ministry could:

- Work with the INC to find appropriate wording which would strengthen the INC Code with regard to donations in emergencies.
- Instigate discussions with other government agencies as appropriate to determine how infant feeding might be included in emergency planning.
- Discuss with District Health Boards the feasibility of them being the agency to co-ordinate donation of formula during emergency situations.
- Carry out a search of overseas jurisdictions to see how they plan for infant feeding in emergencies.

### **Retail promotion of formula**

The industry representatives did not consider there to be a problem with retailers' promotion of infant formula. They also believed they had no authority to limit retailers' activities because of the restrictions of the Commerce Act. It is therefore unlikely the INC as a collective group, or individual companies, would be willing to try and limit retailer activities unless there was evidence the activities were inappropriate and that they would not breach the Commerce Act in limiting retailer activities.

Areas for further consideration:

The Ministry could:

- Research, record and document instances where retailers are failing to comply with the INC Code and investigate avenues for educating retailers about their responsibilities around formula products.
- Investigate the feasibility of an ongoing monitoring of retail promotion of infant formula.

### **Other Ideas**

Many of the suggestions made at the meeting as ways to improve the implementation of the Code are inconsistent with a self-regulatory approach and therefore are not feasible at this time.

Government departments and ministries are facing funding challenges in the foreseeable future therefore finding resources for any new initiatives is likely to be difficult.

Some of the suggestions are outside of the scope of this evaluation for example they do not relate to the marketing of breast-milk substitutes.

The recommendations made at the meeting that are within the scope of this work and are theoretically feasible may lead to an improved implementation of the WHO Code in New Zealand. These recommendations are:

- an improved complaints process
- include follow-on formula in the New Zealand INC Code
- a role for a community based initiative that supports and encourages breastfeeding, in education of organisations and health workers

These issues are all discussed within other areas of the report.

There was concern expressed about the quality, price and marketing of formula in overseas countries in ways which might jeopardise New Zealand's reputation and future access to markets. All stakeholders agreed this was an area of concern and cited the need for some way of controlling how the New Zealand label and name is used overseas.

Areas for further consideration:

- The Ministry and the INC continue discussion with other relevant organisations about the risks associated with New Zealand-based companies not following the INC Code.

## Appendix 1: Consultation Participants

Organisations that attended or contributed to the meeting were:

La Leche League
College of Midwives
Canterbury Breastfeeding Advocacy Service
Maternity Services Consumer Council
Turuku Health
Tongan Health
Women's Health Action Trust
Home Birth Aotearoa
Infant Feeding Association
Choices Health, Hawke's Bay
New Zealand Breastfeeding Authority ( 2 representatives)
NZ Lactation Consultants Association
Pacific HeartBeat
Maternity Manifesto
Plunket
Capital and Coast DHB Lactation Consultant
Jackel (Tommee Tippee)
Homecare Health Management
Infant Nutrition Council
Abbott Industries
Nestlé
Pfizer
NZ Food and Grocery Council
WellChild / Tamariki Ora

Apologies were received from Dietitians New Zealand and EBOS Ltd.

The EBOS representative was sent the questions asked at the meeting regarding the bottle and teat industry and asked if the company would like to respond. The company agreed to send a response but it had not been received by the time report was written.

One health practitioner invited to the meeting who was unable to attend the meeting worked with a colleague to send written comments on some of the questions. These comments have been incorporated into the meeting responses.



## Appendix 2: Consultation Questions

### Health and Consumer organisation:

#### Question One

In 2011 the Research Trust of Victoria University completed a report called the *Effectiveness, Implementation and Monitoring of the International Code of Breast-milk Substitutes in New Zealand*. The report had a number of suggestions for improving the complaints process; including outsourcing complaints under the INC Code to an independent body, and having only second complaints about health workers go through the complaints process.

The Research Trust Report suggested complaints under the INC Code should be outsourced to an independent body such as the Advertising Standards Authority or a private disputes resolution provider such as Dispute Resolution Services Limited.

#### **1 a) Complaints should be outsourced to an independent body**

Agree/Disagree

Why do you agree or disagree?

#### **1 b) If you think the complaints should be outsourced to an independent body, which independent body do you recommend?**

1. The Advertising Standards Authority
2. Dispute Resolution Services Ltd
3. Other (tell us who)

Why do you believe this is the best body to outsource the complaints to?

#### **1 c) What are the advantages and disadvantages of outsourcing the complaints?**

#### Question Two

In 2011 the Research Trust of Victoria University completed a report called the *Effectiveness, Implementation and Monitoring of the International Code of Breast-milk Substitutes in New Zealand*. The report had a number of suggestions for improving the complaints process; including outsourcing complaints under the INC Code to an independent body, and having only second complaints about health workers go through the complaints process.

The Research Trust Report points out a difference between the Industry Code and the Health Workers' Code is that Industry members are aware of, and agree to their Code of Practice, whereas health workers may not be aware of the Health Workers' Code, and have not explicitly agreed to the Code.

The Research Trust suggests that a first time breach by a health worker may be inadvertent, and, therefore, first time complaints against a health worker should not proceed through the complaints process unless the breach is particularly serious or deliberate. The Research Trust suggests that first time breaches should be dealt with by drawing the health workers attention to the Code.

#### **2 a) Only second complaints against a health worker should go through the complaints process.**

Agree/Disagree

Why do you agree/disagree?

**2 b) Would an educative approach (as above) with health workers who had breached the Code for the first time be more effective, less effective or just as effective as the current system?**

**2 c) What are the advantages and disadvantages of only second complaints against health workers proceeding through the complaints process?**

### **Question Three**

In 2004 the Ministry of Health published the *Review of the New Zealand Interpretation of the World Health Organization's International Code of Marketing of Breast-milk Substitutes*.

The review outlines actions to refine and strengthen New Zealand's interpretation of the International Code. The Ministry would like to invite discussion on two of the issues brought up in the review; the marketing of follow-on formula, and the marketing of bottles and teats.

As a result of the 2004 review, the Advertising Standards Authority (ASA) has included the INC Code of Practice as an industry Code that food advertising should comply with, under the ASA Code for Advertising Food. Guidelines have been provided to the ASA to assist with decision making on complaints about follow-on formula. The guidelines specify that follow-on formula can be marketed to infants six months of age or over, as an alternative to cows' milk. The ASA have received two complaints about follow-on formula under the Code for Advertising Food.

**3 a) Should the INC Code of Practice include follow-on formula?**

Yes/No

Why?

**3 b) Should the INC Code of Practice apply to infants up to 12 months of age as occurs in Australia?**

Yes/No

Why?

### **Question Four**

The international Code applies to feeding bottles and teats but they are not included in the New Zealand version of the INC Code of Practice.

**4 a) What is the best way to include bottle and teats?**

1. By including them in an extended INC Code
2. The bottle and teat industry developing their own self-regulatory code
3. Other (tell us how)

Why do you believe this is the best way to manage the issue of bottles and teats?

### **Question Five**

There are a number of new formula manufacturers who do not belong to the Infant Nutrition Council (INC) and therefore are not signatories to the INC Code of Practice for the Marketing of Infant Formula. There have been complaints about some companies that do not belong to the INC, particularly because they have advertised formula for infants less than six months of age.

**5 a) What are your views on the changing nature of the industry?**

**5 b) What can be done to address these issues?**

### **Question Six**

We are interested in your views on how the WHO Code could be made more effective in New Zealand.

At present the INC Code is agreed by the industry for the industry.

**6 a) Would it be beneficial for the Minister of Health or the Ministry of Health to become a signatory to the INC Code thereby potentially involved in active negotiation?**

Yes/No

Why?

**6b) What else would make the implementation of the WHO Code in New Zealand more effective?**

Please put a \* against your top three ideas.

## Industry Group:

### Question One

In 2004 the Ministry of Health published the *Review of the New Zealand Interpretation of the World Health Organization's International Code of Marketing of Breast-milk Substitutes*.

The review outlines actions to refine and strengthen New Zealand's interpretation of the International Code. The Ministry would like to invite discussion on two of the issues brought up in the review; the marketing of follow-on formula, and the marketing of bottles and teats.

The 2004 review found that some groups believed follow-on formula should be included in the Code but others thought it was outside the scope of the WHO Code as follow-on formula is marketed as an alternative to cow's milk rather than as an alternative to breast milk.

As a result of the 2004 review, the Advertising Standards Authority (ASA) has included the INC Code of Practice as an industry Code that food advertising should comply with, under the ASA Code for Advertising Food. Guidelines have been provided to the ASA to assist with decision making on complaints about follow-on formula. The guidelines specify that follow-on formula can be marketed to infants six months of age or over, as an alternative to cows' milk (not breast milk). The ASA have received two complaints about follow-on formula under the Code for Advertising Food.

1a) What is the feasibility of extending the INC Code of Practice to include follow-on formula?

1b) What is the feasibility of applying the INC Code to infants up to 12 months of age as occurs in Australia?

Any other ideas/ways to deal with this?

### Question Two

The international code applies to feeding bottles and teats but they are not included in the New Zealand version of the INC Code of Practice.

Two possible options for including these industry groups in New Zealand's interpretation of the Code could be:

- by including them in an extended INC Code
- or the bottle and teat industry developing their own self-regulatory code

2a) What would be required for the INC and bottle industries to consider these options?

2b) What are the advantages and disadvantages of each option?

2c) Do you have other ideas about including these industry groups?

2d) Which option do you prefer?

Any other ideas/ways to deal with this?

### **Question Three**

There are a number of formula manufacturers who do not belong to the INC and therefore are not signatories to the Infant Nutrition Council Code of Practice for the Marketing of Infant Formula. There have been complaints about some companies that do not belong to the INC, particularly because they have advertised formula for infants less than six months of age.

3a) How can non-INC companies be encouraged to comply with the Code?

Options include;

- making compliance with the Code mandatory regardless of membership of the INC
- making it mandatory for NZ manufacturers to join the INC

3b) Are there other options?

3c) Is there a preferred option?

Any other ideas/ways to deal with this?

### **Question Four**

In 2011 the Research Trust of Victoria University completed a report called the *Effectiveness, Implementation and Monitoring of the International Code of Breast-milk Substitutes in New Zealand*.

The report recommended that complaints under the INC Code should be outsourced to an independent body such as the Advertising Standards Authority (ASA) or a private disputes resolution provider such as Dispute Resolution Services Limited.

4a) What are your views on this idea?

4b) If complaints under the Infant Nutrition Council Code of Practice were outsourced to an independent body such as the ASA or a private provider, would Industry be prepared to fund the operation of the complaints process?

Any other ideas/ways to deal with this?

### **Question Five**

In 2010, the 63<sup>rd</sup> World Health Assembly addressed child feeding in emergency response situations.

The *Infant and young child feeding in emergencies: Operational Guidance for Emergency Relief Staff and Programme Managers* (IFE Core Group, 2007) document is now available. The IFE document is now part of WHO's commitment to the Code, and also a commitment for New Zealand as a signatory to the International Code. The IFE document specifies that donated or subsidized infant formula, bottles and teats should be avoided in emergency situations. It also specifies that 'any well-meant but ill-advised donations of breast-milk substitutes, bottles and teats should be placed under the control of a single designated agency.'

How will INC reflect this guidance in its Code, for donations of infant formula in emergency situations?

Any other ideas/ways to deal with this?

### **Question Six**

The WHO Code places limitations on the way retailers can promote breast-milk substitutes, however the INC Information sheet for Retailers states 'retailers are not members of the Infant Nutrition Council and the INC Code of Practice does not apply to retailers.' This means New Zealand's interpretation of the WHO Code is different to the International Code.

6a) Is this seen as an issue by industry?

6b) If so, what suggestions are there to address this issue?

6c) How can the INC address this issue to ensure there is no marketing of infant formula for infants aged less than six months in New Zealand?

6d) What level of say does industry have in how products are displayed in retail outlets? We understand industry can request how products are displayed and marketed at the retail level.

6e) Should retailers be party to the INC Code?

Any other ideas/ways to deal with this?

## **Combined Group (Health, Consumer and Industry):**

### **Question One**

The Research Trust Report perceived the complaints process to be onerous and off-putting for complainants and favouring those with access to technical information and legal representation. The Report suggested the Ministry of Health should 'appoint an independent person' as an advocate to help complainants prepare submissions, advocate on the complainant's behalf, and decide if a decision should be appealed.

1a) Do you agree with the perception?

Yes/No

Why?

1b) Should the Ministry appoint an independent person to act as an advocate who would lead complaints on behalf of the complainant including deciding on whether a decision should be appealed?

*NB: as there is no new funding for this it would be likely to require savings elsewhere, such as fewer Compliance Panel meetings or one less panel member.*

1c) Are there other ways to solve this problem? (i.e. that the complaints process is perceived as onerous and off-putting for complainants and favours those with access to technical information and legal representation)

1d) What are the advantages and disadvantages of the options you have suggested?

1e) If your suggestion/s required funding, where do you suggest savings are made?

### **Question Two**

The 2011 Research Trust Report suggested that a jurisdiction test should be added to the complaints process. A jurisdiction test would mean that before a complaint went through the complaints process, it would first be determined whether the complaint was in scope. Complaints that are not in scope would not proceed through the complaints process.

2a) Do you agree with this suggestion?

Why?

2b) If a jurisdiction test was to be added, how could the Ministry continue to acknowledge and consider complaints that were out of scope? For example complaints for which the scope of the Code in New Zealand is too limited?

2c) If a jurisdiction test was added, who would determine whether complaints were in or out of scope? The Chair of the Compliance Panel (this is what is done in Australia)? Or the Ministry?

### **Question Three**

The 2011 Research Trust Report suggested that as it is the Ministry's objective to promote breastfeeding and public health, there is a conflict of interest when the Ministry funds and oversees the process that monitors compliance 'by the manufacturers of a product that can potentially undermine that objective.' It recommended the Ministry outsource the complaints process to an independent body, such as the Health and Disability Commissioner.

3a) The Health and Disability Commissioner has agreed in principle to handle complaints about health workers under the Ministry's Code of Practice for Health Workers.

3b) Do you support transferring these complaints to the Health and Disability Commissioner?

Why?

3c) What are the advantages and disadvantages?

### **Question Four**

In 2010, the 63<sup>rd</sup> World Health Assembly addressed child feeding in emergency response situations.

The *Infant and young child feeding in emergencies: Operational Guidance for Emergency Relief Staff and Programme Managers* (IFE Core Group, 2007) document is now available. The IFE document is now part of WHO's commitment to the Code, and also a commitment for New Zealand as a signatory to the International Code. The IFE document specifies that donated or subsidized infant formula, bottles and teats should be avoided in emergency situations. It also specifies that 'any well-meant but ill-advised donations of breast-milk substitutes, bottles and teats should be placed under the control of a single designated agency.'

4a) How should donations of infant formula be handled in emergency situations?

4b) Should a designated agency be in control of any donated infant formula in an emergency situation?

4c) Which agency?

### **Question Five**

We are interested in your views on how the WHO Code could be made more effective in New Zealand.

At present the INC Code is agreed by the industry for the industry.

5 a) Would it be beneficial for the Minister of Health or the Ministry of Health to become a signatory to the INC Code thereby potentially involved in active negotiation?

Yes/No

Why?



5b) What other ideas do you have for making the INC Code more effective?

**Question Six**

What other new or different ways can you think of that would make implementation of the WHO Code in New Zealand more effective? For example around:

- Follow-on formula
- Feeding bottles and teats
- The changing nature of the infant formula industry
- The complaints process

**Question Seven**

What other new or different ways can you think of that would make implementation of the WHO Code in New Zealand more effective? For example around:

- Future challenges around internet advertising, social media
- Industry sponsorship of education events
- Any other areas