

WHO Code Compliance Panel Terms of Reference for the Independent Adjudicator

Introduction

1. The World Health Organisation (WHO) International Code of Marketing of Breast-milk Substitutes (the WHO International Code in New Zealand) is implemented, to the extent agreed by the Government, through three voluntary codes and one mandatory code:
 - a. the Infant Nutrition Council Code of Practice for the Marketing of Infant Formula in New Zealand (the INC Code of Practice), which covers the activity of marketers and importers of infant formula products
 - b. the Code of Practice for Health Workers (the Health Workers' Code), which covers advice about infant feeding provided to families by any health worker or organisation
 - c. the Code for Advertising of Food (administered by the Advertising Standards Authority), which covers advertisements in any media for toddler milk products (aged 12+ months)
 - d. the Australia and New Zealand Food Standards Code (administered by the Ministry for Primary Industries), which is a mandatory code covering the safe manufacture and labelling of food products, including infant formula.

Purpose of this terms of reference

2. This document sets out the objectives and purpose of the WHO Code Compliance Panel's independent adjudicator, their purpose and terms of appointment.

Purpose of the Independent Adjudicator

3. The independent Adjudicator has two roles:
 - a. to determine if what is alleged constitutes a legitimate ground for appeal
 - b. where required, to make a decision about that appeal.

Terms of appointment

4. The independent adjudicator is appointed by the Director-General of Health.
5. The independent adjudicator must have expertise in relevant New Zealand legislation and self-regulatory processes, expertise in decision-making and the application of natural justice principles.
6. An appointed term of office is for three years.
7. At the end of the maximum of two terms, the independent adjudicator's appointment may be extended for a period of up to eighteen months, to allow for continuity while a new appointment is made.
8. The independent adjudicator may at any time resign by advising the Director-General of Health in writing (sent via the secretariat).
9. The independent adjudicator may at any time be removed from office by the Director-General of Health (at their sole discretion) on grounds of inappropriate behaviour, or incapacity to discharge the functions of their office.

The complaints and appeal process

Grounds for appeal

10. The grounds for appeal are:
 - a. the Panel did not follow a fair process based on the principles of justice
 - b. the Panel failed to take a relevant fact into consideration or took an irrelevant fact into account, or gave a relevant fact insufficient weight or
 - c. the Panel did not properly apply the Health Workers' Code or the INC Code of Practice in its decision.

Process for considering a complaint

11. Any person can make a complaint under either the INC Code of Practice or the Health Workers' Code. The processes by which a complaint is received, heard and resolved is set out in the flowcharts in Appendix A.

Process for considering an appeal

12. Any affected party can bring an appeal.
13. The independent adjudicator receives all material relating to the Panel decision that has been appealed.
14. The independent adjudicator undertakes a rigorous examination of the material put before them in an open, fair and unbiased manner, based on the principles of natural justice.
15. The independent adjudicator determines whether one (or more) of the three grounds of appeal (see paragraph 10) are established.
16. If the independent adjudicator determines that there are established grounds for the appeal, they consider the evidence (as presented to, and considered by, the Panel) and decide whether the Panel decision should be upheld, amended, quashed, or referred back to the Panel for re-determination.
17. After receipt of the appeal, the independent adjudicator has 30 working days to consider the grounds for the appeal, make a decision and provide written reasons for their decision.
18. The independent adjudicator does not consider new evidence, only the material that was considered by the Panel. Should new information be provided to the independent adjudicator by either party, the new information must be declined.

Managing interests and confidentiality

Managing interests

19. The independent adjudicator agrees to abide by the Ministry of Health's Conflict of Interest Protocol for Ministry of Health Advisory Committees.
20. The independent adjudicator discloses any pecuniary interests, or other potential or actual conflicts of interest in an Interests Register maintained by the secretariat.

21. An interests declaration form must be provided to the secretariat during the independent adjudicator's appointment process.
22. The independent adjudicator performs their functions in good faith, honestly and impartially and avoids situations that might compromise the integrity of the role or otherwise lead to perceived or actual conflicts of interest.
23. Declarations of a conflict of interest may also be made prior to an appeal commencing, or as soon as it becomes apparent that the independent adjudicator may have a conflict of interest. The PHA rules on the action to manage the conflict.

Confidentiality

24. The independent adjudicator observes the following duties in relation to Panel information.
 - The independent adjudicator ensures that Panel documents are kept secure.
 - The independent adjudicator must not publicly comment on decisions made by the Panel.
 - At no time should the independent adjudicator divulge details of the Panel or decisions of the Panel to persons who are not part of the Panel or the Public Health Agency.
25. The provisions of the Official Information Act 1982 apply to the activities of the independent adjudicator. This includes correspondence between members of the independent adjudicator and the secretariat.

Communications

26. The public has a right to be informed about the final decisions of the Panel and the appeals process.
27. The Panel follows its procedures regarding the release of final decisions. This includes developing and maintaining a Naming Policy¹. The Naming Policy also applies to appeals documentation.
28. Queries from or contact with the media regarding the work of the independent adjudicator must be referred to the Ministry of Health's Communications Manager and the secretariat as soon as possible. This includes all requests for media comment received, including comment on social platforms.
29. The independent adjudicator must not represent themselves as an agent of the Public Health Agency by reason of their role as the independent adjudicator and are not permitted to speak on behalf of the Public Health Agency.

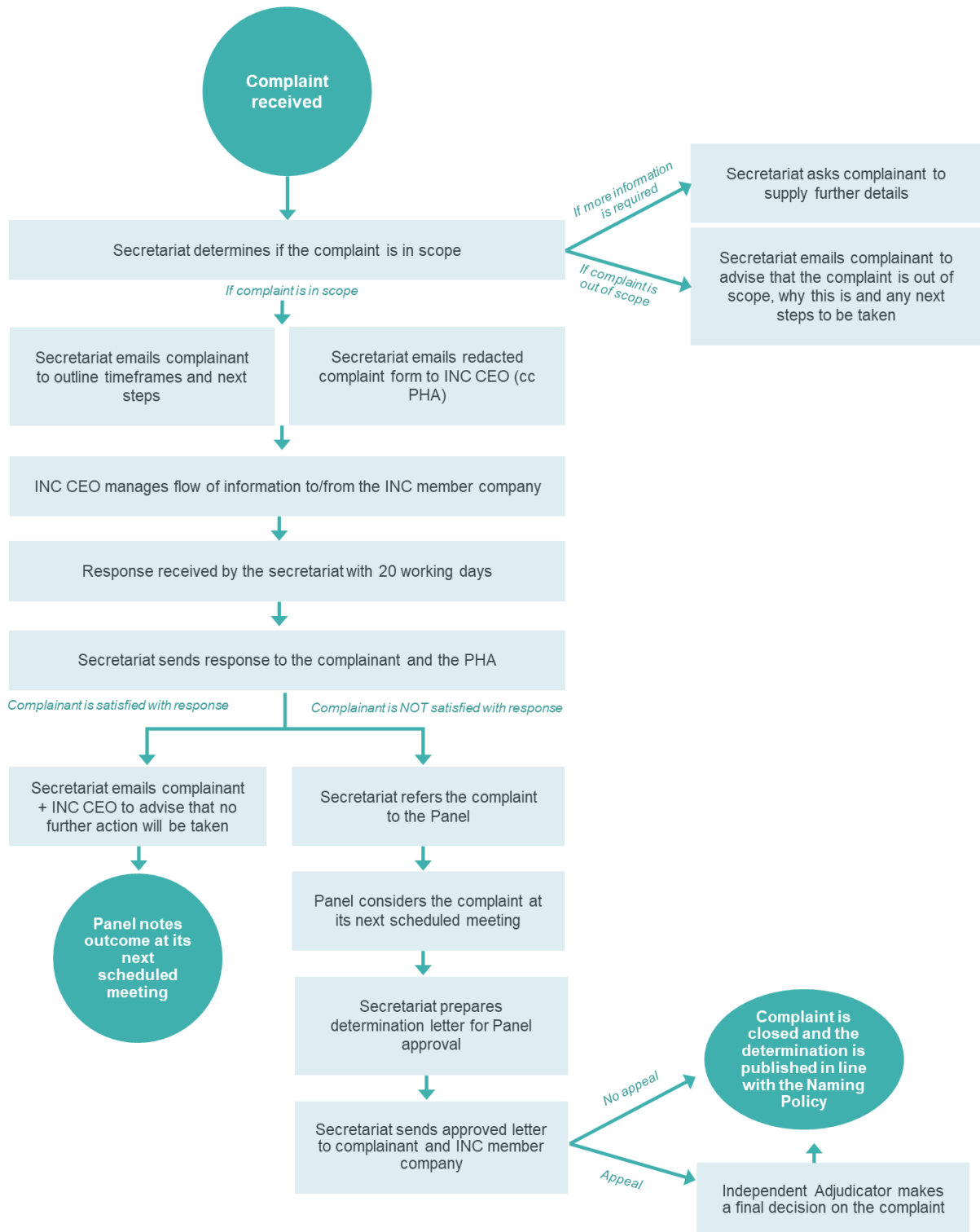
Payment

30. The independent adjudicator is paid at a rate determined by the Public Health Agency on a case-by-case basis. The Public Health Agency anticipates that this remuneration is likely to be within the range of \$320 to \$430 per appeal.

¹ The Naming Policy describes the Panel's approach to identifying the subject of complaints made under either the INC Code of Practice or the Health Workers' Code.

Appendix A Process flowcharts for the INC Code of Practice and the Health Workers' Code

INC Code of Practice



Health Workers' Code

