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| Ministry of Health Annual Report of the WHO Compliance Panel for Implementing and Monitoring the International Code of Marketing of Breast-milk Substitutes in New Zealand: The Code in New Zealand (Ministry of Health 2007) 1 July 2019 – 30 June 2020 |

# Introduction

The Ministry of Health (the Ministry) monitors compliance with the Code of Practice for Health Workers (Health Workers’ Code) and the Infant Nutrition Council Code of Practice for the Marketing of Infant Formula in New Zealand (INC Code of Practice) by receiving complaints about possible breaches of either Code of Practice.

This report summarises complaints and significant enquiries made to the Ministry from 1 July 2019 to 30 June 2020. Related activities/actions undertaken by the Ministry are also reported.

## The WHO Compliance Panel

The role of the WHO Compliance Panel (the Panel) is to:

* make decisions on referred complaints relating to either the Health Workers’ Code or the INC Code of Practice
* provide advice on appropriate action to remedy a breach of either Code, and
* provide advice to the Ministry on issues related to implementing the WHO International Code in New Zealand including, but not limited to, complaints that are outside the scope of either the Health Workers’ Code or the INC Code of Practice.

Advice provided by the Panel may include requesting that the Ministry take further education-focused steps like writing to individuals or organisations that may be operating in New Zealand in a way that is not consistent with the WHO International Code.

## Meetings of the Panel

The Panel met in July 2019 and May 2020.

# Complaints received between 1 July 2019 – 30 June 2020

Three complaints were received between 1 July 2019 and 30 June 2020.

* Two complaints related to alleged breaches of the Health Workers’ Code. One complaint was resolved. One complaint was received in June 2020 and will be addressed in the next period (1 July 2020 – 30 June 2021).
* One complaint related to an alleged breach of the INC Code of Practice.

Two complaints (one under the Health Workers’ Code and one under the INC Code of Practice) were carried over from 2018/19.

## Complaint number 05-2020-05: A complaint about a Facebook post setting out a range of situations when breastfeeding may not be appropriate

A complaint was lodged on 29 May 2020 about a post on a bottle rental service’s Facebook page suggesting that breast may not best in a number of situations. The complainant alleged that the post breached Articles 5.1, 5.2 and 5.3 of the Code of Practice for Health Workers. The complaint was referred to the Panel and will be considered at its August 2020 meeting.

## Complaint number 11-2019-03: A complaint about an article on the use of New Zealand milk powder in an organic formula

A complaint was lodged on 13 November 2019 about an article on New Zealand organic milk powder being used in a named formula. The complainant considered that the article breached Article 5.1 of the INC Code of Practice as it advertised infant formula for infants under the age of 12 months. The Ministry requested a response to the complaint from the manufacturer (via the INC) and from the media outlet. The complainant was satisfied with the response from the manufacturer and the media outlet and the complaint was not referred to the Panel.

## Complaint number 11-2019-04: A complaint about information on breastfeeding provided in the ‘Your Pregnancy’ antenatal booklet

A complaint was lodged on 20 November 2019 about information on breastfeeding provided in the ‘Your Pregnancy’ booklet produced by Bounty. The complainant considered the information provided around safe breast milk sharing and introducing a bottle to breach Articles 1.2, 3.2, 3.3 and 9.1 of the Code of Practice for Health Workers. This is because health workers need to support women to increase confidence in their ability to breastfeed, and they play an essential role in guiding feeding practices, including helping to prevent or resolve common problems that contribute to the cessation of breastfeeding. The complainant noted that this information may be the only information some mothers read, and it may be misleading. On the 4 December 2019, Bounty advised the Ministry that it had closed its office. The complaint was not referred to the Panel.

## Complaint number 04-2019-02: A complaint against Plunket for receiving sponsorship from several producers/distributors of breastmilk substitutes

A complaint was lodged on 16 April 2019 against Plunket for receiving funding for education or indirect funding from producers/distributors of breastmilk substitutes (including funding for Plunket nurses to attend industry symposiums). The complainant alleged that Plunket’s sponsorship or corporate relationships breached the Health Workers’ Code. By majority decision, the Panel did not determine Plunket to be in breach of Article 8 of the Health Workers’ Code for their sponsorship arrangements with Bayer, Danone/Nutricia or Heinz-Watties (although the Panel determined that Plunket needs to be more specific about its relationship with Heinz-Watties).

By majority decision, the Panel determined Plunket to be in breach of Article 8 of the Health Workers’ Code for its corporate relationship with Nestle Wyeth because Nestle Wyeth paid for symposium registration and flights for Plunket nurses who lived outside of Auckland. This created a conflict of interest. The Panel recommended that Plunket:

* amend its website to state the benefits of breastfeeding more clearly and include policies on and references to the INC Code of Practice and the Health Workers’ Code
* review its corporate sponsorship arrangements with Nestle Wyeth, and
* develop a policy on corporate arrangements and ensure clarity about current sponsorships and corporate arrangements and that this information be made available on their website.

## Complaint number 02-2019-02: A complaint about a Facebook advertisement from Nutricia Karicare

A complaint was lodged on 28 February 2019 about a Facebook advertisement from Nutricia Karicare. The advertisement contained a photo of stage 1 and stage 2 infant formula to inform consumers about a change in packaging. The complainant considered the advertisement to breach Article 5.1 of the INC Code of Practice because it deliberately advertised stage 1 and 2 formula under the guise of communicating information on infant formula product composition and usage information for consumers. The complainant noted that advertisement may have appeared on the Facebook newsfeed because they were a member of several parenting groups and breastfeeding support groups. By majority decision, the Panel found Nutricia breached Article 5.1 of the INC Code of Practice because:

* the post included photos of infant formula stage 1 and stage 2 with the wording for infants 0 – 6 months clearly visible on the tin
* the post could be construed as advertising because the picture was presented first followed by information about the composition of the product
* Nutricia acknowledged that it failed to strike the balance between compliance with the INC Code of Practice and communicating product information to existing customers, and
* consideration could have been given as to whether the advertisement would only be seen by existing customers prior to placing the advertisement.

## Other complaints

One complaint was received about an infant formula company that is not a member of the INC. The company had posted an advertisement for its infant formula on Instagram. The provisions of the INC Code of Practice did not apply to this company. The Ministry wrote to the company advising it of the implementation and monitoring of the *International Code of Marketing of Breast-milk Substitutes* in New Zealand, the INC, the INC Code of Practice and the Complaints Process. The company removed its post to avoid any further customer concerns.

# Appeals reviewed between 1 July 2019 – 30 June 2020

One appeal from the previous year (1 July 2018 – 30 June 2019) was carried over.

## Lodged by Nutricia against the decision for Complaint 10-2018-02

On 17 June 2019, Nutricia lodged an appeal against the Panel’s decision that Nutricia breached the INC Code of Practice (Complaint 10-2018-02 refers). Nutricia alleged that the Panel did not follow a fair process based on the principles of natural justice, failed to take a relevant fact into consideration, took an irrelevant fact into account, or gave a relevant fact insufficient weight and did not properly apply the relevant Codes in its decision. The appeal was sent to the Independent Adjudicator on 21 June 2019. The Independent Adjudicator amended the Compliance Panel’s decision. The Adjudicator’s reasoning was that a breach of Articles 4.1, 4.2 or 9.3 could not be established. The Adjudicator agreed that Articles 6.2 and 7.1 had been breached. The Adjudicator’s decision was sent to the affected parties.

# Other business

## Marketing practices of companies that do not belong to the INC

Two complaints relating to non-INC companies were received between 1 July 2019 and 30 June 2020. Companies that do not belong to the INC are not party to the INC Code of Practice. Therefore, the Ministry considers that complaints about non-INC companies should not proceed through the self-regulatory complaints process.

# Official Information Act (OIA) requests relating to the Code in New Zealand

No OIA requests were received between 1 July 2019 and 30 June 2020.

# Enquiries

* A member of the public sought advice about whether a café newspaper advertisement for baby formula and the promotion of formula on their website was a breach of the INC Code of Practice. Retailers are not covered under the INC Code of Practice. There are no third-party obligations.
* A member of the public alerted the Ministry to a Facebook post about the launch of New Zealand Gold infant formula at a New Zealand embassy. The Ministry referred the email to the Ministry of Foreign Affairs and Trade and the service advised that the post had been removed. It advised that, to ensure that the wider organisation remains mindful of its responsibilities, it will work with the Ministry of Health to circulate relevant information to diplomatic missions in relation to the WHO International Code.

# Other work

## Appointment of new Compliance Panel members

In June 2019, Nimisha Waller’s term on the Compliance Panel came to an end. A new member, Carol Bartle was appointed in July 2020.

In April 2020, Helen Little’s term on the Compliance Panel came to an end. A new candidate, Dr Whitney Davis, was appointed in May 2020.

Recruitment processes to appoint a new Chair and Independent Adjudicator were initiated.

# Important links

* Code of Practice for Health Workers:

<https://www.health.govt.nz/our-work/who-code-nz/code-practice-health-workers#:~:text=Specifically%2C%20the%20Health%20Workers'%20Code,health%20consequences%20of%20not%20breastfeeding>

* Infant Nutrition Council Code of Practice for the Marketing of Infant Formula in New Zealand

<https://www.infantnutritioncouncil.com/wp-content/uploads/2018/11/INC-Code-of-Practice-151118-5mmbl-crops-A5.pdf>

* Ministry of Health

<https://www.health.govt.nz/our-work/who-code-nz>