

WHO Compliance Panel – Summary 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 2010 – 30 June 2011

New complaints

The Ministry of Health received a total of six formal complaints in the year 1 July 2010 to 30 June 2011. Five complaints were about infant formula marketers and one was about an unnamed practice nurse. Of the five complaints about infant formula marketers, one was about an advertisement for follow-on formula/toddler milk and the accompanying nutrition claim. This complaint was transferred to the Advertising Standards Authority (ASA) and Ministry for Primary Industries (formerly Ministry of Agriculture and Forestry) respectively as the ASA has responsibility for complaints about advertising of formula made for infants over six months of age, and the Ministry for Primary Industries has responsibility for labelling, composition and quality of formula.

Of the remaining five complaints, two complaints from the same complainant were about the same activity. The complaints related to the health worker allegedly giving this infant formula marketers' infant formula samples, to an exclusively breastfeeding mother of a six-week old infant. The complainant considered the health worker was in breach of the *Ministry's Code of Practice for Health Workers* and the infant formula marketer was in breach of the Infant Nutrition Council's (INC) *Code of Practice for the Marketing of Infant Formula*.

After consideration, the Panel upheld the complaint against the health worker's employer, Westgate Medical Centre (WMC), finding this practice had breached Articles 4.4, 7.1 and 7.2 of the Ministry's *Code of Practice for Health Workers*. The respective Articles state the following:

Article 4: Health workers must ensure appropriate use of formula when necessary

4.4 Health workers should not promote a specific brand of formula, or be involved in the promotion of products used for infant feeding.

Article 7: Health workers should not accept samples from formula companies

7.1 Health workers should not accept samples of formula, equipment or utensils for their preparations or use except when necessary for the purpose of professional evaluation and research at an institutional level. They may be used for educating parents who have decided to use formula, in the correct preparation of formula, while not promoting a specific brand of formula (see 4.4)

7.2 Health workers should not give samples of formula to pregnant women, mothers of infants, or members of their families.

In their decision, the Panel included recommendations to WMC as to how they could improve their practice in relation to requesting and distributing infant formula samples prospectively.

In contrast, the Panel did not uphold the complaint against the infant formula marketer. The Panel considered the infant formula marketer had provided the samples to WMC's registered nurse for "*professional evaluation*" consistent with Article 7.3 of the INC's *Code of Practice for the Marketing of Infant Formula* which states:

Samples of infant formula, or of equipment or utensils for the preparation or use of infant formula, should be provided only for the purposes of professional evaluation and research, or for the education of mothers who have made the informed decision to provide infant formula to their infants.

The complainant appealed this decision and the Adjudicator decided that the Panel should re-determine this complaint. At their eleventh meeting on the 9 August 2011 the Panel confirmed their earlier decision, not to uphold this complaint. The Panel considered that the infant formula company had provided their samples to WMC for "*professional evaluation*" consistent with Article 7.1 of the INC Code of Practice for the Marketing of Infant Formula.

Two other complaints were about one infant formula company's mail-outs to Tamariki Ora Nurses, and to Public Health South (PHS) Nurses. The mail-out to PHS nurses, was referred to the Panel. The Panel was unable to reach a majority decision and were therefore unable to uphold the complaint. The Panel agreed they could only make recommendations to the infant formula company about how they could improve future mail-outs to health workers about infant formula consistent with the INC's *Code of Practice for the Marketing of Infant Formula*.

The last complaint was referred to the Panel for advice, by the Ministry. It was in relation to a retailer's price discounting of infant formula. The complainant had tried unsuccessfully to resolve the complaint directly with the Store Manager. After discussion, the Panel confirmed that the INC's *Code of Practice for the Marketing of Infant Formula* did not apply to retailers but noted that Article 5.2 states:

"[INC] will inform retailers of the provisions of the [INC] Code of Practice. Retailer advertisements and the in-store promotion of infant formula products should be limited to product names, prices and price savings."

The Panel understood from the INC CEO, who is also a current Panel member, that INC uses its members (current marketers of formula¹) to get information to retailers, including information about the INC *Code of Practice for the Marketing of Infant Formula*. The Panel was also advised that INC had recently produced a brochure entitled '*Retailer Information for the Marketing of Infant Formula in New Zealand*'. Therefore, the Panel hopes that retailers

¹ Current members of INC can be accessed at: <http://infantnutritioncouncil.com/about-us/>

prospectively, will become familiar with The Code in New Zealand and its aims to protect, promote and support breastfeeding; and ensure the proper use of breast-milk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution.

Complaints carried over from the 1 July 2010 – 30 June 2011 year

No complaints were carried over.

Enquiries

There were a number of enquiries relating to the Code in New Zealand, which the Ministry responded to (in consultation), as appropriate with the INC. Themes included:

- The process for requesting infant formula samples and INC's sample request policy
- New non-INC members marketing campaigns (including Heitiki and Golden Fern)
- NGO's asking for free formula for mothers
- Advice about bottle warmers

Update on the Government Response to Report of the Health Committee on Parliamentary Petition 2005/127 of Lisa Ross and 15 others²

Following an open request for proposal process, the Ministry contracted The Research Trust, from Victoria University of Wellington to undertake an Information Gathering Exercise on The Code in New Zealand. Their final report entitled '*Effectiveness, Implementation and Monitoring of the International Code of Breast-Milk Substitutes in New Zealand: A Literature and Interview-Based Review*' was received on the 15 July 2011. Their report can be accessed at:

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

The Research Trust report is part of the Ministry's commitment to commence a review of the Code in 2011. Going forward, contingent on resources, an options paper will be developed (incorporating some of the key findings of the Research Trust report) in the latter part of 2011.

Appointment of a new Consumer Representative to the Panel

Karen Eagles was appointed in July 2011. Karen's bio can be accessed at:

<http://www.health.govt.nz/our-work/who-code-nz/compliance-panel>

Secretariat for WHO Compliance Panel - June 2012

² Access the Government's response at:

http://www.parliament.nz/en-NZ/PB/Presented/Papers/1/2/e/49DBHOH_PAP17717_1-Government-Response-to-Report-of-the-Health-Committee.htm