Review of the New Zealand Interpretation of the World Health Organization's *International Code of Marketing of Breast-milk Substitutes*

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Foreword

The Thirty-fourth World Health Assembly of the World Health Organization (WHO), in conjunction with the United Nations Children's Fund, adopted the *International Code of Marketing of Breast-milk Substitutes* (WHO Code) on 21 May 1981 (WHO 1981). New Zealand is a signatory to the WHO Code, so is committed to working towards meeting the WHO Code's aims.

Breastfeeding is key to providing the best start for New Zealand infants, with many benefits for the child and the mother. The Ministry of Health (the Ministry) is committed to protecting and promoting breastfeeding as the normal method of feeding infants. The overall Ministry objectives for breastfeeding are to increase the prevalence and duration of breastfeeding in the whole population, but especially for groups where rates are lower, for example low income groups, Mäori, and Pacific peoples. *Breastfeeding: A Guide to Action* (Ministry of Health 2002) and several other policy documents (see Appendix 1) outline the comprehensive Ministry approach to protecting and promoting breastfeeding.

The New Zealand interpretation of the WHO Code is one of several important factors in the Ministry's approach and a key component in creating a supportive environment. Protecting and promoting breastfeeding are the focal points of many WHO documents, including the *Global Strategy for Infant and Child Feeding* (WHO 2003). Several of these documents are referred to in *Breastfeeding: A Guide to Action.*

The Ministry is committed to the ongoing application of the WHO Code to the marketing of breast-milk substitutes in New Zealand. The WHO Code's aim is to protect infants' nutritional wellbeing. Breastfeeding should be encouraged and protected from practices that undermine it. In reviewing the New Zealand interpretation of the WHO Code, the Ministry has taken into account the WHO's direction and leadership, the Ministry's policy framework and the valuable input from those parties concerned with protecting and promoting breastfeeding.

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Acknowledgements

The review of the New Zealand interpretation of the World Health Organization's *International Code of Marketing of Breast-milk Substitutes* has involved the valued input of a wide range of individuals and groups. The Ministry would like to acknowledge and thank all those who contributed to the review including the members of the sector stakeholder group, the Mäori practitioner group, the Pacific practitioner group, and consumer group, and the individuals and representatives of organisations who responded to the questionnaire and made written submissions.

Contents

Executive Summary

The purpose of this review was to examine the New Zealand interpretation of the World Health Organization's *International Code of Marketing of Breast-milk Substitutes* (WHO Code) and its capacity to meet the WHO Code's objectives.

Breastfeeding: A Guide to Action included the completion of this review as an action point under its fifth goal (Ministry of Health 2002).

The WHO Code was adopted by the World Health Assembly in 1981 and by New Zealand as a member country in 1983. New Zealand put a self-regulatory code of practice in place in 1997. This self-regulatory approach is the subject of this review. The New Zealand interpretation of the WHO Code is only one initiative to increase breastfeeding in New Zealand. Other initiatives include the Baby Friendly Hospitals Initiative, active promotional activities, support for mothers, and appropriate antenatal education.

The following 11 actions are the basis for refining and strengthening the New Zealand interpretation of the WHO Code.

Action 1

The Ministry of Health (Ministry) progresses the development of a single standard reference document, *The New Zealand Interpretation of the WHO Code of Marketing of Breast-milk Substitutes*, to be used by all parties.

Action 2

The Ministry revises the *Food and Nutrition Guidelines for Healthy Infants and Toddlers (Aged 0–2) A Background Paper* (Ministry of Health 2000) and increases awareness of the guidelines as best practice for infant feeding.

Action 3

The Ministry publicises the New Zealand interpretation of the WHO Code.

Action 4

The Ministry revises the complaints process, including the Compliance Panel's structure, composition and funding, so the process becomes more representative and effective.

Action 5

The Ministry publicises the complaints process for possible breaches of the New Zealand interpretation of the WHO Code.

Action 6

The New Zealand Infant Formula Marketers' Association (NZIFMA) includes the internet as a specific example in the definition of 'mass media' in its code of practice (NZIFMA 1997).

Action 7

The Ministry includes in the standard reference document, *The New Zealand Interpretation of the WHO Code of Marketing of Breast-milk Substitutes,* definitions of 'infant', 'health worker', 'health practitioner', 'infant formula' and 'follow on formula'.

Action 8

The Ministry investigates how health practitioners can have better access to generic information about the ingredients, composition and use of formula.

Action 9

The Ministry, the NZIFMA and stakeholders interested in infant feeding collaboratively develop guidelines for the marketing of follow on formula that become part of the New Zealand interpretation of the WHO Code and subject to the complaints process.

Action 10

The Ministry, the NZIFMA and stakeholders interested in infant feeding collaboratively develop guidelines for the provision of follow on formula samples that become part of the New Zealand interpretation of the WHO Code and subject to the complaints process.

Action 11

The Ministry makes further approaches to the appropriate industry groups to develop a code of practice for the marketing of bottles and teats and associated products in accordance with the WHO Code.

Background

Rationale for reviewing the New Zealand interpretation of the WHO Code

The Ministry of Health (the Ministry) decided in late 2001 to review the New Zealand interpretation of the World Health Organization's *International Code of Marketing of Breast-milk Substitutes* (WHO Code), because there was:

- an important shift in the marketing and distribution of complementary foods for infants and young children since the WHO Code's adoption in 1981
- a series of World Health Assembly (WHA) resolutions after the WHO Code, urging member states to strengthen national mechanisms to ensure compliance with the WHO Code and consider what new legislation or other suitable measures might be required to give effect to the WHO Code's principles and aim
- a stronger scientific base on which international infant and child feeding policy recommendations could be made
- an established body of case experience from the complaints process
- concern the New Zealand interpretation might not be meeting its intended objectives
- concern about the complaints process
- concern about the scope of and wording in the documents outlining the New Zealand interpretation of the WHO Code.

The review's terms of reference are in Appendix 2.

Breastfeeding: A Guide to Action restated the Ministry's commitment to the review (Ministry of Health 2002).

History of New Zealand's interpretation of the WHO Code

The thirty-fourth WHA of the World Health Organization (WHO), in conjunction with the United Nations Children's Fund (UNICEF), adopted the WHO Code on 21 May 1981. New Zealand is a signatory to the WHO Code, so is committed to working towards meeting the Code's aims.

Implementing and enforcing the WHO Code are matters for individual countries and governments to determine in keeping with their own social and legislative frameworks.

UNICEF has reviewed the WHO Code's implementation and categorised countries according to the degree to which it has been implemented in each country. The 10 categories cover countries that have adopted the WHO Code into law through to countries from which no information is available about the WHO Code's implementation. The countries and their classifications are in Appendix 3. It cannot be assumed that the adoption of the WHO Code into law guarantees the effective enforcement of that law and effective action in achieving the Code's aims. It is the effectiveness of the implementation of the WHO Code, not the type of implementation, that is

key to achieving the Code's aims. The categorisation system does not indicate levels of effectiveness or enforcement.

The Ministry is the government agency responsible for implementing the WHO Code and monitoring compliance with it in New Zealand. New Zealand adopted the WHO Code in 1983 and a government-funded advisory committee interpreted it initially. The Public Health Commission reviewed the New Zealand interpretation in 1994. The 1994 review recommended that the interpretation and monitoring of the WHO Code be through two voluntary, self-regulatory codes of practice. The Ministry took this approach to interpretation and monitoring in 1997.

The codes of practice are the:

- *Infant Feeding Guidelines for New Zealand Health Workers* (Ministry of Health 1997)
- *Code of Practice for the Marketing of Infant Formula* (NZIFMA 1997).

A complaints process is used to monitor the WHO Code's interpretation (Ministry of Health 1997). The process is outlined in Appendix 4.

Over eight years the Compliance Panel has met five times to deal with 14 formal complaints, which related to 0800 numbers, capsules to add to formula, price displays and advertisements. All complaints have been about the industry, not health workers.

The Ministry intends to continue with a voluntary, self-regulatory approach to remain consistent with New Zealand's social and legislative environment.

Breastfeeding issues in New Zealand

Benefits of breastfeeding

Breastfeeding contributes positively to five of the 13 population health objectives in the New Zealand Health Strategy (Minister of Health 2000):

- improving nutrition
- reducing obesity
- reducing the incidence and impact of cancer
- reducing the incidence and impact of cardiovascular disease
- reducing the incidence and impact of diabetes.

Benefits for children include:

- reduced incidence of diarrhoea, respiratory tract and inner-ear infection
- improved cognitive development and visual acuity
- reduced risk of type 2 diabetes , childhood obesity and coeliac disease
- reduced mortality during the first year of life
- long-term benefits for cardiovascular health.

Benefits for mothers include reduced risk of:

- postpartum haemorrhaging

- breast and ovarian cancer.

The WHO stated in a report on infant and young child nutrition (WHO 1994) that:

> No breast-milk substitute, not even the most sophisticated and nutritionally balanced formula, can begin to offer the numerous unique health advantages that breast milk provides for babies. Nor can artificial feeding do more than approximate the act of breastfeeding, in physiological and emotional significance, for babies and mothers alike. And no matter how appropriate infant formula may be from a nutritional standpoint, when infants are not breastfed or are breastfed only partially, feeding with formula remains a deviation from the biological norm for virtually all infants.

The economic value of breast milk and breastfeeding, and the financial costs of not breastfeeding, also need to be considered. Research in the United States of America and United Kingdom indicates cost savings to health systems if breastfeeding were increased. Australian research concluded that breastfeeding was worth at least A$2.2 billion a year (Smith and Ingham 1997).

Disparity in New Zealand breastfeeding statistics

New Zealand's breastfeeding rates made little or no improvement from 1992 to 2002. For Mäori and Pacific peoples, the rate remained consistently lower than the European/Other rate (Ministry of Health 2002).

The proportion of infants fully breastfed at age three months rose from 50.9 percent in 2001/02 to 55.1 percent in 2002/03. The proportion of babies fully breastfed at three months increased for both Mäori and Pacific peoples over the same period. However, the rates among Mäori and Pacific peoples were still lower than rates among the European/Other group and the rate for Mäori was still lower than for Pacific peoples (Ministry of Health 2004).

Socioeconomic status and effect on infant feeding

Health workers working with children and families acknowledge the impact of socioeconomic status on the choices made by families, along with other barriers to ensuring safe and adequate nutrition for infants and children. Families need access to advice and support from health workers about the benefits of breastfeeding, including cost.

If an infant is not breastfed, health workers must provide information about suitable alternatives and discourage the use of cows' milk and other non-water drinks before the infant reaches the age of one year.

Issues not covered by the review

Composition and labelling of formula

The Government has legislated for the composition and labelling of infant and follow on formula through the *Australia New Zealand Food Standards Code* (FSANZ 2002). Therefore, this review does not cover the composition and labelling of formula.

Marketing, composition and labelling of complementary foods

Responses to the review process questioned the scope of the WHO Code in relation to complementary foods. Complementary foods fall within the scope of the WHO Code only if they are marketed or otherwise represented to be suitable for use as a breast-milk substitute. The Government has legislated for the composition and labelling of complementary foods through the *Australia New Zealand Food Standards Code* (FSANZ 2002). Therefore, this review does not cover the marketing, composition and labelling of complementary foods.

Exclusive breastfeeding to six months

The global public health recommendation to protect, promote and support exclusive breastfeeding for six months was resolved by the WHA in May 2001 (WHO 2001). Authorities in more than 60 WHO member states, eg, Australia, France, Ireland, Slovakia and the United Kingdom, formally recommend six months of exclusive breastfeeding.

Exclusive breastfeeding is when 'the infant has never, to the mother's knowledge, had any water, formula or other liquid or solid food. Only breast milk, from the breast or expressed and prescribed medicines have been given from birth' (Ministry of Health 2002).

The current New Zealand recommendation is exclusive breastfeeding to four – six months. This recommendation will be reviewed separately when the *Food and Nutrition Guidelines for Healthy Infants and Toddlers (Aged 0–2): A background paper* (Ministry of Health 2000) is reviewed. The issue will also be raised in the review of the *Food and Nutrition Guidelines for Healthy Breastfeeding Women: A background paper* (Ministry of Health 1997) which is under way. The New Zealand interpretation of the WHO Code will automatically fall into line with any changed or new policy on exclusive breastfeeding.

Review Process

An indepth questionnaire was developed from the review's terms of reference (Appendix 2) and the WHO's framework for reviewing and evaluating the interpretation of the WHO Code (WHO 1996).

The questionnaire was sent to consumers, maternity service providers, public health providers, industry members and international bodies.

Fifty-nine completed questionnaires and 14 written submissions were received. The submissions provided a range of divergent views about the appropriate monitoring and interpretation of the WHO Code in New Zealand. A list of respondents to the questionnaire is available on request from the Ministry.

A draft review report was prepared from the issues raised in the submissions and the questionnaires and from other feedback to the Ministry. The draft report identified the issues that were consistently raised and proposed 13 actions.

Discussion with interested parties

The draft report informed a series of meetings with interested parties at which the proposed actions were discussed. The Ministry held:

- two meetings with representatives from stakeholder groups, including the New Zealand Breastfeeding Authority, Royal New Zealand Plunket Society, National Māori Sudden Infant Death Syndrome Programme, New Zealand College of Midwives and New Zealand Infant Formula Marketing Association
- two meetings with Pacific health practitioners from primary health organisations (PHOs), Pacific health care providers, District Health Boards (DHBs) and regional public health units
- one meeting with Māori health practitioners from PHOs, Māori health care providers, DHBs and regional public health units
- one meeting with representatives from consumer groups, including La Leche League, Women's Health Action, the Maternity Services Consumer Council, Homebirth Aotearoa and the International Baby Food Action Network.

Some information gathered from the discussions, particularly at the Māori and Pacific practitioner meetings, was more relevant to the implementation phase, so will be considered in that phase. The information relevant to the review's terms of reference has been taken into account in the review.

Collection of other relevant information

During the writing of the report, additional material was considered, including:

- subsequent relevant WHA resolutions
- *Global Strategy for Infant and Young Child Feeding* (WHO 2003)
- *Infant and Young Child Nutrition WHA Resolution 54.2* (WHO 2001)
- the Australian interpretation of the WHO Code (Appendix 5).

Preparation of the report

The draft report was significantly revised after feedback from the meetings. The 13 proposed actions were reconfigured into 11 actions.

Discussion, Responses and Actions

This section presents the information collected in the review, including key issues, responses from the Ministry and relevant actions.

Documents outlining the New Zealand interpretation of the WHO Code

Issue 1: Confusion associated with the two 'codes'

The *Code of Practice for the Marketing of Infant Formula* (NZIFMA 1997) and the *Infant Feeding Guidelines for New Zealand Health Workers* (Ministry of Health 1997) appeared to be creating confusion in the sector, possibly causing unnecessary tensions between the infant formula industry and health sector. It was suggested that developing a single standard reference based on the WHO Code would remove the possible confusion and tension.

Response

The Ministry has sought a legal opinion on the proposal for a single standard reference document. A single document, involving collaboration between the Ministry and an industry group, would be legal, provided it was in accordance with the WHO Code and the New Zealand legislative environment.

The single document would have to be presented and published in a way that did not undermine the 'breast is best' message. However, the document could include other sources of information as appendices.

The benefit of such a document is that it would be a standard reference for everyone, giving a clear interpretation of the WHO Code with one set of definitions and a clearly defined complaints process.

Until any new or revised documents are in place, the Ministry is committed to the current New Zealand interpretation and implementation of the WHO Code as outlined in the NZIFMA code of practice and the Ministry's infant feeding: guidelines.

Issue 2: Need for a best practice guide

Health practitioners identified a need for a best practice guide for infant feeding up to the age of one year. The guide would contribute to the provision of safe and adequate nutrition for infants, including the promotion of breastfeeding and ensuring the proper use of breast-milk substitutes and follow on formula (when necessary) and complementary foods.

Response

The *Food and Nutrition Guidelines for Healthy Infants and Toddlers (Aged 0–2): A background paper* (Ministry of Health 2000) could fulfil the need for a best practice guide. It may be necessary to expand the component on infant feeding in these guidelines to incorporate extra information from the *Infant Feeding Guidelines for New Zealand Health Workers* (Ministry of Health 1997).

The common ground between the single standard reference document based on the WHO Code and the *Food and Nutrition Guidelines for Healthy Infants and Toddlers (Aged 0–2): A background paper* is that breastfeeding and breast milk are best, but formula is the best alternative to breast milk.

Issue 3: Highlight the significance of breastfeeding

The significance of breastfeeding for all New Zealanders needs to be made clearer.

Response

Rather than creating a separate statement, the Ministry makes every effort to incorporate the significance of breastfeeding into all relevant policies and documents.

Issue 4: Little awareness about guidelines and codes

Awareness and distribution of the health worker guidelines and industry code in the health sector, identified especially at the Pacific practitioner meetings, is low.

Response

Increased publicity about the New Zealand interpretation of the WHO Code would raise health provider awareness of their responsibilities under the code, and the need to develop practices and policies in line with the code, for example, policies on giving marketing personnel access to facilities and sampling.

The *Global Strategy on Infant and Young Child Feeding* (WHO 2003) identifies other groups in society who have potentially influential roles in promoting good feeding practices, including education authorities, the mass media, employers, trade unions and childcare workers. Supermarkets have also been identified as key targets for publicity. Efforts to raise awareness of the New Zealand interpretation of the WHO Code should be directed at all these groups.

Any work to develop or update documents, and publicity campaigns to raise awareness of the New Zealand interpretation of the WHO Code (Action 3) and the complaints process (Action 5) must be in the context of reducing inequalities using the *Health Equity Assessment Tool* (Te Rōpū Rangahau Hauora a Eru Pōmare, Ministry of Health and Public Health Consultancy 2003). Information gathered at the discussion meetings, particularly the Māori and Pacific practitioner meetings, should also be considered.

A comparison of promotional restrictions and compliance procedures in the voluntary NZIFMA code of practice with other New Zealand marketing and advertising codes, will be part of the preparation for a single reference document.

Action 1

The Ministry progresses the development of a single standard reference document, *The New Zealand Interpretation of the WHO Code of Marketing of Breast-milk Substitutes*, to be used by all parties.

Action 2

The Ministry revises the *Food and Nutrition Guidelines for Healthy Infants and Toddlers (Aged 0–2): A background paper* (Ministry of Health 2000) and increases awareness of the guidelines as a best practice for infant feeding.

Action 3

The Ministry publicises the New Zealand interpretation of the WHO Code.

Complaints process

Issues

Concerns were raised by members of the Compliance Panel and people responding to the review about the complaints process, including:

- complaints were not being upheld
- individuals and groups were not complaining because they felt there would be little follow up especially given the voluntary nature of the process and New Zealand's weak interpretation of the WHO Code
- the complaints process was not simple or timely
- there was no representation from, for example, Mäori and Pacific peoples, breastfeeding advocates, the public health sector, the health promotion sector and consumers
- the industry is part of the Compliance Panel, specifically that it has a role in funding the panel
- a Compliance Panel of three was too small
- Mäori and Pacific peoples tended not to know about the complaints process
- the definition of a 'breach' and what should be referred to the complaints process was not well understood
- a perception that the complaints process was used to complain only about industry actions and was not relevant for complaints about health workers
- the panel's role and scope were not well understood.

Response

The Ministry accepts that revising the complaints process may improve its effectiveness and making the Compliance Panel more representative may be beneficial. A revision of the Compliance Panel's structure must consider the structure and function of other compliance panels and the proposed changes to the Australian Advisory Panel on the Marketing in Australia of Infant Formula and compliance process (Appendix 5).

The Ministry needs to ensure the Compliance Panel can call in specific cultural or technical expertise when necessary.

The Ministry needs to ensure the complaints process is better understood and promoted, especially in relation to what constitutes a breach and that the breach needs to be within the scope of the New Zealand interpretation of the WHO Code to be dealt with by the complaints process.

Action 4

The Ministry revises the complaints process, including the Compliance Panel's structure, composition and funding, so the process becomes more representative and effective.

Action 5

The Ministry publicises the complaints process for possible breaches of the New Zealand interpretation of the WHO Code.

Definitions

Issue 1: Definition of 'marketing'

The definition of 'marketing' is a concern because the current definition may not cover marketing avenues developed since the WHO Code was adopted eg, the internet.

Response

The WHO definition of 'marketing' is used in the NZIFMA code of practice. It was suggested that this be revised in accordance with the labelling standards in the *Australia New Zealand Food Standards Code* (FSANZ 2002).

While the definition of 'mass media' in the NZIFMA code of practice does not specifically state the internet, it is covered under the definition. Complaints in relation to internet marketing should continue to be dealt with by the complaints process and there is evidence that these have been dealt with.

Monitoring internet advertising is not always practical, for example, when advertisements are from international sources, but the responsibility for following up complaints still lies within the Compliance Panel's terms of reference.

Issue 2: Definition of 'infant' and 'infant formula'

The definition of an infant is a concern. The WHO Code and the New Zealand interpretation of the WHO Code do not define 'infant'. It has been suggested that a definition be included in the New Zealand interpretation so it is consistent with the *Food and Nutrition Guidelines for Healthy Infants and Toddlers (Aged 0–2): A background paper* and the *Australia New Zealand Food Standards Code*.

The definition of infant formula is a concern.

Response

The New Zealand interpretation of the WHO Code used the definition of 'infant formula' from the Food Regulations 1984. However, the regulations have been revoked and replaced by the *Australia New Zealand Food Standards Code.*

The Ministry is required to use the definitions in the *Australia New Zealand Food Standards Code* as this is the legal and regulatory framework for food in New Zealand. The Ministry can provide further guidance on the relationship of the definitions with the WHO Code, but must ensure there is no conflict with the *Australia New Zealand Food Standards Code*.

The *Australia New Zealand Food Standards Code* defines:

- an 'infant' as 'a person under the age of 12 months'
- 'infant formula' 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'
- 'follow on formula' as 'a product represented as either a breast milk substitute or replacement for infant formula and which constitutes the principal liquid source of nourishment in a progressively diversified diet for an infant aged from six to 12 months'.

Issue 3: Definition of 'health worker'

The definition of 'health worker' is too narrow and should be broadened to include people who provide information that can affect breastfeeding such as social workers.

Response

Health workers should be made aware of their responsibilities with respect to the WHO Code. There should also be improved access to easily understood, accurate and consistent information on the New Zealand interpretation of the WHO Code for health workers. This is covered by Action 3.

Social workers and other key people need to be advised of the importance of promoting breastfeeding and ensuring their clients are given the appropriate infant feeding advice from appropriately trained health practitioners.

Issue 4: Definition of 'health practitioner'

A definition of 'health practitioner' needs to be included.

Response

A definition of a 'health practitioner' needs to be included, for example, a health worker who has a health-related tertiary qualification and is registered with an appropriate professional body such as a doctor, dietitian, nurse or pharmacist.

The Ministry will investigate the options for a definition and ensure the definition adopted is consistent with the Health Practitioners Competence Assurance Act 2003. The term 'health practitioner' will be used rather than 'health professional", to ensure consistency with the Act.

An appropriately trained health practitioner should advise on feeding with infant formula or the appropriate age and approach at which to introduce complementary foods. Health practitioners can help parents with the choice of an appropriate alternative if a decision has been made to stop or reduce breastfeeding. The health practitioner can assess the child's situation, taking into account nutritional and social issues and taking the opportunity to promote continued breastfeeding. The advice should be based on the best practice guide (Action 2).

Action 6

The NZIFMA includes the internet as a specific example in the definition of 'mass media' in its code of practice (NZIFMA 1997).

Action 7

The Ministry includes in the standard reference document *The New Zealand Interpretation of the WHO Code of Marketing of Breast-milk Substitutes,* definitions of 'infant', 'health worker', 'health practitioner', 'infant formula' and 'follow on formula'.

Information for health practitioners on formula ingredients, composition and use

The overriding emphasis of the WHO Code is to protect and promote breastfeeding and to promote the superiority of breast milk. The WHO Code does recognise there is a need to ensure the proper use of breast-milk substitutes when these are necessary. A balance is required between recognising that breastfeeding is considered the ideal and preferable method of infant feeding for at least the first six months, while ensuring that adequate and appropriate information is provided for people who bottle-feed their infant.

Participants at the meetings identified that for health practitioners to advise on feeding with infant formula, they needed access to factual, accurate and generic information about the ingredients, composition and use of formula. Some organisations provide this information as part of their practitioner development programme. The *Global Strategy on Infant and Young Child Feeding* is clear that mothers, fathers, caregivers and health workers should have access to objective, consistent and complete information about feeding practices, free from commercial influences.

There was a strong sense that the provision of this information must be seen to be owned and managed by the Ministry and not used as a marketing tool. Information on composition must be available and kept up to date in a way that does not present a conflict of interest for the Ministry. The information must link to all the relevant Ministry documents as well as to WHO and Food Standards Australia New Zealand and other relevant sources of information. It must be framed in the context of protecting and promoting breastfeeding.

Action 8

The Ministry investigates how health practitioners can have better access to generic information about the ingredients, composition and use of formula.

Scope of the New Zealand interpretation of the WHO Code: Follow on formula

The concerns raised were as follows.

- The principal concern from all groups was whether follow on formula should be covered by the scope of the New Zealand interpretation of the WHO Code.
- Some groups believed the WHO Code was weakly interpreted in New Zealand and that marketing of follow on formula, bottles, teats and pacifiers normalises bottle-feeding rather than breastfeeding. Others believed that any stronger interpretation would be outside the scope of the WHO Code.
- Similarity in appearance between infant formula and follow on formula was believed to be misleading. Marketing strategies where the branding of follow on formula was similar to infant formula were criticised, not always because of their promotion of the follow on formula but because of possible confusion with infant formula. This confusion could promote formula use in general.
- Promotion of follow on formula could adversely affect the decision of a mother to breastfeed or continue to breastfeed. While industry does not market the product as a breast-milk substitute, some advertising has been misleading, and this may adversely affect breastfeeding practices.
- Advertising of follow on formula seems to be increasing and being marketed aggressively.
- Some infants' diets may be insufficient in iron and follow on formula may have a role in improving dietary intake of iron.

Response

The *Food and Nutrition Guidelines for Healthy Infants and Toddlers (Aged 0–2): A background paper* (Ministry of Health 2000) recommend that infants be fed exclusively on breast milk from birth to 4–6 months. It is also preferable that breastfeeding continues to at least the age of one year, with the introduction of appropriate complementary foods. Breast milk remains the most appropriate liquid part of a progressively diversified diet once complementary feeding has begun, and should remain a prominent part of the diet until at least the end of the infant's first year. Unmodified cows' milk is not recommended as a primary beverage before an infant is aged one year. If a family has decided to not breastfeed or to stop breastfeeding before the infant is aged one year, formula is the next best alternative. The key public health messages are that 'breast is best' until the infant is aged one year and cows' milk should not be given before the infant is aged one year.

The composition of follow on formula differs from infant formula and is designed to meet the nutritional needs of infants aged over six months in combination with appropriate complementary foods.

The WHO has stated that if follow on formula is not marketed or otherwise represented as a suitable breast-milk substitute, follow on formula does not fall within the scope of the WHO Code (WHO 2001a). However, taking into account the spirit of the WHO Code, there appear to be grounds for countries to conclude otherwise in the light of the way follow on formula is perceived and used in individual circumstances. Authorities may wish to take the position that follow on formula should be considered a de facto breast-milk substitute.

The Ministry sought a legal opinion about whether follow on formula falls within the scope of the WHO Code. It was clarified that follow on formula is a 'milk product' as defined in the Code, but the product must also be marketed or represented as suitable for use as a breast-milk substitute to fall within the scope of the code. The NZIFMA made it clear in its submission to the Ministry that 'follow on formula is not marketed or sold as a breast-milk substitute. It is marketed as an alternative to cows' milk for infants who are no longer being breastfed'. However, follow on formula is used as a breast-milk substitute, so the Ministry believes that care needs to be taken with the marketing of follow on formula in New Zealand.

Follow on formula can be marketed for infants from six months of age, but the marketing must not promote follow on formula as a breast-milk substitute. Guidelines should be developed for the marketing of follow on formula so the marketing does not undermine the key public health messages that 'breast is best' until the infant is aged one year and cows' milk should not be given before the infant is aged one year. Any marketing of follow on formula must ensure a clear differentiation between infant formula and follow on formula in all promotion, labelling and advertising. The marketing of follow on formula will be subject to the complaints process to monitor its adherence to the guidelines to be developed. Complaints about the marketing of follow on formula will be monitored and the Ministry may reconsider its position on follow on formula on the basis of this complaints process monitoring and other relevant sources of information.

Action 9

The Ministry, the NZIFMA and stakeholders interested in infant feeding collaboratively develop guidelines for the marketing of follow on formula that become part of the New Zealand interpretation of the WHO Code and subject to the complaints process.

Distribution of samples

Submissions were received about the inappropriate distribution of samples. In particular, concerns were raised about the provision of samples of follow on formula directly to parents and caregivers at Parent and Child Shows. There was some feeling that samples should not be given to parents or health practitioners in any situation. This issue was of concern for all groups.

The New Zealand interpretation of the WHO Code is in accordance with the WHO Code regarding the distribution of samples. It allows for the distribution of samples of infant formula to health workers for professional evaluation and research or for educating parents on the correct preparation of formula. The NZIFMA Code of Practice states that marketers should not distribute samples of infant formula to pregnant women, the mothers of infants or infants' families.

However, this does not cover follow on formula samples, as follow on formula is covered by the Code only if it is marketed as a breast-milk substitute.

The provision of follow on formula samples should be subject to strict guidelines, for manufacturers and health service providers. Health service providers are encouraged to improve awareness of the New Zealand interpretation of the WHO Code among their staff and develop policies on the use of samples.

Action 10

The Ministry, the NZIFMA and stakeholders interested in infant feeding collaboratively develop guidelines for the provision of follow on formula samples that become part of the New Zealand interpretation of the WHO Code and subject to the complaints process.

Including bottles and teats

The WHO Code clearly includes bottles and teats within its scope for the marketing of such products. In 1998 the Ministry made a considerable effort to include bottles and teats in the interpretation of the WHO Code. Industry groups made a commitment to developing a voluntary agreement, but this has not happened.

Work with industry groups needs to be done to raise awareness of the New Zealand interpretation of the WHO Code and encourage bottle and teat manufacturers to act in the spirit of the Code.

Action 11

The Ministry makes further approaches to the appropriate industry groups to develop a code of practice for the marketing of bottles and teats and associated products in accordance with the WHO Code.

Research concerns

Issues were raised about the use of infant formula in scientific research. Concern was expressed that the free provision of infant formula to people participating in research may adversely influence breastfeeding practices.

Participants at the Pacific practitioners meeting raised the issue that research needed to include Pacific perspectives.

These concerns about research and its bearing on breastfeeding will be considered in the broader Ministry context, taking the WHO Code into account.

Conclusion

The review of the New Zealand interpretation of the WHO Code is timely, given its implementation in New Zealand six years ago, and controversial, given the strong views held by the industry and the health sector, consumers and other key stakeholders.

There is agreement of a level of shared intent and goodwill between the parties to improve the nutritional status of infants and to encourage breastfeeding of all infants for at least six months. The WHO Code plays an important role in these aims as well as many other activities that educate and support mothers and others involved in infant care. It is important to work together to create a societal norm that breastfeeding is essential and that support is available in everyday life for infants to be breastfed as long as possible.

The report presents the major issues raised during the review and specific actions to address those issues. The actions provide a way forward for the New Zealand interpretation of the WHO Code in protecting and promoting breastfeeding.

Appendix 1: Ministry of Health's Policy Context for Protecting and Promoting Breastfeeding

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Appendix 2: Terms of Reference for the Review of the New Zealand Interpretation of the World Health Organization's *International Code of Marketing of Breast-milk Substitutes*

The review is to address the following.

1. The scope of the current New Zealand interpretation of the World Health Organization's International Code of Marketing of Breast-milk Substitutes (WHO Code) and its capacity to meet the objectives of the WHO Code. In particular, whether the New Zealand interpretation of the WHO Code is being implemented sufficiently to meet its objectives. This analysis may cover areas that currently sit outside the WHO Code. If necessary, make recommendations on ways to improve the implementation of the New Zealand interpretation of the WHO Code.

2. The scope, clarity and relevance of the wording and definitions in the New Zealand interpretation of the WHO Code, in particular:
   - including follow on formula (with regard to encouraging the practice of continued breastfeeding up to the age of one year)
   - including bottles and teats
   - the definition of a 'health worker'
   - the distribution of samples
   - the definition of 'mass media' and how it applies to the provision of information on the internet.

3. The Compliance Panel's:
   - composition
   - terms of reference
   - deliberations and decisions on the 14 complaints that have been considered by the panel. (In relation to them, the review should, as far as possible, avoid making any judgment about the correctness of individual decisions. However, it should, where it is considered necessary or desirable, identify and comment on any issues about the scope of the New Zealand interpretation of the WHO Code or the processes by which complaints are addressed that are known to have arisen in the panel's deliberations or have been referred to in its decisions.)

4. The current process for lodging and having heard complaints alleging a contravention of the New Zealand interpretation (including actual or perceived barriers there may be to making such complaints).

5. Alternative mechanisms, confined, however, to a self-regulated and/or co-regulated approach for:
   - promoting and protecting breastfeeding; and/or
   - ensuring the proper use of breast-milk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution; and/or
   - regulating the advertising, marketing and/or distribution of any items it is considered should be included in the New Zealand interpretation of the WHO Code; and/or
   - implementing the WHO Code or its objectives or the New Zealand interpretation.

6. International practice for implementing the WHO Code. Specifically the mechanisms for regulating the marketing of infant formula. International practice concerning the interpretation of the age scope should also be assessed.

7. Comparing promotional restrictions and compliance procedures included in the voluntary NZIFMA Code of Marketing Practice with some other New Zealand marketing and advertising codes, including the Advertising Standards Authority codes of practice.

8. The proposed changes by the Australian Department of Health and Aging to the Advisory Panel on the Marketing in Australia of Infant Formula's compliance process, and the anticipated 2002/03 review of the Marketing in Australia of Infant Formula Agreement.

Appendix 3: National Implementation of the World Health Organization's *International Code of Marketing of Breast-milk Substitutes*

The United Nations Children's Fund (UNICEF) has reviewed the WHO Code's implementation and categorised 166 countries into 10 groups according to the degree to which the Code has been implemented in each country. The categories are explained after the following tables.

The information was gathered from the Nutrition Section, UNICEF, New York in December 2003. It shows how UNICEF has categorised 166 countries.

Law (25 countries)	**Many provisions law (32 countries)**	**Few provisions law (21 countries)**
Albania	Austria	Algeria
Bahrain	Azerbaijan	Armenia
Benin	Bangladesh	Canada
Brazil	Belgium	Chile
Burkina Faso	China	Congo, Democratic Republic of
Cameroon	Colombia	Cuba
Costa Rica	Denmark	Estonia
Dominican Republic	Djibouti	Ethiopia
Georgia	Finland	Guinea
Ghana	France	Guinea-Bissau
Guatemala	Germany	Hungary
India	Greece	Israel
Iran	Indonesia	Japan
Lebanon	Ireland	Macedonia
Madagascar	Italy	Mongolia
Nepal	Lao (PDR)	Mozambique
Panama	Luxembourg	Paraguay
Peru	Mexico	Qatar
Philippines	Netherlands	Saudi Arabia
Sri Lanka	Nicaragua	Turkey
Tanzania	Niger	United Arab Emirates
Uganda	Nigeria	
Uruguay	Norway	
Yemen	Oman	
Zimbabwe	Pakistan	
	Papua New Guinea	
	Portugal	
	Senegal	
	Spain	
	Tunisia	
	United Kingdom	
	Viet Nam	

Voluntary (13 countries)	Some provisions voluntary (nine countries)	Measure drafted awaiting final approval (16 countries)
Australia Bolivia Ecuador Kenya Kuwait Malawi Malaysia New Zealand South Africa Swaziland Thailand Trinidad and Tobago Zambia	Bhutan Guyana Hong Kong Jamaica Korea, Republic of Singapore Switzerland Uruguay Venezuela	Botswana Burundi Cape Verde Congo Cote d'Ivoire El Salvador Gabon Haiti Iraq Jordan Moldova Morocco Namibia Nicaragua Sierra Leone Sweden
Being studied (27 countries)	**Action to end free supplies (two countries)**	**No information (15 countries)**
Angola Afghanistan Argentina Belarus Cambodia Croatia Czech Republic Egypt Eritrea Gambia Honduras Latvia Lesotho Lithuania Mali Mauritius Mauritania Myanmar (Union of) Paraguay Poland Romania Russian Federation Rwanda Slovakia Syrian Arab Republic Togo	Libyan Arab Republic Sudan **No action (six countries)** Central African Republic Chad Somalia United States Iceland Kazakhstan	Bosnia/Herzegovina Bulgaria Korea (DPR) Kyrgyzstan Liberia Netherlands Antilles Niue Federal Republic of Yugoslavia Slovenia Tajikistan Tokelau Turkmenistan Ukraine US Virgin Islands Uzbekistan

Key to categories

Law	Countries have enacted legislation or other legal measures encompassing all or substantially all provisions of the WHO Code.
Many provisions law	Countries have enacted legislation or other legal measures encompassing many of the provisions of the WHO Code.
Few provisions law	Countries have enacted legislation or other legal measures encompassing a few provisions of the WHO Code.
Voluntary	Countries have adopted all or nearly all provisions of the WHO Code through non-binding measures.
Some provisions voluntary	Countries have adopted some provisions of the WHO Code through non-binding measures.
Measure drafted awaiting final approval	Countries have a final draft of a law or other measure that recommends implementation of all or many of the provisions of the WHO Code and final approval is pending.
Being studied	Countries have a government committee studying how best to implement the WHO Code.
Action to end free supplies only	Countries have taken some action to end free and low-cost supplies of breast-milk substitutes to health care facilities, but have not implemented other parts of the WHO Code.
No action	Countries have taken no steps to implement the WHO Code.
No information	No information is available for these countries.

Appendix 4: Complaints Process

Complaints against the New Zealand implementation of the WHO Code are made in writing to the Ministry. A diagram outlining the self-regulatory process for the industry and health workers follows. It has been taken from *Infant Feeding: Guidelines for New Zealand health workers* (Ministry of Heath 1997).

When the Ministry receives a complaint it decides whether the complaint is legitimate (ie, comes under the New Zealand interpretation of the WHO Code). If it is legitimate, an explanation is sought from the individual or group complained about. Their response is passed to the complainant. If the complainant is satisfied with the response the process ends. If the complainant is not satisfied they may ask for the complaint to be referred to the Compliance Panel.

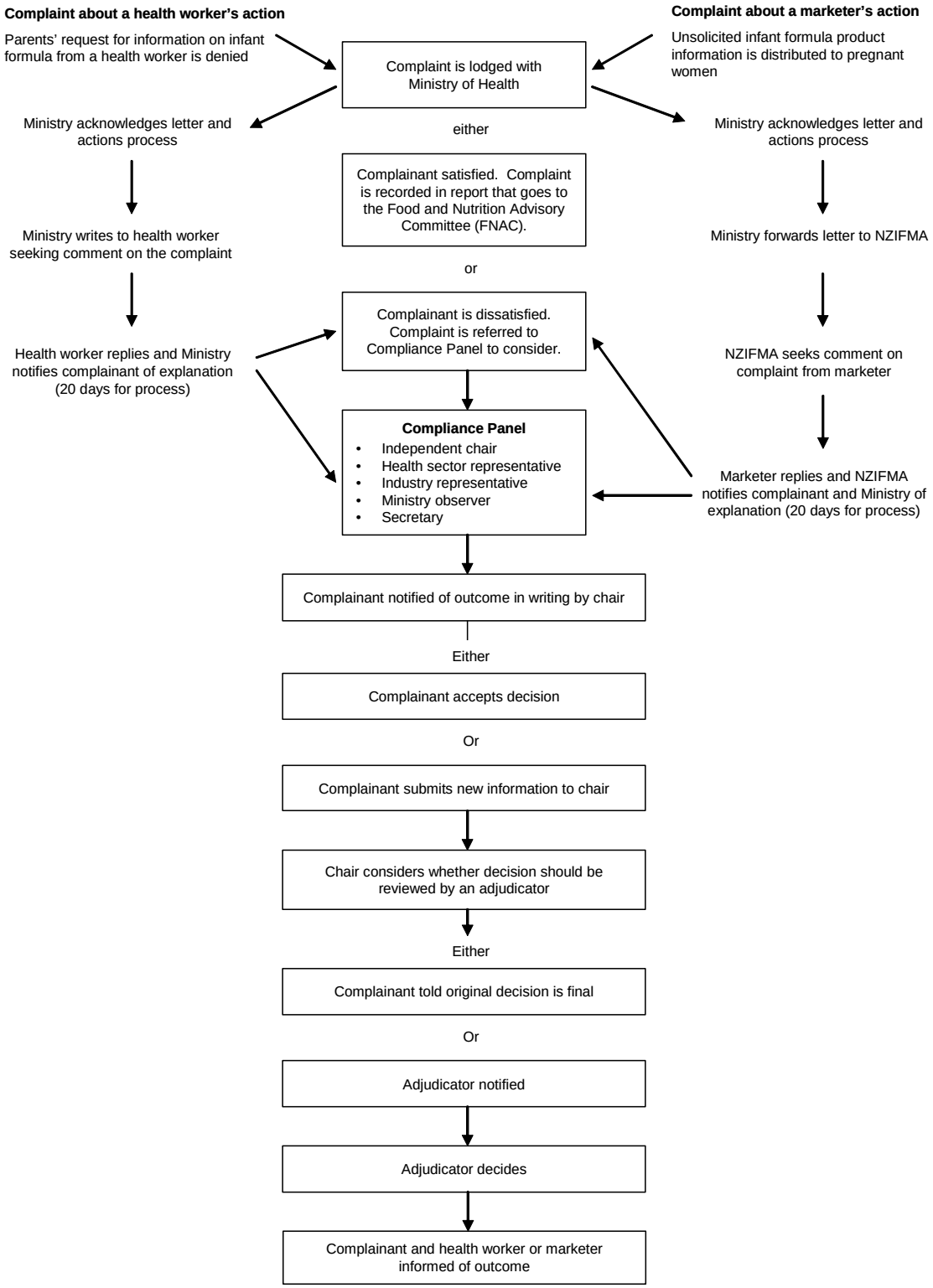
The Compliance Panel is made up of three members: a health worker, an independent chairperson and an industry representative. They meet face to face or via teleconference as necessary to consider complaints.

If the complaint is not legitimate or the complainant is not satisfied, the complaint may also be referred to the Compliance Panel. The Compliance Panel seeks to make decisions by consensus, but will rule by majority if necessary.

If the party against whom the complaint has been laid believes natural justice has been breached or new information has come to light, they can lodge an appeal with the adjudicator.

The adjudicator decides whether an appeal will be heard. Their decision is final.

Diagram of the complaints process



Appendix 5: Australian Response to the World Health Organization's *International Code of Marketing of Breast-milk Substitutes*

The 1992 Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement (MAIF Agreement) is Australia's response to becoming a signatory to the World Health Organization's International Code of Marketing of Breast-milk Substitutes (WHO Code). It sets out the obligations of manufacturers and importers of infant formulas in Australia and gives effect to the WHO Code's principles. It applies to only manufacturers and importers of infant formulas, so does not cover other milk products, foods, beverages or feeding bottles and teats.

The MAIF Agreement aims to help ensure safe and adequate nutrition for infants by:

- protecting and promoting breastfeeding
- ensuring the proper use of breast-milk substitutes when they are necessary (which includes when mothers make an informed choice to use breast-milk substitutes) on the basis of adequate information
- marketing and distributing products appropriately.

The Advisory Panel on the Marketing in Australia of Infant Formula (the panel) is a key component of the Australian monitoring process.

The panel is made up of an independent chair, a member representing community and consumer groups, a member with expertise in public health and infant nutrition, and a member nominated by the infant formula industry. It is supported by a secretariat in the Australian Government Department of Health and Ageing.

The panel's terms of reference are to:

- receive and investigate complaints about the marketing of infant formulas in Australia
- act as a liaison point for people with concerns about the marketing of infant formulas in Australia
- develop guidelines on the interpretation and application of the MAIF Agreement
- advise the Australian Government Minister for Health and Ageing on the MAIF Agreement's operation.

The panel, in collaboration with the Department of Health and Ageing, is developing a strategic plan. Some of the key developments include:

- a procedures manual for the panel incorporating a decision tree for handling complaints
- developing and implementing a communication strategy for the panel
- strengthening links with organisations relevant to the panel's work, including the Australian Breastfeeding Association (ABA) and the Infant Formula Manufacturers' Association of Australia, and encouraging them to speak to the panel
- consulting the ABA to encourage it to review its complaint form

- strengthening links with the WHO and maintaining a watching brief on resolutions or documents that may affect the panel's work
- developing a panel brochure for wide circulation and use in any correspondence
- developing the panel's website and promoting its use by corresponding with stakeholders
- developing a generic visual presentation to be used by panel members to educate stakeholders and promote the panel's activities.

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