



8th November 2023

Supplementary commentary re' the request for authorisation of the proposed INC Code of Practice

The College has further comments to make on the addendum received after our second submission was sent on 31st October 2023. We would like this response added to our two previous submissions.

Comments on the Addendum to Draft Determination – 1.11.2023

- 1.1 The College supports proposals that are consistent with the full WHO International Code of Marketing of Infant Formula and the subsequent World Health Assembly resolutions.
- 1.2 Article 6 of the WHO Code clearly refers only to health care systems and 6.6 relates only to health care systems receiving donations or low-price products.
- 1.3 The College continues to support no contact between industry and consumers and no donations of products or samples to pregnant women, breastfeeding mothers, or their families.
- 1.4 The College does not support the practice of donated supplies of commercial milk formula being provided in emergency and disaster situations. In emergency situations, the Civil Defence Emergency Management Groups (CDEM) have a responsibility to ensure babies are fed safely, and where possible they should support families to buy, safely prepare and use their own supplies of infant formula. In some situations, this may require financial support for families.
- 1.5 The College continues to support the Ministry of Health's position regarding donations of infant formula during an emergency. This states that: *"... agencies, health practitioners and emergency responders involved in the emergency response will decline, and not seek, donations of infant formula, including donations of follow-on*

formula and toddler milks. Instead, only infant formula that has been sourced and distributed on behalf of the relevant Civil Defence Controller and according to the Controller's assessment of the specific emergency will be used.”¹

- 1.6 If 6.6 continues to refer to donations, the College considers that the original clause related to emergency relief, and donations being in accordance with national emergency plans should remain. Therefore, we do not support the revised proposed clause 6.6.
- 1.7 The College struggles to understand why donations of commercial milk formula (CMF) are a priority action for industry when the opposition to this is significant.
- 1.8 If the donations are based in altruism, rather than sales inducement, then presumably the donations could be in non-branded containers.
- 1.9 Branded products are part of an industry marketing strategy which uses cross-promotion of infant, follow-on, and toddler milks using branding and numbered progression to create brand loyalty and product awareness. Providing branded products to parents is part of a marketing strategy whether directly or via an agency.
- 1.10 Brand marketing strategy represents a long-term plan, the purpose of which is to increase a brand's position and positive perception in the market. This is a well-known fact of marketing. Marketing is a strategic approach to business, focused on maximising sales and shareholder returns with no relationship to the concerns of ethics and public health. This is incompatible with infant health concerns and breastfeeding protection.
- 1.11 One of the actions to reduce the power of marketing described in the 2023 Lancet Series on Breastfeeding is to use plain packaging for products which should only display accurate messages determined by national authorities.²

¹ Ministry of Health. (2015). *Guide for DHB Emergency Management Staff: Infant feeding in an emergency for babies aged 0–12 months*. <https://www.health.govt.nz/system/files/documents/publications/infant-feeding-in-an-emergency-guide-for-dhbs-dec15.pdf>

² Rollins, N., Piwoz, E., Baker, P., Kingston, G., Mabaso, K. M., McCoy, D., Neves, P. A. R., Peres-Escamilla, R., Richter, L., Russ, K., Sen, G., Tomori, C., Victora, C. G., Zambrano, P., & Hastings, G. (2023). Marketing of commercial milk formula: a system to capture parents, communities, science, and policy. *The Lancet*, 401(10375),486-502.

- 1.12 The Ministry of Health Code of Practice for Health Workers (4.4) states that health workers should not promote a specific brand of formula or be involved in the promotion of products used for infant feeding.³
- 1.13 The Ministry of Health Code of Practice for Health Workers (7.2) states that health workers should not give samples of formula to pregnant women, mothers of infants, or members of their families.
- 1.14 Donations of CMF to health organisations could compromise health workers in terms of the Code of Practice for Health Workers – specifically 4.4 and 7.2.
- 1.15 Rates of poverty are increasing, breastfeeding is insufficiently supported, and the prices of CMF have been increasing. As we described in our main submission, this has been an issue of increasing concern in the UK, where breastfeeding rates are low, breastfeeding women are not supported by government policy, and the prices of products has increased significantly enough to make them unaffordable for some families. This has contributed to a crisis in terms of the affordability of CMF.^{4 5 6 7 8}
- 1.16 Donating CMF is not the answer to the above. Controlling inflated prices, regulation of marketing and the protection, promotion and support of breastfeeding are the actions that are the safest and healthiest for infants and their mothers.
- 1.17 As we pointed out previously, the College supports the UNICEF UK Baby Friendly Initiative statement and agrees that no family in crisis should ever be turned away without being provided with support.⁹

³ Ministry of Health. (2018). *Code of Practice for Health Workers*. <https://www.health.govt.nz/our-work/who-code-new-zealand/code-practice-health-workers#articles>

⁴ Baby milk 'crisis' amid surge in families struggling to feed infants. <https://news.sky.com/story/baby-milk-crisis-amid-surge-in-families-struggling-to-feed-infants-12976787>

⁵ Baby Feeding Law Group. (2023). *Legal restrictions on the marketing of commercial milk formulas and the cost-of-living crisis*. <https://www.bflg-uk.org/our-work>

⁶ Cost of every available first infant formula milk exceeds value of Healthy Start allowance. <https://foodfoundation.org.uk/press-release/cost-every-available-first-infant-formula-milk-exceeds-value-healthy-start-allowance>

⁷ UNICEF UK Baby Friendly Initiative. (2023). *Unaffordable infant formula process rises: Safeguarding infant health and safety*. <https://www.unicef.org.uk/babyfriendly/infant-formula-price-rises/>

⁸ The All-Party Parliamentary Group on Infant Feeding and Inequalities. (2018). *Inquiry into the cost of infant formula in the United Kingdom*. November 2018. <http://www.infantfeedingapppg.uk/wp-content/uploads/2018/11/APPGIFI-Inquiry-Report-cost-of-infant-formula.pdf>

⁹ UNICEF UK Baby Friendly Initiative. (2022). *Infosheet on the provision of infant formula for families experiencing food insecurity*. <https://www.unicef.org.uk/babyfriendly/wp-content/uploads/sites/2/2022/10/Infosheet-on-provision-of-infant-formula-for-families-experiencing-food-insecurity.pdf>

- 1.18 The College agrees with the key principles outlined in the guide for local authorities and health boards in the UK by UNICEF UK BFI, First Steps Nutrition Trust, and the National Infant Feeding Network.¹⁰ There is a duty of care for the safeguarding of infants under 12 months affected by family hardship, regardless of how they are fed. Provision of infant feeding support needs to conform to the International Code of Marketing of Breastmilk Substitutes and subsequent World Health Assembly resolutions. This should not involve the commercial milk formula industry.
- 1.19 As previously described, we would like to emphasise that the College does not support donations of CMF being given to food charities/ food banks. We feel strongly that this should be prevented now and in the future. Food banks are not health organisations, and their staff are not trained or qualified to make assessments of infant needs either short or long-term, and some situations could include complex feeding difficulties. The responsibility for infant feeding support rests firmly with the Ministry of Health | Te Whatu Ora, public health and some social services who work with families with infants and young children.
- 1.20 We also agree with UNICEF UK BFI that the responsibility for provision of commercial milk formula during a crisis is not a food bank responsibility, because food banks do not have staff trained in infant feeding, they rely on donations which may not be suitable, products which may be short dated, and they cannot guarantee timely and consistent supplies to meet infant needs.¹¹
- 1.21 The College feel strongly about this and would like to emphasise that the Ministry of Health / Te Whatu Ora need to urgently develop policies and guidance for food banks and NGO staff with clear information about the appropriate referral pathways for support in financial hardship. This includes referral for breastfeeding and infant feeding support. These pathways should not include any contact with industry. These pathways should however include how to access the funds to

¹⁰ First Steps Nutrition Trust/UNICEF UK BFI/ National Infant Feeding Network. (2022). *Supporting families with infants under 12 months experiencing food insecurity. A guide for local authorities and health boards.* <https://www.unicef.org.uk/babyfriendly/wp-content/uploads/sites/2/2023/02/UNICEF-UK-Baby-Friendly-Guide-for-Local-Authorities-and-Health-Boards.pdf>

¹¹ UNICEF UK Baby Friendly Initiative. (2022). *Infosheet on the provision of infant formula for families experiencing food insecurity.* <https://www.unicef.org.uk/babyfriendly/wp-content/uploads/sites/2/2022/10/Infosheet-on-provision-of-infant-formula-for-families-experiencing-food-insecurity.pdf>

purchase the appropriate CMF, and this will require collaboration with the Ministry of Social Development (Work and Income).

2. Definition of a health organisation

2.1 The College has some serious concerns about how the definition of health organisations could be misinterpreted to increase the potential to donate CMF.

2.2 There are some organisations that may provide services to women and their families who do not have staff that understand the International Code or their required commitment to the Ministry of Health Code of Practice for Health Workers. Added to this there may be limited understanding of breastfeeding and infant feeding which could cause breastfeeding to be undermined by both the creation of negative perceptions and inappropriate distribution of CMF.

2.3 The College would be interested to know which authority will be assessing the suitability of organisations that would be provided with donations of CMF under the revised proposed clause 6.6. What are the proposals for control, monitoring, reporting of violations and sanctions?

3. The Health Workers Code NZ

3.1 The Ministry of Health Code of Practice for Health Workers requires health professional bodies and health care workers to carry out their responsibilities under the Code to avoid conflicts of interest and fully protect, promote, and support optimal infant and young child feeding.¹²

3.2 The Ministry of Health Code of Practice for Health Workers (10.1) states that “... *health care facilities may purchase formula at wholesale prices in accordance with the principles of the Baby Friendly Hospital Initiative and the Baby Friendly Community Initiative, through the normal procurement channels, and not through free or subsidised supplies.*”

¹² Ministry of Health. (2018). *Code of Practice for Health Workers*. <https://www.health.govt.nz/our-work/who-code-new-zealand/code-practice-health-workers#articles>

3.3 The Ministry of Health Code of Practice for Health Workers (10.2) states that “... *organisations and institutions should not accept donated supplies of formula from manufacturers or distributors. In the case of a natural disaster or similar situation donated supplies may be given but only if infants are medically required to be fed or are already fed on formula. The supply must be continued as long as the special circumstances continue and must not be used as a sales inducement.*”

Conclusion

Many countries, including Aotearoa New Zealand, have not yet enacted legal measures on the International Code. The WHO International Code, Status Report 2022, recommended that countries should recognise their obligations, both under international human rights law and international agreements, to eliminate inappropriate marketing practices through regulatory action.¹³

The College of Midwives does not support the practice of donated supplies of commercial milk formula being provided in emergency and disaster situations or by donations to food charities. In emergency situations, the Civil Defence Emergency Management Groups (CDEM) have a responsibility to ensure babies are fed safely, and where possible they should support families to buy, safely prepare and use their own supplies of infant formula. The College also agrees with the Ministry of Health guidance which states that Te Whatu Ora in all regions (previously DHBs) recognise that emergency planning and response staff are responsible for addressing infant feeding needs in their emergency response and business continuity plans. Operational guidance that includes infant feeding should not include the CMF industry in any way.

The preference of the College is for the New Zealand Government to meet their full international obligations under the Global Strategy of Infant and Young Child Feeding, the International Code and World Health Assembly Resolutions. It is disappointing that we remain in a place where a repeat authorisation for limited voluntary restriction of some aspects of marketing is necessary, as it is in both health and economic interests to protect breastfeeding in any way possible by limiting the marketing of CMF via law and regulatory measures.

¹³ World Health Organization. (2022). *Marketing of breast-milk substitutes: national implementation of the International Code, status report 2022*. <https://www.who.int/publications/i/item/9789240048799>

Proposals to allow donations of CMF weaken the Infant Nutrition Council's voluntary and self-regulated code even further. While we reluctantly must support the authorisation for continued restriction of marketing practices by the Infant Nutrition Council, we do not consider that a voluntary, industry led code, based partially on the International Code is sufficient to protect breastfeeding in Aotearoa New Zealand.

Thank you for the opportunity to take part in this consultation process. We are grateful for the invitation to participate.

Ngā mihi

New Zealand College of Midwives | Te Kāreti O Nga Kaiwhakawhanau Ki Aotearoa