



**Submission on the Infant Nutrition Council application for authorisation of a
'restrictive trade practice' (INC Code)**

To the: Commerce Commission

This submission is made by Women's Health Action Trust

Prepared by: Isis Mckay

Women's Health Action Trust
PO Box 9947
Newmarket
Auckland 1149

Due: 24th of January 2015

Thank you for providing the opportunity for feedback on the request to the Commerce Commission, from the Infant Nutrition Council (INC), seeking authorisation of a restrictive trade practice.

Introduction

Women's Health Action is a women's health promotion, information and consumer advisory service. We are a non-government organisation that works with health professionals, policy makers and other not for profit organisations to inform government policy and service delivery for women. Women's Health Action is in its 31st year of operation and remains on the forefront of women's health in Aotearoa New Zealand.

We provide evidence-based analysis and advice to health providers, NGOs and DHBs, the Ministry of Health, and other public agencies on women's health (including screening), public health and gender and consumer issues with a focus on reducing inequalities. We have a special focus on breastfeeding promotion and support, women's sexual and reproductive health and rights, and body image.

This submission is informed by our extensive background in maternal and child health promotion and policy analysis and through our knowledge and understanding of the spirit and intent of the International Code of Marketing of Breast-milk Substitutes, and the New Zealand Ministry of Health Food and Nutrition Guidelines for Healthy Infants and Toddlers (Aged 0-2): A Background Paper, (2008). **Please note** that in addition to the views of Women's Health Action, aspects of this submission represents the views of wider networks with whom we are involved including:

- Health Professionals (including midwives and lactation consultants)
- Parents and caregivers
- Tamariki Ora providers (Including Māori and Pacific Providers)
- Public health and not-for-profit sector
- Breastfeeding support services

Overview:

Women's Health Action strongly supports the Ministry of Health's objectives to increase the prevalence and duration of breastfeeding practices in New Zealand¹. The marketing of breast-milk substitutes presents an ongoing barrier to the protection, promotion and support of breastfeeding².

Women's Health Action strongly recommends that the New Zealand government urgently enact the International Code of Marketing of Breast-milk Substitutes and subsequent, relevant, World Health Assembly resolutions into regulation and legislation. This move would enable the New Zealand government to meet their international obligations and align the marketing of infant formula to reflect the original intent of the Global Strategy³.

The interpretation of the International Code used in New Zealand and the marketing of infant formula is not a commercial decision alone. Its consideration needs to relate to the impact on the public, including the economic burden and poorer population health outcomes of not protecting breastfeeding.

The New Zealand Ministry of Health highlight the significant contribution of breastfeeding to optimal nutrition, and protection from a wide range of diseases and infections including positive contributions to the reduction of obesity, the incidence and impact of cancer, cardiovascular disease and diabetes.⁴

Breastfeeding is also economically beneficial in regards to population health protection. A US study by Bartick and Reinhold in 2007 found the yearly economic cost savings associated with increasing exclusive breastfeeding rates to be US\$13 billion. This was considered to be conservative by the researchers⁵.

We believe there is robust evidence to support claims made in the INC application that, in this case, the public benefit of restrictive practices (By way of the INC Code) to the New Zealand public are greater than any detriments of lessening competition through restrictive practice.

However, according to the National Breastfeeding Advisory Committee, New Zealand's implementation of the WHO International Code of Marketing of Breast-Milk Substitutes fails to meet the minimum standards envisaged by the International Code⁶. The Infant Nutrition Council Code of Practice for the Marketing of Infant Formula is voluntary and self-regulatory. It is restricted to infant formulas marketed for infants under 6 months, and excludes restrictions on marketing of other breast-milk substitutes such as 'Follow-on Formula' (Defined as a 'nutritionally adequate breast-milk substitute for Infants under the age of one for whom breast-milk is not available').

The Health Select Committee's 2013 report on the Inquiry into improving child health outcomes and preventing child abuse, recommended that "if the voluntary [INC Code] system [was] not working effectively within the next 18 to 24 months regulation should be implemented"⁷. We believe that this voluntary system is not working effectively. There are currently over 70 companies manufacturing and marketing Infant Formula in Aotearoa New Zealand, including 40+ companies who have chosen not to operate under the voluntary INC Code of practice⁸.

Women's Health Action considers that the greatest public benefit would be gained by regulation of all companies manufacturing and marketing Infant Formula in Aotearoa New Zealand.

Failing any impending regulatory measures being implemented by the government, support for the application for authorisation made by INC is necessary, as it is in New Zealand's health and economic interests to protect breastfeeding in any way possible by limiting the marketing of infant formula.

Comments specific to the INC authorization request:

- 1) The INC state in the executive summary (6) that marketing activities are restricted in relation to infant formula. It is important to note that these restrictions only apply to members of INC. Meaning that current and future competitors (Non-INC members) can continue inappropriate marketing practices to the serious detriment of breastfeeding.
- 2) Current recommendations for exclusive breastfeeding remain at six months not 'around four to six months' as mentioned in the INC application⁹.
- 3) References to the benefits of infants being exclusively and fully breastfed in the first six months of life should not be used in isolation and should always include the full World Health Organisation recommendations of "exclusive breastfeeding for the first six months of life, at six months, other foods should complement breastfeeding for up to two years or more". References to the continuation of breastfeeding after 6 months are absent throughout the INC's paper.
- 4) The definition of an infant as 'six months of age and under' in the INC application does not reflect national and international definitions, which define infants as '12 months and under'¹⁰.

Conclusion:

Due to our concern about the wider health and economic implications of not supporting the limitation of the marketing of infant formula, and in the absence of appropriate and robust regulation and legislation to restrict marketing practices of all marketers and manufactures of all breast-milk substitutes in Aotearoa, Women's Health Action supports the Infant Nutrition Councils application for authorisation. We consider that if the INC code of practice was to be disestablished, by being deemed anti-competitive, there would be an urgent need for government intervention to urgently implement regulatory measures.

We would happily provide further information if requested.

-
- ¹ Ministry of Health. (2007). *Implementing and Monitoring the International Code of Marketing of Breast-milk Substitutes in New Zealand: The Code in New Zealand*. Wellington: Ministry of Health.
- ² Smith, J., Galtry, J., & Salmon, L. (2014). Confronting the formula feeding epidemic in a new era of trade and investment liberalization. *Journal of Australian Political Economy*, 73:132-170.
- ³ World Health Organization. (2003). *Global Strategy for Infant and Young Child Feeding*. World Health Organization: Geneva.
- ⁴ Ministry of Health. (2007). *Implementing and Monitoring the International Code of Marketing of Breast-milk Substitutes in New Zealand: The Code in New Zealand*. Wellington, MOH.
- ⁵ Bartick, M., & Reinhold, A., (2010). The burden of suboptimal breastfeeding in the United States: A pediatric cost analysis. *Pediatrics*, 125(5):e1048-e1056.
- ⁶ National Breastfeeding Advisory Committee of New Zealand. (2009). *National Strategic Plan of Action for Breastfeeding 2008–2012: National Breastfeeding Advisory Committee of New Zealand’s advice to the Director-General of Health*. Wellington. Ministry of Health.
- ⁷ Inquiry into improving child health outcomes and preventing child abuse, with a focus from pre-conception to three years of age Report of the Health Committee Fiftieth Parliament (Dr Paul Hutchison, Chairperson) November 2013 , Presented to the House of Representative
- ⁸ Infant Nutrition Council, ‘Application to Commerce Commission Seeking Authorisation of a Restrictive Trade Practice’. 25 November 2014. Commerce Commission Anti-competitive practices authorisations register: <http://www.comcom.govt.nz/business-competition/anti-competitive-practices/anti-competitive-practices-authorisations-register/detail/851>
- ⁹ Kramer MS, Kakuma R. (2009). Optimal duration of exclusive breastfeeding (Review), The Cochrane Library, Issue 4
- ¹⁰Ministry of Health. 2008. *Food and Nutrition Guidelines for Healthy Infants and Toddlers (Aged 0–2): A background paper (4th Ed)*. Wellington: Ministry of Health.