



New Zealand
College of Midwives

TE KĀRETI O NGA KAIWHAKAWHANAU KI AOTEAROA

25th October 2023

Authorisation of a 'restrictive trade practice' on infant formula (INC code)

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

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Te Kāreti O Nga Kaiwhakawhanau Ki Aotearoa | New Zealand College of Midwives (The College) is the professional organisation for midwifery. Our members are employed and self-employed and collectively represent over 90% of the practising midwives in this country. There are approximately 3,000 midwives who hold an Annual Practising Certificate (APC). These midwives provide maternity care to, on average, 60,000 women and babies each year. Aotearoa New Zealand has a unique and efficient maternity service model which centres care around the needs of the woman and her baby.

Midwives undertake a four-year equivalent undergraduate degree to become registered followed by a first year of practice program that includes full mentoring by senior midwives. The undergraduate curriculum meets all international regulatory and education standards. Midwives are authorised prescribers in relation to their Scope of Practice as determined by the Midwifery Council.

Midwives provide an accessible and primary health care service for women in the community within a continuity of carer model as Lead Maternity Carers. Midwives can also choose to work within secondary and tertiary maternity facilities, providing essential care to women with complex maternity needs.

The College offers information, education, and advice to women and their whānau, midwives, Te Whatu Ora, Te Aka Whai Ora, health and social service agencies, and the Ministry of Health regarding midwifery and maternity issues. Midwives interface with a multitude of other health professionals and agencies to support women to achieve the optimum outcome for their pregnancies, health, and wellbeing.



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The Commerce Commission

Infant Nutrition Council

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Tēnā koutou

Te Kāreti O Nga Kaiwhakawhanau Ki Aotearoa | New Zealand College of Midwives (the College) welcomes the opportunity to provide feedback on the request to the Commerce Commission, from the Infant Nutrition Council (INC), seeking reauthorisation of a restrictive trade practice.

Introduction

The protection, promotion, and support of breastfeeding makes a significant and positive difference to women's and children's health, population health and country economy. Protection of breastfeeding requires a serious commitment to remove the barriers to breastfeeding experienced by many women, and one key aspect of protection involves limiting exposure to marketing about commercial milk formula. In 2016 the Lancet released a series on breastfeeding based on a growing body of evidence which highlighted the significant economic, and health benefits for both rich and poor countries alike, when governments support breastfeeding through meaningful investments and targeted programmes.^{1 2 3} The Lancet Breastfeeding Series 2023

¹ McFadden, A., Mason, F., Baker, J., Begin, F., Dykes, F., Grummer-Strawn, L., Kenny-Muir, N., Whitford, H., Zehner, E., & Renfrew, M. J. (2016). Spotlight on infant formula: coordinated global action needed. *The Lancet Breastfeeding Series*, 387(10033),413-415.

² Rollins, N. C., Bhandari, N., Hajeebhoy, N., Horton, S., Lutter, C. K., Martines, J. C., Piwoz, E. G., Richter, L. M., & Victora, C. G. (2016). Why invest, and what it will take to improve breastfeeding practices? *The Lancet Breastfeeding Series*, 387(10017),491-504.

³ Victora, C. G., Bahl, R., Barros, A. J. D., Franca, G. V. A., Horton, S., Krasevec, J., Murch, S., Sankar, M. J., Walker, N., & Rollins, N. C. (2016). Breastfeeding in the 21st century: epidemiology, mechanisms, and lifelong effect. *The Lancet Breastfeeding Series*, 387(10017),475-490.

highlights the vast economic power of the commercial milk formula (CMF) industry, the continued under-regulation of industry practice and marketing, and the chronic under-resourcing of breastfeeding support services. The 2023 series consists of three papers, an editorial, and a comment. The papers highlight the points that women's decisions about infant feeding are based on the information they receive, the support available for breastfeeding, and the influence of the marketing practices of the CMF industry.^{4 5 6}

The protection of breastfeeding is ultimately a government responsibility. Without a government commitment to support breastfeeding women and to the legislation and regulation of commercial milk formula marketing, the protection of breastfeeding will continue to be suboptimal.

Feedback from the College is below.

Executive summary

- The College considers that the New Zealand Government should meet their full international obligations under the Global Strategy of Infant and Young Child Feeding, the International Code and World Health Assembly Resolutions.
- The INC voluntary code of practice does not fulfil the obligations of the International Code of the Marketing of Breast-milk Substitutes and subsequent World Health Assembly Resolutions. The marketing of commercial milk formula directly undermines breastfeeding protection.
- Commercial milk formula (CMF) is only necessary for the first year of life for non-breastfed infants, and follow-on formula and toddler milks are unnecessary products.
- A 'detriment' to commercial milk formula sales translates into a benefit to infant, young child, and maternal health. Population health and wellbeing should take priority over company profits.
- Breast milk is biodynamic, can change from feed to feed, and over the duration of breastfeeding, and in response to infant needs – for example, during mother-infant exposure to environmental pathogens. It cannot be replicated.
- If the INC self-regulated and voluntary code of practice was to be disestablished, by being deemed anti-competitive, there would be an urgent need for Government intervention to implement regulatory measures.
- The INC voluntary and self-regulated code, whilst containing a diluted set of principles, provides some protection for infants.
- The College supports the authorisation for the INC code restrictive trade practices in the absence of regulatory and legislative protections from CMF marketing.

⁴ The Lancet Breastfeeding Series. (2023). <https://www.thelancet.com/series/Breastfeeding-2023>

⁵ Pérez-Escamilla, R., Tomori, C., Hernandez-Cordero, S., Baker, P., Barros, A. J., Begin, F., Chapman, D. J., Grummer-Strawn, L., McCoy, D., Menon, P., Neves, P. A. R., Piwoz, E., Rollins, N., Victors, C. G., & Richter, L. (2023). Breastfeeding: crucially important but increasingly challenged in a market-driven world. *The Lancet Breastfeeding Series*, 401(10375),472-485.

⁶ The Lancet Breastfeeding Series. (2023). Unveiling the predatory tactics of the formula milk industry. *The Lancet Editorial*, 401(10375),409.

Detailed feedback

- 1.0 A voluntary self-regulated code, even on products up to one year, is insufficient to protect consumers from marketing, regardless of the self-imposed restrictions proposed by INC.
- 2.0 The INC marketing restrictions only apply to members of INC, which enables current non-signatories and future competitors to continue inappropriate marketing practices. This problem will not be addressed within the current process if the only industry restrictions consist of a voluntary code of practice.
- 3.0 The College would prefer to see the International Code of Marketing of Breast-milk Substitutes and subsequent, relevant, World Health Assembly (WHA) infant feeding resolutions enacted into regulation and legislation to protect breastfeeding, and to support unbiased information about the safe and appropriate use of commercial milk formula for parents and carers.
- 4.0 The INC code does not recognise any of the World Health Assembly (WHA) infant feeding resolutions ⁷ that regularly update the International Code, to keep it relevant to marketing practices and contemporary issues for infant feeding. This represents a serious undervaluing of the optimal global and New Zealand recommendations for infant and young child feeding which are not being addressed.
- 5.0 The College supports the draft authorisation of the INC code extension to cover products up to the age of one year in the absence of other marketing protections, and whilst we would prefer that the New Zealand Government met their international obligations and strengthened and aligned the restrictions on marketing of breast-milk substitutes to reflect the original intent of the Global Strategy for Infant and Young Child Feeding, the International Code and WHA resolutions, ^{8 9 10} we recognise the current and proposed INC code gives some minor degree of protection in the absence of any regulatory progress.

⁷ World Health Organisation. (2018). *World Health Assembly resolutions and documents: Maternal, infant, and young child nutrition*. http://www.who.int/nutrition/topics/wha_nutrition_iycn/en/

⁸ World Health Organisation/UNICEF. (2003). *Global Strategy for Infant and Young Child Feeding*. Geneva, WHO.

⁹ World Health Organisation. (1981). *The International Code of Marketing Breast-Milk Substitutes*. Geneva, WHO.

¹⁰ World Health Organisation. (2018). *World Health Assembly resolutions and documents: Maternal, infant, and young child nutrition*. http://www.who.int/nutrition/topics/wha_nutrition_iycn/en/

- 6.0 Commercial milk formula (CMF) is only necessary for the first year of life for non-breastfed infants, and follow-on formula and toddler milks are unnecessary products. The World Health Assembly in 1986 recognized commercial milk formula for older infants as unnecessary.
- 7.0 The Lancet Series, 2023 focusses on the marketing of commercial formula products. Doherty et al., in the journal commentary, identify the “*striking message*” of this series, which is that the consumption of commercial milk formula by infants and young children has been normalised, and more children are consuming formula than ever before.¹¹ The pervasive influences of social media on families, and the control of the infant feeding discourse by industry, when global economic and climate crises disrupt formula supply chains, compromise infant health, will potentially endanger the lives of infants and young children who are not breastfed.
- 8.0 Disruptions that have threatened global stability, and safe infant and young child feeding have included the COVID-19 pandemic, climate disasters in many countries such as flooding, and the war in the Ukraine. The ability to make decisions about breastfeeding and infant feeding, free from commercial influences is significantly important, and elevating breastfeeding up to a public health priority is recommended to improve not only infant and child health but also women’s health. A key part of this is the regulation of marketing of commercial milk formula by governments.
- 9.0 Governments have an obligation to ensure citizens have access to impartial infant and young child feeding information which are free from commercial influences. The absence and/or erosion of legal, and regulatory standards, means that actions to prevent misleading marketing are “underpowered and underused” (Rollins et al., 2023).¹²
- 10.0 Unambiguous public health messaging which makes it clear that there is no significant nutritional difference between brands of first infant formula, and why they must all conform to the same compositional regulations as determined by the Codex Alimentarius is necessary. This message is not a priority for industry as they compete by making claims about added ingredients which can mislead parents/carers into purchasing unnecessary and expensive commercial milk formulas. This has been an

¹¹ Doherty, T., Horwood, C., Pereira-Kotze, C., du Plessis, L., & Witten, C. (2023). Stemming commercial milk formula marketing: now is the time for radical transformation to build resilience for breastfeeding. *The Lancet Breastfeeding Series*, 401(10375),415-418.

¹² Rollins, N., Piwoz, E., Baker, P., Kingston, G., Mabaso, K. M., McCoy, D., Neves, P. A. R., Pérez-Escamillo, 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 Breastfeeding Series*, 401(10375),486-502.

ongoing issue in the UK, where breastfeeding rates are low, and breastfeeding women are not supported by government policy. This has recently contributed to a crisis in terms of affordability of CMF.^{13 14 15 16 17}

11.0 The College notes that the Commerce Commission refers to higher prices leading to fewer purchases, resulting in reduced economic activity, and consumers making purchases “that do not provide them with the best possible outcome.”¹⁸ We would like to draw the attention of the Commerce Commission to the issue of misleading claims about unnecessary added ingredients to CMF which we outline briefly in point 10.0.

12.0 A recent study in the UK found that on-pack messaging, was understood by mothers as indicating certain products were superior, or ‘more similar’ to breast milk than others, and the branding was the key to determining choice because of brand trust which had developed over years of exposure to advertising.¹⁹

13.0 It is misleading to suggest that the ‘technical innovation’ of commercial milk formula will result in a product that is ‘structurally identical’ to breast milk. This will never be achieved as breast milk is biodynamic, can change from feed to feed, and over the duration of breastfeeding, and in response to infant needs – for example, during mother-infant exposure to environmental pathogens. Adding a limited number of oligosaccharides to CMF is not identical to the 130 oligosaccharides in breast milk, nor can it replace the significance of the close contact between mother and infant during breastfeeding. This is one of the reasons why there, “remains a gap between the health outcomes of infants who are breastfed and those who are formula fed” (INC, 41, p. 9).²⁰

¹³ 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>

¹⁴ 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>

¹⁵ 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>

¹⁶ 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/>

¹⁷ 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.infantfeedingappg.uk/wp-content/uploads/2018/11/APPGIFI-Inquiry-Report-cost-of-infant-formula.pdf>

¹⁸ Commerce Commission. (2023). *Draft Determination, Infant Nutrition Council Limited*, October. pp.12-13.

¹⁹ Conway, R., Ritchie, I., Esser, S., Steptoe, A., Smith, A. D., & Llewellyn, C. (2023). Perceived influence of commercial milk formula labelling on mothers’ feeding choices in Great Britain: a qualitative study. *Archives of Disease in Childhood*, doi: 10.1136/archdischild-2023-325767

²⁰ Infant Nutrition Council. (2023) *Application for authorisation of restrictive trade practices*. 10 August. 376 Manchester Street / PO Box 21106 Edgeware Christchurch / Telephone (03) 377 2732 / Facsimile (03) 377 5662 / Email nzcom@nzcom.org.nz

14.0 The Commerce Commission previously estimated the costs to New Zealand of a theoretical reduction in breastfeeding rates linked to unrestricted marketing of breast-milk substitutes for infants six months and younger. The College notes that the Commerce Commission considers this quantitative estimate as an underestimation of the health savings that will ensue from restricting marketing and investing in breastfeeding. The College agrees with this point. The Australian National University Mothers' Milk Tool estimates the volume, and value of breastmilk produced each year, and the loss due to suboptimal breastfeeding practices in each country and globally. The Mothers' Milk Tool "*shows what is at risk economically if women's important capacity for breastfeeding is not protected, promoted, and supported by effective national policies, programs, and investments.*"²¹

15.0 The College notes a reference by the Commerce Commission of what is described as the costs of negative health impacts for mothers such as mastitis and abscesses.²² It is worth noting there are conservative, non-invasive, non-pharmaceutical methods that can be used to reduce the incidence of mastitis, which will then also reduce the incidence of abscesses. A systematic review suggests that the burden of mastitis might be preventable (Wilson et al., 2020).²³ Breastfeeding support and access to timely professional assessment and evidence-based conservative treatment provides a solution to these breastfeeding challenges.

16.0 In 2024, at the Seventy-seventh World Health Assembly in Geneva, guidance for Member States about digital marketing was requested of the WHO Director General due to new technology creating marketing tools that are powerfully persuasive, extremely cost effective and often not easily recognizable as CMF promotion. These developments in digital marketing require governmental regulatory and legal controls. A voluntary, industry code cannot control this and cannot provide a disincentive to curb this marketing. There has been a recent consultation on regulatory measures aimed at restricting digital marketing of breast-milk substitutes (CMF).²⁴ The purpose of this

²¹ Smith, J. P., Iellamo, A., Nguyen, T. T., & Mathisen, R. (2023). The volume and monetary value of human milk produced by the world's breastfeeding mothers: Results from a new tool. *Frontiers in Public Health*, 11, <https://doi.org/10.3389/fpubh.2023.1152659>

²² Infant Nutrition Council. (2023) Application for authorisation of restrictive trade practices. 10 August, p.18.

²³ Wilson, E., Woodd, S. L., & Benova, L. (2020). Incidence of and risk factors for lactational mastitis: A systematic review. *Journal of Human Lactation*, 36(4), 673-686.

²⁴ World Health Organization. (2023). *Online public consultation: draft guidance on regulatory measures aimed at restricting digital marketing of breast-milk substitutes*. <https://www.who.int/news-room/articles-detail/who-open-online-public-consultation-draft-guidance-on-regulatory-measures-aimed-at-restricting-digital-marketing-of-breast-milk-substitutes>

consultation was to gather feedback on regulatory measures aimed at restricting the digital marketing of breast-milk substitutes.

17.0 The rise in digital marketing of CMF is of concern. Data on the extent of online social marketing that violates the International Code and resolutions is essential and this work needs to be undertaken by government. It is unlikely that voluntary adherence to an industry code of practice will be sufficient to control these violations.

Conclusion

The College is grateful to have the opportunity to make a submission on this authorisation request by INC, as the implications of the marketing of breast-milk substitutes is of critical positive importance to infant and young child health and well-being, the health and wellbeing of women, health economics, the environment, and society in general. We consider that the public benefits of granting authorisation outweigh any potential lessening of competition.

While all mothers and parents need support with their infant feeding decisions regardless of the reasons why they make them, the protection, promotion and support of breastfeeding, and the need for the International Code of Marketing of Breastmilk Substitutes and WHA resolutions need to remain uppermost and visible as health priorities.

While we support the request for authorisation of the 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, without reference to the World Health Assembly resolutions is effective. Essentially, as described by Rollins et al. (2023)²⁵ the control of CMF marketing is underpowered, and the protection of breastfeeding continues to be undervalued and unrealised.

If further information is required related to this submission, please do not hesitate to contact the College.

Ngā mihi

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²⁵ Rollins, N., Piwoz, E., Baker, P., Kingston, G., Mabaso, K. M., McCoy, D., Neves, P. A. R., Pérez-Escamillo, 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 Breastfeeding Series*, 401(10375),486-502.