

Infant Nutrition Council Restrictive Trade Practice

Submission to the Commerce Commission

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Contact

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About the New Zealand Nurses Organisation

NZNO is the leading professional nursing association and union for nurses in Aotearoa New Zealand. NZNO represents over 46,000 nurses, midwives, students, kaimahi hauora and health workers on professional and employment related matters. NZNO is affiliated to the International Council of Nurses and the New Zealand Council of Trade Unions.

NZNO promotes and advocates for professional excellence in nursing by providing leadership, research and education to inspire and progress the profession of nursing. NZNO represents members on employment and industrial matters and negotiates collective employment agreements.

NZNO embraces te Tiriti o Waitangi and contributes to the improvement of the health status and outcomes of all peoples of Aotearoa New Zealand through influencing health, employment and social policy development enabling quality nursing care provision. NZNO's vision is *Freed to care, Proud to nurse.*

EXECUTIVE SUMMARY

1. The New Zealand Nurses Organisation (NZNO) welcomes the opportunity to comment on Infant Nutrition Council's (INC) application to restrict the marketing of infant formulas to children under six months of age.
2. NZNO has consulted its members and staff in the preparation of this submission, in particular members of NZNO's College of Child and Youth Nurses, the Neonatal Nurses College Aotearoa (NNCA), the Women's Health Section, and Te Runanga o Aotearoa, and NZNO's professional nursing, policy, and research advisers.
3. NZNO notes and supports the submissions of the NNCA and the New Zealand College of Midwives.
4. NZNO believes that the most effective solution to the health risks posed by breast milk substitutes is to legislate the WHO International Code of Marketing Breast-milk Substitutes¹ (the Code), as the voluntary nature of the Code makes it difficult to enforce, and attract adequate resourcing.

¹ http://www.who.int/nutrition/publications/code_english.pdf

5. While there has been progress in improving the level of breastfeeding in Aotearoa New Zealand, we are a long way from meeting the WHO's minimum recommendations of exclusive breastfeeding for six months and the continuation of breastfeeding for a minimum of two years.
6. In the current circumstances, however, restricting the marketing of breast milk substitutes for infants under six months would provide at least some protection from inappropriate marketing for the most vulnerable consumers.
7. We also note that that restrictive competition amongst formula companies has fostered a focus on sharing of scientific nutritional information between neonatal health professionals and formula companies to promote growth and development in neonates.
8. Thus NZNO **supports** the application, with the caveat that clarification is sought about restrictions on the provision of free samples as the samples policy and request reform referred to in paragraph 43 were not available, as stated, in appendix 6.
9. We also recommend specific changes to the document to reflect the fact that breastfeeding is the biological norm for humans. I.e. Breastfeeding is the standard for infant nutrition against which breast milk substitutes need to be compared, not the other way around. It is not accurate a 'decrease' in disease to be identified as an 'advantage' of breastfeeding, for example, when, in fact, 'increased disease' is a 'disadvantage' of breast milk substitutes².
10. We draw your attention to NZNO's position statement on Breastfeeding (2011)³ and note that NZNO has policy guidelines to ensure NZNO members and staff make consistent and socially responsible decisions on income generation through sponsorship and advertising. discussion

The Code

11. As discussed in other submissions⁴ by NZNO on infant formula/ breast milk substitutes, NZNO strongly supports regulation to ensure that the

² <http://www.plunket.org.nz/assets/News--research/Plunket-Breastfeeding-Data-Analysis-of-2004-2009.pdf>

³ <http://www.nzno.org.nz/Portals/0/publications/Breastfeeding.pdf>

⁴ See for instance, our submissions to Food Standards Australia & New Zealand On Minimum Age Labelling of Food for Infants(2013) and Amendments to Regulation of Infant Formula Products in the Australia New Zealand Food Standards Code (2013)

nutrition needs of the most vulnerable humans are prioritised above commercial gain.

12. The large-scale uptake of breast milk substitutes over the last century⁵, characterised by leading researcher Maureen Minchin as a “global *in vivo* experiment”⁶, has significant public health consequences.
13. Nurses and midwives are well aware of the adverse health impact of non-breastfeeding and/or early introduction of formula evidenced by the increased rates of hospitalisation, allergies, respiratory and ear conditions, hearing loss, and speech problems of non-breastfed infants⁷.
14. There are also long term implications for maternal health, population health outcomes⁸ and health costs; health spending has been increasing faster than our national income for most of the last fifty years⁹ so it would seem prudent to consider the economic costs, as well as benefits, of producing and marketing breast milk substitutes
15. Many of the chronic diseases associated with 'lifestyle' such as diabetes, obesity, asthma, allergies, etc. have long been inversely linked with breastfeeding, while recent research has focused on the protective effect of breastfeeding on DNA, and against cancers, particularly lymphomas¹⁰. I.e. the large-scale uptake of breast milk substitutes over the last century¹¹, health spending has been

⁵ "Only 47 percent of babies were breastfed by the end of the 1960's as opposed to the 87% breastfed in the 1920's." McBride-Henry, K. & Clendon, J. (2010) *New Zealand College of Midwives Journal* 43, 5-9. , Breastfeeding in New Zealand: from colonisation until the year 1980: an historical review. "

⁶ Minchin, Maureen et al. 1998 (4th rev ed). Breastfeeding matters: what we need to know about infant feeding. Alma Publications.

⁷ E.g. <http://www.unicef.org.uk/BabyFriendly/News-and-Research/Research/Breastfeeding-research---An-overview/>

⁸ E.g. Horta B.L. et al (2007) Evidence on the long-term effects of breastfeeding. WHO; Ip S et al (2007) Breastfeeding and Maternal Health Outcomes in Developed Countries. AHRQ Publication No. 07-E007. Rockville, MD: Agency for Healthcare Research and Quality

⁹ <http://www.treasury.govt.nz/government/longterm/externalpanel/pdfs/ltfep-s4-01.pdf>

¹⁰ <http://www.acsu.buffalo.edu/~andersh/research/milkcancer.asp>

¹¹ "Only 47 percent of babies were breastfed by the end of the 1960's as opposed to the 87% breastfed in the 1920's." McBride-Henry, K. & Clendon, J. (2010) *New Zealand College of Midwives Journal* 43, 5-9. , Breastfeeding in New Zealand: from colonisation until the year 1980: an historical review. "

increasing faster than our national income for most of the last fifty years¹².

16. Breast milk substitutes, however, also make a significant, even lifesaving, contribution to meeting the nutritional needs of infants, when breast milk is unavailable or where it is medically indicated, and there is little doubt that substitute feeding is a factor in changing social and employment patterns.
17. The Code was introduced to mitigate the obvious risks to infant health in a commercial environment where information asymmetries are likely to skew optimal health choices.
18. Aotearoa New Zealand signed up to the Code in 1983, but its failure to legislate to ensure a comprehensive and unambiguous approach to 'renormalising' breastfeeding as the standard for infant nutrition, has led to inconsistent education, adoption and enforcement.
19. While there has been progress on increasing the rates of breastfeeding, and we note, in particular, the Baby Friendly Hospital Initiative (BFHI) to which 96 percent of New Zealand hospitals are accredited, the voluntary nature of the Code gives rise to anomalies which significantly reduce its effectiveness.
20. For example, a picture of a new born infant being bottle fed accompanied a television news item on the Ministry of Health's recommendation that pregnant women be immunised as there was an outbreak of whooping cough. Showing the picture was a breach of code, but the context made it even more damaging since it implied that maternal/family immunisation would be enough to protect the child, whereas extra protection is offered though the antibodies delivered through breast milk.
21. Repeated efforts by NZNO, including bringing it to the attention of the network, the Broadcasting Standards Authority, the Ministry of Health and the Committee supporting the Code failed to achieve any result other than the rueful conclusion that the Code could not be enforced because Television New Zealand hadn't signed up to it!
22. Though the formula industry was not in any way responsible for this incident, quite clearly the voluntary code is not achieving its purpose if authorities are unable to enforce it, even in critical situations where public health is at stake.

¹² <http://www.treasury.govt.nz/government/longterm/externalpanel/pdfs/ltfep-s4-01.pdf>

23. NZNO strongly recommends that the Code is legislated in Aotearoa New Zealand.

Benefits of restrictive competition

24. As indicated in the NNCA submission, restrictive competition amongst formula companies has fostered a focus on sharing of scientific nutritional information between neonatal health professionals and formula companies to promote growth and development in neonates.
25. As in other areas of health, nursing input into new technologies and techniques is a critical part of safe innovation and as the clinicians providing the key patient interface between science, medicine and patient care, it is vital that they have access to the latest education and training, which is often industry provided.
26. The ethical challenges posed by corporate contributions are managed both by professional codes of conduct and ethical behaviour, and regulation of the Health Practitioners Competence Assurance Act 2003. Additional guidance is provided by professional associations, such as the policy developed by NZNO to ensure its members and staff make consistent and socially responsible decisions on income generation through sponsorship and advertising.
27. The almost universal BFHI accreditation of hospitals indicates strong, multidisciplinary clinical leadership, assuring best practice informed by evidence; this gives confidence in the consistency and rigor of clinical information, education and practice around infant feeding.
28. The co-operation between industry and health would be at risk if the INC's application for authorisation of restrictive trade practice was not approved, and could limit nurses' access to education and industry's access to frontline staff who are able to provide robust and informed feedback on innovation.
29. NZNO would be concerned, however, if, under the guise of "marketing restrictions in the best interests of the community", other forms of advertising, for example, mothers being able to request samples from a website, were facilitated.
30. We recommend that free samples should be restricted to regulated health professionals for evaluation or research, or for teaching mothers who have made an informed decision to feed their infant with a breast milk substitutes.
31. We also recommend that the Commission and the INC recognise and consider e-marketing as relevant to the retail and hospital distribution markets described in clause 75 and specifically prohibit samples being given by internet request.

Comments on the application

Clause 38: "...benefits and superiority of breastfeeding..."

32. Breastfeeding is the biological norm for humans, and, as such, is "normal" conferring normal growth and development. A more accurate way to write paragraph 38 would be to refer to the "...disadvantages and inferiority of formula feeding..."

Clause 60.

33. "Good maternal nutrition is preferred for breastfeeding." This statement should be removed from the Ministry of Health's website. The evidence shows that adequate nutrition is all that is necessary to produce breast milk and that even poor maternal nutrition will result in breast milk superior to formula, except, in extreme circumstances. Midwives and nurse report women who have chosen to feed their infant a substitute because they fear that their standard New Zealand diet is inadequate for breastfeeding.

Relevant reports, surveys, published papers

34. We note that breastfeeding has implications for population health not just the health of infants.

Clause 76.

35. The industry seeks to replicate the nutrients found in breast milk. Breast milk contains living cells, and therefore, a powdered infant formula cannot replicate it.

Clause 118.

36. Again, although taken from the Ministry of Health website, this information makes formula feeding the standard against which breastfeeding is compared when it refers to the "advantages of breastfeeding" and the "decrease" in various disease rates for breastfed infants and breastfeeding woman. It is more accurate to compare the effects of formula feeding to that of breastfeeding and report the "increase" in various diseases for infants and women when infants are formula fed.

Part 8

We note that, although not listed, NZNO is very much an 'interested party' in all matters relating to infant nutrition.

CONCLUSION

Comments

37. In conclusion NZNO strongly supports authorisation of a restrictive trade practice for marketing of breast milk substitutes for infants under six months and recommends that:
- the Code is legislated in Aotearoa New Zealand;
 - all information about infant feeding, including that on the Ministry of Health's website be amended to reflect the fact that breastfeeding is the biological norm for humans;
 - that free samples are restricted to regulated health professionals for evaluation or research, or for teaching mothers who have made an informed decision to feed their infant with a breast milk substitutes; and
 - that the Commission and the INC recognise and consider e-marketing as relevant to the retail and hospital distribution markets described in clause 75 and specifically prohibit samples being given by internet request.

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REFERENCES