PUBLIC VERSION

COMMERCE ACT 1986: APPLICATION FOR AUTHORISATION OF RESTRICTIVE TRADE PRACTICES

10 August 2023

The Registrar
Competition Branch
Commerce Commission
PO Box 2351
WELLINGTON
registrar@comcom.govt.nz

Pursuant to section 58 of the Commerce Act 1986, notice is hereby given seeking authorisation of a restrictive trade practice.

CONTENTS

INTRODUCTION AND EXECUTIVE SUMMARY

1. This is an application under section 58(1) and (2) of the Commerce Act 1986 for authorisation to enter into, and give effect to, provisions in an arrangement to which section 27 may apply.[1]

2. The applicant is Infant Nutrition Council Limited (**INC**) on behalf of its members (current and future), who will be entering into and giving effect to the arrangement. The arrangement involves agreeing to continue to adhere to, and giving effect to, an arrangement under which members restrict their advertising and marketing activities for infant formula products for infants up to 12 months old. The restrictions are embodied the INC Code of Practice for the Marketing of Infant Formula in New Zealand (**INC Code**). A copy of the INC Code is attached as **Appendix 1**. Some minor changes are proposed to the version of the INC Code that was included in INC's previous application for authorisation to the Commerce Commission.[2] The proposed changes are marked up in **Appendix 1**.

3. The INC Code is an important part of New Zealand fulfilling its obligations under the World Health Assembly's International Code of Marketing of Breast Milk Substitutes (**WHO Code**). The WHO Code aims to protect and promote breastfeeding, and to restrict the marketing of breast milk substitutes in ways that could undermine this aim.

4. The INC Code restricts members of INC from engaging in the following marketing activities in relation to infant formula for babies up to 12 months old (collectively, **the restrictions**):

   (a) advertising infant formula to the general public;

   (b) distributing free samples to pregnant women, parents of infants, or the families and caregivers of infants;

   (c) distributing free samples to healthcare professionals as a sales inducement;

   (d) marketing personnel seeking direct or indirect contact with pregnant women or with parents of infants and young children;

   (e) distributing bulk quantities of free infant formula product to the health system, as a sales inducement;

   (f) distributing gifts of utensils or other articles that may discourage breastfeeding, whether to pregnant women, parents of infants, or caregivers of infants; and

   (g) offering inducements to healthcare professionals.

5. The members of INC were authorised by the Commission's 2015 determination (**2015 Determination**) to enter into, and give effect to, the INC Code. The INC Code authorised by the Commission in 2015 defined "infant formula" as formula that is suitable for infants up to 4 to 6

[1] Consistent with INC's application for authorisation in 2014 and 2018, INC submits that the restrictions in the INC Code do not constitute cartel conduct. However, if the Commission considers that the INC Code might contain a cartel provision, authorisation is also sought under section 58(6B) and (6D).

[2] The proposed changes are mostly minor and have not been made to any of the clauses that comprise the restrictions described in paragraph 4. The more substantive proposed changes include deleting clause 5.6 (which required the members of INC to publish infant formula information on electronic media in accordance with the intent of the Code) and amending clause 6.6 to enable donations of infant formula in emergencies to health organisations and food charities. Clause 5.6 is proposed to be deleted because the conduct covered by clause 5.6 is already restricted under other provisions of the Code (in particular, other provisions restrict advertising of infant formula products, including on electronic and social media), and the effect of the clause was unclear (ie, whether the requirement to act in accordance with the intent of the Code imposed an actual restriction on the members of INC).

months old. In its 2018 determination (**2018 Determination**), the Commission revoked and replaced that authorisation with an authorisation of an amended INC Code, which extended the agreement to restrict advertising and marketing activities for infant formula products for infants up to 12 months old. The current authorisation expires on 8 November 2023.

6. In its 2015 and 2018 Determinations, the Commission considered that the restrictions in the INC Code were likely to lessen competition, but that the competitive detriments were outweighed by the likely public benefits.

7. Members of INC are currently restricted by the INC Code from engaging in marketing activities for infant formula, and this would continue if authorisation is granted for the arrangement. If authorisation is not granted, unless and until an alternative regulatory regime is implemented, the ability for INC members to engage in marketing activities for infant formula would not be restricted, subject to food standards regulation and the Fair Trading Act 1986.

8. INC accepts that marketing is a key part of the competitive process. Restricting marketing activities lessens competition by depriving manufacturers and marketers of a key method of competing in the market. This could be detrimental to both manufacturers and marketers (who may make fewer sales), and purchasers (who may not have sufficient information to make optimal decisions).

9. However, continuing to restrict the marketing of infant formula supports the public health goal of protecting and promoting breastfeeding, by restricting the marketing of breast milk substitutes in ways that could undermine this aim, with the objective of improving breastfeeding rates. Breastfeeding is widely recognised as a way to improve the health and nutrition of infants, young children, and their mothers. The Ministry of Health states that implementing the WHO Code is an important part of creating an overall environment that enables mothers to make the best possible feeding choice, based on impartial information free of commercial influence, and to be fully supported in doing so.[3] The Ministry of Health recommends that babies are breastfed until they are at least one year old.[4]

10. If INC members continue to be able to agree to adhere to the restrictions in the INC Code, there will be public health benefits that result from improved health outcomes for both infants and their mothers, as well as avoided regulatory costs.

11. In light of the above, INC submits that the public benefits to be gained from the INC Code outweigh the detriment arising from the lessening of competition, and the Commerce Commission should grant the requested authorisation.

[3] WHO international code questions and answers | Ministry of Health NZ.
[4] http://www.health.govt.nz/your-health/healthy-living/babies-and-toddlers/breastfeeding?icn=yh-breastfeeding&ici=readmore.

PART 1: DETAILS OF APPLICANT AND OTHER PARTIES

The applicant

12. This notice is given by INC on behalf of its members.

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New Zealand postal address:	PO Box 25-420 Wellington 6146 New Zealand
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13. The contact person at INC is:

Jan Carey, CEO

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14. Correspondence and enquires should in the first instance be addressed to:

Buddle Findlay
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Attention:	Susie Kilty / Anna Parker / Emily Tyler
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15. INC is a company limited by guarantee, incorporated in Australia. It is owned by manufacturers and marketers of infant formula and toddler milk products in Australia and New Zealand, who comprise its members.

16. In New Zealand, INC's members are bound by the INC Code. In Australia, the members of INC are bound by the Marketing in Australia of Infant Formula Agreement (**MAIF Agreement**).

17. INC itself is not a manufacturer or marketer of infant formula products, and it is not a party to the INC Code.

18. INC currently has ten directors. Each ordinary INC member has one representative on the board. Associate members may elect up to two members to the board between them. The current directors are:

    (a) Maria Venetoulis (Danone Nutricia) – Chair;

(b) Dandan Chen (the a2 Milk Company);

(c) Suzan Horst (Synlait);

(d) Jithesh Janardhanan (Bellamy's Organic);

(e) Victoria Landells (Fonterra);

(f) Elizabeth Lloyd (Nestlé);

(g) Richard Paine (Bubs Australia);

(h) Matt Scarboro – (Nuchev) – Associate Member Representative;

(i) Evan Scicluna – (H&H Group) – Associate Member Representative; and

(j) David Spurway (Sanulac Nutritionals Australia).

Other parties

19. The other relevant parties to the arrangement are the members of INC that market infant formula in New Zealand.

20. INC's manufacturer and marketer owners are the ordinary members and associate members listed in **Appendix 2**. Contact details for each New Zealand member are also provided in **Appendix 2**. They include global manufacturers Danone, Nestlé, Sanulac Nutritionals, and Heinz Watties, as well as a large number of smaller suppliers of infant formula products in New Zealand.

21. Membership of INC is voluntary. Ordinary membership is open to manufacturers and marketers of infant formula in Australia and New Zealand. Associate membership is open to manufacturers, marketers of infant formula, and other interested parties that are neither manufacturers nor marketers. There are industry participants who are not INC members, but their combined market share is negligible.

22. INC can provide shareholding information for members of INC on request.

PART 2: THE INDUSTRY

Manufacture and supply of infant formula products

About infant formula products

23. As mentioned, members of INC manufacture and/or market infant formula products. As outlined in the Commerce Commission's 2018 Determination, nutritional milk formulas for infants and toddlers are typically available in three stages:

    (a) stage 1: starter infant formula is a substitute for human breastmilk for the feeding of infants aged zero to six months, and is intended to be the principal source of nourishment;

    (b) stage 2: follow-on formula (also referred to as follow-up formula) is a substitute for human breastmilk for the feeding of infants aged six to 12 months, and is intended to be the principal source of nourishment;

    (c) stage 3: toddler milk, which is formulated supplementary food for young children over 12 months old and is not intended to be a breastmilk substitute. As the Commission notes in its 2018 Determination, the composition of toddler milk differs significantly enough from starter infant formula and follow-on formula that they are not substitutable.[5]

24. The Codex Alimentarius (a collection of internationally recognised standards developed and maintained by the Codex Alimentarius Commission, and recognised by the World Health Organisation) defines:

    (a) infant formula as:

    "*a breast-milk substitute specially manufactured to satisfy, by itself, the nutritional requirements of infants during the first months of life up to the introduction of appropriate complementary feeding.*"

    (b) follow-up formula as:

    "*a food intended for use as a liquid part of the weaning diet for the infant from the 6th month on and for young children.*"

25. The Australia New Zealand Food Standards Code defines:

    (a) "infant formula product" as:

    "a product based on milk or other edible food constituents of animal or plant origin which is nutritionally adequate to serve by itself either as the sole or principal liquid source of nourishment for infants, depending on the age of the infant";

    (b) infant formula as:

    "an infant formula product that:

    (a) is represented as a breast-milk substitute for infants; and

    (b) satisfies by itself the nutritional requirements of infants under the age of 4 to 6 months";

    (c) follow-on formula as:

[5] 2018 Determination, paragraph 43.

"*an infant formula product that:*

(a) is represented as either a breast-milk substitute or replacement for infant formula; and

(b) is suitable to constitute the principal liquid source of nourishment in a progressively diversified diet for infants from the age of 6 months."

26. Only products that meet the mandatory compositional and labelling requirements of the Australia New Zealand Food Standards Code are permitted to be represented as infant formula and follow-on formula in New Zealand.[6]

27. The INC Code defines infant formula as:

"*Any food described or sold as an alternative for human milk for the feeding of infants up to the age of twelve months and formulated in accordance with all relevant clauses of the Australia New Zealand Food Standards Code, including Infant Formula Products Standard 2.9.1*".

28. This definition includes both starter infant formula and follow-on formula, so that the marketing restrictions in the INC Code apply to infant formula for infants up to the age of 12 months old. The reasons for this are well-canvassed in INC's application for authorisation dated 21 March 2018. For the purposes of this application, references to "**infant formula**" include both starter infant formula and follow-on formula, unless otherwise indicated.

The manufacturing process

29. Infant formula supplied in New Zealand may be manufactured in New Zealand or imported from other countries.

30. All infant formula products available in New Zealand are made to stringent quality and compositional standards to meet the regulatory requirements for food supply in Australia and New Zealand, which are set by Food Standards Australia New Zealand. The final products must meet very strict specifications.

31. The manufacturing process involves heat treatment, which manages the microbiological quality of the product. Quality control procedures are very strict. Stringent hygiene standards are in force throughout the manufacturing process with a view to ensuring that the risk of potential contamination is kept to an absolute minimum.

Distribution channels

32. Infant formula products are distributed in New Zealand to end users through retailers and hospitals.

33. The sale of infant formula products to consumers in New Zealand occurs through a number of retail channels. Most sales are made through the two large supermarket chains, Woolworths New Zealand Limited and the Foodstuffs group (Foodstuffs North Island Limited and Foodstuffs South Island Limited).[7]

34. Infant formula products are also supplied by pharmacies. While the proportion of sales made through pharmacies is significantly smaller than those made through the supermarket chains, the

[6] *Australia New Zealand Food Standards Code- Standard 2.9.1 – Infant formula products*.
[7] See **Confidential Appendix 3**, which includes information on the approximate share of grocery retailers and non-grocery retailers. It also contains data on the approximate market size for milk formula.

proportion of sales has increased in recent years due to a growing presence of large "bargain" pharmacies, such as Chemist Warehouse and Bargain Chemist.

35. About half of INC members who manufacture infant formula sell directly to consumers online, including two of the major suppliers of infant formula, Danone and Heinz Watties.[8]

36. Some sales are made through alternative retail channels, such as online retailers and mass channels such as The Warehouse.

37. Although the scope of the INC Code does not include retailers, retailers are encouraged to be aware of INC members' obligations under the INC Code, and INC has published a document entitled "Information for Retailers". That document sets out the key features of the INC Code that are relevant for retailers, and is attached as **Appendix 4**.

38. In addition to the channels mentioned above, infant formula products are also supplied to hospitals. The products supplied are pre-mixed liquid starter infant formula (mainly for pre-term babies), as well as starter infant formula and follow-on formula in powdered form. Hospitals tend to regularly rotate suppliers to ensure that one brand is not favoured over another.

39. In its 2015 and 2018 Determinations, the Commission considered that the restrictions in the INC Code on marketing infant formula were unlikely to raise significant competition issues for hospital distribution, and did not consider it in any detail. It is appropriate for the Commission to take a similar approach to analysing the current application for the same reason.

Current industry trends and developments

40. The infant formula products industry has a significant history of technical innovation through research and development. A primary focus of research and development is on producing infant formula products that contain ingredients found in breastmilk and more closely match the outcomes of breastfed infants. There is also a focus on producing infant formula products for specific medical requirements, and for dietary restrictions.

41. Technical innovation typically occurs over a long timeframe because of the rigorous testing required to ensure the safety and benefits of infant formula products. There have been developments in the ingredients used in infant formula products since INC's application in 2018, specifically the introduction of oligosaccharides that are structurally identical to the human milk oligosaccharides found in breast milk. While the composition of infant formula has improved as a result of these developments, there remains a gap between the health outcomes of infants who are breastfed and those who are formula-fed as outlined in further detail in Part 7 of this application.

42. Members of INC recognise the importance of the promotion of breastfeeding as providing the best possible nutrition for infants and young children. This is reflected in the requirement set out in the INC Code of Conduct for each member of INC to display a statement on their websites that includes information about infant formula to the following effect:

> "*Breast milk is the normal way to feed a baby and is important for baby's health. Professional advice should be followed before using an infant formula. Introducing partial bottle feeding could negatively affect breastfeeding. Good maternal nutrition is preferred for breastfeeding and*

[8] There has been an increase in the number of infant formula manufacturers who sell infant formula products directly to consumers online since the 2018 Determination, but the majority of sales continue to be through the grocery channel. See **Confidential Appendix 3** for further detail.

reversing a decision not to breastfeed may be difficult. Infant formula should be used as directed. Proper use of an infant formula is important to the health of the infant. Social and financial implications should be considered when selecting a method of feeding."

43. Recognition of the importance of the promotion of breastfeeding as providing the best possible nutrition for infants up to 12 months old is further reflected by INC's application in 2018 to extend the INC Code to apply to follow-on formula.

Background and operation of the INC Code

Establishment and overview

44. INC's constitution requires its members to comply with a Code of Conduct published by INC pursuant to its constitution. The Code of Conduct requires INC's members to comply with the INC Code.[9] INC's constitution and Code of Conduct are attached as **Appendices 5** and **6** respectively.

45. The directors of INC have the power to terminate or suspend a member's membership if the member refuses or neglects to comply with the constitution which, indirectly, means that a failure to comply with the INC Code may lead to expulsion from INC.

46. The INC Code has a complaints process that is administered by the Ministry of Health / Te Whatu Ora. This process facilitates New Zealand's implementation and monitoring of its obligations under the WHO Code. The complaints process has three parts: initial written complaint, reference to the Compliance Panel, and appeal to the Adjudicator. The Compliance Panel and Adjudicator have no power to sanction market participants that are in breach. However, they do make findings that can have significant reputational impact. Further information about the complaints process (including a complaints procedure flowchart) and the Compliance Panel can be found on the Ministry of Health's website (here and here).

The WHO Code

47. The INC Code is an important part of New Zealand's fulfilment of its obligations under the WHO Code.

48. The WHO Code was adopted by the 34th session of the World Health Assembly in 1981 as a minimum requirement to protect and promote appropriate infant and young child feeding. In particular, it protects and promotes breastfeeding, and aims to restrict the marketing of breast milk substitutes in ways that could undermine breastfeeding.

49. New Zealand is a signatory of the WHO Code, which commits New Zealand to progressing the aims of the WHO Code. The World Health Organisation urged all member states to take action to give effect to the WHO Code's principles and aims (including subsequent relevant World Health Assembly resolutions), where appropriate to their social and legislative framework.

50. The WHO Code was adopted on a voluntary basis by New Zealand in 1983. The then government directed that the WHO Code was to be implemented and monitored through consensus and discussion, not through legislation. Consistent with that direction, the Ministry of Health / Te Whatu Ora is committed to giving effect to the WHO Code in New Zealand. The Ministry of Health

[9] INC members who do not manufacture or market products covered by the INC Code (such as toddler milk) are not restricted by the INC Code.

document *Implementing and monitoring the International Code of Marketing of Breast-milk Substitutes in New Zealand: The Code in New Zealand* is attached as **Appendix 7**.

51. The WHO Code is given effect in New Zealand under four New Zealand codes. They are:

    (a) Code of Practice for Health Workers (published by the Ministry of Health);

    (b) Advertising Standards Code (published by the Advertising Standards Authority);

    (c) Australia New Zealand Food Standards Code (published by Food Standards Australia New Zealand – an Australian independent statutory agency); and

    (d) INC Code (published by the INC).

52. For clarity, INC notes that some parts of the Ministry of Health / Te Whatu Ora website refer to the New Zealand Infant Formula Marketers' Association, and its Code of Practice (**NZIFMA Code of Practice**). The NZIFMA has been incorporated into INC, and the INC Code of Practice supersedes the NZIFMA Code of Practice.

The position in Australia

53. In Australia, the members of INC are bound by the MAIF Agreement. The MAIF Agreement contains similar marketing restrictions to the INC Code in relation to infant formula (both starter infant formula and follow-on formula).

54. In 2021, the MAIF Agreement was reauthorised by the Australian Competition and Consumer Commission (**ACCC**) for a further three years.[10] In that determination (**2021 ACCC Determination**) the ACCC considered that, on balance, the marketing restrictions in the MAIF Agreement were likely to result in public benefit by protecting rates of breastfeeding, with significant consequent health benefits. Those benefits outweighed any public detriment, including from the lessening of competition caused by the restrictions on marketing.

55. The MAIF Agreement is currently undergoing a review by Australia's Department of Health and Aged Care, which is one of the commitments under the 'Prevent inappropriate marketing of breastmilk substitutes' action areas in the *Australian National Breastfeeding Strategy 2019 and Beyond* prepared by the Council of Australian Governments (COAG) Health Council.[11] More information about the review can be found here.

Other developments since the 2018 Determination

National Breastfeeding Strategy for New Zealand Aotearoa | Rautaki Whakamana Whāngote

56. The National Breastfeeding Strategy for New Zealand Aotearoa | Rautaki Whakamana Whāngote (**Strategy**) was developed in 2020 to support the exclusivity and duration of breastfeeding to improve the health and wellbeing of infants, young children, breastfeeding parents and whānau, and benefit society as a whole.[12] It is aligned with the World Health Organisation and the Ministry's recommendations.

[10] The determination is on the ACCC's authorisations register and can be found here.
[11] Australian National Breastfeeding Strategy 2019 and Beyond - see paragraph 1.2.
[12] Introduction | He whakatakinga | Ministry of Health NZ.

57. The Strategy has two priority areas: reducing inequitable outcomes and improving the wellbeing for Māori (Priority 1), and having policies, guidelines, regulations, and frameworks to protect, promote, and support breastfeeding and optimal infant feeding (Priority 2).

58. The Strategy sets out action points relating to Priority 2 (see here). A number of these action points are relevant to this Application, such as:

    (a) explicitly considering breastfeeding in the development of relevant policies, guidelines, regulations and frameworks across government. The strategy states that these should be developed with wide stakeholder consultation and be free from commercial influences and conflict of interest;

    (b) establishing a regular process to review New Zealand's interpretation of the WHO Code, to be developed in collaboration with the Ministry breastfeeding lead and the proposed Infant and Young Child Feeding Committee;

    (c) reviewing the current complaints process for breaches of the INC Code and the Code of Practice for Health Workers and implementing required changes to simplify the complaints process;

    (d) working with the Ministry of Primary Industries and Food Standards Australia New Zealand to review evidence relating to the marketing, labelling and preparation of breast milk substitutes, particularly regarding the safe preparation of powdered milk formulas; and

    (e) reviewing relevant legal measures in place to strengthen the WHO Code in New Zealand and to better align with the WHO Code and subsequent World Health Assembly resolutions.

59. The aim of the Strategy and the two priorities is to achieve nine identified outcomes (detailed here), including that breastfeeding parents and their whānau are supported by increased community education, resources, and awareness.

60. The Expert Advisory Group established to advise on the Strategy has recommended that a national multi-sectoral Infant and Young Child Feeding Committee be established to develop a comprehensive monitoring, implementation and evaluation framework to underpin the Strategy.

Food standards review

61. Food Standards Australia New Zealand is currently reviewing Standard 2.9.1 and other standards in the Australia New Zealand Food Standards Code that regulate infant formula.[13]

62. The aim of the review is to ensure that regulation of infant formula is clear and reflects the latest scientific evidence. FSANZ is also considering the harmonisation of the Australia New Zealand Food Standards Code with international regulations.

[13] P1028 – Infant Formula (foodstandards.govt.nz)

PART 3: PROPOSED AGREEMENT

63. As the Commission is aware, INC publishes the INC Code that contains provisions under which members agree to restrict their marketing (but not pricing) activities in relation to formula appropriate for infants up to 12 months old.

64. The INC Code was introduced as part of New Zealand's compliance with its international obligations in relation to supporting breastfeeding.

65. The marketing restrictions in the INC Code for infant formula products for infants up to 12 months old were authorised by the Commerce Commission in the 2018 Determination for a period of 5 years. This authorisation revoked and replaced the Commission's previous authorisation in its 2015 Determination of marketing restrictions for infant formula products for infants up to 6 months old.

66. The authorisation of the marketing restrictions in the INC Code is due to expire on 8 November 2023. INC seeks the Commission's authorisation for its members to agree to continue to adhere to, and give effect to, an arrangement under which members restrict their advertising and marketing activities for infant formula products for infants up to 12 months old (as embodied in the INC Code), effective from 9 November 2023 (the date after INC's existing authorisation will expire). The authorisation sought is for current and future members of INC.

67. In connection with this application, INC does not consider that it is necessary for the Commission to impose a time limit on the authorisation because:

    (a) as set out in this application, the relevant markets are mature and stable markets, and there have been minimal changes to the industry and infant formula manufacturers since INC's most recent authorisation application in 2018;

    (b) the Commission has the power under the Commerce Act to revoke or amend the authorisation if there is a material change of circumstances; and

    (c) an authorisation would not prevent any regulatory changes in respect of the advertising and marketing of infant formula if the Government decided such changes were appropriate.

68. The above is consistent with the approach taken by the Commission in its 2015 Determination. In the event that the Commission disagrees with the above, authorisation is sought for a further ten years. The experience of the 2018 Determination illustrates that a period shorter than ten years would not be necessary or appropriate, including because the INC Code is not frequently changed and any proposed policy changes are likely to take considerable time to be agreed and implemented, the benefits/detriments are not likely to significantly change over that period, and there are considerable costs involved in applying for re-authorisation. The period would also not prevent the Government from considering policy or regulatory changes.

69. The restrictions in the INC Code fall broadly into two categories:

    (a) restricting the usual ways in which INC members communicate with end consumers (ie, buyers of infant formula products); and

    (b) restricting the use of samples or donations as an inducement.

70. Specifically, the restrictions are:

    (a) Article 5.1: *The advertising of infant formula to the general public, prepared by or under the local control of INC companies through mass media, including television, national or local newspapers, magazines, radio, the electronic media, social media or at point of purchase should be avoided*.

    (b) Article 5.3: *INC companies should not distribute samples of infant formula to pregnant women, parents of infants, or their families and caregivers of infants*.

    (c) Article 5.4: *Gifts of utensils or other articles that may discourage a mother from breastfeeding her infant should not be distributed to pregnant women, parents of infants and caregivers of infants.*

    (d) Article 5.5: *Marketing personnel, in their business capacity, should not seek direct or indirect contact with pregnant women or with parents of infants and young children*.

    (e) Article 6.5: *Quantities of infant formula can be purchased by health care organisations at wholesale prices. However, the distribution of bulk quantities of free product to the health care system should be avoided.* This provision is aimed at avoiding incentivising distribution of large quantities of free product within the health system as a sales-related inducement, and thereby encouraging use of formula divorced from a discussion and assessment of the features of any particular infant formula product, its suitability, and the health benefits of breastfeeding.

    (f) Article 7.2: *No financial or material inducement to promote infant formula should be offered to health workers, health practitioners or members of their families.* This provision is aimed at ensuring that purchasers of infant formula receive impartial and accurate information from health workers and health practitioners.

    (g) Article 7.3: *Samples of infant formula, or of equipment or utensils for the preparation or use of infant formula, may be provided at the request of a health practitioner on completion of a "Samples Request Form" consistent with the Infant Nutrition Council approved form and only for the purposes of professional evaluation and research, or for the education of parents and carers who have made the informed decision to provide infant formula to their infants.*

71. Overall, the INC Code's emphasis is on information and education – not only about the benefits and superiority of breastfeeding, but also other matters that would not be typical in the context of marketing a consumer product.

72. INC has also provided guidance to its members on the application of the INC Code to electronic media, attached as **Appendix 8**.

73. INC recognises that undertaking advertising and promotional activities of the type restricted under the INC Code would ordinarily be expected to be part of the competitive process. The restrictions on marketing embodied in the INC Code would therefore mean that there is some lessening in competition under those arrangements (as recognised by the Commission in paragraph 49 of the 2015 Determination and paragraph 74 of the 2018 Determination).

PART 4: MARKET DEFINITION

74. In the 2018 Determination, the Commission defined the relevant markets (at paragraph 47) as the national market for the supply of the following products through retail channels:

    (a) infant formula for children aged up to six months (ie, stage one formula); and

    (b) follow-on formula for children aged six to twelve months (ie, stage two formula).

75. INC submits that these market definitions remain appropriate for the purposes of this application.

76. Consistent with the 2018 Determination (at footnote 32), INC considers that it is not necessary to define separate markets for the supply of infant formula or follow-on formula to hospitals, because the volumes sold through hospitals are very small, and the proposed arrangement is unlikely to raise any particular competition issues for hospital distribution.

PART 5: COUNTERFACTUAL

77. If the Commerce Commission declines to authorise the arrangement under which members of INC agree to restrictions as embodied in the INC Code, INC will either have to amend the INC Code to omit the relevant restrictions, or otherwise take steps to ensure that it is clear that the relevant restrictions are not binding.

78. This would mean that:

    (a) the marketing of infant formula in New Zealand would not be subject to any regulatory restriction and members of INC would be free to market infant formula as they see fit, subject to food standards legislation and the Fair Trading Act; and

    (b) formula manufacturers would have the ability to increase the promotion of infant formula by direct marketing, and the level of marketing would be likely to increase.

79. Given New Zealand's commitment to the WHO Code, the Government may seek to give effect to similar (or potentially more restrictive) marketing restrictions to those that currently operate. This would be a matter for the government to determine, but would most likely be through legislative change to provide for regulations to restrict the marketing of infant formula products. Other approaches such as bilateral contracting with infant formula manufacturers are possible (but less likely). Any such regulatory response is unlikely to be swift. Consistent with INC's previous applications, INC considers that two or more years is a realistic timeframe for legislative change. The 2023 general election could also have an impact on timing (ie, delay any potential regulatory response).

80. In the medium term, it would be clear to participants that the INC Code is not enforceable and it would create pressure for participants to act in a way inconsistent with the INC Code. While some INC members have their own policies that commit to complying with the WHO Code (for example, Danone commits to not advertising or promoting starter infant formula in New Zealand as part of its Policy for the Marketing of Breast-Milk Substitutes) such policies would not fully constrain the marketing of infant formula in New Zealand. This is because:

    (a) not all INC members have such policies;

    (b) policies such as Danone's Policy for the Marketing of Breast-Milk Substitutes and Nestlé's Policy For Implementing the WHO Code do not extend to follow-on formula in New Zealand.[14]

81. Absent the restrictions, there would be uncertainty as to how each market participant would behave. This means that, over time, it is likely that there would be an increase in the promotion of infant formula by direct marketing.

82. This is consistent with the findings of the Commission in its 2015 and 2018 Determinations, and the 2021 ACCC Determination. For example:

    (a) In 2015, the Commission adopted a counterfactual of at least two years of unimpeded advertising and marketing, followed by government regulation.

[14] Infant formula is defined in Danone's Policy for the Marketing of Breast-Milk Substitutes as formula for infants up to the age of six months, other than in 'higher risk countries' where it also includes follow-on formula. New Zealand is not listed as a 'higher risk' country.

(b) In 2018 (which related to the extension of the INC Code to follow-on formula), the Commission found that if the arrangement did not come into effect, there was a real chance that the level of marketing of formula products would increase, at least until the introduction of any regulations by the Government to prohibit such marketing (which the Commission found were unlikely to be introduced for at least five years).

(c) In the 2021 ACCC Determination, the ACCC found that while some constraint on marketing of infant formula would continue in the absence of the MAIF Agreement (given some global/multinational companies have made commitments not to impact infant formula, and may have a desire to avoid damage to brand reputation and stricter regulatory restrictions), the strength of the restraining effect would likely decrease over time. The ACCC found that manufacturers would have commercial incentive to increase advertising and thus continually 'stretch the limits' of the kinds of advertising that are accepted by the public and government. Any regulatory response would likely take at least two years to develop and implement, and any conclusion regarding an alternative regulatory response is uncertain. The ACCC therefore concluded that, over time there would be some increase in the promotion of infant formula by direct marketing and/or indirect marketing through marketing of toddler milk.

83. In the factual, competitive marketing of infant formula by INC members will continue to be restricted. This means that, compared with the counterfactual, the INC Code will lessen competition.

PART 6: EXISTING AND POTENTIAL COMPETITION

Existing competitors

84. The majority of the competitors in the relevant markets for the supply of infant formula are members of INC. As mentioned, there are industry participants who are not INC members, but their market share is negligible. Supply of starter infant formula and follow-on formula by those competitors who are not members of INC is estimated to be less than 1% of the total supply (whether measured by value and/or volume). In addition, a number of competitors compete in the market in New Zealand but do not have significant market share, including small companies that sell relevant products in New Zealand but are principally producing products for export markets. Some of these companies are members of INC, and some are not.

85. The major suppliers of starter infant formula and follow-on formula include Danone, Nestlé, Sanulac Nutritionals, A2 Corporation, and Heinz Watties.

How competitors compete

86. Although there are regulatory constraints on the composition, labelling and marketing of infant formula, within those constraints the market is dynamic and innovative.

87. In particular, market participants compete on the following non-price factors:

    (a) participants may use specific approved ingredients to improve growth and development outcomes in infants. Participants compete by using varying ingredients in order to better mimic the composition or developmental outcomes of breast milk;

    (b) competitors in the market for infant formula in New Zealand compete with each other on the reputation of their brand;

    (c) many participants have economy and premium versions of their infant formula. Some competitors market goat milk or soy-based follow-on formula;

    (d) packaging innovation is another key area of competition between participants. Examples include pre-measured portions, and containers that have a scoop stored in the lid for ease of use; and

    (e) some participants differentiate their product by the qualities of milk input – for example, organic milk or milk from pasture fed animals.

88. Marketers and manufacturers compete on price in both wholesale and retail markets. In addition, marketers of infant formula are asked, from time to time, to support in-store shelf price promotion of their products.

Market shares

89. INC estimates that the combined market share of suppliers who are INC members is over 99% of the total supply of starter infant formula and follow-on formula.

90. For completeness, the table below contains market share data of New Zealand grocery sales of infant formula for the year ended 2 July 2023.

MAT to 2 July 2023	
Manufacturer	**% market share by revenue/volume**
Total Danone Nutricia Core IFFO	[ ]
Total A2 Corporation Core IFFO	[ ]
Total Kraft Heinz Core IFFO	[ ]
Total Nestlé Ltd Core IFFO	[ ]
Total Sanulac Nutritionals Australia Core IFFO	[ ]
Total Other Mfrs Core IFFO	[ ]

91. AZTEC market share data for infant formula and follow-on formula for the previous 5 years is set out in **Confidential Appendix 9**.

Potential competition

Significant new entry and exit in the past five years

92. In the past five years, INC understands that the following participants have entered the markets in New Zealand for supply of infant formula:

    (a) Blue River Dairy;

    (b) Bluebell New Zealand;

    (c) Care A2 Plus;

    (d) Haven Nutrition Ltd;

    (e) Sanulac Nutritionals Australia Pty Ltd;[15]

    (f) Spring Sheep Milk Co;

    (g) Sprout Organic;

    (h) The Little Oak Company NZ; and

    (i) Zuru New Zealand Ltd.

93. The market share for these new entrants is (and, in the case of Zuru New Zealand Ltd, was) minimal, with the total market share for all infant formula manufacturers other than the top five manufacturers being less than 1.5%. See footnote 15 and the market share information in **Confidential Appendix 9** for further detail.

[15] For completeness, INC understands that Aspen Pharmacare sold its Nutritional Business to the Lactalis Group (which owns Sanulac Nutritionals Australia) in 2018.

94. In the past five years, INC understands that the following participants have exited the markets in New Zealand for supply of infant formula:

    (a) Fresco Nutrition;

    (b) Munchkin;

    (c) Nuztri; and

    (d) Zuru New Zealand Ltd.[16]

Potential for new entry/expansion

95. The potential for new entry or expansion in the market for infant formula is strongly linked to export markets, particularly in Asia, and especially China. This is because New Zealand is a very small market, and any new entry or expansion would likely be supported primarily by expansion into an export market.

96. Dairy exports to China were New Zealand's top export commodity by destination in the 12 months ending March 2023, earning $6.44 billion.[17]

[16] INC understands that Zuru exited the market when it sold its infant formula brand (Haven) to another party – see https://businessdesk.co.nz/article/retail/zuru-yashili-in-court-over-infant-formula-deal.
[17] Statistics New Zealand, New Zealand International Trade dashboard, https://statisticsnz.shinyapps.io/trade_dashboard/.

PART 7: PUBLIC BENEFITS AND DETRIMENTS

Overview

97. In its 2015 and 2018 Determinations, the Commission found that the arrangements in the current INC Code would result, or be likely to result, in a benefit to the public that outweighs the likely lessening of competition. In particular, the Commission found that the public health benefits and avoided regulatory costs outweighed the lost producer and consumer surplus.

98. INC is not aware of any information to suggest that the public benefits and detriments of the restrictions in the INC Code have changed. The public benefits will continue if the INC Code remains in effect.

99. As set out in further detail below, and consistent with the Commission's 2015 and 2018 Determinations:

    (a) there will be detriments associated with the INC Code. Those detriments arise from reduced consumer and producer surpluses in the factual compared with the counterfactual;

    (b) there are clear public health benefits that will, or will be likely to, result from continuing to restrict the marketing of infant formula in the factual compared with the counterfactual; and

    (c) there are also public benefits associated with avoided regulatory costs.

100. Overall, INC submits that the detriments are likely to be small, and that the benefits easily outweigh those detriments.

Detriments

101. In its 2015 and 2018 Determinations, the Commission found that the INC Code is likely to lessen competition because it deprives INC Members of the opportunity to engage in the advertising of infant formula products, and limits information available to potential consumers. The Commission found, however, that the arrangement would not necessarily result in significantly higher prices (given the INC Code does not prevent suppliers from price discounting or retailers form advertising those discounts) and was unlikely to result in any material reduction in the level of product innovation.

102. As with the previous determinations, it is not possible to quantify the extent to which competition is likely be affected because it is difficult to predict precisely the degree to which marketing and advertising would differ in the absence of the provisions in the arrangement.

103. INC would expect that suppliers of infant formula would experience reduced sales and reduced returns compared to a situation without the marketing restrictions. This will result in less producer surplus in the factual compared with the counterfactual. INC is not in a position to quantify the lost producer surplus.

104. However, INC expects that it will be relatively insignificant. Consistent with the 2021 ACCC Determination, this includes because:

    (a) manufacturers can continue to compete on factors such as price, brand, and ingredients;

    (b) the advertising of health and nutrition claims would continue to be limited by food standards legislation; and

(c) there are other factors that would continue to restrain marketing of infant formula to some extent, such as corporate reputational concerns, global commitments by some companies not to advertise infant formula, and incentive to avoid regulation.

105. The continued reduced marketing of infant formula in the factual would also lead to a reduction in consumer surplus. This is because marketing is a key source of information for consumers and, without it, consumers may not make the best choices available to them in the circumstances.

106. INC is not in a position to quantify the lost consumer surplus that may result from the continued adoption of the INC Code. INC expects that it will be insignificant. This includes because of the factors outlined above that would continue to restrain marketing of infant formula in the counterfactual, and because there are other sources of information available in relation to infant feeding (such as health care providers, Te Whatu Ora, and the Ministry of Health).

Benefits

107. The INC Code gives rise to public benefits, including public health benefits and avoidance of regulatory costs.

Public health benefits

108. It is widely accepted that human breast milk is the best form of infant nutrition. Industry participants, and INC members in particular, consistently acknowledge that breastfeeding is important for both maternal and infant health.

109. This was recognised in the Commission's 2015 and 2018 Determinations. As the Commission found in those Determinations, the main benefit arises from better public health outcomes that arise from higher breastfeeding rates. The benefit arises because, if marketing of infant formula increased, this could lead to an increase in the purchase and use of infant formula at the expense of breastfeeding.

110. Similarly, in the 2021 ACCC Determination, the ACCC accepted that the marketing restrictions in the MAIF Agreement result in public benefits by protecting breastfeeding rates, with significant consequential health benefits. For example, the ACCC stated that:

> *The ACCC has long recognised that there is likely to be a public benefit resulting from arrangements that promote and protect breastfeeding. The link between improved health outcomes and breastfeeding is undisputed, and scientific research indicates there is a relationship between breastfeeding and lower incidence of diseases including breast cancer, gastrointestinal infection, necrotising enterocolitis, lower respiratory tract infection and acute otitis media. Therefore increased rates of breastfeeding in infants will likely lead to improved health outcomes and lower public health costs.* [footnotes omitted]

111. The marketing restrictions in the INC Code facilitate a focus on the dissemination of appropriate, scientific, and neutral information about infant formula. The restrictions also facilitate a focus on education (for both health professionals and consumers) in order to protect and promote breastfeeding, and safe and adequate infant nutrition.

112. Accordingly, public health benefits will, or will be likely to result, from the continued adoption of the INC Code.

113. The National Breastfeeding Strategy summarises benefits of breastfeeding, including reduction in illness and improved health, reduction in health costs, and societal and environmental benefits.[18]

114. In its recent publication Healthy Eating Guidelines for New Zealand Babies and Toddlers (0–2 years old) (September 2021), the Ministry of Health summarises some of the benefits of breastfeeding for the baby as follows:[19]

    (a) helps build a strong emotional bond between the mother and baby, and this bond supports healthy brain development in the baby and reduces the risk of mental health conditions later in life (Horta and Victora 2013);

    (b) boosts the baby's immune system and helps protect the baby against common childhood illnesses, particularly diarrhoeal infections and pneumonia, and hospitalisation (Sankar et al 2015; SACN 2018);

    (c) protects against sudden unexplained death in infancy (SUDI) (Hauck et al 2011; Sankar et al 2015);

    (d) decreases the chance of health problems later in life, such as type 2 diabetes (Horta and Victora 2013; Horta et al 2015; Koletzko et al 2019);

    (e) may reduce the chance of obesity in childhood, adolescence and early adulthood (Horta et al 2015); and

    (f) exposes the baby to flavours originating from the maternal diet through their mother's milk, which helps them accept new foods better once they are eating solid foods (Spahn et al 2019; Stoody et al 2019).

115. The Ministry of Health's Healthy Eating Guidelines also state that the benefits of breastfeeding for the mother include that it:

    (a) decreases the chance of women developing breast cancer and ovarian cancer compared with women who have never breastfed. Longer duration of breastfeeding is more protective (Chowdhury et al 2015); and

    (b) decreases the chance of developing type 2 diabetes (Aune et al 2014).

116. Similarly, the Ministry of Health has previously summarised the health and community benefits of breastfeeding as follows:[20]

    (a) Breastfeeding is important for infants up to 12 months old (ie, infants that may otherwise be fed starter infant formula and follow-on formula) because it:

        (i) provides optimum nutrition for infants;

        (ii) assists the physical and emotional development of infants;

        (iii) decreases the incidence and severity of childhood infectious disease;

        (iv) is associated with decreased infant mortality and hospitalisation; and

[18] The case for breastfeeding | Te whakamāramatanga | Ministry of Health NZ.
[19] The sources referred to in the Guidelines are detailed on pages 74 to 81 of the Guidelines (with links to the relevant sources).
[20] *Food and Nutrition Guidelines for Healthy Infants and Toddlers (Aged 0–2): A background paper* (4th Ed) – Partially Revised December 2012. See Food and Nutrition Guidelines for Healthy Infants and Toddlers (Aged 0-2) - A background paper (moh.govt.nz).

(v) is associated with the decreased risk of chronic disease for infants.

(b) Breastfeeding is important for mothers because it:

(i) may help the mother return to her pre-pregnancy weight;

(ii) helps to protect a mother's iron status by minimising postpartum maternal blood loss;

(iii) reduces the risk of postpartum haemorrhaging (this effect relates to immediate post birth breastfeeding);

(iv) encourages contraction of the uterus after birth;

(v) has a 98 percent contraceptive effect in the first six months after the infant's birth, provided the infant is exclusively breastfed in response to their hunger cues and the mother does not resume menstruation;

(vi) reduces the risk of pre-menopausal breast cancer;

(vii) may reduce the risk of ovarian cancer;

(viii) may reduce the risk of osteoporosis and hip fracture in later life; and

(ix) may inspire healthier choices such as ceasing smoking, quitting recreational drugs or improving nutrition, which can be emotionally and physically satisfying, and enhance self-esteem in the maternal role.

117. Globally, there is a range of research into the health benefits of breastfeeding. It is well established that breastfeeding provides short-term and long-term health and economic and environmental advantages to children, women, and society, including in high-income countries.[21]

118. In the Commission's 2015 and 2018 Determinations, the Commission quantified the public health benefits of restricting infant formula marketing by applying the findings of a study commissioned by UNICEF UK[22] (the **UNICEF Study**) to the New Zealand context. The UNICEF Study suggests that there are five illnesses for which the scientific research is sufficiently robust so as to allow the relationship between breastfeeding and impaired health outcomes to be estimated and modelled. Those illnesses are:

(a) breast cancer;

(b) gastrointestinal infection; and

(c) lower respiratory tract infection;

(d) nectrotising enterocolitis; and

(e) acute otitis media.[23]

119. The UNICEF Study includes information relating to the quantifiable health benefits for mothers who breastfeed for up to 18 months in their lifetime. INC considers that the UNICEF Study is a suitable source of data for quantifying some of the public health benefits associated with the INC Code, and

[21] See for example the Lancet's 2016 breastfeeding series, http://www.thelancet.com/series/breastfeeding.
[22] Mary Renfrew et al, "Preventing disease and saving resources: the potential contribution of increasing breastfeeding rates in the UK" (report commissioned by UNICEF UK, October 2012).
[23] In the Commission's 2018 Determination, the Commission looked at the first three illnesses listed, as it was focused on the relationship between breastfeeding during six to 12 months and reduced health outcomes.

it is unaware of any more recent studies on the quantification of public health benefits of breastfeeding.

120. As acknowledged by the Commission in its 2018 Determination, there are also unquantified health benefits, such as:

(a) the avoided distress on infants and/or their caregivers from contracting the illnesses;

(b) the effect of illnesses that have been identified as likely affected by breastfeeding, but for which robust quantitative estimation is not possible; and

(c) the loss of productivity from caregivers taking time off work or the potential for any admissions to hospital to lead to further illnesses.

Avoidance of regulatory costs

121. The counterfactual identified includes similar or more restrictive regulation, implemented via legislation or potentially (but less likely) through bilateral arrangements between the Ministry of Health / Te Whatu Ora and market participants.

122. As the Commission found in its 2018 Determination, a regulatory response would impose costs on society including the time and resources spent by Parliament and policy agencies in enacting the necessary legislation. The Commission estimated that the present value of the cost of legislation at that time, if enacted in five years, would be around $3 million. Against this, the Commission estimated the costs incurred by INC in administering the INC Code in the 'with-the arrangement' scenario. Based on half of a full-time equivalent employee, the Commission estimated a present value over a five year period of approximately $0.1 million.

123. In order for the Ministry of Health / Te Whatu Ora to directly regulate the marketing of infant formula, INC expects that they would, at a minimum, need to allocate additional/new resources to enable them to enter into binding arrangements with each manufacturer and marketer on a bilateral basis. If the Ministry of Health / Te Whatu Ora were potentially required to negotiate and contract with each industry participant on a bilateral basis, significant new resources may be required. The legislative options would give rise to costs in terms of establishing legislation and continual monitoring and enforcement.

124. We are not in a position to quantify with any certainty the costs that may be incurred by the Ministry of Health, Te Whatu Ora, or any other Government department in implementing legislative change or hiring new staff.

125. The public benefit arising from authorisation of restrictions embodied in the INC Code derive from the efficiencies gained by using self-regulation to give effect to the WHO Code in New Zealand.

126. As set out in INC's 2015 application for authorisation, self-regulation can have significant benefits to government regulation. Self-regulation is relatively low cost, and the costs are internalised in the industry, resulting in strong incentives for cost efficiency. These lower costs permit a greater scope for effective regulation than would otherwise be possible given financial constraints.[24]

[24] See, for example, "*Effectiveness, Implementation and Monitoring of the International Code of Breast milk Substitutes in New Zealand: A Literature and Interview-Based Review*" (Report for the Ministry of Health, Matt Burgess and Neil Quigley, Victoria University of Wellington, July 2011), which discusses the circumstances where self-regulation is most likely to be effective and conclude that the market for infant formula is a strong candidate for self-regulation.

Weighing of detriments and benefits

127. INC submits that because the detriments flowing from the continued loss of competitive activity in the infant formula market are low, the Commission need only find a degree of public benefit that is sufficient to outweigh a relatively small detrimental effect.

128. INC submits that the information presented in this application provides more than a sufficient basis upon which the Commission can authorise the INC Code.

129. INC therefore submits that the Commission authorise the INC Code.

PART 8: IDENTIFICATION OF INTERESTED PARTIES

130. The contact details of likely interested parties are set in **Appendix 10.**

PART 9: CONFIDENTIALITY

131. Nothing in this application is confidential, other than:

    (a) the personal information in **Appendices 2 and 10** included in square brackets and highlighted;

    (b) the market share information in paragraph 90 included in square brackets and highlighted; and

    (c) **Confidential Appendices 3 and 9**.

132. A public version of this notice with confidential information deleted will be provided to the Commission.

133. INC requests that it be notified of any request made under the Official Information Act 1982 for the confidential information included in this application, and be given the opportunity to be consulted as to whether the information remains confidential at the time that the request is made.

134. These requests for confidentiality are made because:

    (a) in relation to **Appendices 2 and 10**, the information contains contact details of individuals, which should be withheld to protect the privacy of natural persons (section 9(2)(a) of the Official Information Act); and

    (b) in relation to the market share information in paragraph 90 and **Confidential Appendices 3 and 9**, the information contains commercially sensitive information that was provided to INC under an obligation of confidence and should be withheld under sections 9(2)(b) and 9(2)(ba) of the Official Information Act.

DECLARATION

I, Jan Carey, Chief Executive Officer of the Infant Nutrition Council, have prepared, or supervised the preparation of, this notice seeking authorisation.

To the best of my knowledge, I confirm that:

- all information specified by the Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to the applicant that is relevant to the consideration of this notice has been supplied; and
- all information supplied is correct as at the date of this notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the notice.

I understand that it is an offence under the Commerce Act to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission, including in these documents.

I am an officer of the Infant Nutrition Council and am duly authorised to submit this notice.

Name and title of person authorised to sign:

Jan Carey, Chief Executive Officer

Sign: **Date:**

APPENDIX 1
PROPOSED INC CODE OF PRACTICE

THE INFANT NUTRITION COUNCIL CODE OF PRACTICE FOR THE MARKETING OF INFANT FORMULA IN NEW ZEALAND

Introduction

Breastfeeding is the normal way to feed a baby and is important for baby's health and well-being. The World Health Organization recommends exclusive breast feeding until six months of age, and then to complement breastfeeding with the appropriate introduction of solid foods with continued breastfeeding up to two years of age.

There is no question that breast milk provides the best possible nutrition for infants however, when a baby does not receive breastmilk the only suitable and safe alternative is a scientifically developed infant formula.

In line with the aim of the Infant Nutrition Council's Code of Practice for the Marketing of Infant Formula in New Zealand (INC Code of Practice); infant formula companies, health practitioners and government all have an important role in ensuring that the ~~mothers~~ parents and carers of formula fed babies receive adequate and appropriate information while protecting the critical role of breastfeeding.

The Infant Nutrition Council is the key industry stakeholder in infant nutrition. It works with government and other stakeholders to support the public health goals for the protection and promotion of breastfeeding and, when needed, infant formula as the only suitable alternative.

The Infant Nutrition Council is committed to supporting both breastfeeding and the appropriate use of infant formula.

The INC Code of Practice supports the aim of the WHO Code which is:

"…to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breast feeding and by ensuring the proper use of breast

milk substitutes, when they are necessary, on the basis of adequate information and through appropriate marketing and distribution."

The INC Code of Practice is based on the World Health Organization International Code of Marketing of Breast Milk Substitutes (WHO 1981) and forms part of New Zealand's official application of the WHO Code within the context of New Zealand's legal and economic environment.

The INC Code of Practice is a voluntary self-regulatory code of conduct which applies to the manufacturers and importers of infant formula who are members of INC. It applies to the marketing of infant formula products suitable for infants up to the age of 12 months.

The Infant Nutrition Council Code of Practice for the Marketing of Infant Formula in New Zealand (INC Code of Practice)

Article 1 Aim of the INC Code of Practice

The aim of the Code is to contribute to the provision of safe and adequate nutrition for infants by the protection and promotion of breast feeding and by ensuring the proper use of breast milk substitutes, when they are necessary, on the basis of adequate information and through appropriate marketing and distribution."

Article 2 Scope of Code

This Code applies to the marketing in New Zealand of infant formula when such products are marketed or otherwise represented to be suitable, with or without modification, for use as a partial or total replacement of breast milk. It also applies to their quality and availability, and to information concerning their use (adapted from WHO Code Article 2).

Article 3 Definitions

For the purposes of the INC Code of Practice the following definitions apply:

Advertising	The communication to the general public of an advertising promotional message through mass media. For example, television, national or local newspapers, magazines and radio, the internet, social media or at point of purchase. Price information at point of sale and infant formula product composition and usage information for consumers and health workers and published by or under the local control of INC companies on the internet are excluded from this definition.
Breast milk substitute	Any food marketed or otherwise represented as a partial or total replacement for breast milk, whether or not suitable for that purpose.
Formula Feeding	Providing infants with proprietary infant formula, either exclusively or as a supplement to breastfeeding.
Health Care Provider	Public, private and non-governmental institutions or organisations engaged, directly or indirectly, in health care for parents~~mothers~~, infants and pregnant women; and nurseries or

	child-care institutions. It also includes health workers in private practice. For the purpose of this Code of Practice, the health care system does not include pharmacies or other established sales outlets.
Health Practitioner	A practitioner of a particular health profession who is registered with, and overseen by an authority. For example dietitian, doctor, nurse, pharmacist, midwife.
Health Worker	A person working in a component of such a health care system including voluntary unpaid workers and those providing information to pregnant women, parents and carers. ~~n and mothers~~.
Infant	A person under the age of 12 months.
Infant Formula	Any food described or sold as an alternative for human milk for the feeding of infants up to the age of twelve months and formulated in accordance with all relevant clauses of the Australia New Zealand Food Standards Code, including Infant Formula Products Standard 2.9.1
Labelling	Words, particulars, trade marks, brand names, pictorial matter or symbols relating to, and appearing on the packaging of, products that are offered for retail sale, as defined by the Australia New Zealand Food Standards Code
Marketer	A person, corporation or any other entity engaged in the business of distributing and marketing infant formula to wholesale or retail level, whether directly or through an agent.
Marketing Personnel	Any persons whose functions involve the marketing of a product or products coming within the scope of this Code and who is employed by a marketer.
Marketing	Product promotion, distribution, selling, advertising, product public relations and information services.
Sample	A single package or small quantity of infant formula provided without cost to the recipient.
Supplies	Quantities of a product provided for use over an extended period, free or at a low price, for social purposes, including those provided to families in need.

Article 4 Information and education

4.1 Any information or educational equipment or material provided by marketers should conform to the policies of the health care system.

4.2 Informational and educational materials provided by the marketers of infant formula, whether written, audio or visual, dealing with the feeding of infants with infant formula, should include clear information on all of the following points:

- the benefits and superiority of breastfeeding;
- maternal nutrition, and the preparation for and maintenance of breastfeeding;
- the negative effect on breastfeeding of introducing partial bottle-feeding;

- the difficulty of reversing the decision not to breastfeed;
- where needed, the proper use of proprietary infant formula.

4.3 When information and educational materials contain information about the use of infant formula, they should include the social and financial implications of its use, the health hazards of inappropriate foods or feeding methods and, in particular, the health hazards of unnecessary or improper use of infant formula. Such materials should not use any pictures or text, which may idealise the use of infant formula in comparison to breastfeeding.

4.4 Explicit instructions must be given to guide ~~mothers~~ parents and carers of infants on the appropriate and correct use of infant formula. Members of the health professions, and those members of the public who request it, must be provided with accurate and relevant information about infant formula, which should accurately reflect current knowledge and responsible opinion.

Article 5 Marketing to the general public

5.1 The advertising of infant formula to the general public, prepared by or under the local control of INC companies through mass media, including television, national or local newspapers, magazines, radio, the electronic media, social media or at point of purchase should be avoided.

5.2 INC will inform retailers of manufacturers and importers' obligations under the INC Code of Practice.

5.3 INC companies should not distribute samples of infant formula to pregnant women, parents~~mothers~~ of infants, or their families and caregivers of infants.

5.4 Gifts of utensils or other articles that may discourage a mother from breastfeeding her infant should not be distributed to pregnant women, ~~mothers~~ parents of infants and caregivers of infants.

5.5 Marketing personnel, in their business capacity, should not seek direct or indirect contact with pregnant women or with parents of infants and young children. This does not prevent appropriately qualified personnel from responding to complaints or unsolicited requests for information. For these requests parents should be referred to a health practitioner whenever health advice is required.

~~**5.6** Infant formula product and usage information including pack shots, published by or under the local control of INC companies through the electronic media and accessible to consumers as well as health practitioners should be in accordance with the intent of the INC Code of Practice.~~

Article 6 Contact with the health care system

6.1 Marketers of infant formula should not use any facility of the health care system for the purpose of promoting infant formula. This does not, however, preclude the dissemination of information to health workers as provided in Article 6.2.

6.2 Scientific, factual and relevant information regarding infant formula may be supplied to the health care system, provided that only appropriately trained personnel are used for this purpose.

6.3 The distribution or display of infant formula information and educational materials which meet the requirements of Article 4 of the INC Code of Practice may be allowed in the facilities of the health care system, but this will be at the discretion of the health care system authorities concerned, whose agreement must be obtained.

6.4 The demonstration of the correct preparation, storage and use of infant formula to all ~~mothers~~ parents and carers who need this should be the responsibility of health workers. Any assistance for this purpose may be given by marketing personnel, if requested by and used under the supervision of the health care system authorities.

6.5 Quantities of infant formula can be purchased by health care organisations at wholesale prices. However, the distribution of bulk quantities of free product to the health care system should be avoided.

6.6 I~~f i~~n circumstances of emergency relief or poverty, donations of infant formula may be made to support safe and adequate nutrition for infants. ~~there are D~~donated supplies~~, these~~ need to meet the following conditions:

- they are given to a ~~single designated~~ health organisation ~~agency~~ or food charity to control, and are not provided directly from industry to consumer;
- they are for infants who are medically required to be fed, or are already being fed infant formula;
- the supply is continued for as long as the infants concerned need it;
- the supply is not used as a sales inducement;
- in the case of emergency relief, the donations are in accordance with national emergency preparedness plans and supporting documents.

6.7 The donation to the health care system of equipment and materials should be made only in accordance with the normal policies of the health care system. Such equipment or materials may only bear the donating company's name or logo, but should not refer to a proprietary product that is within the scope of this Code, and should be distributed only within the health care system.

6.8 The use by the health care system of "professional service representatives", "mothercraft nurses" or similar personnel, provided or paid for by manufacturers or distributors, shall not be permitted.

Article 7 Contact with health workers and health practitioners

7.1 Information provided by marketers to health workers and health practitioners regarding infant formula should be restricted to scientific and factual matters and such information should not imply or create a belief that formula feeding is equivalent or superior to breastfeeding. Such information should include that specified in Articles 4.2 and 4.3 of this Code.

7.2 No financial or material inducement to promote infant formula should be offered to health workers, health practitioners or members of their families. However, articles

of general utility may be distributed to members of the health care system, provided they are inexpensive and relevant to the practice of medicine and general health care.

7.3 Samples of infant formula, or of equipment or utensils for the preparation or use of infant formula, may be provided at the request of a health practitioner on completion of a "Samples Request Form" consistent with the Infant Nutrition Council approved form and only for the purposes of professional evaluation and research, or for the education of ~~mothers~~ parents and carers who have made the informed decision to provide infant formula to their infants.

Article 8 Persons engaged in marketing

8.1 Marketers should inform each of their marketing personnel of the provisions of the INC Code of Practice and of the marketer's responsibilities under it.

8.2 Marketing personnel should not as part of their job responsibilities perform educational functions about infant formula to pregnant women or ~~mothers~~ parents and carers of infants, unless requested to do so by and under the supervision of the health practitioner.

8.3 This Article does not restrict marketers from providing information or educational equipment or material in accordance with Article 4.

Article 9 Labelling

9.1 Labelling of infant formula should comply with the requirements of the Australia and New Zealand Food Standards Code.

9.2 Labelling of infant formula should be designed to provide the necessary information about the appropriate use of the product and to conform to the provisions of Article 4.4 of the INC Code of Practice.

9.3 Each container of infant formula offered for retail sale should comply with the requirements of the Australia and New Zealand Food Standards Code and carry a clear and conspicuous message:

- stating the superiority of breastfeeding;
- recommending that personnel of the health care system should be consulted about infant feeding;
- giving clear and precise instructions on the use of infant formula;
- warning against the hazards of inappropriate preparation.

9.4 The provision of a contact point and telephone number on the product label is permissible.

Article 10 Compositional quality

10.1 Infant formula composition and quality must comply with the general provisions of the Australia and New Zealand Food Standards Code.

Article 11 Implementation

11.1 The members of INC who are manufacturers and importers of infant formula shall

be responsible for monitoring the provisions of the INC Code of Practice and making sure that their conduct at every level conforms to the intent and aims of the Code.

11.2 All personnel of INC member companies who are concerned in any way with the marketing of infant formula should cooperate with the INC in order to ensure that the provisions of the INC Code of Practice are applied as effectively as possible.

Article 12 Monitoring

12.1 The Ministry of Health is responsible for monitoring the implementation of the INC Code of Practice. The Ministry does this by receiving complaints about potential breaches of the Code.

12.2 Any person, including individuals and community and consumer groups, can lodge a complaint with the Ministry of Health alleging a breach of the INC Code of Practice.

Infant Nutrition Council Contact Details

Phone 09 354 3272
Email info@infantnutritioncouncil.com
www.infantnutritioncouncil.com

For information about the complaints management process or how to make a complaint please contact the Ministry of Health at http://www.health.govt.nz/our-work/who-code-nz/breast-milk-substitutes-complaints-procedure

APPENDIX 2
INC MEMBERS' CONTACT DETAILS

INFANT NUTRITION COUNCIL MEMBERSHIP

Ordinary Members

- Bellamy's Organic
- Bubs Australia Ltd
- Danone Nutricia Early Life Nutrition
- Fonterra Co-operative Group Ltd
- Nestlé Australia Ltd and Nestle NZ Ltd
- Sanulac Nutritionals Australia
- Synlait Milk Ltd
- The a2 Milk Company Ltd

Associate Members

- Abbott Australasia Pty Ltd
- Aspen Pharmacare
- Australian Dairy Park
- Bakels Edible Oils (NZ) Ltd
- Blue River Dairy LP
- Bodco Dairy Ltd
- Cargill Australia
- Dairy Goat Co-operative Ltd
- DSM Nutritional Products Australia Pty Ltd
- Great Ocean Ingredients Pty Ltd
- GrainCorp Ltd
- Heinz Watties Ltd
- HPS Tech Pty Ltd
- Jamestrong Packaging Pty Ltd
- Mataura Valley Milk Ltd
- Morinaga Nutritional Foods
- NIG Nutritionals Ltd
- Nuchev Food Pty Ltd
- Nu-Mega Ingredients
- Oceania Dairy
- Prinova
- Saputo Dairy Australia Pty Ltd
- Snow Brand Aust Pty Ltd
- Spring Sheep Milk
- Sprout Organic
- Swisse Wellness Pty Ltd (H&H Group)
- Tatua Co-operative Dairy Company
- Tatura Milk Industries
- The LittleOak Company NZ Ltd
- Winston Nutritional New Zealand

CONTACT DETAILS OF NEW ZEALAND MEMBERS

Entity	Address	Webpage	Phone	Contact person
Abbott Australasia Pty Ltd	299 Lane Cove Road Macquarie Park NSW 2113 Australia	https://www.aus.abbott/	Australia: +61 2 9857 1111 New Zealand: +64 9 573 6030	Tim Hinrichs General Manager, Australia [ ]
Bellamy's Organic	Level 18/60 Albert Rd South Melbourne VIC 3205 Australia	www.bellamysorganic.com.au	+61 3 6332 9200	Gilbert Chow General Manager, Supply Chain and Procurement [ ] [ ]
Blue River Dairy	111 Nith Street, Appleby Invercargill 9812 New Zealand	https://blueriverdairy.co.nz/	+64 3 211 5150	Robert Boekhout General Manager [ ]
Bodco Dairy Ltd	8 Kaimiro Street, Te Rapa Hamilton New Zealand	https://bodco.co.nz/	+64 7 903 5195	Nic Wetere CEO [ ]
Bubs Australia Limited / The Infant Food Company	Ground Floor, 6 Tilley Lane Frenchs Forest NSW 2086 Australia	www.bubsaustralia.com	+61 2 9905 0050	Richard Paine CEO [ ] [ ]

Entity	Address	Webpage	Phone	Contact person
Dairy Goat Co-operative Ltd	18 Gallagher Drive, Melville Hamilton 3206 New Zealand	https://www.dgc.co.nz/	+64 7 839 2919	David Hemara CEO [ ]
Danone Nutricia Early Life Nutrition	56 Aintree Avenue, Māngere, Auckland 2022 New Zealand	www.danonenutricia.co.nz	0800 688 745	Rodrigo Lima Managing Director [ ]
Fonterra Co-operative Group Ltd	109 Fanshawe Street Auckland CBD, Auckland 1010 New Zealand	https://www.fonterra.com/nz/en.html	+64 9 374 9000	Victoria Landells Director, Functional Nutrition [ ] [ ]
H&H Group (Swisse Wellness Pty Ltd)	188 Langridge Street Collingwood Victoria Australia	https://www.hh.global	+61 3 9418 6767	Nick Mann CEO [ ]
Heinz Watties Ltd	Level 3, 2 Nuffield Street Auckland 1150 New Zealand	www.heinzwatties.co.nz	Phone: 0800 653 050	Christine Weaver Corporate Nutrition Lead ANZ [ ]
Mataura Valley Milk Ltd	19 Ballast Road, East Gore McNab 9771 New Zealand	https://mataura.com/	+64 3 201 6455	Bernard May CEO [ ]

Entity	Address	Webpage	Phone	Contact person
Nestlé Australia Ltd and Nestlé NZ Ltd	1 Homebush Bay Drive Rhodes NSW 2138 Australia	www.nestle.co.nz	+64 9 367 2800	Elizabeth Lloyd Senior Corporate Counsel [ ] [ ]
NIG Nutritionals Ltd	19 Mahunga Drive Māngere Bridge Auckland 2022 New Zealand	www.nignutritionals.co.nz	0800 242 600 or +64 9 622 2388	Leon Fung Chief Executive Officer [ ]
Nuchev Food Pty Ltd	Level 10, 420 St Kilda Road Melbourne VIC 3004 Australia	https://nuchev.com.au/	+61 3 9544 8910	Greg Kerr CEO [ ]
Oceania Dairy	30 Cooneys Road Glenavy South Canterbury 7980 New Zealand	https://oceaniadairy.co.nz/	+64 03 686 6403	Hila Morey Quality and Compliance Manager [ ]
Sanulac Nutritionals Australia	138 Pavilion Drive, Māngere, Auckland 2022 New Zealand	https://lactalis.com.au/	1800 676 961	David Spurway CEO [ ] [ ]
Spring Sheep Milk Co	Wherescape Towers Level 4	www.springsheepnz.com	0800 777 464	Nick Hammond CEO

Entity	Address	Webpage	Phone	Contact person
	38 Wyndham Street Auckland 1010 New Zealand			[ ]
Synlait Milk Ltd	1028 Heslerton Road Rakaia 7783 New Zealand	https://www.synlait.com/	+64 3 373 3000	Suzan Horst Director of Quality [ ] [ ]
Sprout Organic	Level 3, 9 Ouyan Street Bundall QLD 2417 Australia	www.sproutorganic.com.au	1800 013 898	Ben Chester Director [ ]
Tatua Co-operative Dairy Company	3434 State Highway 26 Tatuanui 3374 New Zealand	https://www.tatua.com/	Phone: +61 3 5824 6200	Eric Morrison Business Manager [ ]
The a2 Milk Company Ltd	Level 11, 80 Mount Street North Sydney NSW 2060	www.a2milk.com.au	0800 22 46 32	David Bortolussi Managing Director and CEO [ ]
The Little Oak Company NZ Ltd	Unit 1, 20 Wilmette Place Mona Vale NSW 2103 Australia	www.thelittleoakcompany.co.nz	0800 741 866	Elke Pascoe Managing Director [ ]

Entity	Address	Webpage	Phone	Contact person
Winston Nutritional New Zealand Ltd	37 Banks Road Mount Wellington Auckland 1060 New Zealand	https://winstonnutritional.co.nz/	+64 9 570 8688	William Zhao General Manager [ ]

APPENDIX 4
INFORMATION FOR RETAILERS

INC Code of Practice and Retailers[1]

Retailers are not members of the Infant Nutrition Council and the INC Code of Practice does not apply to retailers. However, manufacturers and importers must not themselves pursue or endorse promotional activities through retailer channels unless those activities are allowed under the INC Code of Practice.

Due to the sensitive nature of Infant Formula products from 0 to 12 months, and strict regulations, special consideration needs to be taken when these products run into short expiry or get damaged. INC recommends that the following procedures are implemented by a responsible retailer:

- Strong stock management processes to ensure expired stocks are not on shelves.
- For cases of damaged or expired stocks, destruction of these products should be monitored by a certified process to ensure that they cannot be accessed by the public.
- Donations should be avoided as these are strictly governed under the INC Code of Practice.

1 - Defined as businesses engaged in the trade or on-selling of infant formula in physical retail outlets or via e-commerce.

Price promotions

Price promotion of infant formula (such as 'special prices' and discounts) is allowed. Certain aspects of the INC Code of Practice are authorised under the Commerce Act 1986. However, the INC Code of Practice and the authorisation do not place restrictions on price promotion of infant formula.

Further information

Find the Infant Nutrition Council's Code of Practice at:
infantnutritioncouncil.com/marketing-codes

Discover more about the Code in New Zealand at:
health.govt.nz/our-work/who-code-nz

INFANT NUTRITION COUNCIL
AUSTRALIA & NEW ZEALAND

Industry supporting both
Breastfeeding & Infant Formula

The Infant Nutrition Council is committed to working in collaboration with government, regulatory authorities, health care professionals and public health advocates, to optimise the health and wellbeing of infants in New Zealand.

Manufacturers and Importers' Obligations for the Marketing of Infant Formula in New Zealand

Information for Retailers

Contact us

For further information or questions
Phone +64 9 354 3272
Email info@infantnutritioncouncil.com

INFANT NUTRITION COUNCIL
AUSTRALIA & NEW ZEALAND

www.infantnutritioncouncil.com

Breastfeeding is the normal way to feed a baby and is important for baby's health and well-being. The World Health Organization recommends exclusive breastfeeding until six months of age, and then to complement with the appropriate introduction of solid foods up to two years of age.

There is no question that breastfeeding is the normal way to feed an infant and that breastmilk provides the best possible nutrition, however, when an infant does not receive breastmilk, the only suitable and safe alternative is a scientifically developed infant formula product.

The Infant Nutrition Council's Code of Practice for the Marketing of Infant Formula in New Zealand

The Infant Nutrition Council's Code of Practice for the Marketing of Infant Formula in New Zealand (INC Code of Practice) is a voluntary self-regulatory code of conduct which applies to all companies represented by the Infant Nutrition Council (INC) that are marketing infant formula in New Zealand.

It is based on the *World Health Organisation International Code of Marketing of Breast Milk Substitutes (WHO 1981)* and forms part of New Zealand's official application of the WHO Code within the context of New Zealand's legal and economic environment. The INC Code of Practice supports the aim of the WHO Code which is:

"...to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breastfeeding and by ensuring the proper use of breastmilk substitutes, when they are necessary, on the basis of adequate information and through appropriate marketing and distribution."

Key Features of the INC Code of Practice

The following are some of the key obligations for manufacturers and importers of infant formula under the INC Code of Practice:

1. Manufacturers and importers of infant formula should not advertise or in any other way promote infant formula to the general public
2. Infant formula product samples may only be provided through health care professionals and only for specific purposes.
3. Manufacturers and importers of infant formula should not distribute to pregnant women, or parents of infants and young children, any gifts of articles or utensils which may promote the use of breastmilk substitutes or bottle-feeding.
4. Informational and educational material produced by manufacturers and importers of infant formula (such as pamphlets or booklets) dealing with the feeding of infants should always include clear information on the benefits and superiority of breastfeeding (e.g. "Breastmilk is the perfect food for baby"); maternal nutrition, and the preparation for and maintenance of breastfeeding; the negative effect on breastfeeding of introducing partial bottle-feeding; the difficulty of reversing the decision not to breastfeed; and where needed, the proper use of proprietary infant formula. Where such materials contain information about the use of infant formulas, additional information is required.
5. Manufacturers and importers of infant formula must not idealise the use of infant formula through pictures and text on infant formula or information and educational materials.
6. Manufacturers and importers of infant formula should not give financial or material incentives to health professionals to promote infant formula.
7. Manufacturers and importers of infant formula can provide information about the formulas to health care professionals, but should restrict the information to scientific and factual matters, and such information should not imply or create a belief that bottle-feeding is equivalent or superior to breastfeeding.

Monitoring Code Compliance

The Ministry of Health is responsible for monitoring compliance with the INC Code of Practice. Any person, including individuals and community and consumer groups, can lodge a complaint with the Ministry of Health alleging a breach of the INC Code of Practice. If an issue is not resolved to the complainant's satisfaction through a natural justice process, it will be submitted to a Compliance Panel for a decision. The Director of Public Health appoints the Compliance Panel members.

More information about the complaints process is available at health.govt.nz/our-work/who-code-nz/breast-milk-substitutes-complaints-procedure

Application of the INC Code of Practice

The INC Code of Practice applies to the marketing and promotion of:

- **infant formula i.e. formula that is suitable for babies from birth** (e.g. Starter, Stage 1 or All Ages infant formulas) by INC members.
- **Follow-on formula i.e. formula that is suitable for babies from six to twelve months.**

The INC Code of Practice does not apply to:

- **Toddler milk drinks** suitable from 12 months (sometimes called Growing Up milks)
- **Complementary foods** (i.e. baby cereal and packaged baby foods)
- **Feeding bottles and teats**

APPENDIX 5
INC'S CONSTITUTION

CONSTITUTION

INFANT NUTRITION COUNCIL
AUSTRALIA & NEW ZEALAND

TABLE OF CONTENTS

CORPORATIONS ACT 2001

A company limited by guarantee

CONSTITUTION

of

Infant Nutrition Council Limited

ACN 135 154 406

1. Definitions

1.1.1 In this constitution, unless the context otherwise requires:

Associate Member means a Member who is:

(a) not a marketer of Infant Formula Product or Formulated Supplementary Food for Young Children in Australia or New Zealand;

(b) a marketer of either or both of Infant Formula Product and Formulated Supplementary Food for Young Children who:

(i) is a marketer of either or both of Infant Formula Product and Formulated Supplementary Food for Young Children in Australia but not New Zealand, and has, in data published prior to its application for membership as an Associate Member, an Australian Market Share of less than the Market Share Threshold for the relevant Australian market;

(ii) is a marketer of either or both of Infant Formula Product and Formulated Supplementary Food for Young Children in New Zealand but not Australia, and has, in data published prior to its application for membership as an Associate Member, a New Zealand Market Share of less than the Market Share Threshold for the relevant New Zealand market; or

(iii) is a marketer of either or both of Infant Formula Product and Formulated Supplementary Food for Young Children in both Australia and New Zealand, and has, in data published prior to its application for membership as an Associate Member, both an Australian Market Share of less than the Market Share Threshold for the relevant Australian market and a New Zealand Market Share of less than the Market Share Threshold for the relevant New Zealand market; or

(c) a manufacturer of either or both of Infant Formula Product and Formulated Supplementary Food for Young Children in Australia or New Zealand,

and who has applied for and been admitted to membership as an Associate Member;

Australian Market Share means, in respect of a marketer of either or both of Infant Formula Product and Formulated Supplementary Food for Young Children in Australia, the greater of the aggregate market share by value in Australia of either its Infant Formula Product in the Infant Formula Product market or its Formulated Supplementary Food for Young Children in the Formulated Supplementary Food for Young Children market, expressed as a percentage, as evidenced by independent scan data acceptable to the directors;

Code of Conduct means the Company's code of conduct as amended from time to time;

Company means Infant Nutrition Council Limited;

Formulated Supplementary Food for Young Children for the purposes of this Constitution means toddler milk drinks standardised as formulated supplementary foods for young children in the Australia New Zealand Food Standards Code as amended or replaced from time to time;

Infant Formula Product has the same meaning as in the Australia New Zealand Food Standards Code as amended or replaced from time to time;

Market Share Threshold means:

(a) for the Infant Formula Product market in Australia, 2%;

(b) for the Formulated Supplementary Food for Young Children market in Australia, 2%;

(c) for the Infant Formula Product market in New Zealand, 2%; and

(d) for the Formulated Supplementary Food for Young Children market in New Zealand, 2%;

Member means a member of the Company**;**

New Zealand Market Share means, in respect of a marketer of either or both of Infant Formula Product and Formulated Supplementary Food for Young Children in New Zealand, the greater of the aggregate market share by value in New Zealand of either its Infant Formula Product in the Infant Formula Product market or its Formulated Supplementary Food for Young Children in the Formulated Supplementary Food for Young Children market, expressed as a percentage, as evidenced by independent scan data acceptable to the directors;

Nominated Representative means a person nominated in accordance with clause 4.6.1 or a proxy of that person appointed in accordance with clause 4.7;

Officer has the meaning given to that term in section 9 of the *Corporations Act 2001***;**

Ordinary Member means a Member who is:

(a) a marketer of either or both of Infant Formula Product and Formulated Supplementary Food for Young Children in Australia or New Zealand; or

(b) a manufacturer of either or both of Infant Formula Product and Formulated Supplementary Food for Young Children in Australia or New Zealand,

and who has applied for and been admitted to membership as an Ordinary Member;

Register means the register of Members kept in accordance with clause 4.8;

Related Bodies Corporate has the meaning given to that term in section 50 of the *Corporations Act 2001*;

Seal means the common seal of the Company, if any;

Secretary means a person appointed to perform the duties of a secretary of the Company;

Senior Manager has the meaning given to that term in section 9 of the *Corporations Act 2001*.

1.1.2 Where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

2. Purpose

2.1 Objectives

2.1.1 The objectives for which the Company is established are:

(a) to improve infant nutrition by supporting the public health goals for the protection and promotion of breastfeeding and, when needed, Infant Formula Product as the only suitable alternative;

(b) to improve young children nutrition by addressing situations where intakes of energy and nutrients may not be adequate to meet a young child's requirements.

(c) to represent the Infant Formula Product industry and the Formulated Supplementary Food for Young Children industry in Australia and New Zealand; and

(d) generally to do all other things that may appear to the Company to be incidental or conducive to the attainment of the objectives or any of them.

2.1.2 Each objective in clause 2.1.1 is independent of the other objectives.

2.2 Powers

The Company can only exercise the powers in section 124(1) of the *Corporations Act 2001* to:

(a) carry out the objectives in clause 2.1.1; and

(b) do all things incidental or convenient in relation to the exercise of the power under paragraph (a).

2.3 Income

The income and property of the Company:

(a) may only be applied to the carrying out of the objectives of the Company in clause 2.1.1 and the exercise of the powers in clause 2.2; and

(b) must not be paid directly or indirectly to any Member,

provided that nothing in this constitution prevents the payment in good faith by the Company of:

(c) reasonable and proper remuneration and expenses to any employee of the Company or to any Member or other person in return for services or goods provided to the Company in the usual course of business;

(d) interest at market rates on money borrowed from any Member; or

(e) market rent for premises let by any Member to the Company.

3. Liability of Members

3.1 Limitation

The liability of the Members is limited.

3.2 Contribution

Each Member must contribute to the assets of the Company, if it is wound up during the time he is a Member or within 1 year afterwards, such amount as may be required (not exceeding $100) for:

(a) payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a Member;

(b) the costs, charges and expenses of winding up the Company; and

(c) the adjustment of the rights of the contributories among themselves.

4. Membership

4.1 Membership

4.1.1 There are two classes of Members:

(a) Ordinary Members; and

(b) Associate Members.

4.1.2 The Members are the persons who are Members as at the date of the adoption of this constitution and such other persons as the directors admit to Membership in accordance with this constitution.

4.1.3 The directors must not admit to Membership more than 1 company from any group of companies operating in either or both of Australia and New Zealand.

4.2 Form of application

An application for Membership must be:

(a) in writing in the form set out in annexure A or as otherwise approved by the directors;

(b) accompanied by such evidence as to eligibility for Membership as the directors require; and

(c) signed by the applicant.

4.3 Admission to Membership

If an application for Membership is accepted, the name and details of the applicant must be entered in the Register.

4.4 Entitlements

Each Member has the right to:

(a) receive notices of and attend and be heard at any general meeting; and

(b) in the case of Ordinary Members, vote at any general meeting.

4.5 Code of Conduct

Each Member must comply with the Code of Conduct.

4.6 Nominated Representatives

4.6.1 Each Member which is a body corporate may appoint 1 individual to represent it at any general meeting.

4.6.2 Each Member must give the Company notice of the name, address and facsimile number, if any, of the Nominated Representative appointed by it.

4.6.3 If a Member ceases to be a Member, the rights of the Member's Nominated Representative under this constitution terminate on the day the Member ceases to be a Member.

4.6.4 If a Member notifies the Secretary in writing of the termination of appointment of its Nominated Representative the rights of the Member's Nominated Representative under this constitution terminate on receipt by the Secretary of the notice of termination.

4.7 Appointment of a proxy

A Nominated Representative may appoint a proxy to represent it at general meetings in accordance with clause 11. For this purpose, in clause 11 **Nominated Representative** is to be substituted for **Member**.

4.8 The Register

4.8.1 A register of Members must be kept in accordance with the *Corporations Act 2001*.

4.8.2 The following must be entered in the Register in respect of each Member:

(a) the full name of the Member;

(b) the address, telephone and facsimile number, if any, of the Member;

(c) the date of admission to and cessation of Membership;

(d) whether the Member is an Ordinary Member or an Associate Member;

(e) the full name, address and facsimile number, if any, of its Nominated Representatives; and

(f) such other information as the directors require.

4.9 Notification by Members

Each Member must notify the Secretary in writing of any change in the name, address, telephone or facsimile number of the Member and any Nominated Representative of the Member within 1 month after the change.

5. Membership fee

5.1 Determination

Each Member must in accordance with this clause 5.1 pay the annual Membership fee determined by the directors.

5.2 Payment

5.2.1 When a person is admitted or re-admitted as an Ordinary Member in the period:

(a) 1 January to 30 June in any year, the Member must on admission or re-admission pay the full annual Membership fee for that year; and

(b) 1 July and 31 December in any year, the Member must on admission or re-admission pay half of the annual Membership fee for that year.

5.2.2 Each Ordinary Member must, by 1 January each year (or at other times agreed with the Company), pay the annual Membership fee for the period from that 1 January to the next 31 December.

5.2.3 Each Associate Member must:

(a) on admission or re-admission as an Associate Member, pay one quarter of the annual Membership fee for that year; and

(b) pay one quarter of the annual Membership fee for the relevant year by each following 1 January, 1 April, 1 July and 1 October (or at other times agreed with the Company).

6. Disciplining Members

6.1 Directors' power

6.1.1 Subject to clause 6.1.2, the directors may:

(a) terminate the Membership of a Member; or

(b) suspend a Member from Membership for a specified period, or until the Member satisfies any conditions considered appropriate by the directors,

where the directors consider that the Member has:

(c) refused or neglected to comply with a provision of this constitution; or

(d) acted in a manner prejudicial to the interests of the Company.

6.1.2 The Secretary must serve on the Member proposed to be disciplined, at the same time as the notice of meeting required to be served on the directors, a notice stating that:

(a) the conduct of the Member outlined in the notice will be considered at the meeting; and

(b) the Member may:

(i) have any of its Nominated Representatives attend and speak at the meeting on its behalf; and

(ii) submit to the Secretary on or before the date of the meeting, written representations relating to the conduct of the Member.

6.1.3 At a meeting referred to in clause 6.1.1, the directors must:

(a) give the Member or any Nominated Representative of the Member an opportunity to make oral representations; and

(b) give due consideration to these representations and any written representations submitted to the Secretary by the Member at or prior to the meeting.

6.2 Suspension

6.2.1 If a Member is suspended from Membership for a specified period, that suspension is automatically revoked once that period expires.

6.2.2 If a Member is suspended until it satisfies certain conditions, that suspension is only revoked when the directors determine that the conditions have been satisfied and that the suspension is revoked.

6.2.3 If a Member's Membership is suspended and that suspension is later revoked, the Member's Membership is reinstated and no new Membership fees are payable.

6.3 Termination

If a Member's Membership is terminated, the Member may apply for re-admission as a Member at any time.

7. Cessation and change of Membership

7.1 Resignation

7.1.1 A Member may not resign from Membership until it has paid all debts owed to the Company.

7.1.2 Subject to clause 7.1.1, a Member may resign from Membership by giving written notice to the Secretary.

7.1.3 The resignation of a Member takes effect 7 days from the date of receipt of the notice of resignation or such later date as is stated in the notice.

7.2 Cessation of Membership

A Member ceases to be a Member:

(a) on failing to satisfy the requirements for Membership under this constitution;

(b) in the case of a Member that is not an individual, on it being dissolved or otherwise ceasing to exist;

(c) in the case of an individual, on death;

(d) when the Member's fee payable under clause 5 remain unpaid for 3 months; or

(e) in accordance with clause 6,

although the directors may reinstate the Member on rectification of any such default or other action which is capable of remedy.

7.3 Change of Membership

7.3.1 If the Company notifies an Associate Member that its Australian Market Share or New Zealand Market Share of the Associate Member exceeds the relevant Market Share Threshold (**Associate Member Notice**):

(a) the Associate Member must apply for Ordinary Membership to take effect from the 1 January immediately following the date of the Associate Member Notice;

(b) the Associate Member must be admitted as an Ordinary Member with effect from that 1 January; and

(c) the Associate Member's Membership as an Associate Member ceases with effect from that 1 January.

7.3.2 If an Ordinary Member considers that its Australian Market Share and New Zealand Market Share, as applicable, do not exceed the relevant Market Share Threshold, it may, by 30 September in any year, notify the Company accordingly (**Ordinary Member Notice**), accompanied by an application for Associate Membership to take effect from the 1 January immediately following the date of the Ordinary Member Notice.

7.3.3 If, after receiving an Ordinary Member Notice and accompanying application, the directors consider that the Australian Market Share and New Zealand Market Share, as applicable, of the Ordinary Member do not exceed the relevant Market Share Threshold:

(a) the Ordinary Member must be admitted as an Associate Member with effect from the 1 January immediately following the date of the Ordinary Member Notice; and

(b) the Ordinary Member's Membership as an Ordinary Member ceases with effect from that 1 January.

8. General meetings

8.1 Convening

8.1.1 Except as permitted by law a general meeting must be held at least once in every calendar year.

8.1.2 A director may convene a general meeting at any time.

8.1.3 A Member may:

(a) only request the directors to convene a general meeting in accordance with section 249D of the *Corporations Act 2001;* and

(b) not convene or join in convening a general meeting except under section 249E or 249F of the *Corporations Act 2001*.

8.2 Notice

8.2.1 A notice of a general meeting must:

(a) be given at least 21 days before the meeting;

(b) specify the place, the day and the hour of meeting; and

(c) except as expressly set out in this constitution, state the general nature of the business to be transacted.

8.2.2 The accidental omission to give notice of any general meeting to, or the non receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at the general meeting.

8.2.3 If the Secretary receives a written notice from 3 Members or their Nominated Representatives requesting that business be brought before the next general meeting, the Secretary must include that business in the next notice of general meeting.

8.3 Cancellation or postponement

8.3.1 The directors may cancel or postpone the holding of any general meeting whenever they think fit (other than a meeting requisitioned by Members under the *Corporations Act 2001*).

8.3.2 Written notice of the cancellation or postponement must be given to all persons entitled to receive notice of the meeting at least 7 days before the date for which the meeting was convened and must specify:

(a) the reason for the cancellation or postponement; and

(b) where the meeting is postponed, a date, time and place for holding the meeting.

8.3.3 There must be at least 21 days between the date on which a notice postponing the meeting is given and the date on which the meeting is to be held.

8.3.4 The only business that may be transacted at a postponed meeting is that specified in the original notice convening the meeting.

8.3.5 The accidental omission to give notice of the cancellation or postponement of any general meeting to, or the non receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at the postponed meeting.

8.4 Representation of Member

Any Member may be represented at any general meeting by its Nominated Representative, a proxy or otherwise in accordance with this constitution or the *Corporations Act 2001*, and if so represented is deemed to be present in person.

9. Proceedings at general meetings

9.1 Quorum

9.1.1 No business may be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business.

9.1.2 A quorum is constituted by a majority of Ordinary Members or their Nominated Representatives.

9.2 Absence of quorum

If a quorum is not present within 30 minutes after the time appointed for the meeting, where the meeting was convened on the requisition of Members, the meeting is dissolved, or in any other case:

(a) the meeting stands adjourned to the day, and at the time and place, which the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place; and

(b) if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Ordinary Members present constitute a quorum.

9.3 Ordinary and special business

The business of an annual general meeting is:

(a) to receive and consider the profit and loss account, the balance sheet, the reports of the directors and the auditors and the directors' statement required by the *Corporations Act 2001* to be attached to the accounts of the Company;

(b) where necessary, to appoint auditors; and

(c) to transact any other business which under this constitution or the *Corporations Act 2001* ought to be transacted at an annual general meeting.

9.4 Appointment of chairperson

9.4.1 If the directors have elected one of their number as chairperson of their meetings, that person is entitled to preside as chairperson at every general meeting.

9.4.2 If the directors have elected one of their number as deputy chairperson of their meetings, that person is entitled to preside as deputy chairperson at every general meeting or, in the absence of the chairperson at a general meeting, to preside as chairperson at the general meeting.

9.4.3 The directors present at a general meeting must elect one of their number to be chairperson of the meeting if:

(a) a director has not been elected as chairperson of directors' meetings and a director has not been elected as deputy chairperson of directors' meetings; or

(b) the chairperson and deputy chairperson are not present within 15 minutes after the time appointed for the holding of the meeting or are unwilling to act.

9.4.4 The Members present at a general meeting must elect one of their number to be chairperson of the meeting if:

(a) there are no directors present within 15 minutes after the time appointed for the holding of the meeting; or

(b) all directors present decline to take the chair.

9.5 Chairperson's powers

Subject to the terms of this constitution and the *Corporations Act 2001*, the chairperson's ruling on all matters relating to the order of business, procedure and conduct of the general meeting is final and no motion of dissent from a ruling of the chairperson may be accepted.

9.6 Adjournment of meetings

9.6.1 The chairperson may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting to another time and place.

9.6.2 The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.

9.6.3 When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

9.6.4 Except as provided by clause 9.6.3, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

10. Voting at general meetings

10.1 Voting rights

10.1.1 Each Ordinary Member present at a general meeting has 1 vote.

10.1.2 An Associate Member present at a general meeting does not have the right to vote.

10.2 Decisions

Each matter submitted to a meeting must be decided on a show of hands or a poll demanded in accordance with clause 10.4.

10.3 Chairperson's vote at general meetings

The chairperson of a general meeting is not entitled to a second or casting vote.

10.4 Demand for a poll

10.4.1 A poll may be demanded by:

(a) the chairperson;

(b) at least 3 Ordinary Members entitled to vote on the resolution; or

(c) Ordinary Members with at least 5% of the votes that may be cast on the resolution on a poll.

10.4.2 A poll may be demanded:

(a) before a vote is taken;

(b) before the voting results on a show of hands are declared; or

(c) immediately after the voting results on a show of hands are declared.

10.4.3 The demand for a poll may be withdrawn.

10.4.4 The demand for a poll does not prevent the continuance of a meeting for the transaction of business other than the question on which a poll is demanded.

10.4.5 A poll demanded on a matter other than the election of a chairperson or on a question of adjournment must be taken when and in the manner the chairperson directs. The result of the poll is the resolution of the meeting at which the poll is demanded.

10.4.6 A poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately.

10.5 Evidence of resolutions

Unless a poll is demanded in accordance with clause 10.4, a declaration by the chairperson that a resolution has on a show of hands been:

(a) carried;

(b) carried unanimously or by a particular majority; or

(c) lost,

and an entry to that effect in the book containing the minutes of the proceedings of the Company, signed by the chairperson of that or the next succeeding meeting, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

10.6 Objections

10.6.1 An objection may be raised to the qualification of a voter only at the meeting at which the vote objected to is given or tendered.

10.6.2 The objection must be referred to the chairperson of the meeting, whose decision is final.

10.6.3 A vote not disallowed following the objection is valid for all purposes.

11. Proxies

11.1 Appointment

An Ordinary Member who is entitled to vote at a meeting may appoint proxies in accordance with the *Corporations Act 2001*.

11.2 Form of proxy

A document appointing a proxy must be in the form set out in annexure B to this constitution or as otherwise approved by the directors.

11.3 Effect of proxy

11.3.1 An instrument appointing a proxy confers authority to demand or join in demanding a poll.

11.3.2 If a proxy is only for a single meeting it may be used at any postponement or adjournment of that meeting, unless the proxy states otherwise.

11.3.3 A proxy may be revoked at any time by notice in writing to the Company.

11.4 Voting by proxy

11.4.1 An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.

11.4.2 A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid despite:

(a) the previous death or unsoundness of mind of the principal; or

(b) the revocation of the instrument (or of the authority under which the instrument was executed) or of the power,

if the Company has not received written notification of the death, unsoundness of mind or revocation at the registered office of the Company before the commencement of the meeting at which the instrument is used or the power is exercised.

12. Directors

12.1 Number of directors

12.1.1 Subject to the *Corporations Act 2001*, until otherwise determined by the Members in general meeting, the number of directors must not be fewer than 3 nor more than 12.

12.1.2 Alternate directors are not to be treated as directors for the purpose of determining the minimum or maximum number of directors holding office.

12.2 Appointment

12.2.1 The directors are those persons appointed in accordance with this clause 12.

12.2.2 Each Ordinary Member is, subject to clause 12.2.4, entitled to appoint 1 director.

12.2.3 Associate Members are, subject to clause 12.2.4, entitled to appoint directors as follows:

(a) where there are 7 or fewer Associate Members, the Associate Members are entitled to jointly appoint 1 director, being the person appointed by a decision of a majority of the Associate Members; and

(b) where there are more than 7 Associate Members, the Associate Members are entitled to jointly appoint 2 directors, being the persons appointed by a decision of a majority of the Associate Members.

12.2.4 If, under clauses 12.2.2 and 12.2.3, the total number of directors would exceed 12, the directors are:

(a) the directors appointed under clause 12.2.3; and

(b) the number of directors appointed by a decision of a majority of the Ordinary Members required to ensure that there is a total of 12 directors.

12.2.5 Each director appointed under this clause 12 must be an Officer, Senior Manager or shareholder of an Ordinary Member, Associate Member or any of their respective Related Bodies Corporate in Australia or New Zealand.

12.2.6 At any given time, only 1 Officer, Senior Manager or shareholder of a Member or any of its Related Bodies Corporate in Australia or New Zealand is entitled to be appointed as a director.

12.3 Insufficient directors

In the event of a vacancy in the office of a director, the remaining directors may act to appoint a person to fill the vacancy, but if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, they may act only for the purpose of convening a general meeting.

12.4 Retirement and resignation

12.4.1 Each director appointed by a decision of a majority of the Associate Members under clause 12.2.3 or a decision of a majority of the Ordinary Members under clause 12.2.4(b)

holds office until the conclusion of the next following annual general meeting of the Company.

12.4.2 Any director may retire from office on giving notice in writing to the Company of his intention to do so.

12.4.3 The resignation of a director takes effect from the date of receipt of the notice of resignation or such later date as is stated in the notice.

12.5 Vacation of office

In addition to the circumstances in which the office of a director becomes vacant by virtue of the *Corporations Act 2001* or another provision of this constitution, the office of director becomes vacant if the director:

(a) ceases to be an Officer, Senior Manager or shareholder of a Member or any of its Related Bodies Corporate in Australia or New Zealand;

(b) becomes an insolvent under administration;

(c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;

(d) is absent without the consent of the directors from the meetings of the directors held during a continuous period of 6 months and the directors resolve that the office of that director be vacated; or

(e) becomes prohibited from being a director by reason of an order made under the *Corporations Act 2001*.

12.6 Determination of fees

The directors are not entitled to be paid by way of fees for their services.

12.7 Payment for expenses

The directors are not entitled to be paid or reimbursed for any travelling, accommodation or other expenses reasonably and properly incurred by them:

(a) in attending and returning from meetings of the directors or any committee of the directors or any general meetings; or

(b) otherwise in the execution of their duties as directors.

13. Alternate directors

13.1 Power to appoint

A director may appoint any person to act as an alternate director in place of the appointor whenever the appointor is unable to act personally by reason of illness, absence or any other cause and may do so generally, for a meeting, for any other purpose or for a specified period.

13.2 Rights and powers

13.2.1 An alternate director is entitled to notice of meetings of the directors and to attend such meetings and, if the appointor is not present at such a meeting, is entitled to vote in his place.

13.2.2 An alternate director may exercise any powers that the appointor may exercise and the exercise of any power by the alternate director is deemed to be the exercise of the power by the appointor.

13.3 Suspension or revocation

13.3.1 A director may revoke or suspend the appointment of an alternate director appointed by him.

13.3.2 The directors may suspend or remove an alternate director by resolution after giving the appointor 7 days' notice of their intention so to do.

13.4 Form

13.4.1 Each appointment, revocation or suspension under clause 13.1 or 13.3.1 must be made by notice in writing signed by the director making it.

13.4.2 The notice may be given by facsimile.

13.5 Termination of appointment

In addition to the circumstances in which the office of a director becomes vacant by virtue of the *Corporations Act 2001* or another provision of this constitution, the appointment of an alternate director terminates:

(a) if the director for whom the alternate director acts as alternate ceases to hold office as director;

(b) on the happening in respect of the alternate director of any event which causes a director to vacate the office of director; or

(c) if by writing left at the registered office of the Company the alternate director resigns from the appointment.

14. Powers and duties of directors

14.1 General management

14.1.1 The business of the Company is to be managed by the directors who may exercise all those powers of the Company as are not, by the *Corporations Act 2001* or by this constitution, required to be exercised by the Company in general meeting.

14.1.2 Without limiting the powers of management conferred on the directors by any other provision of this constitution, the directors may exercise all the powers of the Company to:

(a) become a member of organisations with similar objectives to the Company;

(b) appoint and remove the Chief Executive Officer of the Company and delegate such powers to the Chief Executive Officer as the directors consider appropriate;

(c) borrow money;

(d) mortgage or charge any property or business of the Company; and

(e) give any other security for any debt, liability or obligation of the Company or of any other person.

14.1.3 No decision made or resolution passed by the Company in general meeting invalidates any prior act of the directors which would have been valid if that decision or resolution had not been made or passed.

14.2 Negotiable instruments

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company may be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any 2 directors or in such other manner as the directors determine.

14.3 Appointment of attorney

14.3.1 The directors may appoint any person to be an attorney of the Company:

(a) for the purposes;

(b) with the powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the directors);

(c) for the period; and

(d) subject to the conditions,

they think fit.

14.3.2 Any power of attorney may contain those provisions for the protection and convenience of persons dealing with the attorney that the directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

15. Proceedings of directors

15.1 Meetings of directors

15.1.1 Subject to clause 15.1.2, the directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.

15.1.2 At least 1 meeting of the directors each year must be held in New Zealand.

15.1.3 The directors are to be treated as present together when in communication by telephone or other means of audio or audio-visual communication if each of the directors participating in the communication is able to hear each of the other participating directors.

15.2 Convening of meeting

Any director may at any time, and a Secretary must on the requisition of any director, convene a meeting of the directors.

15.3 Notice of meeting

15.3.1 Notice of every directors' meeting must be given to each director, except that it is not necessary to give notice to any director who is absent from Australia or New Zealand and has not left with the Secretary a facsimile number at which he may be given notice.

15.3.2 Subject to clause 15.3.3, any notice of a meeting of directors may be given in writing or orally, and by facsimile, telephone or any other means of communication and must be given at least 5 days prior to the meeting.

15.3.3 All directors may waive in writing the required period of notice for a particular meeting.

15.4 Quorum

15.4.1 No business may be transacted at any meeting of the directors unless a quorum of directors is present at the time when the meeting proceeds to business.

15.4.2 Unless otherwise determined by the Company in general meeting, at a meeting of directors a quorum is present if there are present at the meeting a majority of directors.

15.4.3 An alternate director is counted in a quorum at a meeting at which the director who appointed the alternate is not present (provided that the alternate is, under the *Corporations Act 2001*, entitled to vote).

15.5 Absence of quorum

If a quorum is not present within 30 minutes after the time appointed for the meeting:

(a) the meeting stands adjourned to the day, and at the time and place, which the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place; and

(b) if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, meeting, the directors present constitute a quorum.

15.6 Appointment of chairperson of directors

15.6.1 The directors may elect a chairperson of their meetings and determine the period for which the person elected is to hold office.

15.6.2 If a chairperson has not been elected, or if at any meeting the chairperson is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act, the directors present may choose one of their number to be chairperson of the meeting.

15.7 Chairperson's vote at directors meetings

A chairperson is not entitled to a second or casting vote.

15.8 Voting rights

Subject to this constitution, at each directors' meeting each director present has 1 vote.

15.9 Decisions

15.9.1 Decisions of the directors will be effective if passed by a vote of a majority of those directors present and entitled to vote at the meeting.

15.9.2 A person who is an alternate director is entitled (in addition to his own vote if he is a director) to 1 vote on behalf of each director whom he represents as an alternate director at the meeting and who is not present at the meeting.

15.10 Teleconference

15.10.1 For the purpose of this constitution the contemporaneous linking together in oral communication by telephone, audio-visual or other instantaneous means (**Teleconference**) of a number of the directors (being not less than a quorum) constitutes a meeting of the directors.

15.10.2 The provisions of this constitution relating to a meeting of the directors apply to a Teleconference insofar as they are not inconsistent with the provisions of this clause 15.10.

15.10.3 The following provisions apply to a Teleconference:

(a) each of the directors taking part in the meeting must be able to hear and be heard by each of the other directors taking part at the commencement of the meeting and each director so taking part is deemed for the purposes of this constitution to be present at the meeting; and

(b) at the commencement of the meeting each director must announce his presence to all other directors taking part in the meeting.

15.10.4 If the Secretary is not present at a Teleconference one of the directors present must take minutes of the meeting.

15.10.5 A minute of the proceedings of a Teleconference is sufficient evidence of the proceedings and of the observance of all necessary formalities if the minute is certified to be a correct minute by the chairperson of the meeting.

15.11 Circulated resolutions

15.11.1 If:

(a) all directors at that time present in Australia and New Zealand; and

(b) any director absent from Australia or New Zealand who has left a facsimile number at which he may be given notice,

have signed a document containing a statement that they are in favour of a resolution of the directors in terms set out in the document, a resolution in those terms is deemed to have been passed at a meeting of the directors held on the day and at the time on which the document was last signed by a director.

15.11.2 For the purposes of clause 15.11.1, 2 or more separate documents containing statements in identical terms, each of which is signed by one or more directors, together constitute one document containing a statement in those terms signed by those directors on the respective days on which they signed the separate documents.

15.11.3 A reference in clause 15.11.1 to all the directors does not include a reference to a director who, at a meeting of directors, would not be entitled to vote on the resolution.

15.11.4 Every resolution passed under clause 15.11.1 must as soon as practicable be entered in the minutes of the directors' meetings.

15.11.5 A facsimile addressed to or received by the Company and purporting to be signed by a director for the purpose of this clause 15.11 is deemed to be a document in writing signed by that director.

15.12 Committees

15.12.1 The directors may:

(a) delegate any of their powers to committees consisting of such directors or other persons as they think fit and may revoke the delegation; and

(b) appoint advisory committees.

15.12.2 Any committee formed under clause 15.12.1 must conform to any regulations that may be imposed on it by the directors.

15.12.3 The directors may at any time by resolution revoke any delegation of power or disband any committee established under this clause 15.12.

15.13 Validation of acts

All acts done:

(a) at any meeting of directors or a committee of directors; or

(b) by any person acting as a director,

are, although it is afterwards discovered that there was some defect in the appointment or continuance in office of any of the persons concerned or that any of them were disqualified or were not entitled to vote, as valid as if each of them had been duly appointed and had duly continued in office and was entitled to vote.

16. Directors' interests

16.1 Prohibition

16.1.1 Except to the extent permitted by the *Corporations Act 2001* and subject to clause 16.1.2, a director who has a material personal interest in a matter that is being considered at a meeting of directors must not:

(a) be counted in a quorum;

(b) vote on the matter; or

(c) be present while the matter is being considered at the meeting.

16.1.2 If a director who has a material personal interest in a matter that is being considered at a meeting of the directors is not prohibited by the *Corporations Act 2001* from being present at the meeting and voting, the director may be present, be counted in the quorum and may be heard but may not vote on the matter.

16.2 Existence of interest

16.2.1 A director may, to the extent permitted by the *Corporations Act 2001* and with the consent of the Company in general meeting:

(a) enter into contracts or arrangements or have dealings with the Company either as vendor, purchaser, mortgagee or otherwise;

(b) be interested in any contract, operation, undertaking or business entered into, undertaken or assisted by the Company or in which the Company is or may be interested;

(c) hold an office or position of profit with the Company or any body corporate in which the Company is a Member or otherwise interested; or

(d) retain for the director's own benefit any profit or benefit arising from any such relationship or transaction.

16.2.2 The director is not, because of entering into any relationship or transaction referred to in clause 16.2.1:

(a) disqualified from the office of director; or

(b) liable to account to the Company for any profit arising from the relationship or transaction by reason of being a director of the Company or of the fiduciary relationship between the director and the Company.

16.2.3 For the purpose of clause 16.2.1, **Company** includes any subsidiary of the Company and any other company in which the Company or any subsidiary of the Company is or becomes a shareholder or is otherwise interested.

16.3 Disclosure

Subject to any other requirements of the *Corporations Act 2001*, the nature of the director's interest referred to in clause 16.2 must be disclosed by the director before or at the meeting of directors at which the matter is first taken into consideration (if the interest then exists) or in any other case at the first meeting of the directors after the director becomes so interested.

17. By-laws

17.1 Power

The directors may make such by-laws as they consider necessary to provide for:

(a) criteria for eligibility for Membership;

(b) the proper control, administration of the Company's affairs, operations, finances, interests, effects and property; and

(c) such other matters as they consider relevant.

17.2 By-laws

A by-law:

(a) is subject to this constitution;

(b) must not be inconsistent with this constitution; and

(c) is binding on all Members and directors and has the same effect as this constitution.

17.3 Amending and repealing by-laws

17.3.1 The directors may, subject to the requirements of any person or authority having jurisdiction in respect of a matter dealt with in the by-laws, amend and repeal by-laws.

17.3.2 Notwithstanding clause 17.3.1, the Company in general meeting may, subject to the requirements of any person or authority having jurisdiction in respect of a matter dealt with in the by-laws, amend or repeal any by-law made by the directors.

18. Minutes

The directors must carry out the obligations imposed on the Company by the *Corporations Act 2001* to cause minutes of meetings to be kept.

19. Secretary

A Secretary holds office on such terms, as to remuneration and otherwise, as the directors determine.

20. Seal

20.1 Effect

This clause 20 has effect only if the Company has a Seal.

20.2 Safe custody

The directors must provide for the safe custody of the Seal.

20.3 Affixing

20.3.1 The Seal may not be affixed to any instrument except by the authority of a resolution of the directors or of a committee of the directors authorised by the directors.

20.3.2 Every instrument to which the Seal is affixed must be signed by at least 1 director and countersigned by another director, a Secretary or another person appointed by the directors to countersign that document or a class of documents in which that document is included.

20.3.3 A director may sign or countersign as director any instrument to which the Seal is affixed although the instrument relates to a contract, arrangement, dealing or other transaction in which he is interested and his signature is effective with respect to compliance with the requirements of this constitution as to the affixing of the Seal despite his interest.

20.4 Signatures by mechanical means

The directors may determine generally or in a particular case that the signature of a director, Secretary or other person appointed by the directors for the purpose of signing documents to which the Seal is affixed may be written by a specified mechanical means on documents which bear evidence of examination by the auditor.

21. Accounts, audit and records

21.1 Accounts

21.1.1 The directors must cause proper accounting and other records to be kept in accordance with the *Corporations Act 2001*.

21.1.2 The directors must distribute copies of every profit and loss account and balance sheet (including every document required by law to be attached to them) as required by the *Corporations Act 2001*.

21.2 Audit

21.2.1 A registered company auditor must be appointed by the Company.

21.2.2 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the *Corporations Act 2001*.

21.3 Inspection

21.3.1 Subject to the *Corporations Act 2001* the directors determine:

(a) whether and to what extent;

(b) at what times and places; and

(c) under what conditions,

the accounting records and other documents of the Company or any of them are open to the inspection of Members other than directors.

21.3.2 A Member other than a director does not have the right to inspect any document of the Company except as:

(a) provided by law; or

(b) authorised by the directors or the Company in general meeting.

22. Notices

22.1 Means of giving notices

A notice may be given to the addressee by:

(a) delivering it in writing to the street address of the addressee;

(b) sending it by prepaid ordinary post to the street address of the addressee; or

(c) sending it by facsimile to the facsimile number of the addressee,

specified in the Register or by such other method of communication determined by the directors.

22.2 Time notices are given

A notice is to be regarded as given:

(a) if delivered, at the time of delivery;

(b) if sent by post, on the 5th day after posting; or

(c) if sent by facsimile, at the time transmission is completed.

22.3 Proof of giving notices

Proof of the sending of a notice by facsimile and the time of completion of transmission may be established by production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the addressee.

22.4 Notice of general meeting

22.4.1 Notice of every general meeting must be given in the manner authorised by this constitution to:

(a) every Member;

(b) every director;

(c) every Nominated Representative; and

(d) the auditor for the time being of the Company.

22.4.2 No other person is entitled to receive notice of general meetings.

23. Indemnity

23.1 Right to indemnity

Subject to this clause 23, to the extent permitted by law the Company indemnifies each Officer against any liability to another person incurred by the Officer as an Officer of the Company.

23.2 Restrictions

The indemnity referred to in clause 23.1 does not indemnify an Officer against a liability:

(a) owed to the Company or a related body corporate as defined in section 50 of the *Corporations Act 2001* (**Related Body Corporate**);

(b) for a pecuniary penalty order under section 1317G of the *Corporations Act 2001* or a compensation order under section 1317H of the *Corporations Act 2001*; or

(c) that is owed to someone other than the Company or a Related Body Corporate and did not arise out of conduct in good faith.

23.3 Legal costs

23.3.1 The indemnity referred to in clause 23.1 does not indemnify an Officer against legal costs incurred in defending an action for a liability incurred as an Officer of the Company if the costs are incurred:

(a) in defending or resisting proceedings in which the Officer is found to have a liability for which the officer could not be indemnified under clause 23.2;

(b) in defending or resisting criminal proceedings in which the Officer is found guilty;

(c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or

(d) in connection with proceedings for relief to the officer under the *Corporations Act 2001* in which the court denies the relief.

23.3.2 For the purposes of this clause 23.3, the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

23.4 Insurance premiums

The Company may, in accordance with the *Corporations Act 2001*, pay the premiums on contracts insuring a person who is or has been an Officer of the Company.

24. Winding up

If on the winding up of the Company there remains after satisfaction of all its debts and liabilities any property, that property may only be paid or distributed to one or more organisations having similar objectives to the Company and rules prohibiting the distribution of their assets to members. The organisation or organisations are to be determined by the Company in general meeting prior to the winding up of the Company, or, if no such determination is made, by court order.

25. Amalgamation

Where it furthers the objectives of the Company to amalgamate with any one or more other organisations having similar objectives, the other organisation or organisations must have rules prohibiting the distribution of its or their assets and income to members and must be exempt from income tax.

26. Interpretation

26.1 Interpretation

26.1.1 Unless the context otherwise requires a word which denotes:

(a) the singular denotes the plural and vice versa;

(b) any gender denotes the other genders; and

(c) a person includes an individual, a body corporate and a government.

26.1.2 Unless the context otherwise requires a reference to:

(a) any legislation includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation;

(b) any other instrument where amended or replaced means that instrument as amended or replaced; and

(c) a thing or amount is a reference to the whole and each part of it.

26.2 Corporations Act 2001

Except where the contrary intention appears in this constitution, an expression has, in a provision of this constitution which deals with a matter dealt with by a relevant provision of the *Corporations Act 2001*, the same meaning as in that provision of the *Corporations Act 2001*.

26.3 Replaceable rules excluded

To the extent permitted by law, the replaceable rules in the *Corporations Act 2001* do not apply to the Company.

26.4 Headings

Headings must be ignored in the interpretation of this constitution.

26.5 Business day

A reference to a business day means a business day as defined in the *Corporations Act 2001*.

26.6 Time

26.6.1 References to and calculations of time.

26.6.2 Where a period of time is specified and is to be calculated before or after a given day, act or event it must be calculated without counting that day or the day of that act or event.

26.6.3 A provision of this constitution, except that specifying the time for deposit of proxies with the Company, which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as if it required it to be done on or by the next business day.

ANNEXURE A

APPLICATION FOR MEMBERSHIP OF INFANT NUTRITION COUNCIL LIMITED
ABN 23 135 154 406

Company Name _____

Address _____

Telephone no _____

Facsimile no _____

applies for membership as an [*Ordinary Member*/*Associate Member*] of Infant Nutrition Council Limited and agrees to be bound by its constitution and to comply with its Code of Conduct as amended from time to time.

. . . . . .
Signature

. . . . . .
Name (please print)

. . . . . .
Office held

……..
Date

PLEASE FORWARD COMPLETED APPLICATION FORM TO THE INFANT NUTRITION COUNCIL SECRETARIAT AT info@infantnutritioncouncil.com

ANNEXURE B

PROXY FORM

Name and address of Member or Nominated Representative:
(if you are a Nominated Representative, please also state which Member you represent)

_____

_____

Appointment of proxy

I appoint:

_____
(name of person)

or in his or her absence, or if no person is named, the chairperson of the meeting as my proxy to vote in accordance with the following directions (or, if no directions have been given, as the proxy sees fit) at the general meeting of Infant Nutrition Council Limited to be held on *[insert date, time and place]* and at any adjournment of that meeting.

Vote on resolutions

Resolution 1: That ##

For	**Against**
☐	☐

Dated:

. . . . . .
Signature

. . . . . .
Signature

. . . . . .
Name (please print)

. . . . . .
Name (please print)

. . . . . .
Office held

. . . . . .
Office held

SIGNING THIS FORM

Two directors or a director and secretary (or in the case of a sole director company, the sole director and secretary) or a duly authorised officer of the Member must sign this form on behalf of the Member. If signed by an authorised officer, please provide the original or an attested copy of the authority. The authority must be signed by 2 directors or a director and secretary (or in the case of a sole director company, the sole director and secretary).

If signing on behalf of a Member as the Member's attorney, please provide the original or an attested copy of the power of attorney.

APPENDIX 6
INC'S CODE OF CONDUCT

CODE OF CONDUCT

The Infant Nutrition Council ("INC") members agree to work together to resolve issues relating to the infant formula industry in Australia and New Zealand.

These issues may include matters concerning the industry codes in Australia and New Zealand, the support of breastfeeding, possible false and misleading claims, food regulations and standards, food safety issues or company representatives' conduct and activities.

Members will:

- Uphold the values of the INC, which are to be truthful, professional, ethical and accountable and not bring the INC into disrepute.

- Act in good faith and with due care and comply with applicable laws and regulations including where appropriate:
    - the Australia New Zealand Food Standards Code and labelling laws,
    - being a registered exporter under the New Zealand Animals Product Act (APA) 1999, and/or
    - being a registered establishment with Australian Quarantine and Inspection Service (AQIS) under the Export Control Act 1982.
- Include a breastfeeding statement on members' websites that include information about infant formula to the following effect:

    Breast milk is the normal way to feed a baby and is important for baby's health. Professional advice should be followed before using an infant formula. Introducing partial bottle feeding could negatively affect breast feeding. Good maternal nutrition is preferred for breast feeding and reversing a decision not to breast feed may be difficult. Infant formula should be used as directed. Proper use of an infant formula is important to the health of the infant. Social and financial implications should be considered when selecting a method of feeding.

- Accept and abide by the letter and the intent of the industry codes in Australia and New Zealand. These are the Marketing in Australia of Infant Formula: Manufacturers and Importers Agreement 1992 (MAIF Agreement) and The Infant Nutrition Council Code of Practice for the Marketing of Infant Formula in New Zealand (INC Code of Practice).
- Be a signatory to the MAIF Agreement if marketing infant formula in Australia.
- Avoid collusive or anticompetitive behaviour contrary to the Competition and Consumer Act 2010 and the New Zealand Commerce Act 1986.
- Uphold the principles of the consensus based process through participation, collaboration, transparency, balance and respect for each member.
- Seek to resolve disputes between companies through the INC's Compliance Dispute Resolution Process prior to taking legal or other external action.
- Pay the annual membership fee and any special levies set by the Board and do so in a timely fashion.
- In attending INC meetings, including INC board meetings, all participants agree that they will not enter into any discussions, activities or conduct that may infringe any applicable competition law. By way of example, participants will not discuss, communicate or exchange any commercially sensitive information, including information relating to prices, product strategy, costs and revenues, trading terms and conditions with third parties, including purchasing strategy, terms of supply, trade programs or distributions strategy.

Updated by the INC Board 2 December 2013
Updated by the INC Board 23 August 2017
Updated by INC Board 15 November 2017

APPENDIX 7
IMPLEMENTING AND MONITORING THE INTERNATIONAL CODE OF MARKETING OF BREAST-MILK SUBSTITUTES IN NEW ZEALAND: THE CODE IN NEW ZEALAND

Implementing and Monitoring the *International Code of Marketing of Breast-milk Substitutes* in New Zealand:

The Code in New Zealand

Te riunga ora mō ngā mokopuna
The safe pathways to children's wellbeing

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Foreword

Breastfeeding is key to providing the best start for New Zealand infants, and important for both infant and maternal health. The overall Ministry of Health objectives are to increase the prevalence and duration of breastfeeding for all infants. All efforts made to promote and protect breastfeeding practices in New Zealand will contribute to reducing inequalities in health between Māori and non-Māori and between Pacific and non-Pacific peoples, in the short and long term.

This document is one action the Ministry of Health has taken to give effect to the articles of the *International Code of Marketing of Breast-Milk Substitutes* (WHO 1981) (the International Code), and subsequent relevant World Health Assembly resolutions.

The International Code aims to contribute to providing safe and adequate nutrition for infants by protecting and promoting breastfeeding. It also aims to ensure the proper use of breast milk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution. New Zealand is a signatory of the International Code, so is committed to working towards meeting its aims.

Following a review of New Zealand's interpretation of the International Code (Ministry of Health 2004a), the Ministry has prepared a single, standard reference document. This document includes the Code of Practice for Health Workers in New Zealand and the Code of Practice for the Marketing of Infant Formula (NZIFMA 2007). This will ensure the International Code is more accessible, more effectively used and more easily monitored in New Zealand.

This publication is intended to ensure the International Code's spirit and intent become the guiding principles for all parties concerned with infant nutrition and the health and wellbeing of New Zealand families.

Stephen McKernan
Director-General of Health

Acknowledgements

Implementing and Monitoring the International Code of Marketing of Breast-Milk Substitutes in New Zealand: The Code in New Zealand (Te riunga ora mō ngā mokopuna) has involved the valued input of a wide range of individuals and groups. The Ministry of Health would like to acknowledge and thank all those who have contributed to this publication, including sector stakeholders and Māori and Pacific health advisors.

In the context of Te riunga ora mō ngā mokopuna – The safe pathways to children's wellbeing, the term 'mokopuna' includes all children (eg, grandchildren, great-grandchildren, great-great-grandchildren). The title conveys several concepts, including generational wellbeing, safe pathways, informed choice and a focus on mokopuna.

Contents

Introduction

International Code of Marketing of Breast-Milk Substitutes

Breastfeeding has a range of well-recognised benefits to both mother and child (see Appendix 1). Recognising the benefits and observing that rates and duration of breastfeeding have historically been lower than ideal, the World Health Organization (WHO) and United Nations Children's Fund (UNICEF) convened a landmark meeting on infant and young child feeding with representatives of governments, agencies of the United Nations system, non-governmental organisations, the infant-food industry, and experts in related disciplines. In 1981, a series of recommendations was adopted, including the *International Code of Marketing of Breast-milk Substitutes* (the International Code) (WHO 1981). (The International Code is reproduced on page 5. Answers to frequently asked questions about the International Code are in Appendix 2.)

The WHO urged all Member States to take action to give effect to the International Code's principles and aim, as appropriate to their social and legislative framework. Action included adopting national legislation, regulations or other suitable measures to put the International Code into effect, involving all stakeholder groups in the International Code's implementation, and monitoring compliance with the International Code.

The International Code aims to contribute to the provision of safe and adequate nutrition for infants by:

- protecting and promoting breastfeeding
- ensuring the proper use of breast-milk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution.

The Ministry of Health (the Ministry) is committed to protecting, promoting and supporting breastfeeding. As well as the International Code, several other international documents encourage the Ministry's commitment, including:

- *Innocenti Declaration on the Protection, Promotion and Support of Breastfeeding* (WHO and UNICEF 1990)
- *Global Strategy for Infant and Young Child Feeding* (WHO 2003)
- *Innocenti Declaration 2005: On infant and young child feeding* (WHO 2005).

The *Global Strategy for Infant and Young Child Feeding* reaffirms the International Code's ongoing importance, and asks governments to implement and monitor existing measures to give effect to the International Code and subsequent relevant World Health Assembly resolutions and, where appropriate, to strengthen them or adopt new measures. For details about the strategy's implementation in New Zealand, see Stewart (2006).

The Ministry has taken action to give effect to the International Code's principles and aim and subsequent relevant World Health Assembly resolutions, as appropriate to New Zealand's social and legislative framework (Appendix 3).

The International Code, Article 6.1, states that health authorities should give appropriate information and advice to health workers about their responsibilities under the International

Code. *Implementing and Monitoring the International Code of Marketing of Breast-milk Substitutes in New Zealand: The Code in New Zealand* is one such action.

Implementing the International Code in New Zealand

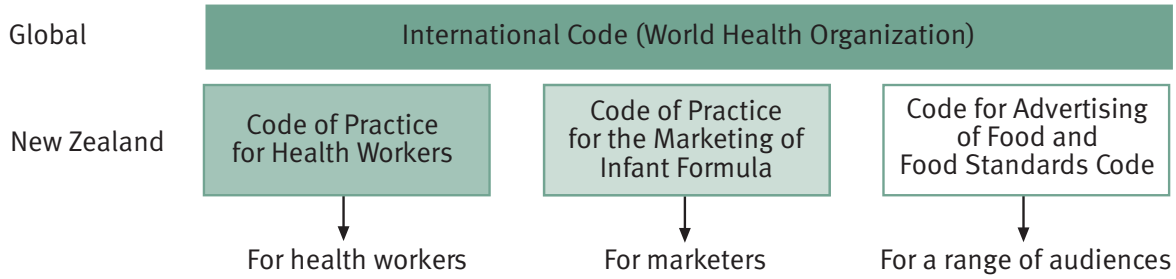
The International Code is implemented in New Zealand under four New Zealand codes. The codes, illustrated in Figure 1, are the:

- Code of Practice for Health Workers (Health Workers' Code)
- New Zealand Infant Formula Marketers' Association Code of Practice for the Marketing of Infant Formula (the NZIFMA Code of Practice) (NZIFMA 2007)
- Advertising Standards Authority Code for Advertising of Food (ASA 2006)
- Australia New Zealand Food Standards Code (Food Standards Code) (FSANZ 2002).

The Health Workers' Code and NZIFMA Code of Practice are based on the International Code and subsequent relevant World Health Assembly resolutions. The Food Standards Code draws on the International Code to cover labelling, composition and quality matters. The Code for Advertising of Food endorses the NZIFMA Code of Practice as the appropriate industry code of ethics.

The International Code is also relevant for health practitioner training providers, non-governmental organisations, community support groups, education authorities, the media, employers, supermarkets, pharmacies and other sales outlets.

Figure 1: Codes implementing the International Code of Marketing of Breast-Milk Substitutes in New Zealand



The Health Workers' Code, NZIFMA Code of Practice and Code for Advertising of Food are:

- **voluntary**, which means the people and organisations subject to the codes are not legally required to comply with them, but each code is a standard for practice
- **self-regulatory**, which means health workers, NZIFMA companies and the Advertising Standards Authority should manage their compliance processes to comply with their codes of practice, and may be asked to change their codes in response to any upheld complaints.

The Food Standards Code is:

- **not voluntary**, which means the people and organisations subject to this code are legally required to comply.

Code of Practice for Health Workers

The Health Workers' Code (see page 13) comprises the bulk of this document, and represents part of the New Zealand response to international recommendations and the Ministry's strategic objectives in relation to breastfeeding and breast milk substitutes. In particular, it ensures the International Code is interpreted for New Zealand's specific situation and is communicated effectively to the New Zealand health sector. For example, the response especially includes consideration of Māori health and reducing inequalities.

A health worker's employer is responsible for implementing the Health Workers' Code in their organisation.

Recommendations from the International Code for formula companies and marketers have not been included in the Health Workers' Code because New Zealand has a voluntary and self-regulated industry code. However, the NZIFMA Code of Practice is referred to where appropriate, and its key principles are outlined, for completeness and because it is important health workers are aware of the NZIFMA Code of Practice.

Code of Practice for the Marketing of Infant Formula

The NZIFMA Code of Practice (NZIFMA 2007) applies to the marketing of infant formula products suitable for infants up to the age of six months. The NZIFMA developed the code in consultation with the Ministry. It applies to the manufacturers, marketers and distributors of infant formula.

The NZIFMA is responsible for liaising with and educating the industry sector to ensure the NZIFMA Code of Practice is adhered to.

The NZIFMA Code of Practice is not a Ministry of Health or health sector document, so it is not reproduced in this document. However, a copy of the code is provided separately with this document. All health workers and other interested parties are encouraged to be aware of the content of the NZIFMA Code of Practice.

Code for Advertising of Food

The Advertising Standards Authority is an independent body the advertising industry set up to administer the rules laid down in advertising codes, including the Code for Advertising of Food (ASA 2006) which is available from the Authority's website http://www.asa.co.nz

The authority uses the principles of the Code for Advertising of Food and guidelines supplied by the NZIFMA for the marketing of follow-on formula for infants aged over six months to help it to decide on complaints about the advertising of these products.

The principles of the Code for Advertising of Food are as follows.

- The advertising of food will be conducted in a socially responsible manner.
- Advertisements should not by implication, omission, ambiguity or exaggerated claim mislead or deceive, or be likely to mislead or deceive consumers, abuse the trust or exploit the lack of knowledge of consumers, exploit the superstitious, or without justifiable reason play on people's fear.

- Advertisements should not undermine the Government's Healthy Eating – Healthy Action policy (Ministry of Health 2004b), the Ministry's Food and Nutrition Guidelines (Ministry of Health 2000), or the health and wellbeing of individuals.
- Advertisements should comply with New Zealand law and the appropriate industry code of ethics (in this case the NZIFMA Code of Practice).

Food Standards Code

The Government has legislated for the labelling, composition and quality of infant formula and follow-on formula through the Food Standards Code (FSANZ 2002). All infant formula and follow-on formula sold in New Zealand must conform with Standard 2.9.1 of the Food Standards Code for labelling, composition and quality.

You can view the Food Standards Code http://www.foodstandards.gov.au/thecode/foodstandardscode.cfm

Monitoring the Code in New Zealand

The Ministry is responsible for monitoring the implementation of the Health Workers' Code and the NZIFMA Code of Practice. The Ministry does this by receiving complaints about potential breaches of either Code of Practice. If an issue is not resolved to the complainant's satisfaction through a natural justice process, it will be submitted to a Compliance Panel for a decision. There is an appeal process, presided over by an adjudicator, for complaints unresolved by the Compliance Panel (See page 21 for how to make a complaint).

The Advertising Standards Complaints Board (ASCB) is responsible for monitoring compliance with the Code for Advertising of Food (see page 22 for how to make a complaint).

The New Zealand Food Safety Authority is responsible for administering and monitoring compliance with the Food Standards Code (see page 22 for how to make a complaint).

International Code of Marketing of Breast-milk Substitutes

The International Code is included in this document before the New Zealand Health Workers' Code and NZIFMA Code of Practice to signify its position as the foundation for the New Zealand codes.

Context

In 1981 the World Health Assembly adopted the International Code, which recommended as a basis for action various requirements and restrictions in relation to the marketing and distributing of breast-milk substitutes. The New Zealand Government adopted the International Code in 1983 through a process of consensus and discussion rather than through regulation.

Key points from the International Code

The 10 key points from the International Code, which apply to products within the scope of the International Code, are as follows.

1. Products should not be advertised or otherwise promoted to the public.
2. Mothers and pregnant women and their families should not be given samples of products.
3. Health care providers should not be given free or subsidised supplies of products and must not promote products.
4. People responsible for marketing products should not try to contact mothers or pregnant women or their families.
5. The labels on products should not use words or pictures, including pictures of infants, to idealise the use of the products.
6. Health workers should not be given gifts.
7. Health workers should not be given samples of products, except for professional evaluation or research at the institution level.
8. Material for health workers should contain only scientific and factual information and must not imply or create a belief that bottle-feeding is equivalent or superior to breastfeeding.
9. All information and educational materials for pregnant women and mothers, including labels, should explain the benefits and superiority of breastfeeding, the social and financial implications of its use, and the health hazards of the unnecessary or improper use of formula.
10. All products should be of a high quality and take account of the climate and storage conditions of the country where they are used.

Articles of the International Code

Article 1: Aim of the Code

The aim of this Code is to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breastfeeding, and by ensuring the proper use of breast-milk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution.

Article 2: Scope of the Code

The Code applies to the marketing, and practices related thereto, of the following products: breast-milk substitutes, including infant formula; other milk products, foods and beverages, including bottle-fed complementary foods, when marketed or otherwise represented to be suitable, with or without modification, for use as a partial or total replacement of breastmilk; feeding bottles and teats. It also applies to their quality and availability, and to information concerning their use.

Article 3: Definitions

For the purposes of this Code:

'Breast-milk substitute' means any food being marketed or otherwise represented as a partial or total replacement for breast milk, whether or not suitable for that purpose.

'Complementary food' means any food, whether manufactured or locally prepared, suitable as a complement to breast milk or to infant formula, when either becomes insufficient to satisfy the nutritional requirements of the infant. Such food is also commonly called 'weaning food' or 'breast-milk' supplement.

'Container' means any form of packaging of products for sale as a normal retail unit, including wrappers. 'Distributor' means a person, corporation or any other entity in the public or private sector engaged in the business (whether directly or indirectly) of marketing at the wholesale or retail level a product within the scope of this Code. A 'primary distributor' is a manufacturer's sales agent, representative, national distributor or broker.

'Health care system' means governmental, non-governmental or private institutions or organisations engaged, directly or indirectly, in health care for mothers, infants and pregnant women; and nurseries or childcare institutions. It also includes health workers in private practice. For the purposes of this Code, the health care system does not include pharmacies or other established sales outlets.

'Health worker' means a person working in a component of such a health care system, whether professional or non-professional, including voluntary, unpaid workers.

'Infant formula' means a breast-milk substitute formulated industrially in accordance with applicable Codex Alimentarius standards, to satisfy the normal nutritional requirements of infants up to between four and six months of age, and adapted to their physiological characteristics. Infant formula may also be prepared at home, in which case it is described as 'home prepared'.

'Label' means any tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, embossed or impressed on, or attached to, a container (see above) of any products within the scope of this Code.

'Manufacturer' means a corporation or other entity in the public or private sector engaged in the business or function (whether directly or through an agent or through an entity controlled by or under contract with it) of manufacturing a product within the scope of this Code.

'Marketing' means product promotion, distribution, selling, advertising, product public relations, and information services.

'Marketing personnel' means any persons whose functions involve the marketing of a product or products coming within the scope of this Code.

'Samples' means single or small quantities of a product provided without cost.

'Supplies' means quantities of a product provided for use over an extended period, free or at a low price, for social purposes, including those provided to families in need.

Article 4: Information and education

4.1 Governments should have the responsibility to ensure that objective and consistent information is provided on infant and young child feeding for use by families and those involved in the field of infant and young child nutrition. This responsibility should cover either the planning, provision, design and dissemination of information, or their control.

4.2 Informational and educational materials, whether written, audio, or visual, dealing with the feeding of infants and intended to reach pregnant women and mothers of infants and young children, should include clear information on the following points:

- the benefits and superiority of breastfeeding
- maternal nutrition, and the preparation for and maintenance of breastfeeding
- the negative effect on breastfeeding of introducing partial bottle feeding
- the difficulty of reversing the decision not to breastfeed
- where needed, the proper use of infant formula, whether manufactured industrially or home prepared. When such materials contain information about the use of infant formula, they should include the social and financial implications of their use; the health hazards of inappropriate foods or feeding methods; and in particular, the health hazards of unnecessary or improper use of infant formula and other breast-milk substitutes. Such materials should not use any pictures or text which may idealise the use of breast-milk substitutes.

4.3 Donations of informational or educational equipment or materials by manufacturers or distributors should be made only at the request and with the written approval of the appropriate government authority or within guidelines given by governments for this purpose. Such equipment or materials may bear the donating company's name or logo, but should not refer to a proprietary product that is within the scope of this Code, and should be distributed only through the health care systems.

Article 5: The general public and mothers

5.1 There should be no advertising or other form of promotion to the general public of products within the scope of this Code.

5.2 Manufacturers and distributors should not provide, directly or indirectly, to pregnant women, mothers or members of their families, samples of products within the scope of this Code.

5.3 In conformity with paragraphs one and two of this Article, there should be no point-of-sale advertising, giving of samples, or any other promotion device to induce sales directly to the consumer at the retail level, such as special displays, discount coupons, premiums, special sales, loss-leaders and tie-in sales, for products within the scope of this Code. This provision should not restrict the establishment of pricing policies and practices intended to provide products at lower prices on a long-term basis.

5.4 Manufacturers and distributors should not distribute to pregnant women or mothers of infants and young children any gifts of articles or utensils which may promote the use of breast-milk substitutes or bottle-feeding.

5.5 Marketing personnel, in their business capacity, should not seek direct or indirect contact of any kind with pregnant women or with mothers of infants and young children.

Article 6: Health care systems

6.1 The health authorities in Member States should take appropriate measures to encourage and protect breastfeeding and promote the principles of this Code, and should give appropriate information and advice to health workers in regard to their responsibilities, including the information specified in Article 4.2.

6.2 No facility of a health care system should be used for the purpose of promoting infant formula or other products within the scope of this Code. This Code does not, however, preclude the dissemination of information to health professionals as provided in Article 7.2.

6.3 Facilities of health care systems should not be used for the display of products within the scope of this Code, for placards or posters concerning such products, or for the distribution of material provided by a manufacturer or distributor other than that specified in Article 4.3.

6.4 The use by the health care system of 'professional service representatives', 'mothercraft nurses', or 'similar personnel', provided or paid for by manufacturers or distributors should not be permitted.

6.5 Feeding with infant formula, whether manufactured or home prepared, should be demonstrated only by health workers, or other community workers if necessary; and only to the mothers or family members who need to use it; and the information given should include a clear explanation of the hazards of improper use.

6.6 Donations or low-price sales to institutions or organisations of supplies of infant formula or other products within the scope of this Code, whether for use in institutions or for distributions outside them, may be made. Such supplies should only be used or distributed for infants who have to be fed on breast-milk substitutes. If these supplies are distributed for use outside the institutions, this should be done only by the institutions or organisations concerned. Such donations or low-price sales should not be used by manufacturers or distributors as a sales inducement.

6.7 Where donated supplies of infant formula or other products within the scope of this Code are distributed outside an institution, the institution or organisation should take steps to ensure that supplies can be continued as long as the infant concerned need them. Donors, as well as institutions or organisations concerned, should bear in mind this responsibility.

6.8 Equipment and materials, in addition to those referred to in Article 4.3, donated to a health care system may bear a company's name or logo, but should not refer to any proprietary product within the scope of the Code. (WHA resolution 39.28 passed in May 1986, urges member states 'to ensure that the small amounts of breast-milk substitutes needed for the minority of infants who require them in maternity wards and hospitals are made through the normal procurement channels and not through free or subsidised supplies'.)

Article 7: Health workers

7.1 Health workers should encourage and protect breastfeeding; and those who are concerned in particular with maternal and infant nutrition should make themselves familiar with their responsibilities under this Code, including the information specified in Article 4.2.

7.2 Information provided by manufacturers and distributors to health professionals regarding products within the scope of this Code should be restricted to scientific and factual matters, and such information should not imply or create a belief that bottle-feeding is equivalent or superior to breastfeeding. It should also include the information specified in Article 4.2.

7.3 No financial or material inducements to promote products within the scope of this Code should be offered by manufacturers or distributors to health workers or members of their families, nor should these be accepted by health workers or members of their families.

7.4 Samples of infant formula or other products within the scope of this Code, or of equipment or utensils for their preparation or use, should not be provided to health workers except when necessary for the purpose of professional evaluation or research at the institutional level. Health workers should not give samples of infant formula to pregnant women, mothers of infants and young children, or members of their families.

7.5 Manufacturers and distributors of products within the scope of this Code should disclose to the institution to which a recipient health worker is affiliated any contribution made to him or on his behalf for fellowships, study tours, research grants, attendance at professional conferences, or the like. Similar disclosures should be made by the recipient.

Article 8: Persons employed by manufacturers and distributors

8.1 In systems of sales incentives for marketing personnel, the volume of sales of products within the scope of this Code, should not be included in the calculation of bonuses, nor should quotas be set specifically for sales of these products. This should not be understood to prevent the payment of bonuses based on the overall sales by a company of other products marketed by it.

8.2 Personnel employed in marketing products within the scope of this Code should not, as part of their job responsibilities, perform educational functions in relation to pregnant women or mothers of infants and young children. This should not be understood as

preventing such personnel from being used for other functions by the health care systems at the request and with the written approval of the appropriate authority of the government concerned.

Article 9: Labelling

9.1 Labels should be designed to provide the necessary information about the appropriate use of the product, and so as not to discourage breastfeeding.

9.2 Manufacturers and distributors of infant formula should ensure that each container has a clear, conspicuous, and easily readable and understandable message printed on it, or on a label which cannot readily become separated from it, in an appropriate language, which includes all the following points:

- the words 'Important Notice' or their equivalent
- a statement of the superiority of breastfeeding
- a statement that the product should be used only on the advice of a health worker as to the need for its use and the proper method of use
- instructions for appropriate preparation, and a warning against the health hazards of inappropriate preparation. Neither the container nor the label should have pictures of infants nor should they have other pictures or text which may idealise the use of infant formula. They may however have graphics for easy identification of the product as a breast-milk substitute and for illustrating methods of preparation. The terms 'humanised', 'maternalised', or similar terms should not be used. Inserts subject to the above conditions, may be included in the package or retail unit. When labels give instructions for modifying a product into infant formula, the above should apply.

9.3 Food products within the scope of this Code, marketed for infant feeding, which do not meet the requirements of an infant formula, but which can be modified to do so, should carry on the label a warning that the unmodified product should not be the sole source of nourishment of an infant. Since sweetened condensed milk is not suitable for infant feeding, nor for use as a main ingredient of infant formula, its label should not contain purported instructions on how to modify it for that purpose.

9.4 The label of food products within the scope of this Code should also state all the following points:

- the ingredients used
- the composition/analysis of the product
- the storage conditions required
- the batch number and the date before which the product is to be consumed, taking into account the climatic and storage conditions of the country concerned.

Article 10: Quality

10.1 The quality of the products is an essential element for the protection of the health of infants and therefore should be of a high recognised standard.

10.2 Food products within the scope of this Code should, when sold or otherwise distributed, meet the applicable standards recommended by the Codex Alimentarius Commission and also the Codex Code of Hygienic Practice for Foods for Infants and Children.

Article 11: Implementation and monitoring

11.1 Governments should take action to give effect to the principles and aim of the Code, as appropriate to their social and legislative framework, including the adoption of national legislation, regulations or other suitable measures. For this purpose, governments should seek, when necessary, co-operation of WHO, UNICEF and other agencies of the United Nations system. National policies and measures, including laws and regulations, which are adopted to give effect to the principles and aim of this Code should be publicly stated, and should apply on the same basis to all those involved in the manufacture and marketing of products within the scope of this Code.

11.2 Monitoring the application of this Code lies with governments acting individually, and collectively through the World Health Organization as provided in paragraphs six and seven of this Article. The manufacturers and distributors of products within the scope of this Code, and appropriate non-governmental organisations, professional groups, and consumer organisations should collaborate with governments to this end.

11.3 Independently of any other measures taken for implementation of this Code, manufacturers and distributors of products within the scope of this Code should regard themselves as responsible for monitoring their marketing practices according to the principles and aim of this Code, and for taking steps to ensure that their conduct at every level conforms to them.

11.4 Non-governmental organisations, professional groups, institutions and individuals concerned should have the responsibility of drawing the attention of manufacturers or distributors to activities which are incompatible with the principles and aim of this Code, so that appropriate action can be taken. The appropriate governmental authority should also be informed.

11.5 Manufacturers and primary distributors of products within the scope of this Code should apprise each member of their marketing personnel of the Code and of their responsibilities under it.

11.6 In accordance with Article 62 of the Constitution of the World Health Organization, Member States should communicate annually to the Director-General information on action taken to give effect to the principles and aim of this Code.

11.7 The Director-General shall report in even years to the World Health Assembly on the status of the implementation of the Code; and shall on request, provide technical support to Member States preparing national legislation or regulations, or taking other appropriate measures in implementation and furtherance of the principles and aim of this Code.

Code of Practice for Health Workers

Context

The Code of Practice for Health Workers (Health Workers' Code) is based on the International Code and has been developed by the Ministry of Health after consultation with the health sector. It recommends best practice for health workers only, so does not apply to other groups such as formula companies.

The Health Workers' Code replaces *Infant Feeding Guidelines for New Zealand Health Workers* (Ministry of Health 1997).

Relevant professional bodies and employer organisations are expected to support health workers to uphold the principles and aims of the Health Workers' Code and their responsibilities under it by developing policies and practices and providing ongoing training.

Breastfeeding forms a unique biological and emotional basis for the health of both mother and child and is the best and safest way to feed infants (see Appendix 1). Breast milk is the ideal food for infants, and meets all an infant's nutritional and fluid requirements for up to the first six months of life, and most of the nutritional and fluid requirements from around six months to one year of age.

When breast milk is not available, infants must be given an appropriate infant formula until they are one year old. Infant formula can be used for up to 12 months of age. Unmodified cow's milk is not recommended as the primary drink before the age of one year, because it can lead to anaemia from poor iron absorption and gastrointestinal bleeding. This can be made worse if iron-containing complementary foods are not given from six months of age (Ministry of Health 2000).

For more information about infant nutrition, see *Food and Nutrition Guidelines for Healthy Infants and Toddlers (Aged 0–2): A background paper* (www.moh.govt.nz/nutrition).

Purpose

The Health Workers' Code has the same aim as the International Code. That is to contribute to the provision of safe and adequate nutrition for infants by:

- protecting and promoting breastfeeding
- ensuring the proper use of breast-milk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution.

Specifically, the Health Workers' Code wants health workers to:

- protect, promote and support breastfeeding, giving clear, consistent and accurate information about the importance of breastfeeding and the health consequences of not breastfeeding
- encourage mothers and families before the birth of their infant to make an informed decision on the feeding method they will use

- help mothers and families to prevent and resolve the most common problems that cause mothers to stop breastfeeding
- meet their obligation to give detailed information and advice to parents, caregivers and families of breastfed and formula-fed infants on infant feeding
- ensure the appropriate and safe preparation, usage and storage of formula when necessary
- be aware of the complaints processes (see page 21) for use when they are confronted with potential breaches of the codes.

Scope

The Health Workers' Code is based on Ministry policy from *Food and Nutrition Guidelines for Healthy Infants and Toddlers (Aged 0–2): A background paper,* and the International Code, and includes all types of formula for infants 0-12 months.[1] Therefore, it differs from the NZIFMA Code of Practice which applies to infant formula only.[2]

Health care providers should develop policies in their organisation on the use of formula, formula samples, gifts from formula companies, product information, and feeding bottles and teats. Policies should include how to promote, protect and support breastfeeding in difficult circumstances, for example, hospitalisation of infant and/or mother or a natural disaster. The policies should be based on *Food and Nutrition Guidelines for Healthy Infants and Toddlers (Aged 0–2): A background paper*, the spirit and intent of the International Code, the Health Workers' Code, the Baby Friendly Hospital Initiative, and the Baby Friendly Community Initiative. Health care providers, including pharmacists, need to be aware of these documents and initiatives and accept responsibility for ensuring staff implement them in the workplace.

Note that the term health worker applies to a person working for a health care provider, including a voluntary, unpaid worker and anyone providing information to pregnant women and mothers. A health practitioner is a subset of this wider group, and is defined as a practitioner of a particular health profession who is registered with, and overseen by an authority, for example, a dietitian, doctor, nurse, pharmacist (see the Glossary for Code of Practice for Health Workers, page 25).

Articles of the Code of Practice for Health Workers

1. Health workers must protect, promote and support breastfeeding.

1.1 The Ministry expects health workers to protect, promote and support breastfeeding and be familiar with their responsibilities under the Health Workers' Code, and other Ministry policies and strategies, for example, the Baby Friendly Hospital Initiative, the Baby Friendly Community Initiative and the Well Child Framework.

1.2 Health workers play an essential role in guiding feeding practices. They do this by encouraging and facilitating breastfeeding and providing objective and consistent advice to mothers and families about the superior value of breastfeeding.

1 Includes infant formula and follow-on formula.

2 Follow-on formula is not marketed as a breast milk substitute in New Zealand.

2. Health workers should enable mothers to make an informed decision about infant feeding.

2.1 Health workers should give accurate, objective and consistent information and educational material on breastfeeding and formula feeding, and should discuss the benefits and problems associated with the different methods of feeding so parents can make an informed decision.

2.2 Health workers should be aware of individual circumstances, and apply best clinical practice for those circumstances to ensure appropriate health care and safe and adequate nutrition for all infants. For example, although virtually all women can breastfeed, some mothers decide not to breastfeed their infants, are unable to breastfeed, or try to breastfeed without success. In some medical situations, establishing breastfeeding is more difficult than others. In such cases specialist lactation services may be required. If the mother is unable to establish breastfeeding, an appropriate infant formula should be provided for the baby or donor milk if available and acceptable to the mother. If used, donor milk must meet the required standards for safe collection and storage.

2.3 Antenatally, information on appropriate infant nutrition should always be presented in the context of breastfeeding as the biological norm and as an unparalleled way of feeding an infant. Pregnant women should also be told that if they want to formula feed then information is available. Any instructions in the use of infant formula should be undertaken one to one with the woman concerned and not in a class setting.

2.4 Mothers who do not breastfeed their infants should receive the same attention from health workers and the health care system since not breastfeeding is associated with increased risks to the health of infants and mothers.

3. Health workers must assist mothers and families to breastfeed.

3.1 Health workers should be knowledgeable about breastfeeding and breastfeeding management, skilled in helping mothers and able to access further information and support as required. Even though it is a natural act, breastfeeding is also a learned behaviour. Virtually all mothers can breastfeed provided they have accurate information and support within their families and communities and from the health care system.

3.2 Health workers need to work with women in a way that increases women's confidence in their ability to breastfeed. Health workers must not undermine breastfeeding by creating negative perceptions and behaviour towards breastfeeding.

3.3 Health workers should help to prevent or resolve the most common problems that cause mothers to stop breastfeeding.

3.4 Health workers should acknowledge the important role of skilled and knowledgeable peer supporters and peer support groups, refer mothers to them and work in collaboration with these groups in the community.

3.5 Health workers should, where appropriate, provide mothers with information about sterilising bottles and storing expressed breast milk. Information should not imply or create a belief that bottle feeding is equivalent or superior to breastfeeding. Mothers should be informed that there is a cup method of feeding expressed breast milk.

4. Health workers must ensure appropriate use of formula when necessary.

4.1 Only health workers should demonstrate to mothers or family members how to prepare and use formula. Family members who need to use formula require instruction and information on the preparation and safe storage of formula, feeding techniques and types of formula available.

4.2 Health workers who cannot provide a family with information about formula feeding must refer the family to another health service provider who can provide the information.

4.3 Health workers should strengthen the health and nutrition education of these mothers and their family members in order to foster preparation for the initiation and maintenance of breastfeeding of any future infants born, whatever the previous feeding experience. These mothers should be referred to community-based breastfeeding support groups antenatally for future births.

4.4 Health workers should not promote a specific brand of formula, or be involved in the promotion of products used for infant feeding.

5. All information prepared by health workers on formula feeding should explain the benefits of breastfeeding, and the costs and health hazards of the unnecessary or improper use of formula.

5.1 Information and educational materials (whether written, audio or visual) dealing with the feeding of infants and intended to reach pregnant women and mothers of infants and young children, should include clear information on the following points.

- The benefits and superiority of breastfeeding.
- Maternal nutrition, and the preparation for and maintenance of breastfeeding.
- The negative effect on breastfeeding of introducing partial formula feeding.
- The difficulty of reversing the decision not to breastfeed.
- Where needed, the proper use of formula. When such material contains information about the use of formula, the information should include the social and financial implications of formula use; the health hazards of inappropriate foods or feeding methods; and, in particular, the health hazards of the unnecessary or improper use of formula.

5.2 Information and educational materials should not use pictures or text that may idealise the use of formula.

5.3 All materials used to provide information should be objective and consistent with current knowledge.

5.4 For a list of information and support providers and resources available nationally, see *Food and Nutrition Guidelines for Healthy Infants and Toddlers (Aged 0–2): A background paper.*

6. Health workers must be aware of the key principles in the New Zealand Infant Formula Marketers' Association (NZIFMA) Code of Practice for the Marketing of Infant Formula.

6.1 The key principles are provided on page 19.

6.2 A health worker may contact a formula company for scientific and factual product information.

6.3 Health workers may meet individually or collectively with formula company representatives to be informed about company products.

6.4 For general information on infant feeding, health workers should consult *Food and Nutrition Guidelines for Healthy Infants and Toddlers (Aged 0–2): A background paper*.

7. Health workers should not accept samples from formula companies.

7.1 Health workers should not accept samples of formula, equipment or utensils for their preparations or use except when necessary for the purpose of professional evaluation and research at an institutional level. They may be used for educating parents who have decided to use formula, in the correct preparation of formula, while not promoting a specific brand of formula (see 4.4).

7.2 Health workers should not give samples of formula to pregnant women, mothers of infants, or members of their families.

8. Health workers should not accept gifts from formula companies.

8.1 Health workers or members of their family should not accept financial or material inducements to promote products.

8.2 Health workers should disclose to the institution to which they are affiliated, any contribution made to him or her on his or her behalf for fellowships, study tours, research grants, attendance at professional conferences or the like. Health workers should ensure that financial support does not create conflict of interest.

9. Health care facilities should not promote formula products in their facilities.

9.1 A health care provider environment should not display items provided by companies such as formula, bottles, teats, posters, growth charts, calendars or formula preparation charts.

9.2 Health workers may ask for materials such as pamphlets, posters and booklets and equipment from manufacturers and distributors, providing the material is restricted to scientific and factual matters. Such material should not imply or create a belief that bottle feeding is equivalent or superior to breastfeeding.

9.3 All infant formula information and educational material prepared by manufacturers and distributors, whether written, audio or visual, must be consistent with the NZIFMA Code of Practice. Such materials may bear the donating company's name or logo, but should not refer to the product brand name, with the exception of product information brochures for health practitioners and advertisements in medical publications, and should be distributed only through (ie, within) the health care system.

9.4 Only mothers and families who have decided to use formula may be given information relating to formula products on discharge.

10. Formula products should not be donated to health care facilities.

10.1 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.

10.2 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.

Code of Practice for the Marketing of Infant Formula

Context

The Code of Practice for the Marketing of Infant Formula (NZIFMA Code of Practice) was developed by the New Zealand Infant Formula Marketers' Association and applies to manufacturers, marketers and distributors of infant formula covered by the NZIFMA, so they can:

- take steps to ensure their conduct at every level conforms to the NZIFMA Code of Practice
- promote the spirit and intent of the International Code and its proper implementation.

The NZIFMA is responsible for liaising with and educating the industry sector to ensure the NZIFMA Code of Practice is adhered to.

The NZIFMA Code of Practice (2007) replaces the NZIFMA Code of Practice (1997).

Key principles of the NZIFMA Code of Practice

The NZIFMA voluntary Code of Marketing Practice applies to the marketing of infant formula products suitable for infants up to the age of six months. Follow-on formula, for infants over six months of age, is excluded from the provisions of the NZIFMA Code of Practice.

The companies represented on the New Zealand Infant Formula Marketers' Association (NZIFMA) have agreed that the following key principles will apply for the marketing of infant formula.

a) NZIFMA and its member companies encourage and support breastfeeding as the best choice for babies.

b) NZIFMA companies should not advertise infant formula products directly to consumers.

c) NZIFMA companies should not initiate direct or indirect contact with pregnant mothers or family members to promote infant formula.

d) NZIFMA companies should not distribute samples of infant formula to pregnant women, mothers of infants, their families and infant caregivers but may provide samples to the health sector for the purpose of professional evaluation or research.

e) All infant formula education and information material prepared by NZIFMA companies and circulated through the health sector should be in accordance with the letter and spirit of the NZIFMA Code of Practice.

f) NZIFMA companies should not give financial or material incentives to health practitioners for the purpose of promoting infant formula.

g) Infant formula product and usage information published by or under the local control of NZIFMA companies through the electronic media, and accessible to consumers as well as health professionals, should also be in accordance with the letter and spirit of the NZIFMA Code of Practice.

h) NZIFMA companies will inform retailers of the provisions of the NZIFMA Code of Practice. Retailer advertisements and the in-store promotion of infant formula products should be limited to product names, price and price savings.

The NZIFMA Code of Practice

For the complete NZIFMA Code of Practice, see the separate attachment to this document or go to the NZIFMA website http://www.nzifma.org.nz/index.html. The NZIFMA Code of Practice ISBN is 978-0-473-12468-7.

NZIFMA follow-on formula marketing guidelines

NZIFMA companies have adopted guidelines for the marketing of follow-on formula. These guidelines have been provided to the Advertising Standards Complaints Board in order to assist it with its decision-making on complaints about follow-on formula advertising.

The guidelines state:

- To avoid any confusion with infant formula, which is a breast milk substitute suitable for infants under six months of age, follow-on formula advertising and informational material prepared by NZIFMA companies should position this product as being suitable for (1) infants already on infant formula when they reach the age of at least six months, and (2) infants of six months of age or over, who are receiving complementary foods, in preference to cows' milk.
- Follow-on formula is marketed in New Zealand as an alternative to cows' milk, not as an alternative to breast milk. This product is not suitable for infants under six months of age.

Complaints

If you are considering making a complaint about an activity, you need to consider all four codes discussed in this document:

- the Health Workers' Code
- the NZIFMA Code of Practice
- the Code for Advertising of Food
- the Food Standards Code.

To determine which code you consider may have been breached, read the text below.

Complaints about the activities of individuals or groups who are not covered by these codes can also be brought to the Ministry's attention, which can deal with them in conjunction with the relevant organisations.

How to make a complaint about the practices of a health worker

If you have concerns about the practices of a health worker or an organisation, for example, they are providing inadequate information to mothers about infant feeding or inappropriately distributing samples, then consult the Health Workers' Code to determine which section of the code you consider the activity is in breach of.

Send your complaint to: Complaints under NZ WHO Code
Population Health Directorate
Ministry of Health
PO Box 5013
Wellington.

The complaints process is summarised in Figure 2.

How to make a complaint about the marketing of infant formula for infants from birth to six months of age

If you have concerns about NZIFMA companies' marketing, for example, an advertising campaign, the content of infant formula information and educational material appearing in brochures or advertisements, or the distribution of samples, then consult the NZIFMA Code of Practice to determine whether the activity falls within the scope of this code, and which article and clause you consider the activity to be in breach of.

Send your complaint to: Complaints under NZ WHO Code
Population Health Directorate
Ministry of Health
PO Box 5013
Wellington.

The complaints process is summarised in Figure 2.

How to make a complaint about the advertising of formula for infants aged over six months

If you have concerns about the advertising of follow-on formula or food for infants aged over six months, you can make a complaint to the Advertising Standards Complaints Board under the Code for Advertising of Food. The board will use the guidelines provided by the NZIFMA (see page 20) when considering complaints about follow-on formula.

For more information on how to make a complaint to the Advertising Standards Complaints Board, contact the:

Advertising Standards Authority
Phone: 0800 234 357
Email: asa@asa.co.nz
Website: http://www.asa.co.nz

How to make a complaint about the labelling, composition or quality of formula

If you have concerns about the labelling, composition or quality of formula or other food products, you can make a complaint to the New Zealand Food Safety Authority under the Food Standards Code.

For more information on how to make a complaint to the New Zealand Food Safety Authority, contact the:

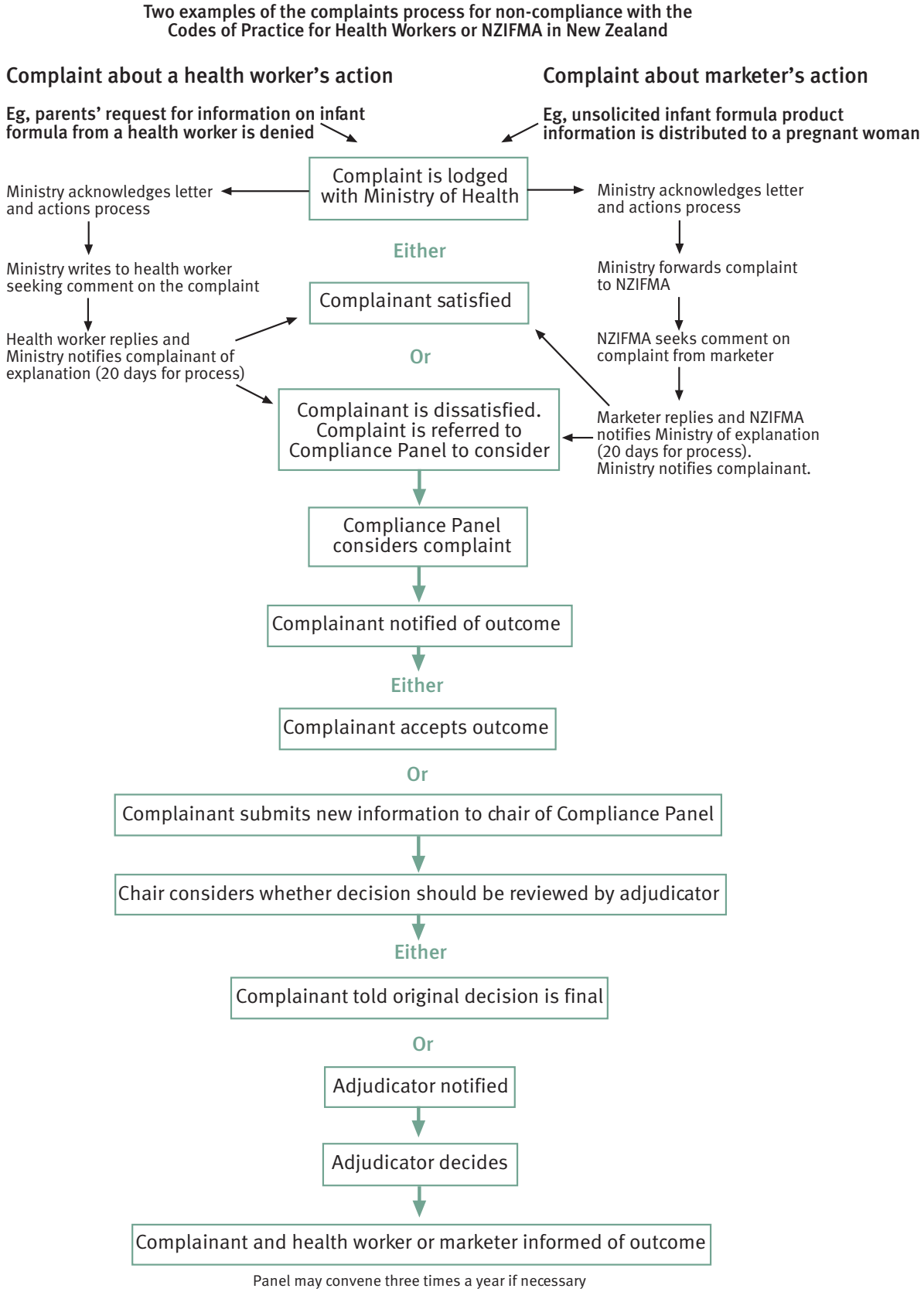
New Zealand Food Safety Authority
Phone: 0800 693 721
Email: nzfsa.govt.nz
Website: http://www.nzfsa.govt.nz

Preparing your complaint

When preparing your complaint, state clearly what you consider the activity is in breach of. Provide as much information, evidence and documentation as possible, for example, dates, names, location and photographs.

If you are unsure how to prepare a complaint or have difficulty preparing your complaint, seek assistance from your organisation, an organisation involved in the provision of Well Child services or a community group.

Figure 2: The complaints process



Abbreviations

ASA	Advertising Standards Authority
ASCB	Advertising Standards Complaints Board
FSANZ	Food Standards Australia New Zealand
FSC	Food Standards Code
NZFSA	New Zealand Food Safety Authority
NZIFMA	New Zealand Infant Formula Marketers' Association
UNICEF	United Nations Children's Fund
WHO	World Health Organization

Glossary for the Code of Practice for Health Workers

Term	Definition
Breast milk substitute	Any food being marketed or otherwise represented as a partial or total replacement for breast milk, whether or not suitable for that purpose, for example infant formula.
Community worker	A person working with individuals, families, groups and organisations to help and support community development according to their needs.
Complementary food	Any food, whether manufactured or prepared at home, suitable as a complement to breast milk or to infant formula, when either becomes insufficient to satisfy the nutritional requirements of the infant. Such food is also commonly called weaning food or solids.
Container	Any form of packaging of products for sale as a normal retail unit, including wrappers.
Distributor	A person, corporation or any other entity in the public or private sector engaged in the business (whether directly or indirectly) of marketing at the wholesale or retail level a product within the scope of this code. A 'primary distributor' is a manufacturer's sales agent, representative, national distributor or broker.
Follow-on formula	A formula product represented either as a breast milk substitute or replacement for infant formula that constitutes the principal liquid source of nourishment in a progressively diversified diet for infants aged six to 12 months (FSANZ 2002).
Formula feeding	Providing infants with a formula product, either exclusively or as a supplement to breastfeeding.
Health care provider	Public, private and non-governmental institutions or organisations engaged, directly or indirectly, in health care for mothers, infants and pregnant women; and nurseries or child-care institutions. It also includes health workers in private practice. It does not include pharmacies or other established sales outlets.
Health practitioner	A practitioner of a particular health profession who is registered with, and overseen by an authority. For example, dietitian, doctor, nurse, pharmacist.
Health worker	A person working in a component of a health care system (provider), including voluntary, unpaid workers and those providing information to pregnant women and mothers.
Infant	A person under the age of 12 months (FSANZ 2002).
Infant formula	An infant formula product represented as a breast milk substitute for infants which satisfies the nutritional requirements of infants aged up to four to six months, and adapted to their physiological characteristics (FSANZ 2002).

Term	Definition
Label	Any tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, embossed or impressed on, or attached to, a container (see the definition above) of any products within the scope of this code.
Lead maternity carer (LMC)	A person who provides maternity care, who may be a midwife, general practitioner or specialist obstetrician. The lead maternity carer is responsible for ensuring continuity of care for their client from the time of registration through to four to six weeks following birth when they are required to hand over to a Well Child provider of the woman's choice.
Manufacturer	A corporation or other entity in the public or private sector engaged in the business or function (whether directly or through an agent or through an entity controlled by or under contract with it) of manufacturing a product within the scope of this code.
Marketing	Product promotion, distribution, selling, advertising, product public relations, and information services.
Marketing personnel	Any persons whose functions involve the marketing of a product or products coming within the scope of this code.
Samples	Single or small quantities of a product provided without cost.
Supplies	Quantities of a product provided for use over an extended period, free or at a low price, for social purposes, including those provided to families in need.

Appendix 1: Background Information about Breastfeeding

Benefits of breastfeeding

Breast milk is the ideal food for infants, and meets all the infant's nutritional and fluid requirements for up to the first six months of life, and most of the nutritional and fluid requirements from around six months to one year. Breastfeeding supplies nutrients in a hygienic, cost-effective, balanced and easily absorbed way. It forms a unique biological and emotional basis for the health of both mother and child. The anti-infective properties of breast milk help to protect infants against disease.

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 of cardiovascular health (Ministry of Health 2004a).

Mothers and families benefit too. Benefits for the mothers include a reduced risk of:

- postpartum haemorrhaging
- breast and ovarian cancer (Ministry of Health 2004a).

For more detailed information on the benefits of breastfeeding see *Food and Nutrition Guidelines for Healthy Infants and Toddlers (Aged 0–2): A background paper*

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

- 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.

Breastfeeding rates

We need to increase breastfeeding rates. New Zealand's breastfeeding rates changed very little between 1997 and 2001, with some improvement between 2001 and 2005 (Table 1). However, the rates among Māori and Pacific peoples are still lower than rates among the European/Other group, and the rate for Māori is lower than for Pacific peoples.

Table 1: New Zealand breastfeeding rates by ethnicity at six weeks, three months and six months, 1997–2006

	Year	Rate (%)				
		Māori	Pacific	Asian*	Other	All*
Exclusive and full breastfeeding at six weeks	1997	54	54		67	
	1998	56	60		69	
	1999	57	56		69	
	2000	57	57		68	65
	2001	55	57		68	65
	2002	59	61		68	66
	2003	62	62	49	71	67
	2004	60	59	55	71	67
	2005	58	58	58	71	66
	2006	59	57	55	70	66
Exclusive and full breastfeeding at three months	1997	36	41		53	
	1998	40	46		53	51
	1999	40	43		56	
	2000	40	45		56	50
	2001	41	43		56	51
	2002	47	50		58	55
	2003	46	49	49	59	55
	2004	47	49	51	60	56
	2005	45	48	52	60	56
	2006	45	48	53	60	55
Exclusive and full breastfeeding at six months	1997	12	13		19	
	1998	14	17		19	
	1999	13	18		19	
	2000	13	17		20	18
	2001	13	17		21	19
	2002	16	20		25	23
	2003	16	19	20	26	23
	2004	18	20	22	27	24
	2005	18	19	23	28	25
	2006	17	19	25	29	25

* Complete data not available

Source: Plunket data covering approximately 90 percent of all births

Definitions

The following are the standard breastfeeding definitions for New Zealand as recommended to the Ministry of Health (Coubrough 1999). These definitions have been used by the Ministry to develop the breastfeeding targets (Ministry of Health 2002).

Exclusive	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.
Fully	The infant has taken breast milk only, and no other liquids or solids except a minimal amount of water or prescribed medicines, in the past 48 hours.
Partial	The infant has taken some breast milk and some infant formula or other solid food in the past 48 hours.
Artificial	The infant has had no breast milk but has had alternative liquid such as infant formula, with or without solid food, in the past 48 hours.

In 2002 the Ministry of Health recommended the following New Zealand breastfeeding targets (Ministry of Health 2002).

- Increase the breastfeeding (exclusive and fully) rate at six weeks to 74 percent by 2005, and 90 percent by 2010.
- Increase the breastfeeding rate (exclusive and fully) at three months to 57 percent by 2005, and 70 percent by 2010.
- Increase the breastfeeding rate (exclusive and fully) at six months to 21 percent by 2005, and 27 percent by 2010.

In 2007, the Ministry restated breastfeeding targets.

- Increase the proportion of infants exclusively and fully breastfed at six weeks to 74 percent or greater, three months to 57 percent or greater, and six months to 27 percent or greater.

Breastfeeding for Māori

For Māori, breastfeeding is a traditional and valued practice and embodies the importance of nourishment, protection, sustenance and continuity for Māori health. Breastfeeding is viewed as imperative in maintaining and sustaining child development and wellbeing.

The foundation for considering Māori health is laid out in He Korowai Oranga: Māori health Strategy (Minister of Health and Associate Minister of Health 2002). The overall aim of He Korowai Oranga is whānau ora: Māori families supported to achieve their maximum health and wellbeing. Whānau ora recognises the interdependence of people, that health and wellbeing are influenced and affected by the collective as well as the individual, and the importance of working with people in their social contexts, not just their physical symptoms. Whānau ora is a strategic tool to assist in working together with iwi, Māori providers and Māori communities and whānau to increase the life span of Māori, improve their health and quality of life and reduce disparities with other New Zealanders.

Breastfeeding: A guide to action (Ministry of Health 2002) calls for the active participation of Māori to improve breastfeeding promotion and support.

Breastfeeding is identified in *Healthy Eating – Healthy Action: Oranga Kai – Oranga Pumau Implementation Plan: 2004–2010* (HEHA) (Ministry of Health 2004b) as one of the key messages. An outcome specified is that breastfeeding is promoted to New Zealand women and their families, particularly Māori and Pacific women.

Māori have lower rates of breastfeeding than do non-Māori (see Table 1). The lower rates may be due, to some extent, to the inequitable distribution of economic resources in New Zealand, with Māori being concentrated into the lower end of the socioeconomic distribution. However, both socioeconomic position and ethnicity affect health (Ministry of Health 2006).

Consultation during the review of the New Zealand interpretation of the International Code, revealed a lower awareness of the International Code and the New Zealand interpretation among Māori and Pacific health practitioners than among other health practitioners.

Breastfeeding for Pacific peoples

For Pacific peoples, breastfeeding is a normal, traditional and valued practice. In Pacific societies and among families, Pacific women are used to seeing women breastfeeding as a natural way of life, and breastfeed their infants whenever they need to be fed. Pacific women are motivated to breastfeed because it is seen as best for baby (and recommended by health practitioners), as natural, as building a stronger mother to child bond, and as a link to cultural heritage. Breastfeeding is also felt to be more convenient and less expensive than the alternatives (Butler et al 2004).

Although breastfeeding is not specifically mentioned, child and youth health, and promoting healthy lifestyles and wellbeing are priorities in the Pacific Health and Disability Action Plan (Minister of Health 2002). *Breastfeeding: A guide to action* calls for the active participation of Pacific peoples to improve breastfeeding promotion and support (Ministry of Health 2002).

Breastfeeding is identified in HEHA as one of the key messages. An outcome specified is that breastfeeding is promoted to New Zealand women and their families, particularly Māori and Pacific women.

Despite the strong cultural basis for breastfeeding, Pacific peoples have lower rates of breastfeeding than European/Other (see Table 1). As for Māori, the lower rates may be due, to some extent, to the inequitable distribution of economic resources in New Zealand, with Pacific peoples being concentrated at the lower end of the socioeconomic distribution.

Barriers to continued breastfeeding include a lack of breastfeeding education and support, returning to paid work, and the cost of equipment for expressing. Traditional practices of expressing and discarding colostrum, and taking the baby away to let the mother rest, will affect initiation and duration of breastfeeding (Lusk, et al 2000). Pacific mothers tend to introduce complementary foods earlier than do other population groups (Tuohy 1997). This may be because of the perception that Pacific babies need extra nourishment earlier because they are bigger.

Consultation during the review of the New Zealand interpretation of the International Code revealed a lower awareness of the code among Māori and Pacific health practitioners than among other health professionals.

Reducing inequalities

In New Zealand, as elsewhere, inequalities in health exist between ethnic groups and socioeconomic groups. These inequalities are not random: in all countries socially disadvantaged and marginalised groups have poorer health, greater exposure to health hazards, and lesser access to high quality health services than their counterparts. In addition indigenous and minority populations tend to have poorer health. The Government has acknowledged that the persistence of these inequalities is unacceptable and has made reducing inequalities a key priority.

Improving breastfeeding rates for Māori and Pacific populations, which are currently lower than non-Māori and non-Pacific populations, represents an area of opportunity to reduce health inequalities. Indeed, given the short-term and long-term health benefits of breast feeding to the infant, mother, and the whānau/family, initiatives aimed at increasing breastfeeding rates among Māori and Pacific populations should continue to be prioritised.

Appendix 2: Frequently Asked Questions about the International Code of Marketing of Breast-Milk Substitutes

The World Health Organization has prepared answers to frequently asked questions (WHO 2006) about the International Code of Marketing of Breast-Milk Substitutes. These questions and answers are reproduced in this appendix.

1. What is the International Code of Marketing of Breast-milk Substitutes?

The Code is a set of recommendations to regulate the marketing of breast-milk substitutes, feeding bottles and teats. The Code was formulated in response to the realisation that poor infant feeding practices were negatively affecting the growth, health and development of children, and were a major cause of mortality in infants and young children. Poor infant feeding practices therefore were a serious obstacle to social and economic development. The 34th session of the World Health Assembly (WHA) adopted the International Code of Marketing of Breast-milk Substitutes in 1981 as a minimum requirement to protect and promote appropriate infant and young child feeding.

The Code aims to contribute 'to the provision of safe and adequate nutrition for infants, by the protection and promotion of breastfeeding, and by ensuring the proper use of breast-milk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution' (Article 1).

The Code advocates that babies be breastfed. If babies are not breastfed, for whatever reason, the Code also advocates that they be fed safely on the best available nutritional alternative. Breast-milk substitutes should be available when needed, but not be promoted.

The Code was adopted through a WHA resolution and represents an expression of the collective will of governments to ensure the protection and promotion of optimal feeding for infants and young children.

2. What are the current WHO recommendations for feeding infants and young children?

To achieve optimal growth, development and health, WHO recommends that infants should be exclusively breastfed for the first six months of life. Thereafter, to meet their nutritional requirements, infants should receive adequate and safe complementary foods while breastfeeding continues up to two years of age and beyond.

Exclusive breastfeeding from birth is possible for most women who choose to do so. It is recommended for all children except for a few medical conditions, such as maternal medication with radioactive substances (WHO/UNICEF 1993). Exclusive breastfeeding as often and as long as the baby wants results in ample milk production.

3. Why is breastfeeding important?

Breastfeeding is unparalleled in providing the ideal food for infants. Breast milk is safe, clean and contains antibodies which help protect the infant against many common childhood illnesses.

The protection, promotion and support of breastfeeding rank among the most effective interventions to improve child survival. It is estimated that high coverage of optimal breastfeeding practices could avert 13 percent of the 10.6 million deaths of children under five years occurring globally every year. Exclusive breastfeeding in the first six months of life is particularly beneficial, and infants who are not breastfed in the first month of life may be as much as 25 times more likely to die than infants who are exclusively breastfed.

Positive effects of breastfeeding on the health of mothers and infants are observed in all settings. Breastfeeding reduces the risk of acute infections such as diarrhoea, pneumonia, ear infection, haemophilus influenza, meningitis and urinary tract infection. It also protects against chronic conditions in the child such as allergies, type I diabetes, ulcerative colitis, and Crohn's disease. Breastfeeding promotes child development and is associated with higher IQ scores in low-birth-weight babies. It is also associated with lower risk factors for cardiovascular diseases including high blood pressure (Martin et al, 2005) and obesity (Owen et al, 2005).

Breastfeeding delays early return of fertility in the mother and reduces her risk of postpartum hemorrhage and breast and ovarian cancer.

Interventions to improve breastfeeding practices are cost-effective and rank among those with the highest cost-benefit ratio. The cost per child is low compared to that for curative interventions.

4. Does WHO provide guidelines for mothers who are unable to or choose not to breastfeed?

WHO has developed guidelines for feeding very low-birth-weight babies whose nutritional requirements cannot be met by breast milk alone, as well as for counselling working women on how to sustain breastfeeding with the addition of other feeding options, if needed.

Guidance is also available for HIV-positive women who choose not to breastfeed on adequate and safe alternatives. The guidelines, training materials and job aids on HIV and infant feeding provide detailed instructions on how to prepare, administer and safely store breast-milk substitutes, including commercially prepared infant formula as well as home modified animal milks (WHO/UNICEF 2003).

5. What products are covered by the Code?

The Code applies to the marketing and related practices of the following products: breast-milk substitutes, including infant formula; other milk products, foods and beverages, including bottle-fed complementary foods; feeding bottles, and teats. It also applies to their quality and availability, and to information concerning their use.

Since the Code covers products that are suitable for use as a partial or total replacement of breast milk, it should be read in conjunction with current global recommendations for

breastfeeding and complementary feeding, such as the Global Strategy for Infant and Young Child Feeding. For example, as the global recommendation is exclusive breastfeeding for six months, any food or drink promoted to be suitable for feeding a baby during this period is a breast-milk substitute, and thus covered by the Code. This would include baby teas, juices and waters. Formulas for infants with special medical or nutritional needs also fall within the scope of the Code.

6. Why is the Code important?

The Code is an important part of creating an overall environment that enables mothers to make the best possible feeding choice, based on impartial information and free of commercial influences, and to be fully supported in doing so.

Poor breastfeeding practices are still common, both in developing and developed countries. Only about 39 percent of children globally are exclusively breastfed for four months and a considerably smaller proportion for the full recommended six months. In addition to the risks posed by not having breast milk's protective qualities, breast-milk substitutes and feeding bottles in particular carry a high risk of contamination that can lead to life-threatening infections in young infants. Infant formula is not a sterile product and it may carry germs that can cause fatal illnesses. Artificial feeding is expensive, requires clean water, the ability of the mother or caregiver to read and comply with mixing instructions and a minimum standard of overall household hygiene – factors not readily met in many households in the world.

Improper marketing and promotion of food products that compete with breastfeeding are important factors that often negatively affect the choice and ability of a mother to breastfeed her infant optimally. Given the special vulnerability of infants and the risks involved in inappropriate feeding practices, usual marketing practices are therefore unsuitable for these products.

7. What aspects does the Code cover?

The Code sets out detailed provisions with regard to, inter alia:

1. Information and education on infant feeding.
2. Promotion of breast-milk substitutes and related products to the general public and mothers.
3. Promotion of breast-milk substitutes and related products to health workers and in health care settings.
4. Labelling and quality of breast-milk substitutes and related products.
5. Implementation and monitoring of the Code.

8. What does the Code say about information and education on infant feeding?

The Code and subsequent relevant WHA resolutions call upon governments to ensure that objective and consistent information is provided on infant and young child feeding, both to families and others involved in infant and young child nutrition.

Informational and educational materials should clearly state the benefits and superiority of breastfeeding, the social as well as financial costs of using infant formula, the health hazards associated with artificial feeding and instructions for the proper use of infant formula.

9. What are the limits set by the code on the promotion of breast-milk substitutes to the general public and mothers?

The Code explicitly states that 'there should be no advertising or other form of promotion to the general public' and that 'manufacturers and distributors should not provide … to pregnant women, mothers or members of their families, samples of products …'.

Promotion through any type of sales device, including special displays, discount coupons and special sales, is prohibited.

Furthermore, no company personnel should seek direct or indirect contact with, or provide advice to, pregnant women or mothers.

10. Does the Code restrict promotional activities to heatlh workers and in health care settings?

The Code and subsequent relevant WHA resolutions call for a total prohibition of any type of promotion of products that fall within their scope in the health services.

Furthermore, donations of free or subsidised supplies of breast-milk substitutes or other products, as well as gifts or personal samples to health workers, are not allowed in any part of the health care system.

Also, information provided by manufacturers and distributors to health professionals regarding products should be restricted to scientific and factual matters.

11. What does the code say about labelling and quality of breast-milk substitutes?

No pictures of infants or other pictures idealising the use of breast-milk substitutes are permitted on the labels of the products.

Information on artificial feeding, including that on labels, should explain the benefits of breastfeeding and the costs and dangers associated with the unnecessary or improper use of infant formula and other breast-milk substitutes.

Unsuitable products for feeding infants, such as sweetened condensed milk, should not be promoted.

12. What are the requirements for the implementation of the code?

Governments should act on the Code, taking into consideration subsequent relevant WHA resolutions. They can adopt legislation, regulations or other measures such as national policies or codes.

The Code is a minimum requirement, and therefore governments can adopt additional, possibly more stringent, measures than those set out in the Code and make them legally binding.

13. Has the Code been updated since 1981?

No, there is only one version of the Code. However, there have been a number of WHA resolutions adopted since 1981 that refer to the marketing and distribution of breast-milk substitutes.[3] The Code and subsequent WHA resolutions must be considered together in the interpretation and translation into national measures.

14. Who should be involved to make implementation of the Code a reality?

While governments have the primary responsibility to take action on the International Code, they can only achieve this with the full co-operation of all concerned stakeholders, including food manufacturers and distributors, health care professionals, non-governmental organisations and consumer organisations. The Global Strategy for Infant and Young Child Feeding (see below) specifies roles and obligations of many actors in the implementation of the Code and in protecting, promoting and supporting breastfeeding more generally.

15. Is the implementation of the Code sufficient for the improvement of infant and young child feeding?

No, additional measures are required as stipulated in the Global Strategy for Infant and Young Child Feeding endorsed by WHO Member States in 2002. The Global Strategy includes nine operational targets consistent with the International Code of Marketing of Breast-milk Substitutes and subsequent relevant WHA resolutions, the Innocenti Declaration on the Protection, Promotion and Support of Breastfeeding and the Baby Friendly Hospital Initiative.

In addition to the implementation of the Code, the Global Strategy also calls for actions to:

- ensure that every facility providing maternity services fully practices the 'Ten steps to successful breastfeeding'
- enact imaginative legislation protecting breastfeeding rights of working women and enforce them
- develop, implement, monitor and evaluate a comprehensive policy on infant and young child feeding
- ensure that the health and other relevant sectors protect, promote and support exclusive breastfeeding for six months and continued breastfeeding for up to two years or beyond; and that they also promote timely, adequate, safe and appropriate complementary feeding from six months onwards
- provide guidance on feeding infants in exceptionally difficult circumstances.

To ensure full implementation of all its components, the Global Strategy calls upon governments to appoint a national co-ordinator with appropriate authority and to constitute an effective broad-based body to lead co-ordinated multi-sectoral implementation of the strategy by all concerned parties.

3 World Health Assembly Resolutions 33.32, 34.22, 35.26, 37.30, 39.28, 41.11, 43.3, 45.34, 46.7, 47.5, 49.15, 54.2 and 55.25 have further clarified or extended certain provisions of the Code.

16. Is the Code consistent with international human rights and other legal instruments and what does this mean in terms of legal obligations?

Today, a wide and increasing range of international human rights standards and norms can be called upon to enhance and protect infant and young child feeding practices, including exclusive breastfeeding, from any disruptive influences.

The *United Nations Convention on the Rights of the Child* (CRC) is the most comprehensive international human rights framework in this regard. Numerous articles of the CRC are supportive of the aim of the Code, particularly the right of children to the highest attainable standard of health, by, inter alia, reducing infant mortality, and promoting breastfeeding. The CRC not only reflects the legal obligations of Governments towards all children and mothers under its jurisdiction, but also provides legal and normative guidance on protecting, promoting and supporting infant and young child feeding.

Countries having ratified the CRC are legally bound by its provisions. In other words, governments can be legally held accountable for action or inaction which hinders the enjoyment of the rights and freedoms set forth in it. Therefore, both national and international mechanisms for monitoring CRC implementation should address the implementation of the Code in their activities.

17. What are the requirements for monitoring of national measures?

Resolutions WHA 49.15 and 54.2 call upon governments to ensure proper and effective monitoring and reporting mechanisms and processes for effective implementation of the Code and subsequent relevant WHA resolutions. These should be **transparent, independent,** and **free from commercial influence** and address labelling, all forms of advertising and commercial promotion across all media. Responsible bodies should be empowered to investigate Code violations, and impose appropriate sanctions according to existing legal systems.

18. Who is responsible for monitoring the implementation of the International Code?

Primary responsibility for the implementation and monitoring of the Code lies with governments, acting individually and collectively through the World Health Organization. Other concerned parties, nationally and internationally, should collaborate fully with governments in this endeavour.

In this respect, manufacturers and distributors of products that fall within the scope of the Code are responsible for monitoring their marketing practices, and taking steps to ensure that their conduct fully conforms with the Code.

Similarly, health professionals and health managers have a responsibility to monitor marketing practices and ensure that their institutions or practices fully comply with the provisions set forth in the Code.

Non-governmental organisations, institutions and individuals can draw the attention of manufacturers and distributors to activities which are incompatible with the Code, and inform the government so that action can be taken.

To foster collective action, Member States should report annually to the Director-General of WHO on their action on the recommendations, enabling the Director-General to report in alternate years to the WHA on the status of the implementation of the Code.

19. Who is responsible for taking action when violations of the Code are reported by concerned individuals or organisations?

According to the decision of the WHA, governments of Member States decide on the legislation, regulations and/or other suitable measures to give effect to the Code and the subsequent relevant WHA resolutions in their own countries. This means that it is up to individual Member States to decide what, if any, actions they would take in response to a violation of the Code.

20. How does the Code apply in the context of HIV?

Global recommendations on infant feeding for HIV-infected mothers are:

- when replacement feeding is acceptable, feasible, affordable, sustainable and safe (AFASS), avoidance of all breastfeeding by HIV-infected mothers is recommended
- otherwise, exclusive breastfeeding is recommended for the first few months
- to minimise the risk of HIV transmission, breastfeeding should be discontinued as soon as feasible, taking into account local circumstances, the individual woman's situation and the risks of replacement feeding (including malnutrition and infections other than HIV)
- when HIV-positive mothers choose not to breastfeed from birth or stop breastfeeding later, they should be provided with specific guidance and support for at least the first two years of the child's life to ensure adequate replacement feeding. Programmes should strive to improve conditions that will make replacement feeding safer for HIV-positive mothers and families.

The fact that HIV can be transmitted through breast milk should not undermine efforts to support breastfeeding for most infants, as their health and survival are greatly improved by breastfeeding. At the same time, the Code seeks to ensure the proper and informed use of breast-milk substitutes when these are necessary. The Code and the WHA resolutions therefore:

- recommend that governments regulate the distribution of free or subsidised supplies of breast-milk substitutes to prevent spillover to babies who would benefit from breastfeeding and whose mothers are HIV-negative or unaware of their status
- protect children fed with breast-milk substitutes by ensuring that product labels carry necessary warnings and instructions for safe preparation and use
- ensure that the product is chosen on the basis of independent medical advice.

With the rising prevalence of HIV, governments may consider accepting free or low-cost supplies for distribution to HIV-positive mothers. WHA resolution 47.5, 2.(2), however, urges Member States to ensure that there are no donations of free or subsidised supplies of breast-milk substitutes and other products covered by the Code in any part of the health care system. Instead of accepting donations, national authorities should consider negotiating prices with manufacturers and offer breast-milk substitutes at a subsidized price or free of charge to be used for infants of mothers living with HIV. It is recommended that this be done in a manner that:

- is sustainable
- does not create dependency on donated or low-cost supplies
- does not undermine breastfeeding for the majority of infants

- does not in effect promote breast-milk substitutes to the general public or the health care system
- assures sufficient quantities for as long as individual infants need them.

21. How does the Code apply in complex emergencies?

For the majority of infants and young children in emergency situations, the emphasis should be on protecting, promoting and supporting breastfeeding and ensuring timely, safe and appropriate complementary feeding. There will always be a small number of infants who will need to be fed breast-milk substitutes for the long or short term. This may be necessary if their mother is dead or absent; or too ill, malnourished or traumatized to breastfeed until she has recovered, and if no wet-nurse is available. Breast-milk substitutes should be procured and distributed as part of the regular inventory of feeds and medicines, in quantities only as needed. There should be clear criteria for their use and education for caregivers about hygienic and appropriate feeding. When breast-milk substitutes are distributed without control in emergency situations, the result is often a dangerous and unnecessary increase in early cessation of breastfeeding.

22. How does the Code apply to medical institutions dealing with infants who have a medical indication not to breastfeed

To be accredited as 'baby-friendly', a hospital is required to avoid all promotion of breast-milk substitutes and related products, bottles and teats, not accept free or low-cost supplies or give out samples of those products. Hence, infant formula needed for infants with medical reasons for its use should be obtained through normal procurement channels.

Appendix 3: Background Information about Implementation of the International Code in New Zealand

New Zealand adopted the International Code in 1983. A voluntary, self-regulatory implementation and monitoring process was set up in 1997.

The process was set up as voluntary and self-regulatory because the Government directed that the International Code was to be implemented and monitored through consensus and discussion, not through legislation. Article 5 of the International Code specifies that products within the scope of the International Code are not advertised. In New Zealand, it was not possible to legally restrict the advertising of products without contravening the Commerce Act 1986 and the Fair Trading Act 1986. However, the members of the New Zealand Infant Formula Marketers' Association (NZIFMA) accepted the need for a voluntary code of practice of marketing because of the widely accepted benefits of infants receiving breast milk in the first six months of life. The NZIFMA Code of Practice means there should be no marketing of infant formula and no marketing of follow-on formula as a breast milk substitute in New Zealand.

As a government agency the Ministry is required to preserve the principles of fairness, transparency, natural justice and self-regulation. To preserve these principles, the Ministry is required to:

- consult with all parties, including industry, when developing a system that affects their practice or business
- make all processes and documentation available on request to all parties under the Official Information Act 1982
- make the subject of a complaint aware of the complaint against their practice, and allow a right of reply
- allow the behaviour of the subject of a complaint to be regulated by their employer or responsible body.

A review of the voluntary, self-regulatory implementation and monitoring process for the New Zealand interpretation of the International Code began in 2001.

The consultation phase consisted of a public submission process and meetings with Pacific health practitioners, Māori health practitioners and consumer groups. Fifty-nine questionnaires and 14 written submissions were received during the submission process. This represented a considerable amount of work on the part of the submitters who provided comprehensive and researched responses. The Ministry considered the diverse and strong views expressed during the consultation phase of the review. The Ministry became aware that the International Code was not well known in New Zealand and that some misinterpretations existed. For example, the International Code was being misinterpreted to mean health practitioners were not allowed to provide information about formula feeding and this was creating difficulties for families and caregivers who were not breastfeeding.

To find a way forward, the Ministry set up a consensus process where two meetings were held in 2003 and 2004 with representatives from stakeholder groups to assist in the completion of the review. The Ministry considered all the issues raised in the consultation and consensus process, along with its responsibility to protect, promote and support breastfeeding; the legislative context; and its responsibility to preserve the principles of fairness, transparency, natural justice and self-regulation. The Ministry decided to continue with a voluntary, self-regulatory approach to implementing and monitoring the International Code in New Zealand. However, the Ministry acknowledged that attention needs to be paid to raising awareness of the International Code in New Zealand, and to the marketing of follow-on formula.

The review was completed and the review report published in 2004 (Ministry of Health 2004a). The review resulted in 11 actions to refine and strengthen the implementation and monitoring in New Zealand.

The Ministry held a third meeting in 2006 with the stakeholder group to begin the process for implementing the actions in the review.

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APPENDIX 8
ELECTRONIC MEDIA MARKETING GUIDANCE

INFANT NUTRITION COUNCIL
AUSTRALIA & NEW ZEALAND

MARKETING OF INFANT FORMULAS VIA ELECTRONIC MEDIA

Overall Principles

1. The purpose of these guidelines is to support the interpretation of the MAIF Agreement in Australia and the INC Code of Practice in NZ.

2. These guidelines are to be read with the aim of the MAIF Agreement and the INC Code of Practice in mind and as an overarching principle: that is, to contribute to the safe and adequate nutrition for infants, by the protection and promotion of breastfeeding and by ensuring the proper use of breast milk substitutes, when they are necessary, on the basis of adequate information and through appropriate marketing and distribution.

Consumer-based websites

1. Prior to a consumer accessing information about infant formula on a manufacturer website, manufacturers should display to the consumer the information required by clauses 4(a) and 4(b) (Important Notice information). This display should include a click-through acknowledgment by the consumer that the consumer has read and understood the information. The display should be provided at least once per day for each consumer who accesses the site on multiple occasions.

2. A tab or link labelled 'Breastfeeding is Best', 'Benefits of Breast Milk' or similar, which links to the Important Notice information, should be included on each page of a website which provides information about an infant formula product. The tab/link should be included on the navigation toolbar of each web page or another equally prominent location.

3. The inclusion of product information about infant formula, including a description and pack shots, on a website is acceptable, provided guidelines 3 and 4 are followed and:
    - the product information is the same as the information on the label of the product (for example: ingredient listing, nutritional profile and nutrition information).
    - any additional information provided is factual in nature and intended to provide sufficient information to help consumers to make an informed choice as to the specific nature of the infant formula; and
    - product logos are not displayed independently of pack shots.

Frequently Asked Questions

4. FAQ pages on websites are an important means of providing information regarding formulas to consumers and assisting consumers to differentiate between different types of formula.

5. Any FAQ pages relating to infant formula should commence with a statement as to why breastfeeding is best. This can be in the form of a statement at the top of the page, or an initial question and answer.

Other electronic communications and social media

6. In accordance with these guidelines, manufacturers and importers should adopt reasonable measures, to monitor and manage social media forums and other electronic platforms which are within their control to ensure they comply with the MAIF Agreement. Manufacturers and importers must not conduct any paid influencer activity for their infant formula products.

7. Manufacturers and importers should not initiate discussion or actively provide information about infant formula via social media forums and other electronic forums. However, it is recognised that manufacturers and importers cannot control postings by consumers or third parties on such forums which are not under their control and are therefore entitled to respond to issues or questions raised provided:

    - the question is directed to the manufacturer, or the issue requires a corrective or clarifying statement;
    - the response is in the same forum;
    - the response is in line with guideline 5 above and, unless the context otherwise requires, limited to the matters raised by the consumer or third party post;
    - if a question relates to a health condition, the consumer is directed to speak to a healthcare professional; and
    - includes a statement to the effect that breastfeeding is best for babies, which links to the Important Notice Information on the manufacturer's website.

8. Electronic mailings to consumers (such as e-newsletters) should only include information about infant formula which is otherwise permitted under the MAIF Agreement (for example, an announcement about change of availability). Where appropriate, the relevant communication should include the Important Notice information.

9. Manufacturers are entitled to initiate communication to consumers via social media forums and other electronic platforms on urgent health and safety matters provided the communication is limited to the health and safety matter.

APPENDIX 10
CONTACT DETAILS OF LIKELY INTERESTED PARTIES

Entity	Contact details	Relevant contact person[1]
COMPETITORS (non-INC members)		
Aotearoa Nutrients (Bluebell)	31-35 Carbine Road, Mt Wellington, Auckland 1060 New Zealand +64 9 601 8270 cs@aotearoanutrients.co.nz https://bluebellbabies.co.nz/	INC has not been able to find contact details for a contact person at this organisation.
Blackmores	20 Jubilee Avenue Warriewood, NSW 2102 Australia +61 2 9910 5000 https://www.blackmoresnz.co.nz/	INC has not been able to find contact details for a contact person at this organisation.
Care A2 Plus	info@carea2plus.com https://carea2plus.com/	INC has not been able to find contact details for a contact person at this organisation.
Haven Nutrition Limited	hello@havenbaby.co.nz https://www.havenbaby.co.nz/	INC has not been able to find contact details for a contact person at this organisation.
Optipharm PTY LTD AU (Optigold)	49 Bond Street Mordialloc, VIC 3195 Australia +61 3 9562 6600	INC has not been able to find contact details for a contact person at this organisation.

[1] INC has provided details that it has been able to find for interested parties, but does not hold full information about relevant contact details for the organisations or contact persons at the organisations.

	customerservice@optipharm.com https://www.optigold.com.au/	
GOVERNMENT/PUBLIC SECTOR		
Te Whatu Ora - Health New Zealand	https://www.tewhatuora.govt.nz/	Kass Jane, Principal Clinical Adviser [ ] [ ]
Te Aka Whai Ora - Māori Health Authority	https://www.teakawhaiora.nz/	Riana Manuel, Chief Executive [ ]
CUSTOMERS		
Woolworths New Zealand Limited	80 Favona Rd Mangere Manukau 2024 New Zealand 0800 40 40 40 media@countdown.co.nz https://www.countdown.co.nz/	Spencer Sonn, Managing Director
Foodstuffs North Island	PO Box 38-896 Wellington Mail Centre New Zealand +64 4 527 2510 https://www.foodstuffs.co.nz/	Chris Quin, CEO

Foodstuffs South Island	Private Bag 4705 Christchurch New Zealand +64 3 353 8700 https://www.foodstuffs-si.co.nz/	Mary Devine, CEO
Chemist Warehouse NZ	125 Apirana Avenue Glen Innes Auckland 1072 Auckland 0800 001 018 https://www.chemistwarehouse.co.nz/	Rizman Haroon, Managing Director
OTHER		
Women's Health Action Trust	13 Coyle Street Sandringham, Auckland 1025 New Zealand +64 9 520 5295 https://www.womens-health.org.nz/	Isis McKay, General Manager [ ] [ ]
New Zealand Breastfeeding Alliance	P O Box 20-454 First Floor, Unit One 16 Sheffield Crescent Bishopdale New Zealand +64 3 3572 072 https://www.babyfriendly.org.nz/	Jane O'Malley, Board Chair

Whānau Āwhina Plunket	PO Box 5474 Wellington 6145 New Zealand +64 4 471 0177 https://www.plunket.org.nz/	Fiona Kingsford, CEO
New Zealand College of Midwives	PO Box 21-106 Edgeware 8143 Christchurch New Zealand +64 3 377 2732 https://www.midwife.org.nz/	Alison Eddy, CEO
La Leche League	PO Box 50780 Porirua 5240 +64 4 471 0690 administrator@lalechleague.org.nz	Janine Pinkham, Board Member