

**Annexure 16 – INC Policy – Compliance Dispute Resolution Process**



# Compliance Dispute Resolution Process

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## Background

As part of their membership commitment the Infant Nutrition Council members have agreed to abide by the Infant Nutrition Council's *Code of Conduct*. This includes seeking to resolve disputes between member companies concerning the industry marketing codes through the *Compliance Dispute Resolution Process* prior to taking legal or other external action.

## [1] Scope

[1.1] The purpose of this Compliance Dispute Resolution Process is to support and encourage the successful, speedy and effective resolution of complaints by one INC member (the Complainant) in relation to the *compliance conduct* of another INC member (the Respondent).

[1.2] *Compliance conduct* means a company's conduct relating to product labelling and promotional activity of any kind and to any audience, evaluated against –

- applicable regulation (see [1.3] below); and/or
- the Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement 1992 (MAIF Agreement) or the Infant Nutrition Council Code of Practice for the Marketing of Infant Formula in New Zealand (INC Code of Practice), as applicable.

[1.3] This Process is not a substitute for, and does not constrain in any way, the enforcement activities of government agencies in relation to regulatory requirements. Allegations as to conduct that is criminal in nature are out of the scope of this process and should be addressed to the relevant enforcement agency. Allegations as to matters that carry a civil or administrative penalty (e.g. allegations of false or misleading conduct) may be considered under this Process.

[1.4] This Process is voluntary, and its outcomes are not intended to be legally binding in any formal sense. INC membership requires participation in the Preliminary Steps (set out in paragraph 2 below), and INC members are strongly encouraged to participate in good faith in the full process as required, to avoid the industry as a whole being drawn into disrepute. Similarly, compliance with the outcome of this Process is strongly

encouraged and failure to do so may jeopardize continued INC membership and participation.

[1.5] A party to a dispute may withdraw from this Process at any time by giving notice to the other Party and to the INC. Parties to a dispute are also encouraged not to institute legal or other external action until this Process is complete, except for legal action being taken in cases where immediate legally-binding relief is sought. In other cases, the institution of legal or other external action is considered to be a withdrawal from this Process.

## **[2] Preliminary Steps**

[2.1] A dispute is instituted where the Complainant communicates to the Respondent about product labelling and promotional activity that has occurred within the last 6 months –

- (a) the specific nature of the *compliance conduct* of concern;
- (b) the specific provision in applicable regulation and/or the MAIF Agreement or the INC Code of Practice; and
- (c) the nature of any remedial action sought by the Complainant.

[2.2] The Respondent must respond to the Complainant within 10 working days of receipt of the communication. The response may be a holding response if it identifies further actions which the Respondent needs to undertake in order to respond fully, and a time (being no later than a further 10 working days, or such other period as the Complainant and Respondent may agree between them) by which a full response will be provided.

[2.3] In the event that the Respondent fails to provide a response within the stated time limits, the Complainant may escalate the dispute to the INC in accordance with section [3].

[2.4] In the event that the Respondent provides a response, the Parties must then engage in such further communications as are necessary to resolve the dispute or else escalate the dispute under paragraph [2.6].

[2.5] The communications under paragraphs [2.1], [2.2] and [2.4] are to be treated by all Parties as being without prejudice and in confidence, and are not to be divulged to persons, or used for any purpose, unrelated to the resolution of the dispute (provided that such materials may be provided to the INC under paragraph [3.4](e)).

[2.6] If at any time either Party considers that further communications under paragraph [2.4] are unlikely to resolve the dispute, that Party may escalate the complaint to the INC in accordance with section [3].

## **[3] Escalation to the INC**

[3.1] A dispute may be escalated to the INC by written notice to the INC CEO attaching –

- (a) the communication referenced in paragraph [2.1];
- (b) any response provided in accordance with paragraph [2.2];
- (c) such further material, if any, as is considered appropriate.

[3.2] A Party escalating a matter to the INC may withdraw the escalation at any time.

[3.3] When a matter is escalated to INC, the INC CEO will, within 5 working days of receiving the notice, write to each party–

- (a) notifying that the dispute has been escalated;
- (b) seeking comment as to whether the dispute might be settled most effectively by INC CEO Discussions (as described in paragraph [3.6]) or by a dispute resolution panel;
- (c) requesting the Party to nominate a primary contact in relation to the dispute;
- (d) requesting a statement of the issues considered by the Party to be in dispute; and
- (e) requesting such further material as the Party may wish to provide, such as –

- a. a copy or original of any of the materials in dispute;
- b. any data or evidence to support the complaint or response;
- c. communications made in any attempt to resolve the matter between the Parties; and/or
- d. a description of any alleged consequences which any material or activity in dispute may have on healthcare professionals and/or consumers;

and each Party shall provide the requested further material within 5 working days of receiving the request from the INC CEO.

[3.4] A Party that fails to respond to the INC CEO within 5 working days is considered to have withdrawn from this Process.

[3.5] Within 5 working days of receiving the response of both Parties, the INC CEO will hold a teleconference jointly with the identified primary contact of each Party to

- (a) determine a joint statement of the issues in dispute where possible;
- (b) identify whether any additional information needs to be provided by either Party and the timeline for providing such information;
- (c) determine whether INC CEO Discussions will be undertaken; and
- (d) if appropriate, identify membership of a dispute resolution panel that is acceptable to the Parties; and available dates for a dispute resolution panel.

### ***INC CEO Discussions***

[3.6] Where it has been determined that INC CEO Discussions should take place, the INC CEO will hold discussions with the Parties, jointly and/or severally. The INC CEO, having taken into consideration all submissions of the Parties and any other materials she or he considers relevant, will propose a resolution of the dispute to the Parties. Either Party may then elect for the matter to be taken to a Dispute Resolution Panel (as described in paragraphs [3.7 and 3.8]), in which case the INC CEO cannot act as a member of the Panel.

### ***Dispute Resolution Panel***

[3.7] Where appropriate for the purposes of this Process, the INC CEO will convene an independent and impartial Dispute Resolution Panel whose membership is as agreed with the Parties. The procedure of the Panel will be at the reasonable discretion of the Panel, but must involve an opportunity for the Parties to make submissions and respond to the submissions of the other Party and must comply with the rules of natural justice.

[3.8] The Panel will then, within 10 working days of being convened, provide the Parties with a written determination as to the resolution of the dispute. This determination must include a statement of -

- (a) the facts of the dispute;
- (b) the evidence taken into consideration;
- (c) any conclusions drawn from that evidence;
- (d) the reasons for the determination; and
- (e) what action is considered appropriate to be taken by a Party in light of the determination, and the appropriate timeframe for such action to be taken.
- (f) How the INC's costs incurred in resolving the dispute should be apportioned between the Parties

[3.9] The INC is to hold all materials provided to it under this Process in confidence and not divulge or use them for any purpose unrelated to the resolution of the dispute.

#### **[4] Outcomes**

[4.1] The Parties, within 5 working days of receiving a proposed resolution under paragraph [3.7] or a determination under paragraph [3.9], must provide the INC CEO and each other with a written acknowledgement and a statement as to whether the party accepts the proposed resolution or determination and intend to take any applicable action mentioned therein.

[4.2] If the matter remains unresolved following this Process, the fact that the matter was referred for consideration under, but not resolved by, this Process will not itself either constitute nor determinatively indicate a breach of the INC Code of Conduct.

[4.3] Either or both Parties have the right to refer the complaint to the Department of Health or Ministry of Health. However, the Compliance Dispute Resolution Process must be complete before either or both parties refer the complaint externally.