Application for re-authorisation of MAIF Agreement:
INC Submission to ACCC following Pre-Decision Conference

Overview

1 The INC thanks the ACCC for the opportunity to respond to submissions made after the Draft Determination and at the Pre-Decision Conference.

2 In summary, the INC submits that:

(a) A five year term is the minimum that is appropriate for authorisation. Granting authorisation for any shorter term would impose undue cost and resource burdens on the INC and signatories.

(b) There is no evidence that the marketing of Toddler Milks has had an adverse impact on breastfeeding rates in Australia. Rather, the evidence indicates that breastfeeding rates in Australia are increasing.

(c) There is no evidence that Toddler Milk marketing is tantamount to the promotion of Infant Formula. The INC and signatories consider there are good reasons that Toddler Milk is marketed using stage numbers and similar packaging to Infant Formula.

(d) Statements and recommendations made by the WHO suggesting that restrictions should be imposed on the marketing of Toddler Milk must be considered in an Australian context.

(e) Toddler Milk and Infant Formula are different products and should not be treated as identical or comparable for the purposes of the MAIF Agreement.

(f) The current MAIF Agreement is already more restrictive than the regulations that apply in comparable overseas jurisdictions.

3 Where a term used in this submission is defined, the definitions in: (i) the INC Application; (ii) the INC's response to third party submissions dated 18 January 2021 (the ***INC's First Submission***); and (iii) the INC's response to the ACCC Draft Determination dated 7 April 2021 (the ***INC's Second Submission***), are to be adopted.

A five year term for authorisation is appropriate

4 The INC has applied for authorisation of the MAIF Agreement for 10 years.

5 In the Draft Determination the ACCC proposed to grant re-authorisation for a period of five years, although a number of interested parties have called for the MAIF Agreement to be re-authorised for a period of no longer than two years.[1]

6 INC does not consider that authorisation for a period shorter than five years would be appropriate for the following reasons.

(a) The costs incurred by the INC and other interested parties in undertaking a re-authorisation process every five years are considerable.

(b) If any relevant policy change were to be proposed by the Federal Government as a result of the upcoming Australian Government review, the INC submits it would take a considerable time for any such changes to be agreed and implemented. It is unlikely, for example, that a two year authorisation period would allow sufficient time for public

[1] ACCC Draft Determination, [4.94]

consultation, preparation of a government response and subsequent implementation of recommendations.

(c) In any event, as noted by the ACCC in the 2016 Determination, any significant change in the policy environment during the period of authorisation is likely to provide a basis for the ACCC to review the authorisation if it wishes to do so.[2]

(d) Finally, the re-authorisation process is a time-consuming process involving considerable lead time dedicated to preparing an application for authorisation. Should a shorter authorisation period be implemented, for example a two period, the INC may be required to being preparing its application for authorisation within the next 12-14 months, at which point in time the outcome of the Government Review may not yet be known.

There is no evidence that the marketing of Toddler Milks has had an adverse impact on breastfeeding rates in Australia

Breastfeeding rates are increasing in Australia

7 The INC submits that the evidence indicates that both the 'exclusive breastfeeding' rate and the rate of 'any breastfeeding' in Australia is rising, not declining.[3] This conclusion is supported by:

(a) The National Health Survey (***NHS***) data set out in **Tables 1 and 2** below, which is the most comprehensive and authoritative data set available on breastfeeding rates in Australia.[4]

(b) The Infant Feeding Guidelines published by the NHMRC in 2012, in which the NHMRC concluded that '*There have been significant increases in both the rate and duration of breastfeeding over the last few decades*'[5] and '*Australia has been successful in increasing breastfeeding rates over the last few decades…*'.[6]

(c) The data presented by Newby and Davies (2016), Scott et al (2019) and Wen et al (2020) set out in **Table 1** below.[7]

Table 1 – National 'any' breastfeeding rates from 0 to 12 months

Data source	Initiation*	At 3 months	At 6 months	At 12 months
NHS				
1995 NHS	86%	63.1%	46.6%	21.3%
2001 NHS	87.4%	64.3%	48.9%	24.8%
2004-05 NHS	87.8%	64.4%	50.4%	23.3%
2014-15 NHS	92.1%	Not reported	59.4%	46.8%
2017-18 NHS	91.7%	Not available	66.8%	40.8%

[2] 2016 Determination, [145].
[3] For more detail, see INC submission in response to Draft Determination, [47]-[49].
[4] The NHS is an Australia-wide health survey conducted by the Australian Bureau of Statistics. The past surveys were conducted in all states and territories, across urban, rural and remote areas with large sample sizes (for example the 2017-18 National Health Survey sampled 21,300 people in 16,400 private dwellings while the 2014-15 National Health Survey considered 14,700 private dwellings).
[5] Infant Feeding Guidelines, p11.
[6] Infant Feeding Guidelines, p7.
[7] Newby, RM, & Davies, PS, 'Why do women stop breast-feeding? Results from a contemporary prospective study in a cohort of Australian women' European Journal of Clinical Nutrition (2016) 70, 1428–1432; Scott, J, et al 'Determinants of Continued Breastfeeding at 12 and 24 Months: Results of an Australian Cohort Study' International Journal of Environmental Research and Public Health (2019) 16, 3980; Wen, LM, et al 'Effects of telephone and short message service support on infant feeding practices, "tummy time," and screen time at 6 and 12 months of child age: A 3-group randomized clinical trial' JAMA Pediatrics (2020).

Data source	Initiation*	At 3 months	At 6 months	At 12 months
Recent state-based studies				
Newby & Davies 2016 (QLD)	98%	80.7%	71%	45%
Scott et al 2019 (SA)	94.9%	66.6%	51%	32%
Wen et al 2020 (NSW)	Not reported	Not reported	68%	44%
Average of the 3 recent state-based studies	96.5%	73.7%	63%	40%

**Initiation is calculated as 'ever' breastfeeding.*

Table 2 – National 'exclusive' breastfeeding rates

Data source	Initiation*	At 2 months	At 4 months	At 6 months
NHS				
1995 NHS	86.2%	Not reported (63.8% at 3 months)	Not reported	7.2%
2001 NHS	86.8%	64.3%	48.9%	16.7%
2004-05 NHS	87.8%	Not reported	Not reported	Not reported
2014-15 NHS	92.1%	72.6%	61.6%	24.7%
2017-18 NHS	91.7%	73.8%	61%	29.1%

**Initiation is calculated as 'ever' breastfeeding.*

8 NHS data indicates that in 1995, only 21.3% infants were still receiving any breastfeeding at 12 months of age. In other words, nearly 80% of mothers had stopped breastfeeding by the time their infants had reached 12 months of age. As Toddler Milk was not available in the Australian market in 1995, this low breastfeeding rate cannot be related to Toddler Milk marketing.

9 The evidence regarding the reasons that mothers stop breastfeeding is set out in paragraphs 50 to 52 of the INC's Second Submission. The INC further notes that a large study of 556 mothers was conducted in Perth in 1992-1993 and assessed the reasons for them ceasing to breastfeed. The study found that most mothers experienced difficulties breastfeeding and that problems could be categorised into three main groups – breast-related (mastitis and pain), feeding problems and anxiety over milk supply.[8] No one of these reasons can be sensibly linked in any way to the marketing of Toddler Milk. A copy of this study is included at **Annexure 1**.

Consideration of 'exclusive breastfeeding' rates is not appropriate in this context

10 At the Pre-Decision Conference, Dr Julie Smith made a submission to the effect that the 'exclusive breastfeeding' rate has risen from 19-20% to approximately 25%, far below 'optimal rates'.[9]

[8] Binns, CW, & Scott, JA, 'Breastfeeding: reasons for starting, reasons for stopping and problems along the way' *Breastfeeding Review* (2002) 10, 13–19.
[9] INC – Pre-Decision Conference – Summary – 13 April 2021, p3.

11 The INC submits that the ACCC should exercise caution when considering rates of 'exclusive breastfeeding'. This is because the Australian Government, through the NHMRC Infant Feeding Guidelines, adopts a very specific definition of what 'exclusive breastfeeding' encompasses. Exclusive breastfeeding:[10]

(a) requires that the infant receive breast milk (including milk expressed or from wet nurse or breast milk donor);

(b) allows the infant to receive prescribed drops or syrups (vitamins, minerals, medicines); and

(c) does not allow the infant to receive anything else.

12 Under this definition, in order to qualify as exclusively breastfed, an infant **must not** have consumed water or solid foods. However, in Australia, the vast majority of parents introduce solid foods to their infant before the age of six months. Multiple quantitative surveys evidence this.

(a) The Australian National Infant Feeding Survey (2010) reported that 91.5% of infants had commenced solids by six months of age.[11]

(b) Scott et al (2009) reported that 93% of infants had started solids by 26 weeks of age in a large study conducted in Perth.[12] A copy of this article is provided at **Annexure 2**.

(c) Newby et al (2014) reported that 98.4% of infants had started solids by six months of age in their cohort study.[13] A copy of this article is provided at **Annexure 3**.

13 Given the strict definition of 'exclusive breastfeeding' and by reason of the introduction of solids alone, few infants are being exclusively breastfed at six months in Australia. Therefore, using what Dr Smith refers to as a 'low' exclusive breastfeeding rate to contend that there is no evidence of increased breastfeeding rates is unsound reasoning.

Infant Formula and Toddler Milk sales data includes exports

14 At the Pre-Decision Conference, Dr Julie Smith submitted that:

(a) *'Data in Australia on breastfeeding rates is pretty inadequate – the data is generally cross-sectional and is not measuring what is going into the baby's mouth. It is therefore preferable to look at data on per capita infant formula sales.'*[14]

(b) *'In recent years, the share of toddler formula in the Australian market has continued the rise that we reported in our submission in 2015. Sales continue to rise.'*[15]

15 In response, the INC submits that the data relied on by Dr Julie Smith does not support the conclusion that Infant Formula and Toddler Milk sales are increasing at the expense of breastfeeding rates.

16 The data Dr Smith relies on captures milk formula category retail sales (tonnes) in Australia 2006-2020.[16] This retail sales data includes Infant Formula and Toddler Milk which is purchased in Australia and then exported to overseas markets.

17 There has been a significant increase in exports of Infant Formula and Toddler Milk from Australia during the 2006-2020 period, primarily to China, which has been widely documented in the

[10] Infant Feeding Guidelines, p 129.
[11] Australian Institute of Health and Welfare, 2010 Australian National Infant Feeding Survey – Indicator Results, p11.
[12] Scott, J, et al 'Predictors of the early introduction of solid foods in infants: results of a cohort study' *BMC Pediatrics* (2009) 9:60, p3.
[13] Newby, RM, & Davies, PS, 'A prospective study of the introduction of complementary foods in contemporary Australian infants: What, when and why?' *Journal of Paediatrics and Child Health* (2014), p4.
[14] INC – Pre-Decision Conference – Summary – 13 April 2021, p3.
[15] Presentation by Dr Julie Smith & Ors at Pre-Decision Conference – 13 April 2021, slide 3.
[16] Presentation by Dr Julie Smith & Ors at Pre-Decision Conference – 13 April 2021, slide 3.

Australian media and even led to shortages for local consumers.[17] In addition to Infant Formula and Toddler Milk products exported directly to other countries, the 'daigou' trade (where shoppers purchase locally in Australian and then transport them back to China) has also come to account for a material portion of sales. Relevantly:

(a) The 'daigou' phenomenon is a worldwide phenomenon. In 2016, it was estimated that 6 - 10% of Chinese Infant Formula and Toddler Milk sales stemmed from this form of parallel exporting, amounting to $7 billion Yuan.[18] This phenomenon has been particularly pronounced in Australia since 2016.

(b) By calculating volumes of air freighted Infant Formula and Toddler Milk products to China, INC estimates that daigou sales could account for over 25% of the total domestic retail market.

18 The data referred to by Dr Smith therefore does not represent actual domestic consumption of Infant Formula or Toddler Milk in Australia. Given this, the data cannot support the conclusion that Infant Formula and Toddler Milk sales are increasing at the expense of breastfeeding rates in Australia.

The MAIF Agreement as currently drafted has significant public benefits

19 As outlined above, there is no evidence that the marketing of Toddler Milks has had an adverse impact on breastfeeding rates in Australia. Breastfeeding rates are increasing in Australia, and any adverse inferences drawn from exclusive breastfeeding rates and formula sales data should be considered with caution given their inherent limitations.

20 The MAIF Agreement (as currently framed) imposes restrictions on the promotion and advertising of Infant Formula. In turn, such restrictions support breastfeeding and increased breastfeeding rates. There is therefore a clear public benefit arising from re-authorising the agreement.

21 This is consistent with the conclusion reached by the New Zealand Commerce Commission (***NZCC***) in its Determination in respect of authorisation of the INC Code of Practice for the Marketing of Infant Formula in New Zealand (the New Zealand voluntary industry code which contains provisions analogous to the MAIF Agreement) in November 2018. The NZCC concluded that public benefits of authorisation are likely to outweigh the detriments arising from the lessening of competition.[19]

Toddler Milk marketing is not tantamount to the marketing of Infant Formula

There is no robust evidence that marketing of Toddler Milk equates to marketing of Infant Formula

22 The INC has not identified any robust empirical evidence of a positive causal relationship or correlation between the promotion of Toddler Milks and the promotion of Infant Formula products in Australia. For the reasons set out below, the INC does not consider that Toddler Milk marketing results in confusion for customers in Australia.

23 In any event, as previously outlined by the INC, the INC has implemented a number of measures to address Toddler Milk marketing including through the publication of Toddler Milk Guidance.[20] while the Committee addresses complaints relating to Toddler Milk marketing.[21] The Department of Health acknowledges that '*significant progress has recently been made on this issue*'.[22]

[17] See for example, https://www.abc.net.au/news/2019-07-31/chinese-daigou-changing-influencing-australian-business/11221498;
[18] Nuyen, X., Chao, C. C., Sgro, P. & Nabin, M. 2016. Cross-border Travellers and Parallel Trade: Implications for Asian Economies. The World Economy.
[19] NZCC, Infant Nutrition Council Limited [2018]NZCC20, Determination dated 8 November 2018, available at: 2018-NZCC-20-Infant-Nutrition-Council-Limited-Final-determination-8-November-2018.PDF (comcom.govt.nz)
[20] INC, Application for Authorisation, pp18-19.
[21] INC, Second Submission, pp10-11.
[22] Department of Health, Submission dated 3 December 2020, p3.

There are good reasons for similarities between Infant Formula and Toddler Milk Packaging

24 Toddler Milk marketing is used to promote Toddler Milk products to parents and caregivers, not to promote Infant Formula products.

25 In addition, Toddler Milk marketing is used to encourage those customers who already purchase Infant Formula to transition to a Toddler Milk with the same brand. Brand recognition provides consumers with the assurance of good quality products from a brand and manufacturer they trust, particularly in circumstances where there is an increased number of brands in the market.

26 Labelling of Toddler Milk is regulated under the Food Standards Code and is intended to provide adequate information to parents and care givers. Packaging is determined by food safety, quality and manufacturing requirements. In particular, can packaging is preferred for Toddler Milk (as it is for Infant Formula) given the sealed format of the can is designed to prevent oxidation of the product. Other available packaging options do not contain the same properties.

There are good reasons for the use of 'stage numbers' on Infant Formula and Toddler Milk Packaging

27 Many manufacturers of Infant Formula and Toddler Milks include a stage number on cans on their products to provide prominent 'age-suitability' information. The Australia New Zealand Food Standards Code requires Infant Formula product labels to contain mandatory information including a statement on age suitability of Infant Formula.[23]

28 Stage numbers generally represent the different feeding periods and nutritional needs as infants grow, with:

(a) Stage 1 representing Infant Formula that is suitable for babies 0-6 months of age;

(b) Stage 2 representing Infant Formula that is suitable for infants 6-12 months of age; and

(c) Stage 3 representing Toddler Milks from 12+ months of age as a supplement to a varied diet, particularly when energy and nutrient intakes may not be adequate.

29 The MAIF Complaints Committee recognises this in its Staging Guidelines*: 'Labels are an important means of providing information about the safe and appropriate use of the infant formula to parents and carers. This includes information about the range of age appropriate for the infant formula product.'*[24]

30 Staging information is used to assist parents and caregivers to clearly identify the age-appropriate product for their child. In fact, it is intended to avoid cross-promotion issues. That is because numbers are simple and easily-recalled label features and a useful tool for primary and secondary caregivers. They help reduce consumer confusion and minimise the likelihood of purchasing an incorrect product (based on age) for an infant. They are also likely to benefit those with low proficiency in English.

31 Such an approach is adopted for a wide range of products for young children including, for example, nappies which are often marketed as part of an enumerated product range.

32 The benefits of staging information were considered in a 2004 qualitative consumer study into food labelling of infant food, prepared for Food Standards Australia New Zealand. The study concluded that:

> *Food label information was regarded as helpful in the selection of infant foods once solids have been first introduced, but the label had little if any influence on the decision to start solids (usually with rice cereal).*[25]

[23] Australia New Zealand Food Standards Code, Standard 2.9.1, division 5.
[24] Staging Guidelines, clause 5.
[25] TNS Social Research Report, A Qualitative Consumer Study Related to Food Labelling of Infant Foods, 0490016 / C03091, April 2004, p2.

> *There was widespread endorsement of the concepts that provided colour coded age ranges and texture information at each stage. References to sequential 'phases' were rejected in favour of 'stages'. The 1st Stage, 2nd Stage, 3rd Stage wording was not as important as the texture and age information, but nonetheless useful for first-time parents.*[26]
>
> *Over the whole study, there was no clear preference for keeping or excluding the 1st, 2nd, 3rd Stage reference. Second-time parents were less likely to insist on the need for stage information and whilst first-time parents did not view the stage reference as being as useful or important as the age and texture information, most felt it was nonetheless better to have it there than not. The inclusion of the stage reference had indirect benefits to mothers, such as being an easy way to direct husbands and relatives to shop for the right food for their baby at any point in time, as well as assisting sleep and time deprived mothers to quickly select products from the supermarket shelf.*[27]

WHO statements on cross-promotion must be scrutinised in the Australian context

33 The ACCC relies on WHO statements expressing concern about cross-promotion practices by which Infant Formula is promoted through labelling and advertising of Toddler Milks. According to the WHO, such practices must be curbed since they put the health of infants at risk by discouraging breastfeeding and creating confusion about the use of infant formula.[28]

34 The INC submits that any WHO statements or recommendations suggesting that restrictions should be imposed on the marketing of Toddler Milks must be considered in the Australian social and legislative context. This is an approach endorsed by the WHO in the WHO Code itself [29] and adopted by the Australian Government.

35 There are a number of instances in which the Australian Government has departed from WHO recommendations to take into account Australia's specific circumstances, including:

(a) **Recommendation on breastfeeding duration –** the WHO recommends continued breastfeeding up to two years or beyond.[30] The Australian Government **has not** adopted this recommendation, it advises women to continue breastfeeding with appropriate complementary foods until 12 months of age and beyond, for as long as the mother and child desire.[31] As Scott et al (2019) explain, few Australian mothers contemplate breastfeeding until two years and beyond and, for this reason, the relevant authorities in Australia and other high income countries recommend a more culturally attainable goal that women breastfeed to 12 months and beyond.[32]

(b) **Definition of breastmilk substitute –** the WHO Guidance recommend that Toddler Milks are included in the definition of breastmilk substitute.[33] This definition **has not** been adopted in Australia,[34] rather, Toddler milks are regulated as a supplementary food for young children.[35] This can be explained by the fact that, in the Australian context, in the second year of life preferred drinks are water and pasteurised full-cream milk, which are not breast-milk substitutes.[36] By extension, Toddler Milks are not breastmilk substitutes in the Australian context.

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[26] TNS Social Research Report, A Qualitative Consumer Study Related to Food Labelling of Infant Foods, 0490016 / C03091, April 2004, p3.
[27] TNS Social Research Report, A Qualitative Consumer Study Related to Food Labelling of Infant Foods, 0490016 / C03091, April 2004, p36.
[28] WHO/UNICEF (2019), "Cross-promotion of infant formula and toddler milks: information note".
[29] WHO Code, article 11.
[30] WHO, Infant and Young Child Feeding Factsheet (2020), available at: https://www.who.int/news-room/fact-sheets/detail/infant-and-young-child-feeding.
[31] Infant Feeding Guidelines, p3.
[32] 2 Scott, J, et al 'Determinants of Continued Breastfeeding at 12 and 24 Months: Results of an Australian Cohort Study' International Journal of Environmental Research and Public Health (2019) 16, 3980, p2.
[33] WHO Guidance, [11], recommendation 2.
[34] See Infant Feeding Guidelines, p120.
[35] Food Standard 2.9.3.
[36] Infant Feeding Guidelines, p88-89.

(c) **Recommendation on introduction of solids –** the WHO recommends exclusive breastfeeding for the first 6 months of life.[37] Australian health experts **have not** adopted this recommendation. In 2012 The NHMRC recommended introduction of solid foods at around six months.[38] In 2016 the Australasian Society of Clinical Immunology and Allergy recommended introducing solids 'when your infant is ready, at around 6 months but not before 4 months'.[39]

36 These examples highlight the frequency with which the Australian Government has departed from WHO recommendations on the topic of infant nutrition where the WHO recommendations are not appropriate to the Australian social and legislative context.

Public benefit is not eroded by Toddler Milk marketing

37 There is no evidence that Toddler Milk marketing is in fact used to cross-promote Infant Formula in Australia. Given this and the sound reasons underlying staging information and product labelling for Toddler Milks, the public benefit arising under MAIF is therefore not eroded by Toddler Milk marketing.

Toddler Milk and Infant Formula are different products and should not be treated as identical for the MAIF Agreement

38 Infant Formula is a breastmilk substitute and is recognised as such by the WHO and the Australian Government. Infant Formula is targeted at parents and caregivers of infants who are unable to or who have made an informed choice not to breastfeed.

39 In contrast, Toddler Milks are not recognised as a breastmilk substitute by the Australia Government. The INC's First Submission sets out the Australian Government's position in relation to this issue in detail.[40] Most relevantly, Toddler Milks in Australia are intended as an alternative to other animal and non-human milks, and provide additional nutrients such as iron.

40 Toddler Milk is targeted at parents and caregivers of toddlers who are fussy eaters and therefore require supplementary nutrients. While such a product could be provided in the form of a nutritional tablet, this is easier to provide to young children as a milk based product.

41 Importantly, unlike Infant Formula, the Australian Government has not imposed restrictions on content claims or health claims made about Toddler Milk products.[41] Given the very deliberate distinction between Infant Formula and Toddler Milk by the Australian Government in its regulatory regime, INC submits that these two products should not be treated the same for the purposes of the MAIF Agreement.

The current MAIF Agreement is already more restrictive than the regulations in comparable overseas jurisdictions

42 Comparable overseas restrictions have not implemented the WHO Code in its entirety through legislation and do have in place any voluntary industry self-regulation.

(a) **Canada** has not implemented the WHO code through legislation, and there is no voluntary industry self-regulation. While Infant Formula is subject to mandatory nutritional requirements set out under *Food and Drug Regulations*, certain content and health claims are permitted. The Canadian Food Inspection Agency and Health Canada urge the Infant

[37] WHO, Infant and Young Child Feeding Factsheet (2020), available at: https://www.who.int/news-room/fact-sheets/detail/infant-and-young-child-feeding.
[38] Infant Feeding Guidelines, p 86.
[39] Australasian Society of Clinical Immunology and Allergy *ASCIA Guidelines: Infant Feeding and Allergy Prevention*, p1.
[40] INC submission in response to Draft Determination, [41]-[44].
[41] See Food Standard 1.2.7-4(b) for prohibition on claims in relation to Infant Formula/

Formula industry to support and implement the WHO Code and have issued guidance which aligns with certain principles set out in the WHO Code.[42]

(b) The **United States** has not implemented the WHO Code through legislation, and there is no voluntary industry self-regulation. The *Federal Food, Drug and Cosmetic Act* and associated regulations provide requirements relating to nutrient content, nutrient quantity, nutrient quality control, recordkeeping and reporting, and recall of infant formula.[43] There are no restrictions on the marketing of Infant Formula.

(c) **Japan** has not implemented the WHO Code through legislation, although it does have some national laws and regulations for the manufacture and sale of infant formula. These do not include detailed prohibitions on marketing as required by the WHO Code.

(d) The **European Union** has implemented aspects of the WHO Code.[44] While the EU regulation address the marketing and promotion of infant formula products for children up to 6 months, it does not address the practices in relation to infant formula from 6-12 months or Toddler Milks.[45]

(e) Similarly, the **United Kingdom** has partially implemented the WHO Code through its *Retained Regulation (EU) No 609/2013 on Food for Specific Groups (FSG)*. This restricts the marketing of infant formula to the general public for children up to 6 months of age as is the case across the European Union. Advertisements in relation to the marketing of follow-on formula (for children between 6 and 12 months of age) are not prohibited, and Toddler Milk marketing is not regulated.

43 The table below summarises the position on marketing and promotion of breastmilk substitutes to the general public in comparable overseas jurisdictions.

Country/Market	Form of Regulation	Scope of products covered by restrictions on advertising to the general public
Australia	Voluntary self-regulatory code (MAIF Agreement)	Infant formula products for children up to 12 months
New Zealand	Voluntary self-regulatory code (similar to MAIF Agreement)	Infant formula products for children up to 12 months
Canada	No regulation	No restrictions on advertising infant formula
European Union	Article 10 EU Directive	Infant formula products for children up to 6 months
United Kingdom	Regulations	Infant formula products for children up to 6 months
United States of America	No regulation	No restrictions on advertising infant formula
Japan	No regulation	No restrictions on advertising infant formula

[42] For more information, see https://inspection.canada.ca/food-label-requirements/labelling/industry/infant-foods-infant-formula-and-human-milk/eng/1393069958870/1393070130128?chap=3.
[43] For more information, see https://www.fda.gov/food/infant-formula-guidance-documents-regulatory-information/regulations-and-information-manufacture-and-distribution-infant-formula.
[44] Commission Delegated Regulation 2016/ 127 and Regulation No 609/ 2013; NHMRC Clinical Trials Centre, 'An International Comparison Study into the Implementation of the WHO Code and other breastfeeding initiatives', Final report, 16 September 2011 p 101
[45] Commission Delegated Regulation 2016/ 127, article 10.

44 In the light of the above, the INC submits that Australia has a more restrictive regime than a number of comparative jurisdictions. The INC submits that, this being the case, the ACCC should not expand the regime to Toddler Milks - the regulation of Toddler Milk marketing is a matter of public health policy, which should properly be addressed by the Federal Government rather than through the ACCC authorisation process.[46] Any changes to the scope of the MAIF Agreement should be considered by appropriated public health departments including through the upcoming Government Review.

11 May 2021

[46] INC, Second Submission, p 4.