

## **Submission re A91506 – A91507 Infant Nutrition Council**

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*Submission from*

**Ros Escott**

**12/11/2015**

**This is an individual submission. Information about my credentials is included at the end.**

I submit that the Infant Nutrition Council and the ACCC should not re-authorise the Marketing in Australia of Infant Formula (MAIF) Agreement for a further 10 years. I recognise that the current authorisation expires this year and recommend that it be extended for one year only, to allow for a much-needed thorough review and update of the MAIF Agreement.

I have a long record of working with the Australian Government and with the World Health Organisation on matters relating to implementation of the *International Code of Marketing of Breast-milk Substitutes*, on which the MAIF Agreement is based.

- Community representative on the working group which drafted the MAIF Agreement in 1992.
- Present at the initial signing of the MAIF Agreement in Melbourne in 1992
- Community Representative on the Advisory Panel on the Marketing in Australia of Infant Formula (APMAIF Panel) (1992 – 1997).
- Participant, World Health Organisation (WHO) Consultant Briefing to train International Consultants on the implementation of the *International Code of Marketing of Breast-milk Substitutes*, Geneva (1993).
- As a WHO Technical Adviser, I did a major revision of the WHO Publication: *Common Review and Evaluation Framework* for the International Code, including field-testing it in Thailand. WHO Geneva - (1995-96). WHO Technical Adviser. Regional workshop on Code Implementation, Philippines (1995).
- Working with the Baby Friendly Hospital Initiative (BFHI), nationally and internationally, re standards of implementation of the *International Code* in BFHI hospitals (1995-current).

When we were working on the MAIF Agreement in 1992, the over-riding premise against which everything had to be justified was “What is in the best interests of the health of Australian mothers and babies?” This is as relevant today as it was then, but there have been a lot of changes over the past 23 years in the products available and the marketing practices. Also, there is now a lot more well-substantiated information available on the short-term and lifelong health implications resulting from how an infant has been fed.

Authorising the outdated MAIF Agreement for a further 10 years is not in the best interests of the health of Australian mothers and babies.

The MAIF Agreement is an inadequate document in a number of ways:

1. The MAIF Agreement has no preamble.

It was intended to implement those aspects of the International Code which related to the marketing in Australia of infant formula. But we overlooked including a preamble based on the Preamble to the *International Code* – I consider this to be the biggest mistake we made.

Before I was trained as a Technical Advisor by WHO, I did not realise the significance of a preamble and that it forms part of the document as a whole. The Preamble in the *International Code* sets the context of the Code and gives meaning what follows. As with other legal documents and constitutions, a preamble enables subsequent informed interpretation of what may otherwise be ambiguous statements.

Those of us who have been and are responsible for interpreting The MAIF Agreement and adjudicating possible breaches, would have benefited greatly from a preamble.

2. The MAIF Agreement in out-of-date by international standards.

Since the *International Code* was adopted in 1981, the World Health Assembly (WHA) has passed a number of subsequent resolutions to inform, interpret or strengthen the Code in the light of changes to marketing practices. These subsequent WHA resolutions are intended to be an integral part of Code implementation by Member States. The MAIF Agreement does not address any of them, which makes it out-of-date and puts Australia out of step with the World Health Assembly's resolutions.

3. Products and marketing practices have been developed to get around the Code.

The first measures to implement the International Code in Australia (and many other countries) were restricted to products for infant (up to 6 months). To get around this, follow-on formulas were introduced on the market, as they could be freely marketed, even though they are nutritionally unnecessary. The NHMRC Infant Feeding Guidelines (2012) state that "the use of 'follow-on formula' for infants aged 6-12 months is not considered necessary and no studies have shown advantages over using 'infant formula'".

The scope of the MAIF Agreement is limited to products marketed to infants (up to 12 months). To get around this restriction, toddler milks (over 12 months) were developed. Again, these products are nutritionally unnecessary. The NHMRC Infant Feeding Guidelines (2012) state that "Special complementary foods or milks for toddlers are not required for healthy children". Berry et al (2010) have shown that "toddler milk advertisements are functioning as defacto infant formula advertisements in Australia". They concluded that "the MAIF is failing to achieve its stated purpose"<sup>1</sup>.

More recently, "staged" formulas have been introduced, with almost identical packaging for the range of products from birth through the toddler years. This too enables defacto promotion of the stages for under 12 months, because the identical products for over 12 months are allowed to be advertised and promoted.

4. More recent marketing options are not addressed

The MAIF Agreement predates marketing by electronic and social media, baby clubs and other innovative marketing methods which get around the wording of the Agreement.

5. The MAIF Agreement had shortcomings 20 years ago

While I was Consumer Representative on APMAIF, the Industry Representative and I were asked to work on revising the MAIF Agreement, because it was recognised even in the 1990s that the MAIF Agreement had shortcomings. We agreed to use the then Pharmaceutical Code of Conduct as a basis, as it shared and addressed a number of relevant issues. We negotiated several drafts, the last of which I still have, but it was never implemented. My recollection is that there was industry resistance because it was a stronger and tighter code.

6. The Knowles Report

In 2001, Robert Knowles reported on his commission to give *Independent Advice on the Composition and Modus Operandi of APMAIF and the Scope of the MAIF Agreement*. He reported that APMAIF had been reviewing the existing MAIF Agreement, with a 'code of conduct' as their preferred model; but industry preferred not to proceed with the Draft Code of Conduct and continue with the existing MAIF Agreement.

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<sup>1</sup> Berry NJ, Jones S, Iverson D. Toddler milk advertising in Australia: the infant formula ads we have when we don't have infant formula ads. <http://ro.uow.edu.au/cgi/viewcontent.cgi?article=1630&context=hbspapers>

I contend that industry has a vested interest in continuing with the current weak and dated MAIF Agreement, and that any decision on the composition of a revised agreement or a code of conduct should be made in the context not of what suits industry, but what is in the best interests of the health of Australian mothers and babies.

## 7. The Nous Group Review

In 2011, the Department of Health commissioned the Nous Group to do an independent review of the MAIF Agreement. The report stated: "Authorisation expires in 2015 and it is expected that the content and operation of the MAIF Agreement will have to be reviewed prior to application for re-authorisation". Since this hasn't happened, it needs to happen over the coming year.

## 8. The Australian National Breastfeeding Strategy 2010-2015

This Strategy states: "The Australian Competition and Consumer Commission's authorisation of the MAIF Agreement will expire on 31 December 2015 (ACCC 2007). This will allow scope for a review of the MAIF Agreement prior to any re-authorisation which may be sought at that time". While not worded a specific recommendation, the Strategy raised the expectation that a review would take place. It should.

## 9. An extended re-authorisation would be premature

It would be premature to authorise the MAIF Agreement for an extended period on the cusp of important national and international developments which should inform a review of the MAIF Agreement.

- Australia is currently reviewing the National Breastfeeding Strategy, with a report due out at the end of this year
- WHO is due to release, in early 2016, strengthened protections against food marketing to children and their parents.

## Conclusion

In conclusion, there are ample reasons why the current MAIF Agreement is outdated and inadequate, serves vested commercial interests, and is not furthering the best interests for the health of Australian mothers and babies. It would be totally unjustifiable to extend it for a further ten years.

I recommend that authorisation should be extended only for one year, to enable a much-needed thorough review and update of the MAIF Agreement.

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- **Australian Breastfeeding Association (ABA)** volunteer breastfeeding counsellor and community educator (1987-present). Active on Breastfeeding Helpline and National Training Team.
- **International Board Certified Lactation Consultant** (1989-current)
- **Baby Friendly Hospital Initiative (BFHI)**. Active national and international BFHI Trainer and Assessor 1995 – present; BFHI National Committee 1996-2010; consultant on BFHI implementation and assessor training at the global standard in New Zealand (2000), Singapore (2011) and Taiwan (2011)
- **WHO International Code.** (as on page 1)