
From: Rachel Fuller <rachel.fuller@breastfeeding.asn.au>
Sent: Wednesday, 23 December 2015 12:09 PM
To: Adjudication
Cc: Ransom, Hannah; Rebecca Naylor
Subject: Infant Nutrition Council Application - Pre Decision Conference
Attachments: ABA Discussion to ACCC pre decision conference 1412 2015.pdf

Thank you for the emailed copy of the record of PDC re Infant Nutrition Council application.

Please note that comments attributed to Dr Nina Berry (Australian Breastfeeding Association) were presented by Rachel Fuller, President Australian Breastfeeding Association.

I have attached a copy of the comments made by the Australian Breastfeeding Association at the pre decision conference and give consent for this to be on public record.

ABA requests that the ACCC ask the Infant Nutrition Council to provide data to support their claim that the significant increase in sales volume of infant formula, follow on formula and toddler milk is attributable to the melamine contamination scare in China in 2008.

Thank you for the opportunity to participate in the pre decision conference. ABA is happy to provide any further information or evidence to support the ACCC decision making process.

Kind Regards
Rachel

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Pre Decision Conference with ACCC -14 December 2015

Infant Nutrition Council applications for authorisation A91506 & A91507



**Australian
Breastfeeding
Association**

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Australian Breastfeeding Association (ABA) representatives:

Rachel Fuller (President), Rebecca Naylor (CEO), Nina Berry (Advocacy Advisor)

The Australian Breastfeeding Association maintains that the Marketing in Australia of Infant Formula Agreement (as described by the Infant Nutrition Council (INC) for this application) cannot achieve its prescribed aims.

It is our position that the Agreement failed to protect breastfeeding in Australia, even when it was administered from within the Australian Department of Health. In light of this failure, we contend that the Infant Nutrition Council's proposal to further limit the scope of the agreement and to assume responsibility for investigating and adjudicating allegations of non-compliance (via the proposed MAIF Complaints Tribunal) is unlikely to result in adequate protection for Australian consumers.

The ABA further contends that reauthorizing the MAIF Agreement, with the addition of the administrative arrangements described, are a wholly inadequate response to Australia's responsibility to implement the World Health Organization's (WHO) International Code of Marketing of Breast Milk Substitutes and subsequent World Health Assembly (WHA) resolutions.

Infant formula is a food unlike any other. It is designed to be the sole source of nutrition during the first half year of life; and the principle source of nutrition during the second half year of life. This results in a unique dependence on a single processed food, which makes Australian parents of formula fed infants uniquely vulnerable to commercial exploitation.

The advertising of infant formula, in which some infant formula products or brands are presented as 'premium' (and that is frequently be through use of words such as Gold, Gold+, Platinum or Premium), is designed to generate a perception amongst consumers that these products confer health or nutritional benefits on the infants who consume them. The National Health and Medical Research Council notes that the composition of infant formula products sold in Australia is prescribed by the relevant Food Standard (2.9.1) and that there is no evidence of benefit from choosing a more expensive infant formula product. Any claim of product superiority must then be misleading. The potential for infant formula advertising to mislead Australian parents is amplified when we note that these claims never include a point of reference and so may be interpreted as implying superiority to breastfeeding.

The ACCC draft determination states *"the ACCC considers the MAIF Agreement is likely to continue to result in public benefits in the form of **promoting and protecting breastfeeding** through the **restriction of inappropriate advertising of infant formula** and **avoided regulatory costs**, and that these benefits are likely to **outweigh detriment arising from the restriction of marketing within the agreement**".*

ABA disputes these claims and will respond to 5 points of the draft determination.

Public benefits in the form of Promoting and Protecting Breastfeeding

- It is not in the interest of Infant Formula Manufacturers to ensure the MAIF achieves its objectives, since doing so would reduce demand for the product. It is therefore inappropriate to entrust the protection of Australian consumers from infant formula advertising to infant formula advertisers.
- No evidence has been presented demonstrating that the MAIF has effectively achieved its aim of promoting and protecting breastfeeding although there is some evidence suggesting the MAIF Agreement has been ineffective¹.
- The proposed arrangements make no provision for external governance or active compliance monitoring. Furthermore there are no meaningful sanctions associated with violating the Agreement.
- We know that despite a recent review to the NHMRC infant feeding guidelines, we are still failing to achieve Australian Government recommendations, that infants are exclusively breastfed to around 6 months. Initiation of breastfeeding in Australia is high - exceeding 96%, which indicates women want to breastfeed. However, in 2010 rates of exclusive breastfeeding at 5 months were a low (15%)², and only 28% of children were still being breastfed at 12 months, 9% at 18 months and 5% at 24 months.³
- The costs to Australian health and the economy of an inadequate system for regulating the marketing of breastmilk substitutes are well known. ABA provided the ACCC with detailed information on the costs of not breastfeeding in our submission dated 17 August 2015. Public health researchers estimate that failure to adequately protect Australian families from infant formula costs the Australian health system and economy well over \$100-120M per annum, - a significant detriment to the Australian community. This figure only relates to a few infectious illnesses and not the longer-term costs of chronic diseases. There is also a cost in terms of lives lost - around 250 a year from premature weaning from breastfeeding.
- If the MAIF Agreement was effectively achieving its stated aims, we would expect to see that the growth in the sales of infant formula would closely follow growth in the birth rate. During the period 2009 to 2014, the birth rate in Australia has remained stable (with the exception of a 3.2% increase 2012 and subsequent decline to pre-2009 levels). However sales volume of infant formula grew 28% during the same period. Sales of follow on formula grew 44% and sales of toddler milk grew 237%. The total value of milk formula sales more than doubled over this period from AUD \$240 million to AUD \$546 million.⁴

With regard to the claim that the MAIF Agreement will restrict inappropriate advertising of infant formula, ABA contends:

- The MAIF Agreement has failed in protecting the Australian community from the advertising of breastmilk substitutes as required by World Health Assembly Resolution 33.47, the International Code of Marketing of Breastmilk Substitutes.
- This is largely due to the fact that the scope of the agreement has failed keep pace with innovations in marketing practices. The narrow scope of the MAIF Agreement encourages creative compliance, enabling advertisers to design marketing strategies that evade the provisions of the agreement with immunity. For example, Australian Research tells us that parents understand toddler milk advertisements to be promoting a range of products

including infant formula⁵. Furthermore parents accept the claims made in these advertisements uncritically, because they believe that misleading claims ‘would not be allowed’.

- Advertising claims made for infant formula (including on the packaging) contradict public health messages about breastfeeding because they are, by nature, silent on the evidence of health risks associated with formula feeding.
- Toddler milk advertisements (on social media, in magazines and on television) appear to be functioning as indirect advertising for infant and follow-on formula⁵.
 - ABA provided images of screen shots taken from Infant Formula Manufacturer’s websites Thursday 10th and Friday 11th December 2015. The images depict products from 4 signatories to the current Agreement, and one who is not a signatory – Bellamy’s (attachment 1).
 - It is easy to see that consumers understand that all of these products are the same.
- Although the Department of Health and Ageing did not accept the advice, The Nous Review of the effectiveness and validity of operations of the MAIF Agreement⁶ recommended *consideration should be given as to how to best restrict manufacturers’ labelling of toddler milk drinks with product identifiers resembling those of infant formula labels*. It stated: *labelling of products should be sufficiently different to enable consumers to clearly and quickly distinguish between infant formula and toddler milk drinks*.

The report acknowledged that there are a number of implications to expanding the scope to include toddler milk drinks and stated that the major concern is the use of brand identifiers resembling infant formula. An alternative mechanism to prevent toddler milk drinks being used as de-facto advertising for infant formula is placing restrictions on the ability of industry to market and label both infant formula and toddler milk drinks in a similar manner.

- In 2013, the World Health Organization stated that follow on and toddler formulas are marketed in a way that confuses consumers, and reduces breastfeeding.⁷

Although the proposed Agreement will Avoid regulatory costs:

- There is nothing to compel industry to comply with the MAIF Agreement, or even become a signatory to this agreement.
- The Nous Report⁶ made a number of recommendations (as referred to by the INC), highlighting three key recommendations for particular consideration:
 - *First, the voluntary, self-regulatory nature of the MAIF Agreement should remain in operation **provided** it continues to promote the aim of the MAIF Agreement and industry coverage remains high*
 - *Second, the wording of the MAIF Agreement needs to be updated to reflect modern health terminology and developments in the marketing environment*
 - *Third, all APMAIF decisions and appointments should be timely, transparent and clearly communicated to the public.*

The proposed agreement achieves none of these three recommendations.

- The Knowles Report in 2001⁸, identified that changing practices in the retail sector, (baby clubs, retailer activity etc) necessitated a mechanism within the MAIF Agreement to address this.
 - This has not occurred. Rather there have been significant advances in technology enabling infant formula manufacturers and retailers much more direct access to parents, especially through social media platforms.

Detriment arising from the restriction of marketing within the agreement

- Evidence tells us it *is* to the public detriment to continue to have MAIF for a further 10 years:
 - This is more than 3 government terms
 - We have already acknowledged that breastfeeding rates and associated health costs in Australia need to be addressed.
 - New guidance from the World Health Organization is imminent and Australia has a responsibility to respond to any changes. The INC argue that timing, outcomes and implications for the MAIF Agreement are unknown, however as the public consultation has taken place and the WHA have a meeting scheduled and have committed to communicate recommendations at the conclusion of that meeting, it is reasonable to assume this information will be available in the short term. There is certainly no indication it will take 10 years.

The Nutrition Council may seek to vary the authorisation at any time, should it consider alterations are appropriate:

- Given the Infant Nutrition Council (ie industry) have sought authorization of this agreement in it's current state – which aside from removal of reference to APMAIF, remains unchanged since 1992; and have sought that authorization for a further 10 years, it is unlikely INC will move to vary the authorization following the release of new guidelines from WHO/WHA because it would not be in their interests to do so.
- It is not in the interest of MAIF members to seek effective restrictions. Indeed, it may be argued that do so would breach the obligations of their officers to increase maximize the returns to their shareholders through increased sales.
- Again, the The Nour Report to the Department of Health and Ageing stated: *it is expected that the content and operation of the MAIF Agreement will have to be reviewed prior to application for re-authorisation.*

ABA strongly urges the ACCC to reauthorize for a period of no more than two years, and impose conditions requiring independent evaluation of effectiveness of the MAIF agreement prior to any further authorization.

This evaluation should include robust consultation with health authorities, health care providers, researchers and the community. It should address the questions of whether there is evidence that:

- **the Agreement effectively protects Australian parents from the advertising of infant formula and,**

- **the scope of the Agreement is tight enough to exclude creative compliance compliance strategies including cross promotion through the advertising of related products or those with similar ingredients**

¹ Berry, N.J., Jones, S.C & Iverson, D.C. (2012). Toddler Milk Advertising in Australia: infant formula in disguise?. *Australasian Marketing Journal*, 20 (1), 24-27

² Australian Institute of Health and Welfare 2011, 2010 Australian National Infant Feeding Survey: Indicator Results. Canberra: AIHW.

³ Australian Institute of Family Studies (AIFS) 2008, *Growing Up In Australia: The Longitudinal Study of Australian Children, Annual Report 2006-07*; www.aifs.gov.au/growingup/pubs/ar/ar200607/breastfeeding Accessed 9 August 2015.

⁴ Euromonitor International 2014. Baby Food In Australia.

⁵ Berry, N.J., Jones, S. & Iverson, D. (2010). It's all formula to me: women's understanding of toddler milk ads. *Breastfeeding Review*, 18 (1), 21-30.

⁶ Department of Health and Ageing, 13 June 2012, Review of the effectiveness and validity of operations of the MAIF Agreement: Research Paper

⁷ http://www.who.int/nutrition/topics/WHO_brief_fufandcode_post_17July.pdf

⁶ Australian Bureau of Statistics

<http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/3301.0Main%20Features32014?opendocument&tabname=Summary&prodno=3301.0&issue=2014&num=&view=>

⁸ Commonwealth Department of Health and Ageing, The Knowles Report - Independent Advice on the Composition and Modus Operandi of APMAIF and the Scope of the MAIF Agreement, February 2011

<http://www.health.gov.au/internet/main/publishing.nsf/Content/health-pubhlth-publicat-document-brfeed-knowles.htm>