

ACCC PRE-DECISION CONFERENCE – INFANT  
NUTRITION COUNCIL – AA1000534

ATTENDEES

<b>Australian Competition &amp; Consumer Commission</b>	<b>Sarah Court (Chair)</b> Commissioner <b>Delia Rickard</b> Commissioner <b>Anna Brakey</b> Commissioner <b>Daniel McCracken-Hewson</b> General Manager – Exemptions <b>David Hatfield</b> Director – Exemptions <b>Hannah Ransom</b> Senior Analyst – Exemptions <b>Gemma Smith</b> Project Officer – Exemptions <b>Marcello Saponaro</b> Principal Lawyer – MEAD Legal <b>Tom Marshall</b> Assistant Director – Executive Office
<b>Infant Nutrition Council</b>	<b>Jan Carey</b> CEO and Chief Spokesperson
<b>Allens (Infant Nutrition Council's legal representation)</b>	<b>Fiona Crosbie</b> <b>Anita Thompson</b> <b>Hanna Kaci</b>
<b>MAIF Signatories</b>	<b>Dana Felder</b> Senior Regulatory Specialist of Abbott Australia

	<p><b>Vivian Zurlo</b></p> <p>General Manager, Marketing and Innovation of Bubs Australia</p> <p><b>Jeremiah Villasin</b></p> <p>Regulatory Affairs Manager ANZ of H&amp;H Group</p> <p><b>Lira Yoon</b></p> <p>Regulatory and Scientific Affairs Manager of Sanulac Nutritionals Australia</p> <p><b>Liz Lloyd</b></p> <p>Corporate Counsel, Nestle</p> <p><b>Peter Fryer</b></p> <p>Scientific Manager, Nestle</p>
<b>Australian Breastfeeding Association</b>	<p><b>Margaret Grove</b></p> <p>President</p> <p><b>Dr Susan Tawia</b></p> <p><b>Naomi Hull</b></p> <p><b>Sally Eldridge</b></p>
<b>Department of Health (Cth)</b> Preventative Health Policy Branch	<p><b>Tiali Goodchild</b></p> <p>Assistant Secretary</p> <p><b>Christel Leemhuis</b></p> <p><b>Emily Dawson</b></p>
<b>Australian College of Midwives</b>	<b>Samantha Tutton</b>
<b>Australian Nursing and Midwifery Association (ANMF)</b>	<p><b>Julianne Bryce</b></p> <p><b>Naomi Riley</b></p>
<b>Baby Friendly Health Initiative (BFHI) Australia</b>	<b>Jennifer Hocking</b>
<b>Breastfeeding Advocacy Australia</b>	<p><b>Janelle Maree</b></p> <p>Director and spokesperson</p> <p><b>Madeleine Munzer</b></p>

	<p>Director</p> <p><b>Elizabeth Albergoni</b></p>
<b>Care A2+</b>	<b>Kym Lennox</b>
<b>Dietitians Australia</b>	<b>Dr Miranda Blake</b>
<b>Lactation Consultants of Australia and New Zealand (LCANZ)</b>	<p><b>Trish Doyle</b></p> <p><b>Narelle Dwyer</b></p>
<b>Obesity Policy Coalition</b>	<b>Katarnya Hickey</b>
<b>Interested Individuals</b>	<p><b>Dr Julie Smith</b></p> <p>Australian National University</p> <p><b>Dr Julianne McGuire</b></p> <p>Queensland University of Technology, Faculty of Health, Paediatric Nutrition Group</p> <p><b>Dr Jeni Stevens</b></p> <p><b>Ros Fleetwood</b></p> <p><b>Katie Bulleen</b></p>

# SUMMARY

ACCC OFFICE, MARCUS CLARKE ST, CANBERRA

MICROSOFT TEAMS VIDEO LINK UPS TO PARTICIPANTS

13 APRIL 2021, 12PM AEST

**Commissioner Sarah Court** introduced herself and the ACCC staff present, welcomed everyone to the conference and declared the conference open.

**Commissioner Court** then summarised a range of relevant issues raised in submissions as she saw them:

- While it is a long standing authorisation there are some submissions that disagree it should be allowed to continue
- There have been developments in the WHO position and they now consider that the marketing of toddler milk is tantamount to the advertising of infant formula
- The Draft Determination proposes to authorise without the condition but we do contemplate whether such a condition is necessary
- Further issues raised in submissions include brand marketing, the complaints handling process, incomplete industry coverage as the MAIF Agreement is voluntary and issues of marketing via third parties
- the appropriate duration of authorisation.

**Commissioner Court** noted the ACCC is not an expert body on infant nutrition. The ACCC has a clearly defined role in authorising conduct under Competition Law – to decide if there is a net public benefit from this agreement. We have previously determined there is a net public benefit, so moving away from that now would be significant and that is an important context to remember.

**Margaret Grove** (Australian Breastfeeding Association) said that:

- The ACCC states its role is to promote competition and fair trading in markets to the benefit of consumers, business and the community. The ABA is here to address the conference on behalf of consumers, the community, its thousands of members, and all pregnant women and mothers.
- The ABA acknowledges there are a small percentage of mothers that cannot breastfeed and those that choose to wean early for various reasons and that those mothers should be able to make their own choices based on evidence.
- There is evidence backing up that the health of infants and growing children is impacted by formula feeding including causing more respiratory issues and hospitalisations from infections, gastrointestinal infections, increased severity of infections, more SIDS deaths, and higher incidences of diabetes and cardiovascular disease. For example, Australian health economist Dr Julie Smith found if 90% of babies are fed some formula during the first six months of life (which is largely what is happening) then 20% of obesity in the adult population can be attributed to that. Additionally, 37% of type 2 diabetes and 17% of cardiovascular disease is attributed to formula feeding.

- There is also increased health risks to mothers who formula feed babies and environmental and economic factors. The economy suffers significant impacts – workplace productivity due to parents' absence due to their infants' poor health. There is also increased burden on health systems, and an increase in state health expenses.
- Breastfeeding needs to be protected for these reasons. Consumers need support and information on breastfeeding without subtle and not-so-subtle marketing of formulas.
- Australia hasn't implemented the WHA resolutions. The MAIF Agreement was set up in response to the WHO Code but doesn't actually protect breastfeeding. It claims to limit inappropriate marketing but doesn't really as (1) it is voluntary, (2) consumer activities are exempt (e.g. supermarkets and pharmacies can promote these products in catalogues) and toddler milks are exempt and (3) there are no real sanctions for companies that breach the Agreement.
- It is still important to have the MAIF Agreement in place as it is currently the only form of protection of breastfeeding. But profits of manufacturers and importers are being prioritised over the health and wellbeing of Australian babies, children and their mothers. Breastfeeding doesn't lose value when infants reach 12 months of age. The MAIF Agreement stopping there doesn't reflect the normal course of breast feeding to two years of age or more which is important for optimal health.
- The general Australian population are not aware of the MAIF Agreement so health professionals and advocates are responsible for it. It is not just about a competitive, level playing field that is at issue but the need to give consumers and the community a voice. We expect the ACCC to take its responsibility to the community just as seriously as it does to manufacturers.
- Given the Department of Health is said to be reviewing the MAIF this year it doesn't make sense to allow the current agreement to stand for five years. Changes will be recommended over the next 1-2 years – they should be incorporated into the MAIF Agreement then.
- The ABA makes two recommendations: extend limitations on advertising set out in clause 5A of MAIF to apply to all breast milk subs including toddler milk; and reauthorisation period of two years, not five.
- There are other groups of consumers and concerns missing from the determination that cannot be represented adequately by ABA but the ACCC should still consider them. There are environmental concerns stemming from infant formula as it requires mass production of dairy. Poor regulation can lead to excessive and inefficient environmental damage. The prices of formula and unnecessary toddler milk don't reflect resources required to produce them leading to planetary and human health concerns.

**Dr Julie Smith** (Australia National University) spoke to a set of powerpoint slides and said:

- It is time for the ACCC to require the Infant Nutrition Council to prove the MAIF Agreement works. All evidence is currently to the contrary: breastfeeding rates have not substantially improved for decades and especially since 1992. By contrast, sales of infant formula and toddler drinks have boomed and that data ignores the provision of formula to institutions like hospitals. The market share of toddler milk has also increased.
- Clearly the warning given by the ACCC in 2016 was ineffective.
- Recommendations:

- (1) impose condition on authorisation limiting advertising off all-milk formula products (0-36 months);
- (2) Authorisation should be for no longer than 2 years and the ACCC should put this market formally under review;
- (3) The ACCC should require INC to revise its guidance documents to health professionals to achieve full compliance with the WHO International Code guidance for health workers;
- (4) The ACCC should account for the regulatory cost to civil society, organisations and individuals of policing the MAIF Agreement;
- (5) Urge ACCC to assess public benefits to include marketing conduct of INC conduct in export markets.

**Commissioner Court** asked Dr Julie Smith to clarify whether she said there is no evidence of breast feeding rates increasing as Commissioner Court thought there was clear evidence of increases.

**Dr Julie Smith** said that:

- As measured by the National Health Survey, they have gone from 87% to 96% as an initiation rate. The rate of any breastfeeding at 6 months has risen from 47% to around 60% at last measurement. But the rate of exclusively breast feeding has gone from approx. 19-20% to around 25%. In the scheme of things these are far below the optimal rates. And there has been little change. The rate of breastfeeding at 12 months from 27% to just above 30%. (Julie Smith disputes the figures in the INC submission).
- The initiation improvement should be attributed to the change in policy but continuation hasn't improved and there is no evidence MAIF has restrained marketing.
- 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.
- Calculated ABS data size of institutional market not much less than retail market.

**David Hatfield** asked Julie Smith to confirm if this data included formula purchased in Australia that is then sent overseas.

**Julie Smith** said that:

- she believes the data includes the Daigou Market. There is also a lot of pilfering going on but she imagines this data would not include pilfering but you would need to ask Euromonitor. The data is presented as being the baby food market in Australia so it is taken to be retail sales in Australia.
- Submits ACCC should demand evidence on what is actually happening rather than accepting INC's submission that it works. There is no evidence available of that. ACCC should require INC to provide that evidence.
- MAIF authorisation should not exceed two years as there is no confidence in MAIF or any significant change coming from it. No evidence that the recommendation from the upcoming review will be implemented and you cannot assume there will be beneficial outcomes from the review either. A shorter period, given the risks, is more likely to generate public benefit than a longer one.
- Marketing to health professional by MAIF Agreement signatories is an issue as the Agreement is much narrower than the WHO code. The ACCC has obligations to take

that into account as authoritative in absence of Australian Government guidance. That WHO Guidance is clear on the responsibilities of health professionals. Infant feeding guidelines should be followed.

- There is a currently unpublished study which reviewed Codes of Practices of relevant health professional organisations in terms of their instructions to health professionals on areas identified by the WHO Code. That study found that while those organisations had a general statement about conflicts of interest, very few (only 1-2) had special provisions regarding the code. The ACCC cannot rely on health professional codes of conduct to adequately regulate health professional behaviours in the industry and their relationships with companies.
- Self-regulation can be beneficial in reducing the cost of achieving policy goals but that is not the case if self-regulation isn't effective (as we argue it isn't here). We submit that this inefficient regulation and the institutional arrangements as set up have outsourced costs to the community, individuals, and consumer organisations. It is not acceptable to effectively rely on the public to monitor industry behaviour.
- The ACCC should place conditions on the enforcement, monitoring and compliance aspects of the MAIF Agreement include requirements of independent reviews, monitoring of the extent of compliance, and independent audits of complaints processes.
- ACCC does have wide powers extending to regulating the overseas conduct of companies which are resident in Australia or operate here and reading these powers together with Australian Government Agency obligations under human rights treaties protecting children and their health suggest the ACCC does have an obligation as a Australian government agency to extend consideration to export market conduct. The Gates Foundation has done studies in Asian markets including Cambodia showing marketing breast feeding substitutes including toddler formulas has a devastating effect on the breastfeeding rates in those countries.
- ACCC should seek evidence on the benefit as well as the detriment. The INC submission argues detriment has increased with the introduction of more competition in market. If the ACCC does grant the authorisation, it must take steps to increase the certainty and level of public benefit and ensure outcomes are closely monitored over a shorter period of time.

**Commissioner Court** asked Julie Smith to clarify is her position that the ACCC should deny the authorisation all together and we would be better off with no agreement or restrictions at all?

**Dr Julie Smith** responded that:

- There is no evidence MAIF is restraining marketing. In contrast with other countries which utilise properly tested research protocols to do data gathering – the ACCC is being told the MAIF Agreement is working in restraining marketing, but there is no evidence of that. The data collected up to 2001 shows it was restrained while the WHO international code was being negotiated under public pressure, but since the Australian version was implemented in 1992, the industry started marketing toddler and other products to get around the MAIF Agreement.
- The counterfactual cannot be assumed to be unregulated marketing – the companies themselves have an interest in having some semblance of public respect. I would argue that companies have used the Australian and New Zealand self-regulatory arrangements to gear their arguments in international forums to discourage these discussions in other countries on the regulation by law of infant formula – essentially using the Australian arrangement to fend off effective regulation. It is preferable for the MAIF Agreement to be revised and brought up to date as things have

substantially changed since 1992 but the MAIF Agreement only reflects the situation in the 1980s. The WHO has made clear recently and the WHA has made clear that toddler formulas are breast milk substitutes.

**Jan Carey** (Infant Nutrition Council) said that:

- The Infant Nutrition Council represents 99% of volume manufactured and marketed in Australia. The INC wants the industry to adhere to best practice, including in the export market.
- INC understands breastfeeding is the biological, normal way to feed infants and provides the most optimal nutrition. The INC is committed to supporting public health goals on that. We believe the MAIF Agreement is the most appropriate interpretation of the WHO Code as it is robust and tailored to Australian conditions.
- INC encourages new entrants to the market to sign the MAIF Agreement.

**Tiali Goodchild** (Commonwealth Department of Health) said that:

- The Department of Health reaffirmed that it does intend to undertake a comprehensive review of the MAIF Agreement in late 2021. An essential part of the review will be consideration of the scope including the age range of products captured, how these products are defined and whether a voluntary agreement remains appropriate in managing these issues. The Department of Health will engage with a broad range of stakeholders including everyone speaking today and will invite public submissions as is the norm.
- The Department of Health supports the ACCC Draft Determination to reauthorise for 5 years. This will allow for a comprehensive review period and implementation of any recommendations. If there are big changes we don't think reauthorisation for 5 years would prevent changes from taking place or prevent requests to the ACCC to allow change.

**Commissioner Court** asked if the Department of Health had any response to suggestions a two-year authorisation period would be more appropriate than the five year period, and whether there was any reason not to authorise for less than five years.

**Tiali Goodchild** said there are a broad range of views in the Department on the most appropriate period of time. She doesn't think a lesser authorisation period would cause major issues in terms of the alignment of reviews, but it may impose greater regulatory burden on the industry. But from the Department's point of view, it can work with any time frame.

**Janelle Maree** (Breastfeeding Advocacy Australia) said that:

- This is an opportunity to protect women and children with legislation, penalties and fines. The Australian government should implement the WHO Code in legislation.
- The government put its trust in the MAIF Agreement in 1992 and that trust has been betrayed and exploited. The industry is all about increasing their market share through the destruction of breastfeeding for profit.
- They use many methods of marketing (e.g. social media influencers, trolley ads etc) which are outside the MAIF Agreement.
- The evidence that the MAIF Agreement works in their favour is the new players entering the field.
- Infant formula is an ultra-processed powder but the government continues to give it credibility. There is a false sense of security with these products; it is not benign as previously thought. It is a Nova Category 4 2019 which are recognised as being



responsible for significant non-communicable diseases including diabetes and cancer.

- By contrast, breast milk is a biological fluid capable of responding to new stimuli such as Covid.
- This is a public health crisis costing billions annually. The current situation is untenable. The MAIF requires Explanation Guidelines and complaints take months to process. Women are fearful to breastfeed in public. Premature infants are having to suffer agonising deaths from gangrene of gut and women lose breasts to preventable breast cancer from lack of breastfeeding.

**Commissioner Court** noted the ACCC does not have power to make legislation on this issue. Commissioner Court asked Janelle Maree whether her submission is to not authorise the agreement at all and that breastfeeding would be better protected without the MAIF Agreement or whether we would be better to have it with conditions and potentially a stronger regime implemented following the Department of Health process later.

**Janelle Maree** said giving any credibility to the MAIF Agreement is a farce. This needs to go to the Department of Health and they need to initiate legislation with penalties. We know Australians are falling ill or dying because we keep letting industry suggest this Agreement is adequate. It is not adequate. It is a farce. The Department of Health needs to stand up and protect the health of Australia.

**Kym Lennox** (Care A2+) said that:

- Care A2+ is not a member of the INC at this point in time.
- For the most part Care A2+ agrees with Janelle Maree that there is a health crisis here. Breastfeeding is not correctly prioritised. The MAIF agreement may or may not have been fit for purpose once but the world has moved on: we now have the internet facilitating relationships directly with consumers whereas the Agreement was written when advertising was remote (such as in newspapers) and the world was very different.
- Care A2+'s submission highlights regulation needs to change to establish the appropriate outcome: health.
- Care A2+ does not want to market its product to mothers that can breastfeed. But mothers that unfortunately cannot breastfeed need an alternative in the market – the product then represents insurance for any nutrition. We no longer have wet nurses, so in that respect we would prefer regulation to provide clear guidance. Consumers and healthcare workers need to be fully informed.
- It should be evident that given products range from 15 – 50 dollars per tin there must be some difference in them and it must be nutritional. Therefore, health standards shouldn't be there for health concerns. All these negative health outcomes occur because breastmilk functions biologically and these products are engineered to the best of scientific ability to function as a shortfall.
- He only learned about the differences in health outcomes between breastmilk and formula feeding as a manufacturer, rather than as a consumer. The government should ensure people are informed. Self-regulation allows manufacturers too much leeway. Care A2+ is comfortable with clear regulation, we don't want to have to navigate uncertainty. We are here because unfortunately breastfeeding is not always going to work and we need better products out there, choice, and consumers need to be informed about that choice when they do go to the shelf.

- This agreement stops you informing parents about the differences between products and prevents you from saying they should avoid using formula if they can. So effectively we are restrained from helping parents.
- As a manufacturer we also find that there are better products overseas that are not on the shelf here. The Australian government should be more involved in this. We encourage a regulatory response not through competition law. We shouldn't have to resort to this confrontational discussion and passionate and confronting submissions such as Janelle Maree's to achieve outcomes.

**Commissioner Court** asked Kym Lennox if his position is that the ACCC should not authorise the agreement and mandatory regulation covering the field should be introduced.

**Kym Lennox** confirmed that is his position and added that:

- He agrees the counterfactual isn't the Wild West but at the same time he is not sure how all players in the market would behave. It is interesting to note that retailers will discuss being a signatory of the MAIF Agreement (which makes no sense because they cannot be, but they behave as such).
- The MAIF Agreement is not fit for purpose in 2021. Care A2+ welcomes a regulatory environment where it is answerable to government.
- Endorsing the MAIF Agreement in principle is possibly poor a signal. The mechanism government can bring in to apply WHO in law and implement across all sectors with education, including for medical professionals – who are not always aware of things and require us to educate them on why breast is best.

**Jeni Stevens** (individual) said that:

- She works in NSW health in a hospital setting and she also looks after babies and mums. In NSW Health the regulations regarding breastfeeding aren't very strong which is so contradictory to everything nurses and doctors are taught in their Codes of Ethics. We should be safeguarding the rights of each woman and infant to receive the highest standard of care.
- The use of formula does have huge health consequences. You learn in nursing to do no harm, but formula does do harm.
- We need to protect and support mothers to reach their feeding goals.
- She is nervous about not having the MAIF Agreement. We shouldn't let go of it until there is a better option and she agrees that should be in NSW Health as it is a health issue.

**Trish Doyle** (Lactation Consultants of Australia and New Zealand (LCANZ)) said that:

- The MAIF Agreement should be extended to include toddler milks. We believe this will assist in implementing the WHO recommended duration of breastfeeding to 2 years of life.
- The authorisation should be for a 2 year period only so it can be reviewed again and intensified.
- The MAIF Agreement was implemented in response to the WHO Code and while it goes some way to implementing the global initiative to support breastfeeding, it is too narrow in its scope and should include toddler milk.
- Australia was poorly ranked by the World Breastfeeding Trends Initiative on the IBFAN report card, placing 95 out of the 96 participating countries.

- Extending the MAIF Agreement to toddler milk will support the strategy recognising breastfeeding as the key to lifelong health of mothers and babies.
- 96% of mothers initiate breastfeeding. That is commendable, but not sustained. Very few make it to 12 months, let alone the recommended 2 years. The decline in breastfeeding rates is in part due to consumer confusion between infant formula and toddler products.
- The WHO is very clear that any milk-like products that displace breastfeeding should not be advertised in any way. It is confusing for families and very dangerous for young babies.
- The WHO Report published last year found that despite dramatic improvement in survival over recent decades, today's children still have an uncertain future. Children need to be protected from the profit motives and predatory commercial practices and the existing framework is not sufficient for that.
- The ACCC has an obligation to protect consumers and it should allow breastfeeding to protect infants and children.
- LCA NZ wants to see the MAIF Agreement strengthened and extended and calls for the Australian Government to implement the WHA amendments.
- When economic incentives are in conflict with public health requirements, how should the conflict be resolved? We urge you to resolve that conflict in favour of the most vulnerable: our infants and children.

**Naomi Riley** (Australian Nursing and Midwifery Association) said that:

- To protect and promote breastfeeding the ACCC must make its final determination aligning with domestic and international recommendations. The authorisation should extend the limitation on advertising in clause 5A of the MAIF Agreement to apply to all breastmilk substitutes including toddler milk as per WHO guidance.
- The authorisation should be reduced to a 2 year period to allow for timely action following the Department of Health's review.
- There are significant concerns surrounding the impact prolific toddler milk advertising has on the protection and promotion of breastfeeding. Toddler milk advertising also promotes infant formula.
- Toddler milk advertising sends an inherent message that breastfeeding and breastmilk do not continue to provide benefits after 12 months when the opposite is true.
- Despite statements that toddler milk is different than infant formula, they are in fact a substitute for breast milk and should therefore be subject to the same restrictions.
- It is imperative families have evidence-based messages regarding substitutes to support their correct use when necessary while protecting and supporting breastfeeding.

**Samantha Tutton** (Australian College of Midwives) said that:

- she reiterates and supports the positions and statements of the Australian Breastfeeding Association, LCA NZ, and the Australian Nursing and Midwifery Federation.
- The MAIF Agreement needs to be strengthened and toddler milk should be included in the advertising restrictions. It needs to align with the WHO Code and WHA Regulations.
- An authorisation period of two years is better than a five year period.

**Jen Hocking** (BFHI Australia) added her agreement to Samantha Tutton's statements.

**Dr Miranda Blake** (Dietitians Australia) said that:

- MAIF should not be renewed and instead stronger regulations should be put in place.
- If it is to be renewed, it should only be for two years while other arrangements are put in place.
- All WHO-defined breastmilk substitutes should be included in the MAIF Agreement, especially toddler milks as they are a proxy for infant formula marketing.
- An ANU study found that many parents who had viewed toddler milk advertising believed they had seen infant formula advertising. This leads to poor consumer attitudes towards breastfeeding and therefore reduced rates.
- Toddler milk marketing strongly promotes the brand and therefore informally infant formulas. This can be seen on the websites of many signatories.
- INC has submitted that toddler milk is not a substitute as it is a milk substitute (analogous to cows' milk, for example). The WHO disagrees. And the MAIF Agreement allows advertising of this toddler milk above alternatives.
- The marketing and packaging implies steps aren't additive or complementary but substitutes for each other – i.e. that breast milk, infant formula and toddler milk are all substitutes for each other. This is confusing parents.
- The Food Standards Code allows health claims on toddler milk. Therefore allowing toddler milk marketing can allow health claims to be inadvertently made about infant formula.
- There are nutritional and health concerns about the content of toddler milk. Toddler milk is unnecessary, it contains more sugar, less protein and less calcium than regular milk.
- While the Department of Health catches up, the ACCC can promote public benefit in the interim by restricting toddler milk advertising.
- Longer term authorisation is an endorsement that the public benefit will be maintained for that longer period of time.
- The MAIF Agreement should not be renewed.

**Katarnya Hickey** (Obesity Policy Coalition) said that:

- They support comprehensive, effective measures promoting breastfeeding in Australia. It is a protective factor against obesity.
- They do not support the MAIF Agreement. The Obesity Policy Coalition wants mandatory government regulation to restrict marketing of all breast milk substitutes.
- They strongly support review of the MAIF Agreement by the Department of Health.
- They acknowledge limitations of the ACCC's role and support the ACCC in renewing authorisation if it requires the restriction of toddler milk advertising through 5A of the MAIF Agreement.

**Julianne McGuire** (Queensland University of Technology, Faculty of Health, Paediatric Nutrition Group) said that:

- She supports the inclusion of a toddler milk advertising restriction in the agreement.

- The reauthorisation should be for only two years while the government reviews the regulatory arrangements addressing the unethical marketing of breast milk substitutes.
- Comprehensive research defines the importance of protecting breastfeeding and restricting marketing of breast milk substitutes including toddler milk.
- She is concerned about extensive use of all formulas.
- We should ameliorate barriers impacting breast feeding. It is part of the national preventative health strategy.
- She is extra concerned about the marketing of breastmilk substitutes including toddler milk in emergencies such as the pandemic. The benefits of vaccines, stem cells, reducing obesity, and supporting mental health of infant and mother are urgent (and passed through breastmilk).
- She concurs with Namoi Riley and Dr Julie Smith.
- The MAIF agreement is not effective in protecting breastfeeding in Australia.

**Katie Bulleen** (individual) said that:

- She is here as a mother of two. She sees toddler milk marketing on social media every single day and she wasn't aware of any restrictions on infant formula marketing until she became a bit more interested in the issue.
- She doesn't think most people are aware of the marketing restrictions or that toddler milk isn't infant formula. Parents are vulnerable and when they encounter challenges they require support and specialised help from health professionals relevant to their medical situations, not advertisements.

**Ros Fleetwood** (individual) said that:

- She is here with the Australian Breastfeeding Association but also as a mother.
- Protecting breastfeeding is a responsibility shared by individuals, governments and health systems. Advertising formula in any form does not serve that function and toddler milk is shown to confuse mothers. All forms of promotion of toddler milk should be banned.
- The WHO says any baby that cannot be breastfed needs access to the safe use of formula. While Kym Lennox suggested we need the best formula to be available – the number of babies that actually need it is very small. The WHO recommends: (1) breast milk, (2) expressed breast milk from their mothers, (3) donor milk from another mother. Then (4), if none of those are available, formula. If we support breastfeeding and milk banking there would be very little need for formula.
- Formula sales are based on the free market, profit-driven activities overseen by this voluntary agreement without any sanctions for breaches cannot be effective. The MAIF Agreement needs to be replaced by adoption of the WHO Code in full.
- She is sceptical that anything will come of the Department of Health's review of the MAIF Agreement. The 2015 Breastfeeding Strategy was replaced by the National Breastfeeding Strategy 2019 – they are the same strategies. Now we are in 2021 and these still haven't been implemented.
- Authorising the MAIF Agreement for another 5 years is just putting off other decisions. It should be authorised for 2 years maximum but it needs to be reviewed and revamped.

**Margaret Grove** (Australian Breastfeeding Association) said that:

- She'd like to reiterate that while some people have recommended abandoning the MAIF Agreement, if it were abandoned now the Australia market wouldn't be regulated at all which could be quite disastrous.
- The ABA suggests a two year authorisation should be allowed for the MAIF Agreement to be in place while the government reviews and perhaps implements the WHO Code in legislation or a much more strengthened MAIF Agreement.

**Commissioner Court** called for any final submissions before the conference ended.

**Dr Susan Tawia** (Australian Breastfeeding Association) said that:

- A two year term is better than five years. If toddler milk isn't included that would give marketers and manufacturers years and years of promoting toddler milk.
- If this review isn't done in two years, then manufacturers will probably come up with another product that undermines breastfeeding.
- The Department of Health needs to get the review done in two years instead of pushing it back and back again.

**Elizabeth Albergoni** (Breastfeeding Advocacy Australia) said that:

- The counterfactual is quite difficult to grasp but the world will not come to an end without the MAIF Agreement. These companies are under the radar and need to behave themselves to avoid a very strong regulatory approach. They are incentivised to behave well.
- There is reason to believe there is not a net public benefit and there is a wealth of evidence to suggest the MAIF Agreement is broken.
- A question for the Commission: how are you believing this thing works? What is the evidence you are relying on to think this is good for the public?

**Dr Julie Smith** said that:

- She wanted to endorse what Elizabeth Albergoni just said.
- The Dietitians Association made a very important point that under the FSANZ we have legislated prohibitions on nutrition and health claims on infant formula. When we don't have prohibitions on health and nutrition claims on toddler milk, those Food Act prohibitions are completely undermined. Parents see them as the same product, so if we are not going to extend the MAIF Agreement to toddler milk then we might as well throw away the Food Act prohibitions on infant formula.

**Sally Eldridge** (Australian Breastfeeding Association) said that:

- The ABA reiterates Dr Susan Tawia and Dr Julie Smith's comments.
- If the ACCC has found and taken into account WHO evidence on toddler milk marketing and has concerns as outlined in the Draft Determination that toddler milk marketing does indirectly market infant formula then the ACCC must act in the interests of toddlers, babies and families rather than manufacturers. Your purpose is to make markets work for consumers now and in the future. You have the opportunity to do that and put babies, families and children first.
- The ACCC should also comply with the UN Convention on the Rights of the Child.

**Janelle Maree** (Breastfeeding Advocacy Australia) said that:

- I don't think we should address this from a victim mentality and say what will happen in the absence of the MAIF Agreement. We can see an increase since the last Determination that they have upped their social media presence into a wider field.

While that is a bit naughtier, I don't know that this fear-based position of 'open slather' is justified. If the INC really has control, they'll have control of them and tell them not to go and do everything possible. We need to approach this from a position of power – we need this for health and cannot be fearful that industry will create a situation where they break all the rules.

**Commissioner Anna Brakey** thanked participants and said the conference and written material had been very constructive.

**Commissioner Court** brought the Conference to an end. She thanked everyone for attending and advised that:

- The conference was intended for the ACCC to hear directly from those affected by our determinations and the work put into the written submissions and conference participation is appreciated.
- The ACCC will accept further written submissions in relation to draft determination if they come in on or before Tuesday 24<sup>th</sup> April. Those can be brief.
- We will prepare a summary of today's proceedings and everyone in attendance will receive a copy of that summary.
- Once the Commission has considered all issues raised today and any further written submissions, the ACCC will determine whether to grant the authorisation and on what terms.

The conference concluded at approximately 2:08PM AEST.