Public Health Association
AUSTRALIA

# Public Health Association of Australia submission on AA1000534 – Infant Nutrition Council application for re-authorisation

**Contact for recipient:**
David Hatfield
Director, Competition Exemptions Branch
Australian Competition and Consumer Commission
**A:** GPO Box 3131, Canberra ACT 2601
**E:** exemptions@accc.gov.au

**Contact for PHAA:**
Terry Slevin – Chief Executive Officer
**A:** 20 Napier Close, Deakin ACT 2600
**E:** phaa@phaa.net.au **T:** (02) 6285 2373

20 November 2020

# Contents

**Introduction** 4

**PHAA Response to the application** 4

Breastfeeding benefits ....4

WHO Code ....4

Limitations of the MAIF ....5

Recommendations....6

**Conclusion** 7

**References** 8

Public Health Association
AUSTRALIA

The **Public Health Association of Australia** (PHAA) is recognised as the principal non-government organisation for public health in Australia working to promote the health and well-being of all Australians. It is the pre-eminent voice for the public's health in Australia.

The PHAA works to ensure that the public's health is improved through sustained and determined efforts of our Board, National Office, State and Territory Branches, Special Interest Groups and members.

**We believe** that health is a human right, a vital resource for everyday life, and a key factor in sustainability. Health equity and inequity do not exist in isolation from the conditions that underpin people's health. The health status of all people is impacted by the social, cultural, political, environmental and economic determinants of health. Specific focus on these determinants is necessary to reduce the unfair and unjust effects of conditions of living that cause poor health and disease. These determinants underpin the strategic direction of the Association.

**Our mission** as the leading national organisation for public health representation, policy and advocacy, is to promote better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health. Members of the Association are committed to better health outcomes based on these principles.

**Our vision** is for a healthy population, a healthy nation and a healthy world, with all people living in an equitable society underpinned by a well-functioning ecosystem and a healthy environment, improving and promoting health and wellbeing for all.

The reduction of social and health inequities should be an over-arching goal of national policy, and should be recognised as a key measure of our progress as a society. Public health activities and related government policy should be directed towards reducing social and health inequity nationally and, where possible, internationally.

# Introduction

PHAA welcomes the opportunity to provide input to the consultation on the re-authorisation of the Infant Nutrition Council (INC). This application would authorise for 10 years, current and future manufacturers in, and importers to, Australia of infant formula, to make and give effect to the Marketing in Australia of Infant Formula: Manufacturers and Importers Agreement (MAIF Agreement). This is a voluntary self-regulatory code of conduct which governs the marketing of infant formula for infants up to 12 months, and constitutes Australia's official application of the World Health Organization's International Code of Marketing of Breast Milk Substitutes (WHO Code).

PHAA supports the full implementation and regulation of the WHO Code with a mandatory government-led response, because industry-led voluntary self-regulation does not work. If the MAIF Agreement is to be renewed through the re-authorisation of the INC, it must be significantly strengthened, and renewed for a shorter time period, while the Government implements the new Australian National Breastfeeding Strategy which aims to strengthen regulation.

# PHAA Response to the application

## Breastfeeding benefits

PHAA affirms that to achieve optimal growth, development and health, Australian infants should be exclusively breastfed for the first six months of life and continue breastfeeding as part of an increasingly diversified diet into the second year of life and beyond. Available data suggest that while breastfeeding is initiated with most infants born in Australia, very few are exclusively breastfed to six months and most have stopped breastfeeding at 12 months.[1, 2] An editorial from the internationally renowned journal The Lancet states: "Breastmilk makes the world healthier, smarter, and more equal…genuine and urgent commitment is needed from governments and health authorities to establish a new normal: where every women can expect to breastfeed, and to receive the support she needs to do so".[3]

Breastmilk is a perfectly balanced source of nutrition with immunological factors that cannot be replicated.[4, 5] Toddler milks are of concern with marketing of them leading to cross promotion of infant formulas which undermines breastfeeding.[6] A recent study of milks in Australia marketed towards children aged 12 months or over found toddler milk formulas are expensive, unnecessary, and less nutritious, containing more sugar, and less protein and calcium than regular milk.[7]

When babies are not breastfed they have a higher risk of illness, such as gastrointestinal illnesses, necrotising enterocolitis, asthma, diarrhoea, respiratory infections and otitis media, and thus increased rates of hospitalisation. In the long term there is also a higher risk of overweight and obesity in children who were breastfed for shorter periods as babies.[8]

There are also health implications for women including an increased risk of certain cancers such as breast and ovarian, Type II diabetes, and potentially cardiovascular disease.[8-10]

## WHO Code

The WHO Code aims to protect and promote breastfeeding and ensure proper use of breastmilk substitutes, when these are necessary. The Code prohibits all advertising and promotion of products to the general public, prohibits the use of the health care system to promote breastmilk substitutes, demands

that product information be factual and scientific, and allows health professionals to receive samples only for research purposes. The Code states:

> *"…breast-feeding is an unequalled way of providing ideal food for the healthy growth and development of infants; that it forms a unique biological and emotional basis for the health of both mother and children; that the anti-infective properties of breast-milk help to protect infants against disease…Recognizing that the encouragement and protection of breast-feeding is an important part of the health, nutrition and other social measures required to promote healthy growth and development of infants and young children…Considering that when mothers do not breast-feed, or only do so partially, there is a legitimate market for infant formula…and that they should not be marketed or distributed in ways that may interfere with the protection and promotion of breast-feeding. Recognizing further that inappropriate feeding practices lead to infant malnutrition, morbidity and mortality in all countries, and that improper practices in the marketing of breast-milk substitutes and related products can contribute to these major public health problems…Affirming that governments are called upon to take action appropriate to their social and legislative framework and their overall development objectives to give effect to the principles and aim of this Code, including the enactment of legislation, regulations or other suitable measures".*[11]

Since the MAIF Agreement was last renewed, the World Health Assembly has adopted resolution 69.9 in 2016, on the inappropriate promotion of foods for infants and young children, which defines milk drink products for children aged 0-36 months as breastmilk substitutes. This resolution aims to protect breastfeeding, prevent obesity and chronic diseases, and to promote a healthy diet, and to ensure that caregivers receive clear and accurate information on feeding.[12] An implementation guide for the resolution has been developed,[13] and countries are urged to incorporate that guidance into national laws, continue the implementation of the WHO Code and establish a system for monitoring and evaluation of its implementation.[14]

## Limitations of the MAIF Agreement

Currently the WHO Code is not legally enforceable in Australia.[15] The MAIF Agreement is voluntary and much narrower in scope than the international Code.[16] Not all manufacturers and importers are signatories to the MAIF Agreement, and it does not cover several aspects of the Code relating to the cessation of free and subsidised breast milk substitutes in the health care system, guidelines for the marketing of bottles, teats and complementary foods, a code of marketing for retailers, and the promotion of infant formula via the marketing of "toddler milk drinks" which Australian parents understand to be infant formula for children over 12 months.[6]

Regulation of the MAIF Agreement is the responsibility of the Commonwealth Department of Health and relies upon individuals, members of industry, community and consumer groups lodging complaints, rather than the Department regulating or initiating investigations into marketing practices. The current MAIF Complaints Committee has just three members – an independent Chair, an industry representative (CEO of the INC), and a public health representative.[17] However, according to the Committee webpage, the public health representative has listed almost 20 conflicts of interest in the form of grants, donations, honorarias, and consultancies with breastmilk substitute manufacturers such as Nutricia, Aspen, Bayer, Nestle and Bellamy's Organic. This suggests close ties with the industry and that this person may not be an appropriate representative of public health interests on that Committee.

The World Breastfeeding Trends Initiative report in 2018 found that Australia was placed in the bottom 3 of 97 countries with one of the main issues being a lack of legislation on the WHO Code.[18]

Government-led regulation is required to reduce children's exposure to unhealthy food marketing across a wide range of media,[19] because the marketing of unhealthy foods and beverages has a detrimental impact on children's food choices and health.[20] The direct linkages between the marketing of breast-milk substitutes and unhealthy food marketing to children has been recognised in the proposal to extend the WHO Code to include an International Code of Food Marketing to Children.[21] Evidence shows that policy to regulate the marketing of foods to children is a cost-effective strategy to address childhood overweight and obesity.[22, 23] Industry self-regulation of food marketing does not lead to meaningful reductions in children's exposure to unhealthy food marketing and contains significant flaws in its substantive rules and content, and its governance processes.[24-26] Self-regulation is a deliberate approach used by industry worldwide to substitute for and delay the adoption of state legislation.[27, 28]

Australia is accountable for upholding international and human rights law such as the UN Convention on the Rights of the Child,[29] and is required to implement national laws to uphold these international legal obligations. The current approach in Australia fails to achieve this. Mandatory marketing restrictions for breastmilk substitutes could be enforced through the provision of sanctions. Industry-led codes or self-regulation do not have the same level of enforcement and are much less of a deterrent. Mandatory regulation also creates a level playing field for businesses, where compliance is not left to the voluntary commitment of industry.

The Australian National Breastfeeding Strategy: 2019 and Beyond includes the objective "to strengthen the regulatory arrangements for marketing of infant formula and breastmilk substitutes so that inappropriate marketing and distribution ceases". This suggests that under the current arrangements, inappropriate marketing and distribution exists, and that therefore a continuation of the current arrangements would not be supported by our national strategy.

A recent global review confirmed that inappropriate marketing and aggressive promotion of breastmilk substitutes undermines breastfeeding and harms child and maternal health in all country contexts. The globalisation of the baby food industry and its supply chains include increasing intensity and sophistication of marketing practices. The review concluded that inadequate policy and regulatory frameworks (such as in Australia) support industry expansion over child nutrition.[30]

## Recommendations

Rather than reauthorising the MAIF for another 10 years, PHAA calls for the Commonwealth, State and Territory Governments to legislate the International Code, including:

- Mandate that free or subsidised supplies of breastmilk substitutes and other products covered by the Code are not provided to any part of the health care system;
- Develop a Code of Practice or agreement in line with the Code for:
    - Manufacturers and importers of bottles and teats
    - Retailers and advertisers of breastmilk substitutes
    - Manufacturers, retailers and advertisers of follow-on (toddler) formulas
- Widely disseminate information to health professionals to support knowledge and awareness about their obligations under the Code
- Encourage health professionals and other relevant professionals to report breaches of the Code.
- Encourage health services to achieve baby-friendly accreditation

# Conclusion

PHAA's strong recommendation is for the Australian Government to adopt all provisions of the WHO Code, including ongoing World Health Assembly resolutions, into national law.

If the MAIF is to be renewed, it must be strengthened in scope, enforceability and governance:

- Scope should be extended to comply fully with provisions in the Code and ongoing resolutions including WHA 69.9
- Enforceability must be improved from the current voluntary industry-led self-regulation model
- Conflicts of interest must be removed from the governance of the MAIF Agreement
- It should only be renewed for a shorter time period (e.g. 2 years) while the new Australian National Breastfeeding Strategy, which aims to strengthen regulation, is being implemented

The PHAA appreciates the opportunity to make this submission and the opportunity to strengthen breastfeeding in Australia through the reduction of inappropriate marketing of breastmilk substitutes.

Please do not hesitate to contact us should you require additional information or have any queries in relation to this submission.



Terry Slevin
Chief Executive Officer
Public Health Association of Australia

Dr Geri Vaughan
PHAA Convenor
Women's Health
Special Interest group

Dr Kathryn Backholer
PHAA Co-Convenor
Food and Nutrition
Special Interest group

20 November 2020

PHAA submission endorsed by:

Dietitians Australia

Cancer Council Australia

# References


1. Australian Bureau of Statistics. National Health Survey: First Results, Australia 2017-18. ABS Catalogue no. 4364.0.55.001. http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4364.0.55.0012017-18?OpenDocument: ABS; 2018.
2. Baxter J, Cooklin AR, Smith J. Which mothers wean their babies prematurely from full breastfeeding? An Australian cohort study. Acta Paediatrica. 2009;98(8):1274-7.
3. The Lancet editorial. Breastfeeding: achieving the new normal. The Lancet. 2016;387(10017):404.
4. Cacho NT, Lawrence RM. Innate Immunity and Breast Milk. Front Immunol. 2017;8:584.
5. Andreas NJ, Kampmann B, Mehring Le-Doare K. Human breast milk: A review on its composition and bioactivity. Early human development. 2015;91(11):629-35.
6. Berry NJ, Jones S, Iverson D. It's all formula to me: women's understandings of toddler milk ads. Breastfeeding review : professional publication of the Nursing Mothers' Association of Australia. 2010;18(1):21-30.
7. VicHealth. High-sugar toddler milks overpriced, potentially harmful https://www.vichealth.vic.gov.au/media-and-resources/media-releases/high-sugar-toddler-milks-overpriced-harmful#: VicHealth; [updated 4 November 2020; cited 2020 18 November].
8. Victora CG, Bahl R, Barros AJD, França GVA, Horton S, Krasevec J, et al. Breastfeeding in the 21st century: epidemiology, mechanisms, and lifelong effect. The Lancet. 2016;387(10017):475-90.
9. Ziegler AG, Wallner M, Kaiser I, Rossbauer M, Harsunen MH, Lachmann L, et al. Long-term protective effect of lactation on the development of type 2 diabetes in women with recent gestational diabetes mellitus. Diabetes. 2012;61(12):3167-71.
10. Nguyen B, Gale J, Nassar N, Bauman A, Joshy G, Ding D. Breastfeeding and Cardiovascular Disease Hospitalization and Mortality in Parous Women: Evidence From a Large Australian Cohort Study. J Am Heart Assoc. 2019;8(6):e011056.
11. World Health Organization. International Code of Marketing of Breast-Milk Substitutes. https://www.who.int/nutrition/publications/code_english.pdf: WHO; 1981.
12. World Health Assembly. Guidance on ending the inappropriate promotion of foods for infants and young children: Mandate from the World Health Assembly. Resolution WHA69.9 https://www.who.int/nutrition/topics/guidance-inappropriate-food-promotion-iyc/en/: WHO; 2016 [cited 2020 18 November].
13. World Health Organization. Guidance on ending the inappropriate promotion of foods for infants and young children: implementation manual. Geneva; 2017. Report No.: Licence: CC BY-NC-SA 3.0 IGO.
14. WHO U, Save the Children, IBFAN and Helen Keller International,. World Health Assembly Resolution on the Inappropriate Promotion of Foods for Infants and Young Children. Policy Brief. https://www.who.int/nutrition/netcode/WHA-Policy-brief.pdf?ua=1: WHO; 2016.
15. World Health Organization. Marketing of breast-milk substitutes: national implementation of the international code, status report 2018. Geneva: WHO; 2018.
16. Department of Health. Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement 1992 (MAIF Agreement) https://www.health.gov.au/internet/main/publishing.nsf/Content/health-pubhlth-strateg-foodpolicy-apmaif.htm: Commonwealth of Australia; [updated 26 February 2019; cited 2019 10 July].
17. Department of Health. The MAIF Complaints Committee https://www1.health.gov.au/internet/main/publishing.nsf/Content/MAIF-Complaints-Committee: Australian Government; [updated 4 June 2020; cited 2020 18 November].
18. International Baby Food Action Network (IBFAN) Asia. World Breastfeeding Trends Initiative Report: Australia. https://www.worldbreastfeedingtrends.org/wbti-country-report.php?country_code=AU: IBFAN; 2018.
19. World Health Organization. Global Action Plan on the Prevention and Control of Non-Communicable Diseases 2013-2020, updated Appendix III, EB 140/27 (Annex I),. 2013 [cited 2017 14 July]. Available from: http://apps.who.int/gb/ebwha/pdf_files/EB140/B140_27-en.pdf?ua=1

20. Cairns G, Angus A, Hastings G, Caraher M. Systematic reviews of the evidence on the nature, extent and effects of food marketing to children. A retrospective study. . Appetite. 2013;62.
21. Lobstein T, Jackson-Leach R, Moodie M, Hall K, Gortmaker S, Swinburn B, et al. Obesity 4: Child and adolescent obesity: part of a bigger picture. Lancet Obesity Series. 2015.
22. Brown V, Ananthapavan J, Veerman L, Sacks G, Lal A, Peeters A, et al. The Potential Cost-Effectiveness and Equity Impacts of Restricting Television Advertising of Unhealthy Food and Beverages to Australian Children. Nutrients. 2018;10(5).
23. Bauman A, Bellew B, Boylan S, Crane M, Foley B, Gill T, et al. Obesity prevention in children and young people aged 0-18 years: a rapid evidence review brokered by the Sax Institute. Summary report. Prepared for the NSW Ministry of Health. Sydney: Physical Activity Nutrition Obesity Research Group, The University of Sydney; 2016.
24. Lumley J, Martin J, N. A. Exposing the Charade – The failure to protect children from unhealthy food advertising. . Melbourne: Obesity Policy Coalition; 2012.
25. Mills C, Martin J, N. A. End the Charade! The ongoing failure to protect children from unhealthy food marketing. . Melbourne Obesity Policy Coalition; 2015.
26. Reeve B. Self-regulation of food advertising to children: an effective tool for improving the food marketing environment? Monash University Law Review. 2016;42(2):419-57.
27. Clapp J, Scrinis G. Big food, nutritionism, and corporate power. Globalizations. 2017;14(4):578-95.
28. Challies E. The Limits to Voluntary Private Social Standards in Global Agri-food System Governance. International Journal of Sociology of Agriculture & Food. 2013;20(2).
29. United Nations General Assembly. Convention on the Rights of the Child. Resolution number 44/25 of 20 November 1989 http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf: UN; 1990 [
30. Baker P, Melo T, Augusto Neves P, Machado P, Smith J, Piwoz E, et al. First-food systems transformations and the ultra-processing of infant and young child diets: The determinants, dynamics and consequences of the global rise in commercial milk formula consumption. Matern Child Nutr. 2020:e13097.