WPHNA submission on ACCC draft determination to grant re-authorization of MAIF Agreement for 5 years

Preamble

The World Public Health Nutrition Association (WPHNA) is a professional association that brings together members from over 65 countries with a common interest in promoting and improving public health nutrition. We affirm that good health is a human right and we work to ensure that in all possible circumstances, adequate nourishing food is available to and affordable by all, especially children.

We fully endorse WHO and UNICEF recommendations that babies be fed nothing but breast milk for their first 6 months, after which they should continue breastfeeding – as well as eating other nutritious and safe foods – until 2 years of age or beyond.

We note babies who are exclusively breastfed are 14 times less likely to die than babies who are not breastfed[1]. Breastmilk saves children's lives as it provides antibodies that give babies a healthy boost and protect them against many childhood illnesses and reducing the risk of chronic disease throughout life span. Breastfeeding has been shown to be of critical importance to a child's development, including increased IQ, school performance and higher income in adult life. However, today worldwide, only 41% of infants 0–6 months old are exclusively breastfed, a rate WHO Member States have committed to increasing to at least 50% by 2025[1].

Inappropriate marketing of breast-milk substitutes continues to undermine efforts to improve breastfeeding rates.[2,3] WPHNA therefore strongly supports the International Code of Marketing of Breast-milk Substitutes and subsequent resolutions adopted by the World Health Assembly (the Code) as an important regulatory method to both protect breastfeeding and promote immediate and long-term health and wellbeing.

Global relevance of ACCC draft determination on MAIF Agreement

Whilst the Commissioner states it is not within the scope of their assessment to consider conduct which occurs outside of Australia (page 8, clause 4.4), we believe the domestic response in Australia will impact neighboring countries, particularly trade partners in Asia and the Pacific.

In addition, WHO and UNICEF have called on governments to urgently strengthen legislation on the Code, especially during the COVID-19 pandemic. Any determination from Australia has leadership potential to influence international policy action in this area.

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Evidence to support/inform recommendations

A 2020 report by WHO, UNICEF, and the International Baby Food Action Network (IBFAN) on national implementation of the Code reveals that despite efforts to stop the harmful promotion of breast-milk substitutes, countries are still falling short in protecting parents from misleading information[2].

Of the 194 countries analysed in the report, 136 have in place some form of legal measure related to the Code. Attention to the Code is growing, as 44 countries have strengthened their regulations on marketing over the past two years.

However, the legal restrictions in most countries do not fully cover marketing that occurs in health facilities. Only 79 countries prohibit the promotion of breast-milk substitutes in health facilities, and only 51 have provisions that prohibit the distribution of free or low-cost supplies within the health care system. Only 19 countries have prohibited the sponsorship of scientific and health professional association meetings by manufacturers of breast-milk substitutes, which include infant formula, follow-up formula, and growing up milks marketed for use by infants and children up to 36-months old.

Health care services aimed at supporting mothers to breastfeed, including counselling and skilled lactation support are strained by the COVID-19 crisis. Infection prevention measures, such as physical distancing make it difficult for community counselling and mother-to-mother support services to continue, leaving an opening for the breast-milk substitute industry to capitalize on the crisis, and diminish confidence in breastfeeding.

WHO and UNICEF have urged governments and civil society organizations not to seek or accept donations of breast-milk substitutes in emergency situations such as the current COVID-19 pandemic[1].

"The fear of COVID-19 transmission is eclipsing the importance of breastfeeding – and in too many countries mothers and babies are being separated at birth – making breastfeeding and skin to skin contact difficult if not impossible. All on the basis of no evidence".

"Meanwhile the baby food industry is exploiting fears of infection, promoting and distributing free formula and misleading advice – claiming that the donations are humanitarian and that they are trustworthy partners," says Patti Rundall, of IBFAN's Global Council[1].

Monitoring and enforcement of the Code is inadequate in most countries. The report, "Marketing of breast-milk substitutes: National implementation of the International Code – Status report 2020", provides updated information on the status of country implementation, including which measures have and have not been enacted into law

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The adverse effects of commercial marketing on exclusive and sustained breastfeeding rates are well documented and remain a barrier to improving breastfeeding rates. Marketing impacts both exclusivity and duration of breastfeeding.

Where countries which have fully adopted the Code[2], into legal measures with enforcement, exclusive and sustained breastfeeding rates are considerably[3] higher than in countries with no legal measures. For example, Brazil[4], where the full Code is law, exclusive breastfeeding rates increased from 3.1% (1975) to 41% (2008) despite increased urbanization and more women entering the workplace.

Compared to the US where no marketing legislation is in place, exclusive breastfeeding rates are reported by the CDC4 at 25% and only 58% breastfed at 6 months. Formula supplementation before 2 days of age had increased from 16.9% to 19.2% from 2016 to 2017. In India where the Code is law and strictly enforced, Code violations are few and 56% of babies are exclusively breastfed for the first six months[5,7].

We commend Australia's national targets[8] for 80% of infants to be fully breastfed for around six months of age. Yet this remains unmet, Data reported by the Australian Bureau of Statistics for the reference period 2017-2018 that although 93% of children aged 0 to 3 years received breastmilk only 29% were exclusively breastfed as recommended by the WHO and by Australia's National Health and Medical Research Council (NHMRC). These rates have not increased since the 2014-2015 reporting.

Globally many studies have concluded that regulating the marketing of breastmilk substitutes is key to establishing breastfeeding supportive environments[3]. Moreover, that governments should incorporate the Code and subsequent resolutions fully into their laws and regulations and should invest in independent monitoring, free from commercial interest, and effective enforcement mechanisms. Evidence from India[6,7] suggests that violations are far fewer when the Code is enshrined in law and enforcement is effective.

Australia has ratified the Convention on the Rights of the Child and as such has a duty to ensure the highest attainable standard of child health through the protection and support of breastfeeding. Additionally, mothers and caregivers have the right to make informed decisions on how to feed their children without commercial interference.

The consequences of not breastfeeding contributes to non-communicable conditions, such as obesity, overweight, cancers, diabetes, as well as dental caries and is associated with decreased performance in intelligent tests. The Australian Institute of Health and Welfare 2020 report, entitled: *Overweight and Obesity reported that "in 2017-18 an estimated I in 4 children and adolescents aged 2 to 17 were overweight or obese".*

Whilst globally 136 countries out of 194 have taken legal measures covering all or some of the provisions of the Code and WHA resolutions, Australia remains one of 49 countries with

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no legal measures taken[2,3].

Importantly, breastfeeding brings substantial economic benefits[9,10]. For each dollar invested in breastfeeding, $35 are generated in economic returns. The cost of long-term cognitive losses impact at all levels, such as school performance, workplace capacity at a cost of billions annually at national level[12].

WPHNA, along with IBFAN strongly agrees with the ACCC draft determination to increase the scope of the authorization to include toddler drink products. The WHA resolution, 69.9 (2016), on the inappropriate marketing of breastmilk substitutes[11] notes that all milks marketed to the age of three years function as breastmilk substitutes. Additionally, the drinks for young children are considered not necessary (WHA resolution 39.28) and contribute to the risk of dental caries and obesity. The WHA resolution 69.9 also recommends that there should be no cross promotion to market breastmilk substitutes via the promotion of other similarly branded products.

Regarding accountability for exporting BMS, the European Union Export Directive 2007[10], does have provisions that safeguard the labeling and use of these products to importing countries;

> *The Export of infant formula to third countries Provision 26 requires compliance with Codex Alimentarius standards; labeling to avoid the risk of confusion between the age specific products; prohibits the idealizing of the products and limits the use of nutrition and health claims.*

Recommendations

The previous five years of voluntary MAIF agreements have not led to improvements in breastfeeding rates in Australia and a continuation of the status quo will be a barrier to improving breastfeeding rates and continue the subsequent health risks associated with BMS use. For the '80% breastfeeding for the first six months' targets set by Australia's NHMRC to have realistic potential of being met, we support the International Baby Food Action Network (IBFAN) in making the following recommendations.

1. The promotion and protection of breastfeeding will require the establishment of legal measures and regulations with independent monitoring and appropriate enforcement to eliminate the inappropriate marketing of BMS products[11,12]. We recommend that the MAIF agreement not be renewed and instead a process put in place to develop legal measures to be implemented into law within a timeframe of two years.

2. Since Australian BMS products are exported primarily to Asian countries where conditions for its use pose serious health risks of malnutrition and increased

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mortality, it is therefore critical that export regulations be established to safeguard their use, through the elimination of inappropriate marketing and labeling of BMS exports.

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