



**Infant & Toddler Foods  
Research Alliance**

Building and translating evidence, and advocating  
for improved nutrition for infants and toddlers.

**Preliminary submission to the  
Australian Competition and Consumer Commission  
regarding  
Infant Nutrition Council Limited - application for  
revocation of authorisation AA1000534 and substitution  
of AA1000665**

**26 June 2024**

## About the Infant and Toddler Foods Research Alliance

The [Infant and Toddler Foods Research Alliance](#) (IFTRA) brings together over 30 Australian researchers and health professionals with an interest in infant and toddler food regulation, development, and intervention to better support dietary and feeding outcomes for infants and young children. IFTRA has the overall aim to improve dietary intake for children aged 0-36 months and ensure all Australian children thrive in the first 1000 days and beyond.

The alliance has three key objectives to achieve this aim:

1. Build a strong independent evidence basis surrounding infant and toddler foods and feeding for 0-36 months;
2. Ensure translation of evidence occurs from institutions into practice and the public domain;
3. Through development of independent evidence, support best practice, active advocacy for change in infant and toddler foods and feeding.

## Acknowledgements

The ITFRA thanks the ACCC for its public consultation opportunity on the Infant Nutrition Council Limited (INC) - application for revocation of authorisation AA1000534 and substitution of AA1000665, the Marketing in Australia of Infant Formula: Manufacturers and Importers Agreement (MAIF Agreement) and its associated guidelines.

This submission summarises the response of ITFRA and it's members, working in collaboration with other organisations Australian Breastfeeding Association, World Breastfeeding Trends Initiative Australia and Public Health Association of Australia, to the INC application for reauthorisation of the MAIF Agreement. As the ACCC's decision relies on available evidence, we also address the [2023 Review of the MAIF Agreement report](#), in the absence of the government's response to the report.

**This submission was prepared by:** Libby Salmon, Naomi Hull, Julie Smith, Phillip Baker, Monique Boatwright, and Rachel Laws on behalf of the ITFRA and its members.

## Summary response to authorisation of the MAIF Agreement

1. ITFRA does **not** support reauthorising the Marketing in Australia of Infant Formulas: Manufacturers and Importers (MAIF) Agreement (1992). The MAIF Agreement has failed to adequately protect Australian families, women and babies from harmful marketing practices. ITFRA strongly recommends that the ACCC **NOT** authorise the Infant Nutrition Council Limited's application (AA1000665-1) for any period (i.e. 0 years).
2. Instead, we call on the government to adopt The [World Health Organization's International Code of Marketing of Breast-milk Substitutes and subsequent World Health Assembly Resolutions](#) (the 'WHO International Code') in full through legislation. Doing so will ensure that families, mothers and children are free from harmful commercial marketing, align Australian policy with international norms, and help fulfill Australia's obligation to realise women's and children's human rights to breastfeeding, food security and health, per United Nations Conventions, to which Australia is a signatory.<sup>1</sup>

## Summary response to the Review of the Marketing in Australia of Infant Formulas: Manufacturers and Importers (MAIF) Agreement Final Report (5 October 2023)

ITFRA has major concerns regarding the 2023 MAIF review report:

**Its recommendations do not align with implementing the WHO International Code in Australia.**

The report does not recommend including toddler milks and retailers (supermarkets, pharmacies and manufacturers who sell directly to consumers, via stores and/or online) in the scope of regulating the marketing of commercial milk formulas. These are central to WHO International Code implementation. Failure to include toddler milks and retailers in the scope of the MAIF Agreement renders the remainder of the report's recommendations insubstantial and fails to protect breastfeeding from modern marketing [strategies](#) and [influence](#) of the globalised commercial milk formula industry. These strategies are well-documented in the following cutting-edge evidence-based reports, which we note, were excluded from the review report:

- The Lancet Series on Breastfeeding 2023 ([3 papers on commercial formula marketing](#))

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<sup>1</sup> United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1979, United Nations Convention on the Rights of the Child, 1989.

- WHO - Scope and impact of digital marketing strategies for promoting breast-milk substitutes (2022). <https://www.who.int/publications/i/item/9789240046085>
- WHO - How the marketing of formula milk influences our decisions on infant feeding (2022). <https://www.who.int/publications/i/item/9789240044609>

**We agree (with major qualification) to:**

- The need for a stronger regulatory model (*Recommendation 1*) and that all industry participants should be required by law to adhere to the same standards. However, we seek more information to understand differences between a ‘prescribed mandatory code’ under the Competition and Consumer Act 2010 and other legislative options, such as a comprehensive separate Act, which were not investigated in the review.
- Inclusion of explicit reference to electronic marketing and advertising with provisions to provide protection from future marketing practices (*Recommendation 4*), especially given new 2023 WHO Guidance on regulatory measures aimed at restricting digital marketing of breast-milk substitutes (<https://www.who.int/publications/i/item/9789240084490>).
- Raising awareness among health care professionals and parents/consumers about the appropriate use of infant formula (*Recommendation 9*) but include awareness of its risks and require breastfeeding education for health care professionals and parents. Industry marketing through the health system such as to health facilities should fully align with 2020 WHO Guidance on the roles and responsibilities of health workers on WHO International Code compliance (<https://iris.who.int/bitstream/handle/10665/332170/9789240005990-eng.pdf>).
- Improving mechanisms for monitoring infant feeding, including breastfeeding (*Recommendation 8*) by incorporating: a) data free from industry conflicts of interest; b) measures of socioeconomic status; and c) associations between breastfeeding with short- and long-term health outcomes.
- A stronger and comprehensive public monitoring system of marketing is crucial to reduce the unfair current burden of monitoring that falls largely on civil society groups and women (*Recommendation 5*).

**To be accepted, the following recommendations require substantial changes to the MAIF complaints committee:**

- Improved efficiency, transparency and robustness of the complaints management mechanism (*Recommendation 6*). However, we note that this measure will be weak and has no accountability for the Department or Minister for Health and Aged Care unless the scope of regulation includes toddler milks and retailers and the Minister is required to report to parliament annually on the effectiveness of the mechanism (see *Recommendations 2 and 3*).
- Changes to the committee to respond to complaints (*Recommendation 7*) but call for its membership to be independent of industry, and to include: (a) a community and consumer representative to advocate on behalf of breastfeeding families; (b) a legal expert; and (c) an expert on marketing and communications who understands digital marketing to parents and can be alert to new strategies.

**We reject and call for major reconsideration of the following review recommendations:**

- Retention of the current scope of regulated products (*Recommendation 2*). To the contrary, toddler milks must be included in the scope of regulated products. The harms of toddler milk marketing on infant and young child diets is well documented.<sup>2</sup>
- Exclusion of retailers in its scope (*Recommendation 3*). The scope of regulated parties must be comprehensive: all supermarkets, pharmacies and manufacturers who sell commercial milk formula products directly to the public, through stores and/or online.
- Introducing policies and guidelines facilitating donations of infant formula in emergency and disaster contexts (*Recommendation 10*). This recommendation is egregious. It has no

<sup>2</sup> **Richter** AP, Grummon AH et al (2024). Toddler milk: a scoping review of research on consumption, perceptions, and marketing practices, *Nutrition Reviews*. 82(3): 425–436. <https://doi.org/10.1093/nutrit/nuad057>

**McCann** JR, Russell GC et al (2021) Nutrition and packaging characteristics of toddler foods and milks in Australia. *Public Health Nutrition*. 24(5):1153-1165. doi:10.1017/S1368980020004590

**Choi** YY, Ludwig A, Harris JL. (2020). US toddler milk sales and associations with marketing practices. *Public Health Nutrition*. 23(6):1127-1135. doi:10.1017/S1368980019003756

**Harris** JL, Pomeranz JL (2020). Infant formula and toddler milk marketing: opportunities to address harmful practices and improve young children’s diets, *Nutrition Reviews*. 78(10): 866–883. <https://doi.org/10.1093/nutrit/nuz095>

**Romo-Palafox** MJ, Pomeranz JL, Harris JL. (2020). Infant formula and toddler milk marketing and caregiver's provision to young children. *Matern Child Nutr*. 16:e12962. <https://doi.org/10.1111/mcn.12962>

foundation in the body of the report, its evidence or analysis. It is well accepted that donations of infant formula cause harm to non-breastfed and breastfed infants.

- Donations of infant formula made in emergencies are in breach of World Health Assembly (WHA) Resolution 63.23 and the WHA-endorsed [Operational Guidance for Infant and Young Child Feeding in Emergencies](#) (OG-IFE). [WHA 63.23](#) states that in emergencies ‘any required breast-milk substitutes are purchased, distributed and used according to strict criteria.’

There is ample and recent [evidence](#), that commercial milk formula manufacturers use charitable donations as a form of marketing, leveraging the vulnerability of populations affected by disasters and emergencies, food insecurity and cost of living crises:

- Australian Breastfeeding Association work in this area, funded by the federal government: <https://www.breastfeeding.asn.au/emergency-resources-babies-and-toddlers>.
- [Emergency preparedness for infant and young child feeding in emergencies \(IYCF-E\): an Australian audit of emergency plans and guidance](#).
- [Infant Feeding in Emergencies Core Group – International Guidance](#)

**The report has several deficiencies and omissions that must be considered prior to any decision to reauthorise the MAIF Agreement:**

- It presents a very narrow interpretation of infant and young child feeding policy objectives and omits health and social inequities.
  - The report analyses the MAIF Agreement in terms of its effectiveness to restrain marketing rather than **protect breastfeeding**, which is the policy objective of the WHO International Code. Consequently, policy to constrain marketing focuses on consumer choice between products, rather than the processes that enable breastfeeding. Policy that fails to protect these processes, including social and biological processes, fails to recognize that using commercial milk formula reduces breastmilk production, which is difficult to regain and creates [‘dietary dependency’ on commercial milk formula](#).
  - In addition, a focus on consumer choice frames infant feeding outcomes as the responsibility of individuals, rather than health systems and governments. Such framing

results in policy failure to address the structural and cultural factors that undermine breastfeeding.

- There is a limited analysis of the important role of regulatory frameworks that effectively restrain marketing in comparable spheres of public health (for example: medicines, tobacco, alcohol, junk food and gambling) in Australia and internationally.
- There is an inadequate analysis of the determinants of breastfeeding, including the structural causes of low rates of breastfeeding. This includes policy neglect, specifically the lack of coordination, implementation and funding for the Australian National Breastfeeding Strategy (ANBS) 2019, and inadequate support of breastfeeding in hospitals, which are stretched after the COVID-19 pandemic. The complexity of breastfeeding and its determinants requires a more sophisticated analysis of the effects of marketing commercial milk formula than presented in the report.
- The political economy of infant and young child feeding is not addressed. The political and economic factors that underpin sales of commercial milk formula products include the [political influence](#) of commercial milk formula industries on policy making, including lobbying at national and [international](#) levels, which diminish or delay government investment in breastfeeding and its protection.
- Discrepancies in power between commercial and civil society actors, that are ignored in ACCC models of self-regulation. Self-regulation of commercial milk formula marketing relies on overburdened mothers and public health and breastfeeding NGOs to resist, research, police and report these activities.
- The economic analysis is inadequate and ignores a vast and growing literature that addresses the social and environmental costs of commercial milk formula. The report's analysis undervalues breastfeeding and omits the costs to government and civil society of a regulatory model that requires repeated reviews, re-authorisation and submissions.
- The report is skewed in favour of industry representation. For example, the proportion of industry stakeholders consulted in interviews and focus groups by agency/organisation is misleading: industry representatives, MAIF signatories, and MAIF non-signatories are all industry stakeholders, yet appear less prominent by the chosen categorisation. Similarly, industry responses in favour of the MAIF Agreement are presented before responses by public health and breastfeeding advocates.

## Conclusion

We consider that the MAIF Review report recommendations are woefully inadequate and totally inappropriate for informing the Australian government's and ACCC's response to the INC application for reauthorising the MAIF Agreement.

We urge the ACCC to consider the wider policy context and challenges for breastfeeding in Australia, and **not** to authorise the MAIF Agreement. The MAIF Agreement has demonstrably failed to protect breastfeeding from current and emerging harmful marketing strategies for commercial milk formulas and novel infant feeding products. After multiple past inquiries on MAIF and failures to act to address the ways that industry marketing undermines breastfeeding, we call on the government to implement the WHO International Code in full, preferably through legislation, to enable secure, equitable, and sustainable breastfeeding, now and for future generations.