



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

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About the World Breastfeeding Trends Initiative Australia (WBTiAUS)

The World Breastfeeding Trends initiative (WBTi) Assessment tool was launched by the International Baby Food Action Network (IBFAN) in 2004. It was devised as a simple way for nations to measure how effectively they are implementing the WHO Global Strategy for Infant and Young Child Feeding. As of April 2024, 99 countries have completed the [WBTi report](#). In Australia, the WBTiAUS team consists of 10-15 academics, breastfeeding and infant and maternal health expert clinicians and advocates, without conflicts of interest, who have undertaken two [assessments](#) (in [2018](#) and [2023](#)). The 2018 WBTi assessment is included in the [Australian National Breastfeeding Strategy 2019](#).

Acknowledgements

WBTiAUS thanks the ACCC for public consultation on the Infant Nutrition Council Limited - 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 preliminary submission summarises the response of WBTiAUS to revocation and authorization of the MAIF Agreement. Given the importance of evidence to the ACCC's decision, we also address the [2023 Review of the MAIF Agreement report](#), in the absence of the government's response to the report.
- WBTiAUS will provide a second, more detailed submission by 30 June 2024 (email ACCC to Naomi Hull, 4 June 2024).

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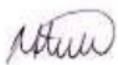
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Summary response to authorisation of the MAIF Agreement

1. WBTiAUS does **not** support the reauthorisation of the Marketing in Australia of Infant Formulas: Manufacturers and Importers (MAIF) Agreement (1992) and 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 strongly recommend that the government urgently mandate the [World Health Organization International Code of Marketing of Breast-milk Substitutes and subsequent World Health Assembly resolutions](#) (the ‘WHO Code’) in full, and human rights to breastfeeding based on United Nations Conventions, to which Australia is a signatory.¹
3. Our second submission will provide detailed evidence to support our recommendations and outline the limited benefit and ineffectiveness of the proposed authorisation, its failure to limit competition with breastfeeding and the resulting public detriment and harms.

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

WBTiAUS has considerable concerns regarding the 2023 MAIF Report.

1. **The recommendations are not consistent with the WHO Code.** Unlike the WHO Code, the report does not recommend the inclusion of 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. The failure to include toddler milks and retailers renders the remainder of the report’s recommendations insubstantial and inadequate to protect breastfeeding from the modern marketing [strategies](#) and [influence](#) of the globalised commercial milk formula industries, of which Australia is a part. These strategies are documented in the following reports. The absence of this key evidence is a major deficiency of the report:
 - The Lancet Series on Breastfeeding 2023 ([3 papers on formula marketing](#))
 - WHO -Scope and impact of digital marketing strategies for promoting breast-milk substitutes. <https://www.who.int/publications/i/item/9789240046085>
 - WHO -How the marketing of formula milk influences our decisions on infant feeding. <https://www.who.int/publications/i/item/9789240044609>

We agree (with major qualification) to:

- The need for a stronger regulatory model (*Recommendation 1*). 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 separate Act, which were not investigated in the Review.
- Inclusion of explicit reference to electronic marketing and advertising (*Recommendation 4*)
- A stronger monitoring system (*Recommendation 5*).
- Improved efficiency, transparency and robustness of the complaints management mechanism (*Recommendation 6*). However, we note that this measure will be weak unless the scope of regulation includes toddler milks and retailers (see Recommendations 2 and 3).

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

- 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 social media marketing to parents.
- Improved mechanisms for monitoring infant feeding, including breastfeeding (*Recommendation 8*), but call for data free from industry conflicts of interest and to include socioeconomic measures and links to short- and long-term health outcomes.
- Raised 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.

We reject:

- Retention of the current scope of regulated products (*Recommendation 2*). We call for the inclusion of toddler milks in the scope of regulated products.
- A failure to include retailers in its scope (*Recommendation 3*). We call for the inclusion in the scope of regulated parties: supermarkets, pharmacies and manufacturers who sell directly to the public, through stores and/or online.
- Establishment of policies and guidelines to enable donations of infant formula in emergency and disaster contexts through reputable charities (*Recommendation 10*). This recommendation is egregious. It has no 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. It is a breach of World Health Assembly (WHA) Resolution 63.23 as well the WHA-endorsed Operational Guidance for Infant and Young Child Feeding in Emergencies (OG-IFE) for donations of infant formula to be made in emergencies. 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 infant formula manufacturers companies 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](#)

2. **There are several problems concerning its quality, methods and analysis, and question its value to public health policy making to protect breastfeeding.** These deficiencies include the report’s:
 - Narrow representation of infant feeding policy objectives and omission of health and social inequities.
 - Limited analysis of regulatory frameworks.
 - Inadequate knowledge of breastfeeding and simplistic analysis of causation.
 - Inadequate economic analysis, which fails to address the social and environmental costs of commercial milk formula, undervalues breastfeeding, and omits the costs to government and civil society of a regulatory model that requires repeated reviews, re-authorisation and submissions.
3. **The report neglects the policy, economic and social context, including:**
 - The structural causes of low rates of breastfeeding. These causes include 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 political economy of infant and young child feeding. The political and economic factors that underpin sales of commercial milk formula products include the [influence](#) of commercial milk

formula industries on policy making, 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.

Conclusion

We consider that the MAIF Review report recommendations are weak and inappropriate, if used to inform the government and the ACCC's response to the INC application for the reauthorisation of 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 fails to protect breastfeeding from marketing strategies for commercial milk formulas and emerging, novel infant feeding products. We ask the ACCC to implement the WHO Code in full to enable secure and equitable breastfeeding for Australian families, now and for future generations.