

17 October 2024

The Australian Competition and Consumer Commission
via exemptions@accc.gov.au

Dear ACCC Exemptions Team,

AMA Support for Discontinuation of the MAIF Agreement

The Australian Medical Association (AMA) is pleased to make a further submission to the Australian Competition and Consumer Commission (ACCC), regarding the recent draft decision on the Marketing in Australia of Infant Formula (MAIF) agreement.

We applaud the ACCC proposal to deny the application for revocation and substitution, on the grounds that the ACCC is no longer satisfied that the MAIF Agreement is likely to result in a public benefit that outweighs the public detriment, due to several factors which undermine the MAIF Agreement's effectiveness.

The AMA agrees with the recommendations made in the MAIF Agreement review report, that the MAIF Agreement is not fit for purpose and should be replaced by a prescribed mandatory code to create a level playing field for industry, make it enforceable under law and still allow some flexibility for policy decisions. The voluntary, self-regulatory model of the MAIF in 2023, does not remain fit for purpose.

The AMA believes that all manufacturers and retailers who market infant formula, need to be held accountable under enforceable legislation. Please see attached to this letter the AMA's previous submission to the application for authorisation, with many of the points raised in July still current in consideration of the Draft Determination. A few key points we wish to highlight include:

1. Voluntary nature

The AMA has long maintained that the MAIF Agreement is not fit for purpose, and that Australia must expedite the drafting, implementation, monitoring and enforcement of effective and sustainable legislation that implements the full provisions of the International Code of Marketing of Breast Milk Substitutes and subsequent WHA resolutions (The WHO Code).

The AMA looks forward to a formal commitment from the Federal Government to adopt a strong regulatory framework using a prescribed mandatory code which adopts provisions of the WHO code in full, in line with Recommendation 1 of the Department of Health's independent review of the MAIF agreement.

2. Failure to include retailers, particularly supermarkets

The MAIF review recommendations failed to recommend the inclusion of retailers within scope of new legislation. In the drafting of the new statutory legislated code that will replace the MAIF Agreement, the AMA urges the Department to extend the scope to include retailers. We suggest the adoption of the terminology and definitions of the World Health Organisation in the WHO Code, which uses the term ‘distributor’ rather than ‘retailer’ to include persons, corporations or any other entity in the public or private sector engaged in the business (whether directly or in-directly) of marketing infant formula at the wholesale or retail level.

3. Toddler milk and the likelihood of cross promotion with infant formula

The ACCC specifically mentioned in their Draft Determination the significant concern expressed by interested parties about the proliferation and unchecked marketing of toddler milks in Australia. This concern covers potential nutritional problems with these products and the fact that toddler milks act as a device for cross-promotion of infant form

The ACCC states that any cross-promotion of infant formula that occurs via toddler milk advertising undermines the purpose of the MAIF Agreement. *Recommendation 2* of the MAIF Review, however, rejected a revision of scope and instead recommended monitoring and adopting as necessary, recommendations arising from the FSANZ review of infant formula regulation.

The AMA strongly advocates for legislation that fully aligns with the WHO Code as it provides clarity about scope that demands marketing protection from birth to 36 months. This would support the inclusion of toddler milk into further work that replaces the MAIF with enforceable legislation.

4. Inability to capture the breadth of modern digital-marketing methods for both toddler milks and infant formula

Ther AMA urges the Department of Health and Aged Care to commit to confronting the significant threat of digital marketing and new technologies, by adopting WHO’s recommended approach, which includes robust enforcement and national accountability mechanisms, as outline in the AMA’s previous submission to the ACCC.

Concluding remarks

Once again, the AMA congratulates the ACCC on its proposed Determination on the MAIF Agreement, which represents a critical moment for Australia to move without delay toward the drafting, implementation, monitoring and enforcement of legislation that encompasses the full scope of the WHO Code.

This work is in line with *Recommendation 1* of the Department of Health and Age Care's independent review of the MAIF Agree. This proposed Determination is also supported by mandatory marketing reform calls that organisations such as the AMA have been making for years, to better inform and protect the health of consumers.

Yours sincerely



Dr Danielle McMullen
AMA President

SUBMISSION

Wednesday, 3 July 2024

AMA submission to ACCC Application for authorisation AA1000665 – Infant Nutrition Council – Interested party consultation, MAIF Agreement

Submitted via: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/infant-nutrition-council-ltd>

Introduction

The Australian Medical Association (AMA) is pleased to make a submission to the Australian Competition and Consumer Commission (ACCC) interested party consultation regarding Infant Nutrition Council's application for reauthorisation of the Marketing in Australia of Infant Formula (MAIF) agreement.

In mid-2023, the AMA made a [submission](#) to the MAIF Agreement Review being undertaken by the Department of Health and Aged Care. This submission raised concerns that due to the current approach of the MAIF Agreement, consumers are not being protected and kept well informed on all parties marketing infant formula. The [final report](#) from this review was released in April 2024, and it is imperative that the ACCC consider the recommendations of this report, when deciding where the MAIF agreement should be reauthorised, and for what length of time.

In this submission to the ACCC, we reiterate our concerns with the MAIF review in its current form, seeing this request for reauthorisation as a chance for the MAIF review to be better implemented.

This process of implementing the review recommendations must be done in consultation with the ACCC, and health experts in the breastfeeding and infant health sphere. The AMA advises that the 5 years that the Infant Nutrition Council is applying for as the reauthorisation period, is not appropriate, and neglects the needs of the Australian community in relation to infant formula marketing. We make three key recommendations for the ACCC regarding the future of infant formula marketing in Australia.

1. The MAIF Agreement is not fit for purpose and should NOT be re-authorised for any period of time.
2. Australia must expedite the drafting, implementation, monitoring and enforcement of effective and sustainable legislation that implements the full provisions of the International Code of Marketing of Breastmilk Substitutes and subsequent WHA resolutions (The WHO Code).
3. The ACCC should be empowered to monitor and enforce the existing Australian Food Standards Code legislation to protect consumers from aggressive and inappropriate marketing of breastmilk substitutes while suitable legislation is being prepared and enacted.

Recommendation 1.

The MAIF Agreement is not fit for purpose and should not be reauthorised for any period of time.

The AMA agrees with the recommendations made in the MAIF Agreement review report, that the MAIF Agreement is not fit for purpose and should be replaced by a prescribed mandatory code to create a level playing field for industry, make it enforceable under law and still allow some flexibility for policy decisions. The voluntary, self-regulatory model of the MAIF in 2023, does not remain fit for purpose. The AMA believes that all manufacturers and retailers who market infant formula, need to be held accountable under enforceable legislation.

The AMA recommends that only legislated regulations which are monitored and enforceable are sufficient to protect breastfeeding and infant feeding choices from commercial influence. We believe that Australia should move towards the drafting and implementation of legislation that encompasses the full scope of the World Health Organisation (WHO) International Code of Marketing of Breastmilk Substitutes,¹ and subsequent World Health Assembly (WHA) resolutions. The AMA notes that the ACCC must be empowered to monitor and enforce the existing relevant Food Standards Australia and New Zealand (FSANZ) legislation which fall within the scope of the WHO International Code of Marketing of Breastmilk Substitutes.

Scope of the MAIF Agreement

The AMA has concerns regarding the current scope of the MAIF Agreement, which was raised in our submission to the review. This includes the lack of inclusion of retailers, evolving digital marketing practices, and toddler milk products.

Retailers, including pharmacies and supermarkets, are not included in the MAIF Agreement and have no restrictions or repercussions for their own marketing of breastmilk substitutes. By intentionally not including retailers in the MAIF Agreement, formula manufacturers can appear to be abiding by The WHO Code when, in fact, they are pushing the marketing role out on to retailers who willingly oblige, particularly because there are no consequences in terms of danger of attracting sanctions or penalties.

The AMA is also concerned that as digital marketing practices advance, the MAIF Agreement struggles to meaningfully address infant formula marketing tactics within Australia, implementing the WHO Code in full, would add protections for consumers against this marketing.

The MAIF Agreement only covers infant formulas to 12 months of age, so toddler milks are excluded. The WHO Code scope is to 36 months and classifies toddler milk as a breastmilk substitute. Toddler milks have been found to be unnecessary and unhealthy and are also used as a proxy to cross-promote infant formula products.²

MAIF Agreement Complaints Process

The AMA also has concerns about the complaints handling process of the MAIF Agreement Complaints Committee. These concerns include

1. Many complaints are out of scope of the MAIF Agreement (due to its narrow scope) and the fact that formula manufacturers and importers are not mandated to sign up to the MAIF Agreement.

2. Complaints are commonly considered months after they have been received, meaning a company can undertake MAIF Agreement breaching activities with impunity.
3. Even when a breach is found to have occurred, there is no penalty imposed.

The AMA is concerned that as many of the complaints made to the MAIF Review Board are ruled out-of-scope, the MAIF agreement does not have any real weight with manufacturers, ultimately harming the health of consumers, by allowing ongoing harmful marketing practices. The AMA's concerns are conducive to the findings of the MAIF Agreement review report, which stated that

The MAIF Agreement in its current form has been found to contribute to several unintended negative outcomes. Efforts should be made to address these through future amendments to the MAIF Agreement or the broader regulatory environment.³

Recommendation 2.

Australia must expedite the drafting, implementation, monitoring, and enforcement of effective and sustainable legislation that implements the International Code of Marketing of Breastmilk Substitutes and subsequent WHA resolutions (The WHO Code) in full.

The AMA recognises that the WHO International Code of Marketing of Breastmilk Substitutes has greater scope than the MAIF Agreement and consequently its full implementation would have greater benefits to consumer protections in Australia. Strengthening the existing Food Standards Act and standards to incorporate more of The WHO Code's scope, including expanding the scope to include all products from birth to 36 months and capturing retailers as well as manufacturers and importers, would offer further protections for consumers.

The AMA notes this is in line with the findings of the MAIF Agreement Review report, and several of its recommendations. Recommendation one, calls for a stronger regulatory framework, recommendation four calls for an explicit reference to digital marketing in a new regulatory framework, and recommendation five suggests a stronger monitoring system is needed, to ensure the regulations put in place are having the desired effects for consumers.

Supporting Health Professional to Support Parents and Guardians

The AMA acknowledges that for parents, learning to predict and accommodate the feeding pattern of their newborn infant can be the cause of anxiety and tension. Medical practitioners can be an appropriate source of reassurance and support through this period, if informed regularly on the current options for breast milk substitutes, and how they can be used appropriately. Consideration for health professionals must be made, in any regulation strengthening relating to the marketing of infant formula.

In the AMA position statement on Infant Feeding and Parental Health (2017), it is stated that infant nutrition and early infant growth patterns lay the foundation for eating patterns and weight gain later in life. Infants need a healthy start to life to reduce the risk of chronic conditions later in life, and doctors and healthcare professionals are uniquely positioned to support parents to achieve this.⁴

New parents and carers should be supported to make informed decisions regarding the feeding of their infant, recognising that this will be influenced by numerous social, physiological, and individual lifestyle factors. Although different in composition, infant formula is an adequate source of nutrients for infants who are not breastfed. Parents seeking to bottle feed their infants should receive appropriate support and guidance around formula feeding, including volume, frequency of feeds, feeding cues and sterilisation and preparation of formula.

Parents who had intended to breastfeed, but were unable to, may feel a sense of guilt or failure for adopting formula feeds. It is important that treating medical practitioners provide appropriate reassurance about the efficacy of formula feeding and work to remove any stigma associated with infant formula.

Parents and carers seeking information can be overwhelmed with conflicting and often misleading advice from social media, family and friends, and the internet. An increasingly important aspect of antenatal education, including that information surrounding feeding of infants, involves improving the health literacy of parents to equip them to seek evidence-based information from reliable sources, such as government or hospital-based websites.

The AMA believes that parents and carers should receive appropriate education from health professionals, regarding infant feeding patterns, perception of milk supply and infant feeding cues. Parental anxiety around infant formula products and feeding can contribute to feeding difficulties, which may further exacerbate the parental anxieties. Every infant is unique and feeding patterns and behaviour are likely to differ substantially, even between siblings. This must be considered in the information being provided to parents and carer by health professionals, regarding the appropriate use of infant formulas.

The AMA recommends that Continuing Professional Development (CPD) for health professionals, especially GPs, is developed around current health advice on infant formulas. This ensures that health professionals have a clear source of information to turn to, when looking to provide advice to patients, on the options around infant formula use.

Recommendation 3.

Empower the ACCC to monitor and enforce existing Food Standards Code legislation to protect consumers from aggressive and inappropriate marketing of breastmilk substitutes while suitable legislation is being prepared and enacted.

The arguments the AMA has made in the previous sections of this submission, explain clearly that the current regulatory framework is not protecting Australian families from exploitative and manipulative marketing, that has a detrimental health impact. The AMA argues that the adoption of The WHO Code in full will provide comprehensive and future-focussed protections from irresponsible and manipulative industry marketing practices.

The AMA recognises that concerns about how discontinuing MAIF Agreement will impact on infant formula marketing until The WHO Code can be fully legislated in Australia. We recommend that to mitigate these concerns, the Australian Government explores mechanisms to empower the ACCC to monitor and enforce existing statutory legislation to provide protection for consumers. The ACCC could be given authority to monitor and enforce the Food Standards Act (1991) standards, including Standard 2.9.1, Standard 1.2.1, and Standard 1.2.7 of the Act, which fall into scope of The WHO Code, providing protections for consumers of breastmilk substitutes, that are enforceable by law.

Conclusion

The AMA recommends that Australia must move towards the drafting, implementation, monitoring, and enforcement of legislation that encompasses the full scope of The WHO International Code of Marketing of Breastmilk Substitutes Code, rather than expend resources in the modification or strengthening of the MAIF Agreement.

The AMA believes that all manufacturers and retailers who market infant formula, need to be held accountable, and current regulation is not adequate in protections for the health and wellbeing of consumers. We implore the ACCC to discontinue the MAIF Agreement, and instead work to create stronger, enforceable protections for Australian consumers, under the guidance of The WHO Code, as

well as health and consumer experts. Efforts should be made to ensure that parents who are unable or choose not to breastfeed can still access appropriate support and information to allow them to effectively feed their infant.

See also: AMA [Position Statement](#) on Infant Feeding and Parental Health 2017.

Contact

president@ama.com.au

¹ World Health Organization (2023) Regulation of marketing breast-milk substitutes. Retrieved 23/04/2024 from: <https://www.who.int/tools/elena/interventions/regulation-breast-milk-substitutes>

² McCann, J; Beckford, K; Beswick, H; Chisholm, M; Woods, J (2022). Toddler foods and milks don't stack up against regular foods and milks. *Deakin University*. Journal contribution. <https://hdl.handle.net/10536/DRO/DU:30163547>

³ Allen + Clarke Consulting (2023) *Review of the Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement*- Department of Health and Aged Care.

⁴ Australian Medical Association (2017) Infant Feeding and Parental Health. Retrieved 12/06/24 from: <https://www.ama.com.au/position-statement/infant-feeding-and-parental-health-2017>