

**Infant & Toddler Foods  
Research Alliance**

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

**Submission to the  
Australian Competition and Consumer  
Commission  
Regarding their draft determination in  
response to  
Infant Nutrition Council Limited -  
application for revocation of  
authorisation AA1000534 and  
substitution of AA1000665**

**17 October 2024**

## About the Infant and Toddler Foods Research Alliance

The [Infant and Toddler Foods Research Alliance](#) (ITFRA) 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. ITFRA 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 - 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 ITFRA and its members to revoking and authorising 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, Monique Boatwright, Rachel Laws and Phillip Baker on behalf of the ITFRA and its members.

## Main message

1. We welcome and **strongly support** the ACCC’s proposal to **not** reauthorise the MAIF Agreement when it expires in November 2024.

## Rationale

The regulation of marketing commercial milk formulas, foods and drinks for infants and young children (IYC) 0-36 months is complex because of the nutritional and developmental needs of this age group, the array of products and fragmented regulatory frameworks for these products.

As outlined in our earlier submissions, infant and young child nutrition in the first 3 years of life is critical to health and development and requires a secure and environmentally sustainable “first food system”. Such a system enables all mothers to breastfeed exclusively for six months and continue to breastfeed while introducing family foods.

Currently, this system is easily destabilised by marketing strategies, which target specific stages in this sequence, and create dependency on commercial products or their overconsumption at later stages. Australia’s current food and consumer laws do not provide an effective framework to protect the first food system from marketing, and many aspects of regulation are under review. Figure 1 and Table 1 illustrate this complexity, and set out the:

- Unique dietary and developmental needs of IYC aged 0-36 months
- Policies and regulations for commercial milk formulas and foods for IYC and their marketing
- Gaps in regulating the marketing of commercial formulas and food products for IYC.

## Recommendations for next steps for the Australian Government

Questions have been raised about the next steps for government if the MAIF Agreement is abolished. Pending a response from the government to the [MAIF Review report](#) by Allen and Clarke, we propose the Australian Government action 3 measures: (1) a full market review; (2) abolishing the MAIF Complaints Committee and establishing an Expert Advisory Group, and (3) referring to the WHO Europe Model Policy for ways to review and implement specific measures to regulate marketing.

## 1. A full market review: evidence for reform and a brake on marketing

In the interim, between the cessation of the MAIF Agreement and the implementation of a new legal measure by government, we propose that a full independent market review of marketing of commercial milk formulas and infant and young child foods and drinks by importers, manufacturers, and distributors (including online retailers, supermarkets and pharmacies, social media and digital media).

- Such a review would put industry “on notice” and monitor and evaluate marketing activities, and likely limit marketing, to some extent, in the absence of the MAIF Agreement.
- Importantly, this review is needed to inform the government, policy makers and the wider public during the development of new legislation. Despite the evidence of cross-promotion of products for infants and toddlers presented in our submissions and those of others,
  - The marketing of toddler milks and retailers was repeatedly omitted (“out of scope”) from recent and past reviews, despite being of concern to the ACCC in 2021 ([Final Determination and Interim Authorisation Decision - 27.07.21 - PR - AA1000534 INC.pdf](#)) and Food Ministers ([Regulation of infant formula products \(Food Ministers Meeting Communique 25 July 2024\)](#))
  - Sales and marketing of commercial foods and snacks for infants and young children have expanded rapidly with the development of new products. Concerns about their nutritional value and marketing have been raised by the Food Ministers’ Meeting - see Commercial foods for infants and young children [Issues paper](#) (Dec 2023) and FRSC [Public Consultation](#) 5 Aug-13 Sep 2024).

## 2. Abolish the MAIF Complaints Committee and establish an Expert IYC Feeding Advisory Group

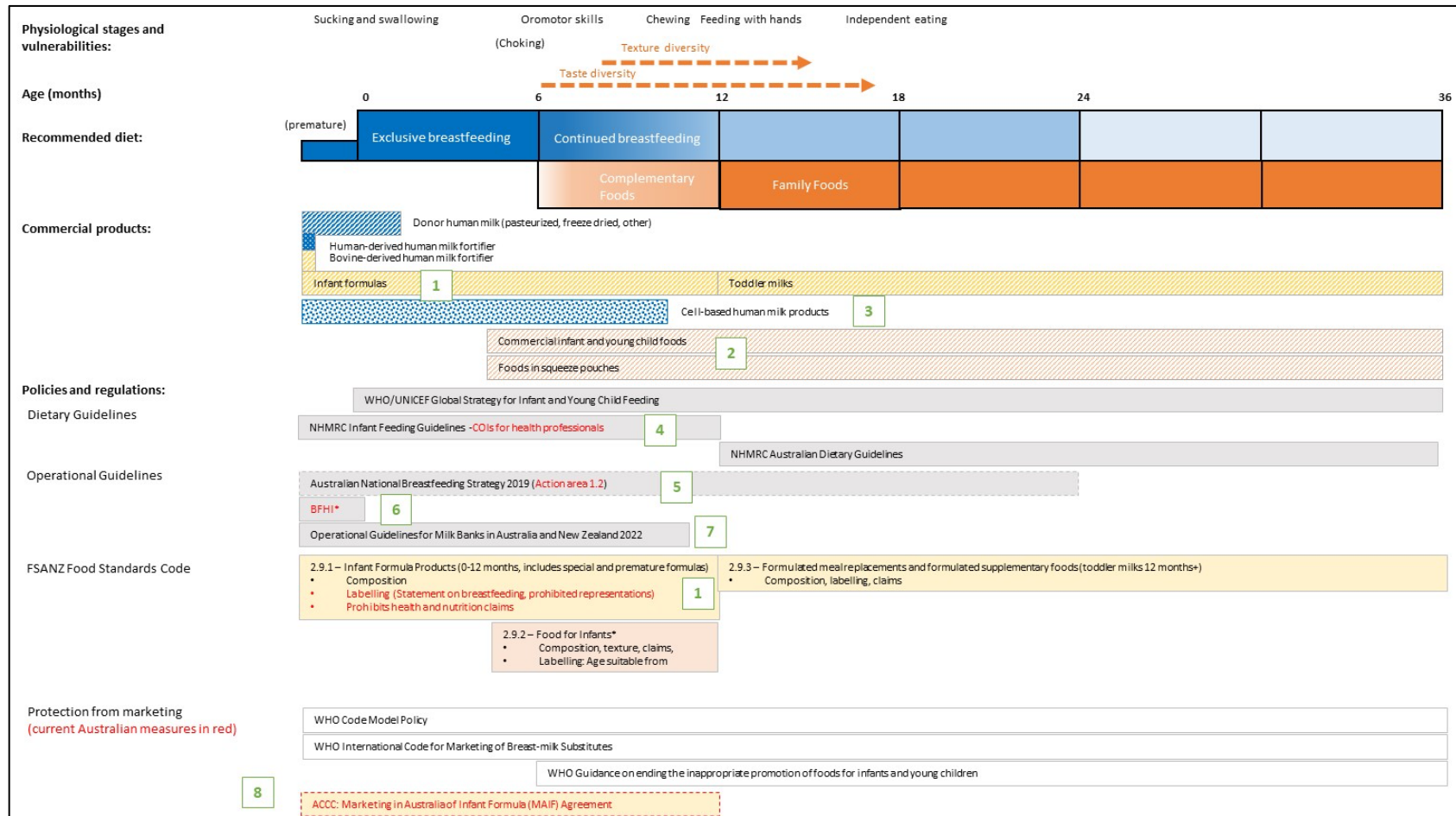
To guide federal and state and territory governments in implementing new legislative measures, the MAIF Complaints Committee should be abolished immediately, and a national advisory/expert reference group established that is independent of industry and transparent in its decision making and reporting. Members of the advisory group would be free of conflicts of interest and include representatives of experts in breastfeeding and young child feeding, public health NGOs and parents.

### 3. New laws to protect the “first food system”

To protect current and future generations of Australians, we propose that the government ensures there is a comprehensive and coherent package of reforms for the effective regulation of marketing products for IYC 0-36 months. We note that some key policies are under review, for example the composition and labelling of food products for IYC 0-36 months, and we encourage the government to consider the addition of marketing regulation that is consistent with those for CMFs (Figure 1 and notes).

We recommend that the Australian Government refers to the [WHO Europe Model Policy when developing reforms in relation to marketing of products for IYC 0-36 months](#). Table 1 shows a gap analysis of current Australian instruments against the measures required to protect the first food system from marketing, set out in the *International Code of Marketing of Breastmilk Substitutes* and subsequent Resolutions by the World Health Assembly, and the 2016 WHO *Guidance on ending the inappropriate promotion of foods for infants and young children*.

Figure 1. Age-appropriate foods for infants and young children 0-36 months and their protection from marketing in International and Australian regulations and guidelines (see notes to green numbers on following page).



## Notes to Figure 1 (Green numbers), which indicate the current reviews of policy for infant and young child feeding 0-36 months:

### 1. Regulation of infant formula products ([Food Ministers Meeting Communique 25 July 2024](#))

See also: [P1028 \(FSANZ Review of Standard 2.9.1 Infant Formula Products\)](#) -commenced 2013, ongoing, does not include toddler milks. The current regulation is [here](#).

### 2. Improving commercial foods for infants and young children ([Food Ministers Meeting Communique 25 July 2024](#)):

- Commercial foods for infants and young children – [Issues paper](#) (Dec 2023)
- FRSC [Public Consultation](#) 5 Aug-13 Sep 2024

### 3. Regulatory Considerations for Cell-Based Human Milk Products. [Food Ministers' Meeting Communique 3 May 2024](#)

- [Issues Paper](#): Food Regulatory Framework Considerations for Cell-based Human Milk Products (May 2024)

### 4. NHMRC Infant Feeding Guidelines: Information for Health Workers (2012), revisions on allergy (2016). (Due for review).

NHMRC Australian Dietary Guidelines (2013) are under review but this work [excludes infants less than 12 months](#).

### 5. [Australian National Breastfeeding Strategy \(ANBS\) 2019](#) Action area 1.2: Prevent inappropriate marketing of breastmilk substitutes:

Review regulatory arrangements for restricting the marketing of breastmilk substitutes:

- See [final report](#) of the review by Allen and Clarke published 11 April 2024.
- Government to respond officially

### 6. Baby Friendly Health Initiative (BFHI) guidelines

- Only 21% of Australian maternity hospitals are [BFHI accredited](#)

### 7. [Operational Guidelines for Milk Banks in Australia and New Zealand \(2022\)](#)

- Section 2.21 (a) “The HMB collaborates, where possible, with relevant government, non-government and public health organisations in the promotion and protection of breastfeeding and the access to a mother’s own milk.”

### 8. [MAIF Agreement](#) and its authorisation by the ACCC

- See also [Marketing in Australia of Infant Formulas \(MAIF\) Complaints Committee](#) administered by the Department of Health and Aged Care

**Table 1: Gaps in the regulation of marketing commercially prepared foods and drinks for infants and young children aged 0-36 months in Australia.**

	Covered
	Partial coverage
	Not covered

	WHO Code and subsequent WHA resolutions <sup>[1]</sup>	Currently covered in Australia - MAIF Agreement or FSANZ Food Standards?	Comment
<b>Scope (marketing regulation)</b>	Breastmilk substitutes (BMS) including commercial milk formula (CMF) products up to age 36 months	Only to 12 months	MAIF - Voluntary code only – not all CMF companies are signatories.
	Complementary foods covered to age 36 months	x	Not covered at all
	Bottles and teats	x	Not covered at all
<b>Monitoring and Enforcement</b>	Definition of sanctions for violations	Only for products and companies within scope of MAIF Agreement. Currently breaches identified on DOHAC website.	This is difficult to find – buried deep. It is clear this penalty lacks teeth because some companies are repeat offenders.
	Identification of who is responsible for monitoring compliance	Yes. MAIF secretariat in DOHAC and MAIF Complaints Committee	
	Requirement that monitoring and enforcement should be independent, transparent and free from commercial influence.	x	The MAIF Complaints Committee is not free from COIs and currently includes a representative from industry (Infant Nutrition Council). Complaints management not transparent and subject to delays.



<b>Informational/educational materials on IYCF</b>	Informational/educational materials from industry prohibited	Covered in MAIF Agreement, but is only for products up to 12months, see next -	
	<p>Required information in these materials</p> <ul style="list-style-type: none"> <li>— the benefits and superiority of breastfeeding</li> <li>— maternal nutrition, and preparation for and maintenance of breastfeeding</li> <li>— the negative effect on breastfeeding of introducing partial bottle-feeding</li> <li>— the difficulty of reversing the decision not to breastfeed</li> <li>— proper use of infant formula</li> <li>— for materials on use of infant formula: social and financial implications of its use</li> <li>— for materials on use of infant formula: health hazards of inappropriate feeding</li> <li>— for materials on use of infant formula: health hazards of inappropriate use</li> </ul>	Covered in MAIF Agreement, but is only for products up to 12months,	
	— for materials on use of infant formula: risk of intrinsic contamination of powdered formula	x	
	Prohibition of reference to proprietary products	Clause 4 (c) MAIF Agreement allows logos but not reference to proprietary products on donated informational or educational equipment or materials, if provided at request of govt authorities and distributed through the health care system.	
	Prohibition of pictures or text idealising BMS	MAIF Clause 4(c) states "such materials should not use any pictures or text which may idealise the use of infant formulas."	

	Advertising	MAIF Clause 5 (a) : "Manufacturers and importers of infant formulas should not advertise or in any other way promote infant formulas to the general public."	
	Promotional devices at point of sale		
	Samples to public		
	Gifts to pregnant women and mothers		
	Contact with mothers		
<b>Promotion in health care facilities</b>	Overall prohibition on use of health care facilities for promotion.	MAIF Clause 6 and 7	
	<ul style="list-style-type: none"> <li>— displaying covered products</li> <li>— displaying placards or posters concerning covered products</li> <li>— distribution of any material provided by a manufacturer or distributor</li> <li>— use of health facility to host events, contests, or campaigns</li> <li>— use of personnel provided by or paid for by manufacturers and distributors</li> </ul>		
<b>Engagement with health workers and systems</b>	Overall prohibition of all gifts or incentives to health workers and health systems.	MAIF clauses 6 and 7	
	<ul style="list-style-type: none"> <li>— financial or material inducements to promote products within the scope</li> <li>— fellowships, study tours, research grants, attendance at professional conferences</li> </ul>		
	Provision of free or low-cost supplies in any part of the health care system		
	Donations of equipment or services		
	Product samples		
	Product information restricted to scientific and factual matters		
	Sponsorship of meetings of health professionals or scientific meetings	x	

Labelling	Prohibition of nutrition and health claims		
	Required information on infant formula products: <ul style="list-style-type: none"> <li>— the words “Important Notice”</li> <li>— a statement on superiority of breastfeeding</li> <li>— a statement on using only on the advice of a health worker</li> <li>— instructions for appropriate preparation</li> <li>— warning on health hazards of inappropriate preparation</li> </ul>	Labelling regulations are covered somewhat within the following FSANZ Regulations 2.9.1 1.2.1 1.2.7	
	<ul style="list-style-type: none"> <li>— warning that powdered formula may contain pathogens</li> </ul>	x	
	Prohibition of pictures that may idealize the use of infant formula on label of infant formula products		
	Required information for follow-up formula, growing up milks, as well as other foods for IYC up to 3 years:		
	<ul style="list-style-type: none"> <li>— the recommended age for introduction of the product</li> </ul>		
	<ul style="list-style-type: none"> <li>— the importance of continued breastfeeding for 2 years</li> <li>— the importance of no complementary feeding before 6 months</li> </ul>		
	Prohibited content for follow-up formula, growing up milks, as well as other foods for Infant and Young Children up to 3 years of age:		
	<ul style="list-style-type: none"> <li>— any representation suggesting use before 6 months</li> <li>— messages that recommend or promote bottle feeding</li> </ul>		

	— professional endorsement		
	— images or text that discourages breastfeeding or compares to breast milk.		

<sup>11</sup> (World Health Organization, 2024)