



Public Health Association
AUSTRALIA

**Public Health Association of Australia submission to
the ACCC interested party consultation regarding:
Infant Nutrition Council Limited - application for
revocation of authorisation AA1000534 and
substitution of AA1000665**

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The **Public Health Association of Australia** (PHAA) is Australia's peak body on public health. We advocate for the health and well-being of all individuals in Australia.

We believe that health is a human right, a vital resource for everyday life, and a key factor in sustainability. The health status of all people is impacted by the social, commercial, cultural, political, environmental and economic determinants of health. Specific focus on these determinants is necessary to reduce the root causes of poor health and disease. These determinants underpin the strategic direction of PHAA. Our focus is not just on Australian residents and citizens but extends to our regional neighbours. We see our well-being as connected to the global community, including those people fleeing violence and poverty, and seeking refuge and asylum in Australia.

Our mission is to promote better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health.

Our vision is for a healthy population, a healthy nation and a healthy world, with all people living in an equitable society, underpinned by a well-functioning ecosystem and a healthy environment.

Traditional custodians - we acknowledge the traditional custodians of the lands on which we live and work. We pay respect to Aboriginal and Torres Strait Islander elders past, present and emerging and extend that respect to all other Aboriginal and Torres Strait Islander peoples.

Introduction

PHAA welcomes the opportunity to provide input to the Australian Competition and Consumer Commission (ACCC) interested party consultation regarding the application for revocation and substitution from the Infant Nutrition Council Limited (INC). We note that the INC seeks to revoke the existing authorisation AA1000534 dated 18 August 2021, which expires on 31 August 2024. In its place, the INC seeks authorisation of the Marketing in Australia of Infant Formula: Manufacturers and Importers Agreement ([MAIF Agreement](#)) and its associated guidelines for a period of five years on the same terms as the original authorisation.

PHAA does not support the reauthorisation of the MAIF Agreement and strongly recommends that the ACCC does not authorise the INC application (AA1000665-1) for any period of time.

The MAIF Agreement, originally set up in 1992, is a voluntary code of conduct self-regulated by industry and limited only to manufacturers and importers of infant formula in Australia. PHAA argues that the MAIF Agreement **fails** to:

- protect families in Australia from marketing and advertising strategies designed to promote commercial milk formula products (including digital marketing); protect parents' rights to unbiased information about feeding products; and protect the health of the child.
- effectively regulate the industry, by excluding retailers that sell directly to consumers (e.g. supermarkets, pharmacies, online distributors), and excluding unnecessary and potentially harmful toddler milks and other novel emerging products from its scope.
- address concerns about efficiency, transparency and robustness of complaints processes, whilst the complaints committee remains industry controlled and driven, with limited public health or consumer representation and unenforceable penalties for breaches.

Furthermore, the MAIF Agreement conflicts with international standards set out in the World Health Organization's 1981 International Code of Marketing Breastmilk Substitutes and subsequent World Health Assembly (WHA) Resolutions ([WHO Code](#)), to which Australia is a signatory.

Instead of reauthorising the MAIF Agreement, PHAA strongly recommends that the ACCC mandates the full provisions of the WHO Code to prevent further public health detriments and harm.

Notably, the 2023 Review of the MAIF Agreement Report ([Review Report](#)), commissioned by the Department of Health and Aged Care was recently released. In the absence of a response from the Australian Government we will comment on relevant recommendations from this report as part of our submission.

PHAA also supports submissions by other specialist NGOs, including the Australian Breastfeeding Association (ABA), whose mission is to 'support, educate and advocate for a breastfeeding inclusive society'; and the World Breastfeeding Trends initiative Australia (WBTiAUS).

Further reading:

- PHAA Policy position statement on [Breastfeeding](#)
- PHAA Policy background paper on [Breastfeeding](#)

PHAA Response to the Infant Nutrition Council Limited - application for revocation of authorisation AA1000534 and substitution of AA1000665 – interested party consultation

Proposed conduct

Voluntary self-regulatory code of conduct between manufacturers and importers

The INC application argues that the voluntary nature of the MAIF Agreement makes it effective, due to industry-ownership of the code, and points to recent increases in signatories as evidence.

The Review Report recommends that the MAIF Agreement be replaced by a mandatory, enforceable code to 'create a level playing field' across the whole industry, with stronger monitoring and reporting to ensure improved public health benefits.

PHAA concurs with this recommendation and argues that only enforceable statutory legislation is an adequate response to meet our obligations under the WHO Code to restrict the marketing of infant formula in Australia, and in so doing protect the rights of parents and families to clear information about how best to feed their child, free from commercially-driven industry-influence, and the rights of the child to an optimal diet and care.¹

Adequate information and appropriate marketing and distribution

The INC application states that the MAIF Agreement protects and promotes breastfeeding and proper use of breastmilk substitutes by governing marketing and providing adequate information. In its supporting submission, the INC argues it achieves this through:

- support and education of (INC produced a request form for distribution of samples to, and guidelines for industry-interactions with) healthcare professionals; and
- regulating marketing on social media (INC produced a guide to interpreting the MAIF Agreement).

The Review Report also discusses these issues and recommends that:

- resources should be developed by an independent body to enable healthcare professionals and parents to access objective, evidence-based information regarding infant formula products, their ingredients, and indications for use; and
- new regulations should include explicit reference to electronic marketing and advertising to increase clarity of regulation and public confidence.

PHAA concurs with these recommendations, noting that it is currently possible for industry to systematically target healthcare professionals, as the trusted advisors to new parents, using sponsorships and incentives, and "training programs" to influence their practice and encourage them to recommend breastmilk substitute products, without providing full coverage of the WHO education standards for Infant and Young Child Feeding or professional responsibilities to the WHO Code, that should be part of initial and ongoing training of health professionals ([WBTi Indicator 5](#)).

PHAA also notes that the MAIF Agreement cannot address globalized digital marketing practices. A recent study by the [WHO and UNICEF](#) highlighted the exploitative marketing practices, including in digital media, that are continuing in defiance of the WHO Code. The study illustrated how industry is preying on parents using targeted marketing informed by machine-learning algorithms that collect and analyse data from online platforms, and 'social influencers' to increase sales of breastmilk substitute products.

Five years to respond to review

The INC seeks a five-year authorization term on the basis that this will allow sufficient time for the government to conduct its review of the MAIF Agreement and industry to respond to proposed recommendations.

Given the Review Report has been completed and released, and it clearly recommends that a stronger regulatory framework is needed, one which introduces a prescribed mandatory code, the MAIF Agreement that is not fit-for-purpose should not be extended. PHAA urges the Australian Government to not delay further and instead expedite the drafting, implementation, monitoring and enforcement of legislation that mandates the WHO Code in full.

Impacts on stakeholders

The INC application names retailers, consumers and health professionals as the stakeholders who will be impacted by extending the MAIF Agreement, because of the imposed restrictions on marketing and distribution of infant formula but doesn't elaborate on what the impact will be. As the MAIF Agreement was implemented as Australia's response to the WHO Code, it is implicit that these restrictions will enable the aim 'to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breastfeeding'.

In terms of measuring impact, it has been acknowledged that Australia has a poor record for monitoring breastfeeding rates generally, and the [Australian National Breastfeeding Strategy](#) prioritises an action to conduct a baseline infant feeding survey and repeat the survey every five years. PHAA notes that exclusive breastfeeding means that the infant is given no other fluids, food or water. The [WHO recommends](#) exclusive breastfeeding for babies to 6 months of age and from then for breastfeeding to continue alongside suitable complementary foods for up to 2 years and beyond.

The INC application draws on the National Health Survey (NHS) data and the OzFITS study from 2021 to argue Australia is successfully protecting and promoting breastfeeding as evidenced by high and increasing rates of breastfeeding. The INC attempts to use NHS data to argue that during the COVID-19 pandemic online data collection for the 2020-21 survey prevents comparison with previous years, but that lockdowns were likely to result in increased rates of breastfeeding. Firstly, PHAA would argue that the NHS data are suboptimal due to issues with data collection methods and the fact it is not a dedicated infant feeding survey. Nevertheless, the last two surveys actually show a decline in breastfeeding rates (Table 1), thus disproving the INC claim that breastfeeding rates are increasing.

Table 1: Breastfeeding rates in Australia from 2020-21 and 2022 NHS

	2022 NHS		2020-21 NHS	
	Non-exclusive	Exclusive	Non-exclusive	Exclusive
Infants aged 0-3 years had ever breastfed	90.6%	NA	96%	NA
Infants still receiving breast milk at 4 months	75.9%	63.9%	80%	66%
Infants still receiving breast milk at 6 months	70.1%	37.5%	74%	35%
Infants still receiving breast milk at 12 months	43.0%	NA	51%	NA

Although there was a small sample size used in the [OzFITS](#) study, it reports rates that are lower than those reported in the same time period as the NHS, and it highlights that 'one-third of infants were given breastmilk substitutes. Of concern was that parents frequently reported that their child's first exposure to breastmilk substitutes was in the hospital soon after birth.' This has been supported by data collected in [Victorian hospitals](#). Notably, the OzFITS study was funded by Nestlé Nutrition Institute. Whilst the authors claim that the 'sponsor had no input in the study design, data collection, analysis, or interpretation of findings', this company nevertheless has a track record of using FITS results to promote their products.²

PHAA therefore contends that the MAIF Agreement is not adequately protecting and promoting breastfeeding and leaves consumers and healthcare providers open to the commercial influence of the infant formula industry.

Market information and concentration

Products and services

The INC application reiterates that the MAIF Agreement signatories all manufacture and supply infant formula in Australia.

Currently the MAIF Agreement does not regulate or restrict the marketing of breastmilk substitute products by retailers including supermarkets and pharmacies, only manufacturers and importers. PHAA argues that retailers should be included in line with the WHO Code, to prevent them inappropriately marketing products without sanctions and penalties that only manufacturers or importers would currently incur. The Review Report however, states there is currently insufficient evidence to justify expansion of the scope of the MAIF Agreement to include supermarkets and pharmacies and recommends a review to evaluate scale and impact of marketing activities undertaken by these parties.

PHAA rejects this assertion, as there is a growing body of evidence to show the scale and impact of marketing activities by retailers. The ABA has been collecting data on the scale of [WHO Code breaches](#) and found that 35.14% of reported breaches between October 15, 2022, and April 3, 2023, were by supermarket and pharmaceutical retailers. Furthermore, [VIVID](#) an automated solution that uses artificial intelligence and supervised machine learning to detect commercial violations of the WHO Code, has also detected significant data on inappropriate marketing by retailers in Australia, which is especially rampant on digital platforms.

PHAA argues that the MAIF Agreement is clearly not preventing inappropriate marketing of infant formula by including only manufacturers and importers and should include stronger regulations that also regulate retailers, including supermarkets and pharmacies.

Relevant supply chains

The INC application states that the authorisation is only for the supply of infant formula for feeding of infants up to the age of 12 months. The application states that 'toddler milk is not a breastmilk substitute' and argues that concerns regarding cross-promotion between infant formula and follow-on products including toddler milk is 'overstated'. The application notes that the [ACCC](#) has previously noted that 'the ability for signatories to advertise toddler milk products, which often has almost identical packaging to infant formula and can have the effect of promoting infant formula'.

The Review Report also suggests that there is insufficient justification for expanding the scope of products to include toddler milks.

PHAA however, rejects this finding and argues that the MAIF Agreement is inadequate compared to the WHO Code which includes follow-on products including toddler milk for feeding of infants and young children up to the age of 36 months. The [WHO](#) clearly defines toddler milk as a breastmilk substitute and warns against the dangers that are inherent in the cross-promotion of infant formula and toddler milks, which are becoming increasingly prevalent in an effort to circumvent regulations on infant formula.

Furthermore, research has shown that toddler milks have a 'poorer nutritional profile than regular foods'.³ The current NHMRC [Infant Feeding Guidelines](#) also clearly state that 'Toddler milks and special and/or supplementary foods for toddlers are not required for healthy children. From 12 months of age and beyond, toddlers should be consuming family foods consistent with the Australian Dietary Guidelines.'

PHAA therefore recommends that regulations should not be limited to infant formula but should include follow-on products including toddler milk to protect our children from marketing of other breastmilk substitutes to the age of 36 months in line with the WHO Code.

Competition issues

The INC application defers to the attached submission in its application on this issue, where it mentions the acquisition of Pfizer Nutrition by Nestlé and submits this is justification of the authorisation to be limited to the Australian market without further definition. It also asserts that there are few manufacturers or importers in this market that are not signatories to the MAIF Agreement, the assumption being that this limits competition issues.

The application then proceeds to address concerns about the complaints management mechanisms and outlines the various committee guidelines and publications including policies, interpretation guides and information brochures it asserts are evidence of its effectiveness in its application of the MAIF Agreement.

The Review Report makes three recommendations calling for enhanced monitoring and enforcement, including a more efficient, transparent and robust complaints management mechanism and expanded committee membership to remove industry influence and include legal and communications expertise.

PHAA supports these recommendations but in addition argues that committee membership should also include expertise in infant nutrition and consumer advocacy. PHAA is also concerned that the INC states in the submission that the 'committee is not bound to apply the committee guidelines when it makes a decision,' which have been progressively reviewed and updated 'in consultation with signatories.' Furthermore, reporting of breaches currently relies on the public at large to lodge complaints, placing responsibility for monitoring on civil society.

This discretionary and self-regulated model of enforcement is not sufficient to independently govern the infant formula industry. PHAA calls on the Australian Government to establish and implement stronger monitoring and enforcement measures to protect our families and children as a priority.

Public benefit

The INC application submits that re-authorisation of the MAIF Agreement will continue to provide public health benefits by promote and protect breastfeeding while providing appropriate information to women who are unable or make an informed choice not to breastfeed. The application also states that low regulatory costs are a major benefit of the MAIF Agreement.

PHAA has already outlined that we believe the MAIF Agreement is not fit-for-purpose and insufficient to protect and promote breastfeeding and the benefits it provides to both the mother and child⁴, particularly in relation to bonding. The benefits of breastfeeding for the child include:

- protection from infections (e.g. respiratory infections, diarrhoea and other gastro-intestinal infections, Necrotising Enterocolitis, otitis media, eczema)
- children and adolescents are less likely to become overweight or obese
- improved cognitive development
- reduce risk of sudden infant death syndrome

Benefits for the mother include:

- facilitated postpartum weight loss and suppressed ovulation
- reduced risk of chronic disease (e.g. diabetes and cardiovascular disease)
- reduced risk of reproductive cancers (e.g. ovarian and breast)

These benefits result in fewer visits to a doctor or admissions to hospital, significantly reducing pressure on our health system.^{5,6}

PHAA argues that these public health benefits and cost savings to our health system far outweigh the low regulatory costs of a voluntary self-regulatory system that is subject to influence of the commercial self-interest of the industry, not fit-for-purpose and does not implement the WHO Code.

Public detriment

The INC submits that the restrictions of promotional activities are not considered a public detriment and the public benefits outweigh potential [economic] detriment.

PHAA would agree that restrictions of promotional activities are not a public detriment and should therefore be mandated in full according to the WHO Code.

Conclusion

The PHAA appreciates the opportunity to make this submission and the opportunity to provide input to the INC – application for revocation of authorisation AA1000534 and substitution of AA1000665 – interested party consultation by the ACCC.

We are particularly keen that the following points are highlighted. The MAIF Agreement is currently failing to:

- meet our obligations under the WHO Code to restrict the marketing of infant formula in Australia, and in so doing protect the rights of our families and children.
- adequately protect and promote breastfeeding, leaving consumers and healthcare providers open to the commercial influence of industry particularly through exploitative globalized digital marketing practices.
- prevent retailers including supermarkets and pharmacies, from undertaking inappropriate marketing activities.
- make adequate provision for mandating the full coverage of the WHO education standards for Infant and Young Child Feeding that should be part of initial and ongoing training of health professionals.
- regulate marketing of follow-on products including toddler milk and other breastmilk substitutes to protect our children to the age of 36 months in line with the WHO Code.
- independently, effectively and transparently govern the infant formula industry through robust monitoring and enforcement measures to protect our families and children.
- adequately provide the public health benefits and cost savings to our health system intended by the WHO Code.

PHAA therefore does not support the reauthorisation of the MAIF Agreement and strongly recommends that the ACCC does not authorise the INC application (AA1000665-1) for any period of time. Instead of reauthorising the MAIF Agreement, PHAA strongly recommends that the ACCC mandates the full provisions of the WHO Code to prevent further public health detriments and harm.

Please do not hesitate to contact me should you require additional information or have any queries in relation to this submission.

Yours sincerely,



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