



Australian College of  
**Midwives**

ACM: For midwives. With women. For the future.

*Review of the Marketing of Infant Formula  
Agreement (MAIF)*

ACM Submission

Issued June 2024

## *Review of the marketing of infant formula agreement*

### **The Australian College of Midwives**

The Australian College of Midwives (ACM) is the peak professional body for midwives in Australia; and welcomes the opportunity to provide a written submission to the Department of Health and Aged Care's Review of the Marketing of Infant Formula Agreement (MAIF). ACM represents the professional interests of midwives, supports the midwifery profession to enable midwives to work to full scope of practice (SoP), and is focused on ensuring better health outcomes for women, babies, and their families.

Midwives are primary maternity care providers working directly with women and families, in public and private health care settings across all geographical regions. There are 34,318 midwives in Australia and 1,195 endorsed midwives<sup>1</sup>. ACM is committed to leadership and growth of the midwifery profession, through strengthening midwifery leadership and enhancing professional opportunities for midwives.

The ACM are custodians of [The Baby-Friendly Hospital Initiative](#) (BFHI), a global program launched by the World Health Organization (WHO) and the United Nations Children's Fund (UNICEF) to promote and support breastfeeding in healthcare facilities. BFHI has a comprehensive approach through accreditation processes to support breastfeeding mothers and infants within healthcare settings. It aims to ensure that hospitals and birthing centres follow specific guidelines known as the Ten Steps to Successful Breastfeeding. These guidelines are complemented by expansion to the Seven Point Plan for community health settings. Every woman is supported to care for her baby in the best and safest way possible, regardless of feeding choices and circumstances. These steps and points include implementing policies that promote breastfeeding, training healthcare staff, educating pregnant women and mothers about breastfeeding, and providing ongoing support after birth and through the first 2000 days.

### **Background**

The [Australian National Breastfeeding Strategy](#) aims to guide priority actions to support and increase breastfeeding, however there is no implementation plan or prioritization of breastfeeding in jurisdictional strategies. [UNICEF's Global breastfeeding scorecard 2023](#) demonstrated increased rates of breastfeeding in locations where the [WHO Code of Marketing of Breast-milk Substitutes](#) is enacted.

An independent [review of the MAIF Agreement](#) by Allen and Clark Consulting has determined in their October 2023 report that the voluntary, self-regulatory approach is no longer fit for purpose, and recommends the establishment of a stronger regulatory framework in the form of a legislated, prescribed, mandatory code. This will more effectively restrict the inappropriate marketing of infant formula in Australia, promote and protect public health, and create a level playing field for industry.

In the context of the MAIF review in Australia, BFHI, as a global breastfeeding promotion program, aligns with the objectives of the MAIF agreement by reinforcing the importance of breastfeeding and discouraging the marketing practices that might hinder breastfeeding initiation and continuation. The Australian College of Midwives (ACM) supports and encourages women to exclusively breastfeed their children to six months, with continued breastfeeding to 12 months and beyond as long as the mother and child desire, as recommended by the [National Health and Medical Research Council \(NHMRC\) Infant Feeding Guidelines: Information for Health Workers \(2012\)](#).

In the 2021 re-authorisation of the MAIF Agreement, the [Australian Competition and Consumer Commission \(ACCC\) raised a number of concerns](#) that were significantly reducing the effectiveness of the MAIF agreement in protecting breastfeeding rates, and therefore the magnitude of the likely public benefit from the MAIF Agreement. To date, these concerns, and the 2021 recommendations of the ACCC, have not been addressed.

The ACM strongly disagrees with approval of the application for re-authorization of the MAIF Agreement and supports the recommendation by Allen and Clark Consulting that a legislated, prescribed, mandatory code is required to effectively restrict the inappropriate marketing of infant formula in Australia. The following is ACMs responses to the current [INC application for reauthorisation of the MAIF agreement](#).

### **The priority opportunities for ACM include;**

1. The MAIF agreement is not fit for purpose and should not be re-authorised for any period of time.
2. Australia should 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 WHO 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.
4. Subscription to the agreement should be compulsory.
5. Penalties should be introduced for non-compliance.
6. The scope should be expanded to include bottles, teats, and toddler formula.
7. The scope should be expanded to include retailers, modern marketing techniques such as social media, and digital marketing platforms.
8. BFHI accreditation should be mandated in all hospitals in Australia.
9. Opportunities to utilise AI tools to capture data on non-compliance should be explored.

## **14. The MAIF Agreement is effective in achieving its aims.**

### ***Strongly disagree***

The aim of the MAIF agreement is to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breastfeeding and by ensuring the proper use of breastmilk substitutes, when they are necessary, on the basis of adequate information through appropriate marketing and distribution.

The MAIF agreement in its current scope excludes the influential and expanding impact of digital marketing practices. The 'opt in' nature of the agreement makes compliance also optional for those outside of the agreement, thus making it ineffective. Self-regulation by members with vested financial interests provides lack of transparency and potential to manipulate the market, promoting profit over the interests of protecting and promoting breastfeeding. It is also unclear in the current process which parent companies are involved in the marketing and production of formula.

The narrow scope of the agreement and the protracted process for considering breeches allows activities to continue unchecked. Once a breach is found to have occurred, there is no penalty imposed,

as per MAIF's [Handling Procedure for complaints of alleged breaches of the Marketing in Australia of Infant Formulas](#).

## **15. The scope of the MAIF Agreement is appropriate.**

### ***Strongly disagree***

The MAIF agreement is limited to infant feeding to 12 months of age, which means there is no restriction applied to toddler formulas. WHO recommends exclusive breastfeeding for the first six months and to continue up to two years and beyond<sup>2</sup>, therefore toddler milks are a breastmilk substitute. Toddler formula promotion also increases formula product recognition. Increasing the scope of the agreement to include toddler formula would be appropriate. Feeding equipment such as bottles and teats should also be included in the scope. Advertising of bottles and teats increases brand recognition and creates familiarity with the image of a bottle-feeding baby. Advertising on digital platforms must also be included.

## **17. The scope of parties covered by the MAIF Agreement is appropriate.**

### ***Strongly disagree***

Regulation of retailers, third parties on digital platforms, and online point of sale formula advertising need to be included. Many complaints currently lodged to the [MAIF Complaints Committee](#) are at point of sale and retailer contact from consumers. This is too late as negative impact to consumers is already occurring.

## **18. The MAIF Agreement (under Clause 7) restricts the type of information that can be provided to health care professionals on infant formula products. What activities can be done to increase the awareness of the appropriate use of breast milk substitutes amongst health care professionals?**

Minimal education based on breastfeeding and the [WHO International Code of marketing of breastmilk substitutes](#) is provided within existing university courses for health professionals including general practitioners and child health nurses. Currently in Australia, midwives are the only health professionals who are required to have pre-registration breastfeeding education. General practitioners and child health nurses provide feeding advice and educational resources and thus have extensive impact on infant feeding practices and decisions. Implementing increased education and continuing professional development would improve knowledge and awareness of appropriate use of breast milk substitutes amongst health care professionals who care for pregnant women, mothers and babies.

One strategy to increase breastfeeding-friendly practices across the country would be to mandate BFHI accreditation in all hospitals in Australia. This is supported by the [Australian National Breastfeeding Strategy](#) action item 5: support for breastfeeding in health care settings / the Baby Friendly Health Initiative (BFHI).

## 19. Are the current advertising and marketing provisions covered by the MAIF agreement appropriate?

### *Strongly disagree*

MAIF agreement Clause 8(b) states that: Personnel employed in marketing infant formulas should not, as part of their job responsibilities, perform educational functions in relation to pregnant women or parents of infants and young children. This is an appropriate rule, however is frequently not followed by formula companies, who provide parenting information and breastfeeding advice through formula membership clubs and websites, for example [Karinourish](#). This increases the market exposure, reinforcing brand recognition, cross promotion and market share. It is appropriate for infant formula companies or their representative to share links to redirect site users to government parenting websites e.g. [Raising Children Network](#) or recognised not for profit parenting support services e.g. [Australian Breastfeeding Association](#) (ABA). This ensures adequate and consistent breastfeeding information is maintained and minimises the risk of users receiving inappropriate product advertising content disguised as breastfeeding education. It is not appropriate for formula companies to provide parenting or breastfeeding information themselves. Information provided by the infant formula companies should be restricted to product information and support only. As the current MAIF agreement clause is frequently not being followed, ACM recommends this be tightened, and consequences introduced for failing to follow this clause.

### 19a. Should the scope be changed to include modern marketing techniques, such as targeting advertising on social media platforms?

Yes. Modern marketing techniques on social media platforms are a key area where inappropriate promotion of breastmilk substitutes are targeted. Digital platforms use pop up advertising, brand recognition, links to baby clubs with the use of 'cookies' to pull consumers into product promotion, often without the consumer realising. This reduces the parents' ability to make an informed decision about feeding their baby, and has the potential for significant negative impacts on children's health. The digital platform is emerging, rapidly evolving and difficult to control. It should be included in the scope of the agreement.

### 19b. What changes would you suggest and how could they be implemented?

Digital platforms, including third party medical advertising companies and retailers, should be required to be in line with current MAIF agreement regulations and with the [WHO Guidance on regulatory measures aimed at restricting digital marketing of breast-milk substitutes](#).

Artificial intelligence is an expanding resource used in the digital space. [The Virtual Violators Detector Tool \(VIVID\)](#) developed by [Alive and Thrive](#) has already captured significant data on inappropriate digital marketing of breastmilk substitutes by retailers in Australia. There could be an opportunity to utilise this or similar AI tools to capture data on non-compliance.

## 28. The MAIF Agreement's effectiveness is not reduced by its voluntary, self-regulatory approach.

### *Strongly disagree*

The voluntary, self-regulatory model of the MAIF in 2024, does not remain fit for purpose. Currently, the reporting of complaints is published on the [Australian Department of Health website](#), but this has not been adequately affecting the marketing practices of infant formula manufacturers, retailers or marketing companies. ACM asserts that all manufacturers and retailers who market infant formula need to be held accountable under the agreement. This non-voluntary approach would ensure well-regulated standards of practice across the whole infant formula industry are being met, for better consumer protection and improved outcomes for babies.

## 30. What changes would you make to the MAIF Agreement and its processes?

- Compulsory membership for all infant formula producers, distributors and associated representatives including contracted marketing researchers and digital platforms.
- Restriction of cookies and links to advertising and baby clubs on social media to include a pop-up warning or notification.
- Expand the scope to include bottles and teats.
- Expand the scope to include follow on and toddler formula preparations used or marketed for infants and young children up to the age of 36 months.
- Introduce penalties for non-compliance, including automatic fines. Repeated non-compliance to incur removal from the membership with associated removal of right to sell for a specified length of time, after which the company may apply for probationary return of membership. 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 of the CODE is being prepared and enacted. Currently the MAIF Agreement is not considered within the Food Standards Code legislation as it is voluntary and unenforceable.

## 30b. What do you think would be the potential benefits of these changes?

- Increased initiation, exclusivity and duration of breastfeeding.
- Unbiased, evidence-based research and education available for families to make informed decisions around their infant feeding choices.
- Ability to independently regulate, monitor and control infant formula marketing practices, including the vast and expanding digital marketing potential that is currently unchecked. This would more effectively restrict the inappropriate marketing of infant formula in Australia while promoting and protecting public health. This creates a level playing field for industry with increased transparency for the consumer and for health professionals.

## 32. Do you have anything further to add?

Transparent, effective transition to implementing Code legislation will ensure protection of breastfeeding and the associated health outcomes for families and infants into the first 2000 days and beyond. Previous

reviews of the MAIF agreement have provided recommendations which have not been actioned by Government. We look forward to decisive action in response to this review.

## Recommendations

- The MAIF agreement is not fit for purpose and should not be re-authorised for any period of time.
- Australia should 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 WHO resolutions (The WHO Code).
- 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.
- Subscription to the agreement should be compulsory.
- Penalties should be introduced for non-compliance.
- The scope should be expanded to include bottles, teats, and toddler formula.
- The scope should be expanded to include retailers, modern marketing techniques such as social media, and digital marketing platforms.
- BFHI accreditation should be mandated in all hospitals in Australia.
- Opportunities to utilise AI tools to capture data on non-compliance should be explored.

The ACM would welcome the opportunity to collaborate and provide further expert advice in the process of this review.



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### Consent to publish

ACM consents to this submission being published in its entirety, including names.

### Consent to provide further information

ACM is available to provide further expert opinion and advice if required.

## References

1. Nursing and Midwifery Board. AHPRA. (2023). *Statistics. Nurse and Midwife – Registration Data Table – 31 March 2024*. [Nursing and Midwifery Board of Australia - Statistics \(nursingmidwiferyboard.gov.au\)](https://www.nursingmidwiferyboard.gov.au/Statistics/Pages/default.aspx)
2. World Health Organisation. (2023). *Infant and young child feeding*. [Infant and young child feeding \(who.int\)](https://www.who.int/inf-youth)