Breastfeeding Advocacy Australia
PROTECT | PROMOTE | SUPPORT
BAA is a deductible gift recipient
ABN 58 637 390 295

BAA's response to the Infant Nutrition Council's application for the reauthorisation of the MAIF agreement

June 2024

BAA's response to the
Infant Nutrition Council's application for the
reauthorisation of the MAIF agreement

June 2024 ©Breastfeeding Advocacy Australia

Foreword

Since the inception of the World Health Organization's (WHO) *International Code of Marketing of Breast-milk Substitutes* (the WHO Code or International Code) the Australian Government has by default left the responsibility of monitoring and evaluating the effectiveness of the *Marketing in Australia of Infant Formulas: Manufacturers and Importers (MAIF) Agreement* (MAIF Agreement) solely to volunteer breastfeeding advocates. This is not only exploitative, but it is also sex-based discrimination. Breastfeeding mothers should not carry the burden of having to defend their human rights and the rights of their children by being forced to advocate for effective protection against unethical and aggressive marketing and promotion of breastfeeding substitute products that undermine successful breastfeeding. Women are not a source of free labour for the Australian Government to exploit.

The MAIF Agreement is nothing more than a façade. Industry uses MAIF as a mask to hide behind under the guise that they are 'compliant'. In effect, industry uses MAIF as a tool that works in their favour and facilitates the continued exploitative marketing practices aimed at pregnant and breastfeeding mothers, and their families. MAIF also facilitates industry to access health workers, the Australian Government and other non-government public health agencies because their marketing campaigns are cleverly disguised as 'education'. Often, they use proxies to circumvent their responsibilities under the Agreement, often by engaging health workers, academics and social media influencers in sponsored partnerships.

The Australian Government and its agencies:

- Department of Health and Ageing
- Food Standards Australia and New Zealand (FSANZ)
- Department of Agriculture, Water, and the Environment
- Department of the Treasury
- Department of Industry, Science and Resources
- Department of Climate Change, Energy, the Environment and Water
- National Health and Medical Research Council (NHMRC)

all prioritise commerce over the health of mothers and infants and thereby are complicit in the exploitation of women and children. Evident in their policies and actions that favour industry and even invite them to participate in planning. Mothers' voices are not privileged, yet they are the key stakeholders and in need of a platform to be heard. The Australian Government is failing in its responsibilities to protect mothers and infants at the most vulnerable stages of their lives.

Tens of thousands of woman-hours have been invested into preparing this document and the others published by Breastfeeding Advocacy Australia (BAA). Thousands of members contribute weekly by submitting examples of International Code violations, and Social Engineering (SE) for members of BAA to collate and report on. All of this labour is contributed by unpaid volunteers. These women take time away from their children and families, paid work, studies and other activities to advocate for protection against unethical and aggressive marketing of breastmilk substitutes. The Australian Government is exploiting women by failing to uphold their own responsibilities to regulate industry.

This review represents a pivotal opportunity for the Australian Competition and Consumer Commission (ACCC) to put an end to the de-valuing of women's labour, their health and the health of their children by making strong recommendations to the Australian Government to protect, promote and support breastfeeding and infant and young child feeding.

Executive Summary

The MAIF Agreement represents Australia's attempt to implement the World Health Organization's (WHO) *International Code of the Marketing of Breastmilk Substitutes*. Its purpose is to regulate the advertising of breastfeeding substitutes (0 to 36 months), including bottles and teats, to the general public and healthcare professionals.

Recently, MAIF has undergone an independent **review** by Allen + Clarke Consulting, with the following outcome (released in April 2024):

> *'…there remains significant room for improvement in the coverage and operation of regulation of infant formula marketing that, if implemented, would more effectively meet the aims of the MAIF Agreement and result in a range of benefits.*
>
> *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.'*
>
> **~ Allen + Clarke Consulting**

This report presents irrefutable evidence that the MAIF Agreement is an ineffective means of monitoring and responding to violations of the MAIF Agreement and, more importantly, does not fulfil the aims of the International Code on which MAIF is loosely based.

This report is in response to the Infant Nutrition Council's (INC) application to the Australian Competition and Consumer Commission (ACCC) for authorisation of the MAIF Agreement. Our findings demonstrate that the MAIF Agreement is not only ineffective in achieving its stated aims in today's marketing environment but has also been ineffective since its inception. Moreover, the MAIF Agreement's scope is inadequate in the current policy landscape due to a lack of monitoring and accountability for breaches to this voluntary agreement. The process is not transparent and inherently favours industry. For example, the infant formula lobby group president is one of the three members of the MAIF committee, and companies are invited to participate in the complaints determination process.

This report calls for appropriate regulatory frameworks to be implemented and highlights the need for a breastfeeding committee to govern its functions (as per *Australian National Breastfeeding Strategy 2019* (ANBS) recommendations). The breastfeeding committee must be independent, and free of conflicts, to have the ability to effectively monitor industry, process breaches, and evaluate the mechanism's effectiveness rather than relying on unpaid volunteer breastfeeding advocates.

The current MAIF Agreement is an ineffective, voluntary, self-regulatory model, which does not even resemble the World Health Organization (WHO) European model law which is the exemplar of robust legislation. It is imperative to compare Australia's position on breastfeeding protection with countries that are substantially aligned with the International Code. Currently, Australia ranks one of the lowest in the world. We must take urgent action to improve. BAA summarises the current evidence detailing benefits, costs, and limitations of implementing changes and expansions to the regulatory framework. The *Australian National*

Breastfeeding Strategy 2019 (ANBS) is an enduring framework for coordinated action which aims to implement effective strategies to improve breastfeeding rates in Australia. The ANBS is a multi-level complex adaptive system which includes implementing robust International Code legislation into national law.

However, for the ANBS to be successful in its aims it must be implemented in its entirety. This analysis recommends that Australia implements robust legislation that not only adheres to the International Code as a minimum standard but surpasses it. Such legislation should cover pregnancy and beyond, up until 60 months, and include penalties and fines for violations that cover reoffences. Moreover, BAA recommend strong regulations of the International Code with a new framework, not to reduce but to cease predatory or aggressive marketing practices.

About Breastfeeding Advocacy Australia

This document has been prepared by members of Breastfeeding Advocacy Australia (BAA). **BAA** is a registered charity and not-for-profit organisation (Health Promotion, Advancing Public Debate, and Advancing Health) that is run exclusively by volunteers. The team are all mothers of varying ages and are invested in the protection of breastfeeding.

BAA aims to:

1. Create public and government awareness of the role of successful breastfeeding as the single most important public health measure a country can implement.
2. Provide education to government agencies, health workers and the public about critical barriers to achieving breastfeeding and suggest strategies to make positive change.
3. Provide a forum for interested parties to interact and be informed.
4. Participate in opportunities that affect policy related to breastfeeding.
5. Recognise and advocate for the human rights of families and their infants in Australia to enact an informed decision to breastfeed without the existing legislative and informational barriers that exist.
6. Advocate for legislation to enforce the International Code of Breastmilk substitutes and the subsequent WHA resolutions (the Code).
7. Identify and expose products and practices that undermine informed decision making about breastfeeding that fall outside the Code.
8. Record breaches of the Code and report them to international, federal and state governing bodies whose role is to protect, promote and support breastfeeding.
9. Expose predatory marketing practices and report them to international, federal and state governing bodies whose role is to protect, promote and support breastfeeding.
10. Create cognisance of how attitudes towards infant feeding are affected by commercial influence amongst those who work with families including, but not limited to, health professionals, academics, childcare workers, teachers, legal representatives, the media and politicians.
11. Advocate for families to be given information about biologically normal sleep in the first 1000 days of life.
12. Advocate for breastmilk, breastfeeding and unpaid carers work to be recorded numerically in the GDP figures.

BAA is the Australian representative of International Baby Food Action Network (IBFAN). IBFAN is a worldwide network of more than 148 public interest groups in over 108 countries. Members are diverse and include health worker, parent and consumer organisations. Social justice, human rights and environmental protection underscore all of IBFAN's work.

IBFAN's primary mission is to facilitate full implementation of the *International Code of Marketing of Breast-milk Substitutes* (the WHO Code or the International Code) and subsequent relevant World Health Assembly (WHA) resolutions into national legislation in every country. They offer technical and planning assistance to governments, as well as advocacy, training and capacity building.

IBFAN's main focus areas are: Codex Alimentarius, the International Code, infant feeding in emergencies, contaminants in baby foods, health and environmental impacts, World Breastfeeding Trends Initiative, and World Breastfeeding Conferences. **IBFAN** strives to have the final say on marketing practices and other activities that undermine breastfeeding and optimal infant feeding.

Reauthorisation of MAIF Agreement rebuttal

- Breastfeeding Advocacy Australia fundamentally opposes the notion that the reauthorisation of the MAIF Agreement, along with its associated guidelines, would serve the best interests of Australian children and their mothers. This stance is rooted in a deep concern for the welfare and health of these vulnerable groups.
- The evidence unequivocally demonstrates that the self-regulated model has proven to be ineffective, and it is untenable for it to persist as a reliable method of regulation.
- Australian consumers have been misled into believing that robust, transparent safeguards exist to shield them from predatory and aggressive marketing tactics during one of life's most vulnerable stages. This illusion of protection is particularly concerning given, the well understood, serious negative health outcomes associated with a lack of breastfeeding.
- The current MAIF Agreement has been found to be ineffective and not fit for purpose by multiple reviews by the ACCC, and an independent review commissioned by the Australian Department of Health. A comprehensive and robust alternative which aligns with the objectives outlined in the World Health Organization's *International Code of Marketing of Breast-milk Substitutes* is urgently required.
- The ***International Code*** *of Marketing of Breastmilk Substitutes* and subsequent Resolutions by the World Health Assembly, along with the 2016 WHO ***Guidance*** *on ending the inappropriate promotion of foods for infants and young children* provide the regulatory framework to put an end to unethical marketing practices. In addition, *Effective* ***regulatory frameworks*** *for ending inappropriate marketing of breast-milk substitutes and food for infants and young children*, provides step-by-step guidance on how to review the current level of national implementation of these instruments and then proceed to strengthen measures and establish effective systems for implementation and enforcement. This includes the use of a 'model law' developed specifically for the European region to demonstrate what effective regulations should look like. ***Guidance*** *on regulatory measures aimed at restricting the digital marketing of breast-milk substitutes* (2024) further strengthens earlier measures by plugging loopholes often exploited in the digital marketing sphere.
- Implementing a new framework that aligns with WHO/UNICEF guidance not only addresses the issues with the current model, but also helps the Government avoid potential legal repercussions that could arise from reauthorising an unfit agreement. Now is the ideal time to make this change.
- *Australian National Breastfeeding Strategy 2019 and beyond* (ANBS), which was commissioned by the Coalition of Australian Governments (COAG), presents an opportunity for Australia to be a global leader in this action area.
- The presence of the Infant Nutrition Council (INC) in the MAIF process is not just unethical, deceptive, and irresponsible, it's a blatant disregard for the principles of impartiality and fairness. The fact that the industry itself has a seat on the committee creates an undeniable conflict of interest. This conflict compromises the integrity of decision-making processes, particularly when it comes to addressing violations of the MAIF Agreement. It's akin to allowing the fox to guard the henhouse, which is both inappropriate and unacceptable. This situation calls for immediate rectification to ensure the protection of public health and the credibility of the MAIF process.
- It is absolutely imperative that a committee operates independently, devoid of any industry influence. It should steadfastly adhere to the guidelines set forth by the ANBS, and other WHO and UNICEF publications/guidance released since (as described in the WHO Code section). This includes the appointment of a national breastfeeding advisory committee, whose primary responsibility would be to implement, monitor, and evaluate a more

suitable policy such as the already developed ANBS. This approach not only ensures transparency and impartiality but also reinforces the commitment to prioritising public health over industry interests. It's a non-negotiable standard for ethical governance and effective policymaking in order to protect Australian consumers.

WHO Code

In 1981 the *International Code of Marketing of Breast-milk Substitutes* (the WHO Code or International Code) was drafted in response to the unethical and **aggressive marketing of infant formula** and the idealisation of bottle-feeding over breastfeeding by companies such as Nestlé. It is estimated that over **66,000 infants died** from malnourishment or infection, and millions more became seriously unwell or sick due to inappropriate feeding practices associated with the use of breastmilk substitutes. Because of the special vulnerability of this population group, it was decided that usual marketing practices should not apply. Consequently, the World Health Assembly (WHA) adopted **the Code** which prohibits the marketing of breastmilk substitutes, feeding bottles, and teats. Since the formation of the Code there have been 20 **WHA resolutions** to the International Code urging governments to adopt tighter controls which plug loopholes industry has found in the Code to exploit. One such product is toddler drink, which is an ultra-processed milk powder marketed for use in infants 12 months old to 3 years old. The product is entirely unnecessary as infant formula is recommended to be discontinued at 12 months. **Toddler drink** was invented to **cross-promote** infant formula and circumvent marketing restrictions that often stop at 12 months old.

Member States adopted a new resolution in May 2016 during the World Health Assembly (WHA), which urges countries to follow the World Health Organization's (WHO) guidelines on ending the inappropriate promotion of food products for infants and young children. The objective is to further safeguard breastfeeding, prevent obesity and chronic diseases, and encourage a healthy diet. Furthermore, the guidelines aim to provide caregivers with accurate and transparent information on feeding. The WHO formulated these guidelines as a response to mounting evidence suggesting that advertising breastmilk substitutes (BMS) and some commercial foods for infants and young children hinders progress towards optimal feeding practices. These guidelines complement existing tools such as the *International Code of Marketing of Breast-milk Substitutes*, relevant WHA resolutions, and the *Global Strategy on Infant and Young Child Feeding*. The resolution encourages Member States to establish **stronger national policies** that protect children under the age of 36 months from harmful marketing practices

Effective regulatory frameworks for ending inappropriate marketing of breast-milk substitutes and foods for infants and young children in the WHO European Region (2022), is a policy brief that provides step-by-step guidance on how to review the current level of national implementation of the International Code, WHA resolutions, and the *Guidance on Ending Inappropriate Promotion of Food for Infants and Young Children*, and then proceed to strengthen measures and establish effective systems for implementation and enforcement. This includes the use of a '**model law**' developed specifically for the region to demonstrate what effective regulations should look like.

In November 2023, the World Health Organization (WHO) released **new guidance** on regulatory measures aimed at restricting the digital marketing of breastmilk substitutes. This guidance is designed to help WHO Member States develop and implement regulations that apply the *International Code of Marketing of Breast-milk Substitutes* to digital environments. It provides 11 recommendations for countries to follow in order to curb the promotion of breastmilk substitutes through online channels and social media platforms. This guidance underscores the importance of protecting breastfeeding and ensuring that marketing practices do not undermine it, especially in the digital age (**Baby Feeding Law Group UK**).

The Australian Government should be utilising these instruments and working closely with WHO, UNICEF and International Baby Food Action Network (IBFAN) to ensure effective implementation.

Multi-level public health strategy

Australian National Breastfeeding Strategy 2019

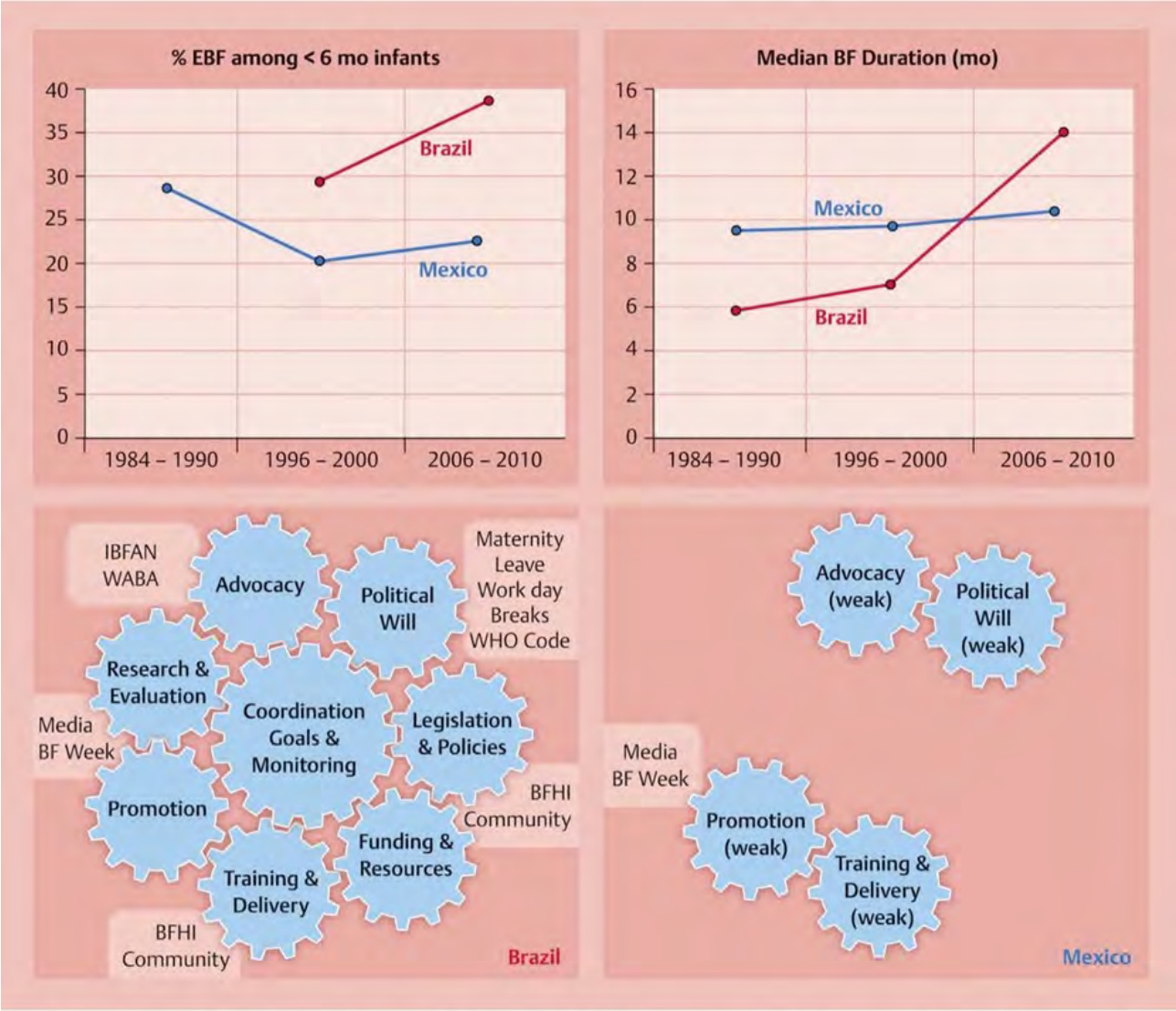
Australian National Breastfeeding Strategy: 2019 and beyond (ANBS/The Strategy) was commissioned by the Council of Australian Governments (COAG) to create an enduring framework for scaling up breastfeeding in Australia. It states:

> '(The Strategy) provides a framework for integrated, coordinated action to shape and inform Commonwealth, state, territory and local government policies and programs as they support mothers, fathers/partners and their babies throughout their breastfeeding journeys. It sets out a vision, objectives, principles, priority areas and action areas to provide a supportive and enabling environment for breastfeeding.'

The review of the MAIF Agreement, commissioned by the Department of Health and Ageing, conducted by Allen + Clarke Consulting, is the first action area implemented under The Strategy – priority area 1.2 'prevent inappropriate marketing of breastmilk substitutes'. Understanding that this review is part of a policy document with stated objectives and evidence-based rationale, the next appropriate step is to carry out the recommendations within the ANBS.

Evidence indicates that countries that adopt a multi-level public health strategy, such as ANBS 2019, have had the most significant success in increasing breastfeeding rates. However, no single component is as effective if it is delivered **independent** of the framework it operates within. It requires collaboration between government and non-government organisations and involvement of health workers, community, policymakers and advocacy groups. The strategy must be underscored by **strong political will**. For example, Brazil implemented the 'Breastfeeding Gear' model (**Figure 1**), which employs a 'complex adaptive systems approach' utilising effective strategies that protect, promote and support breastfeeding in multiple settings, and all life stages continuum. A comparison was made with Mexico which implemented weak and incomplete measures. The outcomes were significantly different. Mexico had little change to breastfeeding exclusivity or duration, but **Brazil increased** dramatically.

Figure 1
Breastfeeding Gear model



Application of the Breastfeeding Gear Model for understanding differences in breastfeeding performance between Brazil and Mexico. (Reproduced from Pérez-Escamilla, et al. [13] with permission)

Note: From Translating the international code of marketing of breast-milk substitutes into national measures in nine countries, by Maternal & Child Nutrition, 2019 (**https://doi.org/10.1111/mcn.12730**)

The Australian government has not invested sufficient funding or resources to implement the ANBS. Central to the breastfeeding gear model is establishing a National Breastfeeding Advisory Committee to coordinate, monitor and evaluate multi-level strategies, such as recommended in the **ANBS**. The MAIF Agreement does not form part of the recommendations in ANBS. Therefore, it must be replaced by enacting the International Code and WHA resolutions into legislation, with penalties and fines for breaches, with sound monitoring and evaluation processes that are free from industry connections and conflicts of interest.

MAIF review

The review commissioned by the Department of Health and Ageing (DoH) and carried out by Allen + Clarke Consulting sought to answer five key review questions. The next sections of this report provides BAA's responses to them.

Review question 1: Is the MAIF Agreement effective in achieving its aims?

The MAIF Agreement is **NOT** effective in achieving its aims.

The Manufacturers and Importers of Infant Formula (MAIF) Agreement is supposedly Australia's '**response**' to the International Code. Yet, MAIF is a voluntary, self-regulated code of conduct that was drafted in partnership with the breastmilk substitute industry and has ZERO penalties for breaches. On paper and in practice MAIF does not fulfill any of Australia's **obligations** as a World Health Assembly (WHA) Member State and signatory to the *International Code of Marketing of Breast-milk Substitutes* and subsequent World Health Assembly **resolutions**.

The International Code and WHA resolutions are intended to be a MINIMUM standard for protecting breastfeeding from unethical and aggressive marketing practices that undermine breastfeeding and compromise maternal and child health. The severely limited scope and coverage of MAIF is nowhere close to a MINIMUM standard. It is well understood internationally that voluntary, self-regulatory systems are **ineffective** in reducing the power of, and exposure to, breastmilk substitute marketing and other infant and young child feeding products.

The International Code should always be read and considered together with the subsequent WHA resolutions as they all enjoy the same legal status, being recommendations emanating from the world's highest public health authority. Policy makers at the international level frequently overlook the subsequent resolutions when implementing the International Code. This oversight has grave consequences as these resolutions try to bring the Code up to date – they clarify the Code in response to recent scientific findings and to new marketing practices and products by manufacturers and distributors of **breastmilk substitutes**. There are 20 relevant WHA resolutions and can be found **here**.

The International Code outlines its rationale and affirms Member States agree the Articles within the Code are recommendations for action. The Articles cited in the International Code and WHA resolutions are comprehensive in scope and coverage. MAIF does not resemble the International Code and does not protect parents from unethical and aggressive marketing by breastmilk substitute manufacturers as per the International Code. Instead, MAIF is a tool that industry uses to facilitate the systematic undermining of successful breastfeeding. MAIF creates the illusion that the Australian Government has done something to uphold its obligations under the International Code. But the reality is that MAIF is nothing more than a façade.

It is deeply concerning that this review is framed to strike a balance between the desire of industry to continue to make money, and the call to action by breastfeeding advocates to implement the International Code and WHA resolutions. The International Code specifically calls Governments to scale up regulatory mechanisms to keep up with industry tactics and ever evolving range of infant feeding products. However, industry has created the narrative that they are supporting the Australian economy by expanding their market, and that regulations will have a negative financial outcome for the Government. This is false, and not evidence based.

A 2001 study found hospitalisation costs attributed to illness associated with a lack of breastfeeding in Australia is estimated between $60–120 million annually. **Cognitive loss** associated with not breastfeeding is around $6 billion per year in Australia, which can be attributed to lost labour and productivity. Breastfeeding rates across socioeconomic classes vary significantly. Mothers with **low socioeconomic status** are less likely to breastfeed exclusively and wean prematurely. The gap between mothers who are most disadvantaged and those who are least disadvantaged is also widening. Increases in breastfeeding rates, as small as 1%, can translate to significant economic and health benefits. For every $1 spent on breastfeeding the **return on investment** is estimated at $35. Human milk is not currently recorded in Gross Domestic Product (GDP); however, the economic value of human milk alone is estimated to be worth **$3 billion** each year in Australia.

The ACCC have the health of mothers and children in their hands. The lens through which this review is viewed must keep the International Code and WHA resolutions as its focus. The evidence is overwhelmingly in favour of enacting robust International Code legislation into Australian law with penalties and fines for breaches. This must be coupled with a regulatory framework that incorporates monitoring and evaluation which is overseen by a governing body that is free from industry connections and any associated conflicts of interest.

Review Question 2: Is the scope of the MAIF Agreement appropriate in the current policy environment?

No. Advertising and media **influence** infant and young child feeding practices and shapes decision making. Studies have shown that mothers do not differentiate between **advertising** of 'growing up milks' (GUMs) and infant formula. Marketing of infant formula (0–12 months) is discouraged in Australia. Cross-promotion is a common marketing tactic that manufacturers of breastmilk substitutes use in Australia to exploit gaps in national voluntary advertising regulations. The **packaging** of infant formula ranges is identical to other product lines which are **unsuitable** for infants under 12 months. This has been identified as a risk to babies' health, as infants can be mistakenly fed products which do not meet their unique nutritional requirements. See **Figure 2**, for an **example** of products from an Australian infant formula manufacturer who packages their entire range of powdered milk products so similarly it is difficult to identify which is appropriate for babies.

Figure 2

Example of cross-promotion of powdered milk products which includes infant formula.

Note: From Determination, Application for revocation of authorisations A91506 and A91507 and the substitution of authorisation AA1000534 lodged by Infant Nutrition Council Limited in respect of the Marketing in Australia of Infant Formula: Manufacturers and Importers Agreement, and associated guidelines, by ACCC, 2021.

Additionally, complementary foods marketed at children 0 to 36 months have been identified to **displace breastmilk feeds** and promote premature weaning.

How does Breastfeeding Advocacy Australia collect and record violations?

Every week a new post is created in the public Facebook group. Group members are asked to post a picture with the date and location of the activity. Each post is entered onto a database and the picture is dated and saved into a file. Each weekly post has its own link. Contributors can interact with the group admin and there are many questions and discussions that broaden the value of Weekly Collections beyond a simple record of predatory marketing to building a community of knowledgeable advocates. All this work is done by members of the BAA team and members of the Facebook group. All unpaid volunteers work.

The recent report(s) published by Breastfeeding Advocacy Australia (BAA) titled *Undermining Breastfeeding for Profit: A Report on the Weekly Collection of International Code Breaches*, cover the periods from March 2021 to December **2022**, January to June **2023**, and January to December **2023**. These reports detail and summarise breaches of the International Code and provide examples of social engineering tactics used by the industry during these times.

BAA has documented over 4,000 instances where breastfeeding has been undermined by commercial interests in Australia. These reports clearly demonstrate that the International Code and World Health Assembly (WHA) resolutions are essential as a minimum standard for scope and coverage. The tactics and products promoted by the industry have infiltrated all aspects of Australian culture and society. Therefore, it is imperative that the Australian Government implements robust legislation with penalties and fines for breaches, alongside effective monitoring and evaluation mechanisms that extend beyond the recommendations of the International Code.

MAIF Agreement is ineffective

MAIF cannot be described as an effective regulatory mechanism because there are no monitoring, enforcement or internal evaluation measures in place. The agreement is only applicable to signatories, and it doesn't include the vast majority of companies that advertise breastmilk substitutes to pregnant and breastfeeding mothers in Australia. MAIF **only** covers infant formula products from 0 to 12 months, and **no** other products, and **only** applies to *signatories* if they have initiated the advertising or promotion. Noteworthy, only a limited number of manufacturers of infant formula are signatories.

Importantly, question 16 of the MAIF review survey states:

> 'It also restricts the promotion of "breastmilk substitutes" which includes "any food marketed as partial or full replacement for breastmilk, whether or not suitable for that purpose"'.

This is incorrect. See **Figure 3**, a reply email from MAIF Complaints Committee secretariat, Claire White, dated 28 November 2022. The email states several times that **only** infant formula (0 to 12 months) is in scope of MAIF, and 'applies **only** to the marketing and advertising activities of ***companies that are manufacturers of and importers to Australia of infant formulas***'.

Figure 3

Source: email reply from MAIF Complaints Committee Secretariat

From: maif
Sent: Monday, 28 November 2022 12:46 PM
To: [redacted]
Subject: MAIF Complaint REF: 2223-38 NHMRC and 2223-36 Minbie [SEC=OFFICIAL]

REF: 2223-38 NHMRC and 2223-36 Minbie

Dear [redacted],

The MAIF secretariat would like to reiterate that the Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement (MAIF Agreement) applies only to the marketing and advertising activities **of *companies that are manufacturers of and importers to Australia of infant formulas.*** Further, only those companies who have

[redacted]

signed the MAIF Agreement (signatories of the MAIF Agreement) are considered in scope of the Agreement.

In regards to your submission of a complaint regarding the NHMRC (**complaint reference 2223-38 NHMRC**) we take this opportunity to advise you that this complaint is out of scope of the MAIF agreement. Health professionals are not covered by the scope of the MAIF Agreement and nor is the Australian Government.

The complaint makes reference to the WHO Code and health worker responsibilities. For clarification, the MAIF Agreement is one of the ways Australia *gives effect in Australia to the principles of* the World Health Organisation's International Code of Marketing of Breastmilk Substitutes (WHO Code). The MAIF Agreement and the WHO Code are two different documents.

Manufacturers and importers of infant formula who are signatories to the MAIF Agreement have obligations to health care professionals and health care settings, in regard to provision of infant formulas and provision of information regarding infant formulas. Manufacturers and importers of infant formulas should not offer any financial or material inducement to health care professionals to promote infant formula.

Health care professionals should be aware of the obligations that manufacturers and importers of infant formulas must adhere to, in order to uphold the MAIF Agreement. However as mentioned above health care professionals are not in scope of (or signatories to the agreement).

In response to your email dated 19th November, 2022, we would like to advise that the company Minbie (**complaint reference 2223-36 Minbie**) is also out of scope of the MAIF Agreement as they are not manufacturers or importers of infant formulas. As mentioned above the MAIF Agreement and the WHO Code are two separate documents and while the WHO Code may define bottles and teats, these products are out of scope of the MAIF Agreement which only covers infant formulas. If you have any concerns with product safety you are welcome to contact the Australian Competition and Consumer Commission (ACCC) and advise of your concerns.

Please don't hesitate to contact the secretariat if you require further clarification of the scope of the MAIF Agreement.

Kind regards,

Claire White
MAIF Complaints Committee Secretariat – Nutrition Policy Section

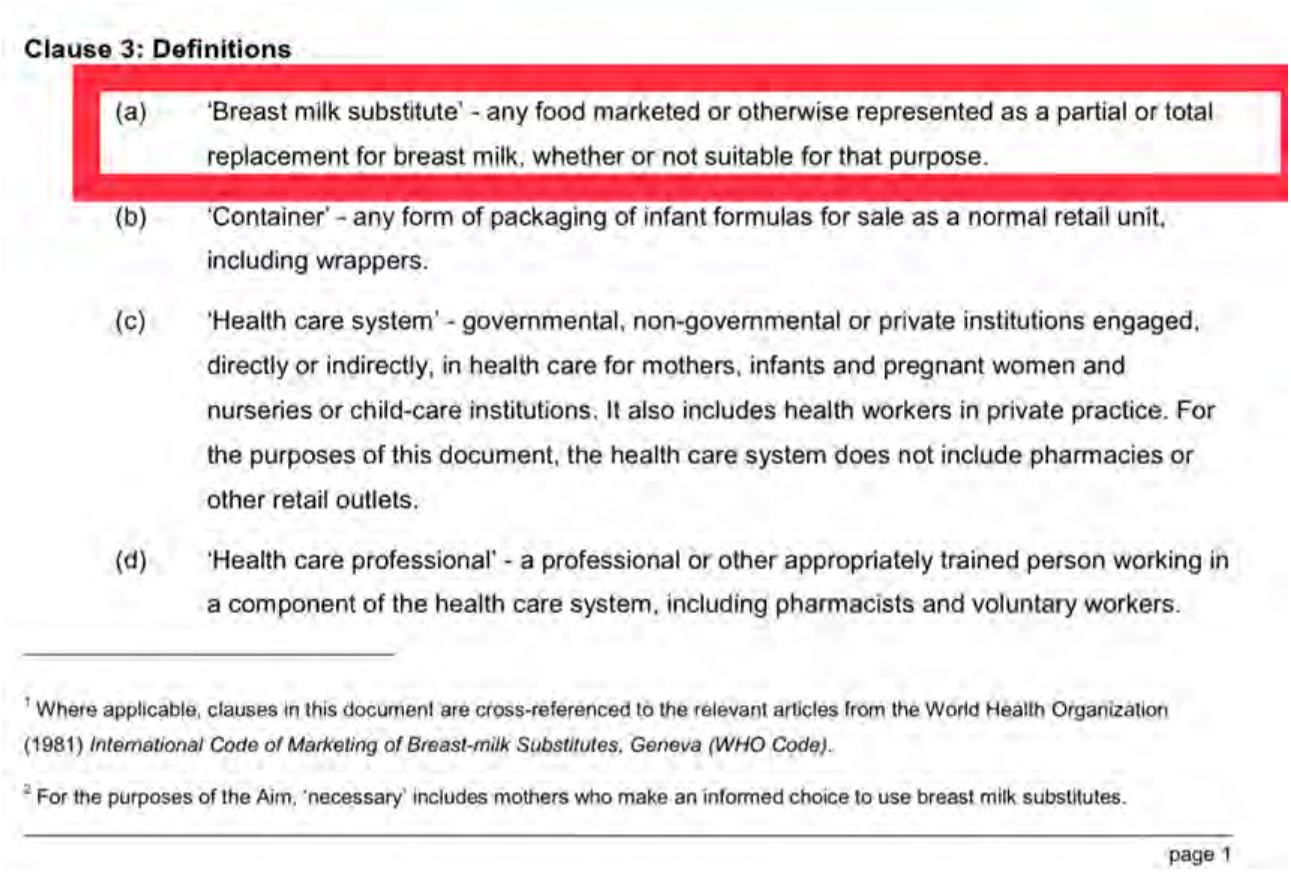
Further, only those companies who have signed the MAIF Agreement are considered 'in scope of the Agreement'. The statement 'It also restricts the promotion of "breastmilk substitutes" which includes "any food marketed as partial or full replacement for breastmilk, whether or not suitable for that purpose"', is included as Clause 3 of MAIF Agreement but only as a ***definition*** of a breastmilk substitute. See **Figure 4**.

It misrepresents the scope of the MAIF Agreement to include the definition of a breastmilk substitute in the MAIF review survey as part of the scope, and compromises the validity of the review. It is clear that the DoH does not understand what products are marketed 'any food marketed as partial or full replacement for breastmilk, whether or not suitable for that purpose' – other than infant formula. These products include (but are not limited to) condensed milk and other milk products, yoghurt, probiotics, cereals for infants, vegetable mixes, 'baby teas', juices, follow-up milks, feeding bottles, and teats. The WHO *Guidance on Ending the Inappropriate Promotion of Foods for Infants and Young Children* was established in 2016 through the WHA Resolution 69.9. This **resolution** not only identifies follow-up formulas and growing-up milk as BMS but also offers suggestions to put an end to inappropriate advertising of commercial complementary foods for infants and young children aged 6 months to 3 years.

This further highlights how poorly planned the MAIF Agreement was in its inception, and how convoluted the MAIF and its processes are for consumers. Working under the assumption that all involved have a sound knowledge and experience of regulatory and policy documents, yet the Department of Health and Ageing (DoH) signed off on the survey that misrepresents the scope – what hope do consumers have navigating the complaints process? For these reasons (but not limited to) it cannot be said that MAIF fulfils Australia's obligations under the International Code, or even be considered a 'response' to it.

The email from MAIF Complaints Committee Secretariat, Claire White, also states, 'Health professionals are not covered by the scope of the Agreement and nor is the Australian Government'. In practice this means that, under the MAIF Agreement, Government agencies and health professionals who have direct or indirect contact with pregnant or breastfeeding mothers and their families are not obligated to promote breastfeeding as first infant feeding option in a clinical setting, policy documents or otherwise. The International Code applies to everyone, including Governments and health professionals, health workers, industry and more.

Figure 4
Source: MAIF Agreement



Clause 3: Definitions

(a) 'Breast milk substitute' - any food marketed or otherwise represented as a partial or total replacement for breast milk, whether or not suitable for that purpose.

(b) 'Container' - any form of packaging of infant formulas for sale as a normal retail unit, including wrappers.

(c) 'Health care system' - governmental, non-governmental or private institutions engaged, directly or indirectly, in health care for mothers, infants and pregnant women and nurseries or child-care institutions. It also includes health workers in private practice. For the purposes of this document, the health care system does not include pharmacies or other retail outlets.

(d) 'Health care professional' - a professional or other appropriately trained person working in a component of the health care system, including pharmacists and voluntary workers.

[1] Where applicable, clauses in this document are cross-referenced to the relevant articles from the World Health Organization (1981) *International Code of Marketing of Breast-milk Substitutes, Geneva (WHO Code)*.

[2] For the purposes of the Aim, 'necessary' includes mothers who make an informed choice to use breast milk substitutes.

page 1

Review Question 3: Are the MAIF Agreement processes appropriate?

NO. Please read this section in tandem with viewing the PowerPoint presentation and interview recording with members of the Breastfeeding Advocacy Australia attended on Thursday, 13 April 2023 with Allen + Clarke Consulting. A pdf copy of BAA's presentation can be found **here**.

The preamble of the MAIF Agreement states:

> 'This document sets out the obligations of manufacturers in and importers to, Australia of infant formulas and gives effect in Australia to the principles of the World Health Organization's *International Code of Marketing of Breast-milk Substitutes*.'

Clause 1 of MAIF is the same as Article 1: Aim of the Code.

WHO Code Article 1: Aim of the Code
The aim of this Code is to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breast-feeding, and by ensuring the proper use of breast-milk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution.

MAIF Clause 1: Aim
The aim is the 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 breast milk substitutes, when they are necessary, on the basis of adequate information and through appropriate marketing and distribution. (WHO Code Article 1)

The aim of the International Code and the MAIF Agreement are identical. However, MAIF cannot possibly achieve Article 1/Clause 1 because the scope and coverage is inadequate.

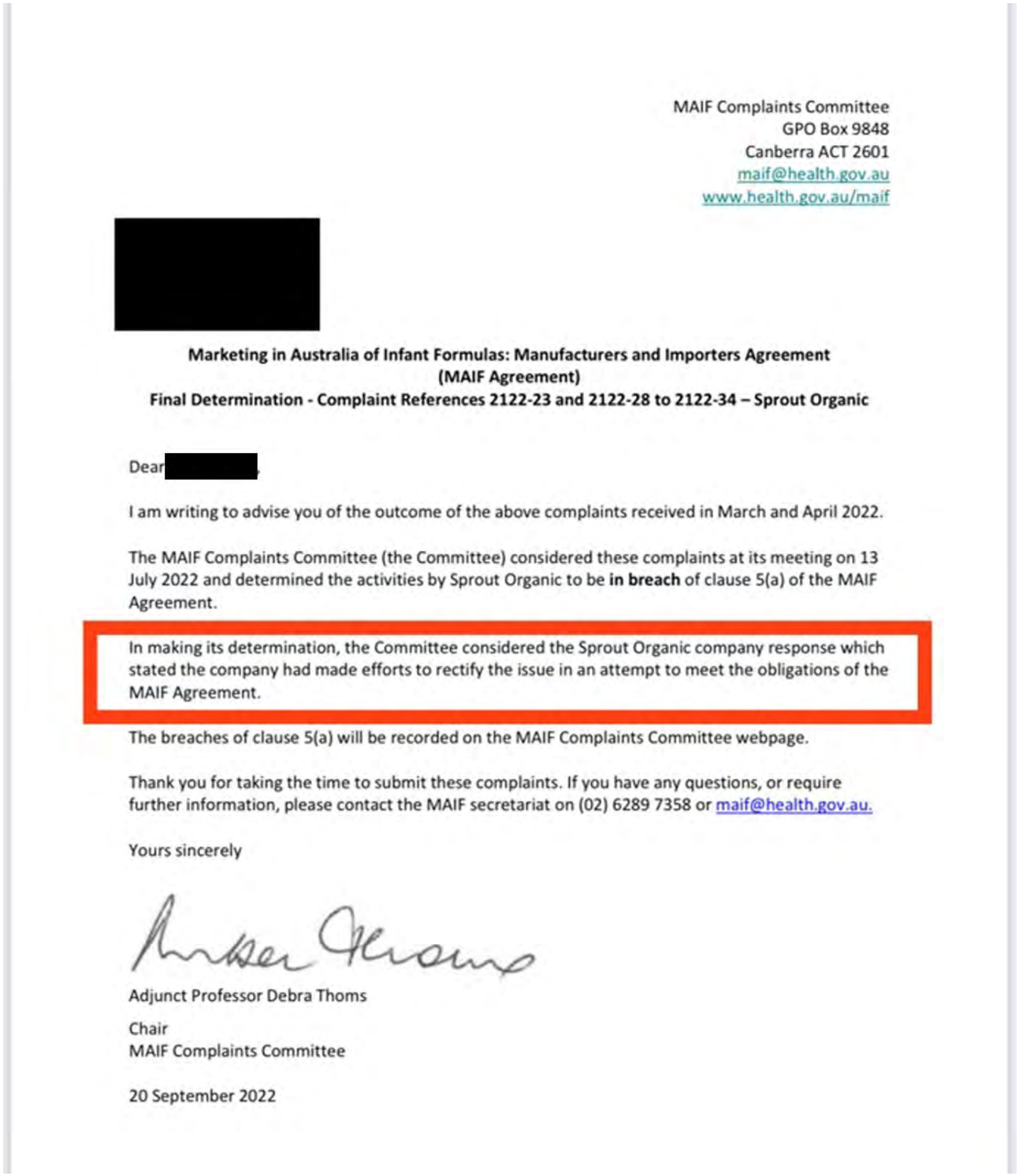
Summary of MAIF complaints submitted by BAA

Between March 2022 and April 2023, 79 complaints were submitted by BAA. The volume of violations surpasses the capacity of BAA's team of volunteers. There are too many to keep up with. Over 50 more MAIF breaches have been identified and are pending submission. The delay in our process is because volunteer breastfeeding advocates do not have enough time to invest in navigating the complicated MAIF complaints process.

Of these 79 submissions, 23 final determinations have been made by the MAIF Committee (2 letters). 16 were found in breach, seven out of scope. The explanations accompanying the determination is mostly a single sentence. No 'high-level summary' as indicated on the DoH website. See **figures 5 and 6** which are the letters received from the **Chair of the MAIF Complaints Committee, Debra Thoms**. Please note there is NO explanation as to *how* the Committee came to its decision. That is, zero transparency in the process. Further to this the complaints were submitted in March of 2022, the letter states the Committee considered these complaints at its meeting on the 13 July 2022, some **5 months** later. It took a further 2 months to send the email notification of the outcomes on 20 September 2022. A **total of 7 months** for the process to be complete (see **Figure 7**). All of the 13 found in breach of MAIF are STILL visible on their social media platforms. This is despite informing the MAIF Committee on several occasions of the ongoing nature of the breaches.

Figure 5

Determination email (1 of 2) dated 20 September 2022 – 7 months after submitting



MAIF Complaints Committee
GPO Box 9848
Canberra ACT 2601
maif@health.gov.au
www.health.gov.au/maif

[redacted]

Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement (MAIF Agreement)
Final Determination - Complaint References 2122-23 and 2122-28 to 2122-34 – Sprout Organic

Dear [redacted],

I am writing to advise you of the outcome of the above complaints received in March and April 2022.

The MAIF Complaints Committee (the Committee) considered these complaints at its meeting on 13 July 2022 and determined the activities by Sprout Organic to be **in breach** of clause 5(a) of the MAIF Agreement.

In making its determination, the Committee considered the Sprout Organic company response which stated the company had made efforts to rectify the issue in an attempt to meet the obligations of the MAIF Agreement.

The breaches of clause 5(a) will be recorded on the MAIF Complaints Committee webpage.

Thank you for taking the time to submit these complaints. If you have any questions, or require further information, please contact the MAIF secretariat on (02) 6289 7358 or maif@health.gov.au.

Yours sincerely

Adjunct Professor Debra Thoms

Chair
MAIF Complaints Committee

20 September 2022

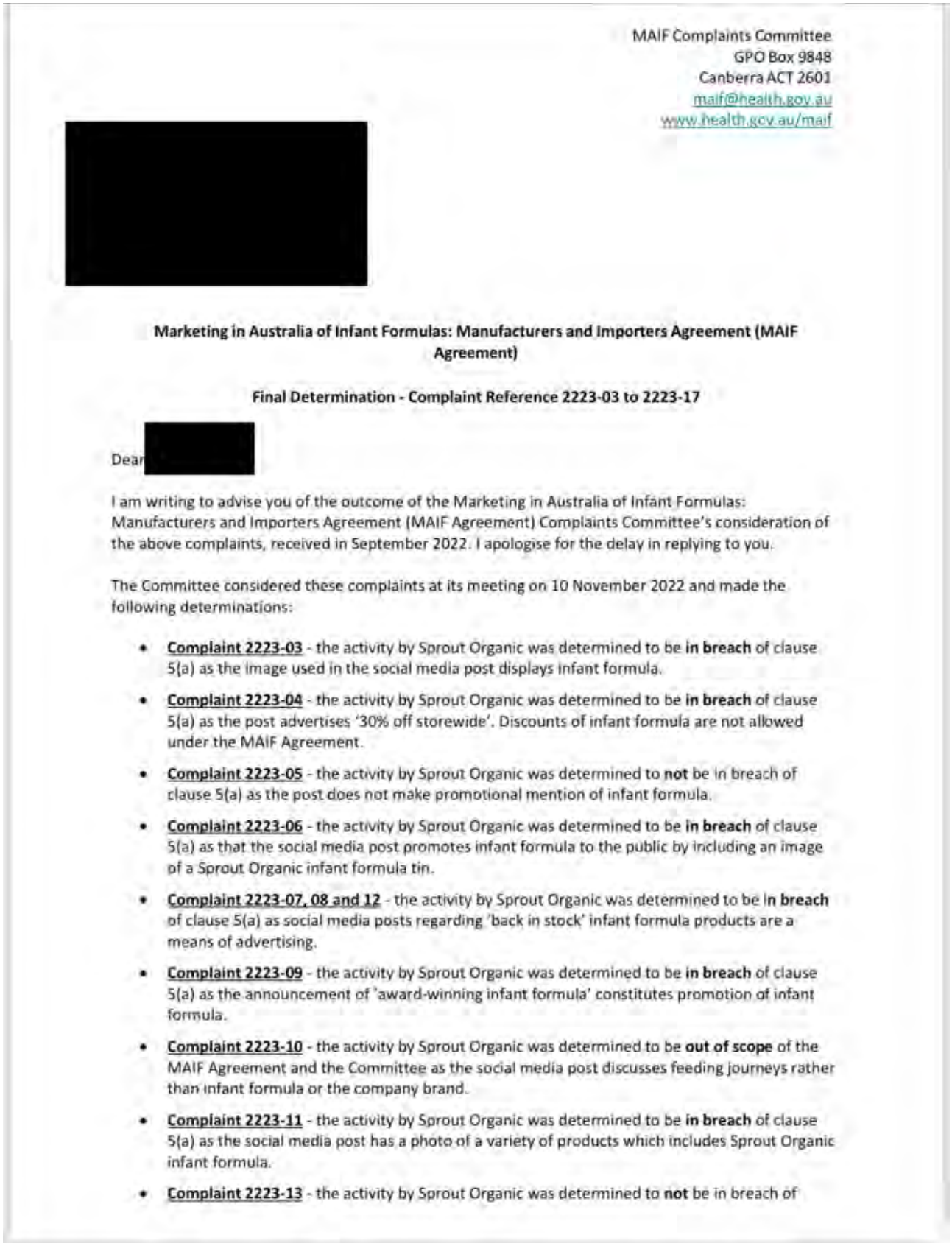
The second determination email (**Figure 6**) is in regard to 15 more complaints, the first of which was submitted in April 2022. The committee notes that the determinations were made on the 10 November 2022, **5 months** after submission. It took the chair of the committee a further **3 months** to inform BAA via email of the outcome. A **total of 8 months** for the process to be completed. The explanation for how the determination was made is a simple sentence or two and does not inform how the decision was made. That is, zero transparency in the process.

All manufacturers found in breach have continued to use the same advertising practices and have new complaints pending determination by the committee. It has been 9 months and still waiting on the outcome of 56 complaints dated from September 2022 to April 2023.

Only 1/23 final determinations are visible on the DoH website, which according to the ACCC is the ONLY penalty to companies. This means there is virtually NO penalty or deterrent for companies when advertising breastmilk substitutes. Mothers and children have NO protection.

Figure 6

Determination email (2 of 2) dated 14 February 2023 – 8 months after submitting



MAIF Complaints Committee
GPO Box 9848
Canberra ACT 2601
maif@health.gov.au
www.health.gov.au/maif

[redacted]

Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement (MAIF Agreement)

Final Determination - Complaint Reference 2223-03 to 2223-17

Dear [redacted]

I am writing to advise you of the outcome of the Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement (MAIF Agreement) Complaints Committee's consideration of the above complaints, received in September 2022. I apologise for the delay in replying to you.

The Committee considered these complaints at its meeting on 10 November 2022 and made the following determinations:

- **Complaint 2223-03** - the activity by Sprout Organic was determined to be **in breach** of clause 5(a) as the image used in the social media post displays infant formula.
- **Complaint 2223-04** - the activity by Sprout Organic was determined to be **in breach** of clause 5(a) as the post advertises '30% off storewide'. Discounts of infant formula are not allowed under the MAIF Agreement.
- **Complaint 2223-05** - the activity by Sprout Organic was determined to **not** be in breach of clause 5(a) as the post does not make promotional mention of infant formula.
- **Complaint 2223-06** - the activity by Sprout Organic was determined to be **in breach** of clause 5(a) as that the social media post promotes infant formula to the public by including an image of a Sprout Organic infant formula tin.
- **Complaint 2223-07, 08 and 12** - the activity by Sprout Organic was determined to be **in breach** of clause 5(a) as social media posts regarding 'back in stock' infant formula products are a means of advertising.
- **Complaint 2223-09** - the activity by Sprout Organic was determined to be **in breach** of clause 5(a) as the announcement of 'award-winning infant formula' constitutes promotion of infant formula.
- **Complaint 2223-10** - the activity by Sprout Organic was determined to be **out of scope** of the MAIF Agreement and the Committee as the social media post discusses feeding journeys rather than infant formula or the company brand.
- **Complaint 2223-11** - the activity by Sprout Organic was determined to be **in breach** of clause 5(a) as the social media post has a photo of a variety of products which includes Sprout Organic infant formula.
- **Complaint 2223-13** - the activity by Sprout Organic was determined to **not** be in breach of

clause 5(a) as there is a line of products called 'children's nutritional drinks' in yellow tins provided to the international market. The Committee noted the social media post does not contain the terminology 'infant formula'. While this will not be recorded as a breach of the MAIF Agreement, the Committee has made recommendations to the company to try and reduce the likelihood of similar issues in the future.

- **Complaint 2223-14** - the activity by The LittleOak Company was determined to be **in breach** of clause 5(a) as the words 'baby formula' were used in the advertisement.
- **Complaint 2223-15** - the activity by Sprout Organic was determined to be **in breach** of clause 5(a) as the image used in the social media post displays infant formula.
- **Complaint 2223-16** - the activity by Sprout Organic was determined to **not** be in breach of clause 5(a) as the post does not make promotional mention of infant formula.
- **Complaint 2223-17** - the activity by Sprout Organic was determined to **not** be in breach of clause 5(a) as the words 'infant formula' and the age range on the tin are not visible.

The Committee has written to Sprout Organic and The LittleOak Company to inform them of these determinations in relation to the MAIF Agreement.

Thank you for taking the time to submit these complaints. If you have any questions or require further information, please contact the MAIF Secretariat on (02) 6289 7358.

Yours sincerely

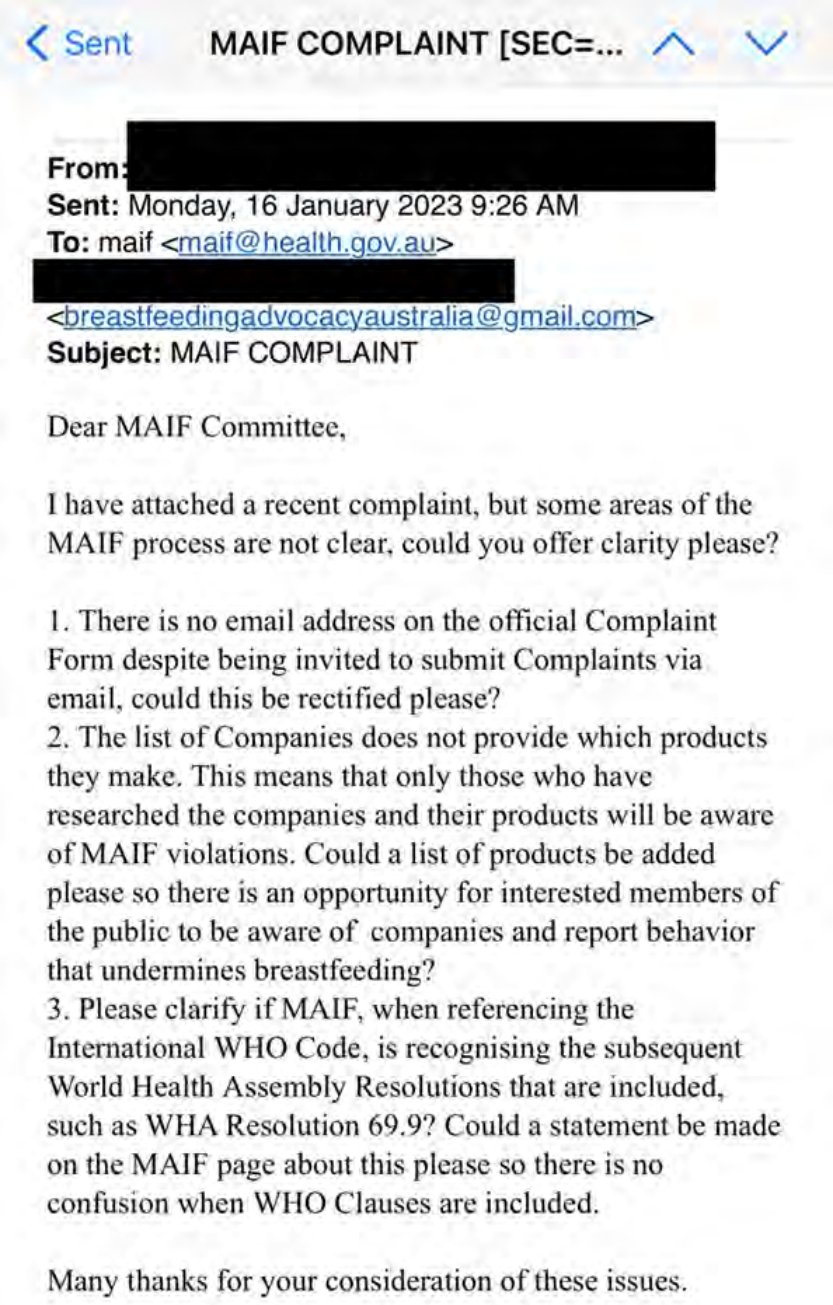
Professor Debra Thoms
Chair
MAIF Complaints Committee

14 February 2023

The Department of Health has been alerted to the persistent breaches and continued advertising of those found 'in breach' on dozens of occasions and never replied. No explanation at all, our complaints simply ignored with the exception of one reply in October 2022 to inform BAA the DoH would be meeting in November 2022 to discuss our concerns and of the intention to plan a review of the MAIF Agreement which will undertake a comprehensive review of the scope and processes of the MAIF Agreement. BAA requested the outcome of the November meeting via email and did not receive a reply until March 2023 when this review by Allen + Clarke Consulting was announced.

BAA made a list of enquiries regarding the complaints process on 16 January 2023, see **Figure 7**. BAA never received a reply.

Figure 7
Email to MAIF Committee dated 16 January 2023 to which there was no reply.



Sent MAIF COMPLAINT [SEC=...

From: [redacted]
Sent: Monday, 16 January 2023 9:26 AM
To: maif <maif@health.gov.au>
[redacted]
<breastfeedingadvocacyaustralia@gmail.com>
Subject: MAIF COMPLAINT

Dear MAIF Committee,

I have attached a recent complaint, but some areas of the MAIF process are not clear, could you offer clarity please?

1. There is no email address on the official Complaint Form despite being invited to submit Complaints via email, could this be rectified please?
2. The list of Companies does not provide which products they make. This means that only those who have researched the companies and their products will be aware of MAIF violations. Could a list of products be added please so there is an opportunity for interested members of the public to be aware of companies and report behavior that undermines breastfeeding?
3. Please clarify if MAIF, when referencing the International WHO Code, is recognising the subsequent World Health Assembly Resolutions that are included, such as WHA Resolution 69.9? Could a statement be made on the MAIF page about this please so there is no confusion when WHO Clauses are included.

Many thanks for your consideration of these issues.

The lack of communication and action from the Committee, and the DoH regarding these serious breaches of human rights is unacceptable and a betrayal to mothers and children.

Further examples of email communication to the MAIF Secretariat can be found in Appendix 1. As discussed above, all but one were ignored by the MAIF Committee.

MAIF Funding

In 2020 BAA submitted a Freedom of Information request to the Department of Health seeking to find a breakdown of operating costs, and employees/time allocated to MAIF. In the financial year ending 2019 the sum of $4982 was estimated, and 50% of the resources were allocated in travel/logistics costs! In the financial year ending 2020 the sum of $10,966 was estimated, and a similar value allocated to travel/logistics being 22% of total costs. These figures vary significantly without identifying where the changes were attributed.

The minute number of resources, planning and budget allocated to MAIF is evidence it is ineffective and nothing more than a token gesture to make it look like the Australian Government is committed to the International Code implementation and the ANBS. The level of investment by the Australian Government reflects their blatant disregard for the health and human rights of mothers and children.

Figure 8

Source: email correspondence from DoH to BAA

Thank you for enquiring about the operating costs of the MAIF Complaints Committee (Committee) in 2018-19 and 2019-20.

The following table and accompanying explanatory notes provide information about the operating costs of the Committee. All costs are borne by the Department (the industry's contribution is in-kind only).

Period	Sitting fees	Travel/logistics costs	Totals
2018 – 19	$2,574.00	$2,408.16	**4,982.16**
2019 – 20	$9,003.00	$1,963.31	**10,966.31**

Explanatory notes:

Remuneration / sitting fees

- Not all non-statutory committee members are eligible for remuneration.
- Members representing organisational interests are not eligible for remuneration. As such, the Committee industry representative is not remunerated.
- Members already receiving salary from their employer for participation on the Committee are not eligible for remuneration. The Independent Chair of the Committee was employed by the Australian Government Department of Health during 2018-19 and as such did not receive sitting fees for Committee meetings during that financial year (but did in 2019-20 after she left the Department).

Secretariat costs

- Secretariat support for the Committee is provided by staff of the Australian Government Department of Health. As such the cost of secretariat support is absorbed into the Department's human resourcing, so I cannot calculate an exact figure of secretariat costs.
- However, to provide you with an idea of resourcing for secretariat support, I note that three staff members provide Committee secretariat support as a part of their day to day responsibilities. The proportion of time each staff member spends on secretariat support varies according to a number of factors, for example additional preparatory work is required as each MAIF Complaints Committee meeting approaches.

I trust this information is of assistance.

Review question 4: Is the voluntary, self-regulatory approach fit for purpose or are there alternative regulatory models?

No, the voluntary self-regulatory approach is not fit for purpose. **Yes**, there are alternatives.

The European model law endorsed by WHO is a robust regulatory framework that countries can use and add whatever they need to protect mothers and children from exploitative marketing that undermines successful breastfeeding. It can be found **here**. It states:

> 'The International Code of Marketing of Breastmilk Substitutes and subsequent Resolutions by the World Health Assembly, along with the 2016 WHO Guidance on ending the inappropriate promotion of foods for infants and young children provide the regulatory framework to put an end to unethical marketing practices. This policy brief provides step-by-step guidance on how to review the current level of national implementation of these instruments and then proceed to strengthen measures and establish effective systems for implementation and enforcement. This includes the use of a '**model law**' developed specifically for the Region to demonstrate what effective regulations should look like.'

The 2016 WHO *Guidance on ending the inappropriate promotion of foods for infants and young children* should be used in tandem with the model law and can be found **here**. It states:

> 'In 2016, the World Health Assembly approved the WHO *Guidance on ending the inappropriate promotion of foods for infants and young children*.
>
> 'The Guidance aims to protect breastfeeding, prevent obesity and chronic diseases, and to promote a healthy diet. In addition, the Guidance aims to ensure that parents and other caregivers receive clear and accurate information on the best way to feed their infants and young children.
>
> 'To assist countries in achieving these aims, the Guidance lays out several recommendations for controlling the marketing of foods and beverages targeted toward children under the age of 36 months, with the goal of protecting breastfeeding, preventing obesity and chronic diseases, and promoting a healthy diet.'

In November 2023, the World Health Organization (WHO) released a new *Guidance on regulatory measures aimed at restricting the digital marketing of breast-milk substitutes*. This guidance is designed to help WHO Member States develop and implement regulations that apply the *International Code of Marketing of Breast-milk Substitutes* to digital environments. It provides 11 recommendations for countries to follow in order to curb the promotion of breast-milk substitutes through online channels and social media platforms. This guidance underscores the importance of protecting breastfeeding and ensuring that marketing practices do not undermine it, especially in the digital age (**Baby Feeding Law Group UK**).

Review question 5: What are the benefits, costs and any limitations of changes and expansion of the agreement scope, alternative regulatory models and MAIF Agreement processes?

Below is a brief summary. For detail the ANBS 2019 and literature review that preceded its publishing should be read, together with all the WHO, UNICEF, IBFAN–ICDC and peer-reviewed literature referenced in this report.

International Code Implementation

Legislation of the International Code and regulatory measures that limit the marketing of breastmilk substitutes, is a **cost-effective strategy** for the Government and Department of Health to tackle while working within budget constraints. This, however, must be **coupled with** effective coordination, monitoring and enforcement and evaluation.

ANBS Implementation

The **ANBS** suggests removing GST exemption from all foods, including infant formulas, aimed at infants and young children as a disincentive to use artificial formulas and other ultra-processed packaged foods aimed at infants and young children. It is noteworthy that there is a potential to widen the gap in health equity between the most disadvantaged and least disadvantaged by removing GST exemption, as the highest rate of non-exclusive breastfeeding is among mothers in low socioeconomic households. This can be offset by providing a minimum 6 months maternity leave, affordable and accessible child care, and **workplace protection**, including paid lactation breaks and safe place to store milk or breastfeed. This is particularly important for Indigenous mothers who have lower initiation and exclusive breastfeeding rates and poorer health outcomes than non-Indigenous mothers. They are **4.6 times more likely to die** in the early postpartum than non-Indigenous mothers too. Countries that have implemented WHO Code legislation have significant improvements in exclusive breastfeeding rates and duration. For example, in 2009 Vietnam's exclusive breastfeeding rates were 20%. With Code **legislation** and other coordinated measures to promote breastfeeding implemented, rates rose to 62% by 2014.

WBT*i*

World Breastfeeding Trends Initiative (**WBT*i***) ranked Australia third last out of the 98 countries that have implemented the reporting system. WBT*i* identified that there has been no comprehensive national infant feeding data collected in Australia since 2010, when exclusive breastfeeding rates at 5 months of age (less than 6) were only 15%. **Regular** data collection and reporting are essential to measure success of any interventions, such as increasing marketing regulations.

See Appendix 2 for WBT*i* Australia report card and key recommendations.

Burden of disease associated with inappropriate use of breastfeeding substitutes

Globally, exclusive breastfeeding to 6 months of age can prevent the death of over 820,000 babies and reduce diarrhoeal illness by half and cut one-third of all respiratory infections. It is estimated that over 20,000 **maternal deaths** due to breast and ovarian cancers can be **prevented** too, most of which occur in high income countries like Australia.

Breastfeeding **prevents malnutrition** in all its forms, including under and over nutrition and is associated with positive health outcomes for mothers and babies. Children who are not breastfed are at an increased risk of sudden infant death syndrome (SIDS), respiratory and gastrointestinal infections, acute ear infection, asthma, type 1 and 2 diabetes, overweight and obesity, leukaemia. Breastfeeding mothers experience longer periods of amenorrhea, leading to greater child spacing and lower post-partum weight retention. They also have a **reduced risk** of breast cancer, ovarian cancer, hyperlipidaemia, hypertension, cardiovascular disease, type 2 diabetes and maternal depression.

Breastfeeding is not only important during the first 6 months where it is recommended to be exclusive. From 6 months and up to 2 years and beyond breastfeeding still plays a **key role** in nutrition, child development – both immunologically and socially. From 6 to 12 months breastfeeding provides up to half an infant's nutritional requirements, and from 12 months to 2 years one-third. Importantly, breastfeeding reduces child morbidity and mortality beyond 6 months of age by providing nutrients and immune protection, while **reducing the risk** of malnutrition.

Society also benefits if breastfeeding is exclusive to 6 months with continued breastfeeding to 2 years or beyond. This is due to the **reduced burden on the health and social system** because of fewer illnesses and infections, and more positive cognitive outcomes associated with breastfeeding.

In Australia, decisions about infant feeding are shaped by cultural norms which are heavily influenced by marketing. Overcoming the **bottle-feeding culture** to promote breastfeeding will be a challenge for policymakers and governments. Mothers globally do not have adequate maternity protections that enable them to breastfeed according to recommendations. In Australia the number one reason mothers stop breastfeeding under 12 months is impending **return to work**.

Because Australia has no International Code legislation, and MAIF is completely ineffective, health workers are often trained by industry representatives in matters of infant feeding. There is a **gap in knowledge** by primary care health professionals regarding breastfeeding and many cite **personal experience** as the basis for recommendations to mothers. This is evident with one in three infants being given **powdered milk** formula before their first birthday and only one in ten children are eating in alignment with Australian dietary guidelines. Furthermore, only one in twenty children are meeting WHO **breastfeeding** recommendations.

Breastmilk and other locally sourced, affordable homemade foods that are nutrient dense should form the basis of an infant's diet. Infants and young children constitute a particularly **vulnerable group** due to underdeveloped immune and digestive systems, which is why the

usual marketing regulations on foods are inadequate. Aggressive marketing of foods targeted at infants under 6 months old displaces important breastmilk and compromises the health of the child. After 6 months of age and beyond, breastfeeding continues to play an important role in infant health and nutrition which is why marketing of complementary foods must be **regulated**. Unethical and exploitative marketing has been shown to create an over reliance on food that is highly processed, nutritionally incomplete and comparatively expensive. This is why marketing, idealising breastmilk substitutes and complementary foods as convenience items as equal to or superior to breastfeeding, is problematic and contributes to **malnutrition**.

Preventing childhood obesity during the early years presents a significant opportunity for government intervention to address lifelong outcomes. Evidence indicates that investing in the First 2000 Days, spanning from conception to around 5 years old, is critical as the majority of excess weight in childhood is gained before children begin school in Australia. According to the 2017–2018 Australian National Health Survey, 24.6% of children aged 2 to 4 years were classified as overweight or obese. Unfortunately, children under the age of 5 years in Australia do not meet the recommended dietary guidelines, with discretionary food choices contributing roughly one-third of energy intake for children aged 2 to 3 years. While the First 2000 Days are increasingly recognised internationally as crucial for preventing obesity, most national policies aimed at preventing **childhood obesity** have focused on school-aged children thus far. Enacting robust International Code and subsequent relevant WHA resolutions into national legislation is a significant opportunity for the Australian Government to safeguard the health of Australia's children.

There are a small number of medical conditions that preclude a mother from breastfeeding her baby and so special breastmilk substitutes should be available to these mothers to purchase. The distinction should be **made** between medical reasons and the choice not to breastfeed. It is the mothers right to choose not to breastfeed. However, no one else has the right to take that decision away from her. Therefore, decisions made about infant feeding should be free from **commercial** interests. Restrictions placed on marketing of breastmilk substitutes do not prohibit their use, they allow a caregiver to make an informed decision without **marketing spin**.

The impact of climate change and emergency preparedness on infants

The WHO Code is essential not only for overseeing and regulating marketing in emergencies but also for ensuring the survival and protection of infants and young children. The Code of Marketing of Breast-milk Substitutes, along with subsequent World Health Assembly resolutions, forms the foundation for all emergency responses. It safeguards breastfeeding and ensures that non-breastfed infants receive safe nutrition and are protected from exploitation through legislation.

Climate change is increasing the frequency and severity of natural disasters, making formula-fed infants particularly vulnerable to disease and death. This vulnerability arises from the difficulty in accessing **clean water** and electricity required for formula preparation. The 2019 bushfires and 2022/2023/2024 floods in Australia demonstrated that natural disasters, exacerbated by global warming, affect even wealthy countries. Infant formula cannot be safely prepared in emergency settings due to the need for boiling water, sterilising equipment and maintaining clean preparation spaces. Formula milk powder contains harmful bacteria that must be killed with previously boiled water at no less than 70 degrees Celsius. In contrast, breastfeeding offers a safe, easily transportable food source with no supply chain issues.

'In emergencies, breastfeeding can make the difference between life and death for babies.'

~ United Nations Children's Fund (UNICEF)

The Food and Agriculture Organization (FAO) and the World Health Organization (WHO) have expressed concern about the safety of infant formula preparation, noting that **unsafe practices** are common even in developed countries like Australia. They state:

> 'Based on the available data, the meeting concluded that FUF is commonly consumed by infants less than 6 months of age in both developing and developed countries, despite existing regulations and label recommendations. Data from developed countries also showed that a substantial percentage of caregivers to infants do not use basic hygiene and the recommended procedures within their country for safely preparing and feeding infant formula. It is likely that infant caregivers in developing countries, where hygiene and cooling require greater effort, do not have safer practices than those in developed countries. This suggests that a substantial proportion of caregivers to infants worldwide fail to follow all of the preparation and feeding practices recommended to reduce the risks of microbiological hazards associated with a non-sterile product.'

This serious risk should form the basis of recommendations to change mandatory labelling on infant formula tins to WHO standards, NOT to keep with manufacturers' guide, as the latter often prioritise ingredients like probiotics and DHA over safety. WHO standard temperatures ensure harmful contaminants and bacteria are killed during preparation – a standard which is not met by Australian labelling of infant formula. Correct labelling becomes crucial in emergencies to prevent common illnesses such as gastrointestinal sickness, diarrhea, and pneumonia.

Infant feeding in emergencies requires careful consideration of the specific safety needs of both breastfeeding and formula-fed infants. Breastfeeding infants depend on close proximity

to their mothers for immune protection. Formula-fed infants face increased risks from environmental pathogens due to the need for sterile conditions in formula preparation.

Hydration is critical for breastfeeding mothers. During recent floods, breastfeeding mothers were often advised to use formula instead of being provided with hydration support, undermining their ability to breastfeed and compromising long-term health outcomes for both mother and baby.

The inappropriate marketing of breastmilk substitutes in emergencies raises legal and ethical concerns. The Australian Government must adhere to UNICEF's ***Operational Guidance*** *for Infant and Young Child Feeding in Emergencies* (IYCF-E) to avoid potential lawsuits and ensure the safety of infants. The use of breastmilk substitutes (BMS) should be a last resort, with a focus on relactation, wet nursing, and donor human milk, supported by skilled assistance.

> *'Governments and agencies should have up-to-date policies which adequately address all of the following elements in the context of an emergency.'*
>
> **~ IFE Core Group, UNICEF**

Governments and agencies need updated policies that address all elements of infant feeding in **emergencies**. Skilled assessment and support are crucial, and untrained NGO oversight is insufficient. All involved in emergency response, including military, police, health workers, and community breastfeeding supporters, must be familiar with the WHO Code and the ten steps for safe infant feeding.

Sustainability

In 2015 a study concluded that greenhouse gases produced from powdered milk formula and powdered toddler drinks in just six Asia–Pacific countries was the equivalent of 9 billion kilometres of car travel – most of the **emissions** coming from toddler drink. Noteworthy is that toddler drinks and other powdered milk products grouped as growing up milks (GUMs) have been identified by WHO as unnecessary and potentially harmful due to high sugar content and being an **ultra-processed food substitute** that displaces breastmilk and home cooked, locally sourced family foods. Additionally, it is estimated that **4,000 litres** of water are required to make just one tin of formula. With global water scarcity crisis, it is **not sustainable** to continue to manufacture and export these environmentally damaging products.

Breastfeeding is considered sustainable for numerous reasons, beginning with its minimal environmental impact. It requires no packaging, shipping, or manufacturing, thereby conserving resources and reducing energy consumption. In contrast, formula production involves significant processing, packaging, and transportation, contributing to **pollution and resource depletion**. Additionally, breastfeeding generates no waste, whereas formula feeding produces **disposable bottles, teats, and packaging**, all of which contribute to landfill waste.

From a health perspective, **breastfeeding provides complete nutrition** essential for an infant's growth and development, including antibodies that protect against infections and diseases, which reduces the need for medical interventions. This reduction in healthcare needs also lessens the environmental burden associated with medical care. Furthermore, breastfeeding is linked to lower risks of chronic conditions like obesity, diabetes, and

cardiovascular diseases later in life, fostering a healthier population that demands fewer medical resources over time.

Economically, **breastfeeding offers significant cost savings for families** by eliminating the need to purchase formula and reducing healthcare expenses due to better health outcomes for both mothers and infants. Additionally, because breastfed infants tend to experience fewer illnesses, parents miss less work, enhancing economic productivity and stability.

Socially, breastfeeding empowers women by enabling them to provide for their infants naturally and sustainably. It also fosters a strong bond between mother and child, yielding **long-term social and emotional benefits**. In emergency situations, breastfeeding provides a reliable source of nutrition that does not depend on clean water, electricity, or supply chains, ensuring food security for infants and proving particularly advantageous when access to resources is compromised.

Overall, breastfeeding is a sustainable practice that benefits the environment, economy, health, and society by reducing waste, conserving resources, promoting health, saving costs, and providing reliable nutrition in emergencies.

Infant Formula Contamination: Legal and Health Implications

There have been several significant lawsuits in the United States regarding bacterial contamination of infant formula, leading to illnesses and deaths. The primary focus has been on Abbott Nutrition's Similac and Mead Johnson's Enfamil products. Key issues include:

1. *Cronobacter Sakazakii* contamination: Abbott faced a major recall of its powdered infant formula products after reports of **contamination** with ***Cronobacter sakazakii***. This bacterium can cause severe infections, including sepsis and meningitis, which are particularly dangerous for infants. According to the FDA, this contamination has been linked to at least **four hospitalisations** and **two deaths**. The FDA found contamination at Abbott's facility in Sturgis, Michigan, prompting the recall and subsequent **lawsuits**.
2. Necrotising enterocolitis (NEC): Lawsuits have also been filed against Abbott and Mead Johnson (maker of Enfamil) for failing to warn about the risk of **NEC**, a serious gastrointestinal condition, in premature infants fed with their formulas. NEC can lead to tissue death in the intestines and is potentially fatal. Parents allege that the companies knew or should have known about the **risks** but continued to market the formulas as safe.
3. Class action and individual lawsuits: Numerous individual lawsuits and a class action have been filed. The class action lawsuit, for example, involves allegations of strict product liability and breach of warranty. Plaintiffs claim significant financial losses and emotional distress due to injuries or deaths caused by the **contaminated formulas**.

The **litigation** is ongoing, with some trials expected to start soon. Abbott maintains that their products are safe and beneficial for infants, despite the allegations and recalls.

Ultra-processed food powder, NOVA category 4: Infant formula, toddler drinks, GUMs

The NOVA food classification system is a widely used tool for categorising foods based on the degree of processing they undergo. This system classifies foods into four categories, with category 1 being unprocessed or minimally processed foods, and category 4 being ultra-processed foods. Infant formula is considered an **ultra-processed food** and falls under NOVA category 4.

Infant formula is a powder made from a combination of ingredients such as milk proteins, carbohydrates, and vegetable oils. These ingredients undergo extensive processing, including heating, drying, and chemical treatment, in order to create a product that meets the specific nutritional needs of infants. Ultra-processed foods like infant formula are defined as foods that undergo multiple industrial processes and artificial ingredients. **UPF4 foods**, which includes infant formula and GUMs are typically highly palatable, energy-dense, and are associated with a range of **negative health outcomes**, including obesity, type 2 diabetes, heart disease, and associated with increased risk of **all-cause mortality**.

Infant formula falls into the ultra-processed food category because it is a product that has undergone multiple processing steps, including the use of industrial chemicals and heating processes, and contains added sugars and fats. Furthermore, infant formula is marketed as a substitute for breastmilk, a minimally processed food that is recommended as the optimal source of nutrition for infants. While infant formula is a useful product for infants who cannot be breastfed, it is important to recognise that it is a highly processed food that should be used as a substitute for breastmilk only when necessary.

Sugar-sweetened beverages tax policy

The sugar-sweetened beverage tax policy has been implemented in many countries around the world as a means of reducing the consumption of sugary drinks and combating the negative health effects associated with them, such as obesity, diabetes, and tooth decay. While the focus of this policy has primarily been on carbonated soft drinks and other similar beverages, there is a growing concern that toddler milk drinks and growing up milks should also be included in this policy.

Toddler milk drinks and growing up milks are marketed as specialised 'formulas' designed to meet the nutritional needs of young children and are often marketed to parents as a healthy alternative to regular milk or other beverages. However, many of these products contain high levels of added sugars, which can have negative health consequences when consumed regularly.

In fact, a recent study by the World Health Organization found that some toddler milk drinks contained more sugar per serving than a can of soda, and that some growing up milks contained as much sugar as a chocolate bar. This high sugar content can contribute to the development of childhood obesity, tooth decay, and other health problems.

Therefore, it is important that these products be included in the sugar-sweetened beverage tax policy, in order to discourage their consumption and promote healthier choices for young children. By implementing this policy, Australia can help to reduce the negative health impacts of sugar-sweetened beverages and ensure that young children are getting the nutrition they need to grow and develop in a healthy way.

The ***World Health Organization manual on sugar-sweetened beverages tax policies to promote healthy diets*** provides guidance to policymakers on how to design and implement effective taxes on sugary drinks. While the focus of the manual is primarily on reducing the consumption of sugar-sweetened beverages, its recommendations can also have a positive impact on breastfeeding rates in Australia.

The revenue generated from the tax can be used to fund programs that support breastfeeding, such as workplace lactation programs, and breastfeeding education programs at childcare centres. By investing in these programs, policymakers can help to create a more supportive environment for breastfeeding in Australia, which can lead to higher rates of exclusive breastfeeding and improved health outcomes for mothers and children.

IYCF indicators include sugar-sweetened beverages

Infant and young child feeding (IYCF) refers to the practices of feeding infants and young children aged 0 to 23 months. The practices of feeding infants and young children have a direct impact on their health, development, and nutrition, and ultimately their chances of survival, especially for those aged 0 to 23 months. Therefore, improving these feeding practices is crucial for promoting better health, nutrition, and development. The World Health Organization (WHO) has provided guiding principles for feeding breastfed and non-breastfed children aged 6 to 24 months, which offer global guidance on optimal feeding practices to support the growth, health, and behavioural development of young children. To monitor progress and support programmatic action, a set of eight core and seven optional **indicators** for assessing infant and young child feeding practices were recommended in 2008, which have since become the standard for data collection and reporting on these practices worldwide.

Sweet beverages include:

- Commercially produced and packaged sweetened beverages (e.g., soda pop, fruit-flavoured drinks, sports drinks, chocolate and other **flavoured milk drinks**, malt drinks).
- 100% fruit juice and fruit-flavoured drinks, whether homemade, sold by informal vendors, or packaged in cans, bottles, boxes, sachets, etc.
- Homemade drinks of any kind to which sweeteners (e.g., sugar, honey, syrup, flavoured powders) have been added.

Policymakers and government departments can utilise the data to strengthen justification for including infant formula (0 to 12 months), toddler drinks (12 to 36 months), growing up milks (36 months+) and other UPF4 powdered milk drink products into future **SSB tax policies**.

Current status of the MAIF Agreement

In re-authorising the MAIF Agreement in 2021, the ACCC found that:

- It 'is likely that direct advertising and broader promotion of infant formula, such as through direct contact with parents, medical facilities and social media influencers, would increase in the absence of the MAIF Agreement'.
- Given the long-standing operation of the MAIF Agreement, it 'is likely to contribute to an industry norm of behaviour that infant formula is not marketed in Australia, which appears to constrain the advertising behaviour of both signatory and non-signatory infant formula manufacturers' (ACCC, 2021).
- The 2012 Review noted that the effectiveness of the MAIF Agreement may be limited due to poor awareness and a lack of consistency in understanding of the WHO Code and MAIF Agreement in the community, particularly among healthcare professionals. It was suggested that the MAIF Agreement needs to be more widely disseminated to improve awareness and understanding among healthcare professionals. This could be achieved by the development of a comprehensive website or general education and media content, as well as harnessing existing professional development pathways to educate health professionals (Nous Group, 2012).
- Views on the effectiveness of the MAIF Agreement were highly polarised. Non-industry stakeholders largely considered the MAIF Agreement to be ineffective and not fit for purpose, and industry stakeholders described it as effective in achieving its aims.
- The majority of survey respondents (71.4%) viewed the MAIF Agreement as ineffective in achieving its aims, while less than 20% of survey respondents considered the MAIF Agreement to be effective.

Stakeholder views relating to the ineffectiveness of the MAIF Agreement included that (ACCC, 2021):

- The MAIF Agreement does not reflect international best practice on infant feeding and does not fully deliver on international agreements (i.e., the WHO Code and subsequent WHA resolutions).
- The MAIF Agreement is voluntary and not all manufacturers/suppliers are signatories.
- Monitoring of compliance is inadequate and there are insufficient deterrents and penalties for breaches.
- Widespread marketing of infant formula may still occur, particularly on social media platforms, through cross-promotion (via similar packaging/design and line extension), and via retail product promotions and price discounting.
- There is a conflict of interest in relation to industry representation on the MAIF Complaints Committee.

A list of signatories of the MAIF Agreement (as at July 2024) can be found in Appendix 3.

Developments since authorisation last granted

Developments in Australia

The independent review of the MAIF Agreement, conducted by Allen + Clarke consulting, found that (Allen + Clarke, 2024):

The MAIF Agreement should be implemented alongside other policy measures and strategies to ensure safe and adequate nutrition for infants.

> 'Several stakeholders indicated that the MAIF Agreement should not be perceived as a standalone mechanism and should be integrated with other policies and strategies, including the NHMRC Infant Feeding Guidelines, the Australian National Breastfeeding Strategy: 2019 and Beyond, the Food Standards Code, the Baby Friendly Health Initiative, and the Breastfeeding Friendly Childcare Program. The Early Years Strategy provides one mechanism to connect the MAIF Agreement to these other strategies. The Review heard that a range of levers should be utilised to increase breastfeeding rates in Australia, and that these strategies should be aligned and consistent.
>
> 'The existing regulatory model is no longer fit for purpose for regulating the marketing of infant formula in Australia. It currently lacks broad community support and trust, burdens a large proportion of compliance costs on volunteers (mainly women), and does not include all marketers of infant formula.
>
> 'A new regulatory model should be established to address the inadequacies of the existing model in order to promote confidence in the information disclosure settings for infant formula, and to foster better health outcomes for Australians. There are different regulatory models the Australian Government could adopt, including quasi-regulation, co-regulation, and statutory regulation. This chapter outlines these options, and broadly reflects on their benefits and costs to the Australian community. Of the regulatory options outlined, a prescribed mandatory code is recommended.'

According to the independent review of MAIF, 'Enforcement-based regulation' is recommended whereby participation in the regulatory regime would be mandatory. This option most closely aligns with the views expressed by the public health officials, academics, and breastfeeding and public health advocates to the MAIF review. Prescribed mandatory codes are legally binding on all industry participants specified within that code. Mandatory codes can be used to identify the specific behaviours in an industry that should be prevented and to better ensure risk is allocated efficiently between the parties to enhance market operation.

Developments globally

Cambodia:

From 2019 to 2022, the Ministries of Health and Commerce, with support from Helen Keller International, WHO, UNICEF, and Alive and Thrive, trained 302 Code monitors. Staff from the two ministries carry out monthly inspections at point-of-sale locations and health facilities, although inspections slowed down in 2020 as a result of the COVID-19 pandemic. Monitors submit their monthly reports via mobile phone, highlighting violations. In addition to official monitoring, efforts are underway to make it easier for civil society and private citizens to report Code violations. An internet-based reporting tool was launched in late 2021, with support from World Vision International, but uptake has been slow. Violation reports have also been submitted by civil society organisations.

'The Cambodian experience demonstrates that a comprehensive, systematic approach to monitoring and enforcing Code legislation is possible within existing government systems. Key to Cambodia's success was the involvement of a range of organizations, high level commitment, and the support of civil society.'

~ International Code of Marketing of Breastmilk Substitutes: Status Report 2022

Summary of the **Global breastfeeding scorecard 2023: Rates of breastfeeding increase around the world through improved protection and support**.

- Sierra Leone adopts a national decree on the Code of marketing of breastmilk substitutes Sierra Leone has made dramatic improvements in breastfeeding, increasing the rate of exclusive breastfeeding from 32% in 2013 to 51% in 2021. In response to rampant marketing of formula, the country passed the Breastmilk Substitutes Act in 2021 to protect breastfeeding and support the gains made in increasing breastfeeding rates. The Act is closely aligned with the Code, including virtually all its provisions.
- Case studies in Kenya, Pakistan, Serbia, Sierra Leone, and Viet Nam illustrate major policy and programmatic advances in protecting and supporting breastfeeding.
- Kenya guarantees breastfeeding breaks at the workplace
  In 2017, the Kenya Parliament passed the Health Act 2017, which advanced the breastfeeding rights of Kenyan mothers in the workplace. It requires that all employers with a minimum of 30 staff:
  - Establish breastfeeding stations with the necessary equipment and facilities
  - Strictly prohibit promotion, marketing, or selling of breastmilk substitutes in the breastfeeding stations
  - Grant breastfeeding employees paid breaks for meals, breastfeeding, or breastmilk expression for up to one hour of every eight-hour working period. Kenya's rate of exclusive breastfeeding jumped from 32% in 2008 to 60% in 2022.
- Pakistan scales up skilled breastfeeding counselling
  In Pakistan, IYCF counselling services rebounded, following significant disruptions in 2020 due to the COVID-19 pandemic. In 2021, 7.8 million mothers and caregivers received IYCF counselling through health facilities and in communities – a more than five-fold increase from 1.4 million in 2020. More than 10,720 healthcare providers built their capacity to provide IYCF counselling via the UNICEF comprehensive

training package. Some 7,735 community-led peer support groups were established as well. Pakistan has seen an increase in exclusive breastfeeding rates from 38% in 2013 to 48% in 2018.

- Serbia reinforces health systems implementing the Ten Steps
  Exclusive breastfeeding rates in Serbia increased from 13% in 2014 to 24% in 2019. The Government of Serbia passed a decree in 2018 to encourage all maternity wards, specialized institutions, and hospital departments of health institutions to have a breastfeeding policy that supports the integration of the Ten Steps to Successful Breastfeeding as a standard of care.
- Viet Nam extends paid maternity leave from 4 to 6 months
  In 2012, Vietnam's National Assembly amended its Labour Code to extend paid maternity leave from four to six months. It decided that public funds would be allocated to cover the cost to reduce the possibility that women would face discrimination in recruitment because of the longer paid leave period. Vietnam's exclusive breastfeeding rates increased from 24% in 2014 to 45% in 2020.

Factors which undermine the aims of the MAIF agreement

The MAIF Agreement does not effectively regulate marketing of Infant Formula on social media

BAA wishes to draw attention to a comprehensive scope and impact report titled ***Restricting digital marketing in the context of tobacco, alcohol, food and beverages, and breast-milk substitutes: existing approaches and policy options*** (who.int) and the ***Scope and impact of digital marketing strategies for promoting breastmilk substitutes*** which details how digital marketing strategies are used and to what extent in regard to breastmilk substitutes.

Within the Scope and Impact report, it was reiterated that the following is a stance held by the ACCC:

> 'Manufacturers market toddler milk in almost identical packaging and branding to infant formula, with numbered 'stages', as part of a consistent product line. Because of these links, advertising for toddler milk can also promote infant formula'. The packaging similarity is a way of promoting the family of products (from stage 1 to 4) and still 'technically' complying with the regulations.'

As explored below, BAA has included the concerns regarding the scope of the MAIF Agreement (regarding both product inclusions and digital marketing techniques) as well as evidence to support both the mentioned reports and the ACCC statement above.

There has been ongoing discussion surrounding what is and is not covered under the Code. There needs to be a clear, independent guideline of included products, due to the Code predating current marketing techniques. Additionally, AI needs explicit mention in the scope as it is the most current, up-and-coming technology which will have large impact in the marketing landscape in this digital era.

Products targeted for maternal use must also be included within the scope. Breastfeeding is a human right for both mother and child, and so the mother must be equally protected from the same aggressive and predatory marketing techniques. ***Convention on the Elimination of All Forms of Discrimination against Women*** recognises that governments have a duty to safeguard women's right to health by ensuring effective regulation of the marketing of breastmilk substitutes and the implementation and monitoring of the *International Code of Marketing of Breast-milk Substitutes*.

'Filmmaking' needs to be included as it is a major form of subliminal marketing. Subliminal marketing is a tactic used to influence consumer behaviour, such as the tobacco industry influence over motion pictures and the inclusion of tobacco products. It has been concluded that there is causation between young people being exposed to tobacco imagery and the uptake of smoking, hence the introduction of 'tobacco depictions' warnings. It is not necessarily a brand being marketed, but the act itself that is being promoted, which must be considered as predatory marketing due to social behaviours/choices being subconsciously manipulated by imagery. Digital marketing can create new social norms, and when these are creating poor health outcomes for a vulnerable population, there must be a firm regulatory stance on social engineering and subliminal marketing of these behaviours and products. The below images demonstrate another example of subliminal messages that the MAIF does not protect consumers against the broad scope of marketing beyond the MAIF signatories. There is still too many opportunities for the Australian consumers to be targeted by the predatory tactics of industry. It should be expected that the Code applies to the film industry and should abide by the same expectations as any other digital media. The film industry is a large contributor to digital marketing, and so it is reasonable to expect that it is explicitly recognised in the list of examples.

There needs to be universal collaboration and standards to ensure that the Code is effective in its purpose when regulating digital marketing as suggested in the ***Scope and impact of digital marketing strategies for promoting breastmilk substitutes*** report.

Marketing goes beyond a product or a tangible item or service. It must take into consideration the psychology and what behaviours, or social norms are being changed. For example, an image of a bottle or the use of the bottle-feeding emoji (the content) markets bottle feeding and implies formula use in general and is encouraging a change in behaviour – social engineering. Influential content expands the scope to include psychosocial factors.

Studies have shown evidence that the inclusion of emojis increase purchase intentions and positively correlate with consumer engagement on social media platforms. **Posts containing emojis receive 72% more likes and 70% more comments compared to those without emojis**. Emojis can guide behaviour related to health such as the **syringe emoji** used to increase awareness and encourage uptake in vaccination status during the COVID-19 pandemic. Similarly, when people encounter the bottle emoji more frequently, it reinforces the idea that bottle-feeding is the default or preferred method. This can indirectly impact societal attitudes toward breastfeeding. When people observe others using emojis to influence health choices and behaviours, it becomes normalised.

The use of symbolism on social media, especially by government departments and their representatives (see **figures 9 and10**), is concerning. When this symbolism undermines health benefits and promotes alternatives associated with multiple lifelong health risks, it can significantly impact consumer choices.

Figure 9

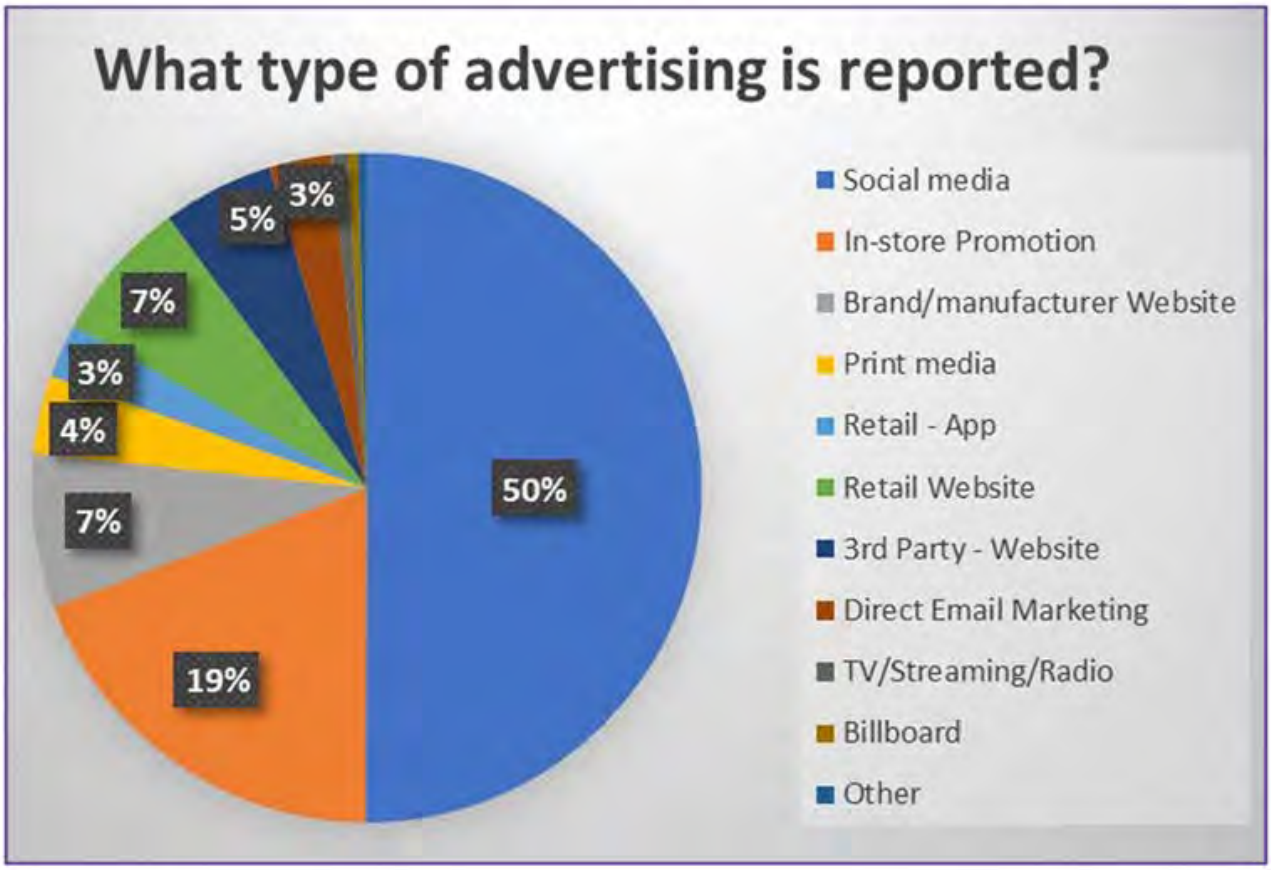
Figure 10

There is a responsibility of those in roles of leadership, businesses (including manufacturers and distributers), organisations and those who hold any form of influence over other individuals' choices, to be aware of the message they are subliminally sending. Emojis are easily understood by individuals with varying health literacy levels, and so normalising behaviours that are not in the best health interest of the public must be addressed to protect consumers.

March 2021 and December 2022:
BAA recorded approximately 3,100 examples of how breastfeeding is being undermined by commercial interests in Australia. Every week a new post is created. Group members are asked to post a picture with the date and location of the activity. Each post is entered onto a database and the picture is dated and saved into a file. Each weekly post has its own link. Contributors can interact with the group admin and there are many questions and discussions that broaden the value of Weekly Collections beyond a simple record of predatory marketing to building a community of knowledgeable advocates.

Diagram 1 demonstrates that digital marketing is making up most of the advertising techniques which consumers report as undermining breastfeeding to BAA.

Diagram 1
What type of advertising was being reported during this timeframe?

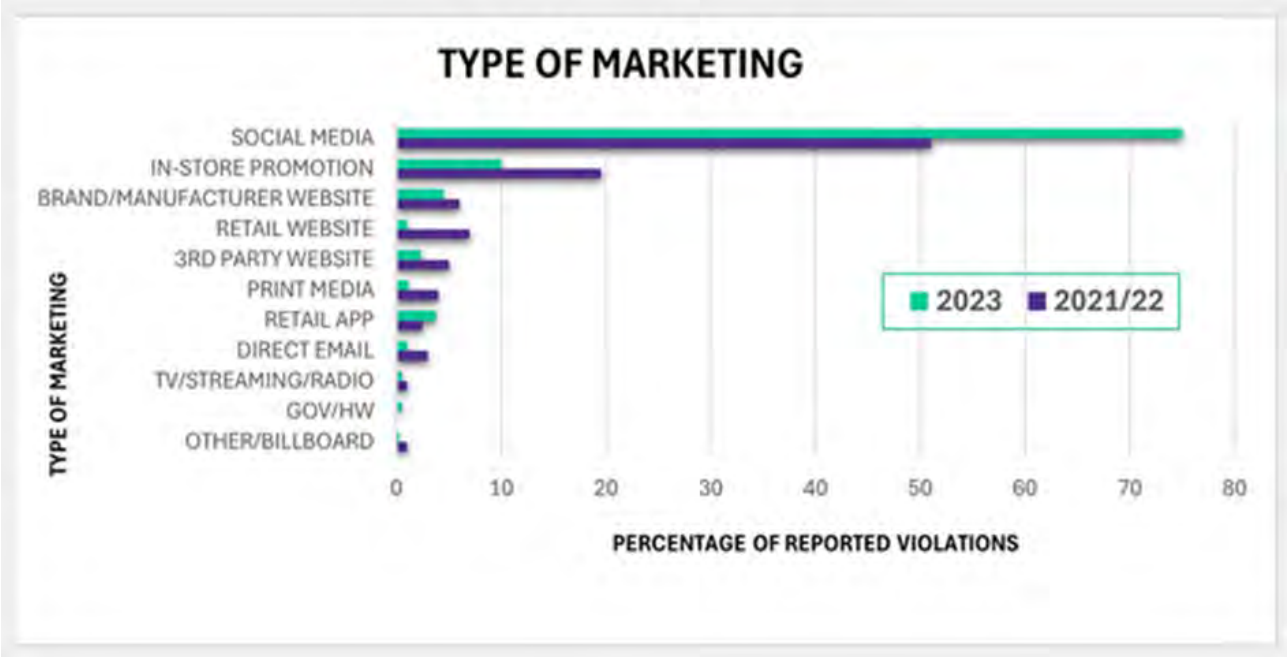


January 2023–
There has been a marked increase in toddler drink marketing with industry 'hiding' 0-to-12-month products behind invitations to their websites to gain access to specials, discounts, and rewards.

Points across the whole range. Once inside the website the 0 to 6 months is often the first product displayed. Reward points are new in the last few months – particularly with Sprout.

The year has shown changes in the type of advertising reported (see **diagram 2**). Significantly, the amount of social media advertising has jumped from 50% to 75% of the reported violations. A disturbing change is the emergence of government agencies as an advertising vehicle.

Diagram 2:
Changes in the type of advertising reported



Members are becoming increasingly angry when they witness social engineering. The marketing creating a false belief that pumps, dummies, lactation teas and 'other paraphernalia' are necessary to breastfeed or mimic breastfeeding, for example 'closer to nature' etc. Members are now seeing the subtle but deliberate bottle emojis and other graphics, and sharing them on the weekly post, so there is a slow and increasing awareness. Cross promotion is very evident, with the advertising of pre-pregnancy to grave ultra processed food (UPF), like growing up milks (GUM) 4+.

Industry benefits from keeping breastfeeding advocates busy reporting on individual breaches. They remain unconcerned that there will be loss of profit or any negative consequences from undermining breastfeeding, selling harmful breastmilk substitutes, and separating mothers from their baby and their milk, while volunteers and advocates spend valuable time and resources in the ineffectual pursuit, recording the overt violations of the International Code. It is clear these companies exist in breach of the International Code and use some clauses that enable them to sell more products and imply breastfeeding is difficult and perhaps harmful.

A respected international central point for documenting the behaviour of the infant feeding industry, is necessary to hold them to account for the immeasurable harm to the environment and health of everyone on the planet

Unrealistic lifestyle comparison or algorithmic influence have a large effect on consumers choices. Social media fosters comparison, leading to anxiety about body image, lifestyle, and health choices. Identifying reliable information about breastfeeding substitutes is crucial for parents and caregivers. In light of digital marketing evolution, regulation becomes imperative to protect consumers against the hazardous nature of seeking and obtaining health advice from social media, influencers, and unregulated content.

There has been a major development in 2024 with the release of the publication ***Restricting digital marketing in the context of tobacco, alcohol, food and beverages, and breast-milk substitutes: existing approaches and policy options*** by the WHO. It examines how restrictions on digital marketing are implemented by Member States as part of broader marketing restrictions, describes current challenges specific to digital marketing and provides policy options and approaches that Member States can adopt to strengthen the design and implementation of restrictions.

In the above resource, the WHO is now including breastmilk substitutes with tobacco and alcohol (as well as food and beverages) as requiring appropriate restrictions regarding digital marketing.

Australia has been a global leader in tobacco control regulations, particularly in advertising restrictions, so there is a high expectation of consumers that the same standard be applied to products that undermine good health outcomes. Similarly to tobacco, infant formula was previously considered benign, and has now been shown to carry significant risks. As parents learn about its impact on their offspring's lives, the risk of litigation increases.

Marketing practices (digital or otherwise) continue to conceal the impact of infant formula on health and cognition. The Australian Department of Health, in conjunction with the ACCC, bears the responsibility of safeguarding Australian mothers and babies from products that have lifelong consequences, which have remained hidden for an extended period.

WHO's recommendations regarding digital marketing states:

> Countries should examine the new promotional techniques being used in digital media and explore how legal channels can be better utilised to stop this type of promotion. While many digital strategies are already covered in existing legal provisions and simply need stronger monitoring and enforcement, some online and social media promotional approaches will require adaptations to existing regulations.

BAA urges the ACCC, in collaboration with the Australian Department of Health, to engage in the implementation of the **model law** in order to ensure protection of Australian consumers against the predatory digital marketing loophole that is being exploited.

Additionally, the *Effective regulatory frameworks for ending inappropriate marketing of breast-milk substitutes and foods for infants and young children policy brief* is intended to guide Member States as they embark on safeguarding parents and caregivers from all forms of promotion of BMS and the inappropriate promotion of breastmilk substitutes through the effective implementation, monitoring and enforcement of the Code and the Guidance.

Consumers have the right to expect certain things when they buy a product. Infant formula and toddler drinks are rich in misinformation or deceptive language, and there is substantial evidence to say there are lifelong health conditions linked to these products. The ACCC must be prepared to side with the consumer now that the evidence has been put forward by

advocates supporting Australian mothers and children. Mothers expect to be told the truth, have full transparency and the best opportunity to be empowered without predatory industry interference. They are being swindled to believe that that their infant's nutrition is a priority for industry – a blatant lie which is experienced repeatedly through lack of protection from the Australian Government.

To reinstate the MAIF Agreement without significantly enhancing the consequences for signatories who engage in inappropriate digital marketing would be irresponsible and adds to the insult of industry currently undermining mothers and the health of their children. Furthermore, the evidence in the *Undermining Breastfeeding for Profits* report written by BAA reinforces the requirement for the scope of MAIF to be explicit in regulating digital marketing, in line with international standards.

The MAIF Agreement falls short of international regulations and implementation of the WHO Code

Legislation of the International Code and regulatory measures that limit the marketing of breastmilk substitutes, is a cost-effective strategy for the Government and Department of Health to tackle while working within budget constraints. This, however, must be coupled with effective coordination, monitoring and enforcement and evaluation.

Australian mothers not only expect, they also entrust the Australian Government with the responsibility of being a global pioneer in safeguarding the welfare of infants and young children. Rather than adopting a stance of being 'more restrictive than the regulations in comparable overseas jurisdiction', Australia should aspire to carve out its own path, setting an unparalleled global standard.

MAIF has recently been reviewed and has been deemed as not fit-for-purpose for Australian consumers. It has been investigated using taxpayer money and found inadequate on four previous occasions already, and all found it to be ineffective.

The following information describes the various ways that the World Health Organization *International Code of Marketing of Breast-milk Substitutes* (the International Code) and subsequent World Health Assembly (WHA) resolutions have been implemented, monitored, and enforced globally. This outline demonstrates that Australia's Government is failing women, babies and young children, evident in the poor provision rating. This is in contrast with countries that are not only aligning their legal measures, policies and sanctions with the International Code, but are in fact surpassing it. This is because under the International Code countries have the sovereign power to enact robust marketing Code into law that is relevant to the products that are marketed in their region. For example, Botswana has included breast pumps in their National Code legislation.

Sierra Leone has become an international leader in the efforts to govern marketing, advertising and commercial practices in regard to infant and young child feeding. The process to do so included a 3-day workshop with the target audience being parliamentarians, in a successful effort to 'sensitise parliamentarians on the issue' of how to implement the WHO Code as extensively as possible. The organisations who supported this were the SUN Movement Secretariat, Action against Hunger, UNICEF and partners. Nine parliamentarians were assembled to create a dedicated committee to 'accelerate the pace towards a national code to regulate the sale of breastmilk substitutes across the nation'.

The new bill was approved by Parliament in 2021 with the collaboration of the Ministry of Health and Ministry of Justice, the Directorate of Food & Nutrition and dedicated parliamentarians who saw the need to protect the health of the national consumers. The Act can be accessed here: **Breast-Milk Substitutes Act, 2021 - SierraLII**.

The following tables are adapted from *Marketing of breast-milk substitutes National implementation of the International Code Status report 2022*, whereby the mentioned countries are all examples of the strongest and most proactive, meaning they have legislation in place which deems them as 'substantially aligned' with The Code.

> 'Substantially aligned with the Code: countries have enacted legislation or adopted regulations, decrees or other legally binding measures encompassing a significant set of provisions of the Code (score of 75–100).'

When considering the data in the comparison table of Code monitoring measures, penalties/sanctions, country rating; countries that have higher scores also closely adhere to the WHO Code implement significant penalties and sanctions. However, Australia's implementation of the MAIF Agreement falls short, indicating inadequate protection for consumers.

Table 1

Summary comparison of Code monitoring measures, penalties/sanctions, country rating. Adapted from Marketing of breast-milk substitutes: national implementation of the International Code | Status report 2022 *and National Code documents and legislation.*

COUNTRY	TOTAL SCORE (X/100) OF COUNTRIES THAT HAVE LEGAL MEASURES IN PLACE	AGREEMENT/ACT/ LEGISLATION NAME:	MONITORING MEASURES:	PENALTIES/SANCTIONS
AUSTRALIA	27/100	MAIF	A **voluntary** code of conduct for manufacturers and importers of infant formula in Australia. **Signatories** must not promote infant formula – does not cover all manufacturers/retailers. Complaint is reviewed by a committee (whom has industry influence), violator is advised and then INVITED to respond. Outcome given, with no deterrent to re-offend.	NONE

COUNTRY	TOTAL SCORE (X/100) OF COUNTRIES THAT HAVE LEGAL MEASURES IN PLACE	AGREEMENT/ACT/ LEGISLATION NAME:	MONITORING MEASURES:	PENALTIES/SANCTIONS
SIERRA LEONE	99/100	The 'Breast Milk Substitutes Act 2020'	Established the 'National Breast-Feeding Advisory Committee' It is a requirement of this committee to uphold capacity of inspectors, development of materials and procedures necessary. Identify violations, perform inspection, report on findings. Improvement notice is served and a specified period to secure compliance	Failure to comply – liable on conviction to a fine or to a term of imprisonment

COUNTRY	TOTAL SCORE (X/100) OF COUNTRIES THAT HAVE LEGAL MEASURES IN PLACE	AGREEMENT/ACT/ LEGISLATION NAME:	MONITORING MEASURES:	PENALTIES/SANCTIONS
BRAZIL	83	The Brazilian Code	IBFAN Brazil's 34 groups conduct monitoring and report violations on an ongoing basis. A national annual monitoring report is sent to the Ministry of Health and National Health Inspectorate IBFAN also trains the authorities sanctioned to act against malpractice: health inspectors, the consumer protection organisation (PROCON – a non-governmental organisation) and public prosecutors, and for health workers and professional associations spot checks are performed for compliance.	Authorities in one city, Florianopolis, have exercised their power to confiscate products from the shelves if they do not comply with the regulations. Warning Fine Discontinuation of product Prohibition Suspension and sale of product Cancellation of product registration Prohibition of advertising
INDIA	78	Infant Milk Substitutes, Feeding Bottles, and Infant Foods (IMS) Act	Monitoring of the IMS Act is undertaken by four NGOs, food safety officials, and other government officials authorized by the government. In particular, the Breastfeeding Promotion Network of India supports the government to implement the Act.	Violation of the IMS Act is a criminal offence and penalties include monetary fines and jail terms.

COUNTRY	TOTAL SCORE (X/100) OF COUNTRIES THAT HAVE LEGAL MEASURES IN PLACE	AGREEMENT/ACT/ LEGISLATION NAME:	MONITORING MEASURES:	PENALTIES/SANCTIONS
SAUDI ARABIA	77	Breastmilk Substitutes Marketing Saudi Arabia Code Executives Regulations	Monitoring undertaken by a committee – a legal advisor is mandatory. Made up of representatives for: Ministry of Justice, Ministry of Health and Ministry of Commerce and Industry. Committee examines the violations, and The Minister approves decisions. Committee members are remunerated.	Warning Financial penalties Closure of the violator firm for up to 180 days
SOUTH AFRICA	87	Regulations Relating to Foodstuffs for Infants and Young Children (R991)	Data unavailable.	On a first conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment. On a second conviction, to a fine or to imprisonment for a period not exceeding twelve months or to both a fine and such imprisonment. On a third or subsequent conviction, to a fine or to imprisonment for a period not exceeding twenty-four months or to both a fine and such imprisonment.
TANZANIA	N/A	National regulations for marketing of BMS and designated products	Data unavailable.	Applies to any manufacturer, importer, packer or distributor who contravenes or fails to comply with these Regulations. Body Corporate: Fine. Where applicable revocation of permit Individual: Fine or imprisonment not exceeding 6 mths Both Body corporate and individual: liable for destruction of any product that offends these Regulations, upon own cost.

COUNTRY	TOTAL SCORE (X/100) OF COUNTRIES THAT HAVE LEGAL MEASURES IN PLACE	AGREEMENT/ACT/ LEGISLATION NAME:	MONITORING MEASURES:	PENALTIES/SANCTIONS
NIGERIA	84	The Marketing (Breast-Milk Substitutes) Act 1990 controls various forms of marketing, and a 2005 regulation stipulates how products should be labelled. • Marketing (Breast Milk Substitutes) Decree No. 41 of 1990 amended as Decree No 22 of 1999 (Now Marketing of Breastmilk Substitute Act Cap M5 LFN 2004). • 2005: 'Marketing of Infant and Young Children Food and other Designated Products (Registration, Sales, etc.) Regulations 2005' to strengthen the existing Acts	It is the duty of the manufacturers and distributors of breast milk substitutes and complementary foods, non-governmental organisations, professional groups, and consumer organisations to collaborate with the agency in the implementation of these regulations. Self-monitoring has not worked, and the sanctions for non-compliance have not been enough of a deterrent	First offenders receive warning letters; after which the following actions may be pursued: • Seizure of offending articles for destruction • Confiscation or detention of product to allow possible corrective action • Closure of business premises • Invalidation of marketing authorization • Confiscation of assets • Prosecution of recalcitrant offenders • Administrative fines

COUNTRY	TOTAL SCORE (X/100) OF COUNTRIES THAT HAVE LEGAL MEASURES IN PLACE	AGREEMENT/ACT/ LEGISLATION NAME:	MONITORING MEASURES:	PENALTIES/SANCTIONS
BOTSWANA	73	Food Control: Subsidiary Legislation Marketing Of Foods For Infants And Young Children Regulations	Appointment of monitors to investigate, observe and record information regarding marketing practices at points of sale, in health facilities, border posts, through the media and elsewhere, and with safeguards to prevent conflicts of interest. Monitoring under the law has been successful.	Detection of violations in retail outlets results in notification and, in many cases, immediate rectification. Cancellation, or suspension of any licence issued violator which is relevant to the offence committed. Fines Imprisonment (term increases with subsequent violations) The Minister may order that any article relevant to the offence be forfeited and that it be destroyed or otherwise disposed of, as the Minister considers appropriate

COUNTRY	TOTAL SCORE (X/100) OF COUNTRIES THAT HAVE LEGAL MEASURES IN PLACE	AGREEMENT/ACT/ LEGISLATION NAME:	MONITORING MEASURES:	PENALTIES/SANCTIONS
PHILIPPINES	85	The Milk Code of the Philippines (E0 51)	Committee created consists of: Minister of Health, Chairman Minister of Trade and Industry, Member Minister of Justice, Member Minister of Social Services and Development, members. The Ministry of Health shall be principally responsible for the implementation and enforcement of the provisions of this Code. Developed a reporting platform for citizens to report violations of the law related to BF. The platform allows reporting, processing, and resolution of Code violation issues through different channels: websites, mobile applications and SMS.	*Individuals* may face up to a year of imprisonment or fine. Healthcare workers face revocation of their licenses. The penalties for violators of the code are two months to one year imprisonment or a fine of not less than 1000 and not more than 30,000. Should the offence be committed by a juridical person, the Chairman of the Board of Directors, the president, general manager, or the partners and/or the persons directly responsible therefore, shall be penalized
ETHIOPIA	85	Ethiopian Food & Drug Authority (EDFA)	Data unavailable.	Importers found not complying with the rule could face the suspension of import or manufacturing permits for up to six months. Repeat offenders could see permits revoked for up to two years

Table 2 highlights where the MAIF Agreement is seriously lacking in scope and identifies examples of what is possible to include in future legislation and regulatory frameworks, by using the 'Substantially Aligned' countries as a comparison.

Table 2

Scope and provisions included in National regulations and legislation. Adapted from **Marketing of breast-milk substitutes: national implementation of the International Code | Status report 2022** *and National Code documents and legislation.*

COUNTRY	AGE COVERED UP TO	PRODUCTS COVERED	OVERALL PROVISIONS ON PROMOTION IN HEALTH CARE FACILITIES	OVERALL PROVISIONS ON ENGAGEMENT WITH HEALTH CARE WORKERS AND HEALTH SYSTEMS	PROVISIONS ON LABELLING PROHIBITION OF NUTRITION AND HEALTH CLAIMS	INFORMATIONAL/ EDUCATIONAL MATERIALS FROM INDUSTRY PROHIBITED	PROVISIONS ON PROMOTION TO THE GENERAL PUBLIC	NOTES
AUSTRALIA	12m	X	X	X	✓	X	No provisions.	Agreement is only applicable to 'signatories', and is not aligned to the WHO code MINIMUM standard

COUNTRY	AGE COVERED UP TO	PRODUCTS COVERED	OVERALL PROVISIONS ON PROMOTION IN HEALTH CARE FACILITIES	OVERALL PROVISIONS ON ENGAGEMENT WITH HEALTH CARE WORKERS AND HEALTH SYSTEMS	PROVISIONS ON LABELLING PROHIBITION OF NUTRITION AND HEALTH CLAIMS	INFORMATIONAL/ EDUCATIONAL MATERIALS FROM INDUSTRY PROHIBITED	PROVISIONS ON PROMOTION TO THE GENERAL PUBLIC	NOTES
BRAZIL	36m	BMS (breast milk substitutes), complementary foods, bottles & teats, breast pumps and nipple shield	Overall prohibition on use of health care facility for promotion	✓	✓	✓	Advertising Samples to public Promotional devices at point of sale Gifts to pregnant women and mothers	Specified the inclusion of growing-up milk, or sometimes referred to as 'toddler formula'.
MONGOLIA	36m	BMS (breast milk substitutes), complementary foods, bottles & teats.	Overall prohibition on use of health care facility for promotion	✓	X	✓	Advertising Samples to public Promotional devices at point of sale	nil

COUNTRY	AGE COVERED UP TO	PRODUCTS COVERED	OVERALL PROVISIONS ON PROMOTION IN HEALTH CARE FACILITIES	OVERALL PROVISIONS ON ENGAGEMENT WITH HEALTH CARE WORKERS AND HEALTH SYSTEMS	PROVISIONS ON LABELLING PROHIBITION OF NUTRITION AND HEALTH CLAIMS	INFORMATIONAL/ EDUCATIONAL MATERIALS FROM INDUSTRY PROHIBITED	PROVISIONS ON PROMOTION TO THE GENERAL PUBLIC	NOTES
INDIA	24m	BMS (breast milk substitutes), complementary foods, bottles & teats.	Overall prohibition on use of health care facility for promotion	✓	X	X	Advertising Samples to public Promotional devices at point of sale Gifts to pregnant women and mothers Contact with mothers	From 36.8% in 2000, exclusive breastfeeding rates have jumped to 58.3%
SAUDI ARABIA	36m	BMS (breast milk substitutes), complementary foods, bottles & teats.	Overall prohibition on use of health care facility for promotion	X	X	X	Advertising Samples to public Promotional devices at point of sale Gifts to pregnant women and mothers Contact with mothers	Specified the inclusion of growing-up milk, or sometimes referred to as 'toddler formula'.

COUNTRY	AGE COVERED UP TO	PRODUCTS COVERED	OVERALL PROVISIONS ON PROMOTION IN HEALTH CARE FACILITIES	OVERALL PROVISIONS ON ENGAGEMENT WITH HEALTH CARE WORKERS AND HEALTH SYSTEMS	PROVISIONS ON LABELLING PROHIBITION OF NUTRITION AND HEALTH CLAIMS	INFORMATIONAL/ EDUCATIONAL MATERIALS FROM INDUSTRY PROHIBITED	PROVISIONS ON PROMOTION TO THE GENERAL PUBLIC	NOTES
SOUTH AFRICA	36m	BMS (breast milk substitutes), complementary foods, bottles & teats. feeding cups with spouts, straws or teats	Overall prohibition on use of health care facility for promotion	✓	✓	✓	Advertising Samples to public Promotional devices at point of sale Gifts to pregnant women and mothers Contact with mothers	nil
TANZANIA	5y	BMS (breast milk substitutes), complementary foods, bottles & teats, cups with spouts or similar receptacles for feeding infants and young children, gripe water and other similar products	Overall prohibition on use of health care facility for promotion	DATA UNAVAILABLE	DATA UNAVAILABLE	DATA UNAVAILABLE	DATA UNAVAILABLE	Any other product as may be specified by the Minister – can be considered and included in the list of products covered.

COUNTRY	AGE COVERED UP TO	PRODUCTS COVERED	OVERALL PROVISIONS ON PROMOTION IN HEALTH CARE FACILITIES	OVERALL PROVISIONS ON ENGAGEMENT WITH HEALTH CARE WORKERS AND HEALTH SYSTEMS	PROVISIONS ON LABELLING PROHIBITION OF NUTRITION AND HEALTH CLAIMS	INFORMATIONAL/ EDUCATIONAL MATERIALS FROM INDUSTRY PROHIBITED	PROVISIONS ON PROMOTION TO THE GENERAL PUBLIC	NOTES
MOZAMBIQUE	36m	BMS (breast milk substitutes), complementary foods, bottles & teats, closed cups, milk pumps, nutrient formula presented or indicated for high-risk newborns; infant formulas for specific dietary needs and other products	Overall prohibition on use of health care facility for promotion	✓	X	✓	Advertising Samples to public Promotional devices at point of sale Gifts to pregnant women and mothers Contact with mothers	Monitoring under the law has been successful. Detection of violations in retail outlets results in notification and, in many cases, immediate rectification.

COUNTRY	AGE COVERED UP TO	PRODUCTS COVERED	OVERALL PROVISIONS ON PROMOTION IN HEALTH CARE FACILITIES	OVERALL PROVISIONS ON ENGAGEMENT WITH HEALTH CARE WORKERS AND HEALTH SYSTEMS	PROVISIONS ON LABELLING PROHIBITION OF NUTRITION AND HEALTH CLAIMS	INFORMATIONAL/ EDUCATIONAL MATERIALS FROM INDUSTRY PROHIBITED	PROVISIONS ON PROMOTION TO THE GENERAL PUBLIC	NOTES
NIGERIA	36m	BMS (breast milk substitutes) including growing up milk/follow up milks, complementary foods, bottles & teats.	Overall prohibition on use of health care facility for promotion	X	✓	✓	Advertising Samples to public Promotional devices at point of sale Gifts to pregnant women and mothers Contact with mothers	nil
ZIMBABWE	60m	BMS (breast milk substitutes), complementary foods, bottles & teats.	Overall prohibition on use of health care facility for promotion	✓	X	X	Advertising Samples to public Promotional devices at point of sale Gifts to pregnant women and mothers Contact with mothers	Zimbabwe has adopted ALL of the provisions of the International Code of Marketing of Breast-Milk Substitutes into national law, including restrictions on advertising and promotion.

COUNTRY	AGE COVERED UP TO	PRODUCTS COVERED	OVERALL PROVISIONS ON PROMOTION IN HEALTH CARE FACILITIES	OVERALL PROVISIONS ON ENGAGEMENT WITH HEALTH CARE WORKERS AND HEALTH SYSTEMS	PROVISIONS ON LABELLING PROHIBITION OF NUTRITION AND HEALTH CLAIMS	INFORMATIONAL/ EDUCATIONAL MATERIALS FROM INDUSTRY PROHIBITED	PROVISIONS ON PROMOTION TO THE GENERAL PUBLIC	NOTES
BOTSWANA	36m	BMS (breastmilk substitutes), complementary foods, bottles & teats. Breast pumps,	Overall prohibition on use of health care facility for promotion	✓	X	X	Advertising Samples to public Promotional devices at point of sale Gifts to pregnant women and mothers Contact with mothers	The law went beyond the minimum standard set by the Code by introducing many innovative provisions. Its scope covers all foods for infants and young children up to three years of age, as well as commodities related to the preparation and use of designated products. It also allows the Minister of Health to designate additional products

COUNTRY	AGE COVERED UP TO	PRODUCTS COVERED	OVERALL PROVISIONS ON PROMOTION IN HEALTH CARE FACILITIES	OVERALL PROVISIONS ON ENGAGEMENT WITH HEALTH CARE WORKERS AND HEALTH SYSTEMS	PROVISIONS ON LABELLING PROHIBITION OF NUTRITION AND HEALTH CLAIMS	INFORMATIONAL/ EDUCATIONAL MATERIALS FROM INDUSTRY PROHIBITED	PROVISIONS ON PROMOTION TO THE GENERAL PUBLIC	NOTES
PHILIPPINES	36m	BMS (breast milk substitutes), complementary foods, bottles & teats.	Overall prohibition on use of health care facility for promotion	✓	✓	✓	Samples to public Promotional devices at point of sale Gifts to pregnant women and mothers	Nil

Currently, Australia has the rating of 'Some provisions of the Code included'. This is defined by:

> 'countries that have enacted legislation or adopted regulations, decrees or other legally binding measures covering less than half of the provisions of the Code (score of <50)'.

Australia currently holds a rating of 27 out of a possible 100. Further to this low rating, Australia does not fulfil the identified provision 'Monitoring and Enforcement', at all:

> 'Requires that monitoring and enforcement should be independent, transparent and free from commercial influence.'

In stark contrast, Sierra Leone scored 99 out of a possible 100, and has very recently scaled up their obligations to implement legislation against aggressive marketing of breast milk substitutes (BMS). Their scope includes BMS products covered up to age 36 months, complementary foods, bottles and teats.

Considering that Australia scores a measly 27/100 according to the ***Marketing of breast-milk substitutes: national implementation of the International Code | Status report 2022***, and continues to maintain the same score in the ***Marketing of breast-milk substitutes National implementation of the International Code | Status report 2024***, full notice and implementation should be taken of the below recommendations as stated within the report.

Figure 11

WHO Recommendations as stated in the International Code Status Report 2022

Recommendations

1. Countries that have not revised their laws or regulations on the marketing of breast-milk substitutes in the past few years should use this report to identify gaps in coverage of all Code provisions and take action to update their legal measures. The WHO/EURO model law is a tool to help to strengthen national regulatory frameworks to protect infants and young children from the harmful effects of food marketing.

2. Countries that have not yet enacted legal measures on the Code should recognize their obligations, both under international human rights law and international agreements, to eliminate inappropriate marketing practices through regulatory action.

3. Countries should examine the new promotional techniques being used in digital media and explore how legal channels can be better utilized to stop this type of promotion. While many digital strategies are already covered in existing legal provisions and simply need stronger monitoring and enforcement, some online and social media promotional approaches will require adaptations to existing regulations.

4. Governments must allocate adequate budgets and human resources to ensure that national Code legislation is monitored and fully enforced, guaranteeing that deterrent sanctions are routinely applied in the case of violations.

5. Health professional bodies and health care workers should carry out their responsibilities under the Code and national legislation to avoid conflicts of interest and fully protect, promote and support optimal infant and young child feeding.

Figure 12
WHO Recommendations as stated in the International Code Status Report 2024

Recommendations

1. Countries should recognize their obligations under international human rights law and international agreements to enact binding legal measures to implement the Code and eliminate inappropriate marketing practices.

2. National governments and civil society partners should use the analyses in this report to identify gaps in existing legal measures and take action to ensure that all Code provisions are fully incorporated.

3. Countries should ensure that legal measures, monitoring systems and enforcement processes fully cover the emerging marketing tactics beyond traditional advertising that have been made possible through digital technologies.

4. Countries should ensure that domestically-based companies are held accountable for cross-border activities that violate the Code.

5. Legislative and executive processes to develop and implement legal measures on the marketing of breast-milk substitutes must be independent and free from the influences of manufacturers and distributors of products within the scope of the Code. Mechanisms must be introduced to protect against all conflicts of interest.

6. Laws and regulations on the Code should place specific duties of compliance on different entities in the supply chain, include procedures for monitoring and enforcement, and allocate adequate financial and human resources to ensure effective implementation and enforcement.

7. Health workers, health systems and health professional bodies should carry out their responsibilities under the Code to protect against promotion of breast-milk substitutes and avoid conflicts of interest.

Australia failed to adhere to the 2022 recommendations, demonstrated by no change in the national score regarding legal measures in place. According to the **2024 status report**, while Australia was maintaining status quo, Timor-Leste, Burkina Faso, El Salvador and China managed to include additional marketing restrictions, leaving Australia further behind in the protection of mothers and infants.

> *'The Code is recognized as a core obligation under the Convention on the Rights of the Child and other relevant UN human rights instruments. Strengthening the implementation of the Code must become a public health priority for all countries.'*
>
> *~ WHO National implementation of the International Code, status report 2024*

The Australian Government should refrain from comparison to jurisdictions who are implementing the code at a lesser scale. Instead, it should critically examine substantially aligned countries, identifying the current shortcomings in supporting our mothers and nurturing future generations, and strive to avoid such pitfalls.

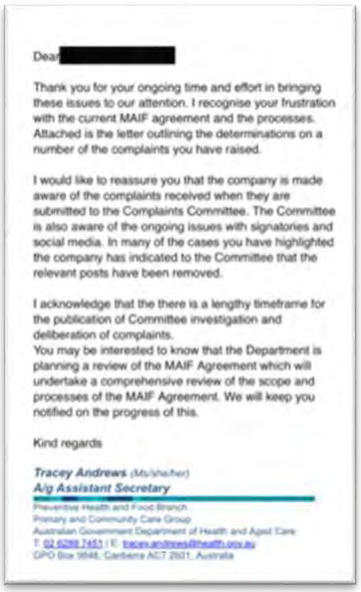
Appendix 1

Emails to MAIF

[redacted] 14/9/2022
To: maif

14.9.2022 Sprout 3

Another MAIF breach by Sprout. It's unacceptable that the MAIF committee has not acted already. This has been going on for most of this year.



Dear [redacted]

Thank you for your ongoing time and effort in bringing these issues to our attention. I recognise your frustration with the current MAIF agreement and the processes. Attached is the letter outlining the determinations on a number of the complaints you have raised.

I would like to reassure you that the company is made aware of the complaints received when they are submitted to the Complaints Committee. The Committee is also aware of the ongoing issues with signatories and social media. In many of the cases you have highlighted the company has indicated to the Committee that the relevant posts have been removed.

I acknowledge that the there is a lengthy timeframe for the publication of Committee investigation and deliberation of complaints.
You may be interested to know that the Department is planning a review of the MAIF Agreement which will undertake a comprehensive review of the scope and processes of the MAIF Agreement. We will keep you notified on the progress of this.

Kind regards

Tracey Andrews (Ms/she/her)
A/g Assistant Secretary
Preventive Health and Food Branch
Primary and Community Care Group
Australian Government Department of Health and Aged Care
T: 02 6289 7451 | E: tracey.andrews@health.gov.au
GPO Box 9848, Canberra ACT 2601, Australia

[redacted] 25/10/2022
To: maif

Re: Response from Department of Health [SEC=OFFICIAL]

Good afternoon Tracy,
I'm following up on my last email sent on 29.9.22 (see below). Can you please confirm the date for the MAIF review by the Department of Health. I note the ACCC determination states the review will happen in 2021, as I'm sure you are aware it is nearing the end of 2022 now.

Regards

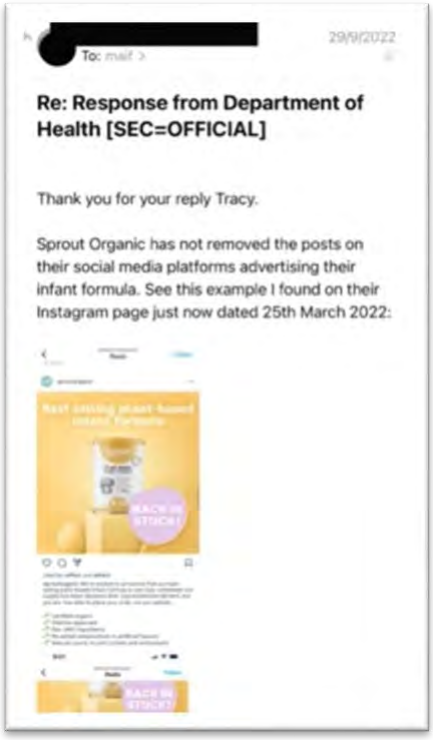
[redacted] 16/11/2022
To: maif

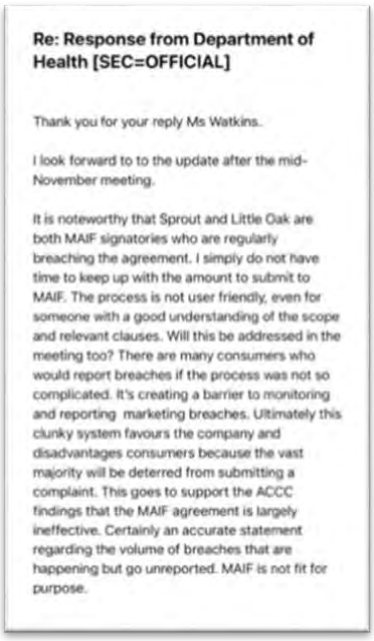
13.11.22 Sprout Organic MAIF breach

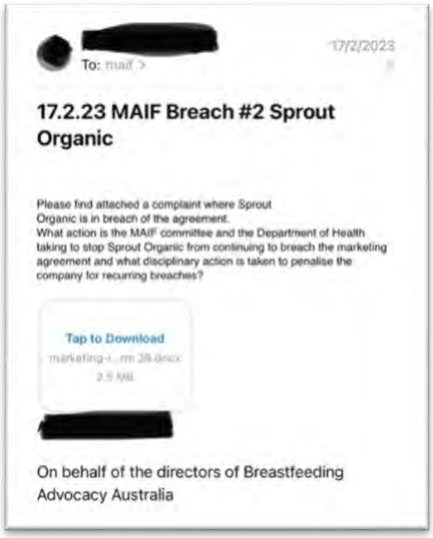
Another breach of MAIF by Sprout. Please act on this matter as the company has already been found in breach and is failing their responsibility to act.

Sincerely,
[redacted]

Tap to Download


29/9/2022
To: maif
Re: Response from Department of Health [SEC=OFFICIAL]
Thank you for your reply Tracy.
Sprout Organic has not removed the posts on their social media platforms advertising their infant formula. See this example I found on their Instagram page just now dated 25th March 2022:


Re: Response from Department of Health [SEC=OFFICIAL]
Thank you for your reply Ms Watkins.
I look forward to to the update after the mid-November meeting.
It is noteworthy that Sprout and Little Oak are both MAIF signatories who are regularly breaching the agreement. I simply do not have time to keep up with the amount to submit to MAIF. The process is not user friendly, even for someone with a good understanding of the scope and relevant clauses. Will this be addressed in the meeting too? There are many consumers who would report breaches if the process was not so complicated. It's creating a barrier to monitoring and reporting marketing breaches. Ultimately this clunky system favours the company and disadvantages consumers because the vast majority will be deterred from submitting a complaint. This goes to support the ACCC findings that the MAIF agreement is largely ineffective. Certainly an accurate statement regarding the volume of breaches that are happening but go unreported. MAIF is not fit for purpose.

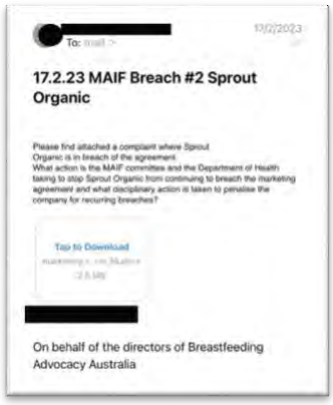

17/2/2023
To: maif
17.2.23 MAIF Breach #2 Sprout Organic
Please find attached a complaint where Sprout Organic is in breach of the agreement.
What action is the MAIF committee and the Department of Health taking to stop Sprout Organic from continuing to breach the marketing agreement and what disciplinary action is taken to penalise the company for recurring breaches?
Tap to Download
On behalf of the directors of Breastfeeding Advocacy Australia


[redacted]
To: [redacted]
10/9/2022

9.9.22 MAIF Breach - Sprout

Please find attached another MAIF breach by Sprout Organic. I am still waiting on you to act regarding the complaints I made in March 2022. This is not good enough.

[redacted]


[redacted]
To: [redacted]
13/2/2023

17.2.23 MAIF Breach #2 Sprout Organic

Please find attached a complaint where Sprout Organic is in breach of the agreement.
What action is the MAIF committee and the Department of Health taking to stop Sprout Organic from continuing to breach the marketing agreement and what disciplinary action is taken to penalise the company for recurring breaches?

Tap to Download

[redacted]

On behalf of the directors of Breastfeeding Advocacy Australia


On 28 Oct 2022, at 2:29 pm, maif <maif@health.gov.au> wrote:

Dear [redacted]

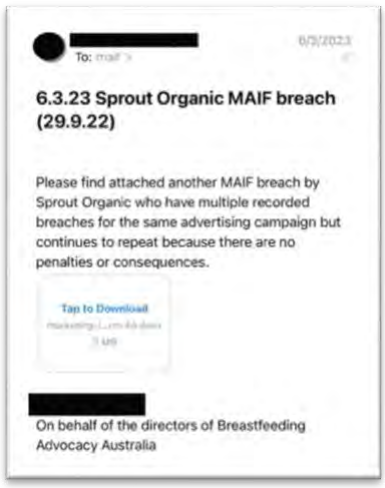
Thank you for bringing the below email to our attention.

The issue you have highlighted regarding social media posts still being visible on company feeds will be added to the agenda for discussion at the next MAIF Complaints Committee meeting. This will include discussion about steps to address the concern. We will provide you with an update following discussion at the meeting in mid-November.

In regards to the review of the MAIF Agreement, the Department is still progressing work to undertake a comprehensive review of the scope and processes of the MAIF Agreement. We will keep you notified on the progress of this, including opportunities for consultation, through the Department's website.

Kind regards

Jennifer Watkins on behalf of
MAIF Complaints Committee Secretariat team
Nutrition Policy Section


[redacted]
To: maif
6/3/2023

6.3.23 Sprout Organic MAIF breach (29.9.22)

Please find attached another MAIF breach by Sprout Organic who have multiple recorded breaches for the same advertising campaign but continues to repeat because there are no penalties or consequences.

Tap to Download

[redacted]

On behalf of the directors of Breastfeeding Advocacy Australia


[redacted]
To: maif
11/9/2022

Sprout MAIF breach

Another sponsored advertisement breaching MAIF by Sprout. This has been going on since March 2022.


[redacted]
To: [redacted]
15/3/2023

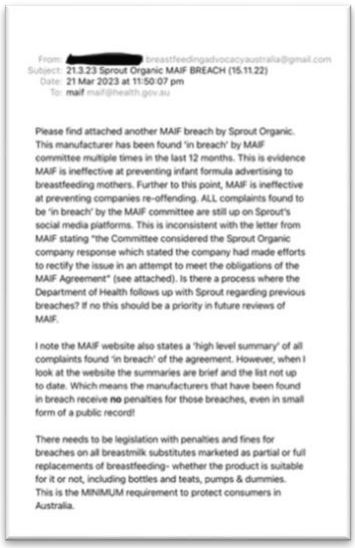
15.3.23 Little Oak MAIF BREACH (15.10.22)

Please find attached another MAIF breach by repeat offender Little Oak. This is further evidence MAIF is ineffective at preventing advertising of infant formula, MAIF does not stop companies from continuing to breach after they have been found 'in breach'.

Tap to Download

[redacted]

On behalf of the directors of Breastfeeding Advocacy Australia

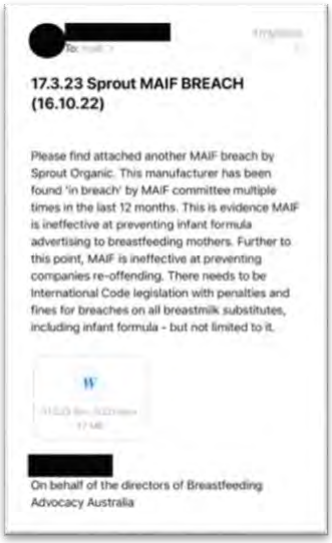


From: [redacted] breastfeedingadvocacyaustralia@gmail.com
Subject: 21.3.23 Sprout Organic MAIF BREACH (15.11.22)
Date: 21 Mar 2023 at 11:50:07 pm
To: maif maif@health.gov.au

Please find attached another MAIF breach by Sprout Organic. This manufacturer has been found 'in breach' by MAIF committee multiple times in the last 12 months. This is evidence MAIF is ineffective at preventing infant formula advertising to breastfeeding mothers. Further to this point, MAIF is ineffective at preventing companies re-offending. ALL complaints found to be 'in breach' by the MAIF committee are still up on Sprout's social media platforms. This is inconsistent with the letter from MAIF stating "the Committee considered the Sprout Organic company response which stated the company had made efforts to rectify the issue in an attempt to meet the obligations of the MAIF Agreement" (see attached). Is there a process where the Department of Health follows up with Sprout regarding previous breaches? If no this should be a priority in future reviews of MAIF.

I note the MAIF website also states a 'high level summary' of all complaints found 'in breach' of the agreement. However, when I look at the website the summaries are brief and the list not up to date. Which means the manufacturers that have been found in breach receive **no** penalties for those breaches, even in small form of a public record!

There needs to be legislation with penalties and fines for breaches on all breastmilk substitutes marketed as partial or full replacements of breastfeeding- whether the product is suitable for it or not, including bottles and teats, pumps & dummies. This is the MINIMUM requirement to protect consumers in Australia.

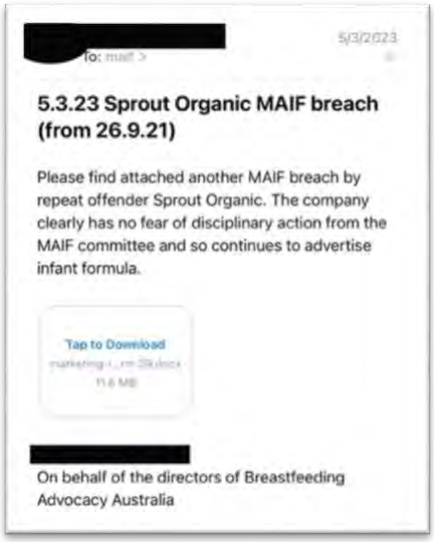


To: maif >

17.3.23 Sprout MAIF BREACH (16.10.22)

Please find attached another MAIF breach by Sprout Organic. This manufacturer has been found 'in breach' by MAIF committee multiple times in the last 12 months. This is evidence MAIF is ineffective at preventing infant formula advertising to breastfeeding mothers. Further to this point, MAIF is ineffective at preventing companies re-offending. There needs to be International Code legislation with penalties and fines for breaches on all breastmilk substitutes, including infant formula - but not limited to it.

[redacted]
On behalf of the directors of Breastfeeding Advocacy Australia



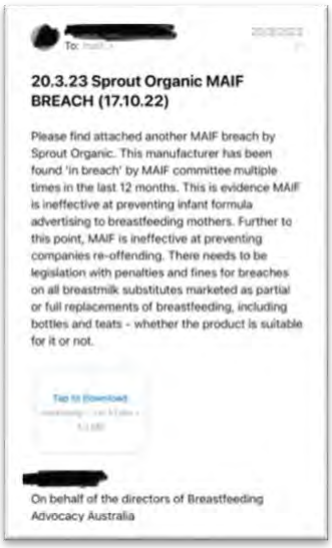
To: maif >
5/3/2023

5.3.23 Sprout Organic MAIF breach (from 26.9.21)

Please find attached another MAIF breach by repeat offender Sprout Organic. The company clearly has no fear of disciplinary action from the MAIF committee and so continues to advertise infant formula.

Tap to Download

[redacted]
On behalf of the directors of Breastfeeding Advocacy Australia



To: maif >

20.3.23 Sprout Organic MAIF BREACH (17.10.22)

Please find attached another MAIF breach by Sprout Organic. This manufacturer has been found 'in breach' by MAIF committee multiple times in the last 12 months. This is evidence MAIF is ineffective at preventing infant formula advertising to breastfeeding mothers. Further to this point, MAIF is ineffective at preventing companies re-offending. There needs to be legislation with penalties and fines for breaches on all breastmilk substitutes marketed as partial or full replacements of breastfeeding, including bottles and teats - whether the product is suitable for it or not.

[redacted]
On behalf of the directors of Breastfeeding Advocacy Australia

Appendix 2

WBT*i* scorecard 2018

WBTi
World Breastfeeding Trends Initiative (WBTi)

Australia: Report Card 2018

25.5

The assessment of implementation of policies and programs from the World Health Organization's Global Strategy for Infant and Young Child Feeding (GSIYCF).

Policies and programs: Indicators 1–10

**IBFAN Asia Guidelines for WBTi for rating individual indicators 1 to 15 are as follows: 0–3 is rated Red, 4–6 is rated Yellow, 7–9 is rated Blue and more than 9 is rated Green.*

	Score out of 10
1. National policy, program and coordination *Concerns national policy, plan of action, funding and coordination issues.*	0
2. Baby Friendly Hospital Initiative (in Australia: Baby Friendly Health Initiative, BFHI) *Concerns percentage BFHI hospitals, training, standard monitoring, assessment and reassessment systems.*	5.5
3. Implementation of the International Code of Marketing of Breastmilk Substitutes (WHO Code) and all subsequent World Health Assembly (WHA) Resolutions *Concerns implementation of the Code as law, monitored and enforced.*	1.5
4. Maternity protection *Concerns paid maternity leave, paid breastfeeding breaks, national legislation encouraging workplace accommodation for breastfeeding and/or childcare and ratification of ILO MPC No 183.*	6
5. Health and nutrition care systems *Concerns health provider schools and pre-service education programs, standards and guidelines for mother-friendly childbirth procedures and in-service training programs.*	2.5
6. Mother support and community outreach: community-based support for the pregnant and breastfeeding mother *Concerns the availability of and women's access to skilled counselling services on infant and young child feeding during pregnancy and after childbirth.*	5
7. Information support *Concerns public education and communication strategy for improving infant and young child feeding that is actively implemented at local levels.*	0
8. Infant and young child feeding (IYCF) and HIV *Concerns policy and programs to address infant feeding and HIV issue and on-going monitoring of the effects of interventions on infant feeding practices and health outcomes for mothers and infants.*	3.5
9. Infant and young child feeding during emergencies (IYCF-E) *Concerns policy and program on IYCF-E and material on IYCF-E integrated into pre-service and in-service training for emergency management.*	0.5
10. Mechanisms of monitoring and evaluation system *Concerns monitoring, management and information systems as part of the planning and management process.*	1
	Subtotal: 25.5/100

Feeding practices: Indicators 11–15 *Requires national data that is no more than five years old and meets the WHO indicators for assessing IYCF practices.*	**Data**	**Score out of 10**
Early initiation of breastfeeding within 1 hour of birth	*No available data*	0/10
Mean percentage of babies 1–<6 months exclusively breastfed	*No available data*	0/10
Median duration of breastfeeding	*No available data*	0/10
Bottle-feeding: percentage of babies 0–12 months fed with a bottle	*No available data*	0/10
Complementary feeding: percentage of babies receiving solids by 8 months	*No available data*	0/10
Subtotal		0/50

Total score = 25.5/150

The full report is available at www.wbtiaus.com or wbtiaus@gmail.com

Appendix 3

Marketing in Australia of Infant Formulas: Manufacturers and Importers (MAIF) Agreement' – July 2024

Abbott Australasia Pty Ltd	Pediasure – 1 to 10yrs, Elecare – 0 to12m Elecare Jnr – 1 to 13yrs
Aspen Pharmacare Pty Ltd	Novolac, NovaNutrition – 0 to 12m, specialty formula
Australian Dairy Nutritionals Ltd	Future stages 1, 2 and 3 (12+m) I would classify as both toddler and GUM Ocean Road Dairies – as above
Australian Dairy Park Pty Ltd	Oz Farm – pre-pregnancy, birth, kids care 1 to 10yrs – toddler/GUMs, through to aged care
Bellamy's Organic	Steps 1, 2, 3 and 4 (3yrs+), Complementary foods 4m+ to 12m+
H & H Group	Biostime – UPF – 0 to 36m, Probiotics 3m+ Supplements: preconception, pregnancy, lactation and more
Bega Nutritionals (as at 2024 no longer signatories)	HAPPi stage 3 – day/night Lactoferrin supplements – birth to adult
The Infant Food Co. Pty Limited	Bubs stages 1, 2, 3 and 4 (3 to 12yrs), Complementary foods – 4m+ and 6m+, Bubs organic snacks – 7m+ and 12m+
The LittleOak Company	LittleOak birth to 4yrs
Max Biocare	Little Étoile birth to 6yrs, Complementary foods – 6m+ Pharmaceuticals/supplements
Nature One Dairy Pty Ltd	Steps 1, 2, 3 and 4 (3 to 6yrs), new range including Dr. Colostrum – sold in Viet Nam, student formula 6 to 18yrs, pregnancy formula, Fortiplus 40+yrs
Nestle Australia Ltd	NAN birth to toddler and GUMs, NAN Probiotics (from birth) CERELAC cereals 4m+
Nuchev Limited	OLi6 UPF birth to 3yrs and stage 4 (3 to 7yrs)
Nutricia Australia Pty Ltd (owned by Danone)	APTAMIL Birth to GUMs, KARICARE – birth to GUMs
Sanulac Nutritionals Australia Pty Ltd	ALULA S-26 birth to GUMs
Spring Sheep Milk Co.	SPRING SHEEP – Gentle Sheep – birth to adult
Sprout Organic	Birth to 13yrs, complementary foods 4m+; Snack bars 12m+
The a2 Milk Company Ltd	a2 birth to toddler, GUMs, pre-conception, pregnancy, motherhood and beyond
Wattle Health Australia Limited	birth to 12m, toddler drink

References

Global breastfeeding scorecard 2023.pdf (unicef.org)

Consumer rights and guarantees | ACCC

australian-national-breastfeeding-strategy-2019-and-beyond.pdf (health.gov.au)

Infant Nutrition Council Ltd | ACCC

annual-report-of-the-maif-agreement-complaints-committee-2022-23_0.pdf (health.gov.au)

review-of-the-marketing-in-australia-of-infant-formulas-manufacturers-and-importers-maif-agreement-final-report_1.pdf (health.gov.au)

THE FINAL 2023 COLLECTIONS Report 220424 (3).pdf (storage.googleapis.com)

MAIF-Review-and-Recommendations-FINAL-May-2023.pdf (storage.googleapis.com)

WHO-EURO-2022-4885-44648-63367-eng.pdf

9789240048799-eng.pdf (who.int)

Breast-Milk Substitutes Act, 2021 - SierraLII

Global infant formula: monitoring and regulating the impacts to protect human health | International Breastfeeding Journal | Full Text (biomedcentral.com)

P1028 - Infant Formula | Food Standards Australia New Zealand

9789240046085-eng.pdf (who.int)