Breastfeeding Advocacy Australia
PROTECT | PROMOTE | SUPPORT
ACN 637 390 295

MAIF Review and Recommendations

Submission to Allen + Clarke Consulting for consideration in the review of the MAIF Agreement and processes – commissioned by the Australian Department of Health and Ageing, May 2023

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Foreword

Since the inception of the World Health Organization's *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 & evaluating the effectiveness of the MAIF Agreement solely with volunteer breastfeeding advocates. This is not only exploitative, it is 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 breastmilk 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 facade. 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 – the 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, Energy and Resources; 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 on 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. 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 Allen + Clarke Consulting 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.

About Breastfeeding Advocacy Australia

This document has been prepared by members of Breastfeeding Advocacy Australia (BAA). BAA is a not-for-profit organisation 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 (36):

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 IBFAN's work. IBFAN's primary mission is to facilitate full implementation of the International Code of Marketing of Breast-milk Substitutes (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 (37).

Executive Summary

The MAIF Agreement represents Australia's effort to implement the World Health Organization's (WHO) International Code of the Marketing of Breastmilk Substitutes (the International Code). Its purpose is to regulate the advertising of infant formula (0–12 months) to the general public and healthcare professionals. 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 answers the questions asked by Allen + Clarke Consulting on behalf of the Australian Department of Health and Ageing (DoH) as part their review of the processes and effectiveness 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 3 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 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. ANBS is a multi-level complex adaptive system which includes implementing robust International Code legislation into National law. However, for 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.

Definitions

ANBS	Australian National Breastfeeding Strategy
BAA	Breastfeeding Advocacy Australia
COAG	Council of Australian Governments
BMS	Breastmilk Substitute
FSANZ	Food Standards Australia and New Zealand
GDP	Gross Domestic Product
GUM	Growing Up Milk
IBFAN	International Baby Food Action Network
ICDC	International Code Documentation Centre
International Code	International Code of Marketing of Breast-milk Substitutes
MAIF	Manufacturers in Australia of Infant Formula
NHMRC	National Health and Medical Research Council
SE	Social Engineering
Toddler Drink	UPF Powdered Drink 12–36 months
UPF	Ultra Processed Food
WHO	World Health Organization
WHA	World Health Assembly

Section 1: Overview

1.1 Background

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 (1, 2). Breastfeeding prevents malnutrition in all its forms, including under and over nutrition and is associated with positive health outcomes for mothers and babies (2). 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 (3).

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 (4). 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 risk of malnutrition (5).

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 (3).

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 policy makers and governments (6). 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 the impending return to work (7). 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 (8, 9). This is evident with 1 in 3 infants being given powdered milk formula before their first birthday and only 1 in 10 children are eating in alignment with Australian dietary guidelines (3). Furthermore, only 1 in 20 children are meeting WHO breastfeeding recommendations (3).

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 (4). 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 (4). 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 (4).

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 five 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 2–4 years were classified as overweight or obese. Unfortunately, children under the age of five in Australia do not meet the recommended dietary guidelines, with discretionary food choices contributing roughly one-third of energy intake for children aged 2–3 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 (28). 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 (10). 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 (11). Restrictions placed on marketing of breastmilk substitutes do not prohibit their use, they allow a caregiver to make an informed decision without marketing spin (12).

1.1.1 WHO Code

In 1981 the *International Code of Marketing of Breast-milk Substitutes* (the 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 (13). 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 (14). 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 (15). 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 (16). One such product is toddler drink, which is an ultra-processed milk powder marketed for use in infants 12 months old to 3 years. 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 the 12-month age (12, 17).

A new resolution was adopted by Member States 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 (12).

'Effective regulatory frameworks for ending inappropriate marketing of breast-milk substitutes and foods for infants and young children in the WHO European Region' 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 (30). 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.

1.1.2 MAIF

Marketing in Australia of Infant Formulas: Manufacturers and Importers (MAIF) Agreement is Australia's response to the WHO Code. It is a non-compulsory voluntary agreement which Australian manufacturers can become signatories to – *if they choose*. The MAIF agreement restricts the advertising of infant formula (0–12 months) to the public and health workers. It does not prohibit GUMS, bottles, teats, and other products advertised as partial or full replacements for breastfeeding (17). MAIF has been identified as ineffective by the Australian Competition and Consumer Commission (ACCC) and is currently under review by the Federal Department of Health and Ageing (19).

An important point that needs to be understood for the context of this review is that the ACCC should ***never*** have been tasked with stewardship of the MAIF Agreement. The ACCC promotes competition in markets to benefit consumers, **businesses**, and the community. The International Code and WHA resolutions are ***human rights instruments*** and therefore it is egregious that the Australian Government has tasked an organisation that handles matters of trade with caretaker responsibilities. It is time for the Government to prioritise health and human rights over trade.

Section 2: MAIF review

The review commissioned by the Department of Health and Ageing (DoH) and carried out by Allen + Clarke Consulting seeks to answer 5 Key Review Questions. The next sections of this report will provide responses to them.

2.1 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 (19). 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 (15, 16).

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 (20).

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 (16). 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 (16). 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 (3).

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 (21). 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 (22). 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 (23).

Allen + Clarke Consulting 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.

2.2 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 (6). Studies have shown that mothers do not differentiate between advertising of 'growing up milks' (GUMs) and infant formula (24). 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 (12, 24). See **Figure 1**, 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 (19).

Figure 1

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 0–36 months have been identified to displace breastmilk feeds and promote premature weaning (12). Please also read the recent report published by Breastfeeding Advocacy Australia titled – *Undermining Breastfeeding for Profit: A Report on the Weekly Collection of International Code Breaches, March 2021 to December 2022* This report details and summarises International Code breaches and examples of Social Engineering (SE) between March 2021 and December 2022. BAA has recorded approximately 3100 examples of how breastfeeding is being undermined by commercial interests in Australia. This report clearly identifies that the International Code and WHA resolutions are necessary as not only a MINIMUM standard for scope and coverage – the products and tactics promoted by industry has infiltrated all aspects of Australian culture and society at large. Therefore, the Australian Government must implement robust legislation with penalties and fines for breaches, with effective monitoring and evaluation that go *beyond* the International Code recommendations.

2.2.1 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.

2.2.2 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 0–12 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 2**, a reply email from MAIF Complaints Committee secretariat, Claire White, dated 28 November 2022. The email states several times that **only** infant formula (0–12 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.*** 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 3**. It misrepresents the scope of the 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 (12).

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 fulfills 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 MAIF, 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 2
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.

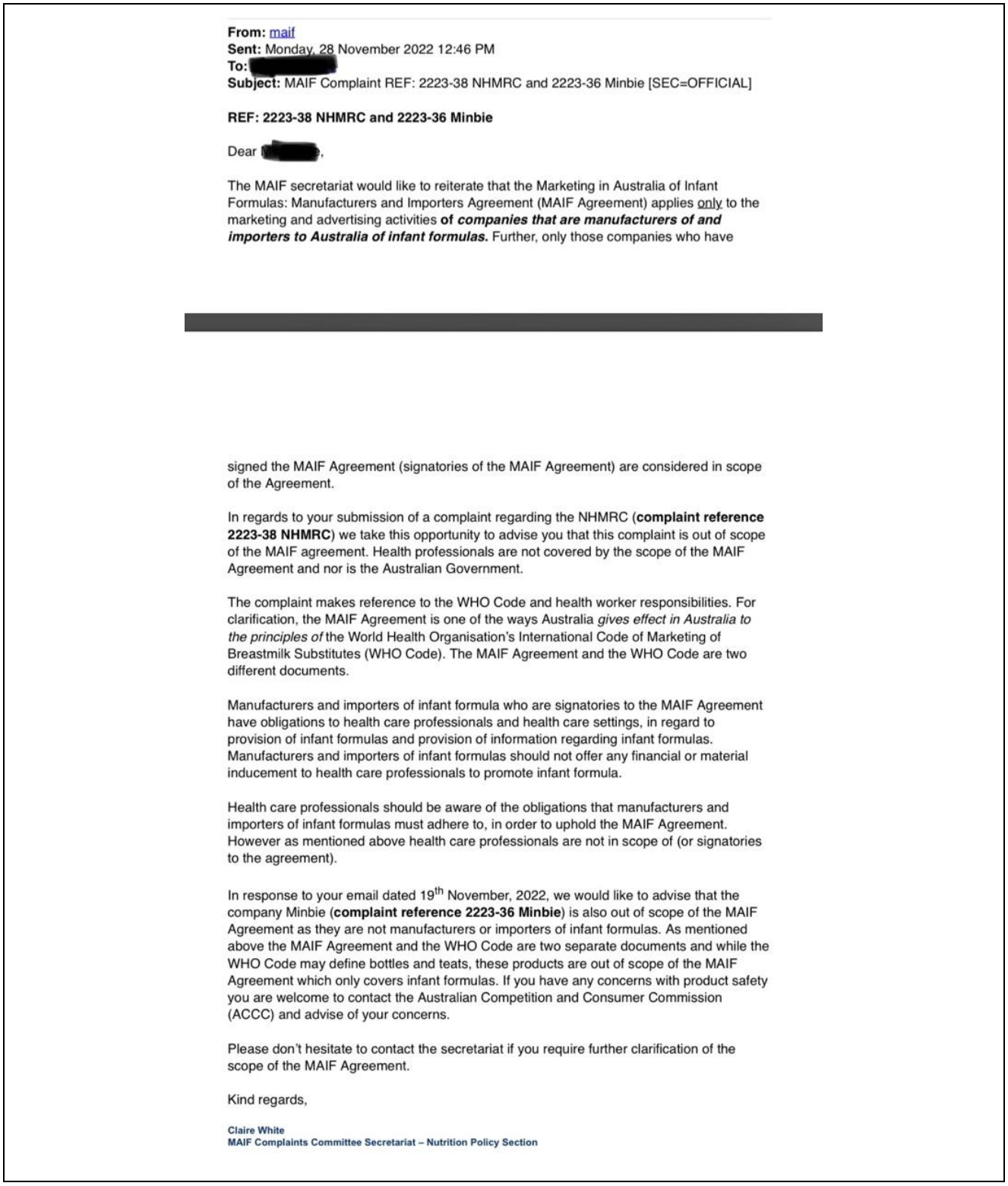
(d) 'Health care professional' - a professional or other appropriately trained person working in a component of the health care system, including pharmacists and voluntary workers.

[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

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

2.2.3 Multi-level public health strategy – Australian National Breastfeeding Strategy 2019

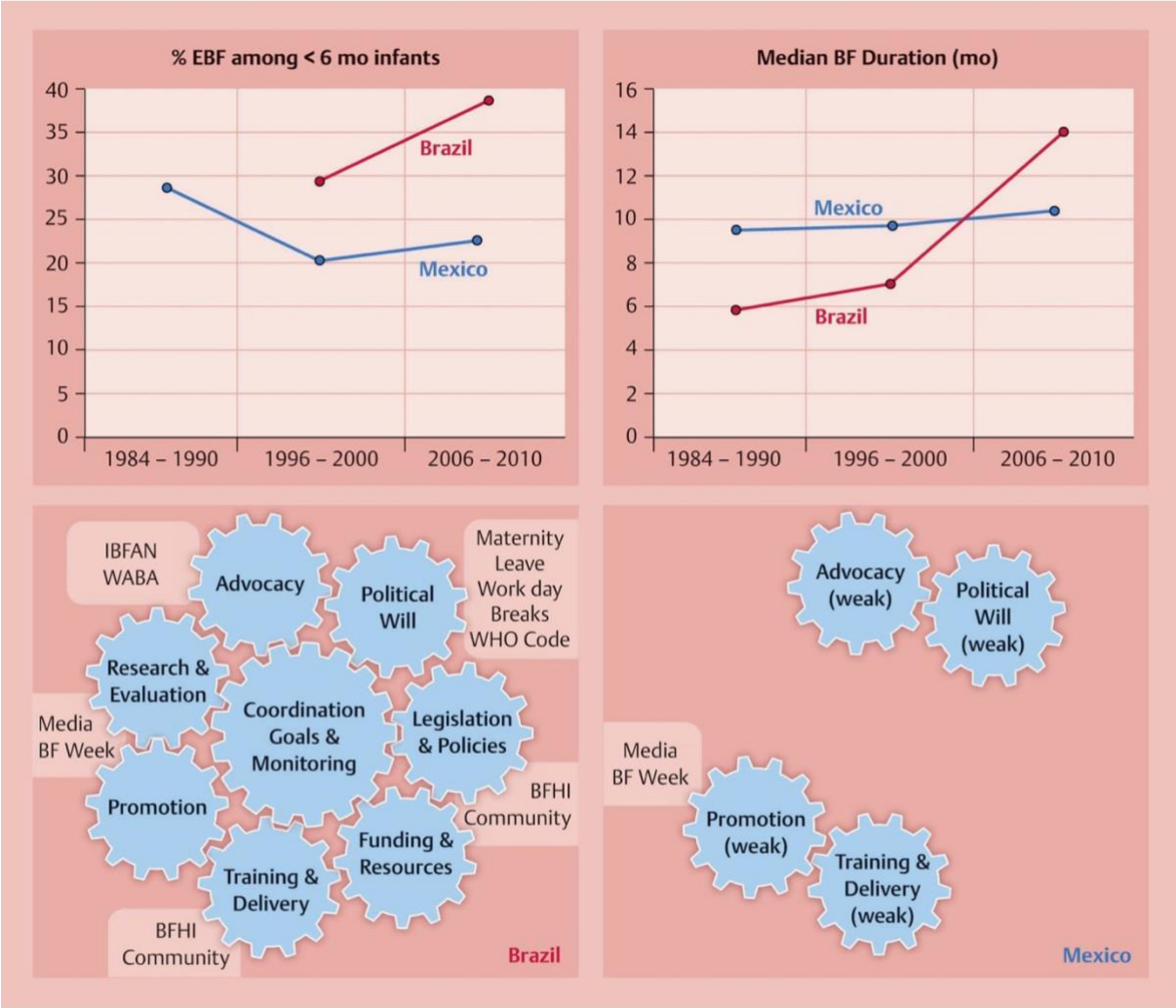
Australian National Breastfeeding Strategy: 2019 and beyond (ANBS/The Strategy) was commissioned by the Council of Australian Governments (COAG) to create an enduring framework for scaling up breastfeeding in Australia. It states:

"(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 who adopt a multi-level public health strategy, such as ANBS 2019, have had the most significant success increasing breastfeeding rates. However, no single component is as effective if it is delivered independent of the framework it operates within (25). It requires collaboration between government and non-government organisations; and involvement of health workers, community, policy makers and advocacy groups. The strategy must be underscored by strong political will (26). For example, Brazil implemented the 'Breastfeeding Gear' model (**Figure 4**), 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, who implemented weak, and incomplete measures. The outcomes were significantly different. Mexico had little change to breastfeeding exclusivity or duration, but Brazil increased dramatically (25).

Figure 4
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 the ANBS (3). 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.

2.3 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 (45).

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 Breastmilk Substitutes". Clause 1 of MAIF is the same as Article 1: Aim of the 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 breastfeeding, and by ensuring the proper use of breastmilk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution.

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.

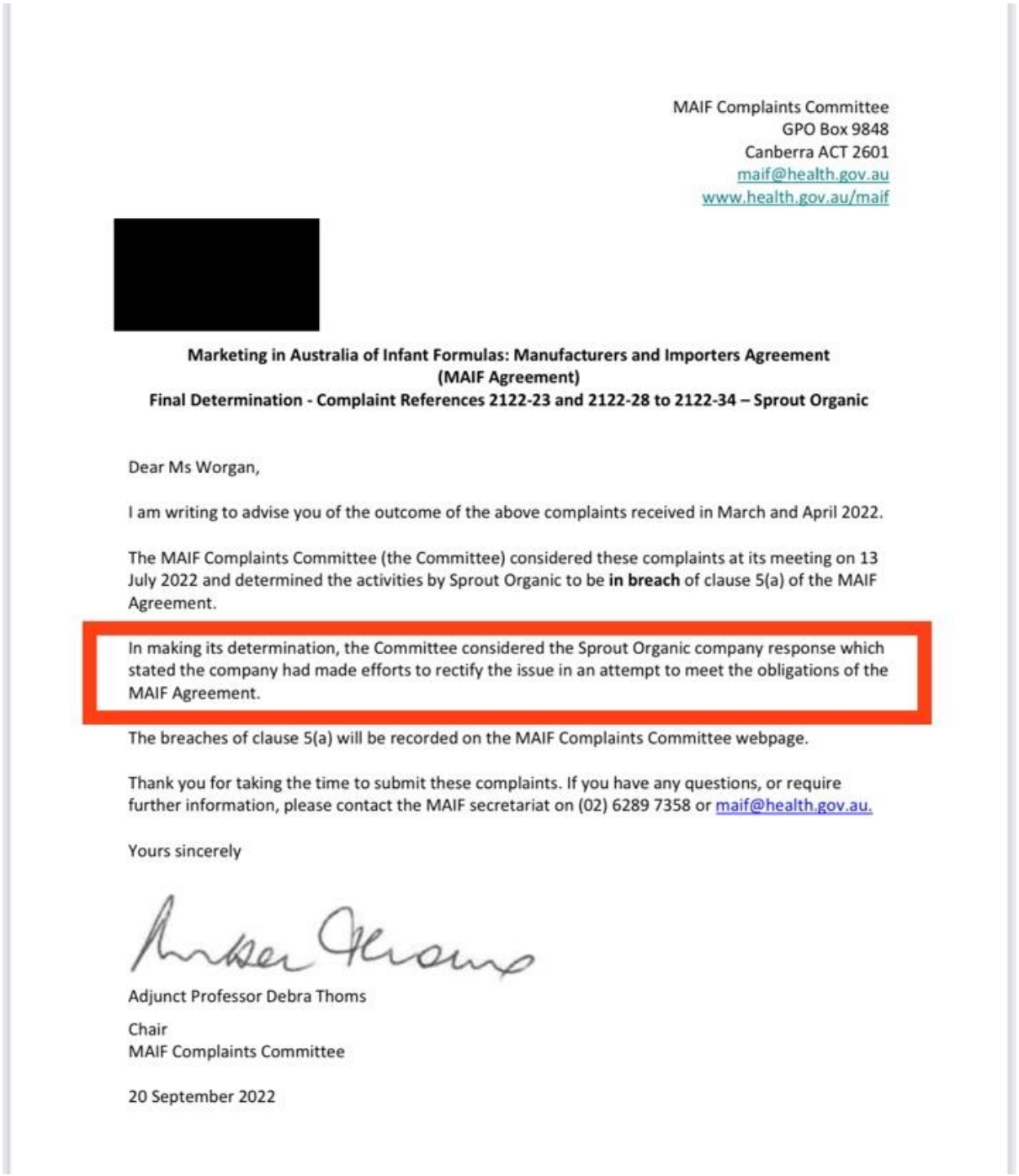
2.3.1 Summary of MAIF complaints submitted by BAA

Between March 2022–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 – 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, 7 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. I.e., 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 13th July 2022, some **5 months** later. It took a further 2 months to send the email notification of the outcomes on 20th September 2022. A **total of 7months** for the process to be complete (see **Figure 5**). 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 Ms Worgan,

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

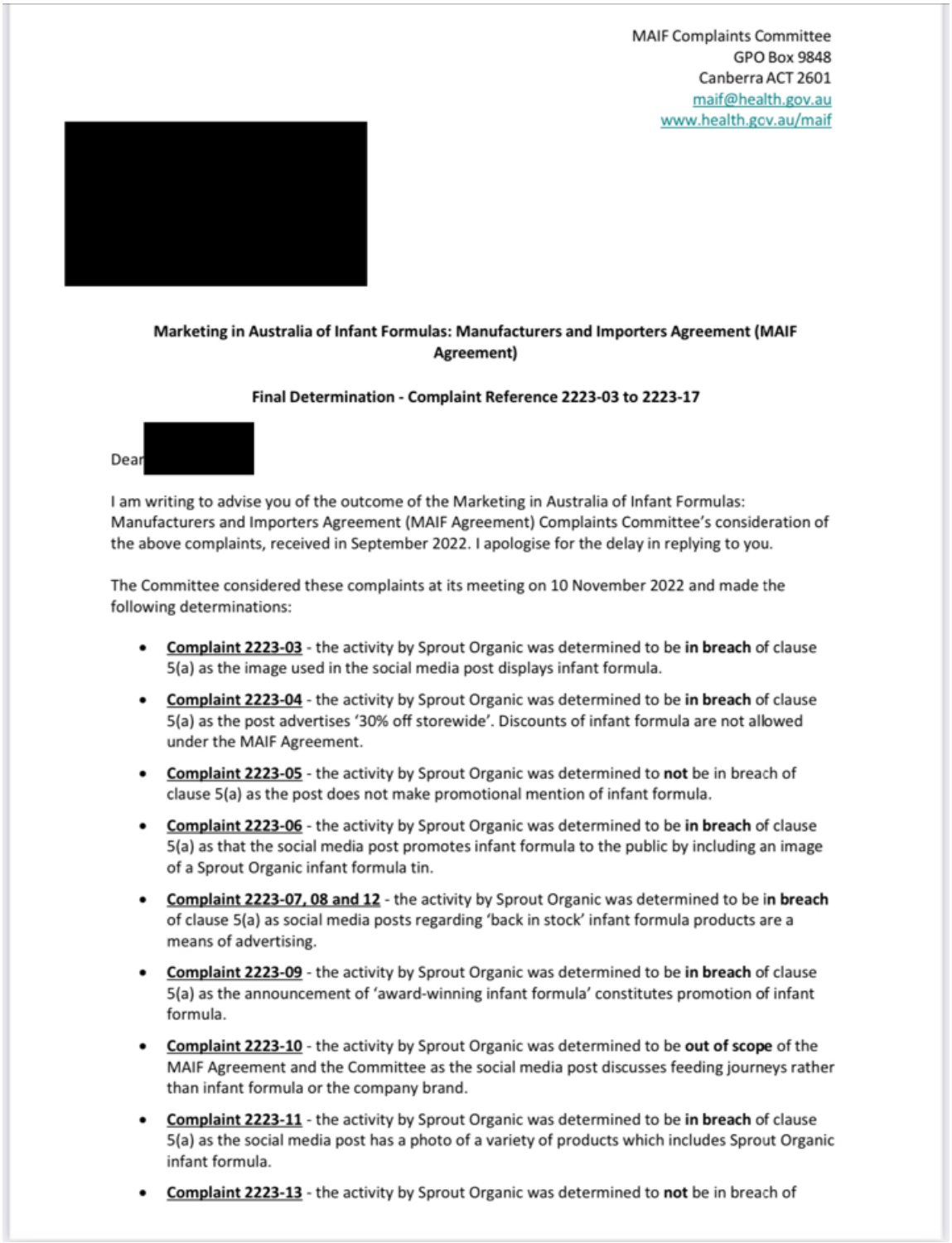
20 September 2022

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 10th of 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. **8 months in total** for the process to complete. The explanation for how the determination was made is a simple sentence or two and does not inform how the decision was made. I.e., 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 2/2 dated 14th February 2023 – 8 months after submitting



MAIF Complaints Committee
GPO Box 9848
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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

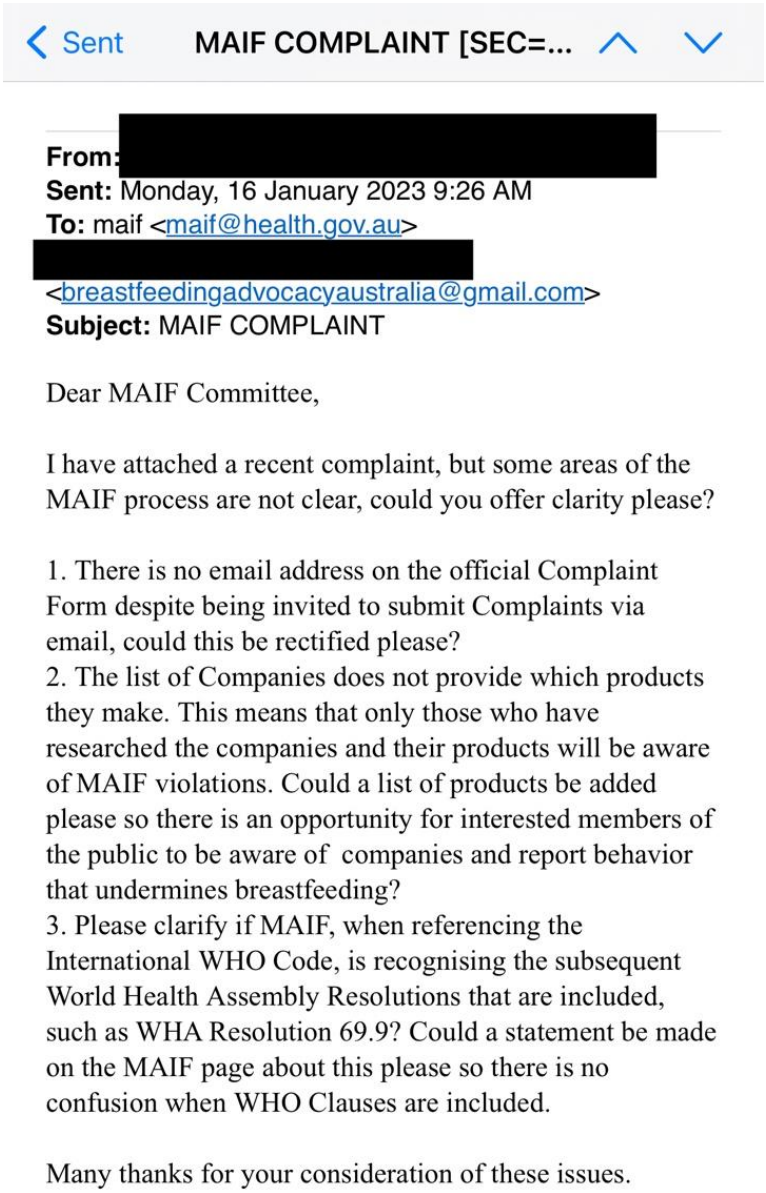
Professor Debra Thoms
Chair
MAIF Complaints Committee

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 1 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.

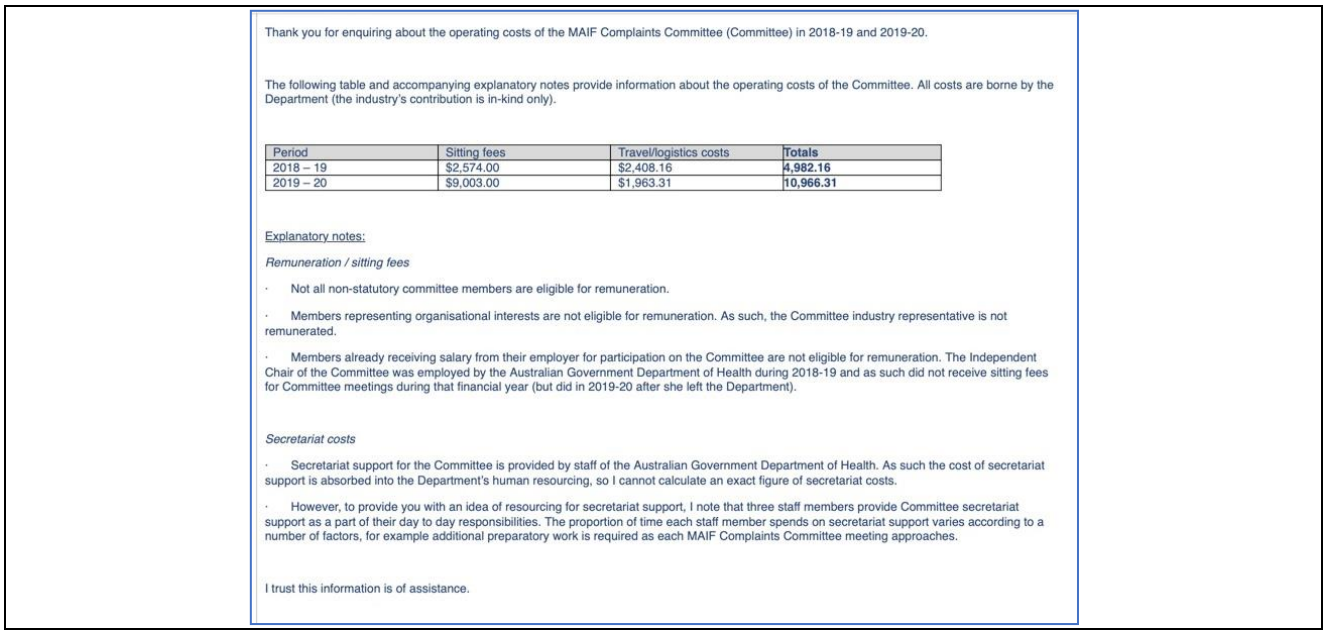
Further examples of email communication to the MAIF Secretariat can be found in Appendix 2. As discussed above, all but 1 were ignored by the MAIF Committee.

2.4 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 5
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.

2.4 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 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."

2.5 Global implementation of the WHO Code

The following information describes the various ways that the World Health Organization International Code of Marketing of Breastmilk Substitutes (the International Code) and subsequent World Health Assembly (WHA) resolutions have been implemented, monitored, and enforced globally.

MAIF is currently under review to determine if it is fit-for-purpose. It has been investigated using taxpayer money and found inadequate on four previous occasions already, and all found it to be ineffective.

This document serves to outline that Australia's Government is failing women, babies and young children, evident in the poor provision rating. This is in stark 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.

Within this document the tables are adapted from 'Marketing of breast-milk substitutes National implementation of the International Code Status report 2022', 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)".*

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 & 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*, full notice and implementation should be taken of the below recommendations as stated within the report.

Figure 8

Summary recommendations from International Code of Marketing of Breastmilk Substitutes: 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.

The following tables are summary evaluation of Australia's effort to protect our mothers from aggressive marketing of breastmilk substitutes. It highlights where the MAIF Agreement is seriously lacking and identifies examples of what is possible to include in future legislation and regulatory frameworks, by using the 'Substantially Aligned' countries as a comparison.

* Please note: Data is unavailable as of this submission. However, even with some data unavailable, the remaining information still demonstrates how Australia's current MAIF agreement is ineffective.

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
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
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 take action against malpractice: health inspectors, the consumer protection organisation (PROCON – a non-governmental organisation) and public prosecutors, and for health workers and professional associations. 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

COUNTRY	TOTAL SCORE (X/100) OF COUNTRIES THAT HAVE LEGAL MEASURES IN PLACE	AGREEMENT/ACT/ LEGISLATION NAME:	MONITORING MEASURES:	PENALTIES/SANCTIONS
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.
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 bit exceeding 6mths Both Body corporate and individual: liable for destruction of any product that offends these Regulations, upon own cost.
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	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.	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

COUNTRY	TOTAL SCORE (X/100) OF COUNTRIES THAT HAVE LEGAL MEASURES IN PLACE	AGREEMENT/ACT/ LEGISLATION NAME:	MONITORING MEASURES:	PENALTIES/SANCTIONS
		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	Self-monitoring has not worked, and the sanctions for non-compliance have not been enough of a deterrent	• Prosecution of recalcitrant offenders • • Administrative fines
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
PHILIPINES	**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 offense 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
ETHIPOIA	**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

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.*

COUNTRTY:	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	12 MONTHS	X	X	X	✓	X	No provisions.	Agreement is only applicable to "signatories", and is not aligned to the WHO code MINIMUM standard
BRAZIL	36 months	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	36 months	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
INDIA	24 months	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	36 months	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	Specified the inclusion of growing-up milk, or sometimes referred to as 'toddler formula'.

COUNTRTY:	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
							Gifts to pregnant women and mothers Contact with mothers	
SOUTH AFRICA	36 months	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	5 years	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.
MOZAMBIQUE	36 months	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.
NIGERIA	36 months	BMS (breast milk substitutes) including growing up	Overall prohibition on use of health	X	✓		Advertising Samples to public	nil

COUNTRTY:	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
		milk/follow up milks, complementary foods, bottles & teats.	care facility for promotion			✓	Promotional devices at point of sale Gifts to pregnant women and mothers Contact with mothers	
ZIMBABWE	60 months	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.
BOTSWANA	36 months	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
PHILIPINES	36 months	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

2.5 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.

2.5.1 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 (3). This, however, must be coupled with effective coordination, monitoring and enforcement and evaluation (15).

2.5.2 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 (3). 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 6months maternity leave, affordable and accessible childcare, and workplace protection, including paid lactation breaks and safe place to store milk or breastfeed (21). 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 (27). 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 (28).

2.5.2 WBT*i*

World Breastfeeding Trends Initiative (WBT*i*) ranked Australia 3rd last out of the 98 countries that have implemented the reporting system (28). WBTi 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%. See Appendix 3 for WBTi Australia report card and key recommendations. Regular data collection and reporting is essential to measure success of any interventions, such as increasing marketing regulations (3).

2.6 Climate Change, Emergencies, NCDs and Contamination

Climate change is increasing the frequency and severity of natural disasters and it is the infants who are formula fed that are the most vulnerable to disease and death in these crises. This is because of the difficulty accessing clean water and electricity required for preparation (31). The 2019 bushfires and the 2022 floods taught Australians that natural disasters caused by global warming impact wealthy countries too. Infant

formula cannot be safely prepared in emergency settings. It requires boiling water, clean water to wash hands, sterilising equipment, clean space to prepare. This is because formula milk powder contains harmful bacteria that must be killed with previously boiled water, no cooler than 70 degrees Celsius. Breastfeeding is food security, safe and easily transportable, with no supply chain shortages as occurs with infant formula.

Members of the Food and Agriculture Organization of the United Nations (FAO) and of the World Health Organization (WHO) have expressed concern regarding the level of safety of food at both national and international level. They state the following about unsafe infant formula preparation in developed countries, including Australia (40) :

"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 basis for lower temperatures is that ingredients such as probiotics and DHA are destroyed at WHO temperature of previously boiled water no lower than 70 degrees Celsius.

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 (33). 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 (34). Additionally, it is estimated that 4000 litres of water are required to make just one tin of formula (35). With global water scarcity crisis, it is not sustainable to continue to manufacture and export these environmentally damaging products (33).

2.7 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 (39).

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 (41, 42, 43).

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 marketed as a substitute for breast milk, which is 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 breast milk only when necessary.

2.8 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 (38) 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.

2.8.1 IYCF indicators include sugar sweetened beverages

Infant and Young Child Feeding (IYCF), refers to the practices of feeding infants and young children aged 0–23 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 0–23 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 6–24 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.

Policy makers and Government departments can utilise these data to strengthen justification for including infant formula, toddler drinks, GUMs and other UPF4 powdered milk drink products into future SSB tax policies (44).

Section 3: Recommendations

Breastfeeding Advocacy Australia has synthesised and collated the recommendations of the WHO Code, WHA, IBFAN, UNICEF, and the ANBS developed by the COAG Health Council. The following recommendations are an appropriate starting point in Australia becoming a "substantially aligned" country, as determined by WHO.

These evidence-based recommendations are minimum implementation requirements and should be regularly reviewed in order to strengthen the protection of breastfeeding in Australia as the marketing landscape changes. It is vital that strong action is taken immediately, and that it sets a standard demonstrating the Australian Department of Health treats the human rights and health of mothers and children as a priority.

3.1 General Recommendations:

- Implementation of robust legislation into Australian law which not only adheres to the International Code as a MINIMUM standard but surpasses it.
- All regulations that are created under legislation must cover pregnancy and up to 60 months (infant).
- Legislators and policymakers should recognise their obligations to promote and protect breastfeeding, and to eliminate inappropriate marketing practices.
- Penalties and fines to be implemented for violations/breaches, which covers reoffences. Penalties commensurate with the profits and marketing budgets that reflect the costs to public health.
- The regulatory framework that incorporates monitoring and evaluation. This is to be overseen by an independent governing body that is free from industry connections and any associated conflicts of interest (including industry representatives or academics funded by industry).
- Government directives about the use of bottle-feeding images in public health messages.
- The use of the WHO/EURO Model Law tool is to be used to strengthen frameworks, and there must be a user-friendly and transparent reporting process in place.
- Government is responsible to take corrective action when violations are identified, through administrative, legal or other sanctions.
- Adopt a multi-level public health strategy – ANBS 2019.
- Establish a Breastfeeding Committee that is independent, free from industry connections, and conflicts of interest.

3.2 Marketing to the general public:

- The scope must cover BMS (infant and toddler GUMs), complementary foods, bottles and teats, dummies, breast pumps, nipple shields, probiotics, gripe water and similar, nutrient formula presented or indicated for specific dietary needs/concerns, mummy shakes.
- Australia must surpass the Code guidelines. The scope must be extended to products that are suggestive of using a breastmilk substitute or undermine breastfeeding. Products such as infant formula dispensers,

complementary food pouches (6+ months), hydration drinks for mothers, hands-free bottle-feeding devices, sleep trainers, probiotics, toddler shakes, lactation teas/drinks/cookies/galactagogues, bottle warmers, infant supplements/vitamins, toys and dolls that include bottles and solid food jars.

- Social Engineering must also be a part of the regulatory framework and will include penalties for language that is suggestive of inability, persuasion or emotionally manipulative.
- Extension of the Code into digital marketing must be implemented into a regulatory framework, to adapt to a constantly changing marketing environment. This includes all media types. Social media, influencers, sponsored ads, TV, radio, billboards, digital catalogues, music and podcast streaming apps, blogs and articles.

3.3 Health professionals, care workers and health systems:

- Provisions must be in place that prohibit the distribution of free or low-cost supplies in the health care system and prohibit the use of health facilities for promotion.
- No Professional Development Points for events that take sponsorship from products that undermine breastfeeding.
- Health care workers should be educated on their responsibilities under the Code and national legislation to avoid conflicts of interest and fully protect, promote and support breastfeeding.
- All donations must be unbranded and suitable for the situation.
- All taxpayer-funded organisations related to infant care and feeding must be free from commercial influence.
- Emergency workers must have training on breastfeeding and harm minimisation for artificially fed infants.

3.4 Labelling

- Introduce requirements for information on labels of BMS: ban on nutrition and health claims, ban on pictures/text that idealises infant formula.
- Plain paper packaging for infant formula products, with penalties for false claims.
- Bring Australian labelling in line with international standards and ban advertising commercial infant and young child food products from having age suitability less than 6 months
- Mandatory temperature for safe preparation of infant formula (0–12 m) in line with WHO. Previously boiled water no cooler than 70 degrees Celsius

Appendix 1

Global Implementation References:

AUSTRALIA: Marketing in Australia of Infant Formulas (MAIF) Complaints Committee

Marketing in Australia of Infant Formulas (MAIF) Complaints Committee | Australian Government Department of Health and Aged Care

BOTSWANA: Chapter: 65:05 Food Control: Subsidiary legislation marketing of foods for infants and young children regulations (under Section 13(1)) (17 June, 2005)

Chapter 6505 Food Control Subsidiary Legislation MARKETING OF FOODS FOR INFANTS AND YOUNG CHILDREN REGULATIONS.pdf (botswanatradeportal.org.bw)

BRAZIL: National System to Monitor the International Code of Breast Milk Substitutes in Brazil

National System to Monitor the International Code of Breast Milk Substitutes in Brazil: SisNBCAL – Current Developments in Nutrition

Breastmilk Substitutes Marketing Violations and Associated Factors in Rio de Janeiro, Brazil

Breastmilk Substitutes Marketing Violations and Associated Factors in Rio de Janeiro, Brazil – PubMed (nih.gov)

Protecting breastfeeding: Brazil's story

TPM Nov 2003FINAL (babymilkaction.org)

ETHIOPIA: Ethiopian Food, Medicine and Health Care Administration and Control Authority Infant Formula and Follow-up Formula Directive

335_Infant_Formula_and_Follow_up_Formula_Directive_No_335_2020.pdf (fmhaca.gov.et)

GLOBAL: Legislation on marketing of breast-milk substitutes and its updated implementing regulations

Legislation on marketing of breast-milk substitutes in digital and social media: a scoping review | BMJ Global Health

Marketing of Breast-milk Substitutes: National Implementation of the International Code Status Report 2016

9789241565325_eng.pdf (who.int)

Marketing of breast-milk substitutes National Implementation of the International Code, status report 2022 – Asia/Oceania Region

9789240051249-eng.pdf (who.int)

INDIA: THE INFANT MILK SUBSTITUTES, FEEDING BOTTLES AND INFANT FOODS (REGULATION OF PRODUCTION, SUPPLY AND DISTRIBUTION) ACT, 1992

199241.pdf (indiacode.nic.in)

MONGOLIA: Nutritional status of under-five children in Mongolia

Microsoft Word – Otgonjargal et al pdf.doc (researchgate.net)

NIGERIA: Implementing the national regulations on the marketing of breastmilk substitutes (BMS) and related products: the role of legislators & policymakers

101530-000_NAFDAC_NigeriaBrief1_Legislators_Policymakers.pdf (aliveandthrive.org)'

Marketing breast milk substitutes act

nigerian-laws/marketing-breast-milk-substitutes-act-cap-m5-lfn-2004.md at master · mykeels/nigerian-laws · GitHub

PHILIPPINES: EXECUTIVE ORDER NO. 51 October 20, 1986, ADOPTING A NATIONAL CODE OF MARKETING OF BREASTMILK SUBSTITUTES, BREASTMILK SUPPLEMENTS AND RELATED PRODUCTS, PENALIZING VIOLATIONS THEREOF, AND FOR OTHER PURPOSES

E.O. No. 51 (lawphil.net)

Milk Code of The Philippines

Milk Code of The Philippines — What It Means To Filipino Moms (hellodoctor.com.ph)

SAUDI ARABIA: LAW OF TRADING IN BREASTFEEDING SUBSTITUTES AND ITS (UPDATED) IMPLEMENTING REGULATIONS

Law-of-Trading-Breastfeeding-in-Substitutes-and-Its-Updated-Implementing-Regulations.pdf (moh.gov.sa)

Breastmilk Substitutes Marketing Saudi Code and Executives Regulation (Updated)

050.pdf (moh.gov.sa)

SIERRA LEONE: Sierra Leone enacts code on breast milk substitutes

Sierra Leone enacts code on breastmilk substitutes | Politico SL

SOUTH AFRICA: THE REGULATIONS RELATING TO FOODSTUFFS FOR INFANTS AND YOUNG CHILDREN (R 991): A FORMULA FOR THE PROMOTION OF BREASTFEEDING OR CENSORSHIP OF COMMERCIAL SPEECH?

The Regulations Relating To Foodstuffs For Infants And Young Children (R991): A Formula For The Promotion Of Breastfeeding Or Censorship Of Commercial Speech? [2014] PER 16 (saflii.org)

SOUTH SUDAN: Exclusive breastfeeding rates up in South Sudan as country marks World Breastfeeding Week

Exclusive breastfeeding rates up in South Sudan as country marks World Breastfeeding Week (unicef.org)

TANZANIA: Tanzania Food, Drugs and Cosmetics (Marketing of Foods and Designated Products for Infants and Young Children)

TZA 2013 THE TANZANIA FOOD DRUGS AND COSMETIC REGULATION FOODS AND DESIGNATED PRODUCTS FOR INFANTS AND YOUNG CHILDREN) REGULATIONS.pdf (who.int)

Point-of-sale promotion of breastmilk substitutes and commercially produced complementary foods in Cambodia, Nepal, Senegal and Tanzania

Point-of-sale promotion of breastmilk substitutes and commercially produced complementary foods in Cambodia, Nepal, Senegal and Tanzania (cyberleninka.org)

ZIMBABWE: Child Rights and Business guidance for Chinese Companies Operating in Zimbabwe

Zimbabwe | UNICEF China

Be smart, be modern, breastfeed your baby, even at work

Be smart, be modern, breastfeed your baby, even at work | UNICEF Zimbabwe

Zimbabwe restricts the use of breastmilk substitutes

Zimbabwe Restricts Use of Breast Milk Substitutes – allAfrica.com

Appendix 2

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.

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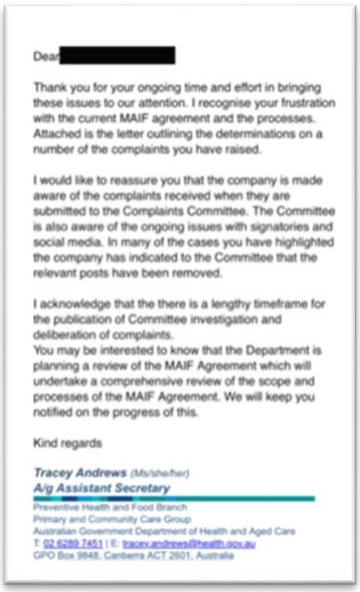
420 KB


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]

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From: mail
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.

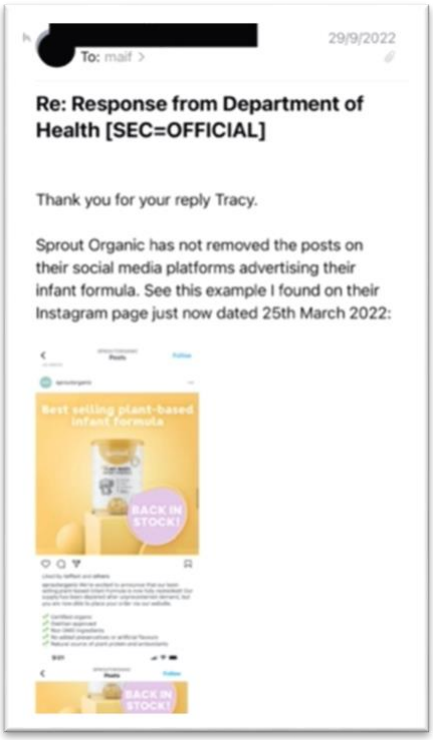
Health care professionals should be aware of the obligations that manufacturers and importers of infant formulas must adhere to, in order to uphold the MAIF Agreement. However as mentioned above health care professionals are not in scope of (or signatories to the agreement).

In response to your email dated 18th 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



[redacted] 29/9/2022
To: mail >

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

Thank you for your reply Tracy.

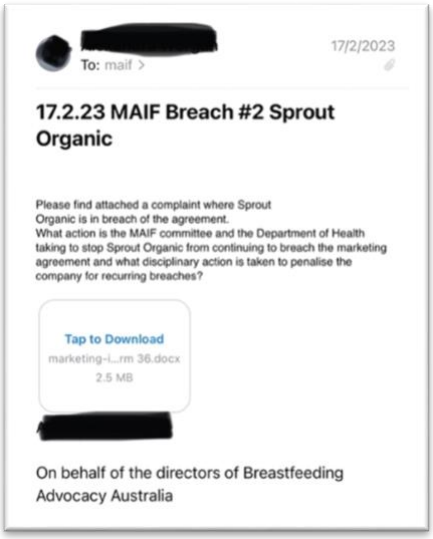
Sprout Organic has not removed the posts on their social media platforms advertising their infant formula. See this example I found on their Instagram page just now dated 25th March 2022:

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.



[redacted] 17/2/2023
To: mail >

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?

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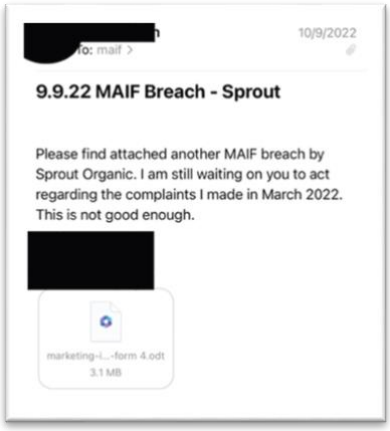
[redacted]

On behalf of the directors of Breastfeeding Advocacy Australia


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

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]

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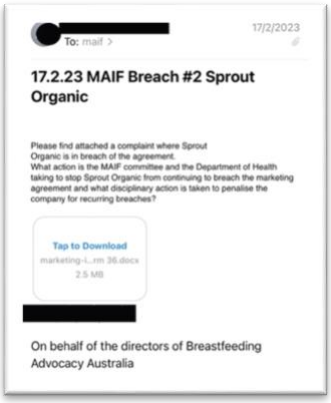
3.1 MB


[redacted] 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?

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[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]

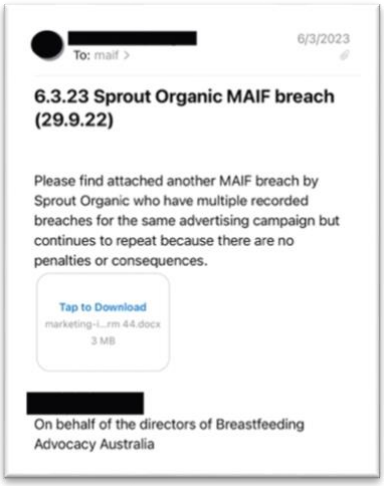
Thank you for bringing the below email to our attention.

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] 6/3/2023
To: maif >

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.

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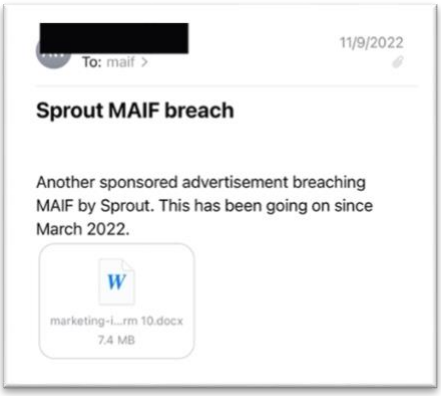
marketing-i...rm 44.docx
3 MB

[redacted]

On behalf of the directors of Breastfeeding Advocacy Australia


[redacted] 11/9/2022
To: maif >

Sprout MAIF breach

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

marketing-i...rm 10.docx
7.4 MB


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

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'.

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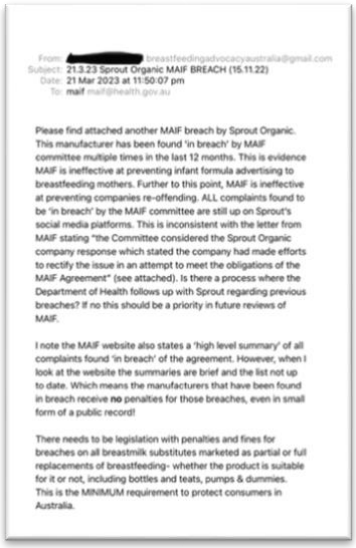
[redacted]

On behalf of the directors of Breastfeeding Advocacy Australia

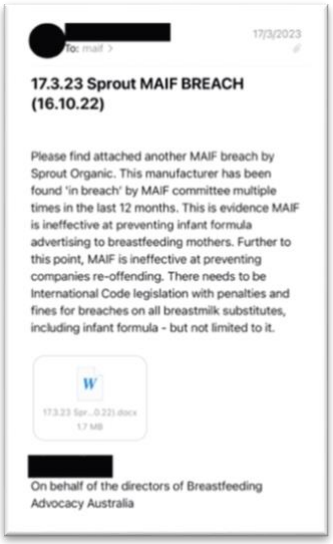


From: [redacted] breastfeedingadvocacyaustralia@gmail.com
Subject: 21.3.23 Sprout Organic MAIF BREACH (15.11.22)
Date: 21 Mar 2023 at 11:50:07 pm
To: maif maif@health.gov.au

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.



[redacted]
To: maif >
17/3/2023

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.

W
17.3.23 Spr...0.22).docx
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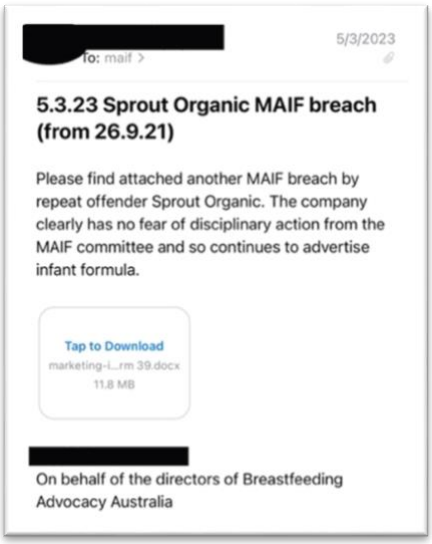
[redacted]
On behalf of the directors of Breastfeeding Advocacy Australia



[redacted]
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.

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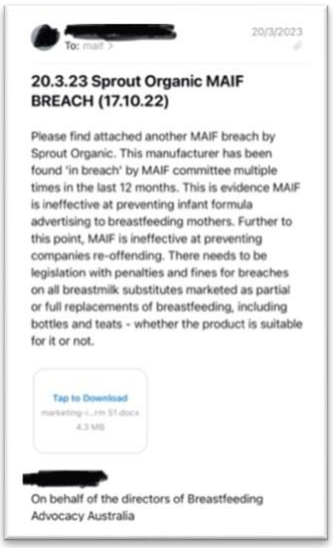
11.8 MB

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



[redacted]
To: maif >
20/3/2023

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.

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4.3 MB

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

Appendix 3

WBT*i* Report Card

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 4

Excerpts from legislation implemented in countries 'substantially aligned with the International Code and WHA resolutions

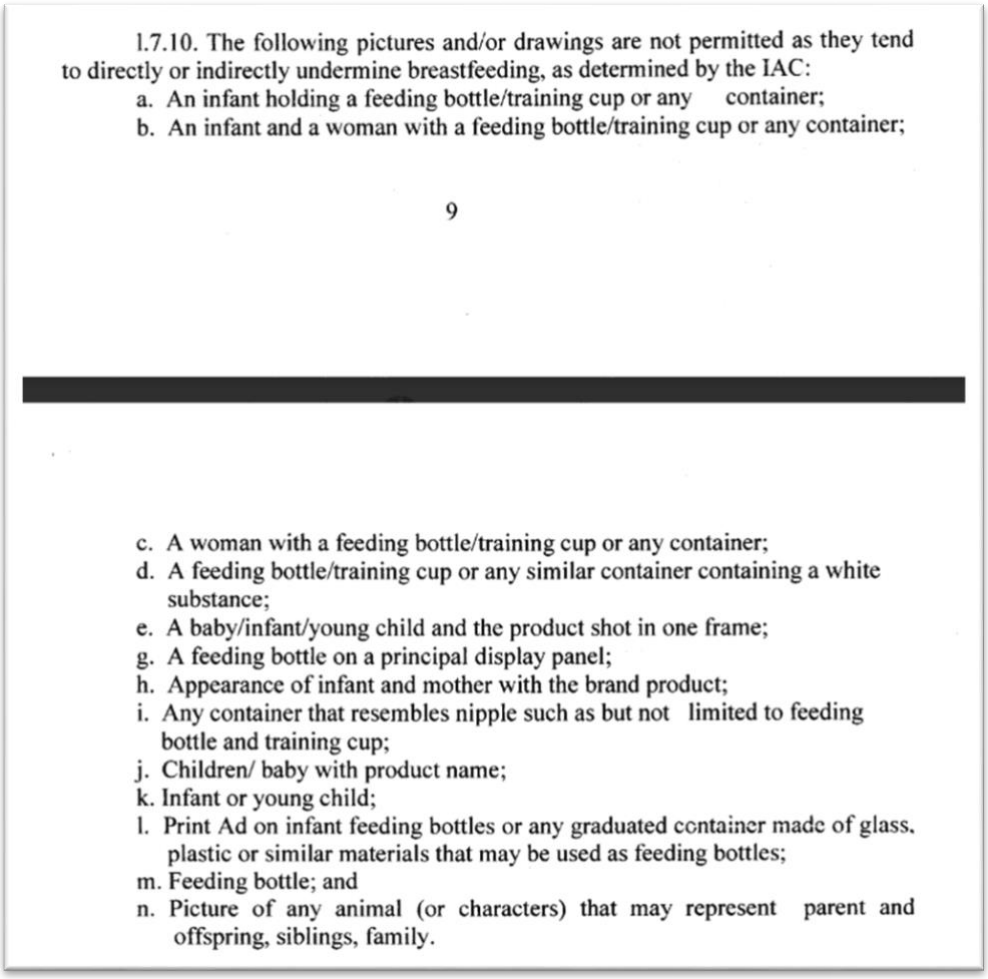
Article 7:

Visual, audio, and printed media shall contribute effectively to raising public awareness to help achieve the objectives of this Law through programs and publications presented by specialists (consultants) in this field.

A7/1
Audio, visual, and printed programs promoting breastfeeding shall be published and broadcasted without violating the Law and Implementing Regulations thereof.

A7/2
Breastfeeding substitutes and infant food products may not be advertised or promoted in any audio, visual, or printed program in any advertising or educational material or through modern technology (smart devices).

Source: LAW OF TRADING IN BREASTFEEDING SUBSTITUTES AND ITS (UPDATED) IMPLEMENTING REGULATIONS Law-of-Trading-Breastfeeding-in-Substitutes-and-Its-Updated-Implementing-Regulations.pdf (moh.gov.sa) – Saudi Arabia



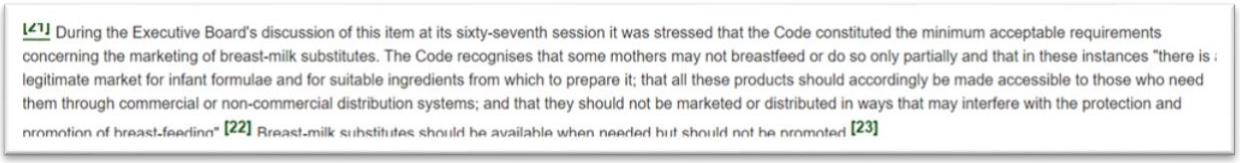
l.7.10. The following pictures and/or drawings are not permitted as they tend to directly or indirectly undermine breastfeeding, as determined by the IAC:

a. An infant holding a feeding bottle/training cup or any container;
b. An infant and a woman with a feeding bottle/training cup or any container;

9

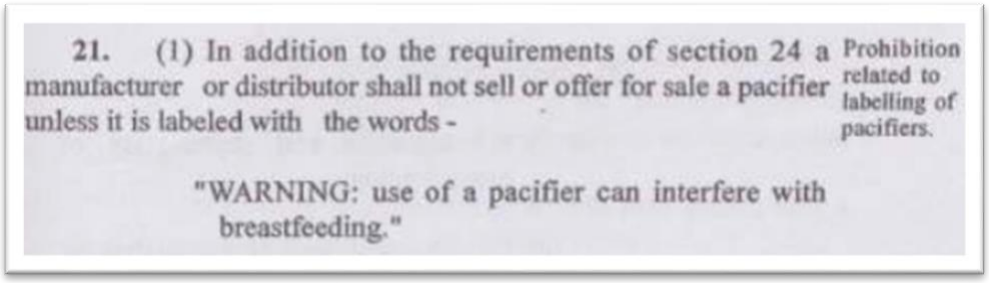
c. A woman with a feeding bottle/training cup or any container;
d. A feeding bottle/training cup or any similar container containing a white substance;
e. A baby/infant/young child and the product shot in one frame;
g. A feeding bottle on a principal display panel;
h. Appearance of infant and mother with the brand product;
i. Any container that resembles nipple such as but not limited to feeding bottle and training cup;
j. Children/ baby with product name;
k. Infant or young child;
l. Print Ad on infant feeding bottles or any graduated container made of glass, plastic or similar materials that may be used as feeding bottles;
m. Feeding bottle; and
n. Picture of any animal (or characters) that may represent parent and offspring, siblings, family.

Source: EXECUTIVE ORDER NO. 51 October 20, 1986 NATIONAL CODE OF MARKETING OF BREASTMILK SUBSTITUTES, BREASTMILK SUPPLEMENTS AND RELATED PRODUCTS –Philippines



[21] During the Executive Board's discussion of this item at its sixty-seventh session it was stressed that the Code constituted the minimum acceptable requirements concerning the marketing of breast-milk substitutes. The Code recognises that some mothers may not breastfeed or do so only partially and that in these instances "there is a legitimate market for infant formulae and for suitable ingredients from which to prepare it; that all these products should accordingly be made accessible to those who need them through commercial or non-commercial distribution systems; and that they should not be marketed or distributed in ways that may interfere with the protection and promotion of breast-feeding" [22] Breast-milk substitutes should be available when needed but should not be promoted [23]

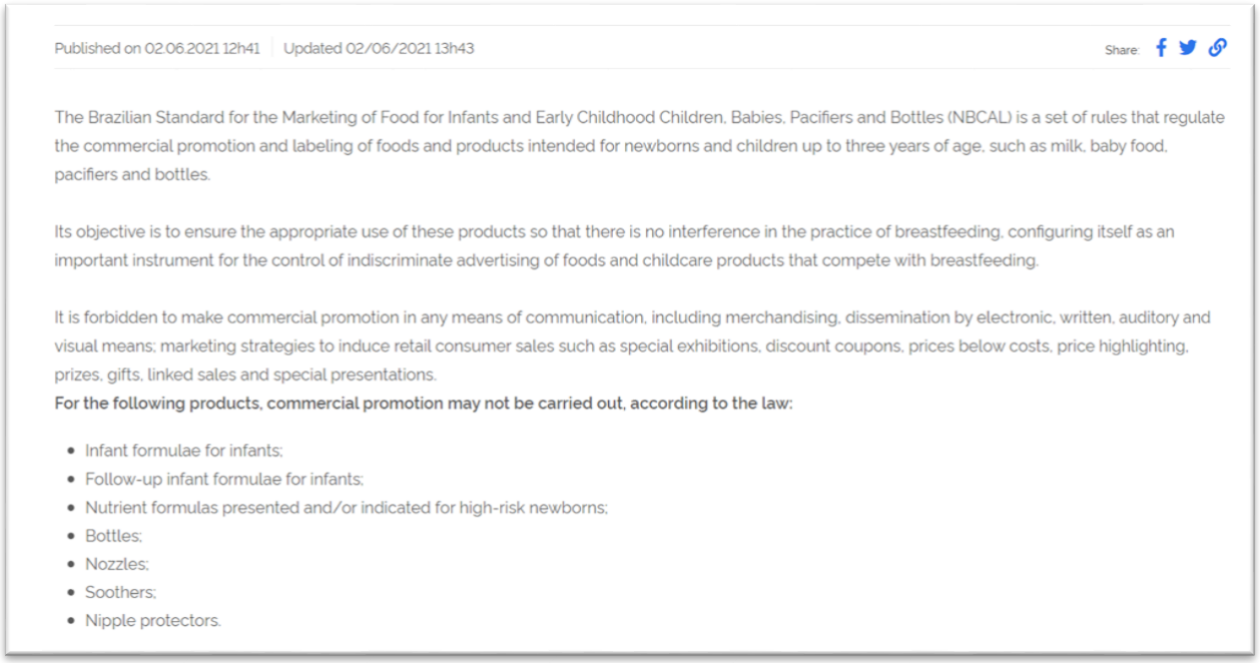
Source: The Regulations Relating To Foodstuffs For Infants And Young Children (R991): A Formula For The Promotion Of Breastfeeding Or Censorship Of Commercial Speech? [2014] PER 16 (saflii.org) – South Africa



21. (1) In addition to the requirements of section 24 a manufacturer or distributor shall not sell or offer for sale a pacifier unless it is labeled with the words - Prohibition related to labelling of pacifiers.

"WARNING: use of a pacifier can interfere with breastfeeding."

Source: 210921 GoSL – Suppl Gaz No. 55 – Breast-milk substitute Act 2021.pdf (slobserver.org) – Sierra Leone



Published on 02.06.2021 12h41 | Updated 02/06/2021 13h43 Share:

The Brazilian Standard for the Marketing of Food for Infants and Early Childhood Children, Babies, Pacifiers and Bottles (NBCAL) is a set of rules that regulate the commercial promotion and labeling of foods and products intended for newborns and children up to three years of age, such as milk, baby food, pacifiers and bottles.

Its objective is to ensure the appropriate use of these products so that there is no interference in the practice of breastfeeding, configuring itself as an important instrument for the control of indiscriminate advertising of foods and childcare products that compete with breastfeeding.

It is forbidden to make commercial promotion in any means of communication, including merchandising, dissemination by electronic, written, auditory and visual means; marketing strategies to induce retail consumer sales such as special exhibitions, discount coupons, prices below costs, price highlighting, prizes, gifts, linked sales and special presentations.

For the following products, commercial promotion may not be carried out, according to the law:

- Infant formulae for infants;
- Follow-up infant formulae for infants;
- Nutrient formulas presented and/or indicated for high-risk newborns;
- Bottles;
- Nozzles;
- Soothers;
- Nipple protectors.

Source: Brazilian Standard for the Marketing of Food for Infants and Early Childhood Children, Beaks, Pacifiers and Bottles – NBCAL — Ministry of Health (www.gov.br) – Brazil

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