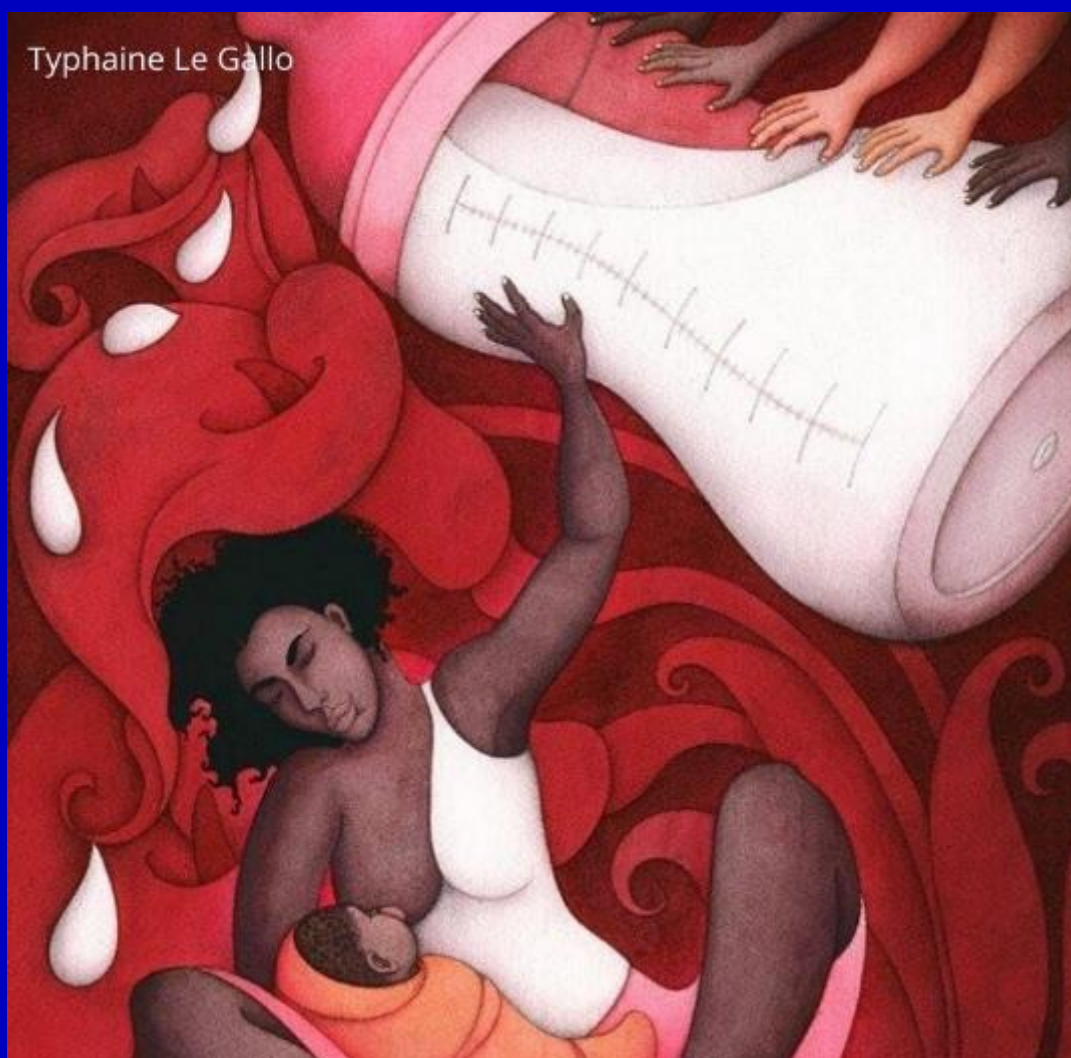




Submission in response to Application for Authorisation of MAIF  
4<sup>th</sup> December 2020

# PROTECT PROMOTE SUPPORT



Breastfeeding Advocacy Australia Ltd

ACN 637 390 295



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## INTRODUCTION

Breastfeeding/breastmilk is not just another corporate interest competing with other local and global corporate entities. It is the final stage of human reproduction; and deliberate actions by corporate entities to attract customers towards their product range has direct negative consequences on breastfeeding and public health.

The Australian Competition and Consumer Commission (ACCC) promotes competition and fair trade in markets to benefit consumers, businesses, and the community. Yet breastfeeding and breastmilk are not goods and services to be bought and sold on the general market, nor should our biological functions be considered in competition with formula products. Breastfeeding Advocacy Australia (BAA) represents the interests of Australian women, children, and families. We are mothers and volunteers; and aspire for Australian consumers to have a realistic opportunity to meet their breastfeeding goals, and those not breastfeeding to have accurate and factual information when making decisions about infant feeding that is free from commercial influence.

The affiliation of infant formula manufacturers and suppliers, who use the misrepresenting term “Infant Nutrition Council”, have access to time, employees, financial resources, and legal teams to research and submit this application. The noticeable absence of action by the Australian government - who is tasked with the protection of infants, their parents and public health - means the complicated, technical task of presenting the case for appropriate measures to protect our most vulnerable is left to inadequately resourced volunteers. These volunteers see the struggle mothers face and are acting to improve their plight, and that of each baby yet to be born into the hostile commercially charged environment Australia furnishes for new mothers.

The application for revocation of the existing agreement and authorisation of a slightly modified Agreement requires consideration through the filter of the principles so eloquently described in the preamble of the of the International Code of Marketing of Breast-milk Substitutes (“the WHO Code”) p.7<sup>1</sup>

“Believing that, in the light of the foregoing considerations,  
and **in view of the vulnerability of infants** in the early months of life  
and the **risks involved** in inappropriate feeding practices,  
including the unnecessary and improper use of breast-milk substitutes,  
the marketing of breast-milk substitutes requires special treatment,  
**which makes usual marketing practices unsuitable for these products;**”



## BACKGROUND

Australia is a signatory to the WHO Code<sup>1</sup> (including all subsequent World Health Assembly {WHA} Resolutions) and as such has an obligation to report and act on Code implementation. Australia's response to this obligation is the voluntary industry agreement called the Marketing in Australia of Infant Formula Agreement<sup>2</sup> (MAIF). MAIF has been demonstrated, repeatedly, to be an inadequate response to the Code and evidence of this is found in the Best Start 2007 Inquiry<sup>3</sup> findings and the World Breastfeeding Trends Initiative (WBTiAUS) Australia Report, 2018.<sup>4</sup>

In 2015, the affiliation of infant formula manufacturers and suppliers, inaptly named: "Infant Nutrition Council", sought to extend the MAIF Agreement for 10 years. The ACCC responded with a five-year re-authorisation.

It is a reasonable expectation - from the volunteers submitting a response on behalf of the mothers, babies, and children of Australia - that the ACCC will act in the interests of consumers and the community. Evidence accrued in these submissions that fall outside the specific task of authorisation of this agreement needs to be acknowledged and recommendations to address the issues need to be put forward. It is disappointing to observe confusion about the responsibility for action on the matters of harm to mothers, babies, and children. Whilst the void in action and leadership is apparent, the companies are free to manipulate the process and act with impunity.

## THE 2016 DETERMINATION

Examination of the rationale for the 2016 Determination<sup>5</sup> is relevant to construct a submission that reflects the role of the ACCC, the evidence already presented and any changes to the current environment being experienced by Australian mothers and babies. There are several issues that arise in the determination that warrant comment prior to submitting a recommended plan of action related to authorisation of the slightly modified agreement. These include breastfeeding rates, toddler drinks and the evidence of adherence to the current agreement and comments that would challenge assertions made in the 2016 Determination<sup>5</sup>.

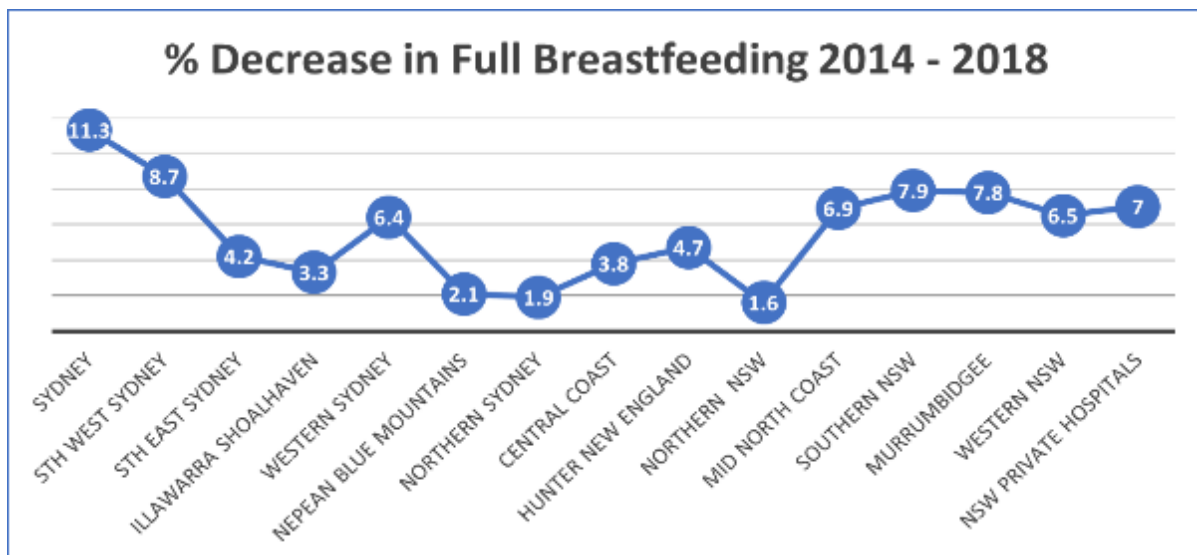
### Breastfeeding Rates

Breastfeeding rates, as they relate to MAIF<sup>2</sup> effectiveness, are mentioned in the 2016 Determination<sup>5</sup> on eight occasions. (paragraphs 80, 84, 87, 88, 89, 90, 129, 130). It is well documented (WBTiAUS Report 2018<sup>4</sup>, Determination 2016 paragraph 87<sup>5</sup>, Australian National Breastfeeding Strategy 2019 and Beyond (ANBS<sup>6</sup> p. 55-58) that Australia has made no attempt to collect any breastfeeding data since 2010, rendering the drawing conclusions about the efficacy of MAIF, in relation to breastfeeding rates, conveniently difficult.

However, NSW does collect minimal data in the form of the NSW Mothers and Babies Report<sup>7</sup>. Since 2014 data collected demonstrates an increase in the use of formula in hospitals over a period of 5 years. This increase had already been obvious in the 2014-2016 figures when the last application was made, but not presented.

The critical element of this data is that it **only** records the well mothers aged between 20 and 34 + 11months who delivered a full term, single baby vaginally with a cephalic presentation, so there would be no apparent reason for these women to need formula as none were in any risk category.

The NSW Mothers and Babies Report 2018<sup>7</sup> (p. 64-65) records the figures over the previous five years. The decrease in breastfeeding on discharge from hospital is represented by the graph below. It should be noted; that we have excluded the Far West Region of NSW, which recorded a slight increase in Full Breastfeeding from 93.9% to 95.2%. Full breastfeeding is defined as having no formula given in hospital.



This is a steady and significant increase in the amount of formula used in NSW hospitals, and whilst we only have percentages, there are countless mothers and babies behind each percentage point of increase that were given formula inappropriately instead of skilled support. These decreasing rates of full breastfeeding (no formula given in hospital) should alarm all politicians, public servants, and families. Those who support the concept that *“individuals who make an informed decision to breastfeed warrant an environment that enables them to meet their breastfeeding goals”* - without undue commercial influence. Poorly trained and equipped health professionals and easily available discounted formula in hospitals contribute to the problem. Anecdotally, women will use the brand of formula given to them by a health professional in hospital as it represents hospital endorsement.



## Toddler Drinks



Please see **Appendix 2** for more information about these images

The 2016 Determination<sup>5</sup> discusses the issue of toddler drinks at length and we respond to these excerpts from the summary:

*“The ACCC considers that toddler milk advertising that has the effect of promoting infant formula (in addition to toddler milk), may undermine benefits arising from the MAIF Agreement.*

*The ACCC understands that the MAIF Complaints Tribunal can currently consider and rule on complaints about toddler milk advertising to the extent they have the effect of marketing infant formula and would be inconsistent with the principles set out in the MAIF Agreement.”*

*“In any event, any impact of toddler milk marketing on the effectiveness of the MAIF Agreement would be a relevant factor in the ACCC’s consideration of any future authorisation application by the Council.”*

Toddler drinks are of interest to the ACCC; firstly, because they act as a proxy for advertising of the infant formula and secondly, because the product is unnecessary and has potential harmful effects on the health of young children. Current widespread advertising of these products misrepresents its role in a toddler’s diet and makes false and misleading claims about health benefits.

The NHMRC Infant Feeding Guidelines for Health Workers 2012<sup>8</sup> recommends breastfeeding 12 months **and beyond**. After 12 months NHMRC<sup>8</sup> and NHMRC 2013 Healthy Eating for Children<sup>9</sup>, suggest cow’s milk can be added to the diet. The use of term the “milk” for these products is incorrect and misleading.

These drinks are covered under the FSANZ Standard 2.9.3<sup>10</sup> *Formulated meal replacements and formulated supplementary foods*. In Division 4 Formulated supplementary foods for young children, Standard 2.9.3—8 Labelling of formulated supplementary foods for young children. This is the specific recommendation:

(4) For the labelling provisions, the required statement is a description of the role of the food as a supplement to a normal diet to address situations where intakes of energy and nutrients may not be adequate to meet an individual's requirements. Note The labelling provisions are set out in Standard 1.2.1.

(5) 'Formulated supplementary food for young children' is a \*prescribed name.

Clear definition of what would constitute *"situations where intakes of energy and nutrients may not be adequate to meet an individual's requirements."* (Standard 2.9.3—8 (4)) is necessary in order for precise guidance in advertising guidelines. The current circumstance of exploiting the good intentions of worried parents of toddlers, who are notoriously fussy eaters, is not consistent with the role of a "supplement". This may fall outside this MAIF authorisation; nevertheless, the issues are intertwined and cannot be separated from purposeful brand advertising.

Dr Demaio from Vichealth, quotes recent research that found these drinks unnecessary, expensive, potentially harmful and with misleading labelling. From the Vichealth media release<sup>11</sup>:

*"Dr Demaio said toddler milks fall into a regulatory loophole when it comes to marketing, and they may be harmful to a child's health long-term.*

*"Unlike infant milk formulas, marketing claims about toddler milk products are under-regulated in Australia," Dr Demaio said.*

*"This is potentially dangerous, as toddler milks could be harmful to the health of growing children. If children consume these toddler products instead of exploring regular foods and drinks, they won't have a chance to develop healthy eating habits that are vital for a long, healthy and happy life.*

*"The Federal Government must urgently act to set higher standards for more honest labelling of added sugars and how these toddler products are marketed to families."*

BAA would express concern, as should all Australians, that the marketing of these unnecessary products would breach FSANZ Section 18 Objectives<sup>12</sup> related to public safety and require urgent scrutiny from those tasked with child protection and public health.



Since the 2016 Determination was written the 69<sup>th</sup> World Health Assembly (WHA) has met in 2016 and made the following recommendations<sup>13</sup>:

1. Optimal infant and young child feeding should be promoted. Emphasis should be placed on the use of suitable, nutrient-rich, home-prepared, and locally available foods that are prepared and fed safely.

2. Products that function as breastmilk substitutes should not be promoted. A breastmilk substitute should be understood to include any milks (or products that could be used to replace milk, such as fortified soy milk), in either liquid or powdered form, that are specifically marketed for feeding infants and young children up to the age of 36 months (including follow-up formula and growing-up milks).

3. Foods for infants and young children that are not products that function as breastmilk substitutes may be promoted only if they meet all the relevant national, regional and global standards and are in line with national dietary guidelines. Nutrient profile models should be developed and utilized to guide decisions on which foods are inappropriate for promotion.

4. The messages used to market foods for infants and young children should support optimal feeding. Messages should include a statement on the importance of continued breastfeeding for up to two years or beyond and should specify the appropriate age of introduction of the food (not less than 6 months). Messages should not suggest use for infants under the age of 6 months, make a comparison to breastmilk, recommend or promote bottle feeding, or convey an endorsement.

5. There should be no cross-promotion to promote breastmilk substitutes indirectly via the promotion of foods for infants and young children. The packaging design, labelling and materials used for the promotion of complementary foods must be different from those used for breastmilk substitutes.

6. Companies that market foods for infants and young children should not create conflicts of interest in health facilities or throughout health systems. Such companies should not provide free products to families through health workers or health facilities, give gifts or incentives to health care staff, give any gifts or coupons to parents, provide education to parents in health facilities, provide any information for health workers other than that which is scientific and factual, or sponsor meetings of health professionals and scientific meetings.

7. The WHO set of recommendations on the marketing of foods and nonalcoholic beverages to children should be fully implemented. A range of strategies should be implemented to limit the consumption by infants and young children of foods that are unsuitable for them.



The ACCC is reminded of the length of time the concern about toddler drinks has been raised, reported, and acknowledged as a problem, by the following final three paragraphs of Chapter 8 of the Best Start Inquiry 2007<sup>3</sup>.

**8.53** The NSW Government considers that 12 months is not a recommended end point for breastfeeding and commercial formulas promoted for toddlers from 12 months may be regarded as breast milk substitutes. **They consider that there is no nutritional requirement to provide toddlers with commercial artificial milk substitutes;** however, these products are being strongly marketed due to limitations of the MAIF agreement. The NSW Government believes that **measures are needed nationally to address this problem, particularly through strengthening the national codes and agreements.**

**8.54** Concern has been expressed about **how toddler milks are advertised.** Toddler milks are not subject to the MAIF Agreement so they can be advertised. It has been comprehensively reported to the committee that toddler milks are in similar packaging and have similar names to infant formula, often with the toddler milk being branded as number 3 (where infant formula and follow-on formula are 1 and 2). Participants to the inquiry consider that this may create an incorrect perception about the necessity of toddler milk and are concerned that it could also lead to **brand recognition.**

**8.55** Toddler milk is beyond the scope of the inquiry and so the committee will not be making a recommendation. However, during the course of the inquiry the committee observed the concern that many in the community have about the promotion and marketing of toddler milks. The committee concludes that it is vitally important that infants are exclusively breastfed for six months and then appropriate solids are introduced after this point following the information provided in the Dietary Guidelines chapter Enjoy a wide variety of nutritious foods. **Unless there is a medically indicated condition such as low birthweight, toddlers should be obtaining the required nutrients from a balanced and appropriate diet, rather than a nutritional supplement such as toddler milk.**



## THE 2017 COMPLAINTS REVIEW<sup>14</sup>

In 2017, the Department of Health (DoH) released a review of the complaints process. It is noted in the executive summary, the DoH reiterates its obligation for monitoring compliance with the WHO Code (**not** MAIF). There are several elements of that review that require comment.

It is questionable whether MAIF<sup>2</sup> does in fact meet Australia's stated obligation to monitor compliance to the WHO Code<sup>1</sup> and technical advice on this matter will be sought to clarify and share with the ACCC when this information becomes available.

The extremely limited scope of this review sought to *"inform Australia's current and future commitment to the WHO Code and to ensure best practice in the complaints handling process"*. This is incorrect as there is no visible reporting mechanism in Australia on the WHO Code<sup>1</sup>. No reports of complaints that were out of MAIF<sup>2</sup> scope, but **did** breach the WHO Code, have ever been published or collated. This may mislead readers into believing, incorrectly, that Australia is meeting this stated obligation.

A reasonable person, an Australian citizen, would expect that a taxpayer funded review would include some scrutiny of the Tribunal (also known as the complaints committee) and their Terms of Reference. This is not the case as stated in section 1.3 on page 3 *"The Terms of Reference and Tribunal have been explicitly excluded from examination by this review at the request of The Ethics Centre, given the Government's 2013 decision to opt out of the complaints determination role."*

Public trust in our government and processes is sorely tested by this next statement, in section 1.3 in the last paragraph page 3 *"The Tribunal has been set up to be completely independent from industry influence"*. The three current members of the tribunal are:

- **Independent representative and Chair:** Adjunct Professor Debra Thoms Chief Nursing and Midwifery Officer for the Australian Government
- **Public health representative:** Professor Peter Davies BSc (Hons) M Phil, PhD, R.Nutr, FNSA - Children's Health Research Centre, University of Queensland
- **Industry representative:** Ms Jan Carey Chief Executive Officer, Infant Nutrition Council

It is implausible that the two people on the tribunal could be considered independent; the title, in fact, says: "Industry representative". Professor Peter Davies has worked with and accepted money from infant formula companies to enable academic career. Breast milk and breastfeeding have no such resources on offer to support these commercial/academic arrangements. Politicians, health workers and Australian families should be extremely

concerned about the industry involvement in this serious public health matter. Findings from this report are clouded by the frequent and misleading use of the term “WHO Code”, when in fact it is only the MAIF Agreement that has any complaint process.

In Clause 3.2 the authors identify the ACCC as the body that “*provides guidelines for voluntary industry codes of conduct.*” It goes on to say the voluntary codes can be highly effective, but that ineffective codes “*may result in unnecessary compliance burdens on business and even reduce market competition.*” The omission of the impact on public health specific to this voluntary code demonstrates bias towards profits rather than public health. The economic and social burden of short, long term, and chronic illness have not been factored in.

The motivation for funding this report remains elusive; as the 2012 Review of the MAIF Agreement<sup>15</sup> identified the same issues, taxpayer time and resources could have been used to address them. It raises the question, at what point will the DoH act on findings of reviews funded by taxpayers?

Recognising and stating the shortcomings of the complaints process and then failing to act to improve the situation would render this process ineffective. The use of complaints as an indicator of the “success” of this voluntary agreement is not a useful tool and cannot be considered as evidence in this application for authorisation.

The authors put forward four options to improve the complaints handling process. The only tenable option that considers the public health aspect of this Agreement is Option 3, which ensures government control, not industry control.

### **6.3 Option 3: Government resume the role of determining complaints, as per the previous APMAIF arrangements**

To ensure a more efficient and effective complaints process Government could make a decision to again manage the complaints process in its entirety. This would bring the process back together under the Department and eliminate the need for a third party decision-maker. Under this option, the members of the complaints determining body would be determined and appointed by Government rather than by the head of the Ethics Centre. This would mean that the complaints determining body could again be established under administrative law, thus providing protections that do not exist with the independent arrangement. A secretariat skilled in supporting a tribunal would be re-established within the Department, thus ensuring a return to a depth of corporate knowledge and expertise. While this option will re-establish a greater role for government, there should be no barrier to the industry signatories funding the complaints process. Any perception of a conflict of interest should be alleviated by the role of government in ensuring an impartial and highly experienced complaints determining body is in place.

Further information about complaint handling is included in the BAA response to the rationale for the authorisation on page 30 of this submission.

## THE 2020 INC APPLICATION

There are many points for comment in the Application and the more detailed rationale. We respond as they appear chronologically in the document.

### List supplied by the INC

Point 3 states:

*“If applicable, provide details of any other persons and/or classes of persons who also propose to engage, or become engaged, in the proposed conduct and on whose behalf authorisation is sought.”*

We note a significant discrepancy between the list signatories published on the DoH website and the list which is presented to be signing up to a new agreement. It is not clear who is currently signed, who will be signing, and who will be not signing a new agreement.

Published on DoH website April 2020	Appearing in the Application (3) Oct 2020
Abbott Australasia Pty Ltd	Abbott Austrasia Pty Ltd
Aspen Nutritionals Australia Pty Ltd*	Australian Dairy Park Pty Ltd*
Australian Dairy Park Pty Ltd	Bayer Australia Ltd
Bayer Australia Ltd	Bellamy’s Organic
Bellamy’s Organic	The Infant Food Co. Pty Limited
Freedom Foods Group Trading Pty Ltd*	The LittleOak Company Pty Ltd
H & H Group*	Nature One Dairy Pty Ltd
Nature One Dairy Pty Ltd	Nestlé Australia Ltd
Nestlé Australia Ltd	Nuchev Ltd
Nuchev Pty Ltd	Nutricia Australia Pty Ltd
Nutricia Australia Pty Ltd	Reckitt Benckiser (Australia) Pty Limited
Reckitt Benckiser Group	Sanulac Nutritional's Australia Pty Ltd*
Saputo Dairy Australia Pty Ltd	Spring Sheep Milk Company*
The a2 Milk Company Ltd	Sprout Organic*
The Infant Food Co. Pty Limited	Swisse Wellness Pty Ltd*
The LittleOak Company	The a2 Milk Company Ltd
Wattle Health Australia Limited	Wattle Health Australia Limited
<i>*not on the Application list</i>	<i>*new to the list, not on the DoH website</i>

## THE RATIONALE ACCOMPANYING THE 2020 INC APPLICATION

### Glossary

Corrections of two of the definitions listed in the Glossary. The inaccurate description of the meaning of these two terms interferes with adequate comprehension of the issues and may misrepresent the obligations of government, manufacturers, and distributors.

#### INCORRECT

##### Toddler milk

Formulated supplementary food for young children over 12 months of age. Sometimes also referred to as 'growing up milk' or GUM. Toddler Milk is not a breastmilk substitute.

#### CORRECT

##### Toddler drink or Toddler milk drink

A supplement to a normal diet to address situations where intakes of energy and nutrients may not be adequate to meet an individual's requirements.

**It is a breastmilk substitute according to WHA Resolution 69.9 (see below)**

*"Products that function as breastmilk substitutes should not be promoted. A breastmilk substitute should be understood to include any milks (or products that could be used to replace milk, such as fortified soy milk), in either liquid or powdered form, that are specifically marketed for feeding infants and young children up to the age of 36 months (including follow-up formula and growing-up milks)."*<sup>13</sup>

#### INCORRECT

##### WHO Code

World Health Organization's International Code of Marketing of Breast-milk Substitutes 1981

#### CORRECT

World Health Organization's International Code of Marketing of Breast-milk Substitutes 1981 including all subsequent WHA Resolutions.

## 2.1 Terms of authorisation

### (a) Ten-year term

In Clause 2.1 (a) the INC offers reasons for a ten-year authorisation, we respond to each justification in order.

*“Very few changes were made to the MAIF Agreement in the eight years following the 2007 Determination, and there have been no changes to the MAIF Agreement since the 2016 Determination.*

*The Federal Government has not, at this stage, indicated any intention to request changes to the MAIF Agreement or to otherwise change its policies in respect of the marketing and promotion of Infant Formula”.*

The absence of government action related to this agreement does not of itself indicate there is no need for change, only that this issue has not been prioritised despite findings from the Best Start Inquiry<sup>3</sup> which made and the following specific recommendations:

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#### **Recommendation 21**

**8.10** That Food Standards Australia New Zealand change the labelling requirements for foods for infants under Standard 2.9.2 of the Food Standards Code to align with the NHMRC Dietary Guidelines recommendation that a baby should be exclusively breastfed for the first six months.

#### **Recommendation 22**

**8.44** That the Department of Health and Ageing adopt the World Health Organisation’s International Code of Marketing of Breast-milk Substitutes and subsequent World Health Assembly resolutions.

These recommendations invited no action, despite significant evidence provided to the taxpayer funded Inquiry. Many of those writing submissions to this application are the same volunteers who submitted to this 2007 Inquiry<sup>3</sup>. The ongoing absence of action is a matter of public record and a violation of the Convention on the rights of the child Article 24.

The contents of the ANBS<sup>6</sup> would conflict with the statement that there has been no intention of change to MAIF<sup>2</sup> indicated by the government. One area recognised for priority and action on p.30-1 of the ANBS<sup>6</sup> is preventing the inappropriate marketing of infant formula. This is identified as a “structural enabler” and contributes the wider recognition of creating an environment that supports breastfeeding.



*“If any relevant policy change were to be proposed by the Federal Government, the INC submits it would take a considerable amount of time for any such changes to be agreed and implemented.*

This statement would suggest that any changes would take 10 years to effect so continuing with the current circumstance of prioritising the pecuniary interests of multinational companies is the main concern of the INC rather than acting quickly and deliberately in response to overwhelming evidence of harm being done and future harm to the public. This is not a realistic justification for these businesses to continue acting with impunity.

*“As noted by the ACCC in the 2016 Determination, any significant change in the policy environment during the period of authorisation is likely to provide a basis for the ACCC to review the authorisation if it wishes to do so.”*

BAA submits that there is a significant body of local and international evidence to provide a basis for reconsidering if authorisation is appropriate and the terms of any such authorisation. Much of this evidence is presented throughout this document and in the references. The list includes, but is not limited to:

- The Lancet Breastfeeding Series 2016<sup>16</sup>
- WHA Resolution 69.9 2016<sup>13</sup>
- The WBTiAus Report 2018<sup>4</sup>
- ANBS 2019 and Beyond<sup>6</sup>
- Nov 2020 report on WHO Code Implementation<sup>17</sup>
- Strengthening the human rights framework to protect breastfeeding: a focus on CEDAW<sup>18</sup> (United Nations Convention on the Elimination of All Forms of Discrimination against Women)

*“The costs incurred by the INC and other interested parties in undertaking a reauthorisation process every five years are considerable. In circumstances where there is no evidence at present that the Federal Government's policies will change in the near-term, it is appropriate that a longer term be granted”.*

It is prudent to continue to always bear in mind the economic, social and health costs incurred by mothers, infants, children, and overall public health when considering costs as a rationale for continuing to condone, by authorising, the deliberate marketing behaviour displayed by signatories and non-signatories alike. The disclosure of marketing strategies, budgets and profits of these companies need consideration when the issue of the costs of regulation and change for the benefits of public health is being deliberated. It is not

appropriate that a longer term be granted nor should the modest “costs” be a genuine factor in overriding public health concerns.

(b) Application to both current and future members

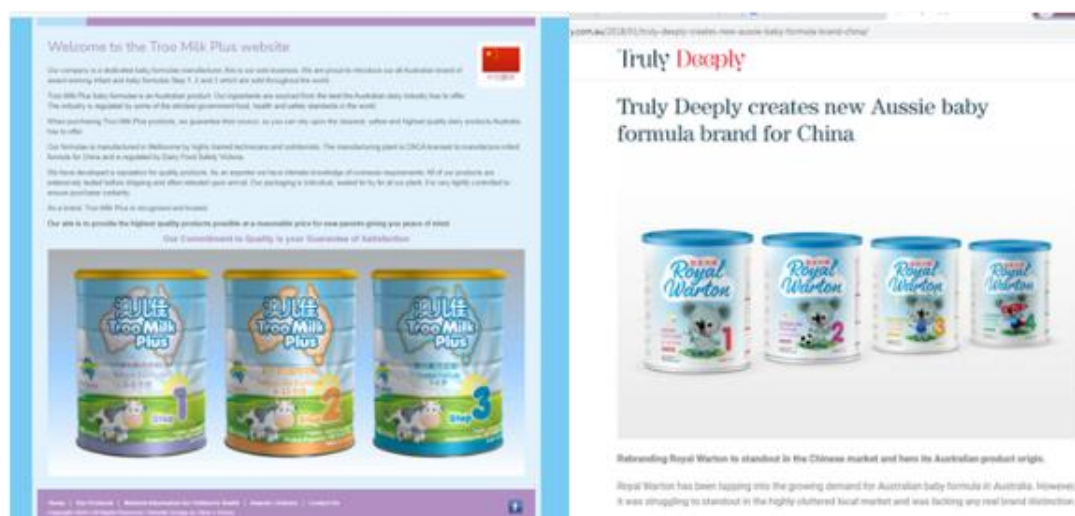
*“Previously, the ACCC has considered it important to maintain the level of certainty afforded by the original authorisations by ensuring that new parties who sign the MAIF Agreement are covered by the authorisations.*

*In its 2007 Determination, the ACCC concluded that this would maintain the industry-wide participation in the MAIF Agreement, and therefore the benefits from the authorisations would continue to be realised. Similarly, in its 2016 Determination, the ACCC extended the authorisation to future parties to the MAIF Agreement.*

*The INC submits that this authorisation should continue to provide for the addition of future parties, to encourage new parties to sign the MAIF Agreement. In this way, market participants would be less inclined to operate outside the terms of the MAIF Agreement thereby avoiding the erosion of public benefits resulting from the MAIF Agreement.”*

Evidence of industry wide participation is absent. A request by BAA to DoH to provide a list of all parties involved in manufacturing and distributing infant formula products in Australia revealed there is no list kept or any mechanism in place to monitor new companies active in this space.

A simple google search revealed an additional 20 companies selling similar products to those who are listed in the application, two manufacturing these products for sale in China and two who are owned by supermarket chains. A total of 24 in all. Even with this list incomplete, it shows that the list on the application represents only 40% of what we know about. A list is presented below.





	Company	Product	Link
1	Gotop Healthcare	Royal AusNZ	<a href="https://www.royalausnz.com/">https://www.royalausnz.com/</a>
2	Optipharm	OptiGold	<a href="https://www.youtube.com/watch?v=RaSpYDNGY6U">https://www.youtube.com/watch?v=RaSpYDNGY6U</a>
3	Bio Living	Holle	<a href="https://www.bioliving.com.au/baby/">https://www.bioliving.com.au/baby/</a>
4	The Careline Group	OzCare	<a href="http://www.ozcaredairy.com.au/">http://www.ozcaredairy.com.au/</a>
5	Nurtura Organic	Nutura	<a href="https://www.nurtura.com.au">https://www.nurtura.com.au</a>
6	Grass Fed	Munchkin	<a href="https://grassfedmilk.com.au/">https://grassfedmilk.com.au/</a>
7	Blackmores	Blackmores	<a href="https://www.blackmores.com.au/nutrition/products">https://www.blackmores.com.au/nutrition/products</a>
8	Nutracare	NutraCare	<a href="https://infantformula.com.au/custom_product/nutracare-infant-formula/">https://infantformula.com.au/custom_product/nutracare-infant-formula/</a>
9	GWC	GWC	<a href="https://www.gwcbabyformula.com.au/premium-baby-formula/">https://www.gwcbabyformula.com.au/premium-baby-formula/</a>
10	Natalplex	Natalplex	<a href="https://www.natalplex.com.au/">https://www.natalplex.com.au/</a>
11	Nature's Way	Nature's Way Kid Smart	<a href="https://www.youtube.com/watch?v=pt-MkmxKXNE">https://www.youtube.com/watch?v=pt-MkmxKXNE</a>
12	Winney	Winney	<a href="http://www.winneydairies.com.au/infant/infant-formula/">http://www.winneydairies.com.au/infant/infant-formula/</a>
13	Sun Wild Farm NutraWiz	Belwiz	<a href="http://belwiz.com.au/happy-belwiz-babies-0-6-months/">http://belwiz.com.au/happy-belwiz-babies-0-6-months/</a>
14	Australia and NZ - JATcorp LTD	Neurio	<a href="https://www.neurio.com.au/product/neurio">https://www.neurio.com.au/product/neurio</a>
15	Nutrigo	SHV Holdings	<a href="https://nutrigo.com.au/why-nutrigo/">https://nutrigo.com.au/why-nutrigo/</a>
16	Camperdown Dairies	Little Treasure	<a href="http://www.littletreasure.com.au/">http://www.littletreasure.com.au/</a>
17	Camperdown Dairy	Duri Baby	<a href="http://www.duribaby.com/about-us.html">http://www.duribaby.com/about-us.html</a>
18	Optivance	Optivance	<a href="https://www.optivance.com.au/">https://www.optivance.com.au/</a>
19	Cotton Tree Thrive	Thrive	<a href="http://www.thriveaustralasia.com/">http://www.thriveaustralasia.com/</a>
20	ACell	Care A2+	<a href="https://www.acell.global/acell-a2-milk-australia">https://www.acell.global/acell-a2-milk-australia</a>



Infant formula products available in Australia but not on the list.

BAA requests clarity about the obligations of companies that manufacture products in Australia designed for an overseas market, it is not clear if they are required to follow the same guidelines as those selling products in Australia. Australian Dairy Park operates in both spaces, it is not clear if the conditions of MAIF apply to the export product. Further information about activities of Australian companies overseas is found on page 41 of this submission.

### Companies manufacturing products for China

Royal Warton	<a href="https://www.trulydeeply.com.au/2018/01/truly-deeply-creates-new-aussie-baby-formula-brand-china/">https://www.trulydeeply.com.au/2018/01/truly-deeply-creates-new-aussie-baby-formula-brand-china/</a>
TrooMilk Plus	<a href="http://www.troomilkplus.com.au/">http://www.troomilkplus.com.au/</a>
Australian Dairy Park Pty Ltd*	<a href="https://www.australiandairypark.com.au/products/">https://www.australiandairypark.com.au/products/</a>

\* Australian Dairy Park is listed in the application for re-authorisation

### Supermarket Brands

Major Australian retailers are typically vertically integrated, meaning they are both manufacturer and retailer. Coles and Aldi own-brand formulas are examples of this. They have come to be perceived solely as a retailer, thus exempting them from any expectations regarding their role as a manufacturer. This flawed perception allows them to exploit their status as a vertically integrated manufacturer. If the goal is to protect public health, it should not matter where the source marketing originates from. How does the ACCC and MAIF<sup>2</sup> plan to reconcile those dual roles? It would not be of any benefit for these manufacturers to sign MAIF. This renders the voluntary nature of the Agreement impotent as it cannot include all players in the market. Advertisements that are harmful to public health, such as cigarette advertising, are not allowed, regardless the manufacturer or retailer.



## Supermarket Brands

CUB – Coles Supermarket	<a href="https://www.thegrocerygeek.com.au/portfolio-item/cub-organic-infant-toddler-formula-range/">https://www.thegrocerygeek.com.au/portfolio-item/cub-organic-infant-toddler-formula-range/</a>
Mamia – Aldi's own brand	<a href="https://www.aldi.com.au/en/groceries/baby/">https://www.aldi.com.au/en/groceries/baby/</a>



## 2.2 Legislative bases for the authorisation application

BAA has written and requested the DoH provide legal assistance on behalf of the Australian Public in the interests of public health, the potential of harm to Australian citizens and obligations to act on implementation of the WHO Code<sup>1</sup>. The volunteers of BAA are not equipped to counter any information put forward by the INC on this matter. At the time of writing, no response has been received from the DoH.

Despite assurance from the ACCC that legal guidance is not required, BAA would disagree. The impact of decisions is felt by mothers, babies, families, health workers and public health in general. The record of government cognisance and inaction would present a case for anyone harmed to seek compensation.

## 3 Infant Formula Products

The information provided by the INC in this section is confusing and some is incorrect.

*“Infant Formula, which is any food described or sold as a substitute for human breastmilk for the feeding of infants up to the age of 12 months. Only products that meet the mandatory compositional and labelling requirements of the Australia New Zealand Food Standards Code – Standard 2.9.1 – Infant formula products (FSANZ Standard), are permitted to be represented as Infant Formula in Australia.”*



BAA observes that the heading of this section is titled “Infant Formula”, and Toddler drinks are not infant formula and are covered under a different food standard as previously discussed on pages 5-8. The inclusion of these products under this heading would imply the INC does consider the product is infant formula and that the products are interchangeable for marketing purposes.

*“Toddler Milk, which is not a breastmilk substitute, and is formulated supplementary food for young children over 12 months of age. Toddler Milk is also referred to sometimes as 'growing up milk' or GUM.”*

The correct term for this product is Toddler drink, it is not milk. FSANZ 2.9.3<sup>10</sup> describes it as “A supplement to a normal diet to address situations where intakes of energy and nutrients may not be adequate to meet an individual’s requirements.” It is also recognised as a breastmilk substitute according to WHA Resolution 69.9<sup>13</sup>.

*“Infant Formula and Toddler Milk are often sold in different 'stages'.*

The INC recognises in this statement that all the products in range are linked and “staged” with toddler drink being the next “stage” after “follow-on”. As shown on the cans in the picture below. The deliberate intent is to have the parent purchase the toddler drink believing it is the necessary next “stage”.





*“Infant Formula is typically available in two compositions:*

- *Stage 1: starter infant formula – for infants aged zero to six months; and*
- *Stage 2: follow-on formula – for infants aged six to twelve months.”*

BAA would draw your attention to the NHMRC Infant feeding Guidelines for Health Workers (NHMRC) Chapter 8, p 74 which states *“the use of ‘follow-on formula’ for infants aged 6–12 months is not considered necessary and no studies have shown advantages over using ‘infant formula’”*. The specific purpose for using the term “follow-on” is a marketing tool.

Whilst FSANZ Standard 2.9.1<sup>19</sup> has provided definitions for both products, the discernible difference in the requirements is negligible. The minimum energy requirements remain the same, as do protein requirements for non-milk-based formulas and a minute reduction in the protein requirements for milk-based formulas. In Standards 2.9.1-10, 2.9.1-11, 2.9.1-12 the requirements for both products are the same.

<b>2.9.1—9 Infant formula and follow-on formula—composition</b>	
<b>(1) Infant formula must have:</b>	<b>(2) Follow-on formula must have:</b>
a) an energy content of no less than <b>2500</b> kJ/L and no more than <b>3150</b> kJ/L; and	a) an energy content of no less than <b>2500</b> kJ/L and no more than <b>3550</b> kJ/L; and
a) a protein content of no less than <b>0.45</b> g/100 kJ and no more than 0.7 g/100 kJ; and	b) the following protein content: (i) for a milk-based follow-on formula – a protein content of no less than <b>0.38g</b> /100 kJ and no more than 1.3 g/100 kJ; and (ii) for all other follow-on formulas – a protein content of no less than 0.45g/100 kJ and no more than 1.3 g/100 kJ; and
c) a fat content of no less than <b>1.05</b> g/100 kJ and no more than <b>1.5</b> g/100 kJ.	c) a fat content of no less than <b>1.05</b> g/100 kJ and no more than <b>1.5</b> g/100 kJ; and
	d) a potential renal solute load value of no more than 8 mOsm/100 kJ.

*“Toddler Milk is formulated for children aged from one and usually up to three years (Stage 3).”*

Again, the correct term is Toddler drink. This statement indicates; that according the INC, children between 1 and 3 years require a special formulation. This is incorrect as toddler drink products fall into a different food standard. NHMRC p.88<sup>8</sup> states *“From 12 months of age and beyond, toddlers should be consuming family foods consistent with the Australian Dietary Guidelines. Special complementary foods or milks for toddlers are not required for healthy children. In the second year of life, water and pasteurised full-cream milk are preferred drinks”*

*“There are also specialty formulas (such as anti-reflux and lactose intolerance formulas) which are specifically formulated to address digestive problems or designed for infants and toddlers with special needs and are made available across all stages.”*

FSANZ are explicit in describing the ingredients of infant formula, ingredients that are superfluous to meet these requirements are added to many products with accompanying health claims. There is no independent evidence that would substantiate claims that these additives are absorbed or utilised.

These added ingredients seek to differentiate brands in a market where, in fact, once these products meet Australian standards, the differences are microscopic and the contrast between what we know is in breastmilk at any one point in time, and formula, would render these infinitesimal differences irrelevant for the consumer. The absence of any FSANZ guidance on these added ingredients, claims of their benefits and no evidence that added ingredients are absorbed and utilised, would mean continuing to tolerate these claims is participating in the deception to health workers and parents. FSANZ, ACCC and the TGA need to be in fact, and perception free from industry influence on order for public health to be prioritised.

The following is presented from FSANZ<sup>19</sup>:

#### **2.9.1—24 Prohibited representations**

- (1) The label on a package of infant formula product must not contain:
  - (a) a picture of an infant; or
  - (b) a picture that idealises the use of infant formula product; or
  - (c) the word ‘humanised’ or ‘maternalised’ or any word or words having the same or similar effect; or
  - (d) words claiming that the formula is suitable for all infants; or
  - (e) information relating to the nutritional content of human milk; or
  - (f) subject to subsection 2.9.1—14(2), a reference to the presence of any nutrient or substance that may be used as a nutritive substance, except for a reference in:
    - (i) a statement relating to lactose under subsection 2.9.1—14(6); or
    - (ii) a statement of ingredients; or
    - (iii) a declaration of nutrition information under section 2.9.1—21; or
  - (g) subject to Division 4, a representation that the food is suitable for a particular condition, disease or disorder.
- (2) Subject to subsection 2.9.1—14(2), the label on a package of infant formula product must not contain a reference to \*inulin-type fructans or \*galacto-oligosaccharides except for a reference in:
  - (a) a statement of ingredients; or
  - (b) a declaration of nutrition information under section 2.9.1—21.

Please note that Bayer has formula products at a site named “Infant feeding Problems”, here is an example of overt flaunting of FSANZ Clause 2.9.1-24:

Infant Feeding Problems

[About Us](#)
[Contact Us](#)
[Novelac Professionals](#)

CONDITIONS

PRODUCTS

WHERE TO BUY

SUPPORT AND ADVICE

BREASTFEEDING IS BEST

EVERY CHILD IS DIFFERENT

Every child's development and needs are different, especially when it comes to conditions that may impact on their everyday feeding habits during the early years of life. We are here to help support you.



COMMON FEEDING PROBLEMS

REFLUX

- Frequent spitting up or gulping
- Pain during or after feeding
- Preferring an upright position


[FIND OUT MORE >](#)

COLIC

- Excessive, unexplained crying
- Pulling the legs up to the stomach
- Arching the back or clenching the fists


[FIND OUT MORE >](#)

CONSTIPATION

- Dry, hard stools
- Crying or pain during a bowel movement
- Loss of appetite


[FIND OUT MORE >](#)

COW'S MILK PROTEIN ALLERGY

- Hives or rash
- Vomiting or diarrhoea
- Not thriving, slow to gain weight


[FIND OUT MORE >](#)

HUNGRY BABY

- Poor sleep, wakes frequently
- Cries often for extra feeds


[FIND OUT MORE >](#)

DIARRHOEA

- Frequent bowel movements
- Loose and watery stools


[FIND OUT MORE >](#)

RUSSY EATER 1-3 YEARS

- Refusing to try new foods
- Distracted during mealtimes
- Asserting their independence
- Concerned that child isn't eating a balanced diet


[FIND OUT MORE >](#)

NEED SUPPORT OR ADVICE?

Call our Medical Information Line to talk to our team for product related questions.

[>](#)

WHICH FORMULA IS RIGHT FOR MY BABY?

Explore the range.

[>](#)

FEELING OVERWHELMED?

Read our handy hints and tips to help you cope with common feeding problems.

[>](#)



SPECIALIST IN INFANT FEEDING CONDITIONS

BREASTFEEDING ADVOCACY AUSTRALIA LTD

22

The US Institute of Medicine Committee on the Evaluation of the Addition of Ingredients New to Infant Formula;<sup>20</sup> makes the statement below in their 2004 publication. In 2020, scientific methods would require the same due diligence and ethical consideration.

*“From a research standpoint, clinical studies that assess the effects of new ingredients will be difficult to design because infants cannot be randomized to be formula fed or breastfed. Furthermore, there may be significant non-nutritional confounding variables between the groups, including, but not limited to, factors related to which mothers breastfeed. Finally, human-milk composition varies considerably among individuals and within individuals over time, while infant formula content remains constant.”*

In summary, infant formula and toddler products are represented in the rationale for authorisation as interchangeable by the INC. According to the same rationale, Toddler products are specially formulated for children between 12 and 36 months, when in fact FSANZ specifically describes them as for children whose diet is compromised. The numerical staging and blurring of Food standards are deliberate and misleading.

**Biostime**  
The Next Generation Organic for growing toddlers.  
SN-280  
Toddler Milk Drink

**NAN**  
2  
3

**Oli**

grows fast  
100% CERTIFIED GRASS-FED MILK  
SPILL PROOF  
DENTIST RECOMMENDED  
THE PERFECT PAIR

## 4.5 Guidance documents for interpretation of the MAIF Agreement

### (b) INC publications

*Best-practice Guidance for INC Members for the Marketing of Toddler Milk Drinks to Consumers (Toddler Milk Guidance).* The INC developed this document to provide guidance on the distinguishing features of Toddler Milk marketing (even though Toddler Milk is outside the scope of the MAIF Agreement). The guidance was approved by the INC board on 27 February 2018. A copy of this guidance is attached at **Annexure 6**.

This document asserts it will “support public health” by offering guidance to its members. For public health to be the priority, the following must be observed:

- The correct term is used for the product – toddler drink or toddler milk drink, it is not milk
- The ACCC or FSANZ seeks to define the circumstances described in the FSANZ 2.9.3<sup>10</sup> “A supplement to a normal diet to address situations where intakes of energy and nutrients may not be adequate to meet an individual’s requirements.”

It is not possible for the INC to offer guidance when the product has been incorrectly identified. The non-binding Best Practice Guidance is superficial at best and without the acknowledgement that it is an unnecessary product and not for everyday use, then these minimal suggestions do truly little to distinguish the products from infant formula.

Best practice for these products would be to have the product in a different shape container and colour, with no numbering and placed alongside other flavoured milk powders and away from infant formula. No recommended daily intakes should be made because these products are not part of Australia’s dietary recommendations for children.

*Information for Retailers brochure.* The INC recently updated its retailer brochure, which is designed to explain to retailers of Infant Formula the key features and best practice application of the MAIF Agreement. A copy of this brochure is provided at **Annexure 7**.

This brochure represents a token by the INC to imply it is supportive of breastfeeding and that the Infant Nutrition Council is a source body on information and support for infant feeding in general.

There is no information of value to a retailer; and the INC ensures that the most prominent message is the one about toddler drinks and complementary food not being included. The WHO Code does include them because incorrect labelling and use of these products is harmful. Information about who this is distributed to and how many have been distributed would perhaps add some credibility.





*“Policy – Breastfeeding. The INC Board approved this policy on 29 July 2010.<sup>18</sup> Under the policy, the INC aims to promote the value of breastfeeding and improve breastfeeding rates by proactively supporting the protection and promotion of breastfeeding. A copy of this policy is attached at **Annexure 8.**”*

There is no purpose for a group of manufacturers and importers of these products to have a Breastfeeding Policy. A policy that genuinely restricts the inappropriate marketing of these products would at least be relevant to the organisation. No reasonable person could believe that a business selling these products would want women to give breastmilk because this takes away sales and shareholder profits. It is practical for companies to exist and make profit; however, there is no reason the pretend to support breastfeeding unless it is to curry public favour.

Promotion of breastfeeding is NOT the role of the INC. Protection of breastfeeding is the critical issue. This document is particularly distasteful.

*“The Infant Nutrition Council supports the aim of the World Health Organisation International Code of Marketing of Breast Milk Substitutes (WHO 1981) through its members’ voluntary restriction of the marketing of infant formula through the Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement 1992 (MAIF Agreement) and in New Zealand the Infant Nutrition Council Code of Practice for the Marketing of Infant Formula.”*

There is no evidence that the INC has any intention of supporting the aims of the WHO Code<sup>1</sup>, MAIF<sup>2</sup> is a superficial interpretation of the principles and content of the WHO Code and the two documents cannot be compared. To state that their members, no other companies, voluntary compliance with MAIF, are supporting the WHO Code is simply incorrect. The deliberate focus on the products that are covered in the WHO Code and not MAIF in the retailer’s brochure (Annexure 7) is proof this is disingenuous.

*“The Infant Nutrition Council and its members are committed to including strategies and activities in their annual strategic planning that support, promote and protect breastfeeding.”*

There is no genuine supporter or advocate of breastfeeding and informed decision making around infant feeding, who would want formula companies promoting breastfeeding. Promotion would only be a marketing tool for their products and a vehicle to appear as a ‘good guy’ by the public.

Authentic protection of breastfeeding would be using resources to effectively monitor and regulate the behaviour of members ensuring actual compliance with the minimal guidelines. To suggest the body is committed to breastfeeding is derisory.





*“The Infant Nutrition Council and its members encourage their employees to breastfeed and are committed to providing ongoing support to their employees to continue to breastfeed after returning to work.”*

The rights of employees to continue to breastfeed after returning to work, is covered under Australian law and is not “special” to the INC. The proper place for the specific details about lactation breaks and providing a space to express should be covered in the conditions of employment and the Award. There is no need for it be here.

*“The Infant Nutrition Council will work in collaboration with other breastfeeding advocates such as the Australian Breastfeeding Association, the New Zealand Breastfeeding Authority and other NGOs.”*

The collaboration needed, is for the INC to focus on ensuring its members adhere in principle and in fact to marketing behaviour laid down in overwhelming evidence to protect breastfeeding from unscrupulous practices. The details of which have been clearly described as a **minimum** standard in the WHO Code<sup>1</sup>. (not MAIF). To entertain the idea that INC and its members have anything to contribute, except exemplary behaviour marketing their products, at the breastfeeding support table is not realistic.

*Guidance on Interactions with Healthcare Professionals. The guidance was approved by the INC Board on 31 January 2012 and was presented to the APMAIF on 16 February 2012, who noted it appeared to have a 'common sense' approach. A copy of the guidance is provided at **Annexure 9**.*

The existence of this document would conflict with MAIF<sup>2</sup> Clause 7. The question is, on what grounds is formula composition scientific? The products are covered under a food standard and all must meet this standard. There is no ethical way to construct studies that would provide robust evidence of bioavailability and efficacy of added ingredients; so, defining what is “scientific” is a missing detail. Independent scientific authorities are needed to define the criteria. Clause 7 (c) says no gifts or inducement to be given or received, yet there is guidance of gift giving and educational sponsorship. BAA calls for a complete independent review of this policy and the inappropriate masquerade of science in a health setting.



BAA encourages a thorough review<sup>21</sup> of this document to appreciate the way the companies communicate information and distort the facts in their engagement with health workers. A health worker recommending these products is the best endorsement. The absence of any breastfeeding training in pre-registration requirements for practice leave Australian health workers vulnerable to commercial solutions for manageable breastfeeding challenges. No such breastfeeding representative is visiting the workplace to offer alternative strategies.

*Policy - Distribution of Infant Formula Samples to Health Care Professionals. The policy was approved by the INC Board on 19 May 2010 and was amended on 15 May 2012. The policy aims to ensure the proper use of Infant Formula samples under the terms of the MAIF Agreement and provides restrictions on the provision of samples. A copy of the policy is provided at **Annexure 10**.*

None of the circumstances listed in this document would be considered scientific, requiring someone to sign a form does not in any way represent authentic scientific evaluation will take place. Considering that these are food items, a parent can buy the product and try it, there would be no compelling reason for medical recommendation unless there were belief in unsubstantiated claims made about a medical advantage of one product over the other. Evaluation would require all the data is described, collected, then sent back to the company for collation. Results of scientific evaluation performed in this way should be available for the benefit of the sample donor recipient and the health worker giving the sample. No such genuine data collection is evident.

### **5.1 New complaints handling process**

BAA has made comment already on the actual 2017 Report<sup>14</sup> on the complaints handling process. Here we offer a recap of what has been happening to the complaints made by concerned members of the public. An unbiased observation of the process may offer another perspective; as the narrow scope, along with the use of terms MAIF and WHO Code interchangeably, of 2017 Review<sup>14</sup> makes it unhelpful in understanding the problem.

Prior to 2014, the MAIF complaints handling process was managed by the Department of Health's Advisory Panel on the Marketing in Australia of Infant Formula (APMAIF). The APMAIF panel was comprised of five members, including.

- Chair
- Community and consumer representative
- Member with legal expertise
- Public health and nutrition expert
- Industry representative

It was recognised at that time that a consumer representative with an understanding of the issues faced by mothers in feeding their babies and young children was a valuable addition to the decision-making process.

From 2014 – 2017 the MAIF complaints handling process was managed by an Independent Tribunal (overseen by the Ethics Centre) operating during this period as an independent and disinterested decision-making body.

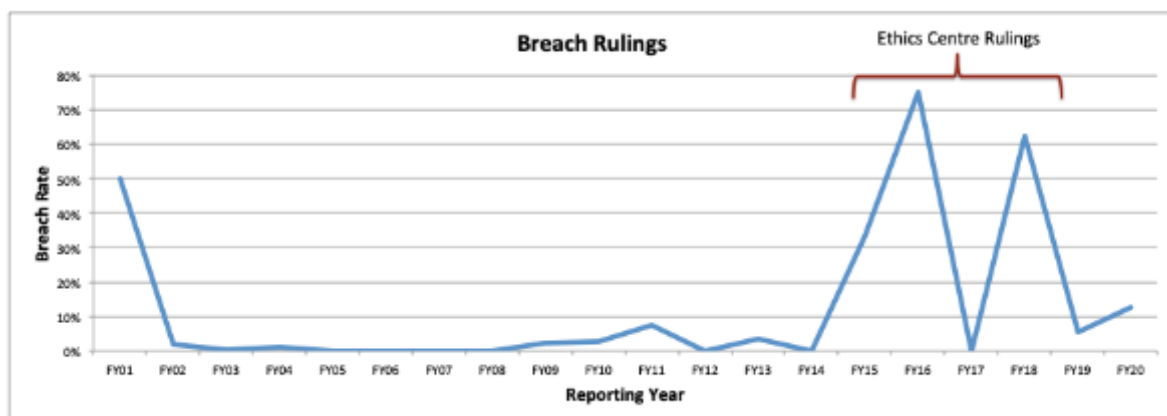
There are two important findings about the operations of the Independent Tribunal during this period. Firstly, they operated at a fraction of the cost of the outgoing APMAIF panel (reducing operating costs by nearly 78% from \$237,164 (DoH contribution of \$151,610) in 2006 to a total running cost of **\$51,984.90** in 2016.

The second finding is that the years in which industry were not present on the complaints panel led to a **significantly higher proportion of breach rulings** by the Independent Tribunal. This suggests that the commercial conflict introduced by industry presence in the complaints handling process has compromised outcomes.

**Table of breach rulings by MAIF tribunal panels 2000-2019/20**

Year	Total complaints	In scope	Out of scope	Breaches	% Breaches	
FY01	10	5	5	5	50%	
FY02	49	5	43	1	2%	
FY03	189	20	149	1	1%	
FY04	80	46	34	1	1%	
FY05	54	17	14	0	0%	
FY06	122	10	71	0	0%	
FY07	900	123	709	0	0%	
FY08	159	19	140	0	0%	
FY09	46	9	37	1	2%	
FY10	39	10	29	1	3%	
FY11	13	2	11	1	8%	
FY12	13	4	9	0	0%	
FY13	30	4	26	1	3%	
FY14	0	0	0	0	0%	
FY15	9	6	3	3	33%	Ethics Centre
FY16	4	3	1	3	75%	Ethics Centre
FY17	21	4	17	0	0%	Ethics Centre
FY18	8	5	3	5	63%	Ethics Centre
FY19	18	11	7	1	6%	
FY20	8	3	5	1	13%	
				<u>Average</u>	<u>13%</u>	

**Graph of breach rulings by MAIF tribunal panels 2000-2019/20**



Following the 2017 Review<sup>14</sup>, the Department of Health established the current MAIF Complaints Committee, comprised of three members:

- Industry representative
- Independent representative & Chair
- Public Health representative

Having an industry representative on the panel clearly compromises the complaints handling process. It is unclear why industry has been allowed to re-join the committee when individual companies are afforded a direct right of reply to complaints made against them, and it is also unclear why there is no longer any consumer representation. Industry representation and as previously mentioned, a significant conflict of interest by a second committee member means the current MAIF Complaints Committee is not independent. The outgoing Chair of the Independent Tribunal (2014 – 2017) commented on this shift in composition in the MAIF annual report 2017-18<sup>22</sup>, stating:

*“We understand that you have agreed to provide the Infant Nutrition Council with a ‘seat-at-the-table’ – hearing complaints against its members. We note, in passing, that this was not a feature of the scheme developed by The Ethics Centre – which, as a general principle, believes that complaints are best heard by a disinterested Tribunal.”*

We agree that industry has no place on the MAIF Complaints Committee. We also believe this concern is backed up by data, which shows a lower breach rate when industry is present in the complaints handling process; in contrast to the higher breach rate observed when a disinterested Tribunal is in place. The complaints panel composition should be formally chartered to require independence from industry, and then re-formed to meet this requirement. Ideally in such a fashion as to replicate the disinterested Tribunal (Complaints Committee) composition in place between 2014 and 2017.

Furthermore, there has been no consumer representative on the panel since 2012. What community consultation has occurred since MAIF was reauthorised in 2016? A Committee that relies on members of the public as key stakeholders in making the Agreement work has an obligation to engage stakeholders. All stakeholder consultation held since 2016 should be publicly disclosed, as should future stakeholder consultation.

The detail recorded in the complaints captured and reported has varied greatly over time. This has compromised identification and tracking of any trends in complaints. BAA makes the following recommendations to reflect community concern and good stewardship of this essential task.

Going forward, complaints should be captured and reported in such a way that includes:

- Establishment of formal complaint categories that include but are not limited to:
  - ✓ Infant formula (12 months age and under)
  - ✓ Toddler drink products (>12 months age)
  - ✓ Bottles and Teats
  - ✓ Cross-marketing (age bracket) promotions
  - ✓ Inducement promotions
  - ✓ Health professional
  - ✓ Retail
  - ✓ Non-signatories
- Retrospective categorisation of complaints from the past 5 years against formal complaint categories
- Consistent year-on-year reporting of complaints that include both summary figures at category level and detailed complaint and outcome records
- Standards should be established to ensure complaints are dealt with and complainants informed of outcomes within a reasonable timeframe.

**The high proportion of complaints found to be out-of-scope strongly suggests that MAIF's technical boundaries do not reflect consumer concerns.**

Examples of issues considered technically outside scope include toddler drink products and retailer promotions. Both these issues directly impact on the health of mothers and babies, and thus should be captured in-scope.

There are no financial or legal sanctions associated with breaches of the MAIF Agreement. As such there is no real disincentive for Signatories to take meaningful steps to ensure adherence. The supposed reputational damage from having a breach upheld likely pales in significance to the sales and associated profits that flow from inappropriate promotions. Thus, MAIF<sup>2</sup> remains a 'toothless tiger' without the ability to enact meaningful consequence for wrong doing on behalf of Signatories.

Penalties should be considered that include a scale of responses including, but not limited to:

- Mandatory public apologies published in the same location/s as the original offending materials
- Financial penalties and marketing restrictions for repeat offenders.

A second component of ensuring MAIF breaches lead to meaningful consequences and subsequent changes in behaviour would be to consider requiring manufacturers, importers, and retailers, (over a certain turn-over, for example \$50m p.a.) be required to become



signatories of MAIF if they intend to engage in any marketing or sales promotions regarding relevant infant formula and toddler drink products. Without any such requirement many actors in the industry can simply opt out of compliance, and this has been observed in many new market entrants posing a real threat to the health and well-being of mothers and babies.

Lastly, the mechanism for making a complaint to the DoH requires that members of the public submit a form that is not mobile user-friendly. The inability to lodge complaints in a mobile-friendly format creates an unnecessary barrier to lodging complaints and puts the onus back on stakeholders to complete the complaint form later when they are in front of a laptop/desktop computer. A simple reporting app or online form could be developed to meet this need and would allow stakeholders to capture evidence/data on their phone while also being able to report potential breaches in real-time, as they occur.

The accumulation of these challenges and inconsistency in the way the complaints are handled, as previously stated, leave the process of questionable merit and cannot be used as evidence of a functioning agreement.

BAA has lodged 43 complaints to the DoH since March 2020, we can find no record of the Complaints Committee meeting or reviewing these complaints.

## **6 Significant Benefits to the Public**

No evidence exists that supports the notion that this voluntary agreement affords any public benefit. MAIF<sup>2</sup> is a vastly different set of guidelines to the WHO Code<sup>1</sup> and has not kept pace with subsequent WHA Resolutions. For a voluntary code to be effective, it must have a mechanism of ensuring all players in the market are known; and prepared to sign up for and abide with the terms of the agreement. INC has not provided any information that would support efficacy when only 40% of those known in the market are willing to sign and many are not, at present, demonstrating any compliance.

## **7 Benefits Outweigh Any Public Detriments**

The brand marketing that saturates every space a mother or health worker would find themselves, could not be any worse. A google search related to babies or toddlers invites electronic pop-ups in email, Facebook, in games and places we cannot imagine. Billboards when driving anywhere, television ads, YouTube videos, Petting Zoos, Museums, sponsored celebrity sessions, the list is only limited by the imagination and deep pockets of these companies. Suggesting there are benefits for mother, babies, families, and public health to keep this agreement is truly delusional. There are, however, pecuniary benefits to the businesses, which Australia must be willing to pay for with the health of its most vulnerable.





## RELATED AREAS OF CONCERN

### Current content of websites

It is relevant to consider, in the context of this application, exactly what the affiliation of infant formula manufacturers and their listed signatories show to the public. Viewing what is represented on their websites will give credence to the claims of compliance and community benefit in their application. This information, together with existing complaints, demonstrates evidence of genuine respect (or not) for the existing agreement, the underlying principles and protection of breastfeeding as the single most important public health measure a nation can support.

A summary of evidence of what appears on their sites is presented below with the evidence displayed with a summary of observations in **Appendix A**.

#### OBSERVATIONS FROM COMPANY WEBSITES OF SIGNATORIES TO PROPOSED AGREEMENT

*Two of the companies, Reckitt Benckiser (Australia) Pty Limited who sell Enfamil and Abbott Australia Ltd have no product websites to review so they are not counted in the percentages.*

Toddler drink used to visually represent product range	53%
Young baby pictured with toddler product	24%
Uses the term “toddler milk drink” or “toddler drink” on label	47%
Uses the term formula to describe/represent toddler products	35%
Uses the term formula on the toddler product	6%
Uses other words, e.g., milk or supplementary drink to describe toddler products	18%
Adds superlatives to describe the toddler drink products, e.g., “premium”	18%
Packaging across product range is remarkably similar, suggesting incorrectly toddler drinks are in the same FSANZ standard	100%
Uses celebrity influencers to sell the brand, visible on website	6%
Uses numerical sequencing to suggest toddler drink is a logical progression (e.g., 1, 2, 3, 4...)	81%
Meets Clause 4a	16%
Somewhat addresses Clause 4a	47%
No attempt to address Clause 4a	37%
Meets Clause 4b	0%
Somewhat addresses Clause 4b	10%
No attempt to address Clause 4b	90%
Specifically ensures that infant formula is seen and understood to be as a separate product	0%

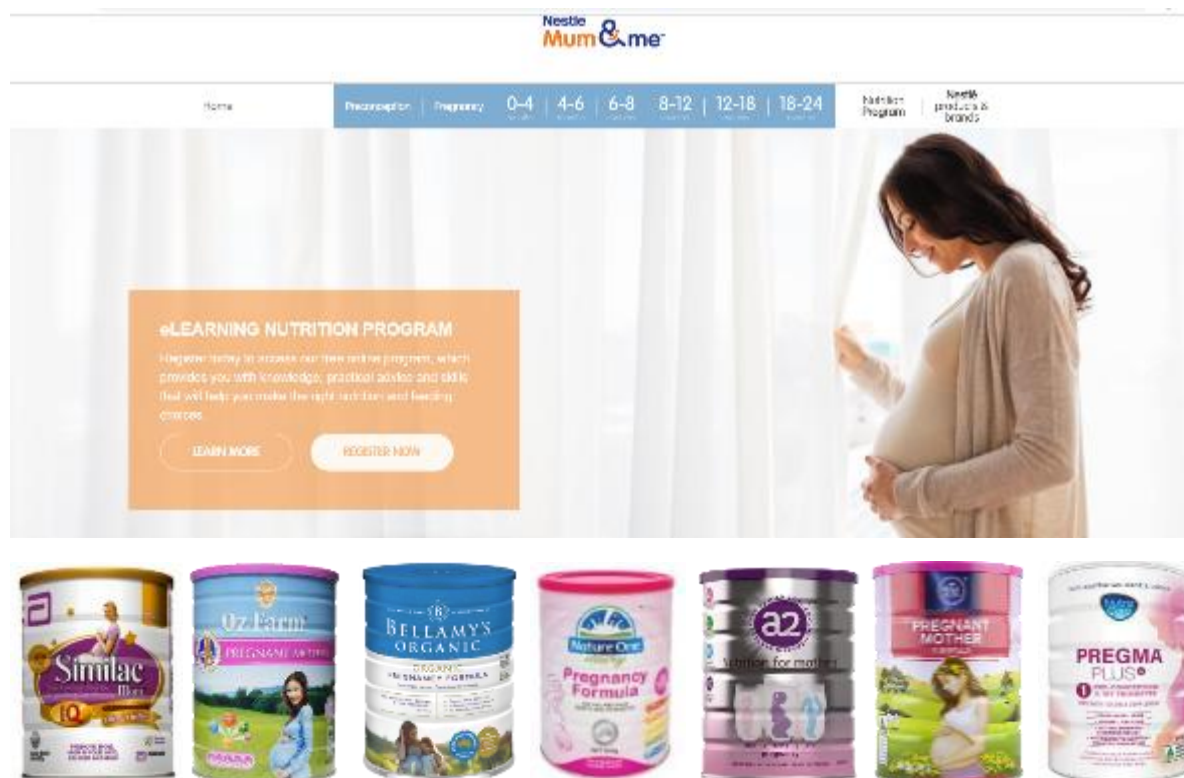
Three of the signatories use website titles that invite parents to visit, Novalac, with their site [www.infantfeedingproblems.com.au](http://www.infantfeedingproblems.com.au); Nestle [www.nestlemumandme.com.au](http://www.nestlemumandme.com.au) and Nutricia [www.mumstore.com.au/](http://www.mumstore.com.au/). All are deceptive and invite mothers to connect.

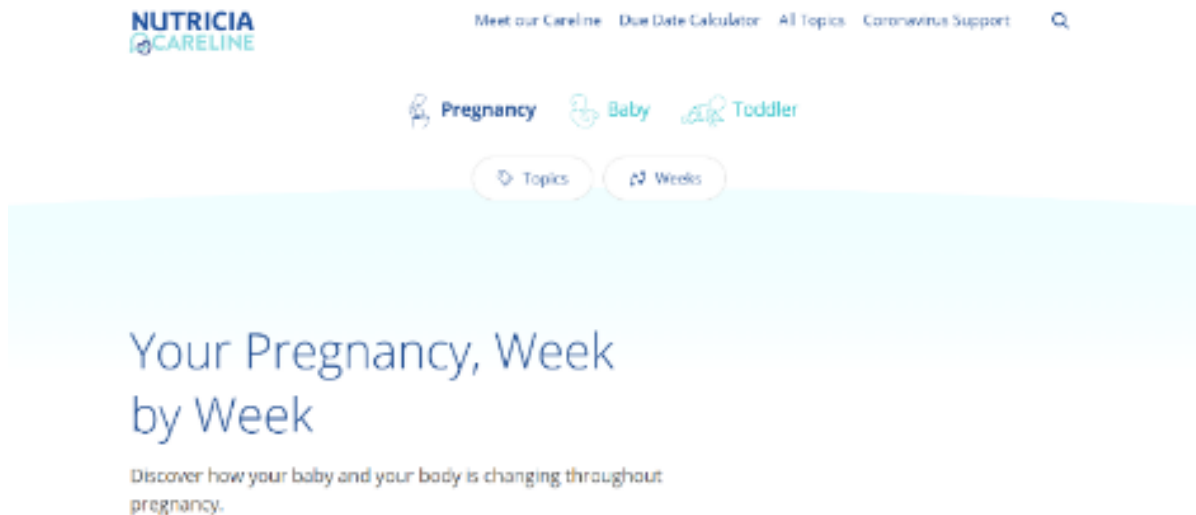
There was not one of the signatories who made any attempt to distinguish the infant products from the other products in the “range”. Companies genuinely interested in complying with the principles of protection and responsible marketing, in the interests of informed decision making, would not be so overt in their intentional brand recognition strategies and ensuring the infant product is sandwiched between pregnancy and toddler products and in some cases pre-conception to old age.

### Pregnancy

The WHO Code includes mention of pregnant women, in the preamble and in Clause 4.2. MAIF<sup>2</sup> mimics a similar requirement in Clause 4 (a) (ii), as presented below:

Aware that families, communities, women's organizations and other nongovernmental organizations have a special role to play in the protection and promotion of breast-feeding and in ensuring the support needed by pregnant women and mothers of infants and young children, whether breast-feeding or not;<sup>1</sup>





4.2 Informational and educational materials, whether written, audio, or visual, dealing with the feeding of infants and intended to reach pregnant women and mothers of infants and young children, should include clear information on all the following points: (a) the benefits and superiority of breast-feeding; **(b) maternal nutrition, and the preparation for and maintenance of breast-feeding;** (c) the negative effect on breast-feeding of introducing partial bottle-feeding; (d) the difficulty of reversing the decision not to breast-feed; and (e) where needed, the proper use of infant formula, whether manufactured industrially or home-prepared.<sup>1</sup>

*Oz Farm; Aussie goodness you can trust.*

## Nutritional Information



4 (a) Manufacturers and importers of infant formulas in Australia agree that informational and educational materials whether written, audio or visual dealing with feeding of infants and intended to reach pregnant women and parents of young children should always include clear information on the following points:

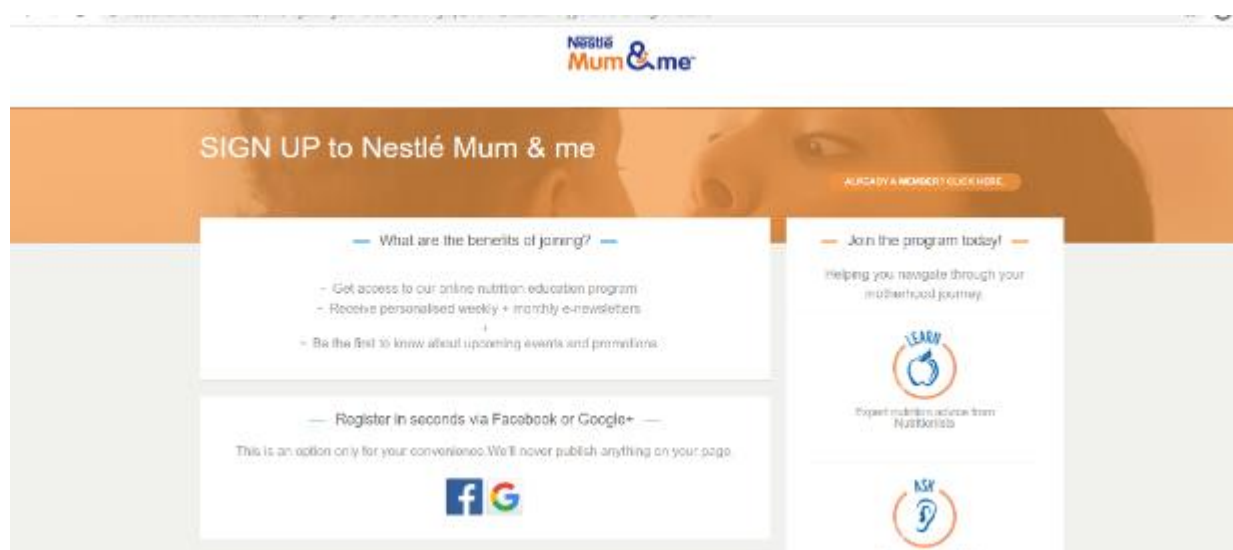
(ii) Maternal nutrition and the preparation for and maintenance of breastfeeding

The original intention of this requirement and those who wrote it, was to protect from inappropriate marketing and to ensure an opportunity for optimal health and wellbeing of the mother and infant. It was not intended to be used to develop and market products to pregnant women as way of bringing them into the brand before their baby was born. It was not intended that formula companies seek to pre-empt the rules of marketing infant formula and use this clause as a guise for “helping” woman with prenatal nutrition.

In 2020, we know that breastmilk is robust and nutritionally sound, regardless of the nutritional status of the mother. Suggesting the need for extra or special nutrition, in fact, creates a loophole for these companies to exploit.

Formula companies are intentionally enticing mothers to engage with the brand in pregnancy with countdowns, pregnancy information and, of course, an opportunity sign up for more targeted marketing. The question for the DoH and the ACCC is “what are these companies doing in this space” and who is going to step up and act to protect families from corporations who have no business being a source of information or support. This is the job of our health system and health workers.

### Mother and Baby clubs



Mother and baby clubs operate in the same way as the pregnancy clubs. This is NOT the place for parents to get feeding or parenting advice. Inviting subscription and offering these



services with company funded “health workers” is certainly not consistent with any part of Clause 5. It could be argued that free courses, access to health professionals (that must be on a wage), and parenting advice could be considered a “free gift” - if it costs the company money to pay the health workers and writers to write the information and graphic designers to draw the graphics and take the photographs then offering it without cost is a gift.

## Celebrity endorsements

Toddler drinks, as stated previously on numerous occasions, have no place in the diet of an Australian toddler. If a supplement to a diet is need for an individual child, this should be determined by a health worker and appropriate dietary support should be given, including a dietician.

The collage consists of three distinct images. The top left is a Facebook post from Jennifer Hawkins dated 1 Oct, endorsing Bubs products. The top right is another Facebook post from Jennifer Hawkins dated 10 Aug, thanking Bubs for a partnership. The bottom image is an advertisement for Aptamil titled 'The Resilience Building Bucket List', featuring a list of 10 activities for toddlers and a photo of Dr. Justin Coulson.

**Facebook Post 1 (Jennifer Hawkins, 1 Oct):**  
 Ordered with Bubs... I'm really happy that Bubs and I found each other (and so is Frankie!). It's a natural fit for a brand that I've already chosen to trust when introducing solids to (fussy eater) Frankie. I now purely my own home-made veg, protein and add their organic puree pouches to mix things up, when I'm on the go - so convenient! I'm also still breastfeeding (and Frankie weans herself or if those teeth keep coming I loose a nip! Lol 😊) but if I need to comp a bottle I'll choose Bubs Goat milk formula - which is gentle on her little tummy. Mum life heyye - the pursuit of a well-fed bub!

**Facebook Post 2 (Jennifer Hawkins, 10 Aug):**  
 Gorgeous gifts! Thank you @Bubs!! I've joined the bubs team! As a new mum it was a huge decision what brand to choose and trust when I was introducing solids to my daughter Frankie. I actually started using Bubs Organics puree pouches and cereal before being approached! I am so excited to take on this partnership.

**Aptamil Advertisement: The Resilience Building Bucket List**  
 Playtime isn't just fun, it's key to building your child's resilience. So, in partnership with Aptamil Toddler, I've put together a fun list of activities for little ones to complete before they turn two - fun pastimes that are proven to build their resilience and help raise them ready.

**Dr Justin Coulson**  
 Parenting Expert

**Bucket List Items:**  
 01. ...  
 02. ...  
 03. ...  
 04. ...  
 05. ...  
 06. ...  
 07. ...  
 08. ...  
 09. ...  
 10. ...

**Footer:**  
 Made in Australia | Aptamil® | Terms of Use | Privacy | Corporate enquire | Data Collection notice



The need for a nutritional supplement would not be the first choice for a professionally trained health worker. Those in the public eye and being paid to endorse these unnecessary products would have no training or information about nutrition. The use of these personalities to promote these products is further evidence that the companies are advertising these products as a benefit to all children. The health and immune claims have no basis and the suggestion that these products will contribute to your child succeeding in life and being “resilient” are grandiose.



## Inadvertent Infant Formula Advertising

Infant formula is considered a food and as such attracts product reviews. Unlike a car or washing machine, there would be no basis for credible reviews except to say an individual baby drank it or didn't drink it, stools may change but these observations cannot be extrapolated to another baby or the general population. These product reviews act as advertising for infant formula products and circumvent MAIF<sup>2</sup> guidelines.

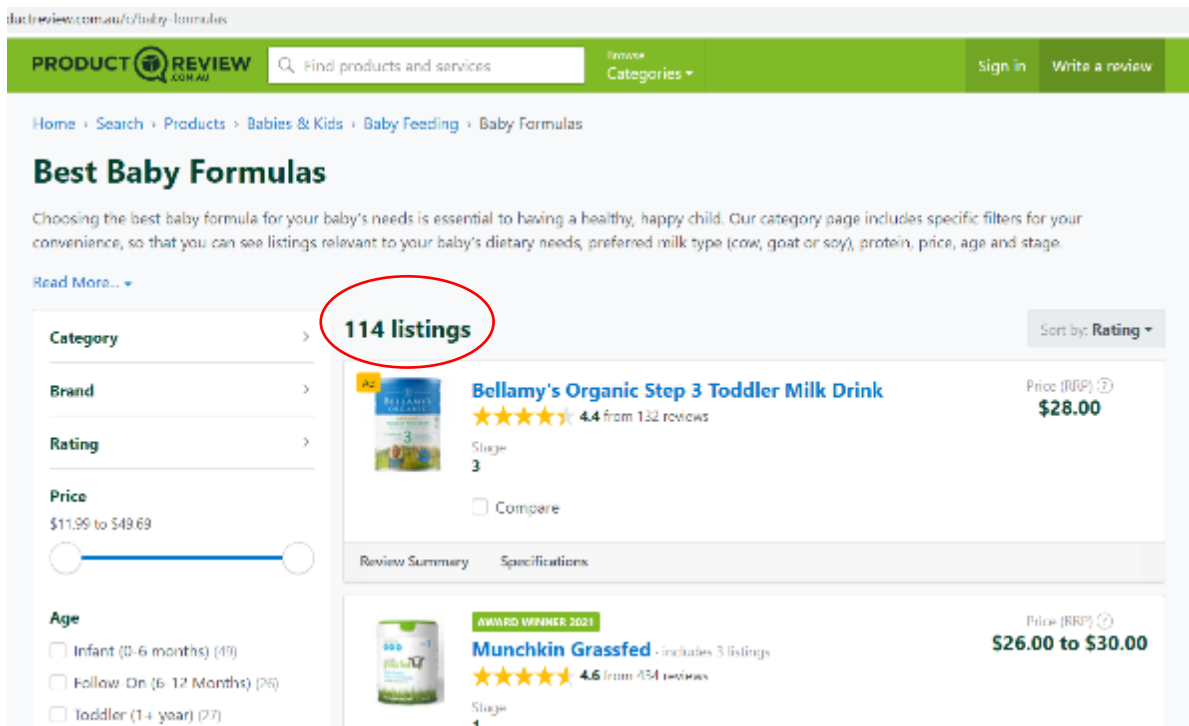
### Best for Reflux - Aptamil Gold + Reflux Baby Formula



There is no way to know if a review was genuine or written by industry. Opinion about a particular brand of infant formula has no basis in the decision making. NHMRC (p.74)<sup>8</sup> recommend “it is preferable to use a formula with a lower protein level.” This is the only guidance a parent might need.



<https://www.productreview.com.au/c/baby-formulas>



productreview.com.au/c/baby-formulas

**PRODUCT REVIEW** COM.AU Find products and services Filter by Categories Sign in Write a review

Home > Search > Products > Babies & Kids > Baby Feeding > Baby Formulas

## Best Baby Formulas

Choosing the best baby formula for your baby's needs is essential to having a healthy, happy child. Our category page includes specific filters for your convenience, so that you can see listings relevant to your baby's dietary needs, preferred milk type (cow, goat or soy), protein, price, age and stage.

Read More...

**114 listings** Sort by: Rating

**Category** >

**Brand** >

**Rating** >

**Price**  
\$11.99 to \$49.69

**Age**  
☐ Infant (0-6 months) (49)  
☐ Follow-On (6-12 Months) (26)  
☐ Toddler (1+ year) (27)

**Bellamy's Organic Step 3 Toddler Milk Drink**  
 ★★★★★ 4.4 from 132 reviews  
 Stage 3  
 Price (RRP) \$28.00  
☐ Compare

**Munchkin Grassfed** - includes 3 listings  
 ★★★★★ 4.6 from 434 reviews  
 Stage 1  
 Price (RRP) \$26.00 to \$30.00  
 AWARD WINNER 2021

Examples of some of the plethora of formula recommendation sites in Australia

- Tell me Baby <https://tellmebaby.com.au/top-products/best-formula-newborns/>
- The Healthy Mummy <https://bit.ly/33CMTwa>
- Baby Info <https://www.babyinfo.com.au/products/voting/best-baby-newborn-formula/>
- Infant Formula <https://infantformula.com.au/>
- Best for Home <https://bestforhome.com.au/best-formula-for-newborns-australia/>
- Consumer Search <https://bit.ly/3mDRtCO>
- Izito <https://bit.ly/33CCuk9>

“Sara” from Mum’s Delivery, makes the statement “some products have extra ingredients added to make them more like breastmilk”, then does go on to say “no formula can replicate breastmilk” adding the word “entirely” on the end to suggest the differences are not really that important. The page is populated by advertisements, later in the text she makes a specific brand and product recommendation, as links to tips to finding the “best formula” for your baby. BAA has written to Mums Delivery to find out if there are any financial incentives offered for these recommendations and awards.

<https://www.mumsdelivery.com.au/reviews/baby-feeding/best-baby-formula-for-newborns/>

Hi! Want a chance to win \$5,000 in Gift Cards? → Entries CLOSE 30 Nov 2020!

Enter Amazon Baby Wishlist competition (FREE!) →

SEPTEMBER 23

8 COMMENTS

## Best Baby Formula for Newborns Australia in 2020

September 23, 2020

affiliate, baby food, baby products

*\*This article may contain affiliate links. We earn from qualifying purchases. The price to you remains the same. For more detail, see our disclaimer page.*

When it comes to baby formula, parents invariably want to know what is the best formula for their baby and how to select the right one. After all, the right formula will assist with your baby's development, health and happiness. Most products based on cow's milk are of similar quality and nutritional value to comply with strict Australian standards.

Some products have extra ingredients added to them to make them more like breast milk such as antioxidants and probiotics. It's important to note that [no formula can replicate breast milk entirely](#) as it is a unique, living organism. Our guide focuses on the best alternative to breast milk and highlights differences available on the market. Our top pick overall is [Aptamil Prosyneo](#) as it's a partially hydrolysed, premium formula tailored for sensitive tummies.

Buying the right baby formula can be a tough decision and for many mothers – do you get hydrolysed, or should you go with [organic baby formula](#)? It can be a case of trial and error with one product switched out for another after a couple of months, but hopefully our guide below helps you to make an informed decision.

TOP POSTS

Best Pregnancy Pillow Australia (Top 5 Maternity Pillows in 2020)

Nursery Furniture Packages Australia (5 Awesome Deals!)



## Dairy Competitions

The Dairy Industry Association of Australia has a competition for their products every year. Infant formula is not like a cheese or yoghurt product. These awards create another loophole for advertising these products inappropriately. Displaying a winning symbol on the infant formula product and the website would suggest it had advantage over another product. Again, these products are not wine or cheese! Competitions of this sort are not appropriate for these ultra-processed powder products.




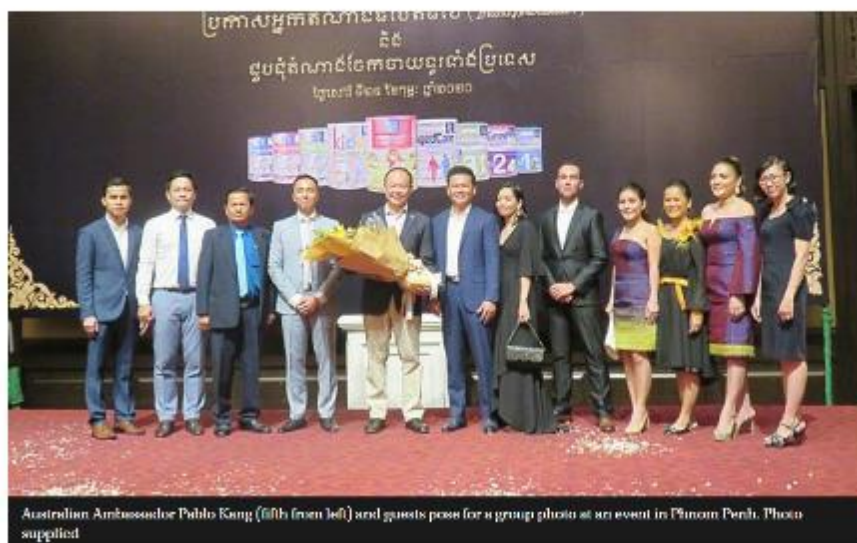
## International Market Behaviour

Whilst this submission is related to Australia, it is instructive to report the behaviour of companies, both signed and not signed, in the international arena. Australia, as a developed nation, should be leading by example.

### Demand for infant formula fuels Australia-Cambodia bilateral trade

Post Staff | Publication date: 05 March 2020 | 22:32 ICT

Share 



Australian Ambassador Pablo Kang (fifth from left) and guests pose for a group photo at an event in Phnom Penh. Photo supplied



In February 2020, H.E Mr. Pablo Kang, the Australian Ambassador, to Cambodia hosted this Australian formula promoting event. This behaviour is best understood in a letter dated 9<sup>th</sup> June 2020 from The Scaling Up Nutrition Civil Society Alliance (SUN CSA) in Cambodia. Here is an excerpt:

*“Recently, the SUN CSA Cambodia learned that Your Excellency attended the Brand Ambassador Presentation and Dinner with Dealers event, hosted by Royal Platinum Co. Ltd. on February 29, 2020. During this event, we observed that infant baby formula was displayed and celebrated. News of this event, titled ‘Demand for infant formula fuels Australia-Cambodia bilateral trade’, was covered in the Phnom Penh Post on March 5, 2020 (<https://www.phnompenhpost.com/post-focus/demand-infant-formula-fuels-australia-cambodia-bilateral-trade>).*

*In the aforementioned article, Your Excellency was quoted as saying “Each tin of their formula carries the prestigious Australian-made kangaroo logo – made with at least 98 percent Australian ingredients.” You may not be aware, but this statement promotes infant formula and therefore violates Cambodia’s SubDecree 133. The Phnom Penh Post also quoted you saying “Consumer research indicates that it is the high quality of Australian*





*infant formula that is generating this level of growth [in infant baby formula exports]. As incomes increase in Cambodia, we can similarly expect there to be growing demand for Australian infant formula.” While we appreciate Cambodia and Australia’s trade ties, we have serious concerns about promoting baby formula in Cambodia. Promotion of these products misleads many Cambodian mothers and caretakers to believe formula is superior, causing declines in the number of women breastfeeding their children. According to the latest Cambodia Demographic Health Survey, exclusive breastfeeding rates in the Kingdom, which were previously some of the highest in the world, had fallen from 74% in 2010 to 65% in 2014.*

*This directly endangers the lives of infants and young children in the Kingdom, especially during the COVID-19 crisis. In addition, poor hygiene in the preparation of infant formula, inadequate cleaning of bottles and poor storage of infant formula have all been documented as significant problems associated with formula feeding, as infant formula reconstituted from powder can easily be contaminated with bacteria during the preparation process. Recently, the Royal Government of Cambodia imposed monetary penalties on four companies found in violation of Sub-Decree 133. Penalties ranged from 2,500,000 – 5,000,000 Riel (US\$625 – US\$1250), namely for the offence of repeatedly promoting breast-milk substitutes in violation of Cambodian SubDecree 133 on the Marketing of Products for Infant and Young Child Feeding, which is Cambodian law.*

*Given these facts, with this letter, the SUN CSA Cambodia requests that Your Excellency review yours and the Australian Embassy’s connections to Australian baby formula companies, particularly those that are violating Cambodia’s Sub-Decree 133, and instead support the protection of infants and young children in the Kingdom through the promotion of optimal breastfeeding practices. With this, we are confident that the existing relationship and friendship between our two nations can be developed and strengthened even further.”*

According to the Federal Government business information page<sup>23</sup>, companies seeking to export to other countries should be complying with the laws of the countries they export to.

The behaviour displayed by this company and the Ambassador, would suggest they have no concept that laws exist to protect mothers and babies from harmful promotion of formula because Australia models unrestricted brand promotion.

Many further examples of similar unethical behaviour by Australian companies in China, Vietnam and Indonesia exist. We include a few links here to offer a sample of the size and extent of the problem. These include ideas on how to make money from selling formula to China and reports of spectacular million-dollar profits and how these companies plan to increase these already excessive profits.



How to sell formula to China

<https://bit.ly/3lyGxV5>

Bubs Australia deal

<https://bit.ly/37rkEBS>

Reports of false advertising

<https://yhoo.it/33DIzwL>

Formula advertising in China

<https://bit.ly/3ltEnpr>

Vi Plus expands into Indonesia

<https://bit.ly/3oimxYA>

Industry push to grow markets

<https://bit.ly/3oiGpv>

Instagram advertising in Indonesia

<https://bit.ly/3fZzfIN>



The new investment in a "spray dryer" would allow ViPlus for the first time to source fresh milk direct from farms and convert it into dried milk powder. Many Australian infant formula companies currently buy the dried milk powder from dairy companies which becomes the key building block for their own infant formula lines.

"It's a massive step. It's probably another doubling of our business in terms of cash flows and revenues. It's our next big step as a business," said ViPlus chief executive Jon McNaught.

### Funding health professional education



The principles underpinning MAIF<sup>2</sup> Clause 7 are meant to protect health workers from becoming the unwitting vehicle for advertising a brand. However, the wording is general enough to create confusion. No company selling food products that meet a recommended food standard have any expertise in infant feeding or the medical support of compromised infants needing specialised care; and should play no part in health professional education.





We share the following examples of deliberate brand recognition “education”, whilst the companies are no doubt intending to make a profit for their shareholders; health professional organisations should be able to recognise the difference between information and advertising and act to protect their members.



**Nestlé Nutrition Institute**



Sponsored •

Less than one week to go until World Prematurity Day. Celebrate with our live webinar “Advances in neonatal nutrition: caring for babies born too soon”, followed by a live Q&A with the experts. Register now!

## Celebrate World Prematurity Day

**Advances in neonatal nutrition:  
caring for babies born too soon**

Attend our webinar on Nov 17th,  
14.00 – 15.30 (CET time) • Live Q&A

**REGISTER NOW**

**NNI** Nestlé  
Nutrition  
Institute

In partnership with

**EFGNI** european foundation for  
the care of newborn infants



FORM ON FACEBOOK

**Register for the live webcast**

For healthcare professionals only

**SIGN UP**

## Environmental Concerns

The Environmental impact of formula feeding in Asia is profound, as reported in the News Daily. The article quotes research by Australian academic Dr Julie Smith who made this statement:

*“The skyrocketing demand for baby formula has disastrous environmental and health implications, an expert warned. Dr Smith called on Australian regulators to regulate and restrain the export and marketing of milk formula”.*

<https://bit.ly/3mAnYAX>

When considering the wider implication of this decision, BAA recommends examining the existing documentation regarding the impact on the environment - which can found at the International Baby Food Action Network (IBFAN).

<https://www.ibfan.org/environmental-awareness/>



## Products affecting breastfeeding

A plethora of products that claim support of breastfeeding saturate the market. These include pro-biotics, breast pumps, lactation cookies, bottles and teats. These products require scrutiny and regulation from an independent Therapeutic Goods Administration (TGA); and the public and health professionals need protection from their fanciful claims of breastfeeding support. The issue is much broader than this specific issue of MAIF authorisation, however cannot be ignored or excluded from any strategy to support breastfeeding success.



## RECOMMENDATIONS

This affiliation of manufacturers and distributors of infant formula is now asking for a 10-year re-authorisation of MAIF<sup>2</sup>. Australian mothers and babies deserve better protection than this voluntary industry agreement, and we call on the ACCC and the Australian government to act decisively to implement legal and punitive measures that mirror the incalculable burden of financial and health consequences which are now being carried by Australian mothers, babies, volunteers, and taxpayers.

### Authentic Action

Listing the companies on the DoH website presents a dilemma. For a complaint to be made, the public need to know which products these companies make, but to list the products may seem like advertising. How is the public to know which products are covered under MAIF? It is not obvious from the list and it can take some digging to find the actual product made by the listed company.

Any complaints that have been upheld should be listed with the company, not in a separate list. It should include what the breach was, what action was taken and confirmation that the matter has been resolved. BAA recommends immediate action to remove this barrier to making complaints.

An affiliation of infant formula manufacturers and importers of infant formulas calling themselves “the Infant Nutrition Council” is a misrepresentation of the role of the organisation. Infant nutrition is a matter for independent health experts, not those selling the product and the Australian public has the right to truth in advertising. The significant public health issue of infant wellbeing should not tolerate this charade. INC can be effective and contribute of the wellbeing of Australian families by:

- ensuring there is no mistaking who and what they are in the public eye
- focusing meticulous attention on ensuring ethical and appropriate sale of their infant formula products
- actively monitoring the participants in the infant formula market in Australia by keeping a list and actively checking the behaviour of all members
- seeking independent opinion on the brand messaging
- ensuring truthful labelling and removal of all health claims
- sponsorship of any health professional education/events should equal the amount spent on independent breastfeeding education.
- No contact with families or pregnant women for any reason, including clubs, subscriptions, parenting advice and access to company paid health workers.



BAA would also highlight that the volume and scope of unacceptable advertising, claims that both breach MAIF and skirt the principles of MAIF is so overwhelming that it is not humanly possible to collect and report them all. The tsunami of advertising is drowning Australian families and health workers and requires urgent deliberate action.

## Legislation

BAA echoes the United Nations (2016) Joint Statement by the UN Special Rapporteurs on the Right to Food, Right to Health, the Working Group on Discrimination Against Women in Law and in Practice, and the Committee on the Rights of the Child in Support of Increased Efforts to Promote, Support and Protect Breast-feeding.<sup>24</sup>

*“These efforts include the International Code of Marketing of Breast-milk Substitutes (1981) [viii](#), as well as subsequent relevant World Health Assembly (WHA) resolutions. The International Code ensures the proper use of breast-milk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution, including by prohibiting advertising, provision of free samples, or promotion in health-care facilities. It also requires all information on artificial feeding to explain the benefits of breastfeeding and the hazards associated with artificial feeding. Another encouraging development is the new WHO Guidance on ending inappropriate promotion of foods for infants and young children [ix](#). States are encouraged to make use of these crucial tools to regulate and reduce inappropriate marketing practices by baby food manufacturers and distributors.*

*However, the experts warned that there are clear signs of the lack of progress made in, and urgent need for, the adoption of effective measures by States to eliminate harmful, inappropriate marketing strategies and practices. Simply too few States have adopted the necessary stringent and comprehensive legal measures- only 39 States have laws enacting all provisions of the Code [x](#)- and even fewer have put in place robust and sustainable Code monitoring and enforcement mechanisms.*

*We call upon States to adopt comprehensive and enforceable normative measures to protect babies and mothers from such practices, and fully align with the recommendations contained in the International Code and the aforementioned new WHO Guidance. Adopting such measures must be recognized as part of States’ core obligations under the Convention on the Rights of the Child and other relevant UN human rights instruments to respect, protect and fulfil children’s right to life, survival and development; their right to safe and nutritious foods, and their right to the enjoyment of the highest attainable standard of health; and to ensure that women’s rights are protected from harmful interference by non-State actors, in particular the business sector.”*



We recommend the current MAIF Agreement expire in **no more than 2 years** and the WHO Code (and subsequent WHA resolutions) legislated with fines and penalties for breaches that reflect the harm and financial cost of health conditions identified in the overwhelming body of evidence.

The WHO Code<sup>1</sup> represents a **minimum** standard, further regulation to close loopholes is needed for genuine protection to be afforded in Australia.

We further recommend a register of all companies manufacturing and selling formula in Australia is kept by the DoH with a requirement that the privilege of operating in Australia is granted only if they agree to the conditions of the legislation both domestically and internationally.

### Resources

Thirty-nine countries have enacted legislation to protect mothers and babies and Australia can seek international support. Such resources include:

- Helen Keller International Assessment and Research on Child Feeding (ARCH)  
<https://archnutrition.org/>
- Recommendations for Adopting the International Code of Marketing of Breast-milk Substitutes Into U.S. Policy<sup>25</sup>
- Global Breastfeeding Collective 2017 Nurturing the Health and Wealth of Nations: The Investment Case for Breastfeeding<sup>26</sup>



## APPENDIX A

### Website content of signatories listed in Application

1. Abbott Australasia Pty Ltd - SIMILAC
2. Aspen Nutritionals Australia Pty Ltd - S 26
3. Australian Dairy Park Pty Ltd OZFARM <https://www.australiandairypark.com.au/products/>
4. Bayer Australia Ltd NOVALAC <http://www.infantfeedingproblems.com.au/>
5. Bellamy's Organic - <https://www.bellamysorganic.com.au/product/step-1-organic-infant-formula/>
6. Freedom Foods Group Trading Pty Ltd ? TRADING HALTED JULY 2020
7. H & H Group BIOSTIME <https://www.hh.global/our-brands>
8. The Infant Food Co. Pty Limited - BUBS
9. The LittleOak Company
10. Nature One Dairy Pty Ltd
11. Nestlé Australia Ltd
12. Nuchev Pty Ltd Oli <https://nuchev.com.au/our-products/>
13. Nutricia Australia Pty Ltd – Aptamil and Karicare
14. Saputo Dairy Australia Pty Ltd bovine lactoferrin <https://www.saputo.com/en/our-products/international-sector/dairy-division-australia>
15. The a2 Milk Company Ltd
16. Wattle Health Australia Limited UGANIC <https://wattlehealth.com.au/>
17. Reckitt Benckiser Group – purchased Mead Johnson ENFAMIL



1. Abbot Australia Pty Ltd Accessed 15/11/20

<https://www.aus.abott/products/nutrition.html>

<https://similac.com/where-to-buy-similac?ps-sku=66081>

**Abbott Nutrition, We're Here for Life.**

Welcome to Abbott Nutrition. We are here to help through life's ages and stages. We hope the information here helps you. We understand that things in life don't always go to plan. There are ups and there are downs. Sometimes help is needed to get things back on track. At Abbott Nutrition, we work with Healthcare professionals to give you as much help as we can to keep you in the best of health. And we always will.

**AT ABBOTT NUTRITION, WE'RE HERE FOR LIFE.**

**About PediaSure Health Shake**

Research shows PediaSure is a good fit for your child's diet, and provides complete, balanced nutrition to keep your child on track.

**THE TRIPLE SURE SYSTEM**

The Triple Sure System

PediaSure contains the clinically-proven Triple Sure System to support growth, "supercharge immunity" and help build a healthy appetite!

- Unique triple protein complex helps support growth and development.<sup>1</sup>
- Essential, balanced nutrients with a new systemic probiotic plus prebiotics to support immunity.<sup>2</sup>
- 20 nutrients including essential vitamins and minerals to help support a healthy appetite.

**Join us!**

Join our growing group for exclusive access to yum yum recipes you can make in a shake!

First name

Last name

Email

☐ By entering your email address, you agree to our Privacy Policy and Terms & Conditions.

**Submit**

**THE TRIPLE SURE SYSTEM**

**PEDIASURE AND YOUR LITTLE FUSSY EATER**

Fussy and picky eaters have met their match with the new great tasting formula of PediaSure. If you're looking for reassurance that your child is getting the vital nutrients they need, or those piles of uneaten greens mean you need to fill gaps in their diet, PediaSure is here to help.

The Triple Sure System provides essential nutrients your child may have missed out on, helping to support their growth and development through their early years (1-10 years). And our new formula has been voted by fussy eaters themselves as being our best ever taste.<sup>3</sup>

**HOW DO I PREPARE PEDIASURE HEALTH SHAKE?**

**WHO IS PEDIASURE HEALTH SHAKE SUITABLE FOR?**

PediaSure Health Shake is a specially formulated food supplement for children aged 1-10 years, which can help fill the gap with nutrients that your child may miss out on during the day. It provides complete, balanced nutrition to help support their growth and development.<sup>1</sup>

PediaSure is suitable for children:

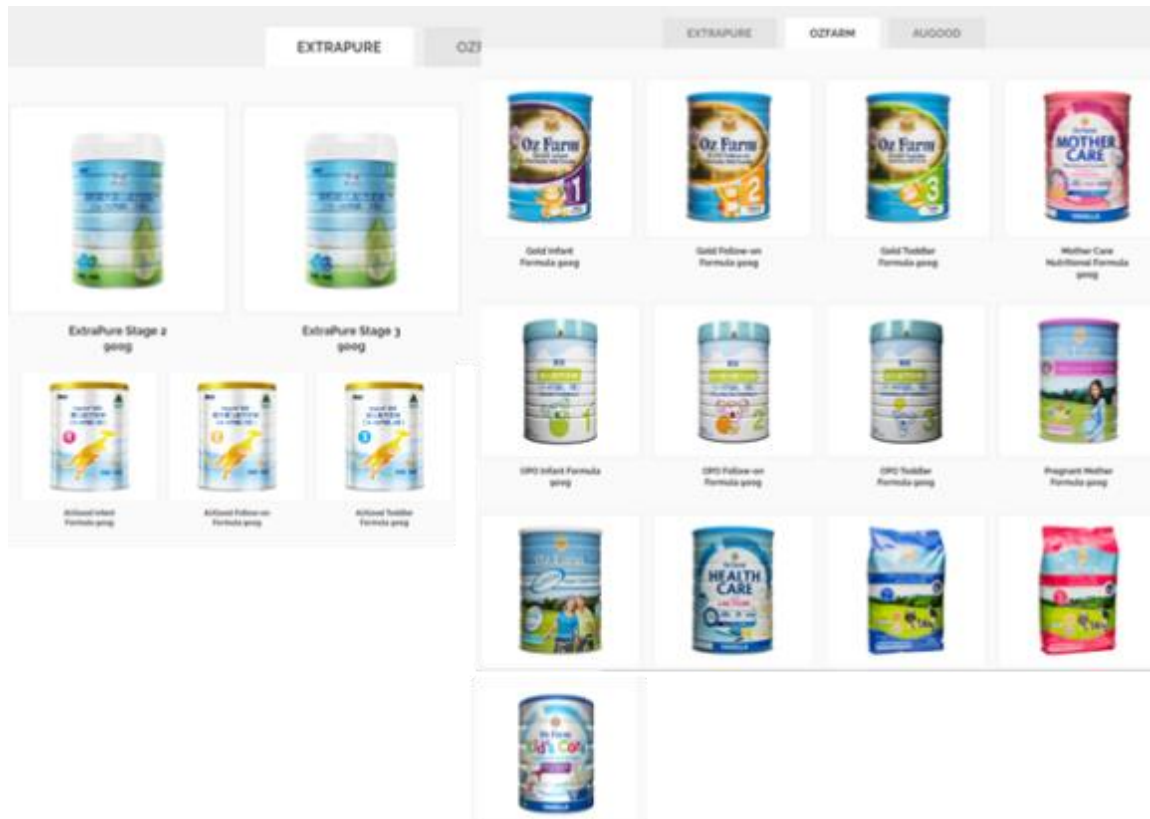
- whose patterns of growth are below those of their age group
- whose caloric and nutrient requirements are increased due to a medical condition
- who are undernourished or have decreased food intake due to illness or diminished appetite

PediaSure Health Shake 850g powder and original PediaSure 200mls, ready-to-drink bottles are available in three flavours - vanilla, strawberry and chocolate.

Kids love the great taste,<sup>3</sup> which means less fuss, less stress and less worry for you.

- To find the infant formula product you must go to an American site despite this product being available in Australia
- No evidence of adherence to Clauses 4a or 4b
- The Abbot PediaSure products for infants and children older than 12 months have a different name and packaging and it is easy to determine PediaSure is not an infant formula product.
- Uses the term toddler milk drink

2. Australian Dairy Park Pty Ltd Accessed 15/11/20  
<https://www.australiandairypark.com.au/products/>



- No evidence of adherence to Clauses 4a or 4b
- Packaging of toddler drinks is almost identical
- The numbering of 1,2 and 3 incorrectly suggests that this product is the next logical step after 12 months when toddler drinks are unnecessary and fall into a different food standard.
- Uses the term “toddler formula”
- Labelled “Nutritional milk drink” on toddler product

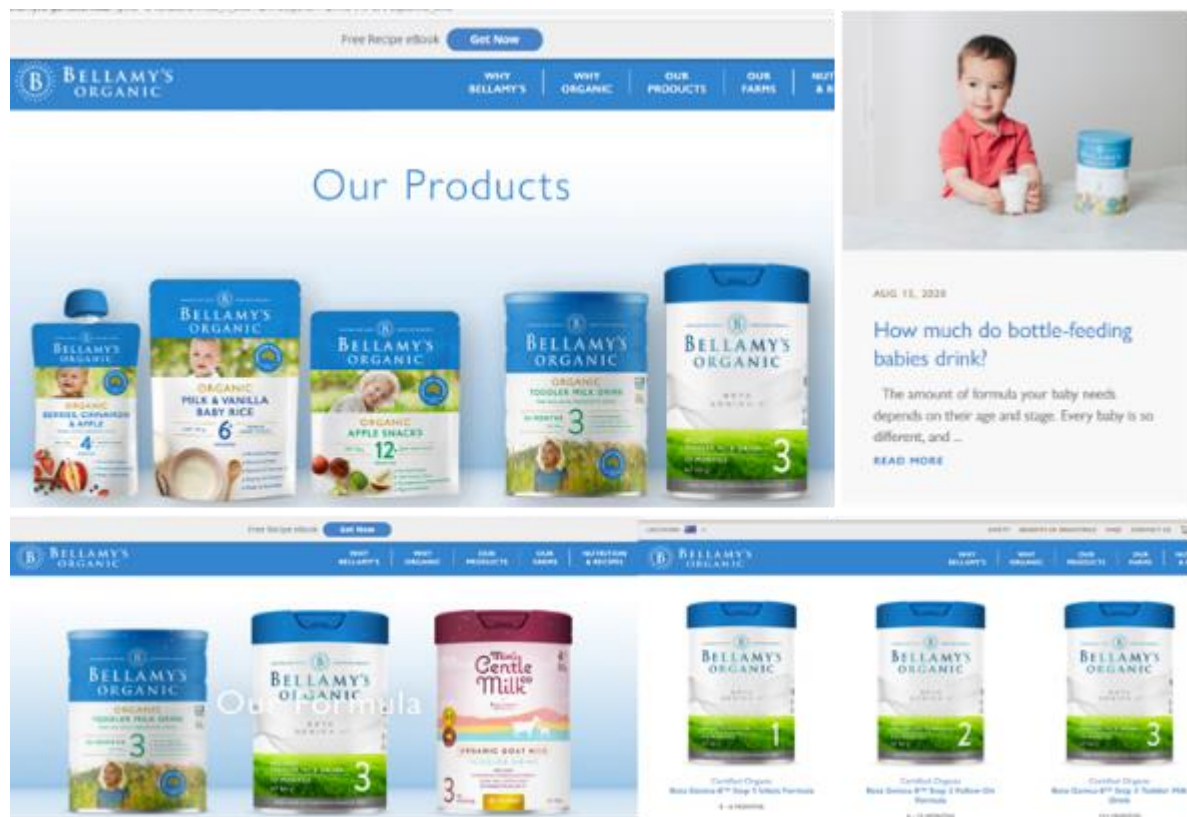
3. Bayer Australia Ltd 15/11/20 Product site: [infant feedingproblems.com.au](http://www.infantfeedingproblems.com.au)  
<http://www.infantfeedingproblems.com.au/>



- When searching this company, only generic company details will appear. You must know that they make “Novalac” to find the products and see if they are meeting their MAIF obligations.
- The product site for Bayer is titled “infant feeding problems”. This is misleading and predatory; those seeking feeding assistance will be thinking it is an actual site for feeding help, not a sales site.
- This site requires you to click on the far-right tab titled “Breastfeeding is Best” in order to see the way this company has interpreted Clause 4a. The first thing a parent will see is colour coded list of feeding challenges which, of course, link to matching product solutions. This is not in the spirit of Clause 4a.
- Clause 4b has been mentioned, however “The social and financial implications of using infant formula should be considered when choosing a method of feeding.” This sentence does not meet the standard required for 4b.
- The site is focussed on exploiting vulnerable parents who need skilled support; while proposing that these products, with unfounded health claims, are a solution.
- A formula manufacturer is not the appropriate place for a parent to get health or feeding information and support.
- The toddler product is a different colour tin to the other products in the range. However, confusingly, it is numbered 1+, when other brands selling toddler drinks use the number 3 (and “1” for under 12 months products).
- Uses the term “premium toddler milk “

#### 4. Bellamy's Organic 15/11/20

<https://www.bellamysorganic.com.au/product-category/formula/>

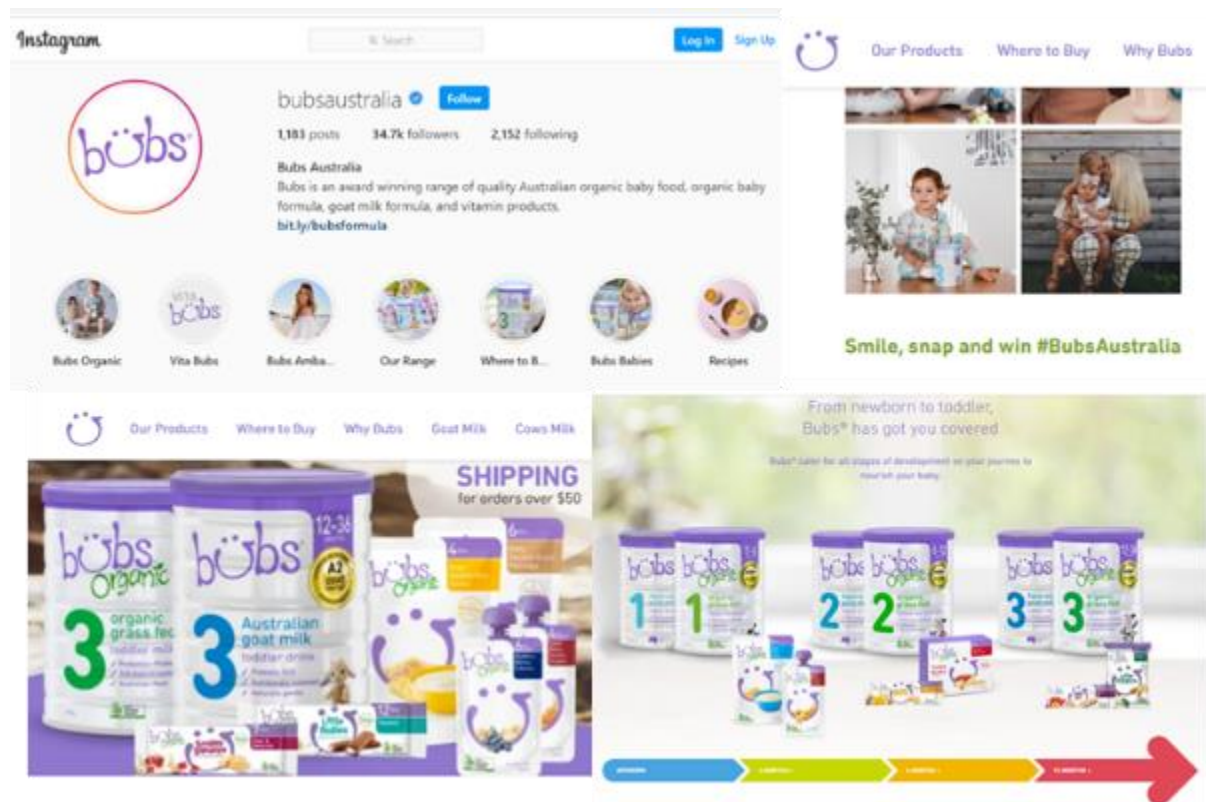


- The landing page list of products, with the label, “our formulas”, only uses the toddler product, not infant product. This demonstrates that the toddler drink is a visual representation of the whole range and is in the same category as the infant formula under 12 months product.
- A picture of toddler and toddler drink is represented with information and a link about infants under 12 months
- The pregnancy product is also remarkably similar looking to the infant products, which has led to mistakes in infant feeding.
- The numbering of 1,2 and 3 incorrectly suggests that this product is the next logical step after 12 months - when toddler drinks are unnecessary and fall into a different food standard.
- The Clause 4a requirement is found if you find and click on an exceedingly small tab in light brown above the main tabs on the landing page.
- There is no evidence that Clause 4b has been met.
- The toddler products are pictured with the general term “Our Formulas”.
- Toddler products are labelled “toddler milk drink”.



5. The Infant Food Co. Pty Ltd accessed 15/11/20 Product site:

<https://www.bubsaustralia.com/>



- When searching this company, only the financial details will appear. You must know that they make “Bubs” to find the product and see if they are meeting their MAIF obligations.
- There is a picture of toddler and a toddler drink, but the information and link are about infants under 12 months.
- The pregnancy product is remarkably similar looking to the infant products, which can lead to infants being incorrectly fed.
- The numbering of 1,2 and 3 incorrectly suggests that this product is the next logical step after 12 months - when toddler drinks are unnecessary and fall into a different food standard.
- The landing page has a slideshow of different scenes and products; only the toddler product, not infant product, is used to represent the brand. This demonstrates that the toddler drink is a visual representation of the whole range and is in the same category as the infant formula under 12 months product.
- This landing page statement “Australian made formula, purees, cereals and rusks for all ages” does not distinguish the toddler drink products from the infant formula.
- The toddler product is labelled “Toddler Milk”.

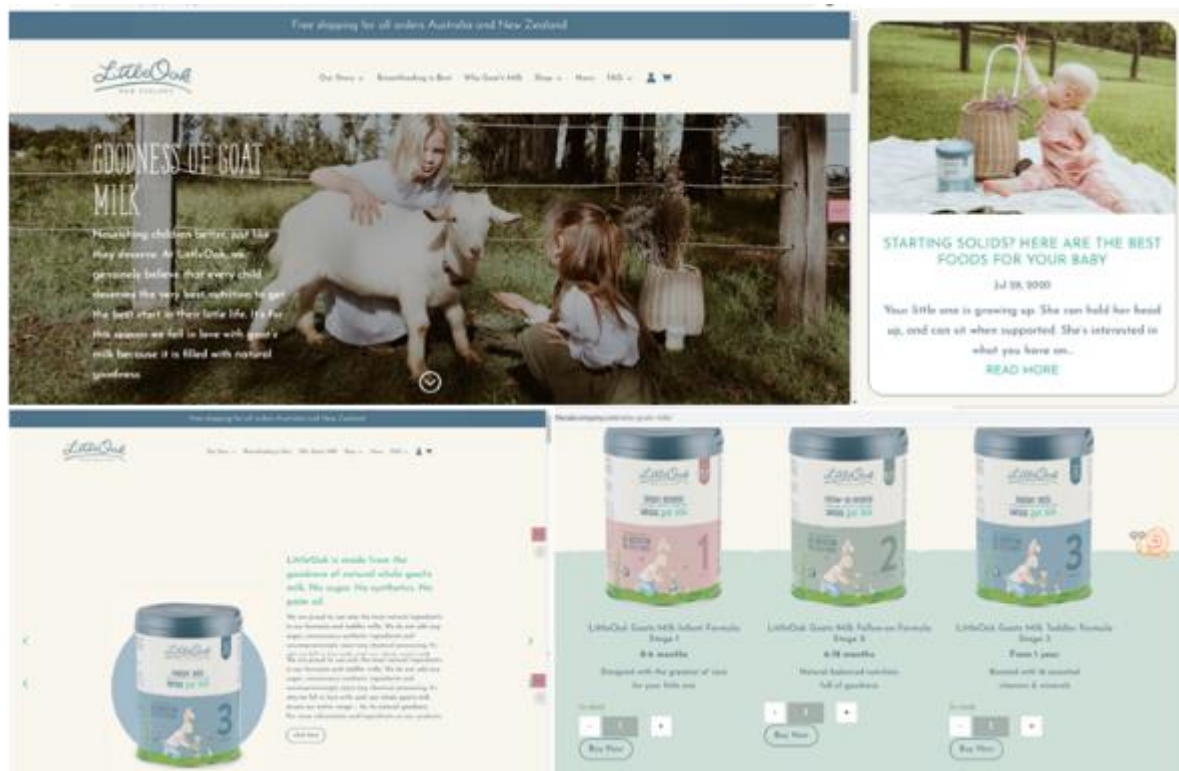
#### 5. The Infant Food Co. Pty Ltd (cont)

- Whilst not yet covered in the MAIF Agreement, the use of a celebrity influencer is not appropriate for these brands where infant formula is not distinguishable as a separate product.
- The requirements of Clause 4a are touched on, only if you click first on the tab “Baby Nutrition” then click on “Baby feeding”. This is what is written “Milk is the perfect food for small babies. Ideally it is breast milk, as it provides all the nutritional and immune benefits babies need in their first six months of life.” This in no way meets the requirement or the spirit of i, ii,iii,iv,v of this clause.
- There is no evidence that Clause 4b has been met.



6. The LittleOak Company Pty Ltd accessed 15/11/20

<https://thelittleoakcompany.com/>



- Little Oak, young baby is pictured with the No 3 drink. No 3 drink is the represented product for the brand, with same labelling and picture on all products
- The landing page only uses the toddler product, not infant product. This demonstrates that the toddler drink is a visual representation of the whole range and is in the same category as the infant formula under 12 months product.
- A young baby is pictured with a toddler drink product.
- They refer to their toddler product as formula on the sales page.
- The labelling on toddler products is “Toddler milk”.
- The products have remarkably similar packaging, including the same picture.
- The numbering of 1,2 and 3 incorrectly suggests that this product is the next logical step after 12 months - when toddler drinks are unnecessary and fall into a different food standard.
- An attempt to address Clause 4a can be found by clicking the “Breastfeeding is Best” tab on the landing page. The very basic information does not meet the requirements of elements i, ii,iii,iv,v of this clause.
- There is no evidence that Clause 4b has been met.

7. Nature One Dairy Pty Ltd accessed 15/11/20 <https://natureonedairy.com/>

Delivery for online orders are available only within Australia.

ABOUT US - OUR PRODUCTS - SHOP - STORE LOCATOR - PARENTING RESOURCES - CONTACT US - FREE SAMPLE

## Baby Formula

HOME / OUR PRODUCTS / BABY FORMULA

### Made in Australia with 100% Grass-fed cow's milk

FREE SAMPLE

**Organics**

Made in Australia, Australia Certified Organic

Our organics milk contains advanced ingredients sourced from local dairy farms and is made with high amounts of natural calcium and low in saturated fat. Our formula is made with organic milk and is free of artificial preservatives, additives, and is free of allergens. It is also free of added sugar and is suitable for infants with sensitive stomachs.

FREE SAMPLE

Can Resealable Pouch Travel Pack

**Premium Newborn Formula Step 1**

**Premium Follow-On Formula Step 2**

**Premium Toddler Nutritious Milk Drink Step 3**

**Premium Junior Nutritious Milk Drink Step 4**

LEARN MORE

FREE SAMPLE

Delivery for online orders are available only within Australia.

ABOUT US - OUR PRODUCTS - SHOP - STORE LOCATOR - PARENTING RESOURCES - CONTACT US - FREE SAMPLE

## Australia

HOME / FREE SAMPLE / AUSTRALIA

Nature One Dairy® provides samples for 12 months and above formula milk. For addressee in Australia only.

## 7. Nature One Dairy Pty Ltd cont.

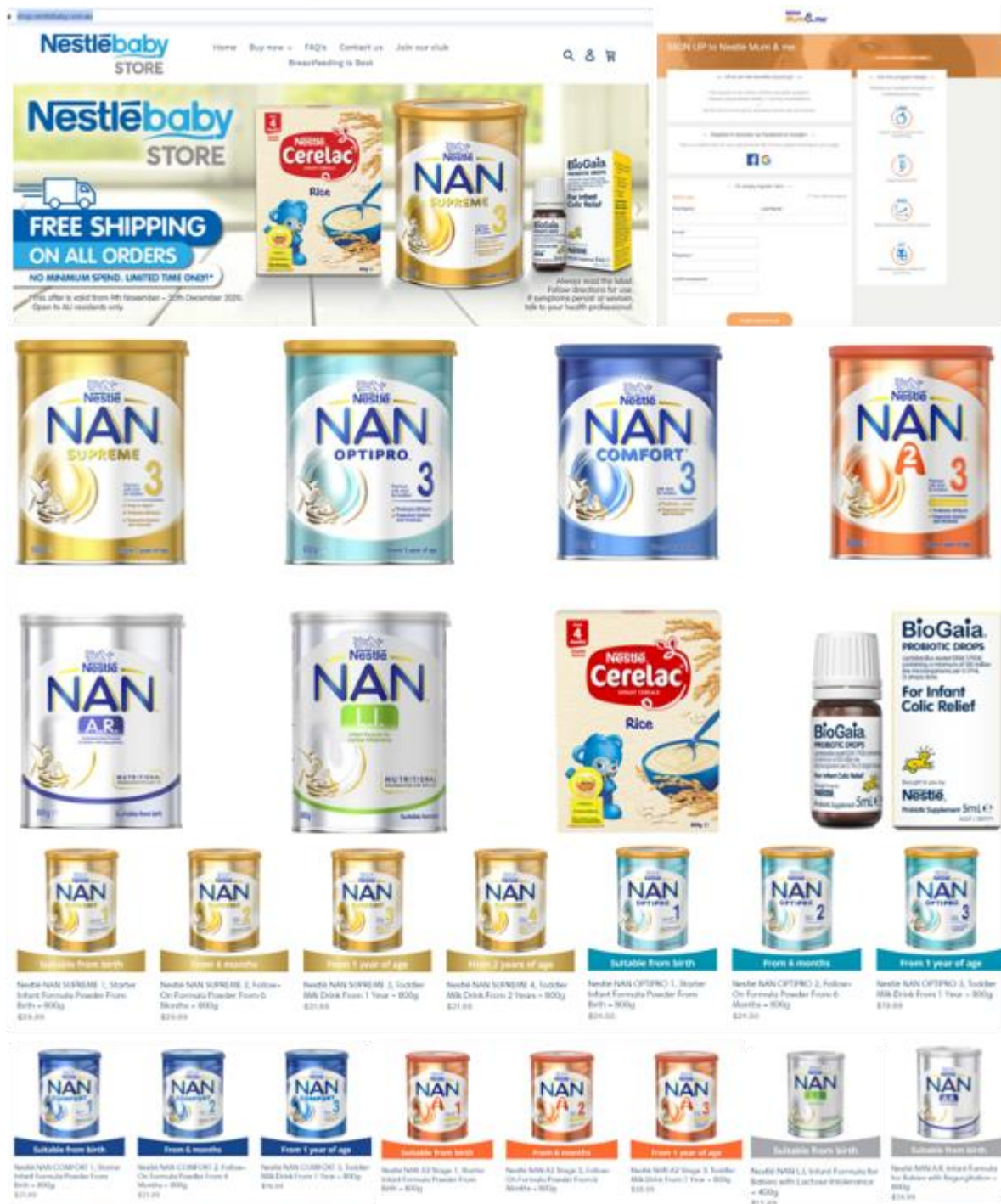
- The Free sample tab stays visible everywhere on the site; whilst when you click it does say that only samples of the 12months+ products are available, they are referred to as “formula”.
- The same young baby is used to represent all the products in the range.
- The numbering of 1,2 and 3 incorrectly suggests that this product is the next logical step after 12 months - when toddler drinks are unnecessary and fall into a different food standard.
- Information about breastfeeding can be found when you click on the “Parenting Resources” tab. The information provided does meet the requirements for Clause 4a. And is an advertisement for their pregnancy product.
- There is no evidence that Clause 4b has been met.
- The toddler products pop up along with the infant products when you hit the “Baby Formula” tab.
- Toddler products are labelled “nutritious milk drink”.
- This picture showing the baby lying down with the bottle demonstrates dangerous feeding practice and should be removed immediately. BAA has contacted the site and requested it be removed however the manufacturer has not acknowledged the concern or responded as yet.







8. Nestle Australia Ltd <https://www.nestle.com.au/en> The actual site for infant products is <https://shop.nestlebaby.com.au/> accessed 15/11/20



- When searching this company, only generic company details will appear. You can only find the formula products at the “Nestle baby Store”.
- The landing page only uses the toddler product, not infant product. This demonstrates that the toddler drink is a visual representation of the whole range and is in the same category as the infant formula under 12 months product.



8. Nestle Australia Ltd (cont.)

- The term “toddler milk drink” is used.
- The numbering of 1,2 and 3 incorrectly suggests that this product is the next logical step after 12 months - when toddler drinks are unnecessary and fall into a different food standard.
- The products all have remarkably similar packaging.
- An attempt to address Clause 4a can be found by clicking the “Breastfeeding is Best” tab on the landing page. The very basic information does not meet the requirements of elements i, ii,iii,iv,v of this clause.
- There is no evidence that Clause 4b has been met.



9. Nuchev Ltd <https://nuchev.com.au/our-products/> accessed 15/11/20

The screenshot shows the Nuchev website. At the top, there is a navigation bar with links: Home, About US, Our Products, Benefits of Goat's Milk, Investor Centre, and Contact Details. Below the navigation bar, a row of Oli products is displayed, including various sizes and types of goat milk powder. The main banner features a large image of an Oli6 Goat Milk Toddler product and a young girl with pigtails. The text on the banner reads "Try Oli6® Goat Milk Toddler for free" with a "Request Sample" button. Below the banner, there is a section for customer reviews. The first review is from Tarmy Lee, dated 47 hours ago, with a 5-star rating and the text "Oli6 is so yummy". The second review is from Geraldine Gonzales, dated 4 days ago, with a 5-star rating and the text "Best formula for my baby". The third review is from Jody Cracknell, dated 6 November, with a 5-star rating and the text "We love Oli goat milk". Below the reviews, there is a section titled "About Oli6®" which states: "Oli6® has been developed in direct response from talking to Australian mums who are seeking products that are as natural as possible to help their little ones' growth and development. Our toddler formula has a high percentage of goat milk solids, which makes Oli6® naturally rich in many essential vitamins and minerals like magnesium, calcium, vitamin A and vitamin C as well as other beneficial substances like prebiotic oligosaccharides."

- The numbering of 1,2 and 3 incorrectly suggests that this product is the next logical step after 12 months - when toddler drinks are unnecessary and fall into a different food standard.
- The products all have remarkably similar packaging.
- The term "toddler milk drink" is used.
- An attempt to address Clause 4a can be found on the landing page, under the heading "Nutrition", "Nuchev recognises that breastmilk is the best choice for babies". The very basic sentence does not meet the requirements of elements i, ii,iii,iv,v of this clause.
- There is no evidence that Clause 4b has been met.

10. Nutricia Australia <https://nutricia.com.au/> accessed 15/11/20

The screenshot shows the Nutricia Australia website. At the top left is the Nutricia logo. To its right are links for 'Discover Nutricia' and 'Where we specialise'. Below the logo is a paragraph: 'Food is more than just the sum of its nutritional qualities. This underpins our long held mission to bring health through food to as many people as possible. The Nutricia brand delivers an important part of Danone's unique, health-focused portfolio.' To the right of this text is a Danone logo with the tagline 'One Trust. One World.' Below this, there are three columns of contact information. The first column is 'Contact Us' with details for Nutricia Australia Pty Limited. The second column is 'Telephone' with three numbers. The third column is 'Discover more about our extensive product range:' with links to 'Aptamulsion' and 'Kormoran'.

**NUTRICIA**

Discover Nutricia Where we specialise

Food is more than just the sum of its nutritional qualities. This underpins our long held mission to bring health through food to as many people as possible. The Nutricia brand delivers an important part of Danone's unique, health-focused portfolio.

**DANONE**  
One Trust. One World.

**Contact Us**  
Nutricia Australia Pty Limited  
Level 4, Building D  
12-24 Talavera Rd  
Macquarie Park NSW 2113

**Telephone**  
Nutricia Caroline: 1800 458 500  
Nutricia Customer Service: 1800 889 480  
Nutricia Clinical Care Line: 1800 080 051

Discover more about our extensive product range:  
[Aptamulsion](#)  
[Kormoran](#)

Brand 1 - Aptamil <https://nutricia.com.au/aptamil/> accessed 15/11/20

The screenshot shows the Aptamil website. At the top is a navigation bar with links for 'About Us', 'Our Products', 'Parents' Corner', and 'Breast is Best'. There is a 'BUY' button and a search icon. Below the navigation bar is a large banner featuring a baby's face. The text on the banner reads: 'Boost your knowledge on how to support your child's immune system' and 'Aptamil BOOSTCAMP Everyday support for your child's immune system'. Below the banner is a grid of product images. Each product image is labeled with its name. The products are: Aptamil Gold+ 1, Aptamil Gold+ 2, Aptamil Gold+ 3, Aptamil Essensis Organic A2 Protein Milk 1, Aptamil Essensis Organic A2 Protein Milk 2, Aptamil Essensis Organic A2 Protein Milk 3, Aptamil Profutura 1, Aptamil Profutura 2, Aptamil Profutura 3, Aptamil Profutura 4, Aptamil Gold+ Colic & Constipation, Aptamil Gold+ Reflux, Aptamil Gold+ De-Lact, Aptamil Gold+ Pepti Junior, and Aptamil Feed Thickener.

**Aptamil**

About Us Our Products Parents' Corner Breast is Best BUY

Boost your knowledge on how to support your child's immune system

**Aptamil BOOSTCAMP**

Everyday support for your child's immune system

Aptamil Gold+ 1 Aptamil Gold+ 2 Aptamil Gold+ 3 Aptamil Essensis Organic A2 Protein Milk 1 Aptamil Essensis Organic A2 Protein Milk 2 Aptamil Essensis Organic A2 Protein Milk 3

Aptamil Profutura 1 Aptamil Profutura 2 Aptamil Profutura 3 Aptamil Profutura 4

Aptamil Gold+ Colic & Constipation Aptamil Gold+ Reflux Aptamil Gold+ De-Lact Aptamil Gold+ Pepti Junior Aptamil Feed Thickener



10. Nutricia Australia <https://nutricia.com.au/> accessed 15/11/20 cont.

Searching Nutricia links only goes to a generic site. You must scroll all the way down to find the products in very small writing. There are 2 products in the range, each addressed individually below.

**Brand 1 Aptamil** <https://nutricia.com.au/aptamil/products/aptamil-gold-plus-1/>

- The numbering of 1,2 and 3 incorrectly suggests that this product is the next logical step after 12 months - when toddler drinks are unnecessary and fall into a different food standard.
- The products all have remarkably similar packaging.
- The term “toddler supplement” is used.
- This site requires you to click on the tab titled “Breast is Best” to see the way this company has interpreted Clause 4a. A basic sentence about breastfeeding does not meet the requirements of Clause 4a.
- Clause 4b has been mentioned, however “The social and financial implications of using infant formula should be considered when choosing a method of feeding.” This sentence does not meet the standard required for 4b.

**Brand 2 Karicare**

[https://nutricia.com.au/karicare/where-to-buy-karicare/?wtbfilters=Karicare:12&gclid=EAlaIQobChMI4uaKwuqw7QIViV1gCh2Mbw5EEAAYASAAEgK8EfD\\_BwE&gclsrc=aw.ds](https://nutricia.com.au/karicare/where-to-buy-karicare/?wtbfilters=Karicare:12&gclid=EAlaIQobChMI4uaKwuqw7QIViV1gCh2Mbw5EEAAYASAAEgK8EfD_BwE&gclsrc=aw.ds)

- The numbering of 1,2 and 3 incorrectly suggests that this product is the next logical step after 12 months - when toddler drinks are unnecessary and fall into a different food standard.
- The products all have remarkably similar packaging.
- The term “toddler milk drink” is used.
- Clause 4a has been presented in a manner that respects the spirit of the clause.
- There is no evidence that Clause 4b has been met.

Pictures next page



11. Reckitt Benckiser (Australia) Pty Limited <https://www.rb.com/us/offices/australia/>  
 Accessed 15/11/20 Company makes Enfamil, available by retail in Australia but no local information

It is not possible to tell if obligations under the MAIF Agreement have been met because there is no information easily available.

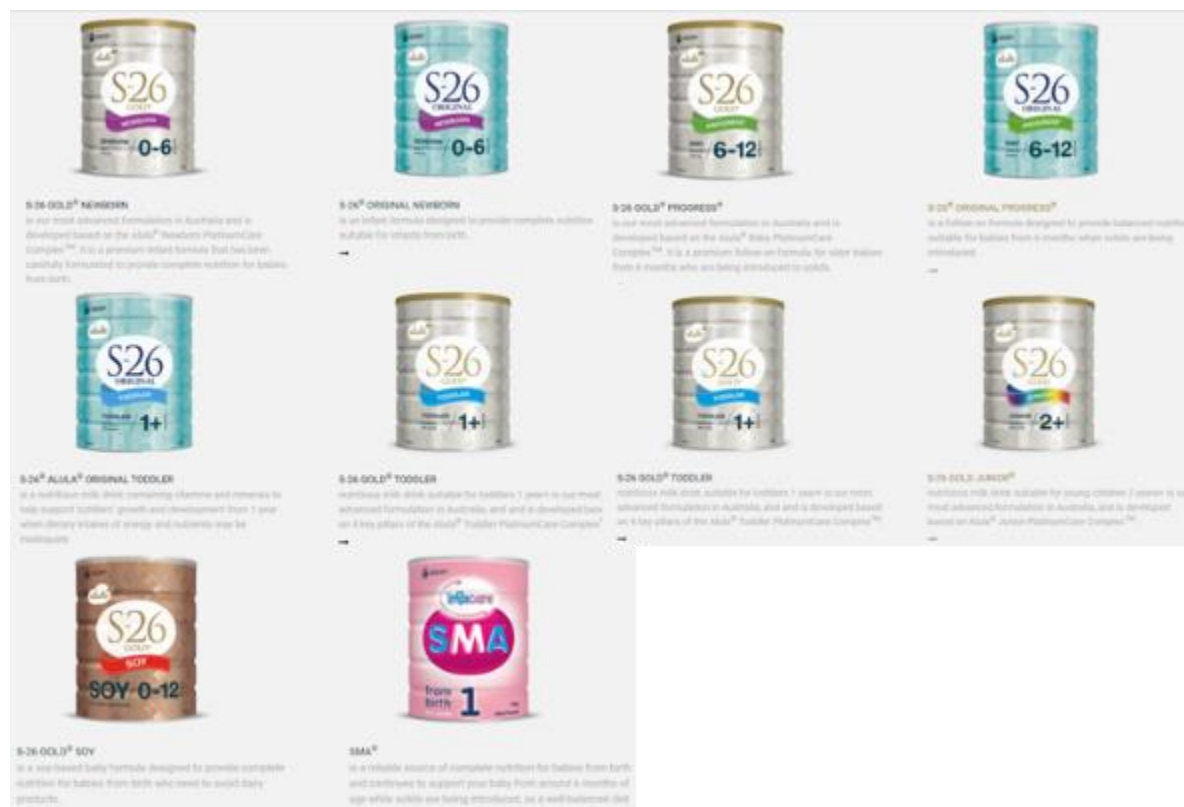


## 12. Sanulac Nutritional's Australia Pty Ltd

[https://www.dnb.com/business-directory/company-profiles/sanulac\\_nutritionals\\_australia\\_pty\\_ltd.3eca92384862a4180523463cdc72f31e.html](https://www.dnb.com/business-directory/company-profiles/sanulac_nutritionals_australia_pty_ltd.3eca92384862a4180523463cdc72f31e.html)

Actual product site: <https://www.meandmychild.com.au/s26/>

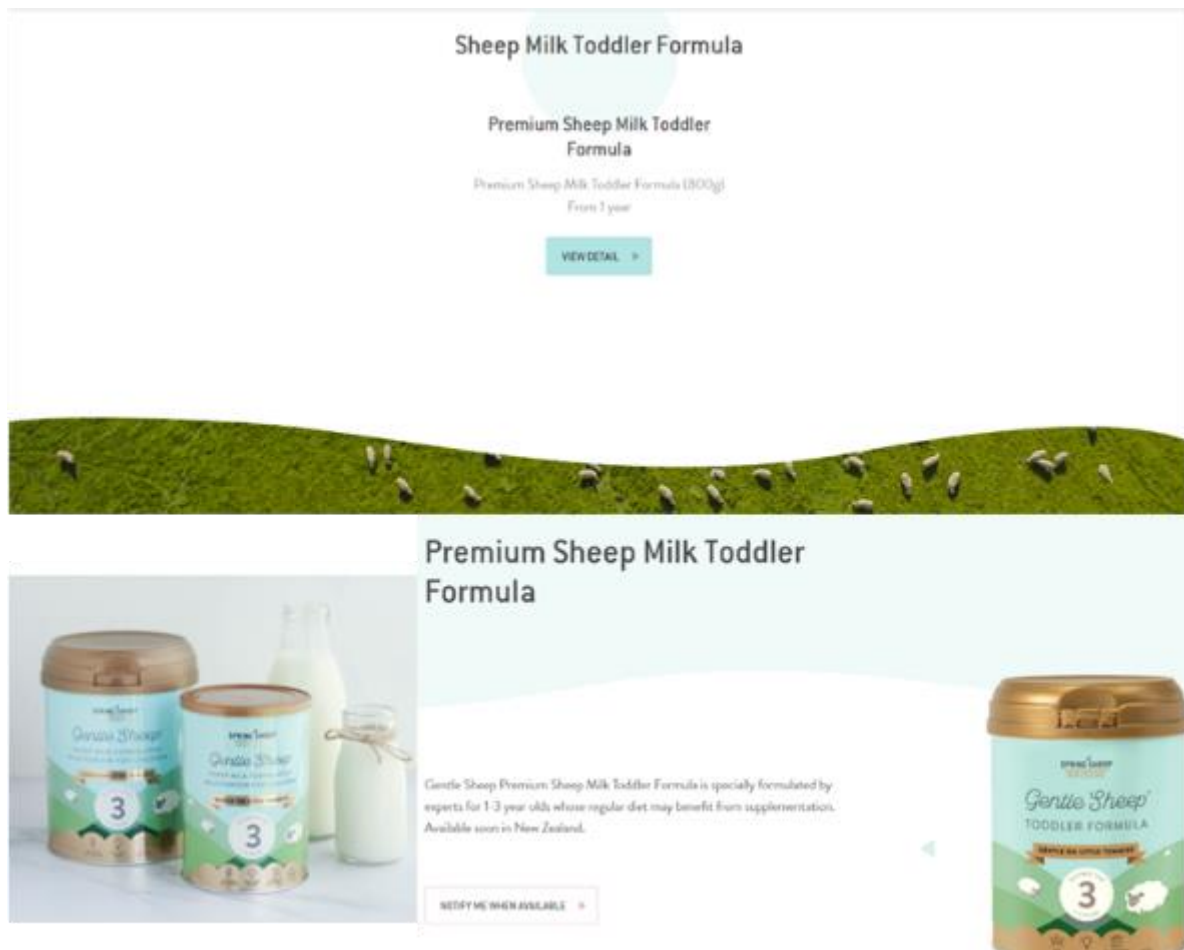
Accessed 15/11/20



- On the landing page the toddler product is the first product you see. This demonstrates that the toddler drink is a visual representation of the whole range and is in the same category as the infant formula under 12 months product.
- The products all have remarkably similar packaging.
- The term “toddler milk drink” is used.
- The toddler product has an exceedingly small difference in the colour of a small shape on the label. However, confusingly, it is numbered 1+, when other brands selling toddler drinks use the number 3 (and “1” for under 12 months products).
- To find the requirements for Clause 4a, you must first click on the “Information” tab and then you must choose “Benefits of Breastmilk” (Note the use of the term breastmilk, not breastfeeding). The information, when found, has been presented in a manner that respects the spirit of the clause.
- There is no evidence that Clause 4b has been met.

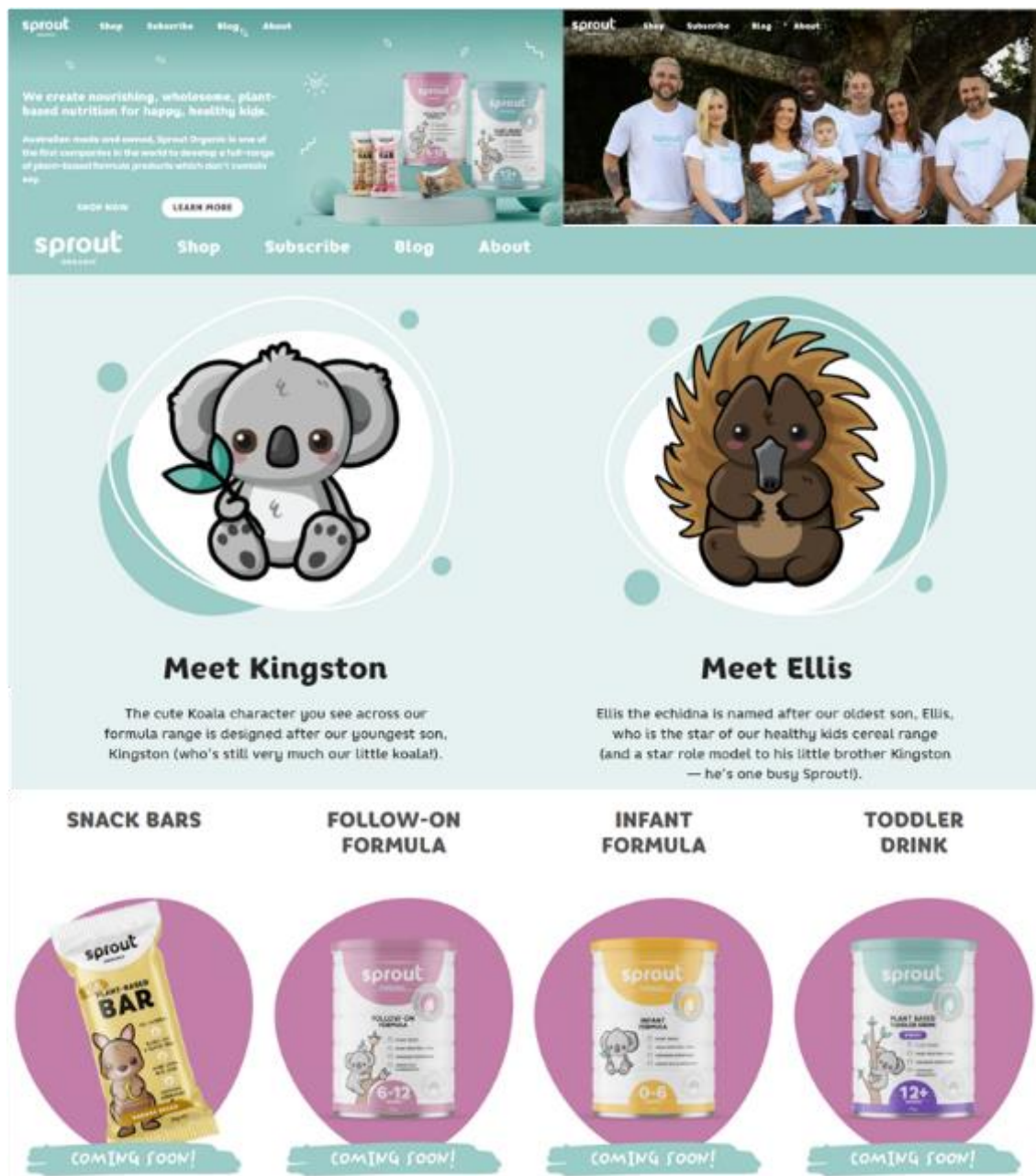


13. Spring Sheep Milk Company <https://springsheepmilkco.com/> accessed 15/11/20



- This company is selling toddler drink only at the time of writing.
- The term formula is used both on the website and on the product labelling.
- You must scroll to the very bottom of the page to find a small tab titled “Breast is Best”, the information is basic and does not meet the standards required for Clause 4a.
- There is no evidence that Clause 4b has been met.

14. Sprout Organic <https://sproutorganic.com.au/> accessed 15/11/20



- The numbering of 1,2 and 3 incorrectly suggests that this product is the next logical step after 12 months - when toddler drinks are unnecessary and fall into a different food standard.
- The products all have very similar packaging, although the colours are different.
- The term “toddler drink” is used.
- The use of mascots named after the owner’s children is inappropriate.
- There is no evidence of either Clause 4a or 4b being addressed on the website.
- On the landing page, the follow-on and toddler products are used to represent the brand.

15. Swisse Wellness Pty Ltd <https://swisse.com.au/> does not link to infant formula product site. <https://www.hh.global/our-brands> - Biostime listed as a product [https://www.biostimenutrition.com.au/?gclid=EAlaIQobChMliINTCsKKE7QIVIXwrCh3wQwID EAAyASAAEgLIH\\_D\\_BwE](https://www.biostimenutrition.com.au/?gclid=EAlaIQobChMliINTCsKKE7QIVIXwrCh3wQwID EAAyASAAEgLIH_D_BwE)



Stage 1: Organic Infant Formula

0 - 6 months



Stage 2: Organic Follow-On Formula

6 - 12 months



Stage 3: Organic Toddler Milk Drink

12 - 36 months



Stage 1: Ultra Goat Infant Formula

0 - 6 months



Stage 2: Ultra Goat Follow-On Formula

6 - 12 months



Stage 3: Ultra Goat Toddler Milk Drink

12 - 36 months



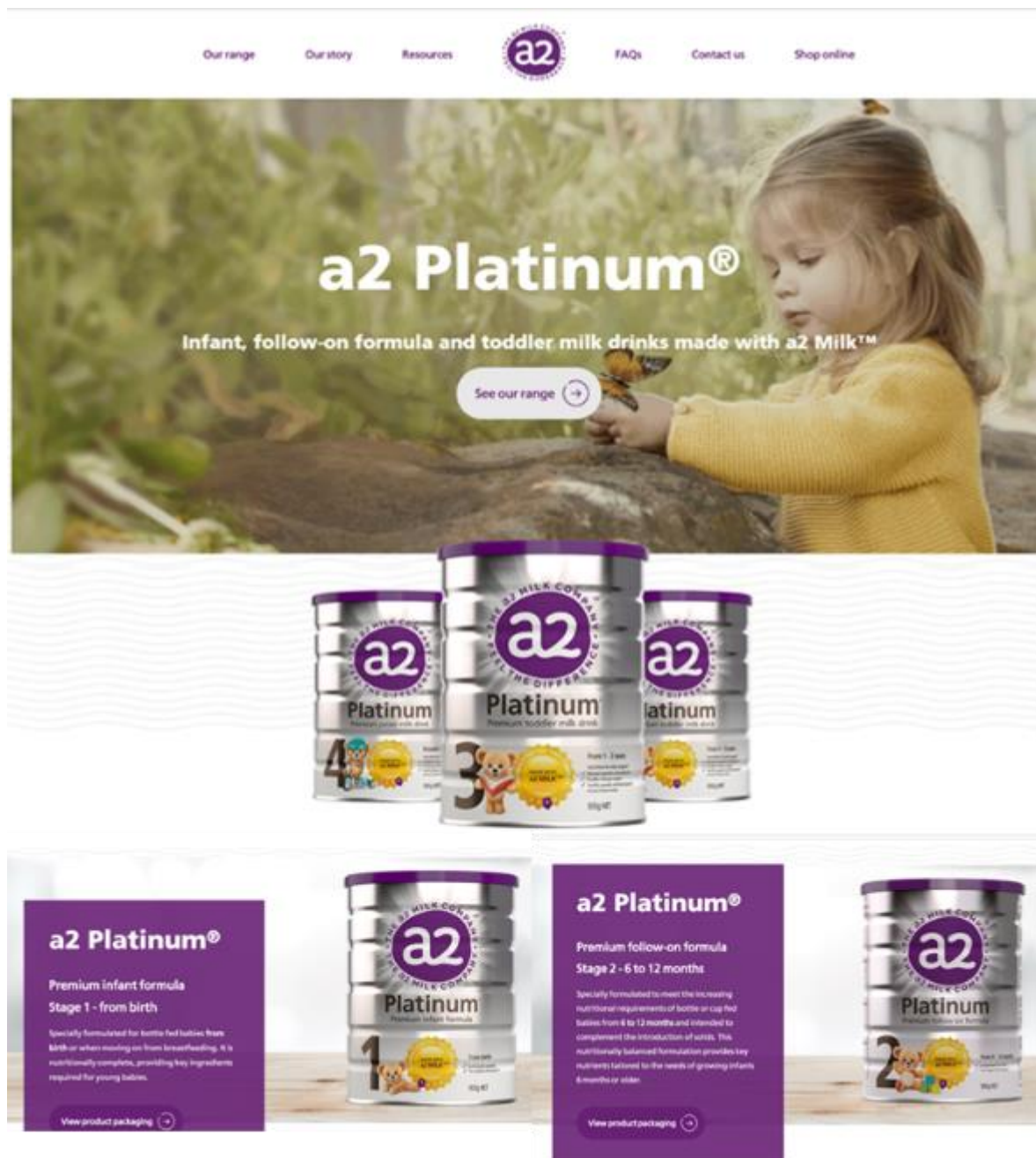
#### 15. Swisse Wellness Pty Ltd (cont.)

Searching Swiss Wellness links only to a generic site. You have to click on the products tab to find that they make Biostime.

- The products are tricky to find; when you click on the “products” tab, only the toddler product is shown. This demonstrates that the toddler drink is a visual representation of the whole range and is in the same category as the infant formula under 12 months product.
- The numbering of 1,2 and 3 incorrectly suggests that this product is the next logical step after 12 months - when toddler drinks are unnecessary and fall into a different food standard.
- The products all have very similar packaging.
- The term “toddler milk drink” is used.
- There is no evidence of either Clause 4a or 4b being addressed on the website.



16. The a2 Milk Company Ltd <https://thea2milkcompany.com/>  
No infant feeding products listed. To find the infant products:  
<https://www.a2nutrition.com.au/> Accessed 15/11/20



- To click through to see product information, a short message about breastfeeding is displayed that you must agree to before moving forward. The information is incomplete and does not meet the requirements of Clause 4a.
- The landing page shows only the toddler products. This demonstrates that the toddler drink is a visual representation of the whole range and is in the same category as the infant formula under 12 months product.

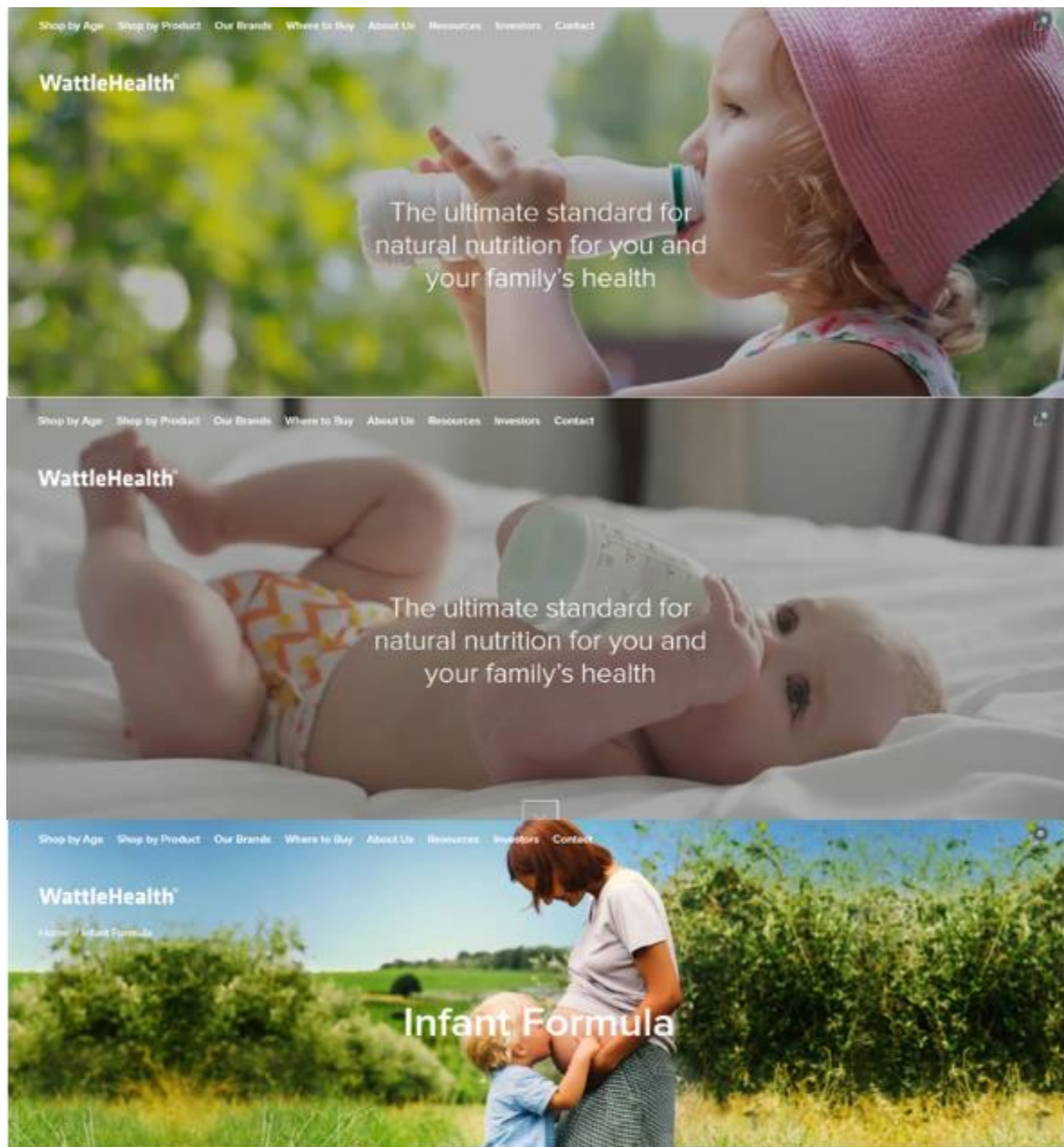




16. The a2 Milk Company Ltd (cont.)

- The numbering of 1,2 and 3 incorrectly suggests that this product is the next logical step after 12 months when toddler drinks are unnecessary and fall into a different food standard.
- The products all have very similar packaging.
- The term “toddler milk drink” is used.

17. Wattle Health Australia Limited <https://wattlehealth.com.au/>



Follow us on Instagram





- The landing page shows a picture of a pregnant woman and a toddler with only the toddler products shown. This demonstrates that the toddler drink is a visual representation of the whole range and is in the same category as the infant formula under 12 months product.
- The numbering of 1,2 and 3 incorrectly suggests that this product is the next logical step after 12 months - when toddler drinks are unnecessary and fall into a different food standard.
- The products all have very similar packaging.
- The pregnancy product looks very different; so, there is less likelihood of confusion.
- The term “toddler milk drink” is used.

## APPENDIX B Toddler drink images and videos



ABC News celebrating baby Sam <https://www.abc.net.au/news/2020-07-04/alice-springs-baby-becomes-viral-sensation/12419998>

ROYAL AUSNZ <https://www.facebook.com/watch/royalausnz/>

NATURES WAY KIDSMART <https://www.youtube.com/watch?v=pt-MkmxKXNE>

NAN <https://www.youtube.com/watch?v=agoDNiHp9Qg>

OZ FARM <https://www.youtube.com/watch?v=XVNXy0zK2J4>

NOVALAC <https://www.youtube.com/watch?v=TPg-4kVfjSk>

BELLAMY'S [https://www.youtube.com/watch?v=3\\_rx9jbj7Sg](https://www.youtube.com/watch?v=3_rx9jbj7Sg)

Oli <https://www.youtube.com/watch?v=rBkunGox3hQ>

APTAMIL <https://www.youtube.com/watch?v=57rbEOV0Xig>

APTAMIL GOLD <https://www.youtube.com/watch?v=ZbMRRmx6juQ>

UGANIC <https://www.youtube.com/watch?v=E3r6JBZ7ZxI>

BISOTIME comparing formula to breastmilk <https://www.youtube.com/watch?v=7diXCjzNLcE>

KARICARE <https://www.youtube.com/watch?v=vkcC1ItRaLI>

BLACKMORES [https://www.youtube.com/watch?v=AY\\_-4uu8\\_E](https://www.youtube.com/watch?v=AY_-4uu8_E)



## REFERENCES

- <sup>1</sup> World Health Organisation (WHO) 1981 The International Code of Marketing of Breast Milk Substitutes WHO Geneva [https://www.who.int/nutrition/publications/code\\_english.pdf](https://www.who.int/nutrition/publications/code_english.pdf)
- <sup>2</sup> Department of Health. Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement 1992 (MAIF Agreement). Accessed 30 Oct 2020 <https://www1.health.gov.au/internet/main/publishing.nsf/Content/health-pubhlth-strateg-foodpolicy-apmaif.htm>
- <sup>3</sup> House of Representatives Standing Committee on Health and Ageing (2008). The Best Start: Report on the Inquiry into the Health Benefits of Breastfeeding. Retrieved from [https://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=haa/breastfeeding/report.htm](https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=haa/breastfeeding/report.htm)
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