

The impact of breast milk substitutes

Overview

- 8.1 The availability and marketing of breast milk substitutes or infant formula is a contentious issue for many public health organisations, health professionals and breastfeeding mothers. However, when breast milk in any form is not available the only suitable alternative nutrition for infants is infant formula.

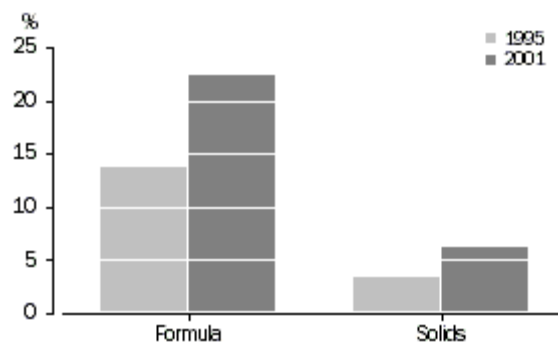
What is infant formula?

- 8.2 Infant formula is an industrially produced milk product designed for infant consumption; an infant is defined as being a person aged up to 12 months. Usually based on cow's milk, formula has added vitamins and enzymes and different fats that infants need. Infant formula is not equivalent to breast milk. It lacks many of the factors present in breast milk, including numerous types of living cells, cholesterol, polyamines, free amino acids, glycosamine and enzymes and other bioactive substances.¹
- 8.3 The most recent data on rates of infant formula use is from the National Health Survey in 2001. This data showed that there was an

1 National Health & Medical Research Council, *Dietary Guidelines for Children and Adolescents in Australia* (2003), p 391; Rothenbury A, sub 15, p 3.

increase in formula and solids use from 1995 to 2001 in infants three months or less in age (see Figure 8.1).

Figure 8.1 Proportion of infants aged 3 months or less currently breastfeeding and receiving formula and solids – 1995 and 2001



Source: Australian Bureau of Statistics, *Breastfeeding in Australia, 2001*, 2001, cat no 4810.0.55.001, p 3

- 8.4 The Queensland Health *Infant and Child Nutrition in Queensland* report released in 2005 found that 12 per cent of children commenced regular formula use on the first day of life and 23 per cent had commenced regular consumption before four weeks of age.²
- 8.5 There is a wide range of infant formula available and most of them are of similar quality and nutritional value although there is some evidence that suggests formula with added long chain polyunsaturated fatty acids (LCPUFAs), naturally found in breast milk, assists in brain development.³ It should be noted that any benefits that LCPUFAs in infant formula offer for cognitive development are smaller than the advantage of breast milk over formula for infants.⁴
- 8.6 Critical to the safe use of infant formula are the following requirements:
- a safe water supply;
 - sufficient family income to meet the costs;
 - effective refrigeration;
 - clean surroundings; and

2 Gabriel R, sub 259, p 1.

3 National Health & Medical Research Council, *Dietary Guidelines for Children and Adolescents in Australia* (2003), p 394

4 National Health & Medical Research Council, *Dietary Guidelines for Children and Adolescents in Australia* (2003), p 394

- satisfactory arrangements for sterilising and storing equipment.⁵
- 8.7 Standards for the quality, composition and labelling of infant formula sold in Australia are regulated through Standard 2.9.1 in the joint Australia and New Zealand Food Standards Code. Standard 2.9.1 provides for the compositional and labelling requirements for foods intended or represented for use as a substitute for breast milk. This Standard applies to all infant formula products whether in powder, liquid concentrate or 'ready to drink' forms. This standard also provides for infant formula products intended for infants with special nutritional requirements. Infant formula products are regarded as a special purpose food and as such have both specific and stringent standards that infant formula manufacturers need to follow regarding composition and labelling.
- 8.8 There is a second standard for foods for infants, Standard 2.9.2. This covers products that are not milk based; for example, canned infant foods, infant cereal products and products that may be sold in jars. This standard indicates that the label on a package of food for infants must not include a recommendation, whether express or implied that the food is suitable for infants less than four months old. Currently Food Standards Australia New Zealand (FSANZ) is reviewing the minimum age labelling requirements of foods for infants under standard 2.9.2. The purpose of this review is to align the labelling requirements for infant foods currently prescribed in the code with the NHMRC Dietary Guidelines, which recommend exclusive breastfeeding for six months. FSANZ noted that it hopes to have this completed by the end of 2007.⁶
- 8.9 The committee considers that the minimum labelling requirement of foods for infants should be changed to reflect the NHMRC infant feeding guidelines. The committee notes that several participants to the inquiry provided evidence of the labelling of infant foods as being suitable for four to six months of age;⁷ there was concern that this labelling clearly contradicted the NHMRC Dietary Guidelines that recommend a baby should be exclusively breastfed for the first six months.

5 National Health & Medical Research Council, *Dietary Guidelines for Children and Adolescents in Australia* (2003), p 395

6 Hazelton J, Food Standards Australia New Zealand, transcript, 13 June 2007, p 16.

7 Pollock R, sub 60, p 1; Perris H, sub 129, p 6; Foster M, sub 147, p 1; Hay L, sub 153, p 9; Tresize J, sub 205, p 2; Courtwood L, sub 338, p 1; Thorp K, sub 358, pp 1-2.

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.**

Infant formula information

- 8.11 The Director General of the World Health Organisation reported to the World Health Assembly in 1992 on infant and young child nutrition. In this report, it was pointed out that even from a viewpoint of fostering competition, direct advertising to mothers with infants in the first four to six months of life was singularly inappropriate because:
- advertising infant formula as a substitute for breast milk competes unfairly with normal, healthy breastfeeding, which is not subject to advertising, yet which is the safest and lowest cost method of nourishing an infant; and
 - advertising infant formula as a substitute for breast milk favours uninformed decision making, bypassing the necessary advice and supervision of the mother's physician or health worker.⁸
- 8.12 In this respect, the Director General's report concluded, it can be considered that advertising of infant formula fails to achieve the objectives of ensuring best quality and the lowest cost and creating an informed public, which are among the benefits assumed to be a result of direct advertising.⁹
- 8.13 Infant formula manufacturers contend that they need to be able to provide information to mothers who have made the choice to use infant formula.¹⁰ Nestlé notes that:

8 World Health Organisation website viewed on 7 August 2007 at http://www.who.int/nutrition/infant_formula_trade_issues_eng.pdf

9 World Health Organisation website viewed on 7 August 2007 at http://www.who.int/nutrition/infant_formula_trade_issues_eng.pdf

10 Infant Formula Manufacturers Association Australia, sub 328, p 2.

- their website contains positive and supportive information and advice on breastfeeding;
 - information on infant nutrition and products is shown on the website only after visitors read and accept a statement on the positive health benefits and superiority of breastfeeding; and
 - the website does not promote, through pictures or words, formula over breastfeeding, but does provide factual information on the use of formula should individuals make the choice to do so.
- 8.14 Heinz Australia are concerned that the use of formula is being politicised and would like to see ‘...the use of formula milk be depoliticised and treated objectively as a routine aspect of baby care, rather than as a moral issue ...’ and that while breastfeeding is encouraged, mothers who do not breastfeed are not made to feel inferior.¹¹
- 8.15 Breastfeeding advocates and consumers have criticised the marketing of infant formula in Australia where it is marketed as a remedy for common infant behaviour, such as loose bowel motions, not sleeping and being hungry.¹² Professor Colin Binns notes that an authoritative guide, the Dietary Guidelines for Children and Adolescents in Australia, to the use of infant formula has been prepared and is readily available. He contends that infant formula companies could assist by publicising its existence and by distributing reprints.¹³

WHO Code

- 8.16 An International Code of Marketing of Breast-milk Substitutes, commonly called the ‘WHO Code,’ was established in 1981 by the World Health Organisation in response to concerns over a perceived decline in breastfeeding, and as a ‘minimum acceptable requirement’ for the marketing of breast milk substitutes.¹⁴ The aim of the WHO

11 Heinz Australia, sub 141, p 3.

12 Hall T, sub 70, pp 7-8; McDonald R, sub 203, p 10; Stocks C, sub 218, p 1; Brook B, sub 236, p 1; Gribble K, School of Nursing, University of Western Sydney, sub 251, p 3-12; Government of South Australia, sub 274, p 9; Australian Breastfeeding Association (NSW Branch), sub 276, p 6; Sgambelluri M, sub 292, p 1; Thorp K, sub 352, p 2.

13 Binns C, sub 434, p 2.

14 Mork T, ‘Statement by the Representative of the Executive Board to the Thirty-fourth World Health Assembly on the Subject of the Draft International Code of Marketing of Breast-milk Substitutes’, 20 May 1981.

Code was to protect and promote breastfeeding and to ensure that marketing of breast milk substitutes, feeding bottles and teats is appropriate. The Code applies to all products marketed as partial or total substitutes for breast milk for infants up to four to six months of age, including infant formula, other milk products, foods and beverages, including bottle-fed complementary foods, when marketed or otherwise represented as suitable for use as a partial or total replacement of breast milk, as well as feeding bottles and teats. More than 70 governments around the world have all or many of the Code's provisions as law.¹⁵ The Code applies to both companies and governments.

8.17 The WHO Code:

- bans all advertising and promotion of products to the general public;
- bans samples and gifts to mothers;
- requires information materials to advocate for breastfeeding, warning of the risks of artificial feeding and not containing pictures of babies or text that idealise the use of breast milk substitutes;
- bans the use of the health care system to promote breast milk substitutes;
- bans free or low-cost supplies of breast milk substitutes;
- allows health professionals to receive samples but only for research purposes and bans gifts;
- demands that product information be factual and scientific;
- bans sales incentives for breast milk substitutes and contact with mothers;
- requires that labels inform fully about the correct use of infant formula and the risks of misuse;
- requires labels to not discourage breastfeeding.¹⁶

15 International Baby Food Network Action Network (IBFAN), 'United Kingdom code violations: a survey of the state of the International Code of Marketing of Breastmilk substitutes and subsequent WHA resolutions,' Fact sheet, viewed on 30 July 2007 at <http://www.ibfan.org/english/pdfs/lwtduk04.pdf>.

16 IBFAN, 'United Kingdom code violations: a survey of the state of the International Code of Marketing of Breastmilk substitutes and subsequent WHA resolutions,' Fact sheet, viewed on 30 July 2007 at <http://www.ibfan.org/english/pdfs/lwtduk04.pdf>.

- 8.18 Subsequent World Health Assembly resolutions have added clarification to aspects of the code including, for example, resolution 47.5 (1994) which addressed the provision of samples, to ensure that there are no donations of free or subsidised supplies of breast milk substitutes and other products covered by the International Code of Marketing of Breast-milk Substitutes in any part of the health care system.¹⁷

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

- 8.19 Australia has not fully implemented the WHO code even though it was one of the early signatories. Instead, in 1992 the Commonwealth Government introduced the Marketing in Australia of Infant Formulas: Manufacturers and Importers (MAIF) Agreement, to set out the obligations of manufacturers and importers of infant formulas in Australia. The MAIF Agreement is a voluntary self-regulatory code of conduct between manufacturers and importers to Australia of infant formula. It was authorised in 1992 under the *Trade Practices Act 1974*¹⁸ but is not legally binding.¹⁹
- 8.20 The MAIF Agreement covers the marketing in Australia of infant formulas when such products are marketed or represented to be suitable for use as a partial or total replacement to breast milk. It also covers the quality and availability of such products and the provision of information concerning their use. It applies only to manufacturers and importers of infant formulas for use up to 12 months of age, not to retailers or distributors and does not include other milk products, foods, beverages or feeding teats.
- 8.21 The aim of the MAIF Agreement is to help ensure safe and adequate nutrition for infants:
- through the protection and promotion of breastfeeding;

17 IBFAN, 'World Health Assembly Resolution 47.5 – Infant and young child nutrition', viewed on 30 July 2007 at <http://www.ibfan.org/english/resource/who/whares475.html>; Justice and International Mission, Uniting Church in Australia, sub 156, p 9.

18 Advisory Panel on the Marketing in Australia of Infant Formula (APMAIF), *Annual Report 2003-04*, Department of Health and Ageing, 2004, p 53.

19 APMAIF, *Annual Report 2003-04*, p 53.

- by ensuring the proper use of breast milk substitutes when they are necessary²⁰ on the basis of adequate information; and
- through appropriate marketing and distribution.²¹

The WHO Code and MAIF - differences

8.22 The major points of difference between the MAIF and the WHO Code were recently described by the International Baby Food Action Network (IBFAN) (See Figure 8.2).

20 The word 'necessary' is used to include mothers who have made an informed choice to use breast milk substitutes.

21 Department of Health and Ageing *'Marketing in Australia of infant formulas: Manufacturers and Importers Agreement'* (2003).

Figure 8.2 The WHO Code versus MAIF

The International Code versus MAIF	
Some notable differences:	
International Code	MAIF Code of Practice
• Applies to all countries and companies as a minimum standard.	◀▶ Coverage is limited to six major baby food companies – Heinz Watties, Nestlé, Nutricia, Wyeth, Abbott and Snow Brand. Others are not bound to follow MAIF.
• Applies to all breast milk substitutes including other milk products, foods and beverages marketed to replace breast milk, feeding bottles and teats.	◀▶ Applies only to infant formula. Products such as baby cereals, infant meals and drinks are not covered even if marketed for infants below 6 months of age. MAIF does not cover feeding bottles and teats.
• Covers “retailers” under its definition of “Distributor”, and forbids promotion at retail level.	◀▶ Distributors are not covered and MAIF is silent on promotion at the retail level.
• Governments have the responsibility to ensure that objective and consistent information is provided on infant feeding.	◀▶ No equivalent responsibility exists. Information materials by companies are often distributed through health care systems and usually contain conflicting messages about breastfeeding.
• No point-of-sale advertising or any other promotion device such as special displays, discount coupons, premiums, special sales, loss leaders and tie-in sales at the retail level.	◀▶ No equivalent provision on promotion at the retail level. Thus promotion at the retail level is not forbidden.
• Health authorities have the responsibility to encourage and protect breastfeeding and promote the principles of the Code.	◀▶ No equivalent responsibility exists.
• Free or subsidised supplies are banned in any part of the health care system (WHA resolution 47.5 [1994]).	◀▶ Allows certain free supplies as it is based on 1981 Code Article 6.6 which is superseded by WHA resolution 47.5.
• Information to health professionals should be restricted to scientific and factual matters, and should not imply or create a belief that bottle feeding is equivalent or superior to breastfeeding.	◀▶ Requires companies to give health care professionals product information reflecting current knowledge and responsible opinion which are clearly identified with company and brand names.
• Governments have overall responsibility to implement and monitor the Code. Monitoring should be carried out in a transparent and independent manner.	◀▶ Advisory Panel which administers MAIF and decides on complaints is partly represented and funded by industry, giving rise to conflict of interests.

Source: IBFAN Exhibit 32, p 4.

Advisory Panel on the Marketing in Australia of Infant Formula (APMAIF)

- 8.23 A government advisory panel, the Advisory Panel on the Marketing in Australia of Infant Formula (APMAIF), has been established to monitor compliance with, and advise the Government on, the Marketing in Australia of Infant Formula: Manufacturers and Importers (MAIF) Agreement. The panel comprises an independent Chair, a community and consumer representative, a public health and

infant nutrition expert, and an industry representative. The Commonwealth Minister for Health and Ageing has responsibility for the appointment of all members except the representative of the infant formula industry.²²

8.24 The APMAIF's terms of reference are to:

- receive and investigate complaints regarding the marketing in Australia of infant formulas;
- act as a liaison point for issues relating to the marketing in Australia of infant formulas;
- develop guidelines on the interpretation and application of the MAIF Agreement; and
- provide advice to the Commonwealth Government Minister for Health and Ageing, on the operation of the Agreement.

8.25 Anyone can lodge a complaint about an alleged breach of the MAIF Agreement. Breaches of the MAIF are reported in the APMAIF annual reports which are tabled in Parliament. The latest Annual Report for the period 2003-04 was tabled in March 2005.

8.26 Between 1999 and 2005 the APMAIF recorded 13 breaches of the Agreement.²³ However, more than 180 complaints were received between 2002 and 2004. Of these complaints 138 concerned retail activity (which is beyond the scope of the MAIF). In addition, where a breach has been found to have been committed by a signatory to the agreement, the panel has no powers to impose a penalty as it can only recommend remedial steps.²⁴

Box 8.1 How complaints to the APMAIF are processed

Complaints to the APMAIF are processed by the APMAIF secretariat. The secretariat considers whether the complaint involves: a MAIF signatory, retailer activity, feeding bottles or teats, dummies, toddler milk or other baby food. The secretariat is also guided by whether the same or similar complaints have been previously determined by the APMAIF to be outside the scope. Some complaints about retail activity may require further information to be sought and the secretariat may send

22 Advisory Panel on the Marketing in Australia of Infant Formula (APMAIF), *Annual Report 2003-04*, Department of Health and Ageing, 2004, p 11.

23 Hon Tony Abbott MP, 'Response to Questions in Writing: Breastfeeding' (Question no. 3807), House of Representatives *Hansard*, 26 February 2007, p 186.

24 McVeagh P, 'The World Health Organization Code of Marketing of Breast milk substitutes and subsequent resolutions (The WHO Code)', *NSW Health Bulletin* vol 16 (3-4), 2005, pp 67-68.

letters to retailers to inform them about the MAIF signatories' obligations and ascertain whether there has been any involvement from MAIF signatories in the matter. If a complaint is likely to be out of scope but there is room for doubt, it is referred to the APMAIF for consideration. Out of scope complaints that concern new or unusual marketing activity may also be drawn to the attention of the APMAIF for information.

Complaints requiring consideration by the APMAIF are summarised by the secretariat using a standard format to present the key information relevant to making a decision. The secretariat does not anticipate or recommend a finding. The complainants' identities are not included in the summaries to protect against bias in consideration of the complaint and to protect complainants' privacy. At APMAIF meetings members have access to the summary sheets, exhibits (e.g. brochures, magazine clippings, and posters) and the complainants' de-identified letters or complaint forms. The APMAIF considers these materials and may ask the secretariat to seek further information. When a decision is made, both the complainant and the subject company are advised of the final outcome of the complaint, including reasons for the decision.

Source: APMAIF Secretariat

Review of MAIF and APMAIF

- 8.27 The MAIF Agreement and the APMAIF were the subject of an independent review in 2000.²⁵ The subsequent report was known as the Knowles report and it made a number of recommendations.²⁶ The Knowles report indicated that if the recommendations in the report were implemented it would enable Australia's commitment to the WHO Code to be honoured through a voluntary agreement. If the changes do not achieve such an outcome, then the Knowles report considered it necessary to consider a legislated statutory framework.²⁷
- 8.28 The Knowles report recommended among other things, that the Commonwealth with the states and territories establish a Public Health Partnership to develop strategies to promote breastfeeding but also provide support to mothers who decide not to breastfeed. A

25 Hon. Michael Wooldridge MP 'Advice sought on how to improve current marketing arrangements for infant formula sold within Australia' Press Release, 9 November, 2000.

26 Rob Knowles *Independent advice on the composition and modus operandi of APMAIF and the scope of the MAIF Agreement* Department of Health and Ageing (2003), p 1.

27 Rob Knowles *Independent advice on the composition and modus operandi of APMAIF and the scope of the MAIF Agreement* Department of Health and Ageing (2003), p 3.

further recommendation was the establishment of an Infant Nutrition Coordinator at the national level, to be advised by an expanded APMAIF panel. The Knowles report also recommended that retailers, including supermarkets and pharmacies, develop a voluntary code of practice.²⁸

- 8.29 The Government implemented a number of recommendations in the Knowles Report, but did not accept the recommendation to establish a Public Health Partnership, or the development of a voluntary code of practice for retailers.²⁹ The Knowles report noted that there was 'basic disagreement' on the purpose of the MAIF Agreement with key stakeholders and that this was reflected in the differing views of the advocates of breastfeeding and the local infant formula industry.
- 8.30 The Australian Breastfeeding Association (ABA) has criticised the MAIF Agreement, arguing it is nowhere near as extensive or powerful as the WHO code because it applies only to manufacturers and importers of infant formulas but not to retailers. Furthermore, it only covers infant formulas and not other milk products such as follow-on milk for toddlers, or feeding bottles and teats. The ABA is also critical of the voluntary nature of the agreement.³⁰
- 8.31 Infant formula manufacturers view the agreement as providing a 'framework' for the provision of information to both mothers who breastfeed and those who use infant formula to feed their infants. A case in point raised in the Knowles report was the issue of samples. Industry was adamant that the provision of samples to health professionals for evaluation was consistent with the Agreement, whereas breastfeeding advocates argued the provision of such samples would result in women being given them free, which would lead to the undermining of breastfeeding.³¹

28 Rob Knowles *Independent advice on the composition and modus operandi of APMAIF and the scope of the MAIF Agreement* Department of Health and Ageing (2003), pp 10-15.

29 The recommendations agreed to are outlined in APMAIF *Annual Report 2002-03*, p. ix.

30 Australian Breastfeeding Association, 'World Breastfeeding Week 2006', viewed on 30 July 2007 at <http://www.breastfeeding.asn.au/news/wbw.html>.

31 Rob Knowles *Independent advice on the composition and modus operandi of APMAIF and the scope of the MAIF Agreement* Department of Health and Ageing (2003), pp 1-2.

The Australian context

- 8.32 Significant evidence was provided to the committee that demonstrated infant formula manufacturers in Australia advertise their products in a manner which would clearly breach the WHO Code.³² Although the WHO Code is not currently implemented in Australia the committee considers the Commonwealth Government should be doing more to protect breastfeeding and the limited scope of the MAIF Agreement falls short of providing an appropriate level of protection.
- 8.33 As an example, the committee is quite concerned by the practice of manufacturers using health professionals as surrogate marketers of their products via distribution of free infant formula sample packs to new mothers. The committee considers that the implicit endorsement of a product given when a health professional provides a free sample to a person should not be underestimated. The committee received consistent evidence that samples of infant formula are being made available to mothers through health professionals such as early childhood nurses, doctors and hospitals.³³

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- 32 See for example; Hartley M, sub 8, p 1; Jeffery L, sub 34, p 4; Pile C, sub 38, p 7; Propadalo L, sub 40, p 9; Wighton M, sub 41, p 1; Hall T, sub 70, p 6; Sands B, sub 73, p 3; Dawson P, sub 98, p 3; Gill P, sub 123, p 1; Justice and International Mission, Uniting Church in Australia, sub 156, pp 2,6,8,9; College of Lactation Consultants Vic, sub 158, p 4; Australian College of Midwives Baby Friendly Health Initiative, sub 185, p 4; Berry N, sub 196, p 1; McDonald R, sub 203, p 10; Trezise J, sub 205, p 2; Eldridge S, sub 214, p 4; Hewitt S, sub 215, p 1; Dietitians Association of Australia, sub 223, p 4; Brook B, sub 236, p 2; Davis A, sub 237, p 5; Gribble K, School of Nursing, University of Western Sydney, sub 251, p 4; Heppell M, sub 291, p 2; Parker L, sub 304, p1; Australian Breastfeeding Association, sub 306, p 18; Women's Electoral Lobby, sub 310, p 3; Volders E, sub 350, p 1.
- 33 Hartley M, sub 8, p 1; Warner B, sub 14, p1; Thorp W, sub 28, p 2; Vane C, sub 36, p 2; Parker E, sub 54, p 2; Ward K, sub 56, p 3; Hall T, sub 70, p 6; Robinson L, sub 90, p 1; Francisco, sub 125, p 5; Browne C, sub 144 p 3; Hay L, sub 153, p 3; Justice and International Mission, Uniting Church in Australia, sub 156, pp 7-22; City of Wodonga, sub 168, p 5; Public Health Association of Australia, sub 181, p 3; Curtis C, sub 188, p 1; Marazakis M, sub 202, p 2, McDonald R, sub 203, p 10; Trezise J, sub 205, p 2; Sneddon A, sub 210, p6; D'Ath C, sub 211, p 1; Goodlet D, sub 213, p 1; Hewitt S, sub 215, p 1; Fuller R, sub 228, p 2; Smith D, sub 234, p 1; Davis A, sub 237, p 5; Forde L, sub 243, p 3; Gribble K, School of Nursing, University of Western Sydney, sub 251, p 4, 6-7; Saxby C, sub 263, p 1; Australian Nursing Foundation, sub 271, pp 11-12; Government of South Australia, sub 274, p 9; Sgambelluri M, sub 292, p 3; Australian Breastfeeding Association, sub 306, p 22; Women's Electoral Lobby, sub 310, p 3; NSW Lactation College, sub 333, p 3; Bowen M, sub 337, sub 3; Bellybelly.com.au, sub 349, p 2,4; Green C, sub 354, p 23; Nielsen L, sub 355, pp 1-3.

- 8.34 The marketing practices of retailers such as pharmacies and supermarkets are also worrying. As mentioned earlier, from the 180 complaints received by the APMAIF between 2002 and 2004, 138 concerned retail activity which is outside the scope of the MAIF Agreement. These marketing practices are likely to be in breach of the WHO Code if it was implemented. The marketing of bottles and teats is also of concern, with the Knowles report encouraging the Government to develop an appropriate agreement on marketing of bottles and teats to reflect the WHO Code as closely as possible.³⁴
- 8.35 The committee also received a wide range of evidence of the ineffectiveness of the MAIF Agreement,³⁵ although it must be noted that many of the issues described in evidence are beyond the scope of the MAIF Agreement. There were a total of 170 complaints about possible breaches of the MAIF Agreement made to the APMAIF in 2002, which resulted in only one breach. The following year 60 complaints were made, again resulting in one breach. The Justice and International Mission Unit of the Uniting Church in Australia was informed that both complaints were submitted by a competing company in the infant formula industry who is also a member of the APMAIF.³⁶
- 8.36 The committee was very unimpressed with the timeliness of APMAIF, including their investigating time and reporting to the Commonwealth Parliament. It is not satisfactory to the committee that the most recent report is the 2003-04 report which was tabled in 2005. Another concern is a perception that there is a potential lack of independence from the industry in the APMAIF. Currently, 70 per cent of the APMAIF is sponsored by the infant formula industry, and the industry has a representative on the panel of four people.³⁷
- 8.37 There is strong support for the scope of the MAIF Agreement to be expanded to the level of the WHO Code.³⁸ The MAIF Agreement,
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34 Rob Knowles *Independent advice on the composition and modus operandi of APMAIF and the scope of the MAIF Agreement* Department of Health and Ageing (2003), p 15.

35 See for example Pile C, sub 38, pp 8-9; Hall T, sub 70, p 7; Heads J, sub 74, p 1; Moyhu Community Health Centre, sub 122, p 4; Australian Breastfeeding Association (Tasmanian Branch), sub 172, p 4; Curtis C, sub 188, p 1; Berry, N, sub 196, p 1; Goodlet D, sub 213, p 1; Brook B, sub 236, p 2; Gribble K, School of Nursing, University of Western Sydney, sub 251, p 4; Saxby C, sub 263, p 1; IBFAN-ICDC, sub 275, p 2.

36 Justice and International Mission, Uniting Church in Australia, sub 156, p 6.

37 Justice and International Mission, Uniting Church in Australia, sub 156, p 6.

38 See for example Alexander N, sub 5, p 1; Smith S, sub 31, p 1; Hall N, sub 79, p 1; Volders E, Royal Children's Hospital, sub 85, p 3; Thorley V, sub 97, p 7; Berkowitz R, sub 136, p 1; Justice and International Mission, Uniting Church in Australia, sub 156, pp 2-9; Day S,

being a voluntary self regulatory code of conduct between manufacturers and importers, cannot be simply expanded to the level of the WHO Code. For this to happen, a new and entirely different agreement would need to be developed.

- 8.38 Additionally when the MAIF Agreement was developed, some aspects of the WHO Code were not feasible to implement because some of the pricing restrictions contained in the WHO Code could not be authorised under the *Trade Practices Act 1974*. In 1988 the Trade Practices Commission concluded that 'the voluntary implementation of a self-regulatory scheme, based on the full WHO Code, was not feasible. The pricing restrictions contained in the WHO Code amounted to breaches *per se* of the Trade Practices Act and could not be authorised in any circumstances'.³⁹
- 8.39 In contrast, infant formula manufacturer Nestlé does not consider that there is any evidence to support the introduction of new measures with respect to marketing of infant formulas.⁴⁰
- 8.40 The Justice and International Mission Unit of the Uniting Church in Australia provided a recent legal opinion that challenges the ruling of the Trade Practices Commission. The opinion states that the Commonwealth Parliament would not be restricted from passing legislation which enacted the WHO code by virtue of the Trade Practices Act provided the instrument introducing the WHO Code complies with the National Competition Principles Agreement (CPA). The CPA is an intergovernmental agreement which was signed by the Commonwealth and all states and territories in 1995. The agreement provides that legislatures can pass legislation which restricts competition, as long as they have undertaken an analysis and formed the conclusion that the public benefits of the restriction outweigh any potential detriment that may flow.⁴¹ The committee considers that there is clear evidence of significant public benefit through the introduction of the WHO Code.

sub 157, p 3; City of Wodonga, sub 168, p 12; Trezise J, sub 205, p 2; Sneddon A, sub 210, pp 3,6; Hewitt S, sub 215, p 1; Barber B, sub 233, p 1; Alexander M, sub 289, p 6; Sgambelluri M, sub 292, p 2; Australian Breastfeeding Association, sub 306, p 5; Borg B, sub 315, p 1; Baby Friendly Hospital Initiative (Queensland), sub 360, p 16; NSW Health, sub 479, p 5.

39 Department of Health and Ageing, sub 450, p 18.

40 Nestlé Australia Ltd, sub 335, p 6.

41 Daniels J, Clayton Utz, transcript, 7 June 2007 p 22.

Implementation of the WHO Code

- 8.41 The World Health Organisation has consistently stated that the appropriate marketing and distribution of breast milk substitutes is only one of several important factors when considering the protection of healthy practices of infant feeding, such as breastfeeding.⁴² The committee agrees that any strategy to improve the rates of breastfeeding in Australia needs to consider the provision of support and advice to expectant and new mothers in addition to providing protection for breastfeeding.
- 8.42 In light of the earlier recommendations, the committee considers it is time to make a decisive and clear statement of the importance of breastfeeding to the Australian community by implementing the full WHO Code and subsequent WHA resolutions.⁴³ The committee notes that there are two main forms in which the WHO Code and subsequent WHA Resolutions could be introduced into Australian law. These are:
- Commonwealth legislation; or
 - a prescribed mandatory industry code of conduct under the Trade Practices Act.⁴⁴
- 8.43 The committee recognises that the implementation of the WHO Code is a significant action but believes that if the Commonwealth Government wants to achieve the goal of 80 per cent of mothers exclusively breastfeeding for the first six months of their baby's life, the WHO Code needs to be implemented in Australia. The committee recommends accordingly.

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.**
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42 World Health Organisation website viewed on 7 August 2007 at http://www.who.int/nutrition/infant_formula_trade_issues_eng.pdf

43 Information on the International Code of Marketing of Breastmilk Substitutes, commonly called the WHO Code can be found at http://www.who.int/nutrition/publications/code_english.pdf viewed on 8 August 2007. WHA resolutions can be found at http://policy.who.int/cgi-bin/om_isapi.dll?infobase=wharec-e&softpage=Browse_Frame_Pg42 viewed on 8 August 2007

44 Justice and International Mission, Uniting Church in Australia, sub 156, p 13.

Breastfeeding information – other sources

- 8.45 According to *The Sydney Morning Herald* newspaper, Australians spent over \$38 million on books in the Family, Health and Relationships category. Of those, 25.4 per cent had titles about pregnancy and parenting.⁴⁵ The impact that information from books can have on prospective or new parents is significant. Some inquiry participants raised concerns about the accuracy of information about breastfeeding in pregnancy and parenting books and the effect these books might have.⁴⁶

I have felt it mostly in the plethora of sleep training books available, and the implicit holy grail of parenting, i.e. if your baby is not sleeping through the night by 3-4 months of age, you have failed as a parent. I have read several of the most popular ones, and the breastfeeding information in these is inaccurate, and in many cases would lead to a mother unable to breastfeed as it would interfere with her milk supply, or feeling that she has to stop breastfeeding as it interferes with the child sleeping for longer stretches.⁴⁷

- 8.46 Online parenting websites and forums have also become increasingly popular. There is an increasing range of these, both based in Australia and internationally. They can be linked to a commercial interest, such as the Mother and Baby magazine or run by organisations such as the ABA. Forums are a source of information and peer support for many mothers. However, they are often a place where myths about both breastfeeding and infant formula can be observed.⁴⁸
- 8.47 EMAP, a publisher of parenting magazines in Australia, noted that their news stand magazines and commercial discharge packs, as of April 2007, will not contain any sales promotion of infant formula or related products which encourage alternatives to breastfeeding.⁴⁹

45 Tait A, '\$38 million worth of advice' *The Sydney Morning Herald, Essential Magazine*, 31 May 2007, pp 10-11.

46 Jeffery L, sub 34, pp 1, 6; Gifford J, sub 42, p1; Clayton-Smith D, sub 43, p 1; Ward K, sub 56, p 6; McKone K, sub 226, p 1; name withheld, sub 232, pp 2, 4; Australian Breastfeeding Association (South Australian/Northern Territory Branch), sub 281, p 3; Australian Institute of Family Studies, sub 301, p 8; BellyBelly.com.au, sub 349, p 7.

47 Name withheld, sub 232, p 2.

48 BellyBelly.com.au, sub 441c, p 5.

49 EMAP, sub 180, p 2.

They will continue to contain educational material which actively encourages breastfeeding. EMAP estimated that they have so far turned away advertising revenue of approximately \$1 million.⁵⁰ There were some participants in the inquiry who were disappointed by this decision as they feel that it further marginalises women who, for whatever reason, use infant formula and removes a source of potential information and advice.⁵¹

- 8.48 EMAP is also responsible for the majority of distribution of Bounty bags in Australia. These commercial discharge packs are a means of providing mothers with samples of useful products. Bounty bags are provided to mothers at three stages during the pregnancy. There is a mother-to-be bag, a new mother bag and a new baby bag.
- 8.49 Although these bags are very popular with mothers, research has found that the distribution of written material has been ineffective in increasing breastfeeding rates. Additionally the distribution of commercial discharge packages that contain samples of infant formula or promotional material for infant formula given to mothers as they leave hospital increases the likelihood of infant formula being used over breast milk.⁵² Concern was expressed that new mothers in hospital should not be seen as a 'captive' market for advertisers, being bombarded with large quantities of information and advertising when they were extremely vulnerable.⁵³
- 8.50 The committee commends the action of companies such as EMAP in becoming WHO Code compliant across their portfolio and welcomes this proactive stance to protect and promote breastfeeding as the normal way to feed a baby.

Toddler milks

- 8.51 The recent advent of 'toddler milks' into the marketplace is of great concern to many inquiry participants.⁵⁴ Toddler milks are typically powdered cow's milk that has been fortified with vitamins and
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50 Runciman J, EMAP, transcript, 4 June 2007, p 57.

51 Name withheld, sub 390, p 1; Fogarty K, sub 427, p 1; Houston A, sub 446, p 1; Pantours R, sub 451, p 1.

52 Centre for Community Child Health, *Breastfeeding Promotion Practice Resource* (2006) p 10; NSW Baby Friendly Health Initiative, sub 339, p 8.

53 Community statements, transcript, 4 June 2007, p 83.

54 Jeffery L, sub 34, pp 4-5; Pile C, sub 38, pp 7-9; Ward K, sub 56, pp 1-3; Hall T, sub 70, p 7; Rieger M, sub 109, pp 3-4; Northern Sydney Central Coast Health Breastfeeding Promotion Committee, sub 163, p 3; Lording R, sub 186, pp 1-5; Evans A, sub 187, p 1; Brook B, sub 236, p 2; Saxby C, sub 263, p 1; Taylor H, sub 346, pp 1-4.

minerals marketed at the 12 months plus age group. The Infant Formula Manufacturers Association notes that toddler milk products can play an important public health role in fulfilling the nutritional needs to young children when their diets are unsatisfactory, particularly in the instance of iron deficiency.⁵⁵

- 8.52 The Australian Lactation Consultants Association gave evidence to the committee that into the second year of life, milk is actually a subsidiary and solids start to take the primary role. They stated that if a child was given a large amount of milk with high protein and high fat content such as toddler milk, the child was not hungry for the rest of the feed. The result can be eating disorders, where parents force their children to eat, using sweets to reward and keep them eating because they think they are starving, or the child is missing a vital opportunity to learn a variety of diet.⁵⁶
- 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.⁵⁷
- 8.54 Concern has been expressed about how toddler milks are advertised.⁵⁸ 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.

55 Infant Formula Manufacturers Association of Australia, Sub 375, p 7.

56 Moody G, Australian Lactation Consultants Association, transcript, 4 June 2007, p 32.

57 Develin L, NSW Health, transcript, 4 June 2007, p 77.

58 See for example Burns N, sub 81, p 1; Dawson P, sub 98, p 4; Beyer L, sub 105, p 1; Bell C, sub 116, p 1; Cassels S, sub 131, p 1; D'Ath C, sub 211, p 1; Davis, A, sub 237, p 5; Barnwell M, sub 255, p 4; Radel E, sub 286, p 1; Heppell M, sub 291, p 1; Bellybelly.com.au, sub 349, p 4; De Vries L, sub 359, p 2; Elliott-Rudder M, sub 371, p 3; Cheers A, sub 445, p 1; Cawthera J, sub 453, p 2.

- 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*.⁵⁹ 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.

Hon Alex Somlyay MP

Chair

⁵⁹ National Health & Medical Research Council, *Dietary Guidelines for Children and Adolescents in Australia* (2003), pp 52-55.