

The importance of a health-led approach to regulating the marketing of infant formula in Australia

Inappropriate marketing of food products that compete with breastfeeding is an important factor that negatively affects the choice of a mother to breastfeed her infant optimally. Given the special vulnerability of infants and the risks involved in inappropriate feeding practices, usual marketing practices are therefore unsuitable for these products.

The WHO International Code of Marketing of Breastmilk Substitutes and subsequent World Health Assembly Resolutions (the Code) aims to protect breastfeeding and promote appropriate infant and young child feeding, by stopping the aggressive and inappropriate marketing of breast-milk substitutes (BMS)¹.

In February 2024 the Australian Government announced its intention to implement mandatory controls for the marketing of infant formula (ref: [Marketing infant formula in Australia | Australian Government Department of Health and Aged Care](#)). This brief outlines our key recommendations for the next critical steps in this process.

Our concerns centre on the Australian Government's proposal to adopt a food regulatory perspective for the regulation of BMS in Australia. Key public health and breastfeeding stakeholders strongly recommend that a legislative framework to regulate marketing of infant formula and BMS from birth to 36 months should be based on a **health** rather than a food regulatory framework.

Recommendations

1. Controls on the marketing of BMS including foods and drinks for infants and young children 0–36 months should be achieved by comprehensive legislation administered by the Department of Health, Disability and Ageing in line with international best practice.
 - Health agencies have the legal power and expertise to regulate the full range of BMS marketing activities and channels, as well as health professional and facility registration and licensing required by the Code.
 - Health frameworks are more effective and more likely to resist industry challenge and influence on the regulation of BMS marketing.
2. The development, implementation, monitoring and enforcement of the legislation, should be supported by a new purpose-built steering committee, free from conflicts of interest and commercial influence, and reporting directly to the Minister for Health and Ageing.
3. Interim measures to monitor BMS marketing, for example by the ACCC.

The public health approach that is needed for protecting breastfeeding is broader than a food regulatory framework can deliver.

- FSANZ's existing work is focused predominately on food safety, manufacturing standards and trade promotion. This focus does not align with the broader, health-related aims of the Code which Australia has endorsed.
- Using a food regulation framework for the development of the new mandatory regulation would unnecessarily limit the focus to regulating marketing using techniques related to composition, packaging and labelling only, and take many years to implement.
- Breastfeeding is important to women's and children's health, and is a human and health right of women and children. The Code aims to protect breastfeeding and, where necessary, consumers of BMS from marketing. Decisions about infant feeding should not be influenced by industry interests or marketing.
- The wide-ranging measures needed for protecting breastfeeding include reforms in health services, workplaces, and communities, as well as ending all BMS marketing, as enshrined in the Australian National Breastfeeding Strategy 2019 and Beyond (ANBS), as agreed by all Australia's health ministers.
- FSANZ does not currently cover Australia's human rights obligations as reflected in the ANBS and the broad policy domains needed to implement the Code - in health, consumer protection and trade, dietary guidelines, and for health professionals and systems.

The regulation of BMS marketing in Australia must be government-led and free from commercial influence

- Legal challenges at the WTO are more likely under food law than health because the relevant international body, CODEX, is heavily influenced by the food industry.
- Self-regulation of advertising and promotion of BMS under the Marketing in Australia of Infant Formulas: Manufacturers and Importers MAIF Agreement (1992 to 2025), have enabled inappropriate industry engagement and influence on policies affecting breastfeeding.
- Regulation of BMS marketing should be independent of the food industry.

In the intervening period between the end of the MAIF Agreement and the implementation of the new controls of marketing of infant formula, interim measures are required to monitor BMS marketing in Australia

- Prior to the creation of the MAIF Complaints Tribunal / Committee, the Advisory Panel on the Marketing in Australia of Infant Formula (APMAIF), a non-statutory advisory panel established by the Australian Government, worked alongside the ACCC to monitor BMS marketing and investigate complaints.

- A similar governance mechanism is required in the interim period that is **independent of industry**.
- [The WHO / UNICEF Netcode Toolkit](#) provides a comprehensive protocol for strengthening Member States' and civil society capacity to monitor the Code; and to facilitate the development, monitoring and enforcement of national Code laws by Member States.

A health-led approach to developing regulation is not bound by the same requirements of stakeholder engagement as work under the Food Standards Australia New Zealand Act. A health-led approach to legislation can allow for public and transparent consultation with all stakeholders as required by good governance principles, while protecting policymaking from undue influence from commercially conflicted interests.

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1. *Definition of breastmilk substitute: any food being marketed or otherwise represented as a partial or total replacement for breast-milk, whether or not suitable for that purpose. [Source: International Code of Marketing of Breastmilk Substitutes]*