



Image sourced from the Australian Government's National Breastfeeding Strategy 2018 and Beyond

Child health is on the line as Codex deliberates food standards

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In: child health, conflicts of interest, Croakey longreads, evidence-based issues, food and nutrition, health & medical marketing, health reform, Public health and population health

Introduction by Croakey: An investigation published last week by the *British Medical Journal* has found that infant formula funding the development of guidelines for the diagnosis and treatment of cows' milk allergy as well as providing research to those who wrote them.

That comes, it reports, amid a six-fold increase in sales of infant formula prescribed for babies with cows' milk protein allergy from 2006 to 2016, despite no evidence of a concurrent increase in the prevalence of infants with the allergy. ^

In this timely Croakey #LongRead below, **Dr Julie Smith, Alex Iellamo, and Dr Phillip Baker** report on how upcoming international Codex Alimentarius (Codex) Commission will shape global and national regulation and marketing of food products for decades to come. They detail the massive market inroads that industry has made in recent decades with commercial products posing concurrent risks to breastfeeding rates and baby health, and warn that Australia's position is at risk of too much industry influence.

They conclude:

“It is time for the World Health Organisation and the UN's Food and Agriculture Organisation as co-convenors to confront the deep conflicts of interest which undermine its formulation of global guidance on food regulation for young children.”

Dr Julie P Smith, Alex Iellamo, and Dr Phillip Baker write:

In recent days a study in the *British Medical Journal* has created a storm by identifying how medical guidelines about infant feeding are shaped by industry and conflicts of interest.

But conflicts of interest in infant feeding go far deeper, into the heart of global and national food policy-making.

The international Codex Alimentarius (Codex) Commission is currently discussing new food standards for commercial infant and young children. Its deliberations, to be continued over the coming year, will shape global and national regulation of commercial baby food products for decades to come.

With the milk formula industry strongly represented in Australia's delegation, conflicts of interest are writ large – risk of regulation that suits manufacturers and exporters, not what is needed to protect health and nutrition of infants and young children.

Codex and the Code

Codex is the world's leading food standards commission established by the United Nations' Food and Agricultural Organization (FAO) and World Health Organization (WHO), intended to protect public health and fair practices in an expanding global food trade.

Codex standards are used as a benchmark in World Trade Organisation disputes and for national food standards.

It provides a forum for national regulators to discuss and coordinate how they approach food regulation, and include packaging and labeling. This is to prevent harms to consumers from unsafe food products, and the use of exploitative marketing and labeling and nutrition or health claims.

This is crucially important for baby foods. Parents of infants and young children – driven by every instinct in their book and marketing pressure to do the best for their offspring – are particularly vulnerable to persuasive food industry marketing.

The unique vulnerability of infants and toddlers to parents' decisions is why the 1981 WHO International Code of Marketing of Breastmilk Substitutes was among the earliest attempts by governments to regulate harmful industry marketing practices.

That year, all countries except the United States voted at the World Health Assembly (WHA) to support a resolution concerning the marketing of commercial breastmilk substitutes.

An ongoing challenge since then has been to ensure such crucial health expert guidance is fully embedded in all relevant commercial food and beverage products for infants and young children.

Regulating harmful marketing

In the 1980s, the Hawke-Keating Labor governments negotiated with formula importers and manufacturers on implementation of the International Code in Australia.

The government eventually accepted a "Marketing Agreement on Infant Formula" (MAIF), a weak and limited voluntary arrangement to restrain marketing to the public.

Until 2014, this was loosely monitored by a panel of government and consumer representatives, with the Health Minister and Parliament on how well the arrangement was working.

Australian food laws were also amended over the decade to prohibit nutrition or health claims on infant formula products.

Notably, the MAIF did not apply to marketing in the form of company-provided 'information and education' or product promotion, even though preventing conflicts of interest and commercial influence on infant and young child feeding is essential to the promotion of breastfeeding within health services.

However in 2003, the Australian government set out the professional ethical responsibilities of health workers to promote breastfeeding in detailed *Infant Feeding Guidelines* whilst including breastfeeding in the first Australian *National Diet*.

Regulation and counter regulation

The ink had barely dried on the MAIF, but by 1992 the industry had already developed a counter-strategy – infant formula for 'follow-on' and 'toddler' formula (sometimes 'growing up milks'). These in effect promoted infant formula and discredited breastmilk, purported to not be covered by marketing restraints on breastmilk substitutes.

A 2001 industry review as well as additional research exposed the tactic, but it soon spread globally.

In Australia, and beyond, with rapidly rising female labour force participation from the 1980s, lack of paid maternity leave pressed parents – just as anxious about feeding 'picky toddlers' as they were about feeding their infants – saw sales of formula products expand rapidly.

From the mid 2000s, a global 'white gold' boom was underway as Chinese as well as Australian parents bought into the marketing lines.

This was despite ongoing warnings from the World Health Assembly on the responsibility of industry to comply fully with the Code regarding breastmilk substitutes, and also the obligation on governments to apply appropriate measures to prevent the marketing of breastmilk substitutes.

In 2013 WHO issued a statement that, as well as being unnecessary, these powdered milk products for older infants are potentially harmful:

“...follow-up formula is unsuitable when used as a breast-milk replacement from six months of age onwards. It can lead to higher protein intake and lower intake of essential fatty acids, iron, zinc and B vitamins than those required for adequate growth and development of infants and young children.”

The same was reaffirmed in 2018 when WHO issued a clarification on the classification of follow-up formulas for child breastmilk substitutes:

“... the International Code aims to safeguard breastfeeding by ending inappropriate marketing and distribution of breastmilk substitutes. Because continued breastfeeding to two years and beyond saves lives and promotes the health of the child and baby, it is important that this protection include follow-up formula.”

'Convenience food' marketing

Similar warnings were being sounded in Australia.

A 2007 parliamentary inquiry noted the added costs to the public health system from marketing which discouraged that the WHO International Code be 'fully implemented' in Australia.

A 2011 consultant's report commissioned by the Health Department recommended banning the misleading use of pre-conflated infant formula (for babies aged less than 12 months) with toddler formula, a marketing tactic known as 'cross-promotion'.

This recommendation fell on deaf ears and formula promotion to busy, health-conscious families became more aggressive.

By 2015, the Australian Competition and Consumer Commission (ACCC) was warning that such marketing of toddler formula breached consumer law.

In late 2017 at a Western Pacific Regional meeting of the WHA in Brisbane, Australia considered a report from WHO on the effects of marketing on children, and noting that voluntary industry measures were proving ineffective.

'Marketing activity', as WHO documented, was pervasive and now included manipulating social and other mass media to promote unhealthy commercial foods for children including breastmilk substitutes. Harmful food marketing activity identified behind-the-scenes industry political lobbying ('stakeholder marketing').

The impact of government policy was also to be seen in Australia when the Abbott Coalition government attempted to make a move that baby food industry analysts predicted would result in decreased breastfeeding rates and Australian mothers turning to formula substitute.

Finally, instead of strengthening Australia's weak, narrow, and voluntary industry regulatory system, the Abbott government removed monitoring and oversight of the MAIF by abolishing the panel in 2014.

The large formula companies organised an alternative consumer complaints arrangement, similarly named 'MAIF', but without the monitoring role or accountability to Parliament. Many companies selling these products do not participate, or comply with the MAIF.

Online marketing of milk formula products is now rife, globally as well as in Australia, breaching the WHO International Code of Marketing of Breastmilk Substitutes guidance.

China is a major export market for Australasian baby food companies. Booming sales of toddler formula in China, along with corrupt marketing of milk formula products to doctors, saw breastfeeding rates halved there between 1999 and 2013, escalating in Asia.

Though this is purportedly in part due to fears of Chinese milk products following the melamine contamination over the years, aggressive marketing is driving product sales.

Regular coverage in the Australian media about empty supermarket shelves by Chinese buyers also promotes the marketing of a necessary and highly valued product. This is despite the WHO guidance and further WHA resolutions reinforcing that such marketing is unnecessary and possibly harmful and should not be inappropriately promoted.

In 2016, the WHA passed a new Resolution (69.9) on inappropriate promotion of foods for infants and young children, which reiterated that products for older babies and toddlers, such as 'follow up' formulas and 'growing up' milks, were not covered by regulatory guidance on marketing of breastmilk substitutes – the WHO International Code and subsequent relevant WHA resolutions.

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It also clarified once and for all that industry should restrain its marketing of these milk products in the same way the marketing of breastmilk substitutes for younger babies. Responsibility to only market 'appropriately' had been accep

In mid-2018, the US baby milk industry, emboldened by the new Trump Administration (and the appointment of a ph lead the US health department) tried to prevent a usually uncontroversial World Health Assembly resolution on supp opposition to the resolution shocked the global health and wider community.

The UN Office of the Human Rights Commissioner has meanwhile also drawn attention to breastfeeding as a human avoiding the conflicts of interest involved where industry has a seat at the policy table.

Codex is a core instrument for protecting the nutrition and health of infants and young children against harm from c conflicts of interest are deeply entrenched in current practice.

Australian policymaking and conflicts of interest

Currently on the table for discussion at Codex is whether to include the 2016 WHO guidance on ending inappropriate and young children in the Codex standard for follow on and toddler formulas.

Half the 4 member Australian delegation to Codex in 2018 were personnel from major milk formula industry represe three – Nestle, Aspen and Fonterra – in the six member delegation (see this \$ article).

Industry influence in the past has been of concern.

For example, in 2017, when follow-up formulas were considered, Codex documents reveal that the Australian delega incorporation of the WHO International Code and relevant WHA Resolutions into the proposed Codex standard, and protein content to levels which scientific experts consider appropriate.

Purportedly to account for inadequate diets in some countries, the Australian delegation also sought to strengthen o unnecessary product by including product definitions such as for 'where nutrient intakes may not be adequate'.

The Australians lined up closely within 'the quartet' of formula manufacturer countries led by the US (plus New Zeala industry, resisting protection of breastfeeding in the standard.

Other countries like the Philippines and Bangladesh, supported consistently by Norway, took contrary positions, seek to more strongly protect exclusive and continued breastfeeding in line with WHO guidance.

In December 2018, the Australian delegation continued to support the US position of watering down or excluding WH resolutions, and allowing labeling with cross promotion, against the advocacy of public health and consumer organis many developing countries that are urging to protect and support breastfeeding.

Looming lose-lose

A dilemma for civil society is that introducing a standard for regulating questionable products such as toddler milk fo marketing. Indeed, industry can be better off with weak regulation than with no regulation, and may seek to achieve

One way of ensuring weak regulation is for industry to dominate and influence official delegations to Codex. A secon through industry lobbying ('stakeholder marketing') on national measures to ensure ineffectual implementation of Cc

This is illustrated by the Lactalis baby milk scare in 2017-18. Despite the Codex Code of Practice on powdered infant f risk to children of bacterial infection, contaminated formula products affecting more than 80 countries and sickening alone were still being sold weeks after their recall. The Code of Practice is not always followed, controls may be lackir

effective, depending on national regulatory practice.

A Codex standard also protects industry because consumer complaints or even litigation and enforcement efforts can be the basis they comply with a regulatory standard.

Industries which market products consumers are wary of – think of the vernacular ‘snake oil merchants’ – can benefit from approval bestowed by a thin veneer of international and national regulation.

Consumers commonly believe that if a product is regulated, it must be safe and useful. ‘The Government wouldn’t let it be sold’ is a widely held belief.

Weakly regulated marketing that harms children, even while pretending to help, will continue to underpin inappropriate food products at the expense of peoples’ health, and at the cost of higher disease burdens on families and the future.

What needs to be done?

1. The Codex Commission must meet its public health remit by firstly ensure its recommendations on milk formula align with WHO International Code and related WHA Resolutions for protecting, promoting and supporting breastfeeding.
2. Codex governance must recognise and respond to concerns of consumer associations and civil society organisations. It must set the highest standards for avoiding conflict of interests in food policy, including on breastfeeding protection policies.
3. Governments as signatories to human rights instruments must act to implement the WHO International Code of Marketing of Breastmilk Substitutes in full, including by enacting and enforcing legislation.

This will not happen while the milk formula industry decides ‘what is on the menu’ for food policy in the form of Codex. The industry is ‘invited to dinner’ at the national food policymaking table.

It is time for FAO and WHO as co-convenors of Codex to admit and confront the deep conflicts of interest which underpin guidance on food regulation for infants and young children.

Most importantly, it must ensure that governments, including Australia’s, do not continue to allow the milk formula industry to participate in official Codex delegations.

Codex guidance of national regulations on infant and young child food products is currently a deceit of those who prioritise food safety and public health and is based on scientific expertise, rather than local industry advice and interests.

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