AFCG submission to Public consultation - Restricting Infant Formula Marketing in Australia

17 April 2026

AUSTRALIAN FOOD & GROCERY COUNCIL

PREFACE

The Australian Food and Grocery Council (AFGC) is the leading national organisation representing Australia's food, beverage and grocery manufacturing sector.

With an annual turnover in the 2022-23 financial year of $162 billion, Australia's food and grocery manufacturing sector makes a substantial contribution to the Australian economy and is vital to the nation's future prosperity. Each business in the sector has contributed towards an industry-wide $4.2 billion capital investment in 2022-23.

Food, beverage and grocery manufacturing together forms Australia's largest manufacturing sector, representing over 32% of total manufacturing turnover in Australia. The industry makes a large contribution to rural and regional Australia economies, with almost 40 per cent of its 281,000 employees being in rural and regional Australia.

It is essential to the economic and social development of Australia, and particularly rural and regional Australia, that the magnitude, significance and contribution of this industry is recognised and factored into the Government's economic, industrial and trade policies.

The industry has a clear view, outlined in *Sustaining Australia: Food and Grocery Manufacturing 2030,* of its role in the expansion of domestic manufacturing, jobs growth, higher exports and enhancing the sovereign capability of the entire sector.

This submission has been prepared by the AFGC and reflects the collective views of the membership.

INTRODUCTION

The AFGC and its members appreciate the opportunity to respond to the Department of Health, Disability and Ageing consultation on Restricting Infant Formula Marketing in Australia.

In response to the consultation, the AFGC has had the opportunity to review the submissions by the Infant Nutrition Council (INC) and the New Zealand Food and Grocery Council. (NZFGC). The AFGC strongly supports their INC and NZFGC's positions as stated in their submissions and shares the concerns that they raise.

GENERAL COMMENTS

The AFGC supports breastfeeding due to the numerous maternal and infant benefits derived from breast milk. However, for infants that are unable to receive breast milk, then infant formula that is based on the latest science is the best alternative.

Effective regulation should strike a clear balance between limiting the marketing and promotion of infant formula and ensuring healthcare professionals have access to accurate, evidence-based information. At the same time, settings should allow sufficient flexibility to support product innovation. This approach enables ongoing improvements in infant formula in line with evolving scientific evidence.

In response to the options in the Discussion Paper, the AFGC supports a mandatory regulatory framework for infant formula marketing based on the previous Marketing in Australia of Infant Formula (MAIF) Agreement (Option 2).

The AFCG does not support an expanded scope of mandatory marketing controls as there is no robust evidence presented in the Discussion Paper to justify broader regulatory expansion (Option 3).

The AFGC has provided comments on selected questions in the consultation document. Please also note our support for the responses to individual questions as outlined in the submissions from the INC and NZFGC.

RESPONSE TO SPECIFIC CONSULTATION QUESTIONS

Q23 – WHAT OTHER CONSIDERATIONS SHOULD BE ADDRESSED IN THE LEGISLATIVE DEVELOPMENT PROCESS?

Legislative design for Option 2

The AFGC supports legislative development being aligned to Option 2 as it is the most suitable approach for legislative design. It supports a legally workable framework with clear lines of responsibility and avoids a scheme that is overly complex yet difficult to enforce consistently. By focusing on the primary regulated parties (manufacturers and importers) to ensure appropriate marketing practices, Option 2 is more likely to deliver clear, enforceable rules within shorter timeframes.

Regarding option 3, the AFGC contends that the current evidence base is insufficient in quality and consistency to support an expansion of regulatory measures beyond the existing MAIF scope. The independent MAIF Review Report (2023) found that the evidence around the inappropriate marketing of infant formula by retailers was not strong enough to warrant the inclusion of these parties under the regulatory framework. Additionally, the regulatory framework for toddler drinks is currently being reviewed by FSANZ as P1066 - Review of young child formula, and the AFCG supports this process.

Be clear on what is being regulated - marketing conduct

The Government should clearly state that the objective of the proposed legislative measures is to regulate the *inappropriate* marketing conduct of infant formula products in Australia.

The AFGC supports advertising and promotional activities being captured under new regulations. However sales, distribution, label information, information/non-promotional activities (eg company websites), consumer research, consumer services, corporate and legal matters (eg reporting) should all continue to be permitted.

Sale-related requirements would introduce additional complexity and practical enforceability risks, including potential interaction with the Trans-Tasman Mutual Recognition Arrangement, and may have broader regulatory and commercial implications beyond the stated policy intent.

Standalone Australian Government legislation

The AFGC notes that the recommended pathway falls outside the regulatory scope of the Food Standards Australia New Zealand Act 1991 (FSANZ Act). The discussion paper also indicates that standalone Australian Government legislation is being considered (p.23).

However, the AFGC notes that the discussion paper also states the legislation would be enacted through the Food Standards Australia New Zealand Act 1991 (FSANZ Act), as it is considered the most relevant existing framework in Australia, while acknowledging that amendments to the Act would be complex.

The AFGC considers that positioning Food Standards Australia New Zealand (FSANZ) as both the standard setter and the enforcement body for restrictions on infant formula marketing would create practical and governance risks. FSANZ's core role is to develop food standards through a scientific and consultative process within the bi-national system, while compliance and enforcement is undertaken by other regulators, including Commonwealth agencies and state and territory enforcement bodies.

The proposal to expand FSANZ's role into an end-to-end marketing regulator raises important questions, including separation of functions, impacts on the Joint Food Standards System, resourcing and capacity building. Considerable work would be required to minimise risks of blurring accountability and perceived conflicts between its technical standard-setting role and prosecutorial decision-making. FSANZ would also require significant new monitoring and investigative capabilities—particularly for digital marketing—outside its usual remit.

Reliance on FSANZ as the primary enforcement body for infant formula marketing controls may lead to longer implementation timeframes, increased resourcing requirements, and a higher risk of inconsistent or contested interpretation in practice.

If the Government chooses to proceed by amending the FSANZ Act, the legislative design needs to be consistent with preserving the integrity and functionality of the bi-national food standards system and set out how the following issues will be managed:

(i) the need to engage with New Zealand under the Joint Food Standards System arrangements.

(ii) how monitoring and enforcement responsibilities will be allocated, including how any unintended shift to states and territories will be avoided; and

(iii) timing and sequencing, noting the uncertainty associated with the broader FSANZ Act Review.

Q24 – DO YOU HAVE ANY SUGGESTIONS REGARDING THE MOST APPROPRIATE MONITORING AND ENFORCEMENT ARRANGEMENTS FOR THIS POLICY?

The AFGC supports an enforcement model that is clear, workable and properly resourced, and that matches Option 2's focused scope. In practice, this requires a streamlined governance model, fit-for-purpose monitoring (particularly in digital channels), an accessible and efficient complaints pathway, transparent reporting, and a proportionate enforcement toolkit that can scale based on risk and recurrence.

Monitoring

The Discussion Paper notes that monitoring should include both proactive and reactive components (p.24). The AFGC supports a surveillance approach that incorporates a clear, accessible complaints mechanism, alongside monitoring methods tailored to different communication channels. This could include routine scanning and targeted audits in digital environments, appropriate review of broadcast content, and practical oversight of marketing activities in healthcare settings.

The AFGC further considers that digital monitoring capability should be embedded from the commencement of any regulatory framework, rather than introduced at a later stage. This should include clear rules and guidance covering influencers and affiliates, re-shares and reposts, paid and earned content, and short form (such as stories), to ensure obligations are clear, monitorable, and enforceable from the outset.

Keeping Monitoring systems "Fit for Purpose" for Option 2

The Discussion Paper references the WHO/UNICEF NetCode as a mechanism for active monitoring (p24) and states that relevant principles from NetCode could be adapted to the local context. While the AFGC supports a monitoring system, this needs to be transparent and based on Australian infant formula marketing legislation.

The AFGC is concerned that NetCode principles would need significant adaptation to be tightly aligned to Option 2 (a framework broadly aligned with the former MAIF settings). In particular, NetCode's monitoring protocols are designed to assess adherence across multiple settings and stakeholders, including retailers and media channels. They are framed around stopping a broader range of products and activities captured by the WHO Code and subsequent WHA resolutions. That is a materially wider concept than MAIF's

narrower focus on manufacturer/importer promotional conduct for infant formula products and a complaints-based mechanism, and it is likely to create scope creep and confusion.

Accordingly, a proportionate approach is to consider monitoring principles and systems based on the Australian context (for example, transparent tool & model design, systematic detection or sweeps, documentation including updated guidance on trends, enforcement priorities and concerns, and periodic review).

The policy scope should be anchored to Option 2 settings. If there is a clear evidence-based and workable enforcement model to justify going further, then this should be an additional monitoring system, distinct from monitoring compliance by regulated entities with infant formula marketing regulations. This helps preserve clarity for industry and regulators, avoids confusion and unintended expansion beyond the agreed policy intent, and keeps the monitoring burden matched to what is actually regulated.

Enforcement – single accountable regulator

The Discussion Paper notes that the enforcement body could be FSANZ, the Department, or a combination of both (p.25). The AFGC does not support FSANZ as the enforcement body for the reasons outlined in question 24.

The AFGC considers that a single enforcement body should be responsible for monitoring, determining whether a breach has occurred, and undertaking enforcement action. Assigning clear end-to-end responsibility to one decision-maker would reduce regulatory gaps, avoid unnecessary inter-agency hand-offs, and support more consistent interpretation of definitions and obligations over time.

Complaints handling within the regulator

Complaints should be managed directly by the regulator's compliance and enforcement functions, supported by clear triage processes, defined evidence thresholds, and transparent decision-making pathways. This would be outlined under the published compliance and enforcement policy or framework.

Graduated, proportionate enforcement tools

Where adopted, standard Commonwealth enforcement tools should be available and applied in a graduated manner, beginning with education and warnings and escalating to infringement notices, civil penalties, and other measures available under the Regulatory Powers Act framework where appropriate. The framework should enable proportionate escalation for serious or repeated non-compliance, while remaining appropriate for lower-risk or first-time breaches.

For enforcement to be credible, fair, and effective, it should be proportionate to risk and supported by clear, publicly available policy. This should include an easy-to-understand escalation pathway setting out how the regulator will respond over time, starting with education and warnings for lower-risk or first-time issues and progressing to stronger enforcement tools where breaches are repeated, deliberate, or serious.

The AFGC also considers that procedural fairness should be embedded in the framework from the outset. This includes a clear right of response for affected parties, transparent criteria for when enforcement outcomes will be published, and accessible review or appeal mechanisms aligned with good regulatory

practice. Establishing these expectations upfront will support consistent decision-making, improve regulatory transparency, and strengthen confidence that enforcement is applied fairly and proportionately.

Embed transparency and reporting

Transparency should be embedded through regular public reporting on breaches, enforcement outcomes, and penalties, for example, through a publicly accessible dashboard. This would support accountability, promote consistent deterrence, and provide both regulated entities and the community with clearer visibility of expectations and enforcement practices. Further details on governance and safeguards are set out in response to question 25.

Evaluation – focus on what's measurable

Evaluation should focus on measurable outcomes. Baseline data should be collected prior to commencement, with independent reviews conducted at regular intervals (e.g. 1, 3 and 5 years) to assess compliance trends, types of breaches, enforcement costs, indicators of marketing prevalence, and consumer understanding, rather than relying solely on breastfeeding rates.

The AFGC considers that evaluation findings should be used to inform refinements to guidance, monitoring settings, and enforcement approaches within the Option 2 framework, supported by a legislated review point and clearly defined evidence thresholds for any future policy adjustments.

Q25 – WHAT OTHER MONITORING, ENFORCEMENT AND EVALUATION CONSIDERATIONS SHOULD BE CONSIDERED?

The AFGC considers that the success of Option 2 will depend on monitoring, enforcement, and evaluation being designed as a practical end-to-end system. This includes clear and monitorable definitions, workable rules for digital environments, consistent decision-making, transparent reporting, and evaluation focused on measurable compliance outcomes and consumer understanding.

Monitoring using AI

The AFGC is neutral, in principle, on the use of AI tools to support active surveillance, such as routine scanning of digital channels to identify potential non-compliance for subsequent human review.

However, robust governance arrangements for AI and other digital tools will be required. If AI is used to identify or assess potential breaches, the regulator should clearly define its intended use and limitations, including how outputs will be applied in practice (for example, as a preliminary flag requiring human review). Appropriate safeguards should include quality assurance checks, record-keeping, and strong human oversight to ensure decisions are consistent, fair, and defensible.

If the government proposes to rely on AI-enabled monitoring capability, it should also recognise that these tools are still evolving and typically require significant setup and ongoing governance to operate effectively. Time will be needed to develop and validate detection models, establish quality assurance thresholds, and maintain appropriate human oversight, particularly given the rapid evolution of digital platforms, advertising formats, and marketing practices.

There are also likely to be material cost implications, including licensing requirements, specialist expertise, data management, and the operational burden associated with investigating false positives, managing review or appeal processes, and continuously improving system accuracy. These resourcing considerations should be addressed upfront to ensure enforcement expectations are realistic and that outcomes remain fair, consistent, and defensible.

Governance and conflict-of-interest safeguards

The Discussion Paper notes that the Department has commissioned an AI-enabled monitoring tool being undertaken by Deakin University (p.24). The AFGC considers that potential conflicts of interest, including perceived conflicts, should be carefully managed where a university develops AI tools intended to support regulatory monitoring in a contested commercial environment.

Governance arrangements should clearly specify that AI outputs are used only as preliminary flags for subsequent human review and not as determinations of non-compliance. Full disclosure of any financial and non-financial interests, as well as relevant external relationships, should be required. Independent oversight should also be in place, for example, through audit mechanisms covering methodologies, error rates, and model update processes.

Separating tool development from enforcement decision-making and publishing clear methodology and quality assurance frameworks would help mitigate bias risk and support procedural fairness for regulated entities.

The AFGC suggests the following elements as examples of good practice to reduce conflicts of interest concerns:

- Full conflict of interest declarations for the institution and named investigators, covering both financial and non-financial interests.
- Independent oversight mechanisms, such as a steering committee with mixed representation and/or an external audit of model performance.
- Transparent methodology, including what data the model searches, how content is classified, error rates and false positive rates, and how updates are made.
- Clear allocation of decision-making authority, whereby the regulator—not the developer—determines breach findings and enforcement outcomes, with the developer providing technical outputs and supporting documentation only.
- A clear right of reply and contestability process for regulated parties where AI outputs inform compliance or enforcement pathways.

CONCLUSION

In conclusion, the AFGC supports a clear, proportionate and practical regulatory framework that is firmly focused on reducing inappropriate marketing of infant formula and its impact on infant feeding decisions. The AFGC also notes its support for the submissions of INC and NZFGC, which are aligned with the positions outlined in this response.

To be effective, the framework should be anchored in Option 2 settings and designed as a coherent end-to-end system with clearly defined roles, consistent decision-making, and robust but proportionate enforcement. Regulatory arrangements must remain within appropriate institutional boundaries, with enforcement responsibilities clearly allocated, and monitoring and compliance tools are used in a way that is transparent, evidence-based and operationally workable.

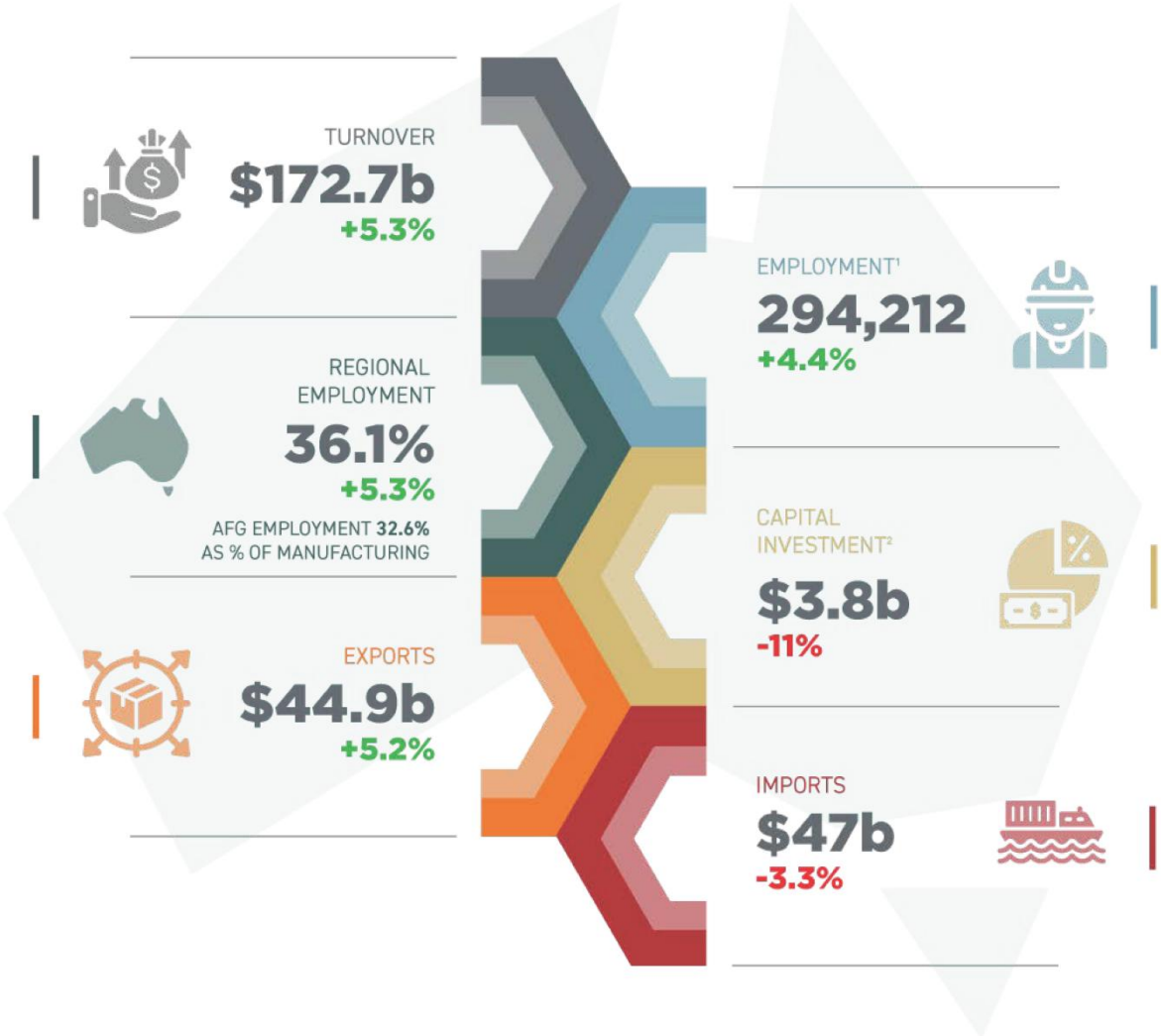
Emerging approaches, including digital surveillance and AI-enabled tools, should be carefully governed to ensure they support—not replace—human judgement, maintain procedural fairness, and do not inadvertently expand the scope or complexity of the framework beyond its intended policy objective.

A strong focus on clarity, accountability, and proportionality will help ensure the system is enforceable in practice, trusted by stakeholders, and capable of delivering its intended public health and regulatory outcomes over time.

AUSTRALIAN FOOD & GROCERY COUNCIL

CELEBRATING 30 YEARS 1995-2025

STATE OF THE INDUSTRY 2023-24



The figures on this page exclude the fresh food sector and are based on 2023-24 ABS data.

1: This is total number of employees, head count basis and does not include seasonal employees.
2: Gross fixed capital formation for food, beverage and tobacco manufacturing subsector is taken as indicator of capital investment.