



Committee Secretary  
Joint Standing Committee on Foreign Affairs, Defence  
and Trade  
PO Box 6021  
Parliament House  
19 December 2022

**Dr Julie Smith** B Econs(Hons) B A PhD  
Honorary Associate Professor  
National Centre for Epidemiology and  
Population Health  
College of Health and Medicine  
Australian National University

Dear Secretary,

**Re: Human Rights Subcommittee Inquiry into the rights of women and children.**

Thank you for opportunity to provide a submission on this important issue.

The United Nations Office of the High Commissioner for Human Rights stated in 2016 that breastfeeding is a human rights issue for women and children.<sup>1</sup> This relates to the rights of women and children under human rights instruments such the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, and the ILO Maternity Protection Convention. In 2017 the WHO/UNICEF NetCode author group highlighted new WHO Guidance on Ending Inappropriate Promotion of Foods for Infants and Young Children and specifically framed this issue of marketing as a human rights issue for women and children.<sup>2</sup>

As the WHO/UNICEF group pointed out, the 2016 OHCHR Statement declares that “children have the right to life, survival, and development and to the highest attainable standard of health, as well as to safe and nutritious foods. Breastfeeding must be considered an integral component of these rights. Breastfeeding is also a rights issue for women. A mother is not obligated to breastfeed her child, but no one may interfere with a mother's right to breastfeed her child. Women have the right to accurate, unbiased information needed to make an informed decision about breastfeeding and the right to an environment that enables them to carry it out. The importance of breastfeeding is now widely understood. It reduces child mortality, increases child cognition, improves maternal and child health, and fosters economic development.”

However, Australia’s trade policies promoting exports of milk formula products to other countries compromise women’s and children’s human rights to breastfeed.

Below we summarise several documents and scholarly journal articles that elaborate on this. We would welcome the opportunity to meet with the Committee to provide detail, documents can be provided on request.

Yours Sincerely,



**Julie Smith, BEc(Hons), BA(Asian Studies), PhD**

Honorary A/Professor

National Centre for Epidemiology and Population Health, College of Health and Medicine

**Naomi Hull, RN, IBCLC, MPH (Nutrition)**

WBTi Country Co-ordinator Australia

**Karleen Gribble, BRurSc, PhD**

Adjunct Associate Professor, School of Nursing and Midwifery

Western Sydney University

**Phillip Baker, BSc., MHSc., PGDipHSc., PhD**

Senior Research Fellow, School of Exercise & Nutrition Sciences,

Deakin University

## AUSTRALIA'S TRADE POLICIES COMPROMISE HUMAN RIGHTS: KEY DOCUMENTS

### Submission

The following documents, prepared by the authors of this submission present, *inter alia*, that:

1. To meet their international legal obligations with respect to the human rights of women and children, governments must protect and apply maximum available resources to the protection, promotion and support of breastfeeding. However, governments across the world, including Australia, have consistently failed in these duties. Breastfeeding has been largely invisible in feminist advocacy on sexual and reproductive health rights.<sup>3</sup>
2. Australia is a “bad policy actor” on infant and young child feeding, both at home and abroad.<sup>4 5</sup> It joined US efforts to stop Thailand from strengthening its milk formula marketing and breastfeeding protection law. In Thailand, attempts to protect mothers from marketing of so called ‘growing up milks’ failed after high income dairy exporting countries in Australasia, the United Kingdom and North America aligned with the companies in global forums to pressure legislators to weaken legislation. In January 2022 the former federal government announced grants totalling \$160,000 for industry to “develop market strategies” in Southeast Asia, Latin America, and the Middle East.<sup>4</sup> In Vietnam, donated supplies of formula from organisations in Australia have been undermining strong and successful national health and nutrition efforts to improve hospital environments for breastfeeding. Australia’s trade representative in Cambodia has attracted controversy for participation in a trade promotion involving milk formula products which can be sold but not legally be promoted in that country.
3. Australia has supported trade agreements which have profound adverse effects on public health particularly through adverse effects on governments ability to restrain the use of marketing of commercial milk formulas in competition with breastfeeding, particular in the context of the failure of governments to implement and enforce women’s rights under the ILO Convention on Maternity Protection. As a result of such trade treaties, business ‘rights’ are in practice enforced more strongly than human rights.<sup>6</sup> For example, although maternity leave is available on paper in China, in practice many new mothers cannot get it. Separation of mother and baby, because of unaccommodating workplaces or employment arrangements, can necessitate formula feeding.<sup>7</sup> Aggressive marketing of infant formula is also a key factor. Research identified that 40% of new mothers in China were contacted directly by infant formula sales staff after the birth of their babies and given samples of formula. Sales representatives walk the halls of hospitals to find mothers and recruit doctors and midwives as salespeople.<sup>7</sup> More recently, in Vietnam, commercial milk formula marketed for pregnant women (not strongly monitored by the Code) from Australia, New Zealand and other countries are widely promoted to pregnant women by industry representative, salespeople, and some health workers. In addition to cross-promotion, they take the opportunities for contacting women to collect information for further promotion of formula milk for infants. Aggressive marketing of commercial milk formula leads to lower self-efficacy and norms relating to breastfeeding, which in it turn lower the early, exclusive and continued breastfeeding.<sup>8</sup>
4. Australasia leads the ‘white gold boom’ in formula exports to China and the Asia Pacific region.<sup>9</sup> The huge expansion of Australian formula exports adversely affects breastfeeding practices and public health in the Asia Pacific region. By affecting public health in importing

countries such as China, protecting breastfeeding creates significant policy conflicts for developed countries in the Asia Pacific region. This is counterproductive to Australia's reputation and our good relations with the people of neighbouring countries in Asia and the Pacific.<sup>10</sup>

5. Australia's self regulatory arrangements for infant formula marketing which are supervised by the ACCC apply only to marketing in Australia by Infant Nutrition Council (INC) members, despite the INC having stated that its member countries comply with a code of practice in export markets.<sup>11</sup> INC members market overseas in ways which reduce breastfeeding and public health and Australia's reputation for public health leadership in the Asia Pacific region, where regulatory systems are often underdeveloped. Australia has moral obligations to observe the WHO Code and subsequent WHA resolutions in overseas markets, as well as Australia.<sup>12-14</sup>
6. We have represented to the ACCC that it has the power to require the INC marketing agreement on infant formula to cover exports by INC members, because the ACCC can regulate companies operating in Australia and because it has a wide public benefit test which can and should include the public benefit of preventing the marketing of breastmilk substitutes in Australian export markets. Many of these are developing, low- or middle-income countries in Asia where there is very much to gain from protecting breastfeeding, but where governments have difficulty enforcing regulations in the face of the power of large multinational corporations and limited resources of government. The ACCC must, where possible, we argue, take Australia's international human rights obligations into account for mothers, infants and young children everywhere in line with the Maastricht principles of the extraterritorial obligations of states.<sup>15 16 14</sup>
7. International breastfeeding advocacy organizations have also pointed to the dire situation of incarcerated mothers of infants and young children.<sup>17</sup> It is shameful that Australia's treatment of incarcerated women in Australia reflects a similar neglect of their human rights. This particularly affects Indigenous Australian women and their children, ensuring the intergenerational entrenchment of health and development disadvantage, and ongoing trauma for Indigenous mothers, infants and young children.<sup>18</sup> Australia should lead international action in this area alongside addressing its own mistreatment of incarcerated women and their infants and young children.

## REFERENCES

1. 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. 2016. at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20871>.)
2. Grummer-Strawn LM, Zehner E, Stahlhofer M, et al. New World Health Organization guidance helps protect breastfeeding as a human right. *Maternal & child nutrition* 2017;13.
3. Stone C, Smith JP. The visibility of breastfeeding as a sexual and reproductive health right: a review of the relevant literature. *Int Breastfeed J* 2022;17:18.
4. Australia's Role in Global Infant Food Security: Implications of the US Milk Formula Shortage. 2022. (Accessed 08 June, 2022, at <https://www.internationalaffairs.org.au/australianoutlook/australias-role-in-global-infant-food-security-implications-of-the-us-milk-formula-shortage/>.)
5. Munzer M, Cashin J, Jameson N, et al. Babies before bottom lines: A call for Australia to end exploitative marketing of commercial milk formula at home and abroad. *Lancet Reg Health West Pac* 2022;29:100640.
6. Smith JP. Submission to Inquiry into the Proposed Trans-Pacific Partnership (TPP) Agreement [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Foreign\\_Affairs\\_Defence\\_and\\_Trade/PP2016](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/PP2016) 28 October.
7. Gribble K, Smith JP. China's 'white gold' infant formula rush comes at a public health cost <http://theconversation.com/chinas-white-gold-infant-formula-rush-comes-at-a-public-health-cost-34363>. The Conversation. Australia: The Conversation Media Trust; 2014.
8. Nguyen TT, Cashin J, Tran HT, et al. Birth and newborn care policies and practices limit breastfeeding at maternity facilities in Vietnam. *Front Nutr* 2022;9:1041065.
9. Smith JP, Galtry J, Salmon L. Confronting the formula feeding epidemic in a new era of trade and investment liberalisation. *Journal of Australian Political Economy* 2014:132-71.
10. Smith JP. Milking the global 'white-gold' boom in infant formula <https://www.smh.com.au/opinion/milking-the-global-whitegold-boom-in-infant-formula-20140211-32fuh.html>. The Sydney Morning Herald/Age/Canberra Times 2014 12 February.
11. Carey J. No denying what is best but formula provides backup <https://www.smh.com.au/opinion/no-denying-what-is-best-but-formula-provides-backup-20140217-32we6.html>. The Canberra Times 2014 18 February
12. Smith JP. Further submission of information in relation to ACCC draft determination on proposal on marketing of infant formula <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/infant-nutrition-council-limited-revocation-and-substitution-a91506-a91507>: Australian National University; 2016.
13. Smith J, Salmon L, Baker P. Response to the Infant Nutrition Council Limited application for authorisation A91506 and A91507, Marketing in Australia of Infant Formula: Manufacturers and Importers Agreement (MAIF Agreement) <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/infant-nutrition-council-limited-revocation-and-substitution-a91506-a91507>. Canberra 2015 14 August 2015.
14. Smith J, Salmon L, Baker P. Submission in response to the ACCC's draft determination on Infant Nutrition Council Limited application for authorisation A91506 and A91507, Marketing in Australia of Infant Formula: Manufacturers and Importers Agreement (MAIF Agreement) <http://registers.accc.gov.au/content/index.phtml/itemId/1188093/fromItemId/278039>. Canberra 2015 13 November 2015.
15. Smith JP, Baker P, Iellamo A, Hull N, Salmon L. Final submission on INC AA1000534 27-4-21 <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/infant-nutrition-council-limited2021>.
16. Smith JP, Baker P, Iellamo A, Hull N. Response to ACCC MAIF draft determination 7-04-21 <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/infant-nutrition-council-limited>. 2021.
17. IBFAN. Children of Incarcerated Parents: Considerations on Infant and Young Child Feeding <https://www.yumpu.com/en/document/view/22438057/children-of-incarcerated-parents-considerations-on-infant-ibfan/32011>.

18. Gribble K, Smith JP. Women in prison and children in care need breastfeeding support too. This is why it's vital they get it <https://theconversation.com/mums-in-prison-or-whose-babies-are-in-care-need-breastfeeding-support-too-121039>. The Conversation2019.