

Annual Report of the Marketing in Australia of Infant Formula Tribunal, 2014-2015

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Letter of Transmittal

Senator the Hon. Fiona Nash
Minister for Regional Development
Minister for Regional Communications
Minister for Rural Health
Parliament House
Canberra ACT 2600

Dear Minister

I am pleased to present the Annual Report of the Marketing in Australia of Infant Formula Tribunal for its first period of operation, ending on 30 June 2015.

Yours sincerely



Graeme Innes AM

Tribunal Chair

June 2016

Chapter 1: Scope and functions

MAIF Tribunal

The MAIF Tribunal (The Tribunal) is a non-statutory dispute resolution body that handles complaints arising under the *Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement* (MAIF Agreement). The Tribunal replaces the former Advisory Panel on Marketing of Infant Formula (APMAIF) which previously handled complaints under the MAIF Agreement.

The Tribunal is conducted under the auspices of The Ethics Centre. The cost of operating the Tribunal in the period covered by this annual report was

- Secretariat - \$48,000; Tribunal - \$7,730

for a total of \$55,730.

MAIF Agreement

The MAIF Agreement embodies a voluntary, self-regulatory code of conduct for those manufacturers and importers of infant formula who are parties to the MAIF Agreement. It aims to promote:

- Safe and adequate nutrition for infants
- Breastfeeding
- Proper use of breast milk substitutes when necessary
- Adequate information about infant nutrition
- Appropriate marketing and distribution of breast milk substitutes.

The MAIF Agreement is Australia's primary means of implementing the World Health Organization's *International Code of Marketing Breast-milk Substitutes* (WHO Code). The MAIF Agreement implements those aspects of the WHO Code that are appropriate to Australia's social, legal and economic environment.

Australian manufacturers and importers who are parties to the MAIF Agreement undertake to observe its provisions with respect to marketing and promotion of formulas for infants up to 12 months of age. The MAIF Agreement applies to:

- Infant formula, i.e., formula that is suitable for babies from birth (often described as *Starter, Stage 1 or All Ages* infant formulas)
- Follow-on formulas, i.e., formula that is suitable for babies aged six months and over

The MAIF Agreement does not apply to:

- Toddler milk drinks (sometimes called *Growing Up* milks)
- Complementary foods (such as baby cereal and packaged baby foods)
- Feeding bottles and teats

The Tribunal has no formal powers to obtain information about a complaint. The Tribunal relies for information on voluntary cooperation from the parties to the MAIF Agreement and on other stakeholders.

Current signatories to the MAIF Agreement include:

- Abbott Australasia Pty Ltd
- Aspen Nutritionals Australia Pty Ltd

- Bayer Australia Ltd
- H J Heinz Company Australia Ltd
- Nestlé Australia Ltd
- Nutricia Australia Pty Ltd
- A2 Corporation Ltd

Authorisation of MAIF Agreement

The MAIF Agreement was authorised by the then Trade Practices Commission on 23 September 1992. Authorisation of the MAIF Agreement was necessary because it contains marketing restrictions limiting competition and was granted on the basis that public benefit outweighed any anti-competitive detriment. Authorised organisations can legally follow the provisions of the MAIF Agreement, but could be in breach of the *Trade Practices Act 1974* if they agree to any further marketing restriction which is not covered in the MAIF Agreement, even if it is recommended in the WHO Code.

On 4 July 2007 Nestlé Australia Ltd lodged an application with the Australian Competition and Consumer Commission (ACCC) for a minor variation to the authorisation of the MAIF Agreement. The application was necessary because several infant formula manufacturers and importers had exited or entered the market since the 1992 authorisations. This created uncertainty for the APMAIF and the infant formula manufacturers about the authorisation status of parties to the MAIF Agreement. The application was made to provide for the addition of parties to the MAIF Agreement and introduce a new time limit on the authorisations to allow for more regular review.

The ACCC granted an interim authorisation on 11 July 2007. On 30 August 2007 the ACCC made a determination varying the 1992 authorisations so that:

Authorisation applies to current and future manufacturers in, and importers into, Australia of infant formula that are or become parties to the Marketing in Australia of Infant Formula: Manufacturers and Importers Agreement.

This determination came into effect on 21 September 2007, replacing the interim authorisation. Authorisations A90539 and A90540 were due to expire on 31 December 2015.

Copies of the application, submissions made to the ACCC and the ACCC final determination are available on the ACCC authorisations register. The ACCC is expected to make a further determination about whether or not the MAIF Agreement will be re-authorised for a further period.

Chapter 2: Tribunal members

Tribunal Chair: Graeme Innes AM

Graeme Innes AM is a lawyer, mediator and company director. He has been a human rights practitioner for more than thirty years. Graeme was a Commissioner at the Australian Human Rights Commission for almost nine years, responsible for issues relating to disability, race and human rights. In this role he led work on:

- The ratification by Australia of a UN Convention on the rights of people with disabilities
- The Same Sex Same Entitlements inquiry
- Regulations in the areas of accessible buildings and transport
- Work with industry on television and movie captions and accessible banking standards
- Three inspections of Australia's immigration detention centres

Mr Innes led the merger of four blindness agencies to form Vision Australia, and chaired the board of that agency. He is currently the chair of the Attitude Australia Foundation, and a board member of Life Without Barriers. Graeme Innes was awarded an AM for his work on the development of the Disability Discrimination Act.

Tribunal Member: Dr. Jacqui Dalby-Payne

Dr Jacqui Dalby-Payne is a General Paediatrician with a special interest in feeding and behavioural feeding problems. She graduated with her MBBS from the University of New South Wales in 1992. She initially trained at Royal North Shore Hospital in Internal Medicine and commenced Paediatric training at The Children's Hospital at Westmead in 1996. She completed a Masters Degree in Clinical Epidemiology at the University of Sydney in 2000 and graduated with her PhD from the University of Sydney in 2002. Dr Dalby-Payne was appointed as a Staff Specialist in General Medicine at The Children's Hospital at Westmead in 2002 and as a VMO in Paediatrics at Royal North Shore Hospital in 2007. She has a conjoint appointment as a Senior Lecturer with the University of Sydney. She is a founding member of the Multi-Disciplinary Feeding Team at The Children's Hospital at Westmead.

Tribunal Member: Gillian Calvert AO

Gillian Calvert AO is an advocate for children and their families with 40 years' experience. She was the inaugural NSW Commissioner for Children and Young People and established it as one of Australia's leading children's policy and research centres, one which was built on being child centred and child inclusive. Prior to that she was the Director of the Office for Children and Young People in NSW Cabinet Office, responsible for coordinating government action for children and young people. During this time she was instrumental in refocusing government attention on the importance of the early years. Her leadership at the NSW Child Protection Council established NSW's collaborative and comprehensive approach to tackling child abuse and neglect. She started her career as a family therapist with troubled children and their families and the importance of listening to and observing children and families experience has underpinned her lifelong commitment to promoting children's wellbeing. Currently she serves on a number of Boards and committees.

Chapter 3: How complaints are processed

The MAIF Tribunal relies upon interested parties, such as breastfeeding advocacy groups, health professionals and members of the public, to monitor compliance with the MAIF Agreement. Alleged breaches of the MAIF Agreement are brought to the attention of the MAIF Tribunal by the submission of formal complaints. The Tribunal does not initiate audit compliance with the MAIF agreement.

Information about how to lodge a complaint is available from the Australian Government Department of Health.

Upon receipt, complaints are assessed by the federal Department of Health and are classified as being within or outside the scope of the MAIF Agreement. Complaints considered outside the scope of the MAIF Agreement may include, but are not limited to, the following:

- An infant formula manufacturer or importer that is not a current member to the MAIF Agreement or was not a member at the time the complaint was made
- Retailer activity where there is no involvement by the manufacturer/importer (e.g. price promotions in retail catalogues)
- Infant merchandise (e.g. infant feeding bottles, teats, dummies, etc.)
- Foods, including milk products formulated for children over 12 months of age (sometimes referred to as “toddler milks”)

The federal Department of Health advises complainants in writing if their complaints are clearly outside the scope of the MAIF Agreement. All other complaints are forwarded to the Tribunal Secretariat. The Tribunal Secretariat records all complaints received in its complaints register and maintains confidentiality about the identities of complainants.

The Tribunal Secretariat advises the manufacturer or importer of the product concerned that a complaint has been received alleging a breach of the MAIF Agreement:

- Where a complaint is considered to be within the scope of the MAIF Agreement
- If it is unclear whether the complaint is out of scope
- If more information is required before an assessment can be made

The manufacturer or importer is invited to respond with any evidence or other information it wishes to submit for consideration.

Complaints that are assessed to be within the scope of the MAIF Agreement are then considered by the Tribunal. Complaints requiring consideration by the Tribunal are summarised by the secretariat prior to being forwarded to the Tribunal. Summaries are prepared using a standard format to present the key information relevant to making a decision. This includes:

- How and where the complainant obtained the complaint material
- The complainant’s concerns regarding the material
- Relevant clause(s) of the MAIF Agreement
- Results of any enquiries made by the Tribunal Secretariat (e.g. responses from formula companies or health professionals)
- Any previous consideration of a similar complaint or relevant guidelines on the interpretation of the MAIF Agreement

The Tribunal considers the complaint and may decide that it does not represent a breach of the MAIF Agreement or that further consideration is required before a determination can be made. Where further consideration is required, the manufacturer or importer is notified and is invited to

respond with any further relevant information. The Tribunal is able to seek information from other sources, including expert scientific or clinical advice.

The Tribunal considers all relevant information provided and makes a decision that the conduct alleged in the complaint is either 'in breach' or 'not in breach' of the MAIF Agreement.

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. Decisions that are 'in breach' are reported to the Minister for Rural Health and are recorded in the Tribunal's Annual Report.

Chapter 4: Complaints outcomes July 2014 – June 2015

The MAIF Tribunal received nine complaints in this reporting period, upholding 3 and dismissing 6. Complaints against more than one respondent are numbered separately. One further complaint was ruled out of scope of the MAIF Agreement by the Department. Reviews were sought on five of these decisions. Those review decisions have been reported here, even though the review decisions were made outside of the reporting period. It was previously the practice of APMAIF not to publish details of complaints that were dismissed by the Advisory Panel. The Tribunal has published details of upheld and dismissed complaints to assist industry and stakeholders in interpreting the MAIF Agreement.

Details of complaints decided

MAIF Party	Complaint Number	Decided	MAIF clause	Decision summary	Outcome
Nutricia Australia Pty Ltd	2014-15_01	12/02/2016	Sub-clause 5(a)	The complainant alleged that the respondent had used an image to promote follow-on formula, which is suitable for infants aged between six and twelve months, on a can of infant formula. The complainant asserted that this action was in breach of Clause 5(a) of the MAIF agreement. The tribunal, in its original decision, found that Nutricia Australia Pty Ltd had breached clause 5(a) of the MAIF agreement through promoting follow-on formula on its cans of infant formula. The tribunal confirmed this finding in its review decision, and gave Nutricia Australia Pty Ltd six months from the date of its review decision to change labels on its cans of infant formula so that this breach does not continue.	Upheld
Nestlé Australia Ltd	2014-15_02	21/05/2015	Sub-clause 7(d)	Samples had been provided by a nurse at a maternal and child health centre. It was alleged that the respondent provided samples of infant formula in breach of clause 7(d) of the MAIF agreement. The respondent submitted evidence that the samples in question were provided to the centre for professional evaluation. The Tribunal was satisfied that no breach had occurred.	Dismissed
Nutricia Australia Pty Ltd	2014-15_03	12/02/2016	Sub-clause 7(c)	The complainant alleged that an article in the nursing journal stated that the respondent's infant formula "mimicked" breast milk, in breach of clause 7(a) of the MAIF agreement. In its original decision the tribunal upheld this complaint. However, following a review of the matter, the tribunal determined that the reference in the article was to the fact that a particular component of the formula "mimicked" a particular effect in breast milk. The tribunal therefore over-turned its original decision and dismissed the complaint.	Dismissed
Nutricia Australia Pty Ltd	2014-15_04	21/05/2015	Sub-clause 5(a)	Material promoting toddler milk was placed in proximity to infant formula displayed for sale in a pharmacy. It was alleged material advertising or	Dismissed

MAIF Party	Complaint Number	Decided	MAIF clause	Decision summary	Outcome
				promoting infant formula had been placed in a manner that breached clause 5(a) of the MAIF Agreement. The respondent submitted that it had no responsibility for placement of advertising within the pharmacy. The Tribunal agreed the respondent was not responsible and that no breach had occurred. The Tribunal therefore did not consider whether the proximate placement to infant formula of advertising for toddler milk could constitute a breach of the MAIF Agreement. It would assist the Tribunal if industry developed guidelines about placement of infant formula adjacent to toddler milk and advertising.	
Aspen Nutritional Australia Pty Ltd	2014-15_05	29/05/2015	Sub-clause 5(a)	Material promoting toddler milk was placed in proximity to infant formula displayed for sale in a pharmacy. It was alleged material advertising or promoting infant formula had been placed in a manner that breached clause 5(a) of the MAIF Agreement. The respondent submitted that retailer activity is outside the purview of the MAIF Agreement and that complaints about toddler milk are outside the scope of the Tribunal. The Tribunal agreed there was no breach because, provided that the manufacturer takes reasonable steps to discourage cross-promotion, the actions of the retailer do not come within the scope of the Tribunal. It would assist the Tribunal if industry developed guidelines about placement of infant formula adjacent to toddler milk and advertising.	Dismissed
Nutricia Australia Pty Ltd	2014-15_06	12/02/2016	Sub-clause 5(a)	A two page lift-out promoting infant formula appeared in the October 2014 issue of Practical Parenting magazine, published by the Amcal pharmacy chain. The respondent provided funding, wording and pictorial material for the lift-out. It was alleged material advertising or promoting infant formula had been placed in a manner that breached clause 5(a) of the MAIF Agreement. The respondent submitted that promotion of infant formula by retailers, and price promotion by retailers, are not within scope of the MAIF Agreement. The Tribunal in its original decision found a breach of the agreement because if manufacturers contribute financially to a publication, and provide content, then they must bear some responsibility. This finding was upheld by the tribunal in its review decision.	Upheld
Aspen Nutritional Australia Pty	2014-15_07	12/02/2016	Sub-clause 5(a)	A two page lift-out promoting infant formula appeared in the October 2014 issue of Practical Parenting magazine, published by the Amcal	Dismissed

MAIF Party	Complaint Number	Decided	MAIF clause	Decision summary	Outcome
Ltd				pharmacy chain. The respondent provided funding for the lift-out and agreed that pictures of its products were generally available to retailers. It was alleged material advertising or promoting infant formula had been placed in a manner that breached clause 5(a) of the MAIF Agreement. The respondent submitted that promotion of infant formula by retailers, and price promotion by retailers, are not within scope of the MAIF Agreement. The Tribunal in its original decision found a breach of the agreement because if manufacturers contribute financially to a publication and provide content then they must bear some responsibility. Aspen sought a review, arguing that their promotions were simply on price. There was no accompanying text, and the pictures provided were consistent with previous APMAIF interpretations of price promotions. Aspen asserts that funding the Amcal lift-out, and only promoting on price, is not in breach of the agreement. The tribunal, in its review decision, agreed with Aspen's assertion and dismissed the complaint.	
Bayer Australia Ltd	2014-15_08	29/05/2015	Sub-clause 5(a)	A two page lift-out promoting infant formula appeared in the October 2014 issue of Practical Parenting magazine, published by the Amcal pharmacy chain. The respondent provided funding, wording and pictorial material for the lift-out. It was alleged material advertising or promoting infant formula had been placed in a manner that breached clause 5(a) of the MAIF Agreement. The respondent submitted that promotion of infant formula by retailers, and price promotion by retailers, are not within scope of the MAIF Agreement. The Tribunal found a breach of the agreement because if manufacturers contribute financially to a publication, and provide content, then they must bear some responsibility. The Tribunal noted that the respondent had in place a procedure for preventing such circumstances, but in this case the procedure was not successful. The tribunal offered Bayer an opportunity to make submissions when the two similar decisions, set out above, were reviewed. However Bayer accepted that it had breached the MAIF agreement, and accepted the tribunal's original decision.	Upheld
Nutricia Australia Pty	2014-15_09	30/05/2015	Sub-clause	As part of a retail promotion in a pharmacy gifts and advertising were displayed next to a display	Dismissed

MAIF Party	Complaint Number	Decided	MAIF clause	Decision summary	Outcome
Ltd			5(c)	of infant formula, the gifts to be supplied to purchasers of the infant formula. It was alleged this breached clause 5(c) of the MAIF Agreement. The respondent submitted that the promotion was clearly an action by the pharmacy which was conducted without the knowledge or approval of the respondent. The respondent had expressed concern to the pharmacy. The Tribunal was satisfied that no breach had occurred.	

Appendix A: Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement

Preamble

This document sets out the obligations of manufacturers in and importers to Australia of infant formulas and gives effect in Australia to the principles of the *World Health Organization's International Code of Marketing of Breast Milk Substitutes* (WHO Code) Where applicable, clauses in this document are cross-referenced to the relevant articles from the World Health Organization (1981) *International Code of Marketing of Breast-milk Substitutes*, Geneva (WHO Code).

Clause 1: Aim

The aim is to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breastfeeding and by ensuring the proper use of breast milk substitutes, when they are necessary, on the basis of adequate information and through appropriate marketing and distribution. (WHO Code Article 1) For the purposes of the Aim, 'necessary' includes mothers who make an informed choice to use breast milk substitutes.

Clause 2: Scope

This document applies to the marketing in Australia of infant formulas when such products are marketed or otherwise represented to be suitable, with or without modification, for use as a partial or total replacement for breast milk. It also applies to their quality and availability, and to information concerning their use. (WHO Code Article 2)

Clause 3: Definitions

'Breast milk substitute' - any food marketed or otherwise represented as a partial or total replacement for breast milk, whether or not suitable for that purpose.

'Container' - any form of packaging of infant formulas for sale as a normal retail unit, including wrappers.

'Health care system' - governmental, non-governmental or private institutions engaged, directly or indirectly, in health care for mothers, infants and pregnant women and nurseries or child-care institutions. It also includes health workers in private practice. For the purposes of this document, the health care system does not include pharmacies or other retail outlets.

'Health care professional' - a professional or other appropriately trained person working in a component of the health care system, including pharmacists and voluntary workers.

'Infant formula' - any food described or sold as an alternative for human milk for the feeding of infants up to the age of twelve months and formulated in accordance with Australian Food Standard R7 - Infant Formula.

'Label' - any tag, brand, mark, pictorial or other descriptive matter written, printed, stencilled, marked, embossed or impressed on, or attached to, a container of infant formulas.

'Marketing' - includes the promotion, distribution, selling, advertising, public relations and information services related to infant formulas.

‘Marketing personnel’ - any persons whose functions include the marketing of infant formulas.

‘Samples’ - single or small quantities of an infant formula provided without cost. (WHO Code Article 3)

Clause 4: Information and Education

4(a) Manufacturers and importers of infant formulas in Australia agree that informational and educational materials, whether written, audio or visual, dealing with the feeding of infants and intended to reach pregnant women and parents of infants and young children, should always include clear information on all the following points:

- the benefits and superiority of breastfeeding;
- maternal nutrition, and the preparation for and maintenance of breastfeeding;
- the negative effect on breastfeeding of introducing partial bottle-feeding;
- the difficulty of reversing the decision not to breastfeed; and
- where needed, the proper use of infant formula, whether manufactured industrially or home prepared. (WHO Code Article 4.2)

4(b) When such materials contain information about the use of infant formulas, they should include the social and financial implications of its use, the health hazards of inappropriate foods or feeding methods and, in particular, the health hazards of unnecessary or improper use of infant formulas. Such materials should not use any pictures or text which may idealise the use of infant formulas. (WHO Code Article 4.2)

4(c) Manufacturers and importers of infant formulas should not donate informational or educational equipment or materials unless it is at the request of, and with the written approval of, the appropriate government authority or within guidelines given by the Commonwealth, State or Territory Governments for this purpose. Such equipment or materials may bear the donating company’s name or logo, but should not refer to a proprietary infant formula, and should be distributed only through the health care system. (WHO Code Article 4.3)

Clause 5: The general public and mothers

5(a) Manufacturers and importers of infant formulas should not advertise or in any other way promote infant formulas to the general public. (WHO Code Article 5.1)

5(b) Manufacturers and importers of infant formulas should not provide samples of infant formulas to the general public, pregnant women, parents or members of their families. (WHO Code Article 5.2)

5(c) Manufacturers and importers of infant formulas should not distribute to pregnant women, or parents of infants and young children, any gifts of articles or utensils which may promote the use of breast milk substitutes or bottle-feeding. (WHO Code Article 5.4)

5(d) Marketing personnel, in their business capacity, should not seek direct or indirect contact with pregnant women or with parents of infants and young children. This does not prevent appropriately qualified personnel from responding to complaints or unsolicited requests for information. For these requests, parents should be referred to a health care professional whenever health advice is required. (WHO Code Article 5.5)

Clause 6: Health care system

6(a) Manufacturers and importers of infant formulas should not use any facility of the health care system for the purpose of promoting infant formulas. This does not, however, preclude the dissemination of information to health care professionals as provided in clause 7(a). (WHO Code Article 6.2)

6(b) Manufacturers and importers of infant formulas should be aware that facilities of health care systems should not be used for the display of products within the scope of this document, for placards or posters concerning such products, or for the distribution of material provided by a manufacturer or distributor other than that specified in clause 4(c) above. (WHO Code Article 6.3)

6(c) The use by the health care system of pharmacies or retail outlets, 'professional service representatives', 'mothercraft nurses', or similar personnel, provided or paid for by manufacturers or importers of infant formulas is not permitted. (WHO Code Article 6.4)

6(d) Manufacturers and importers of infant formulas should be aware that feeding with infant formulas, whether manufactured or home prepared, should be demonstrated only by health care professionals. Such demonstrations should be made only to the parents or other persons who need to use it, and the information given should include a clear explanation of the hazards of improper use. (WHO Code Article 6.5)

6(e) Manufacturers and importers of infant formulas may make donations, or low-priced sales, of infant formulas to institutions or organisations, whether for use in the institutions or for distribution outside them. Such provisions should only be used or distributed for infants who have to be fed on breast milk substitutes. If these provisions are distributed for use outside the institutions, this should be done only by the institutions or organisations concerned. Manufacturers or importers should not use such donations or low-price sales as a sales inducement. (WHO Code Article 6.6)

6(f) Manufacturers and importers of infant formulas should note that, where donated infant formulas are distributed outside an institution, the institution or organisation should take steps to ensure that these provisions can be continued as long as the infants concerned need them. Donors, as well as the institutions or organisations concerned should bear in mind this responsibility. (WHO Code Article 6.7)

6(g) Equipment and materials, in addition to those referred to in clause 4(c), donated to a health care system may bear a company's name or logo, but should not refer to any proprietary infant formulas. (WHO Code Article 6.8)

Clause 7: Health Care Professionals

7(a) Manufacturers and importers of infant formulas providing information about the formulas to health care professionals should restrict the information to scientific and factual matters. Such information should not imply or create a belief that bottle-feeding is equivalent or superior to breastfeeding. It should also include the information specified in clause 4(a) above. (WHO Code Article 7.2)

7(b) Manufacturers and importers of infant formulas should provide members of the medical profession and related health care professionals with information about the products, and this information should accurately reflect current knowledge and responsible opinion. Such material should be clearly identified with the name of the manufacturer or importer, the brand names of the infant formulas, and the date of publication.

7(c) Manufacturers and importers of infant formulas should not offer any financial or material inducement to health care professionals or members of their families to promote infant formulas, nor should such inducements be accepted by health care professionals or members of their families. (WHO Code Article 7.3)

7(d) Manufacturers and importers of infant formulas should not provide samples of infant formulas, or of equipment or utensils for their preparation or use, to health care professionals except when necessary for the purpose of professional evaluation or research at the institutional level. (WHO Code Article 7.4)

7(e) Manufacturers and importers of infant formulas should disclose to institutions, to which a recipient health care professional is affiliated, any contribution made to him/ her, or on his/her behalf, for fellowships, study tours, research grants, attendance at professional conferences, or the like. (WHO Code Article 7.5)

Clause 8: Persons employed by manufacturers and importers

8(a) In systems of sales incentives for marketing personnel, the volume of sales of infant formulas should not be included in the calculation of bonuses, nor should quotas be set specifically for sales of these products. This should not be understood to prevent the payment of bonuses based on the overall sales by a company of other products marketed by it. (WHO Code Article 8.1)

8(b) Personnel employed in marketing infant formulas should not, as part of their job responsibilities, perform educational functions in relation to pregnant women or parents of infants and young children. This does not prevent such personnel from being used for other functions by the health care system. (WHO Code Article 8.2)

Clause 9: Quality and Labelling

9(a) Manufacturers and importers of infant formulas must ensure that infant formulas sold in Australia conform to Australian Food Standard R7 - Infant Formula. (WHO Code Articles 9.2, 9.4, 10.1 and 10.2)

9(b) Manufacturers and importers of infant formulas must ensure that labels provide the information required to be provided by the Australian Food Standard A1 - Labelling and Advertising and Standard R7 - Infant Formula, and also provide the necessary information about the appropriate use of infant formula and should not discourage breastfeeding. (WHO Code Article 9.1)

Clause 10: Implementation and monitoring

10(a) Independently of any other measures taken to implement their obligations under this document, each manufacturer and importer of infant formulas should regard itself as responsible for monitoring its marketing practices according to the principles and aim of this document, and for taking steps to ensure that its conduct at every level conforms to those principles and aims. (WHO Code Article 11.3)

10(b) Manufacturers and importers of infant formulas agree to be represented on the APMAIF and to participate fully in the work of the Advisory Panel.

10(c) Each manufacturer and importer of infant formulas should apprise its personnel of the existence of this document and of their responsibilities under it. (WHO Code Article 11.5)

Appendix B: Complaints upheld by the Advisory Panel on MAIF, 1994 – 2013 MAIF clause	MAIF Party	Reported	Decision summary
Sub-clause 4(a) Sub-clause 4(b)	Wyeth Australia	1995-1996	<p>Brochure - Why your Father looks so old</p> <p>Wyeth Australia Pty Limited published a booklet of advice for fathers called "Why your Father Looks so Old- A collection of handy hints on how to survive becoming a father". The Panel determined that this booklet breaches Clause 4 (a) of the MAIF Agreement.</p> <p>The section on infant feeding: "Your baby's first need- food!" did not contain clear information on the benefits and superiority of breastfeeding. It mentioned only the nutritional superiority of breastfeeding- but only in the simple terms of amount of fat, carbohydrate and protein. It did not mention the complexity of nutritional benefits, or the immunological and economic benefits.</p> <p>The section on breastfeeding was entirely negative; portraying breastfeeding as frustrating, difficult and hard work. We believe that the text idealises the use of infant formula by portraying breastfeeding in a negative way without reference to the benefits, rewards and superiority of breastfeeding. The Panel are aware that difficulties in establishment of breastfeeding are not rare, and considers that it is legitimate to refer to them, but we feel that the section on infant feeding in this booklet lacks balance.</p> <p>The booklet fails to meet the aim of the Agreement expressed in Clause 1: "To contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breastfeeding and by ensuring the proper use of breast milk substitutes, when they are necessary, on the basis of adequate information and through appropriate marketing and distribution."</p> <p>Clause 4 (b) also requires materials such as this booklet to include "in particular, the health hazards of unnecessary or improper use of infant formulas."</p> <p>The section on bottle feeding described the need for sterilisation, attention to correct amount of powder, and boiling of water. However it failed to mention why these are necessary, for example, the risk of malnutrition, over nutrition, hypernatraemia and gastroenteritis. We noted also that the cost, strain and inconvenience inevitable in the preparation of bottles of infant formula were not mentioned in this section of the booklet.</p> <p>The Panel acknowledged that a "breastfeeding statement" appears on the back page but did not accept that this fulfils the requirements of Clause 4(a) and (b) in this context. The information needs to appear in the section on infant feeding.</p>
Sub-clause 4(a), Sub-clause 7(a)	Douglas Pharmaceuticals Pty Ltd	1997-1998	<p>Karicare promotional cards - Karicare Goat Infant Formula & Goat Follow-On Formula</p> <p>The Panel found the statement 'Forms a soft curd promoting easier digestion than cows' milk-based formulas' in breach of clause 7(a). The Panel found the scientific material which was referenced to be selectively quoted and on balance fails to support the claim.</p> <p>The piece does not include an adequate breastfeeding statement and was therefore also found in breach of clause 4(a).</p>
Sub-clause 4(a)	Douglas Pharmaceuticals Pty Ltd	1997-1998	<p>Karicare promotional cards - Karicare Follow-On Formula</p> <p>The Panel found the breastfeeding statement in breach of clause 4(a) as its print size is not the same size as the majority of the text or not at least 8 point. This size requirement is an interpretation under clause 4(a).</p>
Sub-clause 4(a)	Douglas Pharmaceuticals Pty Ltd	1997-1998	<p>Karicare promotional cards - A Guide to choosing Karicare</p> <p>The Panel found the breastfeeding statement in breach of clause 4(a) as its print size is not the same size as the majority of the text or not at least 8 point. This size requirement is an interpretation under clause 4(a).</p>

Appendix B: Complaints upheld by the Advisory Panel on MAIF, 1994 – 2013 MAIF clause	MAIF Party	Reported	Decision summary
Sub-clause 4(a)	Amcal Ltd	1997-1998	'Bottles to Solids' leaflet The Panel found two breaches against the Amcal leaflet titled 'Bottles to Solids'. As the leaflet does not include a breastfeeding statement, the Panel found the piece in breach of clause 4(a).
Sub-clause 4(a)	Wyeth Australia	1997-1998	Advertisement – 'Strike Gold' The infant formula 'S 26 Gold' was launched this year by Wyeth with various promotional pieces. An industry advertisement for S 26 Gold titled 'Strike Gold' was found in breach of clause 4(a) as it did not include a breastfeeding statement.
Sub-clause 4(a)	Wyeth Australia	1997-1998	'Logical solutions for problem feeders' The piece, intended for health professionals, did not include a breastfeeding statement and was therefore found in breach of clause 4(a).
Sub-clause 4(a)	Wyeth Australia	1997-1998	'Infant Formula Guide' The Panel found the breastfeeding statement in breach of clause 4(a), as its print size is not the same size as the majority of the text or not at least 8 point. This size requirement is an interpretation under clause 4(a).
Sub-clause 4(a)	H J Heinz Company Australia Ltd	2002-2003	Heinz update published in May 2001 edition of Heinz Sight In May 2001, Heinz published a Small Talk article titled "No More Scoops! Introducing Heinz Nurture Singles 28 Pack". On 17 June 2003, the Panel at its 48th Meeting found this in breach of clause 4(a) of the MAIF Agreement as Heinz did not include the information requirements of clause 4(a) in the article.
Sub-clause 4(a)	H J Heinz Company Australia Ltd	2003-2004	Heinz advertorial published in Spring 2001 edition of Coles Baby The advertorial entitled 'Feeding Tips for Your Child' contained information on infant feeding. On 30 September 2003, the Panel found the advertorial in breach of the MAIF Agreement as Heinz did not include the information requirements of clause 4(a) in the advertorial. Although the advertorial related back to Spring 2001, Coles Myer advised the Panel that this advertorial appeared nine times in various editions of the Coles Myer catalogue between 2000–2002 without the information requirements of clause 4(a).
Sub-clause 4(c)	Bristol Myers Squibb (Mead Johnson)	1997-1998	Promotional pieces for the infant formula Enfalac AR – 'A Cry from the Heart' tear-off pad Given that this piece contains statements which make it both a promotional material for health professionals and educational material for consumers, the Panel found the piece in breach of clause 4c.
Sub-clause 4(c)	Wyeth Australia	1999-2000	Promotional piece - 'The first 26 weeks. A Guide to feeding your baby' The Panel found the piece in breach of clause 4(c). While the Panel views the Wyeth piece as educational, the booklet mentions S-26 Progress. Material for the general public should not refer to a proprietary infant formula and for that reason the piece is viewed as promotional.
Sub-clause 5(a)	H J Heinz Company Australia Ltd	1995-1996	Announcement of products Heinz wished to make an announcement to consumers of the availability of their products in supermarkets. The Panel allowed this on the grounds that it would be possible for Heinz to distribute their infant formula products initially only through pharmacies and then change to supermarkets, announcing this change in

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			<p>availability in the same way as several other manufacturers. Heinz were advised of the relevant interpretation of Clause 5.</p> <p>However, Heinz breached the Agreement through the use of promotional sentences. The Panel had viewed a draft of the announcement and had advised Heinz that the sentence "With Heinz you can be assured your baby enjoys only the highest nutrition and quality from our complete range of baby foods" was promotional and therefore unacceptable. Heinz removed the sentence but replaced it with two promotional sentences:</p> <p>'Now with Heinz you have the convenience of shopping for your baby from birth through to toddler and beyond. Plus the assurance of Heinz' 60 years' experience of feeding Australian babies.'</p> <p>These promotional sentences breach Clause 5 (a) of the Agreement.</p>
Sub-clause 5(a), Sub-clause 5(c)	Douglas Pharmaceuticals Pty Ltd	1995-1996	<p>Provision of free bib</p> <p>The Panel determined that a free bib marked "Karicare" promoted in the 1995 August/September issue of "Mother and Baby" magazine breached clauses 5 (a) and (c) of the Agreement.</p> <p>The Panel had previously agreed that when a manufacturer advertises to the general public a product with the same name as an infant formula, the product name should be followed either by the range name (e.g. toiletries) or the specific product (e.g. baby powder). Generalised terms such as "Brand X Baby Care Products" or "Brand X, Best for Baby", should not be used where Brand X is the name of an infant formula.</p>
Sub-clause 5(a)	Douglas Pharmaceuticals Pty Ltd	1995-1996	<p>Karicare promotional cards - Karicare First Infant Formula with LCPs</p> <p>Given that the piece contains wording 'Your local child health clinic', the Panel was of the view that this is promotion to the general public and is therefore in breach of clause 5(a).</p>
Sub-clause 5(a)	Wyeth Australia	1998-1999	<p>Promotional piece – 'Why a special formula is recommended for your baby'</p> <p>It is the Panel's view that the piece is in breach of clause 5(a) as it contains references to infant formula names and contains product depictions that constitute product promotion to the general public.</p>
Sub-clause 5(a)	Wyeth Australia	1998-1999	<p>Promotional piece – S-26 Gold 'The Infant formula that gives food for thought' The Panel is of the view that based on the wording and format of the piece, it is promoting infant formula to the general public and in breach of clause 5(a).</p>
Sub-clause 5(a)	Wyeth Australia	1998-1999	<p>S-26 Gold advertisement in 'Practical Parenting'</p> <p>It was the Panel's finding that the advertisement is in breach of clause 5(a), as it constituted product promotion to the general public.</p>
Sub-clause 5(a)	Amcal Ltd	1999-2000	<p>Zonta Celebrating Health Expo</p> <p>Amcal withdrew from being a signatory to the MAIF Agreement, effective 1 July 1999. However, the Panel determined that at a Zonta Celebrating Health Expo, Amcal had a stand promoting various Amcal products. The stand included infant formula products and the Panel found the stand to be direct advertising to the general public and in breach of clause 5(a).</p>
Sub-clause 5(a)	Nutricia Australia Pty Ltd	2000-2001	<p>Karicare Infant Formula Advertisement – WHO Weekly Magazine</p> <p>The advertisement for Karicare Infant Formula was found in breach of clause 5(a) as it is advertising infant formula to the general public.</p>
Sub-clause 5(a)	Heinz Wattie's Australasia	2000-2001	<p>Heinz Nurture infant formula advertisement in the Women's Weekly Magazine – Same Heinz Formula, New Heinz Packaging</p>

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			The Heinz nurture advertisement was found in breach of clause 5(a) as it is advertising infant formula to the general public. The advertisement Heinz Nurture infant formula advertisement was also found in the Special 20th Birthday Issue of Australian Parents. The advertisement was also found to be in breach of clause 5(a), however is not considered by the Panel as a separate breach.
Sub-clause 5(a)	Bristol Myers Squibb (Mead Johnson)	2001-2002	Mead Johnson Swing Tag The complaint concerned a swing tag or shelf-talker that was distributed/produced by the manufacturer for use by retailers. (A swing tag, sometimes also referred to as a shelf talker, is an additional label that hangs adjacent to the price tag on a shelf and provides promotional information about the product.) This complaint was found to be in breach of clause 5(a) of the MAIF Agreement which states that: "Manufacturers and importers of infant formulas should not advertise or in any other way promote infant formulas to the general public." This complaint was found to be in breach of clause 5(a) of the MAIF Agreement by the Panel at its 43rd Meeting in December 2001. This company, Bristol-Myers Squibb Pty Ltd (Mead Johnson) no longer manufactures infant formula in Australia.
Sub-clause 5(a)	Nutricia Australia Pty Ltd	2012-2013	Brochure advertising Karicare Aptamil Gold Toddler and Junior Baby The brochure, which was available at a pharmacy in Queensland, was held in breach of clause 5(a) of the MAIF Agreement. This decision was based on a finding that, considered as a whole, the brochure constituted a promotion of infant milk formula to the general public. This was because it included promotional material for infant formula comprising sequential numbering in conjunction with an arrow depicting the manner of progression from infant formula to Junior and Toddler formula – the sequence beginning with a reference to infant formula, including a pack shot of formula. In addition, the brochure was still publicly available in March 2012, 11 months after the brochure was distributed to pharmacies on a 'one-off basis' after the rebranding of products.
Sub-clause 5(a), Sub-clause 5(c)	Douglas Pharmaceuticals Pty Ltd	1995-1996	Provision of free bib The Panel determined that a free bib marked "Karicare" promoted in the 1995 August/September issue of "Mother and Baby" magazine breached clauses 5 (a) and (c) of the Agreement. The Panel had previously agreed that when a manufacturer advertises to the general public a product with the same name as an infant formula, the product name should be followed either by the range name (e.g. toiletries) or the specific product (e.g. baby powder). Generalised terms such as "Brand X Baby Care Products" or "Brand X, Best for Baby", should not be used where Brand X is the name of an infant formula.
Sub-clause 7(a)	Wyeth Australia	1994-1995	Advertisements appearing in the 17 October 1994 issue of the Medical Journal of Australia, and in a supplement to the November 1994 edition of the Australian Journal of Pharmacy The slogan 'A little extra something' was considered to be neither factual nor scientific. As the slogan was placed adjacent to the trade name 'S26' it was considered to idealise the use of the formula and might be thought to suggest that S26 is equivalent or superior to breast milk.
Sub-clause 7(a)	Wyeth Australia	1994-1995	Advertisement appearing in the Medical Journal of Australia In the advertisement appearing in the Medical Journal of Australia, it was claimed that 'the fat profile of S26 closely matches that of breast milk'. The Panel

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			<p>considered it was misleading for Wyeth to claim that S26 has a fatty acid profile similar to breast milk as in fact, no infant formula available in Australia has a fatty acid profile that is similar to breast milk because none of them contain the polyunsaturated long chain fatty acids present in breast milk.</p> <p>The Panel had previously made the following relevant interpretation: "By "scientific", it is meant that current scientific knowledge is reflected in total, not simply selective parts which can be used in a misleading way. (February 1993)"</p>
Sub-clause 7(a)	Wyeth Australia	1994- 1995	<p>Advertisement in the Australian Journal of Pharmacy</p> <p>Wyeth claimed that "because it is nutritionally close to breastmilk, it is the most popular formula used in Australia". The Panel had previously made the interpretation that:</p> <p>The Panel does not consider that it is scientific or factual to claim that a product "resembles" or "is similar to", or "is close to" breast milk unless the component that the company claims is similar to that in breast milk is specified, and evidence is provided which satisfies the Panel that this specific claim is valid. Additionally, Wyeth claimed that:</p> <p>"The fat profile of S26 is nutritionally close to breast milk. The fats in an infant formula play a very important role, providing about 50 per cent of an infant's energy requirements and directly affecting calcium absorption. Special fatty acids are necessary for the normal development of the brain and central nervous system."</p> <p>The Panel noted that while it is true that certain long chain fatty acids are necessary for the normal development of the brain and central nervous system, it is also a fact that no infant formula currently available in Australia, including Wyeth's, contain these long chain fatty acids. The paragraph containing these statements was felt to be intentionally misleading.</p>
Sub-clause 7(a)	Bristol Myers Squibb (Mead Johnson)	1995- 1996	<p>Nutritional Update– 'Iron in Infancy'</p> <p>The Panel believe that the 'Update' failed to provide objective and scientific information only on the subject of iron deficiency. The Panel considered that the following statement in the 'Update' on iron deficiency may have given health professionals the impression that it is advisable to replace breast milk with infant formula at the age of six months in order to avoid iron deficiency:</p> <p>"Feeding of formulas is an effective and convenient way to protect infants from iron deficiency, for infants less than six months of age that are not breastfed, and all infants after six months of age until they are consuming daily a reasonable intake of haem iron, or an infant cereal with ascorbic acid."</p> <p>The section headed "Infant Formula" on page 2 of the 'Update' also suggested that it is advisable to cease breastfeeding at six months and change to formula in order to prevent iron deficiency. In fact, breast milk is the preferred milk until at least twelve months of age. Breastfeeding mothers need to know that complementary feeds that are rich in iron should be introduced between four and six months of age, and that foods rich in iron are important throughout early childhood. They also need information about how different combinations of food affect absorption of iron.</p>
Sub-clause 7(a)	Bristol Myers Squibb (Mead Johnson)	1995- 1996	<p>Musical competition brochures</p> <p>In October, the Panel received some information brochures that had been sent by Mead Johnson to Early Childhood Clinics and, later, to general practitioners, throughout the country. The five brochures had attractive brightly coloured children's pictures on them, and, when opened they played music such as Brahms' lullaby.</p>

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			<p>The brochures advertised a competition in which the health professional had to answer simple questions, with the answers provided in the text of the brochure. The Panel had concerns about the style and appearance of these brochures and the competition. The Panel determined that the information in the brochures breached the Agreement. The Enfalac brochure contained the question and answer: 'Which routine infant formulas fatty acid profile, compared with breast milk, can't be beaten?'</p> <p>'Enfalac has a fatty acid profile close to breast milk.'</p> <p>The Panel had previously made the following interpretation "The Panel does not consider that it is scientific or factual to claim that a product resembles, or is similar to, or is close to breast milk, unless the component that the company claims is similar to that in breast milk is specified, and evidence is provided which satisfies the Panel that this specific claim is valid."</p> <p>In fact no routine infant formula available in Australia has a fatty acid profile that is similar to breastmilk because none of them contain the polyunsaturated fatty acids present in breast milk that are important for the optimal development of eyes, brain and central nervous system. This breach was very similar to that of Wyeth Australia Pty Limited Pty Ltd which was reported in the 1995 APMAIF Report. The Panel therefore considered that this was a serious breach and informed the Ministers of our concerns.</p>
Sub-clause 5(a), Sub-clause 7(a)	Bristol Myers Squibb (Mead Johnson)	1995-1996	<p>Musical competition brochures (second breach finding)</p> <p>The Panel determined that the use of the promotional competition also breached Clause 7(a) because the video equipment "prize" was given to health professionals who work in a clinic. The competition did not require skill so could not be "judged" for an award, but was more akin to a lottery.</p> <p>The Panel also made a new interpretation of Clause 7(a) and Clause 5(a) in response to concern about the style and appearance of the brochures: "Information materials for health professionals should not contain pictures, music or other devices that are likely to be attractive to young children, and therefore might lead to health professionals putting them on display or giving them to children and parents to look at or play with. Examples might include use of music, posters or mobiles."</p>
Sub-clause 7(a)	Bristol Myers Squibb (Mead Johnson)	1995-1996	<p>1995 edition of the OTC guide The Source</p> <p>In the 1995 edition of the OTC guide The Source, a reference book of product information for pharmacists and their assistants. Bristol-Myers Squibb Australia Pty Ltd (Mead Johnson) infant formula products were described in six columns. None included the information required by Clause 7.</p> <p>The information about Enfalac in the guide made the claim: 'The unique 100% vegetable oil blend of improved formulation Enfalac provides, for the first time, a routine infant formula with a fatty acid profile that closely mirrors that of breastmilk.'</p> <p>This claim is neither scientific nor factual. The Panel therefore determined that it breaches Clause 7 of the Agreement.</p>
Sub-clause 7(a)	Wyeth Australia	1995-1996	<p>MIMS Entry</p> <p>The Panel received a complaint about the Wyeth Australia Pty Limited entry in the 1994 edition of the MIMS Annual, an index of information and reference on pharmaceuticals for health professionals. The entry read: 'S26 is an infant formula which closely approximates the qualitative and quantitative composition of human milk.'</p> <p>The Panel determined that this entry breached Clause 7(a) of the Agreement</p>

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			because we do not consider that it is scientific or factual to claim that a product 'resembles', or 'is similar to', or 'is close to' breast milk, unless the component that the company claims is similar to that in breast milk is specified, and evidence is provided which satisfies the Panel that this specific claim is valid. Where these terms are used without a specific claim the Panel considers that the manufacturer is implying equivalence with breast milk and is therefore breaching the Agreement. This is an important breach because it appears in a reference book rather than a promotional pamphlet, and is therefore even more likely to mislead doctors.
Sub-clause 7(a)	Douglas Pharmaceuticals Pty Ltd	1997-1998	'Karicare' promotional cards - Karicare Goat Infant Formula & Goat Follow-On Formula The Panel found the statement 'Forms a soft curd promoting easier digestion than cows milk-based formulas' in breach of clause 7(a). The Panel found the scientific material which was referenced to be selectively quoted and on balance fails to support the claim.
Sub-clause 7(a)	Douglas Pharmaceuticals Pty Ltd	1997-1998	Karicare promotional cards - Karicare Infant Formula The Panel found the statement 'Optimised Ca:P (calcium phosphorus) ratio, which approximates breastmilk (2.3:1) for maximum bone mineral absorption' in breach of clause 7(a). On examination of the scientific material referenced, the Panel found that it fails to support the claim.
Sub-clause 5(a), Sub-clause 7(a)	Douglas Pharmaceuticals Pty Ltd	1997-1998	Karicare promotional cards - Karicare First Infant Formula with LCPs Given that the piece contains wording 'Your local child health clinic', the Panel was of the view that this is promotion to the general public and is therefore in breach of clause 5(a). The statement 'vital supply of LCPs they need to optimise brain development' was found by the Panel to not be supported by scientific evidence and beyond the therapeutic indication for Karicare's LCP product as approved by the Therapeutic Goods Administration. This is in breach of clause 7(a).
Sub-clause 7(a), Sub-clause 7(b)	Bristol Myers Squibb (Mead Johnson)	1997-1998	Promotional pieces for the infant formula Enfalac AR - Dedicated to Health through Nutrition The Panel found that the piece contains various statements indicating that regurgitation is a problem which Enfalac AR can help. However, the Panel found that the piece does not contain any statements to the effect that GOR is a normal physiological condition that does not usually require treatment. On this basis, the Panel found the piece in breach of clause 7(b). The scientific studies referenced did not validate the statements: a) 'The clinical benefits of thickened formulas like Enfalac AR; and b) 'Reflux Episodes Decreased' because: i. the thickened feeds referred to had a different caloric density to Enfalac AR; and ii. reflux was not reduced but rather regurgitation. Consequently, the Panel's View was that it was inappropriate to rely on these studies to support the claims and found the material in breach of clause 7(a).
Sub-clause 7(a)	Amcal Ltd	1997-1998	'Bottles to Solids' leaflet The Panel found two breaches against the Amcal leaflet titled 'Bottles to Solids'. The opening paragraphs of the piece 'Bottle-feeding can in fact come more easily than breast-feeding, today's formulas are created to more fully resemble mother's milk, and are a safe choice in your decision to bottle feed your child' was found by the Panel to be in breach of clause 7(a). The Panel is of view that this wording implies that bottle feeding is equivalent or superior to breast feeding.

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Sub-clause 7(a)	Wyeth Australia	1997-1998	'SMA Infant Formula' promotional can The statement 'Good for baby' is not considered by the Panel to be scientific and factual and was therefore found in breach of clause 7(a).
Sub-clause 7(a)	Wyeth Australia	1998-1999	Promotional piece – 'Because a Mother's Natural Instinct is Protection' The Panel found the piece in breach of clause 7(a). The Panel does not consider that it is scientific or factual to claim that a product resembles, or is similar to, or close to breast milk, unless the component that the company claims is similar to that in breast milk is specified, and evidence is provided which satisfies the Panel that this specific claim is valid.
Sub-clause 7(a)	Wyeth Australia	1998-1999	Hospital Product Guide The statement 'S-26 Low Birth Weight with LCPs is fortified with the fatty acids AA and DHA at the correct ratios for pre-term babies', was found in breach of clause 7(a) as the statement 'correct ratio' is not supported by clinical papers and is too absolute, implying the correct ratio is definitely known.
Sub-clause 7(a)	Wyeth Australia	1998-1999	Promotional piece – 'Two Welcome Arrivals in the S-26 Family' The Panel found the statement "Because each formula is based on S-26, Australia's most trusted infant formula you can treat problem feeders with the appropriate formula with minimal disruption", to be misleading and not scientific or factual. The Panel found the statement to be in breach of clause 7(a).
Sub-clause 7(a)	Wyeth Australia	1998-1999	Promotional piece – S-26 LF Promotional Piece in 'Two welcome arrivals in the S-26 family' The statement 'Helps soothe both baby and parents upset from common feeding problems' in the above piece was found in breach of clause 7(a) as the statement is an unsupported extrapolation of the possible outcome of treatment for lactose intolerance.
Sub-clause 7(a)	Bristol Myers Squibb (Mead Johnson)	1998-1999	'Stepping Stones' The Panel found the statement 'Enfapro has been specifically formulated with the ideal iron content.' in breach of clause 7(a). The Panel is of the view use of the term 'ideal' implies a quality beyond the Recommended Daily Allowance (RDA) and such a claim has no scientific evidence to support it.
Sub-clause 7(a)	Nutricia Australia Pty Ltd	1998-1999	Karicare First Infant Formula for Infants 0-6 months The statement 'Additional arachidonic acid (AA) has also been added to provide an Omega LCP balance that approximates breast milk' was found in breach of clause 7(a), as it is not supported by scientific evidence. In regards to the constituents, AA content does not equate to the entire omega LCP balance.
Sub-clause 7(a)	Nutricia Australia Pty Ltd	1998-1999	Karicare Infant Formula The Panel considered the statement 'whey predominant for easier digestion than casein based formulas' not to be scientific and factual and therefore, in breach of clause 7(a).
Sub-clause 7(a)	Wyeth Australia	1999-2000	Promotional piece - "Because a mothers natural instinct is protection" The Paragraph "ARE NTs USED ELSEWHERE", compares nucleotides (NT) level's in S26 formula with those found in breast milk and omits that this represents only five of the many NT's found in human milk. The Panel believes that this omission is misleading and is in breach of Clause 7(a).
Sub-clause	Bristol Myers Squibb	1999-	Promotional Wheel

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7(a)	(Mead Johnson)	2000	The panel found this matter in breach of Clause 7(a). The Wheel was found to be unscientific and not factual as the inclusion of the statement 'PROSOBE - 100% sucrose-free soy formula which is recommended by the Australian College of Paediatrics. Milk and lactose free', under the heading 'Milk protein allergy or intolerance' directly contradicts the College of Paediatrics' (now the Royal Australasian College of Physician/Paediatric Division) Policy on Soy Formula.
Sub-clause 7(a)	Nutricia Australia Pty Ltd	2000-2001	Queensland Tender Win – one more reason for Nutricia Australia Pty Ltd 4-level Program – 'Fourthought' The Panel found this matter in breach of Clause 7(a). The letter accompanying the Fourthought advertisement announcing the Queensland tender win is not considered by the Panel to be 'one more reason' to use the Nutricia Australia Pty Ltd 4-level program, nor did it restrict the content of the letter to factual and scientific matters.
Sub-clause 7(a)	Nutricia Australia Pty Ltd	2000-2001	'Fourthought' in really solving feed intolerance problems In 'really solving feed intolerance problems' the Fourthought piece graphic is ambiguous and could imply that the sequential use of four specialised formulas should be followed. The Panel's view is that, Step 1 to 2 as portrayed in the advertisement does not reflect 'responsible opinion'.
Sub-clause 7(a)	Bayer Australia Ltd	2008-2009	Advertisement titled "Put infant feeding problems to bed" published in a medical journal August 2007 The advertisement contained images of houses with lights on at night time, and listed a range of infant feeding issues, the management of which the advertised product was claimed to assist. The APMAIF found that the advertisement was in breach of Clause 7(a) of the MAIF Agreement, because it contained material that was not restricted to scientific and factual information. In the Panel's view: <ul style="list-style-type: none"> • the phrase "Put infant feeding problems to bed" does not, in itself, convey scientific or factual information but is simply a slogan which could reasonably be regarded as idealising the use of infant milk formula; • the imagery used in the advertisement compounds the slogan's idealisation of the use of infant formula; and • the overall impression conveyed is that the products referred to in the advertisement solve a range of infant feeding problems—that is, problems experienced by breastfed infants as well as formula fed infants. In this way, the advertisement can reasonably be seen as idealising the use of infant milk formula in such a way as to undermine breastfeeding. The APMAIF noted that the advertisement has not been re-published since 2007 and that Bayer has no plans to re-publish it in the future.
Sub-clause 7(b)	Bristol Myers Squibb (Mead Johnson)	1997-1998	Promotional pieces for the infant formula Enfalac AR - Dedicated to Health through Nutrition The Panel found that the piece contains various statements indicating that regurgitation is a problem which Enfalac AR can help. However, the Panel found that the piece does not contain any statements to the effect that GOR is a normal physiological condition that does not usually require treatment. On this basis, the Panel found the piece in breach of clause 7(b).
Sub-clause 7(b)	Bristol Myers Squibb (Mead Johnson)	1998-1999	'1 Step at a Time' '1 Step at a Time', is viewed by the Panel to have the potential to undermine Breastfeeding by implying that unspecified problems may be solved by switching to specialised formulas. This is dangerous in that, if followed, it would result in

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			inappropriate formula changes in infants and possible delay in responsible diagnosis and treatment. The piece was found to be in breach of clause 7(b).
Sub-clause 7(c)	Bayer Australia Ltd	2009-2010	<p>Nurses education and movie event</p> <p>The event, which was conducted by Bayer in July 2009, included a presentation on infant feeding problems and solutions as well as information about Bayer's Novalac range of infant formulas. The invitation flyer for the event offered participants a light meal and a private movie screening at a 'Gold Class' cinema.</p> <p>The APMAIF found that Bayer's actions in advertising an offer of a meal, champagne and a gold movie pass at an event designed to expose health care professionals to Bayer's infant formula products were for the purpose of promoting those products in contravention of Clause 7(c) of the MAIF Agreement.</p> <p>While offers designed to offset the cost and/or inconvenience of attendance at an educational event may be acceptable (for example, free parking or light refreshments), the nature of this offer – especially the inclusion of a private movie screening at a Gold Class cinema – was such that, in the Panel's view, it constitutes an inducement to health professionals of the kind referred to in Clause 7(c), to attend an event to promote infant formula products.</p> <p>Bayer has agreed not to include free movie screenings in future educational events.</p> <p>** The APMAIF also received a second complaint regarding a similar event which was held prior to this breach decision being made. In 2010 – 11, the APMAIF made an 'in breach' decision on this complaint.**</p>
Sub-clause 7(d)	H J Heinz Company Australia Ltd	1998-1999	<p>Provision of free samples to a Pharmacy in Queensland</p> <p>The provision of sachets of sample infant formula was found to be in breach of clause 7(d), as this does not constitute professional evaluation or research at the institutional level.</p>
Sub-clause 7(d)	Bristol Myers Squibb (Mead Johnson)	1999-2000	<p>Give-away pack of formula, teat and written material</p> <p>It was viewed by the Panel to have the potential to undermine breastfeeding by giving mothers 'incentive' to bottle feed by providing a teat and sample within the pack. This was found by the Panel to be beyond a sample being used for professional evaluation and therefore found in breach of clause 7(d).</p>
Sub-clause 7(d)	Bristol Myers Squibb (Mead Johnson)	2000-2001	<p>Provision of O-Lac Sachets of infant formula</p> <p>The Panel found the unsolicited provision of infant formula samples to health professionals to be in breach of clause 7(d). The inclusion of Please find enclosed for your professional evaluation... does not satisfy the exemption required under 7(d) which states:</p> <p>"Manufacturers and importers of infant formulas should not offer any financial or material inducement to health care professionals except when necessary for the purpose of professional evaluation or research at the institutional level."</p>
Sub-clause 7(d)	Bristol Myers Squibb Pty Ltd	2000-2001	<p>Provision of Enfalac Sachets of infant formula</p> <p>The Panel found breaches regarding the provision of free samples.</p>
Sub-clause 7(d)	Wyeth Australia	2000-2001	<p>Free samples of SMA Formulas</p> <p>The Panel found breaches regarding the provision of free samples.</p>