Australian Government

Department of Health and Ageing

# Annual Report of the Advisory Panel on the Marketing in Australia of Infant Formula (APMAIF)

## 2011–12

## CONTACT DETAILS

APMAIF Secretariat
Australian Government Department of Health and Ageing
MDP 802
GPO Box 9848
CANBERRA ACT 2601
Email: apmaif@health.gov.au
Secretariat telephone: (02) 6289 7358
Complaint forms and other APMAIF information can be obtained at:
www.health.gov.au/apmaif

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# Letter of Transmittal

The Hon Catherine King MP
Parliamentary Secretary for Health & Ageing
Parliament House
CANBERRA ACT 2600

**2011 – 2012 ANNUAL REPORT OF THE ADVISORY PANEL ON THE MARKETING IN AUSTRALIA OF INFANT FORMULA (APMAIF)**

Dear Ms King

I am pleased to present to you the Annual Report of the Advisory Panel on the Marketing in Australia of Infant Formula (APMAIF) for the year ending 30 June 2012.

Yours sincerely

Venessa Tripp
Chair
APMAIF
February 2013

# Table of Contents


Chapter 1: OVERVIEW ..... 1

About the APMAIF and the MAIF Agreement ..... 1

Terms of Reference ..... 2

Panel Members ..... 2

Companies Authorised under the MAIF Agreement ..... 6

Chapter 2: COMPLAINTS ..... 7

How complaints are processed ..... 7

Complaint Statistics 2011–12 ..... 9

Chapter 3: APMAIF ACTIVITIES ..... 10

Panel meetings ..... 10

Review of Interpretation Guidelines ..... 11

Electronic Media Marketing Guidelines ..... 13

Complaints Handling Process ..... 13

Guidelines for addition of new signatories to the MAIF Agreement ..... 14

Submission to the National Health and Medical Research Council (NHMRC) concerning the revision of the Infant Feeding Guidelines ..... 15

Review of the MAIF Agreement ..... 15

Chapter 4: FINANCES ..... 16
Funding Arrangements ..... 16
Financial Report 2011–12 ..... 16

APPENDICES

Appendix A:
Marketing in Australia of Infant Formula Agreement ..... 18

Appendix B:
MAIF Agreement Interpretation Guidelines ..... 25

Appendix C:
Electronic Media Marketing Guidelines ..... 33

Appendix D:
APMAIF Complaints Handling Process ..... 36

# Chapter 1: OVERVIEW

## About the APMAIF and the MAIF Agreement

The APMAIF is a non-statutory advisory panel established by the Australian Government in 1992 to monitor compliance with and advise the Government on the *Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement* (MAIF Agreement).

The MAIF Agreement is a voluntary, self-regulatory code of conduct between manufacturers and importers of infant formula in Australia. It aims 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. A copy of the MAIF Agreement is available on the Department of Health and Ageing's (the Department's) APMAIF internet site and at Appendix A.

The MAIF Agreement is Australia's primary means of implementing the World Health Organization's *International Code of Marketing of Breast-milk Substitutes* (WHO Code). The MAIF Agreement implements those aspects of the WHO Code that are appropriate to Australia's legal and economic environment. It applies to the marketing and promotion of formulas for infants up to 12 months of age, by those Australian manufacturers and importers of infant formula who are signatories to the MAIF Agreement.

In relation to the products, the MAIF Agreement applies to:

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

The MAIF Agreement does not apply to:

- **Toddler milk drinks** suitable from 12 months *(sometimes called Growing Up milks)*
- **Complementary foods** *(i.e. baby cereal and packaged baby foods)*
- **Feeding bottles and teats**

The APMAIF has no statutory or formal regulatory powers either to obtain information from industry participants or other parties or to enforce the MAIF Agreement. Instead the APMAIF relies upon the cooperation of the industry participants in the MAIF Agreement and other stakeholders to provide information. Changes to marketing practices that are requested by the APMAIF also depend on the voluntary commitment of industry participants.

There are no financial or legal sanctions associated with breaches of the MAIF Agreement. If the APMAIF determines that a breach of the MAIF Agreement has occurred, the Minister for Health (or Parliamentary Secretary) is informed and details of the breach are published in the APMAIF's annual report. While this reporting process is not a financial or legal sanction, it provides for a level of public reporting which can receive global publicity and brand damage for the infant formula manufacturer involved. The APMAIF's annual report is normally tabled in Parliament and will be made available to stakeholders on request. The reports are also made available from the APMAIF internet site on the Department's website.

## Terms of Reference

The APMAIF's terms of reference are to:

- receive and investigate complaints regarding the marketing in Australia of infant formulas;
- act as a liaison point for issues relating to the marketing in Australia of infant formulas;
- develop guidelines on the interpretation and application of the MAIF Agreement; and
- provide advice on the operation of the MAIF Agreement to the Australian Government Minister for Health and Ageing.

## Panel Members

The APMAIF comprises five members including the Chair, a community and consumer representative, an industry representative, a member with legal expertise, and a public health and nutrition expert.

All the members of the APMAIF are part time. Remuneration arrangements are in accordance with Departmental policy and the relevant determinations of the Remuneration Tribunal. The Parliamentary Secretary for Health appoints the panel members.

### *APMAIF Chair*

The APMAIF Chair leads the panel in the adjudication of complaints and manages conflicting views concerning the implementation of the MAIF Agreement and the role of the APMAIF. The Chair takes the lead role in the duties of the panel and liaises with the secretariat in progressing those duties.

In March 2008, Ms Venessa Tripp was appointed as the APMAIF Chair until February 2012. In consultation with the Department and Parliamentary Secretary, Ms Tripp was offered a further four year term to February 2012-2016, which she accepted.

Ms Tripp is currently the principal of her own executive coaching business, an associate with the Institute of Executive Coaching and has been providing one-on-one executive coaching services since 2001. She specialises in career management, leadership, communication, influencing, delegation, presentation, strategic planning, dealing with conflict, representation and dealing with stakeholders. She is also a member of the Australian Institute of Management and the University of Sydney Coaching and Mentoring Association. She has a Masters degree from the University of Sydney and an Honours degree from the University of Newcastle.

### *Member with Legal Expertise*

The legal expert provides a legal perspective on APMAIF deliberations, including interpretations of the scope and particular clauses of the MAIF Agreement. He or she contributes to panel deliberations and decisions by demonstrating the following:

- a good knowledge of the *Competition and Consumer Act 2010;*
- a good knowledge of the legal implications of voluntary self-regulation agreements; and
- knowledge of and an interest in infant nutrition.

Professor Bill Lane was appointed as the APMAIF member with legal expertise in January 2009, for a term of four years.

Professor Lane is the Clayton Utz Professor of Public Law at Queensland University of Technology Law School and is one of Australia's leading administrative law experts. He has taught law at La Trobe University, the University of Sydney and the University of Queensland. He has published works in the fields of judicial review, Freedom of Information, and the application of public law remedies in the field of commercial government activity.

Professor Lane is a member of the Queensland Non State Schools Accreditation Board.

### *Community and Consumer Representative*

The community and consumer representative advocates on behalf of parents and contributes to APMAIF deliberations and decisions by demonstrating the following:

- an understanding of the issues faced by parents in feeding their babies and young children;
- a balanced understanding of the reasons why some women may not breastfeed successfully or for other reasons may choose to bottle feed their babies and small children;
- a balanced view of the issues related to breastfeeding and bottle feeding; and
- an understanding of the importance of the self- regulatory model of infant formula marketing within Australia.

In January 2009, Ms Margaret Grove was appointed as the community and consumer representative, for a term of four years.

Ms Grove has been a breastfeeding counsellor with the Australian Breastfeeding Association since 1983 and held many national positions in that time. She was a director from 2002-2008 and was the organisation's National President from 2006-2008. In addition to teaching mathematics at Bankstown TAFE, Ms Grove has authored a number of text books and educational resource books. Ms Grove is the mother of three children and has been very active in her local community for 25 years.

### *Public Health and Nutrition Expert*

The public health and nutrition expert provides the panel with scientific and technical expertise in public health, nutrition, regulation around therapeutic goods and the food/drug interface. He or she contributes to APMAIF deliberations and decisions by demonstrating the following:

- extensive experience in public health;
- extensive knowledge of therapeutic goods, food standards and the interface between these; and
- experience working on consumer issues.

In January 2009, Associate Professor Heather Yeatman was appointed for four years as the public health and nutrition expert, with particular expertise in regulation around therapeutic goods and the food/medicines interface.

Currently an Associate Professor with the School of Health Sciences at the University of Wollongong, Associate Professor Yeatman has taught public health nutrition at the post-graduate level since 1989 and Chairs the Australian Public Health Nutrition Academic Collaboration. She has extensive experience working for and with government on health promotion and nutrition policy issues and has held several positions on statutory government bodies relating to food standards, food safety, complementary medicines, agricultural chemicals, veterinary medicines and animal welfare. She is also a member of several professional societies and associations related to public health and nutrition.

### *Industry Representative*

The industry representative is nominated by the Infant Nutrition Council (INC), an association of infant formula marketers and manufacturers representing industry. The industry representative is appointed by the Parliamentary Secretary for Health and Ageing. The representative liaises between APMAIF and INC member companies and plays an important role in maintaining industry awareness of the responsibilities of Signatories to the MAIF Agreement.

He or she contributes to APMAIF deliberations and decisions by representing the views of INC member companies and working to maintain a cooperative relationship between APMAIF and members to the MAIF Agreement.

Ms Jan Carey is the CEO of INC, and was appointed as the industry representative on the APMAIF in 2007. Ms Carey was reappointed for a further four year term to March 2011- March 2015.

Ms Carey has an extensive background in infant health, having previously been responsible for developing and maintaining the national not for profit organisation, SIDS and Kids' research and educational programs which have successfully reduced infant mortality in Australia. Ms Carey was the Chair of SIDS and Kids Scientific Advisory Committee, a member of the Global Strategy Task Force for education and the SIDS and Kids' representative on SIDS International.

Ms Carey is committed to best outcomes for infants, and is also a co-founder of the research organisation, the Australian and New Zealand Stillbirth Alliance.

### *Departmental Observer*

A senior officer of the Australian Government Department of Health and Ageing attends all APMAIF meetings as an observer. The Departmental observer provides advice to APMAIF on matters of Government policy and advises the Minister for Health on matters of governance for the APMAIF. He or she does not participate in APMAIF decision making.

## Companies Authorised under the MAIF Agreement

Participating manufacturers and importers of infant formula during 2011–12 were:

- *Abbott Australasia Pty Ltd*
- *Bayer Australia Ltd*
- *H J Heinz Company Australia Ltd*
- *Nestlé Australia Ltd*
- *Nutricia Australia Pty Ltd*
- *Pfizer Australia Pty Ltd*

### *The Infant Nutrition Council*

The Infant Nutrition Council Ltd (INC) represents companies marketing and manufacturing infant formula in Australia and New Zealand. INC works in partnership with government, regulatory authorities, health care professionals and breastfeeding advocates to support the public health goals for the protection and promotion of breastfeeding and, when needed, infant formula as the only suitable alternative. All Signatories to the MAIF Agreement are members of the INC.

# Chapter 2: COMPLAINTS

## How Complaints are Processed

The APMAIF relies upon the assistance of interested parties, such as breastfeeding advocate groups, health professionals and members of the public, in monitoring compliance with the MAIF Agreement. Suspected breaches of the MAIF Agreement are brought to the attention of the APMAIF by the submission of formal complaints through the APMAIF secretariat. The APMAIF does not, itself, initiate audit compliance with the MAIF agreement.

Upon receipt, complaints are assessed by the secretariat and are classified as being within or outside the scope of the MAIF Agreement. Those 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); and/or
- infant foods, including milk products formulated for children over 12 months of age (sometimes referred to as "toddler milks").

The secretariat advises complainants in writing if their complaints are outside the scope of the MAIF Agreement.

Where a complaint is considered to be within the scope of the MAIF Agreement, it is unclear whether the complaint is out of scope, or more information is required before an assessment can be made, the secretariat advises the manufacturer or importer of the product concerned that a complaint has been received alleging a breach of the MAIF Agreement. The manufacturer or importer is invited to respond with any evidence or other information it wishes to submit for consideration.

Complaints that have been assessed as falling within the scope of the MAIF Agreement are then considered by the APMAIF at the next available meeting. Complaints requiring consideration by the APMAIF are summarised by the secretariat prior to being forwarded to the APMAIF. 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 secretariat (e.g. responses from formula companies or health professionals) and any previous consideration of a similar complaint or relevant guidelines on the interpretation of the MAIF Agreement which have been made by the APMAIF.

The APMAIF considers the complaint and may decide that it does not reveal 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 of this and is invited to respond with any further relevant information.

At the next available meeting, the APMAIF considers any additional information provided and makes a decision that 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. In breach' decisions are reported to the Parliamentary Secretary for Health and Ageing and are recorded in the APMAIF Annual Report.

The APMAIF secretariat records all complaints received in its complaints register, which is used to compile statistics for presentation to the APMAIF at its quarterly meetings.

The complainants' identities are not disclosed to the panel or other parties at any time.

## Complaint Statistics 2011–12

| | Brought Forward | Jul | Aug | Sep | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Out of scope** | **0** | **0** | **1** | **0** | **0** | **1** | **1** | **1** | **0** | **2** | **1** | **1** | **1** | **9** |
| Retail—store | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 1 | 1 | 0 | 0 | 3 |
| Retail—pharmacy | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 1 | 0 | 2 |
| Health Professional | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Toddler milk | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| Non-signatory | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 2 |
| Other | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| **In scope** | **0** | **0** | **2** | **0** | **0** | **0** | **0** | **0** | **0** | **2** | **0** | **0** | **0** | **4** |
| In breach | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Not in breach | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 3 |
| Industry-wide action | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Carried forward | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 1 |
| **Total complaints** | **0** | **0** | **3** | **0** | **0** | **1** | **1** | **1** | **0** | **4** | **1** | **1** | **1** | **13** |
| Complainants | 0 | 0 | 1 | 0 | 0 | 1 | 1 | 1 | 0 | 3 | 1 | 1 | 1 | 10 |

In 2011-12 the APMAIF received 13 new complaints; this figure represents the same number of complaints received during the previous reporting period. Of the new complaints received, nine (approximately 69%) were assessed as falling outside the scope of the MAIF Agreement.

The 'out-of-scope' complaints in 2011-12 were assessed mainly within the category of retail activity. These included price promotion by retailers through weekly store catalogues and via the internet which has become a noticeable emerging trend.

Of the remaining 'in-scope' complaints considered by the APMAIF, three were determined to be 'not in breach' and have been resolved. One complaint is still being investigated by the APMAIF and has been carried over to the next reporting period.

# Chapter 3: APMAIF ACTIVITIES

In 2011-12 the APMAIF commenced work on a number of important areas of the application of the MAIF Agreement and its interpretations.

Issues relating to internet based material have increased over the reporting period and the APMAIF has worked with industry to ensure that a consistent approach to internet based material is achieved. The APMAIF has also undertaken a revision of the Complaints Handling Process (CHP) to accentuate the fairness and transparency of its procedures. In addition to this, the APMAIF has established a review of the Interpretation Guidelines to ensure there is a clear understanding of the intent and meaning of clauses in the MAIF Agreement.

## Panel Meetings

| Meeting | Date | Complaints considered | Other items discussed |
|---|---|---|---|
| 78th | 18 August 2011 | Nil | Review of Interpretation Guidelines<br>Electronic Media Marketing Guidelines<br>National Health and Medical Research Council (NHMRC) presentation – Infant Feeding Guidelines |
| 79th | 17 November 2011 | 2 new | Review of Interpretation Guidelines<br>Industry Helpline Observation<br>Infant feeding Guidelines - NHMRC |
| 80th | 16 February 2012 | Nil | MAIF review Nous Group presentation –<br>Procedures on how to become a member of the MAIF Agreement<br>Industry developed guidelines on Interactions with Healthcare Professionals |
| 81st | 17 May 2012 | 2 new | Review of Interpretation Guidelines<br>APMAIF review<br>Electronic Media Marketing Guidelines |

## Meetings with MAIF Agreement Signatories

The APMAIF meets with Signatories to the MAIF agreement annually to discuss activities in the previous year, the operation of the agreement and any issues of interest or concern.

| Meeting | Date | Items discussed |
|---|---|---|
| Signatories meeting | 17 August 2011 | Review of Electronic Media Marketing |
| | | Review of Interpretation Guidelines |
| | | APMAIF presentation on complaint decisions |
| | | Options for meetings/discussions outside the signatories meetings. |

## Interpretation Guidelines

In accordance with its Terms of Reference, the APMAIF, from time to time, develops guidelines on the interpretation and application of the MAIF Agreement.

In the interests of consistency when considering a complaint, the APMAIF will consider past guidelines on the interpretation and application of the clauses of the agreement that are relevant to the complaint. Past guidelines are made available on the APMAIF website as a reference source for stakeholders.

### *The use of past interpretations of the MAIF Agreement*

Formal guidelines on the interpretation of the MAIF Agreement often provide a useful benchmark to industry and signatories in determining the acceptability or otherwise of certain marketing activities. However, the guidelines do not form part of the MAIF Agreement and do not substitute for the APMAIF's ongoing task of analysing and assessing complaints on their individual merits on a case-by-case basis. This means that past interpretation guidelines should not be viewed as stand-alone requirements, but must always be viewed in the context of the relevant clause(s) of the MAIF Agreement.

The guidelines should not be considered to be exclusive or exhaustive – for example, where a guideline records that a specific activity is inconsistent with the MAIF, it should not be assumed that other activities are thereby consistent simply because they were not included in the guideline.

## *Continuing Review of interpretations of the MAIF Agreement*

The APMAIF is undertaking a review of the interpretation guidelines with a view to modernising a number of aspects and ensuring they are relevant to a contemporary marketing environment.

At the August 2010 APMAIF meeting, the panel conducted a preliminary review of past interpretations of the MAIF Agreement and agreed in principle that:

- in accordance with the APMAIF's third term of reference, the interpretations should be referred to as "guidelines on the interpretation of the MAIF Agreement" and should be expressed in guideline-style terminology;
- there is a need to inform stakeholders about the nature and purpose of the Interpretation Guidelines; and
- industry should be actively engaged on issues that arise during the process of reviewing the Interpretation Guidelines to ensure a mutual understanding of the changed introduced.

The first step of the review was finalised in this reporting period. It involved reducing ambiguity and improving the clarity of language and updating out-dated concepts in the Guidelines without altering their meaning, intent or substance.

During the current reporting period the Panel has re-evaluated a number of more complex issues in the Guidelines in the light of changes to the marketing environment and in community expectations. The most substantive of these was the creation of Guidelines concerning the marketing of infant formula in the context of electronic media (which is discussed separately).

In addition the Panel began a review of its Guidelines relating to interactions with health care professionals. The aim is to provide clearer and more useful guidance for the application of clauses 4, 5 and 7 of the MAIF Agreement particularly as they concern what are acceptable interactions between the infant formula company signatories and health care professionals. As part of this process industry has provided its own policy on 'Guidance on Interactions with Healthcare Professionals'. The Guidelines on this matter will be finalised in 2012-13.

APMAIF is continuing the process of review of the interpretation guidelines.

A copy of the APMAIF Interpretations of the MAIF Agreement can be found on the APMAIF site on the Department's website and at Appendix B.

## Electronic Media Marketing

In November 2010, the APMAIF completed its deliberations on a complaint regarding the content of a manufacturer's website. Given the complexity of the issue and the absence of any relevant interpretation guidelines, , the APMAIF decided to provide an industry-wide, rather than company-specific, response. It concluded that as material on manufacturers' websites is available to the general public, the requirements of the MAIF Agreement regarding information intended to reach parents and pregnant women would apply. Consistent with the MAIF Agreement, material made available on manufacturers' websites should be informational in nature and include, material relating to breastfeeding.

Following discussion with industry, the APMAIF agreed that the internet and social media forums should be treated in the same way as other forms of communication. There should be a common fundamental standard, ensuring that the 'breast is best' message is displayed before infant formula information is displayed. At the 80th meeting in February 2012 the APMAIF agreed to a new set of interpretations on electronic media marketing. The APMAIF will continue to engage with industry regarding the Guidelines with any changes to be reported on in the 2012-13 reporting period.

The current version of the Electronic Media Marketing Guidelines is at Appendix C.

## Complaints Handling Process

In 2008, the APMAIF revised its Complaints Handling Process (CHP) to accentuate the transparency and fairness of its procedures. As part of this revision, an extra step was added to the CHP so that companies who are the subject of a complaint under APMAIF consideration are routinely given the opportunity to respond to any preliminary concerns of the panel before a decision is reached. This additional consultation step applies to the handling of all complaints when a 'not in breach' decision cannot be reached at the first consideration.

The wording of this additional step to the process was drafted on the basis of legal advice and, in its summary form, is expressed as follows:

> *Company informed that there is insufficient information to determine that there has been no breach [of the MAIF Agreement] and invited to respond.*

The APMAIF became aware of a lack of clarity around the meaning of the so-called "double negative" contained within this wording.

In response to this, the APMAIF offered the following clarification:

> The phrase "insufficient information to determine that there has been no breach" was included in the Complaints Handling Process on the basis of procedural fairness, and is intended to protect the subject company from either the reality or the perception of a premature determination. The phrase does not imply that there is insufficient information to make any determination, but rather advises a subject company that although any determination has yet been made, the balance of currently available evidence has failed to convince the APMAIF that no breach has occurred and therefore the potential for an 'in breach' decision remains. The company is then invited to provide any further evidence that it may wish the APMAIF to consider in conjunction with the existing evidence when the Panel makes its final determination.

At the November 2011 APMAIF meeting the panel agreed that an explanatory note as drafted by the legal expert be included in Step 3 of the CHP. The wording of the explanatory note to clarify Step 3 has been finalised as the following:

> *(The purpose of Step 3 of the Complaints Handling process is to ensure that the Company is provided with an adequate opportunity to respond to evidence available to APMAIF and to any preliminary view expressed by APMAIF, prior to a final determination being reached in accordance with Step 4.)*

Any need to further clarify this terminology will be monitored during 2012-13.

The current version of the CHP is at Appendix D.

## Guidelines for addition of new members to the MAIF Agreement

During May 2011 the APMAIF secretariat was contacted by a company wishing to become a signatory to the MAIF Agreement. APMAIF believes that all opportunities should be taken to encourage manufacturers and importers of infant formula products to sign the agreement. As a result it was agreed that it would be useful to clarify the process required to join the MAIF. The outcome of this activity will be presented in the 2012-13 Annual Report.

## Submission to the National Health and Medical Research Council (NHMRC) concerning the revision of the Infant Feeding Guidelines

The APMAIF provided a submission to the NHMRC in December 2011 regarding the review of the Infant Feeding Guidelines for Health Workers. The Panel reviewed the document and provided comments in relation to the purpose and role of the MAIF Agreement and the WHO Code, the relationship between the MAIF Agreement and the WHO Code and provided clarification to factual matters such as the voluntary, self-regulatory nature of the MAIF Agreement and sanctions when a breach of the MAIF Agreement occurs.

## Review of the MAIF Agreement

To ensure the operation and processes of APMAIF continue to support breastfeeding and infant health information in a modern marketing and regulatory environment, the Department of Health and Ageing engaged the Nous Group to complete a 'Review of the effectiveness and validity of the operations of the MAIF Agreement' (the Review).

The methodology for the review included stakeholder consultation via a number of methods involving survey and telephone interviews. All members of APMAIF were briefed on the process and contributed individual comments to the reviewers.

The Review assessed:

- the **effectiveness** of the MAIF Agreement in achieving its stated aim;
- the **effectiveness** of the APMAIF in ensuring industry compliance with the MAIF Agreement; and
- the **efficiency, transparency, cost-effectiveness and appropriateness** of APMAIF processes and governance arrangements.

The APMAIF has been advised that the final report will include recommendations for the Government to consider on any changes to the content, coverage or operation of the Agreement.

# Chapter 4: FINANCES

## Funding Arrangements

The Department administers funding for the operating costs of the APMAIF.

In 2011-12 the Chair and APMAIF members, except for the industry representative, were remunerated in accordance with Departmental policy and the applicable Remuneration Tribunal determination. All remuneration and expenses for the industry representative were met by the INC.

In 1998 a cost-sharing agreement was reached between the infant formula companies and the Treasury, who provided the APMAIF secretariat services at that time. Under this agreement, the industry funded 70% of the APMAIF secretariat expenses, which included the salary of one secretariat staff officer, printing, room hire and catering. The Treasury funded the remaining 30% of secretariat expenses, along with 100% of remuneration and travel costs for members.

This cost-sharing arrangement was informally continued when the APMAIF secretariat was transferred to the Department in 2001. Financial contributions and expenditure for the running costs of the APMAIF were administered through the Department's *Services for Other Government and Non-Government Bodies* Special Account.

In 2007 the cost-sharing arrangement with industry was discontinued pending a review of APMAIF funding mechanisms, and no further contribution has been requested from the industry since that time.

In 2011-12, the majority of administrative and committee costs were covered by residual equity held against the Special Account, while the Department continued to provide staffing for the secretariat.

## Financial Report 2011–12

| FUNDING SOURCE | | EXPENDITURE | |
|---|---|---|---|
| Special Account Equity | 38,501 | APMAIF Committee | 38,501 |
| Department | 125,071 | APMAIF Secretariat | 125,071 |
| TOTAL FUNDING | 163,572 | TOTAL EXPENDITURE | 163,572 |

# Appendices

All APMAIF guidelines and the MAIF Agreement can be accessed from the APMAIF site on the Department's website.

**Appendix A:** Marketing in Australia of Infant Formula Agreement

**Appendix B:** MAIF Agreement Interpretation Guidelines

**Appendix C:** Electronic Media Marketing Guidelines

**Appendix D:** APMAIF Complaints Handling Process

# Appendix A

*Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement*

# THE MAIF 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)[1].

## 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[2], on the basis of adequate information and through appropriate marketing and distribution. (WHO Code Article 1)

## 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)

1 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).

2 For the purposes of the Aim, 'necessary' includes mothers who make an informed choice to use breast milk substitutes.

## 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:

*(i) the benefits and superiority of breastfeeding;*

*(ii) maternal nutrition, and the preparation for and maintenance of breastfeeding;*

*(iii) 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

## Guidelines on the interpretation and application of the MAIF Agreement by the Advisory Panel on the Marketing in Australia of Infant Formula (APMAIF)

These guidelines are developed by the APMAIF to assist with the interpretation and application of the MAIF Agreement. The guidelines do not form part of the Agreement and do not substitute for the actual wording of the terms of the Agreement. Where examples of specific activities are given, they are provided as guidance only and should not be considered exclusive or exhaustive. Each guideline is subordinate to, and should be considered in the context of, the clause(s) to which it relates.

The guidelines constitute a 'living document' which may be amended from time to time in order to remain relevant and up-to-date in a changing marketing environment.

In developing and reviewing these guidelines, the APMAIF focuses on the aim of the MAIF Agreement as outlined in Clause 1. The APMAIF is also aware of the need to ensure that the guidelines remain consistent with the requirements of the *Competition and Consumer ACT* (2010) (TPA) concerning anti-competitive conduct, having regard to the relevant TPA Authorisations relating to the MAIF Agreement itself.

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

Clause 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)

## Inclusion of information

- The information required by clauses 4(a) and 4(b) should be included in material of any format (eg. video, written, audio, electronic, etc.) which refers to infant formula that is produced or sponsored by an infant formula manufacturer (December 1993).
- The information required by clauses 4(a) and 4(b) should be included in the main body of the material in the same type of presentation as the rest of the material, and at a level suitable for the target audience. A mother or other carer should be able to understand what it means (December 1993).
- The print size of the information required by clauses 4(a) and 4(b) should be the same size as the majority of the main text or at least 8 point (September 1993).
- The social and financial implications of infant formula use are inter-related. They may include the following points:
    - the weekly cost of formula and/or the impact on the family budget; and
    - notice that infant formula will need to be purchased until the baby is 12 months of age (March 1994).

Pictures on informational or educational material for health professionals

- Certain pictures may be acceptable on materials for health professionals (1994).
- Cartoons and pictures of animals and toys do not necessarily idealise the use of infant formulas and therefore may be acceptable. They should not depict an animal or toy being fed, whether by breast or by bottle, nor should they depict animal or toy 'mothers', because these may idealise the use of infant formula (1994).
- Real babies depicted in a normal context do not necessarily idealise the use of infant formulas and may legitimately draw a health professional's attention to information about an infant formula. However:

- babies (with or without bottles) in fantasy situations (e.g. stars, heavens, clouds, sitting up in school) should not be depicted because they may suggest formula-fed babies are in some way 'ahead' of breastfed babies (March 1994);

- babies with slogans over or adjacent to the pictures should not be used in such a way as to imply that the product is better than breast milk or idealise the use of infant formula (March 1994); and

- A picture of an apparently newly born baby should not be used to draw attention to information about infant formula. Breast milk is the best milk for babies up to 12 months old, but it is particularly valuable in the first few weeks of life when the baby is most vulnerable. Baby models for such pictures should be no younger than three months (February 1995).

- A picture of a woman breastfeeding should not be used to draw attention to information about infant formula because it:

  - may create an impression that the product is equivalent to breastfeeding;

  - appropriates the image of breastfeeding for the purpose of promoting a product; and

  - may be considered a misleading way of gaining attention (March 1994).

Clause 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)

- Instructions on how to prepare a specific infant formula may include the brand logo and should include the product name. Such materials should be limited to preparation instructions only and should not include other educational or promotional information (March 1994).
- Articles (such as pens and monogrammed paper) which bear a brand name and not just a logo should not be distributed at conferences. A slogan may be different to a logo (March 1994).

- Inexpensive materials likely to be used only in the process of professional duty (provided they are not readily given to mothers, for example small 'tear off' note pads) may be acceptable. Materials of a personal nature such as coffee mugs are not considered acceptable. Any such materials should bear only the company name and logo, and not a product brand name or a slogan (March 1994).
- The provision of basic refreshments at informational/educational events is acceptable provided it is in association with a presentation that coincides with a mealtime and that is not of a lavish nature (March 1994).

Clause 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)

## Advertisements to the general public

- Information for parents about the availability of infant formula should be accessible subject to the following:
    - announcements regarding changes to availability of infant formulas (for example, when formulas became available in supermarkets) are acceptable, but only on a one-off basis. Advertisements should appear only once in any one publication over a maximum three month period (to allow for inclusion in quarterly publications);
    - references to outlets of availability should be restricted to generic locations such as 'toy stores' or 'supermarkets', but not to specific locations such as 'Coles' or 'Woolworths';
    - such advertisements should have no promotional content. There should be no slogans and the logo should not include a slogan. Advertisements should not promote or encourage use of formula;
    - changes in formulation should be referred to only on the container, not promoted in advertisements (March 1994); and
    - pack shot size should be restricted to 4 cm x 3 cm (February 1996).
- New infant formula products should not be advertised or 'announced' to the general public (1994).
- When an infant formula 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 (June 1996).

- Slogans which could imply that feeding a baby the product would be better than breastfeeding should not be used – for example 'Every baby deserves the best' or 'A little extra something' (March 1994). However, slogans which clearly and distinctly compare infant formula products may be acceptable.

Clause 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)

- Free samples should not be provided by manufacturers through pharmacies except at the request of a qualified health professional for the purposes of professional evaluation. However, small packs could be made available in retail outlets for purchase at commercial competitive rates. (February 1993).

Clause 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)

## Interpretation of the term 'scientific'

- Scientific information should reflect the current scientific knowledge in total, not simply selective parts that can be used in a misleading way (February 1993).

## Use of the terms 'resembles', 'is close to' and 'is similar to'

- It is not considered scientific or factual to claim that a product resembles, or is similar to, or is close to breast milk unless the ingredient 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 manufacturer may be considered to be implying equivalence with breast milk.

- In informational material for health professionals, a manufacturer sometimes wishes to point out that mothers who cannot breastfeed should be advised that they should use an infant formula that resembles breast milk more closely than cow's milk. The term 'resembles breast milk' should be used only in this context of the comparison with cow's milk (December 1993).
- The following should be included in information used in promotional pieces to compare breast milk with infant formula or ingredients of infant formula:
    1. the units of measurement;
    2. the specific type of breast milk sample which is being compared;
    3. the average or mean values and the standard deviation; and
    4. the references for the source of data (January 1999).

## Access to health professionals

- It is up to health care professionals to decide whether they wish to see representatives of formula manufacturers. There is nothing in the MAIF agreement, nor in the WHO Code, which prevents the access of representatives to health care professionals, and indeed such access may play an important part in providing information about infant formula to health care professionals (June 1994 – February 1995).
- 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 (December 1995).
- It is reasonable for manufacturers to provide information for retailers of their products in trade journals only. The information should comply with the restrictions of clause 7(a) and clause 4(a) of the MAIF Agreement. They should not be promotional in any way, and the information should be restricted to the scientific and factual. In addition, such information should be able to be understood by retailers who are not health professionals (June 1996).

Clause 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)

## Inducements

- Items such as pens and papers (with the company name or logo only) designed for personal use may be handed out at a conference. However, if the gifts were designed to be taken home, this may be classed as an inducement. These materials should not be left in a hospital ward or other health care facility (September 1993).
- Anything intended or likely to be taken home may be considered an inducement.
- Competitions, included in information material for health professionals, which are clearly for the purpose of emphasising information that is restricted to the scientific and factual, may be acceptable. Such competitions, however, should not be an inducement to promote infant formulas. Therefore the prize should not exceed a value of $100. Manufacturers should also be mindful of clause 4(c) (February 1996).
- The provision of basic refreshments at informational/educational events is acceptable provided it is in association with a presentation that coincides with a mealtime and is not of a lavish nature (March 1994).

## Advertising

- A diary may be considered an inducement; however, where the diary provides information regarding infant formula in a subtle and appropriate manner, the information conforms with the requirements of the MAIF agreement and its interpretations, and the diary offers a source of scientific information not readily available to health professionals, then the diary may be viewed as primarily informational with the intention that the diary be for professional use rather than home use. Without the appropriate informational component, the diary may be considered similar to an item intended to induce the professional health care worker (September 2003).

Clause 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)

- Infant formula given to child care or day care centres for distribution in single or small quantities to parents when a mother has forgotten to bring her own formula or when the baby's formula has unexpectedly been exhausted, will be considered, according to the definition in the MAIF Agreement, as a 'sample'. Child care centres are not a setting in which professional evaluation of infant formula occurs, there is therefore no valid reason for manufacturers to give samples of infant formula to child care centres (May 1995).

## The position of APMAIF on conferences, seminars or publications, under the auspices of another organisation, by manufacturers of infant formula

Sponsorship of conferences, seminars or publications by manufacturers of infant formula does not necessarily breach the Agreement. However:

- Any sponsorship of meetings, seminars or conferences should be declared. There should be no conditions which relate to the marketing of the sponsor's product or to restrictions on promotion of breastfeeding.

- The sponsor should not exert any influence on the choice of speakers or the content of presentations.

- In line with clause 4(c) of the Agreement, any conference materials may bear the donating company's logo, but should not refer to a proprietary infant formula, and should be distributed only through the health care system.

# Appendix C

# MAIF GUIDELINES

*Marketing of infant formulas via electronic media*

## Overall Principles

1. The purpose of these guidelines is to support the interpretation of the MAIF Agreement. This guidance does not replace the responsibility of the APMAIF to apply the MAIF Agreement objectively, using commonsense in light of the context of the website, on a case by case basis.

2. These guidelines are to be read with the aim of the MAIF Agreement in mind and as an overarching principle: that is, to contribute to the 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.

## Consumer-based websites

3. Prior to a consumer accessing information about infant formula on a manufacturer website, manufacturers should display to the consumer the information required by clauses 4(a) and 4(b) **(Important Notice information)**. This display should include a click-through acknowledgement by the consumer that the consumer has read and understood the information. The display should be provided at least once per day for each consumer who accesses the site on multiple occasions.

4. A tab or link labelled 'Breastfeeding is Best', 'Benefits of Breast Milk' or similar, which links to the Important Notice information, should be included on each page of a website which provides information about an infant formula product. The tab/link should be included on the navigation toolbar of each web page or another equally prominent location.

5. The inclusion of product information about infant formula, including pack shots, on a website is acceptable, provided guidelines 3 and 4 are followed and:

- the product information is the same as the information on the label of the product (for example: ingredient listing, nutritional profile and nutrition information);
- any additional information provided is factual in nature and intended to provide sufficient information to help consumers to make an informed choice as to the specific nature of the infant formula, any intended special purpose, and the differences between formulas; and
- product logos are not displayed independently of pack shots.

*[Note: the objective here is a safe harbours approach – provide parameters around what is ok, and then it will be for individual companies to take a view outside of that.]*

## Frequently Asked Questions

6. FAQ pages on websites are an important means of providing information regarding formulas to consumers, and assisting consumers to differentiate between different types of formula.

7. Any FAQ pages relating to infant formula should commence with a statement as to why breastfeeding is best. This can be in the form of a statement at the top of the page, or an initial question and answer.

8. FAQs relating to infant formula should be guided by the same principles as guideline 5 above. For example, the following type of question and answer is acceptable:

- *'What is [ingredient/component]?'* [Ingredient/component] is a [description]. [Ingredient/component] can [describe function eg help maintain bowel motions / reduce the incidence of [condition].

9. If an FAQ relates to a named health condition, then in addition to any other information provided the answer should direct consumers to speak to a healthcare professional should they require further information.

## Other electronic communications and social media

10. In accordance with these guidelines, manufacturers and importers should adopt reasonable measures, to monitor social media forums such as Twitter, Facebook and YouTube which are within their control.

11. Manufacturers should not initiate discussion or actively provide information about infant formula via social media such as Twitter, Facebook, YouTube or electronic forums. However it is recognised that manufacturers and importers cannot control postings by consumers or third parties on such forums which are not under their control and are therefore entitled to respond to issues or questions raised provided:

- the question is directed to the manufacturer or the issue requires a corrective or clarifying statement;
- the response is in the same forum;
- the response is in line with guideline 5 above and, unless the context otherwise requires, limited to the matters raised by the consumer or third party post;
- if a question relates to a health condition, the consumer is directed to speak to a healthcare professional; and
- includes a statement to the effect that breastfeeding is best for babies, which links to the Important Notice Information on the manufacturer's website.

12. Electronic mailings to consumers (such as e-newsletters) should only include information about infant formula which is otherwise permitted under the MAIF Agreement (for example, an announcement about change of availability). Where appropriate, the relevant communication should include the Important Notice information.

13. Manufacturers are entitled to initiate communication to consumers via social media on urgent health and safety matters provided the communication is limited to the health and safety matter.

## Transitional period

14. These guidelines will apply from the date which is 6 months after written confirmation from the Advisory Panel.

# Appendix D:

# COMPLAINTS HANDLING PROCESS

*for the*

Advisory Panel on the Marketing in Australia of Infant Formula (APMAIF)

The APMAIF, in keeping with its terms of reference, receives and investigates complaints regarding the marketing in Australia of infant formula. Complaints are considered and resolved according to the specific terms and obligations set forth in the MAIF Agreement.

The following guidelines represent a model of best practice in the handling of complaints made to the APMAIF.

## COMPLAINTS REGISTRATION

All complaints received are registered by the APMAIF Secretariat. The complaints register and complaint statistics are provided at each APMAIF meeting for the panel's review. Complaint statistics are also published in the APMAIF's Annual Reports.

The identity of the complainant is recorded by the Secretariat but is not revealed to the APMAIF or any external party.

## COMPLAINTS CLASSIFICATION

Upon their receipt, complaints are classified as within or outside the scope of the *Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement* (MAIF Agreement) by the APMAIF Secretariat. A complaint may require further investigation before it can be determined as outside the scope of the MAIF Agreement where the classification of a complaint is not straightforward, the Secretariat may seek advice from the APMAIF Chair and/or refer the complaint to the APMAIF for classification.

The Secretariat may refer a complaint to another agency if the complaint is considered within the jurisdiction of that agency. For example, a complaint may be referred to:

- Food Standards Australia New Zealand (FSANZ)
- State/Territory Food Regulatory Authorities
- Australian Competition and Consumer Commission (ACCC)
- Therapeutic Goods Administration (TGA)

## COMPLAINTS THAT ARE CONSIDERED OUTSIDE THE SCOPE OF THE MAIF AGREEMENT

Complaints considered **outside the scope** of the MAIF Agreement may include the following (but not limited to):

- an infant formula manufacturer or importer (Company) that is not a current signatory to the MAIF Agreement or was not a signatory at the time the complaint was made;
- some retailer activity (e.g. price promotions in retail catalogues);
- infant merchandise (e.g. infant feeding bottles, teats, dummies, etc); and/or
- infant foods, including milk products formulated for children over 12 months of age.

The Secretariat advises the complainant in writing that their complaint is outside the scope of the MAIF Agreement and the reason/s for this classification.

## COMPLAINTS THAT ARE CONSIDERED WITHIN THE SCOPE OF THE MAIF AGREEMENT

Complaints considered by the Secretariat to be **within scope** of the MAIF Agreement or complaints referred to APMAIF where it is not certain whether they are **within scope** are handled as follows:

## 1. Investigation of the complaint by the APMAIF Secretariat

The Secretariat:

a) advises the Company that a complaint has been received by the APMAIF alleging a breach of the MAIF Agreement. The relevant clause/s of the MAIF Agreement and a copy of the original complaint (identity of the complainant is withheld) are provided to the Company;

b) invites the Company to provide a response for consideration by the APMAIF; and

c) may seek expert advice where appropriate.

## 2. Complaint and supporting documentation considered

All complaints that are determined to be within the scope of the MAIF Agreement are considered by the APMAIF. All available information concerning the complaint is provided to the APMAIF before its meeting. At the meeting, the APMAIF considers each complaint and makes a finding that:

a) **the complaint does not reveal a breach of the MAIF Agreement** – the APMAIF determines that the conduct that is the subject of the complaint is not a breach of the MAIF Agreement based on the evidence at hand.

*Complaints found not to reveal a breach are classified as 'closed' and both the Company and the complainant are informed of the APMAIF's decision in writing and the reasons for the decision.*

**or**

b) **requires further consideration** – the APMAIF has insufficient information to determine that there has been no breach. The complaint is carried over to the next APMAIF meeting pending further investigation and consideration of the response received from the relevant Company.

## 3. Company informed that there is insufficient information to determine that there has been no breach and invited to respond

For complaints where there is insufficient information to determine that there has been no breach of the MAIF Agreement, the APMAIF:

a) advises the Company that the complaint has been considered and, based on the evidence at hand, there is insufficient information to determine that there has been no breach of the MAIF Agreement;

b) provides the Company with a written explanation of any preliminary view that the APMAIF has reached together with the evidence or other material upon which that view has been reached; and

c) invites the Company to respond within 21 days with any further relevant information which is in addition to that provided at paragraph 1 and considered at paragraph 2.

*(The purpose of Step 3 of the Complaints Handling process is to ensure that the Company is provided with an adequate opportunity to respond to evidence available to APMAIF and to any preliminary view expressed by APMAIF, prior to a final determination being reached in accordance with Step 4.)*

## 4. Determination of Complaint

After considering any additional relevant information provided by the Company and bearing in mind the overriding principle reflected in clause 1 of the MAIF Agreement, the Panel shall:

a) Determine that the conduct that is the subject of the complaint is 'In Breach' of the MAIF Agreement based on the evidence at hand.

or

b) Determine that the conduct that is the subject of the complaint is 'Not in Breach' of the MAIF Agreement based on the evidence at hand.

*Complaints about conduct found to be **'Not in Breach'** are classified as 'closed' and both the company and the complainant are informed of the APMAIF's decision in writing and the reasons for the decision.*

## 5. Notification of an 'in breach' decision

Following an **'In Breach'** decision by the APMAIF:

a) the Company is advised that the APMAIF has determined the conduct that is the subject of the complaint to be **'In Breach'** of the MAIF Agreement and provides the reasons for this decision;

b) the Complainant is advised of the outcome and the reason/s for this decision;

c) the Parliamentary Secretary to the Minister for Health and Ageing is advised that the APMAIF has determined conduct considered by APMAIF as a result of a complaint to be **'In Breach'** of the MAIF Agreement and the reason/s for this decision; and

d) the **'In Breach'** decision is recorded in the APMAIF Annual Report.

**www.health.gov.au**

All information in this publication is correct as at February 2013

10065 February 2013