

**Advisory Panel on the Marketing in Australia of Infant Formula
(APMAIF) Submission to the Parliamentary Inquiry on the
Benefits of Breastfeeding**

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Introduction

Information provided in this submission highlights the activities of the Advisory Panel on the Marketing in Australia of Infant Formula (APMAIF) in protecting and promoting breastfeeding in the Australian community. It addresses:

- the relationship between the WHO Code and the MAIF Agreement;
- the role of the APMAIF;
- statistics on the complaints considered by the APMAIF and the outcomes including breaches and out-of-scope complaints;
- interpretations and guidelines on the MAIF Agreement issued by the APMAIF;
- advice and/or recommendations provided by the APMAIF to government; and
- implementation of the recommendations of the 2001 Knowles Review of the scope of the MAIF Agreement and the structure and operations of the APMAIF.

The International Code of Marketing of Breast-milk Substitutes

The World Health Organization *International Code of Marketing of Breast-milk Substitutes* (WHO Code) was developed based on these themes:

- the encouragement and support of breastfeeding;
- the promotion and support of appropriate and timely complementary feeding (weaning) practices with the use of local food resources;
- the strengthening of education, training and information on infant and young child feeding;
- the promotion of the health and social status of women in relation to infant and young child health and feeding; and
- the appropriate marketing and distribution of breast-milk substitutes.

The WHO Code was endorsed and adopted as a recommendation by the World Health Assembly in 1981. Governments were requested to take action to give effect to the principles and aim of the WHO Code, as appropriate to their social and legislative framework. Australia voted in favour of the resolution adopting the WHO Code.

The aim of the WHO Code is:

“to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breast-feeding, and by ensuring the proper use of breast-milk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution” (WHO 1981).

Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement 1992

The *Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement* (MAIF Agreement), authorised by the then Trade Practices Commission in 1992, gives effect in Australia to the aim and principles of the WHO Code. It sets out the obligations of manufacturers and importers to Australia of infant formulas.

The MAIF Agreement is a voluntary, self-regulatory code of conduct between manufacturers and importers on the marketing of infant formula in Australia. It aims to contribute to the provision of safe and adequate nutrition for infants, through the protection and promotion of breastfeeding. The MAIF Agreement has the same aim as the WHO Code (quoted above).

Implementation of some aspects of the WHO Code was not feasible because, in the Australian context, some of the pricing restrictions contained in the WHO Code could not be authorised under the *Trade Practices Act 1974*. Unlike the WHO Code, the scope of the MAIF Agreement does not include retailer activity, the marketing of infant feeding bottles and teats, and complementary infant foods for use as partial or total replacement for breast-milk. The full MAIF agreement is at:

http://www.health.gov.au/internet/wcms/publishing.nsf/Content/health-publth-publicat-document-brfeed-maif_agreement.htm

The Trade Practices Commission (TPC) now the Australian Competition and Consumer Commission (ACCC) authorised the MAIF Agreement on 23 September 1992. The TPC found that the public benefits of the MAIF Agreement outweighed any anti-competitive detriments. The determination came into force on 15 October 1992.

The MAIF Agreement was signed on 21 May 1992 by these six original signatories:

- Abbott Australasia Pty Ltd
- Douglas Pharmaceuticals Pty Ltd
- Mead Johnson Australia
- Nestlé Australia Limited
- Sharpe Laboratories Pty Ltd
- Wyeth Pharmaceuticals Pty Ltd.

Other companies have subsequently agreed to be bound by the marketing restrictions in the MAIF Agreement. They are:

- Snow Brand (Australia) Pty Ltd (1993)
- H J Heinz Company Australia Ltd (1995)
- Amcal Ltd (1997) (withdrew in 1999)
- Nutricia Australia Pty Ltd (1998)
- Bayer Australia (2006).

The APMAIF understands that Douglas Pharmaceuticals Pty Ltd, Mead Johnson Australia, Sharpe Laboratories Pty Ltd, and Snow Brand (Australia) Pty Ltd are no longer active in the Australian infant formula market.

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

The Advisory Panel on the Marketing in Australia of Infant Formula is a non-statutory advisory panel established by the Australian Government in 1992 to monitor compliance with, and advise the Government on, the MAIF Agreement.

The APMAIF 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
- provide advice on the operation of the MAIF Agreement to the Australian Government Minister for Health and Ageing.

The APMAIF comprises an independent Chair, a community and consumer representative, a public health and infant nutrition expert, a panel member with legal expertise and an infant formula industry representative. The Australian Government Parliamentary Secretary to the Minister for Health and Ageing appoints the panel members. The industry representative is nominated by the Infant Formula Manufacturers Association of Australia (IFMAA). The Australian Government Department of Health and Ageing is an observer at APMAIF meetings.

The current APMAIF members are:

Acting Chair – Mr John Kain, also the panel member with legal expertise. Mr Kain was appointed as Acting Chair following the resignation of the previous APMAIF Chair on 3 November 2006. His appointment started on 13 November 2006.

Community and Consumer Representative - Dr Jennifer James. Dr James was first appointed on 7 June 2002 and her current term of appointment expires on 30 November 2008.

Public Health and Infant Nutrition Expert - Professor Colin Binns. Professor Binns was first appointed on 5 October 2001 and his current term of appointment expires on 30 June 2007.

Panel Member with Legal Expertise - Mr John Kain. Mr Kain was appointed on 1 August 2006 with his term of appointment expiring on 30 June 2008.

Industry Representative - A new representative (Ms Janet Carey) has recently been nominated by IFMAA following the resignation of Mr David Forsythe.

The work of the APMAIF is supported by the APMAIF Secretariat located in the Population Health Division of the Australian Government Department of Health and Ageing.

The APMAIF has protocols for the Secretariat and has established procedures and processes for handling complaints to ensure transparency and fairness. Breaches of the MAIF Agreement are recorded in the APMAIF Annual Report which is tabled in the Parliament of Australia.

Complaints to the APMAIF and Outcomes

The role of the APMAIF includes receiving and investigating complaints regarding alleged breaches of the MAIF Agreement by manufacturers and importers of infant formula. Individuals and members of industry, community and consumer groups can lodge complaints with the APMAIF.

The APMAIF meets at least four times in a year to consider the complaints received. It has set processes and procedures that are followed in assessing, deliberating and making decisions regarding each complaint. Complainants are kept informed about actions regarding complaints particularly in situations where the APMAIF has not finalised the complaint within its set timelines. Delays occur when complaints are further investigated to ensure that the APMAIF has all the relevant information for making the correct decision on the complaint. APMAIF's deliberations on a complaint can result in any of the following findings:

- breach of specified clause(s) of the MAIF Agreement
- not in breach
- outside the scope of the MAIF Agreement.

The APMAIF Secretariat undertakes an initial assessment and categorises complaints as within the scope (in-scope) or outside the scope (out-of-scope) of the MAIF Agreement. Based on the APMAIF's guidelines if a submitted complaint is outside the scope of the MAIF Agreement the Secretariat responds directly to that complaint. Complaints assessed by the Secretariat as out-of-scope are not reassessed by APMAIF but are recorded in the Complaints Register and tabled at each APMAIF meeting.

There are no financial or legal sanctions associated with breaches of the MAIF Agreement. However if a breach is persistent or serious APMAIF may advise the Minister for Health and Ageing to review the matter and take appropriate action.

More detailed information regarding the complaint lodgement process is provided on the APMAIF website and in the annual reports.

Table 1 overleaf provides information about the number of complaints received, decisions made by APMAIF and the outcomes since the first APMAIF meeting in 1993. This table provides a summary of the data presented in each of the annual reports and includes previously unpublished data from 2004-5 and 2005-6.

Complaints classified as outside the scope of the MAIF Agreement

The MAIF Agreement covers only the marketing activities of manufacturers and importers of infant formula. See MAIF Agreement definition of infant formula at Attachment A. Complaints related to other issues are considered to be out-of-scope of the MAIF Agreement. The APMAIF regularly receives complaints that are outside the scope of the MAIF Agreement. The majority of these complaints relate to the infant formula marketing activities of retailers such as supermarkets and pharmacies, as well as toddler milk products. **Table 2** provides details of the types and the numbers of out-of-scope complaints received by APMAIF.

Table 1: Categories of complaints to the APMAIF and outcomes

APMAIF Annual Reports													
	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06
Received	96	83	33	86	72	77	26	10	49	170	60	54	122
Carried from previous year	-	-	-	-	-	-	-	2	-	19	20	15	42~
Breach	36 [∞]	4	9	10	14	14	5	7 [^]	1	1	1	0*	0
Split decision	-	-	-	-	-	-	-	-	-	-	1	-	-
Not in breach	60	79	24	76	36	45	12	0	5	19	29	17 [@]	7 [#]
Out of scope	-	-	-	-	22	18	7	5	43	149	34	13	78
Carried to next year	-	-	-	-	-	-	2	-	19	20	15	39	79 ⁺

Note: Details on specific out-of-scope complaints were not reported prior to 1997

[∞] Some of these breaches concerned material distributed by manufacturers prior to the MAIF Agreement coming into effect

[^] Includes 2 breach decisions carried over from the 1999-00 reporting period

* Three breaches were made but were appealed and carried over into the 2005-06 reporting period

[@] Includes one complaint with insufficient evidence to proceed

~ Includes the 3 appealed breach decisions from the 2004-05 reporting period

Includes the 3 overturned breaches appealed in the 2004-05 reporting period

+ Complaint processing was delayed during this period due to resignation of the APMAIF Chair

Table 2: Categories of out-of-scope complaints and their numbers

APMAIF Annual Reports										
	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	
Retailer activities	15	14	5	3	42	117	21	10	66	
Toddler milk products	2	-	-	2	-	16	5	3	8	
Infant feeding bottles and teats, complementary foods	2	-	1	-	1	12	1	-	4	
Dietary supplement added to infant formula	-	-	1	-	-	-	-	-	-	
Advertising products that are not infant formula, e.g. baby food	-	4	-	-	-	1	2	-	-	
Closed without further investigation/ insufficient evidence	-	-	-	-	-	-	5	-	-	
Publications/ advertisements	-	-	-	-	-	3	-	-	-	
TOTAL	19	18	7	5	43	149	34	13	78	

Note: Details on specific out-of-scope complaints were not reported prior to 1997

Breaches of MAIF Agreement

The annual number of breaches of the MAIF Agreement upheld by APMAIF has decreased over the past decade. In 2006 three of the breach decisions made by the Panel in the 2004-05 reporting period were appealed by the manufacturers of the products involved. Based on the new evidence provided, the appeals were successful and the APMAIF overturned the breach decisions. **Table 3** summarises upheld breaches of the MAIF Agreement over the last twelve years. The companies Abbott Australasia Pty Ltd, Nestlé Australia Limited, Sharpe Laboratories Pty Ltd and Snow Brand (Australia) Pty Ltd are not included in the table as they have not had any breach decisions made against them.

Table 3: Upheld breaches by company and year

Company	Number of breaches												
	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06
Douglas Pharmaceuticals Pty Ltd	1	0	1	8	7								
Wyeth Pharmaceuticals Pty Ltd	20	4	2	2	2	9	2	1*	0	0	0	0	0
Bristol-Myers Squibb Australia Pty Ltd (Mead Johnson)	15 [#]	0	5	0	3	2	2	2*	1				
H J Heinz Company Australia Ltd			1	0	0	1	0	1	0	1	1	0	0
Amcal Ltd				0	2	0	1						
Nutricia						2	0	3	0	0	0	0	0
TOTAL	36 [∞]	4	9	10	14	14	5	7	1	1	1	0	0

[#] Company was known as Mead Johnson Australia during this reporting period

[∞] Some of these breaches concerned material distributed by manufacturers prior to the MAIF Agreement coming into effect

* Two breaches (one for each company) were carried over from the 1999-2000 reporting period

Shaded areas = Not a signatory to the MAIF Agreement

Shaded areas = No longer active in the Australian infant formula market. Amcal withdrew in 1999.

Recent increase in complaints to the APMAIF

There has been an unprecedented increase in the number of complaints received by the APMAIF during the reporting period of 2006-07. Between 1 July 2006 and 30 October 2006 the Secretariat received 498 individual complaints from the public. In the corresponding period of July 2005 to October 2005 only 11 complaints were received.

The majority of these complaints (323) were out-of-scope. **Table 4** provides a breakdown of the number of out-of-scope complaints by category.

Table 4: Categories of out-of-scope complaints received by APMAIF between July and October 2006

Out-of-scope categories	Number of complaints
Retail activity – supermarkets	119
Retail activity – pharmacies	80
Toddler milk products	76
Infant feeding bottles/teats/dummies	37
Baby food	5
Non-signatories to the MAIF Agreement	6
TOTAL	323

Numbers of complainants submitting complaints to the APMAIF

The 498 complaints received by APMAIF between 1 July 2006 and 30 October 2006 were from 42 separate complainants. **Table 5** provides information regarding the number of complainants submitting in-scope and out-of-scope complaints.

Table 5: Number of complainants submitting in scope, out-of-scope and total complaints to APMAIF between July and October 2006

	Number complainants
In scope complaints (175)	29
Out-of-scope complaints (323)	33
Total number of complaints (498)	42

Issues Relating to the Marketing in Australia of Infant Formula Agreement

The MAIF Agreement provides national implementation in Australia of the aim and principles of the WHO Code. Participation in the MAIF Agreement is voluntary. Since the MAIF Agreement was originally signed in 1992 new manufacturers and importers of infant formula have entered the Australian market. New ways of retailing infant formula have also emerged. Stakeholders have expressed concern regarding the scope of the MAIF Agreement to address these issues. Complaints about activities of non-signatories to the MAIF Agreement are classified as ‘out-of-scope’. Since 1997 data about out-of-scope complaints has been collected and reported in the APMAIF Annual Reports. APMAIF is therefore able to monitor trends that may impinge on the effectiveness of the MAIF Agreement in protecting breastfeeding.

Broad concerns about the effectiveness of the MAIF Agreement, and several specific themes for out-of-scope complaints have been identified.

Differences between the MAIF Agreement and the WHO Code

The WHO Code has a wider scope than the MAIF Agreement. There are also differences between the infant formula definitions used in the WHO Code, the MAIF Agreement and the Australia New Zealand Food Standards Code (refer to **Attachment A**).

The scope of the WHO Code encompasses:

“breast-milk substitutes, including infant formula; other milk products, foods and beverages, including bottlefed complementary foods, when marketed or otherwise represented to be suitable, with or without modification, for use as a partial or total replacement of breast milk; feeding bottles and teats [*sic*]. It also applies to their quality and availability, and to information concerning their use” (WHO 1981).

The WHO Code also applies to all the wholesale and retail distributors, the health care system, health workers and marketing personnel involved in marketing and promotion of the above infant feeding products.

The MAIF Agreement only applies to the Australian manufacturers and importers of infant formula who are signatories to the agreement.

Community groups, health professionals and breastfeeding advocates have raised concerns that the MAIF Agreement is limited and is unable to fulfil the objectives of the WHO Code. They assert that the MAIF Agreement does not go far enough to protect and promote breastfeeding because it excludes retailers, infant feeding bottles and teats, toddler milk products and non-signatories. Certain segments of the community have been particularly active in raising these concerns. This is demonstrated by the fact that between 1 July 2006 and 30 October 2006 498 complaints were received from 42 separate complainants.

APMAIF has been aware of these issues and has been keen for resolution for some time, with the First Annual Report in 1994 noting that “since the beginning of negotiations of the MAIF Agreement it has been recognised that development of a similar Agreement on the marketing of infant’s bottles and teats would be the second stage in implementing the WHO Code in Australia.” Between 1994 and 1996 the Federal Bureau of Consumer Affairs negotiated with the Baby Products Association about the introduction of a code of practice on infant feeding bottles and teats however the negotiations were unsuccessful.

APMAIF also recommended in its First Annual Report for the development of a code of practice for retailers within the scope of the WHO Code. The Knowles Report and APMAIF Annual Reports between 1995 and 2001 have supported this call for a code of practice for retailers, however industry support for a retailer code has been lacking.

APMAIF has worked with IFMAA to develop the ‘Guidelines for In-Store Promotions of Infant Formula by Manufacturers in Australia through Retailers’. However the MAIF Agreement does not give the APMAIF any authority to deal with product promotions through retailers.

Complaints outside the scope of the MAIF Agreement

- Complaints about Retailers

Complaints about retailer activity comprise the majority of out-of-scope complaints received by APMAIF. These complaints usually refer to supermarkets and pharmacy advertisements, price promotion, specials catalogues and window displays.

A particular group of retailers, which APMAIF terms ‘retail distributors of own brand infant formulas’ source infant formula from export manufacturers, brand the infant formula with their own company label and then sell it in the retail sector. They do not manufacture or import infant formula themselves and therefore do not fall within the scope of the MAIF Agreement. When the MAIF Agreement was developed in 1992 the issue of ‘retail distributors of own brand infant formulas’ did not exist. ‘Retail distributors of own brand infant formulas’ are primarily pharmacies.

- Complaints about Toddler Milk Products

Toddler milk products are fortified drinks that are marketed for toddlers over 12 months of age and are usually promoted as the next ‘step’ following infant formula. Toddler milk products and their promotion are outside the scope of the MAIF Agreement. They are also not captured by the Australia New Zealand Food Standards Code’s Standard 2.9.1 or 2.9.2 which regulate infant formula products and foods for infants.

A number of complainants have expressed concern that advertisements for toddler milk products:

- may subtly obscure the boundaries between infant and toddler milk products,
- could confuse parents into thinking that toddler milk products are suitable for infants under the age of 12 months,
- promote brand recognition of an infant formula product with similar packaging.

- *Complaints about Infant Feeding Bottles and Teats*

The third most frequently received out-of-scope complaint is for infant feeding bottles and teats. Some complainants are concerned that bottles and teats are not covered in the MAIF Agreement although they are included in the WHO Code. There are also concerns from some consumer groups about a lack of Australian quality and safety standards or guidelines for bottles and teats. A number of complainants also have concerns about the marketing of dummies.

Addressing stakeholder concerns

APMAIF's role is described in its terms of reference. APMAIF does not have the authority to address all the concerns raised by stakeholders.

In 2002 APMAIF developed its first Strategic Plan which included 'communication and liaison' as a priority area, with the goal of strengthening stakeholder confidence and understanding of APMAIF. Since then APMAIF has met with the following organisations and provided a forum to discuss issues of concern:

- IFMAA (26 August 2003, 27 April 2004)
- Australian Breastfeeding Association (17 June 2003, 2 March 2005)
- Australian Lactation Consultants Association (19 May 2005).

In addition, since 17 May 2006, APMAIF has concluded each of its meetings with an informal stakeholder meeting. These have been held in Adelaide, Melbourne and Sydney. The following organisations have attended: IFMAA, Australian Lactation Consultants Association, Australian Breastfeeding Association, Australian College of Midwives Incorporated and the Pharmacy Guild of Australia.

The then Parliamentary Secretary to the Minister for Health and Ageing, the Hon Christopher Pyne MP, attended the first informal stakeholder meeting in May 2006.

Interpretations and Guidelines of the MAIF Agreement Issued by the Panel

In considering complaints about alleged breaches of the MAIF Agreement the APMAIF needs to interpret clauses of the Agreement. These interpretations are published in the APMAIF Annual Reports.

To view the interpretations of the APMAIF up to 2003-04, please refer to page 41 of the 2003-04 Annual Report available from the following internet address [http://www.health.gov.au/internet/wcms/publishing.nsf/Content/health-publth-publicat-document-brfeed-apmaif_03.htm/\\$FILE/apmaif_annrep0304.pdf](http://www.health.gov.au/internet/wcms/publishing.nsf/Content/health-publth-publicat-document-brfeed-apmaif_03.htm/$FILE/apmaif_annrep0304.pdf)

Subsequent to the 2003-04 Annual Report one additional interpretation regarding clause 4(a) of the MAIF Agreement has been determined by the APMAIF.

Clause 4(a) of the MAIF Agreement

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;
- (iv) 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)

Interpretation of Clause 4(a)

Clause 4(a)'s inclusion in the MAIF Agreement needs to be interpreted with the aim of the MAIF Agreement (clause 1) in mind. The Panel therefore requires the clause 4(a) statement to stand alone as a separate paragraph in any informational material as a statement emphasising, protecting and promoting breastfeeding.

Standing alone means the clause 4(a) statement is separately headed and any subsequent paragraphs are headed differently, includes the above elements and does not contain any information about infant formula products, its components or its possible use. As previously interpreted in 1993, the clause 4(a) statement

- should be in the same font/print type etc as surrounding material or at least 10 point; and
- the meaning of the statement must not be de-emphasised as compared to informational material about breastmilk substitutes (November 2006).

APMAIF Advice and/ or Recommendations

One of the APMAIF terms of reference is to provide advice on the operation of the MAIF Agreement to the Australian Government Minister for Health and Ageing. APMAIF Annual Reports are provided to the Minister and tabled in the Australian Parliament.

Over the years APMAIF Annual Reports have contained a range of recommendations to government. Two important recommendations that have recurred throughout the APMAIF Annual Reports are the:

- need for a code of practice or guidelines on the marketing of infant formula by retailers (recommended in the Annual Reports from 1994 to 2000-01 inclusive);
- need for a code of practice or guidelines for the marketing of infant feeding bottles and teats (recommended in the Annual Reports from 1994 to 1997-98 inclusive).

As previously mentioned, the APMAIF does not have the authority to address all the concerns raised by complainants and in particular out-of-scope complaints pertaining to:

- retail activity
- toddler milk products
- infant feeding bottles and teats.

Whether or not a regulatory framework is developed to deal with these classes of complaints will depend partly on whether the baby products industry and retailers would be prepared to develop further voluntary industry codes of conduct and partly on the Australian Government's legal and policy context. Any further regulation would require assessment for feasibility and regulation impact on all stakeholders.

In broad terms, there is a range of regulatory options that might be considered. These include:

- voluntary self-regulation either through an amended MAIF Agreement or additional voluntary industry codes of conduct. Amendments or additional codes would also require authorisation by the Australian Competition and Consumer Commission under the *Trade Practices Act 1974*; or
- developing prescribed codes of conduct that are enforceable under the *Trade Practices Act 1974* (participation in prescribed codes may be either voluntary or mandatory); or
- other delegated or primary legislation.

The Knowles Review of the MAIF Agreement and Operations of the APMAIF

In November 2000 the then Minister for Health and Aged Care appointed the Hon Rob Knowles to conduct an independent review of the composition and operation of the APMAIF and the scope of the MAIF Agreement. The broad objectives of the review were to investigate and provide independent advice to the Minister for Health and Aged Care on:

- the scope of the current MAIF Agreement and its capacity to meet the objectives of the WHO Code
- the current structure and operations of APMAIF including concerns about the length of time to investigate complaints under the MAIF Agreement
- strategies to assist APMAIF in addressing the range of complex issues facing the APMAIF.

Mr Knowles consulted with stakeholders including the public, industry and breastfeeding advocates.

Mr Knowles reported in 2001. In Knowles' view, there were some stakeholder concerns with the MAIF agreement and APMAIF, as follows:

- “ 1. There is basic disagreement on the purpose of the agreement;
2. The expectation of the contribution that the agreement can make to increasing breastfeeding rates is beyond the capacity and scope of the agreement; and
3. The operation of the APMAIF” (Knowles, 2001).

Mr Knowles noted that “Much of the criticism of the current arrangements relates to activity outside the scope of the current MAIF agreement.” The marketing of infant feeding bottles and teats was one such issue.

The MAIF Agreement allows manufacturers and importers to provide infant formula samples to health care professionals “for the purpose of professional evaluation or research at the institutional level.” Mr Knowles commented that:

“the risk of more wide-spread distribution of samples are real... The availability of samples may also lead to health professionals being more likely to advise mothers to cease or reduce breast-feeding, when the alternative may be a time consuming assessment of the mothers difficulties in breast-feeding” (Knowles, 2001).

Some of the strategies recommended by Mr Knowles have not been implemented, such as:

“the establishment of the position of Infant Nutrition Co-ordinator at a National level... [to] be supported by a broad-based Advisory Council to advise the Commonwealth State/Territory Governments on the various components of a comprehensive strategy under the Public Health Partnership.”

“...the development of a voluntary code of practice for the Retail Industry with particular reference to Pharmacies and Supermarkets across Australia” (Knowles, 2001).

Following the recommendations made by Mr Knowles, the following reforms have been implemented:

- procedures to streamline the APMAIF complaints process;
- a process for consulting with the infant formula industry on APMAIF budget issues; and
- APMAIF has been expanded to include a public health and infant nutrition expert and a panel member with legal expertise.
- IFMAA companies have developed self-regulatory guidelines for the distribution of product samples within the health sector.

Other current work includes:

- APMAIF and IFMAA are reconsidering the ‘Guidelines for In-Store Promotions of Infant Formula by Manufacturers in Australia through Retailers’
- an ongoing focus to strengthen stakeholder understanding and confidence in APMAIF through improved promotion, communication and education.

The Knowles Report is available on APMAIF’s internet site at:

www.health.gov.au/internet/wcms/publishing.nsf/content/food-1

Conclusion

APMAIF believes that breastfeeding provides ideal and unequalled nutrition for infants. APMAIF participates in the protection and promotion of breastfeeding by monitoring compliance by infant formula manufacturers and importers with the MAIF Agreement. The MAIF Agreement is the basis of Australia's implementation of the WHO Code.

The annual number of breaches of the MAIF Agreement has decreased over time reflecting compliance by participating companies. However out-of-scope complaints have dramatically increased during the past year. Retailer activities are the main source for out-of-scope complaints received by APMAIF.

There is no process for APMAIF to manage complaints concerning retailer activity, toddler milk products and infant feeding bottles and teats. Complaints about these activities and products are outside the scope of the MAIF Agreement and therefore beyond the authority of the APMAIF. Their non-inclusion causes concern for the public. Recommendations for the development of a code of practice for retailers have been previously put forward by the APMAIF in Annual Reports and in the 2001 Knowles Review. The development of an agreement covering infant feeding bottles and teats has also been suggested by the APMAIF since the early 1990's. The lack of coverage of these types of activities and products is an issue the inquiry may want to address.

Out-of-scope complaints reflect the limitations of the MAIF Agreement. Some complainants believe that these limitations undermine Australia's capacity to protect and promote breastfeeding as a means of improving the health and nutrition of infants and young children, consistent with the objectives of the WHO Code. Any decision to develop regulatory arrangements to address issues raised by out-of-scope complaints would require assessment for feasibility and impact on stakeholders.

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Food Standards Australia New Zealand (2007) Issue 91 *Australia New Zealand Food Standards Code*. <http://www.foodstandards.gov.au/thecode/foodstandardscode.cfm>

Knowles, R (2001) *Independent Advice on the Composition and Modus Operandi of APMAIF and the Scope of the MAIF Agreement*, Canberra.

World Health Organization (1981) *International Code of Marketing of Breast-milk Substitutes*, Geneva.

Definitions of infant formula used in the WHO Code, the MAIF Agreement and the Australian New Zealand Food Standards Code

	Definition
WHO Code	A breast-milk substitute formulated industrially in accordance with applicable Codex Alimentarius standards, to satisfy the normal nutritional requirements of infants up to between four and six months of age, and adapted to their physiological characteristics. Infant formula may also be prepared at home, in which case it is described as "home-prepared".
MAIF Agreement	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
Australia New Zealand Food Standards Code Standard 2.9.1: Infant Formula Products	<p>Infant means a person under the age of 12 months.</p> <p>Infant formula means an infant formula product represented as a breast milk substitute for infants and which satisfies the nutritional requirements of infants aged up to four to six months.</p> <p>Follow-on formula means an infant formula product represented as either a breast milk substitute or replacement for infant formula and which constitutes the principal liquid source of nourishment in a progressively diversified diet for infants aged from six months.</p>

responsible opinion, as required in clause 7. It should be noted that the Panel has upheld several complaints of breaches of clause 7. Whether to see a representative of any company is always the decision of the health professional concerned. Manufacturers should note that health professionals are more likely to allow access if they believe that the information provided will be scientific, factual and reflect current knowledge.

Ms Ros Escott gave a lecture on the implementation of the WHO International Code in Australia to the Australian Lactation Consultants Association (ALCA) Seminar in Victoria in September 1993. Ms Minchin edits "ALCA News" which frequently carries articles on the implementation of the WHO Code in Australia. Dr Holmes will present a lecture about the work of the Panel at the ALCA conference in August this year.

The Panel wishes to take the opportunity of the presentation of their first Annual Report to the Ministers to publicise the MAIF Agreement and the role of the Panel. The first week of August is World Breastfeeding Week which this year has as its theme the WHO International Code. This is therefore a particularly appropriate time to increase awareness of the Agreement. The Panel hopes to have published articles about the MAIF Agreement in appropriate journals to reach retailers and a variety of health professionals.

Breaches of the Agreement

One of the main tasks of the Panel is to oversee the operations of the Agreement. Complaints concerning alleged non-compliance with the Agreement are sent to the Panel by individual members of the general public, health care professionals and members of organisations such as the Nursing Mothers Association of Australia and the Australian Lactation Consultants Association. To a lesser extent complaints are also received from the manufacturers themselves about the activities of other manufacturers although in some instances the complaint tends to be in the form of a query in broad terms rather than a specific complaint.

In considering complaints about the marketing activities of the infant formula manufacturers and importers the Panel was aware that some material had been distributed by manufacturers prior to the Agreement coming into effect. Nevertheless the Panel takes the view that if the material appears to be still current and particularly if it is still being distributed or is otherwise readily available then it comes within the ambit of the Agreement and should be considered in that context.

The secretariat has registered 96 complaints or queries about the marketing activities of the manufacturers in relation to infant formulas. In many cases a particular item drew several complaints. The Panel determined a total of 36 separate breaches of the Agreement.

Manufacturer	Number of breaches
Abbott	0
Douglas Pharmaceuticals	1
Mead Johnson	15
Nestle	0
Sharpe Laboratories	0
Snow (not marketing in Australia)	0
Wyeth	20

Most of the breaches involve material for the information of health professionals. A smaller number concerned advertising to the general public.

There remain an infinite number of possible unacceptable images not yet covered by an interpretation. It would be easy for manufacturers to advise their marketing department not to use images or pictures that could be considered to be controversial in the context of the Agreement. There is great scope for acceptable illustrations to draw attention to information about formula products. All the manufacturers claim to adhere to the Agreement, and to the spirit of the International Code. Many breaches are clear cut. But grey areas exist where the Panel needs to determine what is acceptable under the Agreement. There is no need for the manufacturers to produce material that enters these grey areas. The Agreement allows for distribution of information to health professionals that is scientific and factual; appropriate pictures that draw attention to the information are also acceptable. Several manufacturers have shown that they are able to produce materials which fall well within the restrictions of the Agreement. Many health professionals are well informed about the Code and, although they may not make a formal complaint, they note the type of advertising employed by manufacturers and form an opinion of that company as a result.

Donations to child care centres

After receiving a complaint about the donation of infant formula to a child care centre in 1995, the Panel made the following interpretation of Clause 7(d) of the Agreement:

- *Infant formula given to child care or day care centres for distribution in single or small quantities to parents or 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. Such provision will be considered by the Panel as a breach of the Agreement.*

Breaches

This table of breaches covers the period from August 1994 to June 1995. The breaches identified in the APMAIF report in 1994 covered the period from the formation of the Advisory Panel (December 1992) to July 1994.

Manufacturer	Breaches
Wyeth	4
Abbott	0
Douglas Pharmaceuticals	0
Mead Johnson	0
Nestlé	0
Sharpe Laboratories	0
Snow Brand	0
(not marketing in Australia)	

The Panel determined that Wyeth had breached the Agreement in information produced for health professionals. In advertisements which appeared 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 following claims breached clause 7(a) of the Agreement:

1. 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. Wyeth has agreed to stop using this slogan.
2. 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".

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. 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)"

The Panel considered it was misleading for Wyeth to claim that S26 has a fatty acid profile similar to breast milk. Wyeth undertook to cease using this statement.

3. In the advertisement in the Australian Journal of Pharmacy, 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:

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.

4. Additionally, it was claimed that "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." 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.

Following discussion in February 1995, the Panel was pleased to gain agreement from Wyeth to cease using these statements.

Additionally the Panel has written to the editors of journals for health professionals advising them of the operation of the MAIF Agreement in Australia.

Implementation of World Health Assembly Resolution 47.5 - Cessation of free and subsidised supplies

WHO originally allowed free or subsidised supplies through the health care system as being necessary in some circumstances for needy families. However, the use of free and subsidised supplies as a marketing strategy by manufacturers may undermine breastfeeding.

World Health Assembly Resolution 39.28 in 1986 called for an end to free and subsidised supplies of breast milk substitutes within the health care system. The World Health Organisation and UNICEF set a target date of June 1994 for the end of free and low cost supplies in developed countries.

The commitment to ending free and subsidised supplies was reaffirmed in May 1994 at the World Health Assembly. Australia supported both of these resolutions.

In January 1995, the Panel attended a combined meeting with the Infant Nutrition Panel, and representatives of the Department of Health to discuss the distribution of infant formula in the community setting when the practice of manufacturers donating free or subsidised supplies ceases.

The Panel recognises that there are difficulties in implementing World Health Assembly Resolutions on this issue but holds the view that this marketing practice should cease. The Panel is aware that a recommendation made at the Health Ministers Conference in June 1995 stated that "individual States actively encourage breastfeeding for new born children within their respective jurisdictions". We urge all State Ministers of Health to implement Resolution 47.5 without delay and urge hospital and community health professionals to give their support to such implementation.

This year the Panel has updated its position paper on the cessation of free and subsidised supplies, which is at Appendix 5.

From: Advisory Panel on the Marketing in Australia of Infant Formula (1996) *Room for improvement: Industry and protection of infant nutrition in Australia. Report of the Advisory Panel on the Marketing in Australia of Infant Formula, August 1995 – June 1996*, Canberra, pgs 17-20.

Breaches

This table covers the breaches of the MAIF Agreement from July 1995 to June 1996

Manufacturer	Number of Breaches
Bristol-Myers Squibb Australia Pty Ltd (Mead Johnson)	5 One of these was a serious breach requiring the attention of the Ministers
Wyeth Australia Pty Limited	2
HJ Heinz Company Australia Ltd	1
Douglas Pharmaceuticals	1
Nestle Australia Limited	0
Abbott Australasia Pty Ltd	0
Sharpe Laboratories Pty Ltd	0
Snow Brand Pty Ltd (not marketing in Australia)	0

Breaches by Bristol-Myers Squibb Australia Pty Ltd (Mead Johnson)

Breach 1 – Nutritional Update – “Iron in Infancy”

The Panel are aware that the issue of iron deficiency in young children is important and not sufficiently understood by many doctors and other health professionals. It is therefore an appropriate topic for a “Nutritional Update”. Unfortunately the Panel believe that the “Update” failed to provide objective and scientific information only on the subject of iron deficiency, and therefore breached Clause 7 (a) of the MAIF Agreement.

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: “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.”

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.

Breaches 2 and 3 – Musical competition brochures

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’s lullaby.

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.

1. The Enfalac brochure contained the question and answer:

“Which routine infant formulas fatty acid profile, compared with breast milk, can’t be beaten?”

“Enfalac has a fatty acid profile close to breast milk”.

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.”

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.

2. 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.

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.”

The Minister for Consumer Affairs, Ms Jeannette McHugh, issued a press release about the breaches. The Panel had a constructive meeting with representatives of Bristol-Myers Squibb Australia Pty Ltd (Mead Johnson) in relation to these breaches. The Panel and the representatives also met with the Minister for Consumer Affairs, who expressed concern that the voluntary Agreement would be jeopardised by such breaches. The Bristol-Myers Squibb Australia Pty Ltd (Mead Johnson) representatives assured her of their commitment to the Agreement and their willingness to distribute a retraction to all health professionals who had received the Enfalac brochure. This retraction was subsequently distributed by Bristol-Myers Squibb Australia Pty Ltd (Mead Johnson)

Breaches 4 and 5 – OTC Guide – “The Source”

The Panel received a complaint about entries by Mead Johnson 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.

In addition to informing Bristol-Myers Squibb Australia Pty Ltd (Mead Johnson) of our concerns we corresponded with the editors of the OTC guide who were keen to learn about the voluntary Agreement, and asked us to contribute to a brief introduction to infant feeding which will precede the section containing infant formula product information in the next edition.

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”.

This claim is neither scientific nor factual. The Panel therefore determined that it breaches Clause 7 of the Agreement.

Breaches by Wyeth Australia Pty Limited

Breach 1 – MIMS Entry

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".

Clause 7(a) states:

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

The Panel determined that this entry breached Clause 7 (a) of the Agreement 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.

Breach 2 – Why your Father Looks so Old

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.

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.

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.

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."

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." 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.

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.

The Panel asked for urgent withdrawal of the booklet but was told by Wyeth Australia Pty Limited that all copies had already been distributed, and that a second edition was planned. The Panel have requested the opportunity to view a draft of the second edition.

- When manufacturers produce information for parents about infant feeding they should take great care that the information does not undermine breastfeeding.

Breach by HJ Heinz Company Australia Ltd

This year Heinz entered the infant formula market for the first time. Marketing issues are complicated by the fact that Heinz has advertised its baby food products for years. Now that Heinz has become a manufacturer of infant formula and has agreed to be bound by the restrictions of the voluntary Agreement, Heinz will need to be cautious to ensure that it is clear that infant formula products are not included in advertising or promotion of other products in their range of baby foods.

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 availability in the same way as several other manufacturers. Heinz were advised of the relevant interpretation of Clause 5.

Unfortunately 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: "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."

These promotional sentences breach Clause 5 (a) of the Agreement.

"Manufacturers and importers of infant formulas should not advertise or in any other way promote infant formulas to the general public."

Breach by Douglas Pharmaceuticals Pty Ltd

The Panel determined that a free bib marked "Karicare" promoted in the August/September (1995) 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 (eg toiletries) or the specific product (eg 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. This interpretation applies to all the signatories to the Agreement.

8. Breaches

This year, the Panel received 86 complaints, many of which related to retailer activities not covered by the *MAIF Agreement*. Ten breaches of the *MAIF Agreement* were identified during the year. The nature of the breaches is described later in the Report.

As noted, many complaints are received about retailers' promotional activities. In these cases, the Panel notifies the relevant manufacturer of the retailer activity and whilst recognising the company has no direct control in this area, asks that they draw retailers' attention to the manufacturers' responsibilities and commitments under the *MAIF Agreement* and request the retailer promote their product in such a way that is within the spirit of the *MAIF Agreement*.

The Panel would like to see the development and implementation of guidelines covering the activities of retailers of infant formula and a code covering the marketing of infant feeding bottles and teats.

This table covers the breaches of the *MAIF Agreement* from July 1996 to June 1997

Manufacturer	Number of breaches
Bristol-Myers Squibb Australia Pty Ltd (Mead Johnson)	nil
Wyeth Australia Pty Ltd	2
H J Heinz Company Australia Ltd	nil
Douglas Pharmaceuticals Pty Ltd	8
Nestlé Australia Limited	nil
Abbott Australasia Pty Ltd	nil
Sharpc Laboratories Pty Ltd	nil
Snow Brand Pty Ltd (not marketing in Australia)	nil
Amcal (since April 1997)	nil

8.1 Breaches by Wyeth Australia Pty Limited

The Panel received a complaint concerning Wyeth lid inserts "Body building for babies" and "S26 Progress mortar board". These lid inserts were both considered to be in breach of Clause 9(b) of the Agreement. The picture of the baby and the expression "body building" idealised the use of infant formula. The picture of the baby with the mortar board was considered to be a baby in a fantasy situation (eg stars, heavens, clouds, sitting up in school) and unacceptable because it suggests that babies fed this product are in some way ahead of breastfed babies (see Panel's Interpretations, March 1994). In recording these breaches, the Panel noted Wyeth's comments that the inserts were produced in 1994 and had not been used since early 1995. The Panel also noted that there was a voluntary decision by Wyeth to cease using pictures of babies in early 1995. However, the breaches occurred after Wyeth had signed the *MAIF Agreement*.

8.2 Breaches by Douglas Pharmaceuticals Pty Ltd

The Panel considered a number of complaints regarding Karicare First Formula brochures and advertisements in the Australian Journal of Pharmacy for Karicare First Formula with long chain polyunsaturated fatty acid (LCP) capsules. Eight breaches were determined as follows:

In relation to a Karicare First Formula Brochure

The statement "LCP's – the missing ingredient in infant formulas" is not considered to be scientific and factual and is inconsistent with current knowledge. A number of other constituents of breastmilk may be involved in the optimum development of the neural system and at a general level, there are hundreds of compounds that are present in breastmilk but not present in formula. Therefore, the claim that it is *the missing ingredient* is clearly incorrect. This is a breach of Clause 7(a) and 7(b).

The statement in the brochure relating to the role of LCPs in brain development which refers to a study by Lucas et al, is considered to be misleading and not to be scientific and factual as it does not

differentiate between pre-term and term babies regarding the benefits of the formula. The formula is for full term babies and the brochure should acknowledge that the affect referred to is not established for full term babies. This is a breach of Clause 7(a).

The statement in relation to cot deaths and LCPs is considered unacceptable. This is a breach of Clause 7(a).

The mandatory information required by Clause 7(a) is not included. This is a breach of Clause 7(a).

The table which compares the omega-6 and omega-3 profiles of breastmilk, conventional formula and Karicare First Formula is found not to be scientific and factual because it indicates the presence only and not quantities or importance of those components. The material leads to a misleading notion of equivalence between breastmilk and Karicare First Formula. This is a breach of Clause 7(a).

The statement regarding LCPs ensuring the attainment of full genetic potential is considered to be misleading and is therefore a breach of Clause 7(a).

In relation to an advertisement in the Australian Journal of Pharmacy:

Based on expert advice received by the Panel, the statement "Added to Karicare First Formula... and help them reach their full genetic potential" is considered not to be scientific and factual. This is a breach of Clause 7(a) and 7(b).

The visual of the baby with the mortar board idealises infant formula. The Panel finds this pictorial to be a breach of Clause 4(b) of the Agreement. This is consistent with previous interpretations of the Agreement. "...babies (with or without bottles) in fantasy situations (eg stars, heavens, clouds, sitting up in school) are unacceptable because they suggest formula fed babies are in some way 'ahead' of breastfed babies."

9. Other significant activities and issues

9.1 Amcal

Amcal, prior to becoming a signatory to the *MAIF Agreement*, produced and distributed material that would have breached the agreement if Amcal had been a signatory. While the material had been provided only to health professionals, it was seen on display to the general public. There appeared to have been no effort to ensure it was not displayed to the public.

In particular, Amcal distributed display material to pharmacies titled "Amcal Infant Formula From Birth" that contained the statement "In the manufacturing process, cow's milk is broken down into its nutritional components then reassembled to resemble breastmilk". This statement was considered by the Panel not to be scientific or factual.

Charts provided in the material were considered to be misleading and not scientific or factual. In the charts, breastmilk was shown as having only five ingredients compared to more than thirty in infant formulas.

The Panel was very concerned about this matter and wrote to Amcal asking that the materials be withdrawn.

9.2 Retailer and pharmacy activity

A large number of complaints were received by the Panel regarding retailers and pharmacies promoting infant formula products to the general public. Many of these activities would have constituted breaches of the *MAIF Agreement* had retailer activity been covered. The Panel considers this type of activity undermines the work it does with manufacturers and has written on many occasions to manufacturers asking them to notify retailers of the provisions of the *MAIF Agreement* and requesting them not to promote infant formula products to the public.

8. Breaches

During the year of 1997-98, the Panel received a total of 72 complaints, down from 86 in 1996-97. Of these complaints, 22 were considered to be outside the scope of the *MAIF Agreement*. The reasons for being found outside the scope of the *MAIF Agreement* included:

- Retailer activities (15);
- Promotions of formulas for infants over 12 months of age (2); and
- Bottle and teats advertisements (2).

In the past, in response to complaints against retailer promotions of infant formula, the Panel has notified the relevant manufacturer of the infant formula and asked that they draw the retailers' attention to the manufacturers' responsibilities and commitments under the *MAIF Agreement* and request the retailer to promote their product in such a way that it is within the spirit of the *MAIF Agreement*. Whilst manufacturers continue to cooperate with these requests, the Panel is seeking to be more pro-active in this area of complaint, and on most occasions, is now contacting the relevant retailer directly.

Given the high number of complaints concerning retailers' promotions of infant formula, and that such promotions can clearly undermine breastfeeding, the Panel believes it is crucial to develop and implement guidelines covering retailers' activities in relation to infant formula. Though the number of complaints against promotions of bottles and teats was relatively small, the Panel believes a code covering the marketing of infant feeding bottles and teats is also important and would allow Australia to more fully implement the *International Code*.

Of the 50 complaints received which were investigated as possible breaches of the *MAIF Agreement*, 14 breaches were identified. The particulars of these breaches are set out in the following table.

This table covers the breaches of the *MAIF Agreement* from July 1997 to June 1998.

Manufacturer	Number of breaches
Douglas Pharmaceuticals Pty Ltd	7
Bristol-Myers Squibb Pty Ltd (Mead Johnson)	3
Amcal Ltd	2
Wyeth Australia Pty Ltd	2
Abbott Australasia Pty Ltd	nil
H J Heinz Company Australia Ltd	nil
Nestlé Australia Limited	nil
Sharpe Laboratories Pty Ltd	nil
Snow Brand Pty Ltd (not marketing in Australia)	nil

8.1 Breaches by Douglas Pharmaceuticals Pty Ltd

The Panel received a number of complaints against a series of 'Karicare' promotional cards. These complaints mainly concerned statements which were considered not to be based on scientific evidence or inadequate, or a missing breastfeeding statement. Seven breaches were identified as follows:

- '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.

The piece does not include an adequate breastfeeding statement and was therefore also found in breach of clause 4(a).

- 'Karicare Infant Formula'

The Panel found the statement 'Optimised Ca:P 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.

- ‘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).

-
- ‘Karicare Follow-On Formula’

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).

- ‘A Guide to choosing Karicare’

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).

8.2 Breaches by Bristol-Myers Squibb Pty Ltd (Mead Johnson)

The Panel considered several complaints regarding promotional pieces for the infant formula ‘Enfalac AR’. This infant formula is promoted as a unique formula designed specifically for infants with uncomplicated gastro-oesophageal reflux (GOR).

- ‘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).

- '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 4(c).

8.3 Breaches by Amcal Ltd

- '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.

As the leaflet does not include a breastfeeding statement, the Panel found the piece in breach of clause 4(a).

8.4 Breaches by Wyeth Australia Pty Ltd

- '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).

- '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.

From: Advisory Panel on the Marketing in Australia of Infant Formula (1999) *Advisory Panel on the Marketing in Australia of Infant Formula, Annual Report 1998 – 99*, Canberra, pgs 14-17.

8.3 Breaches

The following table covers breaches of the *MAIF Agreement* from July 1998 to June 1999.

Manufacturer	Number of breaches
Wyeth Australia Pty Ltd	9
Bristol-Myers Squibb Pty Ltd (Mead Johnson)	2
Nutricia Australia Pty Ltd	2
H J Heinz Company Australia Ltd	1
Abbott Australasia Pty Ltd	nil
Amcal Ltd	nil
Nestlé Australia Limited	nil
Sharpe Laboratories Pty Ltd	nil
Snow Brand Pty Ltd (not marketing in Australia)	nil

8.4 Breaches by Wyeth Australia Pty Ltd

- 'Because a Mother's Natural Instinct is Protection' (promotional piece)

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.

- 'Why a special formula is recommended for your baby' (promotional piece)

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.

- S-26 Gold 'The Infant formula that gives food for thought' (promotional piece)

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).

- S-26 Gold advertisement in 'Practical Parenting', June 1988

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.

- '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.

- 'Two Welcome Arrivals in the S-26 Family' (promotional piece)

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).

- 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.

- '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).

- '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).

8.5 Breaches by Bristol-Myers Squibb Pty Ltd (Mead Johnson)

- '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 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).

- '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.

8.6 Breaches by Nutricia Australia Pty Ltd

- '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.

- '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).

8.7 Breaches by H J Heinz Company Australia Ltd

- Provision of free samples to a Pharmacy in Queensland

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 (see 9.5 Interpretations 1998-99).

From: Advisory Panel on the Marketing in Australia of Infant Formula (2000) *Advisory Panel on the Marketing in Australia of Infant Formula, Annual Report 1999 – 2000*, Canberra, pgs 16-17.

8.3 Breaches

The following table covers breaches of the MAIF Agreement from July 1999 to June 2000.

Manufacturer	Number of breaches
Wyeth Australia Pty Ltd	2
Bristol-Myers Squibb Pty Ltd (Mead Johnson)	2
Nutricia Australia Pty Ltd	nil
H J Heinz Company Australia Ltd	nil
Abbott Australasia Pty Ltd	nil
Amcal Ltd	1
Nestlé Australia Limited	nil
Sharpe Laboratories Pty Ltd	nil
Snow Brand Pty Ltd	Nil
Breaches of Clause 7 (d)	2 (Refer 8.7)

8.4 Breaches by Wyeth Australia Pty Ltd

- *'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.

- *"Because a mothers natural instinct is protection"*

The Paragraph *"ARE NTs USED ELSEWHERE"*, compares Nucular Tides (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).

8.5 Breaches by Bristol-Myers Squibb Pty Ltd (Mead Johnson)

- *Give-away pack of formula, teat and written material*

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).

- *Promotional Wheel*

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.

8.6 Breaches by Amcal Ltd

- *Zonta Celebrating Health Expo*

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).

8.7 Breaches found against Clause 7(d) and the provision of samples

The Panel has found breaches against two Signatories of clause 7(d) of the MAIF Agreement. Due to on-going discussions and differing views on this matter, the Panel has decided to withhold the names of the subject companies pending further deliberation with IFMAA, ANZFA and DHAC regarding the distribution of samples. (Item 2.6). The outcome will be reported in the 2000/2001 Annual Report.

From: Advisory Panel on the Marketing in Australia of Infant Formula (2002) *Annual Report of the Advisory Panel on the Marketing in Australia of Infant Formula, July 2000 – June 2001*, Canberra, pgs 22-23.

8.3 Breaches

The following table covers breaches of the MAIF Agreement from July 2000 to June 2001.

Manufacturer	Number of breaches
Wyeth Australia Pty Ltd	Nil
Bristol-Myers Squibb Pty Ltd (Mead Johnson)	1
Nutricia Australia Pty Ltd	3
H J Heinz Company Australia Ltd	1
Nestlé Australia Limited	Nil
Snow Brand Pty Ltd	Nil
Breaches of Clause 7 (d) -1999/2000	(Refer 8.7)
Total	5

8.4 Breach by Bristol-Myers Squibb Pty Ltd (Mead Johnson)

- Provision of O-Lac Sachets of infant formula

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 "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."

8.5 Breaches by Nutricia Australia Pty Ltd

- *Karicare Infant Formula Advertisement – WHO Weekly Magazine*

The advertisement for Karicare Infant Formula was found in breach of clause 5(a) as it is advertising infant formula to the general public.

- *Queensland Tender Win – one more reason for Nutricia 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 4-level program, nor did it restrict the content of the letter to factual and scientific matters.

- *'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'.

8.6 *Breach by Heinz Wattie's Australasia*

- *Heinz Nuture infant formula advertisement in the Women's Weekly Magazine – Same Heinz Formula New Heinz Packaging*

The Heinz Nuture advertisement was found in breach of clause 5(a) as it is advertising infant formula to the general public.

The advertisement Heinz Nuture 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.

8.7 *Held over breaches relating to Clause 7(d) and the provision of samples in 1999/2000*

In the 1999/2000 APMAIF Report on matters relating to the provision of samples, 2 potential breaches were held over. The Panel by majority decision has reached a determination in 2000/2001 as follows that:

- Provision of Enfalac Sachets of infant formula – Bristol-Myers Squibb Pty Ltd; and
- Free samples of SMA Formulas – Wyeth Australia.

have both breached Clause 7(d).

For the purposes of clarity it should be noted that the January 1999 interpretation of clause 7(d) was withdrawn due to ambiguity and the Panel continues to apply clause 7(d) as stated in the original MAIF Agreement. It should also be noted that IFMAA continues to have differing views with the Panel of the meaning and purpose of clause 7(d) and the matter will be further discussed in 2002.

6 | Complaints

6.1 Complaints received by the Panel

During the year 2001 – 2002, the Panel received a total of forty-nine complaints, an increase from the ten complaints received in 2000 – 2001. Of these complaints, forty-three were considered to be outside the scope of the MAIF Agreement, compared to five in 2000 – 2001. The complaints were regarding retailer activity: price promotion (forty-two) and bottles & teats (one) and were therefore outside the scope of the MAIF Agreement. One complaint regarding the issue of infant formula samples is still under consideration by the Panel.

Of the complaints within the scope of the MAIF Agreement that were investigated as possible breaches, one breach was identified. This compares with five breaches in 2000 – 2001.

6.2 Breaches

The following table covers breaches of the MAIF Agreement from July 2001 to June 2002.

Manufacturer	Number of breaches
Bristol-Myers Squibb Australia Pty Ltd (Mead Johnson)	1
H J Heinz Company Australia Ltd	Nil
Nestlé Australia Limited	Nil
Nutricia Australia Pty Ltd	Nil
Snow Brand (Australia) Pty Ltd	Nil
Wyeth Australia Pty Ltd	Nil

6.3 Breach by Bristol-Myers Squibb Pty Ltd (Mead Johnson)

Mead Johnson Swing Tag

This complaint was received by the APMAIF Secretariat on 23 July 2001 and 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.

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.*"

PART 5: COMPLAINTS

5.1 Complaints received by the Panel

During the year 2002–2003, the Panel received 170 complaints, an increase from the 49 complaints received in 2001–2002. The Panel also finalised 19 complaints from previous reporting periods and therefore handled 189 complaints in total. Of these 189 complaints, 149 were considered to be outside the scope of the MAIF Agreement, compared to 43 in 2001–2002.

The complaints considered outside the scope included complaints about:

- retail activity (117);
- toddler formula (16);
- bottles, teats & complementary foods (12);
- a newspaper/magazine article written by an individual contributor (1);
- an activity undertaken by a manufacturer no longer manufacturing in Australia (1);
- an advertisement of a specialised formula not marketed/sold in the retail sector (1); and
- an advertisement that does not refer to infant formula (1).

Of the 189 complaints handled, the Panel is currently seeking further information on 20 complaints. These complaints will be carried over to the 2003 – 2004 reporting period.

Of the complaints within the scope of the MAIF Agreement that were investigated as possible breaches, one breach was identified.

In comparison, during the year 2001–2002, the Panel received 49 complaints. Of these complaints, 43 were considered to be outside the scope of the MAIF Agreement. The outside scope complaints included complaints regarding retailer (42) and bottles & teats (1). Of the complaints within the scope of the MAIF Agreement that were investigated as possible breaches, one breach was identified.

5.2 Breaches

The following table covers breaches of the MAIF Agreement from July 2002 to June 2003.

Manufacturer	Number of breaches
H J Heinz Company Australia Ltd	1
Nestlé Australia Ltd	Nil
Nutricia Australia Pty Ltd	Nil
Snow Brand (Australia) Pty Ltd	Nil
Wyeth Australia Pty Ltd	Nil

5.3 Breach by H J Heinz Company Australia Ltd

- **Heinz update in *Small Talk* article titled: “No More Scoops! Introducing Heinz Nurture Singles 28 Pack” published in May 2001 edition of *Heinz Sight*.**

This complaint is in relation to an article written by Heinz that advertised the *Heinz Nurture Singles 28 Pack* and contained information on infant feeding.

On 17 June 2003, the Panel at its 48th Meeting found this complaint 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.

Clause 4(a) states: *"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;
- (iv) 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)".

5.4 How the Panel reaches a finding on a complaint

The Panel receives complaints from a range of sources including individuals and members of industry, community and consumer groups.

All complaints received by the Panel are taken through the Panel's complaints handling process. The Secretariat allocates the complaint with a complaint number and advises the complainant by correspondence that the complaint has been received. The Secretariat also records the complaint in a complaints register.

Before a complaint is submitted to the Panel for consideration, it may be necessary to seek additional information about the complaint. This process involves contacting the complainant and/or subject companies involved to gather more information about the complaint.

Although retail activity is outside the scope of the MAIF Agreement, the current Panel has developed a process of seeking information from retailers because the Panel is sometimes unclear about whether it was a retailer or an infant formula manufacturer or importer that carried out the activity that the complaint is about.

For further information on the Panel's practice of contacting retailers, refer to Section 4.3.

5.5 Interpretations of the MAIF Agreement

In considering complaints of alleged breaches of the MAIF Agreement, the Panel is sometimes required to make interpretations under the clauses of the Agreement. These interpretations provide clarity and give detail to some of the broader provisions in the Agreement. These interpretations become part of the MAIF Agreement and are equally binding on the signatories. Interpretations are recorded in the Register of Interpretations.

The Panel made no interpretations during 2002–2003.

5.6 IFMAA Inter-company Dispute Resolution Process

IFMAA has advised the Panel that inter-company complaints are now being dealt with through the IFMAA inter-company dispute resolution process. This process does not necessarily replace the function of the APMAIF in handling these complaints but does provide an alternative resolution process for some inter-company disputes.

From: Advisory Panel on the Marketing in Australia of Infant Formula (2005) *2003-2004 Annual Report of the Advisory Panel on the Marketing in Australia of Infant Formula*, Canberra, pgs 25 – 26.

Breach by H J Heinz Company Australia Ltd

This complaint refers to a Heinz advertorial entitled "Feeding Tips for Your Child" published in the Coles Baby Spring 2001 catalogue which contained information on infant feeding.

On 30 September 2003, the Panel at its 50th Meeting found the advertorial in breach of clause 4(a) of the MAIF Agreement as Heinz did not include the information requirements of clause 4(a) in the advertorial.

Clause 4(a) states:

"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;
- (iv) 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)".

Although this advertorial dated 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).

Split Decision – the Wyeth Diary 2003

Wyeth produced a diary for the year 2003. The Panel was concerned that the paragraph on the 'breastfeeding statement', which is the information required under clause 4(a), appearing under a heading of 'Breastfeeding is best for babies', included infant formula product information within the same paragraph. The Panel was concerned about Wyeth's compliance with clause 4(a) of the MAIF Agreement.

At its 52nd Meeting on 17 February 2004, rather than casting a 'breach' or 'not in breach' decision, the Panel agreed to cast a split decision as Wyeth had already voluntarily undertaken to correct the appearance of the clause 4(a) statement by producing a correction page. The Panel agreed that their decision to take a lateral approach to dealing with the complaint was dependent on Wyeth ensuring that all diary holders receive a correction page with the

breastfeeding statement separate from infant formula product information. The infant formula product information also had to appear under a separate heading to 'Breastfeeding is best for babies'. The Panel also agreed to write an interpretation for clause 4(a) of the MAIF Agreement. This interpretation will appear in the 2004–2005 annual report. It should be noted that this decision does not set a precedent for the Panel to deal with other complaints in the same manner.

The Panel asked Wyeth to provide a copy of the correction page containing the new breastfeeding statement. The Panel is awaiting Wyeth's response before deciding whether further action is required.