

18 January 2021

INC response to submissions from interested parties

1 Introduction

The Infant Nutrition Council Limited (**INC**) welcomes the opportunity to engage further with the ACCC in relation to its application (**INC Application**) for revocation and substitution of a new authorisation of the Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement (**MAIF Agreement**).

In this document, INC responds to the submissions made to date by interested parties in relation to the INC Application (**Interested Party Submissions**).

2 Further Committee Guidelines

As provided in section 4.5 of INC's submission in support of re-authorisation of the MAIF Agreement (**INC Submission**)¹, in addition to the annexures to the INC Submission, INC seeks reauthorisation of the following guidance documents, which have now been finalised by the Committee and are provided as attachments to this response:

- The Committee's interpretation of the MAIF Agreement related to information and education (**Attachment A**);
- The Committee's interpretation on the Interpretation of the MAIF Agreement related to Clause 5(a): The general public and parents and/or carers (including information provided to retailers) (**Attachment B**); and
- The Committee's interpretation of Clauses 5(a) & 9(b) of the MAIF Agreement relating to information on appropriate age range on infant formula labels (**Attachment C**).

¹ Infant Nutrition Council Limited, Application to the Australian Competition and Consumer Commission for Authorisation of the MAIF Agreement and Submission in support of this application (October 2020) available at <https://www.accc.gov.au/system/files/public-registers/documents/Application%20Received%20-%2026.10.20%20-%20PR%20-%20AA1000534%20INC.pdf>, Submission in response begins on page 11.

3 Summary of Interested Party Submissions and INC response

The table below summarises a number of arguments advanced in the Interested Party Submissions and INC's response. Many of the issues raised in the Interested Party Submissions are already addressed in the INC Submission². For these responses we direct the ACCC to the relevant sections in the INC Submission. Where a term used in this response is defined (eg, Infant Formula, Committee etc), the definitions in the INC Submission are to be adopted.

#	Arguments advanced in Interested Party Submissions	INC response
1	<p>The MAIF Agreement does not adequately address the issue of inadvertent promotion of Infant Formula through the marketing of Toddler Milk.</p> <p>See the following examples from the Interested Party Submissions:</p> <ul style="list-style-type: none"> • Australian Nursing and Midwifery Federation at paragraph [12]: <i>"[R]esearch demonstrate[s] [that] consumers do not differentiate between advertising for infant formula and toddler milk. To advertise one, is to advertise all, particularly when the products are in near identical packaging and designed to be used sequentially, for example step 1 (0-6 months), step 2 (6-12 months) and step 3 (toddler milks)".</i> • Rosemary Stanton OAM at paragraph [9]: <i>"Of particular concern is the way some companies market products commonly referred to as 'Toddler milk'. These products have similar packaging and bear the company's name and logo which are product identifiers for infant formula – indeed, a way of de-facto advertising the infant formula category".</i> • Maternity Choice Australia at paragraphs [7]-[8]: <i>"A particular issue is the marketing of 'toddler drinks' ... advertisements for toddler drinks can cross-promote infant formula products ...</i> 	<p>INC refers to section 6.4(a) of the INC Submission, which highlights that since the 2016 Determination, there have been a number of developments to improve industry practice in respect of the marketing of Toddler Milk to the extent that it may result in the inadvertent promotion of Infant Formula. Those developments include:</p> <ul style="list-style-type: none"> (a) Dissemination by INC to its members of a <i>Best Practice Guidance for the Marketing of Toddler Milk Drinks to Consumers</i> (the Toddler Milk Guidance); (b) Guidelines recently finalised by the Committee and approved by the Department of Health on staging information for the labelling of Infant Formula (provided at Attachment C of this submission); and (c) The various determinations that have been made by the Committee in relation to the marketing of Toddler Milk (to the extent that this marketing has related to the promotion of Infant Formula). Complaints dealt with by the Committee have included concerns regarding staging information on Infant Formula labels. <p>Relevantly, the Toddler Milk Guidance issued by INC to its members (provided at Annexure 6 to the INC Submission) provides that when promoting Toddler Milk, INC members should:</p>

² Infant Nutrition Council Limited, Application to the Australian Competition and Consumer Commission for Authorisation of the MAIF Agreement and Submission in support of this application (October 2020) available at <https://www.accc.gov.au/system/files/public-registers/documents/Application%20Received%20-%2026.10.20%20-%20PR%20-%20AA1000534%20INC.pdf>, Submission in response begins on page 11.

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	<p><i>supermarket and pharmacies generally shelve toddler drink products adjacent to infant formula products ... identical labelling and product placement ...".</i></p>	<ul style="list-style-type: none"> • use images of young children that are clearly identifiable as aged over 1 year and up (ie, toddlers); • clearly specify the intended age group; and • avoid featuring images of Infant Formula on Toddler Milk packaging.
2	<p>The MAIF Agreement undermines breastfeeding, and does not promote or protect it. Breastfeeding is critical for a healthy start to life and an important public health objective.</p> <p>See the following examples from the Interested Party Submissions:</p> <ul style="list-style-type: none"> • Australian College of Midwives at page 1: "<i>Breastfeeding is a biological norm and critical for a healthy start to life ... Promoting breastfeeding is an important public health strategy, and support is essential to maintain and improve initiation rates and the duration of breastfeeding by women in Australia</i>". • Cheryl Slade at page 2: "<i>We have no meaningful national data from which to say breastfeeding is improving or increasing. However, the NSW Mothers and Babies Report shows that formula feeding has increased significantly...</i>". • Public Health Association of Australia on page 6: "<i>...under current arrangements, inappropriate marketing and distribution exists ... A recent global review confirmed that inappropriate marketing and aggressive promotion of breastmilk substitutes undermines breastfeeding and harms child and maternal health in all country contexts</i>". 	<p>INC and the signatories of the MAIF Agreement are committed to supporting breastfeeding. As noted in section 4.5(b) of INC's Submission, the INC has released a policy which aims to promote the value of breastfeeding and improve breastfeeding rates (provided at Annexure 8 to the INC Submission).</p> <p>INC's commitment to promoting breastfeeding is also illustrated through INC's ongoing dissemination to its members and other key stakeholders (including retailers) of information regarding the appropriate interpretation and application of the MAIF Agreement.</p> <p>While some of the Interested Party Submissions state that formula feeding has increased in Australia, INC understands that there have been no recent published studies that verify this. While there are no recent breastfeeding studies that are nationally representative, there are several state-based studies (see, Wen et al, 2020; Scott et al, 2019; Newby et al, 2016) that all suggest an increase in prolonged breastfeeding in line with public health initiatives. INC supports the need for national data to be conducted in the near future.</p>
3	<p>There is very little regulation of marketing of Infant Formula on social media.</p> <p>See the following examples from the Interested Party Submissions:</p>	<p>Clause 5(a) of the MAIF Agreement provides that manufacturers and importers of Infant Formula should not advertise or in any other way</p>

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	<ul style="list-style-type: none"> • Australian Nursing & Midwifery Federation at page 3: "<i>The MAIF Agreement has also not been updated in accordance with changes to the way consumers access health information. Industry is now able to have direct contact with consumers via social media platforms thereby promoting their brand and product without being in breach of the Agreement. Again, undermining breastfeeding as the normal way to feed an infant and young child</i>". • Zoe Roxon-Hunter at paragraph [5]: "<i>...I see frequent advertisements on social media and via paid promotional content via social Media "influencers". There seems to be very little regulation on this</i>". • Rosemary Stanton OAM at paragraphs [12]: "<i>Previous reviews have identified a number of issues relating to the MAIF agreement [including] ... electronic marketing (online forums with 'influencers', Twitter, Facebook, Instagram, YouTube)...</i>". 	<p>promote Infant Formula to the general public. Promotion of Infant Formula on social media is therefore clearly covered by the MAIF Agreement.</p> <p>The Committee has also published <i>Guidelines on Marketing Of Infant Formulas Via Electronic Media</i> (Annexure 4 to the INC Submission), which provides MAIF signatories with specific guidance in relation to the management of social media accounts.</p> <p>INC understands that signatories of the MAIF Agreement routinely monitor their social media sites with a view to ensuring that Infant Formula is not promoted through their social media accounts.</p> <p>Further, the MAIF Agreement empowers the Committee to investigate complaints relating to the inappropriate marketing of Infant Formula through social media, and the Committee has investigated complaints of this nature in recent times. The final determination in relation to these complaints is published on the Department of Health website. In INC's experience, this process deters future breaches of the MAIF Agreement and results in positive outcomes.</p> <p>An illustrative example from the last financial year was one complaint brought in relation to a third party creating a non-endorsed social media post about a particular Infant Formula. The manufacturer responded by changing its settings so that only approved posts can now 'tag' the manufacturer's official account page.</p>
4	<p>The promotion of Infant Formula may lead to mothers receiving reduced support from health professionals. Further, the MAIF Agreement does not do enough to support, or educate, health professionals.</p> <p>See the following examples from the Interested Party Submissions:</p> <ul style="list-style-type: none"> • Australian Nursing & Midwifery Federation at page 4: "<i>Health professionals are often left in limbo with either inadequate information or research on breast milk substitutes or submit to</i> 	<p>INC refers to section 6.3(a) of the INC Submission, which sets out the public benefits arising from the MAIF Agreement. Those benefits include 'encouraging mothers to obtain the information of the nutritional needs of their children from healthcare professionals'.</p> <p>Health professionals are supported by the MAIF Agreement through a number of policies and guidelines, including:</p>

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	<p><i>receiving industry biased messages to perform this role. The education of health professionals in this area should not be the domain of industry".</i></p> <ul style="list-style-type: none"> • Emily Dickson at paragraphs [2]-[3]: the promotion of infant formula creates "a perception that a breastmilk replacement product is as good as, or has advantages over breastfeeding. This leads to a reduction in community support from Health Professionals and family members when a mother experiencing difficulties breastfeeding wishes to continue but instead of having her problems addressed and resolved, is encouraged to stop...". • Katrina at page 2: "...health professionals are being groomed to promote particular brands and products that undermine breastfeeding". 	<ul style="list-style-type: none"> (a) The Committee's guidelines regarding Clause 7(a) of the MAIF Agreement relating to scientific and factual information provided to health care professionals (provided at Annexure 5 to the INC Submission); (b) Distribution of Infant Formula Samples to Health Care Professionals (provided at Annexure 10 to the INC Submission); (c) Template Infant Formula Samples Request Form (Australia) (provided at Annexure 11 to the INC Submission); and (d) Principles for the consideration of interactions with health care professionals for the purpose of interpreting the MAIF Agreement. This is a guidance document referred to by the Committee when considering complaints relating to interactions with healthcare professionals (Attachment D of this submission). <p>INC's guidance on Distribution of Infant Formula Samples to Health Care Professionals (provided at Annexure 10 to the INC Submission), provides that manufacturers and importers should only provide infant formula samples to health care professionals after the health care professional has signed a request form confirming the samples will only be used for professional evaluation or research. Professional evaluation can include a thorough assessment of the suitability of a product for an individual infant, in circumstances where mothers have made the informed choice to use infant formula.</p> <p>INC fully supports the education of health professionals in relation to Infant Formula. In INC's experience, where health professionals receive inadequate information about Infant Formula, this is not because of a lack of willingness by manufacturers and importers to educate but because of a reluctance on the part of healthcare institutions to receive this information.</p>

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5	<p>There should be a review by the Australian government as to the most appropriate way of implementing the WHO Code. Legislation or government-led regulation is a more effective mechanism than ACCC authorisation for implementing the entirety of the WHO code.</p> <p>See the following examples from the Interested Party Submissions:</p> <ul style="list-style-type: none"> <p>VicHealth at page 6: "<i>VicHealth recommends that Australia adopts and implements legislative and regulatory measures that align with the WHO Code</i>".</p> <p><i>... Instead of reauthorising the MAIF Agreement, VicHealth recommends that Australia implements an evidence-based, comprehensive regulatory framework that aligns with the WHO Code and applies to all breastmilk substitutes</i>".</p> <p>Maternity Choice Australia at paragraph [10]: "<i>Australia needs to legislate the WHO Code (and subsequent WHA resolutions) immediately with fines and penalties for companies that breach it</i>".</p> <p>Zoe Roxon-Hunter at paragraph [1]: "<i>The MAIF agreement ... is not an adequate substitute to the WHO code. Breastfeeding is a human right and should be protected by government and the law at every possible level. The Australian Government's current decision to use MAIF, FSANZ and the NHMRC Infant Feeding Guidelines as a means of WHO Code compliance is a breach of the Convention on the Rights of the Child and the Innocent Declaration</i>".</p> <p>Dr Julie Smith and others at page 14: "<i>Australia's Code status is described in WHO reporting one of the 58 countries as having "no legal measures at all</i>".</p> 	<p>INC notes that Article 11 of the WHO Code provides that governments should adopt the principles and aim of the code 'as appropriate to their social and legislative framework'. In other contexts, the World Health Assembly (WHA) urges WHO Member States to consider the 'national context' when implementing policies regarding breastfeeding.³ While the WHO reports that Australia has 'no legal measures' for implementing the WHO Code, this does not exclude the possibility that Australia can effectively implement the Code through voluntary measures. Further, INC refers to section 4.3 of the INC Submission, which explains that in its original determination regarding the authorisation of the MAIF Agreement, the Trade Practices Commission (TPC) noted that 'the voluntary implementation of a self-regulatory scheme, based on the full WHO Code, was not feasible' in Australia and that 'a workable self-regulatory arrangement, short of the full WHO Code, could be implemented in the sectors of the industry which import and manufacture infant formula'.</p> <p>The question on how to best implement the WHO Code in Australia is one for the Australian government. There are many ways in which governments introduce international obligations into domestic law. As noted in section 4.2 of the INC Submission, the Code is presently implemented in Australia in a number of different ways, including through the MAIF Agreement, the <i>FSANZ Standard</i> and the <i>National Health and Medical Research Council Infant Feeding Guidelines: Information for Health Workers</i>.</p> <p>If the Australian government commences any process to reconsider its implementation of the WHO Code in Australia, this should be done in parallel with re-authorisation of the MAIF Agreement to ensure that the current protections afforded by the MAIF Agreement continue.</p>

³ See, eg 71st World Health Assembly (26 May 2018), Agenda item 12.6 at page 2 available here: https://apps.who.int/qa/ebwha/pdf_files/WHA71/A71_R9-en.pdf?ua=1.

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6	<p>The MAIF Agreement should be mandatory for all manufacturers/importers and there should be fines/sanctions for non-compliance.</p> <p>See the following examples from the Interested Party Submissions:</p> <ul style="list-style-type: none"> • Maternity Choice Australia at page 1: "<i>Voluntary industry agreements are well known to be next to useless, with no recourse for consumers, and no penalty for breaching the agreement, which happens on a regular basis</i>". • VicHealth at pages 5-6: "<i>The MAIF Agreement lacks sufficient sanction and enforcement powers ... [it] is limited in scope and only applies to the 17 companies that manufacturer or import infant formula and are signatory to the MAIF Agreement. There are no enforcement or sanction powers in place for companies that are not signatories to the Agreement</i>". • Australasian Association of Parenting & Child Health at page 1: "<i>The MAIF Agreement has no legal authority to compel every manufacturer or importer of breastmilk substitutes to comply with the agreement as the signatories are voluntary ... [it] only has authority to address complaints of breaches of the WHO Code for marketing breast milk substitutes through the MAIF Complaints Committee if the manufacturer or importer is a signatory to the Agreement</i>". 	<p>INC and the signatories of the MAIF Agreement fully support the MAIF Agreement, notwithstanding its status as a voluntary code. While some submissions claim that many manufacturers or importers in Australia are not covered by the MAIF Agreement, as noted in section 6.4(c) of the INC Submission, INC understands that the MAIF agreement covers the key manufacturers and importers in the Australian market despite its voluntary status.</p> <p>INC considers the current framework to be effective. As noted in section 6.2 of the INC Submission, the MAIF Agreement is an effective voluntary industry code with many associated benefits, including enhanced transparency and low compliance costs. INC also refers to section 6.4(b) of the INC Submission, which notes the enhanced transparency of, and compliance with the complaints process since the 2016 Determination.</p> <p>In INC's experience, where the Committee finds that there has been a breach of the MAIF Agreement by a signatory through the complaints process, the associated reputational consequences are sufficient to ensure that the breach is promptly rectified.</p>
7	<p>The MAIF Agreement should not be re-authorised for a period of 10 years.</p> <p>See the following examples from the Interested Party Submissions:</p> <ul style="list-style-type: none"> • Emily Dickson at page 1: "<i>The Infant Nutrition Council would like to lock-in the status quo for a further 10 years, to pre-empt possible tightening of regulations around infant formula marketing. The ACCC must not allow such a long extension period, which</i> 	<p>INC refers to section 2.1(a) of the INCs Submission, which sets out the reasons why a ten year period of authorisation is appropriate.</p> <p>Several Interested Party Submissions express concern that by requesting authorisation for ten years, INC seeks to 'lock-in the status quo' to prevent substantive change to Australia's breastfeeding policy. The INC submits in response that re-authorisation for 10 years does not prevent the</p>

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	<p>would fail to protect the consumer from the commercial interests of the infant formula producers and importers. The ACCC should re-authorise the MAIF agreement for a maximum of 2 years. A 10-year extension of the MAIF agreement is anti-competitive, and is not in the interests of Australian consumers".</p> <ul style="list-style-type: none"> <li data-bbox="277 491 1151 703">• Australian Nursing & Midwifery Federation at pages 2 to 3: "...a substantive review of the MAIF Agreement [should take place] prior to the INC application for re-authorisation being considered ... If the current MAIF Agreement were to be reinstated for a further 10 years, these action areas would be redundant and result in no substantive change in breastfeeding public policy". <li data-bbox="277 727 1151 826">• Rosemary Stanton OAM at page 3: "Extending any re-authorisation process from 5 years to 10 does not allow for proper evaluation of the effect of the MAIF Code". <li data-bbox="277 850 1151 1174">• Department of Health at page 3 of 4: "The Department is of the view that a five-year authorisation, in line with existing arrangements, would be more appropriate than the proposed ten years. A five-year timeframe would support ongoing collection of information (including the review of the MAIF Agreement in 2021, as noted above), and recognise the rapidly evolving marketing environment, to reduce the risk of a negative impact of these arrangements on competition and breastfeeding rates in Australia". 	<p>government from conducting a review of the MAIF Agreement or proposing reforms to the current arrangements.</p> <p>The INC notes that the Department of Health intends to undertake a comprehensive review of the MAIF Agreement in 2021. Authorisation by the ACCC will not prevent, undermine or in any way affect this process.</p> <p>Authorisation by the ACCC does not prevent the MAIF Agreement from being modified in accordance with any revisions in Government policy over the ten year period. It simply acknowledges that if the MAIF Agreement were to continue in its current form, the public benefits arising from the agreement outweigh any detriment arising from a lessening of competition. The Interested Party Submissions do not suggest there would be any competition law concerns arising from a ten year authorisation.</p> <p>As noted in section 2.1(a) of the INC Submission, even if there were a significant change in the policy environment, this would provide a basis for the ACCC to review the authorisation if it wishes to do so.</p>
8	<p>The MAIF Agreement (or other alternate regulatory framework) should cover the marketing of Toddler Milk. Arguments in support of this include the following:</p> <p>(a) The WHO recommends that breastmilk substitutes constitute all milks marketed for infants and young children up to the age of three years.</p>	<p>Consideration of whether the MAIF Agreement (or alternative regulation) should apply to Toddler Milk is a matter of government policy. In any event, the INC considers that the MAIF Agreement should not be expanded to cover Toddler Milk and responds to the arguments made in the Interested Party Submissions below.</p> <p>(a) <i>Toddler Milk is not a substitute for breastmilk</i></p>

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	<p>(b) Toddler Milk marketing is indistinguishable from Infant Formula since customers gain trust in a particular brand and view Toddler Milk as a natural progression from Infant Formula, including because Toddler Milk is placed near Infant Formula in shopping aisles.</p> <p>(c) Toddler Milk is itself harmful or unnecessary and therefore should not be marketed at all.</p> <p>See the following examples from the Interested Party Submissions:</p> <ul style="list-style-type: none"> • Australian Nursing & Midwifery Federation at page 3: "<i>Despite the WHA resolution in 2016 which classifies a "breast-milk substitute as...any milks..., in either liquid or powdered form, that are specifically marketed for feeding infants and young children up to the age of 3 years (including follow-up formula and growing-up milks 3)", in Australia the MAIF Agreement permits the continued promotion of toddler milks. This does not recognise, and therefore protect, the importance of breastfeeding to public health beyond the first year of life</i>". • Zoe Roxon-Hunter at paragraphs [5]-[7]: "<i>The marketing of toddler formula is especially insidious ... these products are heavily marketed as a tool to increase brand recognition and familiarity so that formula companies who are unable to promote infant formula can still Advertise their products ... [s]upermarket and pharmacies generally shelve toddler drink products adjacent to infant formula products which is confusing for parents ... [i]dential labelling and product placement has led to widespread consumer misuse</i>". • Breastfeeding Advocacy Australia at page 5: "<i>Toddler drinks...act as a proxy for advertising of the infant formula and secondly, the</i> 	<p>Toddler Milk is not a substitute for breastmilk and should therefore not be regulated within the same framework as Infant Formula because:</p> <ul style="list-style-type: none"> • Toddler Milk is intended as an alternative to cow, sheep, goat and other non-human milks in young children <u>over</u> 12 months of age (unlike Infant Formula which is a breastmilk substitute for children 12 months and under); • the nutritional composition of Toddler Milk is different to the nutritional composition of Infant Formula; and • Toddler Milk and Infant Formula are regulated under separate FSANZ standards. For clarity, Infant Formula is regulated under FSANZ standard 2.9.1 and Toddler milk is regulated under FSANZ standard 2.9.3. <p>Further, the INC notes that the recommendation in 2016 by the WHO that breastmilk substitutes should be understood to include any milks (or replacement products) that are specifically marketed for feeding infants and young children up to the age of 3 years was not formally endorsed by the World Health Assembly (WHA) (it was rather 'welcomed with appreciation' by the WHA).⁴</p> <p>(b) <i>Infant Formula is sufficiently protected under the MAIF Agreement</i></p> <p>INC considers that Toddler Milk is generally marketed responsibly in Australia. As discussed in the INC Submission and above, INC has disseminated comprehensive guidelines (including a best practice guide relating to the marketing of Toddler Milk), to prevent the inadvertent marketing of Infant Formula through the promotion of Toddler Milk.</p>

⁴ WHO Guidance on Ending the Inappropriate Promotion of Foods for Infants and Young Children available at: <https://apps.who.int/iris/bitstream/handle/10665/260137/9789241513470-eng.pdf;jsessionid=DFEEFA649059424DD56D2AC1CEFDA0E?sequence=1>.

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	<p><i>product is unnecessary and has potential harmful effects on the health of young children".</i></p> <ul style="list-style-type: none"> • VicHealth at page 4: "<i>Toddler milk products are not recommended as part of a healthy diet for young children...</i>". 	<p>INC also refers to section 6.4(a) of the INC Submission, which explains that the inclusion of Toddler Milk within the scope of the MAIF Agreement may result in signatories withdrawing from the MAIF Agreement, or deter companies who are not presently signatories from joining.</p> <p><i>(c) Nutritional value of Toddler Milk is irrelevant</i></p> <p>A discussion about the role of Toddler Milk in the diet of young children from one year of age is a separate issue to the health objective of the MAIF Agreement, which seeks to promote and protect breastfeeding.</p> <p>In any event, INC does not accept the argument that Toddler Milk has potential harmful effects on the health of young children. Recent local research (see, Wall et al, 2019; Lovell et al, 2019) has highlighted that Toddler Milk can be beneficial for the nutritional status of toddlers. This includes improved intakes of iron, zinc, Vitamin D and Vitamin C, more appropriate average protein intakes, and improved body composition (less body fat). These findings align with a recent systematic review and subsequent commentary by the highly respected ESPGHAN Committee on Nutrition (2018) which concluded that, while such products are not essential they 'can be used as part of a strategy to increase the intake of iron, Vitamin D, and n-3 PUFA, and decrease the intake of protein'. This commentary also stated '[t]here are no published adverse effects associated with YCF (Young Child Formula)', (Hojsak et al, 2018).</p>
9	<p>The MAIF Agreement (or similar framework) should apply to retailers and distributors.</p> <p>See the following examples from the Interested Party Submissions:</p> <ul style="list-style-type: none"> • VicHealth at page 6: "<i>This new [legislative] framework should: apply to retailers and distributors (eg, supermarkets and pharmacies) in addition to manufacturers and importers of breastmilk substitutes".</i> 	<p>To the extent that manufacturers and importers indirectly market Infant Formula to the public through retail channels (for example by providing funding and / or content directly for retailer advertisements), this conduct will be captured by the MAIF Agreement.</p> <p>Further, the scope of coverage of the MAIF Agreement is a matter for the Australian government.</p>

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10	<p>A conflict of interest arises because the MAIF Agreement is administered by industry.</p> <p>See the following examples from the Interested Party Submissions:</p> <ul style="list-style-type: none"> • Maternity Choice Australia at page 1: <i>"The advisory panel which administers MAIF and investigates and adjudicates on complaints is partly funded by industry, and includes industry representatives, giving rise to conflicts of interest"</i>. • Rosemary Stanton OAM at page 1: <i>"Codes should ideally be made by those without a conflict of interest and with expertise in a subject (in this case, breastfeeding). Any Code set up by those with a conflict of interest in its content and outcomes starts with a basic problem that can only be avoided by ensuring that the Code is designed for public health, not company profits"</i>. 	<p>The Committee is managed by the Department of Health and consists of three members (a public health representative, an independent representative and an industry representative). The industry representative plays an important role on the Committee, because of their in-depth understanding of the Infant Formula industry. In any event, the industry representative is outnumbered by the other members of the Committee.</p> <p>The Department follows an established conflict of interest process whereby conflict of interests are declared prior to member appointment as per the Department's Member Guidelines, and regularly discussed by the Committee throughout the year to ensure oversight of any potential interest in matters under consideration by the Committee. All members' declarations of interest are listed on the Department of Health website.</p>

Attachment A – MAIF Complaints Committee's interpretation of the MAIF Agreement related to information and education

MAIF Complaints Committee's interpretation of the MAIF Agreement related to information and education

Overall Principles

1. The purpose of these guidelines is to support the interpretation of the MAIF Agreement.
2. These guidelines are to be read with the aim of the MAIF Agreement in mind and as an overarching principle: that is, to contribute to the safe and adequate nutrition for infants, by the protection and promotion of breastfeeding and by ensuring the proper use of breast milk substitutes, when they are necessary, on the basis of adequate information and through appropriate distribution.

Inclusion of information

3. The information required by clauses 4(a) and 4(b) should be included in any information material of any format (e.g. video, images, written, audio, electronic, etc.) which refers to infant formula that is produced or sponsored by an infant formula manufacturer.
4. The information required by clauses 4(a) and 4(b) should be included in the main body of the material in the same type of presentation as the rest of the material, and at a level suitable for the target audience. A parent or carer should be able to understand what it means.
5. The information required by clauses 4(a) and 4(b) should be the same print size as the majority of the main text.
6. The social and financial implications of infant formula use are inter-related. They may include the following points:
 - The weekly cost of formula and/or the impact on the family budget; and
 - Notice that if your child is not receiving any breastmilk, infant formula will need to be purchased until the baby is 12 months of age.

Pictures on informational material

7. Cartoons and pictures of animals and toys do not necessarily idealise the use of infant formulas and therefore may be acceptable. Such images should not depict an animal or toy being fed, whether by breast or by bottle, nor should they depict animal or toy 'mothers', because these may idealise the use of infant formula.
8. Instructions on how to prepare a specific infant formula may include the brand logo and should include the product name. Such materials should be limited to preparation instructions only and should not include other educational or unrelated information.

Disclosures prior to accessing information (including web based information)

9. Prior to a consumer accessing information about infant formula on a manufacturer website, manufacturers should display to the consumer the information required by clauses 4(a) and 4(b) (Important Notice information). This display should include a click-

through acknowledgement by the consumer that the consumer has read and understood the information. The display should be provided at least once per day for each consumer who accesses the site on multiple occasions.¹

10. The disclosures required by Clause 4(a) must appear in each piece of informational or educational material dealing with the feeding of infants and referencing infant formulas, including those materials directed to health care professionals (MAIF Clause 7(a)).
11. It is not sufficient compliance for these disclosures to appear in additional material accessed at the discretion of the reader by click-through or hyperlinked or referenced external media. The reader must be presented with these disclosures as part of the informational or educational material itself.

Breastfeeding information web page

12. Manufacturer and importer official websites are to provide an obvious and easily navigated separate page dedicated to outlining the benefits of breastfeeding and the superiority of breastmilk.
13. A tab or link labelled 'Breastfeeding is Best', 'Benefits of Breast Milk' or similar, which links to the Important Notice information, should be included on each page of a website which provides information about an infant formula product. The tab/link should be included on the navigation toolbar of each web page or another equally prominent location.¹

¹ For further information on the requirements for web-based information, refer to the guidelines on Electronic media
[https://www1.health.gov.au/internet/main/publishing.nsf/Content/B8D64A18E546D9FBCA257BF0001ACE26/\\$File/MAIF%20Guidance%20Document%20-%20Electronic%20media.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/Content/B8D64A18E546D9FBCA257BF0001ACE26/$File/MAIF%20Guidance%20Document%20-%20Electronic%20media.pdf)

Infant Nutrition Council Limited

Attachment B – MAIF Complaints Committee's interpretation on the Interpretation of the MAIF Agreement related to Clause 5(a): The general public and parents and/or carers (including information provided to retailers)

MAIF Complaints Committee's interpretation of the MAIF Agreement related to Clause 5(a): The general public and parents and/or carers (including information provided to retailers)

Overall Principles

1. The purpose of these guidelines is to support the interpretation of the MAIF Agreement.
2. These guidelines are to be read with the aim of the MAIF Agreement in mind and as an overarching principle: that is, to contribute to the safe and adequate nutrition for infants, by the protection and promotion of breastfeeding and by ensuring the proper use of breast milk substitutes, when they are necessary, on the basis of adequate information and through appropriate distribution.

Provision of information to the general public

3. Existing or new infant formula products should not be 'announced' to the general public. Communicating information that is factual and not promotional about changes to formulations is permitted.
4. When an infant formula manufacturer provides information to the general public a product with the same name as an infant formula, the product name should be followed either by the range name (e.g. toiletries) or the specific product (e.g. baby powder). Generalised terms such as 'Brand X Baby Care Products' or 'Brand X, Best for Baby', should not be used where Brand X is the name of an infant formula.
5. Slogans which could imply that feeding a baby the product would be better than breastfeeding should not be used – for example 'Every baby deserves the best' or 'A little extra something' However, slogans which clearly and distinctly compare infant formula products may be acceptable.
6. Free samples should not be provided by manufacturers except at the request of a qualified health professional for the purposes of professional evaluation

Changes and updates to infant formula

7. For parents who have already made the decision to formula feed, the following information about infant formula should be accessible, subject to the following:
 - Information to be presented in a way that is easy to understand and objective.
 - Announcements regarding changes to availability of infant formulas are acceptable, but only on a one-off basis and not repetitive in nature.
 - The information may include important label changes. Information on a "new look" label or a branding refresh are not permitted.
 - Important information may be sent directly to parents who have already provided their consent to be contacted.

- Such provisions of information should have no promotional content. There should be no slogans. Information should not promote or encourage use of formula;
- Pack shot size should be restricted to 4cm x 3cm for printed material, which in size, colour etc, must be relative to the other product depictions.

Retail stores

8. Information to retailers regarding visual merchandising is to be factually based and should not be a means of cross promoting other products in the brand or range.
9. Price tickets on the 'shelf-talkers' that simply advertises the price of the product, or the fact that it has a 'special' price are acceptable. The ticket may also state the saving to be made – e.g. 'Special. Save \$1'. Shelf tickets should have no content other than the price and the name of the product.
10. Posters, in-store radio announcements, e-catalogues and printed catalogues, online stores and magazine provision of information should only provide the price, the name of the product and a pack shot which in size, colour etc, must be relative to the other product depictions.
11. Products should be located in the appropriate aisle and not on display (i.e. large stacks of cans (gondola ends or shelf stacks) outside of the aisle.
12. Window displays, window stacks and pavement displays are not acceptable.
13. Care should be taken not to display infant formula products or the name of the product under generic slogans for a range of products, such as 'Everything that is best for baby'. There should be no price or product promotion by manufacturers or marketers of infant formula on radio, television, online streaming or any other electronic media, including social media. Online retail store price promotion information should only provide the price, the name of the product and a pack shot which in size, colour etc, and must be relative to the other product depictions. In addition to online retail stores:
 - Infant formula and follow-on formula products must not be linked or linkage suggested. For example, when viewing details for any product, infant formula or follow-on formula must not be displayed on the same page or pop up through "suggested for you" or similar means.

Attachment C – MAIF Complaints Committee's interpretation of Clauses 5(a) & 9(b) of the MAIF Agreement relating to information on appropriate age range on infant formula labels

MAIF Complaint Committee's interpretation of Clauses 5(a) & 9(b) of the MAIF Agreement relating to information on appropriate age range on infant formula labels

Overall Principles

1. The purpose of these guidelines is to support the interpretation of the MAIF Agreement.
2. These guidelines are to be read with the aim of the MAIF Agreement in mind and as an overarching principle: that is, to contribute to the safe and adequate nutrition for infants, by the protection and promotion of breastfeeding and by ensuring the proper use of breast milk substitutes, when they are necessary, on the basis of adequate information and through appropriate distribution.

Label information

3. The purpose of these guidelines is to assist in interpreting the MAIF Agreement.
4. This interpretation takes into account two key elements of the Aim of the MAIF Agreement – on the one hand the necessity for the 'protection and promotion of breast feeding' and on the other the importance of the provision of 'adequate information' around 'the proper use of breast milk substitutes'.
5. Labels are an important means of providing information about the safe and appropriate use of the infant formula to parents and carers. This includes information about the range of age appropriate for the infant formula product.
6. On infant formula product labels, manufacturers and importers:
 - (a) must include information relating to the range of age appropriate for that infant formula product (i.e. suitable from birth or from 6 months – Food Standards Code 2.9.1);
 - (b) may include additional information relating to the range of age appropriate for the infant formula product. This information should be factual and not promotional; and
 - (c) The use of symbols and/or infographics showing all numbers and/or stages of the product range, including highlighting where the product being purchased is in the range, and the use of arrows, triangles or flow chart-like symbols, is not appropriate.

Front of pack/label

7. The use of text, numbers on the label (additional to that required in Standard 2.9.1) to further assist consumers in the identification of age appropriateness of the infant formula product, such as Stage 1 or Stage 2 or the number 1 or 2, is acceptable.

Back of pack/label

8. Information about the range of infant formula products suitable for infants of different ages is acceptable, noting the following:

- (a) Inclusion of the brand name (in text) and the age-appropriateness (text and/or numbers) of other infant formula products in the same range is acceptable.
- (b) Images and/or pack shots of other infant formula products in the brand range are not appropriate.

Definitions

- 'infant formula' – any food described as 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 all relevant clauses of the Australia New Zealand Food Standards Code, including infant Formula Products Standard 2.9.1
- 'Label' - any tag, brand, mark, pictorial or other descriptive matter written, printed, stencilled, marked, embossed or impressed on, or attached to, a container of infant formulas.

Attachment D - Principles for the consideration of interactions with health care professionals for the purpose of interpreting the MAIF Agreement.

Principles for the consideration of interactions with health care professionals for the purpose of interpreting the MAIF Agreement

This document sets out the principles intended to provide guidance to the APMAIF panel to assist in interpreting the MAIF Agreement where interactions between infant formula manufacturers and importers with healthcare professionals and the general public form part of a complaint.

Interpretative approach

Modern marketing environments are complex. In reviewing the interactions of Industry representatives with Health professionals, the Panel can consider:

- intention of the activity;
- environment or context;
- the intention of the MAIF; and
- the outcome of the activity

The result of this approach should be an interpretation that is 'fit for purpose' and interpretations may differ depending on the circumstances of the interaction.

General principles to Guide all interactions

All interactions of Infant formula manufacturers and importers and their interactions with healthcare professionals should:

- be transparent and capable of public and professional scrutiny;
- be carried out by representatives who are aware of the obligations of the MAIF Agreement.
- have the primary objective of providing medical or scientific knowledge and providing factual information about the product.

Principles to Guide Specific Activities

In addition the following principles may be used to guide decisions in relation to specific activities.

Principle 1: The primary purpose of any interactions between importers and manufacturers with health professionals should be the enhancement of medical or scientific knowledge and/or provision of product information including the correct use of infant formula in accordance with Clauses 4 and 7 of the MAIF Agreement.

The primary purpose may be determined by looking at both the *time* allocation of the interaction and the *content* of the interaction.

Time Allocation: A proportional time use analysis may be applied as a starting point. If hospitality or entertainment exceeds 50% of the available time for an educational event, then the primary purpose of the event may have changed. This proportional analysis can be applied to all events where there may be an entertainment or hospitality component and travel and accommodation.

Content of the interaction: Educational events are important for the dissemination of scientific knowledge and experience to healthcare professionals, and should have a clear objective of providing current, accurate and balanced medical and scientific education in an ethical and professional manner. The content itself should be the reason that health professionals attend any particular event rather than entertainment or hospitality.

Scientific Sponsorship of educational events by infant formula manufacturers and importers should have as the primary objective the enhancement of medical knowledge.

Examples: A short educational presentation, of 30 mins may have only light or no refreshments. A longer presentation, may offer a meal. However a 10 minute presentation with a 3 course meal would not be proportionate either in terms of time or educational investment, and analysis may show that the primary purpose of the event is the meal rather than the educational content. A proportional time analysis would place the provisions of hospitality above 50% of the time use.

Principle 2: A best practice position for manufacturers and importers interacting with health care professionals is that no gifts, benefits, competitions, incentives, give-aways or items of any value, whether tangible or in kind, should be given or offered to health care professionals at conferences, seminars, educational/information sessions, trade shows or comparable events.

Exceptions to this position may be determined on a case-by-case basis after an assessment of one or all of the following elements, namely the:

- ***intention*** of providing the items or in kind benefit (what are the gifts or benefits being provided for, does it have a function?),
- ***value of the item or in kind benefit,***
- ***targeting of the item or in kind benefit.***

Example: It is recognised that the common practice of providing free pens and paper given to attendees of conferences and seminars is intended to allow participants to take notes or exchange details. However, if those pens were valuable – for example made of precious metals rather than plastic- it may be viewed as a gift as their value exceeds that needed for the intended function. If the precious metal pens were only given to certain groups of health care professionals, then this could be viewed as conferring a benefit or gift to that group of people.

In some circumstances culturally respectful and appropriate practices such as mutual gift exchange or a certain standard of hospitality may be expected.

However, these are not blanket exceptions and in such cases the panel may consider each situation as it arises.

Example: Tradeshow are an increasingly common way of showcasing products and innovations and small gifts and free give-a-ways are commonly distributed. To determine whether the items may constitute a breach of the MAIF, the intention, value and targeting of the items would need to be considered.

Principle 3: Any assistance provided to health professionals to attend an event such as a conference or seminar must be *appropriate and practical*.

Travel and accommodation expenses should be for the purpose of providing practical assistance to attend, rather than being a reason in itself to attend.

Any travel expenses offered or provided should be justifiable by reference to the educational content and the origin of the delegates and able to meet the proportionality test outlined at Principle 1.

Sponsorship provided to a Healthcare professional to attend an educational event should only be provided where the meeting is directly related to the healthcare professional's area of expertise.

Example: Accommodation and travel provided to delegates' family members would not be appropriate or be of practical assistance in supporting the health care professional to attend the event. This information should be made clear in all invitations to healthcare professionals for educational events.