

**ANNUAL REPORT
MARKETING IN AUSTRALIA OF INFANT FORMULAS:
MANUFACTURERS AND IMPORTERS AGREEMENT
(MAIF) COMPLAINTS COMMITTEE
2019-2020**

TABLE OF CONTENTS

ANNUAL REPORT..... 1

MARKETING IN AUSTRALIA OF INFANT FORMULAS: MANUFACTURERS AND IMPORTERS AGREEMENT.... 1

(MAIF) COMPLAINTS COMMITTEE..... 1

2019-2020 1

1. Scope and functions..... 2

 Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement (MAIF) Complaints Committee 2

 MAIF Agreement..... 2

 Current signatories to the MAIF Agreement include (as at 30 June 2020): 3

 Guidance documents for interpretation of the MAIF Agreement..... 3

 Australian National Breastfeeding Strategy: 2019 and Beyond 4

2. MAIF Complaints Committee members 5

 Independent representative and Chair: Professor Debra Thoms RN RM BA MNA Grad Cert Bioethics Adv Dip Arts 5

 Public health representative: Professor Peter SW Davies 5

 Industry representative: Ms Jan Carey 5

3. How complaints are processed..... 6

4. Complaints outcomes July 2019 – June 2020 7

 Complaint 1819-17: Aspen Nutritionals 7

 Complaint 1920-01: Deloraine – Bubs Australia (Infant Food Company)..... 7

 Complaint 1920-02: My Chemist 7

 Complaint 1920-03: Coles..... 8

Out of scope 8

 Complaint 1920-04: Nature One Dairy 8

 Complaint 1920-05: Nestlé - Hunter Postgraduate Medical Institute..... 8

 Complaint 1920-06: Infant Food Company..... 8

 Complaint 1920-07: The LittleOak Company 9

Contact details

MAIF Complaints Committee Secretariat
Food & Nutrition Policy Section
Australian Government Department of Health
MDP 707, GPO Box 9848, Canberra ACT 2601
Phone: (02) 6289 7358
Email: maif@health.gov.au

1. Scope and functions

Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement (MAIF) Complaints Committee

The MAIF Complaints Committee is managed by the Australian Government Department of Health and was established in September 2018. The Committee consists of three members: an independent representative; a public health representative; and an industry representative. The Department of Health is responsible for all associated secretariat functions of this Committee.

MAIF Agreement

The MAIF Agreement has operated since 1992, as a voluntary, self-regulatory, code of conduct between the manufacturers and importers of infant formula in Australia. It is Australia's response to the World Health Organization's *International Code of Marketing of Breast-milk Substitutes 1981* (WHO Code). The MAIF Agreement applies to Australian manufacturers and importers of infant formula who are signatories to the MAIF Agreement.

The MAIF Agreement aims to contribute to the provision of safe and adequate nutrition for infants, by protecting and promoting breastfeeding and by ensuring the proper use of breast milk substitutes, when they are necessary, on the basis of adequate information through appropriate marketing and distribution. The MAIF Agreement applies to infant formula, i.e. formula that is suitable for infants from birth and follow-on formulas suitable for infants aged six to twelve months.

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

The marketing activities of retailers including pharmacies and supermarkets are outside the scope of the MAIF Agreement. Toddler milk products for toddlers over 12 months of age, and baby food, feeding bottles, teats and dummies are also outside the scope of the MAIF Agreement.

The MAIF Agreement is authorised under the Competition and Consumer Act 2010 and can be viewed at www.accc.gov.au/system/files/public-registers/documents/D15%2B143530.pdf

Current signatories to the MAIF Agreement include (as at 30 June 2020):

- The a2 Milk Company Ltd
- Abbott Australasia Pty Ltd
- Aspen Nutritionals Australia Pty Ltd
- Australian Dairy Park Pty Ltd
- Bayer Australia Ltd
- Bellamy's Organic
- Freedom Foods Group Trading Pty Ltd
- H & H Group
- The Infant Food Co. Pty Limited
- The LittleOak Company
- Nature One Dairy Pty Ltd
- Nestlé Australia Ltd
- Nuchev Pty Ltd
- Nutricia Australia Pty Ltd
- Reckitt Benckiser Group
- Saputo Dairy Australia Pty Ltd
- Wattle Health Australia Limited

Guidance documents for interpretation of the MAIF Agreement

In 2019, the MAIF Complaints Committee resolved to undertake a review of the all existing and historical guidance documents for the interpretation of the MAIF Agreement. To assist in understanding responsibilities and improve compliance with the MAIF Agreement, the MAIF Complaints Committee consulted with MAIF Agreement signatories and reflected on issues and themes raised through the complaints process, in drafting the guidelines.

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

The following guidance documents were finalised at the February 2020 MAIF Complaints Committee meeting:

- [Electronic media marketing activity \(Clause 4\(a\), 4\(b\), 5\(a\)\)](#)
With the recent rise of electronic media, these guidelines were developed to assist in the interpretation of the MAIF Agreement as it relates to electronic media including social media and digital advertising.
- [Clause 7\(a\) – Scientific and factual information provided to health care professionals](#)
This document is intended to be considered in line with the National Health and Medical Research Council (NHMRC) Evidence Hierarchy: designations of levels of evidence according to type of research question.

The MAIF Complaints Committee is continuing work in reviewing the remaining MAIF Agreement guidance material:

- Appropriate age information on labels including reference to other infant formula products (staging);
- Clause 4: Information and education

- Clause 5: The general public and mothers

Australian National Breastfeeding Strategy: 2019 and Beyond

The *Australian National Breastfeeding Strategy: 2019 and Beyond* (the Strategy) was launched by the Hon Greg Hunt MP, Minister for Health, on 3 August 2019, and is a high level strategy incorporating recent research on effective strategies to support breastfeeding. The Strategy aims to protect, promote and support all mothers, fathers/partners and babies in Australia by providing an enabling environment for mothers to breastfeed their infants. As carers, mothers and fathers/partners make decisions (including decisions about infant and young child feeding) that can influence short- and long-term health outcomes for themselves and their children.

The Strategy identifies priority and action areas, with 'Prevent inappropriate marketing of breastmilk substitutes' as one of the four 'structural enablers. This action includes undertaking a review of the MAIF Agreement; and raising the awareness of the MAIF Agreement in the community. To date, the MAIF Secretariat has undertaken the following to address the action areas:

- The MAIF Secretariat continues to actively promote membership of the MAIF Agreement to manufacturers and importers of breastmilk substitutes.
- All complaints received, whether deemed a breach or not, are reported on the Department of Health MAIF Agreement Complaints Committee webpage.
- Statistics including the number of and type of marketing complaints will be used to assist in evaluations of the Strategy.

It is expected that a review of the MAIF Agreement will be undertaken in 2021.

2. MAIF Complaints Committee members

Independent representative and Chair: Professor Debra Thoms RN RM BA MNA Grad Cert Bioethics Adv Dip Arts

Professor Debra Thoms is currently Acting Head, School of Nursing, Faculty of Health, Queensland University of Technology.

Professor Debra Thoms was the Chief Nursing and Midwifery Officer for the Australian Government (September 2015 – June 2019) and responsible for providing high-level advice on nursing and midwifery issues. She also participated in the formulation and implementation of policy and strategic direction in relation to health care in Australia.

Professor Thoms was formerly the inaugural Chief Executive Officer of the Australian College of Nursing, a position she took up in mid-2012 following six years as the Chief Nursing and Midwifery Officer with NSW Health.

Public health representative: Professor Peter SW Davies BSc (Hons) M Phil, PhD, R.Nutr, FNSA - Children's Health Research Centre, University of Queensland

Professor Peter Davies is an Honorary Professor of Childhood Nutrition in the Children's Health Research Centre within the University of Queensland. He has previously held the positions of Deputy Head of UQ's Medical School as well Director of Research for the School of Medicine. Professor Davies has published over 450 articles and papers in the field of nutrition, growth, energy metabolism and body composition in both health and disease in infants and children over a number of years. He is a past member of the National Health and Medical Research Council (NHMRC) Dietary Guidelines Working Committee and the NHMRC Infant Feeding Committee and the Food Standards Australia New Zealand Infant and Young Child Scientific Advisory Group. Professor Davies was made a Fellow of the Nutrition Society of Australia in 2015. He was also the inaugural Chair of the Early Life Nutrition Coalition.

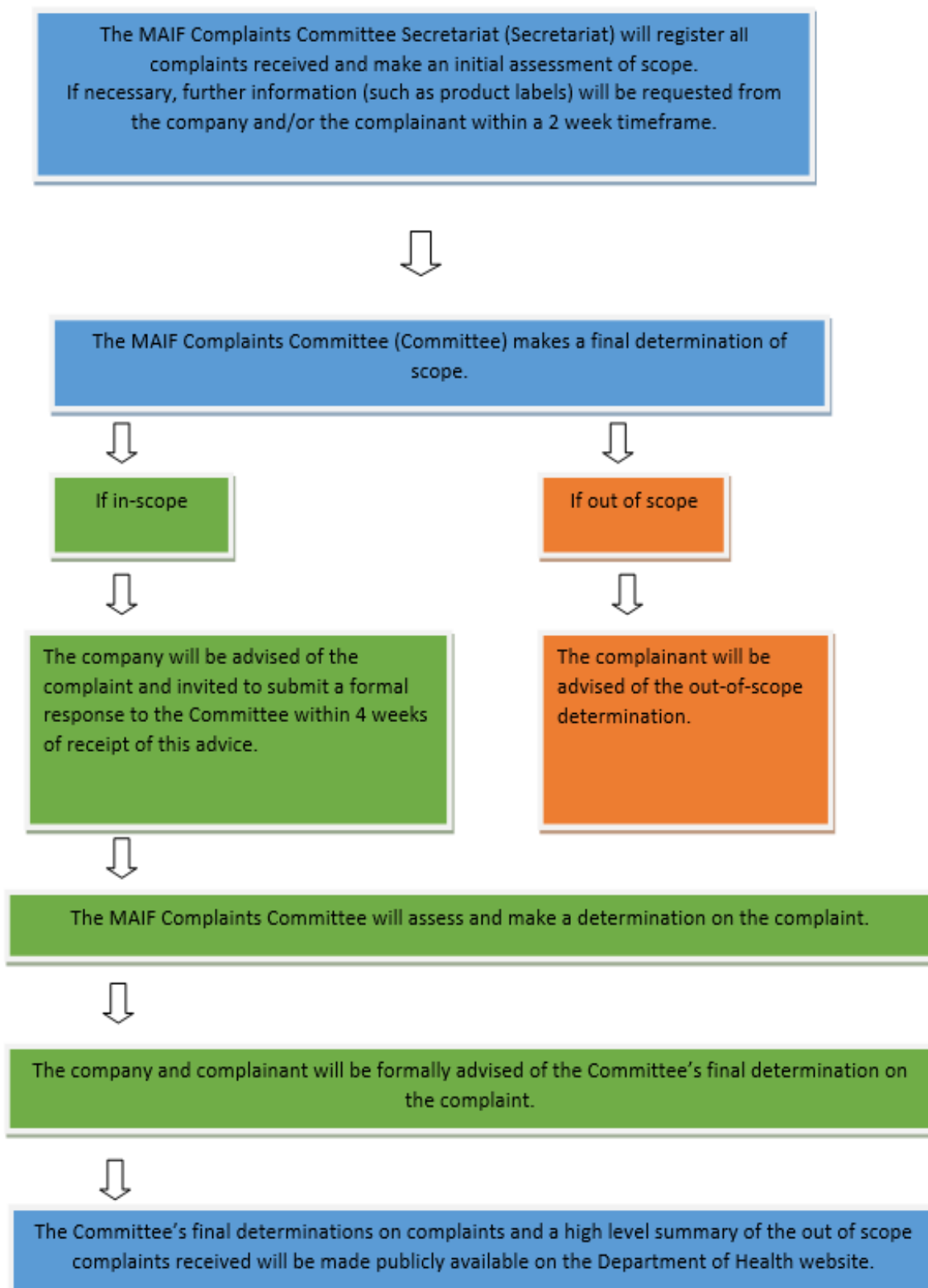
Industry representative: Ms Jan Carey Chief Executive Officer, Infant Nutrition Council

Ms Jan Carey is the current CEO of the Infant Nutrition Council (INC), and was previously the Executive Director of Infant Formula Manufacturers' Association of Australia and the New Zealand Infant Formula Marketers' Association, prior to their amalgamation to form INC. She is also the industry representative on the Ministry of Health's Compliance Panel in New Zealand. In 2013, Ms Carey was appointed to the Executive of the Governing Board for the International Special Dietary Food Industries Association (ISDI). ISDI is based in Brussels, represents the industry globally at Codex, World Health Assembly meetings and World Health Organization (WHO) Executive Board meetings.

3. How complaints are processed

The MAIF Complaints Committee relies upon interested parties, such as breastfeeding advocacy groups, health professionals and members of the public, to monitor compliance with the MAIF Agreement. Formal complaints are lodged with the MAIF Complaints Committee Secretariat within the Department of Health.

Below is a flowchart that demonstrates the complaints handling process.



4. Complaints outcomes July 2019 – June 2020

In this reporting period (July 2019- June 2020) the MAIF Complaints Committee resolved eight complaints. Four were determined to be out-of-scope of the MAIF Agreement. Of those that were considered in scope, one complaint was determined to be a breach of the MAIF Agreement and three complaints were determined to be no breach of the MAIF Agreement.

A number of complaints were received in May and June 2020. The Committee considers complaints periodically and these will be considered after 30 June 2020. Therefore, those complaints will be captured in the 2020-2021 Annual Report, or can be found on the Department of Health MAIF Agreement website following finalisation.

The MAIF Complaints Committee is in the process of reviewing the existing interpretation guidance for the MAIF Agreement, the outcome of which may impact future determinations on such matters.

Set out below is a summary of complaint determinations.

Complaint 1819-17: Aspen Nutritionals

No breach

A complaint received on 17 June 2019 against Aspen Nutritionals, alleged Instagram social media influencer activity in relation to S26 Alula infant formula was a potential breach of clause 5(a) of the MAIF Agreement. The complaint considered an Instagram post with an image of a mother, infant and Alula s26 0-6 months infant formula was marketing of infant formula (0-6 months) to the general public, a potential breach of Clause 5(a) of the MAIF Agreement.

The Committee requested an explanation from Aspen which was provided on 26 July 2019. Aspen Nutritionals stated that the social media posts were created without its knowledge and that Aspen Nutritionals had no involvement in these activities or any association with the Instagram account holders. Upon learning of the inappropriate posts, Aspen Nutritionals updated its Instagram account settings so that only an approved post can tag its official account page.

Determination: The MAIF Complaints Committee at its meeting on 11 October 2019 determined no breach of clause 5(a) of the MAIF Agreement.

Complaint 1920-01: Deloraine – Bubs Australia (Infant Food Company)

No breach

A complaint received on 8 July 2019 against Deloraine, alleged that advertising of infant formula and follow-on formula on a billboard in the international terminal at Melbourne airport was inappropriate marketing of infant formula, was a potential breach of Clause 5(a) of the MAIF Agreement.

Bubs Australia (under the Infant Food Company) informed the Committee that it acquired Deloraine in April 2019 and was not aware of the Deloraine billboard advertisement. The advertisement was the legacy of Deloraine, and at the time the billboard was put up Deloraine was not a signatory to the MAIF Agreement. Bubs Australia agreed to remove the billboard advertisement immediately.

Determination: The MAIF Complaints Committee at its meeting on 11 October 2019, determined no breach of clause 5(a) of the MAIF Agreement.

Complaint 1920-02: My Chemist

Out of scope

A complaint received on 25 July 2019 alleged a My Chemist pamphlet with a price promotion of S26 infant formula and follow-on formula was a breach of clause 5(a) of the MAIF Agreement.

On 28 July 2019, the MAIF Complaints Committee determined that the complaint was out of scope of the MAIF Agreement as the complaint was in relation to retailer marketing activity.

Complaint 1920-03: Coles

Out of scope

A complaint received on 5 August 2019 alleged a television commercial by retailer Coles, was a breach of Clause 5(a) of the MAIF Agreement.

Determination: On 6 August 2019, the MAIF Complaints Committee determined that the complaint was out of scope of the MAIF Agreement as the complaint was in relation to retailer marketing activity.

Complaint 1920-04: Nature One Dairy

Breach of clause 5(a)

A complaint received on 18 August 2019 against Nature One Dairy, alleged toddler milk marketing material in the form of an information leaflet in a Priceline Pharmacy retail store was a breach of clause 4(a), 4(b) and 5(a) of the MAIF Agreement. The complaint considered the appearance and positioning of the infant suggests an infant under 12 months, and the slogan “your child’s most natural start to life” suggests bottle feeding is superior to breastfeeding.

Determination: At its meeting on 27 February 2020, the MAIF Complaints Committee determined that the Nature One toddler milk is marketing infant formula and is a breach of Clause 5(a) of the MAIF Agreement on the following grounds: the slogan and other information on the pamphlet refers to infants “give your little ones an amazing start to life”, “our infant formula is certified by” and “bringing Nature One Dairy Organic Infant Formula Milk at its purest”. The Committee also noted that the use of the image of an infant, clearly not over 12 months of age for a toddler milk product could be considered misleading advertising. The Committee did not record a breach in relation to Clause 4(a) and 4(b) of the MAIF Agreement.

Complaint 1920-05: Nestlé - Hunter Postgraduate Medical Institute

Out of scope

A complaint received on 23 September 2019 alleged an advertisement on a Hunter Postgraduate Medical Institute seminar titled “Fed is Best” and sponsored by Nestlé was a breach of the MAIF Agreement. The complainant considered the workshop was biased and questioned whether there was sufficient representation from a breastfeeding expert.

Determination: At its meeting on 11 October 2019, the MAIF Complaints Committee determined the complaint was out-of-scope of the MAIF Agreement. The seminar was for healthcare professionals only and whilst Nestle was a sponsor, there is no advertising of infant formula.

Complaint 1920-06: Infant Food Company

No breach

A complaint received on 28 November 2019 against The Infant Food Company, alleged infant formula marketing material in the form of product images displaying images of the Bubs Organic products, including the progression of the products, on its website was a potential breach of Clause 5(a) of the MAIF Agreement.

Determination: At its meeting on 27 February 2020, the MAIF Complaints Committee determined that the complaint was not a breach of the MAIF Agreement. The webpage and

pack shot images can only be accessed after the appropriate disclaimer has been accepted by the user.

Complaint 1920-07: The LittleOak Company

Out of scope

A complaint received on 14 January 2020 against The Little Oak Company, alleged various infant formula social media marketing material including 'pop up' retail stores was a potential breach of clauses 4(b); 5(a) and 5(c) of the MAIF Agreement.

Determination: At its meeting on 27 February 2020, the MAIF Complaints Committee determined that the complaint was out of scope of the MAIF Agreement, as the company was not a signatory to the MAIF Agreement at that time.