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## Glossary

ACCC	Australian Consumer and Competition Commission.
APMAIF	The Advisory Panel on the Marketing in Australia of Infant Formula.
Food Standards Code	The Food Standards Code lists requirements for foods such as additives, food safety, labeling and GM foods and regulates the use of ingredients, processing aids, colourings, additives, vitamins and minerals. The code also covers the composition of some foods e.g. dairy, meat and beverages as well as standards developed by new technologies such as novel foods.
Codex Alimentarius	A collection of internationally recognised standards, codes of practice, guidelines and other recommendations relating to foods, food production and food safety.
Complaints handling process	The process by which the APMAIF receives and investigates complaints regarding the MAIF Agreement.
Electronic marketing	The marketing (generally promotion) of products or services over the Internet, e-mail and wireless media.
FSANZ	Food Standards Australia New Zealand. FSANZ is a bi-national Government agency which develops and administers the Australia New Zealand Food Standards Code.
Infant formula	Infant formula is a manufactured food designed and marketed as for feeding babies and infants less than 12 months of age. Infant formula is a breast-milk substitute.
Follow-up formula	Follow-up formula is a manufactured food designed and marketed as for feeding babies and infants from six months onwards. Follow-up formulas may or may not be designed or marketed as a breast-milk substitute.
MAIF Agreement	The Marketing in Australia of Infant Formula Agreement.
NHMRC	National Health and Medical Research Council.
Non-signatory	A manufacturer or importer of infant formula that has not signed the MAIF Agreement.
Self-regulation	Voluntary compliance initiatives that often requires members to comply with certain standards or rules that promote ethical behaviour and maintain product quality.
Signatory	A manufacturer or importer of infant formula that has signed the MAIF Agreement.
Toddler milk drinks	Toddler milk drinks are a manufactured food designed and marketed for feeding toddler-aged children once complementary feeding has begun.
WHO	The World Health Organisation.
WHO Code	World Health Organisation International Code of Marketing of Breast-Milk Substitutes.

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# 1 Executive summary

To ensure measures to protect and enhance breastfeeding and infant health remain effective and relevant to the modern marketing and regulatory environment, the Department of Health and Ageing (DoHA) should revise the content and coverage of the *Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement* (MAIF Agreement). Improvements should also be made to the efficiency, transparency and timeliness of the operations and governance arrangements of the Advisory Panel on the Marketing in Australia of Infant Formula (APMAIF) to ensure effective monitoring of industry compliance.

The World Health Organization's *International Code of Marketing of Breast-milk Substitutes* (WHO Code) was introduced in 1981 as a model set of recommendations to protect breastfeeding and, when necessary, ensure the proper use of breast-milk substitutes. In response to the WHO Code, in 1992 the MAIF Agreement was introduced in Australia as a voluntary, self-regulated industry code of conduct. Despite significant changes to the regulatory and marketing context, few changes have been made to the MAIF Agreement or its governance and administrative practices since its inception. As part of its commitment to the National Breastfeeding Strategy 2010-2015, DoHA commissioned Nous Group (Nous) in December 2011 to conduct a review of the effectiveness and validity of operations of the MAIF Agreement (the Review).

The Review generated a number of key findings related to the coverage and operation of the MAIF Agreement and the governance arrangements of the APMAIF. On the whole, stakeholder consultations found that voluntary, industry self-regulation remains an effective and appropriate model for the MAIF Agreement. Self-regulation provides industry with a strong sense of ownership and encourages high levels of consultation between Government and industry representatives. Many stakeholders however indicated that the MAIF Agreement has become outdated in parts and is not appropriately aligned with the modern marketing context. Review findings also indicated that there is a low level of awareness and transparency of APMAIF operations and the complaints handling process.

Given these key findings, Nous has made a number of recommendations to improve the MAIF Agreement and APMAIF operations and governance arrangements (see Section 1.1). There are three key recommendations that stand out for particular consideration:

- Firstly, the voluntary, self-regulatory nature of the MAIF Agreement should remain in operation provided it continues to promote the aim of the MAIF Agreement and industry coverage remains high.
- Secondly, the wording of the MAIF Agreement needs to be updated to reflect modern health terminology and developments in the marketing environment.
- Thirdly, all APMAIF decisions and appointments should be timely, transparent and clearly communicated to the public.

Adoption of these recommendations will support the MAIF Agreement to achieve its stated aim. The recommendations provide an opportunity to address valid stakeholder concerns regarding the appropriateness of the MAIF Agreement for the modern marketing and regulatory environments. The recommendations will also assist the APMAIF to deliver clear guidance and support increased understanding of interpretations. Greater efficiency and transparency of APMAIF operations will increase consumer confidence in the complaints handling process and the overall effectiveness of the MAIF Agreement.

## 1.1 Recommendations

Nous has made a number of recommendations that relate to the MAIF Agreement and to the APMAIF. The recommendations, together with the findings that support each recommendation, are outlined in Table 1 below. These recommendations should be considered in light of the following contextual information.

The MAIF Agreement is one of several ways in which Australia has implemented the provisions of the WHO Code. Other mechanisms include the Infant Feeding Guidelines for Health Care Workers, and existing labelling laws as they apply to infant formula. Both the Infant Feeding Guidelines and the labelling laws for infant formula are currently being reviewed.

The context in which Australia’s child and maternal health care is delivered also influences the rates of breastfeeding. The Australian health care system is complex and multi-layered. Initiatives run through health care providers at state and territory level such as Baby Friendly Health Initiative accreditation, as well as community organisations that provide peer and family support: all play a role in the support and promotion of breastfeeding.

The complex interplay between these and other factors has been recognised in the Breastfeeding Strategy 2010-2015. The implementation plan developed to support the strategy identifies ten priority areas where effort could be focused to improve breastfeeding rates in Australia. Included among those priority areas was the commitment to revisit Australia’s response to the WHO Code. This Review of the MAIF Agreement has been undertaken as one element of that commitment.

Table 1: Recommendations

Rec No	Recommendation	Findings supporting recommendation
Content of the MAIF Agreement		
1	The following changes should be made to the wording of the MAIF Agreement to ensure it reflects current legislation, standards, marketing practices and modern health terminology: <ol style="list-style-type: none"> <li>a. The preamble to the MAIF Agreement should clearly identify the relationship between the MAIF Agreement and the WHO Code and identify any relevant legislation operating in parallel</li> <li>b. Clause 4 should be amended to change the term ‘superiority’ with wording that focuses on the benefits, importance and biological norm of breastfeeding</li> </ol>	Wording of the MAIF Agreement needs to be updated to reflect changes to legislation, standards and modern health terminology. The proposed updates will provide clearer guidance for APMAIF in making interpretations. There have been significant changes to the marketing environment – many new forms of marketing (including electronic marketing and social media) are not currently covered explicitly under the MAIF Agreement.

Rec No	Recommendation	Findings supporting recommendation
	<ul style="list-style-type: none"> <li>c. Clause 4(a) should be amended to include reference to 'electronic media and social marketing'</li> <li>d. Clause 6 should be amended to replace the term 'mothercraft nurse' with 'child and family nurse'</li> <li>e. Clause 7(c) should be amended to provide clear guidance around what constitutes an 'inducement'</li> <li>f. Clause 7 (d) should be amended to provide clear guidance around what is considered a 'sample' and what constitutes 'professional evaluation'</li> <li>g. Clause 9 should be amended to replace the reference to 'Australian Food Standard R7' with 'Australian Food Standard 2.9.1'</li> <li>h. Clause 9(b) should be amended to replace the phrase 'should not discourage breastfeeding' with a statement about the importance of breastfeeding.</li> </ul>	
Coverage of the MAIF Agreement		
2	<p>The voluntary, self-regulatory nature of the MAIF Agreement is the most cost effective regulatory mechanism and should continue, providing:</p> <ul style="list-style-type: none"> <li>a. it continues to promote the achievement of the aim of the MAIF Agreement</li> <li>b. industry coverage levels remain high. New entrants (manufacturers and importers of infant formula) should be encouraged to sign the MAIF Agreement.</li> </ul>	<p>Regulation of infant formula varies across countries. However, the scope of the MAIF Agreement is similar to regulatory approaches operating in many other countries. Like Australia, New Zealand has adopted a voluntary Code whilst many other countries have implemented the WHO Code via legislation. There does not appear to be any causal relationship between the level of regulation of infant formula (or implementation of the WHO Code) and breastfeeding rates.</p> <p>Although there have been a number of regulatory changes since 1992, these have not impacted the effectiveness of the MAIF Agreement. Future trends towards deregulation and initiatives to reduce compliance costs are similarly predicted to have no significant impacts on the MAIF Agreement. The self-regulation model is operating effectively. Self-regulation encourages high levels of consultation between government and industry and creates a sense of ownership by industry.</p>

Rec No	Recommendation	Findings supporting recommendation
3	<p>The coverage of the MAIF Agreement should <b>not</b> be extended to cover:</p> <ul style="list-style-type: none"> <li>• any food described or sold as an alternative for human milk for the feeding of infants beyond the age of twelve months;</li> <li>• retailers and pharmacies;</li> <li>• other infant feeding products such as bottles, teats and complementary foods.</li> </ul>	<p>Regulation of products sold for feeding infants beyond twelve months - This Review did not identify sufficient evidence to warrant the regulation of products beyond twelve months (see Recommendation 4).</p> <p>Extension to retailers and pharmacies – although many consumer stakeholders indicated that there should be mandatory participation by industry, the MAIF Agreement currently has wide market coverage despite its voluntary nature.</p> <p>Expansion of the MAIF Agreement to retailers would require a major change to current regulations. One significant issue is the practicality of whether both major as well as smaller retailers should be covered under the MAIF Agreement. There are also likely to be significant costs associated with expansion of the scope to the retail market. Results from this review do not provide sufficient evidence to warrant a regulatory expansion of this extent.</p> <p>Extension to other infant feeding products - bottles and teats are used by infant formula feeding parents, but are also used by breastfeeding parents (e.g. for expressed breast milk). As such, restrictions on these products would be inappropriate.</p>
4	<p>Consideration should be given as to how to best restrict manufacturers' labelling of toddler milk drinks with product identifiers resembling those of infant formula labels. Labelling of products should be sufficiently different to enable consumers to clearly and quickly distinguish between infant formula and toddler milk drinks.</p>	<p>Expansion of scope to toddler milk drinks has a number of implications. The major concern regarding toddler milk drinks is the use of brand identifiers resembling infant formula. Extending the MAIF Agreement to cover any food described or sold as an alternative for human milk for the feeding of infants beyond the age of twelve months is inconsistent with the WHO Code. An alternative mechanism to prevent toddler milk drinks being used as de-facto advertising for infant formula is placing restrictions on the ability of industry to market and label both infant formula and toddler milk drinks in a similar manner.</p>

Rec No	Recommendation	Findings supporting recommendation
Operations of the MAIF Agreement - to improve effectiveness of the APMAIF in actively monitoring industry compliance with the MAIF Agreement including the complaints handling process		
5	<p>The APMAIF’s monitoring role should be expanded from a purely reactive monitoring role to also encompass a proactive approach that actively monitors compliance. Its functions and powers should be changed in the following ways:</p> <ol style="list-style-type: none"> <li>a. to be able to initiate an investigation on its own</li> <li>b. to receive direction from the Minister to investigate a particular matter</li> <li>c. to require signatories to publically advertise a breach finding made against it in a prominent position on its website, a national newspaper and other relevant health sector publications as determined by the APMAIF.</li> </ol>	<p>Improvements are required to the complaints handling process – Stakeholders indicated that the complaints handling process needs to be more transparent and timely and that stronger communication is required between the APMAIF and the community. Although many investigations of complaints will continue to be reactive, the current APMAIF Terms of Reference allow for more proactive monitoring of industry behaviour. Breaches should be broadly publicised as a stronger disincentive for non-compliance. Stronger powers of enforcement are required to ensure the voluntary, self-regulated model remains effective.</p>
6	<p>The APMAIF should publish its decisions (and reasons for the decision) on all complaints (having regard to complainants’ and commercial confidentiality) on the DOHA website.</p>	<p>The APMAIF does not currently publish its full decision made on a complaint, but does provide a summary of its finding in its Annual Report. Publication of its decision (including reasons for the decision) would increase the transparency of the complaints process and also provide a valuable source of interpretation of the MAIF Agreement.</p>
7	<p>The currency of the MAIF Agreement should be reviewed regularly through:</p> <ol style="list-style-type: none"> <li>a. an external review every five years of the efficiency, effectiveness and appropriateness of the MAIF Agreement</li> <li>b. annual reviews of the coverage and effectiveness of interpretive guidelines.</li> </ol>	<p>It is best practice to undertake regular reviews of regulatory instruments. Given the rate of change in the marketing environment it is important that interpretive guidelines are regularly reviewed and updated.</p>
8	<p>The APMAIF should promote community and health care professionals’ awareness of the MAIF Agreement and the complaints process through:</p> <ol style="list-style-type: none"> <li>a. development of a website that supports information dissemination and lodgement of complaints</li> </ol>	<p>Stakeholders identified that there is limited awareness and understanding of the WHO Code and MAIF Agreement in the community and that health professionals and industry members require a stronger understanding of their responsibilities under the MAIF Agreement. The effectiveness of the MAIF Agreement is impacted by these limited levels of community awareness.</p>

Rec No	Recommendation	Findings supporting recommendation
	<ul style="list-style-type: none"> <li>b. education and general media events.</li> </ul>	<p>Stakeholders suggested that the requirement to lodge complaints in hardcopy is sub-optimal. Allowing online lodgement would improve the transparency and efficiency of the complaints process.</p>
9	<p>The APMAIF should continue to maintain strong formal and informal communication channels with industry to ensure a consistent understanding and interpretation of the MAIF Agreement and to play an education role following breaches.</p>	<p>The APMAIF has established effective consultation arrangements with signatories. This supports the effective operation of a self-regulatory code.</p>
10	<p>The APMAIF should introduce the following changes to improve the efficiency of the complaints handling process:</p> <ul style="list-style-type: none"> <li>a. design and implement an APMAIF service charter that sets out KPIs on service obligations including targets for timeliness of responses to complaints</li> <li>b. increase the use of out-of-session meetings and other flexible working arrangement to improve the timeliness of its decisions.</li> </ul>	<p>There is value to both consumers and industry in the timely resolution of complaints. It increases consumer protection by facilitating compliance with the MAIF Agreement, and it provides signatories with certainty in their obligations under the MAIF Agreement. A service charter and more flexible working arrangements would help achieve this.</p>
11	<p>An appeals process should not be introduced for complaints.</p>	<p>There is sufficient procedural fairness in the current complaints handling process, so an appeals process is not warranted.</p>
<p>Operations of APMAIF – to improve the efficiency, transparency, cost-effectiveness and appropriateness of APMAIF processes</p>		
12	<p>The APMAIF should include a report card in its Annual Report which could include:</p> <ul style="list-style-type: none"> <li>a. reporting of complaints data against new service charter KPIs</li> <li>b. a summary of APMAIF decisions over the previous 12 months including updated interpretations.</li> </ul>	<p>The APMAIF Annual Report currently includes complaints statistics, details of breaches and any issues arising from APMAIF business. The Annual Report could be further strengthened by the inclusion of a ‘report card’ that highlights performance against set KPIs (performance against KPIs proposed in this Report could also be reflected in the report card).</p>
13	<p>The existing level of funding of the APMAIF by DoHA is appropriate given its current functions and powers. Funding levels should be revised if additional functions are added to the APMAIF Terms of Reference. The previous practice of industry co-funding the operation of the APMAIF should not be re-introduced.</p>	<p>The majority of stakeholders strongly opposed cost recovery through industry funding of the APMAIF. Maintenance of funding by DoHA reinforces the objectivity of the APMAIF.</p>

Rec No	Recommendation	Findings supporting recommendation
Operations of the MAIF Agreement – to improve the effectiveness of governance arrangements		
14	The APMAIF’s Terms of Reference remain valid. The APMAIF should consider if any changes to the terms of reference are necessary to enable implementation of Recommendation 5.	The current terms of reference provide a clear framework for the operations of the APMAIF. However, the APMAIF could be more proactive in implementing the terms of reference.
15	Procedures for the appointment of members to the APMAIF should be reviewed and made publicly available. Consideration should be given to the inclusion of public advertising and application procedures for APMAIF positions.	APMAIF members are currently appointed through nominations from DoHA to the Parliamentary Secretary. The current process lacks transparency, with few stakeholders aware of the appointment procedures. Increased transparency of appointments to the APMAIF will support stakeholder confidence in the impartiality of the process.
16	The existing APMAIF composition (number and designation of members) is appropriate and should continue.	<p>The inclusion of appropriate representatives on the APMAIF is a key factor for maintaining consumer confidence in the complaints handling process.</p> <p>The existing APMAIF member categories and role statements are appropriate and should be retained.</p> <p>Existing APMAIF members should continue to conduct themselves in accordance with their role description.</p> <p>The role statements be central to considerations of future member nominations.</p>

## 2 Background to the Review

To address the issue of infant and young child feeding, in May 1981 the World Health Organization introduced the *International Code of Marketing of Breast-Milk Substitutes* (WHO Code). The WHO Code is a model set of recommendations aimed to protect and promote breastfeeding. It does this by ensuring the proper use of breast-milk substitutes, when necessary, on the basis of adequate information and through appropriate marketing and distribution. The WHO Code is intended to be adapted by member countries to their own social, legal and economic situations.

In 1992, the *Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement* (MAIF Agreement) was established as Australia's response to the WHO Code. As a self-regulated, industry code of conduct, the MAIF Agreement restricts the marketing of infant formulas to the public by manufacturers and importers.

Compliance with the MAIF Agreement is overseen by the Advisory Panel on the Marketing in Australia of Infant Formula (APMAIF). The APMAIF is an independent panel whose members are appointed by the Parliamentary Secretary and funded by DoHA.

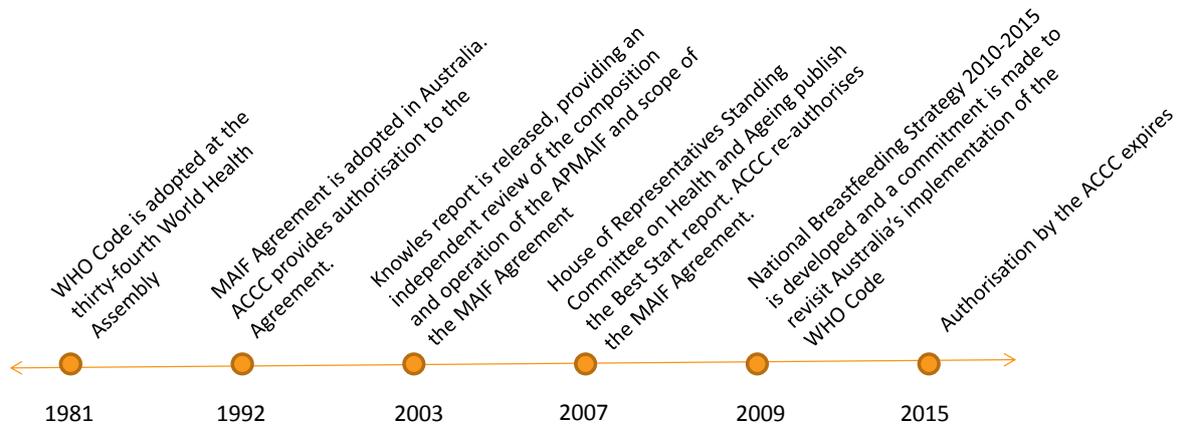
Since establishment of the MAIF Agreement in 1992, few changes have occurred to the MAIF Agreement, or to the governance arrangements and administrative practices of the APMAIF. Several reviews have been conducted on the effectiveness of the MAIF Agreement:

- In 2003, Robert Knowles completed an independent review of the composition and operations of the APMAIF and the scope of the MAIF Agreement (Knowles 2003). A number of the recommendations of this review were adopted, including expansion of APMAIF membership from three to five members and measures to improve the efficiency of APMAIF administrative and complaints handling processes.
- In August 2007, the House of Representatives Standing Committee on Health and Ageing published the 'Best Start' report on the inquiry into the health benefits of breastfeeding (Parliament of Australia 2007). The report was critical of the limited scope of the MAIF Agreement and the timeliness of APMAIF processes.
- In 2009, the Australian Health Ministers' Conference endorsed the *Australian National Breastfeeding Strategy 2010-2015* (AHMC 2009) and made a commitment to revisit Australia's implementation of the WHO Code. This Review is a key element of that process.

The Australian Competition and Consumer Commission (ACCC) provided initial authorisation of the MAIF Agreement in 1992 and re-authorisation was granted in 2007, giving signatories immunity from prosecution under the former *Trade Practices Act 1974* (since replaced by the *Competition and Consumer Act 2010*) for potentially anti-competitive behaviour resulting from the terms of the MAIF Agreement. Authorisation expires in 2015 and it is expected that the content and operation of the MAIF Agreement will have to be reviewed prior to application for re-authorisation.

The timeline of the development of the MAIF Agreement and other associated processes are shown in Figure 1 below.

Figure 1: Timeline of the development of the MAIF Agreement and other associated processes



## 2.1 This project was established to review the effectiveness and appropriateness of the MAIF Agreement and the APMAIF

As part of its commitment to implement the National Breastfeeding Strategy and in preparation for re-authorisation from the ACCC by 2015, DoHA engaged Nous to conduct a review of the effectiveness and validity of operations of the MAIF Agreement. The Review aimed to assess:

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

This Research Paper provides the results and key insights from the Review. It also provides recommendations on options for addressing any significant issues identified during the Review.

## 3 Method

Nous applied a robust method to complete the Review. The Review was guided by a conceptual framework (see Figure 2) and was completed in the following three stages:

- Stage 1: Planning and research – Nous established effective governance arrangements for the Review, gathered and considered relevant documentation and completed an environmental assessment of the international and Australian environments (see Section 4)
- Stage 2: Stakeholder consultation – Nous developed detailed data collection and stakeholder engagement plans and completed extensive stakeholder consultation using a combination of interviews and surveys (see Appendix A)
- Stage 3: Analysis and reporting - Nous completed an in-depth analysis of the data collected during the Review and further research to ensure the validity of the key findings for the Review and the appropriateness of recommendations.

There are two key outputs of the Review:

1. Research Paper – As the primary output of the Review, this document outlines:
  - a. the data collected during the Review
  - b. the analysis undertaken in developing insights
  - c. the key findings that support the recommendations.
2. Project Report – This document complements the Research Paper by summarising project processes and provides a commentary on project issues and compliance with the professional services contract under which the Review was completed.

The remainder of this section sets out key elements of the method applied to complete the Review. These key elements included:

- development of a clear conceptual framework to guide the Review
- implementation of a comprehensive data collection plan
- application of a structured and rigorous approach to data analysis.

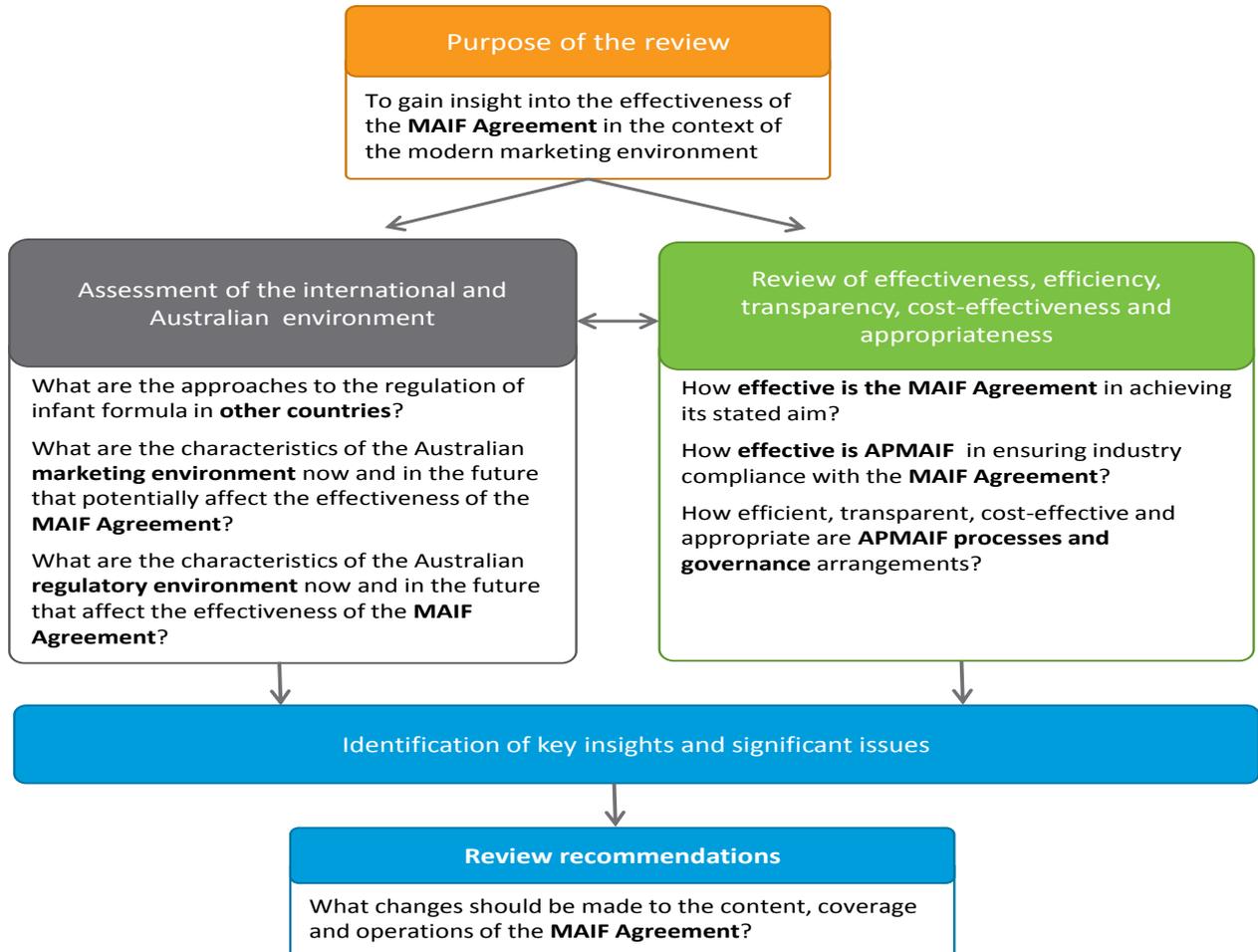
These key elements are described in more detail below.

### 3.1 The Review was guided by a clear conceptual framework

Nous developed a clear conceptual framework to guide the Review (see Figure 2 below) and ensure that its objectives were met. The conceptual framework clearly identified the review components that, in turn, informed the development of a set of review questions. These review questions formed the basis of a data collection plan that guided the data collection activities completed during the Review.

The conceptual framework has also underpinned the structure of this Research Paper.

Figure 2: Conceptual framework used to guide the Review



### 3.2 The collection of evidence was planned and comprehensive

Nous expanded the review components outlined in the conceptual framework to develop a set of review questions. These review questions informed the development of a comprehensive data collection plan that was implemented to gather the evidence necessary to complete the Review.

The initial research undertaken during Stage 1 of the project provided a thorough understanding of the background and context of the Review. This initial research validated the review questions and the data collection plan.

The data collection plan identified a number of likely sources for the data and evidence required to answer each of the review questions. At a high level, the sources involved further research or stakeholder consultation. Further information on each of the data sources is included in Appendix A.

To support the consultation required, Nous developed a stakeholder engagement plan that identified all stakeholders with an interest in the operation of the MAIF Agreement and – sensitive to reasonable time and cost constraints - proposed the most effective mechanisms to gather the data and evidence necessary to answer the relevant review questions. The two mechanisms employed were interviews with targeted stakeholders and two surveys (one targeted and the other general). Further details of the stakeholder engagement mechanisms are outlined in Appendix A.

### 3.3 The analysis completed was structured and rigorous

Nous undertook a structured and rigorous approach to analyse the data and evidence gathered during Stage 1 (Research) and Stage 2 (Stakeholder consultation).

The following key steps were undertaken:

- synthesis of research findings
- compilation of survey responses against stakeholder categories
- analysis of quantitative and qualitative survey responses
- comparison of data collected in the interviews and surveys
- preparation of the synthesis of evidence against each review question
- circulation of a 'Draft Consultation Summary' to all stakeholders that contributed to the Review seeking further feedback on the outcomes of the consultations
- assessment of the synthesised evidence to determine insights and key findings.

This approach ensured that the insights gained and the key findings identified were valid and would support consideration and implementation of the review recommendations.

The evidence gathered and the outcomes of the analysis are outlined in the 'Insight' boxes and the 'Discussion' sections in Sections 4 and 5.

## 4 Assessment of the international and Australian environments

In undertaking the Review, Nous completed an assessment of the international and Australian environments relevant to the MAIF Agreement. Nous identified a number of key findings in relation to the international, marketing and Australian regulatory environments respectively. These key findings are summarised in Table 2.

Table 2: Key findings from the assessment of the international and Australian environments

### Review component (and key findings)

#### **What are the approaches to the regulation of infant formula in other countries<sup>1</sup>?**

- The extent to which the WHO Code has been implemented varies across the nine countries studied and the mechanisms utilised also vary: Australia and New Zealand have voluntary industry codes whilst a number of other countries have enacted legislation.
- In the evidence considered by the Review, no direct correlation has been established between the level of regulation of infant formula (or implementation of the WHO Code) and the level of breastfeeding in any given country. Rather, based on the evidence reviewed, the breastfeeding rate in those countries investigated were determined to be contingent on many additional factors.
- The importance of an independent panel and a robust complaints handling process are reinforced by models operating successfully in other countries.

#### **What are the characteristics of the Australian marketing environment now and in the future that might potentially affect the effectiveness of the MAIF Agreement?**

- Consumer expectations towards product quality, protection and disclosure have increased significantly, with commensurate expectations for a timely response to complaints.
- Changes in technology have led to new media of electronic marketing (e.g. social media) and enable direct, personalised marketing approaches that are not explicitly covered in the MAIF Agreement.
- Brand line extension strategies enable manufacturers to use the marketing of toddler milk drinks (Stage 3) as de-facto advertising for follow-up formula (Stage 2) and infant formula (Stage 1).
- Global e-commerce presents significant challenges to the MAIF Agreement as international manufacturers are now able to market their products online in Australia.

#### **What are the characteristics of the Australian regulatory environment now and in the future that might potentially affect the effectiveness of the MAIF Agreement?**

- The voluntary self-regulatory form of the MAIF Agreement is both complementary to other Australian regulatory frameworks, and appropriate to regulate marketing of infant formula within Australia.
- Although there have been changes in regulatory thinking since the inception of the MAIF Agreement, these changes have not adversely impacted its effectiveness.
- No significant future developments in economic regulation were identified as having an impact on the operation of the MAIF Agreement. However, the trend towards deregulation and reducing compliance costs was acknowledged.

<sup>1</sup> The Review considered the relevant aspects of the comprehensive international comparison study completed by the University of Sydney NHMRC Clinical Trials Centre into the implementation of the WHO Code and other breastfeeding initiatives (University of Sydney 2011) in making its findings and developing recommendations.

The remainder of this section provides more detail on the assessment of the international and Australian environments. It includes a comparison of how other countries have implemented the WHO Code, including lessons learnt from the success of those various approaches. It also examines how changes in marketing practices have affected the MAIF Agreement, and how the use of emerging technologies and other marketing practices continues to challenge its effectiveness. Finally, it examines the regulatory environment and the tools available to policy makers to effect regulation.

## 4.1 What are the approaches to the regulation of infant formula in other countries?

In 2011, the University of Sydney NHMRC Clinical Trials Centre was contracted by DoHA to complete an international comparison study into the implementation of the WHO Code and other breastfeeding initiatives (University of Sydney 2011). The study gathered data on nine developed countries to assist in the assessment of the relative success of measures implemented in Australia. The study was divided into two parts: (i) a rapid, systematic review of the evidence base to identify key global interventions which influence breastfeeding practice; and (ii) a review of websites and databases to retrieve other necessary information to assess the implementation of the WHO Code in each country.

Table 3 outlines the extent and form of regulation used to implement the WHO Code across the nine countries covered in the study.

Table 3: International approaches to the implementation of the WHO Code

	Implementation	WHO Code Articles								
		2: Scope	4: Information and education	5: General public and mothers	6: Health care system	7: Health workers	8: Employees	9: Labelling	10: Quality	11: Implementation / monitoring
Australia	Extent									
	Type of measure	Voluntary code						Legislation	Voluntary code	
Canada	Extent									
	Type of measure	Legislation							Legislation	
France	Extent									
	Type of measure	Legislation						Legislation		
Germany	Extent									
	Type of measure	Legislation							Legislation	Provisional code
Ireland	Extent									
	Type of measure	Legislation						Legislation		
New Zealand	Extent									
	Type of measure	Voluntary code						Legislation	Voluntary code	
Norway	Extent									
	Type of measure	Legislation						Legislation		
UK	Extent									
	Type of measure	Legislation								
USA	Extent									
	Type of measure	Legislation							Legislation	

Key: No implementation Reduced implementation Partial implementation Total implementation

There are differences in the mechanisms used and the degree to which the nine countries have implemented the WHO Code:

- The European Union (EU) countries studied have all partially adopted the WHO Code in legislation (in line with the EU Directives that cover Articles 2-6 and Article 9). None of the European countries included in the study have regulations or codes covering Articles 7 and 8, and there is limited coverage of Article 11.
- Both Australia and New Zealand have voluntary, industry codes in place that cover all articles of the WHO Code (Articles 9 and 10 are covered by the Food Standards Code).
- Canada and the United States of America (USA) have taken little or no action to implement the WHO Code
- Australia regulates both infant formula (0-6 months) and follow-up formula (6-12 months), a range of other approaches have been taken in the other countries studied (see Table 4 below).

Table 4: International approaches to product coverage

	2. Scope	4 Information and education	5. General public and mothers	6. Health care systems	7. Health workers	8. Employees	9. Labelling	10. Quality	11. Implementation/ monitoring
Australia	12months								
Canada	12 months						12 months		
France	6 months						6 months		
Germany	12 months						12 months		Not specified
Ireland	12 months		6 months	Mixture 6/12 months			Mixture 6/12 months	12 months	
New Zealand	Mixture 6/12 months	6 months					12 months		Mixture 6/12 months
Norway	12 months						6 months	12 months	12 months
UK	12 months						6 months		
USA	12 months						12 months		

The International Baby Food Action Network (IBFAN) conducts monitoring of international efforts to implement the WHO Code and categorises countries on a scale of one (law) to eight (no action). Under this system, Australia was most recently assigned to category three, indicating government adoption of a policy or voluntary measure encompassing all or nearly all provisions of the WHO Code.

### 4.1.1 The MAIF Agreement is most similar to the approach taken in New Zealand

Review question	Insights: <sup>2</sup>
To what degree is the MAIF Agreement consistent with regulatory approaches to infant formula in other countries?	<ul style="list-style-type: none"><li>• The MAIF Agreement is similar to New Zealand's voluntary code. Most other countries that have implemented the WHO Code have done so via legislation.</li><li>• The scope of the MAIF Agreement (e.g. it only covers infant formula to 12 months) is similar to many countries.</li><li>• The extent to which the WHO Code has been implemented varies across countries from low (e.g. USA, Canada) to high (e.g. Ireland, New Zealand).</li></ul>

The international comparison of WHO Code implementation (University of Sydney 2011) demonstrated that Australia is situated approximately in the middle of the international spectrum in terms of the scope and enforceability of its implementation. The study identifies the following similarities and differences in WHO Code implementation:

- Many countries have limited their regulation to infant formula, including Australia, New Zealand and EU countries.
- There is a high degree of consistency in relation to food standards (MAIF Article 9: labelling and Article 10: quality).
- Both Australia and New Zealand have adopted a voluntary, industry self-regulatory system with self-regulated enforcement. However one of the key differences is that New Zealand's system enables complaints to be lodged against the Code of Practice for Health Workers and includes an appeals process.
- The Australian MAIF Agreement has a more transparent reporting process than the approaches taken in several other countries.
- The UK has implemented stronger regulatory mechanisms by giving legal effect to the WHO Code. The UK system includes both enforcement of regulations and a timely and transparent process for adjudicating advertising breaches.

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<sup>2</sup> These insights relate to the countries outlined in **Error! Reference source not found.**

## 4.1.2 Several lessons can be learnt from how other countries have implemented the WHO Code

Review question	Insights:
What lessons can be derived from the success or otherwise of the approaches adopted in other countries?	<ul style="list-style-type: none"><li>◦ The findings from the 2011 review of the New Zealand regulation suggest strengths in maintaining the independence of the regulatory body and demonstrate the importance of a robust complaints handling process.</li><li>◦ There does not appear to be a causal relationship between the level of regulation of infant formula (or implementation of the WHO Code) and the level of breastfeeding in a country.</li><li>◦ A country's breastfeeding rate is contingent on many factors, including<sup>3</sup>:<ul style="list-style-type: none"><li>◦ level of support available</li><li>◦ education</li><li>◦ training of health care professionals</li><li>◦ the Baby-Friendly Hospital Initiative (BFHI)</li><li>◦ parental leave, childcare and other government initiatives</li><li>◦ social and cultural norms, which have a significant influence on breastfeeding practice</li><li>◦ demographics</li><li>◦ supplemental foods.</li></ul></li></ul>

The Review derived important insights from two sources. The first is a review that was conducted in 2011 of the WHO Code implementation in New Zealand (Burgess & Quigley 2011). This review is particularly useful given that New Zealand has used a similar regulatory mechanism to implement the WHO Code. Insights can also be gathered from the international comparison study identified in Section 4.1 (University of Sydney 2011). Both are discussed in turn below.

### **Implementation of the WHO Code in New Zealand**

The 2011 review of the implementation of the WHO Code in New Zealand (Burgess and Quigley, 2011) identified several areas for improvements to New Zealand's implementation of the WHO Code.

The Review recommended:

- increased independence of the code monitoring and compliance body to ensure appropriate, non-biased investigation of complaints
- strengthened complaints handling procedures to increase confidence in the system.

The report also recommended that the Minister for Health should table final decisions on complaints in parliament to name and shame signatories who have breached the codes. Burgess and Quigley also stress the importance of assessing whether a complaint falls in-scope prior to commencing an investigation.

Burgess and Quigley also conducted a literature review on the market characteristics necessary for an industry self-regulatory model to be successful. They recognised that, if certain characteristics are present in the industry, self-regulation can be a cost effective regulatory mechanism. They concluded that the market for infant formula is a strong candidate for self-regulation.

<sup>3</sup> University of Sydney 2011 (pp100-103)

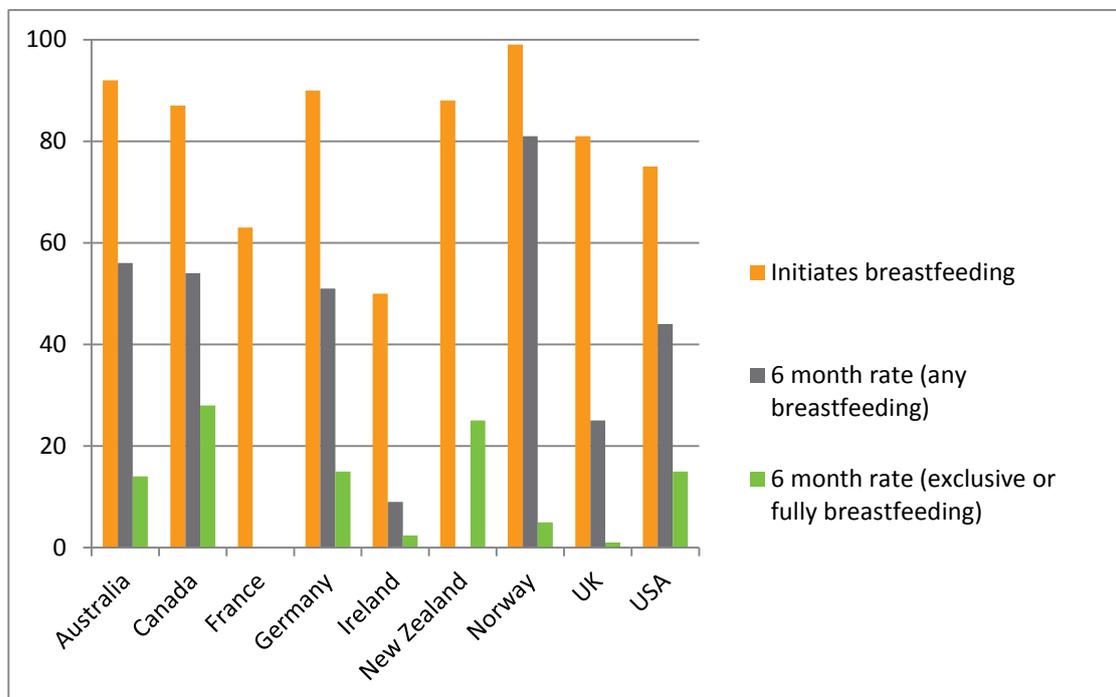
### **International comparisons of breastfeeding rates**

The aim of the MAIF Agreement is to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breastfeeding and by ensuring the proper use of breast-milk substitutes, when they are necessary, on the basis of adequate information and through appropriate marketing and distribution. Consistent with this aim, one measure of regulatory success is the relative breastfeeding rates across different countries.

The University of Sydney study showed a high degree of variability in breastfeeding rates across the countries examined (see Figure 3 below).

Noting the different approaches taken by comparable countries (see Table 3 above), there appears to be no correlation between the degree and type of implementation of the WHO Code and increased breastfeeding rates.

Figure 3: Comparison of breastfeeding rates in comparable countries (University of Sydney 2011)<sup>4 5</sup>



The study found that:

- There is a high level of initial breastfeeding in seven of the nine countries studied. Only two countries have less than 75% of mothers that initiate breastfeeding (including France at 63% and Ireland at 50%).
- The percentage exclusively breastfeeding at six months significantly reduces across all countries. Canada and New Zealand are the only countries (of those included in the study) whose rate remains above 20%.
- Several of the countries have relatively high rates of partial breastfeeding at six months, headed by Norway at 81 per cent, with Australia, Canada and Germany all recording above 50 per cent.

<sup>4</sup> NB: '6 month rate (any breastfeeding)' data not available for France and New Zealand

<sup>5</sup> NB: '6 month rate (exclusive or fully breastfeeding)' not available for France

- France and Ireland have notably lower breastfeeding rates than the other countries across all comparable measures.
- Despite limited implementation of the WHO Code in formal regulations, the USA has higher initial breastfeeding rates than both France and Ireland. Similarly, Canada, with its limited implementation of the WHO Code, has relatively high breastfeeding rates across all three measures.

The study found<sup>6</sup> that no one key factor or intervention was responsible for determining the breastfeeding rate in any given country. Rather, it identified several influencing factors that may explain the variations in breastfeeding rates, including:

- **Level of support available** – whether from a partner, lay person, peer, or professional, the level of support has an impact on breastfeeding rates.
- **Education** – particularly important for low-income families.
- **Training of health care professionals** – the NHMRC Report commented that there is a positive correlation between the level of training of health care professionals and breastfeeding rates.
- **The Baby-Friendly Hospital Initiative (BFHI)** – there is a high implementation of BFHI in Norway and NZ.
- **Parental leave, childcare and other government initiatives** – Norway has the most generous leave provisions and the lowest use of childcare. There is some evidence that increasing paid parental leave only leads to a small increase in rates of breastfeeding.
- **Social and cultural norms have a significant influence on breastfeeding practice** – societal barriers to breastfeeding in public were experienced by women in several countries. Societal influence was not identified as a barrier to breastfeeding in Norway.
- **Demographics** – older women, more highly educated women, and women with a higher socio economic status have higher rates of breastfeeding across most countries surveyed.
- **Supplemental foods** – the study found that the effect of formula feeding on breastfeeding rates was inconclusive.

## 4.2 What are the characteristics of the Australian marketing environment that affect the effectiveness of the MAIF Agreement?

The MAIF Agreement does not explicitly address advances in technology, particularly in relation to electronic marketing and the use of social media. Whilst the rise of these practices raises concern for some stakeholder groups, the Review found that the effectiveness of the MAIF Agreement is relatively robust and should not be affected provided that the APMAIF can make timely interpretations and develop clear guidelines for industry marketing activities.

The advent of toddler milk drinks has led to the development of brand line extension strategies, whereby infant formula and follow-up formula are marketed as the initial stages. Some stakeholders view this practice as being outside the scope of the MAIF Agreement while others have suggested the practice undermines the effectiveness of the MAIF Agreement.

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<sup>6</sup> University of Sydney 2011 - p100 'Findings and conclusions'.

Some stakeholders suggested that the absence of restrictions on the import of products for personal use combined with the exponential growth in global e-commerce is a growing concern. It is difficult to measure the impact that this is having on the effectiveness of the MAIF Agreement in achieving its stated aim but it is an issue that should be closely monitored in years to come.

These issues are discussed in more detail below.

#### 4.2.1 Marketing practices have changed significantly since the MAIF Agreement was drafted in 1992

Review question	Insights:
What are the observable changes that have occurred in industry marketing practices throughout the life of the MAIF Agreement?	<ul style="list-style-type: none"><li>• Consumer expectations towards product quality, protection and disclosure have increased significantly, with higher expectations for a timely response to complaints.</li><li>• Composition of the infant formula market has changed, with shifts in the structure of the supply chain creating significant challenges.</li><li>• Brand-line extensions enable manufacturers to use toddler milk drinks as de-facto advertising for infant formula.</li><li>• Electronic media and social marketing have led to significant changes in consumer access to information and the ability of manufacturers to market products to consumers.</li></ul>

Significant changes have taken place in the Australian marketing environment since the MAIF Agreement came into effect in 1992. The Review investigated changes in the following areas:

1. Shifts in consumer attitudes and expectations
2. Structural changes in the market
3. Developments in marketing approaches and tactic.

The findings of these investigations are outlined below.

##### Greater consumer power has increased consumer expectations

The balance of power has shifted significantly from marketers to consumers over the past two decades (Ward 2011). Greater access to information, higher expectations towards product quality and protection and increased scepticism towards marketers and company profits have led to greater demands for product safety, disclosure and information. These expectations have been accompanied by greater health consciousness and concerns about food composition.

Aligned with these shifts in power has been a lower tolerance amongst consumers of inappropriate marketing practices and greater expectations for timely responses to demands and feedback (Ward 2011). Particularly in environments of self-regulated advertising (Kerr et al 2002), consumers are demanding effective mechanisms for lodging complaints and observing responsive actions to their concerns.

## There have been changes to market composition and the supply chain

Since 1992 the structure of the infant formula market has changed significantly. There are currently six signatories to the MAIF Agreement:

- Abbot Australasia Pty Ltd
- Bayer Australia Ltd
- H J Heinz Company Australia Ltd
- Nestle Australia Ltd
- Nutricia Australia Pty Ltd
- Pfizer Australia Pty Ltd.

All are multinational, diversified companies and collectively they account for the majority of infant formula sales in Australia. Bayer is the most recent entrant into the market, signing the MAIF Agreement in 2007.

Since 1992 a number of changes have occurred to the structural composition of the market:

- Bellamy's Organic, an Australian manufacturer operating from Tasmania, entered the market and is currently a non-signatory to the MAIF Agreement
- A number of producers have emerged in Australia that primarily or exclusively service the Asian and Middle Eastern markets and are not current signatories to the MAIF Agreement (e.g. Formula One Gold, Tatura and Infant Formula Australia).
- Amcal withdrew as a signatory to the MAIF Agreement in 1999 and currently sells private label infant formula through its pharmacy outlets.

Amcal's withdrawal from the MAIF Agreement demonstrates the challenge caused by increasingly complex product supply chains. Greater integration of the supply chain (manufacturers, importers, wholesalers, retailers) over the past two decades has enabled market players to adopt multiple positions within the value chain. As mega-retailers increasingly generate and sell their own home-brand products, they argue that production of their products by a third party exempts them from requirements of the MAIF Agreement. This presents a significant challenge to the coverage of the MAIF Agreement.

Alongside these market shifts has been the introduction of stronger guidelines for infant formula under the Food Standards Code. In 2000, Food Standards Australia New Zealand introduced Standard 2.9.1, outlining the compositional and labelling requirements for foods intended or represented for use as a substitute to breast milk. The Code applies to all infant formula products including powder, liquid concentrate and ready to drink formats and covers infant formulas provided for infants with special nutritional requirements. Areas covered under the Code include (FSANZ 2003):

- Permitted and restricted substances for the composition of infant formula
- Requirements for warnings, nutritional information and prohibited representations on the labelling of products (including prohibition of pictures of infants or pictures that idealise the use of infant formula product)

Nutrition requirements for formula products

## Marketing approaches and tactics have become increasingly sophisticated

In response and anticipation to changes in the broader macro environment, companies often consider strategies within the context of the marketing mix – a set of decisions related to price, channels of

distribution, product, communications and customer relationship management. Part of this marketing mix is the four Ps of marketing:

- Product - the combination of product attributes (e.g. packaging, size, quality and design) which differentiates the product from those of competitors and satisfies consumer need
- Price - encompasses variables in list price such as discounts, payment terms and allowances to maximise the target market's willingness to pay
- Place - refers to distribution channels and coverage and how consumers access the product
- Promotion - methods used to generate brand awareness and influence purchase through the use of advertising, sales promotions and sales force, PR and direct marketing.

Since the introduction of the MAIF Agreement in 1992, a number of trends have occurred in relation to the four Ps. Table 5 outlines a number of key trends relevant to the infant formula market.

Table 5: Key marketing trends

P	Market trend	Relevance to Infant formula	Implication
Product	Increase in the use of brand line extensions by manufacturers	Toddler milk drinks are marketed with similar product identifiers to infant formula (e.g. Heinz Nurture Original labels products as stages 1, 2, and 3).	Regulatory environment should consider all products sharing a common brand identity.
	Increase in product modifications and functional foods to differentiate products from competitors	Optional substances are being added to infant formula to offer additional health benefits and reflect composition of breast milk.	The use of labelling claims for product differentiation requires consideration.
	Product positioning by manufacturers to distinguish products in the market	Manufacturers are targeting products as having scientific benefits or creating trust amongst mothers.	Product labelling and scientific claims have the capacity to differentiate products.
Promotion	Increased use of internet and social media for marketing, enabling more subtle and indirect approaches	Product review websites, Facebook, Twitter and online forums are being used as an avenue to promote infant formulas.	Guidelines and interpretations require flexibility to accommodate ongoing changes in marketing media.
Place	In-store presentation by retailers to increase accessibility and association of products	Infant formula displays are being placed near point-of-purchase or normalised through placement next to other baby products.	Manufacturers can use retail channels to promote infant formula products.
Price	Discount incentives are being provided by retailers and price used for market validation	Pharmacies and retailers are using active discounting to promote products.	The regulatory environment should not inhibit competitive prices.

These trends are discussed in more detail in Appendix D.

## 4.2.2 Electronic marketing and e-commerce present significant challenges to the future effectiveness of the MAIF Agreement

Review question	Insights:
<p>What are the possible future developments that may alter the operations of the Australian marketing sector and thereby affect the effectiveness of the MAIF Agreement, and to what extent can these be anticipated and accommodated?</p>	<ul style="list-style-type: none"><li>• Future developments in electronic marketing will enable more direct, personalised marketing approaches.</li><li>• Global e-commerce presents challenges in monitoring adherence to the MAIF Agreement.</li><li>• The MAIF Agreement needs to be sufficiently robust and flexible to accommodate future environmental changes.</li></ul>

Future developments in electronic marketing present a significant challenge for the effectiveness of the MAIF Agreement. Online marketing media are expected to continue advancing and growing in coming years, providing marketers with the ability to market directly to consumers both domestically and internationally.

Stakeholders identified the growth of e-commerce as a particular challenge. Greater access to online information increases the global reach of manufacturers and the transferability of marketing between products. The ability of consumers to purchase products online direct from manufacturers (both local and international) creates a significant challenge in monitoring compliance with the intent of the MAIF Agreement.

Advances in electronic marketing also present greater opportunities for manufacturers to apply targeted marketing approaches. Interconnection between electronic media and information supports the use of customer profiling and relationship marketing, enabling retailers to effectively segment the market and apply more personalised marketing techniques. The ability of search engines such as Google to store and use previous customer searches to advertise products targeted at personalised interests presents new opportunities for manufacturers of infant formula to reach potential customers. Marketing through text messages, increased use of social media and applications on smart phones all present manufacturers with the opportunity to adopt a direct and personalised approach to market their products. This presents a challenge to monitoring adherence to the MAIF Agreement due to the difficulty in detecting such direct marketing, and consequently a heavy reliance upon submissions of complaints by individuals.

To accommodate future developments in electronic marketing, the MAIF Agreement needs to be flexible and robust enough to adapt to environmental changes. Stakeholders identified a need for guidelines to outline what is considered acceptable practice and to guide interpretation and application of the MAIF Agreement to the modern marketing context. Additionally, effective mechanisms for monitoring developments in the marketing environment need to be developed and implemented.

## 4.3 What are the characteristics of the Australian regulatory environment that affect the effectiveness of the MAIF Agreement?

Whilst there have been changes in regulatory theory and practice since the inception of the MAIF Agreement in 1992 (for example, the establishment of the World Trade Organisation in 1995), these changes have not adversely impacted, or held back its effectiveness.

The Review found that the voluntary self-regulatory nature of the MAIF Agreement is complementary to associated regulatory frameworks.

The Review found insufficient evidence to suggest that a more heavy-handed regulatory mechanism would deliver additional benefit in achieving the stated aims of the MAIF Agreement.

In weighing these various factors, the Review determined that the MAIF Agreement is currently effective and that this form of regulation remains appropriate.

Noting the continuing trends towards deregulation in other areas and overall efforts of Governments to reduce compliance costs, no developments in economic regulation are anticipated in the short to medium term that will have a significant impact on the operation and effectiveness of the MAIF Agreement.

These issues are discussed in more detail below.

### 4.3.1 Changes in the Australian regulatory context have had limited implications for the MAIF Agreement

Review question	Insights:
What have been the changes in the Australian regulatory context throughout the life of the MAIF Agreement and what are the implications of these for the terms and scope of the MAIF Agreement?	<ul style="list-style-type: none"><li>• The voluntary self-regulatory nature of the MAIF Agreement remains an appropriate mechanism (also discussed at Section 5.1.5).</li><li>• Although there have been changes in regulatory thinking since the inception of the MAIF Agreement, these changes have not adversely impacted its effectiveness.</li></ul>

#### **Changes in the Australian regulatory context throughout the life of the MAIF Agreement**

While there have been advances in regulatory thinking since the MAIF Agreement was implemented, the regulatory tools that are available to policy makers today are fundamentally similar. The infant formula marketing environment however, continues to evolve so it is appropriate to review the mechanisms used to implement the MAIF Agreement to determine whether it remains the best way to achieve the Agreement's stated objectives.

Regulatory thinking and practice in Australia has significantly changed since the MAIF Agreement was implemented in 1992. Economic regulation has undergone significant change, commencing with the Committee of Inquiry into a National Competition Policy (Hilmer Report 1993) and consideration by the Council of Australian Governments and subsequent development of the National Competition Policy in 1995 (COAG 1995). This reform process led to the establishment of the ACCC and a drive for efficiency and competition, especially within state-owned enterprises. More recently, jurisdictional consumer

protection regimes have been consolidated into nationally consistent consumer laws. The Australian Consumer Law is jointly administered by the ACCC and jurisdictional consumer protection agencies.

Successive Commonwealth and jurisdictional governments have focused on reducing the burden that unnecessary regulation can impose on business and society. Several 'red tape', and now 'green tape' reduction programs aimed at streamlining government regulation and reducing compliance costs for business have been implemented across a range of sectors.

The Australian Government has detailed processes to ensure that the form of regulation is appropriate to solve an identified problem at least cost. The process includes the preparation of a regulatory impact statement that sets out the rationale for the regulation. This trend has resulted in more evidence-based solutions to regulatory issues, and more stringent processes for the introduction of new regulations.

### **Implications of the regulatory context for the terms and scope of the MAIF Agreement**

This Review assessed the effectiveness of the MAIF Agreement in addressing community expectations and considered whether the current wording and interpretation is effective in meeting health and related social policy objectives.

The MAIF Agreement is a 'light-handed' (ACCC, 2011) industry code, which is voluntary in nature. The ACCC has found that voluntary self-regulatory codes have been more successful in certain circumstances, such as when the regulatory body has widespread industry support (ACCC 2011). Benefits of a light-handed regulatory approach include:

- Effective consumer protection at a low cost
- Increased transparency in the relevant industry
- Increased stakeholder confidence in the relevant industry
- A competitive advantage to signatories of a voluntary code.

The ongoing challenge for government is to ensure that any regulation responds to an identified problem, and does so efficiently by maximising the benefits to the community relative to the costs of the regulation. There are many factors to consider when choosing the appropriate regulatory tool (or form of regulation), such as the nature and history of the industry and the ability of a particular regulatory arrangement to deliver the identified objectives. Only four industries have required the introduction of a prescribed mandatory code.<sup>7</sup>

The form of regulation chosen to implement the MAIF Agreement has a direct impact on the MAIF Agreement's coverage, enforceability, ability to influence behaviour and ultimately, its success in achieving its stated objectives.

The Best Practice Regulation Handbook (Department of Finance and De-regulation 2010) emphasises that a regulatory response must be proportional to and appropriate for the identified problem. If perceptions of the 'problem' were to change (for example, through new technology), or community expectations as to a particular matter were to shift over time, then it may be appropriate to re-assess the form of regulation being used.

Some examples relevant to the MAIF Agreement might include:

- A significant reduction in breastfeeding rates in Australia
- A shift in community concern / awareness of breastfeeding issues or regarding the scope of the Agreement

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<sup>7</sup> The four prescribed mandatory codes are the Franchising Code, Horticulture Code, Oil Code, and the Unit Pricing Code.

- A link between increased demand for infant formula products and trends in marketing practices (e.g. marketing of toddler milk drinks is not currently covered under the MAIF Agreement)
- A significant public safety risk caused by a lowering of manufacturing standards products covered by the Food Standards Code
- Significant, or repeated breaches of the MAIF Agreement by signatories and the MAIF Agreement’s inability to effectively sanction parties
- Practices by a non-signatory manufacturer or importer that were in clear contravention of the Articles of the MAIF Agreement

Figure 4 displays several regulatory options available to implement the MAIF Agreement on a spectrum from light-handed to heavy-handed regulation.

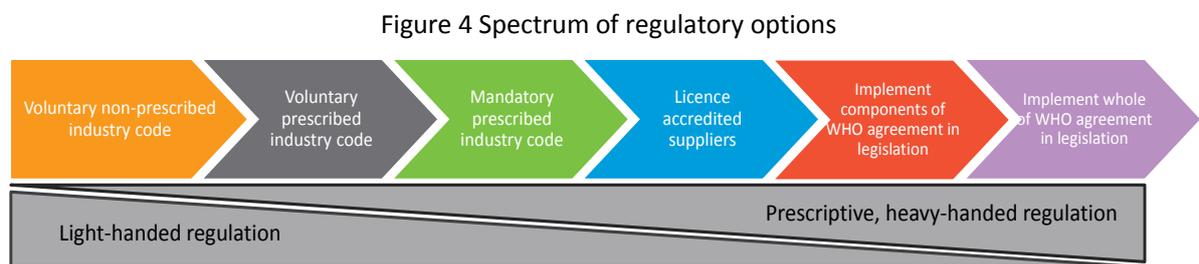


Table 18 in Appendix E discusses these regulatory options available to Government to implement the MAIF Agreement and discusses the advantages and disadvantages of each option. Evidence collected on stakeholder views on the voluntary nature of the MAIF Agreement is also included at Section 5.1.5.

### 4.3.2 Stakeholders did not foreshadow significant future economic regulatory changes that will impact on the MAIF Agreement

Review question	Insights:
What are the possible future developments in Australian economic regulation and their potential impact on the operation of the MAIF Agreement?	<ul style="list-style-type: none"> <li>• No significant future developments in economic regulation were identified as having an impact on the operation of the MAIF Agreement; however, the trend towards deregulation and reducing compliance costs was acknowledged.</li> <li>• The MAIF Agreement interacts with several other regulatory mechanisms including the Food Standards Code (labelling laws), the Codex Alimentarius Commission and consumer protection legislation (ACCC).</li> </ul>

There were limited comments from interviewees in relation to how possible future developments in economic regulation may impact on the MAIF Agreement. Several interviewees referred to the trend towards deregulation and self-regulatory approaches. One stakeholder supported this trend, noting that the MAIF Agreement was consistent with this approach. Other stakeholders considered the trend towards deregulation as a negative for the MAIF Agreement.

Interviewees also commented on the need for consistency between the MAIF Agreement and other areas of regulation, including the Food Standards Code, the Codex Alimentarius Commission and the Competition and Consumer Act, as discussed below:

- **Food Standards Code (FSANZ)** – any infant formula sold in Australia must comply with the Australian and New Zealand Food Standards Code (the Code). FSANZ, the Code administrator, commented that the MAIF Agreement and the Code are generally consistent (in the areas where they overlap) however, alignment could be improved in some specific areas. These suggested changes are captured in Table 10 at Section 5.1.6 of this report. FSANZ stated that it will commence a review of Standards 2.9.1 of the Code (labelling of infant formula) this year. Standard 2.9.1 is Australia’s response to WHO Code Article 9.2.
- **Codex Alimentarius Commission (Codex)** – Australia is a member of Codex which is the international food standards setting body and is recognised by the WTO. Stakeholders commented that FSANZ needs to ensure Australia’s food standards are consistent with the Codex standards.
- **Competition and Consumer Act 2010 (ACCC)** – Stakeholders recognised that the consumer protection functions of the ACCC complement the MAIF Agreement by providing general provisions preventing misleading and deceptive conduct in the sale of goods and services. These provisions protect consumers from a range of conduct including misleading information on labels, or misleading conduct of any party involved in the sale of infant formula.

## 5 Review of effectiveness, efficiency, transparency, cost-effectiveness and appropriateness

Nous conducted a range of stakeholder engagement activities to address the key review questions:

- How effective is the MAIF Agreement in achieving its stated aim?
- How effective is the APMAIF in monitoring industry compliance with the MAIF Agreement?
- How efficient, transparent, cost-effective and appropriate are APMAIF processes and governance arrangements?

This section discusses findings related to the effectiveness, efficiency, transparency, cost-effectiveness and appropriateness of the MAIF Agreement, complaints handling process, and APMAIF operations and governance arrangements.

This section is structured by the key review questions relevant to each of the review components. Recommendations are presented at the start of each section followed by supporting evidence sourced from stakeholder interviews, surveys (targeted and general) and / or complaints data.

### 5.1 How effective is the MAIF Agreement in achieving its stated aim?

#### Recommendations

1. The following changes should be made to the wording of the MAIF Agreement to ensure it reflects current legislation, standards, marketing practices and modern health terminology:
  - a. The preamble to the MAIF Agreement should clearly identify the relationship between the MAIF Agreement and the WHO Code and identify any relevant legislation operating in parallel
  - b. Clause 4 should be amended to change the term 'superiority' with wording that focuses on the benefits, importance and biological norm of breastfeeding
  - c. Clause 4(a) should be amended to include reference to 'electronic media and social marketing'
  - d. Clause 6 should be amended to replace the term 'mothercraft nurse' with 'child and family nurse'
  - e. Clause 7(c) should be amended to provide clear guidance around what constitutes an 'inducement'
  - f. Clause 7 (d) should be amended to provide clear guidance around what is considered a 'sample' and what constitutes 'professional evaluation'
  - g. Clause 9 should be amended to replace the reference to 'Australian Food Standard R7' with 'Australian Food Standard 2.9.1'
  - h. Clause 9(b) should be amended to replace the phrase 'should not discourage breastfeeding' with a statement about the importance of breastfeeding.
2. The voluntary, self-regulatory nature of the MAIF Agreement is the most cost effective regulatory mechanism and should continue, providing:
  - a. it continues to promote the achievement of the aim of the MAIF Agreement
  - b. industry coverage levels remain high. New entrants (manufacturers and importers of infant formula) should be encouraged to sign the MAIF Agreement.

### Recommendations

3. The coverage of the MAIF Agreement should not be extended to cover:
  - any food described or sold as an alternative for human milk for the feeding of infants beyond the age of twelve months;
  - retailers and pharmacies;
  - other infant feeding products such as bottles, teats and complementary foods.
4. Consideration should be given as to how to best restrict manufacturers’ labelling of toddler milk drinks with product identifiers resembling those of infant formula labels. Labelling of products should be sufficiently different to enable consumers to clearly and quickly distinguish between infant formula and toddler milk drinks.

#### ***Aim of the MAIF Agreement (Clause 1):***

“The aim is to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breastfeeding and by ensuring the proper use of breast milk substitutes, when they are necessary, on the basis of adequate information and through appropriate marketing and distribution”.

### 5.1.1 Existence of a formal agreement to regulate infant formula is a key strength, however there are a number of areas for improvement

Review question	Insights
What are stakeholder views on the effectiveness of the MAIF Agreement, including perceived strengths and weaknesses?	<ul style="list-style-type: none"> <li>◦ The existence of a formal agreement in Australia to regulate the marketing of infant formula was identified by many stakeholders as a key strength.</li> <li>◦ Many stakeholders identified that self-regulation creates a strong sense of ownership by industry and encourages consultation between government and industry.</li> <li>◦ Some stakeholders suggested that the scope of the MAIF Agreement was too narrow and therefore a key weakness, particularly in relation to exclusion of toddler milk drinks, marketing activities by retailers and pharmacies and electronic marketing.</li> <li>◦ Many stakeholders suggested penalties for breaching the MAIF Agreement do not provide a strong enough disincentive to industry.</li> </ul>

Many stakeholders (both targeted and wider respondents) indicated that a key strength of the MAIF Agreement was that it was a formal agreement for regulating the marketing of infant formula in Australia. Through the MAIF Agreement, Australia has adopted a number of the recommendations stipulated under the WHO Code and taken positive steps to increase the recognition and awareness of infant health and nutrition.

Stakeholders identified a range of key strengths of the MAIF Agreement. The five key strengths identified by targeted stakeholders through interviews and surveys are outlined in Table 6 (see Appendix F for a comprehensive table of identified strengths).

Table 6: Key strengths of the MAIF Agreement identified by targeted stakeholders

Strengths identified by targeted stakeholders	APMAIF members	Government organisations	Industry signatories	Non-signatories	Health professionals/ organisations	Consumer groups
<b>Existence of the MAIF Agreement:</b> Australia has developed and implemented a formal Agreement that is signed by manufacturers of infant formula and implements elements of the WHO Code.						
<b>Self-regulation:</b> Regulation through consensus by industry partners creates a stronger sense of ownership, engagement and responsibility amongst manufacturers for the MAIF Agreement. Co-regulation between government and industry also supports cooperation and consultation between stakeholders.						
<b>Adaptable to environment:</b> The MAIF Agreement has been developed separately to the WHO Code and tailored appropriately to the Australian context. It has been demonstrated that the MAIF Agreement is robust enough to adapt to environmental changes.						
<b>Aim of the MAIF Agreement:</b> The aim of the MAIF Agreement is clear and provides an effective framework for monitoring marketing in Australia. The two parts of the aim - promotion of breastfeeding and ensuring proper use of breast-milk substitutes - ensure the MAIF Agreement is well-balanced.						
<b>Complaints process:</b> Current arrangements include an effective complaints process. The process is clear.						

 High priority       Low priority

Alongside these key strengths, stakeholders also identified a number of key weaknesses and areas to improve the MAIF Agreement. Although many supported the existence of the MAIF Agreement, both targeted and general survey respondents indicated that coverage of the MAIF Agreement is too narrow, and in particular should be expanded to include toddler milk drinks, retailers and pharmacies, and electronic marketing. Additionally, a number of both targeted and general survey respondents indicated that the current approach to ‘name and shame’ companies in breach of the MAIF Agreement is not a strong enough disincentive. The key weaknesses identified by targeted stakeholders are described in Table 7 (see Appendix F for a comprehensive list of identified weaknesses).

Table 7: Key weaknesses of the MAIF Agreement identified by targeted stakeholders

Weaknesses identified by targeted stakeholders	APMAIF members	Government organisations	Industry signatories	Non-signatories	Health professionals/ organisations	Consumer groups
<p><b>Scope:</b> The scope of the MAIF Agreement is too narrow and should be expanded to include some or all of the following:</p> <ul style="list-style-type: none"> <li>• Toddler milk drinks (covering children up to 24 months of age) - It was identified that WHO recommends breastfeeding up to two years of age.</li> <li>• Retailers and pharmacies – WHO Code prohibits point of sale advertising and pharmacies should be covered due to emergence of private product labels.</li> <li>• Marketing – new forms of marketing including social media, online advertising, and relationship marketing are not covered.</li> </ul>						
<p><b>Powers of enforcement:</b> The ‘name and shame’ approach is not a strong enough disincentive, particularly since manufacturers operate as commercial entities and will try and exploit loopholes and push the boundaries. Some suggested the MAIF Agreement should be legally enforceable.</p>						
<p><b>Disparity with WHO Code:</b> The MAIF Agreement does not cover all aspects under the WHO Code and there is confusion about the alignment of the two documents. (see Section 5.1.7).</p>						
<p><b>Non-signatories:</b> Not all industry members are signatories to the MAIF Agreement.</p>						
<p><b>Interpretation / guidelines:</b> The broad nature of the MAIF Agreement means interpretations are difficult and may vary depending on the situation. Clearer guidelines of appropriate interpretations are required.</p>						
<p><b>Awareness:</b> There is a lack of consistency in the understanding of the MAIF Agreement by healthcare professionals.</p>						

 High priority	 Low priority
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Some respondents to the general survey also identified that the MAIF Agreement does not:

- Cover the provision of sample bags to parents bearing the logo of infant formula brands.

- Contain provisions to regulate health or functional claims by manufacturers on product packaging (e.g. support for healthy immune functions, promotion of nerve development).
- Actively provide information, instead adopting a preventative approach. One suggestion is the provision of standardised information comparing different elements of products.
- Include the requirement for companies to identify the potential risks of using infant formula on package labelling.

### 5.1.2 The effectiveness of the MAIF Agreement may be impacted by limited community awareness

Review question	Key insights
<p>What are stakeholder views on the effectiveness of the MAIF Agreement, including levels of awareness and understanding of the WHO Code and the MAIF Agreement?</p>	<ul style="list-style-type: none"> <li>• Stakeholders identified that there is limited understanding of the WHO Code and MAIF Agreement in the community and that health professionals and industry members require a stronger understanding of their responsibilities under the MAIF Agreement.</li> <li>• The effectiveness of the MAIF Agreement may be impacted by the limited levels of community awareness.</li> </ul>

Several interviewed stakeholders – particularly APMAIF members and industry representatives – indicated that greater awareness and understanding about the intent of the MAIF Agreement is required. It was suggested that the MAIF Agreement needs to be more widely disseminated and information provided to health professionals and industry members about their relevant responsibilities and compliance requirements.

This finding was supported through survey results. 82% of targeted stakeholders (n=17) and 75% of respondents from each stakeholder group represented in the general survey (n=516) disagreed or strongly disagreed that there is a good level of awareness and understanding of the WHO Code and the MAIF Agreement in the community.

The perceived effectiveness, or otherwise, of the MAIF Agreement may be due to low levels of awareness and / or understanding amongst the community. The effectiveness of the MAIF Agreement could be improved through the following:

- Increased awareness about the roles and responsibilities of signatories to the MAIF Agreement would potentially increase the pressure on signatories to comply with the MAIF Agreement and provide a stronger incentive for other manufacturers to become signatories.
- Stronger awareness and understanding of the scope and operation of the MAIF Agreement would potentially increase the identification of breaches (as this process currently relies on complaints being raised by community members).

Some stakeholders proposed that development of a comprehensive website or general education and media content would be effective mechanisms for providing information to the community. Some stakeholders also proposed that existing professional development pathways could be used to educate health professionals.

### 5.1.3 More can be done to address community concerns

Review question	Insights
What is the extent to which the MAIF Agreement responds to the needs of the community?	<ul style="list-style-type: none"> <li>• More than half of both targeted and general stakeholders indicated that the MAIF Agreement does not respond appropriately to the needs of the community.</li> <li>• Since 2007-08, over 80% of complaints to the APMAIF have been deemed to be out-of-scope.</li> </ul>

Review findings indicate that the MAIF Agreement may not be completely aligned with the needs of the community. 59% of targeted stakeholders (n=17) and over 75% of respondents from each stakeholder group represented in the general survey (n=517) disagreed or strongly disagreed with the statement ‘the MAIF Agreement responds to the needs of the community appropriately’.

Since 2007-08, the number of complaints submitted to the APMAIF has decreased year-on-year. There are several possible explanations for this decrease in complaints, including:

- stronger levels of compliance with the MAIF Agreement by industry
- higher levels of community satisfaction with current marketing practices
- lower levels of community awareness and / or decreased willingness to use the complaints process.

Since 2006-07, the percentage of complaints deemed to be out-of-scope has consistently remained greater than 80%. This is shown in Table 8 below.

Table 8: APMAIF complaints data

	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
Total complaints	54	122	900	159	44	36	13
Out-of-scope (number and %)	14 (26%)	71 (58%)	709 (79%)	140 (88%)	37 (84%)	29 (81%)	11 (85%)
In-scope <sup>8</sup>	17	10	123	19	7	7	2
Breach	0 <sup>9</sup>	0	0	0	1	1	1

In 2010-11, the majority of out-of-scope complaints were related to retail activity in stores, followed by retail activity in pharmacies, and toddler milk drinks. All complaints regarding retail activity were related specifically to price promotion. Table 9 provides details of out-of-scope complaints submitted between 2004 and 2011.

<sup>8</sup> ‘In-scope’ and ‘out-of-scope’ columns will not sum to total complaints for 2004-05, 2005-06, 2006-07 because the ‘In-scope’ data is based on actual APMAIF decisions and excludes complaints carried forward to the next year. The APMAIF complaints reporting template was amended for the 2007-08 Annual Report.

<sup>9</sup> In 2004-05, three breaches were found, however these were reconsidered in 2005-06 due to natural justice issues.

Table 9: Out-of-scope complaints 2004-2011

	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
Retail – store	10*	59*	394*	49	12	16	6
Retail – pharmacy	*	*	*	50^	7	1	3
Health Professional				3	0	0	0
Toddler milk	4	8	156	36	14	3	1
Non-signatory	0	0	70	2	0	0	0
Bottles, teats and dummies	0	0	70				
Baby foods	0	0	11				
Other					4	9	1

\* In their Annual Reports between 2004 and 2007, the APMAIF did not disaggregate between retail categories

^ Includes Retail Activity – Other

Findings that the MAIF Agreement does not adequately respond to the needs of the community may, in part, be due to the scope of the MAIF Agreement. Some respondents from all stakeholder groups represented in the general survey indicated that coverage of the MAIF Agreement is too narrow. Some consumer respondents commented that the narrow scope of the MAIF Agreement results in many complaints being considered out-of-scope and a few indicated that they had stopped submitting complaints to the APMAIF as a result of their complaints repeatedly being deemed to be out-of-scope. The appropriateness of the scope of the MAIF Agreement is discussed in Section 5.1.7.

#### 5.1.4 The MAIF Agreement covers the majority of the infant formula market

Review question	Key insights
What is the percentage of the infant formula supply market (including manufacture and retail) covered by the MAIF Agreement?	<ul style="list-style-type: none"> <li>The MAIF Agreement covers the majority of the infant formula market in Australia.</li> </ul>

Limited public information about the market share for infant formula in Australia makes it difficult to determine the exact coverage of the MAIF Agreement in Australia. In 2009, it was estimated that the value of domestic infant formula sales in Australia was \$132 million (FSANZ 2010). There are two primary distribution channels for infant formula in Australia – supermarkets and pharmacies. Across both of these channels, the six signatories account for the majority of market sales. Some interviewed stakeholders suggested that signatories account for up to 95% of the total infant formula market in Australia.

All six signatories to the MAIF Agreement are members of the Infant Nutrition Council (INC). Established in 2009, the INC aims to represent the infant formula industry in Australia and New Zealand and to improve infant nutrition by supporting the public health goals for the protection and promotion of breastfeeding and, when needed, infant formula as the only suitable alternative.

The Australian market is also comprised of a number of non-signatories, many of which predominately manufacture and supply infant formula to Asian and Middle Eastern markets. Only two non-signatories appear to have a significant presence in the Australian infant formula market – Bellamy’s Organic and Amcal.

A table of manufacturers and importers of infant formula in Australia can be found in Appendix G.

### 5.1.5 Self-regulation remains appropriate for the MAIF Agreement

Review question	Insights
What is the extent to which the voluntary, self-regulatory nature of the MAIF Agreement affects its effectiveness (including the relative values of self- and co-regulation, and the case for legislation)?	<ul style="list-style-type: none"> <li>Self-regulation is most effective when the Code is industry ‘owned’.</li> <li>Self-regulation encourages high levels of consultation between government and industry and creates a sense of ownership.</li> <li>Stronger consequences for breaches may be required to ensure the voluntary, self-regulated model remains effective.</li> </ul>

#### *Voluntary industry codes*

The ACCC has identified several benefits of a voluntary industry code (such as the MAIF Agreement), including (ACCC 2011):

- greater transparency of the industry to which signatories to the code belong
- greater stakeholder or investor confidence in the industry
- ensuring compliance with the *Competition and Consumer Act 2010*
- a competitive marketing advantage.

The self-regulatory model of the MAIF Agreement was identified by many APMAIF members and industry representatives as a key strength of the MAIF Agreement. This was supported by some representatives from government departments. It was suggested that self-regulation encourages higher levels of consultation between government and industry than would occur under a legislated model and creates a sense of ownership for the MAIF Agreement amongst industry members.

Consumer groups indicated that self-regulation has been unsuccessful in other areas of public health and is not suitable for the infant formula market. It was suggested that self-regulation by industry leads to a gradual narrowing of scope and as such it would be more appropriate to introduce a regulatory model similar to the pharmaceutical advertising laws in Australia and New Zealand.

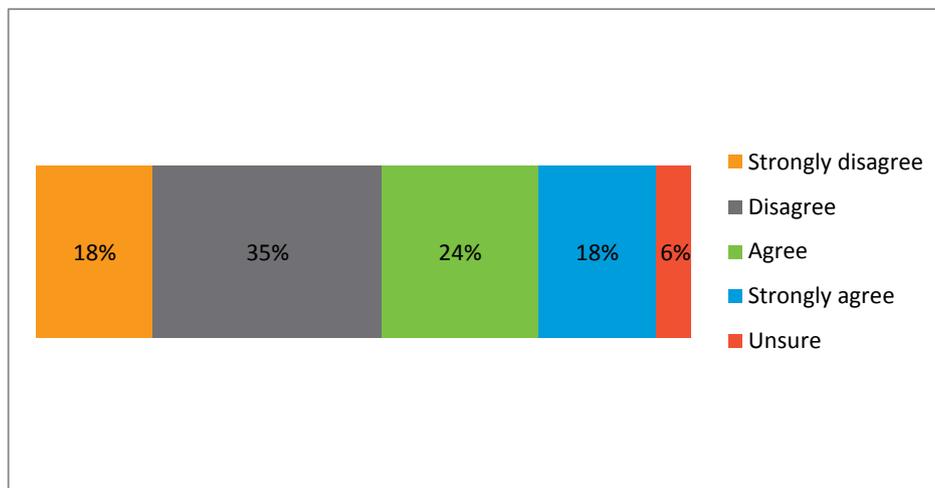
There were mixed responses amongst interviewed stakeholders regarding voluntary participation in the MAIF Agreement. Whilst some government representatives and APMAIF members indicated that all

industry members should be signatories to the MAIF Agreement, others identified that voluntary participation drives greater commitment and responsibility by manufacturers. It was noted that despite its voluntary nature, the MAIF Agreement covers the majority of the infant formula market. Several stakeholders suggested that greater efforts should be made to encourage participation by non-signatories.

When asked whether they agreed that the voluntary self-regulatory arrangement does not affect the effectiveness of the MAIF Agreement, 42% of targeted stakeholders agreed or strongly agreed and 53% disagreed or strongly disagreed. In comparison, more than 80% of respondents from each stakeholder group represented in the general survey (n=516) disagreed or strongly disagreed. Some stakeholders noted that stronger consequences for breaches may make the current arrangement more effective.

Results from targeted stakeholders are shown in Figure 5 below.

Figure 5: Survey statement: “The voluntary, self-regulatory nature of the MAIF Agreement does not affect its effectiveness” – responses from the targeted survey (n=17)



When asked whether the MAIF Agreement is effective in meeting its stated aim, there were mixed responses amongst stakeholders. Whilst the majority of targeted stakeholders (n=17) agreed (47%) or strongly agreed (18%) that the MAIF Agreement is effective in meeting its stated aim, more than 70% of respondents from each respective stakeholder group represented in the general survey (n=516) disagreed or strongly disagreed.

The voluntary nature of the MAIF Agreement has led to strong industry buy-in, with all major manufacturers and importers of infant formula being signatories to the MAIF Agreement. There is no evidence that voluntary participation has impacted market coverage of the MAIF Agreement. Self-regulation enables a higher level of industry engagement than would be achieved under a legislated model and encourages a cooperative and consultative arrangement between government and industry. This model of voluntary, self-regulation remains the most appropriate arrangement for the MAIF Agreement and should continue provided it continues to promote the aim of the MAIF Agreement and industry coverage remains high.

### 5.1.6 The MAIF Agreement is adaptable to environmental changes, however clearer guidance on interpretations is required

Review question	Insights
What is the extent to which any ambiguous, inconsistent, unclear or out of date wording in the MAIF Agreement affects the APMAIF’s ability to interpret and apply the MAIF Agreement to modern marketing activities?	Stakeholders indicated that the MAIF Agreement is robust enough to accommodate environmental changes, however it needs to be: <ul style="list-style-type: none"> <li>• updated to reflect modern language and terminology from the health sector</li> <li>• supported by clear interpretations on emerging practices to give industry more clarity around what constitutes a breach.</li> </ul>

Stakeholders identified that the MAIF Agreement contains, in a number of areas, ambiguous wording or out of date terminology. Amongst survey respondents, 71% of targeted stakeholders (n=17) and between 50-60% of respondents from each stakeholder group represented in the general survey (n=516) indicated that the wording of the MAIF Agreement is ambiguous, inconsistent or requires updating.

Some interviewed stakeholders identified that the nature of the MAIF Agreement lends itself to very general wording and that the overall language of the MAIF Agreement needs to be updated to reflect changes in legislation and standards, to ensure that definitions remain accurate and that terminology is consistent with that commonly used in the health sector.

Table 10 outlines the key stakeholder suggestions for improvements to specific clauses of the MAIF Agreement and provides an assessment of how difficult implementing the proposed changes might be.

Table 10: Key stakeholder suggestions to improve the wording of the MAIF Agreement

Clause	Stakeholder suggestions	Difficulty of implementation
Clause 3	Definition of ‘health care system’ should be updated to include pharmacies since the definition of ‘health care professional’ includes pharmacists.	Difficult – inclusion of pharmacies requires expansion of the current scope
	Definition of ‘healthcare professional’ requires greater clarification as many parents receive advice from part-time pharmacy assistants who are not currently covered under the MAIF Agreement.	Difficult – inclusion of part-time retail staff in pharmacies may have wider implications for the inclusion of all retail staff under the MAIF Agreement
Clause 4	Clause 4(a) should be updated to include electronic media and social marketing	Straightforward
	Term ‘superiority’ should be changed to focus on the benefits, importance and biological norm of breastfeeding.	Straightforward

Clause	Stakeholder suggestions	Difficulty of implementation
Clause 5	Clause 5(a) should provide a clear definition of ‘promote’ and could be updated to include online advertising (including mothers / parents clubs and online advice services).	Best addressed in MAIF guidelines. This approach will support APMAIF’s interpretation of the MAIF Agreement and allow flexibility to address future changes and potential applications of technology
	Clause 5(d) should address the issue of helplines and baby / mother clubs. However, consideration should be given to the ability of consumers to interpret information.	
Clause 6	Term ‘mothercraft nurse’ is out-dated and should be replaced with ‘child and family nurses’.	Straightforward
	Clause 6(c) should provide clarification of the term ‘use’.	Straightforward
Clause 7	Clause 7(c) should provide greater clarity around what constitutes an ‘inducement’.	Difficult – a definition will provide some clarity however this area will be subject to the APMAIF’s interpretation.
	Clause 7 (d) should clearly define what is considered a ‘sample’ and what constitutes ‘professional evaluation’.	Straightforward
Clause 9	Australian Food Standard R7 – Infant Formula is out-dated and should be replaced with Standard 2.9.1.	Straightforward
	Clause 9(b) should replace ‘should not discourage breastfeeding’ with a statement about the importance of breastfeeding.	Straightforward

Several interviewed stakeholders indicated that interpretations of the MAIF Agreement are ambiguous and require review and clarification (e.g. distinction between information and promotion). When asked about the impact of the wording of the MAIF Agreement on APMAIF interpretations, survey results demonstrated:

- 53% of targeted stakeholders (n=17) thought that the current wording of the MAIF Agreement affects the APMAIF’s ability to interpret and apply the MAIF Agreement to modern marketing activities
- Between 50-55% of consumer (n=326), consumer group (n=28) and health professional (n=148) respondents from the general survey indicated that wording of the MAIF Agreement has an impact on APMAIF operations. (NB: a significant proportion of respondents from each stakeholder group (>20%) were unsure of the response to this question).

APMAIF members often rely on previous interpretations in their consideration of breaches and determination of what is acceptable and reasonable. The modern marketing context, however, contains new technology and marketing media, and the MAIF Agreement is not aligned with these developments nor is there sufficient guidance about how these matters should be handled. Interpretations of the MAIF Agreement need to account for changes in public expectations in relation to what constitutes ‘appropriate marketing strategies and incentives’. The APMAIF is currently finalising interpretation guidelines on marketing of infant formulas by electronic media.

### 5.1.7 Inclusion of toddler milk drinks and retailers in the scope of the MAIF Agreement is not warranted

Review question	Insights
<p>What changes should be made to the scope of the MAIF Agreement including coverage of the infant formula market?</p> <p>What are stakeholder views on improvements to the effectiveness of the MAIF Agreement in achieving its stated aim?</p>	<ul style="list-style-type: none"> <li>• Many stakeholders were concerned about the use of similar product identifiers on toddler milk drinks and infant formula.</li> <li>• The review found insufficient evidence to support expanding the MAIF Agreement scope to cover retailers and pharmacies.</li> <li>• Stakeholders identified that non-signatories and new market entrants should be encouraged to sign the MAIF Agreement.</li> <li>• Stakeholders supported expanding the MAIF Agreement to cover electronic marketing.</li> </ul>

*Scope of the MAIF Agreement (Clause 2):*

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

Complaints considered outside the scope of the MAIF Agreement may include the following (but not limited to):<sup>1</sup>

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

<sup>1</sup>APMAIF Complaints Handling Process for the Advisory Panel on the Marketing in Australia of Infant Formula (APMAIF) guidelines

Many stakeholders (both targeted and general survey respondents) expressed concern about the current scope of the MAIF Agreement. 59% of targeted stakeholders (n=17) and approximately 75% of consumer, consumer group and health professional / organisation respondents from the general survey (n=516) disagreed or strongly disagreed that the scope of the MAIF Agreement is appropriate.

Some stakeholders (both targeted and general survey respondents) suggested that the MAIF Agreement should better align with the WHO Code and that more information should be provided on the differences and relationship between the two documents.

The WHO Code notes that governments should give effect to the principles and aims of the Code as appropriate to their own social and legislative framework (WHO 1981). Many of the WHO Code recommendations are of particular relevance to developing countries, where issues such as poverty, illiteracy and hygiene present specific challenges to infant feeding. As such, Australia need not implement the WHO Code in its entirety, nor does the wording of the MAIF Agreement need to be completely aligned for it to be successful.

Interviewed stakeholders and survey respondents (both targeted and general) suggested expanding the scope of the MAIF Agreement to cover the following issues: Toddler milk drinks; retailers and pharmacies; electronic marketing; non-signatories and infant feeding products. These issues are discussed in more detail below.

### **Toddler milk drinks**

The most commonly identified weakness by both targeted stakeholders and general survey respondents was the exclusion of toddler milk drinks from the MAIF Agreement. This was primarily identified as a key concern due to the ability of manufacturers to use similar product identifiers on both toddler milk drinks and infant formula products.

Advertising toddler milk drinks can potentially provide de facto marketing for infant formula, hindering the ability of consumers to distinguish between the two products. Some countries have raised the issue of whether follow-up formula is covered under the WHO Code, with some countries (e.g. Australia, Netherlands and UK), seeking specific guidance. WHO has previously observed that assuming follow-up formula is not marketed or otherwise represented to be suitable as a breast-milk substitute, strictly speaking it does not fall within the scope of the WHO Code (WHO 2001).

Placing restrictions on the marketing of toddler milk drinks may be costly to implement. An alternative mechanism to prevent toddler milk drinks being used as de-facto advertising for infant formula would be to restrict the ability of industry to market and label both toddler milk drinks and infant formulas in a similar manner.

### **Retailers and pharmacies**

Many stakeholders suggested that the scope of the MAIF Agreement should be expanded to cover the role of pharmacies and retailers in the sale and marketing of infant formula.

Expanding the MAIF Agreement to cover all areas of the supply chain presents a number of potential issues. Expansion of the MAIF Agreement to include retailers would require a major change to the MAIF Agreement and may involve significant costs. It would also pose a number of practical issues – e.g. whether both major as well as smaller retailers should be covered under the MAIF Agreement. Although pharmacists are not covered under the MAIF Agreement, the Pharmaceutical Society of Australia (PSA) has a Position Statement on Infant feeding which outlines the role of pharmacists in encouraging breastfeeding and the position of PSA in supporting the WHO Code. The Statement clearly states that pharmacists should not promote breast-milk substitute products to the general public in a manner that discourages breastfeeding and encourages pharmacists to monitor marketing practices in their pharmacies (PSA 2004).

The Review did not identify sufficient evidence to warrant a regulatory change of this nature.

### **Non-signatories**

When asked whether all companies involved in the infant formula supply market (including manufacturers and retailers) should be signatories to the MAIF Agreement:

- the majority of targeted stakeholders (n=17) indicated they agree (29%) or strongly agree (53%)
- more than 75% of respondents from the general survey from each respective stakeholder group of the general survey agreed or strongly agreed.

Despite the voluntary nature of the MAIF Agreement, market coverage remains high (see Section 5.1.4). Additionally, voluntary participation can encourage stronger engagement and willing participation by industry members. As such, voluntary participation in the MAIF Agreement remains appropriate

provided industry coverage remains high. New entrants (manufacturers and importers of infant formula) should be actively encouraged to sign the MAIF Agreement.

### Electronic marketing

A number of new marketing practices have emerged since the introduction of the MAIF Agreement, including online forums, digital marketing and use of social media (see Appendix D). Several interviewed stakeholders (across all stakeholder groups) suggested the scope of the MAIF Agreement needs to be revised to address changes in the marketing environment. Specifically, changes have been identified for Clause 4(a) and Clause 5(a) of the MAIF Agreement (see Section 5.1.6).

### Infant feeding products

Some stakeholders suggested that the scope of the MAIF Agreement should be expanded to prevent the advertising of any infant feeding products, including bottles, teats and complementary foods. Bottles and teats are used by both formula-feeding and breastfeeding parents (e.g. for expressed breast milk). Restrictions on these products would be inappropriate and there is insufficient evidence to warrant a regulatory change of this nature.

## 5.2 How effective is the APMAIF in monitoring industry compliance with the MAIF?

### Recommendations

5. The APMAIF's monitoring role should be expanded from a purely reactive monitoring role to also encompass a proactive approach that actively monitors compliance. Its functions and powers should be changed in the following ways:
  - a. to be able to initiate an investigation on its own
  - b. to receive direction from the Minister to investigate a particular matter
  - c. to require signatories to publically advertise a breach finding made against it in a prominent position on its website, a national newspaper and other relevant health sector publications as determined by the APMAIF.
6. The APMAIF should publish its decisions (and reasons for the decision) on all complaints (having regard to complainants' and commercial confidentialities) on the DOHA website.
7. The currency of the MAIF Agreement should be reviewed regularly through:
  - a. an external review every five years of the efficiency, effectiveness and appropriateness of the MAIF Agreement
  - b. annual reviews of the coverage and effectiveness of interpretive guidelines.
8. The APMAIF should promote community and health care professionals' awareness of the MAIF Agreement and the complaints process through:
  - a. development of a website that supports information dissemination and lodgement of complaints
  - b. education and general media events.
9. The APMAIF should continue to maintain strong formal and informal communication channels with industry to ensure a consistent understanding and interpretation of the MAIF Agreement and to play an education role following breaches.

### Recommendations

10. The APMAIF should introduce the following changes to improve the efficiency of the complaints handling process:
  - a. design and implement an APMAIF service charter that sets out KPIs on service obligations including targets for timeliness of responses to complaints
  - b. increase the use of out-of-session meetings and other flexible working arrangement to improve the timeliness of its decisions.
11. An appeals process should not be introduced for complaints.

### 5.2.1 Timeliness and divergent APMAIF member views are key concerns amongst stakeholders

Review question	Insights
What are stakeholder views on the strengths and weaknesses of the operations of the APMAIF?	<ul style="list-style-type: none"> <li>• Stakeholders valued the complaints process being undertaken by an independent body.</li> <li>• A strong and appropriate relationship exists between the APMAIF and industry members.</li> <li>• Ideological differences between APMAIF members creates conflict and the roles of industry and consumer representatives on the APMAIF need to be clarified.</li> <li>• Stakeholders identified that APMAIF processes could be more timely.</li> </ul>

Both interviewed stakeholders and general survey respondents indicated that a key strength of APMAIF operations is the existence of an independent mechanism for handling complaints. Some general survey respondents also suggested that the APMAIF provides an effective liaison point between government and industry members.

The five key strengths of APMAIF operations identified by targeted stakeholders through interviews and surveys are outlined in Table 11 below. A comprehensive list of identified strengths can be found in Appendix F.

Table 11: Key strengths of APMAIF operations - targeted stakeholders

Strengths identified by targeted stakeholders	APMAIF members	Government organisations	Industry signatories	Consumer Groups
<b>Complaints process:</b> The current process for effective complaints investigation places Australia ahead of many other countries. The complaints process is accessible to complainants (e.g. complaints can be accessed online).				

Strengths identified by targeted stakeholders	APMAIF members	Government organisations	Industry signatories	Consumer Groups
<p><b>Industry compliance:</b> Industry members are aware of the MAIF Agreement and it is in their best interest to work effectively with the APMAIF; Signatories take the APMAIF seriously and commit significant resources to ensure compliance; Industry recognises the impact of a breach upon global branding.</p>	●	●	●	
<p><b>Collegiate approach:</b> Strong relationships exist between the APMAIF and Industry (meet once per year and one representative on the APMAIF); Capacity for the APMAIF to be informed about industry; good consultation with Industry about complaints. Complaints process includes an education / negotiation strategy which provides companies with the opportunity to respond to breaches.</p>	●	●	●	●
<p><b>Independence/ objectivity:</b> the APMAIF is an independent body to the Government and investigates complaints objectively.</p>	●	●	●	
<p><b>APMAIF composition:</b> There is a good representation of stakeholders on the APMAIF and appropriate mix of knowledge and skills. The variety of expertise enables an accurate assessment of complaints to be made and appropriate responses developed.</p>	●	●		

High priority
  Low priority

Stakeholders also identified a number of key weaknesses in APMAIF operations. Some interviewed stakeholders expressed concerns regarding the disparate views of some APMAIF members and potential conflicts of interest arising from inclusion of an industry representative on the APMAIF. This was supported by several general survey respondents, who expressed concern that inclusion of industry does not permit processes to be sufficiently independent from infant formula manufacturers.

The timeliness of APMAIF processes was also identified as a key area requiring improvement. Some interviewed stakeholders suggested that the collegiate approach adopted by the APMAIF in consulting industry is, by nature, a slow process. Additionally, long periods of time between APMAIF meetings mean complaints take a long time to resolve, development of guidelines is slow and APMAIF is slow to provide responses to complainants.

Both interviewed stakeholders and general survey respondents also identified the lack of substantial penalties for breaching the MAIF Agreement as a key weakness. Some general survey respondents felt that the APMAIF should have legislated powers to ensure compliance with the MAIF Agreement. One interviewed stakeholder indicated that over time the decisions and interpretations of APMAIF has weakened the MAIF Agreement.

The five key weaknesses identified by targeted stakeholders through interviews and surveys are identified in Table 12. A comprehensive list of identified weaknesses can be found in Appendix F.

Table 12: Key weaknesses of APMAIF operations

Weaknesses identified by targeted stakeholders	APMAIF members	Government organisations	Industry signatories	Health professionals/ organisations	Consumer Groups
<p><b>APMAIF views:</b> Ideological differences between APMAIF members create conflict. APMAIF members should be aware of their collective responsibility and work towards the aim of the MAIF Agreement and the APMAIF’s Terms of Reference. The role of the industry representative on the APMAIF needs to be clarified due to potential conflicts of interest and concerns that the influence of industry may be too strong.</p>	●	●	●	●	●
<p><b>Enforcement:</b> The MAIF Agreement cannot be enforced and there are no significant consequences for breaches. The APMAIF does not have power to censure those in breach except for naming in the annual report.</p>	●	●			●
<p><b>Timeliness:</b> Many processes take a long time – there are long time periods between meetings; development of guidelines is a slow process and the collegiate approach adopted takes a long time.</p>	●	●	●	●	●
<p><b>Monitoring</b> – the APMAIF does not take a pro-active role in the monitoring of industry and breaches, relying on individuals to report breaches to be investigated. Suggested mechanisms for active monitoring include surveys or audits (see Section 5.4.1 for discussion of APMAIF Terms of Reference).</p>		●		●	●
<p><b>Transparency of complaints handling process</b> – Concerns regarding the transparency of the decision-making process. Reports are not made public on a regular basis and information on the APMAIF website is dated. Interpretation of the MAIF Agreement is currently at the discretion of APMAIF members.</p>				●	●

● High priority	● Low priority
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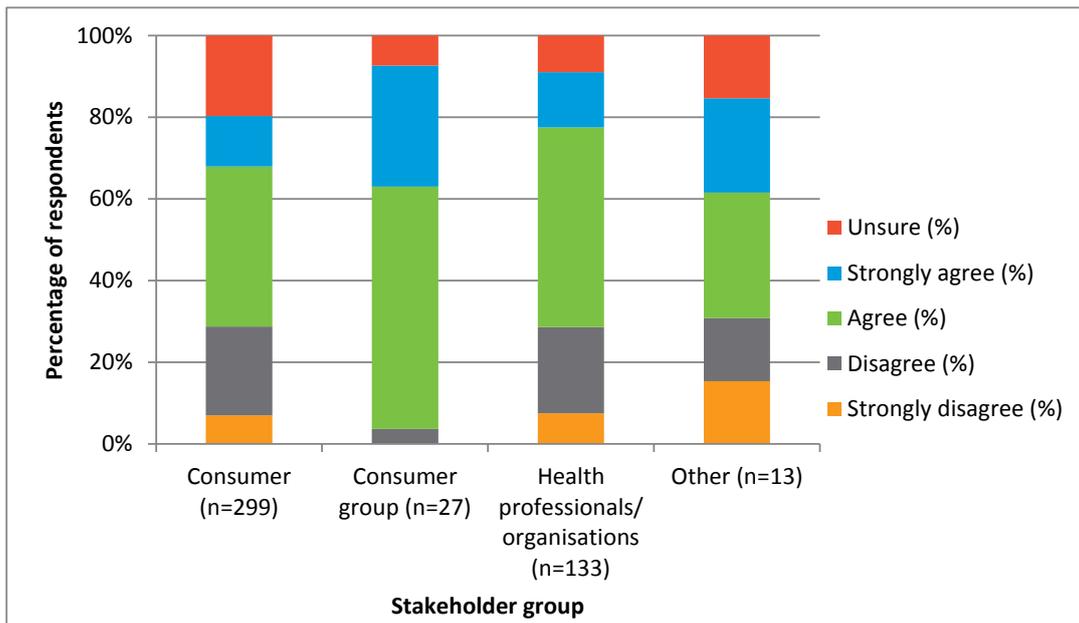
## 5.2.2 There are mixed levels of understanding of the interpretation and application of the MAIF Agreement by the APMAIF

Review questions	Insights
What are i) stakeholders’ levels of awareness and understanding of the interpretation and application of the MAIF Agreement through the APMAIF, ii) stakeholder views of the interpretation and application of the MAIF Agreement?	<ul style="list-style-type: none"> <li>There is generally a strong level of awareness and understanding of the interpretation and application of the MAIF Agreement. Levels of awareness amongst consumers and health professionals could be improved</li> </ul>

Survey results indicated that there is strong awareness and understanding of the interpretation and application of the MAIF Agreement by the APMAIF across all targeted stakeholder groups except health professionals (where one of three respondents agree they have a good awareness and understanding).

There was a mixed result from the general survey (n=472). The strongest level of understanding and awareness was amongst consumer groups (89%) and the lowest level was amongst consumer respondents (51%). Results for different stakeholder groups are shown in Figure 6 below.

Figure 6: Survey statement: “I have/my organisation has a good awareness and understanding of the interpretation and application of the MAIF Agreement by the APMAIF” – results from general survey (n=472)



Amongst health professionals/ organisation respondents from the general survey, 63% indicated that they have a good awareness and understanding of the interpretation and application of the MAIF Agreement. This represented a reasonably low understanding amongst a stakeholder group that is expected to have high levels of awareness and understanding of the MAIF Agreement. Additionally, results indicated a low level of awareness amongst consumer respondents. These results support earlier findings (see Section 5.1.2) which indicated that there is a limited level of awareness and understanding amongst health professionals and the broader community.

### 5.2.3 The complaints handling process is sufficiently fair and does not warrant introduction of an appeals process

Review questions	Insights
<p>What is the i) fairness, efficiency, transparency and effectiveness of the APMAIF complaints handling process (from the perspectives of both the consumer / complainant and companies) and ii) the potential value of an appeals process?</p> <p>What is the level of participant satisfaction with the structure and efficiency of the APMAIF's complaints process (including both complainants and signatories)?</p>	<ul style="list-style-type: none"> <li>• Greater transparency of decisions and the underlying rationale is required</li> <li>• A more timely response to complaints by the APMAIF is required</li> <li>• Sufficient procedural fairness in the current complaints handling process means an appeals process is not warranted</li> </ul>

*Key elements of the Complaints Handling Process:*

- All complaints received are registered by the APMAIF Secretariat. The complaints register and complaint statistics are provided at each APMAIF meeting for the Panel's review
- Complaints are classified as within or outside the scope of the MAIF Agreement by the APMAIF Secretariat. Classification of a complaint is confirmed with the Director, Early Childhood Nutrition Section of DoHA and the APMAIF Chair.
- The Secretariat advises the complainant in writing that their complaint is outside the scope of the MAIF Agreement and the reason/s for this classification
- All complaints within scope of the MAIF Agreement are considered by the APMAIF
- Companies are informed if there is insufficient information to determine that there has been no breach and are invited to respond
- If an 'In Breach' decision is made by the APMAIF:
  - both the company and complainant are advised of the outcome and reason;
  - the Parliamentary Secretary to the Minister for Health and Ageing is advised that there has been a breach and the reason;
  - the 'In Breach' decision is recorded in the APMAIF Annual Report.

As part of the Review stakeholders were asked about the fairness, efficiency, transparency and effectiveness of the APMAIF complaints handling process. Amongst targeted stakeholders, seven respondents indicated that they have been involved in the complaints handling process. 102 general survey respondents indicated that they have previously been involved in the complaints handling process. Results are discussed below.

#### Fairness

Amongst targeted stakeholders who have been involved in the complaints handling process (n=7), 86% agreed that the complaints handling process is fair.

Results from the general survey reveal that 66% of consumer respondents and 55% of health professionals/ organisations who have been involved in the complaints handling process disagreed or

strongly disagreed that the APMAIF complaints handling process is fair (there were insufficient responses from other stakeholder groups to provide a reasonable analysis of results).

Most interviewed stakeholders identified that there is sufficient procedural fairness in the current complaints handling process. In cases where the APMAIF finds there is insufficient information to make a determination, industry representatives are provided with adequate opportunity to respond to complaints prior to any decisions being made.

One stakeholder proposed that the inclusion of an appeal process would make the process more transparent and industry more accountable, but was unlikely to be timely.

### Efficiency

Amongst targeted stakeholders who have been involved in the complaints process (n=7), 71% agreed that the complaints handling process is efficient. Amongst general survey respondents who have been involved in the complaints handling process (n=102), more than 65% of respondents from each respective stakeholder group did not think that the current process is efficient.

In particular, both interviewed stakeholders and general survey respondents identified that the timeliness of the complaints handling process could be improved. Many general survey respondents expressed concerns regarding the level of responsiveness of the APMAIF to complaints and the need for complaints to be determined and communicated within specified timeframes. In particular, stakeholders identified that complainants need to receive timely responses about the receipt of complaints, outcome of the process and the response provided by the relevant manufacturer. Suggestions included the use of an accessible online complaints tracking system or providing complainants with an estimated time until adjudication of their complaints. Some interviewed stakeholders also indicated that improvements could be made to the timeliness of developing guidelines.

Analysis of complaints data provided by the APMAIF Secretariat indicated that the majority of out-of-scope complaints were completed within a few days. The longest time taken for the APMAIF Secretariat to send an out-of-scope letter was nine business days (2010-11). In 2010-11 there were two in-scope complaints- one does not have a logged completion time (although it is assumed it was closed in 2010-11 as no complaints were carried forward); the other took approximately three and a half months to complete (late September 2010 to early January 2011)

Table 13 shows that in 2009-10, six of the seven new in-scope complaints were carried over into the next reporting period.

Table 13: Number of complaints carried forward, 2004-2011

	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
Carried forward	15	38	82	0*	4	6	0

\* Not recorded but from the available data appears to be zero.

There is value to both consumers and industry in the timely resolution of complaints. The APMAIF undertakes a rigorous complaints investigation when a complaint is deemed to be in-scope. While every complaint will require different lines of enquiry, there are several elements of the process that will be similar to every enquiry. While the complaints data does not conclusively indicate that the APMAIF decision making process is unreasonably slow, the process could be better communicated to stakeholders. Development of a specific timeframe within which decisions are made would provide stakeholders with clarity on timing and alleviate concerns regarding the timeliness of decisions. Improved timeliness of decisions can provide the benefits of increasing consumer protection by

facilitating compliance with the MAIF Agreement and provide signatories with certainty in their obligations under the MAIF Agreement.

## Transparency

More than 50% of respondents from the both the targeted and general survey indicated that there is a lack of transparency in the complaints handling process:

- 57% of targeted stakeholders who have been involved in the complaints handling process (n=7) disagreed that the current process is transparent
- 55% of health professionals/ organisations and 72% of consumer respondents from the general survey who have been involved in the complaints handling process disagreed or strongly disagreed that the complaints handling process is transparent (there were insufficient responses from other groups to conduct an analysis of results).

Interviewed stakeholders identified increased transparency of breaches and APMAIF decision making processes as a key improvement required for APMAIF operations. Some interviewed stakeholders suggested that case-studies of breaches and non-breaches could be provided to industry members to aid wider learning and understanding of interpretations. This was supported through survey results, with respondents from both the targeted and general survey indicating that greater transparency in the complaints handling process is required.

Improvements to the transparency of decisions will provide greater clarity about the interpretation of complaints and will help maintain stakeholder confidence in the integrity of the complaints handling process. Although the APMAIF provides a summary of its complaint findings in its Annual Report, it does not publish full decisions. Both interviewed stakeholders and general survey respondents suggested that the current process could be improved by publically broadcasting decisions and supporting rationale (e.g. providing a summary of complaints online). Interpretations of the MAIF Agreement by the APMAIF should be easily accessible to the public and a systematic approach for dealing with out-of-scope complaints established.

General survey respondents also suggested better explanations need to be provided to complainants outlining the reasons why the APMAIF or the Secretariat dismissed their complaint and all complaints should be clearly identified to industry members. The current out-of-scope letter provided by the Secretariat to complainants offers a limited explanation for why the complaint was considered out-of-scope. The provision of more detailed explanations is likely to increase confidence in the process.

## Effectiveness

Amongst targeted stakeholders who have been involved in the complaints process (n=7), 71% agreed that the overall complaints handling process is effective.

Amongst general survey respondents, health professionals/ organisations and consumer respondents had the highest number of respondents that have been involved in the complaints handling process (42 and 53 respondents respectively). Amongst these respondents, 83% of consumers and 79% of health professionals/ organisations disagreed or strongly disagreed that overall the complaints handling process is effective.

Some general survey respondents suggested that increasing public awareness of the MAIF Agreement, the role of the APMAIF and the complaints handling process may result in an increase in the number of complaints submitted. A couple of stakeholders (both targeted and general survey respondents) indicated that the current process for lodging complaints is cumbersome as complaints cannot be submitted electronically. Suggested methods for improvement include increasing the web presence of the APMAIF and allowing complaints to be lodged online.

Despite mixed responses regarding the effectiveness of the complaints handling process, the majority of targeted and general stakeholders were supportive of the current structure of the process. . Amongst targeted stakeholders (n=7), 86% agreed that the process has an appropriate structure. Amongst general survey respondents, 64% of consumer respondents and 72% of health professionals/ organisations indicated that the current structure of the APMAIF complaints handling process is appropriate (insufficient responses were received by other stakeholder groups to conduct an analysis of results).

### Value of an appeals process

The current APMAIF complaints handling process is viewed by many stakeholders as sufficiently fair and robust relative to its powers and functions. The majority of interviewed stakeholders indicated that an appeals process would impose unreasonable cost and complexity. Key rationales presented by stakeholders for not establishing an appeals process included:

- The current process has sufficient procedural fairness and provides industry with adequate opportunity to contribute to the process (as discussed above)
- Introduction of an appeals process will not add enough additional value to the current complaints handling process to warrant the extra time, cost and work required. New Zealand currently have an appeals process whereby complaints unresolved by the Compliance Panel are presided over by an adjudicator. It was noted that this is not an appropriate model to follow as there is a tendency for all complaints to be investigated in great detail, leading to inefficient use of time and money.
- The self-regulatory nature of the MAIF Agreement means there is no value in appealing to another regulatory panel unless they have greater punitive powers than the APMAIF.
- Establishment of an appeals process will add an unnecessary layer of complexity (as it will require decisions to be made about the size, composition and technical expertise required for the appeals panel).

Three stakeholders indicated that there may be value in the development of an appeals process. The main reason suggested for introducing an appeals process was to improve the transparency of the complaints handling process. It was also suggested that an appeals process may increase the accountability of manufacturers and importers. One stakeholder noted that although breaches are reported in the APMAIF Annual Report, there was a three year period when no report was published (2004-2007).

The potential value of an appeals process does not warrant the additional complexity, cost and time required. As such, provided the APMAIF decisions and processes are independent and objective, an appeals process is not warranted. To maintain stakeholder confidence in the integrity and objectivity of the complaints handling process, the process should also remain open and transparent to stakeholders. To maintain this transparency, the Annual Report needs to be consistently published on an annual basis and include all relevant complaints and breaches data.

### Development of a service charter

The range of survey responses indicated that there is scope to improve both the efficiency and transparency of the APMAIF processes. This Review recommends the introduction of an APMAIF service charter that should include key performance indicators (KPIs) on service obligations. For example, the service charter would outline indicative timeframes for different processes. The Review further recommends that a report card be developed against the service charter KPIs and that the outputs are included in the APMAIF Annual Report.

There is value to both consumers and industry in the timely resolution of complaints. It increases consumer protection by facilitating compliance with the MAIF Agreement, and it provides signatories

with certainty in their obligations under the MAIF Agreement. A well designed and implemented service charter would help achieve this.

### 5.2.4 The effectiveness of the APMAIF in monitoring and influencing industry behaviour can be improved

Review question	Insight
What is the effectiveness of the APMAIF's monitoring and influencing of industry behaviour?	<ul style="list-style-type: none"> <li>Some stakeholders indicated that the APMAIF could be more pro-active in monitoring breaches.</li> <li>There was concern amongst some stakeholders that current penalties for breaching the MAIF Agreement are not a strong enough disincentive.</li> </ul>

Some interviewed government representatives suggested that the APMAIF could be more pro-active in the monitoring of industry activity. In particular, it was suggested that the APMAIF could initiate the investigation of complaints rather than wait for complaints to be received. It was also suggested that the APMAIF could actively educate the public about the complaints handling process. One interviewed consumer group stakeholder indicated that over time the decisions and interpretations of the APMAIF have weakened the requirements of the MAIF Agreement.

Many interviewed government representatives, consumer groups and some APMAIF members indicated that the current 'name and shame' approach to dealing with companies in breach of the MAIF Agreement does not provide a strong enough disincentive for manufacturers operating as corporate entities. The APMAIF does not have any significant powers of enforcement except for naming companies in the Annual Report. Some stakeholders suggested that companies in breach of the MAIF Agreement should be publically named (e.g. in the national media).

Amongst targeted stakeholders (n=17), there was a mixed response regarding the effectiveness of the APMAIF's monitoring and influencing of industry behaviour. 30% of respondents either agreed (18%) or strongly agreed (12%) that the APMAIF is effective, whilst 47% disagreed (29%) or strongly disagreed (18%) with this statement. Health and consumer group respondents were the main groups who expressed disagreement with this statement.

Results from the general survey (n=472) indicated that the majority of respondents across stakeholder groups disagree that the APMAIF's monitoring and influencing of industry behaviour is effective. 65% of consumers (n=299), 71% of consumer groups (n=27) and 70% of health professional/ organisations (n=133) expressed disagreement.

Pro-active monitoring of industry activity by the APMAIF may significantly impact the effectiveness of the MAIF Agreement. Pro-active monitoring may increase the awareness of the APMAIF - and in turn the MAIF Agreement - in the community, resulting in a stronger public profile and ability to positively influence industry compliance. Whilst many investigations of complaints will remain reactive, there is scope within the current APMAIF Terms of Reference for more pro-active monitoring of industry behaviour. This would require a change to the current remit and practice of the APMAIF, which relies on the receipt of complaints prior to commencing investigations. Expanded APMAIF functions to enable more proactive activity means the APMAIF will be able to initiate an investigation on its own or investigate a particular matter following direction from the Minister. The appropriateness of current APMAIF Terms of Reference are discussed in more detail in Section 5.4.1.

The effectiveness of the APMAIF in influencing industry behaviour could also be improved through stronger disincentives for breaching provisions of the MAIF Agreement (e.g. greater dissemination of Annual Reports or public naming of companies considered in breach of the MAIF Agreement). Publicising breaches and complaints will result in greater public awareness of industry activities, making companies more publically accountable for their decisions. It should be noted however that the right balance needs to be achieved to ensure stronger monitoring does not deter industry participation.

### Future reviews

This Review recommends that an external review of the efficiency, effectiveness and appropriateness of the MAIF Agreement be completed every five years. It also recommends that annual reviews of the coverage and effectiveness of interpretive guidelines be completed

It is best practice to undertake regular reviews of regulatory instruments. A five year period will allow sufficient time for the Australian Government to consider the recommendations of this Review, implement its response and allow enough time for any new arrangements to operate prior to the commencement of the next review.

Given the rate of change in the infant formula marketing environment, it is important that interpretive guidelines are regularly reviewed and updated. This Review recommends that such reviews are completed annually to ensure that the guidance is appropriate and that signatories are well supported to remain compliant.

## 5.3 How efficient, transparent, cost-effective and appropriate are APMAIF processes?

### Recommendations

12. The APMAIF should include a report card in its Annual Report which could include:
  - a. reporting of complaints data against new service charter KPIs
  - b. a summary of APMAIF decisions over the previous 12 months including updated interpretations.
13. The existing level of funding of the APMAIF by DoHA is appropriate given its current functions and powers. Funding levels should be revised if additional functions are added to the APMAIF Terms of Reference. The previous practice of industry co-funding the operation of the APMAIF should not be re-introduced.

### 5.3.1 Improvements are required to the timeliness of APMAIF communications

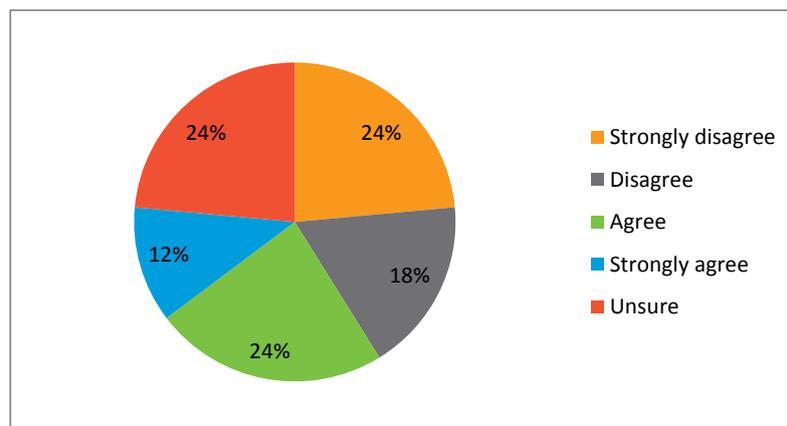
Review questions	Insights
What is the timeliness and effectiveness of APMAIF reporting and communication procedures?	<ul style="list-style-type: none"> <li>• There was a divided response amongst stakeholders regarding the timeliness of APMAIF communications.</li> <li>• Many stakeholders were unsure about the effectiveness of APMAIF reporting and communication procedures. Some suggested that the APMAIF could communicate more effectively with the community about the complaints handling process and the role of the APMAIF.</li> </ul>
What are stakeholder views on improvements in APMAIF processes?	

As part of this Review, stakeholders were asked about the timeliness and effectiveness of APMAIF reporting and communication procedures. Responses are shown below.

### Timeliness

Amongst targeted stakeholders (n=17) there was a mixed response regarding the timeliness of APMAIF procedures. 42% of respondents disagreed/ strongly disagreed and 36% agreed/ strongly agreed that current APMAIF reporting and communication procedures are timely. The range of results from targeted stakeholders is shown in Figure 7 below.

Figure 7: Survey statement: “The APMAIF reporting and communication procedures are timely” – results from targeted survey (n=17)



Amongst general survey respondents, the majority of consumer and health professionals/organisation respondents disagreed or strongly disagreed that reporting and communication procedures are timely. Amongst consumer groups the response was divided, with 20% of respondents disagreeing (8% strongly disagreed; 12% disagreed) and 23% agreeing (19% agreed; 4% strongly agreed) with this statement.

### Effectiveness

There was a mixed response both between and within targeted stakeholder groups (n=17) regarding the effectiveness of APMAIF reporting and communication procedures – 41% of respondents agreed (29%) or strongly agreed (12%) and 36% of respondents disagreed (18%) or strongly disagreed (18%) that current procedures are effective (NB: 24% of respondents were unsure of their response to this question).

Between 30-40% of respondents from each respective stakeholder group represented in the general survey disagreed or strongly disagreed that APMAIF reporting and communication procedures are effective (NB: more than 50% of respondents from each stakeholder group were unsure of their response to this statement). Stakeholder responses regarding the timeliness and effectiveness of APMAIF reporting and communication procedures indicated that current practices are a good base from which to drive further improvements. Some suggestions for improvements to APMAIF processes identified by stakeholders through free-text responses included:

- More regular meetings between APMAIF members should be conducted to enable interpretations and guidelines to be revised and updated if required (this may require increased funding). APMAIF members and signatories should also meet on an annual basis to conduct a review of the MAIF Agreement and new interpretations of the MAIF Agreement. This will enable

the MAIF Agreement to remain up to date and maintain ongoing industry trust and adherence to the MAIF Agreement.

- Greater awareness is required amongst community members and health professionals of the complaints process and the role of the APMAIF. Adopting a more proactive approach in raising awareness, disseminating reports and encouraging complaints would raise the profile of issues and increase the accountability of companies.

The APMAIF currently publishes an Annual Report that provides an overview of its activities for the preceding year. The Annual Report outlines complaints statistics for the preceding 12 months, breaches and issues arising from APMAIF business. The Review recommends that the Annual Report could be further strengthened by the inclusion of a ‘report card’ which tracked actual performance against a set of service charter KPIs (ie a mechanism by which APMAIF performance can be measured).

Other than the Annual Report, the APMAIF does not have a strong public presence. Its communication processes could be significantly enhanced through an active campaign to raise the level of awareness and education on the MAIF Agreement. The establishment of a stronger web presence would also enhance the effectiveness of communication and build community awareness.

### 5.3.2 APMAIF funding should remain independent from industry influence

Review question	Insight
Are there cost recovery options and what is their viability?	<ul style="list-style-type: none"> <li>• Stakeholders identified the importance of ensuring that industry is not involved in the funding of APMAIF operations.</li> <li>• There is support amongst stakeholders for DoHA to continue providing funding for the APMAIF.</li> </ul>

To ensure the APMAIF remains independent and objective, some interviewed stakeholders and respondents to each of the surveys completed identified the importance of ensuring that industry does not fund APMAIF operations. Many stakeholders viewed the partial funding of the Secretariat by industry until 2007 as a conflict of interest which undermined the credibility of the APMAIF complaints handling process. Since that time, stakeholders have welcomed the DoHA initiative to fund all APMAIF operations (including the costs of participation by all APMAIF members).

For many stakeholders, government funding of the APMAIF increases the credibility and integrity of the APMAIF and the complaints handling process. To preserve stakeholder confidence in the effectiveness of the MAIF Agreement and the APMAIF, cost-recovery through industry funding is not considered appropriate.

APMAIF members indicated that APMAIF operations are reasonably cost-efficient and have not been impacted by limited funding. Several stakeholders suggested that better understanding and transparency of the budget and funding arrangements is required. Given its current functions and powers, the existing level of DoHA funding of the APMAIF remains appropriate. Significant changes to the current Terms of Reference may require funding levels to be revised.

### 5.3.3 Greater transparency and efficiency of APMAIF processes is required

Review questions	Insight
What are stakeholder perceptions of the efficiency, transparency and cost-effectiveness of APMAIF's processes? What is the extent to which APMAIF operations are transparent to stakeholders? What are stakeholder views on improvements in APMAIF processes?	<ul style="list-style-type: none"> <li>Stakeholders identified that the efficiency of APMAIF processes could be improved</li> <li>Some stakeholders suggested that greater clarity is required of the role between the APMAIF and other regulatory bodies, particularly FSANZ</li> <li>There is scope to improve the transparency of APMAIF processes</li> </ul>

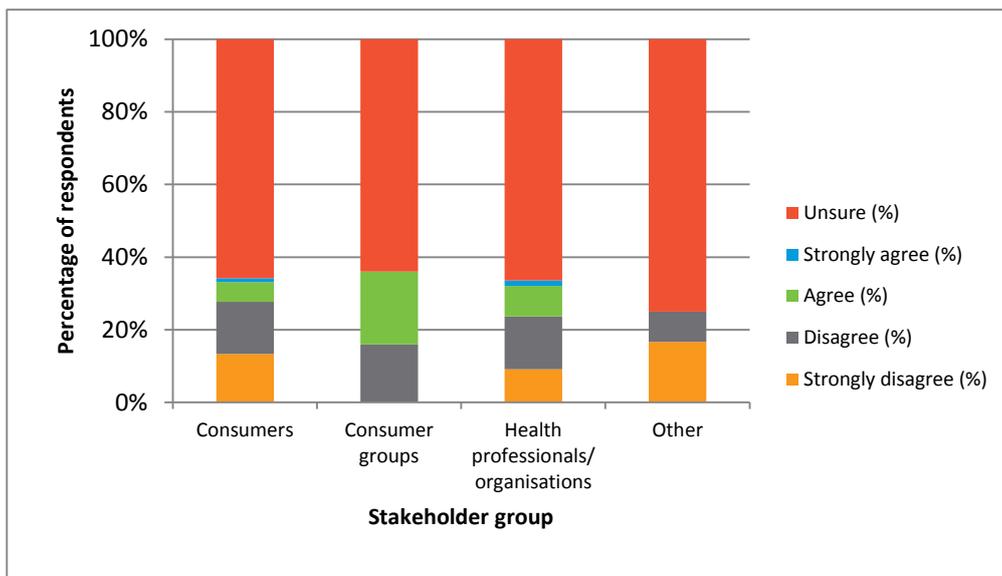
This Review identified a number of areas for improvement in APMAIF processes. The following sections discuss stakeholder views on the efficiency, transparency and cost effectiveness of APMAIF processes. .

#### Efficiency and cost-effectiveness

Survey results demonstrate that 41% of targeted stakeholders (n=17) were unsure of the efficiency and cost-effectiveness of APMAIF processes. Results amongst remaining stakeholders were divided – 30% either disagreed (12%) or strongly disagreed (18%) and 29% agreed that current APMAIF processes are efficient and cost-effective.

Amongst general survey respondents (n=447), the majority of stakeholders (>65% of respondents for each group), were unsure of the efficiency and cost-effectiveness of APMAIF processes. Amongst remaining stakeholders, there was a general disagreement that processes are efficient and cost-effective. The exception was respondents from consumer groups (n=27), where 16% disagreed and 20% agreed that processes are efficient and cost-effective. These results are shown in Figure 8 below.

Figure 8: Survey statement: "The APMAIF's processes are efficient and cost-effective" – general survey (n=447)



Interviewed stakeholders identified a number of areas to improve the efficiency of APMAIF processes. Currently, all APMAIF members and the Chair need to be present to make decisions on breaches. This process may be improved through appointment of a Deputy chair or discussions of complaints via teleconference. In the case where there are no complaints for discussion, it may be appropriate for no APMAIF meeting to be held.

## Transparency

When asked about the transparency of APMAIF operations:

- there was a mixed response amongst targeted stakeholders - 47% agreed that current operations are transparent, 18% disagreed and 6% strongly disagreed
- more than 44% of general survey respondents from each respective stakeholder group were unsure about the transparency of current APMAIF operations. Amongst remaining respondents, the majority disagreed or strongly disagreed that current operations are transparent.

A few stakeholders identified that the role of the APMAIF compared to other regulatory bodies (e.g. FSANZ) needs to be clearer (although some regulatory overlap is inevitable). The Food Standards Code is the primary responsibility of FSANZ and is consistent with the MAIF Agreement. The Scope of the Code is broader, covering composition, labelling, provision of information and advertising. Although FSANZ has regular meetings with staff from both regulatory and nutritional areas of DoHA, further work is required to formalise this relationship. FSANZ are about to begin consideration of a review of Standard 2.9.1, which will include consideration of the complementarity of the Food Standards Code with the MAIF Agreement. This is likely to be a lengthy process of at least nine months duration, providing ample opportunity for consultation with the APMAIF secretariat, DoHA and other stakeholders.

The range of survey responses indicates that there is scope to improve both the efficiency and transparency of the APMAIF processes. The introduction of an APMAIF service charter that includes KPIs on service obligations will promote both efficiency and transparency of operations. Several recommendations proposed through this Review aim to increase the transparency of APMAIF processes (e.g. publication of APMAIF decisions and supporting rationale). Developing and publishing indicative timeframes for different processes will also increase transparency and efficiency.

## 5.4 How efficient, transparent, cost-effective and appropriate are APMAIF governance arrangements?

### Recommendations

14. The APMAIF's Terms of Reference remain valid. The APMAIF should consider if any changes to the terms of reference are necessary to enable implementation of Recommendation 5.
15. Procedures for the appointment of members to the APMAIF should be reviewed and made publicly available. Consideration should be given to the inclusion of public advertising and application procedures for APMAIF positions.
16. The existing APMAIF composition (number and designation of members) is appropriate and should continue.

### 5.4.1 Suggestions were made to improve the clarity and appropriateness of APMAIF’s terms of reference

Review question	Insights
What is the level of clarity, comprehensiveness and appropriateness of the APMAIF terms of reference, and does the APMAIF fulfil these appropriately?	<ul style="list-style-type: none"> <li>Many stakeholders agreed that the APMAIF generally fulfils its terms of reference appropriately, although some suggested that the current terms of reference are vague and too narrow.</li> </ul>

A number of APMAIF members, industry representatives and government representatives agreed that the APMAIF fulfils its terms of reference appropriately. Some stakeholders suggested that the terms of reference should be clearer and more definitive to reduce the hesitancy of the APMAIF and provide better direction. This would help manage the difficulties that arise through ideological differences between APMAIF members and pressure from both industry and consumer groups.

Some interviewed stakeholders expressed the opinion that the APMAIF terms of reference should be better aligned with the stated aim of the MAIF Agreement to protect breastfeeding. Others indicated that provision of advice about breastfeeding and infant formula should be provided by independent health professionals (e.g. nutritionists and child health nurses).

Table 14 outlines suggested improvements by stakeholders for each of the terms of reference.

Table 14: Suggested improvements to APMAIF terms of reference

Terms of reference	Suggested improvements
Receive and investigate complaints regarding the marketing in Australia of infant formula	<ul style="list-style-type: none"> <li>Improved transparency and timeliness of all processes.</li> <li>The APMAIF currently adopts a passive approach whereby complaints need to be received prior to investigations being initiated. The APMAIF should adopt a more-pro-active approach and be able to instigate investigations rather than merely waiting for complaints.</li> <li>One stakeholder suggested that the APMAIF could initiate investigations, supported by a third party (potentially using capability within DoHA) to conduct the investigation. The matter could then be referred back to DoHA following investigation.</li> </ul>
Act as a liaison point for issues relating to the marketing in Australia of infant formulas	<ul style="list-style-type: none"> <li>The APMAIF could be more active and engage with a wider range of stakeholders.</li> <li>The term ‘liaison’ has a broad interpretation and the scope has not been defined. For example, it is unclear whether the APMAIF should be contacting non-signatory companies and encouraging them to sign the MAIF Agreement.</li> </ul>

Terms of reference	Suggested improvements
Develop guidelines on the interpretation and application of the MAIF Agreement	<ul style="list-style-type: none"> <li>• Further guidelines on the interpretation of the MAIF Agreement should be developed.</li> <li>• Terms of Reference should also include the provision of education and advice regarding the MAIF Agreement and complaints handling process, resulting in a more transparent process.</li> <li>• Development of guidelines should be actively considered (e.g. sampling, digital media, inducements).</li> </ul>
Provide advice to the Australian Government Minister for Health and Ageing, on the operation of the Agreement	<ul style="list-style-type: none"> <li>• The APMAIF could be more pro-active in the provision of advice.</li> <li>• There appears to be inadequate opportunity for the APMAIF to meet with either the Minister or Parliamentary Secretary to provide advice.</li> <li>• The APMAIF should provide advice to all government departments (both federal and state).</li> </ul>

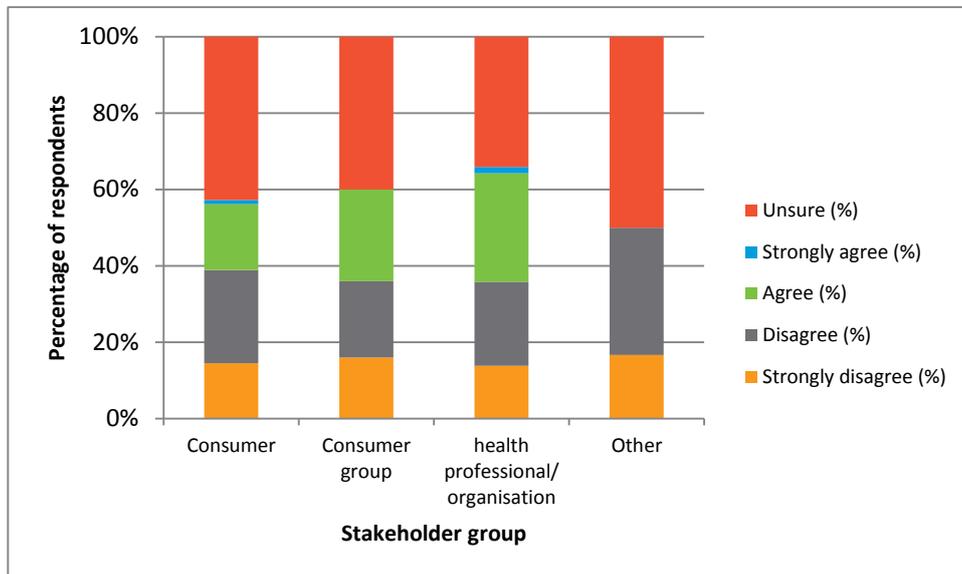
Respondents to the targeted survey (n=17) and general survey (n=422) were asked about clarity, comprehensiveness and appropriateness the APMAIF’s current terms of reference. Results demonstrate:

- Clarity - 83% of targeted survey respondents agreed (65%) or strongly agreed (18%) that the APMAIF’s terms of reference are clear. 56% of general survey respondents from consumer or consumer groups and 63% of health professional/ organisation respondents agreed that the terms of reference are clear.
- Comprehensiveness – 65% of targeted stakeholders agreed (53%) or strongly agreed (12%) that the APMAIF’s terms of reference are comprehensive. Amongst general survey respondents, between 19-33% of respondents from each respective stakeholder group were unsure of the comprehensiveness of the terms of reference. More than half of remaining respondents disagreed or strongly disagreed that the terms of reference are comprehensive.
- Appropriateness- 59% of targeted stakeholders agreed (53%) or strongly agreed (6%) the terms of reference are appropriate. A significant proportion of general survey respondents (between 16-67% of each stakeholder group) were unsure of the appropriateness of the APMAIF terms of reference. More than half the remaining respondents disagreed or strongly disagreed that the terms of reference are appropriate.

When prompted by the statement ‘the APMAIF fulfils its terms of reference appropriately’:

- 65% of respondents from the targeted survey (n=17) agreed (59%) or strongly agreed (6%) with this statement
- more than 34% of respondents from all stakeholder groups represented in the general survey (n=422) were unsure of their response to this statement. Amongst remaining respondents, there was a mixed response between stakeholder groups. These results are shown in Figure 9 below.

Figure 9: Survey statement: "Overall, the APMAIF fulfils its terms of reference appropriately" - general survey (n=422)



Most stakeholders thought that the APMAIF generally fulfils its terms of reference. Many suggestions were received on:

- how to clarify and/or strengthen the APMAIF’s interpretation of existing terms of reference
- additional functions to be incorporated into the APMAIF’s terms of reference.

The utility of the suggested changes need to be considered in the context of the current fiscal environment. For any increase in function, a concurrent increase in funding is required. The calculation of these costs is beyond the scope of this review.

Wherever possible, the APMAIF should interpret its terms of reference as facilitating action rather than curtailing it. There are a number of actions that the APMAIF could undertake within its existing terms of reference and resources (with the assistance of the Secretariat), for example, the APMAIF could:

- convene regular stakeholder engagement activities concurrently with their meetings. Ideally, these activities would bring together all stakeholders to address concerns and seek mutually agreeable outcomes. Alternatively, the APMAIF could meet with:
  - industry stakeholders to understand marketing trends and issues relating to the interpretation of the MAIF Agreement
  - other stakeholders to understand concerns with existing marketing practices.
- initiate a dialogue with non-signatory companies to understand the barriers to participation.

It is appropriate that the APMAIF consults on and commits to adopting best practice in relation to complaints processing and guideline development (in particular in relation to the time taken to complete these processes).

The APMAIF should be able to initiate investigations into industry practices beyond that allowed under the existing complaints process. This may not require greater powers to be provided to the APMAIF, rather, this could be effected through a change to its terms of reference to include this change in function.

If this change were to be implemented, the funding provided to the APMAIF should also be reviewed. Strengthening the terms of reference in this regard is likely to encourage participants to seek clarification whilst developing new marketing practices and strengthen overall compliance without resulting in a net increase in the resources required.

This approach is likely to identify the areas where updated interpretations and guidelines are required to support compliance and therefore address other suggested improvements to the terms of reference.

#### 5.4.2 Stakeholders expressed concerns that formula-feeding mothers are not adequately represented on the APMAIF

Review question	Insights
Is the APMAIF composition (number and designation of members) appropriate to the APMAIF's needs and objectives?	<ul style="list-style-type: none"> <li>Some stakeholders are concerned that the current consumer representative does not adequately represent formula feeding mothers</li> <li>There is concern that inclusion of an industry representative on the APMAIF presents a conflict of interest</li> </ul>

The APMAIF membership categories and roles are outlined in Table 15 below.

Table 15: APMAIF member categories and roles

Category	Role
APMAIF Chair	The APMAIF Chair leads the Panel in the adjudication of complaints and manages conflicting views concerning the implementation of the MAIF Agreement and the role of the APMAIF. The Chair takes the lead role in the duties of the Panel and maintains liaison with the Secretariat in progressing those duties.
Member with Legal Expertise	The Legal Expert provides a legal perspective in Panel deliberations, including interpretations of the scope and particular clauses of the MAIF Agreement. He or she contributes to Panel deliberations and decisions by demonstrating the following: <ul style="list-style-type: none"> <li>a good knowledge of the <i>Competition and Consumer Act 2010</i>;</li> <li>a good knowledge of the legal implications of voluntary self-regulation agreements; and</li> <li>knowledge of and an interest in infant nutrition.</li> </ul>
Community and Consumer Representative	The Community and Consumer Representative advocates on behalf of parents with infants or small children, and contributes to Panel deliberations and decisions by demonstrating the following: <ul style="list-style-type: none"> <li>an understanding of the issues faced by parents in feeding their babies and young children;</li> <li>a balanced understanding of the reasons why some women may not be able to breastfeed successfully or for other reasons may choose to bottle feed their babies and small children;</li> <li>a balanced view of the issues related to breastfeeding and bottle feeding; and</li> <li>an understanding of the importance of the self-regulatory model of infant formula marketing within Australia.</li> </ul>
Public Health and Nutrition Expert	The Public Health and Infant Nutrition Expert provides a professional and/or scientific viewpoint and assists the Chair in focusing the Panel on these issues as they relate to the MAIF Agreement.

Category	Role
Industry Representative	The Industry Representative is nominated by the Infant Nutrition Council (INC) and is appointed by the Parliamentary Secretary for Health. He or she liaises between the Panel and INC member companies and plays an important role in maintaining industry awareness of the responsibilities of signatories to the MAIF Agreement. He or she contributes to Panel deliberations and decisions by representing the views of INC member companies and working to maintain a cooperative relationship between the Panel and signatories to the MAIF Agreement.
Departmental Observer	A senior officer of the Australian Government Department of Health and Ageing attends all APMAIF meetings as an observer. The Departmental Observer provides advice to the Panel on matters of Government policy and advises the Minister for Health and Ageing on matters of governance for the APMAIF. He or she does not participate in APMAIF decision making.

The Review found that the member categories and role descriptions, as outlined in Table 15, provide appropriate representation of stakeholder interests and support the APMAIF to execute the functions outlined in its terms of reference.

Amongst interviewed stakeholders there was a general consensus that the size and composition of the APMAIF and the expertise of its members, remains appropriate.

The Review recognises that ensuring appropriate representation on the APMAIF is a key factor for maintaining consumer confidence in the complaints handling process.

Breastfeeding and formula feeding sit within an infant feeding spectrum. Current policy on infant feeding supports the provision of accurate factual information to support appropriate nutrition for infants. It is appropriate for the APMAIF to include a member who understands and can appropriately represent the spectrum of infant feeding and therefore the interests of breastfeeding mothers as well as formula-feeding mothers, as well as those mothers that use a combination of these approaches.

Some stakeholders proposed that the interests of formula-feeding mothers could be better represented. The Review acknowledges that direct representation for formula-feeding mothers may be appropriate but that this would be difficult to achieve as there is no organised body similar to existing breastfeeding advocacy groups.

Inclusion of both a breastfeeding and infant-feeding representative on the APMAIF may be problematic, as strongly opposing views may hinder both the decision making process and effectiveness of the APMAIF. Rather, the Review found that the identified role of the Community and Consumer Representative allows for the appropriate representation of the spectrum of infant feeding and related issues and therefore no change is warranted.

Some interviewed stakeholders and general survey respondents perceived the inclusion of an industry representative on the APMAIF to be a conflict of interest. Some general survey respondents expressed concern that involvement of an industry representative in decision making may compromise the complaints process and that it would be more appropriate for the APMAIF to consist predominately of health professionals. One suggestion arising from the general survey was that the industry representative should be removed from the process of assessing breaches, but continue to be is still involved in the process of rectifying identified problems.

All APMAIF members are bound by strict guidelines including specific guidance in relation to real or perceived conflicts of interest (APMAIF 2010). Under the guidelines, a conflict of interest relates to instances where a Panel member, partner or close family friend has direct financial or other interest in matters for consideration by the Panel. These situations need to be disclosed. The guidelines however recognise that APMAIF is comprised of community, industry and technical representatives and from time to time this arrangement may give rise to a real or perceived conflict of duty. It is also noted that the

duty of a representative member includes representing the views of, or advocating for, their stakeholder group. Since all Panel members are required to participate in the finalisation of complaints, if a conflict of duty arises during the APMAIF consideration of a complaint the member can remain involved in discussions. The conflict of duty however needs to be disclosed to all Panel members and effort made to resolve the issue in favour of public interest and the fair and efficient operation of the APMAIF.

All APMAIF members sign a *Deed of undertaking in relation to confidential information and conflict of interest* (APMAIF 2011) that binds them to act in accordance with the APMAIF member guidelines. The Review found that, provided that members act in accordance with the deed, the current guidelines are appropriate for dealing with actual conflicts of interest.

Interviewed stakeholders also suggested a range of other experts to be considered for inclusion on the APMAIF to ensure there is a balance of opinion in decision-making processes. Suggestions included:

- A second public health expert
- A pharmacist to provide a perspective on how things operate day-to-day and how people receive information
- Professional with modern marketing/ commercial/ communication background (e.g. understanding of electronic marketing, consumer preferences)
- An independent scientific representative who is separate to the consumer representative.
- Representation from FSANZ, NHMRC and DoHA (beyond the Secretariat role). Including FSANZ on the APMAIF as an observer will assist in addressing any labelling concerns.
- Professional organisations (e.g. lactation expert, health professional)
- Retailers (if the scope of the MAIF Agreement expands to cover this group).

This Review identified insufficient evidence to warrant the inclusion of the above suggested stakeholders as members of the APMAIF at this time.

The existing APMAIF composition (number and designation of members) is appropriate and should continue. Existing APMAIF members should continue to conduct themselves in accordance with their role description. The role descriptions should be central to considerations of future nominations.

### 5.4.3 APMAIF nomination and appointment procedures require greater clarity and transparency

Review question	Insights
Are the APMAIF nomination and appointment procedures appropriate and effective?	<ul style="list-style-type: none"> <li>• Many stakeholders identified that the current nomination and appointment procedures are unclear and lack transparency</li> </ul>

The majority of interviewed stakeholders indicated that the current nomination and appointment procedures for APMAIF members are unclear and lack transparency. Greater clarity about the criteria used to appoint APMAIF members and increased awareness amongst stakeholders of the role of the APMAIF is required. Some stakeholders suggested that a process of public advertising and applications for APMAIF positions may be appropriate.

The APMAIF Annual Reports state that APMAIF members are appointed by the Parliamentary Secretary for Health (Department of Health and Ageing, 2010), however no further details are provided. Improving the transparency of procedures will present many benefits to the integrity of the APMAIF and the complaints handling process. As identified in Section 5.4.3, many stakeholders expressed concerns about potential conflicts of interest arising from the involvement of industry and the perceived lack of appropriate consumer representation. Public awareness of the nomination and appointment processes will help alleviate these concerns and increase the perceived objectivity of the APMAIF. The most appropriate mechanism for increasing public transparency would be through public advertisements seeking applications for APMAIF positions.

#### 5.4.4 The current division of functions is effective and appropriate

Review question	Insight
What is the value of divisions between APMAIF functions such as investigation, deliberation and secretariat?	<ul style="list-style-type: none"> <li>• The current division of functions is effective and appropriate however the role of the Secretariat and The APMAIF should be more clearly defined.</li> </ul>

The APMAIF is solely funded by DoHA and is supported by a Secretariat consisting of DoHA staff.

The current process for initial assessment of complaints is reasonably streamlined. As part of the complaints handling process, the Secretariat receives complaints and undertakes an initial assessment to determine whether the complaint is in-scope. The Secretariat has the authority to respond to complainants regarding out-of-scope complaints. For complaints that are deemed to be in-scope, the Secretariat manages the investigation and will present the evidence to the APMAIF at scheduled meetings. APMAIF members then deliberate and make the decision regarding the complaint. The APMAIF complaints handling process is outlined in the APMAIF Annual Report and on the DoHA website, clearly outlining the responsibilities of the Secretariat, including when it will communicate with the complainant.

Amongst interviewed stakeholders there was a general consensus that the current division between APMAIF functions is appropriate. The screening of complaints by the Secretariat enables the APMAIF to dedicate time to issues that warrant their attention and improves the efficiency of the process. A few stakeholders however commented that the division of functions could be clarified.

Several interviewed stakeholders also suggested that the role of the Secretariat could be more clearly defined – e.g. to address whether the Secretariat should communicate with complainants about issues that are out-of-scope and to ensure that the views of the APMAIF are clearly distinct to those of the Department. One stakeholder suggested that the Secretariat should be kept clearly separate and independent from other APMAIF functions. It was also suggested that additional training should be provided to the Secretariat to ensure they have adequate knowledge to respond to queries. Regular training would address any gaps in knowledge that may arise through staff turnover in the Secretariat.

Overall, the division between APMAIF functions is appropriate, both from a governance perspective and a practical division of the workload. The separation of powers between the APMAIF, the Secretariat and DoHA appears adequate. It is not uncommon for smaller independent bodies (both statutory and non-statutory) to be supported by a Secretariat that sits within a department. To maintain the separation of powers and independence of the APMAIF from DoHA, it is important to have a robust and transparent process to appoint APMAIF members (see Section 5.4.3).

### 5.4.5 The current role of DoHA as observer and Secretariat remains appropriate

Review question	Insights
Is DoHA oversight of the operation of the MAIF Agreement appropriate, and what is the best role for DoHA in the APMAIF’s operations	<ul style="list-style-type: none"> <li>The current role of DoHA as observer and Secretariat remains appropriate.</li> </ul>

Interviewed stakeholders were asked to identify the best role for DoHA in the APMAIF’s operations. Stakeholders identified four key roles for DoHA – observer, secretariat, funder and policy development. Responses from interviewed stakeholders are identified in Table 16 below.

Table 16: Stakeholder views on the most appropriate role for DoHA

	APMAIF members	Government organisations	Industry	Consumer Group
<b>Observer:</b> Provide oversight across governance operations and implementation of the MAIF Agreement; provision of expert advice	●	●	●	●
<b>Secretariat:</b> Provision of administrative support in their role as Secretariat	●	●	●	●
<b>Funder:</b> Provision of funding for the APMAIF to ensure participation (and prevent the requirement for industry funding)		●		
<b>Policy development:</b> Development of policy and ensuring policy goals are achieved	●	●		

 High priority    
  Low priority

The appropriateness of these four roles for DoHA are discussed below:

- Observer – DoHA has observer status on the APMAIF, is not an APMAIF Member and does not vote in decisions. Given that the aim of the MAIF Agreement is to achieve a health policy objective, it is appropriate that DoHA has observer status on the APMAIF.
- APMAIF Secretariat – The APMAIF Secretariat provided by DoHA undertakes the majority of investigative and administrative work required to implement the MAIF Agreement. It is essential that this Secretariat is adequately skilled and resourced for the MAIF Agreement to be successful. This Review did not identify sufficient evidence to warrant a change to the current arrangements.
- Funder – as discussed in Section 5.3.2, DoHA is currently responsible for funding the APMAIF’s operations. This arrangement received strong support from many stakeholders. DoHA should continue to ensure that the APMAIF (including the Secretariat) has adequate funds to undertake its functions.

- Policy Development – It is appropriate that DoHA is responsible for drafting the MAIF Agreement (a policy response to a public health concern) and ensuring implementation of the MAIF Agreement is aligned with Government policy. Findings from this Review support DoHA in its policy development responsibilities.

One stakeholder suggested that DoHA should have a role in surveillance of the marketing environment, as this is too large a task for the APMAIF and consumers to manage. Whilst DoHA should maintain awareness of current marketing practices, it is not considered appropriate for DoHA to actively monitor the marketing environment at this time.

Some stakeholders suggested that DoHA could be more active in providing information to consumers regarding infant feeding (as outlined under the WHO Code). The actions of DoHA in relation to infant feeding generally are beyond the scope of this Review.

# Appendix A Data collection and stakeholder engagement method

An outline of the data collection and stakeholder engagement method used to gather the necessary evidence to answer each of the review questions is provided below.

## A.1 Data collection plan

Nous developed a detailed data collection plan to guide the collection of evidence needed to complete the Review. The data collection plan identified a hierarchy of review questions to address each of the review components included in the conceptual framework (see Figure 2).

Nous identified four likely sources of the data and other evidence that would be required to answer each of the review questions. The sources identified in the data collection plan included:

- DoHA documentation
- APMAIF complaints data
- Literature review
- Stakeholder consultations.

### A.1.1 Stakeholder engagement plan

Nous developed a detailed stakeholder engagement plan to identify which stakeholders were likely to be able to provide the data and evidence required to answer the review questions. Eight categories of stakeholders were identified:

- MAIF Agreement signatories
- APMAIF members
- Complainants
- Government policy and regulatory agencies
- Consumer groups
- Health professionals and organisations
- Industry bodies (including non-signatories)
- Members of the general public.

For each stakeholder category, Nous considered the most effective mechanism of engagement to obtain the required data and other evidence. It was determined that a combination of targeted<sup>10</sup> interviews and two surveys (one targeted and the other general) would ensure effective and timely engagement with all stakeholder categories.

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<sup>10</sup> Due to the broad range of stakeholders that have an interest in the operation of the MAIF Agreement, a decision was taken by DoHA to limit the targeted consultations undertaken to those stakeholders directly involved in the MAIF Agreement and policy makers.

## Interviews

In collaboration with DoHA, Nous designed a structured interview guide to ensure consistency between interviews (see Appendix B) and to allow direct comparison of responses. Each interview was completed in accordance with this interview guide<sup>11</sup>. The interview questions were designed to provide qualitative data to answer many of the review questions.

Nous conducted 24 interviews (which included the five APMAIF Members, 11 Commonwealth and State Government departments and bodies, five of the six<sup>12</sup> manufacturers that are signatories to the MAIF Agreement, one industry representative, and two consumer groups). Twelve of the 24 stakeholders interviewed also completed the targeted survey (see below). A full list of interviewees is at Appendix A.

After each interview, Nous sent a summary of that discussion to the participant to review and to confirm the accuracy of the interview record.

## Surveys

In collaboration with DoHA, Nous developed two surveys – a targeted survey and a general survey – to elicit views from the stakeholders identified in the stakeholder engagement plan.

Nous ensured that the format and range of questions in both surveys facilitated ease of response and analysis (for example, by using agree/disagree questions to capture quantitative data). The surveys were also designed to enable respondents to freely express their views (qualitative responses), while focusing them on the specific purpose of the Review. A copy of the general survey is included at Appendix C.

Both surveys asked essentially the same questions, however, the general survey allowed respondents to remain anonymous or, alternatively, to provide their contact details to assist follow-up.

The first survey was sent to a targeted cohort of 40 stakeholders (the targeted survey).

The targeted survey was sent to the 26 organisations that were offered an interview. 12 completed responses were received from this cohort.

The targeted survey was also sent to a further 13 stakeholder organisations that were not scheduled to be interviewed by Nous but were identified by DoHA and Nous as interested parties that may be affected by the outcome of the Review, or be in a position to provide insights into the Review. These recipients were asked to respond to the survey on behalf of their organisation. Five completed surveys were received from this cohort.

The second survey provided an opportunity for individuals to contribute to the Review (the general survey).

A link to the general survey was made publically available on the APMAIF website by DoHA.

Nous also provided a link to the general survey to those stakeholder groups that were invited to complete the targeted survey (for those groups to provide to members that might wish to make a personal contribution to the Review).

Finally, the APMAIF Secretariat provided a link to the general survey to a representative sample of previous complainants (i.e. individuals that had previously submitted a complaint to APMAIF over the last five years).<sup>13</sup>

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<sup>11</sup> The only departures from this consistent approach were the additional questions asked of the ACCC and FSANZ in relation to their respective regulatory roles.

<sup>12</sup> One signatory declined to participate in an interview.

<sup>13</sup> Complainant details were not disclosed to Nous. Participation was voluntary and not monitored.

Nous received 516 completed responses to the General Survey. Not all respondents completed each question. The majority of respondents were 'consumers' (326), followed by 'health professionals' (148). The remaining categories were 'Consumer group' (28) and 'Other' (14).

### **Draft Consultation Summary**

At the conclusion of Stage 2 (Stakeholder consultation), Nous compiled a Draft Consultation Summary and sent this to all stakeholders that had participated in the Review and had also identified that they would be willing to be contacted by Nous/DoHA.

Recipients were invited to provide feedback on accuracy of the contents of the Draft Consultation Summary on the basis that any feedback received would be considered in compiling advice and recommendations to DoHA. Nous received 15 responses.

## **A.2 Other data sources**

### **DoHA documentation**

DoHA provided Nous with a range of background material that was directly relevant to the Review. This material included:

- International Comparison Study into the Implementation of the WHO Code and Other Breastfeeding Initiatives, conducted by University of Sydney's NHMRC Clinical Trials Centre (University of Sydney 2011). This report was commissioned by DoHA
- Australian National Breastfeeding Strategy 2010-2015
- Australian National Infant Feeding Survey Indicator Results 2010
- APMAIF Annual Reports, including APMAIF Interpretations of the MAIF Agreement.

DoHA also provided a list of references that Nous might consider in undertaking the Review.

### **APMAIF complaints data**

Nous was provided with the following data and documentation by the APMAIF Secretariat (DoHA):

- Initial complaint forms (with identifiers removed) ranging from 2009 to 2010
- Timelines of APMAIF's handling of complaints in 2008
- APMAIF complaints handling process
- Summary of complaints (including out-of scope complaints) for 2010-11
- APMAIF Meeting Minutes (July 2009 – November 2011).

### **Literature review**

Nous conducted a general literature review of a range of documents to inform the Review, including:

- the WHO Code
- previous reviews of the MAIF Agreement including the Knowles Review (2001) and the Best Start Inquiry (2007)
- Australian and international journals, and thesis papers
- Background material and additional references provided by DoHA

A complete bibliography is included in Appendix H.

## A.3 Data limitations

The successful implementation of the robust data collection and stakeholder engagement plans ensured that sufficient data was collected to effectively answer each of the review questions. There were, however, four minor data limitations encountered.

1. Not all stakeholders agreed to participate in the interview process – one signatory to the MAIF Agreement declined to participate in an interview. It is possible that that signatory may have been able to offer additional insights to Nous in completing the Review.
2. Several of the 40 stakeholder groups invited to complete the targeted survey did not respond. It is possible that the groups who did not respond may have been able to offer additional insights to Nous in completing the Review.
3. A link to the general survey was provided on the APMAIF website and was also provided to those stakeholder groups that were invited to complete the targeted survey (for those groups to provide to members that might wish to make a personal contribution to the Review). It is possible that some consumers may not have seen or received the links and therefore not had the opportunity to contribute to the Review. It is possible that those individuals may have been able to offer additional insights to Nous in completing the Review.
4. Obtaining cost effective, quality information about the dynamics of the Australian infant formula market was difficult. The information contained within this Research Paper represents the detail deemed necessary to inform the Review and is not proposed to be a 'market analysis'.

These minor data limitations did not affect the effectiveness of the Review.

## A.4 Targeted stakeholder consultations

The following organisations were invited to participate in an interview and were also invited to complete the targeted survey:

- APMAIF Members (All)
- Australian Breastfeeding Association
- Australian Consumer and Competition Commission
- Department of Health and Ageing
- Food Standards Australia New Zealand
- Health Department - Australian Capital Territory
- Health Department - New South Wales
- Health Department - Northern Territory
- Health Department - Queensland
- Health Department - South Australia
- Health Department - Tasmania
- Health Department - Victoria
- Health Department - Western Australia
- Infant Nutrition Council

- Lactation Consultants of Australia and New Zealand
- National Health and Medical Research Council
- Signatories to the MAIF Agreement – including:
  - Abbott Australasia
  - Bayer Australia
  - HJ Heinz
  - Nestle
  - Nutricia
  - Pfizer

The following additional organisations were invited to complete the targeted survey:

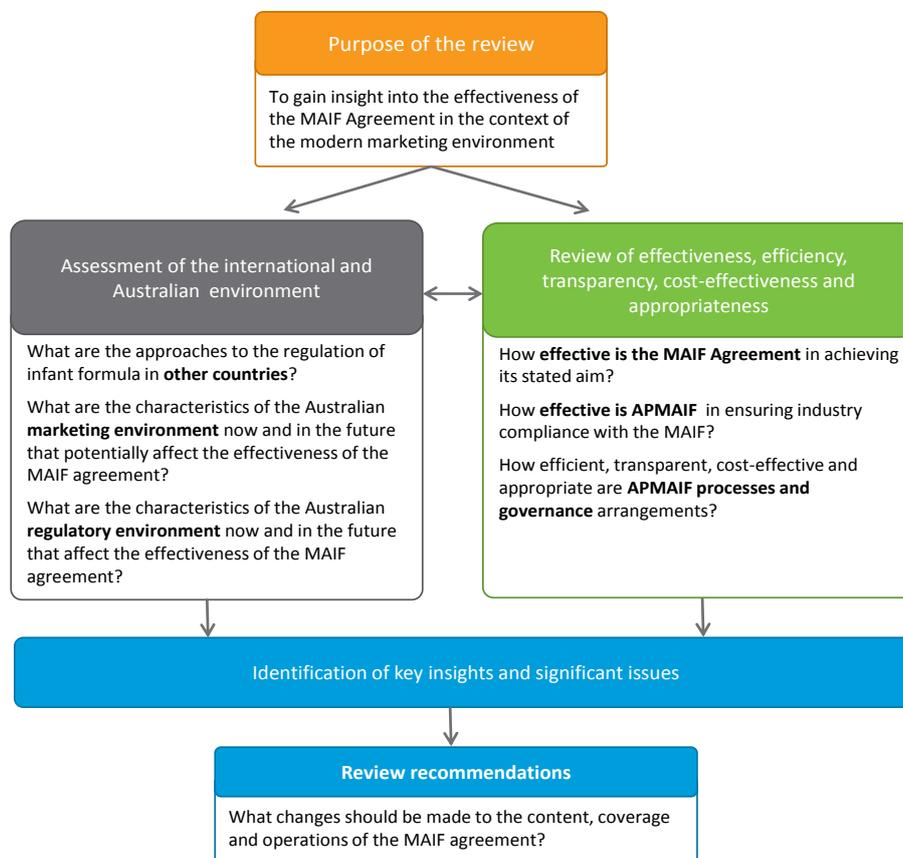
- Australian College of Midwives
- Australian Healthcare and Hospitals Association
- Australian Nursing Federation
- Bellamy's Organic
- Choice
- Consumer Health Forum of Australia
- Food and Grocery Council
- Milk Powder Solutions
- Murray Goulburn
- Public Health Association of Australia
- Royal Australian and New Zealand College of Obstetricians and Gynaecologists
- Royal College of Nursing Australia
- Tatura Milk

## Appendix B Stakeholder Interview Guide

**Overview:** The Department of Health & Ageing (DoHA) has engaged Nous Group to complete a ‘Review of the effectiveness and validity of the operations of the MAIF Agreement’ (the Review) to assess:

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

The Review will include recommendations on any changes to the content, coverage or operation of the MAIF Agreement required at this time.



**Purpose:** The methodology for the Review includes extensive stakeholder consultation. The stakeholder interviews are one means of gaining valuable insights to inform the Review. Outcomes from these interviews will complement the results of a stakeholder survey and guide the development of recommendations.

**Duration:** 45 mins – 1 hour

**Record:** All interview discussions will be treated confidentially. We will be aggregating stakeholder comments as one input to a final report that will be submitted to the Department. Stakeholder comments will not be attributed in published documents.

**Do you have any questions or comments that you would like to make before we proceed?**

<b>Organisation:</b>	
<b>Name of interviewee:</b>	
<b>Role:</b>	
<b>Date of interview:</b>	
<b>Interviewer(s):</b>	

Question	Summary of response
<b>How effective is the MAIF Agreement in achieving its stated aim?</b>	
What are the strengths of the MAIF Agreement?	
What are the weaknesses of the MAIF Agreement?	
What improvements are required to increase the effectiveness of the MAIF Agreement in achieving its stated aim? <i>[Prompt – Is MAIF Agreement scope appropriate?]</i>	
Is there any ambiguous, inconsistent unclear or out of date wording in the MAIF Agreement? <i>[Highlight any suggested passages on hardcopy]]</i>	
<b>Follow-up:</b> Does this affect APMAIF’s ability to interpret and apply the MAIF Agreement to modern marketing activities?	
<b>How effective is APMAIF in ensuring industry compliance with the MAIF?</b>	
What are the strengths of the operations of the APMAIF?	
What are the weaknesses of the operations of the APMAIF?	
What changes would you suggest to improve the effectiveness of APMAIF in ensuring industry compliance with the MAIF?	
Should an appeals process be considered? What value would this offer?	

<b>How efficient, transparent, cost-effective and appropriate are APMAIF processes and governance arrangements?</b>	
Does APMAIF fulfil its terms or reference appropriately?	
Is the APMAIF composition (number and designation of members) appropriate to APMAIF's needs and objectives?	
Are the APMAIF nomination and appointment procedures appropriate and effective?	
What is the value of divisions between APMAIF functions such as investigation, deliberation and secretariat?	
What is the best role for DoHA in APMAIF's operations?	
What changes would you make to improve the efficiency, transparency, cost-effectiveness and appropriateness of APMAIF processes and governance arrangements?	
<b>What are the characteristics of the Australian marketing environment that affect the effectiveness of the MAIF Agreement?</b>	
What are the characteristics of the Australian marketing environment that affect the effectiveness of the MAIF Agreement? [Prompt – Can you identify possible future developments that may impact the environment?	NB: Some stakeholder may feel that they do not have the expertise to answer this question
<b>Follow-up:</b> What extent can these be anticipated and accommodated?	
<b>What are the characteristics of the Australian regulatory environment that affect the effectiveness of the MAIF Agreement?</b>	
What are the possible future developments in Australian economic regulation that might impact on the operation of the MAIF Agreement?	NB: Some stakeholder may feel that they do not have the expertise to answer this question

Prior to closing the interview, the interviewer will thank the participant for taking the time to complete the interview and will provide an outline the next steps in the project.

In the days following the interview, participants will be provided with a summary of the themes discussed during their interview to ensure that these have been recorded accurately and that, where appropriate, the right emphasis is placed on the opinions/positions conveyed.

If, upon reflection, participants would like to provide further information, or to clarify any responses provided during the interview, they should contact:

Benjamin Battisson, Senior Consultant – Nous Group

(02) 6201 9000 or [benjamin.battisson@nousgroup.com.au](mailto:benjamin.battisson@nousgroup.com.au)

## Appendix C General survey

### Welcome to the review of the MAIF Agreement stakeholder survey

Australia's primary regulatory mechanism to implement the International Code of Marketing of Breast-milk Substitutes (the WHO Code) is a voluntary, self-regulatory industry code called the Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement (the MAIF Agreement).

The MAIF Agreement applies only to those manufacturers and importers of infant formula who are signatories. It excludes retailers, such as supermarkets and pharmacies. The scope of the products covered is limited to formula for infants up to 12 months of age.

Oversight of the MAIF Agreement is undertaken by a non-statutory Advisory Panel on the Marketing in Australia of Infant Formula (the APMAIF). The APMAIF advises Government on the operation of the MAIF Agreement and investigates alleged breaches.

The Department of Health and Ageing (DoHA) has engaged Nous Group to complete a 'Review of the effectiveness and validity of the operations of the MAIF Agreement' (the Review). The Review will assess:

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

The Review report will include recommendations on any changes to the content, coverage or operation of the agreement required at this time.

The methodology for the review includes extensive stakeholder consultation. This survey is one means of gaining valuable stakeholder insights. As such, we would value your input via the completion of this survey.

## Review of the MAIF Agreement stakeholder survey

The following information is required to assist confirmation that invited stakeholders have completed the survey. Participation will remain anonymous and no comments will be attributed in published materials.

**\*1. Please select the option from the list below that best identifies you or your organisation.**

- Consumer
- Consumer group
- Government agency
- Health professionals / organisations
- Industry including manufacturers, importers and retailers
- Other (please specify)

**2. Please complete the following fields. (A response to this question is voluntary.)**

**Name:**

**Title:**

**Organisation:**

**Day time telephone no:**

**Email Address:**

**3. I am willing to be contacted by the Nous Group or the Department of Health and Ageing to discuss any or all of my input on this survey.**

- Yes
- No

## Review of the MAIF Agreement stakeholder survey

Australia's primary regulatory mechanism to implement the International Code of Marketing of Breast-milk Substitutes (the WHO Code) is a voluntary, self-regulatory industry code called the Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement (the MAIF Agreement). The stated aim of the MAIF Agreement is to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breastfeeding and by ensuring the proper use of breast milk substitutes, when they are necessary, on the basis of adequate information and through appropriate marketing and distribution.

### \*4. The following statements relate to the effectiveness of the MAIF Agreement in achieving its stated aim.

	Strongly disagree	Disagree	Agree	Strongly Agree	Unsure
The MAIF Agreement is effective in meeting its stated aim.	<input type="radio"/>				
The scope of the MAIF Agreement is appropriate.	<input type="radio"/>				
The current wording of the MAIF Agreement does not affect the APMAIF's ability to interpret and apply the Agreement to modern marketing activities.	<input type="radio"/>				
The MAIF agreement does not include ambiguous, inconsistent, unclear or out-of-date wording.	<input type="radio"/>				
The MAIF Agreement responds to the needs of the community appropriately.	<input type="radio"/>				
The voluntary, self-regulatory nature of the Agreement does not affect its effectiveness.	<input type="radio"/>				
All companies involved in the infant formula supply market (including manufacture and retail) should be signatories to the MAIF Agreement.	<input type="radio"/>				
There is a good level of awareness and understanding of the WHO Code and the MAIF Agreement in the community.	<input type="radio"/>				

### 5. What do you perceive to be the strengths of the MAIF Agreement? (Please comment)

### 6. What do you perceive to be the weaknesses of the MAIF Agreement? (Please comment)

### 7. What changes would you make to the MAIF Agreement? (Please comment)

### Review of the MAIF Agreement stakeholder survey

**\*8. Have you been involved in an APMAIF complaint process?**

Yes

No

### Review of the MAIF Agreement stakeholder survey

**\*9. The following statements relate to the APMAIF Complaints Handling Process.**

	Strongly disagree	Disagree	Agree	Strongly Agree	Unsure
The APMAIF Complaints Handling Process is fair.	<input type="radio"/>				
The APMAIF Complaints Handling Process is efficient.	<input type="radio"/>				
The APMAIF Complaints Handling Process is transparent.	<input type="radio"/>				
The structure of the APMAIF Complaint Handling Process is appropriate.	<input type="radio"/>				
Overall, the APMAIF Complaints Handling Process is effective.	<input type="radio"/>				

**10. What changes would you make to the APMAIF Complaints Handling Process?  
(Please comment)**

## Review of the MAIF Agreement stakeholder survey

Oversight of the MAIF Agreement is undertaken by a non-statutory Advisory Panel on the Marketing in Australia of Infant Formula (the APMAIF).

The APMAIF's Terms of Reference are to:

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

### \*11. The following statements relate to APMAIF.

	Strongly disagree	Disagree	Agree	Strongly Agree	Unsure
The APMAIF's monitoring and influencing of industry behaviour is effective.	<input type="radio"/>				
I have/My organisation has a good awareness and understanding of the interpretation and application of the MAIF Agreement by the APMAIF.	<input type="radio"/>				

### 12. What are the strengths of the operations of the APMAIF? (Please comment)

### 13. What are the weaknesses of the operations of the APMAIF? (Please comment)

### 14. What improvements would you make to the operations of the APMAIF (Please comment)

### Review of the MAIF Agreement stakeholder survey

**\*15. The following statements relate to the efficiency, transparency, cost-effectiveness and appropriateness of APMAIF processes.**

	Strongly disagree	Disagree	Agree	Strongly Agree	Unsure
The APMAIF reporting and communication procedures are timely.	<input type="radio"/>				
The APMAIF reporting and communication procedures are effective.	<input type="radio"/>				
The APMAIF's operations are transparent.	<input type="radio"/>				
The APMAIF's processes are efficient and cost-effective.	<input type="radio"/>				

**16. What improvements would you make to APMAIF processes? (Please comment)**

**17. What would be the value and practicality of the proposed change? (Please comment)**

## Review of the MAIF Agreement stakeholder survey

Oversight of the MAIF Agreement is undertaken by a non-statutory Advisory Panel on the Marketing in Australia of Infant Formula (the APMAIF).

The APMAIF's Terms of Reference are to:

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

### **\*18. The following statements relate to the efficiency, transparency, cost-effectiveness and appropriateness of APMAIF governance arrangements.**

	Strongly disagree	Disagree	Agree	Strongly Agree	Unsure
The APMAIF's terms of reference are clear.	<input type="radio"/>				
The APMAIF's terms of reference are comprehensive.	<input type="radio"/>				
The APMAIF's terms of reference are appropriate.	<input type="radio"/>				
Overall, the APMAIF fulfils its terms of reference appropriately.	<input type="radio"/>				

### **19. What improvements would you make to the governance arrangements for the APMAIF? (Please comment)**

## Review of the MAIF Agreement stakeholder survey

Thank you for taking the time to complete this survey.

Whilst a comparative analysis of the results will be completed and insights obtained from the data presented in a final report of the Review, your participation will remain anonymous and no comments will be attributed in published materials.

If you would like to discuss these matters further, please contact:

Benjamin Battison, Senior Consultant – Nous Group  
(02) 6201 9000 or [benjamin.battison@nousgroup.com.au](mailto:benjamin.battison@nousgroup.com.au)

## Appendix D Assessment of the Australian marketing environment

In response and anticipation to changes in the broader macro environment, companies often consider strategies within the context of the marketing mix– a set of decisions related to price, channels of distribution, product, communications and customer relationship management. Part of this marketing mix is the four Ps of marketing:

- Product- the combination of product attributes (e.g. packaging, size, quality, design) which differentiates the product from those of competitors and satisfies consumer need
- Price- encompasses variables in list price such as discounts, payment terms and allowances to maximise the target market's willingness to pay
- Place- refers to distribution channels and coverage and how the consumer gets access to the product
- Promotion- methods used to generate brand awareness and influence purchase through the use of advertising, sales promotions and sales force, PR and direct marketing.

Current trends in the four P's with respect to the infant formula market are outlined in more detail below.

### D.1 Products

A number of new strategies to differentiate products have occurred since 1992. Relative to developing countries, the marketing techniques adopted in Australia and comparable countries to promote infant formula are often more subtle (Brady 2012). Two key developments relevant to the infant formula market are brand line extensions and product modifications.

#### *Brand line extensions*

The introduction of new items using a successful brand name presents a number of benefits to manufacturers, including command of more retailer shelf space and greater product association by consumers. Since 1992, a number of manufacturers have extended their product lines to include toddler milk drinks, with product identifiers and package design often closely resembling infant formula. This enables toddler milk drink advertisements to act as de-facto adverts for infant formula (Berry et al 2010), hindering the ability of consumers to differentiate between products. Manufacturers have also now released Junior Milk Drinks – often identified as 'Step 4' (e.g. Nurture Gold Junior Milk Drink 4).

#### *Product modifications*

Modifications or improvements to the quality, features or style of a product are key strategies for distinguishing products from market competitors. Manufacturers are increasingly adding new substances to infant formula with the intent of generating additional health benefits or making the composition more similar to breast milk. Although there is no established process to substantiate the significance of these additional substances in normal growth and development (FSANZ 2011), manufacturers market products as offering increased health benefits to infants. Some examples include:

- Pfizer S-26 Gold Newborn claims “S-26 Gold Newborn with Alpha-Pro, for babies from birth, is a premium infant formula with an advanced new formulation and more whey that is well tolerated and easy to digest”
- Amptimal Gold + claims it is “inspired by breast milk”, uses the phrase “Immunnocare: Nutritionally supporting your baby’s immune system” and claims to have “fish oil to help support brain and eye development”

A number of stakeholders suggested through surveys improvements to labelling requirements for infant formula products. It was suggested that manufacturers should be prevented from promoting perceived health benefits of using formula and that all product labelling should include the health risks associated with formula use. One suggestion was mandatory promotion of the MAIF Agreement and WHO Code on labels.

## D.2 Promotion

Electronic marketing and social media have been two highly significant changes to promotional strategies over the past two decades. In 1992 when the MAIF Agreement was introduced, the role of the internet in advertising was inconceivable and unanticipated (Australian Breastfeeding Association 2007). Many new digital and social marketing options are now available for the provision of targeted interventions to a wide range of consumers (Shealy et al 2005), enabling manufacturers to test the boundaries of advertising regulations.

Examples of new avenues for advertising include:

- Discussion forums- online forums are a new means through which parents can publically endorse products (e.g. Bub Hub, Huggies Forum)
- Support lines – many manufacturers are now providing support to new mothers either online or through a helpline advertised on product packaging. E.g. the Kariclub Careline claims “we have a team of experts and mums ready to help and support”.
- Product review websites (e.g. Productreview.com.au)- provide a means for retailers and manufacturers to have their products recommended and discussed
- Social media- Twitter, facebook and YouTube provide an avenue for manufacturers to develop relationships and discuss products with consumers.

Social media has been a particularly influential factor on the marketing environment. Current use of social media by signatories and non-signatories are shown in Table 17.

Table 17: Promotion of infant formula through social media

	Pfizer S-26 Gold and SMA	Heinz Nurture	Bellamy’s Organic infant formula
Website	<ul style="list-style-type: none"> <li>• Mothers’ support page is accessible through the product page</li> <li>• Links are provided to both Facebook and YouTube.</li> </ul>	<ul style="list-style-type: none"> <li>• Dedicated page for parents</li> <li>• Links to both Heinz and external resources (posters, factsheets)</li> <li>• Monthly electronic direct mail newsletter</li> </ul>	<ul style="list-style-type: none"> <li>• Direct links to Facebook, Twitter and company blog</li> <li>• Professional endorsements and customer testimonials</li> <li>• Highly active blog with advice for new mothers and women planning pregnancy</li> </ul>

	Pfizer S-26 Gold and SMA	Heinz Nurture	Bellamy's Organic infant formula
Facebook	<ul style="list-style-type: none"> <li>Page name 'S-26 Gold Toddler Australia' (with over 3500 likes)</li> <li>Provides free samples to mothers and holds trivia competitions</li> <li>Questions are responded to directly or consumers are directed to the Careline support care centre</li> </ul>	No presence	<ul style="list-style-type: none"> <li>Very active page with almost daily posts and conversation with the public</li> <li>Postings of personal items including fun-runs, baby videos and market stalls</li> </ul>
Twitter	No presence	No presence	Very active with up to three daily posts Position themselves as experts on mothering to win consumer trust User ID: @BellamysOrganic
YouTube	<ul style="list-style-type: none"> <li>User name 'S26GoldToddler'</li> <li>Product endorsements and provision of advice about breastfeeding and baby development</li> </ul>	<ul style="list-style-type: none"> <li>No channel, however have advertisements on other channels (e.g. for Nurture and Nurture Gold).</li> </ul>	No presence

### D.3 Place

Product positioning is a commonly used technique to differentiate products within the market. There is evidence of infant formula manufacturers using scientific claims (e.g. Aptimal Gold+ uses the phrase "Nutricia research" and "scientifically researched ingredients to nutritionally support the immune system") or trying to create a sense of trust amongst consumers to increase the appeal of products (e.g. Pfizer S-26 Gold uses the phrase "trusted by generations of mums" whilst Karicare claims it has been "caring for babies since 1896" and displays images of hearts and teddy bears)

Consumer access to infant formula is also largely impacted by in-store presentation by retailers. Techniques to increase consumer access to products include:

- Shelf displays – Whilst shelf displays vary between retailers, many display infant formula products by brand (rather than separation by age group). This increases the impact of associated marketing between toddler milk drinks and infant formulas and decreases the capacity of consumers to distinguish between products or easily recognise those products covered under the MAIF Agreement.
- Display locations – The location of infant formula within retailers impacts consumer access and attitudes towards products. Large displays near point-of sale increase accessibility, whilst placement of formula alongside health products or other child-care items (e.g. nappies) can normalise the use of infant formula.

## D.4 Price

Due to the net public benefit resulting from operation of the MAIF Agreement, in 1992 the ACCC gave authorisation to the MAIF Agreement. In 2007 re-authorisation was granted, providing signatories with immunity from prosecution under the Trade Practices Act (1974)<sup>14</sup> for any potentially anti-competitive behaviour that may result from the terms of the MAIF Agreement.

There is evidence of infant formula manufacturers using price to differentiate products from consumers. Some manufacturers have adopted segmented pricing strategies to target their 'premium' infant formula at a different consumer market whilst other specialised infant formulas (e.g. organic, goats milk) have higher prices. For example Pfizer SMA retails for approximately \$13.50 at large supermarkets whilst Pfizer s-26 gold retails for approximately \$29.00. Across the range of manufacturers, there is a wide range of price variation, with products ranging from approximately \$13.50 to \$30.00.

Retailers are also actively using discount incentives for selling infant formula products. Both pharmacies and supermarket retailers provide promotional discounts on formula products with the intent of increasing sales. Current coverage of the MAIF Agreement does not include retailers, providing them with the freedom to implement the most suitable pricing strategies to maximise sales and profit.

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<sup>14</sup> Now the *Competition and Consumer Act 2010*.

## Appendix E Regulatory options to implement the MAIF Agreement

Table 18: Regulatory options to implement the MAIF Agreement<sup>15</sup>

Form	Characteristics	Advantages	Disadvantages
Voluntary code (e.g. MAIF Agreement)	<ul style="list-style-type: none"> <li>• Voluntary</li> <li>• Low cost</li> <li>• Effective in circumstances where there is a high degree of confidence in an industry body and unity in an industry (at least around issue the code is seeking to address)</li> <li>• Often used in emerging industries as an initial response</li> <li>• No formal role for the ACCC in developing or monitoring the code, although parties can consult the ACCC during code development<sup>16</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Low cost, and cost effective method of regulation in some circumstances</li> <li>• Incentive for signatories to encourage competitors to sign up so there is an even playing field</li> <li>• Threat of moving to heavier handed regulation can positively influence behaviour</li> </ul>	<ul style="list-style-type: none"> <li>• May result in limited coverage – parties are not required to sign up</li> <li>• Inconsistencies in industry practice (between signatories and non-signatories) can lead to confusion</li> <li>• Limited ability to enforce compliance or to impose sanction</li> </ul>
Prescribed voluntary code (Part IVB)	<ul style="list-style-type: none"> <li>• Voluntary</li> <li>• Ministerial involvement to prescribe code – high barriers to prescription (current form of regulation must be inadequate in addressing identified problem)</li> <li>• Involves consultation process</li> <li>• Regulations must be passed by both houses of Parliament</li> <li>• There are currently no prescribed voluntary codes</li> <li>• ACCC has enforcement role</li> </ul>	<ul style="list-style-type: none"> <li>• Incentive for signatories to encourage competitors to sign up so there is an even playing field</li> <li>• Strong enforceability through the ACCC</li> </ul>	<ul style="list-style-type: none"> <li>• Non-signatories may get competitive advantage as they are not constrained by code</li> <li>• May unnecessarily restrict competition or innovation</li> <li>• Costs of regulation may outweigh benefits</li> </ul>

<sup>15</sup> References in this table are to the *Competition and Consumer Act 2010* (Cth)

<sup>16</sup> Parties to a voluntary industry code may apply to the ACCC for authorisation as part of a separate process.

Form	Characteristics	Advantages	Disadvantages
Prescribed mandatory code(Part IVB)	<ul style="list-style-type: none"> <li>• Mandatory</li> <li>• Ministerial involvement to prescribe code – high barriers to prescription (current form of regulation must be inadequate in addressing identified problem)</li> <li>• Involves consultation process</li> <li>• Regulations must be passed by both houses of Parliament</li> <li>• There are currently four prescribed mandatory codes</li> <li>• ACCC has enforcement role</li> </ul>	<ul style="list-style-type: none"> <li>• Even playing field – all competitors covered by code</li> <li>• Strong enforceability through the ACCC</li> </ul>	<ul style="list-style-type: none"> <li>• May unnecessarily restrict competition or innovation</li> <li>• Costs of regulation may outweigh benefits</li> </ul>
Licencing	<ul style="list-style-type: none"> <li>• Cost in application and administration</li> <li>• Blunt instrument – often limited range of sanctions (i.e. revoke licence)</li> <li>• Effective in circumstances where there is significant public interest, or natural monopoly assets</li> </ul>	<ul style="list-style-type: none"> <li>• Effective way to regulate market entry</li> </ul>	<ul style="list-style-type: none"> <li>• Can be hard to monitor and enforce</li> <li>• Costs of regulation may outweigh benefits</li> </ul>
Legislation	<ul style="list-style-type: none"> <li>• Involves parliamentary process of enacting legislation</li> </ul>	<ul style="list-style-type: none"> <li>• Has parliamentary mandate</li> <li>• Has rule of law and can be enforced</li> </ul>	<ul style="list-style-type: none"> <li>• Difficult to amend</li> <li>• Lengthy and costly to implement and enforce</li> <li>• Costs of regulation may outweigh benefits</li> </ul>

## Appendix F Further data

### F.1 Section 5.1

#### Section 5.1.1

Table 19: Strengths of the MAIF Agreement identified by targeted stakeholders

Strengths	APMAIF members	Government organisations	Industry signatories	Non-signatories	Health professionals/ organisations	Consumer groups
<b>Existence of the MAIF Agreement:</b> Australia has developed and implemented a formal Agreement that is signed by manufacturers of infant formula and implements elements of the WHO Code.						
<b>Self-regulation:</b> Regulation through consensus by industry partners creates a stronger sense of ownership, engagement and responsibility amongst manufacturers for the MAIF Agreement. Co-regulation between government and industry also supports cooperation and consultation between stakeholders.						
<b>Adaptable to environment:</b> The MAIF Agreement has been developed separately to the WHO Code and tailored appropriately to the Australian context. It has been demonstrated that the MAIF Agreement is robust enough to adapt to environmental changes.						
<b>Aim of the MAIF Agreement:</b> The aim of the MAIF Agreement is clear and provides an effective framework for monitoring marketing in Australia. The two parts of the aim- promotion of breastfeeding and ensuring proper use of breast-milk substitutes- enable the MAIF Agreement to be well-balanced.						
<b>Scope to 12 months:</b> The MAIF Agreement covers infants up to the age of 12 months, extending beyond the WHO Code which only covers up to six months.						

Strengths	APMAIF members	Government organisations	Industry signatories	Non-signatories	Health professionals/ organisations	Consumer groups
<b>Complaints:</b> Current arrangements include a complaints process, which provides the APMAIF with the ability to hear complaints. The process is clear with a good level of transparency.						
<b>Interpretations/ guidelines:</b> MAIF Agreement is effective in supporting health services in the development of clear policies and guidelines regarding the use of infant formula. The MAIF Agreement clearly demonstrates how the WHO Code has been interpreted.						

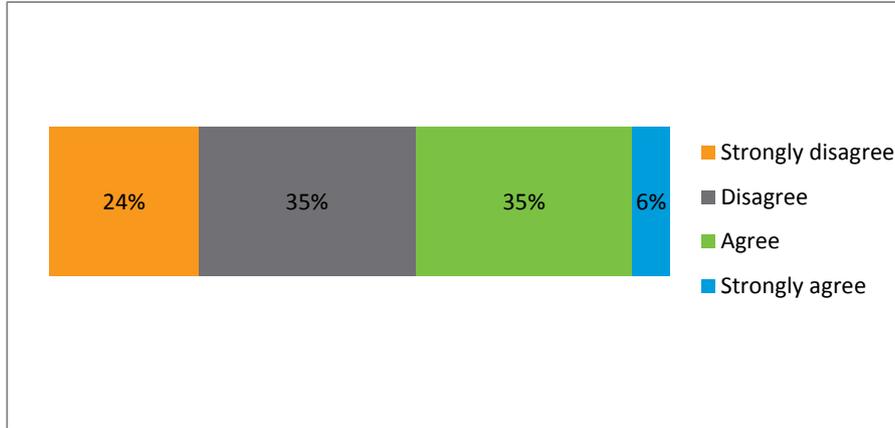
Table 20: Weaknesses of the MAIF Agreement identified by targeted stakeholders

Weaknesses	APMAIF members	Government organisations	Industry signatories	Non-signatories	Health professionals/ organisations	Consumer groups
<b>Scope- Toddler milk drinks:</b> Scope of the MAIF Agreement does not extend to 24 months or include toddler milk drinks. This is a concern due to the proliferation of toddler milk drinks with packaging resembling that of infant formulas. Additionally, the WHO recommends breastfeeding up to two years of age.						
<b>Scope - Retailers and pharmacy:</b> MAIF Agreement currently does not cover retailers or pharmacies, despite the WHO Code prohibiting point of sale advertising. Pharmacies should be covered due to the emergence of private label products.						
<b>Scope - Electronic marketing:</b> MAIF Agreement was developed prior to the emergence of social media (e.g. facebook, twitter) and online advertising and promotion. These are currently not covered under the MAIF Agreement.						
<b>Scope – other products:</b> The current scope of the MAIF Agreement does not cover bottles, teats or dummies.						

Weaknesses	APMAIF members	Government organisations	Industry signatories	Non-signatories	Health professionals/ organisations	Consumer groups
<p><b>Powers of enforcement:</b> The ‘name and shame’ approach is not a strong enough disincentive, particularly since manufacturers operate as commercial entities and will try and exploit loopholes and push the boundaries. Some suggested the MAIF Agreement should be legally enforceable</p>						
<p><b>Disparity with WHO Code:</b> The MAIF Agreement does not cover all aspects under the WHO Code, limiting its effectiveness. There is some confusion regarding the alignment and appropriate application of the WHO Code and MAIF Agreement.</p>						
<p><b>Non-signatories:</b> Not all industry members are signatories to the MAIF Agreement, creating an uneven playing field.</p>						
<p><b>Interpretation/ guidelines:</b> The broad nature of the MAIF Agreement means interpretations are difficult and may vary depending on the situation. Clearer guidelines of appropriate interpretations are required.</p>						
<p><b>Suitability to environment:</b> MAIF Agreement needs to be considered within the broader context, with regular reviews to account for changes in the environment (e.g. social media, new avenues for consumers to access information). Whilst the MAIF Agreement is outdated, in practice it is difficult for any changes to be made due to the high levels of stakeholder consultation required.</p>						
<p><b>Awareness:</b> There is a lack of consistency in the understanding of the MAIF Agreement by healthcare professionals.</p>						
<p><b>Aim of Agreement:</b> MAIF Agreement prevents parents from obtaining balanced information regarding infant feeding; promotes a sense of guilt and disconnect amongst mothers who either cannot or choose not to breastfeed</p>						

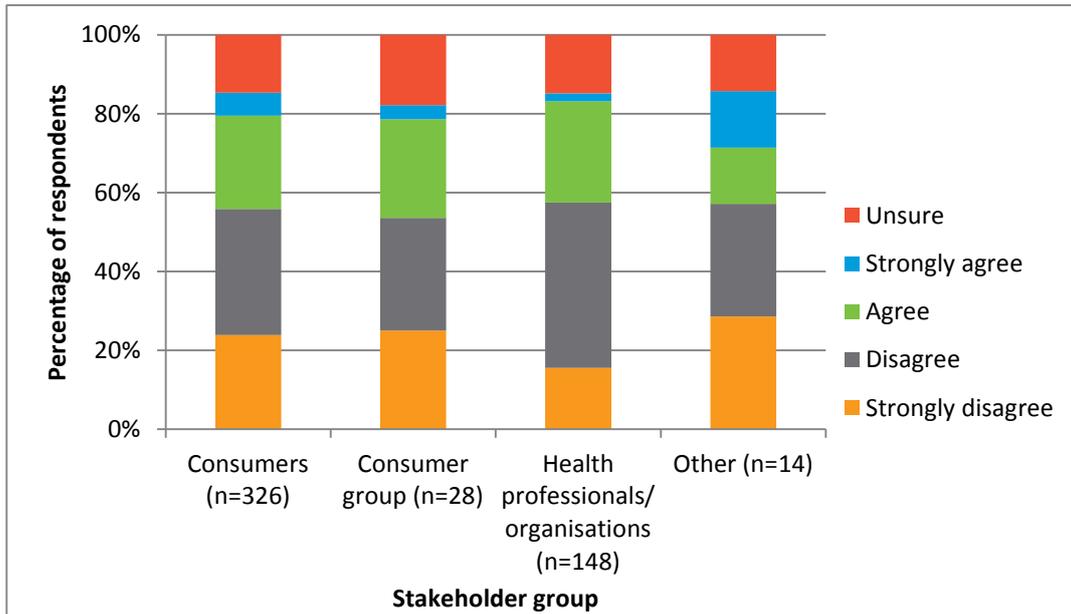
### Section 5.1.3

Figure 10: Survey question: "The MAIF Agreement responds to the needs of the community appropriately" – results for targeted survey (n=17)



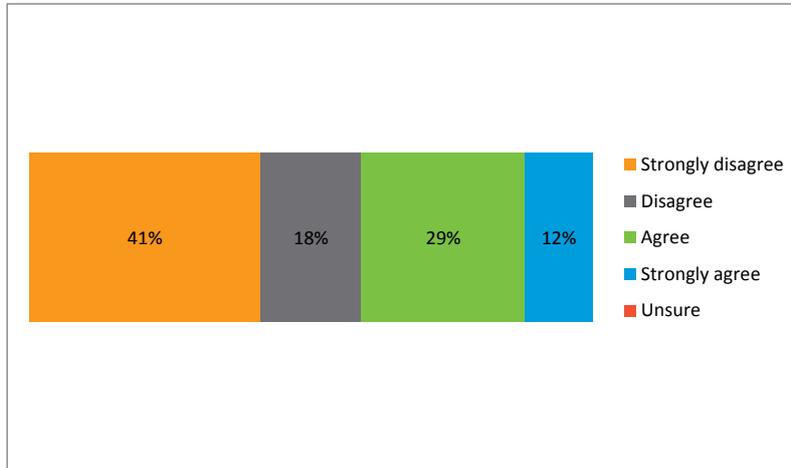
### Section 5.1.6

Figure 11: Survey question: "The MAIF Agreement does not include ambiguous, inconsistent, unclear or out of date wording" – results for general survey (n=516)



### Section 5.1.6

Figure 12: Survey question: “The scope of the MAIF Agreement is appropriate” – results from targeted survey (n=17)



## F.2 Section 5.2

### Section 5.2.1

Table 21: Strengths of the APMAIF’s operations identified by targeted stakeholders

Strengths	APMAIF members	Government organisations	Industry signatories	Consumer Groups
<b>Complaints process:</b> The current process for effective complaints investigation places Australia ahead of other countries. Complaints process is accessible to complainants (e.g. complaints can be accessed online).	●	●	●	
<b>Industry compliance:</b> Industry members are aware of the MAIF Agreement and it is in their best interest to work effectively with the APMAIF; Signatories take their responsibilities seriously and commit significant resources to ensure compliance; Industry recognises the impact of a breach upon global branding.	●	●	●	

Strengths	APMAIF members	Government organisations	Industry signatories	Consumer Groups
<b>Collegiate approach:</b> Strong relationship exists between the APMAIF and Industry (meet once per year and have a representative on the APMAIF); Capacity for the APMAIF to be informed about industry; good consultation with Industry about complaints. Complaints process includes an education/ negotiation strategy which provides companies with the opportunity to respond to breaches.	●	●	●	●
<b>Independence/ objectivity:</b> The APMAIF is an independent body to the Government and investigates complaints objectively.	●	●	●	
<b>APMAIF functioning:</b> Governance, processes and functioning of the APMAIF work well.	●		●	
<b>APMAIF composition:</b> There is good representation of stakeholder on the APMAIF and appropriate mix of knowledge and skills. The variety of expertise enables an accurate assessment of complaints to be made and appropriate responses developed.	●	●		
<b>Transparency:</b> Annual reports are accessible, comprehensive and enable an open and transparent process.		●		

Table 22: Weaknesses of the APMAIF’s operations identified by targeted stakeholders

Weaknesses	APMAIF members	Government organisations	Industry signatories	Non-signatories	Health professionals/ organisations	Consumer Groups
<b>Consumer representative:</b> Consumer representative on the APMAIF is inappropriate as there is no representation by formula-feeding mothers. This hinders the ability of the aim in achieving its aim of providing adequate information regarding the proper use of breast-milk substitutes.	●		●			
<b>Out-of-scope complaints:</b> Many complaints are considered out-of-scope however the APMAIF has no power to address these issues. A process for dealing with these complaints needs to be determined so people do not lose faith in the complaints process.	●	●				

Weaknesses	APMAIF members	Government organisations	Industry signatories	Non-signatories	Health professionals/ organisations	Consumer Groups
<b>APMAIF views:</b> Ideological difference between APMAIF members creates conflict. APMAIF members should be aware of their collective responsibility and work towards the aim of the MAIF Agreement and Terms of Reference. The role of the industry representative on the APMAIF needs to be clarified due to potential conflicts of interest and concerns that the influence of industry may be too strong.						
<b>Enforcement:</b> The MAIF Agreement cannot be enforced and there are no significant consequences for breaches. The APMAIF does not have any power to censure those in breach except for naming in the annual report.						
<b>Timeliness:</b> Many processes take a long time – there are long time period between meetings; development of guidelines is a slow process and the collegiate approach adopted takes a long time.						
<b>Monitoring –</b> The APMAIF does not take a pro-active role in the monitoring of industry and breaches, relying on individuals to report breaches to be investigated. Mechanisms for active monitoring may include surveys or audits.						
<b>Transparency of complaints handling process –</b> Concerns regarding the transparency of the decision-making process. Reports are not made public on a regular basis and information on the APMAIF website is dated. Lack of accountability enables the APMAIF to determine the interpretation of the MAIF Agreement.						
<b>Complexity of the complaints handling process:</b> The complaints process is very complex for many consumers and the requirement to submit evidence of complaints can be difficult and discourage lodgement.						

### Section 5.2.3

Figure 13: APMAIF complaints handling process - results from targeted survey (n=7)

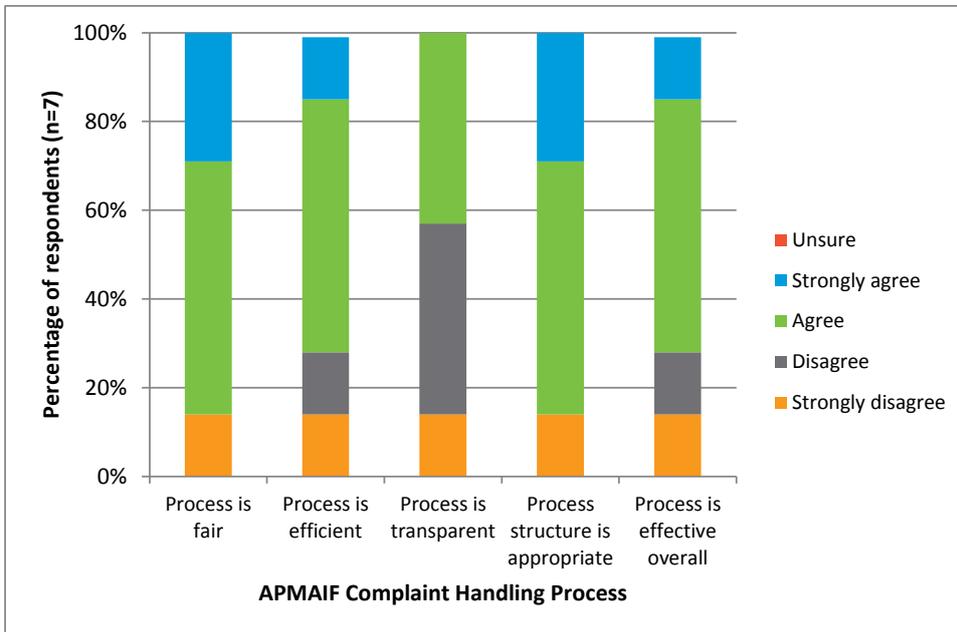
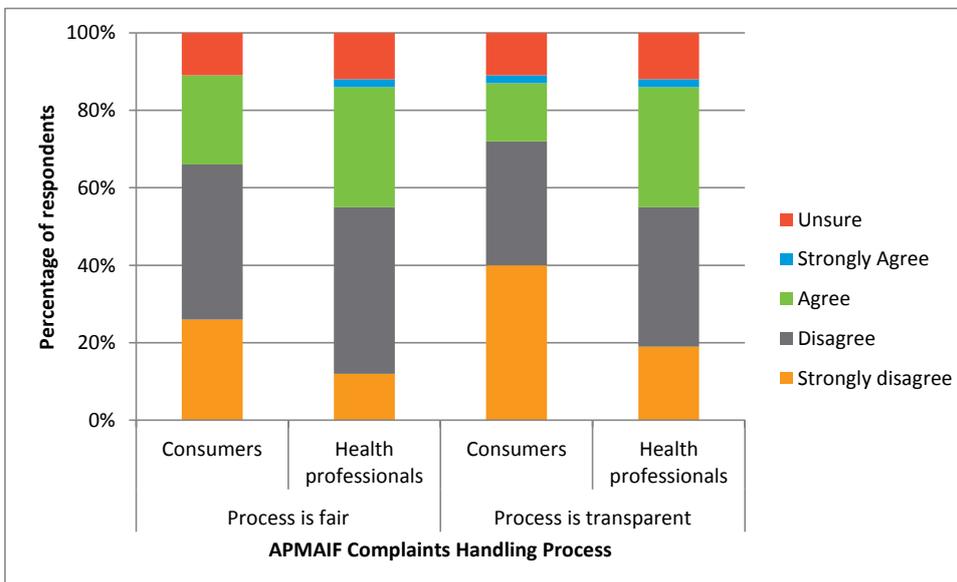


Figure 14: APMAIF complaints handling process- results from general survey (n=102)



## Appendix G Importers and manufacturers of infant formula

Company	Manufacturer (in Australia)	Importer	Signatory	Infant Nutrition Council member	Products	Market
Abbott Australasia Pty Ltd	x	✓	✓	x	Similac	Australia
Bayer Australia Ltd	x	✓	✓	✓	Novalac	Australia
H J Heinz Company Australia Ltd	x	✓	✓	✓	Nurture	Australia
Nestle Australia Ltd	x	✓	✓	✓	NAN, S26	Australia
Nutricia Australia Pty Ltd (Danone)	x	✓	✓	✓	Karicare	Australia
Pfizer Australia Pty Ltd	x	✓	✓	✓		Australia
Bellamy's Organic Formula	✓	x	x	x	Bellamy's Organic	Australia
Murray Goulburn Cooperative Co Ltd	✓	x	x	(Associate)	Natrastart (China only)	Australia
Amcal	?	?	x	x	Amcal Infant Formula	Australia
Milk Powder Solutions (Golden Dairies)	✓	x	x	x	Baby Beauty	Services the Chinese market
Formula One Gold	✓	x	x	x	Formula One	Chinese market
Infant Formula Australia	✓	x	x	x	No brand	Exports to Asia and Middle East
Victorian Dairy Pty Ltd	✓	x	x	x	No brand	Exports to China and Hong Kong
Snowbrand	✓	x	x	x	No brand	Exports to Japan
Tatura	✓	x	x	x	No brand	Produces infant formula on specification
Pinnacle Laboratories	✓	x	x	x	Pinnacle Infant Formula	Australia and global markets

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