



Marketing in Australia of Infant Formulas (MAIF) Complaints Tribunal - amended 'Terms of Reference'

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The Dietitians Association of Australia (DAA) is the national association of the dietetic profession with over 6000 members, and branches in each state and territory. DAA is a leader in nutrition and advocates for food and nutrition for healthier people and healthier nations. DAA appreciates the opportunity to respond to the proposed amended Terms of Reference (TOR) for the MAIF Complaints Tribunal.

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DAA interest in this consultation

As the leading nutrition and dietetic organisation in Australia, the Dietitians Association of Australia (DAA) is concerned about the nutritional health and growth of infants. Breastfeeding is the healthiest start for infants, with proven benefits for both infant and mother in the short term and later in life. It is therefore important for infant breastfeeding to be supported, protected and promoted, as well as valued by society.

It is vital that the Australian Government and the infant formula industry have measures in place to support women to breastfeed their infants. DAA was pleased to see the establishment of an independent process, convened by the Ethics Centre, to receive, investigate, evaluate and determine a course of action for complaints made regarding the marketing of infant formulas in Australia, pursuant to the MAIF Agreement. DAA welcomes the opportunity to provide feedback on the proposed amended 'Terms of Reference' for the MAIF Complaints Tribunal. Here follows our response.

Feedback re: the MAIF Complaints Tribunal amended Terms of Reference

1. Tribunal Composition

In addition to being 'competent to perform the assigned role' and 'disinterested' or impartial, DAA believes the three Tribunal members should have sufficient knowledge and technical skills to make fair assessments based on the intent and purpose of the MAIF Agreement. As such, DAA proposes the following:

- Legal representative – the criteria for appointment should also include a knowledge of food legislation (i.e. the Australia New Zealand Food Standards Code), particularly regulations for Infant Formula Products.
- Public health and nutrition expert - the criteria for appointment should include specific knowledge regarding infant nutrition and food legislation (i.e. the Australia New Zealand Food Standards Code), particularly labelling and other information requirements for infant formula.
- Community representative - the criteria for appointment should include evidence based knowledge and demonstrated experience of infant feeding practices, including breast and use of breast milk substitutes, and demonstrated understanding of the regulation of infant formula marketing.

2. **Process**

Process should relate to the Purpose

The description around 'Process' (pg: 4-7) pertains only to receiving and investigating complaints. DAA considers it appropriate to also describe in the Terms of Reference (TOR) the process around the 'development of guidelines on the interpretation and application of the MAIF Agreement', since this is also a purpose of the Complaints Tribunal. The process for development should:

- ensure that the guidelines are relevant to the aims of the MAIF Agreement;
- include consultation with key stakeholders, such as peak professional bodies and consumer organisations;
- allow for the Tribunal to seek technical advice;
- include communication of the guidelines to the public in an open and transparent manner (e.g. on the Tribunal webpage).

Assessment by Department of Health

The amended Terms of Reference state that complaints made about milk products formulated for children over 12 months of age (i.e. toddler milks) fall outside the scope of the MAIF agreement. While this may be true, DAA does not support a blanket exclusion (by the Department) of complaints made about toddler milks. Issues have been raised where toddler milks have been marketed as part of a 'range' of products, including starter and follow-on formula, which are sequentially numbered and packaged very similarly. Excluding toddler milks from the list of 'in scope' complaints may mean that clever marketing of a toddler milk, with connotations to infant formula and a breach of the MAIF Agreement, may be missed.

Reporting of complaints

Transparency around determinations is essential. DAA would like to see reporting of the nature of complaints which are considered (by the Commonwealth Department of Health) to be 'out of scope', at least at the level published in previous APMAIF Annual Reports, and preferably with some description about the nature of complaints. Reporting of complaints which are out of scope may provide the Tribunal with valuable insight into deficiencies of the guidelines on the interpretation and application of the MAIF Agreement, and direction for further refinement of the guidelines.

Reporting of Tribunal's determinations

The amended Terms of Reference state that determinations of a MAIF Agreement breach and any recommendations made by the Tribunal are to be publicly reported in the Tribunal's Annual Report, yet this is not currently reflected in the

flow chart (Appendix 2). As such, DAA recommends adding the reporting of breaches in the Tribunal Annual Report to Appendix 2 - the MAIF Complaints Tribunal Process Flow Chart.

'Breach' determination

The Terms of Reference state that in cases where a breach of the MAIF Agreement has been found, the Tribunal may make recommendations to the respondent and the Infant Nutrition Council (INC) as to how the breach might best be remedied. DAA notes that the Nous Review stated that 'the effectiveness of the APMAIF in influencing industry behaviour could also be improved through stronger disincentives for breaching provision of the MAIF Agreement' (page 51). DAA would like to see a range of approaches described which could be used to address breaches, with the intention of providing reference points for the Tribunal and consistency in interpretation.