



JAA

JEWELLERS ASSOCIATION  
OF AUSTRALIA LTD

# Industry Code of Practice

5 November 2009

## **Disclaimer**

The Jewellers Association of Australia Limited (JAA) its employees, officers and agents do not accept any liability for the results of any action taken in reliance upon, based on or in connection with this document. To the extent legally possible, the JAA and its employees, officers and agents, disclaim all liability arising by reason of any errors and omissions contained in this document.

## **Legislation**

All references to legislation are current at the date of the release of this document.

## **Defined Terms**

All capitalized words used in this document have the meaning assigned to them in Appendix 1.

## **Copyright**

Copyright in this document resides in the Jewellers Association of Australia Limited (JAA). The JAA grants all industry signatories to this Code a non-exclusive licence to electronically download, copy and distribute this document on a non-commercial basis.

## **Not Legal Advice**

The recommendations and procedures contained in the Code are not legal advice and should not be relied upon as such.

© 2009 Jewellers Association of Australia Limited. All rights reserved.

## Table of Contents

<b>PART A – PURPOSE OF THE CODE</b> .....	4
1 What is the Code?.....	4
2 Why is the Code necessary? .....	4
3 Statement of Objectives.....	4
4 Scope of the Code .....	6
5 Conflict with Legislation .....	7
<b>PART B – CODE PRINCIPLES</b> .....	8
1 Statements about Jewellery and Timepieces .....	8
2 Suppliers who are Code Signatories .....	8
3 Retailers who are Code Signatories .....	9
4 Lay-bys.....	11
5 Timepieces .....	11
6 Valuations .....	11
7 Comparative Price Advertising.....	11
8 Other Advertising.....	13
<b>PART C - FAIR CONDUCT RELEVANT TO ELECTRONIC COMMERCE</b> .	14
1 Email Marketing .....	14
2 Transacting Online.....	14
3 Confirmation Process .....	15
4 Payment .....	15
<b>PART D - CODE ADMINISTRATION</b> .....	16
1 Administration.....	16
2 Compliance Activities.....	17
3 Monitoring.....	17
4 Complaints.....	18
5 Guide to Remedial Action .....	20
6 Referral to Regulatory Authority .....	20
7 Promotion .....	21
8 Industry Awareness.....	21
9 Data Collection .....	21
10 Review and Annual Report .....	22
11 Fees.....	23
<b>APPENDIX 1 - INTERPRETATION AND DEFINITIONS</b> .....	24
1 Interpretation .....	24
2 Definitions.....	24

## **PART A – PURPOSE OF THE CODE**

### **1 What is the Code?**

- 1.1 The Code has been developed by the JAA.
- 1.2 The Code sets out preferred standards for procedures and conduct of signatories in the Australian jewellery industry to increase protection for both Code Signatories and consumers. It will also serve as a benchmark for settling disputes.
- 1.3 The requirements of the Code reflect industry best practice and promote fairness, honesty and ethics. The Code is also intended to serve as a point of reference for Code Signatories to assist them in complying with all applicable federal and state laws.
- 1.4 The Code replaces the Jewellery & Timepieces Industry Code which was previously adopted by the JAA.
- 1.5 The Code does not replace State or Federal law governing these issues.

### **2 Why is the Code necessary?**

- 2.1 The jewellery industry in Australia is largely unregulated and for some time both the ACCC and the JAA have been concerned over unethical and in some cases illegal conduct by industry members, examples of which include misleading or deceptive practices, such as Comparative Price Advertising.
- 2.2 Technological changes in recent years have also created new challenges for the jewellery industry such as the introduction of many synthetic gemstones and numerous enhancements of the colour and clarity of gemstones. It is vital that the industry addresses these challenges.
- 2.3 The future growth of the jewellery industry depends on jewellers maintaining consumer confidence by conducting their businesses in a fair, honest and sustainable manner, and thus enhancing their reputation.

### **3 Statement of Objectives**

- 3.1 The objectives of the Code are to:
  - (a) increase consumer confidence and trust when doing business with Code Signatories. Steps required to meet this objective include the Code rules regarding:
    - (i) the making of false, misleading or deceptive representations, including omissions, about goods or services;
    - (ii) the provision of appropriate disclosure for a consumer to make a fully informed decision when selecting a jewellery product for purchase;
    - (iii) the use of valuations;

- (iv) the use of Comparative-Price Advertising;
  - (v) advertising claims that give a false or misleading impression of an unrealisable saving or opportunity; and
  - (vi) fair conduct relevant to electronic commerce.
- (b) promote a culture among Code Signatories of conducting their business fairly, honestly and ethically, and in accordance with industry best practice. Steps required to meet this objective include the Code rules regarding:
- (i) the making of false, misleading or deceptive representations, including omissions, about goods or services;
  - (ii) the provision by suppliers of complete and accurate information on their invoices to retailers;
  - (iii) the use of valuations or a valuation value;
  - (iv) the prohibition of using or referring to any valuation value in conjunction with Comparative-Price Advertising;
  - (v) the use of Comparative-Price Advertising; and
  - (vi) fair conduct relevant to electronic commerce.
- (c) ensure consumers have access to the information they need to make informed choices. Steps required to meet this objective include the Code rules regarding the provision of:
- (i) appropriate disclosure for a consumer to make a fully informed decision when selecting a jewellery product for purchase;
  - (ii) information by retailers on invoices or sales dockets to consumers;
  - (iii) lay-by conditions as required by the appropriate lay-by legislation in the relevant State or Territory;
  - (iv) the water resistance rating (if any) on time pieces.
  - (v) advertising claims that give a false or misleading impression of an unrealisable saving or opportunity; and
  - (vi) fair conduct relevant to electronic commerce.
- (d) provide consumers with a cost effective alternative dispute resolution process, operated by the Committee, to resolve any disputes they may have with Code Signatories. Steps required to meet this objective include the Code rules regarding:
- (i) the initial handling of consumer complaints;
  - (ii) the Committee's handling of consumer complaints;

- (iii) the corrective action recommended by the Committee to resolve consumer complaints; and
  - (iv) the referral of unresolved complaints to the appropriate Regulatory Authority for investigation.
- (e) provide Code Signatories with a cost effective alternative dispute resolution process, operated by the Committee, to resolve any disputes they may have with fellow Code Signatories. Steps required to meet this objective include the Code rules regarding:
  - (i) the handling of complaints by the Committee;
  - (ii) the corrective action recommended by the Committee to resolve complaints; and
  - (iii) the referral of unresolved complaints to the appropriate Regulatory Authority for investigation.
- (f) reduce the need for additional government regulation of the jewellery industry. Steps required to meet this objective include the Code rules regarding:
  - (i) the publication of the Code;
  - (ii) the production and dissemination of promotional material relating to the Code and for use by Code Signatories;
  - (iii) the promotion of awareness of the Code principles; and
  - (iv) the publication of an Annual Report summarising details of complaints and action taken and the Committee's views on the overall level of compliance with the Code.

## 4 Scope of the Code

- 4.1 Any person or organisation involved in the jewellery industry that supports the objectives and details of this Code may apply to the Committee to become a Code Signatory. Enquiries for such applications should be made in writing or by email to:

Code Administration Committee  
 Suite 33  
 Level 8, 99 York Street  
 Sydney, NSW 2000

OR

[info@jaa.com.au](mailto:info@jaa.com.au)

- 4.2 Upon payment of the appropriate fees, as determined by the Committee (see paragraph 11 of Part D of this Code for fee estimate), and signing an undertaking to adopt the Code and to accept the procedures outlined for the administration of the Code, the Committee will issue a Certificate of Participation confirming the person or organisation is a Code Signatory.

- 4.3 A Code Signatory shall be required to return the Certificate of Participation if required to do so by the Committee. A person or organisation which has not paid the required fees or has had their participation suspended or withdrawn by the Committee is not entitled to make any claim with respect to participation with the Code.
- 4.4 An alleged breach of the Code by a Code Signatory will be dealt with by the Committee in accordance with the provisions of this Code.
- 4.5 If the Committee receives a complaint regarding an alleged breach of the Code by a jewellery organisation that is not a Code Signatory, the Committee will bring the matter to the attention of the company concerned and seek compliance with the Code.
- 4.6 The Committee may receive complaints from consumers, Code Signatories, a Regulatory Authority or any other third party. The Committee will review all complaints in the manner set out in this Code and make a recommendation in accordance with Part D of this Code. Code Signatories consent to details of alleged Code breaches being disclosed by the Committee to a Regulatory Authority for consideration in the manner set out in Part D of this Code.

## **5 Conflict with Legislation**

- 5.1 Where there is any conflict or inconsistency between the Code and any Commonwealth, State or Territory legislation or regulation, that legislation or regulation shall prevail to the extent of the conflict or inconsistency.

## **PART B – CODE PRINCIPLES**

### **1 Statements about Jewellery and Timepieces**

1.1 Parties to the Code must not make false, misleading or deceptive representations, including omissions, by word or image about the standard, size, quality, grade, applicable warranties, place of origin and/or composition of goods. There must be appropriate disclosure given the nature of the relevant product for a consumer to make a fully informed decision when selecting a jewellery product for purchase. Unless otherwise stated, signatories should at all times comply with the standards set out in the CIBJO Blue Book.

### **2 Suppliers who are Code Signatories**

2.1 Suppliers must state complete and accurate information on their invoices to retailers. This must include:

- (a) For plain gold jewellery:
  - (1) If sold by gram weight, the weight of each product or group of like products, in grams;
  - (2) The gold content and colour; and
  - (3) a description of the type of jewellery e.g. wedding ring, hoop earring etc.
- (b) For other jewellery including jewellery set with gemstones and/or loose gemstones:
  - (1) The gold content and colour of any jewellery items;
  - (2) Full and accurate disclosure as to:
    - (A) Whether the gemstones are natural, synthetic or simulants/imitants;
    - (B) Whether gemstones have been treated to enhance colour and/or clarity and/or treatments are not permanent or create special care requirements;
    - (C) The number, size, shape and type of all coloured gemstones; and
    - (D) The type of setting used to affix the gemstones to the jewellery e.g. claw set.
  - (3) If a retailer specifies Diamond Qualities when ordering diamonds or diamond set jewellery, then the supplier must show the qualities of the diamonds supplied on the relevant invoices. For diamonds under 0.20 carats, the colour and clarity can be within a two grade band e.g. H/I, SI1-SI2;

- (4) Suppliers of loose diamonds and diamond set jewellery must comply with the System of Warranties mandated by the World Diamond Council, and include the following statement on all invoices containing diamond products:

*“The diamonds herein invoiced have been purchased from legitimate sources that are not involved in funding conflict and are in compliance with United Nations resolutions. The seller hereby guarantees that these diamonds are conflict free based on personal knowledge and/or written guarantee provided by the supplier of these diamonds.”*

- (5) A description of the type of jewellery e.g. dress ring;
- (6) Suppliers shall provide a diamond grading certificate from a reputable diamond grading laboratory for loose diamonds or jewellery containing a diamond equal to or greater than 1.00ct in weight and H/SI2 in colour and clarity. The cost of the certificate should be borne by the retailer.

Whenever a Clarity Grading is used it must be accompanied by the appropriate grading level e.g. VVS1 or VVS2, not VVS;

- (7) If a synthetic gemstone is supplied it must be described as follows:
- (A) The word *“synthetic”* followed by the type of gemstone e.g. *“Synthetic Emerald”*; or
- (B) The words *“lab-created”*, *“laboratory-created”*, *“laboratory-grown”* or *“lab-grown”* followed by the type of gemstone, e.g. *“Laboratory-Created Emerald”*; or
- (C) The name of the manufacturing laboratory can be added to the description, e.g. *“Gilson Laboratory-Created Emerald”*.
- (8) An item can be labelled *“hand-made”* when its entire shaping from raw materials, its finishing and decoration was done manually, so that the construction, design and finish of each part of each separate item could be varied.

Similarly, an item can be referred to an article as *“hand-polished”* or *“hand-engraved”* when the process was done manually, creating individual effects on each item.

### **3 Retailers who are Code Signatories**

#### **3.1 Information provided by retailers on invoices or sales dockets must include:**

- (a) For plain gold jewellery:
- (1) The gold content and colour, and

- (2) A description of the type of jewellery e.g. wedding ring, hoop earring etc.
- (b) For jewellery set with gemstones, and/or loose gemstones:
- (1) The gold content and colour of any jewellery item;
  - (2) With regard to the gemstones used in jewellery items:
    - (A) Whether gemstones are natural, synthetic or simulants/imitants; and/or
    - (B) Whether gemstones have been treated to enhance colour and/or clarity and/or treatments are not permanent or create special care requirements:
  - (3) A description of the type of jewellery e.g. dress ring;
  - (4) Retailers shall provide a diamond grading certificate from a reputable diamond grading laboratory for loose diamonds or jewellery containing a diamond equal to or greater than 1.00ct in weight and H/SI2 in colour and clarity. The cost of the certificate should be borne by the consumer.

Whenever a Clarity Grading is used it must be accompanied by the appropriate grading level e.g. VVS1 or VVS2, not VVS;

- (5) Synthetic gemstones are to be described as follows:
  - (A) The word *synthetic* followed by the type of gemstone, e.g. *Synthetic Emerald*; or
  - (B) The words *lab-created*, *laboratory-created*, *laboratory-grown* or *lab-grown* followed by the type of gemstone, e.g. *Laboratory-Created Emerald*; or
  - (C) The name of the manufacturing laboratory can be added to the description, e.g. *Gilson Laboratory-Created Emerald*.
- (6) An item can be labelled *hand-made* when its entire shaping from raw materials, its finishing and decoration was done manually, so that the construction, design and finish of each part of each separate item could be varied.

Similarly, an item can be referred to an article as *hand-polished* or *hand-engraved* when the process was done manually, creating individual effects on each item.

- (7) Upon a request from a customer, and within 30 days of the sale, retailers shall provide the customer with a certificate of purchase. The certificate must show the amount paid for the goods and a detailed description of the goods having regards to the price paid.

- (8) Retailers must comply with the system of warranties mandated by the World Diamond Council, and display a notice in store stating:

*“Shop with Confidence – Our store has implemented the procedures mandated by the World Diamond Council and United Nations to eliminate trade in diamonds by rebel organisations and countries involved with human suffering. We guarantee that all of our diamonds are CONFLICT FREE.”*

- (c) For every item of stock offered for sale to the public retailers must:
- (1) Specify in the most prominent way and as a single figure, the single price for the item;
  - (2) The single price figure must include all applicable taxes, duties and levies. For example, as a minimum the single price figure should be a GST inclusive figure; and
  - (3) If the retailer knows at the time of offering goods for sale what the minimum charge to consumers is for delivery of an item to the consumer then it must disclose that minimum delivery charge. Disclosure of the known minimum delivery charge does not need to be incorporated into the single price figure referred to above.

#### **4 Lay-bys**

- 4.1 When the first lay-by payment is made customers must be given the conditions of lay-by as required by the appropriate lay-by legislation in the relevant State or Territory.

#### **5 Timepieces**

- 5.1 The water resistance rating (if any) must be expressed in metres or bars and shown on the watch dial or on the back of the case.

#### **6 Valuations**

- 6.1 Valuations should not be prepared prior to a sale being made. Valuations for retail replacement purposes should contain the name and address of the consumer who owns the item. The price indicated on the valuation should record the actual price paid. The only exception to this is when the item being valued has been sold at a discount from the normal retail price. In these instances, the normal retail price may be used as the retail replacement amount, providing that the normal retail price complies with paragraph 7.3 below.
- 6.2 Code Signatories shall not use or refer to any valuation value in conjunction with Comparative-Price Advertising.

#### **7 Comparative Price Advertising**

- 7.1 Expressions as to price are always to be clearly stated without ambiguity. Consumers should not be left to guess whether or not a price comparison is

being made. If no price comparison is intended, do not use words or phrases which in their normal everyday use and in the context in which they are used are likely to give consumers the impression that a price comparison is being made. Any claim or implication of a dollar or percentage saving must satisfy the principles outlined in this Code.

7.2 Comparative advertising such as "*was \$X now \$Y*" is only to be used when a retailer has had a reasonable quantity of the product offered at \$X price for a reasonable period of time immediately preceding the discount offer. What is a *reasonable period of time* depends on the circumstances of each case but the Code recommends, as a guide only, a minimum period of at least eight weeks.

7.3 Where a retailer states a higher figure (e.g. Retailer's Normal Price, a Recommended Retail Price, a Competitor's Price or the Retailer's *Was \$X* Price) in association with a lower actual selling price (hereinafter called "the comparison") in such a way that the higher figure, either directly or by inference, purports to represent a realistic or normal retail price which a consumer might reasonably expect to pay and that, as a result of purchasing the item at the price actually offered, a saving would be achieved, then the following applies:

- (a) the higher figure used in the comparison is to represent a price at which the retailer can demonstrate that such merchandise has been or could ordinarily be offered for sale in the relevant market in which the comparison has been made; and
- (b) The retailer can and, if requested by the Committee, will substantiate how the higher figure was determined.

7.4 No claim is to be made that would give a consumer a false or misleading impression of an unrealisable saving or opportunity.

7.5 References to reasons for sales including but not limited to "*closing down*", "*fire*", "*clearance*" or "*liquidation*" are only to be used if such terms are factual representations. A closing down or similar sale (e.g. end of lease) may only be conducted for a maximum of four months.

7.6 As noted in paragraph 6.3 above, Code Signatories shall not use or refer to any valuation value in conjunction with Comparative Price Advertising.

#### 7.7 Up to X% Off Campaigns

Where an *up to X% off all stock* claim is made then, at the commencement of the promotion, at least 25% of all stock covered by the claim must be discounted at the maximum level of the claim and all other items covered by the claim must be discounted to some degree. Any limitations on stock included in such a claim must be clearly identified e.g. *up to 50% off all Opals or up to X% on selected items*". In any such claim care must be taken to clearly communicate any exclusions to ensure that consumers are not misled.

#### 7.8 Introductory Offers

Multiple Store Operations may use introductory offers in a new store opening sale. Such offers must satisfy paragraph 7.3 above, and must cease no later than six weeks after the store opening date.

## **8 Other Advertising**

- 8.1 If a Code Signatory advertises *“wholesale prices to the public”* then the Code Signatory must be able to substantiate that the prices listed are the same as it normally pays for a similar quantity of the same stock from its suppliers.

## PART C - FAIR CONDUCT RELEVANT TO ELECTRONIC COMMERCE

### 1 Email Marketing

- 1.1 Code Signatories that use commercial electronic communications (such as email, mobile phone messaging or instant messaging) as their sole or principle means of marketing, advertising or promoting their own goods and services must comply with the Australian eMarketing Code of Practice (**eMarketing Code**). A copy of the Australian eMarketing Code of Practice is available at the following website address:

[http://www.acma.gov.au/WEB/STANDARD/pc=PC\\_310326#](http://www.acma.gov.au/WEB/STANDARD/pc=PC_310326#)

- 1.2 A Code Signatory who fails to comply with the eMarketing Code risks investigation by the Australian Communications and Media Authority (**ACMA**). The ACMA has various powers under legislation to investigate complaints, issue warnings to comply and direct compliance with the eMarketing Code. A failure to comply with a direction issued by the ACMA can result in court action and the imposition of pecuniary penalties.
- 1.3 Code Signatories that are not covered by paragraph 1.1 above must comply with the Spam Act 2003 when sending marketing, advertising or promotional emails.
- 1.4 For the purposes of clarity, a Code Signatory bound by this Part C of the Code must still comply with all of the other provisions of the Code.

### 2 Transacting Online

- 2.1 In addition to the requirements of paragraph 1.1 above, Code Signatories engaged in electronic commerce should provide sufficient information about terms, conditions and costs associated with the electronic transaction to enable consumers to make an informed decision about whether to enter into the transaction.
- 2.2 Such information should be clear, accurate, easily accessible and provided in a manner that gives consumers an adequate opportunity for review before entering into the transaction.
- 2.3 Where more than one language is available to conduct a transaction, Code Signatories should make available in those same languages all information necessary for consumers to make an informed decision about the transaction.
- 2.4 Code Signatories should provide consumers with a clear and full text of the relevant terms and conditions of the transaction in a manner that makes it possible for consumers to access and maintain an adequate record of such transactions. Where applicable and appropriate, given the transaction, such information should include the following:
- (a) an itemisation of total costs collected and/ or imposed by the business;
  - (b) notice of the existence of routinely applicable costs to the consumer that are not collected and/ or imposed by the business, including any GST or other taxes, duties or levies;

- (c) terms of delivery;
- (d) terms, conditions and methods of payment;
- (e) restrictions, limitations or conditions of purchase, such as parental/guardian approval requirements, geographic or time restrictions;
- (f) instructions for proper use including safety and health care warnings;
- (g) information relating to available after-sales services;
- (h) details of conditions related to withdrawal, termination, return, exchange, cancellation and/ or refund policy information; and
- (i) available warranties and guarantees.

2.5 All information that refers to costs should indicate the applicable currency.

2.6 Where, in the process of transacting online Code Signatories collect personal information from or relating to an individual, Code Signatories must ensure compliance with all relevant Federal and State privacy legislation.

### **3 Confirmation Process**

3.1 To avoid ambiguity concerning the consumer's intent to make a purchase, the consumer should be able, before concluding the purchase:

- (a) to identify precisely the goods or services he or she wishes to purchase;
- (b) identify and correct any errors or modify the order;
- (c) know the total price of the good or services he or she wishes to purchase;
- (d) express an informed and deliberate consent to the purchase; and
- (e) retain a complete and accurate record of the transaction.

3.2 The consumer should be able to cancel the transaction before concluding the purchase.

### **4 Payment**

4.1 Consumers should be provided with easy-to-use, secure payment mechanisms and information on the level of security such mechanisms afford.

4.2 Code Signatories should take steps to limit liability for unauthorized or fraudulent use of payment systems.

## **PART D - CODE ADMINISTRATION**

### **1 Administration**

- 1.1 This Code will be administered by the Committee made up of:
  - (a) CEO of the JAA;
  - (b) Two members of the JAA, (one of whom shall represent a chain store operator, and one of whom shall represent a buying group) nominated by CEO of the JAA, and endorsed by the board of the JAA. Such appointments to be for a maximum term of two years;
  - (c) One member of the JAA whom shall represent a manufacturer of jewellery, nominated by the CEO of the JAA, and endorsed by the board of the JAA. Such appointment to be for a maximum term of two years;
  - (d) A representative from Fair Trading Operations Advisory Committee (FTOAC) or any successor to that body, nominated by the CEO of the JAA and endorsed by the board of the JAA. Such appointment to be for a maximum term of two (2) consecutive years; and
  - (e) A representative from an appropriate consumer representative body, nominated by the CEO of the JAA and endorsed by the board of the JAA. Such appointment to be for a maximum term of two (2) consecutive years.
- 1.2 The Committee shall appoint a Chair, nominated by the Committee. Such appointment to be for a maximum term of two (2) consecutive years
- 1.3 Where a potential conflict of interest arises on (a) matter(s) before the Committee, the Chair shall invite another representative from the nominating body, to participate, in lieu of the member for whom the potential conflict arises.
- 1.4 Changes to the Committee membership require a unanimous vote of all members entitled to vote.
- 1.5 Reasonable out of pocket expenses for participation in the activities of the Committee shall be met by the Committee.
- 1.6 A quorum for meetings of the Committee shall be four.
- 1.7 In the event of a tied vote the Chair shall have a casting vote in addition to his/her deliberative vote.
- 1.8 The Committee will be responsible for:
  - (a) monitoring and reporting on compliance with the Code;
  - (b) adjudicating on complaints about breaches of the Code;
  - (c) recommending remedial action for non-compliance with the Code;

- (d) ensuring industry and community awareness of the Code including conducting workshops on Code compliance as required; and
  - (e) conducting periodic reviews of the effectiveness of the Code and its procedures and, where appropriate, making any amendment to the Code as it sees fit.
- 1.9 If the Committee amends the Code in accordance with paragraph 1.8(e) above it must, within a reasonable period of time following the amendment, notify all Code Signatories of the amendment and post a copy of the amended Code on the JAA website. Any Code Signatory who refuses to be bound by the terms of the amended Code must immediately return their Certificate of Participation to the Committee at the address provided in Part A paragraph 4.1 of this Code.
- 1.10 The Committee will meet at least once each quarter to administer the Code. Meetings can be conducted by conference call if required.

## **2 Compliance Activities**

- 2.1 The Committee will appoint a Compliance Officer, nominated by the Committee, who will have responsibility for compliance with the Code. This person will:
- (a) ensure that Code Signatories are aware of the Code provisions as well as the provisions of the *Trade Practices Act 1974 (Cth)*;
  - (b) develop Code and Trade Practices compliance training programs for Code Signatories;
  - (c) offer and conduct regular Code and Trade Practices training sessions, seminars or other educational courses for Code Signatories; and
  - (d) develop and distribute to Code Signatories appropriate Code and Trade Practices compliance fact sheets and materials.
- 2.2 Each Code Signatory will nominate an individual within their enterprise who will have responsibility for compliance with the Code. This person should:
- (a) have a good understanding of the Code provisions;
  - (b) be responsible for ensuring that all of the Code Signatories' promotional and ticketing material complies with the Code;
  - (c) ensure that appropriate records are kept to substantiate claims;
  - (d) be the point of contact between the Code Signatory and the Committee;
  - (e) ensure that all individuals within their enterprise are aware of the Code provisions as well as the provisions of the Trade Practices Act 1974; and
  - (f) ensure that regular Trade Practices Act compliance training sessions are conducted within their enterprise.

## **3 Monitoring**

- 3.1 Compliance with the Code may also be monitored on a random basis by the appropriate State or Territory Regulatory Authority and where a perceived breach of the Code is detected, a report may be submitted by the Regulatory Authority to the Committee.
- 3.2 Further monitoring of compliance with the Code will be carried out by other means, including by the evaluation of data collected on:
  - (a) the number of Complaints lodged and by whom and about whom;
  - (b) the number found to be in breach of the Code and why;
  - (c) the number found not to be in breach of the Code and why;
  - (d) the time taken to deal with Complaints;
  - (e) the details on monitoring activities; and
  - (f) the number and types of recommended remedial action.

## 4 Complaints

- 4.1 If a consumer disputes a Code Signatories action under the Code, the consumer should be advised by the Code Signatory to initially attempt to resolve the dispute by speaking to the store manager or supervisor and/or senior management in the organisation concerned.
- 4.2 If the consumer's complaint, having been referred to the person in the organisation responsible for the resolution of such complaints, is not able to be resolved, the consumer must be advised by the Code Signatory of the mechanism for pursuing such complaints with the Committee under the Code.
- 4.3 If the Committee receives a written complaint from a consumer or otherwise, or a report indicating a possible breach of the Code, the Committee will, within 7 days of receipt of the complaint, submit in writing to the Code Signatory, details of the possible breach, seeking its views and what action it is prepared to take (ö**Complaint Referral Letter**ö). In such cases the Code Signatory is required to substantiate any claims it makes in relation to the complaint.
- 4.4 Where no satisfactory explanation is provided by the Code Signatory within 21 days of its receipt of the Complaint Referral Letter, the Committee will then proceed to make a determination on whether a breach of the Code has occurred. If the Committee decides that a breach has occurred it may recommend any type of remedial action as it sees fit (see paragraph 5.1 below for a list of some of the possible remedial actions available to the Committee).
- 4.5 All signatories agree that any complaint by a Code Signatory against another Code Signatory will be referred to the Committee before any reference to an alleged breach is publicised.
- 4.6 The Committee may, at its discretion, decide not to examine complaint(s) received if it has reason to believe that the complainant is acting in a frivolous or vexatious manner.

- 4.7 Where a Complaint is not resolved by the Committee, the complainant may refer the dispute to mediation administered by the Australian Commercial Disputes Centre (ACDC) and will be conducted in accordance with the ACDC Mediation Guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved, and the terms of those Guidelines are incorporated into this Code.
- 4.8 The Code performance criteria for effective Complaints handling is the benchmark standard AS ISO 10002-2006 (as revised from time to time) the guiding principles of which are:
- (a) visibility: Information about how and where to complain should be well publicised to interested parties;
  - (b) accessibility: The Complaints handling process should be easily accessible to all complainants. This includes readily accessible information about the process, flexibility in the methods of making Complaints and special arrangements and/or support for complainants with specific needs (including interpreters);
  - (c) responsiveness: Receipt of each Complaint should be acknowledged to the complainant immediately. Complaints should be addressed promptly; complainants should be treated courteously and kept informed of the progress of their Complaint through the Complaints handling process;
  - (d) objectivity: Each Complaint should be addressed in an equitable, objective and unbiased manner through the complaints handling process;
  - (e) charges: Access to the Complaints handling process should be free of charge to the complainant;
  - (f) confidentiality: Personally identifiable information concerning the complainant should be available where needed, but only for the purposes of addressing the Complaint within the organisation and should be actively protected from disclosure, unless the complainant expressly consents to its disclosure;
  - (g) investigation of complaints: Every reasonable effort should be made to investigate all the relevant circumstances and information surrounding a Complaint;
  - (h) customer-focused approach: The organisation should adopt a customer-focused approach, be open to feedback including Complaints, and should show commitment to resolving Complaints by its actions;
  - (i) resolution of complaint: Following an appropriate investigation, the organisation should offer a response, for example, correct the problem and prevent it happening in the future. The decision or action taken regarding the Complaint should be communicated to the complainant as soon as the decision or action is taken;

- (j) accountability: The organisation should ensure that accountability for and reporting on the actions and decisions of the organisation with respect to complaints-handling is clearly established; and
- (k) continual improvement: The continual improvement of the Complaints-handling process and the quality of services should be a permanent objective of the organisation.

## **5 Guide to Remedial Action**

5.1 Where a breach of the Code has been determined, the Committee, where necessary, will seek corrective action to be undertaken by the Code Signatory and, where appropriate, recommend remedial action in the nature of one or more of the following:

- (a) cessation of conduct, including withdrawal of advertising;
- (b) insertion of retractive and/or corrective advertising in local and national publications;
- (c) writing to consumers;
- (d) offering refunds to consumers;
- (e) offering alternative merchandise to consumers;
- (f) offering a rain check to consumers;
- (g) paying administrative costs associated with the investigation and resolution of a complaint;
- (h) accepting publication of complaint details and Committee decision on JAA website;
- (i) receiving a notice of intention to refer a matter to a Regulatory Authority;
- (j) submitting at its own cost to a Trade Practices compliance audit.

## **6 Referral to Regulatory Authority**

6.1 Where a Code Signatory fails to undertake any Committee recommended remedial action within a reasonable period as specified in the notification from the Committee or repeats a breach of the Code or where it is alleged that the Code has been breached by a non Signatory, and this is brought to the attention of the Committee, and where any of these circumstances may involve a breach of trade practice or fair trading legislation, the Committee shall notify and provide full details of the possible breach to the appropriate Regulatory Authority for investigation.

6.2 Where a possible breach is referred to the appropriate Regulatory Authority, the Regulatory authority may provide the Committee with a report on proposed action. At the request of the Regulatory Authority the Committee may also be required to liaise and assist the Regulatory Authority with its investigation.

## **7 Promotion**

- 7.1 The Committee may from time to time publicise the Code, its provisions and complaint handling provisions. The Committee may produce suitable promotional material for use by Code Signatories. All promotional material used by Code Signatories referring to the Code must be approved by the Committee.
- 7.2 The Committee will provide access to a published register of Code Signatories on the JAA web site in order to help raise consumer awareness and industry awareness in the Code.
- 7.3 The Committee will produce and provide brochures, fact sheets or other appropriate promotional material about the Code and its Complaints handling provisions.
- 7.4 The Committee will advise Code Signatories which information relevant to the Code they should display in the conduct of their business affairs.
- 7.5 Code Signatories who operate a web site must provide a link to the Code on their web site and must use all reasonable endeavours to promote the Code to their clients.

## **8 Industry Awareness**

- 8.1 The JAA in consultation with the Committee may promote awareness of the Code principles including, if it so wishes, conducting annual compliance seminars in each capital city.
- 8.2 The Committee in consultation with the JAA will develop, provide and conduct on a regular basis Code education programs for new Code Signatories.
- 8.3 The Committee in consultation with the JAA will develop and distribute Code educational materials to new Code Signatories.
- 8.4 New Code Signatories will participate in Code education programs, familiarize themselves with Code educational materials and be aware of how the Code operates.

## **9 Data Collection**

- 9.1 The Committee will keep data on a confidential basis on:
  - (a) the number of complaints lodged and by whom and about whom;
  - (b) the number found to be in breach of the Code and why;
  - (c) the number found not to be in breach of the Code and why;
  - (d) the time taken to deal with complaints;
  - (e) the details on monitoring activities; and
  - (f) the number and types of recommended remedial action.

## 10 Review and Annual Report

- 10.1 The Committee will, every twelve (12) months:
- (a) conduct a review of the operation of the Code and its effectiveness in achieving fair trading outcomes (**Annual Review**); and
  - (b) produce an annual report for Code Signatories and regulatory agencies (**Annual Report**), summarising details of complaints and action taken, and the Committee's views on the overall level of compliance with the Code. Full disclosure of Code Signatories that were found to be in breach of the Code and whose JAA membership was cancelled and/or whose Certificate of Participation was ordered to be returned will be revealed.
- 10.2 The Annual Review will be conducted according to the following steps:
- (a) preparation for review by developing a review tool, schedule and plan;
  - (b) selection at random of Code Signatories not reviewed in last 3 years who will be advised by letter of review at least 4 weeks prior to review date;
  - (c) conducting of audit of designated Code Signatories, including inspection of premises, gathering information and seeking evidence by conducting interviews and observing staff practices;
  - (d) preparing a report of review, including arranging a post-audit meetings to discuss findings and any correction timeframes, providing an agreed final report to be distributed to Code Signatories and summary report of findings and recommendations from reviews prepared for the Committee;
  - (e) follow-up by Code Compliance Officer who will monitor the achievement of desired outcomes and review the appropriateness of a Committee response; and
  - (f) review process for efficiency, effectiveness and appropriateness (continuous improvement).
- 10.3 The Annual Report will also review and report on the following performance indicators:
- (a) the level of industry awareness of the Code;
  - (b) the level of consumer awareness of the Code;
  - (c) whether complaints have dropped on issues the Code is designed to address;
  - (d) whether the complaints mechanism is highly accessible and visible; and
  - (e) the effectiveness of the in-house compliance mechanisms.
- 10.4 The Committee will meet within one month of the publication of the Annual Report to:

- (a) Consider the Annual Report;
  - (b) Consider Committee nominations from the JAA Retail Sector Council and JAA Manufacturing Sector Council. A Committee nominee is deemed to be elected if a majority of all current Committee members vote in favour of that nominee's election; and
  - (c) Consider any recommendations for amendment to the Code which would improve overall compliance with the Code.
- 10.5 Every three (3) years from the commencement of the Code, the Annual Review will be followed by an external review of the operation of the Code.
- 10.6 The external review will be conducted by an independent body or person nominated to the Committee and will follow the steps set out in 10.2 above.
- 10.7 The nominated external reviewer will also review the operation of the Code's Complaints handling procedures by:
- (a) conducting of audit of Complaints, including inspection of files, gathering information and seeking evidence by conducting interviews and observing staff practices;
  - (b) preparing a report of review, including arranging a post-audit meeting to discuss findings and any correction timeframes, and providing an agreed final report to be distributed to the Committee;
  - (c) having the Code Compliance Officer follow up the findings by monitoring the achievement of desired outcomes and reviewing the appropriateness of Committee response; and
  - (d) reviewing the process for efficiency, effectiveness and appropriateness (continuous improvement).

## **11 Fees**

- 11.1 Code Signatories who are not JAA members shall pay an annual Code participation fee of \$220 (including GST). For any additional business locations, the fee is \$27.50 (including GST) per location. Code Signatories who are JAA members shall pay no annual Code participation fee. These fees can be varied from year to year at the discretion of the Committee. The Committee views JAA members as suitable candidates for participation in the Code. Participation fees for non JAA members are therefore higher than those payable by JAA members because the Committee must carry out a more extensive review of applications from non JAA members.

## APPENDIX 1 - INTERPRETATION AND DEFINITIONS

### 1 Interpretation

- 1.1 References to singular include the plural and vice versa.
- 1.2 The Code is to be interpreted in accordance with its objectives. It is not to be read literally if that would produce a result clearly contrary to those objectives.

### 2 Definitions

**ACCC** means The Australian Competition and Consumer Commission.

**Certificate of Participation** means the certificate issued to Code Signatories in accordance with Part A paragraph 4.2 of this Code.

**CIBJO Blue Book** is a definitive set of standards for the grading, methodology and nomenclature standards for diamonds, coloured gemstones and pearls, in which the latter incorporates all organic materials. It was initially compiled, and since has been consistently updated, by number of committees, comprised of representatives from trade organizations and laboratories in the diamond, coloured gemstone, cultured pearl and jewellery industries. The standards represented a consensus derived from the broad expertise on the subject within these committees, and also from individuals outside the committees who had expressed an interest in participating in the development of the guidelines

**Comparative Price Advertising** means the display of a higher price, in conjunction with a lower selling price, in any form of advertising to consumers, including but not limited to television, radio, printed material, point of sale material, websites and emails.

**Code** means this Jewellers Association of Australia Industry Code.

**Committee** means the Code administration committee established by the Code in Part D paragraph 1.1.

**Code Signatories** means any person or organisation involved in the jewellery industry that has had its application to become a Code Signatory under Part A paragraph 4.1 of the Code accepted by the Committee.

**Clarity Grading** means the clarity grading levels used in the description of diamonds.

**Diamond Qualities** means the colour, and clarity of a diamond.

**JAA** means Jewellers Association of Australia Limited.

**Multiple Store Operations** means a chain of retail jewellery stores, with a minimum of 25 stores in the relevant state.

**Raw Materials** are bulk sheet, strip, wire and similar materials that have not been cut or shaped into jewellery parts, semi-finished parts or blanks.

**Regulatory Authority** means a state or territory Fair Trading department, or the ACCC.

**Suppliers** mean a supplier of jewellery, gemstones or of jewellery related services to the jewellery industry.