

# JAA Jewellery Industry Code of Conduct

21 December 2015

## **Disclaimer**

This Code of Conduct and the recommendations and procedures it sets out are not legal advice, and should not be relied on as such. The requirements set out in this Code are additional to the obligations imposed by applicable laws, and conduct that complies with this Code will not necessarily comply with obligations imposed under applicable legislation or the common law. Code Signatories should obtain their own, independent advice as to the legal obligations that apply to their particular circumstances.

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## **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.

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## **PART A – GUIDING PRINCIPLES:**

### **1. PREAMBLE**

Code Signatories acknowledge that:

- 1.1. genuine competition is fundamental to the jewellery industry;
- 1.2. the highest professional and ethical standards and technical skills are necessary to maintain and enhance the reputation of the jewellery industry and uphold consumer confidence in the industry.

### **2. GUIDING PRINCIPLES**

#### **2.1. Integrity**

Code Signatories will at all times:

- a) Conduct themselves and their business with honesty, courtesy and integrity and in such a manner as to not bring disrepute to the jewellery industry.
- b) Abstain from making false or misleading statements about any member of the jewellery industry.
- c) Refrain from public criticism of any JAA member.
- d) Provide full and accurate disclosure of the nature, quality, characteristics and origin (if known) of any merchandise offered or sold.
- e) Abstain from engaging in any conduct or business practice that may directly or indirectly mislead or deceive customers.
- f) Honour all guaranties, warranties and service policies as represented to customers as well as provided by law.
- g) Implement the procedure provided by the CIBJO and the World Diamond Council's "System of Warranties" to prevent trade in Conflict Diamonds.
- h) Implement procedures recommended by the JAA to prevent trade in Conflict Gemstones and Precious Metals.
- i) Make every effort to deal only with companies that do not exploit children or use child labour, provide adequate occupational health and safety conditions and respect the environment.

#### **2.2. Professionalism and Integrity**

Code Signatories will at all times:

- a) Strive to improve the knowledge, expertise and professionalism of themselves and their employees.
- b) Ensure that they remain familiar with current market conditions and trends that influence trading conditions in the jewellery Industry in Australia and overseas.

## 2.3. Compliance

Code Signatories will at all times:

- a) Abide by all Federal, State and local laws and regulations applicable to the jewellery industry.
- b) Ensure that all promotional, advertising and selling material and practices comply with Federal, State and local legislation and any Jewellery Industry Code.
- c) Use every effort to protect their customers against any fraud, misrepresentation or unethical practices which may arise in the jewellery industry.
- d) Cooperate with any inquiry conducted by JAA to resolve disputes involving a customer or another JAA member or Code Signatory.

## **PART B – PURPOSE OF THE CODE**

### **3. WHAT IS THE CODE?**

- 3.1. The Code has been developed by the JAA.
- 3.2. 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.
- 3.3. 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 understanding the requirements of applicable federal and state laws.
- 3.4. The Code replaces the Jewellery & Timepieces Industry Code which was previously adopted by the JAA.
- 3.5. The Code does not have the force of law. Nor does it replace State or Federal law governing these issues. Code Signatories should obtain their own, independent advice as to the legal obligations applying to their particular circumstances.
- 3.6. Code Signatories agree to be bound by the spirit and letter of the Code of Conduct.

### **4. WHY IS THE CODE NECESSARY?**

- 4.1. 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.
- 4.2. 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.
- 4.3. 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.

## 5. STATEMENT OF OBJECTIVES

The objectives of the Code are to:

- 5.1. Increase consumer confidence and trust when doing business with Code Signatories. Steps required to meet this objective include the Code rules regarding:
  - a) the making of false, misleading or deceptive representations, including omissions, about goods or services;
  - b) the provision of appropriate disclosure for a consumer to make a fully informed decision when selecting a jewellery product for purchase;
  - c) the use of valuations;
  - d) the use of Comparative-Price Advertising;
  - e) advertising claims that give a false or misleading impression of an unrealisable saving or opportunity; and
  - f) fair conduct relevant to electronic commerce.
  
- 5.2. 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:
  - a) the making of false, misleading or deceptive representations, including omissions, about goods or services;
  - b) the provision by suppliers of complete and accurate information on their invoices to retailers;
  - c) the use of valuations or a valuation value;
  - d) the prohibition of using or referring to any valuation value in conjunction with Comparative-Price Advertising;
  - e) the use of Comparative-Price Advertising; and
  - f) fair conduct relevant to electronic commerce.
  
- 5.3. 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:
  - a) appropriate disclosure for a consumer to make a fully informed decision when selecting a jewellery product for purchase;
  - b) information by retailers on invoices or sales dockets to consumers;
  - c) lay-by conditions as required by the appropriate lay-by legislation in the relevant State or Territory;
  - d) the water resistance rating (if any) on time pieces.
  - e) advertising claims that give a false or misleading impression of an unrealisable saving or opportunity; and
  - f) fair conduct relevant to electronic commerce.

- 5.4. 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:
- a) the initial handling of consumer complaints;
  - b) the Committee's handling of consumer complaints;
  - c) the corrective action recommended by the Committee to resolve consumer complaints; and
  - d) the referral of unresolved complaints to the appropriate Regulatory Authority for investigation.
- 5.5. 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:
- a) the handling of complaints by the Committee;
  - b) the corrective action recommended by the Committee to resolve complaints; and
  - c) the referral of unresolved complaints to the appropriate Regulatory Authority for investigation.
- 5.6. Reduce the need for additional government regulation of the jewellery industry. Steps required to meet this objective include the Code rules regarding:
- a) the publication of the Code;
  - b) the production and dissemination of promotional material relating to the Code and for use by Code Signatories;
  - c) the promotion of awareness of the Code principles; and
- 5.7. 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.

## **6. SCOPE OF THE CODE**

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

- 6.1. 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.

- 6.2. 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.
- 6.3. 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.
- 6.4. 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.
- 6.5. 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.

## **7. CONFLICT WITH LEGISLATION**

- 7.1. 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 C – CODE PRINCIPLES:**

### **8. STATEMENTS ABOUT JEWELLERY AND TIMEPIECES**

- 8.1. 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 (if known) 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. Signatories should at all times comply with the standards set out in the JAA Technical Reference Guide and be guided by the standards set out in the CIBJO Blue Books covering Diamonds, Gemstones, Pearls and Precious Metals.

#### **8.2. Other Statements**

Parties to the Code must not:

- a) make false, misleading or deceptive representations, including omissions; or
- b) make representations, including omissions, which are likely to be false, or are likely to mislead or deceive; or
- c) engage in any other conduct which is in breach of Schedule 2 of the Competition and Consumer Act (Clth) 2010,

about the quality, characteristics, price or value of jewellery, the business or the services being provided by that Party or by any other Party.



## 9. SUPPLIERS WHO ARE CODE SIGNATORIES

- 9.1. Suppliers must state complete and accurate information on their invoices to retailers. This must include:
- a) For plain precious metal jewellery:
    - 1) If sold by gram weight, the weight of each product or group of like products, in grams;
    - 2) The precious metal 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 precious metal content and colour of any jewellery items;
    - 2) Full and accurate disclosure as to:
      - i. Whether the gemstones are natural, synthetic or simulants/imitants; (the denomination “diamond” without further specification can only be used to describe a natural diamond, as required by ISO International Standard 18323)
      - ii. Whether gemstones have been treated to enhance colour and/or clarity and/or treatments are not permanent or create special care requirements:
      - iii. The number, size, shape and type of all coloured gemstones; and
      - iv. 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) All consignments of diamonds, whether rough, polished, or set in jewellery, must comply with the System of Warranties as mandated by the United Nations and the World Diamond Council. The recommended warranty wording is: “The diamonds herein invoiced have been purchased from legitimate sources that are in compliance with United Nations resolutions. The seller confirms that these diamonds are conflict free based on personal knowledge and/or written declaration provided by the supplier of these diamonds, and also that these diamonds are natural and untreated unless otherwise specified.”
    - 5) A description of the type of jewellery e.g. dress ring;
    - 6) Suppliers shall, on request from a retailer, provide a diamond grading report 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 or over \$6000.00 (incl. GST) at wholesale value. The cost of the report 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:
      - i. The word “synthetic” followed by the type of gemstone e.g. “Synthetic Emerald”; or
      - ii. The words “lab-created”, “laboratory-created”, “laboratory-grown” or “lab-grown” followed by the type of gemstone, e.g. “Laboratory-Created Emerald”; or
      - iii. 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.

9) Where possible the weight of the main stone should be noted on the shank.

## 10. RETAILERS WHO ARE CODE SIGNATORIES

10.1. All customers are entitled to a receipt when they purchase goods or services, regardless of the price paid. If requested, retailers must also provide proof of transaction to consumers for sales of goods or services valued at \$75 or more. A GST tax invoice containing a full description of the goods or services supplied is sufficient proof of transaction.

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

- a) For plain precious metal jewellery:
  - 1) The precious metal 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 precious metal content and colour of any jewellery item;
  - 2) With regard to the gemstones used in jewellery items:
    - i. Whether gemstones are natural, synthetic or simulants/imitants; (the denomination “diamond” without further specification can only be used to describe a natural diamond, as required by ISO International Standard 18323) and/or
    - ii. Whether gemstones have been treated (excluding acceptable treatments described in the JAA technical manual) 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 report from a reputable diamond grading laboratory for loose diamonds or new items of jewellery containing a diamond equal to or greater than 1.00ct in weight and H/SI2 in colour and clarity or over \$10,000.00 (incl. GST) at retail value. The cost of the report 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:
    - i. The word “synthetic” followed by the type of gemstone, e.g. “Synthetic Emerald”; or
    - ii. The words “lab-created”, “laboratory-created”, “laboratory-grown” or “lab-grown” followed by the type of gemstone, e.g. “Laboratory-Created Emerald”; or
    - iii. 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 who sell polished diamonds and/or diamond jewellery must comply with the System of Warranties as mandated by the United Nations and the World Diamond Council.
- 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 components of the price that must be paid, including GST and other applicable taxes, duties and levies. Optional charges or extras (such as credit card transaction fees, delivery charges, etc) do not need to be included in the single price 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.

## **11. LAY-BYS**

- 11.1. When the first lay-by payment is made customers must be given the conditions of lay-by as required by the Australian Consumer Law. Further information about these requirements are available on the ACCC website, at: <http://www.accc.gov.au/business/treating-customers-fairly/lay-by-agreements>

## **12. TIMEPIECES**

- 12.1. 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.

## **13. VALUATIONS**

- 13.1. 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 14.4 below.
- 13.2. Code Signatories shall not use or refer to any valuation value in conjunction with Comparative-Price Advertising.

## 14. COMPARATIVE PRICE ADVERTISING

- 14.1. 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.
- 14.2. A number of high profile retailers (including jewellers) have been the subject of Australian Competition and Consumer Commission investigations and court action for using misleading Comparative Price Advertising, when comparing a previous, undiscounted price, to a discounted price that applies during a promotional period. Several of these retailers have been found to have engaged in conduct in breach of the Australian Consumer Law contained in schedule 2 to the Competition and Consumer Act 2010 (and its predecessor, the Trade Practices Act 1974) where the 'was' price used in such advertising was not 'genuine'.
- 14.3. Comparative Price Advertising in this context is often referred to as 'dual price advertising', 'strikethrough pricing' or 'was/now advertising'. It refers to advertising where a comparison is made between a current price and a previous higher price. Pricing comparisons are often made using 'strikethrough' (\$2,400 → \$1,800), or statements such as 'was \$100, now \$50'.
- 14.4. Comparative Price Advertising is not illegal, but it conveys a representation as to the difference between the two displayed prices. Exactly what that representation is will depend on the context, and must be assessed carefully by reference to the price history of each individual item to which the representation relates. However, in most cases, Comparative Price Advertising statements such as 'Was \$150/Now \$100' or '\$150 Now \$100' are likely to be misleading if:
  - a) products have not been sold at the specified 'was' or 'strike through' prices in a reasonable period immediately before the sale commences (the length of the period will depend on factors such as the type of product or market involved and the usual frequency of price changes); or
  - b) only a limited proportion of a product's sales were at the higher price in the period immediately before the sale commences (the volume or proportion of sales that may result in such statements being misleading will depend on the circumstances of each case).
- 14.5. If a business has a policy or practice of discounting goods when not on sale and uses two-price advertising in relation to sale periods, there is a significant risk that the use of Comparative Price Advertising will involve conduct that is misleading. The business may be representing to some consumers that they will make a particular saving if they purchase the item during the sale period, when this is not necessarily the case.
- 14.6. Comparative Price Advertising such as 'was \$X now \$Y' is only to be used when both of the following conditions are met:
  - a) First, the retailer must have had a reasonable quantity of the product offered for sale 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.
  - b) Second, if the retailer has previously recorded sales of the discounted item, a substantial volume of those sales must have occurred at the \$X price in the period immediately preceding

the discount offer. What will amount to a 'substantial volume of sales' is unclear and depends on the circumstances of each case. For example, if the retailer is an Aggressive Discounter, which often discounts the ticketed price of goods in between sale periods, then a higher volume of sales is likely to be required. The Code recommends (as a guide only) a minimum of 30% of sales at the \$X price in the four month period immediately preceding the relevant promotion period.<sup>1</sup>

If both of the above conditions cannot be met, then Comparative Price Advertising should not be used. If requested by the Committee, the retailer must substantiate how the \$X price used in any Comparative Price Advertising was determined.

- 14.7. If the first condition is met, but there have been no previous sales of the item (i.e. because it is a new item of stock), then Comparative Price Advertising may be used, but it will still be important to ensure that the \$X price was a genuine price. For example, it is not acceptable to simply increase prices to a level at which it is unreasonable to expect consumers to pay, simply to increase the stated discount in a subsequent promotion using Comparative Price Advertising. To ascertain whether the \$X price was a "genuine price", a court might consider factors such as the usual selling price of similar items by the retailer, the selling price of the same or similar items by competitors, and the extent to which the retailer typically sells similar items at the ticketed price (as opposed to a discounted price). Because it may be difficult to assess if the \$X price was a genuine price without actual sales having occurred, Comparative Price Advertising should be used with extreme caution in such circumstances.
- 14.8. If a Code Signatory wishes to use the recommended retail price (RRP) for an item as the comparison price, then care must be taken to explain this to customers. For example, rather than stating 'was \$100, now \$50', the advertisement might state 'RRP \$100, our price \$50'. If actual sales outside promotional periods do not typically occur at RRP, then a disclaimer should also be used to explain this (particularly in the case of Aggressive Discounters). Further, if the RRP is not a genuine price, because sales will never realistically occur at that price, then it should not be used as a comparator.
- 14.9. It is important to understand that Aggressive Discounters face significant difficulties if they seek to use Comparative Price Advertising. If a Code Signatory routinely discounts the price at which it sells its products then, unless its customers are informed and aware that marked prices are merely the starting point for price negotiation, there is a high probability that the use of Comparative Price Advertising will be misleading.
- 14.10. Care must also be taken to ensure that items are not advertised for sale using 'was/now' advertising for extended or indefinite periods of time. Eventually, a 'discounted' price will become the established price for an item, which might then make the 'was/now' representation misleading. We recommend (as a guide only) that promotions advertising discounted prices for items do not exceed six weeks without first obtaining independent legal advice to confirm that the longer period of promotion will not be misleading. Longer periods than six weeks may be appropriate in some cases (for example, when advertising expensive items which have very low clearance rates), but we recommend (as a guide only) that:

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<sup>1</sup> For the purposes of this calculation, if a retailer operates a loyalty program pursuant to which members receive a fixed discount off the advertised sales price of all jewellery items as a benefit of their membership, then the discount received on account of their membership should not be considered when calculating the \$X price

- a) the relevant items must have been offered for sale (and, if applicable, sold) at the \$X price for a period at least as long as the promotional period; and
- b) promotions advertising discounted prices for items should not exceed three months in any event.

Of course, if a catalogue used to promote a sale specifies a promotional period, then the Code Signatory must adhere to that period. Comparative Price Advertising generally suggests to consumers that, at the end of the promotional period, prices will return to their pre-promotional levels.

- 14.11. If a Comparative Price Advertising is qualified by a disclaimer which explains the basis of the comparison being made, (for example “X% off ticketed prices) then it may not be necessary to meet the criteria set out in paragraph 14.12. Provided a disclaimer is clear and prominent, and is not inconsistent with a primary representation, it can be an effective way of explaining what a primary representation means. However, disclaimers must be used carefully, and the use of “fine print” exclusions which are difficult to read or not readily apparent are not permitted. Provided it is sufficiently prominent, an acceptable disclaimer in the case of a discount off a ticketed price might be: “Discount applies to most recent ticketed/advertised price. Some items may have sold below ticketed price prior to current discount offer as a result of in-store, negotiated discounts.”

Use of a disclaimer such as this may assist in explaining that an advertised "was" price may have been discounted in relation to some previous sales. However, it is unlikely to be sufficient if all previous sales have been for amounts significantly less than the advertised "was" price.

- 14.12. Disclaimers are particularly important for Code Signatories who are Aggressive Discounters. An unqualified representation of a ‘saving’ by an Aggressive Discounter (such as ‘save \$50’, ‘50% off’, or ‘was \$100, now \$50’) is more likely to be misleading, given that items may rarely have been sold at the ticketed price. Aggressive Discounters should take care to explain exactly what they mean when referring to such ‘savings’.
- 14.13. No claim is to be made that would give a consumer a false or misleading impression of an unrealisable saving or opportunity.

## **15. OTHER ADVERTISING**

- 15.1. 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.
- 15.2. 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. In particular:
- a) A “closing down” or similar sale (e.g. end of lease) must only be conducted if the Code Signatory is genuinely closing down their premises. Such claims should also specify when the store will be closing (if known) and, in any event, may only be conducted for a maximum of four months prior to closure.

- b) “Liquidation” suggest that all stock will be sold off. As such, it will not be appropriate to use this form of representation where stock is being bought in by the retailer through the course of the sale.
  - c) “Fire” or “flood” sales represent that the sale is being undertaken to clear stock because of damage to the store that was caused by a “fire” or “flood”. Such representations must be truthful. For example, it is not appropriate to make such representations where there has been no such event, or (if there was) the “fire” or “flood” has not related in any need to clear stock.
- 15.3. As noted in paragraph 6.3 above, Code Signatories shall not use or refer to any valuation value in conjunction with Comparative Price Advertising.

## **16. FAIR CONDUCT RELEVANT TO ELECTRONIC COMMERCE**

### **Email Marketing**

- 16.1. 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#)
- 16.2. 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.
- 16.3. 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.

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.

## **PART D - CODE ADMINISTRATION**

### **17. ADMINISTRATION**

- 17.1. This Code will be administered by the Committee made up of:
- a) ED of the JAA who shall also act as the Compliance Officer;
  - b) Three members of the JAA, (one of whom shall represent a retailer, one of whom shall represent a chain store operator, and one of whom shall represent a buying group) nominated by ED of the JAA, and endorsed by the board of the JAA. Such appointments will be at the discretion of the Board;
  - c) One member of the JAA whom shall represent a manufacturer of jewellery, nominated by the ED of the JAA, and endorsed by the board of the JAA. Such appointment will be at the discretion of the Board;
  - d) Should any Committee members resign the JAA Board may appoint another person deemed appropriate;

- e) Should any Committee member not be available to attend a Committee meeting the JAA Board may appoint a person deemed appropriate as a replacement for that meeting only;
- 17.2. The Committee shall appoint a Chair, nominated by the Committee.
- 17.3. 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.
- 17.4. Reasonable out of pocket expenses for participation in the activities of the Committee shall be met by the JAA.
- 17.5. A quorum for meetings of the Committee shall be three.
- 17.6. In the event of a tied vote the Chair shall have a casting vote in addition to his/her deliberative vote.
- 17.7. 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, recommend to the JAA Board any amendment to the Code as it sees fit.
- 17.8. If the JAA Board 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 6.1 of this Code.
- 17.9. The Committee will meet at least once each quarter to administer the Code. Meetings can be conducted by conference call if required.

## **18. COMPLIANCE ACTIVITIES**

- 18.1. The Compliance Officer 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 Competition and Consumer Act 2010);
  - b) develop Code and Australian Consumer Law compliance training programs for Code Signatories;
  - c) offer and conduct regular Code and Australian Consumer Law training sessions, seminars or other educational courses for Code Signatories; and
  - d) develop and distribute to Code Signatories appropriate Code and Australian Consumer Law compliance fact sheets and materials.



- 18.2. 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 Competition and Consumer Act 2010; and

## 19. MONITORING

- 19.1. Compliance with the Code may also be monitored on a random basis by the Code Committee.
- 19.2. 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.

## 20. COMPLAINTS

- 20.1. If a consumer has a dispute with a Code Signatory where the dispute involves workmanship only, then the Code Committee will hand over the resolution responsibility to the JAA office. The JAA will also handle workmanship disputes where the jeweller in question is not a Code participant.
- 20.2. If a consumer or industry participant disputes a Code Signatory's action under the Code, the consumer should be advised by the JAA to initially attempt to resolve the dispute by speaking to the store manager or supervisor and/or senior management in the organisation concerned.
- 20.3. If the consumer's or industry participant'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 or industry participant must be advised by the Code Signatory of the mechanism for pursuing such complaints with the Committee under the Code.
- 20.4. If the Committee receives a written complaint from a consumer or industry participant, 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 ("**Complaint Referral Letter**"). In such cases the Code Signatory is required to substantiate any claims it makes in relation to the complaint.
- 20.5. 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).

- 20.6. 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.
- 20.7. 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.
- 20.8. 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.
- 20.9. The Code performance criteria for effective complaints handling is the benchmark Standard AS ISO 10002-2006 (as revised from time to time).

## **21. GUIDE TO REMEDIAL ACTION**

- 21.1. 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, impose one or more of the following requirements:
  - 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) recommending to the JAA Board the cancellation of JAA membership and JAA Accreditation if appropriate;
  - j) receiving a notice of intention to refer a matter to a Regulatory Authority;
  - k) submitting at its own cost to an Australian Consumer Law compliance audit.
- 21.2. The Committee will determine the appropriate remedial actions from 21.1 above, based on the nature of the breach. As a guide, the remedial actions applied from those listed in 21.1 above should be as follows:
  - a) minor and/or first breach – a)
  - b) if a complaint by a consumer – d), e) or f) (as considered appropriate by the committee)
  - c) serious breaches – b), c), g), h) and or i)
  - d) second or subsequent serious breach – b), c), g), h), i), j), k)

## **22. REFERRAL TO REGULATORY AUTHORITY**

22.1. 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 consumer law or fair trading legislation, the Committee shall notify and provide full details of the possible breach to the appropriate Regulatory Authority for investigation.

## **23. PROMOTION**

23.1. 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.

23.2. 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.

23.3. The Committee will produce and provide brochures, fact sheets or other appropriate promotional material about the Code and its Complaints handling provisions.

23.4. The Committee will advise Code Signatories which information relevant to the Code they should display in the conduct of their business affairs.

23.5. Code Signatories who operate a web site may provide a link to the Code on their web site and must use all reasonable endeavours to promote the Code to their clients.

## **24. INDUSTRY AWARENESS**

24.1. 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.

24.2. The Committee in consultation with the JAA will develop, provide and conduct on a regular basis Code education programs for new Code Signatories.

24.3. The Committee in consultation with the JAA will develop and distribute Code educational materials to new Code Signatories.

24.4. New Code Signatories will participate in Code education programs, familiarize themselves with Code educational materials and be aware of how the Code operates.

## **25. DATA COLLECTION**

25.1. 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.

## **26. REVIEW AND ANNUAL REPORT**

26.1. 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.

26.2. 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.

26.3. 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 Compliance Officer; and
- c) Consider any recommendations for amendment to the Code which would improve overall compliance with the Code.

26.4. 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.

26.5. The external review will be conducted by the JAA Board.

## **27. FEES**

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.

**Aggressive Discounter** means a jewellery retailer at which sales staff actively pursue sales to in-store customers by offering them discounts off the ticketed price of items even where such discounts are not requested.

**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, pearls which incorporates all organic materials and precious metal alloys. 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 of Conduct.

**Committee** means the Code administration committee established by the Code in Part D paragraph 17.1.

**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.

**JAA Technical Guide** means technical guidelines and information relating to gems and jewellery and which is available on the JAA website.

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

**Precious Metals** are platinum (Pt), gold (Au), palladium (Pd) and silver (Ag) in their pure 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.