



## **Submission to Competition Policy Review**

### **Jewellers Association of Australia Limited**

#### **1 Background**

1.1 The Jewellers Association of Australia Limited (**JAA**) is the peak industry body for the jewellery industry. The JAA is a national not-for-profit organisation. The business of the JAA is managed at a national level by JAA's Board, the National Industry Advisory Council, and at a regional level by the State Committees. There are five State Committees covering the following regions:

- (a) New South Wales and the Australian Capital Territory;
- (b) Victoria and Tasmania;
- (c) Queensland;
- (d) South Australia and Northern Territory; and
- (e) Western Australia.

The National Industry Advisory Council consists of up to 20 Councillors (currently 17 appointed), including the chair of each JAA State Committee and additional Councillors representing suppliers, retailers and other associations and groups.

1.2 The Australian jewellery and watch sales for the 2012/2013 financial year was estimated to be approximately \$4.58 billion. This is to be compared to the total retail sales across all industries estimated at \$265 billion. Accordingly, jewellery represents approximately 1.7% of total retail sales in Australia each year. The average sale of jewellery is approximately \$200 per piece with approximately 22.9 million items of jewellery being sold each year in Australia.

1.3 There are approximately 2,966 retail jewellery stores in Australia. 682 of those are owned by large companies with multiple outlets. The remaining 2,284 are largely owned by small family businesses with the vast majority of those businesses owning just one retail shop. Across the retail jewellery market, the average jewellery store employs approximately six people.

#### **2 Functions of the JAA**

2.1 The JAA has approximately 950 members. Membership is voluntary and members include organisations from the manufacturing, wholesaling, distribution and retail sectors of the jewellery industry.

2.2 The criteria for General Membership of the JAA is that the applicant derives the majority of its income or turnover from the jewellery industry, and that the person is domiciled in Australia. The Associate Membership category requires that the person or company derives at least some of its income or turnover from the jewellery industry, and includes buying groups, education providers, students and employees of jewellery businesses.

The JAA's functions include:

- (a) maintaining a national body representing the jewellery industry in Australia, with chapters in each Australian State and Territory;
- (b) promoting the highest business standards and ethics within the Australian jewellery industry;
- (c) providing general guidance to the jewellery buying public, including information regarding jewellery buying, selling and insurance;

- (d) implementing the JAA Jewellery Industry Code of Conduct, to which all JAA members are signatories, and which prescribes minimum standards of operation for the jewellery industry to ensure maximum protection of the jewellery buying public;
- (e) conducting seminars and training for JAA members;
- (f) conducting jewellery industry events and awards;
- (g) providing jewellery industry career and training information and details of current vacancies; and
- (h) managing a nationwide system of dealing with consumer complaints and enquiries, including promoting and maintaining the JAA Information Hotline which allows consumers to use a free call number to obtain information and assistance from the JAA.

### **3 Background to this submission**

3.1 The JAA has endeavoured for almost 20 years to develop a code of practice to provide practical guidance to jewellery industry retailers seeking to comply with the *Competition and Consumer Act 2010* (and, formerly, the *Trade Practices Act 1974*) (**CCA**).

3.2 We set out below an overview of the various initiatives, and the limitations which have been experienced, by way of background to the JAA's concerns which underlie this submission.

#### ***Jewellery and Timepieces Industry Code***

3.3 In 1993 there was a series of adverse media reports targeting two price advertising in the jewellery industry, and in particular discounts based on reference to "independent valuations". At the same time, the ACCC and the industry were concerned about the frequency and extent of "50% off" discounting being used by certain jewellery retail chains.

3.4 In late 1993 an Industry Reference Group (**IRG**) was formed, comprising of representatives of all retail chains and groups, the JAA, the GAA, JATVC, Mark Paterson CEO Australian Retailers Association, Mr Neill Buck representing the Trade Practices Commission (the predecessor of the Australian Competition and Consumer Commission (**ACCC**)) and an in-house lawyer from Myer Stores. The retail representatives present accounted for approx 80% of all retail jewellery stores in Australia.

3.5 The IRG decided that the industry's best interests would be served by implementing a voluntary industry code, rather than relying on action to be taken by the ACCC. It was agreed that the code would be more effective, and importantly, reduce the incidence of adverse and damaging media coverage.

3.6 Mr Neill Buck, representing the ACCC, attended a series of meetings that were organised with JAA members to outline the concept and collect feedback. He also provided extensive input on the language of the code as a draft was developed by the JAA.

3.7 Once the draft code of conduct had been developed – which was named the Jewellery and Timepieces Industry Code (**1994 Jewellery Code**) – it was launched by the NSW Minister for Fair Trading at the 1994 Australian Jewellery Fair.

3.8 The 1994 Jewellery Code was officially endorsed by the ACCC, as well as the Offices of Fair Trading in all Australian states. This fact was noted on the cover of a 1997 reprint of the 1994 Jewellery Code that the JAA has located – a copy of that cover is attached to this submission as **Annexure A**.

3.9 In conjunction with the launch of the 1994 Jewellery Code, an Administration Committee was formed to consider (amongst other things) allegations of breach of the requirements of the Code. Mr Malcolm Finger of the NSW Office of Fair Trading was a member of that Administration Committee.

### ***Retail Jewellery Industry Guide***

- 3.10 While the Jewellery and Timepieces Industry Code was an important initiative, the JAA became concerned that it did not go far enough to give the industry clear guidance as to certain issues. These concerns largely stemmed from two actions that were taken by the ACCC in the Federal Court against Prouds Jewellers<sup>1</sup> and Ascot Four<sup>2</sup> (who operated the Zamel's chain of jewellery stores). Those actions both involved the practice of dual price advertising (commonly referred to as "was/now" pricing), which was a common form of advertising for many jewellery retailers.
- 3.11 The Jewellery and Timepieces Administration Committee raised the issue formally with the ACCC in 2004 and requested that the ACCC provide some specific guidance to the industry as to its expectations and views regarding the requirements for jewellery retailers who engage in dual price advertising.
- 3.12 In response to that request, the ACCC released the publication "*Advertising and Promotion in the Jewellery Industry- a Guide to the Trade Practices Act*" in September 2005 (**ACCC Industry Guide**).
- 3.13 The ACCC Industry Guide was recently removed from the ACCC's website, although copies are still available in various Australian libraries.<sup>3</sup>

### ***The JAA Code of Practice***

- 3.14 While the ACCC Industry Guide purported to clarify the ACCC's expectations for jewellery retailers engaging in dual price advertising, the JAA and its members found the guide to be confusing and unclear.
- 3.15 At both the February and May 2006 IRG meetings, it was unanimously agreed that the ACCC Industry Guide made it more difficult for retailers to comply with the CCA.
- 3.16 In an apparent acknowledgement that the ACCC Industry Guide was not proving effective, the ACCC approached the JAA in 2007 and asked if the JAA would facilitate the introduction of a new code that reflected industry best practice.
- 3.17 The JAA resolved to withdraw the 1994 Jewellery Code, and to instead develop a more comprehensive code of practice, which would provide clear guidance to the industry regarding a range of legal compliance issues (**2009 JAA Code**).
- 3.18 As the JAA had previously liaised with the ACCC in the formulation and adoption of the 1994 Jewellery Code, it again turned to the ACCC for support. Mr Konrad Chmielewski, the Director of Industry Codes at the ACCC, consulted extensively with the JAA in the development of the 2009 JAA Code. While the ACCC was not prepared to formally endorse the Code, Mr Chmielewski indicated that the ACCC was broadly happy with its content.
- 3.19 The JAA held off releasing the 2009 JAA Code until the decisions in the cases brought by the ACCC against Prouds Jewellers and Ascot Four were finalised. The JAA was concerned that those court actions were damaging not only for the Prouds and Zamel's businesses, but for the reputation of the industry as a whole. Many JAA members were also actively seeking guidance from the JAA as to their obligations, in view of the ambiguity of the ACCC Industry Guide and the uncertainty caused by the Prouds and Ascot Four cases.

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<sup>1</sup> *Australian Competition and Consumer Commission v Prouds Jewellers Pty Ltd* [2008] FCA 75 (15 February 2008); *Australian Competition and Consumer Commission v Prouds Jewellers Pty Ltd* [2008] FCAFC 199 (23 December 2008).

<sup>2</sup> *Australian Competition and Consumer Commission v Ascot Four Pty Ltd* [2008] FCA 1295 (21 August 2008); *Ascot Four Pty Ltd v Australian Competition & Consumer Commission* [2009] FCAFC 61 (26 May 2009)

<sup>3</sup> Further information in this regard is available on the Libraries Australia website at:

<http://librariesaustralia.nla.gov.au/apps/kss?action=DisplayRecord&targetid=ncd&recordid=28561062> (accessed 25 June 2014)

- 3.20 The 2009 JAA Code was first publicised to JAA members, and the industry at large, in November 2009. A copy of the 2009 JAA Code is enclosed as **Annexure B** to this submission.
- 3.21 The 2009 JAA Code was intended to be used as a guide for retail jewellery stores in order to assist those jewellery stores in applying the broad concepts of consumer protection to their specific circumstances within the jewellery industry. The 2009 JAA Code was therefore intended to detail best practice in the retail jewellery industry.
- 3.22 While the ACCC did not formally endorse the 2009 JAA Code, it was reviewed (and, in the JAA's view, effectively "signed off") by the ACCC prior to its release in November 2009.

***The decision in ACCC v The Jewellery Group Pty Limited***

- 3.23 In 2011, the ACCC commenced an action against The Jewellery Group Pty Limited (**Zamel's**), which owns a number of Zamel's branded jewellery retail stores. The ACCC alleged that Zamel's had engaged in misleading or deceptive conduct and made false and misleading representations in respect of the price of its goods due to certain conduct engaged in by Zamel's. That conduct related to the use of "Was \$X, Now \$Y" or "~~\$XXXX~~ Now \$YYYY" pricing during sale periods (**Two Price Advertising**).
- 3.24 Zamel's was ultimately found to have contravened the then s52 and s53(e) of the *Trade Practices Act*<sup>4</sup>. In essence, Zamel's was found to have contravened those provisions because it had not *sold* the relevant pieces of jewellery, in reasonable quantities, and for a reasonable period of time prior to the representation, at or about the relevant "Was" price or "Strikethrough" price.
- 3.25 The judgment in the Zamel's case came as a surprise to the JAA, because it appeared to be inconsistent with both the 2009 JAA Code and the ACCC Industry Guide. In particular, both the JAA Guide and the ACCC Industry Guide specified that if retailers were to utilise two price advertising, the retailer must *offer* the goods for sale at the relevant "Was" price for a reasonable period of time prior to using that "Was" price in any Two Price Advertising representation.
- 3.26 In fact, it was common ground in the Zamel's case that Zamel's had offered many of the products for sale at the relevant price for the eight week period specified in the 2009 JAA Code (thereby appearing to comply with the terms of both the 2009 JAA Code and the ACCC Industry Guide). However, because Zamel's had not sold (as opposed to merely offering) the jewellery items at or about that "Was" price, Zamel's was found by the Court to be in contravention of the *Trade Practices Act*.
- 3.27 The JAA approached the ACCC after the Zamel's decision to raise its concerns, and subsequently met with senior members of the ACCC. At that meeting, the ACCC confirmed that in its view the 2009 JAA Code did not accurately describe the requirements for Two Price Advertising in view of the Zamel's decision.
- 3.28 It should be noted that Zamel's is not a JAA member, and was not a JAA member at the time of the conduct complained of by the ACCC. Nor did Zamel's suggest in the case that it was aware of or placed any reliance on the 2009 JAA Code. The JAA also makes no comment on the merits of the decision reached in the Zamel's case. However, the fact remains that:
- (a) despite engaging in conduct consistent with the 2009 JAA Code which had been developed in consultation with the ACCC, it was found to have breached the CCA; and
  - (b) of far greater concern to the JAA, despite the ACCC having been intimately involved in the development of the 2009 JAA Code, it prosecuted a jewellery retailer in connection with conduct that was consistent with the 2009 JAA Code (and, indeed, pleaded its case against Zamel's in a way that was inconsistent with the 2009 JAA Code).

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<sup>4</sup> See *Australian Competition and Consumer Commission v The Jewellery Group Pty Ltd*, (2012) 293 ALR 335; [2012] FCA 848; and its subsequent appeal: *The Jewellery Group Pty Ltd v Australian Competition and Consumer Commission* [2013] FCAFC 144

- 3.29 That a business can comply with a set of guidelines that was developed in consultation with the regulator, but nonetheless be found to have contravened the laws which that same regulator is responsible for policing and enforcing, lies at the heart of this submission for reform.

#### **Consultation with ACCC**

- 3.30 Following the decision on liability at first instance in the *Zamel's case*, the JAA approached and engaged with the ACCC in developing an updated and amended Code of Conduct (**Revised JAA Code**). This consultation included:
- (a) a meeting involving approximately 20 representatives of the jewellery industry with senior members of the ACCC in Canberra on 19 February 2013;
  - (b) various subsequent private telephone conversations and email correspondence between representatives of the JAA and senior members of the ACCC; and
  - (c) a meeting with senior members of the ACCC in Melbourne in March 2014, at which comments were provided by the ACCC on the then-current draft of the Revised JAA Code.
- 3.31 The JAA had sought to convey to the ACCC the concerns of the jewellery industry as to how the obligations set out in the CCA apply to their conduct. The *Zamel's case* has raised many questions for the industry for which the answers are not clear. The JAA's aim was to provide some certainty for the industry as to the appropriate norms of conduct.
- 3.32 The JAA always understood and accepted that the CCA and decisions of the Courts applying the CCA are the only true statement of the law. However, the fact is that the enforcer of the law is the ACCC in most instances, and the ACCC has a discretion as to what cases it chooses to pursue. Accordingly, the JAA requested that the ACCC provide an assurance that if a jewellery retailer conducts itself in accordance with the Revised JAA Code, that it will not be prosecuted by the ACCC.
- 3.33 In response, the ACCC made very clear that while it had provided comments, it was not prepared to provide such an assurance. The JAA's consultation with the ACCC ended when it received written advice from the ACCC which stated (in part) as follows:
- As I have previously mentioned, the ACCC can't endorse an industry code of conduct or approve the wording of specific clauses of a code. While we've been happy to provide comments on your draft code, we consider that our role in this regard has come to an end. We now encourage you to settle the document with your lawyer.*
- 3.34 While the JAA accepts and understands the decision taken by the ACCC, it leaves the jewellery industry in a precarious position. While the JAA has gone to great lengths and expense to provide a comprehensive guideline for its members, in the absence of an assurance from the ACCC that JAA members who comply with the Revised JAA Code will not be prosecuted, it provides little comfort to members (particularly in view of the *Zamel's case*).
- 3.35 The JAA does not seek to criticise the ACCC, which provides what assistance it can in the current policy setting. Rather, the JAA submits that the policy surrounding voluntary industry codes and the role of the ACCC needs to be critically evaluated, so that real and meaningful assurances are able to be provided in the future.

## **4 Proposal for authorising voluntary industry codes**

- 4.1 The JAA's submission, which is expanded on in this section, is that the CCA should be amended to provide for a simple process of authorisation of voluntary industry codes by the ACCC.

### ***Existing "authorisation" regime***

- 4.2 The JAA notes that there is already a regime for "authorisation" of certain conduct under the CCA, and that a number of voluntary industry codes have been approved in this way.<sup>5</sup>
- 4.3 Currently, however, authorisation of industry codes under the CCA is only available where provisions of a code impose standards of behaviour on members that may restrict competition, require members to obtain goods or services from specific providers and/or impose sanctions for code breaches.
- 4.4 The JAA supports the existing authorisation regime, which plays an important function in enabling arrangements that might otherwise breach the anti-competitive conduct provisions of the CCA. However, it has no relevance to this submission.
- 4.5 The JAA believes that an expanded authorisation regime should be explored, which will not only authorise conduct that would otherwise breach the anti-competitive conduct provisions of the CCA, but also authorise codes of practice as being compliant with the requirements of specific parts of the CCA (including the *Australian Consumer Law (ACL)*).
- 4.6 The reason why the JAA considers that such an expanded form of authorisation would be advantageous, is because there are aspects of the CCA which are heavily dependent on context for their meaning (particularly section 18 of the ACL). This means that for small businesses who cannot afford to have ongoing legal advice and sign-off of their advertising and other conduct, it can be very difficult to have any certainty that their conduct will comply with the requirements of the CCA.

### ***Part IVB of the CCA***

- 4.7 Part IVB of the CCA already provides a statutory basis for prescribing industry codes.
- 4.8 An industry code under Part IVB is defined as "*a code regulating the conduct of participants in an industry towards other participants in the industry or towards consumers in the industry*". However, the effect of Part IVB is to impose obligations upon participants that are subject to an industry code. A prescribed code, in effect, imposes additional obligations to those set out in the CCA.
- 4.9 The JAA's proposal is not for an extension or variation of the law that already applies under the CCA. Rather, it is to enable industries to develop more detailed provisions that apply the existing requirements of the CCA in the context of that industry. This will have the benefit of providing greater clarity for industry participants as to the application of the provisions of the CCA to that industry, in a way that the CCA (which must, by its nature, apply to all industries) can never hope to achieve.

### ***The problem the JAA seeks to address***

- 4.10 The JAA submits that there are currently considerable difficulties for small businesses in applying the provisions of the ACL to their particular circumstances. To highlight the issue, it is worth considering in more detail an example of the confusion that can arise, by reference to the Zamel's case.
- 4.11 The ACCC alleged that Zamel's had infringed section 52 of the *Trade Practices Act 1974* (which is now section 18 of the ACL). That provision simply provides that:

*A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.*

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<sup>5</sup> Industry Associations that have had codes of practice authorised include the Generic Medicines Industry Association, the Australian Tyre Industry Council, the Mortgage Industry Association, the Australian Self-Medication Industry Association, the Boating Industry Association, the Australian Care Industry Association, the Australian Tyre Industry Council and the Generic Medicines Industry Association.

- 4.12 The particular context of the Zamel's case was the use of "was/now" pricing by Zamel's (such as "was \$100, now \$50"). This is a common type of advertising in many industries, and used extensively by jewellery retailers.
- 4.13 The 2009 JAA Code and the ACCC Industry Guide had each specified that in order to use "was/now" price representations without breaching section 52 of the Trade Practices Act, the advertised goods must have been offered for sale at the "was" price for a reasonable period prior to the promotion. That view was the commonly understood requirement for jewellery industry participants.
- 4.14 In the Zamel's case, the ACCC alleged (and the Court accepted, both at first instance and on appeal) that a "was/now" advertisement falsely represented to some consumers that those consumers would achieve a "saving" of the difference between the advertised "was" price and the "now" price if that product was purchased during the promotion. However, the court found that to other consumers, a different representation (which was not false or misleading) was conveyed.
- 4.15 The case highlights how the particular context of an industry can impact on the potential meaning of an advertising representation. Characterisation of the types of consumers that are typical of the jewellery industry was a critical aspect of the Zamel's case. The difficulty for small businesses is that they simply do not have the resources to take legal advice on such complexities, or to obtain legal review of each advertisement they prepare to determine if an advertising representation is likely to constitute misleading conduct.
- 4.16 The Revised JAA Code has sought to provide guidance and certainty to JAA members as to the requirements of section 18 of the ACL for "was/now" advertising representations by jewellery retailers. However, in the absence of any endorsement of the JAA's interpretation and summary of the requirements, it provides little comfort to jewellery retailers, and potential exposure to liability for the JAA.

#### ***A new authorisation regime***

- 4.17 The JAA submits that there would be substantial benefits if a separate statutory basis were created which would permit the ACCC to authorise or otherwise endorse industry codes to the effect that compliance with the that industry code will provide protection from prosecution by the ACCC for an alleged breach of the ACL.
- 4.18 The JAA does not suggest that compliance with an authorised industry code should protect a code participant from liability to consumers. Consumers should be entitled to rely on the broad provisions of the ACL as they apply to the individual's particular circumstances. However, compliance with an authorised industry code should provide safe harbour from prosecution by the ACCC.
- 4.19 The JAA acknowledges that authorisation of an industry code should not provide indefinite immunity from prosecution. There would need to be checks and balances. At a minimum, there should be:
- (a) a formal process for adopting the industry code;
  - (b) an effective period for which compliance with the industry code provides protection from prosecution, to ensure that the provisions of the code would need to be regularly re-submitted for review; and
  - (c) an ability for the ACCC to, after consultation with participants and after providing written reasons, revoke the industry code at some future point in time if it considers that compliance with the code will nevertheless be noncompliance with the law (either due to a change in circumstance or a change of law);

## 5 Existing authorising Codes

- 5.1 The concept of industry codes that provide organisations with certainty as to their compliance with particular legislation is not new. There are examples of such regimes in place already, both within Australian and internationally, as set out below.

### ***Privacy Codes under the Privacy Act 1988 (Cth)***

- 5.2 The *Privacy Act* regulates the handling of "personal information". "APP entities", bound by the *Privacy Act*, are required to handle personal information in accordance with the Australian Privacy Principles (**APPs**) prescribed by the *Privacy Act*.
- 5.3 Part IIIB of the Privacy Act, allows APP entities (that is, agencies and organisations bound the Privacy Act), or groups of APP entities or bodies or associations representing one or more APP entity to develop their own privacy codes.
- 5.4 An APP Code must set out how one or more of the APPs are to be applied or complied with, may impose additional requirements to those imposed by the APPs, deal with internal complaints handling procedures and may also deal with other specified matters. These codes apply in addition to the Privacy Act and the APPs.
- 5.5 A privacy code can be developed to apply to a specific industry (or class of industries), a specific activity (or class of activities), a specific type of personal information (or all personal information) or to APP entities that use technology of a specified kind.
- 5.6 Privacy codes are designed to assist APP entities in their compliance with the Privacy Act and the APPs and promote the protection of personal information. The Office of the Information Commissioner states that reasons for developing a privacy code include:
- (a) *"providing greater clarity of how particular APPs are applied or complied with in a specific industry context or in relation to new and emerging technologies which entities bound by the code utilise";* and
  - (b) *"incorporating higher standards for privacy protection than the Privacy Act requires, including covering certain exempt acts or practices or providing for additional obligations to those in the APPs or Part IIIA..."*
- 5.7 Currently, there are no registered privacy codes, since recent reform to the Privacy Act resulted in the existing privacy codes ceasing to have effect. However, the Association of Market and Social Research Organisations (**AMSRO**) had an approved privacy code prior to this reform. It has recently released its new Privacy (Market and Social Research) Code 2014 for public consultation. This code has been developed in collaboratively with the Office of the Australian Information Commissioner. It sets out how AMSRO members are to apply and comply with the Australian Privacy Principles in their handling of personal information.
- 5.8 In a press release, AMSRO commented that:

*"our industry is unique because AMSRO members are co-regulated under the privacy code with AMSRO as the administrator and the Privacy Commissioner as the adjudicator of the Code. The fact that we have a 10-year record without a privacy breach demonstrates the success of AMSRO in protecting the industry and people who engage in market and social research."*

- 5.9 The development of industry specific guidance and enforcement regime has assisted the industry to achieve an exceptional level of compliance.

### ***Model Codes of Practice under the Work Health and Safety Act 2011 (Cth)***

- 5.10 Under the *Work Health and Safety Act* codes of practice may be approved. These codes of practice are developed by Safe Work Australia (the relevant regulator). They are practical guides to achieving the standards of health, safety and welfare required for compliance with *Work Health*



and Safety Act and associated regulations. Each code deals with particular hazards and risks (for example, model codes of practice exists for "confined spaces", "demolition work" and "how to safely remove asbestos").

- 5.11 To be enforceable a model code of practice must be approved by the relevant regulator in each jurisdiction. Once approved, a code applies to those who have a duty of care under the *Work Health and Safety Act* in the circumstances described in the code.
- 5.12 The rationale for the model codes of practice, is that compliance with such a code will ensure compliance with the *Work Health and Safety Act* and associated regulations in relation to the matters covered by the code.
- 5.13 Approved codes of practice are admissible in proceedings as evidence of whether or not a duty or obligation under the *Work Health and Safety Act* has been complied with.<sup>6</sup> The Court may regard the code as evidence of what is known about a hazard or risk, risk assessment or risk control to which the code relates, and rely on the code in determining what is reasonably practicable in the circumstances to which the code relates.
- 5.14 The model codes of practice provide clear guidance on how to comply with obligations under the legislation, and an evidential basis for showing that such obligations were complied with should proceedings be instituted.

### **South Africa**

- 5.15 In South Africa, the *Consumer Protection Act (No 68 of 2008)*<sup>7</sup> came into force on 31 March 2011. It prescribes the minimum requirements for adequate consumer protection in South Africa. Under the Act, industry codes of conduct can be developed to provide guidance on compliance with standards of consumer protection and complaints handling within that industry including appointment of an ombud.
- 5.16 An industry code will be binding on all suppliers in an industry once the code is prescribed by the Minister for Trade and Industry (following approval by the National Consumer Commission after consultation with the public and relevant stakeholders). The same penalties for contravention of the *Consumer Protection Act* apply to a contravention of a code.
- 5.17 While the *Consumer Protection Act* is relatively new, a number of industry codes are already in development, including for the motor vehicle industry and retail industry. One such code is that prepared by the Consumer Goods Council of South Africa.<sup>8</sup>
- 5.18 A benefit of the industry code scheme is that it provides for the monitoring of markets and consumer protection at an industry level and reporting of statistics and other information to the National Consumer Commission.

### **New Zealand Privacy Act**

- 5.19 In New Zealand, similar codes of practice regulating the handling of personal information apply.
- 5.20 Under New Zealand privacy legislation, the New Zealand Privacy Commissioner can issue codes of practice. These codes of practice are mandatory and form part of the legislative framework. Generally, they are initiated by trade associations or representative bodies, although the Privacy Commissioner may also initiate codes of practice.

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<sup>6</sup> Section 275 *Work Health and Safety Act 2011 (Cth)*

<sup>7</sup> Available online at: <http://www.thenct.org.za/NCTDocs/founding-legislation/f8d6f6aa-994d-4305-b3d0-ea056416bbd0.pdf> (accessed 25 June 2014)

<sup>8</sup> Available online at:

<http://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB4QFjAA&url=http%3A%2F%2Fwww.gov.za%2Fdocuments%2Fdownload.php%3Ff%3D189822&ei=OsWqU9zoE8mslAXB2YGYDA&usq=AFQjCNGLKENPjzEqxCO-iyWMMg6iFTBR7Q&bvm=bv.69620078,d.dGI> (accessed 25 June 2014)

- 5.21 The codes modify the operation of the *New Zealand Privacy Act* for specific industries, activities or types of personal information. Specifically, the codes may impose standards for the handling of personal information that can be either more or less stringent than the principles under the *Privacy Act*, and may provide standards about how any one or more of the principles are to be applied or complied with.
- 5.22 The codes are considered to be more flexible, since they can be more easily introduced, revoked and varied. They enable special circumstances affecting the industry, activity or types of personal information they regulate to be addressed.

## **6 Summary and conclusion**

6.1 In summary, the JAA submits:

- (a) certain obligations imposed under the CCA are broad and general;
- (b) while this generality is necessary in order to apply to a wide range of circumstances, it can make it difficult for small business to understand the application of such provisions to the particular circumstances of their industry;
- (c) currently, industry bodies such as the JAA are encouraged to develop voluntary codes of practice to provide guidance to such industries. However, such guidelines do not provide industry participants any protection from prosecution (even where the regulator is involved in the development of the code);
- (d) the uncertainty this creates for small business, in particular, which may not have the resources to obtain regular, detailed legal advice, puts small businesses that are focused on compliance at a considerable competitive disadvantage;
- (e) in certain industries (such as the jewellery retail industry), there is a need for specific guidance to be provided as to the effect of the provisions of the CCA. Voluntary industry codes are an efficient and effective way of providing such guidance; and
- (f) were there a mechanism for authorisation of such an industry code to be provided, with the result that conduct which complied with the code would be immune from prosecution by the ACCC, this would be likely to encourage more careful attention to specified compliance obligations, and far greater take-up of such initiatives.

6.2 As described, there are numerous examples in Australia and internationally where mechanisms exist that enable the certification or endorsement of codes of practice.

The JAA is happy to provide whatever further information as may be useful, or to meet with the review panel in person to discuss its submission further.

**Jewellers Association of Australia**  
**30 June 2014**



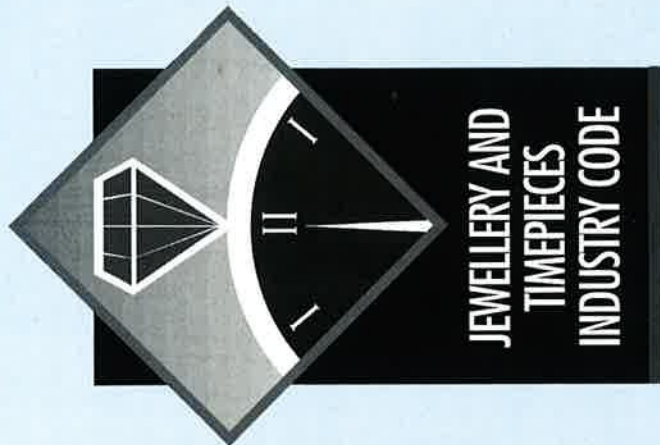
**Submission to Competition Policy Review**

**Jewellers Association of Australia Limited**

**ANNEXURE A**

***Cover page of the 1994 Jewellery Code***

# JEWELLERY AND TIMEPIECES INDUSTRY CODE



**Enquiries:**

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Phone: (06) 282 3211  
Fax: (06) 282 2725

*This code of practice is a voluntary code developed by the Jewellers Association of Australia and the Australian Retailers Association and constituent State Associations with the assistance of the Australian Competition and Consumer Commission and State and Territory Fair Trading Agencies.*



***Jewellery & Timepieces Industry Code (Revised).  
Published March 1997***



**Submission to Competition Policy Review**

**Jewellers Association of Australia Limited**

**ANNEXURE B**

***2009 JAA Code***



JAA

JEWELLERS ASSOCIATION  
OF AUSTRALIA LTD

# Industry Code of Practice

5 November 2009

## **Disclaimer**

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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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## **Table of Contents**

<b>PART A – PURPOSE OF THE CODE .....</b>	<b>4</b>
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>	<b>8</b>
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>	<b>14</b>
1 Email Marketing .....	14
2 Transacting Online.....	14
3 Confirmation Process .....	15
4 Payment .....	15
<b>PART D - CODE ADMINISTRATION .....</b>	<b>16</b>
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>	<b>24</b>
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 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 Competitors Price or the Retailers "*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 ("**Complaint Referral Letter**"). 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.