

**CODE OF PRACTICE
AND
ADMINISTRATION RULES**

FOR THE

FRUIT JUICE INDUSTRY



Administered by:

Australian Fruit Juice Association

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BACKGROUND

The initiative to set up a self-regulation scheme for the fruit juice industry has been encouraged and assisted by the Australian Competition & Consumer Commission (ACCC) and State Health Departments.

The Code is intended to supplement the provisions of the Food Standards Australia New Zealand Code and related legislation. It has been designed as a mechanism to operate in line with legislation to ensure that fruit juice products are not adulterated and labelling breaches do not occur and the public is not otherwise misled about fruit juice related products. In taking this action itself, the Fruit Juice Industry believes that it will enhance both the image of the industry and the marketability of its fruit juice products.

The Code has a number of key features

- ❖ It establishes an infrastructure to monitor fruit juice products in the marketplace for adulteration and/or labelling breaches and administer a regime of commercially significant sanctions as a deterrent to such behaviour.
- ❖ It indicates clearly to the public that the fruit juice industry is seeking to handle its affairs in a way that is sensitive and responsive to consumers' concerns.
- ❖ It establishes important ethical trading principles for Industry members based on the Trade Practices Act 1974 and State and Territory Fair Trading laws.
- ❖ It provides a flexible and cost efficient marketplace alternative to government enforcement action.
- ❖ It provides guidelines for Industry on Food Safety Procedures and Regulations as per the Food Standards Australia New Zealand Code 2001.

As a demonstration of good faith with the public, the Australian Fruit Juice Association in conjunction with the Australian Competition & Consumer Commission (ACCC) and New South Wales Food Authority will undertake a review of the self-regulation scheme at least every two years.

PART I

CODE OF PRACTICE

1. OBJECTIVES

The objectives of the Code are:-

- To establish procedures within the Australian Fruit Juice Industry aimed at preventing adulteration of juices and other unfair practices in the processing, reconstituting, packaging, marketing and labelling of fruit juice products.
- To establish the Fruit Juice Industry as a responsible and law abiding, best practice industry.

2. INTERPRETATION

2.1 DEFINITIONS

For the purpose of the Code:-

Fruit Juice Products encompasses all **Fruit Juices and Products** where juice is the characterising or predominant ingredient.

- Vegetable Juices
- Fruit Drinks
- Cordials

ACG	=	Australian Citrus Growers
AFJA	=	Australian Fruit Juice Association
ACCC	=	Australian Competition & Consumer Commission
ARA	=	Australian Retailers Association
Adulteration	=	Any fruit juice product that is deemed to be adulterated;

2. INTERPRETATION

2.1 DEFINITIONS (cont...)

- (a) when it is labelled or otherwise represented as being a particular type of food, and
 - (i) it contains or is mixed or diluted with any substance (**other than permitted additives**) in any quantity which diminishes in any manner any of its properties as compared with such food in a pure state and in an un-deteriorated condition; or
 - (ii) has had any constituent wholly or partly extracted or removed so that its properties and as compared with such food in a pure state are diminished;
- (b) when it contains any substance prescribed by State or Territory food laws or the Food Standards Australia New Zealand Code as prohibited generally or in relation to that food;
- (c) where the Food Standards Australia New Zealand Code or any State or Territory food laws specify that food generally or food of the class or description concerned is to contain no more (or less) than a specified quantity or proportion of particular substance, and the food contain more (or less) than the quantity or proportion;
- (d) when it is prepared in any manner whereby damage, deterioration or inferiority is or may be concealed;
- (e) when it is potentially injurious to health, dangerous or offensive;
- (f) when any package or anything included in the package or anything or matter with which food comes in contact consists, either wholly or in part, of any substance which may render the article injurious to health, dangerous or offensive, or
- (g) Deleted

‘Labelling Breaches’ includes all labeling, packaging logos and promotional material that makes statements, changes or implications and representations in breach of:

- (a) Food Standards Australia New Zealand Code;
- (b) The Trade Practices Act and State and Territory fair trading laws
- (c) Code of Practice **Quality Descriptor and Labelling Guidelines**

‘FSANZ’ means this Food Standards Australia New Zealand;

‘Food Standards Australia New Zealand Code’ means the Code known by that name published in the Commonwealth of Australia Gazette on 27 August 1987 together with any amendments of the standards contained in that code;

- (a) that were approved by the National Food Standards and AFJA before the commencement of the National Food Authority Act 1991, and the Australia New Zealand Food Authority Act 1996, and the Australia New Zealand Food Authority Act 1996 or
- (b) that were or are made under the National Food Authority Act 1991, and the Australia New Zealand Food Authority Act 1996.

‘Code’ means this Code of Practice and Administration Rules for the Fruit Juice Industry and any variations thereof

‘Committee’ means the Industry Compliance Committee (ICC)

‘Days’ means calendar days unless otherwise specified.

‘Interested Parties’ includes the Australian Competition & Consumer Commission; Federal, State and Territory Departments of Health; Federal, State and Territory Fair Trading agencies; the Australia New Zealand Food Authority; the ASI; the Retailers’ Association of Australia; the Australian Horticultural Corporation; and the Australian Taxation Office.

‘Manufacturer’ means a manufacturer or converter of fruit juice products, and those who pack fruit juice.

‘Member’ means any member of the Australian Fruit Juice Association, National Citrus Packers Association or Australian Citrus Growers.

‘Person’ means a person, corporation, partnership, association or any other body.

‘Processor’ means a person who manufactures bulk juice and concentrates for or on sale to other manufacturers.

‘Testing’ means scientific analysis of fruit juice products to ascertain whether the product conforms to requirements of the Food Standards Australia New Zealand Code, other relevant legislation and guidelines associated with the Code.

2.1 DEFINITIONS (cont...)

‘Signatory’ means a Person, including a Member, who has signed an agreement binding the person to the Terms and Conditions of the Code.

‘AGAL’ means Australian Government Analytical Laboratory or its successors.

Interpretation

Any reference in this Code to **“fruit juices”** or **“fruit juice products”** shall be taken to include any fruit juices, vegetable juices, fruit drinks, fruit cordials **and other food products where juice is the characterising or predominant ingredient**, as well as retail and industrial concentrated fruit juices.

Any reference to the **‘same product’** in this Code means a product or products represented to be of the same or substantially similar composition whether or not packaged in different shapes or quantities to the product under comparison.

2.2 HEADINGS

Headings in this Code are for guidance only and are not intended to be used in interpreting the clauses following the heading.

3. APPLICATION

(1) Application

This Code applies to all members of the:

- Australian Fruit Juice Association (AFJA)
 - National Citrus Packers Association (NCPA)
 - Australian Citrus Growers (ACG)
- and to each other Signatory to the Code.

(2) Eligibility to be Signatory

Subject only to the payment of such application fees as may be reasonably determined from time to time by the AFJA to apply generally to new Signatories, any person with any association or involvement with the Australian Fruit Juice Industry is entitled to be a Signatory to this Code.

(3) Binding Agreement

All parties to the Code shall sign an agreement that they will be bound by its terms, conditions and obligations.

(4) Terms and Conditions

The terms, conditions and obligations of the Code may be varied by a majority vote of a General Meeting of the AFJA held following notice of the proposed variations having been given to all members and Signatories of the Code in accordance with the AFJA Constitution.

(5) Variations to the Code

Such variations approved by the AFJA shall be notified in writing to all members and signatories.

(6) Voluntary Termination

A Person may cease to be a Signatory to the Code by serving a written note to that effect on the AFJA and such cessation shall take effect from the date of receipt of such notice by the AFJA. The Signatory will continue to be liable in respect of its obligations and conduct to the date of cessation and the Code may be enforced by the AFJA in respect of such prior obligations and conduct notwithstanding such cessation.

3. APPLICATION (cont...)

(7) Suspension from Code

In the event that a Signatory to the Code is suspended pursuant to the provisions of the Code and notified by the AFJA accordingly, the following restrictions shall apply during the period of suspension.

- (a) the Signatory shall not hold out or represent to any other Signatory or other party that it is a Signatory to the Code without also advising that it is under suspension;
- (b) no product of the Signatory manufactured after fourteen working days from the date of the notification shall be entitled to bear any certification or logo indicating that the person is a signatory to the Code or otherwise complies with the Code;
- (c) the Signatory shall continue to be bound by the obligations of the Code.

4. PRINCIPLES OF FAIR PRACTICE

Members and Signatories (whether Manufacturers, Processors, Distributors or others) are expected to observe good manufacturing and marketing practices for fruit juice products and to observe the provisions of the Food Standards Australia New Zealand Code and related legislation and agree not to engage in conduct that is misleading or deceptive or that is likely to mislead or deceive or engage in any other conduct in breach of the Trade Practices Act and State and Territory fair trading laws. Such conduct would include, but is not limited to:

- adulteration
- misrepresentation about composition, grade, contents or the like;
- misleading or deceptive labelling;
- misleading or deceptive packaging;
- misleading or deceptive advertising;
- labelling breaches

5. CERTIFICATION

5.1 The AFJA may, from time to time, develop, own and licence to Signatories, logos, insignia or other devices which proclaim or certify a person to be a Signatory to the Code. All licence fees collected by the AFJA shall be applied to the administration of the Code.

5.2 Signatories shall not employ a logo, insignia or other device proclaiming or certifying a person to be a Signatory to the Code outside the AFJA licence system.

PART II

ADMINISTRATION RULES

1. ADMINISTRATION

The Code is to be administered by the AFJA, the role of which is to

- manage the operation of the Code;
- oversee the establishment and ongoing operation of the ICC;
- provide adequate financing for the administration of the scheme;
- take action on recommendations made by the ICC and in its own name enforce the provisions of the Code;
- monitor and make amendments to the Code after consultation with relevant interest groups;
- promote the Code;
- cooperate with or enter into any convention or agreement with any other trade association in furtherance of the principles and objectives of the Code;
- establish operating costs and ongoing budgeting;

2. ADMINISTRATION (cont...)

As the manager of the Code, the AFJA Secretary or president shall be responsible for any public communication in relation to the Code.

- If any conflict of interest is likely on the part of the AFJA representative responsible for public statements, then in the interest of the industry, that representative will stand aside on the matter in question and the Chairperson of ICC is to be notified of the conflict prior to any sitting relating to that matter.
- In order to support and maintain the ongoing operation of the code, a levy may be imposed on signatories deemed suitable and fair by the Executive Board of the AFJA.

2. INDUSTRY COMPLIANCE COMMITTEE (ICC)

1. The AFJA will appoint at most ten (10) individuals to be members of the ICC consisting of a Chairperson nominated by the Association who must be independent of Industry interests and by preference (but not by necessity).
 - a nominee from a government health department;
 - a non industry nominee representing consumer and community interests;
 - a nominee from the Australian Retailers Association;
 - a nominee from the ACG;
 - two nominees from the AFJA and;
 - any other persons the AFJA deem appropriate;
2. The AFJA will endeavour to ensure that at least one of the members of the ICC has legal qualifications.
3. The ICC shall hold office for two years and be eligible for re nomination.
4. During their terms of office none of the non-industry committee members shall be an officer, director, employee, or hold any substantial interest in the fruit juice industry. The members shall disclose to the AFJA all holdings of any interest prior to appointment and also any subsequent purchases or acquisitions of such shares of interest.
5. Non-industry members will be engaged on a fee-for-service basis agreed between the AFJA and each of the ICC members.
6. Industry nominees shall be ruled ineligible to sit on any matter which involves a conflict of interest, including, but not limited, deliberations on matters involving their employer or related company.
7. The ICC shall receive, assess and make recommendations for appropriate action in relation to:-
 - complaints referred to the ICC by the ACC, state health authorities, and/or other enforcement agencies;
 - results of national juice monitoring programs;
 - alleged breaches of the Code;
 - complaints from AFJA Members and/or Code of Practice signatories;
 - public complaints and allegations; and
 - any other matter referred by the AFJA
8. AFJA will call for nominations for members of the Committee from any relevant organisations it so determines. Any person so nominated (the nominee), will accept his/her nomination in writing. Where the AFJA receives a nomination, this nominee shall be admitted as a member of the Committee where the AFJA approves the nomination. Such nominations will be called for and approved prior to the expiry of the term of the existing Committee members, or in the case of the initial Committee members, before the provisions of this Code come into force. Existing Committee members are eligible to be re nominated for a further term.
9. The ICC shall act in accordance with the principles set out in Appendix "D".

2. INDUSTRY COMPLIANCE COMMITTEE (ICC) (cont...)

- 10 The Quorum shall be four. Two from Industry and two from non industry representatives. Meetings shall be validly held notwithstanding the absence of the Chairperson. Such meetings may be convened through video or telephone conferencing.
- 11 The ICC shall –
 - Act fairly, in good faith and without bias;
 - Ensure that documents which the ICC takes into account in reaching a decision are made available to the organisation the subject of the complaint;
 - Give the organisation the subject of the complaint the opportunity (subject to any time frames specified in the Code) to adequately state its case, and to correct or contradict any relevant statement prejudicial to its case;
 - Deal with the complaint as expeditiously as possible.
- 12 In arriving at any decision or exercising any discretion the ICC is at liberty to take into account any previous conduct of the person the subject of the Complaint and any other matter or fact which the ICC deem relevant.
- 13 Any communication of the AFJA issued in connection with this Code shall be deemed valid and duly authorized if issued under the signature of the Secretary of the AFJA.
- 14 Unless otherwise expressly provided, any decision or opinion of the ICC required under this Code may be taken in the ICC's absolute discretion.

3. MONITORING OF PRODUCTS

- 1 The AFJA will conduct an ongoing National juice monitoring program through AGAL in respect of the products of both signatories and non-signatories. The selection criteria is as per Appendix "A" (a).
- 2 Any member or signatory may initiate testing of any Manufacturer's products. The ICC will only consider these results providing that:
 - the sample collection protocol as per Appendix "A" (b), has followed;
 - the initiator pays for all product sample collection and testing;
 - all results are forwarded by AGAL to the ICC (not the initiator) for consideration;
 - any results indicating non-conformances will be retained by the ICC for further action. The ICC will advise the initiator accordingly;
 - any conforming results will be forwarded to the initiator by the ICC.
- 3 The action to be taken following the ICC's AGAL testing is summarised in Appendix "B". In the event of any conflict or ambiguity between the provisions of the summary and the provision in the main body of this Agreement, the latter shall prevail.

3. MONITORING OF PRODUCTS (cont...)

- (4) The results of any AGAL testing under this code carried out in accordance with Appendix “A” shall be deemed conclusive of the accuracy of the results in the absence of evidence of manifest error.

4. BREACHES OF THE CODE - (ADULTERATION ISSUES)

(refer to Appendix “B”)

FIRST BREACH

- (1) If the analytical results from AGAL testing, in the opinion of the ICC confirm a breach of the Code, a “First Letter of Non-conformance” shall be issued by the AFJA to the offending Manufacturer in accordance with Appendix “C” (1) amongst other things requesting a letter of explanation.
- (2) The AFJA engage AGAL to take and test further samples of the offending product. Where the Manufacturer has provided sufficient identification detail in its letter of explanation, the sample is to have been manufactured no earlier than two weeks after the date of receipt of the “First Letter of Non-conformance”. Where the Manufacturer has failed to supply such detail, the sample is to be the relevant product bearing the longest “use by” date to expiry then available to AGAL in the selected retail outlet.
- (3) In the event that the explanation of the Manufacturer fails to satisfy the ICC that a further or continuing breach of the Code by the Manufacturer is unlikely to occur, the AFJA, upon recommendation of the ICC, can request the Manufacturer to duly execute and return to the AFJA an undertaking in the form of Appendix “G”. The Manufacturer shall return such undertaking within 7 days of such request and shall comply in all respects with the undertaking.
- (4) That the Manufacturer has taken all reasonable measures to ensure a breach of the Code will not re-occur.

SECOND BREACH or Failure to Comply with Undertaking

(refer to Appendix “B”)

- (5) In the event that within 12 months of a breach of the Code.
- AGAL testing disclosed the same or a related breach of the Code by the Manufacturer in respect of the same or similar product.
 - AGAL testing discloses what in the opinion of the ICC is a serious breach of the Code in respect of a different product; or
 - the Manufacturer fails to return the undertaking or provide upon request evidence of full compliance with the undertaking required under Part 11 clause 4(3) (which failures shall in either case be deemed to be a breach of the Code),
 - then a letter to show cause in accordance with Appendix “C” (2) shall be sent to the Manufacturer.
- (6) If in response to the Letter to show Cause, the Manufacturer fails to satisfy the ICC that a further or continuing breach of the Code by the Manufacturer is unlikely to occur the AFJA upon recommendation of the ICC may initiate any or all of the following actions.

4. BREACHES OF THE CODE - (ADULTERATION ISSUES) (cont...)

- (a) The Manufacturer may be subjected to ongoing AGLA testing of such of the Manufacturer's product at such frequency and for such duration (to a maximum of 12 months) as the AFJA upon recommendation of the ICC may determine and advise to the Manufacturer. Such testing shall be at the Manufacturer's expense to a maximum of \$5,000.
- (b) The AFJA may notify and provide full details of the breach of the Code to the ACCC if in the opinion of the ICC a prima facie breach of the Trade Practices Act has occurred and request that the ACCC consider taking action in relation to the conduct in question.
- (c) The AFJA may notify and provide full details of the breach to any relevant Health Department (or equivalent department or agency) and request that any breaches of the relevant Food Act (or equivalent legislation) be pursued. To this end, the AFJA may offer the testing by AGAL of any samples collected by such Health Department at AFJA'S expense.
- (d) The ARA shall be advised of the results of the AGAL testing in respect of the first and/or subsequent breach and requested to inform its members of such results.
- (e) The AFJA will seek a letter of undertaking, as per Appendix "G", if not previously provided or confirmation of an undertaking already provided.

THIRD BREACH

- (7) Where, within 12 months of the abovementioned second breach, the ICC becomes aware of another breach of the Code in respect of any of the Manufacturer's products, the AFJA upon recommendation of the ICC, shall notify the Manufacturer and request an explanation. In the event that no explanation is received within seven (7) days of the date of request or if the explanation fails to satisfy the ICC that a further or continuing breach of the Code is unlikely to occur, then at the discretion of the AFJA upon recommendation of the ICC, will initiate any or all of the following actions:

- (a) **Publication**

The AFJA may publish the test results and an expert's scientific interpretation of the results (with comparison or reference to the Food Standards Australia New Zealand Code) in any form of publication the Committee deems fit.

The Manufacturer acknowledges that such publication shall not be defamatory of the Manufacturer.

THIRD BREACH (cont...)

(b) **Advice to Regulatory Agencies**

Full details of the breaches of the Code and how it breaches relevant legislation shall be supplied to the Australian Competition & Consumer Commission and the appropriate Health Department with the request that the strongest possible action be taken under the relevant legislation.

(c) **Private Action**

Where the matter involves an alleged breach of a Commonwealth or State law, the AFJA may institute in its name legal proceedings for damages, injunctive or other Court Order aimed at preventing further breaches by the Manufacturer.

(d) **Suspension from the Code**

The AFJA may by notification to the Manufacturer suspend the Manufacturer from the enjoyment of the rights and benefits of the Code for a period of up to 185 days (refer Part I clause 3(7)) and publicise the suspension in any form the AFJA deems fit (including advising the ARA or its members of the suspension and the reasons for the suspension).

SUBSEQUENT BREACHES

- (8) For any subsequent breach of the Code beyond the third breach occurring within 12 months of the immediately preceding breach the procedures and actions outlined in Clause 4(6) above shall apply.

5. BREACHES OF THE CODE (LABELLING ISSUES)

Procedure to be followed as per draft procedure in Appendix "H".

6. OVERRIDING RESPONSIBILITY OF MANUFACTURERS

- (a) It is the overriding responsibility of each Manufacturer to take all reasonable steps to ensure that the raw material and concentrates it purchases comply with State and Territory food and trade practices laws.
- (b) Subject to (c) below, non compliance of raw materials and concentrate shall not of itself be a sufficient excuse to preclude the ICC from deciding that the Manufacturer has failed to satisfy the ICC that the same or related breach of the Code is unlikely to occur in the future.
- (c) The ICC shall take no action in respect of a first breach of the Code arising as a direct result from non-compliance of raw materials provided the Manufacturer had obtained a certificate of compliance in respect of the offending supplies.
- (d) Nothing in this Clause 6 should be taken as alleviating the obligation of Processors, importers and other suppliers to observe the Principles of Fair Practice set out in this Code.

7. PUBLICITY PROCEDURES

The AFJA shall publicise the existence of the Code and the administration rules, and any alterations to its members and to the retail sector through relevant industry associations or other appropriate means.

8. STAFF INSTRUCTIONS

All members and signatories who are a party to the Code shall undertake to give adequate instructions to employees or agents about its existence and the administration rules, and any alterations when they occur.

9. RECORDS

All members and signatories who are a party to the Code shall keep adequate records in accordance with Appendix "E".

10. REPORTING PROCEDURES

The ICC shall report to the AFJA at least annually on its activities including the number of complaints, type of complaints, how complaints were resolved, and whether complaints were substantiated.

The AFJA shall produce an annual report on the Code and its administration and make it available to interested parties.

11. REVIEW AND EVALUATION OF THE CODE AND ADMINISTRATION RULES

The Code and its administration will be reviewed and evaluated by the Australian Fruit Juice Association and the ICC at least every two years.

Comments may be sought from interested parties on the review and evaluation of the Code, and on proposed amendments.

12. NOTICES

Any notice, request or notifications to be given under the Code may be sent by facsimile, mail or personal delivery. Such communication shall only be effective upon receipt and shall be deemed to have been received:

- in the case of email or fax upon receipt by the sender of the confirmation of full transmission;
- in the case of mail after two days from certified posting; and
- in the case of personal delivery when delivered.

APPENDIX "A"

A Sampling protocol for random market survey for fruit juice product samples

1. ICC to select market segment to be surveyed.
2. Industry Members on the ICC provide a list of available products/brands in that segment.
3. Non Industry Members randomly select those brands to be tested. These include products found previously to be non-conforming **and a new list of the product segment(s) to be examined as drawn up by the Industry representatives.**

B Sampling Collection Protocol of Fruit Juice Products

1. Sampling is to be carried out by AGAL officers or other Government representatives from any retail outlet in Australia. In the case of the ongoing National juice monitoring program,

the sampling will be random, but will cover the range of products available. Assistance to AGAL by State departments of Agriculture/Primary Industry, Health Departments, Local Councils, etc., in obtaining samples may be sought by the AFJA. ICC to select market segment to be surveyed.

2. Three (or more) samples - see 3. below - of the brand or brands as the case may be are to be purchased and sealed with a paper seal bearing the initials of the AGAL officer or other Government representatives. They are to be labelled A, B and C. The sampling officer will sign and date the seals.
3. Each of the samples is to be the same with respect to size, labelling, use-by date, and any other identifying features. Where the sample volume is less than 2L, sufficient samples are to be purchased to make a total of 2L for each of A, B and C.
4. Samples will be stored at AGAL NSW in a frozen state. Sample A will be analysed by AGAL, Sample B will be available to the supplier and Sample C will be kept, in case of a dispute, as a referee sample subject to Court Order.
5. The AGAL sampling officer or persons collecting samples will record the following details on an AGAL pro forma:
 - (a) name and classification of officer;
 - (b) name and address of manufacturer;
 - (c) brand of fruit juice and use-by date;
 - (d) place of purchase;
 - (e) date of purchase;
 - (f) how product was stored (e.g., shelf, open refrigerator);
 - (g) for interstate samples, the freight consignment number.

The cash register receipt should be retained and attached to the pro forma. A copy of the pro forma should be sent with the consignment of interstate samples.

Upon receipt in NSW, each sample will be given a unique AGAL registration number. Before analysis is commenced, the AGAL NSW Food Section supervisor will check that the seal is intact and sign then or later an Acknowledgement in the form set out in Appendix "F".

6. Interstate samples are to be packed in an esky by the organisation obtaining the samples and consigned by express delivery to AGAL NSW as soon as practicable after purchase. The officer obtaining the interstate sample shall record the details and do all things required in Clause 5 above.

APPENDIX "B"

Action chart for dealing with breaches of the Code

FIRST BREACH

AGAL analytical results from

- Industry juice monitoring program
- Individual complaints approved by ICC

ICC to meet as required evaluating results for breaches of the Code. (From time to time, the meeting may take the form of a video or telephone conference hook-up).

APPENDIX "B" (cont...)

Action chart for dealing with breaches of the Code (cont...)

- First Letter of Non-conformance sent to offenders by facsimile and registered mail within 7 days of ICC Meeting.

- Three samples taken by AGAL of offending product manufactured at least two weeks after date of receipt of first Letter of Non-conformance.
- If required, AFJA can seek from the offender Letter of Undertaking requiring self-audited compliance programme.

SECOND BREACH

- If subsequent dilution, adulteration or misrepresentation found from AGAL testing or if undertaking not given or evidence of full compliance with undertaking not supplied, letter to “show cause” is sent to offender requesting response within 7 days and advising (if applicable) that a sample is available through AGAL for testing at their expense.
- ICC meets to deliberate on findings and the offenders' response and make recommendations to AFJA on further action. If required AFJA may implement the following action.
- Ongoing testing at the offenders’ expense (maximum \$5,000) for such products frequency and duration (up to 12 months) as may be recommended by ICC.
- Request the Australian Competition & Consumer Commission to seek enforceable undertakings.
- Advise State Health Department about the verified complaint.
- ARA requested to inform members of AGAL testing results.

IN CASE OF SUBSEQUENT OFFENCES....

THIRD BREACH

- National juice monitoring program
- Individual complaints approved by ICC
- Ongoing analysis of previous offenders as directed by AFJA
- Upon confirmation by AGAL that a breach has occurred, a letter to “show cause” is sent to the repeat offender by ICC requesting a response within 7 days
- ICC meets to deliberate on findings and the offenders' response and make recommendations to AFJA on further action which may include:-
 - Publish the test results and an expert scientific interpretation of the results in any form the ICC deem fit.
 - Further notify the Australian Competition & Consumer Commission and appropriate State Health Departments with request to pursue strongest possible actions.

THIRD BREACH (CONT...)

- Suspension from the Code and publication of suspension.
- Institute legal proceedings for damages, an injunction, or other court orders aimed at preventing further breaches.

APPENDIX “C”

(1) FIRST LETTER OF NON-CONFORMANCE FROM AFJA

The letter will be sent by electronic mail and/or facsimile to the Secretary of the Manufacturer and the original sent to that officer by certified mail. The letter shall:-

- Identify the product concerned;
- Quote the 'use by' date and/or batch code of the samples;
- Set out the details of the alleged breach of the Code;
- Advise that further samples of the offending product manufactured two weeks from the date of receipt of this letter (or such later date as may be advised in the letter) will be taken and tested;
- Seek details on the relationship between the date of manufacture and the 'use by' date in respect of the offending product sufficient to allow the required samples to be identified;
- Warn that if these details are not forthcoming within 7 days from the date of receipt of this letter samples will be taken from the longest dated products currently available in the selected retail outlet;
- Specify that the supplier must reply in writing to the AFJA to the alleged breaches of the Code within 7 days from the date of the AFJA letter providing –
 - an explanation of the facts concerning the alleged breach.
 - any mitigating circumstances which may have existed.
 - any matters to be considered by te AFJA in determining whether a breach has occurred.

(2) LETTER TO SHOW CAUSE

The letter shall be sent by electronic mail and/or facsimile to the Secretary of the Manufacturer and the original sent to that officer by certified mail. The letter shall:-

- identify the product concerned or the undertaking concerned;
- quote the 'use by' date and/or batch code of the samples (if relevant);
- advise that sample is available for testing at their expense (if relevant);
- set out details of the alleged breach of the Code;
- set out that the supplier must reply to the alleged breaches of the Code within 7 days from the date of the letter in writing addressed to AFJA providing:
 - an explanation of the facts concerning the alleged breach.
 - any mitigating circumstances which may have existed.
 - any matters to be considered by the AFJA in determining whether a breach has occurred.
 - reasons why further action under Part II Clause 4(4), 4(5), 4(6), of the Code should not be taken by the ICC.

APPENDIX “D”

ICC PRINCIPLES

1. The AFJA is to provide sufficient funding, resources and premises to adequately service the functions of the ICC.
2. The ICC will appoint sufficient officers on any condition it deems fit to adequately carry out its functions.
3. The ICC will submit an activity report and an audited financial report to the ACIC and AFJA prior to 30 September each year and at any other time it deems fit.
4. ICC Officers will provide a receipt (acknowledgement) for each written complaint by members or signatories to the Code.
5. ICC officers will maintain a register of all complaints made by signatories which will be available for inspection by signatories to the Code.
6. The ICC through AGAL will endeavour to organise a system of handling and storage of samples to ensure tampering with samples is not possible so that the evidence chain remains unbroken (eg lockable freezers to which only the responsible officer has access).
7. The ICC expenses will be funded by the AFJA. Signatories to file an individual complaint may be asked to pay all or part of the associated costs in having the product analysed by AGAL.
8. The results of independent finished product sample testing submitted by and paid for by persons or organisations will be limited to the ICC and the paying person or organisation where appropriate.
9. Samples submitted by non-members and utilizing the AFJA data base information shall be tested by AGAL in the knowledge that the results are to be made available to ICC.
10. After obtaining AGAL test results that establish a breach of the Code has occurred, the ICC will comply with the procedures set out in Part II of the Code, notify the juice supplier advising that a sample is available for testing at their expense.

RECORDS TO BE KEPT

Members and signatories will retain all relevant purchasing, manufacturing and quality assurance records for a minimum of 7 years.

APPENDIX "F"

ACKNOWLEDGEMENT FROM TESTING AUTHORITY

**I,(person's name) of(organisation)
acknowledge that I have received the below mentioned containers.**

**I confirm I have inspected the seals thereon and have noted that the goods were sealed and intact
on delivery to me by(person's name) of
.....(organisation).**

Signed:

Date:

APPENDIX "G"

**To: The Secretary
Industry Compliance Committee
Australian Fruit Juice Association**

Dear Sir,

Reference is made to your letter of and the breaches of the Code of Practice outlined therein.

We hereby undertake that we will immediately take the following steps to implement the following compliance program to ensure that such breaches do not re-occur.

- A person at senior management level to have compliance with relevant trade practices laws (including the Trade Practices Act and State and Territory fair trading laws).**
- Appointment of a person with expertise in food and trade practices law to undertake an audit of the manufacturing processes and labelling to identify any areas which put the company at risk and to recommend appropriate changes to ensure that all claims made about a product (e.g. on the packaging and any form of advertising or promotional material) accurately reflects the true nature of the product being sold and otherwise complies with the Food Standards Australia New Zealand Code and relevant trade practices laws. Compliance with relevant laws should be signed off by the compliance expert and the senior manager responsible for compliance.**
- Set in place a mechanism to ensure that any changes to the process and/or labelling and other promotional material made after the audit have been cleared by the compliance expert and that the clearance has been signed off by the compliance expert and the senior manager responsible for compliance.**
- Ensure that contracts/order forms for material purchased from another supplier stipulate that the material meets conditions that will ensure compliance with relevant laws.**
- Require Certification from Suppliers/Processors that materials purchased comply with the Food Standards Australia New Zealand Code and all applicable food laws.**
- Institute regular product analysis at the plant level to ensure that suppliers/Processors are meeting contract stipulations and finished packaged products meet the requirements of the Food Standards Australia New Zealand Code.**

We further undertake that such program will be implemented within three months from the date hereof and that upon request of your committee, we shall provide:

- detailed evidence of our compliance with the program, including extracts or samples of written procedures and forms and names of responsible officers;**
- a declaration under oath from the Chairman of the Board of Directors (or in his absence, the Managing Director or Chief Executive Officer) that the compliance program has been instituted, is ongoing and is being followed by our organisation.**

Yours faithfully,

PROCEDURE FOR REPORTING LABELLING MISDEMEANOURS

