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Western Australia

Fair Trading (Fitness Industry Interim Code) Regulations (No. 2) 2019

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Fair Trading Act 2010

Fair Trading (Fitness Industry Interim Code) Regulations (No. 2) 2019

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Fair Trading (Fitness Industry Interim Code) Regulations (No. 2) 2019*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on 1 January 2020.

3. Code of Practice prescribed

- (1) In this regulation —
client, *supplier* and *fitness service* have the meanings given to them in the Code of Practice set out in Schedule 1.
- (2) The Code of Practice set out in Schedule 1 and entitled the *Fitness Industry Interim Code of Practice 2020* is prescribed under section 46(1) of the Act as an interim code of practice that applies in relation to clients and suppliers of fitness services.
- (3) The *Fitness Industry Interim Code of Practice 2020* has effect for the period of 6 months beginning on 1 January 2020.

4. Expiry

These regulations expire at the end of 30 June 2020.

Fair Trading (Fitness Industry Interim Code) Regulations (No. 2) 2019**Schedule 1** Fitness Industry Interim Code of Practice 2020**Division 1** Introduction**cl. 1**

Schedule 1 — Fitness Industry Interim Code of Practice 2020

[r. 3(2)]

Note for this Schedule:

A person bound by this Code should be familiar with the requirements contained in other applicable legislation including, but not limited to, health legislation, occupational health and safety legislation, misuse of drugs legislation, trade practices and consumer protection legislation, privacy legislation and equal opportunity legislation.

Division 1 — Introduction**1. Objectives**

The objectives of this Code are to —

- (a) ensure appropriate standards of service are maintained in the fitness industry; and
- (b) encourage and maintain consumer confidence in the fitness industry; and
- (c) support and promote the fitness industry.

2. Terms used

In this Code —

client means a person who —

- (a) is, or was, supplied with a fitness service by a supplier; or
- (b) enters into, or has previously entered into, a membership agreement with a supplier; or
- (c) makes enquiries, or has previously made enquiries, with a supplier or an employee of a supplier at a fitness centre about entering into a membership agreement with the supplier;

cooling off period has the meaning given in clause 13;**exercise screening**, for a client, means a completed questionnaire or fitness appraisal or assessment;**fitness centre** means an indoor facility primarily used for providing fitness services;

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Fitness Industry Interim Code of Practice 2020

Schedule 1

Introduction

Division 1**cl. 3**

fitness equipment means apparatus used in the supply of fitness services including (for example) free weights, machine weights, treadmills, exercise bikes and rowing machines;

fitness service has the meaning given in clause 3;

martial arts include judo, karate, ju jitsu and similar disciplines;

membership agreement means an agreement between a supplier and a client for the supply of fitness services by the supplier to the client at a fitness centre;

ongoing agreement means a membership agreement that does not end unless the client or the supplier terminates the membership agreement;

person means a natural person, public body, company, or an association or body of persons whether corporate or unincorporated;

supplier means a person who is carrying on, or has carried on, the business of supplying fitness services, including a fitness trainer, but not an employee of such a person.

3. Fitness service

- (1) A fitness service includes —
- (a) exercise screening; or
 - (b) an individual exercise programme; or
 - (c) a group exercise programme; or
 - (d) the provision of fitness equipment at a fitness centre for use by clients.
- (2) A fitness service does not include —
- (a) a fitness service supplied by —
 - (i) a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession; or
 - (ii) a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the physiotherapy profession; or
 - (iii) a sporting club or organisation, for the playing of, or training for, a sport; or

Fair Trading (Fitness Industry Interim Code) Regulations (No. 2) 2019**Schedule 1** Fitness Industry Interim Code of Practice 2020**Division 2** General rules of conduct**cl. 4**

(iv) an educational institution for exclusive use by staff or students; or

(v) a person for the performance of, or training for, martial arts, dancing or ballet;

or

(b) where no other fitness service is supplied — the use of a spa bath, sauna bath, swimming pool or similar facility; or

(c) a fitness service at a fitness centre provided for the sole purpose of medical rehabilitation; or

(d) the hire of a court or other facility for the playing of sport.

4. Compliance with the Code

- (1) This Code contains provisions relating to the fitness industry with which a supplier must comply.
- (2) Without limiting subclause (1), the supplier must comply with this Code even though a client asks the supplier to do something contrary to this Code.

Note for this clause:

Contravention of this Code is a ground for —

- (a) seeking an order that the person cease contravening the Code under the *Fair Trading Act 2010* section 47;
- (b) seeking an order that the person rectify any consequence of that contravention under the *Fair Trading Act 2010* section 47;
- (c) obtaining an injunction under the *Fair Trading Act 2010* section 100;
- (d) seeking an order for compensation or another remedial order referred to in the *Fair Trading Act 2010* section 105.

Division 2 — General rules of conduct**5. Claiming membership or endorsement**

- (1) A supplier must not falsely claim to be a member of, or be endorsed by, an organisation or association.
- (2) A supplier must take reasonable steps to ensure an employee of the supplier does not falsely represent the employee or the supplier as being a member of, or endorsed by, an organisation or association.

Fair Trading (Fitness Industry Interim Code) Regulations (No. 2) 2019

Fitness Industry Interim Code of Practice 2020

Schedule 1

General rules of conduct

Division 2**cl. 6****6. Misrepresenting qualifications and employment of staff**

- (1) A supplier must not misrepresent qualifications held by the supplier or employees of the supplier.
- (2) A supplier must take reasonable steps to ensure an employee does not falsely represent the qualifications held by the employee or the supplier.

7. High pressure selling techniques, harassment or unconscionable conduct

- (1) A supplier must not engage in high pressure selling techniques, harassment or unconscionable conduct for the purpose of entering into a membership agreement with a client.
- (2) A supplier at a fitness centre must take reasonable steps to ensure an employee of the supplier does not engage in high pressure selling techniques, harassment or unconscionable conduct for the purpose of entering into a membership agreement with a client.

8. Soliciting through false or misleading advertisements or representations

- (1) A supplier must not solicit clients through false or misleading advertisements or other representations or statements that the supplier knows are false or misleading.
- (2) A supplier at a fitness centre must take reasonable steps to ensure an employee of the supplier does not solicit clients through false or misleading advertisements or other representations or statements that the supplier knows are false or misleading.

9. Confidentiality

- (1) A supplier must not use, or disclose to another person, confidential information about a client obtained under the client's membership agreement.
- (2) Subclause (1) does not apply to information that is —
 - (a) used or disclosed for a purpose authorised in writing by the client; or
 - (b) otherwise lawfully used or disclosed.

Fair Trading (Fitness Industry Interim Code) Regulations (No. 2) 2019**Schedule 1** Fitness Industry Interim Code of Practice 2020**Division 3** Disclosure**cl. 10**

10. Free or discounted services

A supplier must not describe part of a membership as free or discounted if any programme offered in relation to the membership is increased in price, decreased in quality or restricted in any manner as a result of the discounted price.

Division 3 — Disclosure**11. Disclosure of information about fitness services**

A supplier —

- (a) must ensure sufficient information is made available to a client about a fitness service to enable the client to make an informed decision about using the fitness service; and
- (b) must ensure promotional material about a fitness service —
 - (i) is truthful, accurate and unambiguous; and
 - (ii) does not encourage unrealistic expectations of outcomes attainable from the fitness service;and
- (c) must not knowingly make false or misleading comparisons with a fitness service supplied by another supplier; and
- (d) must not make any false or misleading statements or representations relating to the cost of a fitness service; and
- (e) must have available a copy of this Code for perusal by any client or potential client.

12. Disclosure of information

Before a supplier enters into a membership agreement with a client, the supplier must —

- (a) give the client the opportunity to peruse a copy of the membership agreement and the rules (if any) of the fitness centre; and
- (b) in the case of a fitness centre that has commenced operating — allow the client the opportunity to inspect the fitness centre.

Fair Trading (Fitness Industry Interim Code) Regulations (No. 2) 2019

Fitness Industry Interim Code of Practice 2020

Schedule 1

Membership agreements

Division 4**cl. 13****Division 4 — Membership agreements****13. Cooling off period**

- (1) The cooling off period, for a client entering into a membership agreement with a supplier, starts —
- (a) where the client enters into the agreement before the fitness centre opens —
 - (i) if the fitness centre opens on the proposed opening day — on that day; or
 - (ii) if the fitness centre opens on a new opening day and the fitness centre has not opened at the time the supplier notifies the client of the new opening day — on the new opening day; or
 - (iii) if the fitness centre opens on a new opening day and the fitness centre has already opened at the time the supplier notifies the client of the new opening day — on the day the client receives notice that the fitness centre has opened;
 - or
 - (b) where the client enters into the agreement after the fitness centre opens — on the day the client enters into the agreement with the supplier.
- (2) The cooling off period ends 48 hours after the cooling off period starts.

14. Membership agreement to be signed

A supplier must ensure a membership agreement is —

- (a) in writing; and
- (b) dated and signed by the client.

15. What a membership agreement must state

A supplier entering into a membership agreement with a client must ensure the agreement contains the following details —

- (a) the supplier's name and address;

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- (b) in the case of a supplier that is a company — the supplier's Australian Company Number (ACN);
- (c) the supplier's and client's rights and obligations under the agreement;
- (d) the fitness service or services to be provided under the agreement;
- (e) a statement in bold 14 point type that the agreement is subject to a 48 hour cooling off period;
- (f) the procedure set out in clause 19 for terminating the agreement during the cooling off period;
- (g) the date and time at which the cooling off period starts and ends;
- (h) the circumstances (other than under clause 19) under which the client or supplier may terminate the agreement and the procedure for terminating the agreement;
- (i) the administrative charge (if any) the client must pay to the supplier if the client terminates the agreement —
 - (i) during the cooling off period; or
 - (ii) for any other reason allowed by the agreement;
- (j) all fees and charges payable under the agreement and, where separate fees are payable for a particular service, the amount of the fee or charge and the service to which the fee or charge relates;
- (k) the method of payment;
- (l) where the agreement is entered into before the supplier's fitness centre opens — the proposed opening day;
- (m) in the case of an ongoing agreement, the following statement in bold type located in a box within the agreement —

This is an ongoing membership agreement. The agreement will continue until it is terminated by either you or the supplier in the way described in the agreement.

If an automatic debit arrangement is in place, membership fees will continue to be debited from

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Schedule 1

Membership agreements

Division 4**cl. 16**

your credit card or account until the arrangement is cancelled by you or your fitness centre notifying your bank or credit provider. If you terminate the agreement or stop the automatic debit arrangement in a manner not described in the agreement, then you may be liable to the fitness centre for damages for breach of contract.

16. Copy of signed membership agreement

The supplier must provide the client with a copy of the signed membership agreement immediately after it has been signed.

17. 12 month maximum on prepaid membership fees

- (1) This clause applies to a supplier who enters into a membership agreement with a client that has a term of more than 12 months or is an ongoing agreement.
- (2) The supplier must not accept prepayment from the client of fees for a period greater than 12 months.

18. Prepayment of fees where a fitness centre is leased

Where a lease on premises being used for a fitness centre has less than 12 months before it is due to expire without an option to renew the lease for a further period, a supplier must not sell or renew a membership agreement for a period that exceeds the unexpired period of the lease.

19. Termination of membership agreements during cooling off period

- (1) A client may terminate a membership agreement without cause or reason during the cooling off period.
- (2) The client terminates the agreement with the supplier by giving the supplier written notice of the termination.

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- (3) The supplier must refund to the client the fees and other amounts paid by the client to the supplier under the agreement, less —
 - (a) if the supplier has supplied a fitness service to the client and the client has not paid for the service — the cost of providing the service; and
 - (b) a reasonable administration charge (if any).
- (4) The supplier must pay the refund to the client within 14 days of the client terminating the agreement.

20. Request to terminate a membership agreement

- (1) Where a supplier receives a request from a client to terminate a membership agreement (other than in relation to a termination to which clause 19 applies), the supplier must respond to the request within 7 days.
- (2) The supplier must, as soon as practicable, make a record of the client's termination request or cause the termination request to be recorded.

Division 5 — Complaint handling procedures**21. Complaints by clients**

- (1) A supplier must make every reasonable effort to resolve quickly and fairly a complaint made by a client about the supply of a service offered or provided under a membership agreement with the supplier.
- (2) Information on how to lodge a complaint must be readily available to a client.
- (3) A supplier must ensure that, in handling complaints —
 - (a) a record of the complaint is placed on file; and
 - (b) the receipt of the complaint is acknowledged within 7 days.

R. NEILSON, Clerk of the Executive Council.

Fair Trading (Fitness Industry Interim Code) Regulations (No. 2) 2019**Defined terms****Defined terms**

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
client	3(1), Sch. 1 cl. 2
cooling off period.....	Sch. 1 cl. 2
exercise screening	Sch. 1 cl. 2
fitness centre	Sch. 1 cl. 2
fitness equipment	Sch. 1 cl. 2
fitness service.....	3(1), Sch. 1 cl. 2
martial arts	Sch. 1 cl. 2
membership agreement	Sch. 1 cl. 2
ongoing agreement.....	Sch. 1 cl. 2
person.....	Sch. 1 cl. 2
supplier	3(1), Sch. 1 cl. 2