

Western Australia

## Fair Trading (Fitness Industry Code of Practice) Regulations 2020

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Fair Trading Act 2010

## **Fair Trading (Fitness Industry Code of Practice) Regulations 2020**

**SL 2020/179**

Made by the Governor in Executive Council.

**1. Citation**

These regulations are the *Fair Trading (Fitness Industry Code of Practice) Regulations 2020*.

**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 July 2021.

**3. Code of practice prescribed**

- (1) In this regulation —  
*client*, *supplier* and *fitness service* have the meanings given 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 Code of Practice 2021* is prescribed under section 45(1) of the Act as a code of practice that applies in relation to clients and suppliers of fitness services.

**4. Expiry**

These regulations expire at the end of 30 June 2024.

**Fair Trading (Fitness Industry Code of Practice) Regulations 2020****Schedule 1** Fitness Industry Code of Practice 2021**Division 1** Preliminary**cl. 1**

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**Schedule 1 — Fitness Industry Code of Practice 2021**

[r. 3(2)]

**Division 1 — Preliminary****1. Objects of code**

The objects 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 —

*agreement summary* has the meaning given in clause 12(1);

*client* means —

- (a) a person who —
  - (i) enters, or has entered, into a membership agreement with a supplier; or
  - (ii) is supplied, or has been supplied, with fitness services by a supplier; or
  - (iii) makes inquiries, or has made inquiries, with a supplier or an employee of a supplier about entering into a membership agreement with the supplier or being supplied with fitness services by the supplier;

or

- (b) if a parent or guardian enters, or has entered, into a membership agreement with a supplier on behalf of a person — the person;

*cooling-off period* has the meaning given in clause 3;

*electronic* includes electrical, digital, magnetic, optical, electromagnetic, biometric and photonic;

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Fitness Industry Code of Practice 2021

**Schedule 1**

Preliminary

**Division 1****cl. 2**

**fitness centre** means an indoor facility primarily used for providing fitness services;

**fitness service** has the meaning given in clause 4;

**fixed-term agreement** means a membership agreement that —

- (a) has a fixed term; and
- (b) does not continue after the end of the fixed term;

**martial arts** includes 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, other than an agreement under which a client pays a supplier for the supply of a fitness service each time the client uses a fitness service;

**ongoing agreement** means a membership agreement that —

- (a) has an initial term; and
- (b) continues after the end of the initial term; and
- (c) ends only if and when the client terminates the membership agreement;

**personal information** has the meaning given in the *Privacy Act 1988* (Commonwealth) section 6(1);

**supplier** means a person who is carrying on, or has carried on, the business of supplying a fitness service, but not an employee of such a person;

**termination fee**, in relation to a membership agreement, means a fee for a client terminating the agreement that reasonably reflects the financial loss incurred by the supplier as a result of the termination;

**third party agreement**, where a supplier uses a third party payment system, means an agreement between a client and a third party in relation to that system;

**unpaid fee**, in relation to a membership agreement, means a fee for a fitness service if —

- (a) the supplier has supplied the fitness service to the client under the membership agreement; and
- (b) the client has not paid for the fitness service; and
- (c) the client terminates the membership agreement.

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**3. Cooling-off period**

The *cooling-off period* for a client entering into a membership agreement —

- (a) starts on the day on which the client enters into the agreement; and
- (b) ends —
  - (i) if the agreement relates to the supply of fitness services in a fitness centre and the client enters into the agreement before the fitness centre opens — 7 days after the day on which the fitness centre opens; or
  - (ii) otherwise — 7 days after the day on which the client enters into the agreement.

**4. Fitness service**

(1) A *fitness service* includes any of the following —

- (a) a fitness appraisal, assessment or questionnaire;
- (b) an individual exercise programme;
- (c) a group exercise programme;
- (d) the supply of fitness equipment at a fitness centre for use by clients.

(2) A fitness service does not include any of the following —

- (a) a service supplied by —
  - (i) a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession, if the service is supplied in the course of that profession; or
  - (ii) a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the physiotherapy profession, if the service is supplied in the course of that profession; or
  - (iii) a sporting club or organisation for the playing of, or training for, a sport; or

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**Schedule 1**

General rules of conduct

**Division 2****cl. 5**

- (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;
- (b) if no other service is supplied — the use of a spa bath, sauna bath, swimming pool or similar facility;
- (c) a service provided for the sole purpose of medical rehabilitation.

**Division 2 — General rules of conduct****5. High-pressure selling techniques or harassment**

A supplier —

- (a) must not engage in high-pressure selling techniques or harassment in relation to the supply of fitness services; and
- (b) must take reasonable steps to ensure an employee of the supplier does not engage in high-pressure selling techniques or harassment in relation to the supply of fitness services.

**6. Deceptive, misleading, false or unfair information**

- (1) Without limiting the *Australian Consumer Law (WA)*, a supplier must not use deceptive, misleading, false or unfair advertising or marketing practices and, in particular, must not make —
  - (a) false or misleading representations concerning the cost of fitness services; or
  - (b) false representations that fitness services have benefits they do not have; or
  - (c) false or misleading representations concerning the need for fitness services; or
  - (d) false or misleading comparisons with fitness services supplied by another supplier.

**Fair Trading (Fitness Industry Code of Practice) Regulations 2020****Schedule 1** Fitness Industry Code of Practice 2021**Division 3** Obligations on suppliers**cl. 7**

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- (2) A supplier must take reasonable steps to ensure an employee of the supplier does not use deceptive, misleading, false or unfair advertising or marketing practices.
- (3) A supplier must ensure that sufficient information is available to enable a client to make an informed decision in relation to the supply of fitness services by the supplier.

**7. Confidentiality**

- (1) A supplier must not use, or disclose to another person, personal information about a client obtained through the supplier's business of supplying a fitness service to the client.
- (2) A supplier must take reasonable steps to ensure an employee of the supplier does not use, or disclose to another person, personal information about a client obtained through the supplier's business of supplying a fitness service to the client.
- (3) This clause does not apply to the use or disclosure of information —
  - (a) authorised in writing by the client; or
  - (b) authorised or required under a written law.

**Division 3 — Obligations on suppliers****8. Public written summary**

A supplier must make available to the public a written summary that includes —

- (a) a concise description of the fitness services supplied by the supplier; and
- (b) any initial or fixed term for supply of the services; and
- (c) all fees and charges payable for the supply of the services; and
- (d) any exclusions, limitations or restrictions in relation to the supply of the services.

**Fair Trading (Fitness Industry Code of Practice) Regulations 2020**

Fitness Industry Code of Practice 2021

**Schedule 1**

Membership agreements

**Division 4****cl. 9****9. Fitness centres**

- (1) Before a supplier enters into a membership agreement for the supply of fitness services to a client in a fitness centre, the supplier must —
  - (a) provide the client with a copy of any rules of the fitness centre; and
  - (b) if the centre is operating — allow the client the opportunity to inspect the centre; and
  - (c) if the centre is not operating — notify the client of the proposed opening day of the centre.
- (2) If the proposed opening day of the fitness centre notified under subclause (1)(c) changes, the supplier must notify the client of the change.

**10. Qualifications and professional registrations**

- (1) A client may request from a supplier information about the qualifications and professional registrations held by the supplier or an employee of the supplier.
- (2) The supplier must comply with the request in writing.

**Division 4 — Membership agreements****Subdivision 1 — Requirements for membership agreements****11. Formal requirements**

A supplier must ensure that a membership agreement is —

- (a) in writing; and
- (b) signed and dated by —
  - (i) if the client is a person who is under 18 years of age — a parent or guardian of the client; or
  - (ii) otherwise — the client.

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**12. Agreement summary**

- (1) A supplier entering into a membership agreement must ensure the agreement contains a summary (the *agreement summary*) at the beginning of the agreement.
- (2) The agreement summary must include the following —
  - (a) a concise description of the fitness services to be supplied under the agreement;
  - (b) the term of the agreement;
  - (c) whether the agreement is a fixed-term agreement and, if so, the end of the fixed term for the agreement;
  - (d) whether the agreement is an ongoing agreement and, if so, the end of the initial term for the agreement;
  - (e) a statement clearly indicating that —
    - (i) the agreement is subject to a cooling-off period; and
    - (ii) a client under the agreement may end the agreement at any time within 7 days after the day on which the agreement is signed (or 7 days after the day on which the fitness centre opens if it has not yet opened);
  - (f) the details of all fees and charges payable by the client under the agreement, including the following —
    - (i) the total amount of fees and charges payable;
    - (ii) when each fee or charge is payable;
    - (iii) the service or good to which each fee or charge relates;
  - (g) any exclusions, limitations or restrictions in relation to the fitness services to be supplied under the agreement.

**13. Content requirements**

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

- (a) the supplier's name, business address and email address;
- (b) if the supplier is a company — the supplier's ACN as defined in the *Corporations Act 2001* (Commonwealth) section 9;

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**Schedule 1**

Membership agreements

**Division 4****cl. 13**

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- (c) the rights and obligations of the supplier and client under the agreement;
  - (d) the method by which payments are to be made under the agreement;
  - (e) for an ongoing agreement —
    - (i) a condition stating that the agreement is an ongoing agreement and that the agreement will continue until it is terminated; and
    - (ii) the date by which the supplier must give notice of the end of the initial term under clause 17(2);
  - (f) if payment is to be made under a third party agreement —
    - (i) the name of the third party to that agreement; and
    - (ii) any amounts payable by the client under that agreement; and
    - (iii) details of where the third party agreement can be accessed electronically;
  - (g) the client's right to terminate the agreement for any reason and at any time, including —
    - (i) during the cooling-off period; or
    - (ii) because the client has a medical certificate stating that the client cannot use the fitness services supplied under the agreement because of the client's permanent illness or physical incapacity;
  - (h) how to terminate the agreement, including how the agreement may be terminated electronically;
  - (i) a statement clearly indicating that the client may be liable for damages for breach of contract if the client terminates the agreement in a manner not described in the agreement;
  - (j) the circumstances under which the supplier may terminate the agreement.

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**Subdivision 2 — Obligations on suppliers****14. Client's right to information**

- (1) Before a supplier enters into a membership agreement with a person, the supplier must provide to the person a copy of —
  - (a) the proposed membership agreement; and
  - (b) any proposed third party agreement.
- (2) After a supplier enters into a membership agreement with a client, the supplier must provide the client with a signed copy of —
  - (a) the membership agreement; and
  - (b) any third party agreement.

**15. Cap on prepayment of fees**

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

**16. Cap on term of agreement**

- (1) Subclause (2) applies to a supplier who requires a lease or permit to use a facility or location to supply a fitness service.
- (2) The supplier must not enter into a membership agreement for the supply of the fitness service for a term that exceeds the unexpired period of the lease or permit.

**17. Notice of end of initial term**

- (1) This clause applies if a supplier enters into an ongoing agreement with a client under which the initial term of the agreement is more than 6 months.

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**Schedule 1**

Membership agreements

**Division 4****cl. 18**

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- (2) The supplier must, at least 2 months before the end of the initial term, give the client written notice stating —
- (a) when the initial term ends; and
  - (b) that the agreement continues after the end of the initial term and ends only if and when the client terminates the agreement; and
  - (c) the procedure for terminating the agreement.

**Subdivision 3 — Terminating membership agreements****18. Client's right to terminate**

- (1) A client may terminate a membership agreement with a supplier at any time by giving the supplier written notice of the client's intention to terminate.
- (2) If a client gives a supplier a notice under subclause (1), the agreement is terminated with effect from —
- (a) if the supplier receives the notice during the cooling-off period — the day on which the notice is received; or
  - (b) otherwise — the day specified in the membership agreement, being no later than 30 days after the day on which the supplier receives the notice.

**19. Supplier's obligations on termination**

- (1) A supplier must respond to a notice given under clause 18(1) within 7 days of receipt, confirming —
- (a) the amount of the last payment due under the agreement; and
  - (b) the date that the termination takes effect.
- (2) The supplier must, on receipt of the last payment due under the agreement, cease deductions under the membership agreement.
- (3) The supplier must —
- (a) treat a notice given under clause 18(1) as a notice of termination of any third party agreement; and

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- (b) on receipt of the last payment due under the agreement, immediately instruct the third party to cease deductions under the third party agreement.

**Subdivision 4 — Fees, charges and refunds****20. Fees and charges**

A supplier must not charge a client a fee or charge under a membership agreement unless the fee or charge —

- (a) may be charged by the supplier under this Subdivision; and
- (b) has been disclosed to the client in the agreement summary.

**21. Refunds**

- (1) If a client terminates a membership agreement with a supplier, the supplier must refund to the client a proportion of the fees and charges paid by the client to the supplier representing the unused part of the agreement.
- (2) The supplier must pay the refund to the client within 7 days after the day on which the termination takes effect.

**22. Cooling-off period**

If a client terminates a membership agreement during the cooling-off period, the supplier may charge the client —

- (a) a fee that reasonably reflects the administration costs incurred by the supplier in administering the agreement; and
- (b) an unpaid fee in relation to the agreement.

**23. Permanent illness or physical incapacity**

If a client terminates a membership agreement because the client has a medical certificate stating that the client cannot use the fitness services supplied under the agreement because of the client's permanent illness or physical incapacity, the supplier may charge the client an unpaid fee in relation to the agreement.

**Fair Trading (Fitness Industry Code of Practice) Regulations 2020**

Fitness Industry Code of Practice 2021

**Schedule 1**

Complaints and administration

**Division 5****cl. 24****24. Other circumstances**

- (1) Subclause (2) applies if a client terminates a membership agreement other than —
  - (a) during the cooling-off period; or
  - (b) because the client has a medical certificate stating that the client cannot use the fitness services supplied under the agreement because of the client's permanent illness or physical incapacity.
- (2) The supplier may charge the client —
  - (a) a termination fee in relation to the agreement (unless the agreement is an ongoing agreement and the client terminates after the end of the initial term); and
  - (b) an unpaid fee in relation to the agreement.

**Division 5 — Complaints and administration****25. Complaints**

- (1) A supplier must provide information to a client on how to lodge a complaint with the supplier.
- (2) If a complaint is lodged by a client about the supply of a fitness service provided by a supplier, the supplier must make every reasonable effort to resolve the complaint quickly and fairly.
- (3) A supplier must, as soon as practicable after receiving a complaint —
  - (a) record the complaint on file; and
  - (b) notify the complainant that the complaint has been received.

**26. Provision of documents and information**

A document or information required to be provided or available under this code must be provided free of charge —

- (a) in electronic form; and
- (b) in paper form on request.

***Fair Trading (Fitness Industry Code of Practice) Regulations 2020*****Schedule 1** Fitness Industry Code of Practice 2021**Division 5** Complaints and administration**cl. 27**

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**27. Availability of code**

A supplier must make a copy of this code available to a client.

V. MOLAN, Clerk of the Executive Council.

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**Fair Trading (Fitness Industry Code of Practice) Regulations 2020**

## 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.]*

<b>Defined term</b>	<b>Provision(s)</b>
agreement summary .....	Sch. 1 cl. 2 and 12(1)
client .....	3(1), Sch. 1 cl. 2
cooling-off period .....	Sch. 1 cl. 2 and 3
electronic.....	Sch. 1 cl. 2
fitness centre .....	Sch. 1 cl. 2
fitness service.....	3(1), Sch. 1 cl. 2 and 4(1)
fixed-term agreement .....	Sch. 1 cl. 2
martial arts .....	Sch. 1 cl. 2
membership agreement .....	Sch. 1 cl. 2
ongoing agreement.....	Sch. 1 cl. 2
personal information .....	Sch. 1 cl. 2
supplier .....	3(1), Sch. 1 cl. 2
termination fee .....	Sch. 1 cl. 2
third party agreement .....	Sch. 1 cl. 2
unpaid fee.....	Sch. 1 cl. 2