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FAIR TRADING ACT 1987

**FAIR TRADING
(HEALTH AND FITNESS INDUSTRY)
INTERIM CODE OF PRACTICE 1992**

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Made by His Excellency the Governor in Executive Council.

Citation

1. These regulations may be cited as the *Fair Trading (Health and Fitness Industry) Interim Code of Practice 1992*.

Application

2. (1) Subject to subregulation (2) and regulation 4, this Code applies to suppliers who, in the course of a business, supply consumers with physical fitness programmes that include any one of, or any combination of, the following services—

- (a) pre-exercise evaluations;
- (b) individualized exercise programmes;
- (c) supervised fitness programmes;
- (d) provision of fitness equipment for use by a consumer;
- (e) aerobic fitness programmes.

(2) Nothing in this Code shall extend or apply to, or in any manner affect the rights or privileges of—

- (a) a medical practitioner registered under the *Medical Act 1894*; or
- (b) a physiotherapist registered under the *Physiotherapists Act 1950*,
in the practice of his or her profession.

Interpretation

3. In this Code, unless the contrary intention appears—

“appointed member” means a member of the Committee referred to in regulation 5 (2) (c);

“Committee” means the Health and Fitness Industry Committee of Management established under this Code;

“employee” means an employee who is directly involved in the provision of any of the services referred to in regulation 2;

“health and fitness industry” means the business of providing all or any of the services referred to in regulation 2;

“membership agreement” means an agreement between a supplier and a consumer for the supply of all or any of the services referred to in regulation 2;

“supplier” means a supplier to whom this Code applies;

“the Act” means the *Fair Trading Act 1987*.

Exemptions from Code

4. (1) The Committee may recommend to the Commissioner that a class of persons to whom this Code applies should be exempted from the application of the whole or part of this Code.

(2) The Commissioner may accept or reject a recommendation referred to in subregulation (1).

(3) If the Commissioner—

- (a) accepts a recommendation referred to in subregulation (1); or
- (b) notwithstanding that there has been no recommendation from the Committee, is of the opinion that a class of persons should be exempt from the application of the whole or part of this Code,

the Commissioner shall, by notice in the *Gazette*, exempt that class of persons from the application of the whole or part of this Code.

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**Health and Fitness Industry
Committee of Management**

5. (1) There shall be a Health and Fitness Industry Committee of Management.
- (2) The Committee shall consist of—
- (a) an officer of the Ministry of Consumer Affairs nominated in writing by the Commissioner;
 - (b) 2 officers of the Department of Sport and Recreation nominated in writing by the chief executive officer of that department; and
 - (c) 2 persons nominated by the body known as the Western Australian Fitness Industry Association and appointed by the Minister.
- (3) Where the body referred to in subregulation (2) (c) fails to make a nomination within 60 days after being requested in writing by the Commissioner to do so the Minister may appoint any person considered suitable and any person so appointed shall be deemed to have been nominated under subregulation (2) (c).
- (4) A nomination for the purposes of subregulation (2) (a) or (b) may be made from time to time, may be made by reference to the holder of a specified office and may be expressed to operate for a period or in such circumstances as are specified in the instrument of nomination.

Term of appointed members

6. An appointed member shall hold office for such term not exceeding 3 years as is specified in the instrument of his appointment and is eligible for reappointment.

Vacation of office

7. The office of an appointed member becomes vacant if—
- (a) the member's term of office expires;
 - (b) the member becomes permanently incapable of performing the duties of member;
 - (c) the member resigns his office by written notice addressed to the Minister;
 - (d) the member is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
 - (e) the member is removed from office by the Minister on the grounds of neglect of duty, misbehaviour or incompetence;
 - (f) the member is absent without leave of the Committee from 3 consecutive meetings of the Committee;
 - (g) the member's nomination is revoked; or
 - (h) the member dies.

Leave of absence

8. The Committee may grant leave of absence to an appointed member on such terms and conditions as the Committee determines.

Casual vacancies

9. Where an office of an appointed member becomes vacant otherwise than by effluxion of time a person appointed to the vacancy shall hold office only for the balance of the term of the person whose vacancy that person fills.

Meetings of the Committee

10. (1) The Committee shall hold such meetings as are necessary for the purposes of discharging its functions under this Code.
- (2) The member referred to in regulation 5 (2) (a) shall preside at any meeting of the Committee at which he is present.

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- (3) If the member referred to in regulation 5 (2) (a) is not present at a meeting of the Committee the members present shall elect one of their number to preside at that meeting.
- (4) At a meeting of the Committee 4 members constitute a quorum.
- (5) All questions arising at a meeting of the Commission shall be decided by a majority of the votes of the members present.
- (6) Subject to this Code the Committee may determine its own procedures.

Members of Committee not personally liable

11. A person who is or has been a member of the Committee shall not be personally liable for anything done or omitted to be done in good faith in or in connection with the exercise or purported exercise of any power conferred by this Code.

Functions and duties

12. (1) It is the duty of the Committee to work for the attainment of compliance with this Code.
- (2) The functions of the Committee are—
- (a) to inquire into and report to the Commissioner upon any matters referred to it by the Commissioner;
 - (b) to examine, review and make recommendations to the Commissioner with respect to the implementation of this Code;
 - (c) to provide advice to and co-operate with interested persons in relation to the health and fitness industry; and
 - (d) to monitor compliance with this Code and to recommend to the Commissioner that action be taken by the Commissioner under section 44 of the Act.

Register

13. The Committee shall keep a register of the names and addresses of all suppliers.

General meeting

14. At least once in each year the Committee shall convene a general meeting of all suppliers.

Trading obligations

15. (1) A supplier—
- (a) shall not trade in membership agreements that exceed 2 years in duration;
 - (b) shall offer the consumer the choice of—
 - (i) a membership agreement of less than 3 months in duration or the use of services on a payment per visit basis; or
 - (ii) a membership agreement for longer than 3 months in duration;
 - (c) shall ensure that the management and employees of that supplier act in an ethical and professional manner;
 - (d) shall ensure that any membership agreement offered by that supplier sets out clearly and unambiguously the rights of both that supplier and the consumer; and
 - (e) prior to the sale of a membership agreement, shall advise the consumer that an inspection of the premises to which the agreement relates may be made without any obligation to purchase a membership agreement.
- (2) A supplier is not obliged to offer both of the options referred to in subregulation (1) (b) (i).

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Advertising and sales promotion

16. (1) A supplier shall adopt methods of selling that are professional and ethical and comply with this Code and the provisions of the Media Council of Australia's Advertising Code of Ethics.

(2) A supplier shall ensure that all advertising and sales promotion by that supplier—

- (a) are clear, truthful and accurate in content and intention; and
- (b) are not likely to mislead, whether by omission or otherwise, the consumer as to any matter, in particular about the services and range of facilities offered, and the terms and conditions of the membership agreement.

(3) Advertisements by a supplier shall disclose the true price of the service offered, including—

- (a) the joining fee;
- (b) casual and monthly rates of payment;
- (c) long term (maximum 2 years) membership fees; and
- (d) any other individual or collective charges payable under the membership agreement.

(4) When a reduction from the usual price of a service offered by a supplier is offered, the dollar value of the reduction, together with the usual price, shall be stated.

(5) No part of a membership shall be described as "free" or "discounted" if the programme to be purchased increases in price, decreases in quality or is restricted in any manner as a result of that offer.

(6) A supplier shall not sell to any consumer with whom that supplier has entered into a membership agreement any further or additional membership term until the original agreement has less than 3 months to run to expiry.

(7) A supplier shall not advertise in any manner so as to give the impression that—

- (a) any additional membership term may be obtained for no additional charge; or
- (b) additional numbers of memberships for the same term as that advertised may be obtained for no additional charge.

(8) The supplier shall keep informed of all relevant legislation and codes of practice that may apply to advertising and business practice in the health and fitness industry.

Information to be contained in membership agreements

17. (1) A membership agreement shall express clearly and legibly the rights and responsibilities of both supplier and consumer.

(2) A membership agreement shall specify the membership fees, itemizing as applicable—

- (a) the joining fee;
- (b) the total membership fee for the duration of the membership period;
- (c) the fee per service or visit;
- (d) the fee per fitness assessment;
- (e) the fee per prescribed exercise programme;
- (f) the required method of payment (eg. cash, credit or debit card);
- (g) any costs associated with the provision of credit; and
- (h) any costs associated with food preparations or other items or substances which are recommended for purchase as part of the course.

(3) Without limiting the generality of subregulations (1) and (2), the Committee may issue advice from time to time as to the appropriate form to be used for membership agreements.

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(4) Subject to subregulation (5), where a consumer is unable, by reason of sickness or physical incapacity verifiable by a medical certificate provided at the consumer's expense by a medical practitioner nominated by the supplier, to avail himself or herself of the services for which the consumer had entered into a membership agreement to purchase for a period constituting a third or more of the total period of that agreement, that consumer is entitled to—

- (a) receive a *pro rata* refund for the unused portion of the membership agreement, determined in accordance with subregulation (5); or
- (b) defer the balance of the period of the membership agreement to a period agreed with the supplier,

at the choice of the supplier.

(5) Where the sickness or physical incapacity referred to in subregulation (4) is permanent and is verified as such in the medical certificate referred to in that subregulation, the consumer is entitled to receive a *pro rata* refund as referred to in paragraph (a) of subregulation (4).

(6) Where a consumer is to receive a *pro rata* refund under subregulation (4) or (5), the supplier shall refund such amount of the membership fee as bears the same proportion to the membership fee paid as the remaining balance of the membership period bears to the total period of the membership agreement, less such administrative costs as are determined by the supplier.

(7) A supplier shall provide a copy of the membership agreement free of charge to any consumer who enters into a written membership agreement with that supplier.

(8) A consumer and supplier may negotiate variations of a membership agreement but where such a variation would result in a failure to comply with the requirements of this clause the variation must be agreed to in writing by the Committee prior to the making of the agreement as varied.

Qualifications and employment of staff

18. (1) A supplier shall not misrepresent the qualifications held by employees of the supplier.

(2) A supplier shall not claim accreditation from any organization or body unless the accreditation has been obtained.

(3) A supplier shall ensure that the supplier's employees have the qualifications required in writing from time to time by the Committee.

(4) A supplier shall comply with the provisions of any relevant industrial awards that may apply from time to time to employees within the health and fitness industry and shall encourage proper industrial relations and democratic industrial practices in the supplier's place of employment.

Complaint and resolution procedures

19. (1) A supplier shall make every effort to resolve fairly any complaint a consumer may make with respect to the provision of services under a membership agreement with that supplier.

(2) If a complaint is not resolved in accordance with subregulation (1) the supplier shall advise the consumer to refer the complaint, or the supplier may refer the complaint, to the Committee for resolution and determination.

(3) Nothing in subregulation (2) precludes a supplier or consumer for pursuing other available legal remedies, notwithstanding that the supplier or consumer may have referred the complaint to the Committee.

(4) If the supplier has a complaint against another supplier concerning failure to comply with this Code the complainant supplier may refer the complaint to the Committee for investigation.

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(5) The Committee shall furnish a report to the Minister responsible for the administration of the Fair Trading Act 1987 at quarterly intervals detailing any serious complaint against a supplier referred to it by a consumer or a supplier.

Disciplinary procedures

20. (1) The Committee may recommend to the Commissioner that the Commissioner take action under section 44 of the Act in respect of a supplier found by the Committee not to be complying with the provisions of this Code.

(2) A supplier is entitled to be legally represented at an inquiry by the Committee into any alleged breach of this Code by that supplier.

Specified period of operation (section 43 (2))

21. This code of practice shall remain in force for a period of 6 months commencing on the day on which it is published in the *Gazette*.

By His Excellency's Command,

D. G. BLIGHT, Clerk of the Council.

