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FAIR TRADING ACT 2010

**FAIR TRADING (FITNESS
INDUSTRY INTERIM CODE)
REGULATIONS 2018**

Western Australia

Fair Trading (Fitness Industry Interim Code) Regulations 2018

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Fair Trading Act 2010

Fair Trading (Fitness Industry Interim Code) Regulations 2018

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Fair Trading (Fitness Industry Interim Code) Regulations 2018*.

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 2018.

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 (No. 2) 2018* 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 (No. 2) 2018* has effect for the period of 6 months beginning on 1 July 2018.

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4. Expiry

These regulations expire at the end of 31 December 2018.

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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, 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

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Fitness Industry Interim Code of Practice (No. 2) 2018 **Schedule 1**
General rules of conduct **Division 2**
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 2018**Schedule 1** Fitness Industry Interim Code of Practice (No. 2) 2018**Division 2** General rules of conduct**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 —
 - (a) that is used or disclosed for a purpose authorised in writing by the client; or
 - (b) that is otherwise lawfully used or disclosed.

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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.

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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 with the supplier 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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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. 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.

