



WESTERN
AUSTRALIAN
GOVERNMENT
azette
ISSN 1448-949X (print) ISSN 2204-4264 (online)
PRINT POST APPROVED PP665002/00041



PERTH, TUESDAY, 23 JUNE 2020 No. 105

SPECIAL

PUBLISHED BY AUTHORITY KEVIN J. McRAE, GOVERNMENT PRINTER AT 12.30 PM
© STATE OF WESTERN AUSTRALIA

FAIR TRADING ACT 2010

**FAIR TRADING (FITNESS
INDUSTRY INTERIM CODE)
REGULATIONS 2020**

Western Australia

Fair Trading (Fitness Industry Interim Code) Regulations 2020

Contents

1. Citation
2. Commencement
3. Code of Practice prescribed
4. Expiry

Schedule 1 — *Fitness Industry Interim Code of Practice (No. 2) 2020*

Division 1 — Introduction

1. Objectives
2. Terms used
3. Fitness service
4. Compliance with the Code

Division 2 — General rules of conduct

5. Claiming membership or endorsement
6. Misrepresenting qualifications and employment of staff
7. High pressure selling techniques, harassment or unconscionable conduct
8. Soliciting through false or misleading advertisements, representations or statements
9. Confidentiality
10. Free or discounted services

Division 3 — Disclosure

11. Disclosure of information about fitness services
12. Disclosure of information

Fair Trading (Fitness Industry Interim Code) Regulations 2020**Contents**

Division 4 — Membership agreements

13. Cooling off period
14. Membership agreement to be signed
15. What a membership agreement must state
16. Copy of signed membership agreement
17. 12 month maximum on prepaid membership fees
18. Prepayment of fees if a fitness centre is leased
19. Termination of membership agreements during cooling off period
20. Request to terminate a membership agreement

Division 5 — Complaint handling procedures

21. Complaints by clients

Defined terms

Fair Trading Act 2010

Fair Trading (Fitness Industry Interim Code) Regulations 2020

SL 2020/86

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Fair Trading (Fitness Industry Interim Code) 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 2020.

3. Code of Practice prescribed

- (1) In this regulation —
client, *fitness service* and *supplier* 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 titled the *Fitness Industry Interim Code of Practice (No. 2) 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 (No. 2) 2020* has effect for the period of 6 months beginning on 1 July 2020.

Fair Trading (Fitness Industry Interim Code) Regulations 2020

r. 4

4. Expiry

These regulations expire at the end of 31 December 2020.

Fair Trading (Fitness Industry Interim Code) Regulations 2020**Schedule 1** Fitness Industry Interim Code of Practice (No. 2) 2020**Division 1** Introduction**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 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 at a fitness centre;

ongoing agreement means a membership agreement that does not end unless the client or the supplier terminates the membership agreement in accordance with this Code;

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

supplier —

- (a) means a person who is carrying on, or has carried on, the business of supplying fitness services, including a fitness trainer; but
- (b) does not include an employee of a person referred to in paragraph (a).

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

Fair Trading (Fitness Industry Interim Code) Regulations 2020**Schedule 1** Fitness Industry Interim Code of Practice (No. 2) 2020**Division 2** General rules of conduct**cl. 5**

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.

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, representations or statements

- (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.

Fair Trading (Fitness Industry Interim Code) Regulations 2020
Fitness Industry Interim Code of Practice (No. 2) 2020 **Schedule 1**
Disclosure **Division 3**
cl. 9

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.

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 make a copy of this Code readily available for any client or potential client to read.

Fair Trading (Fitness Industry Interim Code) Regulations 2020**Schedule 1** Fitness Industry Interim Code of Practice (No. 2) 2020**Division 4** Membership agreements**cl. 12**

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 read 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.

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) if 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 after the proposed opening day — on the day the fitness centre opens; or
 - (iii) if the fitness centre opens before the proposed opening day — on the day the client receives notice that the fitness centre has opened;
 - or
 - (b) if 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.

Fair Trading (Fitness Industry Interim Code) Regulations 2020
Fitness Industry Interim Code of Practice (No. 2) 2020 **Schedule 1**
Membership agreements **Division 4**
cl. 15

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;
- (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) that 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) if the agreement is entered into before the supplier's fitness centre opens — the proposed opening day;

Fair Trading (Fitness Industry Interim Code) Regulations 2020**Schedule 1** Fitness Industry Interim Code of Practice (No. 2) 2020**Division 4** Membership agreements**cl. 16**

- (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 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 if a fitness centre is leased

If 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.

Fair Trading (Fitness Industry Interim Code) Regulations 2020**Schedule 1** Fitness Industry Interim Code of Practice (No. 2) 2020**Division 5** Complaint handling procedures**cl. 21**

- (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.

M. INGLIS, Clerk of the Executive Council.

Fair Trading (Fitness Industry Interim Code) 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.]

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