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FAIR TRADING ACT 1987

**FAIR TRADING (FITNESS
INDUSTRY CODE OF
PRACTICE)
REGULATIONS 2004**

Fair Trading Act 1987

Fair Trading (Fitness Industry Code of Practice) Regulations 2004

Made by the Governor in Executive Council under section 43 of the Act.

1. Citation

These regulations may be cited as the *Fair Trading (Fitness Industry Code of Practice) Regulations 2004*.

2. Commencement

These regulations come into operation on 1 January 2005.

3. Code of Practice prescribed

- (1) The Code of Practice set out in Schedule 1 and entitled the *Fitness Industry Code of Practice 2004* is prescribed under section 43(1) of the *Fair Trading Act 1987* as a code of practice that applies in relation to clients and suppliers of fitness services.
- (2) In this regulation —
 - “**client**”, “**supplier**” and “**fitness service**” have the meanings given to them in the Code of Practice in Schedule 1.

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Schedule 1 Fitness Industry Code of Practice 2004

Schedule 1 — *Fitness Industry Code of Practice 2004*

[r. 3]

Note: 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;
- (b) encourage and maintain consumer confidence in the fitness industry; and
- (c) support and promote the fitness industry.

2. Interpretation

In this Code —

“**client**” means a person who —

- (a) is, or was, supplied with a fitness service by a supplier;
- (b) enters into, or has previously entered, 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 to that phrase 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 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 to that phrase 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” has the meaning given to that phrase in clause 15(2);

“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. Meaning of “fitness service”

(1) A fitness service includes —

- (a) exercise screening;
- (b) an individual exercise program;
- (c) a group exercise program; or
- (d) 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 doctor registered as a medical practitioner under the *Medical Act 1894*;
 - (ii) a physiotherapist registered under the *Physiotherapists Act 1950*;
 - (iii) a sporting club or organisation, for the playing of, or training for, a sport;
 - (iv) an educational institution for exclusive use by staff or students; or

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- (v) a person for the performance of, or training for, martial arts, dancing or ballet;
- (b) where no other fitness service is supplied — the use of a spa bath, sauna bath, swimming pool or similar facility;
- (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: Contravention of this Code is a ground for —

- seeking an enforceable undertaking under section 44 of the *Fair Trading Act 1987*;
- obtaining an injunction under section 75 of the *Fair Trading Act 1987*;
- seeking an order for compensation or another remedial order under section 77 of the *Fair Trading Act 1987*.

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. Qualifications and employment of staff

- (1) A supplier must not misrepresent qualifications held by the supplier or employees of the supplier.

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- (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 tactics, 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, which 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) used or disclosed for a purpose authorised in writing by the client; or
 - (b) that must be 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 program offered in relation to the membership is increased in price, decreased in quality or is restricted in any manner as a result of the discounted price.

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

A supplier must —

- (a) 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;
- (b) 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;
- (c) not knowingly make misleading or false comparisons with a fitness service supplied by another supplier;
- (d) not make any false or misleading statements or representations relating to the cost of a fitness service; and
- (e) 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 Code of Practice) Regulations 2004**Fitness Industry Code of Practice 2004 Schedule 1****Division 4 — Membership Agreements****13. Meaning of “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;
 - (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 — 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

- (1) 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;
- (d) the fitness service(s) 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 point type located in a box within the agreement —

“

**This is an ongoing membership agreement.
The agreement will continue until either you
or the supplier terminate it 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**

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

”.

- (2) An **“ongoing agreement”** means a membership agreement that does not end unless the client or the supplier terminates the membership agreement.

16. Signed membership agreement

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

17. 12 month limit on term of pre-paid membership agreements

- (1) This clause applies to a supplier who enters into a membership agreement with a client for a term of more than 12 months, or an ongoing agreement as defined in clause 15(2).
- (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 set out in clause 13.

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- (2) The client terminates the agreement with the supplier by giving the supplier written notice of the termination.
- (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 member to terminate a membership agreement (other than a request 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.

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(3)A supplier must ensure that, in handling complaints —

- (a) a record of the complaint is placed on file;
- (b) the receipt of the complaint is acknowledged in 7 days; and
- (c) the supplier endeavours to resolve the complaint as quickly as possible.

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.



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