

CODE OF PRACTICE SOUTH AUSTRALIAN FITNESS INDUSTRY

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Fair Trading (Health and Fitness Industry Code of Practice) Regulations 2007 under the *Fair Trading Act 1987*

Schedule 1—Fair Trading (Health and Fitness Industry) Code of Practice

In this code— *aerobic fitness programme* includes aerobic exercise, aquarobics and cardio-vascular training;

fixed term—see clause 4(4)(b);

fixed term agreement—see clause 4(2)(d)(ii);

individualised exercise programme includes information or advice given to a consumer (whether orally or in writing) with respect to a new or existing exercise programme;

membership agreement means an agreement entered into between a trader and a consumer for the supply of prescribed goods or prescribed services but does not include an agreement under which payments by the consumer for such goods or services are required to be made only at the time of visits by the consumer when the goods or services are supplied by the trader;

periodic agreement—see clause 4(2)(d)(i);

pre-exercise evaluations includes screening, testing, and the collection of information, by the trader for the purpose of providing advice or making recommendations to the consumer with respect to the consumer's fitness training;

prescribed goods means goods referred to in clause 3(1);

prescribed service means a service referred to in clause 3(1);

sporting club means a sporting club or organisation that is not established for the purpose of securing pecuniary profit for its members;

supervised fitness programme includes advice given during an individualised exercise programme (whether to an individual or a group of persons) and includes super circuit workouts;

supply period—see clause 4(3)(b);

visit means a visit by a consumer, for the purpose of obtaining prescribed goods or prescribed services, to premises occupied by the trader at which such goods or services are supplied.

3—Application

(1) Subject to subclause (2), this code applies to a trader who supplies or offers to supply any 1 or more of the following goods or services:

- (a) the use of fitness equipment at premises occupied by the trader;
- (b) a physical fitness programme that is to be undertaken at premises occupied by the trader and includes any 1 or more of the following services:
 - (i) pre-exercise evaluations;
 - (ii) individualised exercise programmes;
 - (iii) supervised fitness programmes;
 - (iv) aerobic fitness programmes;
- (c) the use of fitness facilities at premises occupied by the trader.

(2) This code does not apply to—

- (a) a sporting club; or
- (b) a person engaged in the business of providing only the use of a spa or sauna bath, solarium, swimming pool or other similar facility; or
- (c) a person engaged in the business of providing only instruction in martial arts; or
- (d) a person registered as a medical practitioner under the law of this State, in the practice of his or her profession; or
- (e) a person registered as a physiotherapist under the law of this State, in the practice of his or her profession.

4—Membership agreements

(1) A trader must not be a party to a membership agreement with a consumer unless the agreement complies with this clause.

(2) A membership agreement must—

- (a) be in writing; and
- (b) be signed by the consumer; and
- (c) set out the following:
 - (i) the full name and address of the trader;
 - (ii) particulars of the prescribed goods or prescribed services to be supplied under the agreement;
 - (iii) the address of the premises at which those goods or services are to be supplied; and
- (d) be—
 - (i) an agreement for the ongoing supply of prescribed goods or prescribed services on a periodic basis (a **periodic agreement**) that complies with subclause (3); or
 - (ii) an agreement for the supply of prescribed goods or prescribed services for a specified period (a **fixed term agreement**) that complies with subclause (4).

(3) A periodic agreement—

- (a) must clearly state in a prominent position at the beginning of the document that the agreement is a periodic agreement that will continue until the trader or the -consumer terminates it; and

- or
- (b) must provide for periodic payments for the supply of prescribed goods or prescribed services, specify the period for which the consumer is entitled to receive goods or services for each payment and clearly identify that period as the **supply period** for the purposes of the agreement; and
 - (c) must not specify a supply period that exceeds 3 months; and
 - (d) must specify the amount of each periodic payment and any joining fee and any other amount payable under the agreement; and
 - (e) must set out the method by which the trader will inform the consumer of any increase in future periodic payments and the amount of notice of an increase that will be given (which must be at least 2 weeks); and
 - (f) must—
 - (i) provide that, if the consumer gives written notice of termination of the agreement to the trader, the agreement is terminated with effect for the supply period that next commences 2 weeks or later after the date of the notice and subsequent supply periods; or
 - (ii) allow the consumer to terminate the agreement by written notice to the trader with earlier effect (in which case, the agreement must specify whether or not the consumer is entitled to a refund for the remainder of the current supply period or for a supply period commencing less than 2 weeks after the date of the notice and, if the consumer is entitled to a refund, the amount or the method for calculating the amount of the refund); and
 - (g) must not impose any financial penalty for termination of the agreement by the consumer; and
 - (h) must provide that, on termination of the agreement by the consumer in circumstances in which the consumer has paid in advance for future supply periods (in respect of which the agreement is terminated), the consumer is entitled to a refund of the amount paid in advance; and
 - (i) must clearly warn the consumer to cancel any direct debit authorisation for payments under the agreement on termination of the agreement.
- (4) A fixed term agreement—
- (a) must clearly state in a prominent position at the beginning of the document that the agreement is a fixed term agreement and that, if the consumer requires goods or services for a further term, a new agreement will be required; and
 - (b) must provide for the supply of prescribed goods or prescribed services for a specified period not exceeding 12 months (the **fixed term**); and
 - (c) must not provide for the supply of prescribed goods or prescribed services at a time later than 12 months from its execution; and
 - (d) must specify the total amount payable under the agreement, including any joining fee; and
 - (e) must, if any amount is to be paid by instalment, specify the consequences of failure to make a payment; and
 - (f) must, if the consumer is to be entitled to a refund or release from the obligation to make further payments on early termination of the agreement, specify—
 - (i) the action that must be taken by the consumer to terminate the agreement before the end of the fixed term; and

- (ii) the amount, or the basis for calculating the amount, to which the consumer is to be entitled, or from which the consumer is released from the obligation to pay, on such early termination; and
 - (g) must clearly warn the consumer to cancel any direct debit authorisation for payments under the agreement at the end of the fixed term or on earlier termination of the agreement.
- (5) This clause applies only to agreements entered into on or after 1 September 2007.

Note— Clause 8 provides special arrangements for agreements entered into before 1 January 2008.

5—Trader not to renegotiate if fixed term has more than 3 months to run

- (1) A trader who is party to a fixed term agreement with a fixed term of more than 3 months must not—
- (a) extend or offer to extend the fixed term; or
 - (b) offer to supply prescribed goods or prescribed services for a further period commencing on or after the end of the fixed term, unless the fixed term has less than 3 months to run.
- (2) A trader who is party to a membership agreement entered into before 1 September 2007 must not—
- (a) extend or offer to extend the period during which prescribed goods or prescribed services are to be supplied; or
 - (b) offer to supply prescribed goods or prescribed services for a further period commencing on or after the expiry of the agreement, unless the agreement has less than 3 months to run to expiry.

6—Trader not to accept periodic payment more than 12 months in advance

A trader who is a party to a periodic agreement must not accept payment for a supply period more than 12 months in advance of the commencement of the supply period.

7—Trader to give copy of agreement to consumer

A trader who enters into a membership agreement with a consumer must, as soon as practicable after the consumer signs the agreement, provide the consumer with a copy of the agreement.

OBJECTIVES

1. The objectives of the Fitness Australia Fitness Industry of Practice are to:
 - (a) Provide high value services and facilities and enhance consumer confidence in the industry;
 - (b) Improve the long term viability of the signatory fitness centres;
 - (c) Set a standard of business practice that protects consumers' rights beyond those provided under the Fair Trading Regulations 2007;
 - (d) Set a standard of service that protects the health and well-being of the consumer; and
 - (e) Establish procedures to resolve complaints, and to establish a disciplinary process for defaulting signatories.

APPLICATION OF CODE

2. This Code applies to Fitness Australia Fitness Business Members (as defined in accordance with the constitution of Fitness Australia) who are signatories to the South Australian Fitness Industry Code of Practice.

INTERPRETATION

3. The following are definitions of the terms used in the context of this code:

Casual: a consumer without a membership agreement who pays a supplier for the provision of a specified service each individual time they use a fitness centre.

Code this Code of Practice for Fitness Centres.

Consumer: a person who is supplied with a fitness or exercise service and includes a person who is making inquiries with a fitness centre.

Cooling-off period: a time in which a consumer may terminate their new membership (clause22).

Dispute: an expression of discontent from a consumer where the consumer claims the Code of Practice has not been followed completely.

Supplier/trader: a fitness centre, including its employees, directors or agents, or facility at which fitness or exercise services are provided.

Fitness equipment: apparatus used in the provision of exercise services.

Fitness centre: an establishment or trader that provides a fitness or exercise service.

Personal information: information about an individual.

Standard cost: the cost which is normally charged by a supplier for a service and without discount.

SUPPLIERS OBLIGATIONS

4. A supplier/trader must not use misleading or false advertising or marketing practices. The provisions of the Fair Trading Regulations 2007 apply as well as the provisions of this Code.

5. There must be enough information for a consumer to make an informed decision about a membership agreement, and in particular the supplier must:

- (a) ensure all promotional material is truthful, accurate and unambiguous;
- (b) ensure promotional material does not encourage unrealistic expectations about the outcomes attainable from the fitness and exercise services provided;
- (c) not make misleading or false comparisons with programs provided by competitors;

- (d) allow prospective consumers to inspect the premises without any obligation to enter a membership agreement;
- (e) make a copy of the Code available if requested; and
- (f) ensure that employees and agents act in an ethical and professional manner and do not use unreasonable sales methods to sell membership agreements such as harassment or coercion.

6. Any employee who provides a fitness service must be a qualified fitness leader, and the supplier must display its current Certificate of Accreditation.
7. There must be an appropriately qualified employee available at all time fitness or exercise services are provided.
8. Services offered under membership agreement must ordinarily be available to consumers.
9. A supplier must maintain and provide evidence of adequate public liability insurance and professional indemnity insurance based on accepted industry standards.
10. All employees must be familiar with the terms of this Code.
11. A consumer's personal information must remain confidential unless the consumer has given written authorisation.

MEMBERSHIP AGREEMENTS

12. The membership agreement must conform with the Fair Trading Regulations 2007. See Part 1. of this Code.
13. Specify that on both Fixed Term and Periodic agreements, termination by the consumer must be in writing and will take effect, as far as the supply period allows, within two weeks of notice.
14. Any refund policy on both fixed Term and Periodic agreements should be clearly stated in the membership agreements attached to the contract.
15. The cost of administering a termination on a periodic Agreement must be clearly stated in the membership conditions attached to the contract (and not a charge in excess of the actual cost of administration).
16. A financial penalty to a consumer for terminating a Fixed term Agreement must be clearly stated in the membership conditions attached to the contract.
17. On receipt of notice of termination the supplier/ trader will provide the consumer with written advice to cancel any direct debit authorisation for payments under the agreement contract.
18. If a supplier has provided services to a consumer before termination, the supplier may keep or request the standard cost of the service provided including a reasonable administration fee.

PRE - EXERCISE QUESTIONNAIRE

19. Before a consumer can use the services, they must complete a pre-exercise questionnaire in regards to the health risks they have in participating in a fitness or exercise service.

20. If answers to the questionnaire indicate a consumer could be at high risk from participating in a particular fitness service, the consumer must provide written confirmation from an appropriate health professional confirming there is minimal risk before the service will be provided.

21. A qualified employee will assess the questionnaire and advise an appropriate fitness program.

COOLING OFF PERIOD

22. When a new member enters into an agreement, there is a 3 day cooling off period during which the membership may be terminated.

MEMBERSHIP SUSPENSION

23. Where a consumer has a permanent physical condition restricting their ability to use the services provided under their membership agreement, they are entitled to a refund for the unused portion of their membership if they provide a medical certificate verifying their condition.

24. Where a consumer has a temporary physical condition restricting their ability to use the services provided under their membership agreement, they are entitled to suspend their membership for a period agreed with the supplier if they provide a medical certificate verifying their condition. The supplier may charge an administration fee.

25. Where a consumer is to receive a refund under Clause 14, the supplier may keep the standard cost of any service provided including a reasonable administration fee.

26. A supplier must pay the refund due to the consumer under Clause 14 within 14 days.

STANDARD OF FITNESS CENTRE

29. All wet areas are cleaned regularly in order to maintain a satisfactory standard of cleanliness and comply with relevant health authority requirements.

30. There must be a fully equipped first aid kit located in an easily accessible position, and all staff members know its location.

31. All equipment must be:

- a. installed and operating in accordance with the manufacturers instructions and standards;
- b. serviced as required to ensure continued user safety.

32. Instructors who advise consumers how to operate the equipment must be competently trained.

33. All exercise areas must have adequate safe working space and user numbers must be monitored to allow safe and effective use of the training equipment.

QUALIFICATIONS OF STAFF

34. A supplier must not offer misleading or false evidence about an employee's qualifications.

35. Any unqualified employees in training must be supervised by a qualified fitness leader, and consumers made aware that a trainee is providing the service.

36. Employees who provide a fitness service must have a recognised fitness qualification, current Senior First Aid and a CPR certificate.

37. During all hours of fitness operation there must be a qualified Fitness Leader on the premises.

CODE ADMINISTRATION COMMITTEE

38. This Code will be administered by the Fitness Australia - Regional Industry Council Fitness Australia RIC) who will appoint a Code Administration Committee (CAC) made up of:

- (a) three industry representatives who are members of the Fitness Australia RIC and who are signatories to the Code;
- (b) a consumer nominee from an appropriate consumer body; and
- (c) any additional independent representative if deemed appropriate.

The Chairperson will be elected from one of the industry representatives.

REVIEW AND EVALUATION OF THE CODE

39. The CAC will meet every quarter to administer and review the Code. A special meeting of the CAC may be called by any three committee members with one week's notice to all members.

ANNUAL REPORTING

40. The CAC will produce a report to the Fitness Australia RIC that includes:

- (a) the number of accredited centres, including newly accredited centres and centres ceasing accreditation;
- (b) the number of complaints received, their nature and resolution;
- (c) sanctions imposed; and
- (d) an executive summary on the operation of the Code.

41. The CAC will be responsible for:

- (a) assessing the ongoing eligibility of signatories to the Code and reporting to the Fitness Australia RIC if action is required;
- (b) monitoring compliance of the Code;
- (c) reporting non-compliance and actions to the Fitness Australia RIC ;

- (d) advising the Fitness Australia RIC on the response required to consumer complaints against Code signatories;
- (e) advising the Fitness Australia RIC regarding imposing sanctions for non-compliance with the Code; and
- (f) collecting data on the operation of the Code for the preparation of an annual report.

PROMOTION OF THE CODE

42. The Fitness Australia Regional Industry Council is responsible for the promotion for the Code.

SANCTIONS

43. Where a breach of the Code has been determined, the Fitness Australia RIC will request corrective action. Such action may include (but is not limited to) a request for:

- (a) advertising to be amended or withdrawn;
- (b) corrective advertising to be placed;
- (c) corrective mailing to clients concerned;
- (d) literature or stationary to be amended or withdrawn; and
- (e) all/any equipment, facilities or services modified to meet the standards in the Code.

44. The Fitness Australia RIC may issue warnings or censures to non-complying Code signatories.

45. If corrective action is not taken within the time allocated, the CAC may recommend that the Fitness Australia Member suspends the signatory's membership for a period, or, in the event of continued non-compliance, the CAC may recommend that the signatory be expelled.

46. Where the CAC recommends expulsion, it must make a report of the signatory's conduct to the Fitness Australia RIC and allow the signatory to make an appeal for continued participation. A decision by the Fitness Australia RIC will be final. Following suspension or expulsion, the signatory must not claim signatory status in internal or external advertising and immediately remove any materials referring to the Code.

COMPLAINTS RESOLUTION

47. The CAC will endeavour to resolve all issues. In the event of possible conflict of interest, the Fitness Australia RIC Committee may appoint Complaints Resolution Committee or use alternative dispute resolutions procedures.

48. Where appointed, a Complaints Resolution Committee will consist of:
- (a) two representatives of the fitness industry;
 - (b) one representative of a consumer organisation; and
 - (c) one independent chairperson.

49. In investigating a complaint, a Complaints Resolution Committee may request copies of relevant documentation from a supplier, who must comply with this request. The documentation will be treated as confidential and not be reproduced or distributed without permission of the supplier.

50. In investigating a complaint, a Complaints Resolution Committee may request access to the supplier's fitness centre. A supplier must comply with such a request. The Complaints Resolution Committee will give reasonable notice to the supplier of the required access.

51. A member of a Complaints Resolution Committee will not take part in the resolution if there is a conflict of interest.

COMPLAINTS RESOLUTION PROCEDURE

52. A supplier will make every reasonable effort to resolve any complaint quickly and fairly.

53. Where a written complaint is made the supplier will provide the complainant with details of the actions to be taken for resolution within 10 days of receiving the complaint. If it is not possible to resolve the complaint within 10 days, the supplier will provide a written acknowledgment of receipt of the complaint within 7 days, and will specify a time frame within which details of the actions to be taken for resolution will be made available.

54. The supplier will ensure that all employees are familiar with the complaints resolution procedures.

55. The supplier will collect relevant data relating to the complaints it receives from consumers. The nature of this data will be determined by the Fitness Australia RIC, and the Fitness Australia RIC may request the data from a supplier. A supplier must comply with such a request.

56. Where a complaint cannot be resolved between the supplier and consumer, the supplier must advise the consumer of the consumer's right to refer the complaint to the CAC. Either party can refer the complaint to the CAC.

57. Where a complaint is referred to the CAC, the Committee will hear the complaint and notify both parties of their intentions in writing.

58. Where the CAC determines that a supplier has breached the Code, the CAC must make the Fitness Australia RIC aware of the breach, and give recommendations of which sanctions apply.

Fitness NSW is the original author of this Code.
Certain alterations have been made to the original Code in line with South Australian requirements.
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