

FITNESS TASMANIA - CODE OF PRACTICE FOR FITNESS FACILITIES

PART 1 – INTRODUCTION

Objectives

The objectives of the Fitness Tasmania Code of Practice are:-

- 1.1 To provide a high value service which will enhance consumer confidence and improve the long term viability of complying fitness facilities .
- 1.2 To set a standard of business practices that financially protects the consumer.
- 1.3 To set a standard of service that protects the health and well-being of the consumer.
- 1.4 To establish procedures to resolve complaints, and to establish a disciplinary process for defaulting signatories.

Application of Code

- 1.5 This Code applies to Fitness Tasmania Business Members (as defined in accordance with the constitution of Fitness Tasmania) who are signatories to the code.

Definitions

- 1.6 In this Code:-

“casual” means a consumer who has not entered a membership agreement with a supplier and who pays that supplier for the provision of a specified service each time the consumer uses a fitness facility;

“Code” means the Fitness Tasmania Code of Practice for Fitness Facilities

“consumer” means a person who is supplied with a fitness or exercise service and includes a person who makes inquiries of a fitness facility with a view to making a decision on a membership agreement;

“cooling-off period” means the period referred to in Clause 2.23 during which a consumer may terminate his or her membership;

“dispute” means an expression of discontent from a consumer where the consumer perceives there has been a non compliance with this Code of Practice;

“supplier” means a fitness centre, including its employees, directors or agents, or facility at which fitness or exercise services are provided, or other party who is a Business Member of Tasmania as defined by the constitution of Fitness Tasmania’;

“fitness equipment” means apparatus used in the provision of fitness or exercise services;

“fitness facility” means an establishment that provides fitness or exercise services

“membership agreement” means an agreement referred to in Clause 2.13 between a supplier, consumer and any other party to the agreement for membership of a fitness facility for a specified period;

“personal information” means information about an individual whose identity is apparent, or can be reasonably ascertained, from the information;

“standard cost” means the cost which is normally charged by a supplier for a service and does not include any discount offered by a supplier on any service.

“periodic debit” is a payment option where the membership fees are paid through a periodic debit to an individual’s bank or credit card account.

PART 2 - SUPPLIER'S OBLIGATIONS – THE CODE OF PRACTICE

Supplier's obligations

- 2.1 A supplier must not use misleading or false advertising or marketing practices, which may include, but is not limited to, false or misleading representations concerning the price of goods or services, false representations that goods or services have benefits they do not have; false or misleading representations concerning the need for goods or services. These provisions will apply along with any state based Fair Trading provisions as contained in any Legislation.
- 2.2 A supplier must ensure that sufficient information is available for a consumer to make an informed decision in relation to membership of a fitness facility for the provision of fitness and exercise services, and in particular must:-
- (a) ensure that all promotional material is truthful, accurate and unambiguous
 - (b) ensure that promotional material does not encourage unrealistic expectations about the outcomes attainable from fitness and exercise services or the facilities and equipment provided
 - (c) not make misleading or false comparisons with programs provided by competitors
 - (d) allow prospective consumers to make a reasonable inspection of the premises without any obligations to purchase a membership
 - (e) make available for perusal a copy of this Code
 - (f) ensure that employees and agents act in an ethical and professional manner and do not use unreasonable sales methods to sell membership agreements.
- 2.3. A supplier must provide a copy of the membership agreement and a copy of the completed, signed membership agreement to a member if requested. A supplier must also display a current Fitness Tasmania membership certificate.
- 2.4 A supplier must ensure that an employee who provides a fitness service is eligible for registration with Fitness Australia as a Fitness Instructor or Fitness Trainer and at the level of registration according to the duties they perform.
- 2.5 A supplier must ensure that at least one staff member is on site with current first aid training, with a minimum standard of Workplace Level 2, at all times that the centre is open for business and that the facility has a procedure and appropriate staff training in incident and emergency procedures.
- 2.6 A supplier must maintain and provide evidence of adequate public liability and professional indemnity insurance.
- 2.7 A supplier must ensure that all employees are familiar with the requirements of this Code.
- 2.8 A supplier must not disclose to any person or organisation any personal information acquired from a consumer unless authorised in writing by the consumer.

Membership agreements.

- 2.9 Membership agreements should clearly outline all fees and charges that will apply. If there are any extra fees for the following services, then these must be clearly outlined in the membership agreement. These extra charges may relate to services or extra fees to cover the following:
- (a) any joining fee;
 - (b) the fee for each service or visit;
 - (c) the amount payable, frequency of payments and minimum term applicable to the agreement.
 - (d) the fee for an exercise consultation;
 - (e) the fee for a fitness or exercise program;
 - (f) any other fees payable, or that may be payable, under the membership agreement; and
- 2.10 A supplier shall not enter into a membership agreement or accept payment from a consumer if there are reasonable grounds of which the supplier is aware, or ought reasonably to be aware, for believing that the services under the membership agreement cannot be provided.
- 2.11 Where there is a minimum term to any periodic debit membership contract, there must be an early termination clause that details the procedure and fees payable if early termination is requested by the customer.
- 2.12 A supplier shall ensure that a membership agreement:-
- (a) states the name and address of the parties to the agreement including Australian Business Number (ABN) for corporations;
 - (b) sets out clearly and unambiguously the rights and responsibilities of the supplier and the consumer;
 - (c) states that an agreement is subject to a cooling off period in accordance with Clause 2.22; and
 - (d) discloses the full price of the services being offered in accordance with Clause 2.9; and
 - (e) sets out any rules of the fitness centre that apply to the member.
- 2.13 A supplier shall not enter a membership agreement with a consumer unless the agreement is in writing and is signed by the consumer.
- 2.14 A membership agreement with a customer aged under 18 must be signed by a parent or guardian.
- 2.15 The supplier must have a policy on membership and casual use for customers aged under 18 which must be made available if requested. Fitness Tasmania has a recommended position paper on under 18 membership and casual use that is included in this code as **appendix A**.

- 2.16 A supplier shall not receive membership or renewal agreements in advance:-
- (a) for a period greater than 12 months
 - (b) for a period that exceeds the unexpired period of the lease of the fitness facility's premises unless there is written documentation of the supplier's intention to renew the lease and acknowledgment from the lessor of the receipt of such advice.
- 2.17 For a fitness facility that has not commenced providing fitness services, a supplier must:-
- (a) place all pre-paid membership fees into a trust account which must not be accessed until the supplier commences providing fitness services; and
 - (b) not sell memberships more than 3 months before commencement of providing fitness services.

Consumer to complete pre-exercise questionnaire

- 2.18 A supplier must ensure that All members and customers complete a physical Activity Readiness Questionnaire (PARQ) prior to providing exercise services.
- 2.19 This questionnaire must advise all customers and members of the circumstances when medical clearance to commence an exercise program is required.
- At present this position is detailed in Fitness Tasmania guidelines on instructor qualifications which is detailed in Appendix B as part of this code. This paper recommends that any individual identified as "MODERATE RISK" or higher be referred to a medical practitioner to gain clearance to commence an exercise program.
- 2.20 Customers who have been identified as being at "MODERATE RISK" must either sign a waiver that they have been cleared by their treating Doctor to commence an exercise program or provide a written referral from their Doctor to that effect. Customers must also be advised that they should make any instructor they seek advice from aware of their current physical and medical status when seeking such advice. The consumer must also be advised that they must provide advise if their status changes.
- 2.21 A supplier must ensure that any staff member providing any specific exercise advice, takes into account any information provided about a consumer's current status prior to giving such advice.

Cooling off period

- 2.22 Where a consumer enters into a membership for a period of 3 months or more, there is a 24 hour cooling off period that begins at the time the contract is signed, during which the consumer may terminate the membership. The cooling off period does not apply where a contract is renewed.
- 2.23 A consumer who terminates a membership during the cooling off period shall give written notice to the supplier.
- 2.24 Where a supplier has provided services to a consumer before the consumer terminates the membership, the supplier may deduct from the amount refunded the standard cost of any service provided including a reasonable administration charge. If the consumer has not paid sufficient fees to cover services already provided, the supplier can ask that such fees are paid before contact is terminated.
- 2.25 A supplier must pay a refund due to a consumer under Clause 2.22 within 7 days of receiving notice of termination of the membership.

Refunds or Membership Deferment due to Sickness or Physical incapacity

- 2.26 A consumer is not entitled to a refund on any prepaid membership for any reason including non use, a change in residence or lack of use. This must be stated on the membership agreement.

- 2.27 Should a consumer be unable to continue to participate in the services provided by a membership agreement due to temporary physical incapacity, then that consumer is able to defer the balance of the membership agreement to a time agreed with the supplier. The supplier can request a medical statement to this effect. Such a request should be made at the time the customer is made aware of such incapacity.

Standard of Fitness Centre

- 2.28 A supplier must ensure that all wet areas are cleaned frequently to maintain a high standard of cleanliness and comply with all relevant occupational health and safety regulations.
- 2.29 A supplier must provide a fully equipped first aid kit, located in a prominent position that all staff are aware of.
- 2.30 A supplier must ensure that all equipment:-
- (a) is mechanically sound, installed and operated in accordance with the manufacturers instructions and standards.
 - (b) is serviced as required to ensure continued user safety.
- 2.31 A supplier must ensure that instructors who advise consumers how to operate the equipment must themselves be adequately trained as to the equipment's operation.
- 2.32 A supplier must ensure that all exercise areas contain adequate safe operating space and that user numbers do not hinder safe and effective use of the training equipment.

Qualifications of staff

- 2.33 A supplier must not misrepresent to a consumer that a person who is to provide a fitness or exercise program is qualified to provide that service.
- 2.34 A trainee who is gaining experience to become a registered fitness instructor or trainer must be supervised by a person who is qualified to provide the service at the appropriate level. Consumers must be advised that a trainee is providing services.
- 2.35 Fitness Instructor must only provide instruction in areas that they have received specific training and only provide instruction to consumers in situations at their level of qualification as per Fitness Australia guidelines. This is shown in Appendix C. This part of the code may be amended from time to time through recommendation of the Fitness Tasmania Board.

PART 3 - ADMINISTRATION

- 3.1 This Code will be administered by Fitness Tasmania. The Board of Fitness Tasmania will appoint a Code Administration Committee (CAC). The committee will be made up of:
- (a) Three (3) persons from the fitness industry who are members of Fitness Tasmania and are signatories to the Code.
 - (b) A consumer nominee from an appropriate consumer body.

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

Review and Evaluation of the Code

- 3.2 The CAC will meet at least every 6 months as a minimum to review the Code. A special meeting of the CAC may be called by any three committee members (with one weeks notice required to all committee members).

Annual Reporting

- 3.3 The CAC will produce an annual report to Fitness Tasmania that includes:
- (a) the number of complying facilities, including new and terminating facilities.
 - (b) the number of and nature of complaints received.
 - (c) sanctions imposed
 - (d) an executive summary on the operation of the Code.
- 3.4 The CAC will be responsible for:
- (a) assessing the ongoing compliance of Signatories to the Code and reporting to Fitness Tasmania if action is required;
 - (b) monitoring compliance of the Code;
 - (d) advising Fitness Tasmania on the response required to consumer complaints against code Signatories;
 - (e) advising Fitness Tasmania 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

- 3.5 Fitness Tasmania is responsible for the promotion for the Code.

Sanctions

- 3.6 Where a breach of the Code has been determined, Fitness Tasmania will seek corrective action to be taken by the Signatory concerned. Such action will include, but is not limited to:
- (a) offending advertising to be amended or withdrawn;
 - (b) corrective advertising to be placed;
 - (c) individual advice of non compliance to supplier's clients concerned;
 - (d) offending literature or stationery to be amended or withdrawn; and
 - (e) any faulty equipment, facilities or services restored to meet the requirements of the Code.
- 3.7 Fitness Tasmania may, at its discretion, issue warnings or censures to non-complying Code Signatories.
- 3.8 If corrective action is not taken within the timeframe directed, then the CAC may recommend that Fitness Tasmania suspend the Signatory's membership of the organisation for a specific time period, In the event of continued non-compliance, the CAC may recommend the expulsion of the Signatory from the organisation.
- 3.9 Where the CAC recommends expulsion, Fitness Tasmania will allow the Signatory to appeal the recommendation. Following such an appeal, any direction given by Fitness Tasmania will be final. Following suspension or expulsion, the Signatory must not claim Signatory status in internal and external advertising and immediately remove Code signage and immediately cease using all literature and stationery referring to the Code.

Complaints Resolution

- 3.10 The CAC will endeavour to resolve all complaints it receives. In the event of possible conflict of interest, the Board of Fitness Tasmania may appoint a sub-committee called the Complaints Resolution

Committee or engage alternative dispute resolutions procedures that are independent and acceptable to all parties to determine complaints between consumers and suppliers.

- 3.11 Where appointed, a Complaints Resolution Committee will consist of three persons of which:
- (a) one must be a representative of the fitness industry;
 - (b) one must be a representative of a consumer organisation; and
 - (c) one must be an independent chairperson.
- 3.12 Any Complaints Resolution Committee will observe the principles of natural justice.
- 3.13 In investigating a complaint, a Complaints Resolution Committee may request that a supplier provide copies of relevant documentation. A supplier must comply with such a request. The documentation will be treated as confidential and not be reproduced or distributed without the permission of the supplier.
- 3.14 In investigating a complaint, a Complaints Resolution Committee may request that a supplier allow the Committee reasonable access to the supplier's fitness facility. A supplier must comply with such a request. The Complaints Resolution Committee will give reasonable notice to the supplier of the required access.
- 3.15 A member of a Complaints Resolution Committee will not take part in the resolution of a complaint where doing so would mean that member has a conflict of interest.

Complaints Resolution Procedure

- 3.16. A supplier will make every reasonable effort to resolve quickly and fairly any complaint made by a consumer.
- 3.17. Where an oral complaint is made the person receiving the complaint will:
- (a) identify themselves and record details of the complaint and complainant.
 - (b) confirm the details received;
 - (c) explain the complaints resolution process.
 - (d) If possible resolve the complaint immediately or give an indication of the timeframe required to investigate the claim.
 - (e) follow up the complaint as appropriate eg. provide the complainant with feedback regarding the result of action taken by the supplier to resolve the complaint.
- 3.18 Where a written complaint is made the supplier will:
- (a) provide the complainant with a written response within 10 days of receipt of the complaint regarding the result of action taken by the supplier to investigate the complaint.
 - (b) if it is not possible to resolve the complaint within 10 days, provide written acknowledgment of the receipt of the complaint within 7 days and specify the time frame within which the complainant will be advised of the outcome of those investigations.
- 3.19 The supplier will ensure that all staff employed are familiar with the fitness centre's complaints resolution procedures.
- 3.20. The supplier will collect relevant data relating to the complaints it receives from consumers. Fitness Tasmania may request a supplier provide it with the complaints data it has collected. A supplier must comply with such a request.
- 3.21 Where a complaint cannot be resolved between the supplier and consumer the supplier must refer the issue to Fitness Tasmania which will refer it to the CAC.

- 3.22 Where a complaint is referred to the CAC, the Committee will hear the complaint in a timely manner and notify the parties in writing of the determination.
- 3.23 Where the CAC determines that a supplier has breached the Code, the CAC must bring this breach to the attention of the Fitness Tasmania Board with recommendations as to which appropriate sanctions to apply.