

Australian Capital Territory

# Fair Trading (Fitness Industry) Code of Practice 2009

Disallowable instrument DI2009–65

made under the

Fair Trading Act 1992, section 34 approval of codes of practice

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## 1 Name of instrument

This instrument is the *Fair Trading (Fitness Industry) Code of Practice 2009*.

## 2 Commencement

This instrument commences on 1 July 2009

## 3 Revocation of Previous Instrument

Notifiable Instrument NI2005-474, Fair Trading Fitness Industry Code of Practice – June 2005 is revoked

## 4 Approval

The Fair Trading Fitness Industry Code of Practice 2009 is approved

Simon Corbell MLA  
Attorney General  
30 April 2009

AUSTRALIAN CAPITAL TERRITORY

*Fair Trading Act 1992*

**Fitness Industry  
CODE OF PRACTICE  
2009**

**Published by the Commissioner for Fair Trading  
for the Australian Capital Territory**

## TABLE OF PROVISIONS

Clause	Page
1. Principal Code	3
2. Substitution	3
<b>PART 1- PRELIMINARY.....</b>	<b>3</b>
1. Objectives	3
2. Interpretation	4
3. Application of Code	6
4. Exemption from Code	6
5. Code Administration	6
<b>PART II-SUPPLIER'S OBLIGATIONS.....</b>	<b>7</b>
6. Supplier's obligations	7
7. Price of services to be made available to consumer before membership agreement entered	8
8. Membership agreements	9
9. Consumer to complete pre-exercise questionnaire	11
10. Visits to fitness centre by casuals	11
11. Cooling off period	11
12. Refunds or Membership Deferment due to Sickness or Physical incapacity	12
<b>PART III-STANDARD OF FITNESS CENTRE.....</b>	<b>13</b>
13. Standard of fitness centre	13
<b>PART IV-QUALIFICATIONS AND EMPLOYMENT OF STAFF.. .....</b>	<b>14</b>
14. Qualifications of staff	
<b>PART V-CONSUMER OBLIGATIONS.....</b>	<b>14</b>
15. Consumer obligations	14
<b>PART VI-ADMINISTRATION.....</b>	<b>15</b>
16. Code Administration Committee	15

## Fitness Industry Code of Practice

17. Complaint Resolution procedure	16
18. Compliance	16
19. Administrative report	17
20. Review and evaluation of Code	17

## *Fair Trading Act 1992*

# **Fitness Industry CODE OF PRACTICE AMENDMENT (No 1 of 2009)**

## ***Principal Code***

1. In this amendment, "Principal Code" means the *Fitness Industry Code of Practice*, prescribed as a Code of Practice under the *Fair Trading Act 1992*.

## ***Substitution***

2. All clauses of the Principal Code are repealed and replaced with the following:

## **"PART I-PRELIMINARY**

### **Objectives**

1. The objectives of the Code are:
  - (a) to ensure appropriate standards of trading are maintained within the Fitness Industry;
  - (b) to promote consumer confidence in the Fitness Industry;
  - (c) to ensure that management and employees in the Fitness Industry provide services in an ethical and professional manner which takes into consideration the interests of consumers;
  - (d) to support and promote the Fitness Industry;
  - (e) to encourage people in the community to participate in regular physical fitness activities;

## Fitness Industry Code of Practice

- (f) to establish rights and obligations between suppliers and consumers in relation to:
  - (i) services offered and provided;
  - (ii) the disclosure of all information that is relevant to a consumer entering a membership agreement at a fitness centre; and
  - (iii) complaint resolution; and
- (g) to establish adequate procedures to resolve complaints.

### **Interpretation**

2. In this Code, unless the contrary intention appears:

"approved registration body" means a registering authority approved by the Minister

"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 he or she uses a fitness service;

"Code" means this Fitness Industry Code of Practice;

2. "Commissioner " means the Commissioner for Fair Trading for the Australian Capital Territory or his or her nominee;

"consumer" means a person who is supplied with a fitness service and includes a person who is making enquiries at a fitness centre preparatory to deciding whether to enter a membership agreement;

"cooling off period" means the period referred to in clause 11 during which a consumer may terminate his or her membership;

"Fitness Australia" means Fitness Australia Limited, unless the Minister has approved some other peak industry body, in which case; that other body;

"fitness centre" means a facility at which fitness services are provided, but does not include outdoor sport and recreation facilities or unsupervised activities that include interaction with the natural environment;

"Fitness Industry" means the service industry encompassing all persons who are suppliers;

## Fitness Industry Code of Practice

"fitness service" means any of the following services:

- (a) a pre-exercise evaluation;
- (b) an individual fitness program and fitness assessments;
- (c) a supervised fitness program;
- (d) a group fitness program;
- (e) the provision of fitness equipment at a fitness centre for use by consumers.

"fixed term" means the minimum component of a periodic billing membership for which the consumer has agreed to maintain their membership.

"floor class" means any group exercise;

"membership agreement" means an agreement referred to in clause 7 between a supplier and a consumer for membership of a fitness centre for a specified period;

"Minister" means the Minister responsible for administering the *Fair Trading Act 1992*;

"periodic billing membership" is a membership agreement where payment is made periodically (weekly, fortnightly or monthly) in advance. This membership may have a fixed term of no more than 12 months.

"pre-paid membership" is a membership agreement where payment is made upfront at commencement of the agreement for a fixed period

"supplier" means a person, other than an employee, who supplies a fitness service, but does not include:

- (a) a medical practitioner registered under the *Medical Practitioners Act 1930* providing a service in the course of his or her profession;
- (b) a physiotherapist registered under the *Physiotherapists Act 1977* providing a service in the course of his or her profession;
- (c) a sporting club or organisation established to engage in competitive sport, where people, either individually or as part of a team, train in a place other than a fitness centre; or
- (d) a person engaged in the business of providing only the use of a spa or sauna bath, swimming pool or similar facility.

### **Application of Code**

3 (1) This Code applies to a supplier.

### **Exemption from Code**

4 (1) A supplier may apply to the Minister for an exemption from the application of all or any of the provisions of this Code.

(2) An application to the Minister under subclause (1) shall be in writing setting out the grounds on which the supplier seeks the exemption.

(3) Where the Minister receives an application in accordance with subclause(1), the Minister shall seek advice from the Commissioner for Fair Trading

(4) The Minister may:

(a) after considering advice from the Commissioner; and

(b) if satisfied that there will be no substantial detriment caused to consumers;

grant to a supplier:

(c) an unconditional exemption; or

(d) an exemption subject to conditions.

(5) The Minister may, at any time, revoke an exemption.

(6) If the Minister revokes an exemption, he or she shall give notice, in writing, to the supplier.

### **Code Administration**

5 (1) The Code shall be administered by the Commissioner through the Code Administration Committee.



## **PART II-SUPPLIER'S OBLIGATIONS**

### **Supplier's obligations**

- 6 (1) A supplier shall not use misleading or unfair advertising or marketing practices.
- (2) A supplier shall ensure that sufficient information is available to enable a consumer to make an informed decision in relation to membership of a fitness centre, and in particular shall:
- (a) ensure that all promotional material is truthful, accurate and unambiguous;
  - (b) ensure that promotional material does not encourage unrealistic expectations about the level of fitness attainable or the facilities and equipment provided;
  - (c) not make misleading or false comparisons with programs provided by competitors; and
  - (d) allow prospective consumers to inspect the premises without any obligation to purchase a membership.
- (3) A supplier must provide a consumer with:
- a) a copy of the proposed membership agreement, the rules of the fitness center and any other relevant documentation, if requested; and
  - b) a copy of the signed membership agreement, at the time of entering into the membership agreement.
- (4) A supplier shall display the rules of the fitness centre in a place where they are likely to come to the attention of consumers.
- (5) A supplier shall provide information, either at the fitness centre, or directly to the consumer, about their right to make complaints to the Health Services Commissioner under the *Human Rights Commission Act 2005*
- (6) A supplier shall display any new rule in a place where it is likely to come to the attention of consumers.

## Fitness Industry Code of Practice

- (7) A supplier shall ensure that an employee who provides a fitness service is qualified to provide the service.
- (8) A supplier shall ensure that there is available, at all times during which fitness services are provided at a fitness centre, an appropriately qualified person to supervise the provision of each service.
- (9) A supplier must take reasonable steps to ensure that services offered under membership agreements are ordinarily available to consumers.
- (10) A supplier shall maintain adequate public liability insurance and professional indemnity insurance.
- (11) A supplier must ensure that all relevant employees are aware of and understand the code
- (12) A supplier shall not disclose to any person any personal information acquired by him or her from a consumer unless authorised, in writing, by the consumer, or as required under law.

### **Price of services to be made available to consumer before membership agreement entered**

- 7 (1) Before a consumer signs a membership agreement a supplier shall provide the consumer with material that discloses the full price of the services being offered including, where applicable-
  - (a) any joining fee;
  - (b) the fee for each service or visit;
  - (c) the total amount payable for membership for a specified period;
  - (d) the fee for a fitness assessment;
  - (e) the fee for an exercise program; and
  - (f) any other fees payable, or that may be payable, under the membership agreement.
- (2) A supplier shall 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 offer.

**Membership agreements**

- 8 (1) A supplier shall ensure that employees act in an ethical and professional manner and do not use unreasonable sales methods to sell memberships.
- (2) A supplier shall ensure that a membership agreement:
- (a) states the name and address of the parties to the agreement including the 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 for a period of 3 months or more is subject to a cooling off period in accordance with clause 11 of this Code; and
  - (d) discloses the full price of the services being offered including, where applicable:
    - (i) the joining fee;
    - (ii) the fee for each service or visit;
    - (iii) the total amount payable for membership for a specified period;
    - (iv) the fee for a fitness assessment;
    - (v) the fee for an exercise program; and
    - (vi) any other fees payable, or that may be payable, under the membership agreement.
- (3) A supplier shall not enter a membership agreement with a consumer unless the agreement is in writing and is signed by the consumer.
- (4) A supplier shall not sell a pre-paid membership for a period greater than 12 months.
- (5) A supplier shall not sell a periodic billing membership with a fixed term greater than 12 months.
- (6) A supplier shall not sell a pre-paid or periodic billing membership where a lease on premises being used for a fitness centre has less than 12 months before it is due to expire, for a period that exceeds the unexpired period of the lease.

Fitness Industry Code of Practice

- (7) A supplier shall ensure that any periodic billing agreement:
- (a) is structured to have a reasonable proportional relationship to any term or annual membership rate offered and will not be structured so as to discourage consumers from selecting this membership option
  - (b) clearly identifies any fixed term component of the agreement and the consumers obligation to pay under the agreement including the following notice in bold 14pt type that must be signed and dated by the consumer

**I acknowledge that unless I provide written notice of termination of my membership prior to the end of the fixed term of my Periodic Billing Agreement, I will still be liable for my membership fees until 14 days after I provide written notice of termination to the Fitness Centre. I understand the Fitness Centre must respond to its receipt of a written notice within 7 days**

- (8) Where a supplier has not commenced providing agreed Fitness Services, but wants to accept pre-paid membership fees, the supplier must:
- (a) place all pre-paid membership fees into a solicitor's trust account which must not be accessed by the supplier until;
    - (i) the facility is open;
    - (ii) the member has used the gym; and
    - (iii) the member has determined within 7 days of first using the gym whether to terminate the membership;
  - (b) not sell membership more than 3 months before commencement of providing the agreed Fitness Services;

- (9) A supplier shall not offer to renew a membership:
- (a) in the case of a membership for a period of 12 months, until the current membership has less than 4 months before it is due to expire; or
  - (b) where a lease on premises being used for a fitness centre has less than 12 months before it is due to expire, for a period that exceeds the unexpired period of the lease; or
  - (c) in any other case, where the total pre-paid membership would, at any time, exceed 15 months.

**Consumer to complete pre-exercise questionnaire**

- 9 (1) A supplier shall not enter a membership agreement with a consumer unless the consumer completes a pre-exercise questionnaire, provided by the supplier, in relation to the consumer's risk in participating in the fitness service.
- (2) Where answers to a pre-exercise questionnaire indicate, in the opinion of the supplier, that a consumer may be at risk from participating in a particular fitness service, the supplier shall not supply any fitness service to the consumer unless the consumer:
- (a) provides evidence from; or
  - (b) states in writing that he/she has received advice from; a medical practitioner or an appropriate health professional to the effect that the consumer is, in the opinion of the practitioner or the health professional, not at risk from participating in the proposed fitness service.
- (3) Where a consumer provides evidence that they may be at risk from participating in a fitness service under subclause (2) a supplier shall not provide a fitness service until an appropriately qualified person has provided advice to the consumer in relation to an appropriate fitness program.
- (4) Subclause (1) does not apply to a casual user as per clause 10.

**Visits to fitness centre by casuals**

- 10 (1) A supplier shall, before providing a fitness service to a casual user, inquire whether the casual knows, or has reasonable grounds to believe, that he or she may be at risk from participating in the fitness service.
- (2) A supplier may, after making an inquiry under subclause (1), require a casual to put in writing that they believe they are not at risk from the activity, before the casual participates in a particular fitness service.

**Cooling off period**

- 11 (1) Where a consumer purchases a membership for a period of 3 months or more, there is a 7 day cooling off period that begins on the date of purchase, during which the consumer may terminate the membership.
- (2) A consumer who terminates a membership during the cooling off period shall:
- (a) give notice to the supplier, in writing, include evidence of membership; and

## Fitness Industry Code of Practice

- (b) either:
- (i) deliver the notice in person or have it delivered to the supplier's registered or business address; or
  - (ii) post the notice to the supplier's registered or business address by certified mail.
- (3) Where a supplier has provided services to a consumer before the consumer terminates the membership, the supplier may deduct from the amount refunded the reasonable cost of any service provided together with a reasonable administration charge.
- (4) A supplier shall pay a refund due to a consumer within seven days of receiving notice of termination of the membership agreement.

### **Refunds or Membership Deferment due to Sickness or Physical Incapacity**

- 12 (1) Where a consumer is unable, by reason of permanent physical incapacity verifiable by a medical certificate, to avail him/herself of the Fitness Services provided under the membership agreement, the consumer is entitled to terminate the membership by written notice, with the medical certificate, to the Supplier whereby:
- (a) The unused portion of a pre-paid membership will be calculated from the date that the supplier receives the written notice and will be refunded in accordance with subclause 12(4); or
  - (b) Upon receipt of a termination notice for a periodic billing membership, the supplier will immediately inform the periodic billing agency and request that the deductions cease as soon as possible.
- (2) Where a consumer is unable, by reason of temporary physical incapacity verifiable by a medical certificate, to avail him/herself of the fitness services provided under the membership agreement, for a period of more than ten consecutive days, the consumer may seek to defer the balance of the period of the membership contract to a period agreed with the supplier
- (3) Where a consumer has sought deferment pursuant to subclause 12(2) the maximum period that may be deferred is three months total in any 12 month period unless a further period is agreed with the supplier.
- (4) Where a consumer is to receive a refund under subclause 12(1):
- (a) a supplier may deduct from the amount refunded the standard cost of any service provided including a reasonable administration charge: and
  - (b) a supplier must pay the refund due to the consumer within 21 days of receiving written notice of termination.

## **PART III-STANDARD OF FITNESS CENTRE**

### **Standard of fitness center**

- 13 (1) A supplier shall ensure that all wet areas are effectively cleaned on a daily basis or more frequently if required.
- (2) A supplier shall ensure that all equipment:
- (a) conforms to safety standards established by Standards Australia;
  - (b) is mechanically sound;
  - (c) is installed and operating in accordance with the manufacturer's instructions; and
  - (d) is serviced adequately, efficiently and regularly to ensure continued user safety.
- (3) A supplier shall, display an adequate warning notice, stating that a hazard potential exists if the equipment is misused, at the entrance to any area where fitness equipment is located.
- (4) A supplier must ensure that employees who advise consumers how to operate the equipment are adequately trained in the operation of the equipment
- (5) A supplier shall:
- (a) restrict the number of people in floor classes to a maximum of 1 person for every 3 square metres of effective exercise area; and
  - (b) ensure that dedicated resistance training areas contain adequate safe working space and that user numbers do not hinder safe and effective use of the training equipment.
- (6) A supplier shall provide ventilation adequate to ensure the comfort of the maximum number of people that a particular area accommodates at any time.
- (7) A supplier must provide a fully equipped first aid kit located in a prominent, easily accessible position, and ensure that all staff members know its location.

## **PART IV-QUALIFICATIONS AND EMPLOYMENT OF STAFF**

### **Qualifications of staff**

- 14 (1) A supplier shall not represent to a consumer that an employee who is to provide a fitness service is qualified to provide the service if the employee is not so qualified.
- (2) A person who is gaining experience to become registered shall be supervised by a person who is qualified to provide the service at the appropriate level.
- (3) An employee is qualified to provide a fitness service if the employee is registered by Fitness Australia, or other approved registration body, and provides service at a level appropriate to that registration.

## **PART V-CONSUMER OBLIGATIONS**

### **Consumer obligations**

- 15 (1) A consumer who enters a membership agreement with a supplier agrees to:
- (a) carry out, as far as is reasonably practicable, his or her obligations under the agreement;
  - (a) abide by the rules of the fitness centre; and
  - (b) follow any reasonable direction of an employee of the fitness centre.
- (2) If a consumer knows or has reasonable grounds to believe that he or she may be at risk by participating in a particular fitness service, the consumer shall inform the supplier.



## **PART VI-ADMINISTRATION**

### **Code Administration Committee**

16 (1). The Code Administration Committee shall consist of:

- (a) a representative of Fitness Australia;
  - (b) a representative of the Fitness Industry who is the owner or manager of a fitness centre;
  - (c) the Commissioner.
  - (d) a representative of a consumer organisation.
- (2) The representative of the Fitness Industry shall be elected at an open meeting of suppliers.
- (3) The Chairperson of the Code Administration Committee shall be the Commissioner.
- (4) The Commissioner shall provide secretariat services to the Code Administration Committee.
- (5) The Commissioner may appoint to the Code Administration Committee such other people as he or she considers necessary to carry out its functions.
- (6) Each member of the Code Administration Committee shall be appointed by the Commissioner for a period of 2 years and shall be eligible for reappointment.
- (7) The Code Administration Committee shall meet at least once each year but may meet more frequently as required.
- (8) The Code Administration Committee shall:
- (a) monitor compliance with the Code;
  - (b) report to the Minister on the effectiveness of the Code;
  - (c) monitor complaints referred to the Commissioner;
  - (d) develop policy and procedures to promote the Code within the industry and its recognition by consumers; and

## Fitness Industry Code of Practice

- (e) conduct periodic reviews of the effectiveness of the Code and consider recommendations for amendments to the Code.
- (9) A member, or former member, of a Code Administration Committee shall not disclose any information acquired by him or her as a consequence of his or her position.
- (10) A member, or former member, of a Code Administration Committee shall not be liable for anything done or omitted to be done in good faith in or in connection with the exercise or purported exercise of any duties conferred on him or her under this Code.

### **Complaint Resolution procedure**

- 17 (1) A supplier shall make every reasonable effort to resolve quickly and fairly any complaint made by a consumer in relation to the provision of services offered under a membership agreement with that supplier.
- (2) A supplier shall have a documented complaints handling policy.
- (3) Where:
  - (a) a complaint cannot be resolved between a supplier and a consumer: or
  - (b) a complaint is made by a supplier against another supplier;The complainant may request, by writing, that the complaint be dealt with by the Commissioner.
- (4) The supplier will ensure that all staff employed are familiar with the fitness centre's complaints resolution policies and procedures.
- (5) Where a complaint cannot be resolved, the supplier must advise the complainant of his/her right to have the complaint referred to the Commissioner
- (6) If the complaint is in relation to the appropriateness of provision of a health service, the supplier must advise the complainant of his/her right to have the complaint referred to the Health Services Commissioner
- (7) A supplier will co-operate with the Commissioner in resolving any consumer complaint or supplier complaint.

### **Compliance**

- 18 If a supplier refuses to comply with a provision of the Code, the Commissioner may exercise his or her powers under section 36 of the *Fair Trading Act 1992*.

**Administrative report**

- 19 (1) The Code Administration Committee shall, within 3 months after the end of each financial year, submit a report to the Minister.
- (2) The report shall identify industry specific problems and recommend changes to inappropriate practices.
- (3) The report shall include details of:
- (a) the number of complaints lodged with the Commissioner for Fair Trading and the outcome of these complaints;
  - (b) the number of consumer complaints identified through monitoring, and the outcome of these complaints

**Review and evaluation of Code**

- 20 The Commissioner shall review the effectiveness of the Code and may make recommendations for amendments to the Code.