

Australian Capital Territory

Fair Trading Fitness Industry Code of Practice-June 2005

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made under the

Fair Trading Regulation 1995, s 4 (Approved codes of practice prescribed)

1 Name of instrument

This instrument is the *Fair Trading Fitness Industry Code of Practice-June 2005*.

2 Code of practice

The *Fitness industry Code of Practice-June 2005* is approved.

Jon Stanhope
9 December 2005



AUSTRALIAN CAPITAL TERRITORY

Fair Trading Act 1992

Fitness Industry CODE OF PRACTICE

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**ACT DEPARTMENT OF JUSTICE
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TABLE OF PROVISIONS

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

Fitness Industry Code of Practice

16. Complaints Resolution procedure	14
17. Complaint Resolution Committee	15
18. Sanctions	16
19. Compliance	16
20. Administrative report	17
21. Review and evaluation of Code	17

Fair Trading Act 1992

Fitness Industry CODE OF PRACTICE AMENDMENT (No 1 of 2005)

Principal Code

1. In this amendment, "Principal Code" means the *Fitness Industry Code of Practice*, prescribed by the *Fair Trading Regulations* 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 All clauses of the Principal Code are repealed and replaced with the following: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:

"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;

"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 10 during which a consumer may terminate his or her membership;

"Commissioner" means the [Commissioner for Fair Trading](#) for the Australian Capital Territory or his or her nominee;

"Fitness ACT" means Fitness ACT Incorporated, 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 service" means any of the following services:

- (a) a pre-exercise evaluation;
- (b) an individual fitness program;

Fitness Industry Code of Practice

- (c) a supervised fitness program;
- (d) a group fitness program;
- (e) the provision of fitness equipment at a fitness centre for use by consumers.

"floor class" means any adult 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*;

"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.

Fitness Industry Code of Practice

- (3) Where the Minister receives an application in accordance with subclause (1), the Minister shall seek advice from the Code Administration Committee.
- (4) The Minister may:
- (a) after considering advice from the Code Administration Committee; 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.

PART II-SUPPLIER'S OBLIGATIONS

Supplier's obligations

5. (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
 - (e) allow prospective consumers to inspect the premises without any obligation to purchase a membership.

Fitness Industry Code of Practice

- (3) A supplier shall, where requested by a consumer, give a copy of the membership agreement, the rules of the fitness centre and any other relevant documentation to the consumer prior to the consumer signing a 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 display any new rule in a place where it is likely to come to the attention of consumers.
- (6) A supplier shall ensure that an employee who provides a fitness service is qualified to provide the service.
- (7) 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.
- (8) A supplier shall take reasonable steps to ensure that services offered under membership agreements are available to consumers.
- (9) A supplier shall maintain adequate public liability insurance and professional indemnity insurance based on accepted industry standards.

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

6. (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) the 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.

Fitness Industry Code of Practice

(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

7. (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 supplier;

(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; and

(d) discloses the full price of the services being offered including,

(e) 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 membership:

(a) for a period greater than 12 months;

(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.

Fitness Industry Code of Practice

(5) 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;

(6) 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 membership would, at any time, exceed 15 months.

Consumer to complete pre-exercise questionnaire

8. (1) A supplier shall not enter a membership agreement with a consumer unless the consumer completes a questionnaire, provided by the supplier, in relation to the consumer's **risk** to participate in a fitness service.

(2) Where answers to a 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 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.

Fitness Industry Code of Practice

Visits to fitness centre by casuals

9. (1) A supplier shall, before providing a fitness service to a casual, 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 indemnify a fitness centre before the casual participates in a particular fitness service.

Cooling off period

10.(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

(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 21 days of receiving notice of termination of the membership.

Confidentiality of personal information

11. 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.

PART III-STANDARD OF FITNESS CENTRE

Standard of fitness center

12.(1) A supplier shall ensure that all wet areas are effectively cleaned on a daily basis.

(2) A supplier shall ensure that all equipment:

(a) conforms to safety standards established by the Standards Association of Australia;

(b) is mechanically sound; and

(c) 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 shall restrict the number of people in floor classes to a maximum of 1 person for every 3 square metres of effective exercise area.

(5) A supplier shall 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.

PART IV-QUALIFICATIONS AND EMPLOYMENT OF STAFF

Qualifications of staff

13.(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.

Fitness Industry Code of Practice

(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 in the state or territory in which the employee resides](#) and provides service at a level appropriate to that registration.

PART V-CONSUMER OBLIGATIONS

Consumer obligations

14.(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

15.(1) The Code shall be administered by the Code Administration Committee.

(2) The Code Administration Committee shall consist of:

(a) a representative of Fitness ACT;

(b) a representative of the Fitness Industry who is the owner or manager of a fitness centre;

(c) [the Commissioner](#).

Fitness Industry Code of Practice

- (d) a representative of a peak consumer organisation.
- (3) The representative of the Fitness Industry shall be elected at an open meeting of suppliers.
- (4) The Chairperson of the Code Administration Committee shall be the [Commissioner](#).
- (5) [The Office of Fair Trading](#) shall provide secretariat services to the Code Administration Committee.
- (6) The Code Administration Committee may appoint to the Code Administration Committee such other people as it considers necessary to carry out its functions.
- (7) Each member of the Code Administration Committee shall be appointed for a period of 2 years and shall be eligible for reappointment.
- (8) The Code Administration Committee shall meet at least twice each year but may meet more frequently as required.
- (9) The Code Administration Committee shall:
- (a) monitor compliance with the Code;
 - (b) report to the Minister on the effectiveness of the Code;
 - (c) monitor the operation and administration of the complaints handling procedures and the Complaints Resolution Committee;
 - (a) develop policy and procedures to promote the Code within the industry and its recognition by consumers;
 - (b) conduct periodic reviews of the effectiveness of the Code and consider recommendations for amendments to the Code; and
- (10) A member of the Code Administration Committee may act by proxy.
- (11) The appointment of a member of the Code Administration Committee is not invalidated, and shall not be called in question, by reason of a defect or irregularity in, or in connection with, the appointment of the member.
- (12) A member of the Code Administration Committee shall not act as a member of a Complaints Resolution Committee.

Fitness Industry Code of Practice

(13) 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.

(14) 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

16. (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) 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 Complaints Resolution Committee.

(3) Where the [Commissioner](#) receives a request under subclause (2), he or she shall, as soon as practicable, appoint a Complaints Resolution Committee and, within 14 days, refer the complaint to it for determination.

(4) Where a complaint is referred to a Complaints Resolution Committee, the Committee shall, within 30 days of the referral, hear the complaint.

(5) Where a Complaints Resolution Committee reaches a decision on a complaint, the Committee shall, within 7 working days:

- (a) prepare a written statement of reasons for the decision; and
- (b) provide that statement to the Director for distribution to the parties.

Complaints Resolution Committee

17. (1) A Complaints Resolution Committee shall consist of:

- (a) an independent chair;
- (b) a representative of the Fitness Industry who is an owner or manager of a fitness centre; and

Fitness Industry Code of Practice

(c) a representative of consumers.

(2) The Commissioner shall appoint a panel of persons for membership to a Complaints Resolution Committee for the purposes of subclause (1).

(3) The Commissioner shall appoint, from the panel referred to in subclause (2), a Complaints Resolution Committee, to determine a complaint in accordance with subclause 16(3).

(4) The members of the Complaints Resolution Committee referred to in paragraphs (1)(b) and 1(c) shall be selected from appropriately qualified people who have expressed an interest in being a member of the Committee.

(5) The Complaints Resolution Committee shall observe the principles of natural justice.

(6) Where a member:

(a) has a direct interest, pecuniary or otherwise; or

(b) has an interest which could otherwise conflict, or appear to conflict, with the proper performance of his or her duties as a member of the Committee in a matter before the Complaints Resolution Committee,

the member shall advise the Committee and the Director of the interest and take no further part in those proceedings as a member of the Committee.

(7) A member, or former member, of a Complaints Resolution Committee shall not disclose any information acquired by him or her as a consequence of his or her position.

(8) A member or former member of the Complaints Resolution 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.

(9) The Director may appoint eligible persons as alternates in the event that a member advises the Director of a conflict of interest under subclause (6).

(10) Each member of the panel referred to in subclause (2) shall be appointed for a period of 2 years and shall be eligible for reappointment.

(11) The appointment of a member of the Complaints Resolution Committee is not invalidated, and shall not be called in question, by reason of a defect or irregularity in, or in connection with, the appointment of the member.

Fitness Industry Code of Practice

Sanctions

18. Where a Complaints Resolution Committee determines that a supplier has breached the Code, the Committee may do one or more of the following:

- (a) require the principal to remove or change any offending material;
- (b) require the principal to publish a corrective statement in a manner and with wording approved by the Committee;
- (c) require the principal to have future advertising and promotional material monitored by the [Commissioner](#);
- (d) require the principal to refund to a consumer an amount determined by the Committee; or
- (e) make such recommendation to the [Commissioner](#) as it considers appropriate.

Compliance

19. If a supplier refuses to:

- (a) attend to have a complaint determined by a Complaints Resolution Committee;
- (b) comply with a requirement imposed by the Complaints Resolution Committee; or
- (c) comply with the provisions of the Code;

the [Commissioner](#) may exercise his or her powers under section 36 of the *Fair Trading Act 1992*.

Administrative report

20. (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 Office of Fair Trading](#);

Fitness Industry Code of Practice

- (b) the number of suppliers found to be in breach of the Code and the nature of the breaches;
- (c) the amount of time taken to deal with each complaint;
- (d) the number of breaches identified through monitoring; and
- (e) the number and type of sanctions imposed.

Review and evaluation of Code

21. The Code Administration Committee shall review the effectiveness of the Code after the first 6 months of its operation, and then at intervals of not more than 3 years, and may make recommendations for amendments to the Code."