

Queensland



Subordinate Legislation 2003 No. 65

Fair Trading Act 1989

**FAIR TRADING (CODE OF PRACTICE—
FITNESS INDUSTRY) REGULATION 2003**

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1 Short title

This regulation may be cited as the *Fair Trading (Code of Practice—Fitness Industry) Regulation 2003*.

2 Commencement

This regulation commences on 1 July 2003.

3 Code of practice

The code of practice in the schedule is the code of practice about the fitness industry prescribed for the Act, section 88A.¹

¹ Section 88A (Codes of practice) of the Act

SCHEDULE

FITNESS INDUSTRY CODE OF PRACTICE

section 3

PART 1—PRELIMINARY

1 Title

This code of practice may be cited as the Fitness Industry Code of Practice.

2 Object of code

The object of this code is to—

- (a) ensure appropriate standards of trading are maintained in the fitness industry; and
- (b) promote client confidence in the fitness industry; and
- (c) ensure fitness services are supplied to clients in an ethical and professional way, taking into account the interests of clients; and
- (d) establish rights and obligations between suppliers and clients for—
 - (i) fitness services offered and supplied; and
 - (ii) the disclosure of all information relevant to clients entering into agreements for fitness services.

3 Definitions

The dictionary in the schedule defines particular words used in this code.

4 Meaning of “fitness service”

(1) A “fitness service” includes the following—

SCHEDULE (continued)

- (a) an exercise consultation;
 - (b) a supervised or unsupervised individual exercise program;
 - (c) a group exercise program;
 - (d) a fitness program;
 - (e) fitness equipment at a fitness centre for use by clients.
- (2) A “**fitness service**” does not include any of the following—
- (a) a service supplied by—
 - (i) a doctor in the course of the doctor’s profession; or
 - (ii) a physiotherapist registered under the *Physiotherapists Registration Act 2001* in the course of the physiotherapist’s profession; or
 - (iii) a sporting club or organisation, for the playing of, or training for, a competitive sport; or
 - (iv) an educational institution, as part of the institution’s curriculum;
 - (b) if no other fitness service is supplied—
 - (i) the use of a spa bath, sauna bath, swimming pool or similar facility; or
 - (ii) fitness equipment at a fitness centre attached to a hotel for use by a person staying at the hotel;
 - (c) a service at a fitness centre for the sole purpose of medical rehabilitation;
 - (d) a service for an unsupervised outdoor activity;
 - (e) the hire of a court or other facility for playing sport.

(3) In this section—

“**exercise consultation**”, for a client, means a questionnaire or fitness assessment completed before or after exercising.

SCHEDULE (continued)

5 Compliance with code

(1) This code contains provisions with which a supplier must comply.²

(2) Without limiting subsection (1), the supplier must comply with the code even though—

- (a) a client asks the supplier to do something contrary to the code; or
- (b) if the supplier is an employee, the supplier's employer asks the supplier to do something contrary to the code.

PART 2—GENERAL RULES OF CONDUCT

6 Claiming membership or endorsement

(1) A supplier must not falsely claim to be a member of, or endorsed by, an organisation or association.

(2) A supplier must take reasonable steps to ensure an employee of the supplier does not falsely claim to be a member of, or endorsed by, an organisation or association.

7 High pressure tactics, harassment or unconscionable conduct

(1) A supplier at a fitness centre must not engage in high pressure tactics, harassment or unconscionable conduct for the purpose of entering into a membership agreement with a client.

(2) A supplier at a fitness centre must take reasonable steps to ensure an employee of the supplier does not engage in high pressure tactics, harassment or unconscionable conduct for the purpose of entering into a membership agreement with a client.

2 Contravention of this code is a ground for—

- seeking an undertaking under the Act, section 91I
- obtaining an injunction under the Act, section 98
- seeking an order for compensation or other remedial order under the Act, section 100.

SCHEDULE (continued)

Examples of ‘harassment’—

1. Using, or getting a third party to use, threatening or intimidating language or behaviour towards a client.
2. Engaging in conduct that would make an ordinary person feel unwillingly compelled to comply with a supplier’s request or demand.

Examples of ‘unconscionable conduct’—

1. Taking unfair advantage of a supplier’s superior bargaining position relative to a client.
2. Requiring a client to comply with conditions not reasonably necessary for the protection of a supplier’s legitimate interests.
3. If it is reasonably apparent a client can not understand relevant documents, taking unfair advantage of the client’s lack of understanding.
4. Exerting undue influence or pressure on, or using unfair tactics against, a client.

8 Soliciting through false or misleading advertisements or communications

(1) A supplier at a fitness centre must not solicit clients through false or misleading advertisements or other communications the supplier knows are false or misleading.

Example—

A supplier must not tell a client a reward or gift is free if the fitness services to which it relates is increased in price or decreased in quality because of the reward or gift

(2) Without limiting subsection (1), a supplier must not make deliberately misleading or false comparisons with a fitness service supplied by another supplier.

(3) A supplier at a fitness centre must take reasonable steps to ensure an employee of the supplier does not solicit clients through false or misleading advertisements or other communications the supplier knows are false or misleading.

Example—

A supplier must take reasonable steps to ensure an employee does not tell a client a reward or gift is free if the fitness services to which it relates is increased in price or decreased in quality because of the reward or gift.

(4) Without limiting subsection (3), a supplier must take reasonable steps to ensure an employee of the supplier does not make deliberately

SCHEDULE (continued)

misleading or false comparisons with a fitness service supplied by another supplier.

9 Signs at fitness centre

(1) A supplier at a fitness centre must display a sign complying with subsections (2) to (5).

(2) The sign must be displayed in a conspicuous position so it is clearly visible to a person who enters the fitness centre.

Examples—

1. Display in a prominent position on the reception counter.
2. Display at eye level on a wall that clients view on first entering the fitness centre.

(3) The sign must have the following statement—

‘If you believe there is a risk to your health by participating in a fitness service at this fitness centre, you must inform the supplier in writing about the risk.’

(4) The statement must be immediately followed by another statement—

‘If you are a casual client, you must assess your fitness level, ability to exercise and risk to your health by participating in a fitness service at this fitness centre.’

(5) However, a supplier also complies with subsections (3) and (4) if the statements substantially comply with the subsections.

(6) The statements must be—

- (a) easily legible; and
- (b) in a colour contrasting distinctly with the background colour of the sign; and
- (c) conspicuous to a person looking at the sign.

SCHEDULE (continued)

PART 3—DISCLOSURE AND CONFIDENTIALITY

10 Disclosure of information about fitness services

A supplier must—

- (a) ensure enough information is available to a client about a fitness service to enable the client to make an informed decision about using the fitness service; and
- (b) ensure promotional material about a fitness service—
 - (i) is truthful, accurate and unambiguous; and
 - (ii) does not encourage unrealistic expectations of outcomes achievable from the fitness service.

11 Availability of code

A supplier must—

- (a) have a copy of this code available for perusal by a client; and
- (b) if asked by a client, promptly tell the client where to obtain a copy of this code.³

12 Disclosure of information about fitness centre

(1) Before a client enters into a membership agreement with a supplier, the supplier must—

- (a) give the client a copy of the membership agreement, the rules of the fitness centre and other information to enable the client to make an informed decision about entering into the agreement; and

³ This code may be purchased from Goprint or accessed at www.legislation.qld.gov.au.

SCHEDULE (continued)

- (b) if the client enters into the membership agreement after the fitness centre opens—tell the client that the client may inspect the fitness centre.⁴

(2) The supplier must have a copy of the rules available at the fitness centre for perusal by a client.

(3) If—

- (a) a rule is added to the rules of the fitness centre (a “**new rule**”); or
 (b) a rule of the fitness centre is changed;

the new rule or change to the rule must be displayed for 2 months in a conspicuous position so it is clearly visible to a person who enters the fitness centre.

13 Confidentiality

(1) A supplier must not use or disclose confidential information about a client obtained through the supplier’s business of supplying fitness services to the client.

(2) Subsection (1) does not apply to information—

- (a) used or disclosed for a purpose authorised in writing by the client; or
 (b) that must be lawfully used or disclosed.

Example of when information must be ‘lawfully used or disclosed’—

To comply with legal process.

(3) A supplier must take reasonable steps to ensure an employee of the supplier does not use or disclose confidential information about a client obtained through the supplier’s business of supplying fitness services to the client.

(4) In this section—

“**client**” includes a former client.

“**supplier**” includes a former supplier.

⁴ See section 23 (Notifying client of opening of fitness centre) for when a client may inspect a fitness centre if the client enters into the membership agreement before the fitness centre opens.

SCHEDULE (continued)

PART 4—MEMBERSHIP AGREEMENTS

Division 1—Interpretation

14 Meaning of “cooling-off period”

(1) The “cooling-off period”, for a client entering into a membership agreement with a supplier, starts—

- (a) if the client enters into the agreement before the fitness centre opens—
 - (i) if the fitness centre opens on the proposed opening day—on that day; or
 - (ii) if the fitness centre opens on a new opening day and the fitness centre has not opened when the supplier notifies the client of the new opening day—on that day; or
 - (iii) if the fitness centre opens on a new opening day and the fitness centre has opened when the supplier notifies the client of the new opening day—when the client receives notice that the fitness centre has opened; or
- (b) if the client enters into the agreement with the supplier after the fitness centre opens—the day the client enters into the agreement with the supplier.

(2) The “cooling-off period” ends 48 hours after the cooling-off period starts.

Division 2—Supplier’s obligations before entering into membership agreements

15 Disclosure of fees

(1) Before a client enters into a membership agreement with a supplier, the supplier must give the client a clearly expressed written statement containing the following—

- (a) each fee the client must pay to the supplier under the membership agreement;

SCHEDULE (continued)

- (b) for what fitness service or fitness services each fee is payable;
 - (c) when each fee is payable;
 - (d) the total amount of fees payable under the agreement.
- (2) Each of the following fees must be disclosed—
- (a) the initial fee for joining the fitness centre;
 - (b) the fee for membership (“**membership fee**”);
 - (c) the fee for each visit to the fitness centre;
 - (d) the fee for fitness services provided at the centre;
 - (e) the fee for administration if the client terminates the agreement during the cooling-off period or because of the client’s permanent sickness or physical incapacity (“**administration fee**”);
 - (f) the fee for terminating the agreement if the client terminates other than during the cooling-off period or because of the client’s permanent sickness or physical incapacity (“**termination fee**”);
 - (g) if there is a fee to transfer membership to another fitness centre or another person—the fee;
 - (h) if there is a fee to suspend membership—the fee;
 - (i) any other fee payable, or that may be payable.
- (3) If a supplier offers a fitness service free or discounted under a membership agreement, each of the following must be disclosed in the statement mentioned in subsection (1)—
- (a) the usual fee for the fitness service before the offer is made;
 - (b) if the usual fee for the fitness service is increased before the offer is made—the increase in the fee;
 - (c) if the fitness service is decreased in quality or restricted in any way because of the offer—the decrease in quality of, or the restriction on, the fitness service.

SCHEDULE (continued)

Division 3—Requirements for membership agreements

16 Membership agreement to be in writing and signed

(1) A supplier must ensure a membership agreement—

- (a) is in writing, easily legible and clearly expressed; and
- (b) is signed by the client and by or for the supplier.

(2) Immediately after a client enters into a membership agreement with a supplier, the supplier must give the client a copy of the signed membership agreement.

17 What a membership agreement must state

A supplier entering into a membership agreement with a client must ensure the agreement states each of the following—

- (a) the supplier's name and address;
- (b) the supplier's and the client's rights and obligations, including, for example, a requirement that, if the client believes there is a risk to the client's health by participating in a fitness service at the supplier's fitness centre, the client must inform the supplier in writing about the risk;
- (c) each fee the client must pay to the supplier under the membership agreement;
- (d) for what fitness service or fitness services each fee is payable;
- (e) if there are no fees payable for a part of the term of the agreement—the part of the term;
- (f) when each fee is payable;
- (g) the total amount of fees payable under the agreement;
- (h) that the agreement is subject to a cooling-off period;
- (i) when the cooling-off period starts and when it ends;
- (j) if the supplier enters into the agreement with the client before the supplier's fitness centre opens—the proposed opening day;

SCHEDULE (continued)

- (k) that the client is entitled to terminate the agreement because of the client's permanent sickness or physical incapacity;
- (l) the circumstances under which the client is entitled to terminate the agreement before the membership term ends, other than during the cooling-off period or because of the client's permanent sickness or physical incapacity;
- (m) how the client terminates the agreement;
- (n) the circumstances under which the supplier may terminate the agreement.

18 Fitness services offered under membership agreement

A supplier must take reasonable steps to ensure a fitness service offered under a membership agreement with a client is available to the client.

Division 4—Types of membership agreements

19 Limitation on membership agreement of more than 1 year

(1) This section applies if a supplier enters into a membership agreement with a client for a term of more than 1 year.

(2) The supplier must not accept prepayment from the client of fees for more than 1 year of the term.

20 On-going agreement

(1) A supplier who enters into an on-going agreement with a client must ensure—

- (a) there is a condition in the membership agreement stating the membership agreement is an on-going agreement; and
- (b) the client initials and dates the condition when the client signs the membership agreement; and
- (c) the supplier, at least 2 months before the end of the initial term of the membership agreement, gives the client written notice stating—

SCHEDULE (continued)

- (i) when the initial term ends; and
- (ii) that the membership agreement continues after the end of the initial term and ends only if and when the client terminates the membership agreement.

(2) In this section—

“**on-going agreement**” means a membership agreement that—

- (a) has an initial term; and
- (b) continues after the end of the initial term; and
- (c) ends only if and when the client terminates the membership agreement.

Division 5—Entering into membership agreements before fitness centre opens

21 Membership agreement allowed

A supplier may enter into a membership agreement with a client before the supplier’s fitness centre opens.

22 No fee payable until fitness centre opens

If a supplier enters into a membership agreement with a client before the fitness centre opens—

- (a) the client is not liable to pay any fee under the agreement until the centre opens; and
- (b) the supplier must not collect any fee from the client until the centre opens.

23 Notifying client of opening of fitness centre

(1) Before a supplier enters into a membership agreement with a client, the supplier must tell the client—

- (a) the proposed opening day; and

SCHEDULE (continued)

- (b) that the client may inspect the fitness centre during the cooling-off period.⁵
- (2) If there is a new opening day, the supplier must tell the client—
 - (a) the new opening day; and
 - (b) that the client may inspect the fitness centre during the cooling-off period.
- (3) The supplier must allow the client to inspect the fitness centre during the cooling-off period.

Division 6—Terminating membership agreements

24 Terminating membership agreement during cooling-off period

(1) A client may terminate a membership agreement with a supplier during the cooling-off period.⁶

(2) The client terminates the agreement by giving the supplier written notice of the termination.

(3) The supplier must refund to the client the fees paid by the client to the supplier less—

- (a) if the supplier has supplied a fitness service to the client and the client has not paid for the fitness service—the fee for the fitness service (the “**unpaid fee**”); and
- (b) the administration fee.

(4) However, the supplier may deduct the unpaid fee from the refund only if the supplier has disclosed the fee to the client in the written statement given to the client before the client entered into the agreement.⁷

(5) The maximum administration fee a supplier can charge is the lesser of the following—

- (a) \$75;

5 See section 14 (Meaning of “cooling-off period”).

6 See section 14 (Meaning of “cooling-off period”).

7 See section 15 (Disclosure of fees).

SCHEDULE (continued)

(b) 10% of the membership fee.

(6) The supplier must pay the refund to the client within 21 days after the client terminates the agreement.

25 Terminating membership agreement because of sickness or incapacity

(1) A client may terminate a membership agreement with a supplier if the client cannot use a fitness service supplied under the agreement because of the client's permanent sickness or physical incapacity.

(2) The client terminates the agreement by giving the supplier—

- (a) written notice of the termination; and
- (b) a medical certificate stating that the client cannot use the fitness service because of the client's permanent sickness or physical incapacity.

(3) The supplier must refund to the client a proportion of the fees paid by the client to the supplier representing the unused part of the agreement less—

- (a) if the supplier has supplied a fitness service to the client and the client has not paid for the fitness service—the fee for the fitness service (the “**unpaid fee**”); and
- (b) the administration fee.

(4) However, the supplier may deduct the unpaid fee from the refund only if the supplier has disclosed the fee to the client in the written statement given to the client before the client entered into the agreement.⁸

(5) The maximum administration fee a supplier can charge is the lesser of the following—

- (a) \$75;
- (b) 10% of the membership fee.

(6) The supplier must pay the refund to the client within 21 days after the client terminates the agreement.

⁸ See section 15 (Disclosure of fees).

SCHEDULE (continued)

26 Other termination of membership agreement

(1) A client may terminate a membership agreement with a supplier other than under section 24 or 25.

(2) The client terminates the agreement by giving the supplier written notice of the termination.

(3) The maximum termination fee the supplier can charge the client is the termination fee stated in the agreement.

(4) The supplier must make every reasonable effort to respond quickly and fairly to the client's termination of the agreement.

PART 5—COMPLAINTS HANDLING PROCEDURES

27 Complaints by client

A supplier must make every reasonable effort to resolve quickly and fairly a complaint made by a client about the supply of a fitness service under a membership agreement with the supplier.

28 Complaints handling procedures

(1) A supplier supplying a fitness service to a client under a membership agreement must make available to the client a complaints handling procedure —

- (a) in the supplier's own business; or
- (b) by an industry organisation.

(2) The procedure must—

- (a) be simple and easy to use; and
- (b) comply with AS 4269—1995.⁹

⁹ AS 4269—1995 (Complaints handling).

SCHEDULE (continued)

SCHEDULE**DICTIONARY**

section 3

“administration fee” see section 15(2)(e).

“casual client” means a person who—

- (a) has not entered into a membership agreement with a supplier;
and
- (b) pays the supplier for a fitness service at a fitness centre each time the fitness service is used.

“client” means a person who—

- (a) is not a casual client; and
- (b) either—
 - (i) is supplied with a fitness service by a supplier; or
 - (ii) enters into a membership agreement with a supplier; or
 - (iii) makes enquires with a supplier or employee of a supplier at a fitness centre about entering into a membership agreement with the supplier.

“cooling-off period” see section 14.

“fitness centre” means an indoor facility owned, leased, or used by a supplier at which the supplier—

- (a) provides fitness equipment; and
- (b) primarily conducts the business of supplying fitness services.

“fitness equipment” means apparatus used in the supply of fitness services, including, for example, free weights and rowing machines.

“fitness service” see section 4.

SCHEDULE (continued)
SCHEDULE (continued)

“membership agreement” means an agreement between a supplier and a client for the supply of fitness services by the supplier to the client at a fitness centre.

“membership fee” see section 15(2)(b).

“new opening day”, for a fitness centre, means the day the fitness centre opens if the day is different from the proposed opening day.

“opens”, for a fitness centre, means starts operating as a fitness centre.

“permanent sickness or physical incapacity”, of a client, means the client is sick or physically incapacitated for the greater of—

- (a) the remainder of the term of the membership agreement; or
- (b) 5 years.

“proposed opening day”, for a fitness centre, means the day advised by a supplier to a client, before the supplier enters into a membership agreement with the client, as the day the fitness centre would open.

“supplier” means a person who is in the business of supplying fitness services.¹⁰

Examples of a supplier—

1. An owner of a fitness centre who receives income, other than rent, for the provision of fitness services at the centre.
2. A franchisee of a fitness centre.
3. A person who has effective control of the day to day management of a fitness centre.
4. A person operating a business as a personal trainer.

Examples of a person who is not a supplier—

1. An administrative person who is paid a wage or salary and works in an office at a fitness centre.

¹⁰ *Acts Interpretation Act 1954*, section 36 (Meaning of commonly used words and expressions)—

“person” includes an individual and a corporation.

SCHEDULE (continued)
SCHEDULE (continued)

2. An aerobics instructor at a fitness centre who is paid to conduct aerobics classes for clients or casual clients.

“termination fee” see section 15(2)(f).

ENDNOTES

1. Made by the Governor in Council on 10 April 2003.
2. Notified in the gazette on 11 April 2003.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Office of Fair Trading.