

The NSW Fitness Industry Code of Practice

Setting the standards of Service, Safety and
Fair Trading within the NSW Fitness Industry.



FITNESS INDUSTRY CODE OF PRACTICE

PART 1 – INTRODUCTION

Objectives

The objectives of the Fitness Industry Code of Practice are:

- 1.1 To provide a high value service which will enhance consumer confidence and improve the long term viability of the signatory fitness centres.
- 1.2 To set a standard of business practice that protects the consumer financially.
- 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.
- 1.5 To promote a drug free fitness environment.

Application of Code

2. This Code applies to Fitness Centres in NSW that are signatories to the Code and have satisfied the Code Administration Committee of their compliance with the Code.

Interpretation

3. In this Code:

“Allied Fitness Service” means a fitness related activity, and includes physiotherapy, massage, martial arts and yoga provided by a suitably qualified professional who may not necessarily be a Registered Fitness Professional;

“Code Administration Committee” means the code administration committee appointed by Fitness NSW;

“Complaints Administration Officer” means the complaints administration officer appointed by Fitness NSW;

“Casual User” means a Consumer who has not entered into a Membership Contract with a Supplier and who pays that Supplier for the provision of a specified service each time he or she uses a Fitness Centre;

“Certificate of Membership” means a certificate issued to any Fitness Centre on becoming a member of Fitness NSW;

“Code” means the Fitness Industry Code of Practice;

“Complaint” means an expression of discontent alleging breach of the Code;

“Consumer” means a person who is supplied with a Fitness Service or Allied Fitness Service and includes a person who is making inquiries with a Fitness Centre prior to deciding whether to enter into a Membership Contract;

“Consumer Complaint” is a “Complaint” made by a “Consumer”;

“Cooling-off Period” means the period referred to in this Code during which a Consumer may terminate his or her Membership Contract;

“Complaints Resolution Committee” means the independent complaints resolution committee which may be appointed from time to time by Fitness NSW;

“Fitness Centre” means an establishment that provides Fitness Services or Allied Fitness Services;

“Fitness Equipment” means apparatus used in the provision of Fitness Services or Allied Fitness Services;

“Fitness Industry Guidelines” means any government supported guidelines specifically adopted by Fitness NSW for inclusion in the Code and set out in Schedule 1;

3. In this Code: (cont'd)

“Fitness Service” means a general fitness or exercise activity provided by, or under the supervision of, a Registered Fitness Professional in respect of which the Registered Fitness Professional has activity specific credentials;

“Membership Contract” means an agreement between a Supplier and a Consumer, or any other party on behalf of a Consumer, for membership of a Fitness Centre;

“Periodic Billing Contract” means a Membership Contract between a Consumer and Supplier under which the Consumer is billed on a regular basis such as weekly, fortnightly or monthly as agreed between the parties;

“Pre-paid Membership Contract” means a Membership Contract under which the whole of the cost is paid at the time of entering into the Membership Contract;

“Registered Fitness Professional” means a qualified fitness professional currently recognised by and registered with the national peak fitness industry body Fitness Australia, or other equivalent body approved by the Code Administration Committee;

“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;

“Supplier” means a Fitness Centre which is a signatory to the Code and includes its employees, directors and agents.

“Supplier Complaint” means an allegation of breach of the Code made by another Supplier.

PART II - SUPPLIER'S OBLIGATIONS

Supplier's obligations

4. A Supplier must not use misleading or false advertising or marketing practices which may include, but are not limited to, false or misleading representations:
 - (a) concerning the price of goods or Fitness Services or Allied Fitness Services;
 - (b) that goods or Fitness Services or Allied Fitness Services have benefits they do not have; or
 - (c) concerning the need for goods or Fitness Services or Allied Fitness Services.
5. A Supplier must ensure that sufficient information is available to enable a Consumer to make an informed decision in relation to membership of a Fitness Centre or the provision of Fitness Services and Allied Fitness 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 Services and Allied Fitness services, or the facilities and equipment provided;
 - (c) not make misleading or false comparisons with programs provided by competitors;
 - (d) allow prospective Consumers to inspect the premises without any obligation to purchase a membership;
 - (e) make available for perusal a copy of this Code; and
 - (f) ensure that employees and agents act in an ethical and professional manner and do not use unreasonable sales methods such as harassment or coercion to sell memberships.
6. A Supplier must provide a Consumer with:
 - (a) a copy of the proposed Membership Contract, if requested, and
 - (b) a copy of the signed Membership Contract at the time of entering into the Membership Contract.
7. A Fitness Centre which is a member of Fitness NSW must display its current Certificate of Membership.
8. A Supplier must provide Consumers with a copy of the consumer brochure about the Code produced by the Office of Fair Trading prior to entering into the Membership Contract.
9. A Supplier must ensure that an employee who provides a Fitness Service is a Registered Fitness Professional and that the Fitness Centre and all Registered Fitness Professionals comply with any applicable Fitness Industry Guidelines.

10. A Supplier must ensure that a Registered Fitness Professional is available at all times when a Fitness Centre is open for business.
11. A Supplier must ensure that Fitness Services, Allied Fitness Services and facilities offered under the Membership Contract are ordinarily available to Consumers.
12. A Supplier must maintain, and provide evidence of, adequate public liability insurance and professional indemnity insurance based on accepted industry standards.
13. A Supplier must ensure that all employees are aware of and understand the Code.
14. A Supplier must ensure that all personal information is handled in accordance with applicable privacy law.
15. A Supplier must comply with any reasonable request for access or relevant documentation from the Complaints Resolution Committee, within a reasonable time.

Membership Contracts

16. A Supplier must not enter into a Membership Contract with a Consumer unless the Membership Contract is in writing and is signed by the Consumer and Supplier.
17. A Supplier must ensure that a Membership Contract:
 - (a) states the name and address of the parties to the Membership Contract including Australian Business Number (ABN) for corporations;
 - (b) sets out clearly and unambiguously the rights and responsibilities of both the Supplier and the Consumer;
 - (c) states that the Membership Contract is subject to a Cooling-off Period in accordance with Clauses 29-32;
 - (d) discloses the full price of the services being offered in accordance with Clause 18; and
 - (e) sets out any rules of the Fitness Centre that apply to the Member.
18. The Membership Contract must list the services being offered and the price for such services including, where applicable:
 - (a) the joining fee;
 - (b) the fee for each service or visit;
 - (c) the amount payable, frequency of payments and minimum term;
 - (d) the fee for an exercise consultation;
 - (e) the fee for a Fitness Service or Allied Fitness Service;
 - (f) any other fees payable, or that may be payable; and
 - (g) any early cancellation fee and the circumstances under which that fee is payable.
19. A Supplier shall not describe a service or membership, or part of a membership, as free or discounted if the service or membership is increased in price, decreased in quality or is restricted in any manner as a result of the offer.
20. A Supplier will give all Consumers, both new and renewing, the options of entering into either a Periodic Billing Membership Contract or a Pre-paid Membership Contract.
21. A Supplier will ensure that any Periodic Billing Membership Contract 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.
22. The following Notices must be included in all Membership Contracts in bold 14pt type and each must be signed and dated by the Consumer:
 - (a) Membership Contract Options
Notice of an offer of a Periodic Billing Membership Contract or a Pre-paid Membership Contract, in the following form -

"I acknowledge that I have been given the option of choosing a membership based on either periodic billing or pre-payment. I have chosen to pay my membership by periodic billing/pre-pay my entire membership fee (delete whichever does not apply)."

- (b) Obligation under Periodic Billing Membership Contract
Notice of an obligation to pay under a Periodic Billing Membership Contract, in the following form –

“I acknowledge that unless I provide written notice of termination of my membership prior to the end of the minimum period of my Periodic Billing Membership Contract, my membership fees will continue to be deducted until 30 days after I provide written notice of termination to the Fitness Centre. I understand that the Fitness Centre must respond to its receipt of a written termination notice within 7 days.”

23. A Supplier must not enter into a Membership Contract 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 Contract cannot be provided.
24. A Supplier must not receive membership or renewal fees 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 Centre premises unless there is written documentation evidencing the Supplier’s intention to renew the lease, and acknowledgment from the lessor of the receipt of such documentation; or
 - (c) for any services or periods otherwise defined in the Fitness Services (Pre-paid Fees) Act 2000 (NSW).
25. Where a Fitness Centre has not commenced providing agreed 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 the agreed Fitness Services;
 - (b) not sell memberships more than three months before commencement of providing agreed Fitness Services; and
 - (c) otherwise comply with the Fitness Services (Pre-paid Fees) Act 2000.

Consumer to complete pre-exercise questionnaire

26. A Supplier must not provide a Fitness Service to a Casual User or enter into a Membership Contract with a Consumer unless:
- (a) the Consumer completes a pre-exercise questionnaire provided by the Supplier, in relation to his/her risk in participating in the Fitness Service; and
 - (b) that questionnaire is assessed by a Registered Fitness Professional.
27. Where answers to a pre-exercise questionnaire indicate that a Consumer may be at risk from participating in a particular Fitness Service, the Supplier must not supply any Fitness Service to the Consumer unless the Consumer states that he or she has received advice from a medical practitioner or any 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.
28. Where a Fitness Centre receives evidence that the Consumer may be at risk from participating in a Fitness Service under Clause 26, a Supplier must not provide that service until an appropriately qualified person has provided advice to the Consumer in relation to an appropriate fitness program.

Cooling-off Period

29. Where a Consumer enters into a Membership Contract for a period of three months or more, there is a seven day Cooling-off Period from the date that the Membership Contract is signed during which the Consumer may terminate the membership. The Cooling-off Period does not apply where a Membership Contract is renewed.
30. A Consumer who terminates a Membership Contract within the Cooling-off Period must give written notice to the Supplier, attaching a copy of the Membership Contract.
31. Where a Supplier has provided services to a Consumer before the Consumer terminates the Membership Contract, the Supplier may deduct from the amount refunded the Standard Cost of any service provided including a reasonable administration charge.

32. A Supplier who receives a notice in accordance with Clause 28 must pay the refund to the Consumer within seven days of receiving the notice.

Refunds or Membership Deferment due to Sickness or Physical Incapacity

33. Where a Consumer is unable, by reason of permanent physical incapacity verifiable by a medical certificate, to avail him/herself of the Fitness Services or those Allied Fitness Services provided under his/her Membership Contract, he/she 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 Clause 35; or
 - (b) upon receipt of a termination notice for a Periodic Billing Contract, the Supplier will immediately inform the financial institution and request that the deductions cease as soon as possible.
34. Where a Consumer is unable, by reason of temporary physical incapacity verifiable by a medical certificate, to avail him/herself of the Fitness Services or those Allied Fitness Services provided under his/her Membership Contract, he/she is entitled to defer the balance of the period of the Membership Contract to a period agreed with the Supplier.
35. Where a Consumer is to receive a refund under Clause 33:
- (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 seven days of receiving written notice of termination.

Standard of Fitness Centre

36. A Supplier must ensure that all wet areas of the Fitness Centre are cleaned frequently and regularly in order to maintain a high standard of cleanliness and comply with occupational health and safety legislation.
37. 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.
38. A Supplier must ensure that all equipment:
- (a) is mechanically sound, and is installed and operating in accordance with the manufacturer's instructions and standards; and
 - (b) is serviced as required to ensure continued user safety.
39. A Supplier must ensure that Registered Fitness Professionals or Allied Fitness Service Providers who advise Consumers how to operate the equipment are adequately trained in the operation of the equipment.
40. A Supplier must ensure that all exercise areas contain adequate safe working space and that user numbers do not hinder safe and effective use of the area or equipment.

Qualifications of staff

41. A Supplier must not misrepresent to a Consumer that the provider of a Fitness Service or Allied Fitness Service is qualified to provide that service.
42. A person who is gaining experience to become a Registered Fitness Professional must be supervised by a person who is qualified to provide the Fitness Service at the appropriate level. Consumers must be advised where a trainee is providing Fitness Services.
43. A person is qualified to provide a Fitness Service if the person is a Registered Fitness Professional.

Resolution of Complaints

44. A Supplier will make every reasonable effort to resolve quickly and fairly any Complaint.
45. Where an oral Complaint is made, the person receiving the Complaint will:
 - (a) identify himself/herself, listen, record details and determine what the complainant wants;
 - (b) confirm the details received;
 - (c) explain the Complaints resolution process and advise of alternative courses of action;
 - (d) resolve the Complaint immediately if possible or make a commitment to resolve the Complaint within a given time frame;
 - (e) follow up the Complaint as appropriate eg. provide the Complainant with feedback regarding the result of action taken.
46. Where a written Complaint is made, the Supplier will:
 - (a) provide the Complainant with written feedback about action taken within ten days of receiving the Complaint or;
 - (b) if it is not possible to resolve the Complaint within ten days, provide written acknowledgment of receipt of the Complaint within seven days and specify the time frame within which the Complainant will receive feedback about action taken.
47. The Supplier will ensure that all staff employed are familiar with the Fitness Centre's complaints resolution policies and procedures.
48. The Supplier must collect relevant data relating to Complaints that they receive, as specified by Fitness NSW, and provide it to Fitness NSW upon request.
49. Where a Complaint cannot be resolved, the Supplier must advise the Complainant:
 - (a) of his/her right to have the Complaint referred to the Code Administration Committee; and
 - (b) that either party may refer the Complaint to the Complaints Administration Officer.
50. A Supplier will co-operate with the Code Administration Committee, the Complaints Resolution Committee or Fitness NSW in resolving any Consumer Complaint or Supplier Complaint.

Part III - ADMINISTRATION

Role of Fitness NSW

51. Fitness NSW will administer the Code and is responsible for its promotion.
52. Fitness NSW must provide an account of its administration and promotion of the Code, including the following details, in its Annual Report:
 - (a) the current number of Member Fitness Centres, identifying new members and details of those ceasing membership;
 - (b) the number of Consumer Complaints, their nature and resolution;
 - (c) the number of Supplier Complaints, their nature and resolution;
 - (d) sanctions imposed; and
 - (e) an executive summary on the operation of the Code.
53. Fitness NSW will appoint a Code Administration Committee which will be made up of:
 - (a) three persons representing the fitness industry who are members of Fitness NSW, including a member of the Board of Fitness NSW;
 - (b) one representative of the Office of Fair Trading (NSW);
 - (c) an independent consumer representative;
 - (d) a representative of the Department of Tourism, Sport and Recreation; and
 - (e) an independent representative appointed by Fitness NSW, if deemed appropriate by Fitness NSW, with
 - (f) a Chairperson to be elected from one of the industry representatives.

54. Where the Complaints Administration Officer is unable to resolve promptly either a Consumer Complaint or a Supplier Complaint, it must be referred to the Code Administration Committee.
55. Fitness NSW may seek advice from the Code Administration Committee on interpretation of the Code and on other Code matters.
56. Fitness NSW may impose sanctions or order corrective action under Clauses 66 and 69.

Role of the Code Administration Committee

57. The Code Administration Committee shall meet as required but at least four times per year.
58. A special meeting of the Code Administration Committee may be called by any three Code Administration Committee members, or by Fitness NSW, on seven days notice.
59. The Code Administration Committee will:
 - (a) review the effectiveness of the Code;
 - (b) make recommendations on amendments to the Code;
 - (c) deal with matters referred to it under Clauses 49, 54 and 55;
 - (d) provide a report on its activities to Fitness NSW for inclusion in its Annual Report;
 - (e) assess the on-going eligibility of signatories to the Code of its own initiative or when requested by Fitness NSW, and make recommendations on any action required; and
 - (f) advise Fitness NSW of the outcome of the investigation of any Complaints and recommend any sanctions under Clause 66 for non-compliance with the Code.
60. Where the Code Administration Committee considers it appropriate or where a Complainant or a Supplier requests it, the Code Administration Committee shall recommend to Fitness NSW that a Complaint be referred to the Complaints Resolution Committee.

Role of Complaints Resolution Committee

61. Fitness NSW may appoint a Complaints Resolution Committee, or adopt alternative dispute resolution procedures that are independent and acceptable to all parties, to determine matters referred to it under Clause 60.
62. The Code Resolution Committee will consist of three persons;
 - (a) a representative of the fitness industry;
 - (b) a representative of a consumer organisation; and
 - (c) an independent chairperson.
63. The Complaints Resolution Committee, and any other alternative dispute resolution method adopted, must observe the principles of natural justice, and must report all findings and recommendations to Fitness NSW and notify the parties in writing of the determination.
64. In investigating a Complaint, a Complaints Resolution Committee may:
 - (a) request that a Supplier provide copies of relevant documentation. The documentation will be treated as confidential and will not be reproduced or distributed without the permission of the Supplier.
 - (b) request that, on reasonable notice, a Supplier allow the Committee access to the Supplier's Fitness Centre,
65. A person sitting on a Complaints Resolution Committee will disqualify him/herself from participation in the resolution of a Complaint in which he/she has a conflict of interest, or an apparent conflict of interest.

Supplier Sanctions

66. Where a breach of the Code has been determined and recommendations made, Fitness NSW may direct the Supplier to take corrective action not limited to, but including:
 - (a) the withdrawal or amendment of particular advertising;
 - (b) the placement of corrective advertising;
 - (c) corrective mailing to Consumers;
 - (d) the withdrawal or amendment of particular literature or stationery;
 - (e) modification of equipment, facilities or services to meet the standards in the Code.
67. Fitness NSW, acting on its own discretion or on the recommendation of the Code Administration Committee or the Complaints Resolution Committee, may issue warnings to, or censure, a non-complying Supplier.
68. If a Supplier does not comply with sanctions imposed by Fitness NSW within the time allocated, the Code Administration Committee or Complaints Resolution Committee may recommend that Fitness NSW suspend the Supplier's membership of Fitness NSW for a specific time period, or, in the event of continued non-compliance, the Code Administration Committee or Complaint Resolution Committee may recommend that the Supplier be expelled from membership of Fitness NSW.
69. Where the Code Administration Committee or the Complaints Resolution Committee, recommends expulsion or some other penalty, it must make a report of the Supplier's conduct to Fitness NSW and allow the Supplier to appeal for continued participation. A decision by Fitness NSW following any such appeal will be final.
70. Following suspension or expulsion, the Supplier must not claim to be a Fitness NSW member in internal or external advertising; must immediately remove Code signage; and must immediately withdraw and cease using all literature and stationery referring to the Code or to Fitness NSW.

Schedule 1

• Kids In Gyms Guidelines Effective Date January 2006

• Solarium Guidelines Effective Date January 2006