



Government of **Western Australia**
Department of **Commerce**
Consumer Protection

Exercising your rights the fitness code



48 hour cooling-off period
Membership agreement
Truth in advertising
Full fee disclosure

Acknowledgements

The Department of Commerce wishes to thank Fitness WA for its assistance in preparing this brochure. Fitness WA is a major fitness industry association in Western Australia with a focus on improving fitness standards and promoting the fitness industry. Fitness WA members registered with Fitness Australia are required to meet certain standards as a condition of membership.

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1. Introduction

The fitness industry code of practice offers consumers significant rights when dealing with fitness centres and other fitness suppliers.

The code includes:

- a 48 hour cooling-off period for all membership agreements;
- requirements for truth in advertising and the selling of membership agreements;
- full disclosure of fees and services; and
- a limit of 12 months payments in advance.

The Department of Commerce is responsible for enforcing the code. If you have a problem and cannot resolve it with your fitness supplier, you can contact the Consumer Protection Advice Line on 1300 30 40 54.

2. Membership agreements: Fitness centres only

In the fitness industry, a fitness centre's contract with a consumer is known as a **membership agreement**. A membership agreement is a legally binding contract and must be in writing.

Selecting a fitness centre

Before signing a membership agreement, you should visit the fitness centre to check out the facilities and services. For instance, you may want to:

- find out what facilities and services are provided;
- check how busy the fitness centre is at the times you will attend;
- check the equipment and cleanliness of the fitness centre; and
- talk with a couple of members to find out what their experience has been.

The code of practice requires that if the fitness centre has commenced operating, you must be given the opportunity to inspect the fitness centre before you enter into the membership agreement.

Not all fitness centres offer the same terms and conditions so it is important that you shop around for the agreement that best suits your needs. For example, if you are prone

to illness or injury then you should try to find a fitness centre which allows the termination or suspension of a membership during a period of sickness or injury.

Truth in advertising

The code of practice requires that promotional material published by fitness centres must be truthful, accurate and unambiguous. In relation to special deals, a fitness centre must not describe a membership as 'free' or 'discounted' if the services or facilities provided under the membership have been restricted or decreased in quality.

Information provided during the sales process must be truthful. A fitness centre must not make any false or misleading statements about the cost of the fitness services provided.

No high-pressure sales tactics, harassment or unconscionable conduct may be used when selling a membership agreement.

Your membership agreement

Under the code of practice, each membership agreement must include certain information important to consumers. This information must include:

- the name and address of the business;
- all services to be provided;
- all fees charged under the agreement; and
- a 48 hour cooling-off period during which the client can terminate the membership agreement without cause or reason and the date and time at which the cooling-off period starts and finishes.

A fitness centre must give you the opportunity to read a copy of the membership agreement and the rules of the fitness centre before you sign the membership agreement. The fitness centre must also have a copy of the code of practice for you to read if you wish.

Pre-paid membership agreement

Under a **pre-paid membership agreement** with a fitness centre, you pay the full amount of the membership at the beginning of the membership.

Pre-paid membership agreements can be cheaper. However, if the fitness centre goes out of business before the membership period has ended, you risk losing the value of the unexpired portion of your membership agreement.

The code of practice limits pre-paid arrangements to 12 months payment in advance.

The code of practice does not allow fitness centres to sell or renew a pre-paid membership agreement if the lease on the fitness centre premises expires before the end of the membership agreement period.

Payment by instalment membership agreement

With a **payment by instalment membership agreement**, you pay through fortnightly or other regular deductions which are made automatically from your credit card or bank account, as indicated in your membership agreement.

Many consumers mistakenly believe that if they stop using a fitness centre then they can stop making payments. In fact, you will be bound to continue making payments for the period indicated in your membership agreement.

It is therefore very important to make sure you are happy with the length of the agreement before signing. If you have doubts that you will use the fitness centre membership for the full period, you may want to consider opting for a shorter term, such as a three month period, if the fitness centre offers one.

Ongoing membership agreement

An **ongoing membership agreement** is a type of payment by instalment agreement that will not come to an end until the consumer takes action to end the membership agreement. Generally the agreement will require the consumer to provide a 'written notice of termination' to end the agreement. Thirty days written notice is commonly required but you should check your agreement to see how much notice you should give.

An ongoing membership agreement appeals to some consumers because of its flexibility. However, this type of contract can be the source of disputes if consumers do not know what they are getting into, or if fitness centres do not process terminations promptly with the result that one or more extra payments are deducted. The fitness industry code of practice addresses these concerns by requiring:that:

- ongoing membership agreements contain a statement alerting consumers to the special issues involved; and

- fitness centres respond to requests to end an ongoing membership agreement within seven days and record the request for termination.

Amending the membership agreement

It is important that you ensure that your membership agreement suits your circumstances by carefully checking the terms of the agreement before you sign it. The agreement can only be changed later with the consent of the other party.

Before signing the membership agreement, you may cross out clauses that you consider unfair or add new clauses. These clauses must be initialled and dated by both you and the fitness centre representative in order to be effective.

For instance, if you are planning to have an overseas holiday during the term of your membership you may want to include a clause allowing you to suspend your membership during that time. You may also choose to insert a clause allowing you to suspend or end your membership in the event that you become injured or sick and cannot use the fitness centre. Both you and the fitness centre representative need to initial and date any added clauses for them to become effective.

48 hour cooling-off period

Under the code of practice, all fitness centre membership agreements are subject to a 48 hour cooling-off period. This means that you can cancel your membership agreement, without needing to give a cause or reason, during the 48 hours immediately after both you and the fitness centre signed the membership agreement.

The fitness centre is required to provide you with a copy of the signed membership agreement, including the time and date that the cooling-off period starts and ends.

When fitness centres are starting up, membership agreements will often be sold before the business opens. Consumers who are sold a membership agreement before their fitness centre opens will have the opportunity to inspect the fitness centre before the cooling-off period starts.

It is important that written notice of termination be given to the fitness centre before the termination of the 48 hour cooling-off period in order to be effective.

Giving written notice of termination

There is no set wording for the written notice, however the following sample letter can provide a guide if you would like one.

Dear XYZ Health Club

I hereby terminate my membership agreement with your fitness centre during the 48 hour cooling-off period provided under the contract in accordance with the fitness industry code of practice.

My membership number is 8970.

Please refund the fees I have paid minus the amount you are entitled to retain under my membership agreement and in accordance with the fitness industry code of practice.

You are welcome to contact me on 999 9999.

Yours sincerely

Mr A. BC

Proof of written notice of termination

To avoid possible disputes with the fitness centre, it is advisable to keep some evidence that the written notice was received by the fitness centre within the 48 hour cooling-off period.

The recommended option is that you:

- keep a copy of your written notice;
- deliver the written notice to the fitness centre during opening hours; and
- either ask for a receipt which includes the time, date and name of staff member, or make a note of this information.

Your refund

The fitness centre must refund any money you have paid in advance but may deduct the costs of any fitness services, including exercise screenings, that you used during the cooling-off period and a reasonable administration fee (if there is one). If an administration fee is charged then it must be noted in the membership agreement. Your refund must be provided within 14 days.

Cancelling after the cooling-off period ends

If you want to cancel your membership agreement after the 48 hour cooling-off period ends, you will need to check the specific details of your membership agreement to find out the circumstances in which you may terminate the agreement. You can then discuss the matter with your fitness centre.

Different fitness centres have different policies in relation to the termination of membership agreements outside the cooling-off period. For example, some fitness centres may allow you to suspend your membership or sell your membership agreement to another person. In certain circumstances, some fitness centres may allow you to cancel your membership before the term of the agreement if you pay a percentage of the amount that you owe for the unexpired portion of the membership agreement.

If you stop making your instalment payments before the membership agreement allows you to do so, or if you attempt to terminate the agreement in circumstances not provided for, you may have to pay damages to the fitness centre for breach of agreement. It is therefore important to follow the termination procedure set out in your membership agreement before stopping your regular instalment payments.

Key questions to ask

The following are some key questions to ask before joining a fitness centre.

Services and facilities

- What types of classes are provided?
- What are the opening hours?
- What is the experience and qualifications of the staff?
- Are the trainers and instructors registered with Fitness Australia, or are they accredited by the Australian Association for Exercise and Sport, or an equivalent industry association?

Prices

- How much does the membership cost?
- What services are included in the membership fee?
- What services or facilities require extra fees?
For example, extra costs may apply for the crèche or personal training.
- What payment options are available?
For example, casual fees, pre-payment, automatic debits from a bank account or credit card.

Length and kind of agreement

- Is the membership agreement a fixed term agreement or an ongoing agreement that will continue on until you take action to cancel it?

Terminating the membership agreement

- Are there any penalties if you want to end the membership agreement early?
- In what circumstances can you terminate or suspend the membership agreement, eg. can you terminate the agreement if you get sick, move house or go on holiday?
- What procedure do you need to follow to terminate the membership agreement?

3. Other requirements: Fitness centres and all other fitness suppliers

for example personal trainers, gym instructors, group exercise instructors and aqua instructors

In addition to the requirements placed on fitness centres, which are described in Part 2 of this brochure, the code of practice places certain complaints handling and other requirements on fitness centres and other businesses that supply fitness services. As well as fitness centres, other businesses that must comply include those providing personal training, gym instruction and aerobics instruction.

Fees

- A supplier must not make any false or misleading statements or representations about the cost of a fitness service.

Sales and advertising requirements

- A supplier must not solicit clients through false or misleading advertisements or other representations or statements which the supplier knows are false or misleading.
- A supplier must ensure that promotional material is truthful, accurate and unambiguous and does not encourage unrealistic expectations of the outcomes attainable from the fitness service.

Claiming membership or endorsement

- A supplier must not falsely claim to be a member of, or be endorsed by, an organisation or association.
- A supplier must also take reasonable steps to ensure an employee does not do this.

Misrepresentation of qualifications

- A supplier must not misrepresent the qualifications held by the supplier or employees of the supplier.
- A supplier must take reasonable steps to ensure an employee does not falsely represent their own qualifications or that of the supplier.

Disclosure of information

- A supplier must ensure that sufficient information is made available to a client about a fitness service to enable the client to make an informed decision about using the fitness service.
- A supplier must have available a copy of the code of practice for a client or potential client to read.

Confidentiality

- A supplier must not disclose to any other person information obtained about a client unless required by law or with the authorisation of the client.

Complaints handling procedures

If you have a concern or complaint, make a formal complaint to the business in the first instance. Suppliers of fitness services are required by the code to deal with complaints made by clients.

- A supplier must endeavour to resolve the complaint as quickly as possible.
- Information about how to lodge a complaint must be made readily available to clients.
- A record of each complaint must be placed on file.
- A response to the client indicating that the complaint has been received must be made within a maximum of seven days.

Department of Commerce

Consumer Protection Division

Advice Line 1300 30 40 54

(for the cost of a local call statewide)

8.30 – 5.00pm weekdays

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