

South Australia

Fair Trading (Health and Fitness Industry Code) Regulations 2007

under the *Fair Trading Act 1987*

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Legislative history

1—Short title

These regulations may be cited as the *Fair Trading (Health and Fitness Industry Code) Regulations 2007*.

2—Interpretation

In these regulations—

Act means the *Fair Trading Act 1987*;

civil penalty contravention has the same meaning as in Part 7 Division 3A of the Act;

code means the Health and Fitness Industry Code 2007 set out in Schedule 1.

2A—Prescription of code

- (1) The code is prescribed as an industry code for the purposes of Part 3A of the Act.
- (2) The Commissioner for Consumer Affairs is responsible for the administration of the code.

Note—

Under clause 37(2) of Schedule 1 of the *Small Business Commissioner Act 2011*, the code is taken to have been prescribed as an industry code.

3—Contravention of code subject to civil penalty

- (1) A contravention of section 28E of the Act constituted of a contravention of the code is to be subject to a civil penalty under Part 7 Division 3A of the Act.
- (2) The expiation fee for an alleged civil penalty contravention involving an alleged contravention or attempted contravention of the code (other than an alleged contravention or attempted contravention of clause 7 of the code) is \$500.

Schedule 1—Health and Fitness Industry Code

1—Citation

This code may be cited as the *Health and Fitness Industry Code 2007*.

2—Interpretation

In this code—

aerobic fitness programme includes aerobic exercise, aquarobics and cardio-vascular training;

fixed term—see clause 4(4)(b);

fixed term agreement—see clause 4(2)(d)(ii);

individualised exercise programme includes information or advice given to a consumer (whether orally or in writing) with respect to a new or existing exercise programme;

membership agreement means an agreement entered into between a trader and a consumer for the supply of prescribed goods or prescribed services but does not include an agreement under which payments by the consumer for such goods or services are required to be made only at the time of visits by the consumer when the goods or services are supplied by the trader;

periodic agreement—see clause 4(2)(d)(i);

pre-exercise evaluations includes screening, testing, and the collection of information, by the trader for the purpose of providing advice or making recommendations to the consumer with respect to the consumer's fitness training;

prescribed goods means goods referred to in clause 3(1);

prescribed service means a service referred to in clause 3(1);

sporting club means a sporting club or organisation that is not established for the purpose of securing pecuniary profit for its members;

supervised fitness programme includes advice given during an individualised exercise programme (whether to an individual or a group of persons) and includes super circuit workouts;

supply period—see clause 4(3)(b);

visit means a visit by a consumer, for the purpose of obtaining prescribed goods or prescribed services, to premises occupied by the trader at which such goods or services are supplied.

3—Application

- (1) Subject to subclause (2), this code applies to a trader who supplies or offers to supply any 1 or more of the following goods or services:
 - (a) the use of fitness equipment at premises occupied by the trader;
 - (b) a physical fitness programme that is to be undertaken at premises occupied by the trader and includes any 1 or more of the following services:
 - (i) pre-exercise evaluations;
 - (ii) individualised exercise programmes;
 - (iii) supervised fitness programmes;
 - (iv) aerobic fitness programmes;
 - (c) the use of fitness facilities at premises occupied by the trader.
- (2) This code does not apply to—
 - (a) a sporting club; or
 - (b) a person engaged in the business of providing only the use of a spa or sauna bath, solarium, swimming pool or other similar facility; or
 - (c) a person engaged in the business of providing only instruction in martial arts; or
 - (d) a person registered as a medical practitioner under the law of this State, in the practice of his or her profession; or
 - (e) a person registered as a physiotherapist under the law of this State, in the practice of his or her profession.

4—Membership agreements

- (1) A trader must not be a party to a membership agreement with a consumer unless the agreement complies with this clause.
- (2) A membership agreement must—
 - (a) be in writing; and
 - (b) be signed by the consumer; and
 - (c) set out the following:
 - (i) the full name and address of the trader;
 - (ii) particulars of the prescribed goods or prescribed services to be supplied under the agreement;
 - (iii) the address of the premises at which those goods or services are to be supplied; and
 - (d) be—
 - (i) an agreement for the ongoing supply of prescribed goods or prescribed services on a periodic basis (a *periodic agreement*) that complies with subclause (3); or

- (ii) an agreement for the supply of prescribed goods or prescribed services for a specified period (a ***fixed term agreement***) that complies with subclause (4).
- (3) A periodic agreement—
 - (a) must clearly state in a prominent position at the beginning of the document that the agreement is a periodic agreement that will continue until the trader or the consumer terminates it; and
 - (b) must provide for periodic payments for the supply of prescribed goods or prescribed services, specify the period for which the consumer is entitled to receive goods or services for each payment and clearly identify that period as the ***supply period*** for the purposes of the agreement; and
 - (c) must not specify a supply period that exceeds 3 months; and
 - (d) must specify the amount of each periodic payment and any joining fee and any other amount payable under the agreement; and
 - (e) must set out the method by which the trader will inform the consumer of any increase in future periodic payments and the amount of notice of an increase that will be given (which must be at least 2 weeks); and
 - (f) must—
 - (i) provide that, if the consumer gives written notice of termination of the agreement to the trader, the agreement is terminated with effect for the supply period that next commences 2 weeks or later after the date of the notice and subsequent supply periods; or
 - (ii) allow the consumer to terminate the agreement by written notice to the trader with earlier effect (in which case, the agreement must specify whether or not the consumer is entitled to a refund for the remainder of the current supply period or for a supply period commencing less than 2 weeks after the date of the notice and, if the consumer is entitled to a refund, the amount or the method for calculating the amount of the refund); and
 - (g) must not impose any financial penalty for termination of the agreement by the consumer; and
 - (h) must provide that, on termination of the agreement by the consumer in circumstances in which the consumer has paid in advance for future supply periods (in respect of which the agreement is terminated), the consumer is entitled to a refund of the amount paid in advance; and
 - (i) must clearly warn the consumer to cancel any direct debit authorisation for payments under the agreement on termination of the agreement.
- (4) A fixed term agreement—
 - (a) must clearly state in a prominent position at the beginning of the document that the agreement is a fixed term agreement and that, if the consumer requires goods or services for a further term, a new agreement will be required; and
 - (b) must provide for the supply of prescribed goods or prescribed services for a specified period not exceeding 12 months (the ***fixed term***); and

- (c) must not provide for the supply of prescribed goods or prescribed services at a time later than 12 months from its execution; and
 - (d) must specify the total amount payable under the agreement, including any joining fee; and
 - (e) must, if any amount is to be paid by instalment, specify the consequences of failure to make a payment; and
 - (f) must, if the consumer is to be entitled to a refund or release from the obligation to make further payments on early termination of the agreement, specify—
 - (i) the action that must be taken by the consumer to terminate the agreement before the end of the fixed term; and
 - (ii) the amount, or the basis for calculating the amount, to which the consumer is to be entitled, or from which the consumer is released from the obligation to pay, on such early termination; and
 - (g) must clearly warn the consumer to cancel any direct debit authorisation for payments under the agreement at the end of the fixed term or on earlier termination of the agreement.
- (5) This clause applies only to agreements entered into on or after 1 September 2007.

Note—

Clause 8 provides special arrangements for agreements entered into before 1 January 2008.

5—Trader not to renegotiate if fixed term has more than 3 months to run

- (1) A trader who is party to a fixed term agreement with a fixed term of more than 3 months must not—
- (a) extend or offer to extend the fixed term; or
 - (b) offer to supply prescribed goods or prescribed services for a further period commencing on or after the end of the fixed term,

unless the fixed term has less than 3 months to run.

- (2) A trader who is party to a membership agreement entered into before 1 September 2007 must not—
- (a) extend or offer to extend the period during which prescribed goods or prescribed services are to be supplied; or
 - (b) offer to supply prescribed goods or prescribed services for a further period commencing on or after the expiry of the agreement,

unless the agreement has less than 3 months to run to expiry.

6—Trader not to accept periodic payment more than 12 months in advance

A trader who is a party to a periodic agreement must not accept payment for a supply period more than 12 months in advance of the commencement of the supply period.

7—Trader to give copy of agreement to consumer

A trader who enters into a membership agreement with a consumer must, as soon as practicable after the consumer signs the agreement, provide the consumer with a copy of the agreement.

8—Transitional arrangement until 1 January 2008

- (1) A membership agreement entered into on or after 1 September 2007 but before 1 January 2008 may, instead of complying with clause 4, comply with the *Fair Trading (Health and Fitness Industry) Code of Practice 1992* as in force immediately before 1 September 2007 (as if that code had remained in force at the time of execution of the agreement).
- (2) If a membership agreement is entered into as contemplated by subclause (1), the trader must not—
 - (a) extend or offer to extend the period during which prescribed goods or prescribed services are to be supplied; or
 - (b) offer to supply prescribed goods or prescribed services for a further period commencing on or after the expiry of the agreement,unless the agreement has less than 3 months to run to expiry.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Formerly

Fair Trading (Health and Fitness Industry Code of Practice) Regulations 2007

Legislation revoked by principal regulations

The *Fair Trading (Health and Fitness Industry Code) Regulations 2007* revoked the following:

Fair Trading (Health and Fitness Industry Code of Practice) Regulations 1992

Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2007	203	<i>Gazette 19.7.2007 p3156</i>	1.9.2007: r 2
2012	14	<i>Gazette 15.3.2012 p999</i>	22.3.2012: r 2

Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
r 1	varied by 14/2012 r 4	22.3.2012
r 2	substituted by 14/2012 r 5	22.3.2012
r 2A	inserted by 14/2012 r 5	22.3.2012
r 3	substituted by 14/2012 r 5	22.3.2012
Sch 1		
heading	substituted by 14/2012 r 6	22.3.2012
cl 1	varied by 14/2012 r 7	22.3.2012
<i>Sch 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	22.3.2012