

South Australia

Fair Trading (Health and Fitness Industry Code) Regulations 2022

under the *Fair Trading Act 1987*

Contents

- 1 Short title
- 2 Commencement
- 3 Interpretation
- 4 Prescription of code
- 5 Contravention of code subject to civil penalty

Schedule 1—Health and Fitness Industry Code

- 1 Citation
- 2 Interpretation
- 3 Application
- 4 Membership agreements
- 5 Fixed term agreement
- 6 Periodic agreement
- 7 Trader not to renegotiate if fixed term agreement has more than 3 months remaining
- 8 Trader not to offer incentives or exert undue pressure on consumer to enter into periodic agreement with initial fixed period
- 9 Trader not to accept periodic payment more than 12 months in advance
- 10 Trader to give copy of agreement to consumer
- 11 Trader to give consumer notice of end of initial fixed period in periodic agreement

Schedule 2—Transitional provisions

- 1 Transitional provision relating to membership agreements entered into before 1 September 2022

Schedule 3—Repeal of *Fair Trading (Health and Fitness Industry Code) Regulations 2007*

Legislative history

1—Short title

These regulations may be cited as the *Fair Trading (Health and Fitness Industry Code) Regulations 2022*.

2—Commencement

These regulations come into operation on 1 September 2022.

3—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 2022* set out in Schedule 1.

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

5—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 10 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 2022*.

2—Interpretation

In this code—

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

fixed term agreement means a membership agreement that—

- (a) provides for the supply of prescribed goods or services to a consumer for a fixed term; and
- (b) does not continue after the end of the fixed term;

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;

initial fixed period, in relation to a periodic agreement, means a fixed period for which the consumer is entitled to the supply of prescribed goods or services under the agreement, being a period that commences when the agreement takes effect;

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 means a membership agreement that—

- (a) provides for the supply of prescribed goods or services to a consumer on an ongoing basis; and
- (b) ends only if and when it is terminated by the consumer or the trader,

and includes any such agreement that has an initial fixed period;

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 circuit workouts;

supply period means the period for which a consumer is entitled to receive goods or services under a periodic agreement but does not include any initial fixed period of the agreement;

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 medical practitioner in the practice of medicine; or
- (e) a physiotherapist in the practice of physiotherapy.

4—Membership agreements

- (1) A trader must not be a party to a membership agreement with a consumer unless the agreement complies with this code.
- (2) A membership agreement—
 - (a) must be in writing and be signed by the consumer; and
 - (b) must set out—
 - (i) the full name and address of the trader; and
 - (ii) particulars of the prescribed goods or prescribed services to be supplied under the agreement.
- (3) A membership agreement must be—
 - (a) a fixed term agreement that complies with clause 5; or
 - (b) a periodic agreement that complies with clause 6.
- (4) A periodic agreement may include an initial fixed period not exceeding 12 months.
- (5) If a trader offers consumers periodic agreements that include an initial fixed period—
 - (a) the trader must also offer consumers fixed term agreements; and
 - (b) the trader must, before entering into a membership agreement with a consumer, ensure that—
 - (i) the consumer has been informed in writing of the different types of membership agreements offered by the trader; and
 - (ii) the consumer has acknowledged that they have been so informed.

5—Fixed term agreement

A fixed term agreement—

- (a) must clearly state in a prominent position at the beginning of the document that the agreement—
 - (i) provides for the supply of prescribed goods or services to the consumer for a fixed term; and
 - (ii) will not continue after the end of the fixed term; and
- (b) must provide for the supply of prescribed goods or prescribed services to the consumer for a fixed term not exceeding 12 months; and
- (c) must not provide for the supply of prescribed goods or prescribed services to the consumer at a time later than 12 months from the execution of the agreement; and

- (d) must specify the total amount payable by the consumer 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.

6—Periodic agreement

A periodic agreement—

- (a) must clearly state in a prominent position at the beginning of the document that the agreement—
 - (i) provides for the supply of prescribed goods or services to a consumer on an ongoing basis; and
 - (ii) ends only if and when it is terminated by the consumer or the trader; and
- (b) if the agreement includes an initial fixed period—
 - (i) must specify the date on which the initial fixed period commences and ends; and
 - (ii) must specify the total amount payable by the consumer under the agreement for membership during the initial fixed period; and
 - (iii) must, if any amount is to be paid by instalment in respect of the initial fixed period, specify the consequences of failure to make a payment; and
 - (iv) if the consumer is to be entitled to a refund or release from the obligation to make further payments on termination of the agreement before the end of the initial fixed period, specify—
 - (A) the action that must be taken by the consumer to terminate the agreement before the end of the initial fixed period; and
 - (B) 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

- (C) must clearly warn the consumer to cancel any direct debit authorisation for payments under the agreement on termination of the agreement before the end of the initial fixed period; and
- (c) must, in respect of the supply of prescribed goods or prescribed services for a period other than an initial fixed period—
 - (i) provide for periodic payments; and
 - (ii) specify the period for which the consumer is entitled to receive goods or services for each payment; and
 - (iii) clearly identify that period as the supply period for the purposes of the agreement;
- (d) must not specify a supply period that exceeds 3 months; and
- (e) must specify the amount of each periodic payment; and
- (f) must specify any joining fee and any other amount payable under the agreement; and
- (g) 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
- (h) must—
 - (i) provide that, if the consumer gives the trader written notice of termination of the agreement during a supply period, 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
- (i) must not impose any financial penalty for termination of the agreement by the consumer (other than termination during an initial fixed period); and
- (j) 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
- (k) must clearly warn the consumer to cancel any direct debit authorisation for payments under the agreement on termination of the agreement.

7—Trader not to renegotiate if fixed term agreement has more than 3 months remaining

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 remaining.

8—Trader not to offer incentives or exert undue pressure on consumer to enter into periodic agreement with initial fixed period

A trader may offer a consumer incentives to enter into a membership agreement but must not—

- (a) offer a consumer any incentive; or
- (b) exert undue pressure on a consumer,

to enter into a periodic agreement with an initial fixed period rather than a fixed term agreement.

9—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.

10—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.

11—Trader to give consumer notice of end of initial fixed period in periodic agreement

A trader who is a party to a periodic agreement that includes an initial fixed period must, 1 month before the initial fixed period ends, give the consumer written notice of the expiry of the initial fixed period setting out the consumer's rights to cancel the agreement.

Schedule 2—Transitional provisions

1—Transitional provision relating to membership agreements entered into before 1 September 2022

Despite Schedule 3, the *Health and Fitness Industry Code 2007* prescribed by the *Fair Trading (Health and Fitness Industry Code) Regulations 2007*, as in force immediately before the commencement of these regulations, continues to apply to a membership agreement entered into before that commencement until the agreement expires or is terminated in accordance with that Code.

Schedule 3—Repeal of *Fair Trading (Health and Fitness Industry Code) Regulations 2007*

The *Fair Trading (Health and Fitness Industry Code) Regulations 2007* are repealed.

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.

Principal regulations

Year	No	Reference	Commencement
2022	66	<i>Gazette 18.8.2022 p2570</i>	1.9.2022: r 2