Fitness Australia – reforming provisions of licensing for outdoor fitness services in NSW

Submission prepared by Fitness Australia for IPART’s Review - Reforming licensing in NSW
December 2012
Overview

Fitness Australia is the peak national health and fitness industry association and is committed to helping to achieve a fitter and healthier nation.

Fitness Australia’s mission is to raise industry standards, support, promote and represent the fitness industry. However, the industry continues to work under outdated, inconsistent regulations across jurisdictions and Fitness Australia is lobbying for consistent regulations across all jurisdictions.

Fitness Australia would welcome the opportunity for IPART to review current licensing arrangements for outdoor fitness training services by local governments and statutory authorities in NSW.

Current licensing arrangements for outdoor fitness training services

The fitness industry is a dynamic and important part of the Australian economy. It is comprised of a range of business models including large, national fitness centre chains and franchises, independent fitness centres, recreation and leisure facilities, 24-hour clubs, women’s only centres and weight loss circuits, personal training studios, outdoor personal training businesses and yoga/pilates studios.

The growth of commercial personal and outdoor fitness training in NSW over the past decade has increased the opportunities for people to engage in structured exercise in a safe, supervised environment.

Outdoor fitness training services have expanded to provide a larger range of exercise options, in a variety of settings and for a broader range of clientele. This is a response to an increase in community demand for both variety and niche offerings. From walking groups, to structured boot camp sessions, the prevalence of outdoor programs has escalated and become more accessible.

The response from local governments and statutory authorities to the growth of outdoor fitness training has been inconsistent. There are 152 local government areas in NSW ranging in size from Hunters Hill (6 km²) and Conargo Shire (387 people) to Central Darling (51,000 km²) and Blacktown (270,000 people), and all face similar challenges in managing public space.

Over the past decade, outdoor fitness training licensing policies have been implemented by an increasing number of local governments in NSW. Much consultation and negotiation has taken place between individual local government areas, Fitness Australia and service providers in an effort to achieve reasonable terms for the issuing of licenses. This process has been repeated with monotonous regularity by multiple local government areas, with each establishing its own mix of policy terms.

This is far from an ideal situation. The burden of red tape involved in completing forms, adhering to regulations and reporting is significant for both exercise professionals and for local governments and statutory authorities involved. It has also had the effect of restricting competition in some areas, with the number of exercise professionals capped and the establishment of new barriers to entry.

The approach taken by local governments has differed considerably. In some instances, an awareness of existing industry standards and community demand has led to the development of reasonable policy that has encouraged uptake and ongoing compliance. In other cases, there has been an obvious lack of knowledge regarding outdoor fitness services with a subsequent attempt to install unrealistic and unworkable licensing terms. This has been most
evident in the setting of licensing fees, where in some instances fees have been set at a cost that runs into thousands of dollars per annum and can represent the equivalent of up to 30% of business turnover. In many cases, these terms have been eased following consultation and criticism from service providers, the public and Fitness Australia.

Fitness Australia has issued a position statement to help inform and support the development of licensing policy, the position statement can be accessed at www.fitness.org.au. While not all existing local government policies reflect the principles and recommendations contained within the statement, it appears that a more consistent approach is beginning to emerge – a trend that needs to continue.

Many licensing terms now require mandatory Fitness Australia registration for exercise professionals and businesses, and appropriate public liability insurance cover to be held for the life of the permit. However, fair and realistic terms for fees, booking requirements and group sizes are becoming issues of contention.

There is an obvious need for this form of licensing to be consistent throughout NSW – and, in the long term, across Australia. In the context of the Australian and NSW Governments’ preventive health agenda, the efficient use of all resources including outdoor recreational areas is imperative. If we are to create a healthier and fitter Australia and achieve greater community connection, the use of outdoor public space for exercise cannot afford to be impeded through unrealistic regulatory terms.

To support the provision of safe and effective practice in outdoor fitness training, Fitness Australia will produce more specific safety guidelines for providers. This will help to clarify safety and practice for many of the current and emerging activities such as kettle bells training, boxing and bootcamp activities. The safety guidelines will help to minimise risk and further enhance the quality and credibility of services that are highly visible to the general public.

Fitness Australia has also developed, in co-operation with Sports Medicine Australia and Exercise Sports Medicine Australia, a uniform pre-exercise screening tool to identify risk factors, such as high blood pressure that may be a contra-indicator to exercise.

Additionally, Fitness Australia is embarking upon the development of an industry wide accreditation framework for businesses that will provide consumers with quality assurance across professionalism, safety, service and customer care. These standards will be defined for all business models in the sector including outdoor fitness training services.

What is desperately needed is a consistent, uniform set of guidelines across NSW applying to the use of outdoor public land.

**Similar reforms**

In 2009, the Department of Local Government and Arts NSW developed the Local Government Filming Protocol as part of a package of reforms known as Film Friendly NSW. The object of the reforms was to streamline approvals for filming across councils and other landholders and attract investment in the film industry in NSW. The Filming Related Legislation Amendment Act 2008 amended a number of sections of the Local Government Act 1987.

Prior to the reforms film and TV producers had encountered difficulty negotiating with councils for access to land for filming, which was handled on a council by council basis. Many councils opposed filming outright because of the supposed impact it would have on residents’ amenity.

The Local Government Filming Protocol made it easier for filmmakers to work on locations around the state by giving all councils one set of rules for processing approvals. However, it also established a Code of Conduct for the screen industry, designed to ensure that the film industry was sensitive to community needs.
The film industry estimates that there are more than 1,400 film and television related businesses in NSW, employing more than 6,800 people and generating around $1.3 billion each year. However, film production in Australia also attracts significant levels of public subsidies, both through Commonwealth Government tax offsets and direct grants and endowments by Federal and State film funding bodies. In 2010–11, Screen NSW delivered $9.6 million in public subsidies to 48 screen projects which accounted for $143 million production expenditure in NSW delivering a ration of around 1:15 in public versus private investment.

In contrast, the fitness industry is a mixture of commercial enterprise, publicly owned and not-for profit. It’s estimated that in NSW alone employs 35% of the fitness industry workforce that is around 10,500 exercise professionals – of which there are 8,000 currently registered with Fitness Australia. Nationally, the industry now contributes more than $1.2 billion to the economy and provides services to over 3.3 million Australians, and this is projected to more than double by 2020 to 7.15 million. In fact, women aged 25-44 are the key client base for gyms whereas men 45 years and over are least likely to attend a fitness facility.

There are strong arguments for public support for the health and fitness industry. Over the coming decades, the increasing prevalence of chronic disease such as heart disease and type-2 diabetes, often termed ‘lifestyle’ diseases, will have a significant impact on public funds. These diseases are termed lifestyle diseases because the major contributors are lack of physical activity, unhealthy weight and poor diet.

To be clear, the fitness industry is seeking reforms that will streamline access to public space across local government areas and statutory authorities, regulate fees to be uniform or close to uniform, codify the industry’s responsibilities and rights, and simplify current arrangements into one document.

Fees and charges under the Local Government Filming Protocol are very reasonable. The act of filming in itself does not attract any fee, but councils are able to charge for the lodgement of an application where an approval is required; to recover costs from services provided by the council; and for the hire of constructed facilities such as town halls, community centres, and swimming pools.

The economic success of the Australian economy over the past three decades has been based on deregulation and increasing competitiveness.

**Fitness Industry Code of Practice**

The NSW Fitness Industry Code of Practice was developed in co-operation with the NSW Office for Fair Trading and NSW Sport and Recreation and came into force in 2006. It is a voluntary code administered by Fitness Australia and all businesses and exercise professionals are subject to the Code.

The Code provides a guideline for the business conduct of fitness businesses and their employees and a guarantee to consumers of fair, safe and ethical service. The Code aims to enhance consumer confidence and improve the long term viability of fitness businesses by setting standards of business practice and service delivery, promoting a drug-free fitness environment and establishing procedures for dispute resolution.

An update to the Code is currently being progressed to reflect changes in industry practice, such as the growth of 24-hour clubs, and changes to legislation, particularly reforms to contract terms and other areas, such as the banning of solariums. The draft updated Code has been circulated to all stakeholders for comments and is currently being finalised. Fitness Australia plans to have a final copy of the national Fitness Industry Code of Practice in the first half of 2013.
In future, Fitness Australia would like to see elements of the Code move from being voluntary to mandatory to improve standards in the industry and provide a framework for the further expansion of the industry in a sustainable manner. Expansion of the industry in NSW is vital to meet the challenges of an ageing population and the increasing prevalence of ‘lifestyle’ diseases.

The mandatory elements could include a requirement for exercise professionals to be registered with the industry body nominated by the Minister, such as Fitness Australia, that can assure satisfactory levels of quality assurance, training and qualifications.

A mandatory registration scheme would provide confidence to members of the public that all registered exercise professionals and businesses adhere to industry standards, are committed to customer care, safety and wellbeing of their clients and strive to provide quality services.

**Key points**

- Amendment to the Local Government Act 1993 to require councils and state government agencies to allow organised physical exercise – both commercial and non-commercial – on public land, unless there are compelling reasons against doing so, which can’t be addressed through conditions of use.

- Fees for outdoor fitness training access should be reasonable and reflect only those additional administrative costs councils incur managing commercial activities. Fees for non-commercial activities should be minimal and reflect only a small portion of cost recovery.

- Application fees for outdoor fitness training should be set at $150 for all councils and state government authorities.

- Council restrictions should only be able to regulate certain designated matters.

- Guidelines for the fitness industry should be applied through a Code of Practice with mandatory provisions for all exercise professionals who use outdoor public space.

- Exercise professionals using outdoor public space must be registered with the appropriate body, determined by the Minister for Fair Trading and specified in the Code of Practice endorsed by NSW Fair Trading. Registration will ensure that trainers are qualified to the level at which they are practicing, that they have the necessary qualifications, including CPR training, and that they have professional indemnity insurance.

**NSW legislative framework**

<table>
<thead>
<tr>
<th>State Government agencies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fair Trading</td>
</tr>
<tr>
<td>Department of Local Government</td>
</tr>
</tbody>
</table>
NSW Sport and Recreation
National Parks and Wildlife Service (Office for Environment and Heritage)

**State Government statutory authorities and trusts**

Centennial and Moore Park Trust
Parramatta Park Trust
Western Sydney Parklands Trust
Sydney Olympic Park Authority
NSW State Parks

~700 Crown Land Reserve Trusts

**Legislation – regulations, acts and guidelines**

Crown Lands Act 1989
Local Government Act 1993
Fitness Industry (Pre-paid Fees) Act 2000
Fitness Industry (Pre-paid Fees) Regulations 2011

**For further information contact:** Robert Barnes
General Manager – Operations
robert.barnes@fitness.org.au
Fitness Australia
T. 1300 211 311
www.fitness.org.au