

Letter to the Hon. Sherryl Garbutt, Minister for Community Services and Minister for Children  
The Hon. Sherryl Garbutt

Minister for Community Services and Minister for Children  
Level 22  
50 Lonsdale Street  
Melbourne Vic 3000

Dear Ms. Garbutt,

### *Creche Regulations*

The purpose of this letter is to seek the exemption of health and fitness centres from the Children's Services Act 1996.

In the first instance we need to state that propositions outlined in this letter will result in a higher level of care and safety for children than is being achieved by the relevant Act and Regulations. Nothing in this letter suggests any diminution in the care or safety of the children.

Fitness Victoria believes that, fundamentally, the Act and subsequent Children's Services Regulations were not drafted with fitness centres in mind. Indeed a conversation with the Hon. Denis Napthine, the Minister who introduced the legislation in 1996 supported this contention with the caveat that there had been some problems at a couple of health and fitness centres at the time. However, the main target was day long care while parents were at work. Unfortunately, health and fitness centres have been swept up by the Regulations.

In this discussion, we draw the distinction between:

- Creches: Commercial facilities where the main service is caring for children in the absence of parents where that absence is of considerable distance and considerable time and typically where the parent is at work for 8 hours per day.
- Fitness centre child minding facility: A set aside area within a fitness centre where a parent can leave a child while they do some exercise. The parent would be within contact, responsible for their child and be readily available. The maximum period of care would be 90 minutes.

The inclusion of child minding facilities within health and fitness centres has encouraged young parents, mostly women, to become members and engage in regular healthy physical activity and strength training. Indeed, activities at many of these centres have become an important part of the social fabric of these young parents and this is dependent on the availability of child minding facilities.

It is important to recognise that child care at the health and fitness centre is as important for a parent as it is for a child.

Over recent years, and because of the impact of the Act and Regulations, some health and fitness centres closed their child minding facilities and this has prevented some parents from attending the centres which have become an important part of their social fabric. Several years ago, a Fitness Victoria survey of member clubs showed that 35% of centres with a child minding facility might have to close them. There was anecdotal evidence that some clubs would construct child minding facilities if the regulations were supportive.

In discussions with Government, Shadow Ministers and bureaucrats, Fitness Victoria noted that in other States such as NSW, Queensland and Western Australia, fitness clubs are specifically exempt from the equivalent of the Children's Services Regulations.

Fitness Victoria is concerned to ensure that the Children's Services Regulations do not impose regulations on child minding facilities in health and fitness centres that are so onerous as to cause the closure of child minding facilities and damage the cohesion of the family and the community. Fitness Victoria has been on a Government committee dealing with this issue but movement has been painfully slow. It had been hoped that a series of special rules to cover child minding facilities in fitness centres would be developed.

Fitness Victoria is adamant that any regulations regarding child care facilities in fitness centres must reflect the fact that:

- The children's parent or guardian is in the same building.
- The time that the child is minded is limited to about 90 minutes, rather than a whole day.
- The children are minded, not educated.
- It is the existence of child minding facilities that allows parents to get out into the community

The Association thought that some advances had been made with the release by DHS of a publication, "*Guidelines - Definition of Children's Service*". This at last provided a definition of absent and stated,

*"Parents/guardians may not be absent in relation to their children if they are:*

- *Proximate;*
- *Easily located;*
- *Available; and*
- *Are responsible for the care of their child."*

The advice attached was provided on the 4th of July 2003 and was headed "**FINAL VERSION 'DEFINITION OF A CHNS SERVICE'**" (our emphasis

Health and fitness centres were pleased to have this clarification and some considered that their child minding facilities need not be licensed because the parents were not "absent". The publication was widely circulated within the health and fitness centre industry among others in the sport and recreation sector and was included on the Association's website as advice to owners.

Fitness Victoria also proceeded with the preparation of a Code for use within the Association to set high standards for child care in facilities that did not require licensing. A draft of this Code of Conduct was provided to DHS at a meeting on 12 July 2006.

The Association has been dismayed to learn that DHS are now dismissing their - "*Guidelines - Definition of Children's Service*" (sent to us by the DHS) publication as no longer representing their view and have published (January 2006 "*Children's Services Guide*") the definition of a children's service in the Act:

*"a service providing care or education for 5 or more children under the age of 6 years in the absence of their parents or guardians*

- *for fee or reward; or*

- *while the parents or guardians of the children use services or facilities provided by the proprietor of the service;”*

With the added interpretation that “A service that meets all parts of this definition is required to be licensed”.

This advice confirms the earlier DHS advice that fitness centres and other retailers and sporting groups eg hardware stores (eg Bunnings), and Hotels and poker machine venues (eg Mulgrave Country Club ) need to be registered only if the parents are "absent" as, clearly, most meet the other 3 "parts of the definition" above.

While some examples are given in the January 2006 guide where the parents are not absent and therefore not a children's service significantly DHS seems resolutely determined to withdraw it's definition of "absence".

FV has sought to work with DHS for some years to

- comprehend the legislation
- understand in what circumstances a creche must be registered
- step up to the significantly increased costs of construction
- come to terms with the onerous requirements on ratios of children to carers
- deal with the extremely onerous reporting requirements

It seemed likely that the DHS publication “*Guidelines - Definition of Children's Service*” was a guideline for commonsense and a relief for the hundreds of playgroup arrangements around the state that would otherwise be operating illegally but now the Department has set aside this advice and implied that that Fitness Centres will be policed differently than Pubs and Stores and other sporting groups because historically that is the way they were treated in the past.

The Association believes that the same interpretation of “*absence*” should be applied to Fitness Centres as any other business or group.

It seems that we are back to square one and the real losers are the mothers who are, and will be, unable to access a child minding facility at their local health and fitness centres. It could be expected that closing off this avenue for exercise will have an adverse impact on both the parent and the child. We are sure that this is not the intention of the Act, the Regulations, the Department or yourself.

In all these circumstances, we consider the best resolution is:

- Health and fitness centres that are members of Fitness Victoria and agree to abide by the Associations Code of Conduct for child care be exempted from the Children's Services Act 1996 and Regulations.
- FV recognises that the code would need to be enforced and suggests that this be done either by a person employed by Fitness Victoria, but funded by DHS or DHS officers. Any breach would result in that centre not being exempt from the Act and the Regulations.

Yours sincerely,

Helen Benson  
President

CC

The Hon. Bruce Atkinson, Shadow Minister for Sport & Recreation

The Hon. Damien Drum, Nationals Spokesman for Sport, Recreation & Racing

The Hon. Denis Napthine, MLA

The Hon. Andrea Coote MLC, Shadow Minister for Children

The Hon. Hugh Delahunty, Nationals Spokesman for Health