Legal risk management in the Australian fitness industry: outcomes of the focus group research

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Legal Risk Management in the Fitness Industry (Australian Research Council Linkage Project) 2012-2014

- Our industry partners are Fitness Australia and Sports Medicine Australia
- The Chief Investigators on this project are the author, Professor Joachim Dietrich (Bond), Professor Caroline Finch (Monash), Professor Kevin Norton (UniSA) and Dr Betul Sekendiz (CQU).

This project will answer two important questions:

- How does Australian regulation currently control risk management in the fitness industry and thereby prevent adverse health outcomes and injury, and the legal liability associated with those risks?
- What sustainable changes could be made to Australian regulation for more effective risk management in the health and fitness industry in order to prevent the risk of adverse health outcomes and injury, and the legal liability associated with those risks?
Armed with this knowledge, we will then:

- Develop, in consultation with our industry partners and key stakeholders, new best practice benchmarks to improve safety in the fitness industry and reduce the risk of adverse health and injury outcomes;

- Design regulation and safety practices to advance the achievement of those benchmarks; and

- Develop training materials for industry use related to those benchmarks, with the objective of increasing safety, reducing the risk of adverse health outcomes and injury, and decreasing the prospect of adverse legal liability outcomes.
How does Australian regulation currently control risk management in the fitness industry?

Three reports so far on ‘private law’, check out www.fitness.org.au/riskmanagement and sma.org.au:
- Impact of the Australian Consumer Law
- Torts and personal injury
- Use of contractual waivers

Recently completed:
- Workplace health and safety
- Planning and environment issues

Still to come:
- Sexism, racism and disability discrimination
- Criminal law (drugs in gyms?)
- Other human rights issues?
Provide a professional environment

Know and adhere to the law and published standards of practice

Hire qualified and competent personnel

Develop and comply with safety policies

Adopt, follow and rehearse emergency action plans

Use waivers

Secure liability insurance
Fitness Industry Codes in each of the eight States and Territories
- Some are mandatory and some are not
- Either way, the law imposes duties that must be complied with
- Published standards of practice provide evidence in determining duty
Fitness industry codes

- Pre-exercise screening
- Standards relating to equipment
- First aid
- Qualifications of employees
- Employee inquiries about risk
Some US research indicated generally favourable responses to questions regarding compliance with standards, relevant laws and regulations, including the Americans with Disabilities Act (Eickhoff-Shemek and Deja, 2002)

Studies in 2006 and 2008 reported significant knowledge deficits
Focus groups employing nominal group technique

- Sydney x 2
- Gold Coast
- Ballarat
- Adelaide x 2
- Rockhampton
The six most important issues identified in our focus group sessions

- (Lack of) education
- (Lack of) supervision
- (Poor) technique
- (Defective) equipment
- (Unsuitable) environment
- Overcrowding
Additional issues

- Scope of practice
- Pre-exercise screening
- Medical risks associated with de-conditioned clients
- Poor or inappropriate nutritional advice
- Inadequacy of qualifications
- Clients have unrealistic expectations
The next step

- A comprehensive national survey
Sexual harassment, racism and disability.....

- Racial Discrimination Act 1975 (Cth)
- Disability Discrimination Act 1992 (Cth)
- Sex Discrimination Act 1984 (Cth)
Workplace health and safety

- Work Health and Safety
  - “Health” means physical and psychological health
- Explanatory memorandum of WHS Act 2011
  - The term ‘health’ is used in its broadest sense and covers both physical and psychological health. This means that the Bill covers psychological risks to health like stress, fatigue, and bullying.
Workplace health and safety

- Persons with health and safety duty
  - Managers, trainers and employees alike
- Penalties
  - With death or serious injury or illness
    - Up to $600,000 for individuals
    - Up to $3,000,000 for body corporate
- Significant gap: unincorporated associations
Do fitness professionals appreciate the legal risks?

- Does the Certificate III/IV prepare people to deal with the risks of physical and psychological injury?
- Do fitness centres have detailed referral protocols and procedures to ensure that people stay within their scope of practice?