

Please keep my submission confidential or redact any personally identifying information, as I would not like my financial issues or other personal details to be displayed to the public. Please note page 6-7 are the appendix which can be removed at your discretion

To the Consumer Policy Unit, Treasury

I recently saw the proposal to address unfair trading practices. I would like to describe to you my own experience dealing with unfair business practices and offer suggestions that could be made so those in a similar position are more explicitly protected under the new legislation.

[REDACTED]

[REDACTED]

This is where the problem arises. As soon as I realized this fact I attempted to cancel my gym membership. My gym membership is the standard contract [REDACTED] uses, which is a perpetual subscription, with fees payable per fortnight (approx. \$ [REDACTED] in this case) and further cancellations terms.

I outline the problematic terms below (please see the appendix for the full membership terms and conditions).

- Clause [REDACTED] of my contract states that any perpetual agreement has to give 28 days of notice before cancellation and that this notice must be via the online portal. It also says that no cancellation fees apply. However, in effect this clause means a cancellation fee of 2 payments will apply. In my case I had two issues preventing me from cancelling. Firstly, I had no money in my account for a roughly two fortnight period, due to this they had requested two payments from my bank which I was unable to pay. Secondly their online portal does not allow you to cancel or even give notice to cancel if you have ongoing fees payable (this is where they trap you in the debt/subscription). In effect this meant I had no means to pay off the accrued debt and I had no means to cancel to stop further debt accrual.
- Clause [REDACTED] states a cooling off period for contracts longer than 3 months where any cancellation before 7 days would incur and administrative cost and a further cost for any fitness services. While this was not an issue for me, I note it here for your reference as I

can easily see how this many be predatory for customers who experience a change of mind or find the facilities/service to not be as advertised. On surface it may seem fair to charge a fee for services rendered (such a personal trainer), however the cooling off period of 7 days in addition to the 28 day cancellation notice period of predatory and the legislation could make protections for the right to waive this administrative or service fees for services that are not as advertised (similar to consumer protection for goods)

- Clause [REDACTED] states that a processing fee of \$20 is charged for failed debit transactions and that they are not liable for bank charges resulting from debit requests on accounts with insufficient funds. The former points unfairly compound financial issues for those experiencing financial hardship and the later would be unfair in cases where the gym will not cancel your membership (in my case I had to contact my bank to manually block them from debiting me)
- Clause [REDACTED] states you can suspend your membership for a period of time however they charge a suspension fee and an ongoing fee every week during the suspension period. This is predatory and it's unreasonable for a business to request an ongoing fee for no service to be given to a customer. This option would likely be used by those experiencing financial hardship and serves as a way to fool them into delaying their cancellation. Furthermore, the suspension has to be made via their online portal which has the previously described issues with unpaid fees.
- Clause [REDACTED] states that to enter the facilities and use the club services you must not have a suspended/cancelled membership or have any outstanding membership fees. This clause is completely reasonable, however in combination with the above clauses it can cause the very unfair situation for customers where they are being charged for a service they no access.

For context this company [REDACTED] is one of the main brands for [REDACTED] which is publicly traded company with a market cap of [REDACTED] million [REDACTED]. This means unfair contract terms could affects 1000's of other Australian. [REDACTED] Further a company of [REDACTED] capacity cannot feign ignorance of consumer protection laws and have the capacity to ensure fairness to all Australian using their services. In my case more than 1 year following my attempt to cancel my subscription they have refused to cancel my subscription through SMS, email, phone or any other means other than their online portal and they are continuing to accrue debt to my name. [REDACTED]

[REDACTED] As recently as [REDACTED] 2024 I tried to contact their customer support via email to stop their payment requests as the emails and SMS messages are major source of anxiety and I am worried about my debt history being effected by their unfair practices. Yet despite my efforts they still insist that even though I have no access to facilities and keep trying to cancel, my member ship is "still active" and that I will need to pay [REDACTED] hundred dollars before I am even allowed to submit an intention to cancel via their online portal This would also mean another two further payments before I am fully canceled. Please see the appendix for the full contract terms and an email excerpt.

Recommendations

- Create a limit either in dollar amount or period of time. By which any debt created through the terms of the business agreement will cause the automatic cancellation of the agreement or halt to payments once that threshold has been met.
Where appropriate i.e. agreements that should generally be cancellable by only one party such as a gym membership, food delivery subscription service or other similar non-essential ongoing services.
- Where the service described in the agreement is deemed essential (such as for health or other reasons). The debt/time threshold may be bypassed only in the case that
 - 1. The agreement subscriber is explicitly informed of their option to cancel via a reasonable written channel (such as email or sms)
 - 2. The subscriber is explicitly consents to the ongoing accrual of debt, at or after the time of debt notification. This will not be automatic, inferred or agreed ahead of time and must be explicitly written or selected digitally with a clearly understood warning.
 - 3. The service is understood to be essential to the subscription for medical or other allowed reasons.
 - 4. The service will continue to be provided as normal and with no limitations to the subscribers during the continued period of debt accrual.
 - 5. The business owning the service agreement consents to the ongoing accrual of debt for the user.
 - 6. The business owner make available a method contractable through reasonable written means (both digital and physical such as by email or mail), a method for the subscriber to cancel their subscription and immediately halt the debt accrual.
- Any reasonable method to contact business should be accepted for cancellation purposes and there should explicitly be no mandate to use an online portal to cancel. Furthermore any email address listed in a contract as an address to send cancellation requests should be understood as a recommendation only. Any email address that is not “no-reply” and also a monitored email address (i.e 1-14 business day response rate), should be allowed for this cancellation notification.
- Any fees payable for a subscription service which was not offered in full to subscriber (their normal usage). Should not be payable by the subscriber
- Fees and debt acquired by the contract agreement that is in contradiction with the legislation should be retroactively removed. This would **not** automatically apply to monetary amounts already paid to the business but could be repaid to the customer through a court or other process. This would however automatically be applicable to monetary amounts withheld or unpaid to the business after either
 - 1. The customer notified the business of their decision to cancel; or
 - 2. The business began withholding or reducing regular usage of the service, while continuing to charge a subscription fee
- Add additional penalties for businesses that attempt to withdraw funds from the customer after their notification of cancellation (a grace period could be allowed for communication). Further harsher penalties should also be imposed for businesses that attempt to affect the customer’s credit score or debt history through the process of these bad faith transaction requests. Each requested payment can have an increasingly

heavy effect on a customers' mental health and living standards. Particularly in the event that a payment is deducted from their account in error this can impact the customers standing with the bank and other living situations. As such the penalty imposed should be commensurate or greater than the impacted customer. I suggest this penalty increase by 1 penalty unit for every 2 transactions requested. In the event a payment request made is greater than 1 penalty unit, the penalty units accrued at every interval should exceed that amount (e.g if the amount requested is \$1000 dollars and then the amount is requested a second time, a penalty of approx 5 units would be applicable for the contravening business). Even with minimal enforcement of this recommendation, it would provide a strong financial deterrent to businesses. This could be made available and shown clearly in a new subscriptions page of a government site or a pdf document made available (around 1 page with graphic images/charts emphasizing the penalty) detailing the max penalties a business could face. Customers could send the business this info document to solve some minor cases, which could in turn reduce the burden on government agencies for enforcement. This penalty would only apply after the passing of the legislation and a reasonable grace period. After the grace period any ongoing cancellation requests that have not been resolved should apply their penalties amounts retroactively.

Gym Membership Specific:

I believe gym contracts may be one of the major areas that the legislation can help everyday Australians and so here are specific recommendation catered to that area.

- Contract terms that allow suspension of a membership instead of cancellation are allowed to be offered by the business and activatable via an online portal or other means at their discretion, only where
 - 1. During suspension period no debt is added to the subscriber i.e they will not pay a limited/reduced fee during the suspension period
 - 2. No fee is required to activate the suspension period
 - 3. The subscriber is notified through a reasonable channel (email, sms) before the suspension period is deactivated
 - 4. The subscriber is allowed a 72-hour grace period (or other time period consistent with other laws) to cancel their membership fully following the close of the suspension.

My specific reasoning here is that the business cost to suspend a membership via an online portal is very minimal and if the business opts to offer this to customers the cost should not be passed on to the consumer. Furthermore, a suspended membership with a reduced fee or activation fee would most likely only be considered by those experiencing financial hardship. In which case the practice is predatory and a method by which businesses attempt to keep customers in an agreement can't afford.

- A business should not be allowed to charge a cancellation fee or impose a mandatory notice period for cancellation longer than 5 business days, if either of the following hold.

- a) The company surpasses a certain threshold of subscribers or is a multistate entity should not charge any payments period as a condition of cancellation of the membership agreement.
- b) The contract is a fixed term contract (this should instead be displayed upfront and incorporated in the price shown to customers before subscribing)

Context: Some smaller gyms such as MMA gyms plan their finances into the future as you would expect from a small business and so it's reasonable for them to request a cancellation fee of for instance two weeks to give them a cushion for periods where many customers cancel (such as holidays, school starting, exams, etc). For the health of these small businesses this should be maintained, however for larger business and for smaller business seeking to exploit the practice this should have guard-rails. Additionally, a notice period longer than the payment interval is a sneaky way where by companies charge and actively obfuscate cancellation fees

E.g If a large multi-state gym company such as ██████████ or a similarly applicable company have more than a threshold of subscribers across all their gyms they would be barred from including contract terms (in new contracts) that allow this fee

- Where a fee (outstanding or otherwise) is to be paid prior to cancellation of a gym service. This fee will not prevent the cancellation of the service by the customer, but will be retained as an ongoing debt to be paid by the customer and requestable/assignable by the business to the customers bank or other debt collection agencies.
Reasoning: This is possibly the most critical recommendation that if made explicit in the regulation would prevent spiraling debt due to being unable to cancel a membership. This allows the applicable gyms to maintain their business books while also preventing abuse of vulnerable people who wish to cancel.
Further reasoning: Although the previous recommendation on disallowing cancellation fees is preferable, I understand that the business situation can also make that impractical for large franchise gym businesses too, where each gym is operated with a degree of separation from the head company. I am unaware of the financial margins of these gym franchises and would assume they have the leeway's to take the financial burden of off periods from the franchisees. However, in the absence of that previous recommendation this is a crucial suggestion to safeguard the consumer from unfair fees and debt.
- Perpetual period gym contracts should be allowed only where the contract is updated every 3 years to ensure compliance with local, state and government laws. The subscription fee of the new contract should not be increased in the new perpetual license without first notifying the customers in writing and allowing them the option to cancel.

Thank you for your time reading my letter, I strongly believe that the combination of all or some of these recommendations will help disadvantaged people with unfair business practices, while also still allowing small-medium business to flourish and continue any good faith behavior as before. I hope you will consider the suggestions for your upcoming legislation. This is an important area which I am glad the government has put on their agenda.

Kind regards