



Guidelines for Excluding a Person from a Retail Premises



Australian
Retailers
Association

The guidelines for excluding a person from entering, or remaining on any site occupied by a retailer.

► Overview

From time to time, it becomes necessary to ask a person to leave a store. This requirement must be handled with extreme diplomacy. Retailers allows the public to enter their premises during operating hours and use the services, facilities and space. It does this by granting to each member of the public an implied licence to be on the premises. Generally, people have a right to be on commercial premises under an implied licence, therefore to effectively remove this right we must formally withdraw the implied licence, and thereafter the person will become a trespasser.

Formally, withdrawing a person's implied licence is initiated by issuing a person a 'Notice Prohibiting Entry' or 'Termination of Licence'. These notices generally advise that the specified person is forthwith prohibited from entering the premises for a period. Six months to 1year is the length of time usually specified.

► Designated Persons

To withdraw a person's implied licence, Retailers firstly need to appoint a designated person entitled to authorise the excluding of individuals.

Store Management or Duty Managers of a site are ideal for these purposes. The designated person must ensure the criteria for excluding person is satisfied and understand they are acting as an authorised representative of the business in relation to these matters.

► First Steps

An oral request to leave may be adequate for an immediate and temporary ejection for issues such as offensive behaviour. However, the oral request must come from a designated person and any ongoing revocation of the implied licence must be in writing,

Designated person for your business will be responsible for issuing the business exclusions in the form of a letter or notice to a person who fits either of the criteria outlined; however, to do so, you must have obtained the name of the person for

the exclusion to be valid. This facilitates the ability to take further action in the event that the person chooses to ignore the ban. The service of a notice or letter should preferably be witnessed by another employee of the business or a serving member of the Police Service, if they are in attendance.

In situations where the police are called to an incident, obtaining details may be undertaken by the attending officers.

Once the person is issued with a notice or letter, the exclusion is considered active within the specified premises for a period detailed in the letter or notice.

► Criteria for Excluding Persons from Premises

The decision to exclude a person from premises should not be made lightly.

Although it is a decision which may be made at the discretion of the designated person, substantial care must be taken in its exercise. Retailers should appreciate there may be adverse legal and commercial implications if they fail to appropriately consider these steps.

A designated person may prohibit any person from entering into or remaining upon any premises owned or occupied by the retailer in circumstances where:

- the designated person has reasonable grounds for believing the retailer's property is at risk from the person; or
- that the person has engaged in behaviour (currently or in the past), within or around the property of the retailer, which has caused staff or customers to have documented real or perceived distress, or which amounts to evidence of on-going offensive, obscene, threatening or unruly behaviour.

► Issuing the Letter or Notice

When issuing the letter or notice as a designated person, the following suggestions may be helpful.

- When approaching the person in question, do so with caution, ensure other staff are present who are aware of the situation.
- If camera surveillance is available, choose a point in the store with the best vantage point.
- Request Police, if available, to issue the ban on your behalf.

The delivery method is up to each individual, below is some suggested dialogue

- Approach with caution, ensuring the presence of other staff members.
- Clearly state the name of the offender and hold out the letter. Once it is accepted, you can state ***“As the Manager/Owner of (business name) p, I am issuing you a notice prohibiting entry, please leave the premises immediately”***.

In the event that the offender chooses not to accept the notification letter, ensure you document their refusal and the time and place the notice was issued along with names of witnesses.

It is vital a copy of the Notice remains on file at the store in a safe and secure location in accordance with Privacy Act Requirements.

▶ Action Against Juveniles

Particular care needs to be taken when dealing with under-aged (under 18 years) persons. Where a Notice is issued to an under-aged person, their parents must (where possible) be notified and given the opportunity to speak to store management.

▶ Where unable to identify person of interest by name

In some circumstances, it may not be possible to identify the person by name. In such cases, all available information identifying the person must be recorded on the Notice instead (e.g. hair, height, gender, tattoos etc.). However without the person's name or positive identification follow up action may not be possible.

▶ Dealing with Trespassers

Any person in a store (or at a site), who can be positively identified through photographs and personal knowledge, as a person on whom a Notice or letter has been served, should be approached and requested to leave. Where that person refuses to leave, the Police must be notified to attend. When the Police arrive, provided the person is still on the premises, they should be requested to take appropriate action.

Under no circumstances are retail staff or security staff permitted to apprehend any person for trespass. Only the Police can apprehend in this instance.