

BAGCHECK

Guidelines for the checking of
bags and parcels in retail stores

November 2013

Sponsored by
Australian Retailers
Association
1300 368 041

Endorsed by
NSW
Fair Trading

Published by
Australian Retailers
Association



Bag checks are conducted by retailers in an attempt to control theft. While this practice may be necessary, privacy issues need to be considered and the check conducted with a minimum of intrusion.

The *Bagcheck Guidelines* are sponsored by the Australian Retailers Association (ARA) and endorsed by NSW Fair Trading.

OBJECTIVES

The purpose of the Bagcheck Guidelines is to provide principles and practices in relation to bag checks so that shoppers and retailers can approach the situation with knowledge of their rights and obligations. Clearly, not all conflicts will be avoided; however the Bagcheck Guidelines provide procedures for the control of conflicts when they arise.

The principles and procedures are divided into:

- the legal position which is determined by the general law of contract and must be complied with;
- agreed principles which have been adopted following consultation with interest groups; and
- suggested practices as to how the legal position and agreed principles might be met or improved upon.

ADMINISTRATION

Enquiries regarding the operation of the Bagcheck Guidelines should be directed to:

Australian Retailers Association	Telephone 1300 368 041 (for retailers)
NSW Fair Trading	Telephone 13 32 20 (for consumers)

COMPLAINTS

The ARA will endeavour to resolve any issues arising from retailers in respect of the Bagcheck Guidelines. NSW Fair Trading will endeavour to resolve any issues and any complaints arising from consumers who feel that the Bagcheck Guidelines have been breached.

THE STORE'S RIGHT TO CONDUCT BAG CHECKS

Legal Position

A customer who enters a store does so under licence. Retailers are able to set conditions of entry to their store. As such, a shopkeeper can make entry to their store conditional upon showing bags, cartons, parcels and containers for checking.

If special requirements are imposed with regard to items carried into the store without proof of purchase or other matters, these must also be made a condition of entry.

Agreed Principles

Personal hand bags will not be checked unless larger than the size of a sheet of A4 paper, i.e. 297 mm x 210 mm, or the shopkeeper is certain that the handbag conceals unpaid for goods which are the property of the shopkeeper.

All other bags, cartons, parcels and containers that could reasonably be expected to conceal goods may be checked.

NOTIFICATION THAT THE STORE CONDUCTS BAG CHECKS

Legal Position

In order to carry out a bag check, a retailer must notify the customer, through the display of signage at the point of entry to the store of its intention to do so.

If other conditions apply these should also be covered in the notice.

A customer, upon entering a store with a sign displaying the retailer's intention to check bags, accepts that condition of entry.

Agreed Principles

Signage establishing entry conditions should be prominently displayed at entrances to stores, be written in simple language and should indicate:

- that agreeing to checks is a condition of entry; and
- that checks are done on bags, parcels, cartons and containers

Supplementary signage should indicate the shopkeeper's commitment to the Bagcheck Guidelines, particularly in regard to the checking of personal handbags.

The Bagcheck Guidelines Summary Statement will be incorporated into any literature that the store manager provides to customers on receipt of enquiries.

Suggested Practices

The key to avoiding disputes is to provide customers with as much information as possible in the first instance. It is suggested that:

- where possible signage should make reference to the Bagcheck Guidelines;
- in areas with a large non-English speaking population, consideration be given to the translation of signage and the Summary Statement as appropriate; and
- supplementary signage includes displaying the Summary Statement or having it readily available.

PROCEDURES FOR CONDUCTING BAG CHECKS

Legal Position

A person who forcibly conducts a bag check against a customer's will may be liable for assault.

Agreed Principles

Requests should be courteously made so as to minimise the degree of intrusion.

The employee or shopkeeper should request that the customer personally opens the bag. There should be no direct physical interference by the employee or the shopkeeper.

Where a view of the bag is obstructed by a large parcel, coat or similar item, the employee or shopkeeper may request the customer to remove the obstruction but should not touch the obstructing item.

PROCEDURES FOR DEALING WITH DISPUTES

Legal Position

A shopper can refuse to allow a bag check.

In that situation a shopkeeper may ask the shopper to leave the store and not return unless prepared to comply with the store's conditions for entry. In so doing, the shopkeeper is terminating the licence agreement.

A shopkeeper needs to be absolutely certain that an offence has been committed by the shopper in order to forcibly detain or search the shopper. A shopper who has been forcibly detained by a shopkeeper may sue for false imprisonment if no shop stealing has occurred.

Agreed Principles

An employee should not under any circumstances enter into a dispute with a customer over a request to check bags or a suspected theft.

Under no circumstances must an employee attempt to forcibly restrain the customer or interfere with the bag(s).

If any dispute arises the employee should immediately summon the store manager.

The manager will explain the conditions under which the customer entered the store. If the customer again refuses to offer the bags for checking, the manager may ask the customer to leave the store and not return or summon a police officer.

STAFF TRAINING

Agreed Principles

Retail personnel involved with the implementation of the Bagcheck Guidelines should be given details of the Guidelines.

Suggested Practices

The most efficient means of providing details of the Bagcheck Guidelines to relevant employees will depend on the size and structure of the business. Mechanisms that could be considered include:

- inclusion of a section in induction courses;
- special staff training sessions;
- internal memoranda;
- display of the Bagcheck Guidelines or an appropriate staff instruction on notice boards; and
- distribution of the Bagcheck Guidelines itself.

Where the Bagcheck Guidelines are not distributed it is recommended that copies be made available to employees on request.

ALTERNATIVE MEASURES

Suggested Practices

It is recommended that, where practical, additional measures to bag checks, eg camera surveillance, electronically sensitised price tags, mirrors, security guards, bag check services etc be considered.

BAGCHECK GUIDELINES SUMMARY STATEMENT RIGHTS AND OBLIGATIONS OF CUSTOMERS

This statement is a summary of the rights and obligations of customers under the *Bagcheck Guidelines* which is sponsored by the Australian Retailers Association and endorsed by NSW Fair Trading.

RIGHTS

- You have the right to know before entry that the store conducts bag checks.
- You have the right to refuse interference with your person or with your bags. Checking means that store personnel can look, but not touch. You can be asked to assist during the check, eg by removing any obstruction to visual inspection.
- A shopkeeper shall not check a personal handbag unless it is larger than the size of a sheet of A4 paper (ie 297mm x 210mm) or they are certain that the handbag conceals goods which have not been paid for and are the property of the shopkeeper.

OBLIGATIONS

- Having entered a store knowing that bag checks are conducted, you have accepted the store's right to ask you to open your bags for checking.

IMPORTANT NOTES

- If you refuse a check of your bags you can be asked to leave the store and not return.
- Other bags, cartons, parcels and containers that could reasonable be expected to conceal goods may be checked.
- If you feel that the *Bagcheck Guidelines* have been breached you should contact the Australian Retailers Association on 1300 368 041 (for retailers) or NSW Fair Trading on 13 32 20 (for consumers).

THIS NOTICE IS PRINTED ON A SHEET OF A4 PAPER