



Australian  
Competition &  
Consumer  
Commission



ASIC

Australian Securities & Investments Commission

# FairStore



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# 1. All stores can be fair stores

As a business, you should provide high standards of service to all your customers, all the time—and in a way that complies with the law.

This FairStore booklet aims to help people working in stores in outback communities, who work day-to-day with Indigenous and other consumers, to:

- think about the ways in which you interact with those consumers and
- understand your obligations and rights under Australia's consumer laws in those dealings.

## The ACCC and ASIC

FairStore is published by the Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investments Commission (ASIC).

The ACCC is responsible for making markets work for everyone. It promotes compliance with the Australian Consumer Law (ACL) and the *Competition and Consumer Act 2010* (CCA) and, where needed, takes legal action against businesses that break the law.

ASIC is responsible for regulating financial services and products, including consumer credit. ASIC also regulates Australian companies.

## Engaging with Indigenous consumers

As a business you will come across customers whose particular circumstances may put them at risk in the marketplace.

Some Indigenous consumers may be vulnerable or at risk of disadvantage in the marketplace because they:

- have limited English skills and have trouble interpreting written contracts and comparing them with other information you have provided (verbally or in writing)
- do not regularly engage in complex commercial transactions and may be at risk if key terms and conditions are unclear.

You must be careful not to take advantage of vulnerability—or you can face serious penalties.

While businesses are not expected to know everything about their customers, it is important that you are aware that what you say and do can affect different people differently. You should try to familiarise yourself with your customers' circumstances as best you can and make sure that you are fair and accurate in your dealings with them.

## Trade fairly

As a business owner or operator, it is your responsibility to be aware of the laws applying to your business, including the Australian Consumer Law, the *National Consumer Credit Protection Act 2009* and the *Australian Securities and Investments Commission Act 2001*. FairStore will help you understand important parts of these laws.



## 2. Your Australian Consumer Law obligations

The Australian Consumer Law contains rules that businesses must follow when dealing with consumers. These rules cover any advertising you do, the way that you and your staff engage with consumers and the things you and your staff say about products and services (both verbally and in writing).

### Key points:

- All businesses must be fair and honest when dealing with consumers.
- Make sure your marketing messages are clear and accurate.
- Make sure that you and your staff are aware of fair trading laws, including when you must repair something or give a refund.
- 'No refunds' signs are illegal.
- Clearly display the price of all items available for sale. Include all charges payable and any tax (for example, GST) in the displayed price.
- EFTPOS transactions should be authorised and completed only by the consumer, unless the card owner is unable to do so because of a disability.
- Clearly make known any terms, conditions or charges (for example: minimum transaction amounts, EFTPOS or lay-by charges, store operating times).

## Be honest and fair

You and your staff have an obligation to treat consumers honestly and fairly at all times. Be careful not to mislead or deceive consumers when conducting your business. In addition, you must not use physical force, coerce or unduly harass consumers about the supply of, or payment for, goods and services.

When you are dealing with consumers who may be disadvantaged or vulnerable (for example, due to limited English skills), you need to take extra care. Something you or your staff does might be 'unconscionable' if it is particularly harsh or exploits your customers' vulnerability.

## Unfair contract terms

It is common for businesses to offer its consumers the same or a similar contract on a 'take it or leave it' basis where consumers have no opportunity to negotiate the terms of such a contract. This is known as a standard-form contract. The Australian Consumer Law protects consumers from unfair terms in standard-form consumer contracts. If your business provides consumers with a standard-form contract, make sure the contract does not contain unfair terms.

### What types of terms may be unfair?

While there are a number of factors to consider when deciding whether a term is unfair, the following types of terms may raise concerns:

- Contract terms that allow the business (but not the consumer) to change the terms of the contract without the consumer's consent.
- Terms that unfairly permit the business (but not the consumer) to cancel the contract.
- Terms that make the consumer responsible for things that would ordinarily be outside of their control.

For more information please visit [www.accc.gov.au](http://www.accc.gov.au) or [www.asic.gov.au](http://www.asic.gov.au).

## Clear prices

When selling goods you should make sure that the price displayed on the shelf is the same as the price at the cash register. If you display shelf prices lower than purchase prices, you could be breaking the law.

If products have more than one price displayed, you must either sell the goods for the lowest 'displayed price' or not sell them until the price is corrected.

It's also a good idea to regularly check stock to get rid of out-of-date products. State laws and national codes require that food must show 'use by' and 'best before' dates. Selling out-of-date products can be a breach of the Australian Consumer Law, as you may be representing that goods are of a certain quality when they aren't.

### Example

The ACCC was concerned that a remote community store had misled customers by selling some food well beyond best-before dates and displaying some shelf prices that were lower than the actual purchase prices. The store made a commitment to the ACCC, in 'undertakings' enforceable in court, that it would not repeat the conduct; that it would carry out regular checks to make sure that food past 'best-before' dates was removed from sale; and that it would make sure that store managers undertook Australian Consumer Law training.



## Provide receipts

When you sell products or services totalling \$75 or more (excluding GST) you must provide the customer with a cash register or handwritten receipt, or other proof of purchase—such as a GST tax invoice or credit card machine receipt.

The receipt or proof of purchase must list the purchase date, your business details, each item bought and its price as well as the total price (including GST).

If the total sale is less than \$75, you do not have to provide proof of transaction unless a customer asks for it, but it is good business practice to always provide receipts.

If you provide services, a customer can ask you for an itemised bill that shows:

- how the price was worked out
- the number of labour hours and the hourly rate (if relevant) and
- the materials used and the amount charged for them (if relevant).

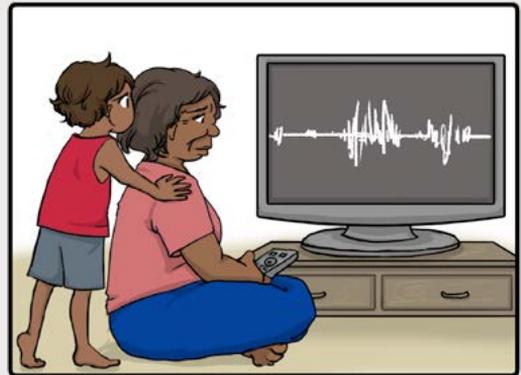
You must provide an itemised bill free of charge and within seven days of the request.

## Consumer guarantees

If you sell a product or service that breaks too easily, doesn't work or do what it is supposed to, your customers have rights under the Australian Consumer Law.

When you sell goods, you automatically guarantee to the consumer that:

- you have the right to sell the goods
- the goods are of acceptable quality
- the goods are fit for any purpose the consumer told you about before buying the item or any purpose that you told the consumer the goods would be fit for
- the goods match any description given to them
- the goods do not differ from any sample or demonstration shown to the consumer
- repair facilities and spare parts are reasonably available
- any extra promises you made about performance or quality of the goods will be met
- the goods do not carry any hidden debts or extra charges
- no one has the right to take the goods away or stop the consumer from using them.



If you provide services, you automatically guarantee to the consumer that:

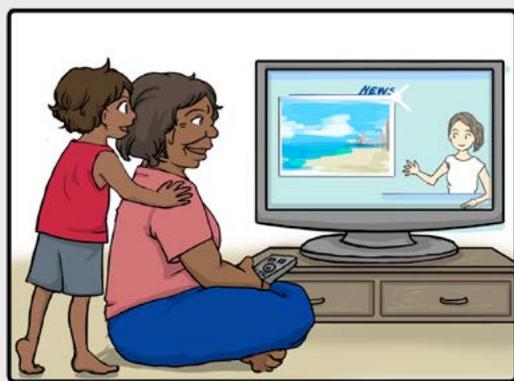
- you will provide the services with acceptable care and skill
- the services will be fit for the purpose or achieve the results that the consumer told you about before buying the services
- the services will be provided within a reasonable time (if not specified).

If you supply goods or services to consumers that do not meet one or more of the consumer guarantees, the consumer may claim a remedy from your business. Where a remedy may be sought against your business, you cannot refuse to help the consumer by sending them to the manufacturer or importer.

## When you must provide a remedy

If you sell a consumer a product, or provide a service, that fails to meet a consumer guarantee, the consumer is entitled to a remedy.

A consumer's remedy in a particular case will depend on whether the failure to meet a consumer guarantee is major or minor. A major failure means the problem is so severe that it would have stopped a reasonable consumer from buying the item if they'd known about it. There may also be a major problem if the goods do not match the description/sample, cannot be fixed in a reasonable time and/or are unsafe; or the service creates an unsafe situation. Generally, where a problem can be fixed easily it will likely be considered a minor problem.



If goods fail to meet a guarantee and the failure is major, the consumer can choose the remedy: reject the goods and get a refund or replacement, or keep the goods and get compensation for the drop in value caused by the problem. If the failure is minor, you can choose the remedy.

If services fail to meet a guarantee and the failure is major, the consumer can choose to cancel the service contract with you and get a refund, or keep the contract and get compensation for the difference in the service delivered and what they paid for. If the problem with the service is minor and can be fixed, the consumer cannot cancel the contract and demand a refund immediately. The consumer must give you an opportunity to fix the problem free of charge and within a reasonable time.

### Examples of a major problem

- A customer buys a toaster which doesn't work when plugged in and switched on.
- A customer buys a water tap that is faulty and causes flooding.

Generally, you do not have to provide a remedy if the consumer:

- has simply changed their mind
- has discovered they can buy the same goods cheaper somewhere else
- has damaged the goods
- had a fault drawn to their attention before buying the goods and now wants to return them because of that fault.

### Refunds and returns signs

It is against the law for you to tell consumers or display signs stating that you do not give refunds. This is because they give the impression that your customers can't get a refund under any circumstances.

The ACCC has developed a national refunds and returns sign to give consumers clear information about refunds and replacements. You can download an approved sign from [www.accc.gov.au/publications/refunds-returns](http://www.accc.gov.au/publications/refunds-returns).

You should think about displaying this sign (or one like it) to make it easier for you to resolve customer concerns.

### More information

For more information about fair business practices, consumer guarantees or how to obtain a refunds and returns sign, visit the ACCC's website or contact the ACCC's Small Business Helpline on 1300 302 021.

# Refunds and returns

We are not required to provide a refund or replacement if you change your mind.

But you can choose a refund or exchange if an item has a **major** problem. This is when the item:

- has a problem that would have stopped someone from buying the item if they had known about it
- is unsafe
- is significantly different from the sample or description
- doesn't do what we said it would, or what you asked for and can't be easily fixed.

Alternatively, you can choose to keep the item and we will compensate you for any drop in value.

If the problem is **not major**, we will repair the item within a reasonable time. If it is not repaired in a reasonable time you can choose a refund or replacement.

Please keep your proof of purchase—e.g. your receipt.



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**ACCC Infocentre 1300 302 502**

[www.accc.gov.au](http://www.accc.gov.au)

## 3. Safe products

By law, Australian consumers have the right to expect that goods and services they purchase will work properly without causing injury, illness or harm. As a business, you must use quality control measures to ensure that goods and services you supply meet acceptable levels of safety and will not cause harm when used—including reasonably foreseeable misuse.

### Bans

If any of your products are subject to a ban, you must not sell them. A ban on a product-related service makes it unlawful for anyone, in trade or commerce, to supply or offer to supply that service.

### Mandatory standards

Mandatory standards set out the specific safety requirements that a product or product-related service must meet before it can be sold. A mandatory standard may require products to comply with certain design, construction, labelling, information or performance requirements if they are considered necessary to prevent or reduce the risk of injury to a person. If you supply goods or services that are subject to a mandatory standard, you must ensure that the particular safety requirements are met before it can legally be sold.

#### Example

In 2012 the ACCC issued infringement notices (totalling \$19 800) to a wholesaler who supplied a variety of products to stores in remote Indigenous communities in the Northern Territory. A product safety survey by the ACCC found that the wholesaler was supplying unsafe baby walkers and strollers that did not comply with the relevant mandatory standards, specifically:

- the baby walkers did not display the required warning labels and did not have a braking mechanism to prevent them from moving if one or more of the wheels came off a horizontal plane and
- the strollers did not display the mandatory general warning label and their harnesses displayed an incorrect warning label.

## Penalties

Supplying products that do not comply with a mandatory standard or are banned is an offence. You could be fined up to:

- \$1.1 million for companies
- \$220 000 for individuals.

## Recalls

If a product or service presents a safety risk, it should be recalled. A recall involves:

- stopping supply of the product
- offering consumers a remedy in the form of repair, replacement or refund and
- warning consumers of the hazard.

A product can be recalled voluntarily by a supplier, or a compulsory recall can be required by the Commonwealth, state or territory ministers responsible for the Australian Consumer Law. A successful product safety recall has a clear message that reaches all affected people. You should have a process in place to implement an effective recall if needed, including making sure recalled products are removed from sale.



## Mandatory reporting

If you become aware of a death, serious injury or illness that you or someone else believes may have been caused by the use of a product you supplied or serviced, you must notify the ACCC within two days of becoming aware of the incident. Serious injury or illness means an acute physical injury or illness requiring treatment by, or under the supervision of, a doctor or nurse.

If you don't make a mandatory report to the ACCC, you may be liable for a penalty. And if you do make a mandatory report, it's not admitting liability or declaring that your products are unsafe.

## More information

Visit [www.productsafety.gov.au/emailalerts](http://www.productsafety.gov.au/emailalerts) to find out how you can keep up-to-date on product safety issues, including bans and mandatory standards.

To make sure you stay up-to-date on product recalls, sign up to receive email alerts from [www.recalls.gov.au](http://www.recalls.gov.au), or alternatively download the ACCC's Recalls Australia phone app.

## Join us via social media



Follow us on Twitter @ACCCProdSafety



Watch our safety videos on the ACCC Product Safety YouTube channel



Like our Facebook page ACCC Product Safety



Download our Recalls Australia iPhone and Android app

## 4. Your obligations if you offer credit, lay-by or book-up

Your store can trade in a number of different ways, including providing credit for purchases and leasing goods. If you provide credit or lease goods for a set period, you may need to be licensed by ASIC.

### Consumer Credit

#### Key points

- If you offer any type of credit, check [ASIC's Regulatory Guide 203 'Do I need a credit licence?'](#) to find out if you need a licence.
- If you are not sure whether you require a credit licence, get legal advice.
- If you think you might be offering credit that would require a licence, you must stop offering that credit immediately until you have been granted a licence or serious penalties can apply.

If you offer loans or lease goods, you may be providing credit as set out in the *National Consumer Credit Protection Act 2009* (Cth) (National Credit Act) and/or the *ASIC Act 2001* (Cth). The National Credit Act applies to consumer credit including cash loans, rent to buy (payment by instalments), lease arrangements and in some circumstances, book up. The National Credit Act describes these as 'credit activities'.

If you are engaging in a 'credit activity' as defined by the National Credit Act, you will generally need an Australian credit licence or an authorisation from a credit licensee before commencing business. While authorised credit representatives will not hold a licence directly, they still have laws and obligations to follow.

ASIC issues credit licences to applicants who meet certain criteria including:

- being able to comply with the general conduct obligations of credit licensees under the National Credit Act, which aim to ensure that you operate your credit business properly and
- being a 'fit and proper' person to engage in credit activities.

As the regulator of consumer credit, ASIC issues licences and tries to ensure that licensees and authorised representatives follow the laws when providing consumer credit. ASIC does this in a number of ways including through its education, compliance and enforcement work.

Credit licensees must follow all compliance obligations set out in the National Credit Act. For example, if you offer any credit services (including book up) under the National Credit Act you must have a written contract. If you don't comply with the relevant laws there could be serious consequences like fines and imprisonment. More information on the credit compliance requirements can be found on the ASIC website under the 'Credit' section.

You should seek your own legal advice before deciding whether or not to apply for a credit licence. You can apply for a licence online at [www.asic.gov.au](http://www.asic.gov.au).

**If you think you might be engaging in credit activities that require a licence and are currently unlicensed, you should cease credit activities and contact ASIC. For more information read ASIC's *Regulatory Guide 203: Do I need a credit licence?* at [www.asic.gov.au](http://www.asic.gov.au).**

## Other laws you should know about when providing credit

Even if your business does not provide credit under the National Credit Act, you will still have responsibilities under the Australian Consumer Law and ASIC Act to deal with customers in a fair, honest and transparent way. In particular, prohibitions on unconscionable conduct, misleading or deceptive conduct, and unfair contract terms will still apply.

It is a good idea to give your customers a clear written agreement that includes terms and conditions and any interest and charges, even if you are not required by the National Credit Act to do so. It is important that your customers can understand the terms and conditions so that they know their rights and responsibilities. This is particularly important where you can see that customers may have trouble understanding things you are saying or documents they are looking at.

# Rent to buy and leasing

## Key Points

- If you are offering 'rent to buy' arrangements to customers you will generally need a licence.
- If you offer consumer leases for a set period of more than 4 months and the total payments exceed the cash price of the goods you will generally need a licence.

You may choose to offer your customers the option to rent or lease different items, particularly where the person does not have enough cash to pay for it upfront. You may do this through either leasing the item (consumer lease) or through a 'rent to buy contract' (instalment contract).

A 'rent to buy contract' is where you make an agreement with a customer to rent them an item, such as an appliance or piece of furniture, for a specific time. Some contracts provide that the customer will own the goods at the end of the term; others require a final payment from the customer.



A 'consumer lease' allows your customer to hire an item (for example, a computer or TV) over a period of time. The customer must make regular rental payments until the term of the contract finishes. The customer generally does not own the item at the end of the lease period.

Depending on which option you offer, you will have different rights and obligations under the contract. If you provide 'rent to buy' arrangements or lease goods to customers where:

- the contract is for a set period of more than four months and
- the total payments exceed the cash price of the goods, generally the National Credit Act will apply to your services and you will need a credit licence.

### Example

In 2013 ASIC cancelled the licence of a company that was leasing household goods to Aboriginal customers in rural areas of Victoria and NSW. The directors of the company were also banned from engaging in credit activities for four to six years. These penalties were imposed because the company was not following the responsible lending obligations. It did not make reasonable inquiries about the customer's financial situation or their requirements and objectives for signing the rental agreement. The company targeted Indigenous consumers, who were unable to afford the repayments.

## Lay-by agreements

A lay-by is where a customer:

- pays for the product in at least two instalments (when the agreement is called a lay-by) or at least three instalments (when the agreement is not called a lay-by) and
- does not receive the product until the total price is paid.

If you offer sale by lay-by, you must ensure that the agreement is in writing, expressed in plain language, legible and clearly presented. The agreement should also set out all of the relevant terms and conditions, including whether a cancellation fee will apply.

If a customer cancels a lay-by agreement, you must refund the deposit and any other amount paid (less any cancellation fee you charge). The cancellation fee must be no more than your reasonable costs in relation to the lay-by and not a 'penalty' for cancelling.

A store can only elect to cancel a lay-by agreement if:

- the customer breaches the agreement
- your business is no longer operating or
- the product is no longer available.

If you terminate the lay-by agreement, you cannot charge a termination fee.

## Book up

### Key points

- Do not ask for or keep customers' key cards or PIN numbers.
- When providing itemised receipts, ensure you list the items purchased and any fees or charges.
- Keep clear and up to date records of book up accounts.
- Unless authorised in writing, do not let anyone else book up on someone else's account.
- Charge the same price for things paid for with cash—charging more may be a 'credit activity' and require a credit licence.

'Book up', 'tiki', or 'running a tab', is when you allow customers to buy goods or services and pay later. Unlike lay-by, the goods and services can be used immediately: customers don't have to wait until they have paid in full to take the goods or use the services.

If you charge a fee or interest for book up services, the National Credit Act may apply to your services. This will generally apply if you allow customers to book up the cost of goods or services and:

- the customer is given more than 62 days to pay for the goods or service and is charged a fee or interest or
- the customer has less than 62 days to pay for the goods or service and you charge the customer a fee that is more than five per cent of the amount being booked up, or you charge an annual interest rate of 24 per cent or more.

Even if the National Credit Act does not apply to your book up arrangements (for example, because you don't charge for the service), you are still required to act fairly and honestly towards your customers. Having written terms to display and provide to customers will help you to avoid problems.

When providing book up it is important that you maintain clear and easy to understand records. These records should include book up purchases, payments and outstanding balances. You should also allow customers to have access to their records. Customers should never be asked to secure the debt by leaving their key card or to tell you their PIN.

ASIC's *Dealing with book up: Key Facts* provides more detailed information about book up, including good book up practices. It's available at [www.asic.gov.au](http://www.asic.gov.au).

## **We have best practice book up here**

If you want to book up here you must agree to these terms:

- Store limit of \$60
- Only essential items can be booked up
- You must sign your book up receipt before you take the items
- You can only book up on your account.

We charge the same price for booked up items as we do for items paid in cash!



## 5. Dealing with customer feedback

Customer feedback is a good way to help you identify what works and does not work for your business. It is best practice to make sure you have a system in place to record and deal with any comments or complaints quickly and cheaply. Such a system is known as an internal dispute resolution system.

**If a complaint relates to regulated credit activities you must have an internal dispute resolution system in place. You also must be a member of an external dispute resolution scheme. Visit [www.asic.gov.au](http://www.asic.gov.au) to find out about ASIC-approved external dispute resolution schemes.**

If you receive a complaint, you should:

1. Take down the person's contact details and a summary of their complaint. Do not reveal these details to anyone else.
2. Make an effort to resolve the issue with the person making the complaint. Take time to understand what they are worried about.
3. If you cannot resolve the issue with the person making the complaint, you should consider seeking help or advice from a community counsellor, a dispute-resolution/ombudsman scheme, social worker or lawyer. If the complaint relates to regulated credit activities, you must provide the person making the complaint with the details of your external dispute resolution scheme.
4. If the person making the complaint asks for someone else to help them with their complaint, you should not say no without good reason. It is important to use an interpreter if needed.

Customers can also complain to the ACCC or ASIC if they want to.

You should look at complaints from time to time to see if the same or similar issues keep occurring.

Industry and business associations may also be able to help you understand your legal rights and obligations when dealing with consumers. They may also be able to give you some advice on resolving and avoiding problems.



# More information

## **Australian Competition and Consumer Commission**

Small Business Helpline  
1300 302 021

Indigenous Infoline  
1300 303 143

[www.accc.gov.au](http://www.accc.gov.au)

## **Australian Securities and Investments Commission**

1300 300 630

ASIC Indigenous Help Line  
1300 365 957

[www.asic.gov.au](http://www.asic.gov.au) and  
[www.moneysmart.gov.au](http://www.moneysmart.gov.au)

Each state and territory government also has its own consumer protection agency and you can get advice from it as well.

## **Australian Capital Territory**

Office of Regulatory Services  
Ph: (02) 6207 3000  
[www.ors.act.gov.au](http://www.ors.act.gov.au)

## **New South Wales**

NSW Fair Trading  
Ph: 13 32 20  
[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

## **Northern Territory**

Consumer Affairs  
Ph: 1800 019 319  
[www.consumeraffairs.nt.gov.au](http://www.consumeraffairs.nt.gov.au)

## **Queensland**

Office of Fair Trading  
Ph: 13 74 68  
[www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au)

## **South Australia**

Consumer and Business Services  
Ph: 131 882  
[www.ocba.sa.gov.au](http://www.ocba.sa.gov.au)

## **Tasmania**

Consumer Affairs and Fair Trading  
Ph: 1300 654 499  
[www.consumer.tas.gov.au](http://www.consumer.tas.gov.au)

## **Victoria**

Consumer Affairs Victoria  
Ph: 1300 558 181  
[www.consumer.vic.gov.au](http://www.consumer.vic.gov.au)

## **Western Australia**

Department of Commerce  
Ph: 1300 304 054  
[www.commerce.wa.gov.au](http://www.commerce.wa.gov.au)

If you are a member of an industry or trade association, you may also want to contact them for information or assistance.

## Other resources

### ACCC Small Business Online Education Program

The ACCC has developed a free online education program to assist small businesses to understand their rights and responsibilities under the Competition and Consumer Act. Go to [www.ccaeducationprograms.org](http://www.ccaeducationprograms.org) to access the program.

### ACCC Publications

- [Small business and the Competition and Consumer Act](#)
- [Australian Consumer Law: what you need to know—business snapshot](#)
- [Consumer guarantees—video training for business and sales staff](#)
- [Product safety—A guide for businesses and legal practitioners](#)
- [A guide to unfair contract terms law](#)

### ASIC Publications

- [Your obligations as a small business operator](#)
- [Dealing with book up: key facts](#)
- [Credit, loans and debt](#)

# Checklist

1. Be alert to any special needs your customers may have.
2. Train your staff to know when they do and do not have to give a refund.
3. Do not ask for or keep customers' PINs or key cards.
4. Make sure EFTPOS transactions are completed by the actual cardholder—unless the cardholder is unable to do so because of a disability.
5. Make sure the prices in your advertising and on your shelves match the price at the register.
6. Always provide receipts for sales totalling \$75 or more (excluding GST), or if a customer asks for a receipt.
7. Download the 'ACCC Recalls Australia' phone app to stay on top of the latest product recall information.
8. If you offer book up or lay-by, make sure you have a written agreement that sets out the terms and conditions clearly.
9. If you are engaging in credit activities make sure you have a credit licence. If you are unsure, contact ASIC.
10. Have a dispute resolution system in place for customer complaints.