

## Checking Retail Customer's Bags

### What is the Bag Check Code of Conduct?

- Amendments in 2018 to the Security and Investigations Agents Act provided an exemption to retailers from requiring a security guard licence to be granted to their staff to check customer bags for unpaid items.
- The Code aims to assist small retailers who do not currently employ a security guard.
- It also established the Tasmanian Bag Check Code of Conduct to guide retail shop operators and staff and their customers on the rights and duties of persons who enter retail premises.
- This Code of Conduct is based on the Australian Retailers Association Bag Check Guidelines, widely used and regarded as the industry standard.

### Should the Bag check Code become part of a store's policies on shoplifting?

Yes, it is strongly suggested that retail stores adopt the Code and that the store managers must ensure that staff members understand:

- The requirements of the Code and store policy on both bag checks and stealing
- What you, or store management, expect of staff under the Code or store policies
- The procedures staff are to follow if they suspect someone has stolen property
- That the value of the goods stolen can never outweigh the value of the health and wellbeing of the staff

### Who is allowed to conduct a bag check under the Code?

A staff member who is over 18 years, who has been trained, has a copy of the Code and wears identification that notes that they are authorised can conduct bag checks. To comply with the Code, all these requirements must be met by businesses.

### Does this give retail staff greater powers than a security guard?

No, this gives retail staff the same powers as a security guard performing bag checks.

They can only request a bag check and may not touch the customer or their bag.

## **'Isn't there a danger to staff members conducting bag searches?**

Retail staff must comply with a Tasmanian Bag Check Code of Conduct which sets out what they can and can't do when conducting a bag check and the requirements for people conducting bag checks.

## **What happens if a shoplifter refuses to allow their bag to be checked?**

A retail employee must not attempt to apprehend the shoplifter or forcibly search their bag.

If they suspect the person has items in their possession that have not been paid for, and the person refuses to allow their bag to be checked, the next step would be to call a security guard or contact the Police. The staff member must not attempt to detain the person.

Since the person has breached the store's entry conditions, action may also be taken to refuse this person entry in the future.

## **How can I ban a person from my store?**

Shops are privately owned, and owners or occupiers can prohibit entry to anyone they don't want in the store.

- Someone who enters contrary to this consent would be a trespasser, and Police can deal with them for this offence if they enter when told they aren't welcome.
- To make clear that people aren't allowed in shops, shops can serve a letter on the person setting out their ban from the premises. This letter doesn't have any legal authority. It just formalises the ban. If the store owner keeps a copy of the letter and proof it was served, this can help show that they knew they were banned and may help prove a trespass charge.

## **Can bag checks only be done at the checkout?**

No. A bag check can be requested at any time within a store, not just at the checkout. Under the Code, it is a condition of entry to the store and does not only have to be done on leaving the store.

## **Must I see someone place goods in their bag before I can ask to look in their bag?**

No. A check may be requested at any time before they leave the store, especially if their behaviour or conduct suggests that they may have concealed goods in a bag or a container.

## **Does a person commit an offence by not having their bag inspected?**

No. Customers have the right to refuse a bag check. If suspected of concealing stolen goods, the Police must be notified.

You can ask a customer to immediately leave the store if they refuse a bag check, as it is a condition of entry to the store.

## **Can I perform a bag check after the person has left the store?**

No. Once they leave the premises, the Bag Check Code of Conduct does not apply. It becomes a matter for the Police to handle and investigate.

## Can prams and mobility walkers be checked for concealed goods?

Yes, as the Code refers to: "containers that could reasonably be expected to conceal goods may be checked."

There is a need to show greater sensitivity to these customers as prams may contain infants, and mobility walkers are needed for the users' personal safety.

## Can I conduct a bag check against the customer's will?

No. There should be no direct physical interference by the employee or the shopkeeper.

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.

## Can I detain a person who has put goods in their bag?

No, this is not included in the Bag Check Code, and it does not give any rights to detain a person forcibly.

## Can I perform a "citizen's arrest" for shoplifting?

This is not part of the Code, and it does not give any rights to detain a person forcibly.

The Criminal Code Act says that you (or any person) may 'arrest' someone who is caught committing or who has just committed an offence that is punishable under the law.

You may stop and detain a person who has committed an offence such as stealing:

- At the time they commit the offence, or
- Immediately after they commit an offence

You cannot arrest the person a few hours later or the next day.

- If the situation causes danger to you, your staff or customers, do not detain the offender. The value of the goods can never exceed the value of your life.
- You have a duty of care to all people you detain for an offence. You also have a duty of care if you decide to release a person from your store before the Police become involved. Juveniles should only be released into the care of a parent, guardian or Police.

## What are the penalties for breaching the Code of Conduct?

- Since retail staff are only permitted to conduct bag checks if they comply with the Tasmanian Bag Check Code of Conduct, a breach would mean the exemption no longer applies. They are effectively doing the work of a security guard without a license.
- The penalty for working without a security agent licence is up to 1000 penalty units for a business and up to 200 penalty units for a natural person, which is of the order of \$172,000 and \$34,400, respectively.

## More information

To help retailers and consumers understand these requirements, Consumer, Building and Occupational Services (CBOS) has developed a fact sheet, frequently asked questions and a code of conduct for bag checking. You will find this information at [www.cbos.tas.gov.au](http://www.cbos.tas.gov.au) under *Resources and Tools*.

This document has been produced and published by the Consumer, Building and Occupational Services Division of the Department of Justice. Although every care has been taken in the production of the work, no responsibility is accepted for the accuracy, completeness, or relevance to the user's purpose of the information. Those using it for whatever purpose are advised to verify it with the relevant government department, local government body or other source and obtain any appropriate professional advice. The Crown, its officers, employees and agents do not accept liability however arising, including liability for negligence, for any loss resulting from the use of or reliance upon the information and/or reliance on its availability at any time.