



Australian  
Competition &  
Consumer  
Commission

# FAIRSTORE

A best practice guide for stores serving  
remote and Indigenous communities



FAIRSTORE

good for consumers  
good for stores—good for communities



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### **The artist**

Janet Whitton is a local Indigenous artist from north-west Victoria. Janet's mother, Jenny, is from the Wiradjuri, Yitha Yitha and Madi Madi clans and her father, Kevin, is from the Kokatha, Madi Madi, Wiradjuri clans. Janet is therefore from four different tribal groups.

### **Artwork**

'The circle represents the fire. The fire is a meeting place for the people to come together. The goanna is bush tucker and it is all over Australia. The goanna is on the fire cooking. The people are all around waiting for the goanna to be cooked so they can have a feed. All Aboriginal people eat the goanna; this is also the goanna dreaming.' As told by Kevin, Janet's father.

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# What is FairStore?

*FairStore* is a guide for owners and operators of retail stores serving Indigenous communities in rural and remote areas of Australia. This includes stores owned or operated by Indigenous communities, governments or private businesses (whether operated as a separate business or run as part of another business, such as a pastoral lease).

*FairStore*'s purpose is to:

- > help you and your staff comply with fair trading and other relevant laws
- > encourage higher trading standards.

*FairStore* aims to meet these objectives by raising awareness through education and with the support of government agencies, industry and business groups, Indigenous organisations and consumer groups.

## Why does it apply to me?

Stores in remote areas play an important role within communities and are well placed to improve their customers' understanding of consumer rights and obligations.

You may work under difficult conditions and provide services to customers who may have different cultural norms from people in less remote areas. Owners, operators and staff must comply with the law and are urged to do their best to provide services that meet the needs of their customers.

## Dealing with Indigenous customers

You should be aware that some Indigenous customers may be vulnerable or disadvantaged because of limited English or financial skills. These customers may be low-income earners, have limited exposure to commercial transactions and little understanding of commercial documents. They may have health problems or other disabilities.

Indigenous culture may also affect shopping behaviour and willingness to voice complaints about levels of service provided by stores. Cultural aspects such as kinship links and obligations affecting demand sharing, dominance of social relationships and ties to land may also affect the operation of stores.

You need to be aware of these cultural influences in developing appropriate operating procedures. Make sure that you don't take unfair advantage of customers who may not understand the terms or subject matter of a transaction, or who suffer a disability or disadvantage.

You also need to consider the cultural needs of any Indigenous persons you employ at your store. For example, you may wish to change Indigenous staff members' duties when there are cultural obligations that require them to be away from the store or that might otherwise affect the efficient operation of the store.



## What is fair trading?

The *Trade Practices Act 1974* (Cwlth) (on goods and services) and the *Australian Securities and Investments Commission Act 2001* (Cwlth) (on financial services and credit), as well as state and territory consumer affairs and fair trading legislation, establish basic legal standards for business conduct regarding consumers. These Acts prohibit false or misleading representations, misleading or deceptive conduct, and unconscionable conduct (which means taking unfair advantage of someone who has a clear disadvantage or vulnerability).

## Compliance with the Trade Practices Act

The Australian Competition and Consumer Commission (ACCC) is committed to ensuring that all businesses understand their rights and obligations under the Trade Practices Act. The Act applies to many important aspects of your business—the way you set prices, advertise and compete.

### Compliance with other laws

There are other federal, state, territory and local laws and regulations that may apply to specific aspects of a store's operation, for example the sale and handling of food, and the sale of cigarettes to children. You and your staff should know your obligations under these laws.

You need to be aware of your obligations under anti-discrimination legislation. Contact the Human Rights and Equal Opportunity Commission (HREOC) or the state or territory equivalent for more information.

### HREOC contact details

Tel: (02) 9284 9600

Complaints Infoline: 1300 656 419

General inquiries and publications: 1300 369 711

Website: [www.humanrights.gov.au](http://www.humanrights.gov.au)

Email: [complaintsinfo@humanrights.gov.au](mailto:complaintsinfo@humanrights.gov.au)



## Fair trading tips

- > Ensure that, before they buy, customers are able to see the goods, understand their use, and know the quality and the price.
- > Clearly display the price of all items available for sale. This may be through price tags on individual items or, as a minimum, by using a shelf price or sign near the item. It is unlawful to mislead your customers about the price of goods or services.
- > The prices of goods and services charged by remote stores are often significantly higher than the prices of the same goods and services in less remote areas. There may be valid reasons for this such as high unit costs, low sales volumes, high spoilage rates and high transport costs. Some stores apply higher mark-ups on certain products (such as cigarettes) so they can have lower mark-ups on other items (such as healthy foods). However, some stores may charge unreasonably high prices because of limited competition or because some customers don't know they are being charged too much. Do not take advantage of your store's remoteness or lack of competition to charge unreasonably high prices. You should be able to explain your pricing policies to customers.
- > Include GST in the price display when it applies. Consumers should be made aware of the full price they will have to pay when the price is displayed.
- > Keep all sales talk about products and services accurate and clear. Do not mislead or deceive customers about products and services (for example about quality, price, country of origin or after-sales service).
- > Clearly disclose any terms, conditions or charges imposed by the store (for example, for book-up services, if there is a minimum transaction amount or a charge for using EFTPOS facilities, lay-by or for opening out of normal hours). Satisfy yourself that the customer understands these terms and conditions before any commitment is made.
- > Be fair and honest and don't use coercive, false or misleading practices. It is important to note that what may be reasonable for some consumers may distress or intimidate disadvantaged or vulnerable consumers, including some Indigenous consumers. Remember, it is unlawful to take advantage of a person because of their vulnerability or disadvantage, especially if it is evident to you.

## What about receipts?

You should offer to provide receipts for all sales. Receipts should list the item(s) bought, the price of each item, the total price paid (including GST) and the date of purchase. Sometimes it may not be practical to issue a receipt (for example if you don't have a cash register or other easy means of producing a receipt).

As a minimum you should give receipts for all non-cash purchases. These include purchases made by way of credit/debit card, cheque or using an in-store account (for example book-up).

## What about non-cash payments?

If you make an arrangement with a customer for payment 'in kind', for example by working off a debt through direct labour, exchange of artwork or some other means, make sure the value given to the 'in kind' payment is at fair market rates.

## Store credit or 'book-up'

'Book-up' (or book-down) is a term that describes a form of store credit commonly used in regional and remote Australia. It involves a store offering small amounts of short-term credit to customers.

## What can I ask for as security for book-up?

It has been the practice of some stores offering book-up to ask customers to provide them with some form of security, such as blank withdrawal forms signed by the customer, debit or credit cards (banking items) and their personal identification number (PIN). Do not ask customers to provide you with a signed blank withdrawal form as a form of security. This can place the customer at risk. If a store asks customers for a signed blank withdrawal form and the form is misused or lost because the store does not provide for adequate safekeeping, the store owner may be liable for any loss suffered by the customer.

Do not ask customers to disclose their PIN, particularly as it may be a breach of the customer's contract with their bank or financial institution. Remind customers that they have an obligation to the bank to keep their PIN secure and not reveal it to anyone.

When possible, avoid asking for the customer's banking item as a means of security. Rather ask for another form of security in case they need the banking item for other purposes.

However, should you choose to hold a customer's banking items as security for book-up, you should:

- > return the customer's banking item on request, if there is no longer any debt—if there is still a debt outstanding, do not unreasonably refuse a customer's request to return their banking item, particularly in circumstances where you do not need the banking item to protect the store's legitimate interests
- > ensure that you hold the banking item in some form of secure storage to prevent loss, theft or use by an unauthorised person
- > have suitable arrangements in place to allow customers use of their banking items during times when the store will be closed for extended periods.



## What else should I consider?

- > Provide customers with a clear statement of the terms and conditions of book-up and ensure that they understand and accept the terms and conditions (including any limits to the amount that may be booked-up) before opening a book-up account. Failure to adequately explain the terms and conditions of the contract to customers means that the contract could be set aside at a later time.
- > Do not allow third parties to book-up against a customer's account (for example to obtain cash advances, or to buy goods or services) unless authorised by the account owner.
- > Ensure that EFTPOS transactions are authorised and completed by the customer, unless the customer can't because of a disability.
- > Be aware that under certain circumstances, the Uniform Consumer Credit Code<sup>1</sup> may apply to book-up practices, for example if fees are charged or interest rates apply. In many cases the code will not apply, but its principles of transparency and accountability should still be applied to book-up so that customers can be assured that stores are properly accounting for debts and payments.
- > Maintain details of customers' account histories and amounts they owe, and give them access to those details.
- > Provide itemised receipts to customers for purchases and payments made against their book-up account.
- > Keep a record for each customer using book-up. The record should contain clear, accurate and easily understood details (including dates) of credit provided, any service charges, payments made and the customer's current level of debt. The account details should be made available for inspection by the customer, a person acting on behalf of the customer, or officers from a law enforcement agency or regulatory authority (for example a police officer or consumer affairs official with either permission from the customer or legal documentation, such as a warrant).

The Australian Securities and Investments Commission (ASIC) has developed, *Dealing with book up: a guide*, for communities, community organisations, government agencies and private businesses. A copy of the guide is available on the publications page of the ASIC website ([www.asic.gov.au](http://www.asic.gov.au)). If you or your customers have a complaint about book-up, contact ASIC or your local Office of Fair Trading or consumer affairs agency.

In June 2006 the Northern Territory announced that they intend to develop a mandatory code of conduct for book-up. Stores in the Northern Territory should note that the obligations in the code are likely to be binding on them.

1 Further information about the Uniform Consumer Credit Code may be found at <http://www.creditcode.gov.au>.

## Warranties and refunds

The Trade Practices Act implies certain statutory conditions and warranties into consumer contracts for goods and services (whether or not the manufacturer or retailer has also provided a voluntary warranty.) To attempt to exclude, restrict or modify such statutory conditions and warranties may be a breach of the Trade Practices Act.<sup>2</sup>

### Implied conditions for goods

The implied conditions for goods are that:

- > you have a right to sell the goods
- > the goods match their description and/or sample
- > the goods are of merchantable quality (that is, the goods must meet a basic level of quality and performance)
- > the goods are reasonably fit for their purpose.

### Implied warranties for goods

The implied warranties for goods are that:

- > the consumers' right to possess the goods will not be challenged
- > the goods are free from any claim by a third party (except as disclosed to the consumer before buying the goods).

### How do these conditions and warranties affect my obligation to give a refund?

If any of the implied **conditions** are breached (for example if the goods sold are faulty, do not do what they're reasonably expected to or do not match their description/sample) then you are obliged to issue a refund.

If any of the implied **warranties** are breached, you do not have to provide a refund; however, your customer may be entitled to some other form of compensation such as a partial refund to reflect the reduced value of the goods, damages, replacement goods or repair costs.

It is the ACCC's view that in some circumstances, consumers may be entitled to a refund for partly consumed goods that are not of merchantable quality. This may depend on the extent to which the product has been consumed.

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2 State and territories may also have other fair trading laws that will apply to you.



## Can I refuse to give a refund?

Yes, in some circumstances you are entitled to refuse to give a refund. Generally, you do not have to provide a refund to your customer if they:

- > have changed their mind or decide they no longer like the goods
- > have discovered they can buy the same goods more cheaply somewhere else
- > were aware, or should have been aware, of a fault in the goods before they bought them
- > had the fault drawn to their attention before buying the goods
- > damaged the goods by unreasonable or unintended use.

However, you must not:

- > refuse to refund the full price of defective goods (unless the consumer has caused the defect through unintended use)
- > make a false or misleading representation about a customer's right to a refund (for example a statement claiming that refunds will not be given under any circumstances may mislead consumers)
- > refuse to provide a refund for goods just because customers don't have a receipt (you are entitled to demand some proof of purchase, such as a credit card slip or bank statement)
- > limit the time in which a customer can make a claim (within reason).

## What should customers do to claim a refund?

You are encouraged to explain your store's refund policy to customers, taking into account the above information on refunds. You should advise them what they should do when claiming a refund. In general, customers should:

- > return the goods as soon as they can, once the defect is apparent
- > not dispose of, lose, damage or destroy the goods
- > bring their receipt or other proof of purchase back with the product
- > provide details of how the goods are defective.

## If a customer returns a faulty product, who has to pay?

As the retailer, you are responsible for providing a refund to the customer if the goods they buy are faulty, not fit for their purpose or do not match the description or sample provided (as outlined above). If a customer is entitled to a refund, you should pay this before you consider making a claim against your supplier. If a product requires repair, you should not charge the customer for freight.

In some circumstances, your manufacturer or supplier may be liable to provide you with compensation, for instance if goods have a design or manufacturing fault.

## What if my customer is still not satisfied?

If a dispute involving a customer's request for a refund remains unresolved, you can advise the customer that they can contact the consumer claims tribunal, the fair trading tribunal or small claims court in their state or territory. (A list of these agencies in your particular state or territory is on p. 10).

## Trading hours

Predictability of opening times is an important feature, particularly if your customers travel long distances to your store. Save your customers time and travel by clearly displaying your store's opening days and times.

If you need to close your store because of community or other events, provide advance warning to customers.

## Dealing with complaints

Complaints are a good way to understand the concerns of your customers and may even help improve your service. You may find it beneficial to seek the advice of a third party to help you to resolve a dispute.

## What should I do when a customer complains?

Having a system to deal with complaints can help you, your staff and customers reach a timely resolution.

### Step 1

Remember that customers have a right to complain and to be treated fairly. Record the details of the complaint including the details of the person making the complaint, remembering to keep the customer's personal details confidential.

### Step 2

Attempt to resolve the complaint by dealing directly with the customer. If the complaint cannot be resolved, advise the customer that they can ask for help from any of the following:

- > a local community councillor
- > a local consumer affairs representative
- > an interpreter
- > the local, state or territory consumer affairs or fair trading agency
- > the Australian Competition and Consumer Commission (ACCC)
- > the Australian Securities and Investments Commission (ASIC).

If your customer has asked a third party for help to resolve the dispute, you should not object to dealing with that third party without good reason.



### Step 3

If you still cannot resolve a dispute, a mediator acceptable to both parties may help to resolve the matter.

### Step 4

Look for common or recurring complaints. There may be something you can do to fix the problem before someone else makes a complaint.

## Staff training

Remember that your store is responsible for the actions of its staff. Protect your store by ensuring that your staff are adequately trained and well informed. You may wish to display a summary of these *FairStore* guidelines in a place visible to your staff.

## Further assistance

If your store needs assistance, for example with legal rights or obligations, dealing with suppliers or training staff, you may find one or more of the following helpful:

- > your first point of call should be your local state or territory consumer affairs/fair trading agency
- > your local health department (for matters relating to the sale and storage of food)
- > the ACCC
- > ASIC
- > industry and trade associations such as the Australian Retailers Association, chambers of commerce and industry, pastoralist and farmers' associations.

## Feedback or comments on FairStore

Any comments on *FairStore* may be sent to:

Director, Consumer Liaison  
Australian Competition and Consumer Commission  
PO Box 1199  
Dickson ACT 2601

ACCC Indigenous Infoline: 1300 303 143

Make a complaint or inquiry online at: [www.accc.gov.au](http://www.accc.gov.au)

For other business information information go to:  
[www.business.gov.au](http://www.business.gov.au)



## Contacting state and territory consumer affairs agencies

If your complaint is about the quality of goods and non-financial services you have bought then the fair trading department or consumer affairs office in your state or territory may be able to help you.

### **ACT**

Office of Fair Trading  
[www.fairtrading.act.gov.au](http://www.fairtrading.act.gov.au)  
Tel: (02) 6207 0400

### **NSW**

Dept of Fair Trading  
[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)  
Tel: (02) 9895 0111

### **NT**

Office of Consumer Affairs  
and Fair Trading  
[consumeraffairs@nt.gov.au](mailto:consumeraffairs@nt.gov.au)  
Tel: (08) 8999 5184 or  
1800 019 319 (NT only)

### **Qld**

Office of Fair Trading  
[www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au)  
Tel: 13 13 04

### **SA**

Office of Consumer  
and Business Affairs  
[www.ocba.sa.gov.au](http://www.ocba.sa.gov.au)  
Tel: (08) 8204 9777

### **Tas**

Office of Consumer Affairs  
[www.justice.tas.gov.au/ca/  
index.htm](http://www.justice.tas.gov.au/ca/index.htm)  
Tel: 1300 654 499

### **Vic**

Consumer Affairs Victoria  
[www.consumer.vic.gov.au](http://www.consumer.vic.gov.au)  
Tel: 1300 558181

### **WA**

Department of Consumer and  
Employment Protection  
[www.docep.wa.gov.au](http://www.docep.wa.gov.au)  
Tel: 1300 304 054

