

Deposits – Where Do You Stand?

Paying a deposit for future services or goods is part of everyday business. But what happens if your client cancels? Can you keep the deposit?

A frequent dispute between removers (or anyone who offers a service) and clients is the issue of deposits paid for services that have not gone ahead at the request of the client. Whether you can keep the deposit paid or must refund it (in total or in part) will depend upon what was set out in the original booking terms and conditions and any deposit/cancellation policy your business has in place.

For many businesses, there is little or no structure around what happens to deposits when the client decides not to proceed. When a deposit is paid, you must advise the client what will happen to that deposit should the booking not go ahead, and any criteria for refund or partial refund of a deposit must be made clear before the deposit is paid. It is always best to have a written policy.

Before a business can set down in writing their deposit refund or cancellation policy, they must establish what their policy is. It sounds obvious, but many businesses do not pay attention to the many variations that might give rise to cancellations or changes. For example, in removals, what if a person books for a move with you with uplift booked in in six weeks, but calls you the same day as they made the booking to advise their spouse has also made a removal booking, and they now want to cancel? Can you keep the whole deposit? Is it the same if they call three days before the move and want to cancel? What if the cancellation is due to circumstances out of their control? Such as COVID? Will this make a difference? Overarching all these considerations are Australian Competition and Consumer laws. Under these laws any cancellation or deposit policy must be reasonable, and not considered unconscionable. Finally, it is unconstitutional to have a cancellation fee that is considered punitive.

What is reasonable?

What is reasonable will depend upon many factors, but the length of time before the booked move that the cancellation was made is perhaps the most important. Generally speaking, the further out from the move date that the cancellation is made, the greater the percentage of the booking deposit should be refunded.

Cancellation fees may increase closer to the booked move date, or where expenses are incurred by the remover as part of planning for the move

It is appropriate to have different cancellation rates tailored to factors such as when a cancellation is made and what services were booked. For example, you might make some concessions for cancellations a long way out from a move date and hence allow for a greater refund of deposit, but have more onerous parameters for cancellations within 2 or 3 weeks of the move date. Cancellation of long haul moves that might require greater advance planning (and incurrence of expenses on your part) may also attract more stringent cancellation fees.

Your policy should be determined in such a way as to reflect expenses you have incurred in taking the booking and preparing for the impending move. If the policy is a genuine reflection of losses or expenses incurred by you, it is far more likely to be defensible.

A cancellation is not the same as a date change

In determining what your policy will be, you may want to clearly identify within your business what expenses might be incurred for a date change and what expenses might be incurred for a cancellation. For example, if I wanted to move with you on Tuesday in a fortnight, but now I need to move Wednesday in a fortnight instead, this date change may cause a small loss (say time spent rearranging staffing rosters). On the other hand, a cancellation within two weeks of the move date might be a loss to the business because it is too short notice to be able to take another booking for that allocated slot. Once you can establish what expenses you would incur – such as staff wages, loss of other income, accommodation costs for staff - you are both better placed to set and articulate your cancellation policy, as well as defend it.

Can I charge an administration fee?

Yes. Taking a booking, working with the client to estimate the volume of their goods, and undertaking the paperwork/computer work to book a move in takes time and costs your business money. Your deposit policy may allow for a full refund of a deposit if cancellation is made within a certain number of days/weeks, less an administration fee. So long as the administration fee is reasonable, it would be enforceable.

Can I charge a non-refundable deposit?

Yes and no. A client would be entitled to a refund of their deposit where the change or cancellation was the action of the removalists. And again, the deposit itself must be reasonable both in itself and in its enforcement. It would be difficult to defend a non-refundable deposit that was set at 50% of the quoted cost for the move where a cancellation was made shortly after the booking and months before the move date.

Make your policy known before the client books

This is key. Contract law requires you to make known any conditions of the contract – such as a deposit refund/cancellation policy – BEFORE the customer enters into the contract with you. This means your deposit policy should be clearly written and presented to the customer before the booking is made. This may be in the terms and conditions on your website, in the email you send your clients when they make a booking enquiry, or in your general terms and conditions.

Confused?

AFRA is here to help. Please do not hesitate to contact us to clarify your rights or obligations in this area.