

# LAY-BY SALES ACT.

Act No. 36, 1943.

**George VI.** An Act to amend the law relating to certain  
**No. 36, 1943.** sales of goods; and for purposes connected  
therewith. [Assented to, 10th December,  
1943.]

**B**E it enacted by the King's Most Excellent Majesty,  
by and with the advice and consent of the Legis-  
lative Council and Legislative Assembly of New South  
Wales in Parliament assembled, and by the authority of  
the same, as follows:—

**Short title,  
commence-  
ment and  
construc-  
tion.**

**1.** (1) This Act may be cited as the "Lay-by Sales  
Act, 1943."

(2) This Act shall commence upon a day to be  
appointed by the Governor and notified by proclamation  
published in the Gazette.

(3) This Act shall be read and construed with the  
Sale of Goods Act, 1923-1937.

**Inter-  
pretation.**

**2.** (1) In this Act, unless the context or subject matter  
otherwise indicates or requires—

"Lay-by sale" means a sale of goods or an agree-  
ment to sell goods under conditions, express or  
implied, which provide that—

- (a) the goods sold or agreed to be sold  
will not be delivered to the purchaser  
until the purchase price or a specified  
part or proportion thereof is paid,  
whether or not any charge is expressed  
to be payable for storage of the goods;  
and

(b)

(b) the purchase price or, where a deposit No. 36, 1943. is paid, the balance of the purchase price—

- (i) is to be payable by instalments (whether the number of instalments or the amount of all or any of the instalments is fixed by those conditions or is left at the option of the purchaser); payable over a fixed or ascertainable period; or
- (ii) is to be paid at the expiration of a fixed or ascertainable period with an option, express or implied, for the purchaser to make payments in respect of the purchase price during that period;

and where, by virtue of two or more agreements none of which, by itself, constitutes a lay-by sale, goods are sold or agreed to be sold subject to the conditions referred to in the foregoing provisions of this definition, the agreements shall, for the purposes of this Act, be treated as a single agreement made at the time when the last agreement was made.

“Purchaser” means a person who buys or agrees to buy goods by a lay-by sale and includes a person to whom the property or interest of the purchaser in the goods and the rights and liabilities of the purchaser under the lay-by sale have passed by assignment or by operation of law.

“Recorded number of the lay-by sale” means the number (or the letter or letters and numbers) under which the transaction constituting the lay-by sale is recorded by the vendor.

“Vendor” means a person who sells or agrees to sell goods by a lay-by sale and includes a person to whom the property or interest of the vendor in the goods and the rights and liabilities of the vendor under the lay-by sale have passed by assignment or by operation of law.

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(2) For the purposes of this Act the purchase price of any goods shall be deemed to be the total amount of the moneys paid or payable and the value of any other consideration provided or to be provided to complete the purchase of the goods pursuant to the lay-by sale:

Provided that in the application of this subsection to a case in which the lay-by sale is determined under section eight or section nine of this Act, where the purchase price as so defined includes any amount which is expressed in the sales docket or in the terms and conditions of the lay-by sale to be payable for storage of the goods, there shall be deducted therefrom a sum equivalent to that part of that amount which is applicable in respect of any period subsequent to the determination of the lay-by sale.

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sales.

**3.** (1) Except as provided in this section no person shall sell or agree to sell goods by a lay-by sale unless such goods are in the possession of such person at the time of the sale or agreement to sell.

(2) A person may sell or agree to sell by a lay-by sale goods not in existence or not in his possession at the time of the sale or agreement to sell subject to the following conditions:—

- (a) the vendor shall not accept any payment, other than a deposit not exceeding twenty per centum of the purchase price of the goods, until the goods have been received into the possession of the vendor, and have been inspected and approved by the purchaser;
- (b) any time fixed by the conditions of the lay-by sale for payment of the purchase price (other than the deposit) shall commence to run as from the day upon which the goods are so inspected and approved by the purchaser;
- (c) any deposit so accepted shall be held by the vendor exclusively for the benefit of the purchaser to be disbursed as the purchaser directs, and until so disbursed the deposit shall be paid into a bank in New South Wales to a trust account whether general or separate.

The provisions of subsection five of this section shall not apply to and in respect of a lay-by sale made subject to the conditions specified in this subsection.

(3)

(3) (a) The moneys in any such trust account shall not be available for the payment of the debts of the vendor to any other creditor of the vendor, or be liable to be attached or taken in execution under the order or process of any court at the instance of any such other creditor.

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cf. Act No.  
22, 1898,  
s. 41.

(b) Nothing in this section shall be construed to take away or affect any just claim or lien which the vendor may have against or upon any such moneys.

(4) (a) Subject to the provisions of this subsection no bank shall, in connection with any transaction on any account of a vendor kept with it or with any other bank, incur any liability or be under any obligation to make any inquiry or be deemed to have any knowledge of any right of any person to any money paid or credited to any such account which it would not incur or be under or be deemed to have in the case of an account kept by a person entitled absolutely to all the money paid or credited to it:

cf. *Ibid.*  
s. 44.

Provided that nothing in this paragraph shall relieve a bank from any liability or obligation under which it would be apart from this Act.

(b) Notwithstanding anything in paragraph (a) of this subsection a bank at which a vendor keeps an account for moneys paid as deposits under subsection two of this section shall not, in respect of any liability of the vendor to the bank, not being a liability in connection with that account, have or obtain any recourse or right whether by way of set-off, counter-claim, charge or otherwise, against moneys standing to the credit of that account:

Provided that nothing in this paragraph shall deprive a bank of any right existing at the time of the commencement of this Act.

(5) (a) A person may sell or agree to sell by a lay-by sale goods not in existence or not in his possession at the time of sale where—

- (i) the goods sold or agreed to be sold are goods of a type or class to which the provisions of this subsection have been applied by the Governor by notification published in the Gazette; and
- (ii) the fidelity bond referred to in this subsection has been lodged and is still subsisting.

(b)

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(b) (i) The fidelity bond shall be a bond in the prescribed form in the penal sum of such amount as may, for the time being, be fixed by the Minister, from the Government Insurance Office of New South Wales or some insurance company or person approved for the purpose by the Minister, conditioned for the due delivery of the goods by the vendor to the purchaser pursuant to the lay-by sale or in default thereof for duly accounting to the purchaser for all moneys received by the vendor pursuant to the lay-by sale:

Provided that where security approved by the Minister for the payment of an amount equal to the penal sum (which security shall be in addition to the bond hereinafter referred to) has been given to the Minister, the Minister may, in lieu of the bond referred to in the foregoing provisions of this subsection, accept a bond similarly conditioned from the vendor.

In fixing the amount of the penal sum the Minister shall have regard to the annual turnover or estimated annual turnover (by way of lay-by sales) of the vendor in the type or class of goods to which the provisions of this subsection have been applied, but shall not, in any case, fix such amount at a sum greater than one half of such annual turnover or estimated annual turnover.

The amount so fixed may be reviewed by the Minister from time to time, and upon such review any additional or substituted fidelity bond shall be taken out.

The fidelity bond or, as the case may be, the additional or substituted fidelity bond, shall be lodged with the Minister.

(ii) Any purchaser may, with the approval in writing of the Minister, sue upon any fidelity bond under this subsection for indemnity in respect of any loss covered by the said bond.

(iii) Any such action shall be taken within two years after the date upon which the cause of action arises.

(c) The provisions of subsection two of this section shall not apply to and in respect of a lay-by sale made in conformity with the requirements of this subsection.

(6) Any person who sells or agrees to sell goods in No. 36, 1943. contravention of this section or who neglects or fails to comply with any of the requirements of this section shall be guilty of an offence against this Act and shall be liable if a corporation, to a penalty not exceeding two hundred pounds, or, if an individual, to a penalty not exceeding one hundred pounds or to imprisonment for a period not exceeding six months or to both such penalty and imprisonment.

4. (1) Every vendor who sells or agrees to sell goods Register. ] by a lay-by sale shall keep a register and shall enter therein the following particulars:—

- (a) the name and address of the purchaser;
- (b) a description of the goods sold or agreed to be sold;
- (c) the date of the sale or agreement to sell;
- (d) a reference to the recorded number of the lay-by sale.

(2) In the case of a lay-by sale to which the provisions of subsection two of section three of this Act apply there shall also be entered in the register the following particulars:—

- (a) the deposit paid;
- (b) the date upon which the goods were received into the possession of the vendor;
- (c) the date upon which the goods were inspected and approved by the purchaser.

(3) In the case of a lay-by sale to which the provisions of subsection five of section three of this Act apply there shall also be entered in the register a statement indicating that the lay-by sale is one to which those provisions apply.

(4) It shall be a sufficient compliance with the requirements of subsections one, two and three of this section if the particulars referred to therein are contained in a series of cards, and the duplicates of the sales docket for the transactions constituting the lay-by sales, subject however, to the following conditions:—

- (a) each card shall contain the name and address of the purchaser and shall have endorsed thereon or affixed thereto a reference to the recorded number of the lay-by sale;

(b)

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- (b) each card shall be filed and kept filed in a suitable container and in appropriate sequence having regard to the system of recording adopted and used by the vendor;
- (c) each duplicate sales docket shall have endorsed thereon or affixed thereto a reference to the recorded number of the lay-by sale;
- (d) each duplicate sales docket shall be filed and kept filed in appropriate sequence having regard to the system of recording adopted and used by the vendor.

In any such case the cards and the duplicate sales dockets shall be deemed to constitute the register, and each card and the duplicate sales docket containing a reference to the same recorded number of the lay-by sale shall be deemed to constitute one entry in the register.

(5) The register shall be kept at the place of business of the vendor, and where the vendor carries on business at more than one place of business a separate register shall be kept in respect of lay-by sales at each such place of business.

(6) Every entry in any such register shall be deemed until the contrary is proved to have been made by or with the authority of the vendor.

(7) The register shall be preserved by the vendor for a period of not less than one year after the date of completion of the last of the lay-by sales recorded therein.

In any case where a series of cards and duplicate sales dockets is deemed to constitute the register each such card and the duplicate sales docket containing a reference to the same recorded number of the lay-by sale shall be preserved by the vendor for a period of one year after the date of completion of the lay-by sale referred to therein.

(8) (a) The register shall be open to inspection at any reasonable time by a purchaser who may inspect the entry relating to the lay-by sale in which he is purchaser and may take a copy of or extract from such entry.

Such inspection may be made by the purchaser or any person authorised by him in writing.

(b)

(b) The register shall also be open to inspection at all reasonable times by any member of the police force of or above the rank of sergeant, who may inspect all or any of the entries made therein, and may take copies of or extracts from the same. No. 36, 1943.

(c) The vendor or, in the absence of the vendor, any employee of the vendor having the apparent control or charge for the time being of the place of business of the vendor at which the register is kept shall, upon being required so to do, produce the register for inspection by the purchaser or member of the police force.

(9) Any person who fails to comply with the requirements of this section shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding twenty pounds.

**5.** (1) It shall be the duty of every vendor who sells or agrees to sell goods by a lay-by sale to deliver to the purchaser, at the time of the sale or agreement to sell— Lay-by agreements.

- (a) a sales docket having endorsed thereon or affixed thereto a reference to the recorded number of the lay-by sale, and containing a description of the goods and an itemised statement showing the purchase price of the article or each of the articles comprising the goods;
- (b) a document in writing setting out the terms and conditions of the lay-by sale; and
- (c) a notice in writing in the prescribed form containing a summary of the rights and privileges conferred by this Act on purchasers.

Any parcel agreement made at or before the time of the sale or agreement to sell whereby the terms and conditions contained in the document referred to in paragraph (b) of this subsection are varied or modified, or whereby any additional or substituted term or condition is imposed, shall be void except insofar as the rights of the purchaser thereunder or arising therefrom are concerned.

In this subsection the word "writing" shall be deemed to include such printing only as is in type not smaller than eight-point face.

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(2) Where the goods the subject of the lay-by sale are not new, unused goods, the sales docket shall contain a statement clearly indicating the nature, quality and condition of the goods.

(3) Where the goods the subject of the lay-by sale have been selected by the purchaser by reference to a sample or to a catalogue, price list or advertisement, the sales docket shall contain a statement clearly indicating that fact, and also clearly indicating the nature and quality of the goods.

(4) In any case where the goods sold or agreed to be sold are goods to which a trade description is appended in conformity with the provisions of the Factories and Shops Act, 1912-1943, the nature and quality of the goods sold or agreed to be sold may be indicated, in any statement furnished pursuant to this section, in terms of or by reference to the trade description so appended to such goods.

(5) Any vendor who neglects or fails to comply with the requirements of this section shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding twenty pounds.

(6) Non-compliance with the requirements of this section shall not invalidate any lay-by sale.

**Goods sold  
or agreed to  
be sold  
on lay-by  
to be set  
aside.**

**6.** (1) Where goods are sold or agreed to be sold under a lay-by sale the vendor shall set aside such goods—

(a) where the goods are in the possession of the vendor at the time of sale or agreement to sell—as soon as practicable after the lay-by sale is made;

(b) where the goods are not in existence or not in the possession of the vendor at the time of sale or agreement to sell—as soon as practicable after the goods have been inspected and approved by the purchaser,

and shall thereafter store or otherwise keep the same separate and distinct from goods in the possession of the vendor for sale.

Where

Where goods are so set aside and stored there shall **No. 36, 1943.**  
be securely attached or affixed to such goods or (where  
the same are wrapped) to the wrapping in which such  
goods are stored, a reference to the recorded number of  
the lay-by sale.

This subsection shall not apply to and in respect of  
a lay-by sale to which the provisions of subsection five  
of section three of this Act apply.

(2) (a) Any purchaser of goods under a lay-by sale  
may, at any convenient time, inspect the goods set aside  
in accordance with this section.

(b) Any member of the police force of or above  
the rank of sergeant authorised in that behalf by writing  
under the hand of the Commissioner of Police may in-  
spect all or any of the goods set aside in accordance with  
this section and may check such goods with the entries  
in the register relating to goods the subject of lay-by  
sales.

(c) The vendor or, in the absence of the vendor,  
any employee of the vendor having the apparent control  
or charge for the time being of the place at which the  
goods are stored shall, upon being required so to do,  
produce such goods for inspection by the purchaser or  
member of the police force.

(3) Any vendor who neglects or fails to comply  
with the requirements of this section shall be guilty of an  
offence against this Act and shall be liable, if a corpora-  
tion, to a penalty not exceeding two hundred pounds or,  
if an individual, to a penalty not exceeding one hundred  
pounds or to imprisonment for a period not exceeding six  
months or to both such penalty and imprisonment.

**7.** (1) Except where the sales docket contains a **Offences.**  
statement of the nature referred to in subsection two of  
section five of this Act, the vendor shall be guilty of an  
offence against this Act if, pursuant to the lay-by sale,  
he delivers to the purchaser goods other than new, unused  
goods.

(2) Except where the sales docket contains a state-  
ment of the nature referred to in subsection three of  
section five of this Act, the vendor shall be guilty of an  
offence against this Act if, pursuant to the lay-by sale,  
he delivers goods other than the goods selected by the  
purchaser at the time of the sale or agreement to sell or,  
as

No. 36, 1943. as the case may be, the goods inspected and approved by the purchaser.

(3) Where a sales docket contains a statement indicating the nature and quality of the goods the subject of the lay-by sale, the vendor shall be guilty of an offence against this Act if, pursuant to the lay-by sale, he delivers to the purchaser goods which are inferior to goods of the nature and quality indicated in the statement.

Nothing in this subsection shall be held to affect the liability of a vendor in proceedings taken under the Factories and Shops Act, 1912-1943, but no vendor shall be punished for the same offence under any such proceedings and under this Act.

(4) Where a sales docket contains a statement indicating the condition of the goods the subject of the lay-by sale, the vendor shall be guilty of an offence against this Act if, pursuant to the lay-by sale, he delivers to the purchaser goods which are not of the condition so indicated.

(5) Any vendor who is guilty of an offence against this Act by reason of a contravention of any of the provisions of this section shall be liable, if a corporation, to a penalty not exceeding two hundred pounds, or, if an individual, to a penalty not exceeding one hundred pounds or to imprisonment for a period not exceeding six months or to both such penalty and imprisonment.

(6) Where a vendor is convicted of an offence against this Act by reason of a contravention of this section the court before which he is convicted may, where an application in that behalf is made by the purchaser, in addition to any penalty imposed, order—

(a) that the vendor, within a period to be specified in the order, pay to the purchaser an amount equivalent to the purchase price of the goods and that the property or interest of the purchaser in the goods the subject of the charge vest in the vendor; or

(b) that the vendor, within a period to be specified in the order, pay to the purchaser an amount equivalent to the difference between the purchase price and the value of the goods the subject of the charge.

The

The provisions of section eighty-two of the Justices Act, 1902-1940, shall, mutatis mutandis, apply to and in respect of any amount so ordered to be paid and the persons against whom the order is made. No. 36, 194

8. (1) A vendor shall not, in the exercise of any power expressly or impliedly given to him by the lay-by sale, determine the lay-by sale except as provided in this section. Determination by vendor of lay-by sale.

(2) Notice of intention to determine the lay-by sale shall be given to the purchaser at his place of abode last known to the vendor, and shall specify the date, not being earlier than seven days after the date of service of the notice and of the statement hereinafter referred to, upon which the lay-by sale will be determined.

Such notice shall be accompanied by a statement signed by the vendor or his agent showing the following particulars:—

- (a) the purchase price of the goods;
- (b) the total amount of the moneys paid and the value of any other consideration provided by the purchaser in respect of the lay-by sale;
- (c) the amount which the vendor estimates to be the value of the goods at the time of the notice, indicating whether or not such value is the same as the value at the date of the sale or agreement to sell;
- (d) the amount which the vendor estimates is sufficient to recoup him for selling costs in respect of the lay-by sale;
- (e) the balance estimated to be due to the vendor or the purchaser as the case may be.

(3) If, on or before the date specified in the notice, the purchaser pays or tenders to the vendor the balance due in respect of the purchase price of the goods the vendor shall deliver the goods to the purchaser.

(4) This section shall apply to and in respect of lay-by sales made before and not completed at the commencement of this Act as well as to and in respect of lay-by sales made after such commencement.

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Right of  
purchaser to  
determine  
lay-by sale.  
of Act No. 56,  
1941, s. 24.

9. (1) A purchaser shall, at any time before the purchase price under a lay-by sale has been paid, be entitled to determine the lay-by sale by giving notice in writing to the vendor of his desire to determine the lay-by sale. The lay-by sale shall be determined as from the date of service of the notice or from such later date as may be specified in the notice.

Act No. 56,  
1941, s. 11.

(2) The vendor shall, within four days after he has received a request in writing from the purchaser and the purchaser has paid or tendered to him the sum of one shilling for expenses, supply to the purchaser a statement signed by him or his agent showing the following particulars:—

- (a) the purchase price of the goods;
- (b) the total amount of the moneys paid and the value of any other consideration provided by the purchaser in respect of the lay-by sale;
- (c) the amount which the vendor estimates to be the value of the goods at the time of the notice, indicating whether or not such value is the same as the value at the date of the sale or agreement to sell;
- (d) the amount which the vendor estimates is sufficient to recoup him for selling costs in respect of the lay-by sale;
- (e) the balance estimated to be due to the vendor or the purchaser as the case may be.

Any vendor who, without reasonable cause, neglects or refuses to supply any such statement shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding ten pounds.

(3) Nothing in this section shall prejudice any right of the purchaser to determine a lay-by sale otherwise than by virtue of this section.

(4) This section shall apply to and in respect of lay-by sales made before and not completed at the commencement of this Act as well as to and in respect of lay-by sales made after such commencement.

**10.** (1) Where a lay-by sale is determined under section eight or section nine of this Act the following provisions shall have effect:—

**No. 36, 1943.**  
Rights of  
vendor and  
purchaser  
on deter-  
mination of  
lay-by sale.

- (a) If the total amount of the moneys paid, and the value of any other consideration provided by the purchaser in respect of the lay-by sale, and the value of the goods at the time when the lay-by sale is determined, exceeds the purchase price of the goods and an amount sufficient to recoup the vendor for selling costs in respect of the lay-by sale, the purchaser shall be entitled to recover such excess from the vendor as a debt due and payable by him to the purchaser.
- (b) If the purchase price of the goods and an amount sufficient to recoup the vendor for selling costs in respect of the lay-by sale exceeds the total amount of the moneys paid, and the value of any other consideration provided by the purchaser in respect of the lay-by sale, and the value of the goods at the time when the lay-by sale is determined, the vendor may recover such excess from the purchaser as a debt due and payable by him to the vendor, but shall not be entitled to recover any additional sum, whether as penalty or compensation or otherwise in consequence of the determination of the lay-by sale.

(2) Where a lay-by sale has been determined under section eight or section nine of this Act the value of the goods at the time when the lay-by sale was determined shall, unless the contrary is proved, be deemed to be the value of such goods at the time when the lay-by sale was made; and any loss of value of such goods whether due to deterioration of the goods or otherwise shall, unless the vendor proves that the loss could not have been avoided by the exercise of reasonable diligence on his part, be disregarded.

(3) Where a lay-by sale has been determined under section eight or section nine of this Act and, at the time when the lay-by sale was determined, the goods were not in existence or not in the possession of the vendor, then the value of the goods at the time when the lay-by sale was determined shall, for all purposes of this

**No. 36, 1943.** this Act, be deemed to be the value of the goods at the time when the lay-by sale was made.

Appropriation of payments in respect of lay-by sales. *cf. Act No. 56, 1941, s. 12.*

**11.** (1) A purchaser who is liable to make payments in respect of two or more lay-by sales to the same vendor shall, notwithstanding any agreement to the contrary, be entitled, on making any payment in respect of the lay-by sales which is not sufficient to discharge the total amount then due under all such sales, to appropriate the sum so paid by him in or towards the satisfaction of the sum due under any one of such sales or in or towards the satisfaction of the sums due under any two or more of such sales in such proportions as he thinks fit, and if he fails to make any such appropriation as aforesaid the payment shall, by virtue of this section, be appropriated towards the satisfaction of the sums due under the respective lay-by sales in the proportions which those sums bear to one another.

(2) This section shall apply to and in respect of lay-by sales made before and not completed at the commencement of this Act as well as to and in respect of lay-by sales made after such commencement.

Service of notices. *cf. Ibid. s. 17.*

**12.** Any notice or other document required or authorised by this Act to be served shall be in writing and shall be sufficiently served—

- (a) if delivered personally; or
- (b) if left at the usual or last known place of abode or business in or out of New South Wales of the person to be served; or
- (c) if sent by post in a registered letter addressed to the person to be served at that place of abode or business; and such service shall be deemed to be made at the time when the registered letter would be delivered in the ordinary course of post.

Jurisdiction of court of petty sessions. *cf. Ibid. s. 21.*

**13.** (1) No proceedings relating to a lay-by sale shall be brought or taken in any court of petty sessions other than a court of petty sessions holden before a stipendiary magistrate or a police magistrate sitting alone.

(2) A court of petty sessions holden before a stipendiary magistrate or a police magistrate sitting alone shall, in addition to the jurisdiction which might be

be exercised by it if this section had not been enacted, No. 36, 1943.  
 have jurisdiction in respect of proceedings relating to a lay-by sale in all cases in which the purchase price of the goods the subject of the lay-by sale does not exceed two hundred and fifty pounds.

(3) The costs of any proceedings relating to a lay-by sale which are brought or taken in a court of petty sessions shall be in the discretion of the court, and the court, when allowing any costs to any party in such proceedings, may assess the amount thereof.

This subsection shall not be construed so as to affect in any way the jurisdiction of any other court in relation to costs.

(4) Any order made by a court of petty sessions under the authority of this Act for the payment of money or of costs shall operate as an order for the payment of money under the Small Debts Recovery Act, 1912, as amended by subsequent Acts, and be enforceable as such under the provisions of that Act as so amended.

(5) This section shall apply to and in respect of lay-by sales made before and not completed at the commencement of this Act as well as to and in respect of lay-by sales made after such commencement.

**14.** Any provision of a lay-by sale—

- (a) whereby the right conferred on a purchaser by this Act to determine a lay-by sale is excluded or restricted or whereby any liability in addition to the liability imposed by this Act is imposed on a purchaser by reason of the termination of a lay-by sale; or
- (b) whereby a purchaser, after the determination of the lay-by sale in any manner whatsoever, is subject to a liability which exceeds the liability to which he would have been subject if the lay-by sale had been determined by him under this Act; or
- (c) whereby any person acting on behalf of the vendor in connection with the formation or conclusion of any lay-by sale is treated as or deemed to be the agent of the purchaser; or

Avoidance  
of certain  
provisions.  
cf. Act No.  
56, 1941,  
s. 28.

(d)

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- (d) whereby the vendor is relieved from liability for the acts or defaults of any person acting on his behalf in connection with the formation or conclusion of a lay-by sale,

shall be void.

Conditions  
and  
warranties  
implied in  
lay-by sales.  
cf. Act No. 56,  
1941, s. 26.

**15.** (1) In every lay-by sale there shall be—

- (a) an implied warranty that the purchaser shall have and enjoy quiet possession of the goods;
- (b) an implied condition on the part of the vendor that, in a case where the lay-by sale is a sale of goods, he has a right to sell the goods, and that, in a case where the lay-by sale is an agreement to sell goods, he will have a right to sell the goods at the time when the property is to pass;
- (c) an implied warranty that, in a case where the lay-by sale is a sale of goods, the goods are at the time of the sale free from any charge or encumbrance in favour of any third party and that, in a case where the lay-by sale is an agreement to sell goods, the goods shall be free from any charge or encumbrance in favour of any third party at the time when the property is to pass;
- (d) except where the sales docket relating to the lay-by sale contains a statement of the nature referred to in subsection two of section five of this Act, an implied condition that the goods shall be of merchantable quality so, however, that no such condition shall be implied by virtue of this paragraph as regards defects of which the vendor could not reasonably have been aware at the time when the lay-by sale was made, or, if the purchaser has examined the goods or a sample thereof, as regards defects which the examination ought to have revealed.

(2) Where the purchaser expressly or by implication makes known the particular purpose for which the goods are required, there shall be an implied condition that the goods shall be reasonably fit for such purpose.

(3) The warranties and conditions set out in subsection one of this section shall be implied notwithstanding any agreement to the contrary, and the vendor shall

not

not be entitled to rely on any provision of the lay-by sale, excluding or modifying the condition set out in subsection two of this section unless he proves that before the lay-by sale was made the provision was brought to the notice of the purchaser and its effects made clear to him. No. 36, 1943.

(4) Nothing in this section shall prejudice the operation of any other enactment or rule of law whereby any condition or warranty is to be implied in any lay-by sale.

**16.** (1) Any provision contained in a lay-by sale made after the commencement of this Act or in any agreement supplementary thereto or collateral therewith whereby the vendor undertakes to deliver the goods thereby sold or agreed to be sold without further payment or to release the purchaser from liability for all or any of the payments due or to become due under the lay-by sale upon conditions specified in the agreement evidencing the lay-by sale or in any agreement supplementary thereto or collateral therewith shall be void. Provision for "awards" to be void.

(2) Any vendor who enters into an agreement containing any provision rendered void by the operation of subsection one of this section shall be guilty of an offence against this Act. cf. Act No. 15, 1942, s. 23 (1).

**17.** (1) This section shall apply to every contract relating to the sale of goods under conditions, express or implied, which provide that— Moneys received under certain contracts to be paid to trust account.

(a) the purchase price or, where a deposit is paid, the balance of the purchase price—

(i) is to be payable by instalments (whether the number of instalments or the amount of all or any of the instalments is fixed by those conditions or is left to the option of the purchaser) payable over a fixed or ascertainable period; or

(ii) is to be paid at the expiration of a fixed or ascertainable period, with an option, express or implied, for the purchaser to make payments in respect of the purchase price during that period; and

(b)

No. 36, 1943.

(b) the purchaser shall, at a time subsequent to the date of the contract, make a selection of the goods to be accepted by him pursuant to the contract, whether or not the purchaser does at the date of the contract indicate a choice or preference in relation to the goods or the type or class of goods to be selected by him.

(2) All moneys received by a vendor under a contract to which this section applies shall be held by him exclusively for the benefit of the purchaser to be disbursed as the purchaser directs, and until so disbursed such moneys shall be paid into a bank in New South Wales to a trust account whether general or separate.

cf. Act No.  
22, 1898,  
s. 41.

(3) (a) The moneys in any such trust account shall not be available for the payment of the debts of the vendor to any other creditor of the vendor, or be liable to be attached or taken in execution under the order or process of any court at the instance of any such other creditor.

(b) Nothing in this section shall be construed to take away or affect any just claim or lien which the vendor may have against or upon any such moneys.

cf. *Ibid.*  
s. 44.

(4) (a) Subject to the provisions of this subsection no bank shall, in connection with any transaction on any account of a vendor kept with it or with any other bank, incur any liability or be under any obligation to make any inquiry or be deemed to have any knowledge of any right of any person to any money paid or credited to any such account which it would not incur or be under or be deemed to have in the case of an account kept by a person entitled absolutely to all the money paid or credited to it:

Provided that nothing in this paragraph shall relieve a bank from any liability or obligation under which it would be apart from this Act.

(b) Notwithstanding anything in paragraph (a) of this subsection a bank at which a vendor keeps an account for purchasers' money shall not, in respect of any liability of the vendor to the bank, not being a liability in connection with that account, have or obtain any recourse or right, whether by way of set-off, counter-claim, charge or otherwise, against moneys standing to the credit of that account:

Provided

Provided that nothing in this paragraph shall deprive a bank of any right existing at the time of the commencement of this Act. No. 36, 1943.

(5) Any vendor who neglects or fails to comply with any of the requirements of this section shall be guilty of an offence against this Act and shall be liable, if a corporation, to a penalty not exceeding two hundred pounds, or, if an individual, to a penalty not exceeding one hundred pounds or to imprisonment for a period not exceeding six months or to both such penalty and imprisonment.

(6) In this section—

“purchaser” means the person who agrees to purchase goods under a contract to which this section applies and includes any person to whom the rights and liabilities of the purchaser have passed by assignment or by operation of law;

“vendor” means the person who agrees to sell goods under a contract to which this section applies and includes any person to whom the rights and liabilities of the purchaser have passed by assignment or by operation of law.

**18.** (1) The provisions of this Act shall have effect notwithstanding any stipulation to the contrary whether made before or after the commencement of this Act.

Contracting  
out pro-  
hibited.  
cf. Act No.  
67, 1941,  
s. 44.

(2) No contract or agreement made or entered into either before or after the commencement of this Act shall operate to annul or vary or exclude any of the provisions of this Act.

**19.** (1) Any person who is guilty of an offence against this Act shall be liable, where no other penalty is expressly provided, to a penalty not exceeding fifty pounds.

General  
penalty.

(2) All proceedings for offences against this Act or the regulations shall be disposed of in a summary manner before a court of petty sessions holden before a stipendiary magistrate or a police magistrate sitting alone.

(3) Where two or more persons are guilty of an offence against this Act each of such persons shall be liable therefor and the liability of each shall be independent of the liability of the other or others.

**Lay-by Sales Act.****No. 36, 1943.**

Offence by  
corporation  
—liability  
of directors,  
etc.

cf. Act No.  
20, 1899,  
s. 17A (3).

**20.** Where any act or omission which by this Act is declared to be an offence against this Act and which is done or omitted by a corporation, is proved to have been done or omitted with the knowledge, consent or approval of, or to have been facilitated by any neglect on the part of any director, manager, secretary or other officer of the corporation, he, as well as the corporation, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Conviction  
not to  
affect civil  
remedy.

cf. Act No.  
15, 1942,  
s. 42.

**21.** No proceeding or conviction for any act or omission by this Act declared to be an offence against this Act shall affect any remedy which any person aggrieved or injured by such act or omission may be entitled to at law or in equity against the person who committed such act or who was responsible for such omission.

**Regulations.**

**22.** (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of subsection one of this section the regulations may make provision for and in relation to—

- (a) the opening and keeping of accounts of moneys required by section three or section seventeen of this Act to be held for the benefit of purchasers;
- (b) the particulars to be shown in such accounts of moneys received, held and disbursed for or on account of purchasers;
- (c) the audit of such accounts at such times as may be prescribed;
- (d) empowering the Minister at any time and from time to time to direct the making of a special audit, by an accountant appointed by him, of any such account, defining the powers and duties of any accountant so appointed and prescribing the duties of vendors for facilitating the making of such special audit including the duty to produce books, documents, papers and records, and to furnish any authorities to bankers and others which may reasonably be required by the accountant making the special audit;

(e)

- (e) empowering the Minister to take such action as may be necessary or as may be prescribed to enable him to ascertain whether the requirements of all or any of the regulations made in relation to the matters referred to in this subsection are being or have been complied with. No 36, 1948.

(3) The regulations may impose a penalty for any breach of the regulations.

The penalty so imposed where it relates to a breach of the regulations made in relation to the matters referred to in subsection two of this section shall not exceed one hundred pounds, and where it relates to a breach of any other regulations shall not exceed ten pounds.

- (4) The regulations shall—
- (a) be published in the Gazette;
  - (b) take effect from the date of publication or from a later date to be specified in the regulations; and
  - (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.