

FAIR TRADING (LAY-BY) AMENDMENT ACT 1993 No. 25

NEW SOUTH WALES



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FAIR TRADING (LAY-BY) AMENDMENT ACT 1993 No. 25

NEW SOUTH WALES



Act No. 25, 1993

An Act to amend the Fair Trading Act 1987 to make provision with respect to lay-by sales; to repeal the Lay-by Sales Act 1943; and for related purposes. [Assented to 8 June 1993]

Fair Trading (Lay-by) Amendment Act 1993 No. 25

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Fair Trading (Lay-by) Amendment Act 1993.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Fair Trading Act 1987 No. 68

3. The Fair Trading Act 1987 is amended as set out in Schedule 1.

Repeal of Lay-by Sales Act 1943 No. 36

4. The Lay-by Sales Act 1943 is repealed.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

- (1) Part 5B:

After section 60D, insert:

PART 5B—LAY-BY SALES

Meaning of “lay-by”

60E. (1) A lay-by is the supply of goods on terms (express or implied) which provide that:

- (a) the goods will not be delivered to the consumer until the whole of the price has been paid; and
- (b) the price is required or allowed to be paid by 3 or more instalments (for this purpose a deposit is considered to be an instalment).

(2) The fact that the purchase price is allowed to be paid by less than 3 instalments does not prevent there being a lay-by, so long as payment by 3 or more instalments is allowed also.

SCHEDULE 1—AMENDMENTS—*continued*

(3) A supply of goods which would be a lay-by except for the fact that the price is required to be paid by less than 3 instalments is taken to be a lay-by if the supplier has described, represented or advertised it as being a lay-by.

(4) The goods 'need not be in existence or in the supplier's possession when a lay-by is entered into.

Consumer must be given written statement of lay-by terms

60F. (1) The consumer under a lay-by must be given a written statement (a "**lay-by statement**") containing the terms or a summary of the terms of the lay-by.

(2) The statement must be given to the consumer when the lay-by is entered into and must be clearly legible, readily understandable and written in the English language. The statement may be written in another language if that language is understood by the consumer.

(3) The following are examples of some of the matters that the terms of a lay-by would provide for and which would appear in the lay-by statement:

- the purchase price of the goods
- any deposit paid and balance outstanding
- the dates on which installments are due
- any cancellation charge payable
- the date by which the final instalment must be paid.

Consumer can cancel lay-by

60G. (1) The consumer can cancel a lay-by by notifying the supplier in writing that the consumer wants to cancel, but this can only be done before the goods are delivered.

(2) The supplier can accept the cancellation of a lay-by even if cancellation is not notified in writing.

(3) Section 60I provides for refunds, cancellation charges and other matters when a lay-by is cancelled.

Supplier can cancel if consumer breaches lay-by term

60H. (1) The supplier can cancel a lay-by if the consumer breaches a term of the lay-by (for example, by being late with a payment).

SCHEDULE 1—AMENDMENTS—*continued*

(2) However, the supplier must first give the consumer notice that the lay-by will be cancelled if the consumer does not rectify the breach within a specified period (in the example, by making the payment). The period specified must not be less than 7 days.

(3) The notice to the consumer must be in writing unless the consumer accepts notice given in some other way (such as by telephone), but it must not be a term of the lay-by that the consumer agrees to accept notice given other than in writing.

(4) The lay-by is cancelled at the end of the period specified in the notice unless the consumer rectifies the breach before then or the supplier agrees not to cancel.

(5) Section 60I provides for refunds, cancellation charges and other matters when a lay-by is cancelled.

What happens when a lay-by is cancelled

60I. (1) When a lay-by is cancelled (whether by the supplier or the consumer):

- (a) the supplier must refund to the consumer all money paid by the consumer under the lay-by (except any amount that the supplier is allowed to keep under paragraph (b)); and
 - (b) the supplier is allowed to keep the “cancellation charge” (the amount specified in the lay-by statement as the amount the consumer must pay if the consumer cancels or the lay-by is cancelled because the consumer fails to make a payment); and
 - (c) the supplier is entitled to recover any unpaid cancellation charge from the consumer as a debt if the amounts paid by the consumer under the lay-by are not enough to cover the cancellation charge.
- (2) However, the supplier cannot keep or recover any cancellation charge (or any other money) if:
- (a) the supplier has breached any term of the lay-by; or
 - (b) the goods were not available for delivery to the consumer when the terms of the lay-by indicated they would be available; or

SCHEDULE 1—AMENDMENTS—*continued*

(c) the lay-by statement given to the consumer does not comply with section 60F, is misleading or deceptive or contains a material false representation as to the terms of the lay-by.

(3) A lay-by statement can provide that the cancellation charge is to be an amount calculated in a particular way (rather than by providing that it is to be a particular amount).

Supplier's only remedies are those provided by this Part

60J. (1) If a term of a lay-by is breached by the consumer or the lay-by is cancelled, the supplier is not entitled to damages or to enforce any other remedy in respect of the breach or cancellation except the remedies specifically provided by this Part.

(2) In particular, the supplier is not entitled to keep or recover any money from the consumer except as specifically provided by this Part,

Supplier cannot demand early payment

60K. If it is a term of a lay-by that payment in full must be made by a fixed or ascertainable date, the supplier is not entitled to demand payment before that date.

Cancellation charge cannot exceed a reasonable amount

60L. (1) The cancellation charge that a supplier is allowed to keep or recover under this Part is not to exceed the sum of the following amounts:

- (a) an amount sufficient to recoup the supplier for reasonable selling costs (including storage costs and administrative expenses) in respect of the lay-by;
- (b) an amount that equates to any loss of value of the goods (whether due to deterioration or otherwise) between when the lay-by was entered into and when the lay-by was cancelled.

(2) The supplier has the onus of establishing any loss of value of the goods and his or her reasonable selling costs.

(3) The supplier must also establish that any loss of value could not have been avoided by the exercise of reasonable diligence on the supplier's part, otherwise the loss of value is to be disregarded.

SCHEDULE 1—AMENDMENTS—*continued***Contracting out etc. prohibited**

60M. (1) A term of a lay-by is void to the extent that it would operate to exclude, modify or restrict the operation of this Part.

(2) A supplier must not enter into a lay-by if a term of the lay-by would (but for subsection (1)) operate to exclude, modify or restrict the operation of this Part.

Maximum penalty: 50 penalty units.

Other rights of consumer not affected

60N. This Part does not affect any rights that a consumer may have otherwise than under this Part, such as the right to sue for damages for breach of a term of the lay-by.

Other laws not affected

60O. (1) This Part does not affect the operation of any other Act or law (for example, the Sale of Goods Act 1923) with respect to a lay-by, to the extent that does not exclude, modify or restrict the operation of this Part.

(2) The terms of a lay-by are not limited by this Part and include any terms implied by any other Act or law, to the extent that does not exclude, modify or restrict the operation of this Part.

(2) Sections 62, 65, 66, 67, 71:

After “5A” wherever occurring, insert “, 5B”.

(3) Sections 68, 69:

Omit “4 or 5” wherever occurring, insert instead “4, 5 or 5B”.

(4) Section 72:

Omit “5 or 8” wherever occurring, insert instead “5, 5B or 8”.

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SCHEDULE 1—AMENDMENTS—*continued*

(5) Schedule 5 (**Savings and transitional provisions**):

(a) After clause 11, insert:

Fair Trading (Lay-by) Amendment Act 1993

11A. Part 5B (Lay-by Sales) of this Act does not apply to a lay-by sale within the meaning of the Lay-by Sales Act 1943 made before the repeal of that Act and that Act continues to apply to the sale as if it had not been repealed.

(b) In clause 12 (1), after “this Act”, insert “or the Fair Trading (Lay-by) Amendment Act 1993”.

*[Minister's second reading speech made in—
Legislative Assembly on 28 April 1993
Legislative Council on 19 May 1993]*