

Act 1993 No. 25

FAIRTRADING (LAY-BY) AMENDMENT BILL 1993

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to replace the existing Lay-by Sales Act 1943 with simpler and less prescriptive provisions for the protection of consumers under lay-by sales.

The principal features of the new provisions are as follows:

- The consumer is required to be given a written statement of the terms of the lay-by.
- The consumer is given the right to cancel a lay-by at any time before the goods are delivered. The consumer is then entitled to a full refund subject to payment by the consumer of an agreed cancellation charge.
- The only remedy available to a supplier when the consumer misses a payment is to cancel the lay-by and keep the agreed cancellation charge. All other amounts must be refunded to the consumer. The supplier cannot cancel until the consumer has been informed of the supplier's intention to cancel and been given an opportunity to make the missed payment.
- The cancellation charge payable is not to exceed a reasonable amount based on the supplier's reasonable selling costs and any loss of value of the goods.
- The supplier will lose the right to payment of a cancellation charge if the required lay-by statement is not given to the consumer (or it is false, misleading or deceptive), if the supplier breaches any term of the lay-by or if the goods are not available for delivery when it was agreed they would be available.
- Contracting out of the provisions is prohibited.

The proposed new provisions will form part of the Fair Trading Act 1987 as Part 5B containing the following sections:

Section 60E contains a definition of "lay-by" and makes it clear that the goods that are the subject of a lay-by need not be in existence at the time the lay-by is entered into.

Section 60F requires the consumer to be given a written statement (a "lay-by statement") containing the terms or a summary of the terms of the lay-by. Examples are given of the sorts of things that the lay-by statement would contain. The

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consequences of the consumer not being given a lay-by statement or of the statement being false, misleading or deceptive are dealt with in section 60I.

Section 60G allows the consumer to cancel the lay-by at any time before the goods are delivered

Section 60H enables the supplier to cancel the lay-by if the consumer breaches a term of the lay-by (for example, by missing a payment). The supplier must first give the consumer an opportunity to make the missed payment by informing the consumer that the lay-by will be cancelled if the payment is not made within 7 days (or longer if the supplier wishes).

Section 60I entitles the supplier to payment of a cancellation charge when a lay-by is cancelled under section 60G or 60H. All other payments are required to be refunded to the consumer. The supplier is not entitled to the cancellation charge if the supplier has breached a term of the lay-by, the goods were not available for delivery as agreed or a proper lay-by statement was not given to the consumer.

Section 60J provides that the supplier is limited to cancelling the lay-by and keeping any allowable cancellation charge if the consumer breaches a term of the lay-by.

Section 60K provides that the supplier is not entitled to demand payment in full before the date provided for final payment by the terms of the lay-by.

Section 60L imposes a limit on the charge payable when a lay-by is cancelled. The charge is not to exceed the supplier's reasonable selling costs and an amount for loss of value of the goods. The onus is on the supplier to establish his or her reasonable selling costs and any loss of value and to establish that loss of value could not have been avoided by reasonable diligence.

Section 60M prohibits a lay-by containing terms that exclude, modify or restrict the operation of the new provisions ("contracting out") and makes it an offence for a supplier to enter into such a lay-by.

Section 60N makes it clear that the new provisions do not affect any other rights that the consumer may have under a lay-by.

Section 60O provides that the new provisions do not affect any other Act or law to the extent that does not exclude, modify or restrict the operation of the new provisions.

The Bill also amends the Fair Trading Act 1987 to extend the enforcement provisions of that Act to the new provisions for lay-bys and to include a transitional provision to continue the existing law for lay-bys entered into under the Lay-by Sales Act 1943 before its repeal.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 gives effect to the Schedule of amendments to the Fair Trading Act 1987.

Clause 4 repeals the Lay-by Sales Act 1943.

Schedule 1 makes the amendments to the Fair Trading Act 1987 explained above.
