



Australian Capital Territory

# **Lay-by Sales Agreements Act 1963 (repealed)**

**A1963-9**

**Republication No 5**

**Effective: 1 January 2011**

Republication date: 1 January 2011

As repealed by A2010-54 s 4 (1)

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Lay-by Sales Agreements Act 1963* (repealed) (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)). It also includes any commencement, amendment, repeal or expiry affecting the republished law to 1 January 2011.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

# Lay-by Sales Agreements Act 1963 (repealed)

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Australian Capital Territory

# Lay-by Sales Agreements Act 1963 (repealed)

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An Act relating to the sale of goods under lay-by sales agreements

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**1 Name of Act**

This Act is the *Lay-by Sales Agreements Act 1963*.

**2 Dictionary**

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act.

*Note 2* A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

**3 Notes**

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act s 127 (1), (4) and (5) for the legal status of notes.

**4 Agreements for lay-by sales of goods not in seller's possession**

- (1) Subject to this section, a person shall not agree to sell goods under a lay-by sale agreement unless the goods are in his or her possession at the time when the agreement is made.

Maximum penalty: 50 penalty units.

- (2) A person may agree to sell under a lay-by sale agreement goods not in his or her possession at the time when the agreement is made if the agreement provides that—
- (a) the seller shall not accept any payment, other than a deposit not exceeding  $\frac{1}{5}$  of the purchase price of the goods, until the goods have been received into the possession of the seller, and have been inspected and approved by the buyer; and

- (b) any time fixed for the payment of the purchase price (other than the deposit) shall begin to run as from the day when the goods are so inspected and approved by the buyer.
- (3) The seller shall hold the money received in relation to a lay-by sale agreement of goods referred to in subsection (2) exclusively for the benefit of the buyer to be disbursed as he or she directs.

Maximum penalty: 50 penalty units.

## **5 Terms and conditions to be reduced to writing**

- (1) The seller under a lay-by sale agreement shall, at the time when the agreement is made, reduce to writing the terms and conditions of the agreement, other than terms and conditions implied by this Act or by the *Sale of Goods Act 1954*.

Maximum penalty: 50 penalty units.

- (2) An agreement made between the seller and the buyer under a lay-by sale agreement that varies, or adds to, the terms and conditions of the lay-by sale agreement as reduced to writing is voidable at the option of the buyer.

## **6 Records**

- (1) A seller under a lay-by sale agreement shall keep the prescribed records and shall preserve those records for 12 months after the completion or termination of the agreement.

Maximum penalty: 50 penalty units.

- (2) The prescribed particulars for subsection (1) are—
  - (a) the name and address of the buyer of the goods; and
  - (b) a description of the goods; and
  - (c) the purchase price of the goods; and
  - (d) the date when the lay-by sale agreement was made; and

- (e) the amount of each payment made to him or her, under the lay-by sale agreement, by the buyer and the value of any other consideration provided to complete the purchase of the goods; and
- (f) the date when the goods were inspected and approved by the buyer; and
- (g) a number for the lay-by agreement.

## **7 Documents to be given to buyer**

A seller under a lay-by sale agreement shall give to the buyer, at the time the agreement is made—

- (a) a sales docket containing the following particulars:
  - (i) a description of the goods including, if the goods are second-hand goods, a statement that the goods are second-hand goods;
  - (ii) an itemised statement of the purchase price of each article comprising the goods;
  - (iii) the recorded number of the lay-by sale agreement in the record kept by the seller under section 6; and
- (b) a copy, printed in type not smaller than 10 point Times and signed by the seller or by the person who enters into the agreement on his or her behalf, of the terms and conditions of the agreement as reduced to writing; and
- (c) a written notice containing a summary, in accordance with the form set out in schedule 1, of the provisions of sections 5, 7, 12, 15, 16 and 17.

Maximum penalty: 20 penalty units.



## **8 Avoidance of certain provisions**

- (1) A provision of a lay-by sale agreement by which—
- (a) the right given to the buyer by this Act to determine a lay-by sale agreement is excluded or restricted or a liability in addition to the liability imposed by this Act is imposed on the buyer because of the termination of a lay-by sale agreement; or
  - (b) the buyer is, after the determination of the lay-by sale agreement, subject to a liability that exceeds the liability to that he or she would have been subject if the lay-by sale agreement had been determined by him or her under this Act; or
  - (c) a person acting on behalf of the seller in connection with the formation or conclusion of any lay-by sale agreement is treated as, or deemed to be, the agent of the buyer; or
  - (d) the seller is relieved from liability for the acts or defaults of any person acting on his or her behalf in connection with the formation or conclusion of a lay-by sale agreement;

is void.

- (2) In this section:

*lay-by sale agreement* includes an agreement supplementary to, or collateral with, a lay-by sale agreement.

## **9 Provision for 'awards' to be void**

- (1) A provision of a lay-by sale agreement made after the commencement of this Act or of an agreement supplementary to, or collateral with, a lay-by sale agreement by which the seller undertakes to deliver the goods sold or agreed to be sold without further payment or to release the buyer from liability for all or any of the payment due or to become due under the lay-by sale agreement on conditions specified in the lay-by sale agreement or the agreement supplementary to or collateral with it shall be void.

- (2) A seller shall not enter into an agreement containing a provision referred to in subsection (1).

Maximum penalty: 50 penalty units.

**10 Appropriation of payments in relation to lay-by sales agreements**

- (1) If a buyer is liable to make payments in relation to 2 or more lay-by sales agreements to the same seller and he or she pays to the seller in relation to the agreements a sum that is not sufficient to discharge the total amount due under all the agreements, the buyer may, notwithstanding any agreement to the contrary, direct the seller—

- (a) to appropriate the sum paid in or towards the satisfaction of the sum due under any 1 of the agreements; or
- (b) to appropriate the sum paid in or towards the satisfaction of the sums due under 2 or more of the agreements in the proportions that the buyer specifies; or
- (c) to appropriate the portions of the sum paid that the buyer specifies in or towards the satisfaction of the sums due under such of the agreements as the buyer specifies;

and, if the seller fails to comply with the direction, the sum shall, notwithstanding the failure, be deemed to have been appropriated by the seller accordingly.

- (2) If the buyer does not give a direction under subsection (1), the sum paid by him or her shall be appropriated by the seller towards the satisfaction of the sums due under the respective lay-by sales agreements in the proportions that those sums bear to the total amount due under all the agreements, and, if the seller fails so to appropriate the sum, it shall, notwithstanding the failure, be deemed to have been so appropriated.

- (3) This section applies to, and in relation to, lay-by sales agreements whether the lay-by sales agreements were entered into before, or are entered into after, the commencement of this Act.

## **11 Other laws and conditions and warranties**

- (1) Subject to this Act, the *Sale of Goods Act 1954* applies to a lay-by sale agreement.
- (2) In every lay-by sale agreement there is—
- (a) an implied warranty that the buyer shall, after delivery to him or her of the goods, have and enjoy quiet possession of the goods; and
  - (b) an implied condition on the part of the seller—
    - (i) if the goods are in the possession of the seller at the time when the lay-by sale agreement is made—that he or she has a right to sell the goods; and
    - (ii) if the goods are not in the possession of the seller when the lay-by sale agreement is made—that he or she will have the right to sell the goods that are inspected and approved by the buyer when they are inspected and approved; and
  - (c) an implied warranty—
    - (i) if the goods are in the possession of the seller at the time when the lay-by sale agreement is made—that the goods are free from any charge or encumbrance in favour of a third party that is not declared or known to the buyer before or at the time when the contract is made; and
    - (ii) if the goods are not in the possession of the seller at the time when the lay-by sale agreement is made—that the goods when inspected and approved by the buyer will be free from any charge or encumbrance in favour of a third

party that is not declared or known to the buyer before or at the time of inspection and approval; and

- (d) subject to subsection (3), an implied condition that the goods will, on delivery, be of merchantable quality.
- (3) The condition referred to in subsection (2) (d) shall not be implied—
- (a) if—
    - (i) the goods are second-hand goods; and
    - (ii) the sales docket relating to the lay-by sale agreement contains a statement that the goods are second-hand goods; or
  - (b) as to defects—
    - (i) that the seller could not reasonably have been aware of at the time when the property in the goods passed; or
    - (ii) that, if the buyer has examined the goods, ought to have been revealed by the examination.
- (4) The seller under a lay-by sale agreement is not entitled to rely on a provision of the agreement excluding or modifying the condition specified in the *Sale of Goods Act 1954*, section 19 (2) unless he or she proves that, before the agreement was made, the provision was brought to the notice of the buyer and its effect made clear to him or her.

## **12 Seller to label and set aside goods after approval by buyer**

- (1) The seller under a lay-by sale agreement shall—
- (a) if the goods are in the possession of the seller at the time when the lay-by sale agreement is made—at that time; or

- (b) if the goods are not in the possession of the seller when the lay-by sale agreement is made—at the time when they are inspected and approved by the buyer;

securely label the goods in the prescribed way and shall set aside and keep the goods in his or her possession.

Maximum penalty: 50 penalty units.

- (2) The prescribed way, for subsection (1) is to attach securely—

- (a) if the goods are unwrapped—to the goods; or  
(b) if the goods are wrapped—to the wrapping;

a label stating the recorded number of the lay-by sale agreement in the records kept by the seller under section 5.

- (3) The seller shall, when requested to do so by the buyer or a police officer, produce the goods and the records kept by him or her relating to the lay-by sale agreement for the inspection of the buyer or police officer.

Maximum penalty: 50 penalty units.

- (4) If a seller under a lay-by sale agreement fails to comply with subsection (1) or (3), the lay-by sale agreement is voidable at the option of the buyer and, if the buyer avoids the lay-by sale agreement, the buyer is entitled to recover, as a debt due and payable to him or her by the seller, any money, being part of the purchase price, paid by the buyer under the lay-by sale agreement.

### **13 Passing of property and goods that have perished**

- (1) The property in goods, the subject of the lay-by sale agreement, passes to the buyer—
- (a) if the goods are in the possession of the seller at the time when the lay-by sale agreement is made—at that time; or

- (b) if the goods are not in the possession of the seller when the lay-by sale agreement is made—at the time when they are inspected and approved by the buyer.
- (2) The passing of property in goods, the subject of a lay-by sale agreement, under subsection (1) is conditional on its reverting in the seller on the determination of the lay-by sale agreement.

#### **14 Nondelivery**

If—

- (a) the time fixed for delivery by a seller of goods the subject of a lay-by sale agreement has passed; and
- (b) the seller does not deliver the goods on request by the buyer;

the buyer may recover from the seller the amount that the buyer has paid under the agreement as a debt due and payable by the seller to the buyer, and, if the market or current price of the goods at the time fixed for delivery exceeds the purchase price, the amount of that excess.

#### **15 How seller may determine lay-by sale agreement**

- (1) A seller under a lay-by sale agreement shall not, in the exercise of a power expressly or impliedly given to him or her under the terms of the lay-by sale agreement, determine the lay-by sale agreement unless—
  - (a) he or she has given notice of his or her intention so to do by serving on the buyer, at the last address of the buyer known to him or her, a notice of his or her intention to determine the lay-by sale agreement; and
  - (b) he or she has specified, in the notice, the date, not earlier than 14 days after the service of the notice, when he or she intends to determine the lay-by sale agreement; and

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- (c) he or she has served on the buyer, at the time of serving the notice of his or her intention to determine the lay-by sale agreement, a written statement signed by him or her specifying—
- (i) the purchase price of the goods under the lay-by sale agreement; and
  - (ii) the amount of the storage charge (if any) at the date when it is intended to determine the lay-by sale agreement; and
  - (iii) the total amount of money paid, or the value of any other consideration provided, towards the purchase price by the buyer; and
  - (iv) the amount that the seller estimates is sufficient to recoup him or her for selling costs in relation to the lay-by sale agreement; and
  - (v) the balance payable by the buyer to complete the lay-by sale agreement; and
  - (vi) the balance (if any) that the seller estimates to be the amount to be due, under section 17, to the buyer or to the seller.
- (2) If, on or before the date specified in the notice as the date when the seller intends to determine the lay-by sale agreement, the buyer tenders to the seller the balance due in relation to the purchase price of the goods and the storage charge under the lay-by sale agreement (if any) the seller shall deliver the goods to the buyer.

Maximum penalty: 50 penalty units.

## **16 How buyer may determine lay-by sale agreement**

- (1) A buyer under a lay-by sale agreement may, at any time before the lay-by sale agreement is completed or determined, determine the lay-by sale agreement by serving, at the place of business of the seller, written notice of his or her intention to determine the

lay-by sale agreement and, if the buyer so serves such a notice, the lay-by sale agreement shall be determined from the date of service of the notice, or, if a date later than the date of service is specified in the notice as the date when the lay-by sale agreement shall be determined, from that later date.

- (2) If—
- (a) the buyer has served a notice under subsection (1); and
  - (b) the buyer has served on the seller a request that the seller give him or her a statement under this subsection; and
  - (c) the buyer has paid or tendered to the seller the sum of 20 cents; the seller shall, within 7 days after receiving the request, make available to the buyer a statement signed by the seller stating—
  - (d) the purchase price of the goods under the lay-by sale agreement; and
  - (e) the amount of the storage charge (if any) at the date when it is intended to determine the lay-by sale agreement; and
  - (f) the total amount of money paid, or the value of any other consideration provided, towards the purchase price by the buyer; and
  - (g) the amount that the seller estimates is sufficient to recoup him or her for selling costs in relation to the lay-by sale agreement; and
  - (h) the balance payable by the buyer to complete the lay-by sale agreement; and



- (i) the balance (if any) that the seller estimates to be the amount to be due, under section 17, to the buyer or to the seller.

Maximum penalty: 20 penalty units.

- (3) This section does not prejudice any right a buyer has under a lay-by sale agreement to determine the lay-by sale agreement otherwise than under this section.

## **17 Effect of determination of lay-by sale agreement**

- (1) If, at the time of the determination of a lay-by sale agreement, the total of—

- (a) the amount of money paid by the buyer under the lay-by sale agreement; and
- (b) the value of any other consideration provided by the buyer under the lay-by sale agreement; and
- (c) the value of the goods at the time of the determination of the lay-by sale agreement;

exceeds the total of—

- (d) the proportionate amount of the storage charge (if any) under the lay-by sale agreement, for the period for which the agreement has been in force; and
- (e) an amount sufficient to recoup the seller for his or her selling costs in relation to the lay-by sale agreement; and
- (f) the purchase price of the goods;

the buyer is entitled to recover from the seller the amount of the excess as a debt due and payable by the seller to the buyer.

- (2) If the total of the amounts specified in subsection (1) (d), (e) and (f) exceeds the total of the amounts specified in subsection (1) (a), (b) and (c), the seller is entitled to recover from the buyer the amount of the excess as a debt due and payable by the buyer to the seller.

- (3) Except as provided by subsection (2), if a lay-by sale agreement is determined, the buyer ceases to be liable to make any further payments under the lay-by sale agreement.
- (4) If a lay-by sale agreement has been determined under section 15 or 16, the value of the goods at the time of the determination of the lay-by sale agreement shall be deemed to be—
  - (a) the purchase price of the goods; or
  - (b) the retail market selling price of the goods at the time of the determination, assuming, if the condition of the goods has deteriorated since the time when the property in the goods passed to the buyer, that their condition has not deteriorated;whichever is the less.

**18 Money received under certain agreements to be maintained in trust account**

- (1) In this section:

*buyer* includes a person to whom the rights and liabilities of a buyer have passed by assignment or by operation of law.

*seller* includes a person to whom the rights and liabilities of a seller have passed by assignment or by operation of law.
- (2) This section applies to an agreement to sell goods under which it is agreed, expressly or impliedly, between the seller and the buyer that—
  - (a) the purchase price, or, if a deposit is paid, the balance of the purchase price—
    - (i) is to be paid by instalments, whether the number of instalments or the amount of all or any of the instalments is fixed by the agreement or is left to the option of the buyer; or

- (ii) is to be paid at the end of a fixed or ascertainable period with an option, express or implied, for the buyer to make payments in relation to the purchase price during that period; and
  - (b) the buyer shall, at a time subsequent to the date of the agreement, make a selection of the goods to be accepted by him or her under the agreement, whether or not the buyer indicates at the date of the agreement a choice or preference in relation to the goods or the type or class of goods to be selected by him or her.
- (3) The seller shall be deemed to hold all money received by the seller under an agreement to which this section applies in trust for the buyer to be disbursed as the buyer directs, and, until the money is so disbursed, the seller shall maintain the money in a trust account, whether general or separate, with a bank, credit union or building society in the ACT.
- (4) Money maintained in a trust account in accordance with subsection (3) is trust money and is not available for the payment of the debts of the seller to any other creditor of the seller or liable to be attached or taken in execution under an order or process of any court at the instance of any such other creditor, but nothing in this section takes away or affects any just claim or lien that the seller may have against or on the money.
- (5) Subject to subsection (6), a bank, credit union or building society shall not, in connection with any transaction in relation to any account of a seller kept with it or with any other bank, credit union or building society, incur any liability or be under any obligation to make an inquiry or be deemed to have any knowledge of any right of any person to any money paid or credited to such an account that 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, but nothing in this subsection relieves a bank, credit

union or building society from any liability or obligation to which it would be subject apart from this Act.

- (6) Notwithstanding anything in subsection (5), a bank, credit union or building society where a seller keeps an account for buyers' money shall not, in relation to any liability of the seller to the bank, credit union or building society, other than a liability in connection with that account, have or obtain any recourse or right, whether by way of set-off, counterclaim, charge or otherwise, against money standing to the credit of that account, but nothing in this subsection deprives a bank, credit union or building society of any right existing at the commencement of this Act.

Maximum penalty: 50 penalty units.

## **19 Contracting out prohibited**

The provisions of this Act apply notwithstanding any stipulation to the contrary whether made before or after the commencement of this Act.

## **20 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

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# Schedule 1

(see s 7)

## AUSTRALIAN CAPITAL TERRITORY

### SUMMARY OF SECTIONS 5, 7, 12, 15, 16 AND 17 OF THE LAY-BY SALES AGREEMENTS ACT

1. The seller of goods under a lay-by sale agreement is required to hand to the buyer, at the time the agreement is made, the following documents:

- (a) a sales docket stating a description of the goods including, where the goods are second-hand goods, a statement that the goods are second-hand goods, the price of the goods and the recorded number of the lay-by sale agreement;
- (b) a copy, signed by the seller or the person who enters into the agreement on his or her behalf, of the terms and conditions of sale, not being terms and conditions implied by law; and
- (c) a copy of this Summary.

2. Any agreement made between the seller and buyer varying, or adding to, the terms and conditions of the lay-by sale agreement, as stated in the copy of them handed to the buyer at the time of the making of the agreement, is voidable at the option of the buyer.

3. The buyer has the right to inspect, at any reasonable time, the goods that have been labelled and set aside for him or her under the lay-by sale agreement and the entry relating to the lay-by sale agreement in the records of lay-by sales agreements kept by the seller. If the seller fails to label and set aside the goods after they have been approved by the buyer or to allow the buyer to inspect the goods or the records relating to the lay-by sale agreement, the buyer may avoid the lay-by sale agreement and claim the return of any moneys he or she has paid to the seller.

4. Notwithstanding any agreement to the contrary, a seller shall not, in the exercise of a power expressly or impliedly conferred on him or her under the terms of a lay-by sale agreement, determine the lay-by sale agreement unless—

- (a) he or she gives notice of his or her intention so to do by serving on the buyer, at the last address of the buyer known to him or her, a notice of his or her intention to determine the lay-by sale agreement;
- (b) he or she specifies, in the notice, the date, not being a date earlier than 14 days after the service of the notice, upon which he or she intends to determine the lay-by sale agreement;
- (c) he or she serves on the buyer, at the same time as he or she serves the notice of his or her intention to determine the lay-by sale agreement, a statement in writing signed by him or her specifying—
  - (i) the purchase price of the goods under the lay-by agreement;
  - (ii) the amount of the storage charge, if any, at the date on which it is intended to determine the lay-by sale agreement;
  - (iii) the total amount of moneys paid, or the value of any other consideration provided, towards the purchase price by the buyer;

## Schedule 1

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- (iv) the amount that the seller estimates is sufficient to recoup him or her for selling costs in respect of the lay-by sale agreement;
- (v) the balance payable by the owner to complete the lay-by sale agreement; and
- (vi) the balance, if any, which the seller estimates to be the amount to be due to the buyer in accordance with clause 8 of this Summary.

5. If, on or before the date specified, in the notice of intention to determine the lay-by sale agreement as the date on which the seller intends to determine the lay-by sale agreement, the buyer tenders to the seller the balance due in respect of the purchase price of the goods and the storage charge under the lay-by sale agreement, if any, the seller shall deliver the goods to the buyer.

6. Notwithstanding any agreement to the contrary, the buyer may, at any time before the lay-by sale agreement is completed or determined, determine the lay-by sale agreement by serving, at the place of business of the seller, a notice in writing of his or her intention to determine the lay-by sale agreement and, if the buyer so serves such a notice, the lay-by sale agreement shall be determined from the date of service of the notice, or, where a date later than the date of service is specified in the notice as the date on which the lay-by sale agreement shall be determined, from that later date.

7. If—

- (a) the buyer serves on the seller a notice in writing of his or her intention to determine the lay-by sale agreement;
- (b) the buyer requests the seller to furnish him or her with a statement under subsection (2) of section 16 of the Lay-by Sales Agreements Act; and
- (c) the buyer pays or tenders to the seller the sum of 20 cents;

the seller shall, within 7 days after receiving the request, make available to the buyer a statement signed by the seller stating the same particulars in respect of the lay-by sale agreement as are required in the statement that the seller is required to serve on the buyer if the seller intends to terminate the lay-by sale agreement (*see* 4 paragraph 4 (c) of this Summary).

8. Where, at the time of the determination of a lay-by sale agreement, the total of—

- (a) the amount of moneys paid by the buyer under the lay-by sale agreement;
- (b) the value of any other consideration provided by the buyer under the lay-by sale agreement; and
- (c) the value of the goods at the time of the determination of the lay-by sale agreement,

exceeds the total of—

- (d) the amount of the storage charge, if any, under the lay-by sale agreement;
- (e) an amount sufficient to recoup the seller for his or her selling costs in respect of the lay-by sale agreement; and
- (f) the purchase price of the goods;

the buyer is entitled to recover from the seller the amount of the excess as a debt due and payable by the seller to the buyer.

9. Where the total of the amounts specified in paragraphs 8 (d), (e) and (f) exceeds the total of the amounts specified in paragraphs 8 (a), (b) and (c), the seller is entitled to recover from the buyer the amount of the excess as a debt due and payable by the buyer to the seller.

10. Except as provided in clause 9, where a lay-by sale agreement is determined, the buyer ceases to be liable to make any further payments under the lay-by sale agreement.

11. Where a lay-by sale agreement has been determined under section 15 or 16 of the Lay-by Sales Agreements Act, the value of the goods at the time of the determination of the lay-by sale agreement shall be deemed to be—

- (a) the purchase price of the goods; or
- (b) the retail market selling price of the goods at the time of the determination, assuming, in a case where the condition of the goods has deteriorated since the time when the property in the goods passed to the buyer, that their condition has not deteriorated;

whichever is the less.

## Dictionary

(see s 2)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- bank
- building society
- credit union
- disallowable instrument (see s 9)
- Executive
- person
- police officer.

**goods** includes all chattels personal other than things in action and money.

**lay-by sale agreement** means—

- (a) a sale of goods; or
- (b) an agreement to sell goods;

under which it is agreed expressly or impliedly that—

- (c) the goods will not be delivered to the buyer until the purchase price or a specified part of the purchase price is paid, whether or not any charge is payable for storage of the goods; and
- (d) the purchase price or, if a deposit is paid, the balance of the purchase price—
  - (i) is to be paid by instalments, whether the number of instalments or the amount of all or any of the instalments is fixed by the agreement or is left to the option of the buyer; or



- (ii) is to be paid at the end of a fixed or ascertainable period with an option, expressed or implied, for the purchaser to make payments in relation to the purchase price during that period, but does not include an agreement to sell goods to which section 18 applies.

***purchase price***, of goods, means the total amount of the money paid or payable for the goods and the value of any other consideration provided or to be provided to complete the purchase of the goods.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

### 3 Legislation history

This Act was originally a Commonwealth ordinance—the *Lay-by Sales Agreements Ordinance 1963* No 9 (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

#### Legislation before becoming Territory enactment

##### **Lay-by Sales Agreements Ordinance 1963 No 9**

notified 9 May 1963

commenced 1 July 1963 (s 2 and Cwlth Gaz 1963 p 1617)

as amended by

##### **Ordinances Revision (Decimal Currency) Ordinance 1966 No 19 (as am by 1967 No 36)**

notified 23 December 1966

commenced 23 December 1966 (s 2)

##### **Ordinances Revision (Decimal Currency) Ordinance 1967 No 36**

notified 30 November 1967

commenced 23 December 1966

*Note* This ordinance only amends the Ordinances Revision (Decimal Currency) Ordinance 1966 No 19.

##### **Lay-by Sales Agreements Ordinance 1972 No 21**

notified 3 August 1972

commenced 3 August 1972

## Endnotes

3 Legislation history

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### **Ordinances Revision Ordinance 1978 No 46**

notified 28 December 1978  
commenced 28 December 1978

### **Self-Government (Consequential Amendments) Ordinance 1989 No 38 sch 1**

notified 10 May 1989 (Cwlth Gaz 1989 No S160)  
s 1, s 2 commenced 10 May 1989 (s 2 (1))  
sch 1 commenced 11 May 1989 (s 2 (2) and see Cwlth Gaz 1989 No S164)

### **Legislation after becoming Territory enactment**

#### **Statute Law Revision (Penalties) Act 1994 No 81 sch**

notified 29 November 1994 (Gaz 1994 No S253)  
s 1, s 2 commenced 29 November 1994 (s 2 (1))  
sch commenced 29 November 1994 (s 2 (2) and Gaz 1994 No S269)

#### **Financial Institutions (Removal of Discrimination) Act 1997 No 88 sch**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch commenced 31 December 1997 (s 2 (2) and Gaz 1997 No S442)

#### **Statute Law Revision (Penalties) Act 1998 No 54 sch**

notified 27 November 1998 (Gaz 1998 No S207)  
s 1, s 2 commenced 27 November 1998 (s 2 (1))  
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

#### **Legislation (Consequential Amendments) Act 2001 No 44 pt 217**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 217 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

#### **Statute Law Amendment Act 2007 A2007-3 sch 3 pt 3.57**

notified LR 22 March 2007  
s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))  
sch 3 pt 3.57 commenced 12 April 2007 (s 2 (1))

as repealed by

**Fair Trading (Australian Consumer Law) Amendment Act 2010  
A2010-54 s 4**

notified LR 16 December 2010

s 1, s 2 commenced 16 December 2010 (LA s 75 (1))

s 4 commenced 1 January 2011 (s 2 (1))

## 4 Amendment history

### Name of Act

s 1 am R3 LA

### Dictionary

s 2 om 2001 No 44 amdt 1.2612  
ins A2007-3 amdt 3.316

### Notes

s 3 defs reloc to dict A2007-3 amdt 3.315  
sub A2007-3 amdt 3.316

### Agreements for lay-by sales of goods not in seller's possession

s 4 am 1966 No 19 (as am 1967 No 36); 1994 No 81 sch

### Terms and conditions to be reduced to writing

s 5 am 1966 No 19 (as am 1967 No 36); 1994 No 81 sch

### Records

s 6 am 1966 No 19 (as am 1967 No 36); 1994 No 81 sch

### Documents to be given to buyer

s 7 am 1966 No 19 (as am 1967 No 36); 1994 No 81 sch

### Provision for 'awards' to be void

s 9 am 1966 No 19 (as am 1967 No 36); 1994 No 81 sch

### Other laws and conditions and warranties

s 11 am 1972 No 21

### Seller to label and set aside goods after approval by buyer

s 12 am 1966 No 19 (as am 1967 No 36); 1994 No 81 sch

### How seller may determine lay-by sale agreement

s 15 am 1966 No 19 (as am 1967 No 36); 1994 No 81 sch

### How buyer may determine lay-by sale agreement

s 16 am 1966 No 19 (as am 1967 No 36); 1994 No 81 sch

### Money received under certain agreements to be maintained in trust account

s 18 am 1966 No 19 (as am 1967 No 36); 1994 No 81 sch; 1997  
No 88 sch

## Endnotes

### 5 Earlier republications

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#### Regulation-making power

s 20 am 1966 No 19 (as am 1967 No 36); 1978 No 46; 1989 No 38 sch 1; 1998 No 54 sch sub 2001 No 44 amdt 1.2613

#### Schedule

sch 1 (prev sch) am 1966 No 19 (as am 1967 No 36); 1978 No 46 renum R3 LA

#### Dictionary

dict ins A2007-3 amdt 3.317  
def **goods** reloc from s 3 A2007-3 amdt 3.315  
def **lay-by sale agreement** reloc from s 3 A2007-3 amdt 3.315  
def **purchase price** ins A2007-3 amdt 3.317

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	ord 1989 No 38	30 June 1991
2	Act 1997 No 88	31 December 1997
3	A2001-44	22 August 2002
4	A2007-3	12 April 2007

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