

AUSTRALIAN CAPITAL TERRITORY
LAY-BY SALES AGREEMENT ORDINANCE 1963
EXPLANATORY MEMORANDUM

No. 9 of 1963

The purpose of this Ordinance is to regulate the sale of goods by lay-by in the Territory. It is designed to provide for the rights and obligations of the parties entering into this type of contract. The need for legislation on this matter arises from the abuses that have occurred from time to time in the States, which include the practice of entering into a lay-by sale agreement in respect of goods which are not in the possession of the seller at the time of making the agreement, and entering into agreements with several persons in respect of the same goods. The Ordinance is designed to prevent similar occurrences in the Territory and to provide the basic terms of, and for completion of such agreements.

The term “goods” is defined in section 3 of the Ordinance to include all chattels personal other than things in action and money. A “lay-by sale agreement” is defined as an agreement between buyer and seller under which it is agreed that the goods shall not be delivered to the buyer until the purchase price is paid either by instalments or at the expiration of a specified period. The purchase price is defined as including any other monies payable for storage and the like. However, a lay-by sale agreement does not include the simple sale of goods nor does it include the type of agreement under which the buyer makes a selection of goods at some time after the agreement is made. A lay-by sale agreement is distinct from a hire purchase agreement in that the possession of the goods which are the subject of a lay-by sale agreement do not pass to the buyer until the purchase price is paid and any time specified for the running of the agreement expires.

Section 4 of the Ordinance provides that a person may not agree to sell goods which he does not have in his possession unless the agreement specifies that not more than one-fifth of the purchase price is to be accepted until the goods are in the possession of the seller and have been inspected and approved by the buyer. In such a case the time for the payment of the purchase price shall not begin until the buyer has inspected and approved the goods.

Section 5 provides that the terms and conditions of a lay-by sale agreement which are not implied by the Lay-By Sales Ordinance or in the Sale of Goods Ordinance 1954 are to be reduced to writing. Any other agreement which varies the written agreement is voidable at the option of the buyer.

Section 8 details the provisions in a lay-by sale agreement that are rendered void by the Ordinance. These are provisions which:

- (a) adversely affect the buyer’s right to terminate the agreement;

- (b) impose on the buyer a greater liability at termination than he would have been liable for had he determined the agreement himself in accordance with the Ordinance;
- (c) make a person acting on behalf of the seller an agent of the buyer;
- (d) relieve the seller from liability for the acts and defaults of his servant; or
- (e) enable the seller to deliver the goods without further payment or release the buyer from any payment specified in the agreement.

Section 10 requires the seller to allot monies paid to him by the buyer in respect of more than one agreement, as the buyer directs, even though there may have been an agreement to the contrary. If the seller fails to do so, the sum paid is deemed to be allotted as directed by the buyer. If the buyer does not give a direction the seller is to allot the monies in proportion to the amount owed on each agreement. The provisions of this section are expressed to apply to agreements made before the commencement of the Ordinance.

Section 11 provides that where goods are described by the agreement as second hand goods it is not implied that they are of merchantable quality. It also provides that notwithstanding any provision in the agreement to the contrary there are implied conditions that the seller has power to transfer property in the goods and that there are no latent defects in them.

The seller must in accordance with Section 12 label and set aside goods at the time of making the agreement or at the time of inspection and approval if the goods are not in his possession at the time of making the agreement. The seller must at any reasonable time, produce the goods and the records kept by him at the request of the buyer or a member of the Police Force of the Territory, and if the goods are not properly labelled, the buyer may renounce the agreement and recover any money paid to the seller.

Under section 13, the property in the goods passes to the buyer -

- (a) where the goods are in the possession of the seller, at the time when the lay-by sale agreement is made; or
- (b) where the goods are not in the possession of the seller when the agreement is made, at the time when they are inspected and approved by the buyer.

Section 15 provides that the seller may only terminate the agreement in accordance with a provision of same if he gives at least two weeks' notice of his intention to do so and delivers to the buyer at the same time a signed statement specifying the particulars of the payments made and monies owing.

The buyer has the right to the goods if the monies outstanding are paid before the expiration of two weeks after the date on which the seller notified his intention to terminate the agreement. The buyer may under the terms of section 16 terminate the agreement on giving notice to the seller.

Where upon termination of the agreement the value of the goods at that date together with monies paid by the buyer exceeds the storage charge and selling costs the buyer is entitled to recover the difference and then ceases to be liable to make any further payments. If the reverse is true then the seller may recover the difference from the buyer.

By virtue of section 19, the Ordinance applies to an agreement which is within the definition of a lay-by sale agreement in section 3, notwithstanding any provision in the agreement to the contrary whether made before or after the commencement of the Ordinance.

GORDON FREETH