

## CONSUMER AFFAIRS

### Lay-bys

***This fact sheet provides advice to consumers on their rights and responsibilities with regards to lay-bys. It covers issues such as store policies, cancellations, refunds and store signs.***

Lay-by sales are contracts between a trader and a consumer where the trader agrees to hold goods until the total selling price is paid. Payments are made by regular instalments within a fixed period.

Lay-bys are offered by many traders as an incentive for consumers to purchase goods from their store but in the Northern Territory terms and conditions may vary from store to store. A lay-by is not a credit sale nor a sale by finance as no debt is created. Lay-by arrangements are also free of interest.

### ***Sale of Goods Act***

Although lay-by sales in the Northern Territory are subject to the provisions of the *Sale of Goods Act*, there is no legislation that deals specifically with lay-bys. The sale is deemed to have occurred when the contract is entered into and ownership of the goods passes to the buyer.

The trader is responsible for the storage and condition of the lay-by items until you complete the lay-by and collect the goods.

### ***Store Policy***

Traders should set clear store policies outlining the terms and conditions of the lay-by service offered to consumers. If the lay-by conditions are not displayed, you are entitled to ask the trader for a copy of their lay-by policy.

Make sure you read the store policies as once you've signed the contract; you are bound by the store's lay-by terms and conditions. These should also be printed on the lay-by docket, and include:

- amount of deposit;
- duration of the lay-by period;
- the frequency and minimum amount of payments required;
- the cancellation policy (including refunds of deposits or any payments made).

Receipts should be issued every time you make a payment on the lay-by.

**Remember you are still entitled to redress if the goods are found to be faulty.**

### ***Cancellations***

#### **Cancellation by the Trader**

If you breach the lay-by contract, the store can cancel your contract. The trader must write to you and advise you of their intentions and allow you 14 days to reply or rectify the breach.

#### **Cancellation by the Consumer**

If for some reason you no longer require the goods on lay-by you can cancel the contract.

## **Refunds**

The store policy determines whether deposits and/or payments are not refunded, refunded in full or a percentage of the payments kept for administrative costs.

Where traders have written lay-by policies the terms of this policy will govern the contract.

Under sections 40, 51(1) and 52(1) of the *Sale of Goods Act*, the trader may sue you for the balance of money owed on the goods, damages for non-acceptance and any additional losses (including a storage fee).

Where a trader does not use written terms and conditions, the *Sale of Goods Act* and common law will apply. The trader must justify keeping any monies paid by you if you dispute the assessment of damage suffered by the trader, or if the trader breaches the lay-by agreement. There is no automatic entitlement for the trader to keep all monies paid.

If the dispute cannot be settled, then either party may apply to have the matter settled by the Small Claims Court or Local Court. Resolution of such disputes involves an assessment of the facts on a case by case analysis.

### ***Temporary financial hardship***

If you find yourself in a position whereby you cannot afford to pay the amount required by the due date, give the store a call. Most traders will come to some mutual arrangement for the payment of monies owed. Cancellation should be seen as a last resort.

## **Minors**

Contracts entered into by minors (people under 18 years of age) may be terminated at the option of the minor where the lay-by is for "unessential" items. Essential items are those without which an individual cannot reasonably exist.

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