



LAY-BY AGREEMENTS – NATIONAL SUMMARY

AS AT JUNE 2017

This fact sheet provides an overview of the requirements for lay-by agreements entered into on or after 1 January 2011.

WHAT IS A LAY-BY AGREEMENT?

Under the Australian Consumer Law (ACL), a lay-by agreement exists where:

- goods are paid for in at least two instalments (when the agreement is called a lay-by); or
- goods are paid for in at least three instalments (when the agreement is not specifically called a lay-by); and
- the consumer does not receive the goods until the full price has been paid.

Any deposit made by the consumer is considered to be an instalment.

MUST LAY-BY AGREEMENTS BE IN WRITING?

A lay-by agreement must be in writing and specify all the terms and conditions that apply, including details about any termination charges. The terms of the agreement must be expressed in plain language, be legible and clearly presented.

A copy of the lay-by agreement must be given to the consumer.

WHAT HAPPENS WHEN A CONSUMER CANCELS A LAY-BY?

A consumer is entitled to cancel a lay-by agreement at any time prior to taking possession of the goods.

In this case, the consumer must be refunded all amounts paid, less any termination fee that was clearly specified in the agreement.

WHAT IS A TERMINATION FEE?

A lay-by agreement may include a term that requires the consumer to pay a termination fee in certain circumstances.

There is no set termination fee but it must not be more than the supplier's "reasonable costs" relating to the agreement (for example, storage and administrative costs).

If the instalments made by the consumer are not sufficient to cover the termination fee, the supplier can recover the outstanding amount as a debt. However, this must be clearly stated in the terms of the lay-by agreement.

A termination fee must not be charged where:

- the consumer cancels the lay-by because of an act/event caused by the supplier (e.g. the goods are damaged in storage); or
- the supplier cancels the lay-by.

Other than the termination fee, a supplier is not entitled to damages or any other remedy as a result of a cancelled lay-by.

CAN YOU CANCEL A LAY-BY AGREEMENT?

You can only cancel a lay-by agreement if:

- the customer has breached a term of the agreement (e.g. missing a scheduled payment);
- you are no longer engaged in trade or commerce (e.g. entered liquidation); or
- the goods are no longer available due to circumstances outside your control (e.g. your supplier ceases to trade at the same time as the lay-by agreement is entered into).

If you cancel a lay-by agreement, you cannot charge a termination fee.

ARE THERE PENALTIES FOR BREACHING LAY-BY REQUIREMENTS?

A supplier is liable for criminal and civil penalties of up to \$30,000 for a body corporate and \$6,000 for an individual if the supplier:

- fails to put a lay-by agreement in writing;
- fails to provide the consumer with a copy of the lay-by agreement;
- refuses to refund the consumer's money (other than the termination charge) on cancellation of the lay-by;
- charges a termination fee that is higher than the "reasonable costs" associated with the agreement; or
- charges a termination fee when the supplier has breached the lay-by agreement.

For more information

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IMPORTANT INFORMATION

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