

# PYRAMID SALES ACT, 1973

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## PYRAMID SALES ACT, 1973

being

Pyramid Sales Act, 1973, No. 61 of 1973 [Assented to 29th November, 1973]<sup>1</sup>.

**An Act relating to pyramid and referral selling and other undesirable trading practices; to regulate the operation of certain trading schemes and trading practices; and for other purposes.**

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

### PART I

### PART I

#### PRELIMINARY

1. This Act may be cited as the "Pyramid Sales Act, 1973". Short title.
  
2. This Act shall come into operation on a day to be fixed by proclamation<sup>1</sup>. Commence-  
ment.
  
3. This Act is divided as follows:— Division of Act.
  - PART I—PRELIMINARY
  - PART II—ADMINISTRATION
  - PART III—PYRAMID SELLING SCHEMES
  - PART IV—UNDESIRABLE TRADING PRACTICES
  - PART V—MISCELLANEOUS.
  
4. (1) In this Act, unless the contrary intention appears— Interpretation.
  - "authorized officer" means an authorized officer as defined in the Prices Act, 1948-1973<sup>2</sup>;
  - "consumer"—
    - (a) in relation to a trading scheme, pursuant to which goods or services are supplied to a person for supply by that person, by way of retail sale, from premises from which other goods or services are supplied by way of retail sale, means the person so supplied with those goods or services;
    - and
    - (b) in relation to any other trading scheme, pursuant to which goods or services are supplied to a person means the person so supplied with those goods or services for enjoyment, use or exercise and not for resale:

<sup>1</sup> Came into operation 13th December, 1973: *Gaz.* 13th December, 1973, p. 3262.

<sup>2</sup> Now Prices Act, 1948-1975.

“goods” includes any tangible property capable of being the subject of sale, hire or lease:

“participant” in relation to a trading scheme, means a person who participates in that scheme otherwise than as a promoter thereof or as a consumer:

“person” includes a firm, partnership or any other unincorporated body of persons:

“promoter” in relation to a trading scheme, means a person who, whether alone or in association with others, promotes the trading scheme:

“pyramid selling scheme” means any trading scheme, which is or is intended to be carried out wholly or partly within the State and by which—

- (a) goods or services are to be provided by a person;
- (b) the goods or services so provided are to be supplied to or for other persons under transactions effected by participants in the scheme;
- (c) the transactions, or most of the transactions, by which those goods or services are to be supplied to consumers are or are to be effected elsewhere than at premises at which any promoter or participant effecting transactions pursuant to the scheme normally carries on business;

and

- (d) the prospect is held out to some or all of the participants of receiving payments or other benefits in respect of one or more of the following:—

- (i) the introduction or participation of other persons who become participants;

- (ii) the promotion, transfer or other change of status of participants within the trading scheme;

- (iii) the supply of goods or services to other participants;

- (iv) the supply of training facilities or other services for other participants;

or

- (v) transactions effected by or on behalf of other participants under which goods or services are to be supplied pursuant to the trading scheme:

“services” includes rights or privileges and any intangible property:

“supply” in relation to—

- (a) goods, includes the hiring or leasing of goods;

and

(b) services, includes the supplying, making available, vesting, granting or by any means passing title to such services,

and its derivatives and correlatives have a corresponding meaning:

“the Commissioner” means The South Australian Commissioner for Prices and Consumer Affairs appointed for the purposes of the Prices Act, 1948-1973<sup>1</sup>:

“trading scheme” includes any arrangements made in connection with the carrying on of a business whether those arrangements are made or recorded wholly or partly in writing or not.

(2) For the purposes of the definition of “pyramid selling scheme” in subsection (1) of this section a trading scheme shall be deemed to include the element referred to in paragraph (b) of that definition whether the transactions referred to in that paragraph are, or are to be, effected by participants in the capacity of servants or agents of the promoter or any one of the promoters or in any other capacity.

(3) For the purposes of paragraph (c) of the definition of “pyramid selling scheme” in subsection (1) of this section, in determining whether any premises are premises at which a participant carries on business no account shall be taken of transactions effected or to be effected by him under that pyramid selling scheme.

(4) For the purposes of the definition of “pyramid selling scheme” in subsection (1) of this section, a prospect such as is referred to in paragraph (d) of that definition shall be deemed to have been held out to a participant—

(a) whether it is held out so as to confer on the participant a legally enforceable right or not;

and

(b) in so far as it relates to the introduction of new participants, whether it is limited to the introduction of new participants by the participant or extends to the introduction of new participants by other persons.

(5) In the definition of “pyramid selling scheme” in subsection (1) of this section, a reference to the provision of goods or services by a person shall include a reference to the provision of goods or services under arrangements to which that person is a party.

5. Except as is expressly provided by or under this Act, nothing in this Act shall be held as limiting or restricting the application or effect of any other Act or law to or in relation to any trading scheme.

Application of other Acts, etc., not affected.

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## PART II

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## PART II

### ADMINISTRATION

6. (1) Subject to the control and directions of the Minister, the Commissioner shall be responsible for the administration of this Act.

Commissioner to be responsible for administration of this Act.

(2) For the purposes of this Act, the Commissioner and every authorized officer shall have and may exercise and perform, in relation to this Act and to matters to which this Act applies, the same powers and functions as are vested in them respectively under the Prices Act, 1948-1973<sup>1</sup>, in relation to that Act

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<sup>1</sup> Now Prices Act, 1948-1975.

and to matters to which that Act applies, and the provisions of that Act shall apply and have effect to and in relation to the exercise and performance of such powers and functions by the Commissioner or any authorized officer and to and in relation to all matters and persons in relation to which and to whom such powers and functions are exercised and performed as if the provisions of that Act were expressly enacted and contained in this Act with such modifications as may be necessary to render them applicable and effective accordingly.

(3) For the purposes of sections 18a and 18b of the Prices Act, 1948-1973<sup>1</sup>, a participant, or intending participant or a former participant in a pyramid selling scheme shall, in his capacity as such, be deemed to be a consumer.

## PART III

## PART III

## PYRAMID SELLING SCHEMES

Prohibition on  
certain  
payments.

7. (1) If a person resident or carrying on business in the State who is or intends to be a participant in a pyramid selling scheme—

(a) makes any payment to or for the benefit of the promoter or any of the promoters of the pyramid selling scheme or to or for the benefit of any participant in the pyramid selling scheme;

and

(b) is induced to make that payment or any part of that payment by reason that the prospect is held out to him of receiving payments or other benefits in respect of the introduction or participation of other persons who become participants in the pyramid selling scheme,

any person to whom or for whose benefit that payment is made shall be guilty of an offence.

(2) It shall be a defence, to a prosecution for an offence that is a contravention of subsection (1) of this section, for the defendant to prove that he did not know or suspect and could not by the exercise of reasonable diligence have known or suspected that a payment or part of a payment made to him or for his benefit was a result of an inducement of a kind referred to in that subsection.

(3) If the promoter or any of the promoters of a pyramid selling scheme or any other person acting in accordance with the pyramid selling scheme, by holding out any such prospect as is referred to in paragraph (b) of subsection (1) of this section, induces or attempts to induce a person resident in the State—

(a) if he is already a participant in the pyramid selling scheme, to make any payment to or for the benefit of the promoter or any of the promoters or to or for the benefit of a participant in the pyramid selling scheme;

or

<sup>1</sup> Now Prices Act, 1948-1975.

- (b) if he is not already a participant in the pyramid selling scheme, to become such a participant and to make any such payment as is referred to in subsection (1) of this section,

the person inducing or attempting to induce that person to make such a payment is guilty of an offence.

(4) For the purposes of subsection (1) or subsection (3) of this section, in determining whether an inducement or an attempt to induce is made with respect to the holding out of a prospect of a kind referred to in those subsections, it shall be sufficient if such a prospect constitutes or would constitute a part of the inducement.

(5) For the purposes of subsection (1) or subsection (3) of this section, a reference to the making of a payment to or for the benefit of a person shall be construed as including the making of a payment partly to or for the benefit of that person and partly to or for the benefit of one or more other persons.

(6) It shall be a defence, to a prosecution for an offence that is a contravention of subsection (1) or subsection (3) of this section, for the defendant to prove that the payment that was made or, as the case may be, the payment in respect of which the inducement or attempt to induce occurred was, at the material time pursuant to subsection (7) of this section, an approved payment for the purposes of this section.

(7) In relation to a payment to be made by a participant in a pyramid selling scheme for sales demonstration equipment or for any other thing or purpose as the Minister may approve the Minister may from time to time by notice published in the *Gazette* declare—

- (a) any such payment;

or

- (b) any such payment of a class or kind,

to be an approved payment for the purposes of this section and may by notice published in a like manner revoke or amend any such declaration.

(8) An offence against subsection (1) or subsection (3) of this section may be prosecuted summarily or upon information.

(9) The punishment for an offence against subsection (1) or subsection (3) of this section shall be—

- (a) if the offence is prosecuted summarily, a fine not exceeding one thousand dollars;

or

- (b) if the offence is prosecuted upon information, a fine not exceeding five thousand dollars or imprisonment for a term not exceeding two years.

8. (1) Where on or after the first day of July, 1973, a payment to which this section applies was made the person who made that payment may, subject to this section, sue for and recover as a debt due to him, an amount equal to the amount of that payment, from the person to whom or for whose benefit that payment was made.

Payments made  
after 1st July,  
1973.

(2) Where in consideration or in part consideration of the payment referred to in subsection (1) of this section the person who made the payment was supplied with any goods, the right of action provided for by subsection (1) of this section shall not be available to him until he has returned to the proposed

defendant in the action such of those goods as are in his possession or under his control.

(3) In the case of the person who was supplied with goods the amount that that person shall, pursuant to subsection (1) of this section, be entitled to sue for and recover shall be reduced by an amount equal to—

(a) the value of the goods not returned;

and

(b) any loss in value of the goods returned arising from his wilful act or neglect,

and in determining the value or the loss in value of the goods regard shall be had to the value, if any, placed on the goods by the person who supplied those goods to that person for the purposes of the transaction under which the goods were supplied.

(4) An action provided for by subsection (1) of this section shall be commenced—

(a) within the period of six months next following the day of commencement of this Act;

or

(b) within the period of six months next following the day on which the payment, in respect of which the action arises, was made,

whichever period last expires.

(5) This section applies to any payment (other than an approved payment)—

(a) referred to in subsection (1) of section 7 of this Act;

or

(b) that, had this Act been in force before that payment was made, would have been a payment referred to in subsection (1) of section 7 of this Act.

(6) In this section “approved payment” means—

(a) a payment that was, at the time that it was made, declared to be an approved payment for the purposes of section 7 of this Act;

or

(b) a payment, being a payment that was made before the commencement of this Act, that is an approved payment for the purposes of this section.

(7) In relation to a payment that was made before the commencement of this Act and that was made for sales demonstration equipment or for any other thing or purpose that the Minister may approve, the Minister may from time to time by notice published in the *Gazette* declare—

(a) any such payment;

or

(b) any such payment of a class or kind,

to be an approved payment for the purposes of this section.

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## PART IV

## PART IV

## UNDESIRABLE TRADING PRACTICES

## 9. (1) In this section—

Referral selling.

“buyer” in relation to goods includes a person who hires or leases goods where—

(a) he has an option, express or implied to purchase those goods;  
or

(b) he may, on complying with conditions, become entitled to become the owner of those goods or become entitled to keep those goods without further payment:

“seller” in relation to goods, includes a person whose business is or includes the letting of goods on hire or lease.

(2) A seller of goods or services shall not hold out to any buyer or prospective buyer of those goods or services any advantage, benefit or gain to the buyer or prospective buyer for doing anything that purports to assist the seller in selling to or finding another buyer or prospective buyer.

Penalty: One thousand dollars.

10. (1) A provision of a contract or agreement made pursuant to a trading scheme that requires a participant in that trading scheme as a condition of his participation to accept a quantity of goods that is, having regard to all the circumstances, unreasonable or excessive shall be voidable at the option of the participant.

Contracts, etc.,  
for excessive  
quantities of  
goods.

(2) Where a participant avoids a provision of a contract or agreement pursuant to subsection (1) of this section, that participant may within one month of receiving the quantity of goods that are unreasonable or excessive return those goods to the person who supplied them and upon that return the participant may sue for and recover as a debt due to him from that person the amount, if any, paid by him in respect of the goods so returned.

## PART V

## PART V

## MISCELLANEOUS

11. (1) In proceedings for an offence against this Act, an allegation in a complaint or information—

Evidentiary.

- (a) that a trading scheme is or was a pyramid selling scheme;
  - (b) that a person is or was a participant in a pyramid selling scheme;
  - (c) that a person is or was a promoter of a pyramid selling scheme;
  - (d) that a pyramid selling scheme is or was of a particular description;
- or

- (e) that a pyramid selling scheme was or was not in operation on a particular day,

shall be *prima facie* evidence of the matters so alleged.

(2) In proceedings for an offence against this Act, an allegation that the defendant is a body corporate incorporated under the law of a State or Territory of the Commonwealth, not being this State, shall be *prima facie*



evidence that the defendant is a body corporate incorporated under the law of that State or Territory.

(3) In proceedings for an offence against this Act any statement or representation by a person appearing or purporting to act for or on behalf of the defendant in those proceedings whether that statement was made before or after he became such a defendant shall be evidence that the statement or representation was authorized by that defendant.

Summary  
proceedings.

**12.** (1) Except as is expressly provided in this Act, proceedings in respect of offences against this Act shall be disposed of summarily.

(2) Proceedings for offences against this Act that may be disposed of summarily may be brought within one year from the day on which it is alleged that the act or omission constituting the offence was done or omitted.

Regulations.

**13.** (1) The Governor may make such regulations as are necessary or expedient for the purposes of giving effect to the provisions and objects of this Act.

(2) Without limiting the generality of the provisions of subsection (1) of this section, such regulations may—

(a) prescribe all matters required or authorized to be prescribed under this Act;

(b) make provision with respect to the issue, dissemination or distribution of material that—

(i) contains any invitation to persons to become participants in a pyramid selling scheme;

or

(ii) contains any information likely to lead directly or indirectly to persons becoming participants in a pyramid selling scheme,

and may prohibit the issue, dissemination or distribution of any such material unless that material complies with the prescribed requirements as to the matters that shall or shall not be included in the material;

(c) prohibit the promoter or any of the promoters of, or any participant in a pyramid selling scheme from—

(i) supplying any goods or services to a participant in a pyramid selling scheme;

(ii) supplying or providing any training facilities or other services to such a participant or to a prospective participant in a pyramid selling scheme;

(iii) providing any goods or services under a transaction effected by such a participant;

(iv) being a party to any arrangements under which goods or services or training facilities are supplied or provided to participants or proposed participants;

and

- (v) accepting any payment or any undertaking to make a payment in respect of any matter or thing mentioned in the foregoing subparagraphs,

unless such requirements as are prescribed in relation to any such matter or thing are complied with;

- (d) specify rights required to be conferred on every participant in a pyramid selling scheme in relation to that scheme and obligations required to be assumed by every promoter of a pyramid selling scheme in relation to that scheme;
- (e) require that the rights and obligations of every participant in a pyramid selling scheme shall be set out in full in an agreement in writing made between the participants concerned, or as the case may be, between the participant and the promoter or, if more than one, each of the promoters of the pyramid selling scheme;
- (f) limit the obligations or liabilities that may be imposed on or incurred by any participant in a pyramid selling scheme;
- (g) provide that in specified circumstances and on such conditions that may be prescribed where the requirements of this Act or the regulations are not complied with in relation to a pyramid selling scheme any person who makes a payment of a specified kind pursuant to that scheme may sue for and recover the amount of that payment from the person to whom or for whose benefit that payment was made and prescribe the degree to which anything done in contravention of the regulations is to be treated as valid or invalid for the purposes of civil proceedings;
- (h) provide for and prescribe penalties not exceeding in any case two hundred dollars for the breach of any provision of such regulations.

(3) The power to make regulations under this section may be exercised so as to make different provision—

- (a) in relation to different descriptions of pyramid selling schemes;

or

- (b) in relation to pyramid selling schemes that are or were in operation on a day specified in the regulations and pyramid selling schemes that are or were not in operation on that day,

or in relation to different descriptions of participants in pyramid selling schemes.

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