

PYRAMID SALES ACT.

New South Wales



ANNO VICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 33, 1974.

An Act to make provision for prohibiting certain trading schemes; to prohibit payments to or for the benefit of the promoters of or participants in certain trading schemes; and for purposes connected therewith. [Assented to, 19th April, 1974.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Pyramid Sales Act, Short title. 1974".

2.

No. 33, 1974 **2.** (1) This section and section 1 shall commence on the date of assent to this Act.
 Commence-
 ment.

(2) Except as provided in subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Interpreta-
 tion—
 general.** **3.** (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“Commission” means the Industrial Commission of New South Wales;

“prohibited scheme” means a trading scheme in respect of which an order made under section 4 is in force;

“supply” includes—

(a) in relation to goods—supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and

(b) in relation to services—provide, grant or confer;

“trading scheme” means a scheme that includes the following elements—

(a) goods or services, or both, are to be provided by the person promoting the scheme (in this Act referred to as “the promoter”) or, in the case of a scheme promoted by two or more persons acting in concert (in this Act referred to as “the promoters”), are to be provided by one or more of those persons;

(b) the goods or services so provided are to be supplied to or for other persons under transactions effected by persons (other than the promoter or any of the promoters) who participate in the scheme (each of whom is in this Act referred to as a “participant”);

(c)

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- (c) those transactions, or most of them, are to be effected elsewhere than at premises at which the promoter or any of the promoters or the participant effecting the transaction carries on business; and
- (d) the prospect is held out to participants of receiving payments or other benefits in respect of any one or more of the following matters :—
- (i) the introduction of other persons who become participants;
 - (ii) the promotion, transfer or other change of status of participants within the scheme;
 - (iii) the supply of goods to other participants;
 - (iv) the supply of training facilities or other services for other participants;
 - (v) transactions effected by other participants under which goods or services are to be supplied to other persons; or
 - (vi) any other prescribed matters related directly or indirectly to the recruitment of other participants or to any transactions with or in relation to other participants.

(2) For the purposes of the definition of “trading scheme” in subsection (1)—

- (a) a scheme shall be taken to include the element referred to in paragraph (b) of that definition whether the transactions referred to in that

paragraph

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paragraph are to be effected by participants in the capacity of servants or agents of the promoter or of one of the promoters or in any other capacity;

- (b) in determining whether any premises are premises at which a participant in a scheme carries on business, no account shall be taken of transactions effected or to be effected by him under or in the course of—
- (i) that scheme; or
 - (ii) a business commenced at the request or suggestion of the promoter or any of the promoters of the scheme, or for the purpose of or with a view to avoiding the application of any provision of this Act,
- or of any transaction of a prescribed description;
- (c) a prospect of a kind mentioned in paragraph (d) of that definition shall be taken to be held out to a participant—
- (i) whether it is held out so as to confer on him a legally enforceable right or not; and
 - (ii) in so far as it relates to the introduction of new participants, whether it is limited to the introduction of new participants by him or extends to the introduction of new participants by other persons;
- (d) a 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; and
- (e) any reference to the provision of goods or services by a person shall be construed as including a reference to the provision of goods or services under arrangements to which that person is a party.

(3)

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(3) For the purposes of this Act an order is in force No. 33, 1974 if it has come into force and has not been rescinded, and if its operation—

- (a) is not for the time being suspended; or
- (b) is for the time being suspended and any condition attached to the suspension has not been fulfilled.

(4) In this Act a reference to the making or receiving of a payment includes a reference to the giving or receiving, respectively, of any valuable consideration.

(5) A trading scheme that is a prohibited scheme does not cease to be a prohibited scheme by reason only of a variation of the scheme.

4. (1) Where the Minister is of opinion, in relation to a trading scheme, that—

- (a) the profit or gain which may be derived from the operation of the scheme by the promoter of, or any participants in, the scheme is likely to depend wholly or mainly, or to an unreasonable extent, on the continued recruitment of persons as participants in the scheme; or
- (b) it is likely that—
 - (i) the number of participants in the scheme will progressively increase, either without a definite limit or up to such a limit; and
 - (ii) by reason of the number of persons likely to become participants they, or any of them, will be unable to derive profit or gain from their participation by the exercise of reasonable skill and application,

or both, he may, by order published in the Gazette, declare the scheme to be a prohibited scheme.

(2)

Declaration
of certain
schemes as
prohibited
schemes.

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(2) The power conferred by subsection (1) may be exercised in relation to a trading scheme that has been set up or is proposed to be set up.

(3) An order made under subsection (1) shall come into force on and from a date (which shall not be earlier than the date on which the order is published in the Gazette) specified in the order.

(4) The Minister may, by order published in the Gazette—

- (a) rescind an order made under subsection (1); or
- (b) suspend the operation of such an order for a specified period, and may attach conditions to the suspension.

(5) An order made under subsection (1) shall recite the ground or grounds on which it is made, and describe the trading scheme or trading schemes to which it relates with such particularity as will enable the scheme or schemes to be identified with reasonable certainty and, if it does so describe the scheme or schemes, shall not be held to be inoperative by reason only of a misdescription or omission in respect of the identification of the scheme or schemes.

(6) In determining for the purposes of subsection (1) (a) the profit or gain which may be derived from the operation of a trading scheme no regard shall be had to any profit or gain which may accrue as a direct result of the supply of goods or services to or for persons who are not participants in the scheme and who do not buy the goods or avail themselves of the services in order to become participants in the scheme.

(7) Notice of the making of an order under subsection (1) or (4), and of such particulars of the order as the Minister may determine, either generally or in any particular case, shall be published in a newspaper circulating throughout the State, but the failure to publish any such notice shall not affect the validity of an order so made.

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5. (1) Where an order has been made under section 4 No. 33, 1974
 (1) with respect to a trading scheme, the promoter of the scheme may, whether or not the order has come into force, within seven days after the publication of the order in the Gazette or within seven days after the order comes into force, whichever is the later, apply to the Commission for the rescission of the order.

Applica-
 tion to
 Commis-
 sion for
 rescission
 of orders.

(2) An application under subsection (1) may be made only on the ground that—

- (a) an opinion formed by the Minister (being an opinion which it was necessary for him to form for the purpose of making an order under section 4 (1)) was incorrect; or
- (b) the trading scheme to which the order relates has, since the publication of the order, been varied and no such opinion could correctly be formed by the Minister in respect of the scheme as so varied.

(3) An application under subsection (1) shall be by motion on notice filed in the office of the Industrial Registrar.

(4) The Commission may, pending the hearing of an application under subsection (1), make such interlocutory orders as it thinks fit, including an order for the suspension, either unconditionally or subject to such conditions as the Commission may determine, of an order made by the Minister under section 4 (1).

(5) The onus of proving any matters necessary to sustain an application under subsection (1) shall be on the applicant.

(6) On application made under subsection (1) the Commission may, by order—

- (a) rescind the order made by the Minister under section 4 (1) or dismiss the application; and
- (b) make such ancillary orders as it thinks fit.

(7)

No. 33, 1974 (7) The suspension under subsection (4) or the rescission under subsection (6) of an order made by the Minister under section 4 (1) shall not affect the previous operation of the order.

Offences relating to prohibited schemes.

6. (1) A person who, whether himself or by an agent, and whether or not as agent of another person—

(a) offers or grants, or purports to grant, to another person a right (whether or not legally enforceable) to become a participant in a trading scheme that is a prohibited scheme; or

(b) invites or induces or attempts to induce another person to become or to seek to become a participant in a trading scheme that is a prohibited scheme,

is guilty of an offence and liable to a penalty of \$1,000 or imprisonment for three months, or both.

(2) Where a participant in, or a person who proposes or has been invited to become a participant in, a trading scheme that is a prohibited scheme—

(a) makes a payment to or for the benefit of a promoter of or a participant in the scheme; and

(b) has been induced to make that payment by reason that the prospect has been held out to him of receiving payments or other benefits in respect of the recruitment, whether by him or another or others, of other persons into the scheme, or in respect of any matter specified in subparagraphs (ii) to (vi), inclusive, of paragraph (d) of the definition of "trading scheme" in section 3 (1),

a person to whom or for whose benefit that payment or any part of that payment is made is guilty of an offence and liable to a penalty of \$1,000 or imprisonment for three months, or both.

(3)

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(3) A promoter of or a participant in a trading scheme No. 33, 1974 that is a prohibited scheme who by holding out to another person a prospect of receiving payments or other benefits in respect of the recruitment, whether by him or another or others, of other persons into the scheme, or in respect of any matter specified in subparagraphs (ii) to (vi), inclusive, of paragraph (d) of the definition of "trading scheme" in section 3 (1), attempts to induce that person—

- (a) if he is a participant in the scheme, to make a payment to or for the benefit of the promoter of or another participant in the scheme; or
- (b) if he is not a participant in the scheme, to become a participant in the scheme and to make a payment to or for the benefit of the promoter of or another participant in the scheme,

is guilty of an offence and liable to a penalty of \$1,000 or imprisonment for three months, or both.

(4) A promoter of a trading scheme that is a prohibited scheme who delivers or provides, or causes to be delivered or provided, any goods or services under the scheme to a participant in the scheme or to any other person is guilty of an offence and liable to a penalty of \$10,000 or imprisonment for twelve months, or both.

(5) In determining, for the purposes of subsection (1), (2) or (3), whether an inducement or attempt to induce is made by holding out a prospect referred to in any of those subsections, it shall be sufficient if the prospect constitutes or would constitute a substantial part of the inducement.

(6) In this section any 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.

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 Offences
 relating to
 trading
 schemes.

7. (1) Subject to subsection (8), where a participant in, or a person who proposes or has been invited to become a participant in, a trading scheme—

- (a) makes a payment to or for the benefit of a promoter of or a participant in the scheme; and
- (b) has been induced to make that payment by reason that the prospect has been held out to him of receiving payments or other benefits in respect of the recruitment, whether by him or another or others, of other persons into the scheme as participants,

a person to whom or for whose benefit that payment or any part of that payment is made is guilty of an offence and liable to a penalty of \$1,000 or imprisonment for three months, or both.

(2) Subject to subsection (8), a promoter of or a participant in a trading scheme who by holding out to another person a prospect of receiving payments or other benefits in respect of the recruitment, whether by that person or another or others, of other persons into the scheme, attempts to induce that person—

- (a) if he is a participant in the scheme, to make a payment to or for the benefit of the promoter of or another participant in the scheme; or
- (b) if he is not a participant in the scheme, to become a participant in the scheme and to make a payment to or for the benefit of the promoter of or another participant in the scheme,

is guilty of an offence and liable to a penalty of \$1,000 or imprisonment for three months, or both.

(3) In determining, for the purposes of subsection (1) or (2), whether an inducement or attempt to induce is made by holding out a prospect referred to in either of those subsections, it shall be sufficient if the prospect constitutes or would constitute a substantial part of the inducement.

(4)

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(4) In this section any 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. No. 33, 1974

(5) In proceedings for an offence under this section it shall be a defence for the person charged to prove that, by reason of a declaration made by the Minister under section 8, this section does not apply to the trading scheme in relation to which the offence is alleged to have been committed.

(6) Subject to subsection (7), this section does not apply to a trading scheme that is a prohibited scheme.

(7) The declaration of a trading scheme to be a prohibited scheme shall not affect any proceedings for an offence partly or wholly committed before the date on which the declaration comes into force, whether or not the proceedings for the offence are commenced before or after that date.

(8) Subsection (1) or (2) does not apply in respect of a payment that is of or below a prescribed amount, or in respect of a payment that is made or to be made in such circumstances or for such a purpose as may be prescribed.

8. (1) The Minister may, by notice published in the Gazette, declare that section 7 does not apply to a specified trading scheme or to a trading scheme promoted by a specified person. Declaration by
Minister.

(2) A declaration under subsection (1) shall not affect—

- (a) any proceedings for an offence under section 7 commenced before the date of the publication in the Gazette of the declaration, or any conviction for such an offence had before that date, or any appeal against such a conviction or against a conviction arising out of any such proceedings; or

(b)

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(b) any proceedings pursuant to section 11 for the recovery of compensation commenced before that date, or any award of compensation made before that date, or any order made under section 12 before that date, or any appeal against such award or order or against any award arising out of any such proceedings.

(3) The Minister may, by notice published in the Gazette, revoke a declaration made under subsection (1).

(4) The revocation under subsection (3) of a declaration does not affect the previous operation of the declaration or anything done or suffered in accordance with the declaration or a right, privilege or obligation acquired, accrued or incurred under or in connection with the trading scheme to which the declaration related.

Offences by corporations.

9. Where an offence against this Act committed by a corporation is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the corporation, he, as well as the corporation, shall be deemed to have committed that offence and shall be liable to be proceeded against and punished accordingly.

Proceedings.

10. (1) Proceedings for an offence against this Act may—

(a) be taken and prosecuted by any person acting with the authority of the Minister; and

(b) be disposed of summarily before an industrial magistrate appointed under the Industrial Arbitration Act, 1940, or a stipendiary magistrate.

(2) In a prosecution for any such offence, an authority to prosecute, purporting to have been signed by the Minister, shall be evidence of such authority without proof of the Minister's signature.

(3) The provisions of the Industrial Arbitration Act, 1940, and the regulations made under that Act, relating to proceedings before an industrial magistrate and to appeals from

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an industrial magistrate to the Commission shall apply to proceedings before an industrial magistrate or a stipendiary magistrate for offences against this Act as if the proceedings under this Act were proceedings under that Act. No. 33, 1974

(4) In proceedings for an offence against this Act the informant may conduct his case himself, or by his counsel or attorney, or by an agent authorised by him in writing, or by an officer in the public service.

(5) Any such proceedings shall be commenced by information laid at any time within twelve months after the time when the offence is alleged to have been committed.

11. (1) This section is subject to section 12 (4).

Action for damages.

(2) Subject to subsection (3), where a participant in a trading scheme that is a prohibited scheme, or in a trading scheme, makes a payment to or for the benefit of a promoter of, or another participant in, the scheme and the accepting of the payment involves a contravention of section 6 or section 7, the participant making the payment is entitled, in a court of competent jurisdiction, to recover, as a debt, the amount so paid from the promoter, or any of the promoters, or where the payment is made to another participant, from that participant.

(3) Where any payment referred to in subsection (2) or any part of that payment was made in consideration of the supply of goods or services to or for the payer, the amount or value of the payment recoverable under this section shall be reduced by—

- (a) the market value, as at the time of the commencement of the proceedings for the recovery of the amount or value of the payment, of any such goods supplied or, if any such goods have been sold, by the amount received by the payer in respect of the sale; and
- (b) the value of any such services supplied, as at the time when they were supplied.

12.

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Order by
magistrate.

12. (1) Where a person (in this section called "the defendant") is convicted by an industrial or stipendiary magistrate of an offence under section 6 or section 7 in respect of a payment made to or for the benefit of the defendant by another person (in this section called "the payer"), the magistrate may, at the request of the informant of which at least seven days' notice has been given to the defendant, and in addition to any penalty imposed, order the defendant to pay to the payer any amount that would have been recoverable by the payer under section 11 in respect of the payment, and shall assess that amount and specify it in the order.

(2) The magistrate may name in the order, for the purposes of this section, a district court, or a court of petty sessions not being a court of petty sessions in respect of which an order under section 77 (3) of the Courts of Petty Sessions (Civil Claims) Act, 1970, is for the time being in force.

(3) The order shall have the effect of a judgment, obtained at the suit of the payer, for the amount specified in accordance with subsection (1), in the District Court or court of petty sessions named in the order pursuant to subsection (2) or, if no such court is so named, in the District Court at Sydney.

(4) The order shall be a bar to the recovery by the payer, under section 11, of any amount in respect of the payment so made by him, but a refusal or failure by the magistrate to make, or by the informant to request, such an order shall not be such a bar.

Disposal
of goods.

13. (1) Where a trading scheme is declared under section 4 to be a prohibited scheme and a participant in the scheme is in possession, on the relevant date in relation to the scheme, of goods delivered to him under the scheme he may—

- (a) retain the goods;
- (b) return the goods to the promoter or any of the promoters of the scheme; or
- (c) retain some of the goods and return the remainder of the goods to the promoter or any of the promoters of the scheme.

(2)

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(2) Subject to any other Act and to any regulations No. 33, 1974 made thereunder, regulating or prohibiting the disposal of the goods, the right of a participant under subsection (1) to retain goods includes a right to dispose of them by way of sale or otherwise.

(3) A participant who—

- (a) retains goods pursuant to subsection (1) (a) or (c) is liable to pay any amount due from him only in respect of the goods, and the person entitled under the scheme to receive payment of the amount may recover it, as a debt, in a court of competent jurisdiction; or
- (b) returns goods pursuant to subsection (1) (b) or (c) may recover from the promoter or any of the promoters of the scheme any amount paid by him in respect of the goods, as a debt, in a court of competent jurisdiction.

(4) For the purposes of this section the relevant date in relation to a prohibited scheme—

- (a) is the date on which the right to make application under section 5 (1) to the Commission for the rescission of the order relating to the scheme expires; or
- (b) if such an application is made under section 5 (1), is the date (if any) on which the application is dismissed.

14. (1) The Governor may make regulations, not Regulations. inconsistent with this Act, for or with respect to all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, but without limiting the generality of subsection (1), regulations made under subsection (1) may include provision for or with respect to—

- (a) the issue, circulation or distribution of any instrument containing an invitation to persons to become participants in a trading scheme;
- (b)

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- (b) the supplying of goods, services or training facilities to participants in a trading scheme;
- (c) the rights and obligations of participants in a trading scheme including the rights to be conferred on any such participant;
- (d) restrictions on the liabilities to be incurred by participants in a trading scheme;
- (e) the recovery by a participant in a trading scheme of money paid by him; or
- (f) the carrying on of prescribed practices for the purposes of a trading scheme.

(3) Regulations made under subsection (1)—

- (a) may make different provisions in respect of different matters according to time, place or circumstances;
- (b) may be expressed to apply, and where so expressed shall apply, to trading schemes already in existence at the date on which the regulations take effect as well as to trading schemes set up on or after that date;
- (c) may prescribe a penalty not exceeding \$500 or imprisonment for one month, or both, for any contravention of, or failure to comply with, any provision of the regulations;
- (d) may prescribe the extent to which anything done in contravention of the regulations is to be treated as valid or invalid for the purposes of any civil proceedings; and
- (e) may provide for the granting, absolutely or subject to conditions, of exemptions from the regulations.