

PYRAMID SALES SCHEMES.

No. 86 of 1973.

AN ACT to prohibit the practices known as pyramid selling and referral selling, and for incidental and other purposes.

[Assented to 21st December, 1973.]

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

1. This Act may be referred to as the *Pyramid Sales Schemes Act, 1973*. citation.

2. This Act shall come into operation on a date to be fixed by proclamation. Commencement.

Interpreta-
tion.

3. In this Act, unless the contrary intention appears—

“Commissioner” means the Commissioner for Consumer Protection appointed pursuant to the Consumer Protection Act, 1971;

“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.

Pyramid
selling.

4. (1) A person shall not obtain a benefit, or seek to obtain a benefit, from a pyramid selling scheme.

(2) For the purposes of subsection (1) of this section a person shall be taken to obtain a benefit from a pyramid selling scheme if, and only if—

- (a) he is the promoter of, or (if there are more than one) one of the promoters of, or is a participant in, the pyramid selling scheme;
- (b) another person who is a participant in that pyramid selling scheme, or has applied or been invited to become a participant in that pyramid selling scheme, makes any payment to him or for his benefit or to or for the benefit of a participant in that pyramid selling scheme; and
- (c) the person making the payment is induced to make the payment by reason that the prospect is held out to him of receiving payments or other benefits in respect of the introduction of other persons who may become participants in that pyramid selling scheme.

(3) For the purposes of subsection (1) of this section a person shall be taken to seek to obtain a benefit from a pyramid selling scheme if, and only if—

- (a) he is the promoter of, or (if there are more than one) one of the promoters of, or is a participant in, that pyramid selling scheme; and
- (b) he by holding out to any person the prospect of receiving payments or other benefits in respect of the introduction of further persons who may become participants in that pyramid selling scheme, attempts to induce that other person—
 - (i) if he is already a participant in that 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 that pyramid selling scheme; or
 - (ii) if he is not already a participant in that pyramid selling scheme, to become such a participant and to make a payment of a kind mentioned in subparagraph (i).

(4) For the purposes of subsection (2) or subsection (3) of this section—

- (a) in determining whether an inducement or attempt to induce is made by holding out a prospect of a kind mentioned in that subsection, it is sufficient if a prospect of that kind constitutes or would constitute a substantial part of the inducement; and
- (b) 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.

(5) For the purposes of this section, a pyramid selling scheme is 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 section referred to as “the promoter”) or, in the case of a scheme promoted by two or more persons acting in concert (in this section 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 section referred to as a “participant”); and
- (c) 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.

(6) For the purposes of subsection (5) of this section—

- (a) a scheme shall be taken to include the element referred to in paragraph (b) of subsection (5) whether the transactions referred to in that 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) a prospect of a kind mentioned in paragraph (c) of subsection (5) 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;
- (c) a scheme includes any arrangements made in connexion with the carrying on of a business, whether those arrangements are made or recorded wholly or partly in writing or not; and
- (d) 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.

5. (1) The Governor in Council may, by notice in writing published in the *Government Gazette*, declare that the provisions of this Act, other than this section, do not apply or did not at a particular

Power to
declare
certain
schemes not
to be
pyramid
selling
schemes.

time apply to a specified trading scheme or to specified transactions forming part of a trading scheme or to a specified trading scheme promoted by a specified person.

(2) A declaration under subsection (1) of this section may be made subject to such terms and conditions as the Governor in Council determines and specifies in the notice.

(3) The Governor in Council may, by notice in writing published in the *Government Gazette* revoke a declaration made under subsection (1) of this section.

(4) The revocation of a declaration under subsection (3) of this section 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 the declaration.

(5) For the purposes of subsection (1) of this section, "trading scheme" includes any arrangements made in connexion with the carrying on of a business, whether those arrangements are made or recorded wholly or partly in writing or not.

Referral
selling.

6. (1) A person shall not induce another person to acquire goods or services by representing that that other person will, after the contract for the acquisition of the goods or services is made, receive a rebate, commission or other benefit in return for giving that first-mentioned person the names of prospective customers or otherwise assisting that first-mentioned person to supply goods or services to other persons, if receipt of the rebate, commission or other benefit is contingent on an event occurring after that contract is made.

(2) Subsection (1) of this section does not apply to or in relation to the acquisition of goods or services by a person where—

- (a) that person uses those goods or services for the purposes of, or in the course of, trade or business or for a public purpose; or
- (b) that person acquires the goods for the purpose of resale.

7. Where an act or omission of a person is both an offence against this Act and an offence under a law of the Commonwealth and that person is convicted of an offence under the law of the Commonwealth, he is not liable to be convicted of the other of those offences. Double jeopardy.

8. A person who contravenes a provision of this Act is guilty of an offence punishable, on summary conviction by a court constituted by a stipendiary magistrate sitting alone,— Offences.

- (a) in the case of a person not being a body corporate—by a fine not exceeding Ten thousand dollars or by imprisonment for a period not exceeding six months; or
- (b) in the case of a person being a body corporate—by a fine not exceeding Fifty thousand dollars,

but the court convicting the person for the offence shall commit him for sentence before The District Court of Western Australia which may pass sentence for the offence in accordance with this section and may make such order in relation to the convicted person as might be made by a court of summary jurisdiction convicting a person of an offence.

Ancillary
orders.

9. (1) The District Court of Western Australia may, in addition to imposing a penalty under section 8 or granting an injunction under section 10 make such other orders as it thinks fit to redress injury to persons caused by any act or course of conduct to which the proceeding relates or any like act done, or like course of conduct engaged in, by the defendant.

(2) The orders that may be made under subsection (1) of this section include, but are not limited to—

- (a) an order declaring the whole or any part of a contract or of a collateral arrangement relating to a contract to be void and, if the Court thinks fit, to have been void *ab initio* or at all times on and after such date before the date on which the order is made as is specified in the order;
- (b) an order varying a contract or such an arrangement in such manner as is specified in the order and, if the Court thinks fit, declaring the contract or arrangement to have had effect as so varied on and after such date before the date on which the order is made as is so specified;
- (c) an order directing the refund of money or the return of property; and
- (d) an order directing the payment to a person who has suffered loss or damage of the amount of the loss or damage.

Injunctions.

10. (1) The District Court of Western Australia may, on the application of—

- (a) the Attorney General;
- (b) the Commissioner; or
- (c) with the consent of the Attorney General, any other person,

grant an injunction restraining a person from engaging in any course of conduct, or doing any act, that constitutes or would constitute—

- (d) a contravention of a provision of this Act;
- (e) attempting to contravene such a provision;
- (f) aiding, abetting, counselling or procuring a person to contravene such a provision;
- (g) inducing, or attempting to induce, a person, whether by threats, promises or otherwise, to contravene such a provision; or
- (h) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision.

(2) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1) of this section.

(3) The Court may rescind or vary an injunction granted under subsection (1) or subsection (2) of this section.

11. (1) A person who suffers loss or damage by an act of another person that was done in contravention of a provision of this Act may recover the amount of the loss or damage by action against that other person.

Other remedies.

(2) Nothing in this Act shall be taken to limit, restrict or otherwise affect any right or remedy a person would have had if this Act had not been enacted.

12. In proceedings against a person under this Act a finding of any fact by a court made in proceedings under this Act in which that person has been found to have contravened a provision of this Act is *prima facie* evidence of that fact.

Finding in proceedings to be evidence.

Acts done by
servants or
agents of
body
corporate.

13. (1) Where, in a proceeding under this Act in respect of any act or thing done by a body corporate it is necessary to establish the intention of the body corporate it is sufficient to show that a servant or agent of the body corporate by whom the relevant act or thing was done had that intention.

(2) Any act done or course of conduct engaged in on behalf of a body corporate by a director, agent or servant of the body corporate or by any other person at the direction or with the consent or agreement (whether express or implied) of a director, agent or servant of the body corporate shall be deemed, for the purposes of this Act, to have been done or engaged in also by the body corporate.

Offences by
bodies
corporate.

14. Where a person charged with an offence against this Act is a body corporate, a person who is concerned or takes part in the management of the body corporate may be charged with a like offence and where the body corporate is convicted of the offence a person who is so concerned or takes part in the management of the body corporate may be convicted of the like offence unless he proves that—

- (a) the offence committed by the body corporate was committed without his knowledge;
- (b) he was not in a position to influence the conduct of the body corporate in relation to the commission of the offence by it; or
- (c) he, being in such a position, used all due diligence to prevent the commission of the offence by the body corporate.