



## PYRAMID SELLING

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 No. 111 of 1974  
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**AN ACT to prohibit payments to or for the benefit of a promoter of or participant in any pyramid selling scheme on account of the introduction of participants into the scheme and for purposes connected therewith.**

[24 January 1975]

**BE** it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

### PART I PRELIMINARY

**1** This Act may be cited as the *Pyramid Selling Act 1974*.

Short title.

## Interpretation.

**2**—(1) In this Act, unless the contrary intention appears—

- “ authorized officer ” means an authorized officer as defined in the *Consumers Protection Act 1970*;
- “ consumer ”, in relation to a 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;
- “ Council ” means the Consumers Protection Council established under the *Consumers Protection Act 1970*;
- “ 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;
- “ promoter ”, in relation to a trading scheme, means a person who, whether alone or in association with other persons, 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; and
  - (c) 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, that is to say:—
    - (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 training facilities or other services for other participants; or

- (iv) 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;

“ 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;

“ 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 ”, 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 the definition of “ pyramid selling scheme ”, a prospect referred to in paragraph (c) 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.

(4) In the definition of “ pyramid selling scheme ”, 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.

**3** 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, &c., not affected.

Council to be responsible for administration of this Act.

**4—(1)** Subject to the control and directions of the Minister, the Council shall be responsible for the administration of this Act.

(2) For the purposes of this Act, the Council, the secretary and officers of the Council, 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 *Consumers Protection Act 1970* in relation to that Act 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 Council, its secretary and other officers, and 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 6 and 6A of the *Consumers Protection Act 1970* a participant, an intending participant, and a former participant in a pyramid selling scheme shall, in his capacity as such, be deemed to be a consumer.

## PART II

### PYRAMID SELLING SCHEMES

Prohibition on certain payments.

**5—(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 to or participation of other persons who become participants in the pyramid selling scheme,

any person to whom or for whose benefit that payment is wholly or partly 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) 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 for the purpose of the pyramid selling scheme, by holding out any such prospect as is referred to in subsection (1) (b), 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

(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),

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

(4) A payment shall be deemed to be a payment within the meaning and for the purpose of subsection (1) notwithstanding that, in consequence of the payment, sales demonstration equipment or other sales aids is supplied to or for the benefit or by the direction of the person making the payment unless the payment is made with the previously obtained written approval of the Council (being an approval which has not been revoked by the Council), proof of which shall lie on the defendant.

(5) Where a prospect referred to in subsection (1) is held out, it is an inducement for the purposes of that subsection or, as the case may be, an attempt to induce for the purpose of subsection (3), notwithstanding that the prospect did not or would not have constituted the whole of the inducement if the prospect constituted or would have constituted a part of the inducement.

6—(1) A person convicted of an offence contrary to section 5 (1) or (3) shall be liable to a fine of \$2 000 or imprisonment for 6 months or both such fine and imprisonment.

Consequences  
of conviction:  
orders to  
repay money.

(2) On convicting any person of an offence contrary to section 5 (1) the court may, in addition to any penalty it may impose, order that the person convicted pay to the person making the payment in respect of which he stands convicted or to the court on his behalf a sum equal to the whole or any part of that payment and, in default of payment of the sum so ordered to be paid within the time limited in that behalf in the order, that the person convicted be imprisoned for such period as the court thinks fit.

(3) The failure of the court to make an order for the payment of a sum of money as provided by subsection (2) or the serving of a period of imprisonment for the non-payment of such a sum shall not prejudice the right of any person afforded by section 7 to recover any moneys paid by him to become a participant in a pyramid selling scheme or for the purposes of the scheme.

(4) Notwithstanding any other law to the contrary, proceedings in respect of offences against this Act shall be heard and determined by a magistrate sitting alone.

Civil remedies  
to recover  
payments.

**7—**(1) Where after the commencement of this Act a payment referred to in section 5 (1) or for the supply of goods to be sold by way of retail pursuant to the pyramid selling scheme is made the person who made the payment may, subject to this section, sue for and recover as a debt due to him, in any court of competent jurisdiction, the amount of the payment from the person to whom or for whose benefit the payment was made.

(2) Where in consideration or in part consideration of a payment referred to in subsection (1) the person who made the payment was supplied with goods, the right of action provided by subsection (1) 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 a person proceeding as provided by this section who was supplied with goods, the amount that he is entitled to recover pursuant to this section 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 that amount the value of the goods in question shall be taken not to exceed the value (if any) placed on them by the supplier thereof for the purposes of the transaction under which they were supplied to that person. .

(4) An action under this section shall be commenced not later than one year next following the day of the payment in respect of which it is brought.