

No. 56 of 1973

AN ORDINANCE

Relating to Pyramid Selling.

I, THE GOVERNOR-GENERAL of Australia, acting with the advice of the Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910-1972*.

Dated this eighteenth day of December, 1973.

PAUL HASLUCK
Governor-General.

By His Excellency's Command,

GORDON M. BRYANT
Minister of State for the Capital Territory.

PYRAMID SELLING ORDINANCE 1973

1. This Ordinance may be cited as the *Pyramid Selling Ordinance* Short title. 1973.*

2. A reference in this Ordinance to the making of a payment to or for the benefit of a person shall be read 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. Interpretation.

3. (1) A scheme is a trading scheme to which this Ordinance applies if the scheme includes the following elements:— Trading schemes to which Ordinance applies.

(a) goods or services, or both, are to be provided by the promoter of the scheme or, in the case of a scheme promoted by two or more persons acting in concert, by one or more of the promoters of the scheme;

(b) the goods or services so provided are to be supplied to or for other persons under transactions effected by persons (not being promoters of the scheme) who participate in the scheme.

(2) For the purposes of sub-section (1)—

(a) a scheme shall be taken to include the element referred to in paragraph (1)(b) whether the transactions referred to in that paragraph are effected by participants in the capacity of servants or agents of the promoter of the scheme or of one of the promoters of the scheme, as the case may be, or in any other capacity;

* Notified in the *Australian Government Gazette* on 19 December 1973.

- (b) a scheme includes any arrangements made in connexion with the carrying on of a business, whether those arrangements are wholly in writing or wholly oral or partly in writing and partly oral; and
- (c) a 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.

Offences by promoters of trading schemes.

4. (1) A person who is the promoter, or one of the promoters, of a trading scheme to which this Ordinance applies is guilty of an offence if a participant in the scheme or a person who has applied or been invited to become a participant in the scheme makes a prescribed payment to or for the first-mentioned person.

(2) A person who is the promoter, or one of the promoters, of a trading scheme to which this Ordinance applies is guilty of an offence if, by holding out a prescribed inducement—

- (a) he attempts to induce a participant in that trading scheme to make a payment to or for the benefit of that person or another person who is a promoter of, or a participant in, that trading scheme; or
- (b) he attempts to induce a person to become a participant in that trading scheme and to make a payment to or for the benefit of the first-mentioned person or another person who is a promoter of, or a participant in, that trading scheme.

Offences by participants in, or persons acting in accordance with, trading schemes.

5. (1) A person who is a participant (otherwise than as a promoter) in a trading scheme to which this Ordinance applies is guilty of an offence if another participant in the scheme or a person who has applied or been invited to become a participant in the scheme makes a prescribed payment to or for the first-mentioned person.

(2) A person who is a participant (otherwise than as a promoter) in a trading scheme to which this Ordinance applies or who is acting in accordance with such a scheme is guilty of an offence if, by holding out a prescribed inducement—

- (a) he attempts to induce a participant in that trading scheme to make a payment to, or for the benefit of, that person or another person who is the promoter of, or one of the promoters of, or a participant in, the trading scheme; or
- (b) he attempts to induce a person to become a participant in that trading scheme and to make a payment to, or for the benefit of, the first-mentioned person or another person who is the promoter of, or one of the promoters of, or a participant in, that trading scheme.

Prescribed payments and inducements.

6. (1) A payment that a person is induced to make by reason that there is held out to that person the prospect of his receiving payments or other benefits in respect of the introduction (whether by himself or by another person) of other persons who may become participants in a trading scheme is a prescribed payment for the purposes of this Ordinance.

(2) Subject to sub-section (3), a person shall, for the purposes of this Ordinance, be taken to hold out to another person a prescribed inducement if he holds out to that other person the prospect of receiving payments or other benefits in respect of the introduction (whether by the second-mentioned person or by another person) of persons who may become participants in a trading scheme.

(3) A person shall not be taken to have held out a prescribed inducement unless the prospect referred to in sub-section (2) constituted the whole, or a substantial part, of the inducement held out.

7. A person who commits an offence against this Ordinance is punishable, on summary conviction—

Penalties.

- (a) in the case of a corporation—by a fine not exceeding \$10,000; or
- (b) in the case of a person not being a corporation—by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 6 months.

8. Where a corporation is convicted of an offence against this Ordinance, each person who, at the time of the commission of the offence, was a director of the corporation shall be deemed to be guilty of the offence and shall be liable to be convicted and punished as if the offence had been committed by him unless he proves that the offence was committed without his knowledge or that he took all reasonable steps to prevent the commission of the offence.

Liability of directors of body corporate.

9. (1) Where a person has been convicted of an offence against this Ordinance, the Supreme Court, on an application made for the purpose, may make any one or more of the following orders:—

Powers of the Supreme Court.

- (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 (being a 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 (being a date before the date on which the order is made) as is specified in the order;
- (c) an order directing the refund of money or the return of property;
- (d) an order directing the payment to a person who has suffered loss or damage of the amount of the loss or damage.

(2) Subject to section 10, where a person has been convicted of an offence against this Ordinance, an order made under this section, being an order referred to in paragraph (1) (a) or (1) (b), binds each of the parties to the contract or arrangement to which the order relates.

(3) Subject to section 10, where a corporation has been convicted of an offence against this Ordinance, an order referred to in paragraph (1)(c) or (1)(d) may be made—

- (a) against that corporation;
- (b) against a corporation that is, for the purposes of the *Companies Ordinance* 1962-1973, to be deemed to be related to that corporation; and
- (c) against any person who is a director of either of those corporations.

Procedure in
the Supreme
Court.

10. (1) The parties to an application for an order under section 9 are—

- (a) the applicant;
- (b) the person convicted of an offence against this Ordinance; and
- (c) such other persons as are specified in the application.

(2) An application for an order under section 9 shall be served personally or in such other manner as the Court or a Judge directs.

(3) An order referred to in paragraph 9(1)(a) or 9(1)(b) does not bind a person who was not a party to the application for the order.

(4) An order referred to in paragraph 9(1)(c) or 9(1)(d) shall not be made against a person not a party to the application for the order.

(5) An order referred to in paragraph 9(1)(c) or 9(1)(d) may be enforced as if it were a judgment of the Supreme Court.

(6) Where the Supreme Court makes an order under paragraph 9(1)(c) or 9(1)(d) against a person who has been convicted of an offence against this Ordinance, the Court has the same powers in relation to the penalty (if any) imposed on that person in respect of the conviction as the Court would have had on an appeal by that person, under Part XI of the *Court of Petty Sessions Ordinance* 1930-1972, against that penalty.