



# **Trade Practices Amendment Act (No. 1) 2002**

**No. 128, 2002**

**An Act to amend the *Trade Practices Act 1974*, and  
for related purposes**

Note: An electronic version of this Act is available in SCALEplus  
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## **An Act to amend the *Trade Practices Act 1974*, and for related purposes**

[Assented to 11 December 2002]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Trade Practices Amendment Act (No. 1) 2002*.

### **2 Commencement**

This Act commences on the day on which it receives the Royal Assent.

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### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendment of the Trade Practices Act 1974**

### **1 Section 61**

Repeal the section.

### **2 After Division 1 of Part V**

Insert:

## **Division 1AAA—Pyramid selling**

### **65AAA Overview**

This Division sets out the meanings of a *pyramid selling scheme* and other related concepts. A corporation is prohibited from engaging in certain conduct in relation to a pyramid selling scheme (see sections 65AAC and 75AZO).

### **65AAB Definitions**

In this Division:

*new participant*, in a pyramid selling scheme, includes a person who has applied, or been invited, to participate in the scheme.

*participant*, in a pyramid selling scheme, means a person who participates in the scheme.

*participate*, in a pyramid selling scheme, means:

- (a) establish or promote the scheme (whether alone or together with another person); or
- (b) take part in the scheme in any capacity (whether or not as an employee or agent of a person who establishes or promotes the scheme, or otherwise takes part in the scheme).

*participation payment* has the meaning given by paragraph (a) of the definition of *pyramid selling scheme* in subsection 65AAD(1).

*payment*, to a person or received by a person, means:

- (a) the provision of a financial or non-financial benefit to or for the benefit of the person; or
- (b) the provision of a financial or non-financial benefit partly to or for the benefit of the person, and partly to or for the benefit of someone else.

***pyramid selling scheme*** has the meaning given by section 65AAD.

***recruitment payment*** has the meaning given by paragraph (b) of the definition of ***pyramid selling scheme*** in subsection 65AAD(1).

### **65AAC Pyramid selling schemes—participation**

- (1) A corporation must not participate in a pyramid selling scheme.
- (2) A corporation must not induce, or attempt to induce, a person to participate in a pyramid selling scheme.

### **65AAD What is a pyramid selling scheme?**

- (1) In this Act:

***pyramid selling scheme*** means a scheme with both the following characteristics:

- (a) to take part in the scheme, some or all new participants must make a payment (a ***participation payment***) to another participant or participants in the scheme;
  - (b) the participation payments are entirely or substantially induced by the prospect held out to new participants that they will be entitled to a payment (a ***recruitment payment***) in relation to the introduction to the scheme of further new participants.
- (2) A scheme may be a pyramid selling scheme:
  - (a) no matter who holds out to new participants the prospect of entitlement to recruitment payments; and
  - (b) no matter who is to make recruitment payments to new participants; and
  - (c) no matter who is to make introductions to the scheme of further new participants.
- (3) A scheme may be a pyramid selling scheme even if it has any or all of the following characteristics:



- (a) the participation payments may (or must) be made after the new participants begin to take part in the scheme;
- (b) making a participation payment is not the only requirement for taking part in the scheme;
- (c) the holding out of the prospect of entitlement to recruitment payments does not give any new participant a legally enforceable right;
- (d) arrangements for the scheme are not recorded in writing (whether entirely or partly);
- (e) the scheme involves the marketing of goods or services (or both).

### **65AAE Marketing schemes—are they pyramid selling schemes?**

- (1) To decide whether a scheme that involves the marketing of goods or services (or both) is a pyramid selling scheme, a court may have regard to the following matters in working out whether participation payments under the scheme are entirely or substantially induced by the prospect held out to new participants of entitlement to recruitment payments:
  - (a) the extent to which the participation payments bear a reasonable relationship to the value of the goods or services that participants are entitled to be supplied under the scheme (as assessed, if appropriate, by reference to the price of comparable goods or services available elsewhere);
  - (b) the emphasis given in the promotion of the scheme to the entitlement of participants to the supply of goods and services by comparison with the emphasis given to their entitlement to recruitment payments.
- (2) Subsection (1) does not limit the matters to which the court may have regard in working out whether participation payments are entirely or substantially induced by the prospect held out to new participants of entitlement to recruitment payments.

## **3 Section 75AZO**

Repeal the section, substitute:

### **75AZO Pyramid selling**

- (1) A corporation must not participate in a pyramid selling scheme.

Penalty: 10,000 penalty units.

- (2) A corporation must not induce, or attempt to induce, a person to participate in a pyramid selling scheme.

Penalty: 10,000 penalty units.

- (3) Subsections (1) and (2) are offences of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) In this section:

*participate* has the meaning given by section 65AAB.

*pyramid selling scheme* has the meaning given by sections 65AAD and 65AAE.

#### 4 Application

The amendments made by items 1 to 3 apply only to conduct engaged in after the commencement of this Schedule.

#### 5 Paragraphs 85(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) that the contravention in respect of which the proceedings were instituted was caused by a reasonable mistake of fact, including a mistake of fact caused by reasonable reliance on information supplied by another person; or

#### 6 Subsection 85(1A)

Omit “(1)(b)”, substitute “(1)(a)”.

#### 7 Application

The amendments made by items 5 and 6 apply only to a contravention of a provision of Part VC of the *Trade Practices Act 1974* that occurs after the commencement of this Schedule.

#### 8 Subsection 155(6A)

After “20 penalty units”, insert “or imprisonment for 12 months”.

## **9 Application**

The amendment made by item 8 applies only to a contravention of subsection 155(5) or (6) of the *Trade Practices Act 1974* that occurs after the commencement of this Schedule.

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*[Minister's second reading speech made in—  
House of Representatives on 26 September 2002  
Senate on 5 December 2002]*

(207/02)