

ELECTRONIC VERSION

**IMPROVED CONSUMER PROTECTION: THE
FAIR TRADING AMENDMENT BILL 1996**

LEGISLATION BULLETIN NO 10/96

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Publications and Resources Section

BRISBANE
October 1996
ISSN 1324-860X
ISBN 0 7242 7348 4

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DATE OF INTRODUCTION: 4 SEPTEMBER 1996

**PORTFOLIO: ATTORNEY-GENERAL
AND JUSTICE**

HANSARD REFERENCE

SECOND READING: pp 2424 - 2427

1. PURPOSE

The Fair Trading Amendment Bill 1996 proposes to amend the *Fair Trading Act 1989* (Qld) (the Act) by:

- Increasing the powers of the Commissioner for Consumer Affairs (the Commissioner), and other officers assisting the Commissioner, to obtain information, seize goods and request and enforce undertakings;
- Repealing the *Pyramid Selling Schemes (Elimination) Act 1973* and introducing offences in relation to pyramid selling based on Part V of the *Trade Practices Act 1974* (Cth) (the Trade Practices Act);
- Amending the way in which persons can be exempted from the provisions under the Act which relate to door-to-door selling;
- Adding specifications to warning notices to be attached to unsolicited goods and services and unauthorised invoices;
- Amending the way in which the Commissioner and other officers assisting the Commissioner are to be appointed and providing for the delegation of the Commissioner's powers;

- Increasing the penalties for offences (eg for misleading and deceptive conduct) set out within Division 1 of Part 3 of the Act and amending the ambit of liability for certain offences;
- Repealing Division 4 of Part 4 of the Act which relates to the sale of dangerous refrigeration equipment; and
- Repealing Division 6 of Part 3 of the Act which relates to the manufacture of shoes.

2. BACKGROUND TO THE FAIR TRADING AMENDMENT BILL 1996

2.1 THE FAIR TRADING ACT 1989 (QLD)

The *Fair Trading Act 1989* was proclaimed on 9 October 1989 with the stated principal objective of providing for “*an equitable, competitive, informed and safe market place*”.¹ The Act deals with the rights of the consumer who is defined as

*... a person who, in a particular transaction, whether a separate contract or separate transaction within a contract, acquires goods or services or an interest in land as a consumer.*²

As well as consolidating existing consumer protection laws (then prescribed by the *Consumer Affairs Act 1970*, the *Door to Door (Sales) Act 1966*, the *Unordered Goods and Services Act 1973* and the *Mock Auctions Act 1973*), the Act also adopted the offence provisions of the *Trade Practices Act* which relate to unfair practices in trade or commerce. These include provisions relating to false and misleading conduct, misleading advertising, bait advertising, referral selling and harassment or coercion of consumers to make them buy or pay for goods or services.

2.2 THE 1994 REVIEW OF THE FAIR TRADING ACT 1989

On 30 September 1991 the Business Regulation Review Unit (BRRU), (established as a result of the report of the Committee of Review of Business

¹ *Fair Trading Act 1989*, section 3.

² *Fair Trading Act 1989*, section 6(1).

Regulations 1985 (the Savage Report)), commenced a program to undertake a systematic review of all Queensland legislation and regulations affecting business.

Each relevant Government Department was required to conduct its own review of its legislation and regulations. The Department of Consumer Affairs accordingly conducted a review of the *Fair Trading Act 1989* (the 1994 Review). BRRU required that the whole review process “include provision for extensive consultation between Government departments, the BRRU and the business sector”.³ The 1994 review involved input from officers of the Department such as inspectors appointed under that Act and officers from the Trade and Measurement Branch who provided details as to the practical operation and effect of the Act. As required by BRRU,⁴ invitations to comment on the Act were sent to all those who had expressed an interest in being consulted about its review.⁵

As a result of the 1994 review, the following proposals for amendments to the Act have been included in the Bill:

- The increase in the enforcement powers of the Commissioner and inspectors;
- The inclusion of provisions for exemption from requirements relating to door-to-door selling;
- The addition of specifications of warning notices to be attached to unsolicited goods and services and unauthorised entries in directories;
- The increase of penalties for offences under the Act as well as amendments which relate to the ambit of liability for certain offences; and
- The repeal of obsolete provisions relating to the manufacture of shoes and sale of refrigeration equipment.

Apart from the amendments arising out of the 1994 Review, the Bill also contains two other main areas of amendment namely

- Amendments to the law in relation to pyramid selling. (These amendments arose as a consequence of a recent proliferation of complaints to the Office of Consumer Affairs about the operation of alleged pyramid selling schemes in Queensland.)

³ Business Regulation Review Unit, *Management of the Systematic Review of Business Legislation and Regulations in Queensland*, Occasional Paper No 14, Department of Business, Industry and Regional Development, Brisbane, 1992, p 6.

⁴ Business Regulation Review Unit, pp 5-6.

⁵ Fair Trading Amendment Bill 1996 (Qld), Explanatory Notes, p 5.

- Amendments to the ways in which the Commissioner and other officers are appointed. (These amendments arose as a consequence of the anticipated effect of the provisions of the *Public Service Act 1996* (Qld)).

3. POWERS OF THE COMMISSIONER AND INSPECTORS

The Bill introduces new powers for the Commissioner and inspectors in relation to the enforcement of the provisions of the Act. These are:

- The Commissioner's power to ask for written substantiation of claims made about the supply of goods and services. (**Clause 38 - new section 88B**);
- Inspectors' power to seize and return goods (**Clause 40 - new sections 91A to 91G**); and
- The Commissioner's power to accept and enforce undertakings. (**Clause 41 - new sections 91H to 91L**).

The Commissioner's powers in relation to requests for substantiation and undertakings are capable of being delegated to a public service officer pursuant to **new section 19A**.

Section 8 of the *Public Service Act 1996* (Qld) defines **public service officers** as follows:

- (a) a chief executive; or
- (b) a senior executive, other than a chief executive; or
- (c) an officer, other than a senior executive.

3.1 REQUEST FOR SUBSTANTIATION OF CLAIMS

New section 88B (which is similar to section 42 of the *Fair Trading Act 1987* (South Australia)) gives the Commissioner power to ask for written proof to substantiate claims. There is a pre-existing condition to the operation of the section, namely that the Commissioner must believe

... on reasonable grounds, that —

- (a) a person has caused a statement to be published promoting or apparently intended to promote, the supply of goods or services; and
- (b) the statement is false or misleading.

A pre-existing condition that the Commissioner have a reasonable belief of some fact does not exist for the operation of other enforcement powers in the Act such as the power to obtain information (s 90) or the power to enter premises and search (s 89). These sections simply require that the power be exercised pursuant

to the discharge of the functions of the Act. There is, however, the further requirement of a pre-existing condition for the operation of the new power of inspectors to seize goods (see section 3.2) and to the operation of the Commissioner's power to accept undertakings (see section 3.3).

Such a pre-existing condition is also found in Section 155 of the Trade Practices Act which permits the Australian Competition and Consumer Commission (ACCC) to obtain information, documents or evidence in circumstances including those where the ACCC reasonably believes that the person is capable of furnishing information that constitutes or may constitute a contravention of the Act. There have been several challenges to whether this condition has been satisfied, ie whether the Trade Practices Commission (as it was then called) has had the reasonable belief prior to exercising the power under section 155. The Federal Court has held that a

... court, may, in an appropriate case investigate whether the condition has been satisfied and whether the Commission, the Chairman or Deputy Chairman has acted in good faith, but it seems that the grounds upon which the reason to believe is founded need not be disclosed except possibly insofar as there is a basis for the contention that the power has been exercised improperly.⁶

The court held further that a challenge to the existence of such belief required some factual basis. Assuming there was such a factual basis, the legality of the exercise of the Commissioner's powers under **new sections 88B**, and **new Division 1B** and the inspectors' powers under **new Division 1A** could therefore arguably be challenged.

The Full Federal Court has also held that the power must not be exercised dishonestly or in bad faith.⁷

If the pre-existing condition is satisfied, the Commissioner may send a notice to the person who caused the statement to be published. This notice must state a day, at least 14 days after the date the notice is served, by which the person must give "*written proof that supports any representation made in the statement*". (**New sections 88B(2) and (3)**). Failure to respond to the notice without a reasonable excuse is an offence (maximum penalty of 100 penalty units - \$7500) and a warning to this effect must be included in the Commissioner's notice requesting the proof. Unlike the South Australian provision, there is no offence under this section if the Commissioner is not satisfied with the proof, however

⁶ *Melbourne Home of Ford Pty Ltd & Ors v TPC & Anor* (1979) ATPR 40-107, pp 18,100-18,101.

⁷ *Lockhart, J, WA Pines Pty Ltd v Bannerman* (1980) ATPR 40-144, pp 42-289.

further action under the Act may be taken in relation to the false or misleading statement.

New section 88B(5) confirms that the possibility of self incrimination is not a reasonable excuse justifying failure to respond to the notice, however **new section 88B(6)** states that any information so provided cannot be used in criminal proceedings against an individual or a body corporate, unless, in the case of a body corporate, the criminal proceeding is for an offence under the Act. This effect and the use of the privilege against self-incrimination is mirrored in **new sections 90(5) and (6) (Clause 39)** which deal with the Commissioner's power to obtain information. Whether such information could be used by parties involved in a civil proceeding against that person or body corporate will need to be tested.

3.2 POWER OF INSPECTORS TO SEIZE GOODS

This power is contained within the **new Division 1A** to be inserted in Part 5 of the Act by **Clause 40**. Again there is a pre-existing condition to the exercise of the power, namely that the inspector must reasonably believe that goods have been supplied in contravention of the Act, other than section 86 (which covers certain goods or services for which seizure powers are already available under section 87).

If the inspector has such a belief, the inspector may seize enough of the goods either to decide whether the contravention has happened or to be used as evidence in a proceeding under the Act "*about the contravention*". An example of the use of the power was given by the Minister in his Second Reading Speech when he said that

*... an inspector who, by manual inspection, notices that a bicycle does not comply with the mandatory safety standard must, if enforcement action is to be taken, purchase that bicycle as evidence. Some bicycles cost as much as \$2000. The Bill therefore gives inspectors the power, in circumstances where they reasonably believe an offence against the Act has been committed, to seize goods, but only sufficient number to have those goods tested to confirm whether they comply with any mandatory information or safety standard or whether they have the qualities etc. claimed and to secure those goods as evidence.*⁸

⁸ Hon D E Beanland MLA, Fair Trading Amendment Bill 1996, Second Reading Speech, *Queensland Parliamentary Debates*, p 2426.

Mr Beanland also stated that owners rights will be protected and that owners have the right to appeal against the seizure of the goods.⁹ However, the Bill does not specify that the contravention must be by any person or entity in particular, only that goods must “*have been supplied in contravention*”. This may mean that the contravention of the Act does not have to be by the owner of the goods in question before they can be seized, which in turn may mean that goods can be seized from persons who are not the owners of the goods. The Bill does, however, provide a mechanism for the “*person whose goods have been seized*” to challenge the initial seizure in the Magistrates Court (**new section 91C**). A Magistrates Court is not bound by the rules of evidence in conducting such a hearing and can either confirm or set aside the seizure (**new section 91D and 91E**). There is a right to appeal to the District Court on questions of law only (**new section 91F**).

Seized goods must be returned “*to their owner*” no later than 9 months after they have been seized, unless a prosecution has commenced within that time in which case the goods can be kept until the end of that prosecution and any appeal (**new section 91B**). The exception to this is that if the offence for which the goods were seized is proved then the court may order that the seized goods be forfeited to the Crown (**new section 91G**). There is no mechanism within the Bill to challenge this forfeiture order (eg on the grounds of hardship or in the case of an ‘innocent third party’ such as in sections 28 and 29 of the *Crimes (Confiscation) Act 1989*)).

3.3 COMMISSIONER’S POWER TO ACCEPT UNDERTAKINGS

An **undertaking** is defined as

*A promise, especially a promise in the course of legal proceedings by a party or his counsel, which may be enforced by attachment or otherwise in the same manner as an injunction.*¹⁰

Clause 41 inserts **new Division 1B** which contains the power of the Commissioner in relation to undertakings and is based on section 87B of the Trade Practices Act.

New section 91H empowers the Commissioner to accept an undertaking from a person as a condition of exemption from the provisions relating to door-to-door

⁹ Hon D E Beanland MLA, p 2426.

¹⁰ J Burke (ed), *Osborn’s Concise Law Dictionary* (Sixth edition), Sweet and Maxwell, London, 1976, p 335.

selling (see section 4 below). This undertaking does not have to be in writing, though **new section 71A(4)** requires that notice of exemption and any conditions attached to it must be in writing.

New section 91I gives the Commissioner a general power to request and accept written undertakings. There is a pre-existing condition that the Commissioner must reasonably believe that a person has contravened or has been involved in a contravention of a provision of “*this Act or a code of practice*”. Codes of practice are, according to section 88A of the Act, prescribed by regulation “*for fair dealing*” between a particular type of supplier and consumer or by a particular type of person in relation to consumers. No such codes of practice have yet been prescribed by regulation under the Queensland Act.

If so satisfied the Commissioner may, by written notice given to that person, state the contravening conduct and request a written undertaking from that person that they will not continue or repeat that conduct. If the person gives the undertaking and stops the contravening conduct and the Commissioner accepts the undertaking, then the Commissioner is prohibited from “*starting an offence proceeding*” until the Commissioner withdraws the undertaking (which must be withdrawn by written notice).

The Commissioner may withdraw the undertaking in two kinds of circumstances. The first is that if, prior to the undertaking being accepted by the Commissioner, it was contravened in a way unknown to the Commissioner which if the Commissioner had known, it would not have been accepted (**new section 91J(1)(b)**). Secondly, **new section 91J(2)** provides that the Commissioner may also withdraw the undertaking if the Commissioner reasonably believes it is no longer necessary. The person giving the undertaking cannot vary or withdraw the undertaking unless that person has the consent of the Commissioner.

The undertaking is enforced according to the provisions of **new section 91K** and on the pre-existing condition that the Commissioner reasonably believes that a person has contravened a term of the undertaking. If so the Commissioner may apply to the court for any of the following orders:

- (a) *an order directing the person to comply with the term;*
- (b) *an order directing the person to pay to the Crown an amount that is not more than the direct or indirect financial benefit obtained by the person from, and reasonably attributable to, the breach;*
- (c) *an order directing the person to pay compensation to someone else who has suffered loss or damage because of the breach;*
- (d) *an order directing the person to give a security bond to the Crown for a stated period;*
- (e) *any other order the court considers appropriate.*

These provisions, apart from paragraph (d), mirror those in section 87B(4) of the Trade Practices Act. **New section 91K(3)** provides that, if the person contravenes the undertaking during the stated period, any security bond ordered to be provided under paragraph (d) may be forfeited to the Crown, upon application by the Commissioner to the Supreme or District Court.

New Section 91L provides that the Commissioner must keep a register containing a copy of each undertaking given under **new section 91I** which may be inspected and copied by any person upon the payment of a prescribed fee. The Explanatory Notes deal with the issues of the administrative cost of the maintenance of the register and the process by which undertakings are given, concluding that these matters will be “*revenue neutral*” for the Government.¹¹

The Minister explained the philosophy behind enforceable undertakings in the Second Reading Speech of the Bill as follows:

*While enforceable undertakings will be accepted by the commissioner as an alternative to prosecution, this does not mean that Consumer Affairs will no longer prosecute traders who breach the Act. It simply means that Consumer Affairs will have more choices when dealing with such traders. The acceptance of enforceable undertakings in appropriate cases, combined with timely media releases, will give Consumer Affairs the ability to quickly get the message out to both the business community and to consumers that breaches of the Act will not be tolerated.*¹²

4. DOOR-TO-DOOR SELLING

The most significant effect of the amendments in relation to door-to-door selling will be the inclusion of specific sections permitting exemption from the provisions of Division 4 of Part 3 which applies to door-to-door selling. Significantly the power to grant the exemptions is given to the Chief Executive and not to the Commissioner.

Under the existing Act, **door-to-door traders** (persons who go from place to place or who make telephone calls seeking out persons who may be prepared to enter contracts for the supply of goods or services and who subsequently enter into negotiations with those persons with a view to making such contracts) are required to comply with certain requirements in relation to **prescribed contracts**. One of the most important requirements is that the consumer is entitled to rescind the contract within a prescribed cooling-off period of 10 days. Another

¹¹ Fair Trading Amendment Bill 1996, Explanatory Notes, p 4.

¹² Hon D E Beanland MLA, p 2425.

requirement is that such traders cannot call on a person during certain hours unless by appointment. Failure to comply with these provisions constitutes an offence under the Act.

Under the existing Act certain kinds of contracts can be exempted from complying with these provisions by regulation (Sections 58(3) and 60(3)(c)). According to the Explanatory Notes only two exemption applications have ever been received. The Bill repeals these provisions (**Clauses 25 and 27**) and introduces **new section 71A** which permits a dealer or supplier of goods or services to apply in writing to the **Chief Executive**

... for an exemption for all or any of the provisions of this division for a particular contract or a particular type of contract ...

Such an exemption may be granted on conditions including a condition that the dealer/applicant enter into a written undertaking with the Commissioner under **new section 91H** of the Bill (See section 3.3 above).

For example a door-to-door trader may make an application in relation to contracts for the sale of wine that that trader be exempted from the provisions of section 63(c)(ii) and be therefore permitted to call on persons within the prohibited hours of 8.00pm and midnight on a weekday. The exemption could be granted on the condition that the trader is only exempted in relation to those persons who are the owners or operators of licensed establishments open at that time and operating in a certain area. An undertaking that the trader does not call on anyone other than these persons may be required and then if the Commissioner establishes that this undertaking has been breached, the trader may be dealt with by the court (see section 3.3) and any exemption granted to the trader may be revoked by the Chief Executive.

The application for exemption is to be accompanied by the prescribed fee and must state from which provision and for what period exemption is sought (**new section 71A(2)**). The chief executive may only revoke the exemption if the exempted person fails to comply with a condition of the exemption (**new section 71A(8)**). **New section 71A(9)** specifically provides that any of the Chief Executive's powers under this section may be delegated to "*a public service officer employed in the department*" (see section 3).

Just like **new section 91I** which relates to undertakings from the Commissioner, **new section 71B** provides that the chief executive must keep a register of each exemption which may be inspected by members of the public upon payment of a prescribed fee.

The other amendment concerning exemptions is the inclusion of **new section 58A** which exempts the provisions of the Division relating to door-to-door selling from "*a contract to supply goods or services for emergency repairs to a*

person's property damaged by a major incident". "**Major incident**" is defined as an "accident, earthquake, fire, flood, storm or similar event". There is no definition of 'emergency repairs'.

5. WARNING NOTICES

During the 1994 review, inspectors provided information about the proliferation of what Mr Beanland described in the Second Reading Speech as **invoice fraud**.¹³ This is when consumers are asked to pay for advertisements ('entries') in directories relating to the consumer which have not been authorised by the consumer.

The Act currently contains provisions designed to protect consumers from this practice including section 52 which provides that a person shall not assert a right to payment for an unauthorised entry in a directory relating to another person unless certain conditions are complied with. A person is taken to have asserted such a right to payment by making certain kinds of demands as set out in section 52(5) which includes sending an invoice stating an amount of the payment and "*not stating as prominently (or more prominently) that no claim is made to the payment*". Inspectors reported that individuals were getting around this section by using a combination of "fine print" and a generous interpretation of the word "prominently". By **Clause 21**, section 52(5)(e) will be amended to require the specific wording of the warning statement which is set out in **new section 52(5A)** as

"THIS IS A SOLICITATION, NOT AN INVOICE FOR A DEBT INCURRED BY YOU"

and which must be printed at the top of the first page of the document in upper case and in a type not smaller than 18 point. **(18 POINT)**.

Clause 21 of the Bill also amends the definition of **directory** to make it clear that it "*includes a journal, magazine and similar publication*".

¹³ Hon D E Beanland MLA, p 2425.

6. PYRAMID SELLING SCHEMES

6.1 BACKGROUND

Pyramid selling is a type of multi-level selling. Another kind of multi-level selling is referral selling which is an offence under Section 47 of the Act. Whilst pyramid selling schemes vary in their operation, commentators agree that they contain two fundamental elements. These are that:

- participants pay for the right to become a distributor of goods, services or money; and
- participants are rewarded for recruiting new participants/distributors.

The distinction between a legal multi-level selling scheme and an illegal multi-level selling scheme is that in the former there is the genuine sale of goods or services while the essence of the illegal scheme is the sale of distributorships.

Multi-level selling schemes are more likely to be genuine schemes if the products being supplied are genuine products which consumers are likely to buy on a continuing basis. If so, then the participants in the scheme are generally able to generate an income from the sale of the products. Schemes which supply one off products with no repeat purchases are less likely to be genuine multi-level marketing schemes as they rely upon an ever expanding number of participants to generate income.

The main criticism of pyramid selling schemes is that financial success for most participants depends on an ever increasing market for distributorships. Like many others, the Chairman of the Western Australian Consumer Affairs Council describes the inherent difficulties in making money from a pyramid sales scheme with a mathematical exercise

If one person were to start a Pyramid Selling company and introduce another member each week, and each new member recruited introduces a further member each week (necessary to earn reasonably large sums), at the end of twenty weeks there would be slightly over one million members,... By the end of the 24th week, there would be over 16 and a half million members. If the system works even moderately well, saturation is rapidly reached.¹⁴

¹⁴ Chairman of the Western Australia Consumer Affairs Council, *First Annual Report (1972 - 1973)*, p 13 in G Taperell, R Vermeesch & D Harland, *Trade Practices and Consumer Protection*, (Second edition), Butterworths, Sydney, 1978, p 567.

In their book, *Consumer Protection Law*, legal academics John Goldring, Laurence Maher and Jill McKeough listed the major criticisms of pyramid

selling schemes as follows;

- (1) *They are fraudulent because:*
 - (a) *the underlying “get rich quickly and easily” promotional theme depends for plausibility on potential distributors believing in a seemingly unlimited pyramid whereas, in fact, there is an early limit easily ascertainable by mathematical calculation;*
 - (b) *they masquerade as a technique for distributing goods and services whereas, in fact, they are essentially concerned with distributing distributorships;*
 - (c) *they rely on misrepresentation concerning potential return on investment. So that in addition to (a) “the system works” claim, it is also represented that it works so well as to build fortunes.*
- (2) *Frequently distributors operate without exclusive territorial rights vis-a-vis their fellow distributors and particular territories are quickly saturated.*
- (3) *Distributors at the various levels inevitably pay high prices for the goods because there are several levels of distribution and a concomitant price-discounting mechanism. Often these high priced goods are left in the hands of the lowest level distributors facing saturated markets.*
- (4) *At the lowest level merchandising difficulties are intensified because the goods in question are rarely advertised by the higher level distributors.*
- (5) *Distributors are required to sign unconscionable distributorship contracts.*
- (6) *Distributors are encouraged to borrow to finance the purchase of distributorships.*
- (7) *Distributors having made an investment are liable to be pressured into further expenditure to cover sales training courses, storage and accounting requirements. Often such courses are basically aimed at pressuring a distributor to increase his or her investment and to move into a higher distributorship position on the pyramid.¹⁵*

6.2 THE PYRAMID SELLING SCHEMES (ELIMINATION) ACT 1973

Pyramid selling schemes proliferated in the early 1970s when neither existing legislation nor the common law assisted victims.

¹⁵ J Goldring, L Maher & J McKeough, *Consumer Protection Law* (Fourth edition), Federation Press, Sydney, 1993, p 316.

On 22 March 1973 the then Attorney-General of Queensland, the Hon W Knox MLA made a Ministerial Statement warning the community “*of the nefarious activities of a particular pyramid-selling-type organisation known as ‘Dare to be Great’*”.¹⁶ Mr Knox subsequently stated that following this statement “*a meeting of Attorneys-General of Australia agreed ... that each State and the Commonwealth would introduce legislation to prohibit pyramid selling*”.¹⁷ The *Pyramid Selling Schemes (Elimination) Act 1973* was assented to on 20 December 1973.

At or around the same time all Australian jurisdictions passed similar legislation largely inspired by the United Kingdom *Fair Trading Act 1973*, the provisions of which were substantially re-enacted as Section 61 of the Trade Practices Act. Western Australia, New South Wales and South Australia largely adopted the provisions of Section 61. Of the remaining jurisdictions that did not adopt Section 61, Queensland’s legislation is the most detailed.¹⁸

Mr Knox stated in the Second Reading Speech to the Pyramid Selling Schemes (Elimination) Bill 1973 that the Bill would achieve its sole objective of eliminating pyramid selling schemes in Queensland by:

- creating certain offences in the promotion and participation of defined schemes; and
- establishing a **Pyramid Selling Scheme Elimination Committee** (composed of members of the **Corporate Affairs Advisory Committee** constituted pursuant to the *Companies Act 1961 - 1972*)¹⁹ which would, at the request of the Minister, investigate and examine any trading scheme for the purpose of determining whether the scheme was a pyramid selling scheme and, if so, would prohibit by order the promotion and conduct of the scheme in Queensland. The Committee was to have the assistance of the “*Police Department, the Auditor-General’s Department, the Office of the Commissioner for Consumer Affairs and the Office of*

¹⁶ Hon W Knox, Ministerial Statement, *Queensland Parliamentary Debates*, 22 March 1973, p 3142.

¹⁷ Hon W Knox, Pyramid Selling Schemes (Elimination) Bill 1973, Initiation in Committee, *Queensland Parliamentary Debates*, 5 December 1973, p 2300.

¹⁸ Goldring, Maher & McKeough, p 317.

¹⁹ Hon W Knox, Initiation in Committee, p 2288.

the Commissioner for Corporate Affairs to carry out the necessary investigations.”²⁰

It was the establishment of this Committee and its powers of administrative prohibition that is the most significant difference between the Queensland legislation and that adopted by other jurisdictions.

The **Pyramid Selling Schemes Elimination Committee** was obliged to provide an annual report to the Minister with the usual requirements. It seems that no report was ever tabled and, in 1986, the committee was disbanded pursuant to the *Pyramid Selling Schemes (Elimination) Act Amendment Act 1986*. The Committee’s functions were taken over by the Registrar of Commercial Causes under the direction of the then Minister for Justice and Attorney-General. The Committee’s powers, including the power to make prohibition orders were vested in that Minister.

During the debate following the Second Reading Speech by the then Minister for Justice and Attorney General, the Hon N J Harper, of the Bill which disbanded the committee, Mr W K Goss MLA commented

*... - in recent times, nobody has drawn my attention to any particular problems with pyramid selling in Queensland. Hopefully, this blight on the commercial landscape has been disposed of for all time.*²¹

Mr Harper acknowledged these comments by

*... warning that the repeal of the legislation does not mean that the Government will tolerate a proliferation of pyramid selling activity from now on. The legislation contains provisions that ensure that pyramid selling does not rear its ugly head and again get off the ground in Queensland.*²²

No documented details of any prosecution under the *Pyramid Selling Schemes (Elimination) Act 1973*, nor of any prohibition orders made by the Committee or the Minister, were able to be located during the preparation of this Bulletin.

²⁰ Hon W Knox, Pyramid Selling Schemes (Elimination) Bill 1973, Second Reading Speech, *Queensland Parliamentary Debates*, p 2604 - 2605.

²¹ W K Goss MLA, Pyramid Selling Schemes (Elimination) Act Amendment Bill 1986, Second Reading - Resumption of Debate, *Queensland Parliamentary Debates*, 20 August 1986, p 471.

²² Hon N J Harper, Pyramid Selling Schemes (Elimination) Act Amendment Bill 1986, Second Reading Speech, *Queensland Parliamentary Debates*, pp 470 - 471.

6.3 COMPLAINTS REGARDING PYRAMID SELLING

Media reports of alleged pyramid selling schemes mention schemes known as **Joker 88, Pentagono, Golden Sphere and Fortuna Alliance**.

Joker 88, Golden Sphere and Pentagono are all similar in their structure and operation. **Joker 88** emanated from Germany and costs participants an initial outlay of \$150, \$50 of which is paid for a certificate with a list of the names and bank details of seven other people, \$50 of which is deposited in the bank account of the person named at the top of this list and \$50 of which is posted to an entity known as 'KWO-Daten Verwaltung'. That entity then provides the participant with a further three certificates, (which now have the participant's name and bank details listed seventh) which the participant is to sell for \$50 each. Once these three certificates have been sold the participant has recovered his or her initial outlay and as more participants join and more certificates are sold the original participant's name moves up the list so that they are eventually at the top and entitled to receive \$50 from all new participants.

On 6 September 1996 following a search of the premises used by the promoter of **Golden Sphere International Inc**, the Federal Court granted an ex parte injunction against **Golden Sphere International Inc**, Pamela Joy Reynolds and Victor Michael Cottrill restraining those persons and that entity from dealing with any assets (whether off-shore or within Australia) while those persons were in Australia. (Pamela Reynolds has since left Australia so that injunction insofar as it applies to her cannot be enforced).

On 1 October 1996, Justice Keiffel granted an application by the ACCC for an interlocutory injunction in the Federal Court (Queensland Division) restraining **Golden Sphere International Inc**, Pamela Reynolds and Victor Cottrill from promoting the scheme or being knowingly concerned in the promotion of the scheme. The interim injunction referred to above restraining the respondents from dealing with any assets was extended. (See media releases in Appendix C).

There do not appear to be any other reported cases of prosecutions concerning pyramid selling schemes with a Queensland nexus apart from the case of *Trade Practices Commission v My Life Corporation Pty Ltd* which deals with Section 61(2A) of the Trade Practices Act (See 6.3.2 below) and which is summarised in Appendix A to this bulletin.

6.4 MAIN PROVISIONS OF THE BILL RELATING TO PYRAMID SELLING SCHEMES

The new provisions in relation to pyramid selling are set out in **Clause 22** of the Bill and are very similar to sections 4 and 6 of the *Pyramid Selling Schemes*

(*Elimination*) Act 1973 which will be repealed. **Clause 22** largely adopts the provisions of section 61 of the Trade Practices Act. The main difference will be that the new legislation makes it quite clear that the promotion of schemes where only money is transferred (such as **Joker 88** and **Golden Sphere**) is illegal. The other main difference arises not so much from the offences created by these new provisions but from the fact that the provisions are now included in the *Fair Trading Act 1989* which will have a consequential effect in the enforcement area. For example whilst the *Pyramid Selling Schemes (Elimination) Act 1973* provides for administrative prohibitions and exemptions to those prohibitions, the Bill provides that persons involved in **trading schemes** can be restrained from further involvement by injunction. Furthermore the existing powers of entry and search (including the right to copy records) under the *Pyramid Selling Schemes (Elimination) Act 1973* (which also exist under the Act) will be enhanced by powers given to the Commissioner (and persons to whom such powers are delegated) to obtain information, to require written substantiation of claims and to accept and enforce undertakings.

The Bill does **not** actually define the term **pyramid selling scheme** but instead prescribes the elements of what is referred to as a **trading scheme** and then goes on to set out certain offences committed by persons involved with such trading schemes.

6.4.1 Definition Of ‘Trading Scheme’

The definition is based on **Section 61(4)** of the Trade Practices Act as well as **Section 4** of the *Pyramid Selling Schemes (Elimination) Act 1973*.

The **new section 55B(1)** defines ‘trading scheme’ as a scheme which includes the following elements: —

- (a) *goods, services or both goods and services are to be provided by a promoter of the scheme;*
- (b) *the goods or services are to be supplied to or for other persons under transactions arranged or effected by participants in the scheme, not all of whom are promoters of it.*

The definition does not require that the terms of the scheme be in writing (**section 55B(2)(b)**), nor do the promoter and participant have to be in any precise legal relationship (**section 55B(2)(a)**). The terms **benefits**, **payments**, **promoter**, and **payment to or for the benefit of a person** used in this definition are further defined by **new sections 55A, 55B(2) and 55C**.

This definition **does not include** schemes which only involve the provision of money rather than goods or services (eg ‘chain letters’ or the ‘Joker 88’

situation). This situation is specifically covered by **new section 55D(3)**. The definition of “*pyramid selling scheme*” in the *Pyramid Selling Schemes (Elimination) Act 1973* **does not** cover these schemes. Chain letters and, arguably the ‘**Joker 88**’ scheme, are therefore not illegal under the *Pyramid Selling Schemes (Elimination) Act 1973*. (There is some argument that these schemes would be covered under the existing Act because of the definition of ‘*services*’ as including “*rights or privileges and any intangible property*”, however the situation is, at best, unclear and untested.)

The definition of **trading scheme** under the Bill is less prescriptive than that of **pyramid selling scheme** in the *Pyramid Selling Schemes (Elimination) Act 1973* which, for example also requires that most of the transactions for the supply of the goods or services under the scheme should take place or be effected at a place other than a place of business of a promoter of the scheme or of the participant supplying the goods or services. The definition in the *Pyramid Selling Schemes (Elimination) Act 1973* also requires that the goods or services are actually supplied by the participants to others, whereas the Bill will possibly have a wider reach in that it will include situations where the goods or services are supplied “*under transactions arranged or effected*” by participants.

6.4.2 Offences in Relation to Pyramid Selling Schemes.

The Bill creates three kinds of offences all based on the same scenario of a person (either a promoter or a participant), known as a **payee**, of a scheme receiving payments, (or the benefits of payments,) from another person, known as the **payer**. This money is paid by the payer under the inducement (which need only be a ‘substantial’ inducement - **new section 55D(4)**) that the payer will receive either:

- benefits for the introduction of other persons who become members of the scheme; or
- benefits from other persons who may participate in the scheme.

The ‘victim’ of the offence is always a person who is or has applied or been invited to become a participant in a trading scheme or a scheme. Broadly speaking, the offence created by **new section 55D(1)** is when actual payment is made by the participant to the offender while the offence created by **new section 55D(2)** is the representation by which an offender attempts to induce the participant to pay money. The offence created by **new section 55D(3)** is to cover chain letters. Although this offence has been included within **new section 55D**, offences created under **new section 55D(3)** do not have to be **trading schemes**. Unlike the offences created under **new sections 55D(1) and (2)**, this section simply refers to **a scheme**.

In the summaries below the participant/‘victim’ will be referred to as “P” and the offender will be referred to as “O”.

The three kinds of offences are set out in new **sections 55D(1), (2), and (3)**.

New section 55D(1) is based on Section 61(1) of the Trade Practices Act and section 6 (2) of the *Pyramid Selling Schemes (Elimination) Act 1973*. The effect of the section can be summarised as follows:

P pays money to O (either the promoter or another participant) under the inducement that P will receive benefits if P or someone else introduces other persons who become participants in the scheme.

An offence will not be committed until the payment is made and, it is arguable, until these other persons have become participants in the scheme.

New Section 55D(2) is based on Section 61(2) of the Trade Practices Act and section 6(3) of the *Pyramid Selling Schemes (Elimination) Act 1973*. The effect of the section can be summarised as follows:

O (either the promoter, another participant or a person “*otherwise acting in accordance with*” the scheme) attempts to induce P to pay O (and if P is not already a participant also attempts to induce P to become a participant) by representing that P will receive benefits if P introduces other persons to become participants in the scheme.

There can still be an offence committed if no payment is actually made by P to O.

New section 55D(3) is based on section 61(2A) of the Trade Practices Act. The effect of the provision can be summarised as follows:

P is induced by O’s representation that P will receive benefits (defined as payments or benefits) from other persons who may participate in a scheme, to pay either : —

O (either the promoter or a person taking part in the promotion of the scheme); or

someone else who takes part in the promotion of the scheme; or

someone else who participates in the scheme.

Other persons could also include the promoter - see *Trade Practices Commission v My Life Corporation* (Appendix A).

Section 61(2A) of the Trade Practices Act, upon which this last section is based was inserted in the Trade Practices Act in 1986 to cover the situation where schemes only required the transfer of money and not the transfer of goods or

services.²³ The new section is intended to catch the ‘chain letter’ type of pyramid selling scheme.

Section 61(2A) appears to be the only section about which there is any reported cases or prosecution. In the case of *Trade Practices Commission v Parker*, a person pleaded guilty to an offence under section 61(2A) as a person in the Northern Territory who was involved in the promotion of a scheme. His Honour Mr Justice Pincus describes the scheme as follows:

The prosecution’s case is that the defendant was a participant in a scheme of the pyramid type. The general idea appears to have been to induce eight people to pay \$125 each to join an imaginary train. The money would then pass up the pyramid to a man or a woman, at the apex, called the train engineer, who would collect \$1000. The original pyramid would then split and each participant would move up a level.

Ultimately those who came in at the bottom of \$125 would, it was said, hope to receive \$1000; that is, eight times \$125 less their own original subscription of \$125. The whole scheme seems to have been something which could be described as a minor racket. It seems to be common ground that the defendant (although one might have thought from some of the evidence that he was an originator or a partner in the scheme) in fact took only a minor part in it.

He said, and was not challenged on this, that he paid his \$125 and received nothing himself.²⁴

Due to this fact and the cooperation of the defendant with the prosecution in the taking out of injunctions to suppress the scheme as well as other character evidence the charges against Mr Parker were dismissed without conviction.

The other reported case, *Trade Practices Commission v My Life Corporation*²⁵ does not concern a chain letter situation as it involves a scheme where goods and services are allegedly provided. For reasons which are not clear from the case, the prosecution is under section 61(2A).

²³ Trade Practices Act Amendment Bill 1986, Explanatory Notes, p 29.

²⁴ *Trade Practices Commission v Parker* (1990) ATPR 41-055, p 51,712.

²⁵ *Trade Practices Commission v My Life Corporation Pty Ltd*, (Unreported) No QG 169 of 1994 FED no 358/95.

6.4.3 Compensation and Remedies

Under section 20 of the *Pyramid Selling Schemes (Elimination) Act* a participant/victim of a pyramid selling scheme is entitled to “*sue for and recover as a debt due*” a payment made to a person under section 6(2) of that Act (which is where a person is induced to make a payment by reason that they will receive benefits in respect of the introduction of persons who become participants in the scheme). A civil remedy is also available under section 99 of the *Fair Trading Act 1989* which will permit a wider range of compensation in that it allows not only the possible recovery of any payment made but compensation from a person contravening the sections dealing with **trading schemes** “*for any loss or damage suffered*” as a result of such contravention.

A ‘victim’ need not, however, necessarily commence such a civil action to recover losses. Section 19 of the *Pyramid Selling Schemes (Elimination) Act 1973* permits a court, upon conviction of a person of an offence under that Act to order,

... in addition to any penalty it may impose, the offender to pay to any participant in the pyramid selling scheme concerned or to the court on behalf of such a participant moneys paid by that participant to become a participant in the scheme or for the purposes of the scheme, and, in default of payment of those moneys within the time limited by the order, that the offender be imprisoned for such period as the court thinks fit.

Sections 100(2) and 100(2A) of the *Fair Trading Act 1989* are similar. In the course of proceedings in which a person is found guilty of an offence against the Act, a person who has suffered, or is likely to suffer loss or damage because of the contravention, may apply for orders for the purposes of compensation or “*preventing or reducing the extent of the loss or damage*” suffered.

6.5 COMMENTARY ON AMENDMENTS RELATING TO PYRAMID SELLING

According to the Explanatory Notes the amendments contained within the Bill are designed to bring Queensland into line with other jurisdictions, ensure that pure chain letters are prohibited by Queensland legislation for the first time and provide the Office of Consumer Affairs with the “*more comprehensive enforcement mechanisms and options*” set out in Part 5 of the Act.²⁶

²⁶ Fair Trading Amendment Bill 1996, Explanatory Notes, p 2.

The last point highlights the major difference with the *Pyramid Selling Schemes (Elimination) Act 1973*. Under the *Pyramid Selling Schemes (Elimination) Act 1973* people could be prosecuted for exactly the same types of offences (apart from the chain letter situation) as they can be under the Bill, however such prosecutions would possibly be frustrated by the lack of powers such as the power to obtain information and seek injunctions (though these powers were always available, under the Trade Practices Act, in the case of corporations.)

In 1984, a report called *The Role of Prosecution in Consumer Protection* was produced by what was then called the Australian Federation of Consumer Organisations Inc and concluded that “*the prosecutorial capacity of all Australian consumer affairs agencies is a joke, but only unscrupulous white-collar criminals are enjoying the laugh*”.²⁷ The report included a tabular summary of convictions relating to hire purchase, door-to-door sales and pyramid selling (attached to this bulletin as Appendix B). The report considered ways to redress this situation including increasing maximum penalties and suggesting that consumer affairs officers need to adopt more proactive strategies if they are to achieve adequate deterrence through prosecution. The report also identified the need for more consumer protection law and an increase in resources for consumer protection authorities.

There are, however, perhaps more fundamental difficulties in eliminating illegal multi-level selling schemes, the most obvious being the jurisdictional problem. Many of these schemes are promoted by foreign entities, so that the only offenders within the scope of a Queensland Act will be participants. In most cases these ‘offenders’ are the very victims the Act is designed to protect.

The anomaly of the offenders also being victims highlights another problem which was pointed out by Hon W Knox MLA in the initial debate of the *Pyramid Selling Schemes (Elimination) Act 1973*, namely

*The basic philosophy here is that people who have been bitten by the pyramid-selling bug are themselves potential pyramid sellers, and they are reluctant to give information or have their name used in order to charge the original promoter of the pyramid selling scheme with fraud.*²⁸

²⁷ J Braithwaite, S Vale & B Fisse, *The Role of Prosecution in Consumer Protection*, Australian Federation of Consumer Organisations Inc, 1984, p 3.

²⁸ Hon W Knox, Initiation in Committee, p 2301.

7. AMENDMENTS RELATING TO OFFENCES UNDER THE ACT

7.1 INCREASE IN PENALTIES

Clauses 9 to 21 of the Bill increase the current maximum penalties for offences set out in Part 3 of the Act from 400 penalty units to 540 penalty units. A penalty unit is currently equal to \$75²⁹ so the maximum penalty for these offences has increased from \$30,000 to \$40,500. The maximum penalties have all been increased so as to be consistent with those imposed for the same offences under the Trade Practices Act.

7.2 ATTEMPTS AND PARTIES TO OFFENCES

New section 92B (clause 43) now makes it an offence to attempt to commit certain offences which include some of the offences from Part 3 of the Act.

New sections 92(2) to (6) (Clause 42) clarify the position in relation to the prosecution of parties to an offence for example by providing that a conviction of conspiring to commit the offence has the same consequences in all respects as a conviction of committing the offence (**new section 92(4)**). **New sections 92(2) to (6)** adopt the language of Section 7 of the Criminal Code (*Criminal Code Act 1899* (Qld)).

7.3 DEFENCE FOR DIRECTORS OF BODY CORPORATE

New Section 96(2) (Clause 45) deals with the situation where a Body Corporate has committed an offence. Section 96 of the Act states that, if so, the **directors** of the Body Corporate are also taken to have committed the offence and are liable to be punished accordingly. If the directors can prove that the offence is one for which the Body Corporate “*tended to be incriminated*” because of information provided by way of **new section 88B** or section 90 then **new section 96(2)** provides that the directors will not be vicariously liable according to section 96. **New section 88B** and section 90 (as amended) deal with the Commissioner’s power to require information or records or written proof to substantiate claims and provide that a person cannot refuse to provide the information on the grounds that such information might incriminate that person (see section 3.1 above).

²⁹ *Penalties and Sentences Act 1992* (Qld), Section 5.

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APPENDIX A

In *Trade Practices Commission v My Life Corporation*³⁰ Mr Justice Cooper of the Queensland division of the Federal Court considered an application by My Life Corporation Pty Ltd (My Life) to have struck out a part of a Statement of Claim filed against it which alleged a contravention of section 61(2A). The allegations were that

- My Life was the promoter of a scheme known as the ‘My Life Surviving 2000 Business Plan’ (‘the S Plan’).
- My Life produced and promoted ‘a food supplement’ called ‘Biogen’.
- My Life conducted seminars and published booklets promoting membership of the S Plan.

Membership of the S Plan involved the payment of six, monthly, but then continuing, payments of \$20 for which the member received each month six information booklets and, at the end of each six month period, a 200g jar of Biogen. My Life would maintain an account for each participant to credit payments made by the member and debit purchases for Biogen. The member would also receive credits from My Life for money paid by other people who had been recruited by the member to join the S Plan. There were also incentive income payments made by My Life to a participant if income from recruited members reached certain levels and a participant had the ability to purchase further ‘positions’ in the scheme of recruited members. The Statement of Claim also dealt with My Life’s promotion of a scheme known as the ‘International Charity Program’ which members were induced to join by similar information booklets and seminars and which involved similar payments.

My Life argued that there had been no contravention of section 61(2A) because it was the prospect of the promoter making incentive payments and crediting the member’s account which induced members to pay money. My Life argued that paragraph (b) of Section 61(2A) (which is the same as paragraph (b) of **new section 55D(3)** of the Bill) requires that the payment which constitutes the inducement must be the prospect of receiving payments “*from other persons who may participate in the scheme*” [emphasis added] and not, as in this case, from the promoter.

³⁰ *Trade Practices Commission v My Life Corporation Pty Ltd*, No. QG 169 of 1994 FED no 358/95.

The Trade Practices Commission (TPC) argued that the use of My Life as “*a conduit for the payments cannot take the arrangement outside the ambit of the section if the payment in fact comes from another participant as part of the scheme.*” The TPC pleaded that the inducement was payment by other persons as participants in the scheme through the respondent or by the respondent itself as a participant in the scheme. The TPC argued that the section includes cases “*where a corporation adopts two roles in relation to a particular scheme; that of promoter and also that of participant*”.³¹

For the purposes of this application, His Honour only had to decide whether that part of the Statement of Claim should be struck out which merely required him to decide whether the TPC’s case was “*so obviously untenable that it cannot possibly succeed*”. His Honour held that the TPC’s construction of the section “*is clearly not untenable*”.

³¹ TPC v My Life Corporation Pty Ltd, pp 9 - 10.

APPENDIX B

Source: Table 12 from *The Role of Prosecution in Consumer Protection*, Australian Federation of Consumer Inc, August 1984, p 54.

Convictions Relating to Hire Purchase, Door-to-Door Sales and Pyramid Selling

YEAR	FED	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
1973/74	-	-	-	0	7	-	0	0	-
74/75	0	-	0	0	5	-	0	0	-
75/76	0		0	1	6	-	0	0	-
76/77	0	3	0	1	4	0	0	0	-
77/78	0	10	0	1	5	0	0	0	-
78/79	0	6	3	0	0	0	0	0	-
79/80	0	6	4	0	0	1	0	0	0
80/81	0	7	0	0	0	5	0	0	0
81/82	0	5	0	0	1	10	0	0	0
82/83	0	6	0	0	2	3	0	0	0

- A dash means data not available

APPENDIX C

This appendix contains the following articles:

- Whittaker N, 'Chain letter support rally', *Sunday Mail*, 24 March 1996, p 24.
- Marx A, 'Get-rich chain game spreads like wildfire', *Courier Mail*, 13 April 1996, p 9.
- Maccallum J, 'Friends may ask you to be involved', *Sunday Mail*, 4 August 1996, p 15.
- Hellaby D & MacCallum J, 'Beware of the pyramid trap', *Sunday Mail*, 4 August 1996, p 15.
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- Marx A, 'State laws blitz get-rich sharks', *Courier Mail*, 5 September 1996, p 7.
- Marx A, 'Selling scam closed down after Gold Coast raids', *Courier Mail*, 13 September 1996, p 5.
- Australian Competition & Consumer Commission, 'Pyramid selling schemes targeted by joint Qld/Federal action', Media Release, 12 September 1996.

Title **Selling scam closed down after Gold Coast raids.**

Author **Marx, Anthony**

Source *Courier Mail*

Date Issue **13/09/96**

Pages **5**

STATE and federal investigators have shut down the popular Golden Sphere International pyramid selling scam after a series of raids on the Gold Coast.

Documents, including computer discs, were seized by Consumer Affairs officials late last week from the homes and offices of the alleged organisers.

Assets worth "a substantial sum" have been frozen and an injunction put in place to stop further promotion of the game.

The crackdown comes after more than six months of joint investigation by Queensland police, the Office of Consumer Affairs and the Australian Competition and Consumer Commission.

It is the most significant action taken against the growing proliferation of the illegal get-rich-quick schemes.

Like many of the games, Golden Sphere required players to pay \$150 and then sell three more tickets to friends and co-workers.

The promoters claimed that when the early players reached the top of a selling pyramid they would receive more than \$100,000.

But like all pyramid games, the internal contradictions of a growing pool of investors eventually force the scheme to

collapse, leaving most of the late-joining players with nothing to show for their money.

Officials say the move against Golden Sphere is part of a larger, continuing probe of pyramid selling and they expect charges to be laid.

Under current Queensland law, promoters can be imprisoned for up to one year and fined up to \$150,000.

Participants also face prosecution from similar federal laws and can be forced to pay back money to players.

Queensland Commissioner for Consumer Affairs Neil Lawson said his office started investigating Golden Sphere in February.

He declined to estimate how many Queenslanders were playing Golden Sphere or reveal the worth of the frozen assets.

But the pyramid problem is so severe that Mr Lawson said he had created a special five-person investigative unit just to probe the growing number of games flourishing in south-east Queensland.

Many of the best-known schemes, such as Joker 88 and Pentagono, are based overseas and are beyond the reach of Australian justice.

Golden Sphere was reputed to have been operating from Vanuatu but investigators soon learned about the alleged role of Gold Coast operators.

Mr Lawson said one of the alleged organisers had agreed to be interviewed about the matter and he also hoped to speak to the other.

At a hearing scheduled for October 1 in the Brisbane Federal Court, the ACCC will seek a permanent injunction against Golden Sphere, and officials also expect to file a class action soon.

Title State laws blitz get-rich sharks.

Author Marx, Anthony

Source Courier Mail (59)

Date Issue 05/09/96

Pages 7

POPULAR chain-letter schemes would be prohibited for the first time in Queensland under fair trading legislation introduced in State Parliament yesterday.

Penalties for "pyramid" investment scams would also be significantly increased and business owners would enjoy new protection from fraudulent invoices.

Other provisions would require producers and sellers of "miracle" medical cures to prove their products work if consumers request verification.

Attorney-General Denver Beanland said the changes, which amend the 1989 Fair Trading Act, would help toughen the state's "principal consumer protection legislation" and bring it into line with laws around the country.

"The Act protects consumers' and honest traders' interests by imposing a statutory code of conduct of fair and ethical behaviour for traders across all industries and businesses," Mr Beanland said. Opposition consumer affairs spokeswoman Judy Spence welcomed the changes and said they were "long overdue."

State officials said chain letters and pyramid games such as Joker 88, Pentagono and Golden Sphere generated

more complaints than any other consumer issue.

The new legislation repeals Queensland's antiquated laws against pyramid selling and replaces them with tougher provisions modelled on the federal Trade Practices Act.

Maximum fines, which have been boosted by one-third, can now cost individuals \$40,000 and corporations \$200,000.

"Both my office and Consumer Affairs have been deluged in recent months with complaints and queries about a number of pyramid-selling schemes," Mr Beanland said.

"These schemes are illegal because they tend to enrich a few - the promoters and the early participants - at the expense of many."

Similarly, the amendments attempt to help business owners by halting the wide spread problems of invoice fraud and bogus billing.

Demanding payment for unsolicited advertising in directories, journals and magazines will now be forbidden under the new law.

It will also be an offence to send a solicitation disguised as an invoice which does not contain a warning in minimum 18-point bold type saying

"This is a solicitation, not an invoice for a debt incurred by you".Previously, scam operators used a legal loop hole to avoid prosecution by saying in small type "no claim made this order".

This change should help small-business owners such as Colin Roy, a self-employed painter and decorator based in Aspley, northern Brisbane.

Mr Roy said he routinely received two or three solicitations a week to buy advertising in obscure trade journals or listings in industry directories.

He has also been sent at least four bogus invoices demanding payment for ads or services he never approved.

Title United States smashes pyramid con.

Author Hellaby, David

Source SUNDAY MAIL (151)

Date Issue 25/08/96

Pages 35

THE pyramid investment scam Fortuna Alliance has been smashed by United States federal agents.

The scam, widespread in Queensland, is believed to have raised \$11 million from 25,000 investors in 64 countries.

Queensland Consumer Affairs Commissioner Neil Lawson said his office had been notified of the raid by the US Federal Trade Commission.

He warned people not to become obsessive about trying to protect the pyramid schemes they had invested in because they were being exploited by the promoters, who stood to gain the most.

Arrest warrants had been issued against Fortuna's principals, including Augustine Delgado, who was believed to have fled to Belize in Central America with his wife.

Federal agents are tracking millions of dollars alleged to have been transferred to banks in Belize and Antigua.

Mr Lawson renewed his recent warnings about pyramid schemes such as Fortuna, Joker 88, Pentagano and Golden Sphere.

He said they relied on new investors being sucked in to generate returns for those at the top.

"These schemes develop a cult mentality with the promoters and their followers convincing themselves they've discovered some new money-making secret.

"Some participants become obsessed and are exploited by scheme promoters.

"Fortuna supporters in the US organised letter-writing campaigns and lobbied to try and protect their scheme, just like promoters of similar schemes in Queensland have been doing."

Meanwhile, Consumer Affairs has warned that some shonky businesses were now using private mail centres and serviced offices to give the appearance of greater legitimacy.

"We have always warned consumers about responding to advertisements that only give a PO Box number.

"But now the public needs to understand that an address might be described as Suite 123 in a well known street, but be nothing more than a mail box rented from a privately run mail collection service.". Mr Lawson said many honest businesses also used these services but consumers should always check the credentials of the firms with which they dealt.

Title Friends may ask you to be involved.

Author MCCALLUM, JAN

Source SUNDAY MAIL (151)

Date Issue 04/08/96

Pages 15

HOW it works: People are usually introduced to pyramid schemes by friends or colleagues.

To get in, you buy a \$50 certificate from someone else already in Pentagono and send \$50 to Future Strategies in Italy.

The certificate you have bought lists the names of seven people and the name at the top has a bank account number and codes.

You send another \$50 to that person's bank account and your bank deposit slip to Future Strategies, to prove you have paid.

Now you have spent \$150.

Future Strategies says it will send you three certificates with your name in seventh place.

The names on the first certificate you bought will move up a notch.

You could get your \$150 back at this point by selling your three certificates and in fact you need to sell your certificates to bring more people into the scheme.

As more people enter, a pyramid is built and you would eventually reach the top with 2187 certificates and \$50 from each one into your bank account, or \$109,350.

The promoters say they track the payments and cancel the certificates of people who do not send their \$50 to the person at the top of their list.

Golden Sphere claims a sophisticated computer program to ensure its success.

However, according to consumer authorities, the schemes eventually run out of people to draw in.

Title Beware of the pyramid trap.

Author Hellaby, David

MCCALLUM, JAN

Source SUNDAY MAIL (151)

Date Issue 04/08/96

Pages 15

CHAIN letters promising riches through pyramid-style investment schemes are sweeping the country, prompting warnings and threats of prosecution from consumer authorities.

They warn the schemes are illegal in Australia and unlikely to deliver on their promises.

Queensland Consumer Affairs Commissioner Neil Lawson said the commission had been warning people against the schemes for several months and was now looking at possible prosecutions.

It is illegal to promote or participate in the schemes.

"We have had a number of complaints about them, but we also have had a number of calls from people telling us to leave schemes like Joker 88 and Pentagono alone," Mr Lawson said.

"They want us to keep our hands off because they think the schemes are a way of keeping the economy going."

Public meetings have called for Joker 88 to be made legal, but according to Consumer Affairs, if every one of the 1200 people at the meetings received the \$109,000 they were promised, more than 2.5 million people would have to be recruited.

"It stands to reason that the scheme will not support the tens of thousands of people believed to be involved throughout Australia." Pentagono is a chain letter from Italy which promises a reward of \$109,000 for an initial outlay of \$150.

The Commonwealth Office of Fair Trading last week warned consumers to beware of Pentagono.

It said the only people likely to make money were the Italian promoters and a few people who got in early.

Pentagono is similar to Joker 88 from Germany and Golden Sphere, which apparently comes from Vanuatu, and is circulating country Victoria.

In April, Queensland Attorney-General Denver Beanland said the schemes were illegal under both the Federal Trade Practices Act and the Queensland Pyramid Selling Schemes (Elimination) Act.

Under the federal act, corporations faced fines of up to \$100,000 and individuals could be fined \$20,000.

The state act carried a possible six month jail sentence or a fine of up to \$30,000.

"Hundred, perhaps thousands of Queenslanders will get their fingers badly burned.

It's not a matter of 'if', it's a matter of 'when'," Mr Beanland said.

In NSW one Pentagono hopeful claimed that it had the approval of the NSW Department of Fair Trading, but the department denied this and said it had warned consumers against such schemes.

The promoters of the system, Future Strategies SRL, give an address in Modena, Italy, and state the system is legal.

Pentagono operates by selling certificates to an ever-expanding group of people.

Contacted by phone in Modena last week, a Pentagono spokesman, Mr Luca Pronti, said the scheme began in January, 1995, and was introduced to Australia in February.

He said it had 20,000 participants in Italy and 3000 in Australia, where it was available from a contact on the Gold Coast.

Mr Pronti agreed there would be a point where no more people could be recruited and that some people could make losses.

But he said Pentagono had not promised that everyone would make money.

Title **Get-rich chain game spreads like wildfire.**

Author **Marx, Anthony**

Source **Courier Mail (59)**

Date Issue **13/04/96**

Pages **9**

A GET-rich-quick scheme known as Joker 88 has taken Queensland by storm, tempting thousands with the lure of easy cash.

State consumer affairs officials say the pyramid-style game is the best known of an increasing number of illegal scams and chain letters that have surged in popularity over the past year.

Consumer officials have warned of the dangers of losing money in "multi-level marketing" plans, and have threatened to fine organisers.

"Hundreds, perhaps thousands of Queenslanders will get their fingers badly burnt," Attorney-General Denver Beanland said.

"It's clearly not worth the gamble.

The odds are stacked against the participants from the start."

Despite these warnings, an estimated 20,000 people are believed to be playing the game in Queensland, mainly in Brisbane, the Gold Coast and down to the New South Wales border.

By putting down \$150, players start at the bottom of a seven-level pyramid that will allegedly begin reaping them \$109,350 in just eight months.

Here's how it works: The player outlays \$50 for a certificate with the names and bank accounts of seven other people.

Another \$50 is posted to the German organisers, KWO-Daten ver waltung.

The last \$50 is deposited in the bank account of the top person on the list.

KWO then sends the player three more certificates to sell for \$50 each, thereby recouping the initial outlay.

As more certificates are sold, the name moves up the list, and more money supposedly arrives.

Nationwide, about 200,000 Australians are thought to be involved in Joker 88, which was launched in Germany in 1988 and has spread throughout the world.

Since the game has been in Australia for only four years, recent players are now starting to see returns of up to \$20,000.

Many players want state and federal authorities to stand aside.

In a highly unusual move, hundreds of supporters and players have joined forces to seek a law change or exemption.

Last month more than 1200 Joker 88 supporters rallied in Tweed Heads,

urging the Federal Government to treat the game like a lottery or any other punt.

Players have formed groups in Queensland and New South Wales and are lobbying government officials all the way up to Prime Minister John Howard. A meeting is scheduled for 2pm today at the Seagulls Rugby League Football Club in Tweed Heads.

Organisers expect up to 800 people will sign petitions. Organiser Lyndell Russell, a Tweed Heads receptionist, said: "It's not a pyramid. It's a system, a cycle and a stepping thing.

You go up a ladder more than a pyramid and everybody who participates in the system receives money out of the system."

Shirley Donaldson, organiser of a Joker 88 group in Tin Can Bay, accused the State Government of "blatant intimidation" in trying to stop the game.

"Joker 88 would go a long way to solving our social and economical problems," she said. "With a little more positive thinking and support from our elected governments, the whole economy could be turned around through Joker 88."

Ms Russell and Ms Donaldson concede they are new comers and have made no money yet. But three other players say they made about \$11,000 each within 18 months.

The three, who asked not to be named, said up to \$1500 a week had been deposited in their bank accounts; but recent "bad publicity" had slowed the flow, and they did not expect to make the \$109,350.

All said they treated the game like a light-hearted punt, and did not want to be treated like criminals - a wide spread sentiment among the faithful.

"It should be decriminalised," Ms Russell said.

"We all have the right to spend our hard-earnt \$150 how we want to and where we want to."

Despite the high hopes, there appears little prospect that Queensland will scrap a state law banning pyramid games, or that the Federal Government will amend the Trade Practices Act to permit the scheme.

Under the state law, participants can be fined up to \$30,000 or jailed for six months.

Promoters face penalties of \$75,000 and a year's jail. The federal Act mandates fines of \$40,000 for individuals and \$200,000 for companies. If the penalties are not enough to deter punters, then the numbers should do the trick.

As with all pyramid games, the internal contradictions and constant need for a greater number of players and money will ultimately force the whole scheme to collapse.

Some players at the top of the chain may be making money now; but late comers at the bottom stand a good chance of losing out, Consumer Affairs officials say. Moreover, they are disclosing their bank accounts and addresses to strangers: which Mr Beanland called "a recipe for disaster".

Despite the legal and logical hurdles, the true believers remain unswayed.

"Scams have come and gone, but this is not a scam," Ms Russell said.

"It has a proven track record and safety net, and it has worked all over the world.".

Title Chain letter support rally.

Author WHITTAKER, NOEL

Source SUNDAY MAIL (151)

Date Issue 24/03/96

Pages 24

MORE than 500 people took part in a rally at the Gold Coast yesterday to discuss methods of lobbying state and federal governments to "decriminalise" the chain letter scheme Joker 88.

Paul Murphy and Brian Davis of the New South Wales Department of Fair Trading attended as observers to ensure that no promotion of the scheme took place.

They carried a two-page prepared statement that included the words: "Joker 88 is an illegal pyramid selling scheme under the Fair Trading Act 1987...anybody who promotes or participates is liable for a fine of \$20,000...those at the top reap money from those at the bottom...sooner or later those at the bottom must lose their money.".

The department had gone to great lengths to convey the legal position to the organisers, who consequently took care to ensure the rally kept to the topic of lobbying.

At one stage, Mr Murphy took the microphone to confirm that the scheme was illegal.

He pointed out that he was there as an observer only, but was jeered by a section of the crowd when he refused to debate why the government had deemed Joker to be illegal.

The rally took on the flavour of an old-fashioned revival meeting with speakers using expressions like "help your state through helping your mate", "all we want is a fair go" and "we are sick of being controlled".

The debate had swung from the merits of Joker 88 to the rights of Australians to have a \$150 punt.

Few were concerned about the expectations that would be raised and dashed, and the fate of those who could not afford to lose \$150.

Title **Selling scam closed down after Gold Coast raids.**

Author **Marx, Anthony**

Source **Courier Mail**

Date Issue **13/09/96**

Pages **5**

STATE and federal investigators have shut down the popular Golden Sphere International pyramid selling scam after a series of raids on the Gold Coast.

Documents, including computer discs, were seized by Consumer Affairs officials late last week from the homes and offices of the alleged organisers.

Assets worth "a substantial sum" have been frozen and an injunction put in place to stop further promotion of the game.

The crackdown comes after more than six months of joint investigation by Queensland police, the Office of Consumer Affairs and the Australian Competition and Consumer Commission.

It is the most significant action taken against the growing proliferation of the illegal get-rich-quick schemes.

Like many of the games, Golden Sphere required players to pay \$150 and then sell three more tickets to friends and co-workers.

The promoters claimed that when the early players reached the top of a selling pyramid they would receive more than \$100,000.

But like all pyramid games, the internal contradictions of a growing pool of investors eventually force the scheme to

collapse, leaving most of the late-joining players with nothing to show for their money.

Officials say the move against Golden Sphere is part of a larger, continuing probe of pyramid selling and they expect charges to be laid.

Under current Queensland law, promoters can be imprisoned for up to one year and fined up to \$150,000.

Participants also face prosecution from similar federal laws and can be forced to pay back money to players.

Queensland Commissioner for Consumer Affairs Neil Lawson said his office started investigating Golden Sphere in February.

He declined to estimate how many Queenslanders were playing Golden

Sphere or reveal the worth of the frozen assets.

But the pyramid problem is so severe that Mr Lawson said he had created a special five-person investigative unit just to probe the growing number of games flourishing in south-east Queensland.

Many of the best-known schemes, such as Joker 88 and Pentagono, are based overseas and are beyond the reach of Australian justice.

Golden Sphere was reputed to have been operating from Vanuatu but investigators soon learned about the alleged role of Gold Coast operators.

Mr Lawson said one of the alleged organisers had agreed to be interviewed about the matter and he also hoped to speak to the other.

At a hearing scheduled for October 1 in the Brisbane Federal Court, the ACCC will seek a permanent injunction against Golden Sphere, and officials also expect to file a class action soon.

Australian Competition and Consumer Commission

Media Release

Pyramid Selling Schemes Targeted by Joint Qld/Federal Action

A number of Queensland promoters of pyramid selling schemes have been the focus of a joint Queensland Office of Consumer Affairs and Australian Competition and Consumer Commission crackdown.

As part of the investigation, Consumer Affairs officers searched a number of premises used by the alleged promoters of one scheme. Enquiries are continuing in relation to the promotion of other schemes.

Already, the ACCC has gained an *ex parte* injunction against Golden Sphere International Inc, Pamela Joy Reynolds and Victor Michael Cottrill, freezing assets in relation to an alleged pyramid selling scheme.

The ACCC has also applied for an injunction in the Brisbane Federal Court, restraining the respondents from engaging in pyramid selling. The hearing has been set down for 1 October 1996. The ACCC expects to file a class action shortly.

Consumer Affairs and ACCC officers warned that selling schemes prey on people's urge to 'get rich quick' but usually only the promoters, or those at the very top of the 'pyramid', benefit, not the sometimes thousands who join with the expectation of rich rewards.

Consumer Affairs said today the promoters and participants faced fines or six months imprisonment under Queensland's *Pyramid Selling Schemes (Elimination) Act 1973*.

Under Queensland law, a participant includes *anyone* who has sold products or induced others to take part in a pyramid selling scheme. Promoters and participants who are convicted can be ordered to pay back monies to those who brought into the scheme.

Additionally, promoters and participants face action under the Federal *Trade Practices Act*.

The crackdown by Consumer Affairs and the ACCC follows a sudden proliferation of these schemes with the inevitable result that the majority of participants who enter the pyramid at a late stage lose their money.

Further information

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MR 128/96

12 September 1996

