

21 December 2020

Miss Shelly Cullen



## **URGENT**

Dear Miss Cullen,

### **Fair Trading Act 1986: Stop now letter**

1. As you are aware, the Commerce Commission (Commission) is investigating the Lion's Share scheme in New Zealand and your involvement in promoting this and other potential pyramid selling schemes under the Fair Trading Act 1986 (FTA).
2. This letter requests that you stop certain conduct and provides information to enable you to comply with the law.
3. The Commission requests that you:
  - 3.1 Immediately cease all association with the Lion's Share scheme and any other pyramid selling scheme, and cease promoting and recruiting additional participants into such scheme (directly or indirectly), or encouraging others to do so; and
  - 3.2 Remove any content from Facebook, YouTube and your other Social Media channels that promote such schemes.

### **The Commission's view on conduct**

4. Based on the information the Commission has considered to date, we believe the Lion's Share scheme is likely a pyramid selling scheme. Your continued promotion of the Lion's Share scheme and any similar pyramid selling scheme, and the recruitment of additional participants into such a scheme is likely to breach section 24 of the FTA.
5. Your conduct may also breach other sections of the FTA including but not limited to sections 20 and 22 which has the potential to result in separate sanction. The

Commission reserves its position to assess whether your conduct gives rise to separate breaches under other provisions.

### **Our Investigation**

6. The Commission commenced its investigation into the Lion's Share scheme and your activities within this scheme after it received multiple complaints from concerned parties.
7. Although our investigation continues, we have formed a preliminary view that the Lion's Share scheme is likely a pyramid selling scheme primarily because:
  - 7.1 The scheme is promoted as an opportunity for participants to earn a financial benefit similar to an investment scheme;
  - 7.2 The scheme does not primarily generate its income via the sale of goods or services; and
  - 7.3 The primary source of income generated within the scheme is dependent on the continuous recruitment of additional participants.
8. The evidence we have gathered to date suggests that you are heavily involved in promoting this scheme in New Zealand whilst running crypto gardening training / information sessions. The information obtained indicates that you are:
  - 8.1 Organising crypto gardening events, training and meetings which promote the scheme;
  - 8.2 Creating videos and posting social media content and live feeds that promote the scheme;
  - 8.3 Recruiting additional participants into the scheme and encouraging others to do so; and
  - 8.4 Earning what appear to be considerable sums through your and others involvement in the scheme.
9. We are concerned also that you may be involved in promoting other similar schemes that may also be pyramid selling schemes. Any attempt to promote a pyramid selling scheme will contravene section 24 and potentially other sections of the FTA.
10. We recommend that you seek immediate legal advice about this letter and stop any unlawful conduct.

### **Request to stop conduct**

11. The Commission's immediate objective is to prevent further harm to consumers.

12. Please confirm by no later than **10am (NZST) on Thursday 24 December 2020**, whether you intend to comply with this request to stop the conduct.
13. If you do not agree to cease the identified conduct, we may seek an injunction in the High Court to prevent you from engaging in this conduct. If the Commission were to decide to prosecute for the conduct, it may also identify your failure to cease engaging in the conduct to the court as an aggravating factor in any penalty sought.
14. We also invite your proposals for compensating and returning money to those that have paid money into the schemes in New Zealand. Any monies made from the schemes should be protected immediately to safeguard the interests of participants to enable compensation and a later distribution in the event that the Commission proves a claim against you.
15. The Commission may still bring legal proceedings in relation to this conduct, irrespective of whether it has subsequently ceased, or an injunction has been granted. We will make that decision when we conclude our investigation.
16. A written response to this stop now request should be sent to [REDACTED], by email [REDACTED] or by post to [REDACTED]

### **The law**

17. The FTA makes it illegal for businesses to mislead consumers, give false information, or participate in unfair trading practices.
18. Misleading consumers can involve incorrect statements of fact, as well as omitting to disclose information that consumers may need to properly understand what they are being offered. Half-truths, representations causing confusion, ambiguous remarks, and instances of silence may be misleading. Misleading representations can also include those which though literally true in fact lead into error.
19. The FTA covers:
  - 19.1 all aspects of the promotion and sale of goods and services;
  - 19.2 anything said about a product or service, either verbally or in writing;
  - 19.3 any impressions given by pictures, advertisements, or promotional material.
20. The FTA also prohibits certain unfair practices including pyramid schemes.
21. We attach the following information which helps explain the law:
  - 21.1 Copy of the Commission's fact sheet about pyramid schemes (**Annex A**);
  - 21.2 Extract - s24 FTA – Pyramid Schemes (**Annex B**);

- 21.3 Extract – s20 FTA – Referral Selling (**Annex C**);
- 21.4 Extract - s22 FTA – Misleading representations about certain business activities (**Annex C**);
- 21.5 Commission advice on misleading conduct and consumer rights:  
<https://comcom.govt.nz/consumers/your-rights-as-a-consumer>
- 21.6 Commission advice on scams: <https://comcom.govt.nz/consumers/dealing-with-typical-situations/scams>
- 22. Further information about complying with the FTA is also available on the Commission's website: [www.comcom.govt.nz](http://www.comcom.govt.nz).
- 23. We would also like to remind you of the requirement to register on the Financial Service Providers Register (FSPR) if you intend to provide, or offer to provide, a financial service in New Zealand.<sup>1</sup>

#### **Penalties for breaching the Fair Trading Act**

- 24. Only the courts can decide if there has been a breach of the FTA. The court can impose penalties where it finds the law has been broken.
- 25. Any person who breaches section 24 of the FTA can be fined up to \$600,000 per offence. A breach of sections 20 and 22 can result in a fine of up to \$600,000 for a body corporate or \$200,000 for an individual per offence.

#### **Next steps**

- 26. The Commission's investigation remains ongoing, and we may contact you again to request further information.
- 27. This letter is public information. We may make public comment about our investigations, including issuing a media release or making comment to media.
- 28. Please do not hesitate to contact [REDACTED] should you have any questions.

Yours sincerely



Kirsten Mannix  
Consumer Manager Wellington

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<sup>1</sup> For further information see <https://fsp-register.companiesoffice.govt.nz/>

The Fair Trading Act

# Pyramid selling schemes



Pyramid selling schemes are illegal in New Zealand. They make money by recruiting people rather than by selling goods or services, and they often mislead recruits about the likely financial returns.

Because the potential reward offered depends mainly on the recruitment of new people to pay into the scheme, many participants will always be at or near the base of the pyramid and will not achieve the promised return on their 'investment'.

## What is a pyramid scheme?

A pyramid scheme can take many forms, but has the following essential elements:

- it offers a financial return based on the payments made by new recruits
- the return is dependent primarily on the continued recruitment of new members, not sales of a product or service.

### EXAMPLE

Three businessmen promoted a 'get rich quick' scheme. Prospective members were told that the potential return was "huge" – at least US\$10,000 in 90 days, with a "minimum potential income" of US\$160,000. This was a pyramid scheme as the only way members could make money was by recruiting new participants. If no new members were recruited, no money was made.

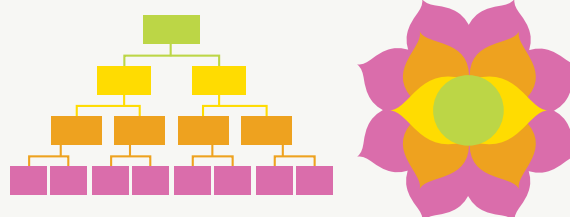
Three people that promoted the scheme were convicted, fined and ordered to pay reparation to their victims.

Pyramid selling schemes may involve 'gimmick' products (for example certificates) or grossly overpriced products or services that have little or no resale value and are not likely to be purchased again (for example personal development programmes or general financial information).

### WARNING

The Commission warned four people for promoting or operating a *gifting scheme*. The scheme asked women to pay an 'unconditional gift' of US\$5000 to join. Participants were then encouraged to recruit others to progress through the levels of the scheme and had the potential to be 'gifted' US\$40,000 if they reached the top status within the scheme. The Commission considered the scheme was likely to be a pyramid scheme operating under the guise of a personal growth network.

Pyramid schemes come in many forms and the structure may not appear to be a classic pyramid shape. Don't assume a scheme is not a pyramid scheme just because any promotional diagram or image doesn't look like a triangle.



## Pyramid schemes on social media

Consumers should be wary of offers on social media that sound too good to be true. Social media provides a platform through which pyramid schemes can easily be promoted to many people.

## Are multi-level marketing schemes the same as pyramid selling schemes?

No, there are a number of multi-level marketing schemes operating in New Zealand which are not pyramid selling schemes. With multi-level marketing schemes salespeople are expected to sell products directly to consumers. They are separately incentivised to recruit others as fellow salespeople. Participants earn commission from selling products, whereas pyramid selling involves participants earning money solely or primarily by introducing other people into the scheme.

In a multi-level marketing scheme, income expectation is limited by the number of sales, not by the number of new sales representatives. Customers of multi-level marketing companies can buy the goods or services they offer without joining the scheme.

Multi-level marketing also usually involves commercially viable products (for example clothing, jewellery, cosmetics, health products, cleaning products and cookware) which present genuine business and income-earning opportunities through sales to clients.

Multi-level marketing schemes are not prohibited by the Fair Trading Act. However, some promoters of pyramid schemes do try and make their schemes sound lawful. Therefore you should always check a scheme very carefully to ensure that it is genuinely a multi-level marketing scheme, and not an illegal pyramid selling scheme.



## Misleading claims about potential earnings

The Fair Trading Act also prohibits any representations that exaggerate the earnings participants are likely to obtain from their involvement with a business activity. The Commission has investigated claims of unrealistic earnings relating to both pyramid selling schemes and legitimate business activities.

Members of the public need to be wary of joining schemes where the promotional materials contain testimonials of high earnings from people who are not easily identifiable (for example, “Since I joined this scheme I have made \$100,000 without really trying,” RS of Auckland).

Similarly, where schemes make claims such as “this is not a get rich quick scheme” or “this scheme is legal”, the question needs to be asked – why is such a statement necessary? They may be intended to disguise the fact that the scheme is illegal or that the promotional material is misleading.

## Are chain letters pyramid schemes?

Yes, chain letters which request the sending of money, goods or the provision of services, are covered by the definition of pyramid schemes and are illegal.

## Penalties for promoting or operating a pyramid scheme

Only the courts can make a ruling on breaches of the Fair Trading Act. Courts may fine individuals and companies up to **\$600,000** per offence if they are found guilty of breaching the provisions of the Act relating to pyramid schemes.

In addition, a person or business found guilty of promoting or operating a pyramid scheme may be required by the court to pay money up to the value of any commercial gain resulting from promoting or operating the scheme.

A District Court may impose a management banning order against anyone found guilty of Fair Trading Act offences on two or more separate occasions within a 10 year period.

## Guidance for checking out a scheme

The following guide may help in checking the nature and legitimacy of a marketing scheme and if you are unsure, you should seek legal advice before joining or participating in a scheme.

1	Is there a joining fee?	Pyramid selling schemes often have start-up fees which are not paid for purchasing commercially viable goods or services since most earnings come from introducing others to the scheme.
2	Does the promotional literature indicate unrealistic earnings (for example "make \$100,000 a month legally")?	Promoters who make unrealistic claims risk breaking the law.
If you answer yes to (1) and (2) then, regardless of whether the scheme is pyramid selling or not, you should seek financial advice before entering.		
3	Do participants earn commissions primarily from selling products or services, or are financial rewards largely dependant on recruiting others into the scheme?	Pyramid schemes are primarily focused on creating rewards for those members who recruit others.
4	Do the products offer a genuine income-earning opportunity through sales?	A legitimate scheme has products which consumers want to buy.
5	Is the number of products required to be purchased or ordered by the participants commercially realistic?	Legitimate businesses require participants to buy or order only as much stock as they can realistically expect to sell.
6	Does the promotional literature offer benefits such as "a life of happiness and prosperity", or "it's easy to sign up new distributors"?	Such statements need to be read carefully as they may make unrealistic promises which conceal the amount of hard work and risk associated with achieving such goals.
7	Does the promotional literature contain testimonials from people who are not easily identifiable (for example "RS of Auckland writes...")?	People giving testimonials may not want to be identified for reasons of privacy. However, failure to identify them may raise suspicions about whether the testimonials are genuine. Even if they are, there is generally no way for consumers to check. References to testimonials should be read with this caution in mind.
8	Does the promotional literature contain claims such as "this is not a get rich scheme" or "this scheme is legal"?	Statements like this need to be read with care. You need to ask yourself why such a statement is necessary. They may be intended to disguise the fact that the scheme may be illegal, or contain illegal components.
9	Does the literature suggest the Commerce Commission or another government department or agency has endorsed the scheme?	The Commerce Commission does not endorse or approve any scheme. If this statement is made, it is untrue.
10	Does the promotional literature fail to provide a street address, so that you cannot contact a person for further details?	Legitimate schemes are usually easy to contact in person.
11	Does the scheme provide ongoing training and sales support?	Legitimate multi-level marketing businesses have a vested interest in ensuring that participants are well trained and supported.

This fact sheet provides guidance only. It is not intended to be definitive and should not be used in place of legal advice. You are responsible for staying up to date with legislative changes.

You can subscribe for information updates at [www.comcom.govt.nz/subscribe](http://www.comcom.govt.nz/subscribe)

Contact us with information about possible breaches of the laws we enforce:

**Phone:** 0800 943 600 **Write:** Enquiries Team, PO Box 2351, Wellington 6140 **Email:** [contact@comcom.govt.nz](mailto:contact@comcom.govt.nz)



## ANNEX B









## Fair Trading Act 1986

Order a commercial print 

- Warning: Some amendments have not yet been incorporated

Search within this Act

SEARCH

<b>By sections</b>	View whole (605KB)	Versions and amendments	Print/Download PDF [838KB] 
 Contents	 Previous section	Next section 	 Tag section
		 Remove	 Previous hit
			Next hit 

**24 Pyramid selling schemes**

- (1) No person shall promote or operate a pyramid selling scheme.
- (2) For the purposes of this section, the term **pyramid selling scheme** means—
  - (a) a scheme—
    - (i) that provides for the supply of goods or services or both for reward; and
    - (ii) that, to many participants in the scheme, constitutes primarily an opportunity to buy or sell an investment opportunity, whether personally or through an agent, rather than an opportunity to buy or supply goods or services; and
    - (iii) that is or is likely to be unfair to many of the participants in the scheme in that—
      - (A) the financial rewards of many of those participants are dependent on the recruitment of additional participants (whether or not at successively lower levels); and
      - (B) the number of additional participants in the scheme that must be recruited to produce reasonable financial rewards to participants in the scheme is not attainable or is not likely to be attainable by many of the participants in the scheme;
  - (b) a scheme of the type commonly known as a chain letter scheme (whether or not it provides for the supply of goods or services or both) that is likely to be unfair to many of the participants in the scheme, in that—
    - (i) the financial rewards of many of those participants are dependent on the recruitment of additional participants; and
    - (ii) the number of additional participants in the scheme that must be recruited to produce reasonable financial rewards to participants in the scheme is not attainable or is not likely to be attainable by many of the participants in the scheme.

Compare: 1975 No 113 s 48A; 1979 No 140 s 22(1)

Section 24(2)(a)(ii): substituted, on 8 July 2003, by [section 5](#) of the Fair Trading Amendment Act 2003 (2003 No 31).



## ANNEX C

### Fair Trading Act 1986

#### 20 Referral selling

- (1) Subject to subsection (2), no person shall induce another person to acquire goods or services by representing that the person acquiring the goods or services will, after the contract for the acquisition of the goods or services is made, receive a rebate, commission, or other benefit in return for giving that person the names of prospective customers or otherwise assisting that person to supply goods or services to other users or consumers, if receipt of the rebate, commission, or other benefit is contingent on an event occurring after that contract is made.
- (2) Nothing in subsection (1) applies to the acquisition of goods for resupply.  
Compare: Trade Practices Act 1974 s 57 (Aust)

#### 22 Misleading representations about certain business activities

- (1) No person shall make a representation that is false or misleading in a material particular concerning the profitability or risk or any other material aspect of any business activity that that person represents as one that can be, or can be to a substantial extent, carried on at or from a person's place of residence.
- (2) No person who invites, whether by advertisement or otherwise, persons to engage or participate, or to offer or apply to engage or participate, in a business activity requiring—
  - (a) the performance by the persons concerned of work; or
  - (b) the investment of money by the persons concerned and the performance by them of work associated with the investment—

shall make, with respect to the profitability or risk or any other material aspect of the business activity, a representation that is false or misleading in a material particular.