

**Undertakings to the Commerce Commission under  
section 46A of the Fair Trading Act 1986**

**Waste Management NZ Limited**

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## 1 Persons giving Undertakings

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- 1.1 These Undertakings are given to the Commerce Commission (**Commission**) for the purposes of s 46A of the Fair Trading Act 1986 (**FT Act**) by Waste Management NZ Limited (Company Number 1795427), a company incorporated in New Zealand and having its registered office at 318 East Tamaki Road, East Tamaki, Auckland 2013 (**WMNZ**). (The Commission and WMNZ together referred to as the **Parties**.)

## 2 Background

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- 2.1 WMNZ is a materials recovery, recycling and waste management provider which operates across New Zealand.
- 2.2 Between July and September 2020, the Commission received complaints from WMNZ residential customers relating to WMNZ's invoicing and debt collection practices.
- 2.3 The Commission opened an investigation in relation to whether WMNZ may have misled customers by claiming that they had an unpaid debt owing to WMNZ when they did not, and then unduly passing this debt to a debt collection agency.
- 2.4 Following its own investigation, WMNZ identified that all complainants to the Commission were residential customers who had been included in a batch of around 4,800 residential customer debts that had been referred by WMNZ to a third party debt collection agency in July 2020 (**July 2020 Batch**). WMNZ identified data integrity issues with some aspects of its systems, and deficiencies in its processes for debt collection in relation to residential customers (**Customers**), which had resulted in erroneous referral of the July 2020 Batch to debt collection.
- 2.5 WMNZ engaged BDO Auckland Limited (**BDO**) to undertake an independent analysis of aspects of its invoicing and debt collection practices to identify potential issues and enable WMNZ to address them. Following its investigation, BDO produced a report (**2021 BDO Report**) which concluded that the central cause of the issues identified was WMNZ not following its own account cancellation process.
- 2.6 Section 13(i) of the FT Act prohibits making in trade, and in connection with the supply or possible supply of goods or services, false or misleading representations concerning the existence, exclusion, or effect of any right.
- 2.7 Invoices and credit management notices contained representations that customers owed Waste Management payment of monies in exchange for service. In effect, Waste Management asserted a right to payment when issuing these documents.
- 2.8 Whenever Waste Management issued invoices or credit management notices for amounts that customers did not owe the company, it was making a misleading or false representation to those customers in likely breach of section 13(i) of the FT Act.

- 2.9 WMNZ has taken the following steps to remediate Customers who may have been overcharged as a consequence of the issues identified:
- (a) in relation to five of the complainants referred to at paragraph 2.2 above (who gave permission for their identity to be disclosed ), WMNZ refunded the incorrect amounts which were paid by those Customers to the third party debt collection agency, and made a goodwill payment to all of them, totalling \$1,197.84;
  - (b) without going through the resource intensive exercise of reviewing the individual position of each Customer, in relation to 2,094 Customers whose debt was included within the July 2020 Batch, WMNZ refunded all amounts paid by all Customers in that batch totalling \$463,673.11;
  - (c) similarly, without reviewing the individual position of each Customer, WMNZ wrote off all recorded debts or debit balances totalling \$5,256,111.12 in relation to 55,090 Customers that were:
    - (i) closed Customer accounts which were not included within the July 2020 Batch but which WMNZ considered may have been impacted by the issues identified: or,
    - (ii) Customers who were not closed but had been non-active for at least 13 months;
  - (d) also, without reviewing the individual position of each Customer, in relation to 2330 active and non-active Customers where the net balance was showing in credit, WMNZ is in the process of refunding those sums in credit totalling \$135,000<sup>1</sup>.
- 2.10 There remains an outstanding group of Customers who are recorded in WMNZ's systems as having a zero balance, but who the Commission and WMNZ consider may have reached that balance as a consequence of having previously paid an incorrect invoice (**Zero Balance Customers**).
- 2.11 In response to the Commission's investigation, WMNZ has:
- (a) acknowledged that its conduct is likely to have contravened section 13(i) of the FT Act; and
  - (b) offered these Undertakings to the Commission.
- 2.12 The Commission has concluded, after reviewing the practices and criteria outlined in the Commission's Competition and Consumer Investigation Guidelines and Enforcement Response Guidelines, that it is in the public interest to resolve this investigation by way of these Undertakings provided by WMNZ and issuing a warning letter.

### **3 Purpose of Undertakings**

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- 3.1 These Undertakings are given by WMNZ to:

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<sup>1</sup> An active customer is considered a customer currently receiving any waste management services from WMNZ. Non-active customers may have account details with WMNZ, but not receiving services at the time.

- (a) record WMNZ's commitment to remediating these matters;
- (b) record the steps that WMNZ will take to help ensure that the conduct will not be repeated; and
- (c) address the Commission's concerns arising from the investigation.

## 4 Undertakings

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### 4.1 WMNZ undertakes to the Commission to:

- (a) conduct a review to identify whether the issues identified in the 2021 BDO Report are occurring in such a way as to affect the amounts its Customers are invoiced and, where they are, to refund identified Customers in full. This will involve reviewing and testing whether:
  - (i) remedial action has been taken by WMNZ in relation to each of the findings outlined in the 2021 BDO report;
  - (ii) the actions taken address and mitigate the root cause(s) of each finding; and
  - (iii) processes and controls that have been remediated as a result of the actions taken are operating as intended;
- (b) develop and implement a control testing strategy to ensure ongoing compliance and reassurance that the measures implemented to resolve billing issues continued to be successful; and
- (c) review Zero Balance Customers between 1 January 2018 and 31 December 2021 to determine whether such customers have overpaid WMNZ as a result of the issues identified in the 2021 BDO Report and, where they have to refund identified customers in full.

4.2 WMNZ will provide refunds to identified customers either itself or may for the Zero Balance Customers, elect to do so through a third party distribution process by appointing Integrity First Business Solutions Limited (trading as Integrity1) to manage the refund process in accordance with the terms of these Undertakings. The Commission agrees that Integrity1 is suitable for appointment in this role.

4.3 WMNZ will meet all costs of making distribution of refunds, including auditing and reporting costs .

4.4 WMNZ will complete the process of providing refunds or credits to identified customers entitled thereto within twelve months of the effective date of these undertakings (**Refund Period**). WMNZ will take all reasonable steps to locate, and contact identified customers in order to provide those refunds.

#### *Bankrupt Customers*

- 4.5 If any customer who is entitled to be paid a refund or credit is bankrupt, the relevant refund amount shall be paid to the Official Assignee, unless otherwise agreed with the Official Assignee.

#### *Deceased Estates*

- 4.6 If any customer who is entitled to be paid a refund or credit is deceased, WMNZ shall:
- (a) use reasonable endeavours to contact the representative(s) of the deceased customer and inform them of the entitlement;
  - (b) pay the refund or credit amount to a bank account nominated by the representative(s) of the deceased customer; or
  - (c) if the representative(s) of the deceased customer have not contacted WMNZ within 3 months of WMNZ's last attempt to contact them, proceed as set out at clause 4.7 below.
- 4.7 If any customers cannot be located by the end of the Refund Period WMNZ will provide the Commission with a list of those customers and the steps that have been taken to contact them. Any unclaimed refunds for those customers should be held for a period of one year from the date on which WMNZ notify the Commission that they cannot be located (**One Year Term**). If the refund is not claimed in that time the sum held for those customers will be treated as follows:
- (a) unclaimed refunds of more than \$100 to be treated as unclaimed money under the Unclaimed Money Act 1971 (**UMA**); and
  - (b) unclaimed refunds of less than and equal to \$100 will then be donated to a charity to be agreed between the Parties.
- 4.8 WMNZ undertakes to adhere to the following timeframe for providing the Chief Legal Counsel, Fair Trading, Legal Services at the Commission with the following reports:
- (a) A report setting out all steps taken, reviews conducted and refunds provided in accordance with clauses 2.9 and 4.1 (a) and (b) provided no later than three months from the effective date of these Undertakings. This report will be prepared by BDO and will describe the steps that WMNZ has taken to comply with clauses 2.9 and 4.1 (a) and (b) of these Undertakings.
  - (b) A report setting out all steps taken, reviews conducted and customers identified to be refunded in accordance with clause 4.1 (c) to be provided by no later than nine months from the effective date of these Undertakings. This report will be prepared by WMNZ, following the methodology reviewed by BDO, and will describe the relevant steps that WMNZ has taken to comply with clause 4.1 (c) of these Undertakings.
  - (c) A report setting out a complete list of all refunds or credits provided to customers in accordance with clause 4.1 (c) and the list of customers and steps taken to be reported under clause 4.7 to be provided by no later than two months after the end of the Refund Period. This report will describe the relevant steps that WMNZ has

taken to comply with clause 4.1 (c) and 4.7 of these Undertakings and will be prepared either by WMNZ or Integrity1, if Integrity1 has undertaken this work. Included will be a review by BDO of the steps outlined in the report (including refunds and credits provided) to assess compliance with relevant Undertakings.

- (d) A report setting out how refunds held in terms of clause 4.7 were dealt with to be provided two months after the end of the One Year Term. This report will provide a list of refunds provided during this period and describe how the remaining unclaimed refunds were dealt with under clauses 4.7(a) and (b) of these Undertakings and will be prepared either by WMNZ or Integrity1, if Integrity1 has undertaken this work. Included will be a review by BDO of the steps outlined in the report (including refunds and dealing with unclaimed refunds) to assess compliance with relevant Undertakings.

- 4.9 Should the Commission consider upon review of the reports provided under clause 4.8 that the reporting done, steps taken to identify eligible customers and provide refunds were inadequate, the Commission will engage with WMNZ to raise its concerns and unless satisfactorily resolved, be entitled to continue its investigation into the original conduct.

## **5 Effect of Undertakings**

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- 5.1 These Undertakings are Court enforceable undertakings in terms of s 46A of the FT Act.

## **6 Commencement of Undertakings**

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- 6.1 These Undertakings comes into effect when:
- (a) executed by WMNZ; and
  - (b) the Commission confirms its acceptance of these Undertakings.

## **7 Duration of Undertakings**

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- 7.1 These Undertakings will continue to have effect until the earlier of:
- (a) the Commission for any reason discharging WMNZ from these Undertakings; or
  - (b) five years from the date the Commission confirms its acceptance of these Undertakings.
- 7.2 For the duration of the period the Undertakings remain in effect, WMNZ will ensure that all relevant information, databases, software and accounting systems that may relate to the business processes involved in the invoicing of Customers, are retained.

## **8 Compliance with Undertakings**

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- 8.1 If WMNZ becomes aware of a breach of these Undertakings, whether advertent or inadvertent, it will notify the Commission within seven days of becoming aware, giving full particulars of the breach.
- 8.2 For the avoidance of doubt, nothing in 8.1 above prevents the Commission from directly seeking any information from WMNZ at any time for the purpose of checking compliance with these Undertakings.

## **9 Variation of Undertakings**

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- 9.1 The Commission and WMNZ may agree at any time to vary these Undertakings.
- 9.2 No variation to these Undertakings will be effective unless it is in writing, executed by WMNZ, and signed as accepted by the Commission.

## **10 Miscellaneous**

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- 10.1 These Undertakings are properly executed if each Undertaking Party signs the same copy, or separate identical copies of the execution page. Where separate copies are signed by WMNZ or by the Commission, the signed copy can be the original document, or a faxed or emailed copy.
- 10.2 WMNZ acknowledges that:
- (a) the Commission will make these Undertakings publicly available, including by publishing them on the Commission's enforcement response register on its website.
  - (b) the Commission may, from time to time, make public reference to these Undertakings, including in media statements and in the Commission's publications.
  - (c) nothing in these Undertakings is intended to restrict the right of the Commission, or the right of any other person, to take action under the FT Act or any other statute or law.

**Execution**

**Signed by and on behalf of Waste Management NZ Limited**

[Redacted Signature]

Director/authorised signatory

EVAN MAEHL

Name

*In the presence of:*

[Redacted Signature]

Signature of witness

Penelope Bower

Name of witness

Solicitor

Occupation

AUCKLAND

City/town of residence

25 AUGUST 2023

Date



## Acceptance

Signed by and on behalf of the **Commerce  
Commission** by:



Commissioner - Commerce Commission

21/09/2023

Date

