

PRJ0044957

22 September 2023

Waste Management NZ Limited  
318 East Tamaki Road,  
East Tamaki, Auckland 2013

Attention: [REDACTED]

By email: [REDACTED]

Dear [REDACTED]

**Fair Trading Act 1986: Warning for making false or misleading representations to consumers regarding amounts payable.**

1. The Commerce Commission (**Commission**) has been investigating Waste Management Limited (**Waste Management**) under the Fair Trading Act 1986 (**FT Act**). We have now completed our investigation and are writing to inform you about our views.
2. The Commission considers that Waste Management is likely to have breached the FT Act by making false or misleading representations to consumers that a right existed to collect money from them, when the consumers did not owe Waste Management the amounts represented as payable.
3. We are issuing you with this warning letter because in our view, Waste Management's conduct is likely to have breached section 13(i) of the FT Act. A warning is not a finding of non-compliance; only the courts can decide whether a breach of the law has occurred, and we have determined that, at this time, we will not be bringing legal proceedings.<sup>1</sup>
4. WMNZ has confirmed to us that it has ceased the conduct, which it considered could have been careless, but was not intentional. Affected consumers whose debts were incorrectly referred for collection have been remediated.
5. In addition, Waste Management has offered, and the Commission has accepted, court enforceable undertakings (**Undertakings**) pursuant to section 46A of the FT

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<sup>1</sup> Commission's published *Enforcement Response Guidelines* at [41].

Act, to record the steps Waste Management will take to continue the review of its billing processes and complete its customer remediation process.

### **The investigation**

6. Following receipt of complaints in 2020, the Commission investigated allegations that Waste Management was seeking payment of amounts complainants claimed they did not owe, via debt collection practices.
7. During our investigation, we obtained the following evidence, which we consider indicates a likely breach of the FT Act:
  - 7.1 Written responses from Waste Management to requests for information issued by the Commission. These responses dealt with Waste Management's explanation of the investigated conduct being provided in the BDO report and were also elaborated on at interview.
  - 7.2 A report prepared by BDO for Waste Management following BDO's review of Waste Management's customer billing practices. This report sets out the reason for billing and account errors occurring.
  - 7.3 A spreadsheet particularising the detail of each of the 543 customers referred to collections in July 2020, where Waste Management reviewed each account for accuracy.
  - 7.4 Copies of invoices, where false representations were made that Waste Management had a right to payment of the amounts in the invoices, when it did not.

### **How this conduct can break the Law**

8. Section 13(i) of the FT Act relevantly 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.
9. 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.
10. 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.

### **Waste Management's response**

11. Waste Management responded to the Commission's enquiries by providing an explanation for why the conduct occurred. An internal investigation established that the complainants to the Commission were residential customers who had been included in a batch of 4813 residential customer debts that had been referred to a third-party debt collection agency in July 2020. Waste Management identified data integrity issues with some aspects of its systems, and deficiencies in its processes for

debt collection in relation to residential customers, which had resulted in consumers being charged amounts they did not owe in its systems, and the erroneous referral of those customers to debt collection.

12. Waste Management engaged BDO to undertake an independent analysis of aspects of its invoicing and debt collection practices to identify and address potential issues. Following its investigation, BDO produced a report which concluded that the central cause of the issues identified was Waste Management's account cancellation process not being correctly followed.
13. Immediate steps were taken by Waste Management to improve its billing practices, as well as identify and action appropriate remediation. In particular:
  - 13.1 Waste Management suspended all debt collection activities.
  - 13.2 In relation to the specific complainants Waste Management refunded the amounts which were paid by those customers to the third-party debt collection agency, and made a goodwill payment to each complainant.
  - 13.3 Waste Management established a residential billing committee and employed a new senior leadership manager to oversee the residential side of its business with increased board oversight.
  - 13.4 All debt referred to the third-party debt collector in July 2020 was waived (or refunded if paid).
  - 13.5 Closed customer accounts which were not included within the July 2020 debt collection referral, but which Waste Management considered may have been impacted by the issues identified, were refunded any credit balances recorded, and any debit balances recorded written off.
  - 13.6 In relation to certain Customers who had been non-active for at least 13 months, Waste Management wrote off all recorded debts and closed those customer accounts.
  - 13.7 In relation to active Customers where the net balance was showing in credit, Waste Management is in the process of refunding those sums.
14. In light of the nature of the billing issues involved, along with consumer propensity to pay invoices which are incorrect, the Commission remained concerned that there may be instances where incorrect amounts had been invoiced by Waste Management and paid by consumers. Waste Management has provided the Undertakings which sets out a process by which it will identify and remediate consumers who have paid incorrect amounts and have not otherwise been identified or remediated during the initial BDO investigation.

### **The Commission's view**

15. In this case, and having fully considered relevant information received, the Commission's view is that it is likely that Waste Management's conduct breached the FT Act.
16. We have reached this view because Waste Management requested payment from consumers for amounts they did not owe the company. Those requests amounted to false or misleading representations concerning the existence of the right to collect the money from its customers, when it did not in fact have the legal right to do so, and thereby the company is likely to have breached s13(i) of the FT Act.

### **Warning**

17. The Commission has concluded, after assessing Waste Management's conduct against 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 conclude our investigation by issuing this warning and accepting the Undertakings rather than by issuing legal proceedings.
18. This warning and the Undertakings represent our opinion that the conduct in which Waste Management have engaged is likely to have breached the FT Act and that legal action remains available to the Commission in future if the conduct continues or is repeated.
19. In reaching the decision to issue a warning and to accept the Undertakings, the Commission acknowledges the actions taken by Waste Management to remedy the harm to customers, prevent the conduct from recurring and Waste Management's cooperation with our investigation.
20. We may draw this warning letter to the attention of a court in any subsequent proceedings brought by the Commission against Waste Management.
21. This warning letter and the signed Undertakings are public information and will be published on the case register on our website. We may also make public comment about our investigations and conclusions, including issuing a media release or responding to media enquiries.

### **The Commission's role**

22. The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the FT Act. The FT Act prohibits false and misleading behaviour by businesses in the promotion and sale of goods and services.

### **Penalties for breaching the FT Act**

23. As indicated above only the courts can decide if there has actually been a breach of the FT Act. The court can impose penalties where it finds the law has been broken. A company that breaches the FT Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.

24. Waste Management should be aware that our decision to issue this warning letter does not prevent any other person or entity from taking private action through the courts.

**Further information**

25. We recommend that Waste Management seek legal advice and encourage the company to:
- 25.1 continue reviewing its internal systems and processes to prevent the same conduct from reoccurring; and,
  - 25.2 regularly review its compliance procedures and policies.
26. We have published a series of fact sheets and other resources to help businesses comply with the FT Act and the other legislation we enforce. These are available on our website at [www.comcom.govt.nz](http://www.comcom.govt.nz). We encourage you to visit our website to better understand Waste Management’s obligations and the Commission’s role in enforcing the Act.
27. The FT Act and other legislation can be viewed at [www.legislation.co.nz](http://www.legislation.co.nz).
28. Thank you for your assistance with this investigation. Please contact [REDACTED] on [REDACTED] or by e-mail at [REDACTED] if you have any questions about this letter.

Yours sincerely

[REDACTED]

Rachael Manttan  
Acting Fair Trading Investigations and Compliance Manager