

NATIONAL ENERGY RETAIL LAW

Undertaking to the Australian Energy Regulator for the purposes of section 288 of the National Energy Retail Law

by

Trinity Place Investments Pty Ltd (ACN 609 933 511)

1. Persons giving this Undertaking

- 1.1. This Undertaking is given to the Australian Energy Regulator (**AER**) by Trinity Place Investments Pty Ltd (ACN 609 933 511) (**Trinity**) for the purposes of section 288 of the *National Energy Retail Law* (**Retail Law**).

2. Background

- 2.1. Trinity owns and operates the Maroochy Cabins embedded network located in Diddillibah on the Sunshine Coast, Queensland. Since approximately May 2016, Trinity has sold electricity to customers at the embedded network.
- 2.2. Under the Retail Law, any person or business who sells electricity to another person for use at premises must have either a retailer authorisation or a retail exemption from the AER. Since 24 May 2016, Trinity has held a registrable exemption under the Retail Law and has been an Exempt Seller within the meaning of the Retail Law.
- 2.3. The AER may impose conditions on an Exempt Seller or class of Exempt Sellers under the Retail Law. These conditions are set out in the AER's Retail Exempt Selling Guideline (**Retail Guideline**). As an Exempt Seller, Trinity is required to comply with all applicable conditions set out in the Retail Guideline.
- 2.4. Trinity's retail exemption class is R4, to which Condition 7 of the Retail Guideline applies. Condition 7 of the Retail Guideline specifies that an Exempt Seller must not charge the Exempt Customer tariffs higher than the standing offer price that would be charged by the relevant local area retailer for new connections, if the local area retailer were to supply that quantity, or estimated quantity, of energy directly to the premises of the Exempt Customer.¹

3. Conduct of concern

- 3.1. In July 2022, the AER received a complaint alleging that Trinity was charging its Exempt Customers higher electricity tariffs than it should be.
- 3.2. The AER's subsequent investigation found Trinity had charged Exempt Customers at the Maroochy Cabins embedded network:
 - (a) a usage price higher than the relevant local area retailer's standing offer usage price from 31 December 2019 to 30 June 2022; and
 - (b) a supply and usage price higher than the relevant local area retailer's standing offer supply and usage price from 1 July 2022 to 19 January 2023.

(Relevant Conduct)

- 3.3. The AER is concerned that the Relevant Conduct resulted in approximately:

¹ The standing offer price includes the supply price and the usage price. Exempt sellers must ensure that the price they charge for each of these parts does not exceed the price charged for the equivalent part of the standing offer.

- (a) 103 Exempt Customers being overcharged for electricity between 31 December 2019 and 20 June 2022; and
- (b) 82 Exempt Customers being overcharged for electricity between 1 July 2022 and 19 January 2023.

(Affected Customers)

- 3.4. The AER considers that by engaging in the Relevant Conduct, Trinity failed to comply with condition 7 of the Retail Guideline in contravention of section 112(2) of the Retail Law.

4. Admission and resolution

- 4.1. Trinity admits that it failed to comply with condition 7 of the Retail Guideline between 31 December 2019 and 19 January 2023 and breached section 112(2) of the Retail Law.
- 4.2. To address the AER's concerns and to minimise the likelihood of future contraventions of the Retail Law, Trinity offers the Undertaking in clause 7.

5. Commencement of the Undertaking

- 5.1. This Undertaking comes into effect when:
 - (a) the undertaking is executed by Trinity; and
 - (b) the AER accepts the Undertaking so executed (**Commencement Date**).
- 5.2. Upon the Commencement Date, Trinity undertakes to assume the obligations set out in clause 7.

6. Expiry and variation

- 6.1. This Undertaking expires (the **Expiry Date**) once Trinity receives written notice from the AER that the AER considers Trinity has satisfied its obligations set out in clause 7.
- 6.2. Trinity may apply to withdraw or vary the Undertaking at any time, but this Undertaking will only be taken to be withdrawn or varied on the date on which the AER consents to such withdrawal or variation.
- 6.3. The AER may, if requested by Trinity, expressly waive in writing any of the obligations contained in the Undertaking or extend the date by which any such obligation is to be satisfied.

7. Undertaking

Refrain from further conduct

- 7.1. Trinity undertakes that it will not charge any Exempt Customer tariffs higher than the standing offer price that would be charged by the relevant local area retailer for new connections, if the local area retailer were to supply that quantity, or estimated quantity, of energy directly to the premises of the Exempt Customer.

Consumer redress

- 7.2. Trinity undertakes to provide remediation to Affected Customers in accordance with clauses 7.3 to 7.7.
- 7.3. Trinity undertakes to, within 30 days of the Commencement Date, send or cause to be sent a communication in the form provided at **Annexure A** to this Undertaking to each Affected Customer identified in **Annexure B**.

- 7.4. Trinity undertakes to, at least once every 30 days after sending the correspondence referred to in clause 7.3, use reasonable endeavours to contact, including via phone, email and mail, each Affected Customer that has not yet contacted Trinity, informing the Affected Customer of their right to remediation. Trinity must provide the correspondence referred to in clause 7.3.
- 7.5. Trinity undertakes to, within 14 days of receiving contact in relation to remediation from an Affected Customer:
- (a) where bank details or another appropriate method of payment method is provided, pay the corresponding remediation amount to the Affected Customer set out for that Affected Customer in **Annexure B**; or
 - (b) provide a credit to the Affected Customer's electricity account in the amount set out for that Affected Customer in **Annexure B**,
whichever the Affected Customer chooses.
- 7.6. Trinity undertakes to provide the remediation to Affected Customers in accordance with clause 7.5, where the Affected Customer contacts Trinity within 12 months of the Commencement Date.
- 7.7. After the 12-month period referred to in clause 7.6 lapses, Trinity must within 30 days:
- (a) add together the corresponding remediation in **Annexure B** for each Affected Customer that Trinity has not paid or credited (**Outstanding Amount**); and
 - (b) divide the Outstanding Amount calculated in clause 7.7(a) among each of Trinity's current electricity customers at the Maroochy Cabins embedded network and provide the divided amount as a credit to each customer's electricity account.

Commitment to improving compliance systems and processes

- 7.8. Trinity undertakes to improve its compliance systems and processes in relation to the pricing of electricity, including by taking the following steps:
- (a) implementing a process to check and be aware of the standing offer supply and usage prices for electricity being charged by the relevant local area retailer;
 - (b) implementing a process to review the supply and usage prices for electricity being charged by Trinity to its Exempt Customers;
 - (c) regularly reviewing its obligations under the Retail Guideline; and
 - (d) regularly educating staff about Trinity's obligations under the Retail Guideline,
- being steps designed to minimise Trinity's future risk of non-compliance with Condition 7 of the Retail Guideline and to ensure its awareness of the responsibilities and obligations under the Retail Guideline as an Exempt Seller.

Reporting

- 7.9. Trinity undertakes to, every 90 days from the Commencement Date, provide a report to the AER which details:
- (a) the method and number of contact attempts it has made to each Affected Customer;

- (b) a list of Affected Customers that have received remediation under clause 7.5;
 - (c) the amount of remediation paid to each Affected Customer; and
 - (d) the steps it has taken to improve its compliance systems and processes under clause 7.8.
- 7.10. Trinity undertakes that it will report to the AER any non-compliance or likely non-compliance with the Undertaking within 14 days of such non-compliance or likely non-compliance.

AER enquiries

- 7.11. For the purposes of monitoring compliance with this Undertaking, the AER may make reasonable enquiries with Trinity and Trinity will use reasonable endeavours to respond to such enquiries within 5 business days.
- 7.12. If requested by the AER, Trinity will cause to be produced to the AER copies of such documents (excluding any legally privileged documents) in its power, possession or control evidencing Trinity's compliance with the obligations set out in this Undertaking.

8. Acknowledgements

- 8.1. Trinity acknowledges that, and to the extent relevant, consents to, the following actions and matters:
- (a) the AER may authorise a member of the AER or a member of AER staff, to exercise a decision-making function under this Undertaking on its behalf and that authorisation may be subject to any conditions the AER may impose;
 - (b) the AER will make this Undertaking publicly available including by publishing it on the AER's website;
 - (c) the AER will, from time to time, make public reference to the Undertaking in news media statements and in AER publications;
 - (d) the AER reserves its rights and remedies (including to institute legal proceedings against Trinity seeking penalties and other relief) in relation to any breaches of the Retail Law which have occurred before or after the Commencement Date, including in respect of matters referred to in this Undertaking; and
 - (e) this Undertaking in no way derogates from the rights and remedies available to any other persons arising from the alleged conduct.

9. Costs

- 9.1. Trinity must pay all of its own costs in relation to the Undertaking.

10. Notification

- 10.1. Any notice or communication to the AER pursuant to this Undertaking must be sent to:

Name: General Manager, Compliance & Enforcement
Address: Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Email: Attn: General Manager, Compliance & Enforcement
AERCompliance@aer.gov.au

10.2. Any notice or communication to Trinity pursuant to this Undertaking must be sent to:

Name:

[REDACTED]

Address:

[REDACTED]

Email:

[REDACTED]

10.3. Trinity must notify the AER of a change to its contact details within five Business Days.

11. Definitions

11.1. Terms used in this Undertaking are set out below. Italicised terms used in this Undertaking have the meaning given to those terms in the Retail Law, as the case requires.

Term	Meaning
AER	means the Australian Energy Regulator.
Affected Customer	means each customer identified in Annexure B to this Undertaking.
Business Day	has the meaning given to that term under section 2 of the Retail Law.
Trinity	means Trinity Place Investments Pty Ltd (ACN 609 933 511).
Commencement Date	is the date the Undertaking comes into effect under clause 5.1 of this Undertaking.
Exempt Customer	means a person to whom an Exempt Seller sells energy and who would be a retail customer of the seller if the seller were a retailer.
Exempt Seller	A person who is exempted by the AER under a deemed, registrable or individual exemption from the requirement to hold a retailer authorisation.
Expiry Date	means the period of time in clause 6.1 of this Undertaking for which the Undertaking has effect.
Outstanding Amount	means the amount calculated in clause 7.7(a) of this Undertaking.
Relevant Conduct	means the conduct set out at clause 3.2 of this Undertaking.
Retail Guideline	means versions 5 and 6 of the AER's Retail Exempt Selling Guideline.
Retail Law	means the National Energy Retail Law set out in the Schedule to the <i>National Energy Retail Law (South Australia) Act 2011</i> .

Undertaking

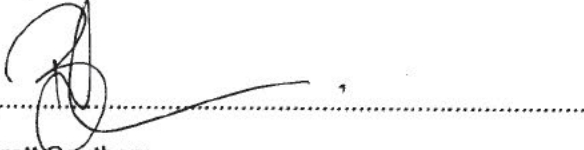
means this document (including any schedules or annexures to this document) as varied from time to time under section 288 of the Retail Law.

12. Interpretation

- 12.1. In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:
- (a) a reference to this Undertaking includes all of the provisions of this document including its annexures;
 - (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
 - (c) if the day on which any act, matter or thing is to be under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
 - (d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
 - (e) a reference in this Undertaking to any company includes a company over which that company is in a position to exercise control within the meaning of section 50AA of the *Corporations Act 2001*;
 - (f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
 - (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
 - (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or government agency;
 - (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
 - (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes other genders;
 - (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions can be construed without limitation;
 - (l) a construction that would promote the purpose or object of this Undertaking (whether expressly stated or not) will be preferred to a construction that does not promote that purpose or object; and
 - (m) a reference to:
 - i. a thing (including but not limited to, a chose in action or other right) includes part of that thing;
 - ii. a party includes its successors and permitted assigns; and
 - iii. a monetary amount is in Australian dollars.

Executed by

Trinity Place Investments Pty Ltd, ACN 609 933 511, pursuant to section 127(1) of the Corporations Act 2001.

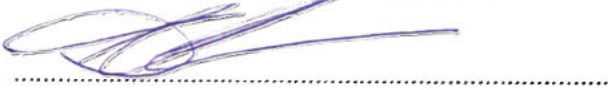


Brett Southern

Director and Secretary

This 22ND day of August 2023.

ACCEPTED BY THE AUSTRALIAN ENERGY REGULATOR PURSUANT TO SECTION 288 OF THE NATIONAL ENERGY RETAIL LAW.



Justin Oliver, AER Board Member

This 28th day of August 2023.

Annexure A
Notification to Affected Consumers

Current Affected Customers of Trinity

Dear [insert name],

Refunds on your electricity account

You are entitled to a refund or credit on your electricity account of \$[insert corresponding total remediation amount for the Affected Customer from Annexure B] as you were overcharged for your electricity by Trinity Place Investments Pty Ltd (**Trinity**).

Last year the Australian Energy Regulator (**AER**), the Commonwealth Government agency responsible for enforcing Australia's energy laws, investigated Trinity and found that it charged customers higher electricity tariffs than it should have between 31 December 2019 and 19 January 2023. Trinity has agreed with the AER to provide refunds or credits to customers that were overcharged during this period.

We have made the commitment to provide refunds or credits in a court enforceable undertaking provided to the AER.

Further information can be found on the AER's website [AER to provide URL link to media release].

What we need from you

To assist us to provide your credit or refund please contact Trinity by phone on [insert number] or via email [insert email] to indicate whether you would prefer to receive a refund or credit on your electricity account. If you prefer a refund, we will ask for your bank details, so that the refund can be deposited into your account. Please let us know if you would prefer a different method of payment.

Once you have provided the appropriate details, we will pay your refund or add the credit to your electricity account within 14 days of receiving your response.

Please note that you must contact us before [insert date 12 months from the Commencement Date] in order to receive your refund or credit.

If you have any queries about this letter, including to confirm your appropriate remediation amount, please contact us at [insert contact details].

Separately, if you have any queries regarding the AER's investigation, you can contact the AER by emailing aerinqury@aer.gov.au or calling 1300 585 165.

Yours sincerely,

Former Affected Customers of Trinity

Dear [insert name],

Refunds on your electricity account

You are entitled to a refund on your electricity account of \$[insert corresponding total remediation amount for the Affected Customer from Annexure B] as you were overcharged for your electricity by Trinity Place Investments Pty Ltd (**Trinity**).

Last year the Australian Energy Regulator (**AER**), the Commonwealth Government agency responsible for enforcing Australia's energy laws, investigated Trinity and found that it charged customers higher electricity tariffs than it should have between 31 December 2019 and 19 January 2023. Trinity has agreed with the AER to provide refunds or credits to customers that were overcharged during this period.

We have made the commitment to provide refunds or credits in a court enforceable undertaking provided to the AER.

Further information can be found on the AER's website [AER to provide URL link to media release].

What we need from you

To assist us to provide your refund please contact Trinity by phone on [insert number] or via email [insert email]. We will ask for your bank details, so that the refund can be deposited into your account. Please let us know if you would prefer a different method of payment.

Once you have provided the appropriate details, we will pay your refund or add the credit to your electricity account within 14 days of receiving your response.

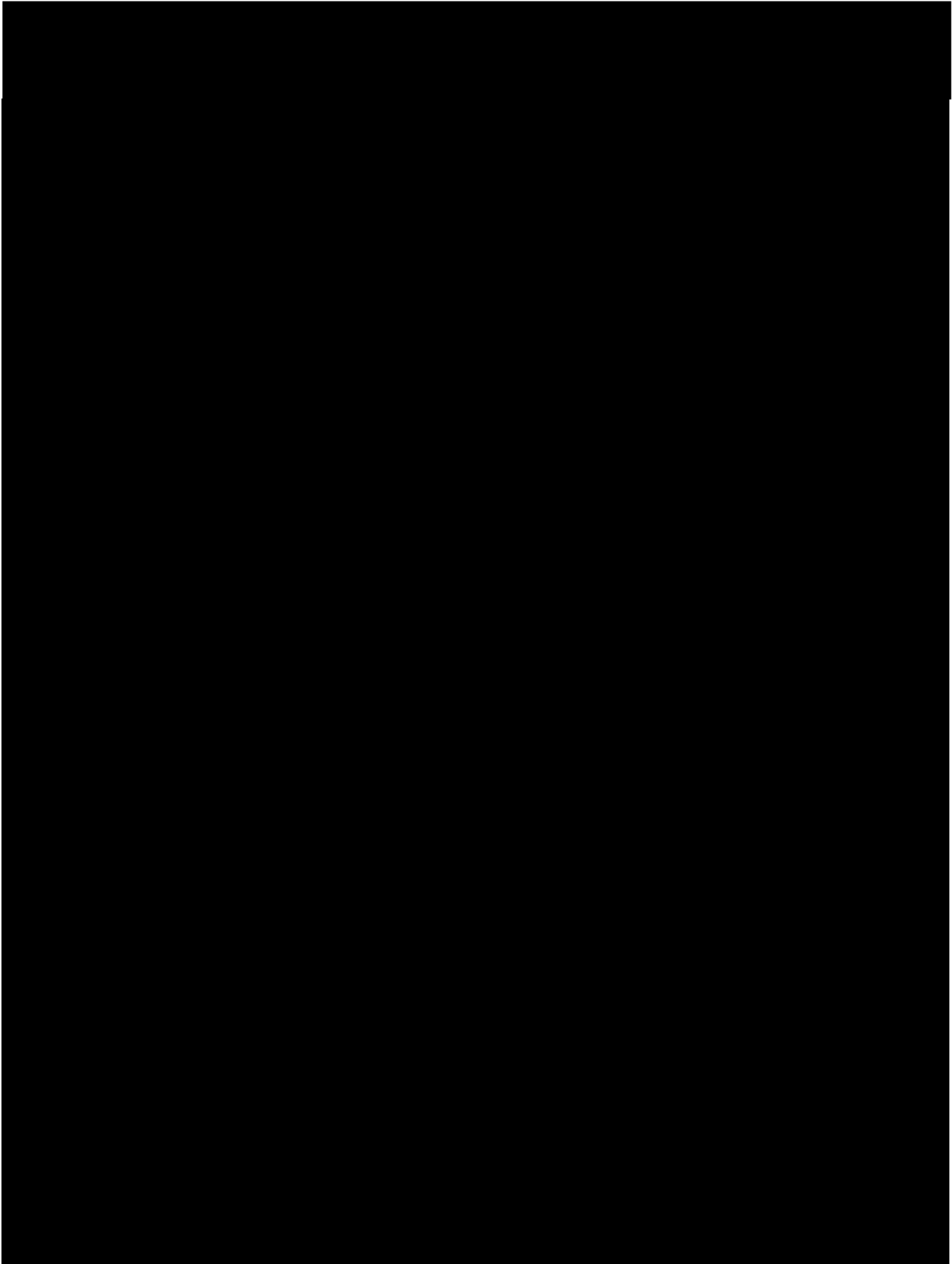
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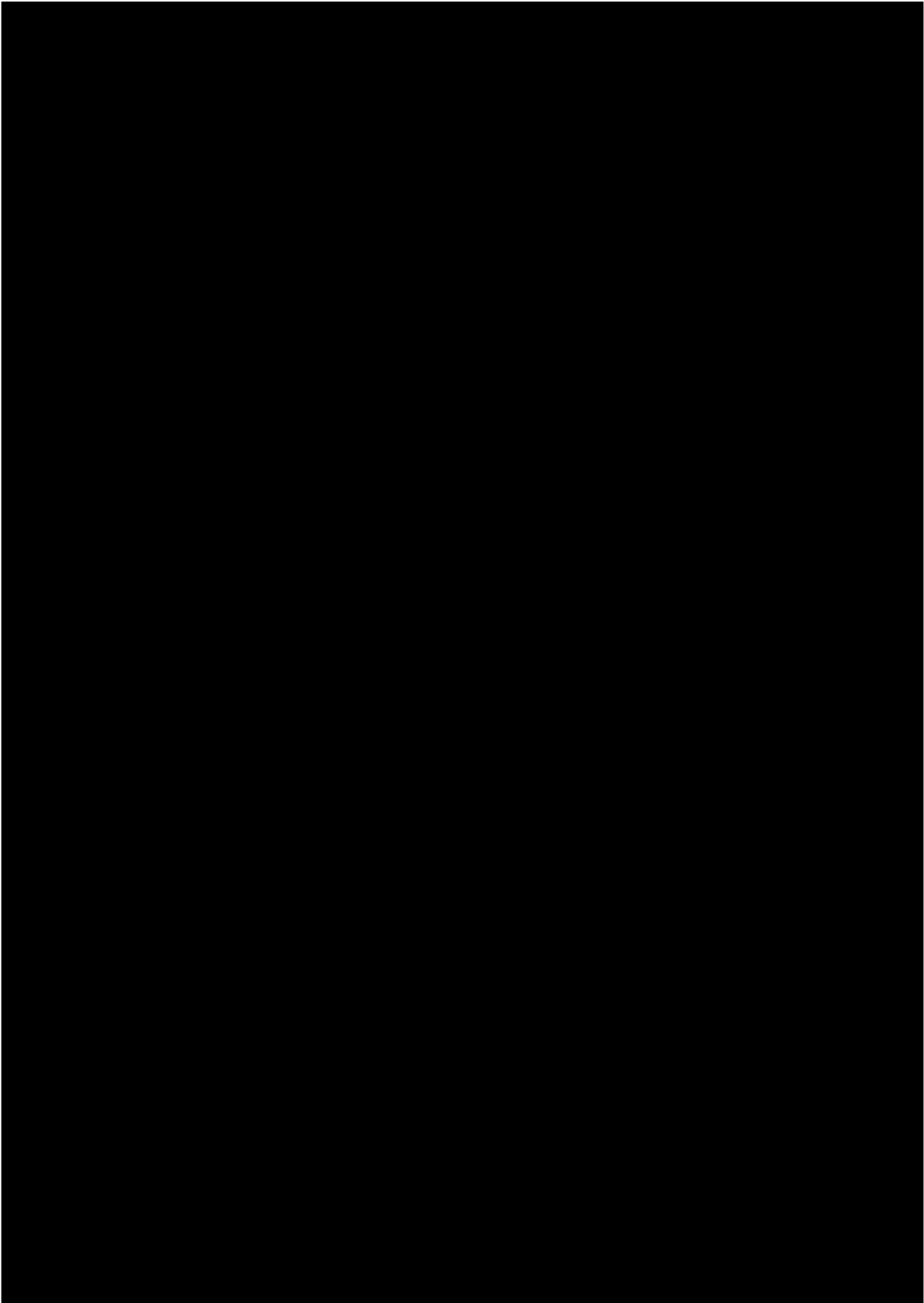
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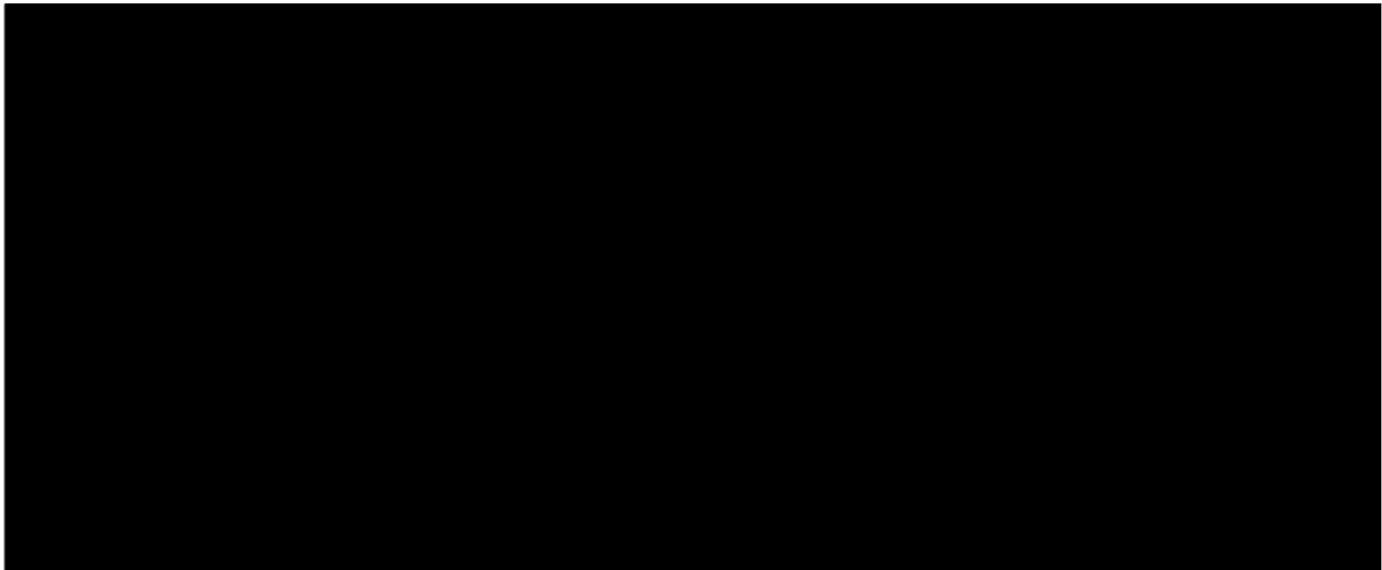
Separately, if you have any queries regarding the AER's investigation, you can contact the AER by emailing aer inquiry@aer.gov.au or calling 1300 585 165.

Yours sincerely,

Confidential Annexure B
Affected Customer Remediation Amounts







Total remediation amounts	\$ 28,376.28	\$ 5,871.20	\$ 34,247.48
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