

## NATIONAL ENERGY RETAIL LAW

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

by

**M2 Energy Pty Ltd (ACN 123 155 840)**

### 1. Persons giving this Undertaking

- 1.1. This Undertaking is given to the Australian Energy Regulator (**AER**) by M2 Energy Pty Ltd (ACN 123 155 840) for the purposes of section 288 of the *National Energy Retail Law* (**Retail Law**).

### 2. Background

- 2.1. M2 Energy Pty Ltd (trading as Dodo Power & Gas) (**Dodo**) is an authorised Retailer of electricity and gas in Queensland, New South Wales, Australian Capital Territory, South Australia, and Tasmania (electricity only) under the *National Energy Retail Regulations* (**Retail Regulations**).
- 2.2. As an authorised Retailer, Dodo must comply with applicable obligations in the Retail Law and *National Energy Retail Rules* (**Retail Rules**) in relation to engaging with customers experiencing hardship and payment difficulties, establishing Payment Plans and arranging direct debits for customers. Relevantly, these obligations include:
- (a) rule 71(1) of the Retail Rules, which requires a Retailer to inform a Hardship Customer of the Retailer of the existence of the Retailer's Customer Hardship Policy as soon as practicable after the customer is identified as a Hardship Customer;
  - (b) rule 72(1)(a) of the Retail Rules, which requires a Payment Plan for a Hardship Customer to be established having regard to the customer's capacity to pay. Under rule 33(4) of the Retail Rules, rule 72 of the Retail Rules also applies to other Residential Customers experiencing payment difficulties if the customer informs the Retailer in writing or by telephone that the customer is experiencing payment difficulties; and
  - (c) rule 32(3) of the Retail Rules, which requires a Retailer to obtain explicit informed consent before entering into a direct debit arrangement with a Small Customer and the agreement of that customer to the amount, initial date, and frequency of the direct debits.

### 3. Conduct of concern

- 3.1. In March 2023, the AER commenced a spot check of Retailer compliance with hardship and Payment Plan obligations contained in the Retail Law and Retail Rules.
- 3.2. The results of the AER's spot check prompted an investigation into Dodo's hardship and Payment Plan practices.
- 3.3. The AER's investigation found that in November 2022, Dodo failed to:
- (a) inform 3 Hardship Customers of its Customer Hardship Policy as soon as practicable after they informed Dodo they were experiencing domestic violence, unemployment, and/or loss of income, thereby identifying themselves as Hardship Customers (**Failure to Inform Conduct**); and

- (b) establish Payment Plans for 3 customers experiencing hardship and/or payment difficulties, having regard to their capacity to pay (**Failure to Consider Capacity to Pay Conduct**).

(collectively, **Relevant Conduct**)

- 3.4. The AER considers that by engaging in the:

- (a) Failure to Inform Conduct: Dodo breached rule 71(1) of the Retail Rules on 3 occasions; and
- (b) Failure to Consider Capacity to Pay Conduct: Dodo breached rule 72(1)(a) of the Retail Rules on 3 occasions.

- 3.5. The AER's investigation into the Relevant Conduct identified broader concerns regarding Dodo's compliance systems and processes, including:

- (a) Dodo's call scripts and workflows do not appear to adequately reference its Customer Hardship Policy or informing Hardship Customers of its Customer Hardship Policy;
- (b) Dodo does not appear to identify customers as Hardship Customers in some instances where the customer displays hardship indicators but agrees to a Payment Plan; and
- (c) Dodo's call operators, in some instances, do not appear to follow Dodo's call scripts and workflows in relation to establishing a Payment Plan with regard to a customer's capacity to pay.

(**Broader Concerns**)

- 3.6. The AER's investigation also identified concerns about compliance with rule 32(3) of the Retail Rules as the AER identified:

- (a) at least 14 occasions where Dodo attempted direct debits from the account of a Hardship Customer in circumstances where it appeared Dodo did not obtain the customer's explicit informed consent to direct debit those amounts. This customer was charged a \$9.50 Direct Debit Decline Fee on each occasion (**Direct Debit Conduct**).

#### **4. Admission and resolution**

- 4.1. Dodo admits that, by engaging in the Failure to Inform Conduct, it breached rule 71(1) of the Retail Rules on 3 occasions.
- 4.2. Dodo admits that, by engaging in the Failure to Consider Capacity to Pay Conduct, it breached rule 72(1)(a) of the Retail Rules on 3 occasions.
- 4.3. Dodo acknowledges the AER's Broader Concerns and concerns in relation to the Direct Debit Conduct.
- 4.4. To address the Relevant Conduct, Broader Concerns and Direct Debit Conduct, and to minimise the likelihood of future contraventions of the Retail Rules, Dodo 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 Dodo; and
  - (b) the AER accepts the Undertaking so executed (**Commencement Date**).
- 5.2. Upon the Commencement Date, Dodo undertakes to assume the obligations set out in clause 7.

## 6. Expiry and variation

- 6.1. This Undertaking expires once Dodo receives written notice from the AER that the AER considers Dodo has satisfied its obligations set out in clause 7 (**Expiry Date**).
- 6.2. Dodo 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 Dodo, 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

### Independent Expert Report

- 7.1. Within 2 Calendar Months of the Commencement Date, Dodo will propose an Independent Expert for the AER's approval, to conduct a review of Dodo's Customer Hardship Policy and compliance with hardship and direct debit obligations in the Retail Law and Retail Rules.
- 7.2. In the event the AER does not approve the Independent Expert Dodo nominates, Dodo must liaise with the AER to identify a candidate acceptable to the AER within 10 Business Days of receiving written notification of the AER's non-approval.
- 7.3. Within 20 Business Days of receiving written notification of the AER's approval of the Independent Expert, Dodo will contractually engage the Independent Expert to conduct a review of and prepare a report addressing, but not limited to, the following matters:
  - (a) the Broader Concerns and Direct Debit Conduct;
  - (b) Dodo's Customer Hardship Policy, including any variations which could be made to the policy in accordance with the AER Customer Hardship Policy Guideline (2019), to address the AER's concerns specified in clauses 3.3 to 3.6; and
  - (c) Dodo's compliance with hardship and direct debit obligations in the Retail Law and Retail Rules (particularly rules 71(1), 72(1)(a) and 32(3) of the Retail Rules), including any improvements which can be made to Dodo's compliance systems and processes.

### **(Compliance Review)**

- 7.4. Within 20 Business Days of contractually engaging the Independent Expert, Dodo will submit to the AER for approval a detailed proposal for the Compliance Review developed jointly with the Independent Expert which addresses the matters in clause 7.3 above (**Compliance Review Proposal**). The Compliance Review Proposal must include details of how the Compliance Review will be conducted and the matters to be addressed by the Independent Expert in its final report.
- 7.5. If the AER raises concerns in relation to the Compliance Review Proposal, Dodo will revise the Compliance Review Proposal in conjunction with the Independent Expert. Dodo will submit a revised Compliance Review Proposal to the AER for approval within 10 Business Days of the AER notifying Dodo of its concerns.
- 7.6. Within 15 Business Days of receiving notice of the AER's approval of the Compliance Review Proposal, Dodo must instruct the Independent Expert to commence the Compliance Review.
- 7.7. Dodo undertakes to provide the Independent Expert with full, free, and unrestricted access to all functions, staff, records, documentation, and information necessary

to develop the Compliance Review Proposal and to conduct the Compliance Review.

- 7.8. Within 4 Calendar Months of commencing the Compliance Review, the Independent Expert will provide Dodo with a report outlining its findings and recommendations in relation to the matters outlined in clause 7.3 (**Independent Expert's Report**).
- 7.9. Within 5 Business Days of receipt of the Independent Expert's Report, Dodo will provide the Independent Expert's Report to the AER.
- 7.10. Within 20 Business Days of receipt of the Independent Expert's Report, Dodo will provide the Independent Expert with its response to the Independent Expert's Report including each of the recommendations Dodo:
  - (a) will implement, including timing for implementation; and
  - (b) will not implement, including:
    - i. Dodo's reasons for not implementing the recommendation; and
    - ii. a description of alternative approaches Dodo proposes to address the issues identified in the recommendation.

**(Dodo's Response)**

- 7.11. Dodo will implement as soon as reasonably practicable and with due diligence any recommendations made in the Independent Expert's Report that it, acting reasonably, considers prudent and practical.
- 7.12. Within 10 Business Days of receipt of Dodo's Response, the Independent Expert will provide to Dodo its response to each of the recommendations Dodo will not implement, including its response to each of the matters specified in clause 7.10(b) above (**Independent Expert's Response**).
- 7.13. Within 5 Business Days of receipt of the Independent Expert's Response, Dodo will provide the AER with a copy of Dodo's Response and the Independent Expert's Response.

**Compliance and Training Program**

- 7.14. Dodo undertakes that it will establish and maintain, for a period of 3 years, a Compliance Program with respect to its hardship and direct debit obligations under the Retail Law and Retail Rules, in particular, rules 71(1), 72(1)(a) and 32(3) of the Retail Rules (**Compliance Program**).
- 7.15. Within a Calendar Month of the Commencement Date, Dodo will appoint a senior manager with suitable qualifications or experience in corporate compliance (**Compliance Officer**), to be responsible for ensuring the Compliance Program is effectively designed, implemented and maintained. Dodo may replace the Compliance Officer during the term of the Undertaking with a new Compliance Officer who meets the criteria in this clause.
- 7.16. Within 2 Calendar Months of receipt of the Independent Expert's Report, Dodo will review and update the Compliance Program with regard to the findings and recommendations in the Independent Expert's Report.
- 7.17. Dodo will ensure that:
  - (a) its officers, employees, representatives, and agents who are responsible for carrying out Dodo's hardship obligations and direct debit requirements under the Retail Law and Retail Rules complete the staff training in relation to the Compliance Program at least once every year; and

- (b) any new officers, employees, representatives and agents of Dodo, who are responsible for carrying out Dodo's hardship obligations and direct debit requirements under the Retail Law and Retail Rules complete staff training in relation to the Compliance Program as part of their induction at Dodo.
- 7.18. Dodo will ensure that the Compliance Officer reports to Dodo's Board and/or senior management every year on the continuing effectiveness of the Compliance Program.

Direct debit fees

- 7.19. Dodo undertakes to refund any Direct Debit Fees that it has applied to Affected Customers for any unauthorised direct debit attempts in the period 8 October 2022 – 8 October 2024 (inclusive).
- 7.20. If Dodo is unable to refund an Affected Customer pursuant to clause 7.19 within 3 years of the Commencement Date, it will deal with any Direct Debit Fees it is unable to refund to that Affected Customer in accordance with the relevant unclaimed money legislation.
- 7.21. Dodo undertakes that within 6 Calendar Months of the Commencement Date and for a period of 24 Calendar Months thereafter it will not charge any Flagged Hardship Customers Direct Debit Decline Fees.

Documentation and reporting

- 7.22. Dodo will maintain copies of all documents relating to the obligations under this Undertaking, for a period no less than 5 years from the Commencement Date.
- 7.23. Dodo will notify the AER as soon as reasonably practicable of the:
- (a) date on which it:
    - (i) engages the Independent Expert pursuant to clause 7.3;
    - (ii) instructs the Independent Expert to commence the Compliance Review pursuant to clause 7.6;
    - (iii) receives the Independent Expert's Report pursuant to clause 7.8;
    - (iv) provides Dodo's Response pursuant to clause 7.10;
    - (v) receives the Independent Expert's Response pursuant to clause 7.12;
    - (vi) completes a review and update of the Compliance Program pursuant to clause 7.16;
    - (vii) ceases charging Direct Debit Decline Fees to Flagged Hardship Customers pursuant to clause 7.21; and
    - (viii) recommenced charging Direct Debit Decline Fees to Flagged Hardship Customers pursuant to clause 7.21.
  - (b) number of Affected Customers; and
  - (c) quantum of Direct Debit Fees applied to Affected Customer accounts for any unauthorised direct debit attempts in the period 8 October 2022 – 8 October 2024 (inclusive).
- 7.24. Dodo undertakes to, every 12 Calendar Months from the Commencement Date for a period of 3 years, provide to the AER:
- (a) a report which details for the 12-month period:
    - (i) the total number of Affected Customers who have been refunded;
    - (ii) the total amount in Direct Debit Fees refunded to Affected Customers;

- (iii) the total number of Affected Customers who were unable to be refunded pursuant to clause 7.20;
    - (iv) if applicable, the total amount in Direct Debit Fees dealt with via the relevant unclaimed money legislation pursuant to clause 7.20; and
    - (v) an explanation for amounts yet to be refunded to Affected Customers or dealt with via unclaimed money legislation.
  - (b) a copy of the report referred to in clause 7.18.
- 7.25. For the purposes of monitoring compliance with this Undertaking, the AER may make reasonable enquiries with Dodo and Dodo will use reasonable endeavours to respond to such enquiries within 5 business days.
- 7.26. If requested by the AER during the period of 4 years following the Commencement Date, Dodo will produce and provide the AER copies of all documents related to its compliance with the obligations in this Undertaking.
- 7.27. Dodo undertakes to 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.

## **8. Acknowledgements**

- 8.1. Dodo 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 Dodo seeking penalties and other relief) in relation to any breaches of the Retail Law or Retail Rules, which have occurred before or after the Commencement Date; 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. Dodo must pay all of its own costs in relation to the Undertaking.
- 9.2. Dodo undertakes not to seek or receive indemnification or reimbursement for any 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](mailto:AERCompliance@aer.gov.au)

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

[REDACTED] [REDACTED]  
 [REDACTED] [REDACTED]  
 [REDACTED] [REDACTED]

10.3. Dodo must notify the AER of a change to its contact details within 5 Business Days.

## 11. Definitions

11.1. Terms used in this Undertaking are set out below.

Term	Meaning
<b>AER</b>	means the Australian Energy Regulator.
<b>Affected Customers</b>	means all Flagged Hardship Customers impacted by unauthorised direct debit attempts from Dodo in the period 8 October 2022 – 8 October 2024 (inclusive).
<b>Broader Concerns</b>	means the AER's concerns set out in clause 3.5 of this Undertaking.
<b>Business Day</b>	has the meaning given to that term under section 2 of the Retail Law.
<b>Calendar Month</b>	has the meaning given to that term in Schedule 2 of the Gas Law.
<b>Commencement Date</b>	is the date the Undertaking comes into effect under clause 5.1 of this Undertaking.
<b>Compliance Officer</b>	has the meaning given to that term in clause 7.15 of this Undertaking.
<b>Compliance Program</b>	has the meaning given to that term in clause 7.14 of this Undertaking.
<b>Compliance Review</b>	has the meaning given to that term in clause 7.3 of this Undertaking.
<b>Compliance Review Proposal</b>	has the meaning given to that term in clause 7.4 of this Undertaking.
<b>Customer Hardship Policy</b>	has the meaning given to that term under section 2 of the Retail Law.
<b>Direct Debit Conduct</b>	means the conduct set out at clause 3.6 of this Undertaking.
<b>Direct Debit Decline Fee</b>	means any fees or charges applied to the account of a customer by Dodo for any direct debit payment which is declined, dishonoured or reversed.
<b>Direct Debit Fees</b>	means any fees or charges applied by Dodo to a customer for any unsuccessful or successful direct debit attempt, including transaction fees and Direct Debit Decline Fees.
<b>Dodo</b>	means M2 Energy Pty Ltd (ACN 123 155 840).
<b>Dodo's Response</b>	has the meaning given to that term in clause 7.10 of this Undertaking.
<b>Expiry Date</b>	means the period of time in clause 6.1 of this Undertaking for which the Undertaking has effect.
<b>Failure to Consider Capacity to Pay Conduct</b>	has the meaning given to that term in clause 3.3(b) of this Undertaking.

<b>Failure to Inform Conduct</b>	has the meaning given to that term in clause 3.3(a) of this Undertaking.
<b>Flagged Hardship Customer</b>	means any customer identified by Dodo as a Hardship Customer and who has been enrolled in Dodo's hardship program.
<b>Gas Law</b>	means the National Gas Law set out in the Schedule to the <i>National Gas (South Australia) Act 2008</i> .
<b>Hardship Customer</b>	has the meaning given to that term under section 2 of the Retail Law.
<b>Independent Expert</b>	means a third party who is not a Related Body Corporate of Dodo.
	<p>The third party carrying out the Compliance Review must:</p> <ul style="list-style-type: none"> <li>• be able to act without bias and without any actual or potential conflicts of interest with reference to the following criteria: <ul style="list-style-type: none"> <li>○ is not a present or past staff member or director of Dodo;</li> <li>○ has not acted and does not act for, and does not consult and has not consulted to, Dodo in any matters relating to compliance with hardship or direct debit obligations in the Retail Law and Retail Rules; and</li> <li>○ has no significant shareholding or other interests in Dodo;</li> </ul> </li> <li>• have professional competence to apply established audit standards and techniques to carry out the Compliance Review to a high standard; and</li> <li>• have a system of quality controls to ensure the Independent Expert's Report is of a professional standard.</li> </ul>
<b>Independent Expert's Report</b>	has the meaning given to that term in clause 7.8 of this Undertaking.
<b>Independent Expert's Response</b>	has the meaning given to that term in clause 7.12 of this Undertaking.
<b>Payment Plan</b>	has the meaning given to that term under section 2 of the Retail Law.
<b>Relevant Conduct</b>	means the conduct set out at clause 3.3 of this Undertaking.
<b>Residential Customer</b>	has the meaning given to that term under section 2 of the Retail Law.
<b>Retailer</b>	has the meaning given to that term under section 2 of the Retail Law.
<b>Retail Law</b>	means the National Energy Retail Law set out in the Schedule to the <i>National Energy Retail Law (South Australia) Act 2011</i> .
<b>Retail Rules</b>	means the <i>National Energy Retail Rules</i> .
<b>Small Customer</b>	has the meaning given to that term under section 5 of the Retail Law.
<b>Undertaking</b>	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) if a period of time is provided to begin from a given act, matter or thing, the period is to be calculated by excluding the day of the act, matter or thing, and by including the day by which the relevant obligation is to be fulfilled;
- (e) 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;
- (f) 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*;
- (g) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (h) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
- (i) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or government agency;
- (j) 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;
- (k) 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;
- (l) a reference to the words 'such as', 'including', 'particularly' and similar expressions can be construed without limitation;
- (m) 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
- (n) 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

M2 Energy Pty Ltd, ACN 123 155 840, pursuant to section 127(1) of the *Corporations Act 2001*.

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Nitesh Naidoo

Director

25 February 2025 | 9:12 AM AEDT

This.....day of.....2025.

DocuSigned by:  
  
3BCD8880792B48B.....


Simon Lewin

Secretary

21 February 2025 | 12:44 PM AEDT

This.....day of.....2025.

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

  
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Justin Paul Oliver, AER Board Member

This 1st.....day of April.....2025.