

## **Undertaking to the Australian Competition and Consumer Commission**

Given under section 87B of the *Competition and Consumer Act 2010* (Cth) by Blue NRG Pty Ltd (ACN 151 014 658)

### **1. Person giving the Undertaking**

- 1.1 This undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Blue NRG Pty Ltd (ACN 151 014 658) (**Blue NRG**) for the purposes of section 87B of the *Competition and Consumer Act 2010* (**CCA**) (**Undertaking**).

### **2. Background**

- 2.1 Blue NRG is an energy retailer which provides electricity to approximately 13,378 businesses in Victoria, New South Wales, South Australia and Queensland.
- 2.2 Blue NRG purchases electricity on the National Electricity Market from wholesale producers, known as generators. Blue NRG sells the electricity it purchases from generators to its customers and supplies electricity to their premises.
- 2.3 In 2020, 2021 and 2022, Blue NRG offered to supply electricity to certain small and large business customers in New South Wales and Queensland on the basis that the peak, off-peak and/or shoulder rates for the supply of electricity to their premises would be fixed or non-variable for the duration of their contracts (**Fixed Rate Contracts**).
- 2.4 A class of 543 small and large business customers in New South Wales and Queensland entered into Fixed Rate Contracts that were affected by the conduct described below (**Affected Customers**).

### **3. ACCC's concerns**

- 3.1 On 16 November 2022, Blue NRG sent letters to each of the Affected Customers that purported to provide written notice of force majeure concerning Blue NRG's sale of electricity to their premises and stated that Blue NRG was prevented from maintaining current prices and would pass on its increased wholesale purchasing costs to customers (**Force Majeure Notice**).
- 3.2 On 12 December 2022, Blue NRG also sent letters to each of the Affected Customers notifying them of changes to their peak, off-peak and/or shoulder rates effective 1 January 2023 (**Price Increase Notice**). The increases effectively doubled the price of electricity for Affected Customers.
- 3.3 By sending the Force Majeure Notice and the Price Increase Notice to Affected Customers, Blue NRG represented to each of the Affected Customers that Blue NRG had the right to increase the price payable for electricity under the customer's contract due to force majeure (**Force Majeure Increase Representation**), when in fact Blue NRG had no legal right to increase the price payable for electricity under the customer's contract due to force majeure.
- 3.4 More broadly, the ACCC is concerned that Blue NRG made the Force Majeure Increase Representations to Affected Customers in circumstances where:

- (a) Blue NRG had negotiated and entered into Fixed Rate Contracts which set a fixed or non-variable rate/tariff for peak, off-peak and/or shoulder rates; and
  - (b) Affected Customers had relied upon the relevant rate/tariff being fixed or non-variable for the entire term of the Fixed Rate Contract.
- 3.5 The ACCC considers that by engaging in the conduct described in paragraphs 3.1-3.3 of this Undertaking (**Relevant Conduct**), Blue NRG engaged in misleading or deceptive conduct and made false or misleading representations in contravention of sections 18, 29(1)(i) and 29(1)(m) of the Australian Consumer Law (**ACL**), contained in Schedule 2 of the CCA.

#### 4. Admissions and Resolution

- 4.1 In response to the ACCC's investigation, Blue NRG:
- (a) has admitted that its conduct was likely to have contravened sections 18, 29(1)(i) and 29(1)(m) of the ACL;
  - (b) has cooperated with and assisted the ACCC during its investigation by:
    - (i) providing the ACCC with an interim undertaking on 2 February 2023 in which Blue NRG undertook to:
      - 1. not take any steps to proceed with the Price Increase;
      - 2. provide the ACCC with 5 business days written notice before taking any steps to proceed with the Price Increase; and
      - 3. withdraw any invoices with the Price Increase that may have been sent to Affected Customers and, in the event the invoice with the Price Increase has already been paid, provide any applicable credit or refund to the Affected Customer in accordance with the revised invoice; and
    - (ii) on 8 February and 4 May 2023, issuing price reversion notices to Affected Customers notifying them that prices as they stood prior to the Price Increase Notice would be reinstated (**Price Reversion Notice**); and
  - (c) has offered this Undertaking to the ACCC.

#### 5. Commencement of this Undertaking

- 5.1 This Undertaking comes into effect when:
- (a) this Undertaking is executed by Blue NRG, and
  - (b) this Undertaking so executed is accepted by the ACCC (the **Commencement Date**).
- 5.2 This Undertaking has effect for 3 years from the Commencement Date (**Term**).
- 5.3 From the Commencement Date, Blue NRG undertakes to assume the obligations set out in paragraphs 6.1 to 6.9 of this Undertaking for the purposes of section 87B of the CCA.

#### 6. Undertaking

*Cease and refrain from further false or misleading representations*

- 6.1 Blue NRG undertakes that it will not, in trade or commerce, make representations that it has a legal right or power to increase any fixed or non-variable rate/tariff for the supply of electricity to a customer (**Fixed Rate**)

including by making any Force Majeure Representations in circumstances where, in fact, it has no such right or power.

- 6.2 With respect to the Affected Customers, for the term of the relevant Fixed Rate Contract, Blue NRG undertakes that it will:
- (a) not withdraw the Price Reversion Notices;
  - (b) not charge Affected Customers the prices set out in the Price Increase Notice and instead charge the pre-existing rates or tariffs fixed under the relevant Fixed Rate Contract;
  - (c) only issue invoices to Affected Customers based on the pre-existing rates or tariffs fixed under the relevant Fixed Rate Contract; and
  - (d) not otherwise take any steps to increase the fixed or non-variable rates/tariffs for the supply of electricity to an Affected Customer before the expiry date of the Fixed Rate Contract.
- 6.3 This Undertaking does not prevent Blue NRG from invoicing customers for any variations to the fees and other charges that are not fixed or non-variable under the relevant Fixed Rate Contract.

#### *Consumer redress*

- 6.4 Blue NRG undertakes that it will, in accordance with the processes identified in **Annexure A**, offer to compensate all Affected Customers who transferred to another electricity retailer following the Relevant Conduct and before the issue of the Price Reversion Notice (**Former Affected Customers**).
- 6.5 The amount of any compensation payable under paragraph 6.4 of this Undertaking shall be calculated as the difference between the following:
- (a) the total amount paid by the Former Affected Customer for the supply of electricity during the period between the date of transfer to another electricity retailer and the expiry date specified in the relevant Fixed Rate Contract with Blue NRG entered into at any time following the Relevant Conduct and before the issue of the first Price Reversion Notice on 8 February 2023; and
  - (b) the total amount that would have been calculated and charged by Blue NRG to the Former Affected Customer under the Fixed Rate Contract for the supply of same quantity of electricity that the Former Affected Customer was supplied by another retailer during the period referred to paragraph 6.5(a).
- 6.6 Blue NRG will not be required to pay any compensation, where:
- (a) there is no difference between the amount paid by the Former Affected Customer to another retailer as specified in paragraph 6.5(a) and the amount calculated under paragraph 6.5(b);
  - (b) the amount calculated under paragraph 6.5(b) is more than the amount paid by the Former Affected Customer to another retailer as specified in paragraph 6.5(a).

#### *Competition and Consumer Compliance Program*

- 6.7 Blue NRG undertakes to, at its own expense:
- (a) establish and implement a Competition and Consumer Compliance Program (**Compliance Program**) in accordance with the requirements and timelines set out in **Annexure B**, being a program designed to minimise

Blue NRG's risk of future breaches of the ACL and to ensure its awareness of the responsibilities and obligations in relation to the requirements of the ACL;

- (b) maintain and continue to implement the Compliance Program for the Term of this Undertaking; and
- (c) provide a copy of any documents required by the ACCC in accordance with this Undertaking, including **Annexure B**.

#### *Reporting to the ACCC*

6.8 Blue NRG undertakes that it will:

- (a) within 1 month of the Commencement Date, provide a report to the ACCC stating all measures taken in compliance with paragraphs 6.1 and 6.2 of this Undertaking;
- (b) 1 year after the Commencement Date, provide a report to the ACCC stating all measures taken in compliance with paragraph 6.4 of this Undertaking and stating:
  - (i) the number of Former Affected Customers that applied for compensation and have been paid the Compensation Amount (as defined in Annexure A) in accordance with paragraph 1.4 of Annexure A; and
  - (ii) the number of Former Affected Customers that applied for compensation and have not been paid the Compensation Amount (as defined in Annexure A), and the reason why Blue NRG did not make payment.

6.9 Blue NRG undertakes that it will report to the ACCC any non-compliance or likely non-compliance with the Undertaking within 14 days of such non-compliance or likely non-compliance.

### **7. ACCC Enquiries**

7.1 For the purposes of monitoring compliance with this Undertaking, the ACCC may make reasonable enquiries with Blue NRG and Blue NRG will respond to such enquiries at its own expense within a reasonable period of time.

7.2 If requested by the ACCC during the Term of this Undertaking, Blue NRG will, at its own expense, cause to be produced and provide to the ACCC copies of such documents (excluding any legally privileged documents) in its power, possession or control evidencing Blue NRG's compliance with the obligations set out in this Undertaking.

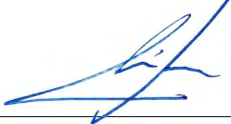
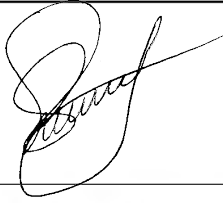
### **8. Acknowledgements**

8.1 Blue NRG acknowledges that:

- (a) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
- (b) the ACCC will, from time to time, make public reference to this Undertaking including in news media statements and in ACCC publications; and
- (c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

**Executed as an Undertaking**

Executed by Blue NRG Pty Ltd (ACN 151 014 658) pursuant to section 127(1) of the *Corporations Act 2001* by:

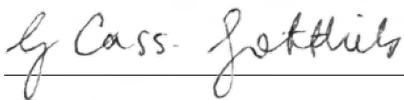
	
Signature of director	Signature of a director/ <del>company secretary</del> (delete as appropriate, or entire column if sole director company)
Christopher Kuperman	Nicholas Smedley
Name of director (print)	Name of director/ <del>company secretary</del> (print)
Date 29/6/2023	Date 29/6/2023

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

29 June 2023

Date

and signed on behalf of the Commission:



Chair  
Gina Cass-Gottlieb

Date 29 June 2023

## **Annexure A**

### **Consumer Redress Process**

In accordance with paragraphs 6.4 and 6.5 of this Undertaking, Blue NRG will follow the consumer redress process outlined below. Definitions contained in this Undertaking are incorporated in this Annexure A.

#### **Part A**

##### *Direct communications to Former Affected Customers*

- 1.1 Blue NRG will, within 1 month of the Commencement Date, at its own expense, send a letter to all Former Affected Customers in the form at Part B of this Annexure A.
- 1.2 Blue NRG will, within 7 days of the date that the Former Affected Customer's Fixed Rate Contract with Blue NRG would have expired, at its own expense, send a letter to any Former Affected Customer for whom Blue NRG has not yet received a claim for compensation, reminding them of their right to claim compensation.

##### *Compensation for Former Affected Customers*

- 1.3 Blue NRG will, within 14 days of receipt of the complete information requested by Blue NRG in the letter to the Former Affected Customer in paragraph 1.1:
  - (a) In good faith and acting reasonably, assess the information provided by a Former Affected Customer and calculate the compensation amount payable (**Compensation Amount**); and
  - (b) notify each Former Affected Customer of:
    - (i) the Compensation Amount; and
    - (ii) the Former Affected Customer's right to dispute the compensation amount pursuant to paragraph 1.6 of this Annexure A.
- 1.4 After providing the notice in paragraph 1.3 and unless a Former Affected Customer notifies Blue NRG in writing of a dispute in accordance with paragraph 1.6 of this Annexure A, Blue NRG must, within 7 days of the expiry of the time for a customer to raise a dispute, reimburse the Former Affected Customer by way of cheque or direct debit payment into the Former Affected Customer's nominated bank account, or another payment method nominated by the Former Affected Customer, excluding cash.
- 1.5 Blue NRG will, within 14 days of receipt of any incomplete information referred to in paragraph 1.3 of this Annexure A, contact the Former Affected Customers and advise what they need to provide to qualify for reimbursement of the Compensation Amount.

##### *Dispute resolution and independent auditor*

- 1.6 A Former Affected Customer may notify Blue NRG within 14 days of receiving notice in writing from Blue NRG, of a dispute regarding the Compensation Amount payable (**Dispute**), which notice shall include:
  - (a) the nature of the dispute; and

- (b) the amount of compensation that the Former Affected Customer says should be paid by Blue NRG.
- 1.7 Blue NRG upon receiving the Dispute notice shall try to reach an agreement with the Former Affect Customer as to the Dispute.
- 1.8 If Blue NRG and the Former Affected Customer cannot agree to the resolution of the Dispute within 14 days of Blue NRG receiving the Dispute notice, Blue NRG will:
  - (a) refer the Dispute to an independent auditor appointed by Blue NRG and agreed by the Former Affected Customer (acting reasonably) with suitable qualifications or experience (at Blue NRG's own cost) to make a determination in respect of the Dispute and the Compensation Amount payable to the Affected Customer to be calculated in compliance with the items in paragraphs 1.3 to 1.5 of this Annexure A (**Independent Auditor**). The Independent Auditor will qualify as independent on the basis that they:
    - (i) did not conduct, design or implement the process for Blue NRG's assessment of information provided by Affected Customers pursuant to paragraph 1.3 of this Annexure A;
    - (ii) is not a present or past staff member or director of Blue NRG or its related bodies corporate;
    - (iii) has not acted and does not act for, and does not consult and has not consulted to Blue NRG or its related bodies corporate; and
    - (iv) has no significant shareholding or other interests in Blue NRG or its related bodies corporate;
  - (b) if an Affected Customer requests a review of Compensation amount payable, use its best endeavours to ensure that the Independent Auditor is provided with a copy of this Undertaking and Annexure A and all relevant sources of information in Blue NRG's possession or control, including but not limited to:
    - (i) information provided by the Affected Customer in response to the letter to the Former Affected Customers in paragraph 1.1 of this of this Annexure A;
    - (ii) all calculations and/or assessments made by Blue NRG pursuant to paragraph 1.3 of this Annexure A;
    - (iii) the relevant Fixed Rate Contract;
    - (iv) any other relevant information requested by the Independent Auditor to make the determination;
  - (c) request the Independent Auditor to determine the Dispute and the Compensation Amount within 5 days of receiving the information referred to in paragraph 1.8(b) above.
  - (d) within 5 days of the Dispute being referred to the Independent Auditor, notify the Former Affected Customer as soon as the Dispute has been referred to the Independent Auditor; and
  - (e) adjust the Compensation Amount to match the amount determined by the Independent Auditor and make payment of the Compensation Amount as determined by the Independent Auditor within 14 days being notified of the Independent Auditor's determination.

- 1.9 If appointed, the Independent Auditor will provide the ACCC with a copy of each determination made in relation to each Dispute referred to the Independent Auditor for determination under this Undertaking, within 7 days of providing the determination to Blue NRG.

## Part B

### *Direct communications to Former Affected Customers*

Dear [INSERT],

Australian Consumer Law Notice

Blue NRG Pty Ltd (**Blue NRG**) has likely misled certain customers that had entered into contracts with Blue NRG that contained fixed or non-variable rates/tariffs for the supply of electricity (**Fixed Rate Contracts**).

Between November and December 2022, Blue NRG sent letters to customers in New South Wales and Queensland who had entered a Fixed Rate Contract, advising them that due to “force majeure” Blue NRG would be increasing peak, off-peak and/or shoulder rates effective from 1 January 2023. This was not true as we did not have the legal right to increase the price payable for electricity under the customer’s contract due to force majeure.

The Australian Competition and Consumer Commission (**ACCC**) investigated this conduct and formed the view that Blue NRG likely misled consumers and made false claims in contravention of sections 18, 29(1)(i) and 29(1)(m) of the Australian Consumer Law.

Blue NRG admits that it likely misled customers and expresses its apologies to any customers affected.

### **How we will make this right**

We understand that you ended your contracts with Blue NRG on [INSERT DATE] and transferred to another electricity retailer.

We will compensate you if you were charged more than your original Fixed Rate Contract with Blue NRG for [insert retailer]. This will be the difference from the date you left Blue NRG until [insert date], which should be the end of your original Fixed Rate Contract with Blue NRG.

If you would like compensation:

1. Contact us by 30 June 2024 to apply for compensation via [mechanism – e.g. hyperlink, email, phone etc]. Please include in your application for compensation the following: [INSERT DETAILS of information required by Blue NRG to make this assessment]
2. We will assess and pay your claim for compensation within 35 calendar days of receiving a valid application including all information that we require from you (subject to any dispute between us about the amount of compensation owed).



You will be able to make an application for compensation from [insert date] (when your Fixed Rate Contract with Blue NRG would have expired). We will send you a letter reminding you of the above.

We have sent you this letter as part of a court enforceable undertaking that we have provided to the ACCC. This undertaking includes information on the dispute mechanism in case there is disagreement on the compensation amount. More information is available at [ACCC to provide URL link to media release].

If you have any queries about this letter, please contact us at [INSERT].

Your sincerely,

## Annexure B

### Competition and Consumer Compliance Program

Blue NRG Pty Ltd (**Blue NRG**) will establish a competition and consumer compliance program (**Compliance Program**) that complies with each of the following requirements:

#### Appointments

- 1.1 Within 3 months of the undertaking under the *Competition and Consumer Act 2010* (Cth) (**CCA**) provided by Blue NRG coming into effect (**Commencement Date**), Blue NRG will appoint a director or a senior manager with suitable qualifications or experience in corporate compliance as responsible for ensuring the Compliance Program is effectively designed, implemented and maintained (**Compliance Officer**).
- 1.2 Within 3 months of the Commencement Date, Blue NRG will appoint a suitably qualified, internal or external, compliance professional with expertise in competition and consumer law (**Compliance Advisor**).

#### Compliance Policy

- 1.3 Blue NRG will, within 30 days of the Commencement Date, issue a policy statement outlining Blue NRG's commitment to compliance with the CCA (**Compliance Policy**).
- 1.4 Blue NRG will ensure the Compliance Policy:
  - (a) contains a statement of commitment to compliance with the ACL;
  - (b) contains an outline of how commitment to compliance with the ACL will be realised within Blue NRG;
  - (c) contains a requirement for all staff to report any Compliance Program related issues and ACL compliance concerns to the Compliance Officer; and
  - (d) contains a clear statement that Blue NRG will take action internally against any persons who are knowingly or recklessly concerned in a contravention of the ACL and will not indemnify them in the event of any court proceedings in respect of that contravention.

#### Complaints Handling System

- 1.5 Within 3 months of the Commencement Date, Blue NRG will develop and implement procedures for identifying, classifying, storing and responding to competition and consumer law complaints (**Complaints Handling System**).
- 1.6 Blue NRG will use its best endeavours to ensure the Complaints Handling System is consistent with the Australian/New Zealand Standard **AS/NZS 10002:2022 Guidelines for complaint management in organizations**, as in force or existing at the Commencement Date, tailored as required to Blue NRG's circumstances.

- 1.7 Blue NRG will ensure that staff and customers are made aware of the Complaints Handling System.

### **Staff Training and Induction**

- 1.8 Blue NRG will ensure that the Compliance Program includes a requirement for regular (at least once a year) training of all directors, officers, employees, representatives and agents of Blue NRG whose duties could result in them being concerned with conduct that may contravene the CCA, including the ACL (**Staff Training**).
- 1.9 Blue NRG will ensure that the Staff Training is conducted by a suitably qualified compliance professional or legal practitioner with expertise in competition and consumer law.
- 1.10 Blue NRG will ensure that the Compliance Program includes a requirement that awareness of competition and consumer compliance issues forms part of the induction of all new directors, officers and employees whose duties could result in them being concerned with conduct that may contravene the CCA, including the ACL (**Induction**).

### **Reports to Board/Senior Management**

- 1.11 Blue NRG will ensure that the Compliance Officer reports to the Board and/or senior management every 12 months on the continuing effectiveness of the Compliance Program.

### **Independent Compliance Review**

- 1.12 Blue NRG will, at its own expense, cause a review of the Compliance Program (**Review**) to be carried out within 6 months of the Commencement Date, in accordance with each of the following requirements:
- (a) **Scope of Review** – the Review should be broad and rigorous enough to provide Blue NRG and the ACCC with:
- (i) a verification that Blue NRG has in place a Compliance Program that complies with each of the requirements detailed in paragraphs 1.1-1.11 and
  - (ii) the Compliance Report detailed at paragraph 1.14 below.
- (b) **Independence of Review** – Blue NRG will ensure that each Review is carried out by a suitably qualified, independent compliance professional with expertise in competition and consumer law (**Reviewer**). The Reviewer will qualify as independent on the basis that he or she:
- (i) did not design or implement the Compliance Program;
  - (ii) is not a present or past staff member or director of Blue NRG or its related bodies corporate;
  - (iii) has not acted and does not act for, and does not consult and has not consulted to, Blue NRG or its related bodies corporate in any competition and consumer law matters, other than performing Reviews; and
  - (iv) has no significant shareholding or other interests in Blue NRG or its related bodies corporate.

- (c) **Evidence** – Blue NRG will use its best endeavours to ensure that each Review is conducted on the basis that the Reviewer has access to all relevant sources of information in Blue NRG’s possession or control, including without limitation:
- (i) the ability to make enquiries of any officers, employees, representatives, and agents of Blue NRG;
  - (ii) documents relating to Blue NRG’s Compliance Program, including documents relevant to Blue NRG’s Compliance Policy, Complaints Handling System, Staff Training and Induction; and
  - (iii) any reports made by the Compliance Officer to the Board or senior management regarding Blue NRG’s Compliance Program.

1.13 Blue NRG will ensure that the Reviewer completes the Review, prepares a Compliance Report with the Reviewer’s findings as specified in paragraph 1.14 and delivers the Compliance Report to the Compliance Officer of Blue NRG within 6 months of the commencement of the Review.

### **Compliance Report**

1.14 Blue NRG will use its best endeavours to ensure that as a part of the independent Review, the Reviewer includes the following findings of the Review in a report to the Compliance Officer of Blue NRG (**Compliance Report**):

- (a) whether the Compliance Program of Blue NRG includes all the elements detailed in paragraphs 1.1 - 1.11 above and if not, what elements need to be included or further developed;
- (b) whether the Compliance Program adequately covers areas identified in the Risk Assessment, and if not, what needs to be further addressed;
- (c) whether the Staff Training and Induction is effective, and if not, what aspects need to be further developed;
- (d) whether Blue NRG’s Complaints Handling System is effective, and if not, what aspects need to be further developed;
- (e) whether there are any material deficiencies in Blue NRG’s Compliance Program, or whether there are or have been instances of material non-compliance with the Compliance Program (**Material Failure**), and if so, recommendations for rectifying the Material Failure.<sup>1</sup>

### **Blue NRG response to Compliance Report**

1.15 Blue NRG will ensure that the Compliance Officer, within 14 days of receiving the Compliance Report:

- (a) provides the Compliance Report to the Board or relevant governing body;
- (b) where a Material Failure has been identified by the Reviewer in the Compliance Report, provides a report to the Board or relevant governing

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<sup>1</sup> Material failure means a failure, that is non-trivial and which is ongoing or continued for a significant period of time, to:

- Incorporate a requirement of the Undertaking in the design of the Compliance Program, for example, if a Complaints Handling System did not provide an mechanism for responding to complaints; or
- Comply with a fundamental obligation in the implementation of the Compliance Program, for example if no Staff Training has been conducted within the Annual Review period.

body identifying how Blue NRG can implement any recommendations made by the Reviewer in the Compliance Report to rectify the Material Failure;

- (c) Blue NRG will implement promptly and with due diligence any recommendations made by the Reviewer in the Compliance Report to address a Material Failure.

### **Reporting Material Failures to the ACCC**

1.16 Where a Material Failure has been identified by the Reviewer in the Compliance Report, Blue NRG will:

- (a) provide a copy of the Compliance Report to the ACCC within 30 days of the Board or relevant governing body receiving the Compliance Report; and
- (b) inform the ACCC of any steps that have been taken to implement the recommendations made by the Reviewer in the Compliance Report; or
- (c) otherwise outline the steps that Blue NRG proposes to take to implement the recommendations and inform the ACCC once those steps have been implemented.

### **Risk Assessment**

1.17 Blue NRG will instruct the Compliance Advisor to conduct an annual competition and consumer law risk assessment to be carried out within 6 months of the implementation of the recommendations of the Compliance Report (**Risk Assessment**) and to provide a written report outlining their findings (**Risk Assessment Report**) to Blue NRG within 6 months of conducting each Risk Assessment.

1.18 Blue NRG will use its best endeavours to ensure that the Risk Assessment Report:

- (a) identifies the areas where Blue NRG is at risk of breaching the Australian Consumer Law (**ACL**) (contained in Schedule 2 to the CCA), taking into account but not limited to the areas which are the subject of the ACCC's concerns, which are set out in the Undertaking;
- (b) assesses the likelihood of these risks occurring;
- (c) identifies where there may be gaps in Blue NRG's existing procedures for managing these risks; and
- (d) provides recommendations for any action to be taken by Blue NRG having regard to the above assessment.

1.19 Blue NRG will implement the recommendations in the Risk Assessment Report within 6 months of the Compliance Advisor providing Blue NRG with a copy of the Risk Assessment Report.

### **Provision of Compliance Program documents to the ACCC**

1.20 Blue NRG will maintain copies of all documents relating to and constituting the Compliance Program for a period not less than 5 years following the Commencement Date.

- 1.21 If requested by the ACCC during the period of 5 years following the Commencement Date, Blue NRG will, at its own expense, cause to be produced and provided to the ACCC copies of all documents constituting the Compliance Program, including:
- (a) the Compliance Policy;
  - (b) all Risk Assessment Reports;
  - (c) an outline of the Complaints Handling System;
  - (d) Staff Training and Induction materials;
  - (e) the Compliance Report referred to in paragraph 1.14 of this Annexure B;
  - (f) the reports to the Board and/or senior management referred to in paragraph 1.11 of this Annexure B.

**ACCC Recommendations**

- 1.22 Blue NRG will implement promptly and with due diligence any recommendations that the ACCC may make that the ACCC deems reasonably necessary to ensure that Blue NRG maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.