
UNDERTAKING TO THE COMMISSIONER FOR FAIR TRADING

By

Wilson Parking Australia 1992 Pty Ltd

ACN 052 475 911

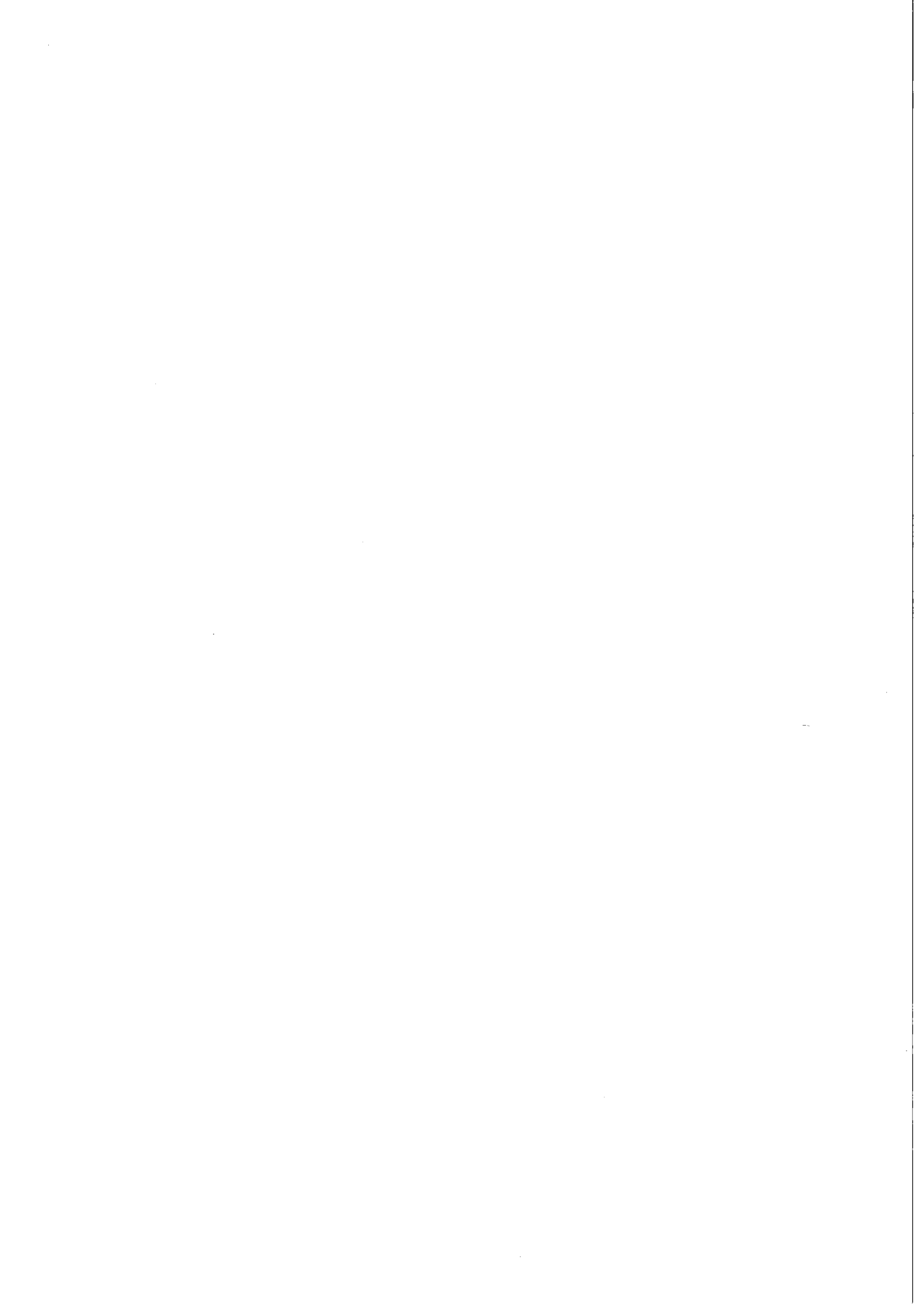
Person Giving Undertaking

1. This undertaking is given to the Commissioner for Fair Trading of the Australian Capital Territory (**Commissioner**) by Wilson Parking Australia 1992 Pty Ltd ACN 052 475 911, ABN 67 052 475 911 (**Wilson**) of Level 3, Bishop's See, 235 St George's Terrace, Perth, Western Australia 6000 for the purpose of section 218 of the Australian Consumer Law (ACT) (**ACL**). Wilson gives this undertaking on behalf of Parking Enforcement Services (**PES**), a division of Wilson.

Background

2. Wilson carries on a business of operating car parks throughout Australia, and operates 6 premises within the Australian Capital Territory (**ACT**), including:
 - (a) the Section 63 Car Park (**Section 63**), London Circuit, Canberra City; and
 - (b) the Woden Green Car Park (**Woden Green**), Easty Street, Woden.
3. PES carries out a function of enforcing compliance with the terms and conditions of entry to Wilson premises (**Enforcement Activities**).
4. Between around 2009 and around 1 February 2014, the Office of Regulatory Services (**ORS**) was responsible for carrying out Enforcement Activities in respect of Section 63 and Woden Green on behalf of Wilson, including carrying out parking patrols and issuing infringement notices.
5. On around 1 February 2014, Wilson assumed responsibility for carrying out the Enforcement Activities at Section 63 and Woden Green.
6. In March 2014, two complaints were referred to the ORS in respect of 'parking breach notices' which had been issued to those consumers by PES in relation to their use of the Section 63 car park. The complaints referred to a lack of signage upon entry to indicate that the car park was operated by Wilson, and a lack of signage to indicate that fees were payable for weekend parking. One of the complainants expressed the belief that the 'parking breach notice' they had received was an ACT Government parking infringement notice.
7. In response to these complaints, ORS inspected the Section 63 car park on 20 March 2014, and noted that:
 - (a) there was no signage at the entry to the car park to indicate the terms and conditions of entry;
 - (b) the 4 pay stations in the car park were not distinguishable from an ACT Government ticket machine, unless a person was directly in front of the machine;

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- (c) all 4 pay stations had a small Wilson sign above them displaying the applicable parking fees, however the terms and conditions of entry were displayed at only 1 of the 4 stations;
- (d) the sign displaying the terms and conditions:
- i. stated that "infringement notices" distributed for "illegal parking" were enforceable under "local council by-laws";
 - ii. stated that all references to 'we', 'us' or 'our' in the signage included "the local council";
 - iii. did not refer to the imposition of a fee or claim for liquidated damages upon an 'infringement notice' being issued, nor the quantum of such a fee or claim; and
 - iv. did not refer to wheel clamping being used as a measure for non-payment of 'infringement notices', nor the fee or quantum of liquidated damages that would be imposed or claimed for release of the clamp.
8. During this period, similar signage and 'parking breach notices' were used by Wilson at Woden Green.
9. The Commissioner considers that from 1 February 2014 to 9 April 2014, Wilson conducted its operations at the Section 63 and Woden Green car parks in a manner which was misleading or deceptive, and made representations which were false or misleading, in contravention of sections 18, 29(1)(g) and 29(1)(m) of the ACL. The extent of those contraventions decreased over time, in accordance with changes Wilson made in response to ORS raising concerns.
10. The Commissioner considers that Wilson engaged in conduct which was misleading or deceptive or was likely to mislead or deceive by:
- (a) issuing 'parking breach notices' which represented that the recipient had entered into a contract with Wilson upon parking at the car park;
 - (b) issuing 'parking breach notices' which claimed that the terms of the recipient's contract with Wilson were as per the terms and conditions displayed at the car park;
 - (c) issuing 'parking breach notices' which claimed that the recipient was required to pay a stated amount for breach of that contract;
 - (d) representing that infringement notices were enforceable under 'local council by-laws';
 - (e) representing that it was associated with the ACT Government for the purpose of enforcing parking arrangements;
 - (f) representing that it had lawful authority to issue parking breach notices and or wheel clamp vehicles when it was likely that consumers had not seen the conditions of entry and therefore not consented to the conditions so as to make those actions lawful.



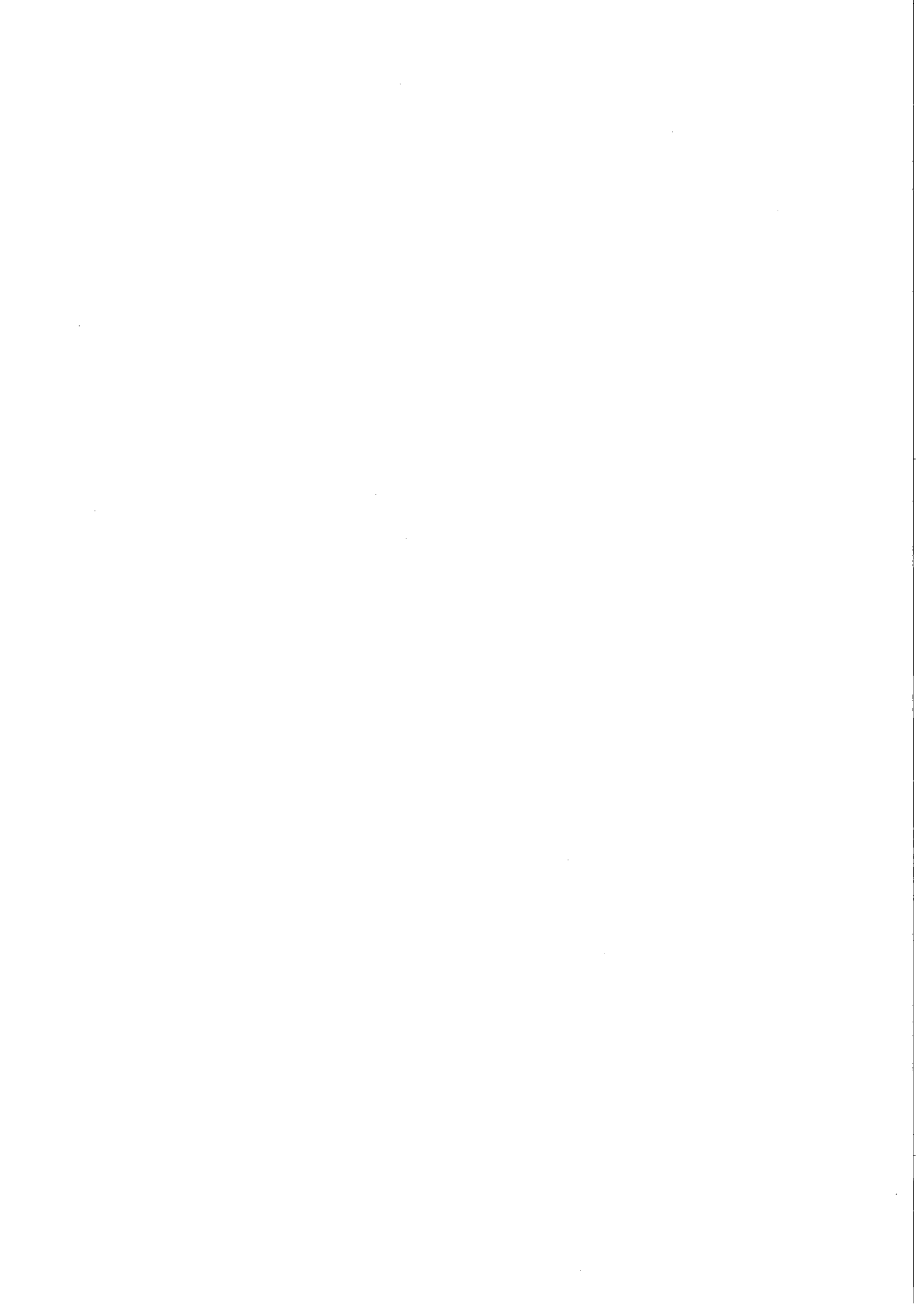
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11. In addition, the Commissioner considers that Wilson made false or misleading representations about services to the effect that:
- (a) recipients of a 'parking breach notice' had entered into a contract with Wilson upon parking at the car park;
 - (b) the terms of the contract between the recipient of a 'parking breach notice' and Wilson were as per the terms and conditions set out on notices displayed at the car park;
 - (c) recipients of a 'parking breach notice' were required to pay a stated amount for breach of that contract;
 - (d) infringement notices were enforceable under 'local council by-laws';
 - (e) Wilson was associated with the ACT Government for the purpose of enforcing parking arrangements; and
 - (f) Wilson had lawful authority to issue parking breach notices and or wheel clamp vehicles when it was likely that consumers had not seen the conditions of entry and therefore not consented to the conditions so as to make those actions lawful.
12. Wilson has accepted that there were issues with its signage at the Section 63 and Woden Green car parks between 1 February and 9 April 2014, and acknowledges that the Commissioner considers that this conduct was inconsistent with sections 18, 29(1)(g) and 29(1)(m) of the ACL.
13. Wilson has cooperated with ORS and, in addition to the steps it has already taken (including voluntarily ceasing Enforcement Activities in respect of Section 63 and Woden Green, and, where feasible, reimbursing users who were issued, and complied, with breach notices at Section 63 or Woden Green between 1 February 2014 to 9 April 2014), Wilson wishes to address the Commissioner's concerns by offering this undertaking in accordance with section 218 of the ACL.

Commencement

14. This undertaking comes into effect when:
- (a) the undertaking is executed by Wilson; and
 - (b) the Commissioner accepts the undertaking so executed.

Undertakings

15. Wilson undertakes for the purpose of section 218 of the ACL to:
- (a) remove from its parking breach notices any reference to it being an "infringement notice", within 14 days of this undertaking coming into effect;
 - (b) remove from its signage, for all of its premises in the ACT, all references to "illegal parking", "infringement notices" and the "local council", within 28 days of this undertaking coming into effect;
 - (c) include in its conditions of entry signage, for all of its premises in the ACT, the quantum of liquidated damages Wilson will claim for the release of a wheel clamp. This figure, and the quantum Wilson will claim upon issue of a parking breach



notice, will be emphasised in bold text, within 28 days of this undertaking coming into effect;

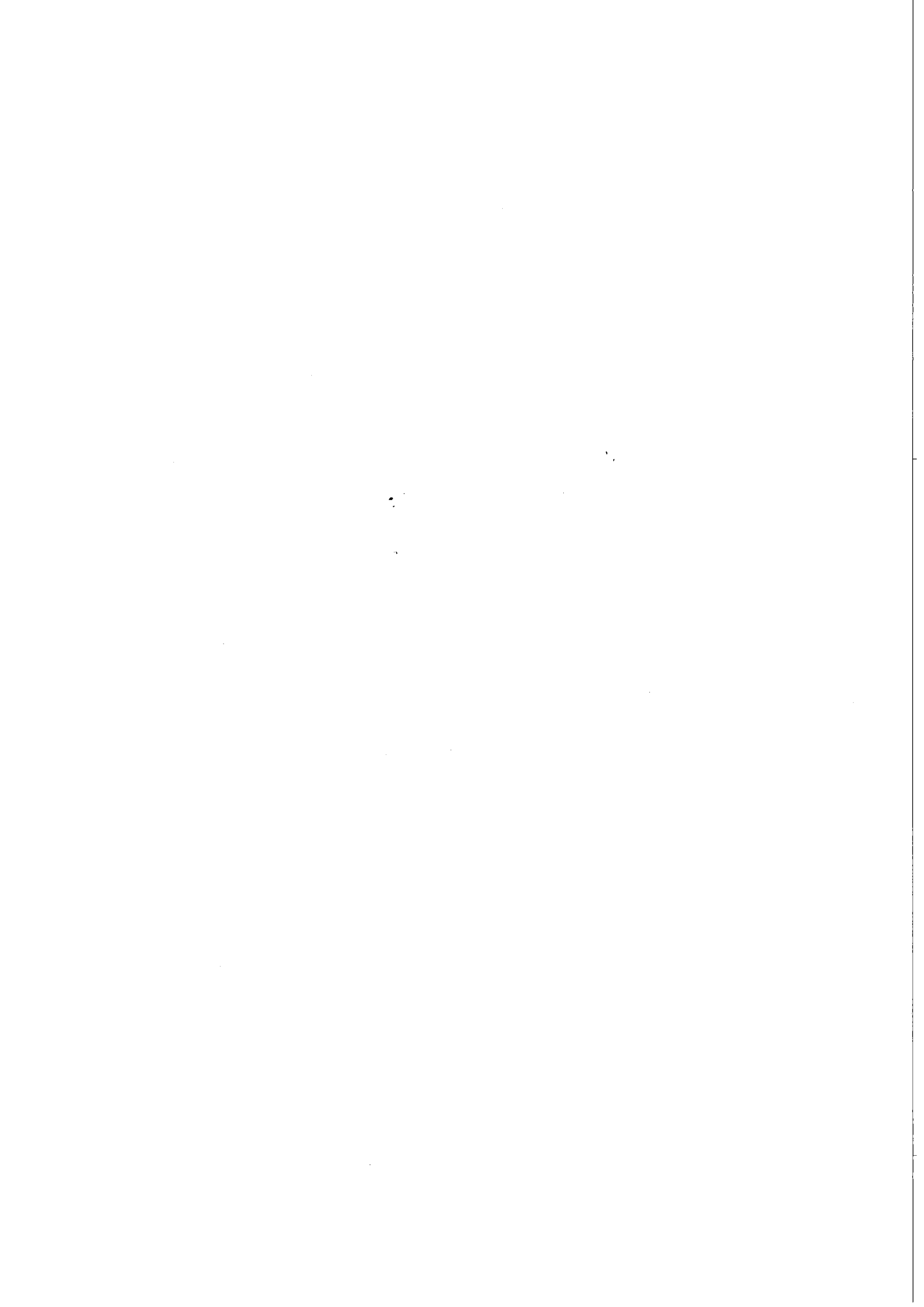
- (d) ensure that any signage erected at any new premises Wilson may commence operating in the future does not refer to 'illegal parking', 'infringement notices' or the 'local council', but does include, in bold text, in its conditions of entry signage the quantum of liquidated damages Wilson will claim for a parking breach notice and for the release of a wheel clamp;
- (e) use all reasonable endeavours to reimburse all persons who made payment to Wilson in response to a parking breach notice which was issued in relation to use of the Section 63 or Woden Green car parks during the period 1 February to 9 April 2014, within 28 days of this undertaking coming into effect;
- (f) waive any outstanding parking breach notice liquidated damages claims for those persons who have not paid the damages claim, but to whom a parking breach notice was issued in relation to use of the Section 63 and Woden Green car parks during the period 1 February to 9 April 2014;
- (g) ensure that vehicles which, or persons who, were issued with a parking breach notice in relation to use of the Section 63 or Woden Green car parks during the period 1 February to 9 April 2014 are not recorded by Wilson as having breached the terms and conditions of entry, for the purposes of determining whether to wheel clamp the vehicle in the future if there is a breach of the terms and conditions of entry;
- (h) make a monetary donation of \$10,000 to Snowy Hydro Southcare within 28 days of this undertaking coming into effect;
- (i) within 6 months of the date of this undertaking, conduct a review of its policies and procedures to ensure that its car parking operations are compliant with the ACL, particularly when establishing new car parks or taking over car parks previously controlled by a government or other entity;
- (j) provide documentary evidence to ORS regarding its compliance with each of the above undertakings within 14 days of completion of each.

Duration

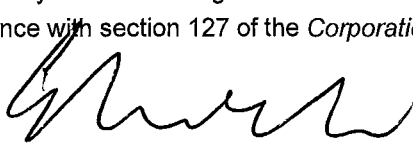
16. These undertakings have effect for a period of 1 year.

Acknowledgments

17. Wilson acknowledges that:
- (a) The ORS will make this Undertaking publicly available including by publishing it on the ORS website;
 - (b) The ORS will, from time to time, make public reference to the Undertaking including in news media statements and in ORS publications; and
 - (c) This Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

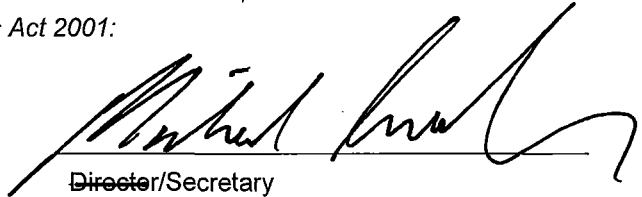


Executed by Wilson Parking Australia 1992 Pty Ltd ACN 052 475 911, ABN 67 052 475 911 in accordance with section 127 of the *Corporations Act 2001*:



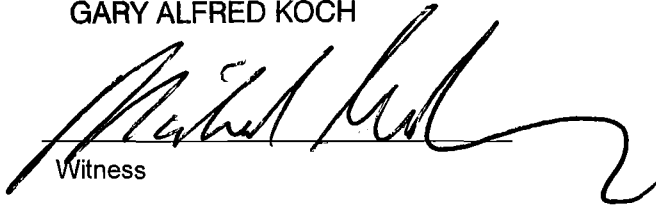
Director

GARY ALFRED KOCH



Director/Secretary

MICHAEL JAMES QUINLIVAN



Witness

Dated this *20th* day of *August* 2014.

ACCEPTED by the ACT Commissioner for Fair Trading pursuant to section 218 of the Australian Consumer Law (ACT).



Brett Phillips
ACT Commissioner for Fair Trading



Witness

Dated this *4th* day of *September* 2014.

