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Australian Communications and Media Authority

Investigation Report

Summary	
Entity	Tabcorp Holdings Limited
Australian Company Number	063 780 709
Type of activity	Commercial electronic messaging
Relevant Legislation	*Spam Act 2003*
Findings	**11** contraventions of subsubsection 16(1) [Commercial electronic messages must not be sent] **3,148** contraventions of subsection 17(1) [Commercial electronic messages must include accurate information about the identity of the individual sending the message and how the recipient can readily contact that individual or organisation] **2,598** contraventions of subsection 18(1) [Commercial electronic messages must contain a functional unsubscribe facility]
Date	4 April 2025

Background

1. The Australian Communications and Media Authority (**ACMA**) commenced an investigation under section 510(1)(ab) of the *Telecommunications Act 1997* (**Telco Act**) into Tabcorp Holdings Limited (**TAB**)'s compliance with the *Spam Act 2003* (**Spam Act**) on 15 November 2024.

2. The investigation concerned commercial electronic messages (**CEMs**) TAB sent to electronic addresses between 1 February and 1 May 2024. These are CEMs TAB sent to customers in its VIP Program (referred to as **TAB X**).

3. The ACMA's findings are based on submissions obtained from TAB between 19 December 2024 and 13 February 2025, in response to:

    a. a compulsory information gathering notice (**Notice**) given by the ACMA on 14 November 2024

    b. a request for information from the ACMA on 24 January 2025

    c. a request for information from the ACMA on 11 February 2025.

4. The CEMs subject to preliminary contravention findings are collectively referred to as the 'investigated messages', specifically:

    a. 11 CEMs sent via SMS between 15 February and 29 April 2024, in contravention of subsection 16(1) of the Spam Act

    b. 3,148 CEMs sent via SMS or WhatsApp between 1 February and 1 May 2024 in contravention of subsection 17(1) of the Spam Act

    c. 2,598 CEMs sent via SMS or WhatsApp between 1 February and 1 May 2024 in contravention of subsection 18(1) of the Spam Act

5. Details about the investigated messages are set out in **Attachment D**.

6. The reasons for the ACMA's findings, including the key elements which establish the contraventions, are set out below.

Relevant legislative provisions

Commercial electronic message

7. Under section 6 of the Spam Act, a CEM is an electronic message where, having regard to:

   a. the content of the message; and

   b. the way in which the message is presented; and

   c. the content that can be located using links, telephone numbers or contact information (if any) set out in the message:

   it would be concluded that the purpose, or one of the purposes, of the message is:

   d. to offer to supply goods or services; or

   e. to advertise or promote goods or services […]

Designated commercial electronic message (DCEM)

8. The Spam Act allows for the sending of messages with factual information only that contain the names, logos and contact details of businesses. There is no requirement to have consent or provide an unsubscribe for these types of messages under the Spam Act.

9. Under Schedule 1 to the Spam Act, an electronic message is a DCEM if:

   a. The message consists of no more than factual information (with or without directly related comment) and any or all of the following additional information:

      (i) The name, logo and contact details of the individual or organisation who authorised the sending of the message […]

   b. Assuming that none of that additional information had been included in the message, the message would not have been a CEM […]

Consent – subsection 16(1)

10. Under subsection 16(1) of the Spam Act, a person must not send, or cause to be sent, a CEM that has an Australian link and is not a designated CEM.

11. Exceptions apply to this prohibition. Specifically, a person will not contravene subsection 16(1) of the Spam Act where:

    a. the relevant electronic account-holder consented to the sending of the CEM (subsection 16(2))

    b. a person did not know, or could not have ascertained, that the CEM has an Australian link (subsection 16(3)), or

    c. a person sent the message, or caused the message to be sent, by mistake (subsection 16(4)).

12. Clause 6 of Schedule 2 to the Spam Act sets out when a person withdraws consent to receive CEMs. Relevantly, paragraph 6(1)(d) provides:

    the relevant electronic account-holder, or a user of the relevant account, sends the individual or organisation:

    (i) a message to the effect that the account-holder does not want to receive any further commercial electronic messages at that electronic address from or authorised by that individual or organisation; or

(ii) a message to similar effect.

13. Where an electronic account-holder sends an unsubscribe request to an entity, CEMs sent more than 5 business days after that request are sent without consent and in breach of subsection 16(1).

Accurate sender information in CEMs – subsection 17(1)

14. Under subsection 17(1) of the Spam Act, CEMs which have an Australian link must (a) clearly and accurately identify the individual or organisation who authorised the sending of the message; and (b) include accurate information about how the recipient can readily contact the authorising individual or organisation.

15. Subsection 17(1) does not apply if the person did not know, and could not, with reasonable diligence, have ascertained that the message had an Australian link (subsection 17(2)); or the person sent the message, or caused the message to be sent, by mistake (subsection 17(3)).

Unsubscribe function in CEMs – subsection 18(1)

16. Under subsection 18(1) of the Spam Act, CEMs which have an Australian link must contain a functional unsubscribe facility.

17. Under paragraph 18(1)(e), an unsubscribe link / function in a CEM must be capable of receiving a recipient's unsubscribe message.

18. Subsection 18(1) does not apply if:

    a. the message is a 'designated commercial electronic message' (paragraph 18(1)(b))

    b. a person did not know, or could not have ascertained, that a CEM has an Australian link (subsection 18(2))

    c. including an unsubscribe facility would be inconsistent with the terms of a contract or other agreement (subsection 18(3)), or

    d. a person sent the CEM, or caused the CEM to be sent, by mistake (subsection 18(4)).

Evidential burden for exceptions

19. Under subsections 16(5), 17(4) and 18(5) of the Spam Act, if an entity wishes to rely on any of the exceptions, it bears the evidential burden in relation to that matter. This means that it needs to produce or point to evidence that suggests a reasonable possibility that the exception applies.

Reason for findings

Issue 1: CEMs must not be sent – section 16

20. To determine TAB's compliance with section 16 of the Spam Act, the ACMA has addressed the following in relation to 11 investigated messages:

    a. Is TAB a 'person' to which section 16 of the Spam Act applies?

    b. If so, did TAB send or cause the messages to be sent?

    c. If so, were the messages commercial?

    d. If so, did the CEMs have an Australian link?

    e. If so, were the CEMs designated as exempt from the prohibition on sending unsolicited messages?

    f. If not, did TAB claim that the CEMs were subject to any exceptions?

    g. If so, did TAB meet the evidential burden in relation to these claims?

21. If these conditions or elements of the offence are met (and the person has not raised an exception which is supported by evidence) then contraventions are established.

Is TAB a 'person' to which section 16 of the Spam Act applies?

22. TAB is a company registered under the *Corporations Act 2001* and is therefore a 'person' for the purposes of the Spam Act.

Did TAB send, or cause to be sent, the messages?

23. TAB stated that it sent the issue 1 investigated messages. They were sent by TAB account managers to TAB X customers

Were the messages commercial?

24. The ACMA is satisfied that at least one of the purposes of the issue 1 investigated messages was to offer to supply TAB goods or services or advertise or promote TAB goods or services, including the offer of bonus bets, deposit matches, rebates or offers of tickets to sporting and other events. The issue 1 investigated messages are commercial based on their content (See **Attachment A** for examples).

Did the messages have an Australian link?

25. TAB's central management and business registration were in Australia when it sent the issue 1 investigated messages, therefore, the messages had an Australian link.

Were the messages designated?

26. The issue 1 investigated messages were not designated CEMs because:

    a. The messages were for the purpose of providing offers/promotions and more than factual information.
    b. TAB is not an entity of a type set out in clauses 3 or 4 of Schedule 1 to the Spam Act, i.e., a government body, registered charity, registered political party or an educational institution.

Did TAB claim that any of the messages were subject to any exceptions?

27. TAB did not claim to have consent to send the messages, or make claims about any other potential exceptions, and they were sent more than 5 business days after the account holders made unsuccessful requests to unsubscribe.

Conclusion – Issue 1

28. The ACMA is of the view that TAB contravened subsection 16(1) of the Spam Act on 11 occasions between 15 February and 29 April 2024, by sending CEMs more than 5 business days after an account holder made a request to unsubscribe.

Issue 2: CEMs must contain accurate sender information – section 17

29. To determine TAB's compliance with section 17 of the Spam Act, the ACMA has addressed the following in relation to 3,148 issue 2 investigated messages:

    a. Is TAB a 'person' to which section 17 of the Spam Act applies?

    b. If so, did TAB send or cause the messages to be sent?

    c. If so, were the messages commercial?

    d. If so, did the CEMs have an Australian link?

    e. If so, did the CEMs identify the authoriser and contain their contact information?

    f. If not, did TAB claim that the CEMs were subject to any exceptions?

    g. If so, did TAB meet the evidential burden in relation to these claims?

Is TAB a 'person' to which section 17 of the Spam Act applies?

30. This has been established under Issue 1 above.

Did TAB send, or cause to be sent, the messages?

31. TAB stated that it sent the issue 2 investigated messages. They were sent by TAB account managers to TAB X customers.

Were the messages commercial?

32. The ACMA is satisfied that at least one of the purposes of the issue 2 investigated messages was to offer to supply TAB goods or services or advertise or promote TAB goods or services, including bonus bets, deposit matches, rebates or offers of tickets to sporting and other events. The issue 2 investigated messages are commercial based on their content (see **Attachment B** for examples).

Did the messages have an Australian link?

33. TAB's central management and business registration were in Australia when it sent the issue 2 investigated messages, therefore, the messages had an Australian link.

Did any of the messages include accurate authoriser and contact information?

34. The issue 2 investigated messages did not identify the individual or organisation who authorised the sending of the message AND/OR include accurate information about how the recipient can readily contact the authorising individual or organisation.

35. TAB stated that customers would be able to identify and contact the account managers sending messages if they had saved those account managers' names and phone numbers in their phones. While this could have been a practical reality in some cases, TAB's view is speculative at best, and the Spam Act does not contemplate such arrangements. Accordingly, these messages were sent without the required contact information.

Did TAB claim that any of the messages were subject to any exceptions?

36. TAB do not claim that the issue 2 messages were subject to any exception under section 17(2) or 17(3) of the Spam Act.

Conclusion – Issue 2

37. The ACMA is therefore of the view that TAB contravened section 17(1) of the Spam Act on 3,148 occasions between 1 February and 1 May 2024 by sending CEMs without accurate authoriser and contact information.

Issue 3: CEMs must contain a functional unsubscribe facility – section 18

38. To determine TAB's compliance with section 18 of the Spam Act, the ACMA has addressed the following in relation to 2,598 issue 3 investigated messages:

    a. Is TAB a 'person' to which section 18 of the Spam Act applies?

    b. If so, did TAB send or cause the messages to be sent?

    c. If so, were the messages commercial?

    d. If so, did the CEMs have an Australian link?

    e. If so, did the CEMs fall within the definition of DCEM as outlined in Schedule 1?

    f. If not, did the CEMs include a functional unsubscribe facility?

    g. If not, did TAB claim that the CEMs were subject to any exceptions?

    h. If so, did TAB meet the evidential burden in relation to these claims?

Is TAB a 'person' to which section 18 of the Spam Act applies?

39. This has been established under Issue 1 above.

Did TAB send, or cause to be sent, the messages?

40. TAB stated that it sent the issue 3 investigated messages. They were sent by TAB account managers to TAB X customers.

Were the messages commercial?

41. The ACMA is satisfied that at least one of the purposes of the issue 3 investigated messages was to offer to supply TAB goods or services or advertise or promote TAB goods or services, including the offer of bonus bets, deposit matches, rebates or offers of tickets to sporting and other events. The issue 3 investigated messages are commercial based on their content (see **Attachment C** for examples).

Did the messages have an Australian link?

42. TAB's central management and business registration were in Australia when it sent the issue 3 investigated messages, therefore, the messages had an Australian link.

Were the messages designated?

43. The issue 3 investigated messages were not designated CEMs because:

    a. The messages were for the purpose of providing offers/promotions and more than factual information.

    b. TAB is not an entity of a type set out in clauses 3 or 4 of Schedule 1 to the Spam Act, i.e., a government body, registered charity, registered political party or an educational institution.

Did the any of the messages include a functional unsubscribe facility?

44. TAB sent the issue 3 investigated messages without a functional unsubscribe facility in contravention of subsection 18(1) of the Spam Act.

Did TAB claim that any of the CEMs were subject to any exceptions?

45. TAB does not claim that the issue 3 investigated messages were subject to any exemption under sections 18(2), 18(3) or 18(4) of the Spam Act.

Conclusion – Issue 3

46. The ACMA is therefore of the view that TAB contravened section 18(1) of the Spam Act on 2,598 occasions between 1 February and 1 May 2024 by sending messages without a functional unsubscribe facility.

Conclusion

47. The ACMA finds there are reasonable grounds to believe that TAB has contravened:

    a. subsection 16(1) of the Spam Act for sending 11 CEMs after consent had been withdrawn, between 15 February and 29 April 2024, and

    b. subsection 17(1) of the Spam Act for sending 3,148 CEMs without identifying the authoriser or containing accurate contact information about the authoriser between 1 February and 1 May 2024, and

    c. subsection 18(1) of the Spam Act for sending 2,598 CEMs sent without a functional unsubscribe facility between 1 February and 1 May 2024.

Attachments

Attachment A – example issue 1 messages

Attachment B – example issue 2 messages

Attachment C – example issue 3 messages

Attachment D – details of contraventions

Attachment A – Indicative examples of issue 1 messages (deidentified of personal information)

Example 1:

Hi

Thanks for taking the call with, Bit of a pain, I know. Apologies for any inconvenience.

I've just put a couple of Bonus bets onto the account for the weekend.

Sing out if you need anything & have a good weekend 👍

Cheers,

Chances are you're about to lose. Set a deposit limit. For free and confidential support call 1800 858 858 or visit gamblinghelponline.org.au

(Interaction ID 32484)

Example 2:

Hey

Hope all is well, mate.

I've just put a Bonus bet onto the account a bit earlier this week due to the Public Holiday.

Reach out if you need anything and have a great weekend😎

Cheers,

Chances are you're about to lose. Set a deposit limit. For free and confidential support call 1800 858 858 or visit gamblinghelponline.org.au

(Interaction ID 17441)

Example 3:

Hi Mr

Since you haven't been active since 29/2, I have dropped you $288 bb. Stay well!

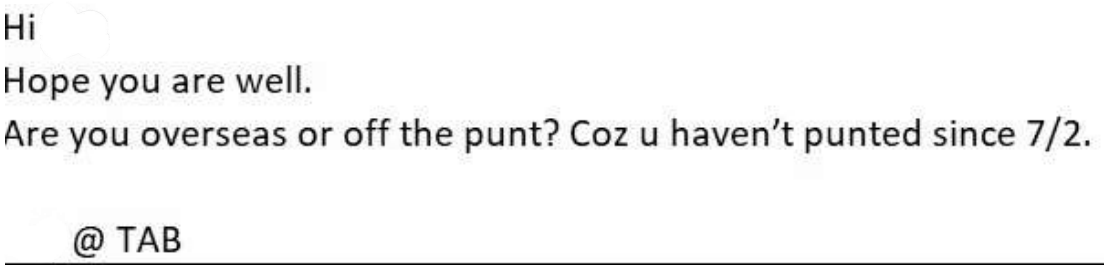
@ TAB

🔴🔴🔴🔴🔴🔴🔴🔴 What are you prepared to lose today? Set a deposit limit. For free and confidential support call 1800 858 858 or visit gamblinghelponline.org.au

(Interaction ID 320692)

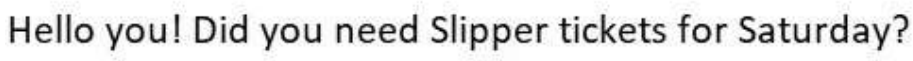
Attachment B – Indicative examples of issue 2 messages (deidentified of personal information)

Example 1:



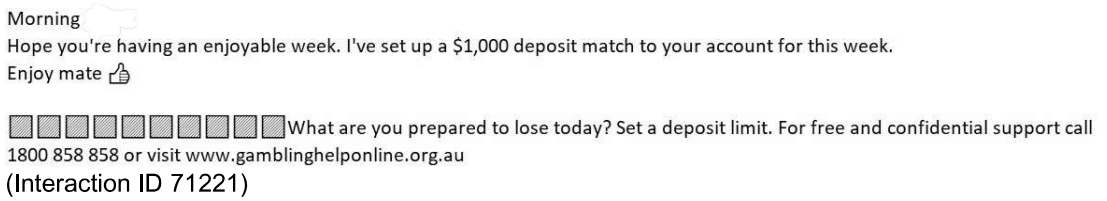
(Interaction ID 328285)

Example 2:



(Interaction ID 174676)

Example 3:



(Interaction ID 71221)

Attachment C – Indicative examples of issue 3 messages (deidentified of personal information)

Example 1:

Hey mate
Hope you're well. I've set up a $5,000 deposit match to the account for this week. Enjoy mate 👍

What are you prepared to lose today? Set a deposit limit. For free and confidential support call 1800 858 858 or visit www.gamblinghelponline.org.au

(Interaction ID 54470)

Example 2:

Hey

At the moment races will still go ahead tomorrow and any changes we will still have something on for everyone.

I will keep you updated.

I've allocated something to your account and set up a deposit match for you and look forward to seeing you!

Thanks
Chances are you're about to lose.
Set a deposit limit. For free and confidential support call 1800 858 858 or visit gamblinghelponline.org.au
(Interaction ID 193187)

Example 3:

Hey How are you?

Just checking - did you want me to look at any tickets for Randwick through Autumn Racing Carnival? Or wanting to wait for cancellations for Golden Slipper?

Also there's a $2000 deposit match offer on your account! 😇

Cheers,

What are you prepared to lose today?
Set a deposit limit. For free and confidential support call 1800 858 858 or visit gamblinghelponline.org.au
(Interaction ID 183778)

Attachment D – details of contraventions (attached separately)