

Investigation report

Summary	
Entity	Betfair Pty Ltd
Australian Company Number	110 084 985
Type of activity	Commercial electronic messaging
Relevant Legislation	<i>Spam Act 2003</i>
Findings	<p>148 contraventions of subsection 16(1) [Unsolicited commercial electronic messages must not be sent]</p> <p>6 contraventions of subsection 18(1) [Commercial electronic messages must contain a functional unsubscribe facility].</p>
Date	5 May 2025

Background

1. The Australian Communications and Media Authority (**ACMA**) commenced an investigation under section 510(1)(ab) of the *Telecommunications Act 1997* into Betfair Pty Ltd's (**Betfair**) compliance with the Spam Act 2003 (**Spam Act**) on 11 December 2024.
2. The investigation concerned commercial electronic messages (**CEMs**) sent to electronic addresses during the period 6 March 2024 to 11 December 2024 (**Relevant Period**). These are CEMs that Betfair sent to its VIP customers (known as **Betfair+ customers**).
3. The ACMA's findings are based on information provided by Betfair on 5 February 2025, in response to a notice dated 11 December 2024, given to it by the ACMA.
4. The CEMs subject to contravention findings are collectively referred to as the 'investigated messages', specifically:
 - Issue 1: 148 CEMs sent in the Relevant Period in contravention of subsection 16(1) of the Spam Act (**see tab 1 of Attachment A**)
 - Issue 2: 6 CEMs sent in the Relevant Period in contravention of subsection 18(1) of the Spam Act (**see tab 2 of Attachment A**)
5. 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

6. 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 [...]

Consent – subsection 16(1)

7. 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.
8. 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)).
9. 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:
 - (d) 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.

the withdrawal of consent takes effect 5 business days after the unsubscribe request was sent.

Unsubscribe function in CEMs – subsection 18(1)

10. Under subsection 18(1) of the Spam Act, CEMs which have an Australian link must contain a functional unsubscribe facility.
11. 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)).

Designated commercial electronic message (DCEM)

12. 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.

13. 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 [...]

Evidential burden for exceptions

14. Under subsections 16(5) and 18(5) of the Spam Act, if an entity wishes to rely on any of the above 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

15. To determine Betfair's compliance with section 16 of the Spam Act, the ACMA has addressed the following:
- a. Is Betfair a 'person' to which section 16 of the Spam Act applies?
 - b. If so, did Betfair send or cause the investigated 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 Betfair claim that the CEMs were subject to any exceptions?
 - g. If so, did Betfair meet the evidential burden in relation to these claims?
16. 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 Betfair a 'person' to which section 16 of the Spam Act applies?

17. Betfair is a company registered under the *Corporations Act 2001* and is therefore a 'person' for the purposes of section 16 of the Spam Act.

Did Betfair send, or cause to be sent, the investigated messages?

18. Betfair stated in its response to the ACMA on 5 February 2025 that it sent the issue 1 investigated messages.

Were the messages commercial?

19. Betfair stated in its response to the ACMA on 5 February 2025 that the issue 1 investigated messages are CEMs.
20. The ACMA is satisfied that a purpose of the issue 1 investigated messages was to offer to supply, advertise or promote Betfair's goods and services, including promoting specific events and depositing funds into customers' betting accounts (**see Attachment B for examples**).
21. The issue 1 investigated messages are therefore CEMs.

Did the messages have an Australian link?

22. Betfair's central management and business registration was in Australia when it sent the investigated messages. Therefore, the investigated messages had an Australian link.

Were the messages designated?

23. The ACMA is of the view that the issue 1 investigated messages were not designated CEMs because:
- a. They consisted of more than factual information and were commercial in nature (see clause 2 of Schedule 1 to the Spam Act), and
 - b. Betfair 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 Betfair claim that any of the investigated messages were subject to any exceptions?

24. No, Betfair did not provide information or make claims that the issue 1 investigated messages were subject to any exceptions.

Conclusion – Issue 1

25. The ACMA finds that there are reasonable grounds to believe that Betfair contravened the Spam Act in relation to 148 CEMs it sent to customers between 6 March 2024 to 11 December 2024 without consent.

Issue 2: CEMs must contain a functional unsubscribe facility – section 18

26. To determine Betfair's compliance with section 18 of the Spam Act, the ACMA must address the following:
- a. Is Betfair 'a person' to which section 18 of the Spam Act applies?
 - b. If so, did Betfair send or cause the investigated 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 Betfair claim that the CEMs were subject to any exceptions?
 - h. If so, did Betfair meet the evidential burden in relation to these claims?
27. The matters under paragraphs 27(a) and (d) have been established under issue 1 above, and equally apply to the issue 2 matter. Accordingly, these matters are not addressed again below.

Did Betfair send, or cause to be sent, the investigated messages?

28. Betfair stated in its response to the ACMA on 5 February 2025 that it sent the issue 2 investigated messages.

Were the messages commercial?

29. As outlined above under paragraph 6, section 6 of the Spam Act defines a CEM as an electronic message, where having regard to a number of factors, one of the purposes of the message is to offer to supply, advertise or promote goods and services.
30. Betfair has stated in its response to the ACMA on 5 February 2025, that the issue 2 investigated messages sent to its Betfair+ customers in the Relevant Period are CEMs.
31. The ACMA is satisfied that having regard to the content of these messages sent to its Betfair+ customers that at least one of the purposes of the issue 2 investigated messages was to offer to supply, advertise or promote Betfair's good and services, including offering tickets for specific events (**see Attachment C for examples**).
32. Therefore, the issue 2 investigated messages are CEMs.

Were the messages designated?

33. The issue 2 investigated messages were not designated CEMs because:
- a. They consisted of more than factual information and were commercial in nature (clause 2 of Schedule 1 to the Spam Act), and
 - b. Betfair 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.
34. Betfair has also admitted that the issue 2 investigated messages were CEMs.

Did the messages include a functional unsubscribe facility?

35. Betfair stated in its response to the ACMA on 5 February 2025 that the issue 2 investigated messages sent via email on 6 March 2024, 11 March 2024 and 19 July 2024 and via SMS on 20 May 2024, 18 October 2024 and 10 December 2024 were sent without a functional unsubscribe facility. Betfair stated that this was because of the unsubscribe facility in these messages either having been deleted or not included at all.
36. Accordingly, the ACMA is satisfied that Betfair sent the issue 2 investigated messages without an unsubscribe facility in contravention of subsection 18(1) of the Spam Act. Specifically, they did not include the following information required under paragraph 18(1)(c) of the Spam Act:
- a. a statement to the effect that the recipient may use an electronic address set out in the message to send an unsubscribe message to the individual or organisation who authorised the sending of the first-mentioned message, or
 - b. statement to similar effect.

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

37. No, Betfair has not claimed that any of the investigated messages were subject to any exceptions.

Conclusion – Issue 2

38. The ACMA finds that there are reasonable grounds to believe that Betfair contravened the Spam Act in relation to 6 messages sent between 6 March and 10 December 2024 without a functional unsubscribe facility.

Conclusion

39. The ACMA finds that there are reasonable grounds to believe that Betfair has, between 6 March 2024 and 11 December 2024, contravened:
- a. subsection 16(1) of the Spam Act on 148 instances by sending commercial electronic messages without consent; and
 - b. subsection 18(1) of the Spam Act on 6 instances by sending commercial electronic messages without a functional unsubscribe facility.

Attachments

Attachment A – Spam Act contravention details (attached separately)

Attachment B – Indicative examples of Issue 1 messages (deidentified of personal information)

Attachment C – Indicative examples of Issue 2 messages (deidentified of personal information)

Attachment B – Indicative examples of Issue 1 messages (deidentified of personal information)

Subject line of email or full contents of SMS	Email / SMS
Betfair Winter Cycle	Email
Geelong Cup 2024	Email
Betfair Datathon - 2024 AFL Brownlow Medal Count - Wrap Up	Email
<p>Hi [NAME], sorry it's taken me a few days to get back to you about your MatchMe issue. I popped \$200 in your account on Tuesday morning! Hope you've been well.</p> <p>Cheers, [NAME]</p> <p>THINK. IS THIS A BET YOU REALLY WANT TO PLACE? Set a deposit limit. For free and confidential support call tel:1800858858 or visit http://gamblinghelponline.org.au</p> <p>BetStop is the Australian National Self-Exclusion Register. For more information, please visit https://betstop.gov.au</p> <p>To unsubscribe from SMS marketing messages from Betfair, please click here https://customer.betfair.com.au/unsubscribe</p>	SMS

Attachment C – Indicative examples of Issue 2 messages (deidentified of personal information)

Subject line of email or full contents of SMS	Email / SMS
2024 Pricing Deal	Email
Hi [NAME], I've got 4 x Medallion Club tickets to the Demons v Saints game @ MCG on Sunday 3:20pm. Would you like to snap them up?	SMS
Good morning, I've just had some additional tickets come up for today in the promenade, which is a sit down dining & drinks package. I have two available- would you like to take them?	SMS