

Investigation report

| Summary | |
|---------------------------|---|
| Entity | Latitude Finance Australia (Latitude) |
| Australian Company Number | 008 583 588 |
| Type of activity | Commercial electronic messaging |
| Relevant Legislation | <i>Spam Act 2003</i> (Spam Act) |
| Findings | <p>2,378,987 contraventions of subsection 17(1) [Commercial electronic messages must not be sent without accurate contact information]</p> <p>344,416 contraventions of subsection 18(1) [Commercial electronic messages must contain a functional unsubscribe facility].</p> |
| Date | 1 December 2025 |

Background

1. The Australian Communications and Media Authority (**ACMA**) commenced an investigation under paragraphs 510(1)(ab) and (c) of the *Telecommunications Act 1997* into Latitude Finance Australia's (**Latitude**) compliance with the *Spam Act 2003* (**the Spam Act**) on 30 October 2025.
2. The investigation was commenced based on reports of non-compliance obtained from Latitude under its enforceable undertaking (EU) accepted by the ACMA on 23 August 2023.
3. The investigation concerned commercial electronic messages (**CEMs**) sent to electronic addresses during the period 22 March 2024 to 12 April 2025 (**Relevant Period**).
4. The ACMA's findings are based on information obtained from Latitude on 9 July 2025 under the EU and 26 August 2025, in response to the ACMA's request for further information dated 12 August 2025.
5. The CEMs subject to contravention findings are collectively referred to as the '**investigated messages**', specifically:

| | CEMs sent in the Relevant Period in contravention of: | |
|--|---|------------------------|
| | Issue 1 messages | Issue 2 messages |
| | s17(1) of the Spam Act | s18(1) of the Spam Act |
| Subset 1 Tab 2 of Attachment A | 1,954,525 | N/A |
| Subset 2 Tab 3 of Attachment A | 80,046 | N/A |
| Subset 3 Tab 4 of Attachment A | 344,416 | 344,416 |
| Total | 2,378,987 | 344,416 |

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 [...]

Accurate sending information – subsection 17(1)

8. Under subsection 17(1) of the Spam Act, a person must not send, or cause to be sent, a CEM that has an Australian link, unless:
 - a. Under paragraph 17(1)(b), the message includes accurate information about how the recipient can readily contact that individual or organisation.
9. Exceptions apply to this prohibition. Specifically, a person will not contravene subsection 17(1) of the Spam Act where:
 - a. a person did not know, or could not have ascertained, that the CEM has an Australian link (subsection 17(2)), or
 - b. a person sent the message, or caused the message to be sent, by mistake (subsection 17(3)).

Unsubscribe function in CEMs – subsection 18(1)

10. Under subsection 18(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 DCEM unless the message includes 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 (subparagraph 18(1)(c)(i)).
11. Under paragraph 18(1)(e), an unsubscribe link/function in a CEM must be capable of receiving a recipient's unsubscribe message.
12. 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)

13. The Spam Act allows for the sending of messages with factual information only that contains 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.
14. 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

15. Under subsections 17(4) 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 without accurate information – section 17

16. To determine Latitude's compliance with section 17 of the Spam Act, the ACMA has addressed the following:
 - a. Is Latitude a 'person' to which section 17 of the Spam Act applies?
 - b. If so, did Latitude 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 messages contain accurate information about how the recipient can contact the organisation that sent the message?
 - f. If not, did Latitude claim that the CEMs were subject to any exceptions?
 - g. If so, did Latitude meet the evidential burden in relation to these claims?
17. 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 Latitude a 'person' to which section 17 of the Spam Act applies?

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

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

19. Latitude stated in writing to the ACMA on 9 July, 26 August and 17 November 2025 that it sent the investigated messages, including those investigated under Issue 1.

Were the investigated messages commercial?

20. Latitude stated in writing to the ACMA on 9 July, 26 August and 17 November 2025 that the investigated messages are CEMs.
21. The ACMA is satisfied that a purpose of the investigated messages was to offer to supply, advertise or promote Latitude's goods and services (see **Attachments B & C** for examples). The products and services promoted included credit card rewards and bonuses, such as low interest rates and gift cards.
22. The issue 1 investigated messages are therefore CEMs.

Did the investigated messages have an Australian link?

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

Did the investigated messages contain accurate information about how the recipient can contact the organisation that sent the message?

24. No, Latitude stated in writing on 9 July, 26 August and 17 November 2025 that the CEMs did not contain information about how the recipient can contact Latitude.

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

25. No, Latitude did not provide information or make claims that the investigated messages were subject to any exceptions.

Conclusion – Issue 1

26. The ACMA finds that there are reasonable grounds to believe that Latitude contravened subsection 17(1) of the Spam Act in relation to 2,378,987 (issue 1) CEMs it sent to customers without contact information in the Relevant Period.

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

27. To determine Latitude’s compliance with section 18 of the Spam Act, the ACMA has addressed the following:

- a. Is Latitude ‘a person’ to which section 18 of the Spam Act applies?
- b. If so, did Latitude 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 Latitude claim that the CEMs were subject to any exceptions?
- h. If so, did Latitude meet the evidential burden in relation to these claims?

28. The matters under paragraphs 28(a) to (d) have been established above and equally apply to the issue 2 matter. Specifically, the Issue 2 investigated messages are a subset of the Issue 1 investigated messages. Accordingly, these matters are not addressed again below.

Were the investigated messages designated?

29. 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. Latitude 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 investigated messages include a functional unsubscribe facility?

30. Latitude stated in writing to the ACMA on 9 July, 26 August and 17 November 2025 that the issue 2 investigated messages were sent without a functional unsubscribe facility (see **Attachment C** for examples).

31. Latitude stated that this was due to the issue 2 investigated messages being sent from an Alpha Tag with a “Reply Stop” statement as their unsubscribe mechanism. A person cannot reply to a message sent from an Alpha Tag, as such tags do not act as electronic addresses to which a person can respond or send a message.

32. Accordingly, the ACMA is satisfied that Latitude sent the issue 2 investigated messages without a functional unsubscribe facility in contravention of subsection 18(1) of the Spam Act. Specifically, Latitude did not include the following information required under subsection 18(1) 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 (subsection 18(1)(c)(i)), or
- b. A statement to similar effect (subparagraph 18(1)(c)(ii)) [...]

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

33. No, Latitude did not claim that any of the investigated messages were subject to any exceptions.

Conclusion – Issue 2

34. The ACMA finds that there are reasonable grounds to believe that Latitude contravened subsection 18(1) of the Spam Act in relation to 344,416 (issue 2) CEMs sent in the Relevant Period.

Conclusion

35. The ACMA finds that there are reasonable grounds to believe that Latitude has, during the Relevant Period, contravened:
- a. subsection 17(1) of the Spam Act on 2,378,987 instances by sending CEMs without accurate contact information; and
 - b. subsection 18(1) of the Spam Act on 344,416 instances by sending CEMs without a functional unsubscribe facility.

Attachments

Attachment A – Spam Act contravention details (attached separately)

Attachment B – Indicative examples of Issue 1 messages

Attachment C – Indicative examples of Issue 1 and 2 messages

Attachment B – Indicative example of Issue 1 messages

Subset 1: 30 May 2024 – 12 April 2025 - 1,954,525 CEMs sent

| Message name | Sent from | Message text |
|--|-----------|--|
| 20241025_28D_Conditionally Approved_Day5_SMS_AMLPOI | Alpha Tag | [REDACTED], your Latitude 28° Global Platinum Mastercard application is, almost complete. Simply log in to verify your identity and income to enjoy a new world of shopping and travel adventures. Check your inbox for more info. To OptOut, send STOP to 0409321924 |
| 20241128_GO_IF_Spend & Get_Launch_SMS | Alpha Tag | Black Friday! Activate and spend the required amount on long-term 0% Interest payment plans with your Latitude GO Platinum Mastercard, credit card. T&Cs and minimum spend applies. Check your inbox for more info. To OptOut, send STOP to 0409321924 |
| 2024120628D_Spend_Accelerator_Spend_Final_Reminder_SMS | Alpha Tag | [REDACTED], last chance to earn \$200 in Latitude Rewards by spending \$5000 or more on eligible transactions with your Latitude 28° Global Platinum Mastercard by 31 Dec 2024. T&Cs and minimum spend applies. Check your inbox for more info. To OptOut, send STOP to 0409321924 |

Subset 2: 22 March 2024 – 19 March 2025 - 80,046 CEMs sent

| Message name | Sent from | Message text |
|---------------------------------------|-----------|---|
| SMS Reminder #1 | Alpha Tag | Hi [REDACTED], don't forget, you can unlock a \$50 David Jones gift card when you spend \$1,500 on your David Jones credit card between 10 October 2024 and 8 January 2025. To opt out reply STOP to 0409245135 |
| Offer ending reminder SMS | Alpha Tag | (FirstName), your Latitude 28° Global Platinum Mastercard credit card 0% interest rate promo has ONE month to go. So there's still time to save this Black Friday! T&Cs apply. To OptOut, send STOP to 0409321924 |
| 2_4_9_1_Activated_Spend SMS_V1_141124 | Alpha Tag | [REDACTED], you've activated your Latitude Low Rate Mastercard. Start shopping on the down low for high rewards! To OptOut, send STOP to 0409321924 |

Attachment C – Indicative examples of Issue 1 and 2 messages

Subset 3: 12 June 2024 – 7 August 2024 - 344,416 CEMS sent

| Message name | Sent from | Message text |
|---|-----------|--|
| Gem_SMS_Reminder_Non_Activated_Active | Alpha Tag | Activate offer and shop with your Latitude Gem Visa credit card by 30 June 2024. Check inbox for details. T&Cs apply. Reply STOP to opt out |
| GO_Platinum_SMS_Reminder_Activated_Active | Alpha Tag | Keep shopping with your Latitude GO Platinum Mastercard by 30 June 2024 to earn credit back. T&Cs apply. Check inbox for details. Reply STOP to opt out |
| GO_SMS_Reminder_Non_Activated_Inactive | Alpha Tag | Activate offer and shop with your Latitude GO Mastercard to earn credit back by 30 August 2024. Check inbox for details. T&Cs apply. Reply STOP to opt out |