

Investigation report

Summary	
Entity	Tabcorp Holdings Limited
Australian Company Number	063 780 709
Type of activity	Telemarketing
Relevant Legislation	<i>Do Not Call Register Act 2006</i> <i>Telecommunications Act 1997</i> <i>Telecommunications (Telemarketing and Research Calls) Industry Standard 2017</i>
Findings	283 contraventions of subsection 11(1) of the <i>Do Not Call Register Act 2006</i> [Unsolicited telemarketing calls must not be made to a number registered on the Do Not Call Register] 867 contraventions of subsection 128(1) of the <i>Telecommunications Act 1997</i> [Compliance with industry standards], as a consequence of contravening sections 8 [Prohibited calling times] and 9 [Information to be provided as soon as the call starts] of the <i>Telecommunications (Telemarketing and Research Calls) Industry Standard 2017</i>
Date	10 June 2025

Background

- The Australian Communications and Media Authority (**ACMA**) commenced an investigation under section 510(1) (ac) of the *Telecommunications Act 1997* (**Telco Act**) into Tabcorp Holdings Limited (**TAB**)'s compliance with the *Do Not Call Register Act 2006* (**DNCR Act**) and the *Telecommunications (Telemarketing and Research Calls) Industry Standard 2017* (**Telemarketing Industry Standard**), on 15 November 2024.
- The investigation concerned telemarketing calls TAB made or caused to be made to Australian numbers between 1 February and 1 May 2024. These are telemarketing calls TAB made to customers in its VIP Program (referred to as **TAB X**), including telemarketing calls to prospective TAB customers eligible to join the TAB X program.
- The ACMA's findings are based on information and records obtained from TAB between 19 December 2024 and 13 February 2025, in response to:
 - a compulsory information gathering notice (Notice) given on 14 November 2024
 - requests for additional information on 24 January and 11 February 2025
 - Do Not Call Register records obtained by the ACMA.
- The telemarketing calls subject to the contravention findings are collectively referred to as the 'investigated calls', specifically:

Issue 1: 283 telemarketing calls to Australian numbers from 1 February 2024 to 1 May 2024

Issue 2:

- 17 telemarketing calls to Australian numbers from 12 February 2024 to 25 April 2024

- b. 764 telemarketing calls to Australian numbers from 1 February 2024 to 1 May 2024
5. The reasons for the ACMA's findings, including the key elements which establish the contraventions, are set out below.

Relevant legislative provisions

Do Not Call Register Act 2006

6. Under subsection 11(1) of the DNCR Act, a person must not make, or cause to be made, a telemarketing call to an Australian number if the number is registered on the Do Not Call Register (**the Register**) for at least 30 days up until the date the call was made, and the call is not a designated telemarketing call.
7. Exceptions apply to the prohibition in subsection 11(1) of the DNCR Act. Specifically, a person will not contravene subsection 11(1) of the DNCR Act where:
- the relevant account-holder or a nominee of the relevant account-holder consented to the making of the call (subsection 11(2) of the DNCR Act)
 - the person washed any of the numbers against the Register and the numbers were returned as not registered (subsection 11(3) of the DNCR Act)
 - the person made, or caused to be made, telemarketing calls by mistake (subsection 11(4) of the DNCR Act), or
 - the person took reasonable precautions and exercised due diligence to avoid the contraventions (subsection 11(5) of the DNCR Act).
8. Under subsection 11(6) of the DNCR Act, if TAB wishes to rely on any of the above exceptions concerning the making of telemarketing calls, it bears the evidential burden. This means that TAB needs to provide or point to evidence that suggests a reasonable possibility that the exception applies.

Telecommunications Act 1997

9. The Telecommunications (Telemarketing and Research Calls) Industry Standard 2017 (Telemarketing Industry Standard) is made under subsection 125A (1) of the Telco Act. It establishes a minimum set of requirements applicable to all telemarketing and research calls.
10. Under subsection 128(1) of the Telco Act, a participant in a section of the telemarketing industry must comply with the Telemarketing Industry Standard. Therefore, a contravention of the Telemarketing Industry Standard is a contravention of the Telco Act.
11. Subsection 128(1) of the Telco Act is a civil penalty provision, per subsection 128(3).
12. Under subsection 8(1) of the Telemarketing Industry Standard, subject to subsections (3) and (5), a caller must not make, or cause to be made, a call that is not a research call, or attempt to make such a call, on a;
- weekday before 9 am; or
 - weekday after 8 pm; or
 - Saturday before 9 am; or
 - Saturday after 5 pm; or
 - Sunday.
13. Under paragraph 8(3)(a)(i) to (f), a caller must not make or attempt to make a call at any time on:
- A day that is any of the following national public holidays:

- (i) New Year's Day
- (ii) Australia Day
- (iii) Good Friday
- (iv) Easter Monday
- (v) Anzac Day
- (vi) Christmas Day
- (vii) Boxing Day

- b. A holiday on a weekday given in lieu of a public holiday mentioned in paragraph a.
14. Paragraph 8(5) provides that calling may occur during prohibited times where the relevant account-holder has provided express consent (and the calls were made during the time to which the express consent applied). Where these conditions are met, such calls will not contravene the prohibited calling times.
 15. Under paragraph 9(2)(a) of the Telemarketing Industry Standard, as soon as a telemarketing call starts, the caller must give, or cause to be given, the given name of the individual making the call (unless the call is made solely using a recorded or synthetic voice).
 16. Under paragraph 9(2)(b) of the Telemarketing Industry Standard, as soon as a telemarketing call starts, if the individual making the call is not self-employed, a caller must give, or cause to be given, the company name or registered business name of the employer of the individual making the call, or if these details do not exist, a name by which the organisation or individual can be readily identified.
 17. Under paragraph 9(2)(d) of the Telemarketing Industry Standard, as soon as a telemarketing call starts, the caller must give, or cause to be given, the name of the person causing the call to be made (if not already mentioned).
 18. Under paragraph 9(2)(e) of the Telemarketing Industry Standard, as soon as a telemarketing call starts, the caller must give, or cause to be given, the purpose of the call.

Reasons for findings

Issue 1: Unsolicited telemarketing calls must not be made to numbers registered on the Do Not Call Register – section 11

19. To determine TAB's compliance with section 11 of the DNCR Act, the ACMA must address the following:
 - a. Is TAB a 'person' to which section 11 of the DNCR Act applies?
 - b. If so, did TAB make, or cause to be made, investigated calls?
 - c. If so, were the investigated calls telemarketing calls?
 - d. If so, were the investigated calls made to numbers registered on the Register?
 - e. If so, were the investigated calls designated as exempt from the prohibition on making telemarketing calls to numbers on the Register?
 - f. If not, did TAB claim that the investigated calls were made on the basis of express consent, and, if so, where the calls made during the applicable period?
 - g. If so, did TAB meet the evidential burden in relation to these claims?
20. If these conditions or elements of the offence are met (and TAB has not raised an exception which is support by evidence) then contraventions are established.

Is TAB a 'person' to which section 11 of the DNCR Act applies?

21. TAB is a company registered under the *Corporations Act 2001* and is therefore a 'person' for the purposes of subsection 11(1) of the DNCR Act.

Did TAB make, or cause to be made, the issue 1 investigated calls?

22. TAB staff were responsible for making each of the calls during the relevant period. The ACMA obtained details of the calls TAB made, including the purpose, date, time of each call and a sample of call recordings for the calls. Therefore, TAB made the issue 1 investigated calls.

Were the issue 1 investigated calls telemarketing calls?

23. Section 5 of the DNCR Act defines a telemarketing call as a voice call to an Australian number where, having regard to the content of the call, the purpose includes, among other matters, to offer to supply, advertise or promote good and services.
24. The ACMA is satisfied that at least one of the purposes of the Issue 1 investigated calls 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.
25. Therefore, the investigated calls were telemarketing calls for the purposes of subsection 11(1) of the DNCR Act.

Were the issue 1 investigated calls made to numbers on the Register?

26. The ACMA conducted a point in time Register check¹ of each number that TAB called, between 1 February 2024 and 1 May 2024 to determine whether the number was on the Register for at least 30 days up until the end of the day on which the call was made.
27. This check identified that TAB made 299 telemarketing calls to Australian numbers that had been on the Register for at least 30 days at the time the calls were made. Details about the 299 telemarketing calls are set out in **Attachment A**.
28. Therefore, TAB made the issue 1 investigated calls to numbers that had been on the Register for at least 30 days up until the time the call was made for the purposes of subsection 11(1) of the DNCR Act.

Were the investigated calls designated?

29. The investigated calls were not designated telemarketing calls for the purposes of paragraph 11(1)(b) of the DNCR Act because TAB is not an entity of a type set out in clauses 2, 3 or 4 of Schedule 1 to the DNCR Act, i.e., a government body, registered charity, registered political party or an educational institution.

Did TAB claim that the investigated calls were made on the basis of express consent, and, if so, where the calls made during the applicable period??

30. TAB has provided information claiming that for 232 of the issue 1 investigated calls, it relied on express consent to make the investigated calls (subsection 11(2)) of the DNCR Act).
31. For the remaining 67 investigated calls, TAB has provided information that these calls were made to recipients who had previously opted out of receiving marketing from TAB. TAB has stated that it has instead relied on inferred consent to make these 67 calls based on the account-holders ongoing business relationship with TAB (Schedule 2 (2) of the DNCR Act).

¹ A 'point in time check' is conducted to check if a particular number was on the Register on a specific date, such as the date on which that call was made or attempted to be made

Did TAB meet the evidential burden in relation to these claims?

32. Under subsection 11(2) of the DNCR Act, TAB has the evidential burden of providing or pointing to evidence which suggests a reasonable possibility that it had the consent to make the investigated calls to numbers registered on the Register.
33. TAB has stated that it had not verified whether TAB customers it contacted in relation to the TAB X program had registered their phone numbers on the DNCR. TAB's policies and procedures² at the time also did not include any consideration or reference to obligations under the DNCR Act or the Telemarketing Industry Standard, including in relation to consent.
34. For the 232 investigated calls in which TAB have claimed were made with the express consent of the account holder, TAB has provided details of the dates the consent was obtained.
35. Under clause 3(b) of Schedule 2 of the DNCR Act, if the consent is not expressed to be for a specified period or for an indefinite period, the consent is taken to have been withdrawn at the end of the period of 3-months beginning on the day on which the consent was given.
36. TAB has submitted that it considers the duration of express consent obtained from these TAB X customers to be indefinite and not withdrawn 3-months after consent was given as per clause 3 of Schedule 2 of the DNCR Act. TAB has pointed to example scripts in its TABX Process Manual where the customer is informed in a follow-up text message after an initial call that they can contact their TABX Account Manager at any time via SMS or phone call if they no longer wish to receive any further contact.
37. These scripts do not however include any mention of the specific terms and conditions customers are agreeing to when consenting to receive contact from a TABX Account Manager, including any express reference to whether the customer is agreeing to provide consent to receive telemarketing calls for a specified or indefinite period.
38. Subject to the provision of any evidence to support that consent was obtained with clear terms and conditions about its duration as set out above, the ACMA therefore does not accept TAB's submission that the consent obtained from TABX customers can be considered indefinite for the purposes of clause 3(b) of Schedule 2 of the DNCR Act.
39. A review of the information provided by TAB for these 232 calls shows that 216 of these were made at least 3-months after TAB advised in its submission that the call recipients had provided their consent to receive these calls.
40. The ACMA is therefore of the view that TAB has contravened clause 3(b) of Schedule 2 of the DNCR Act on 216 occasions between 1 February and 1 May 2024.
41. A further 67 telemarketing calls were made by TAB during the investigated period to customers whose numbers were registered on the DNCR and who had also opted out of receiving marketing from TAB prior to these calls being made. TAB claims that it had inferred consent to make these calls to these customers based on their ongoing business relationship with TAB through their participation in the TAB X program and ongoing wagering with TAB generally.
42. The ACMA's view is that inferred consent cannot be relied upon when the account-holder has actively opted-out of providing express consent to receive marketing communications. The mere fact of having an account or using the services of a business cannot be taken as inferred consent. Under schedule 2 of the Spam Act, inferred consent can only reasonably inferred from the conduct and the business and other relationships. In these cases, the conduct involves the persons expressly withdrawing their consent. As such, inferred consent be reasonably inferred in these circumstances.

² Including documents titled *TAB X Process Handbook v 1.1* (also referred to as the TAB X process manual), *TAB X Account Manager General Training*, and *TAB's Wagering Standards for Responsible Marketing and Advertising*

43. The ACMA is therefore of the view that TAB has contravened subsection 11(2) of the DNCR Act on 67 occasions between 1 February and 1 May 2024.
44. Accordingly, the ACMA is of the view that TAB has contravened subsection 11(2) of the DNCR Act on 283 occasions between 1 February and 1 May 2024 in relation to these issue 1 investigated calls.

Issue 2: Telemarketing Industry Standard

45. To determine TAB's compliance with subsections 8(1), 8(3) and 9(2) of the Telemarketing Industry Standard (and accordingly with subsection 128(1) of the *Telecommunications Act 1997*), the ACMA must address the following:
- a. Is TAB required to comply with the Telemarketing Industry Standard?
 - b. If so, did TAB make the investigated calls?
 - c. If so, were the investigated calls telemarketing calls?
 - d. Did TAB make the investigated calls during the prohibited calling times?
 - e. If so, did any exceptions to the prohibited calling times apply because TAB has obtained *express* consent in advance that covered the time called? (If so, an offence is not established.)
 - f. Did TAB fail to:
 - i. Provide, as soon as the call starts, the given name of the individual making the call (unless the call is made solely using a recorded or synthetic voice)?
 - ii. Provide, as soon as the call starts, the company name or registered business name of the employer of the individual making the call, or if these details do not exist, a name by which the organisation or individual can be readily identified?
 - iii. Provide, as soon as the call starts, the name of the person causing the call to be made (if not already mentioned)?
 - iv. Provide as the call starts, the purpose of the call?

46. If these elements of the offence are met, then contraventions are established.

47. The ACMA has established, as set out under Issue 1 (above) that TAB made the investigated calls, and the investigated calls were telemarketing calls. For the avoidance of doubt, the Issue 2 investigated calls were made by TAB, and they are telemarketing calls (Note that the definition of a telemarketing call under section 7 of the Telco Act includes the definitions of a telemarketing call under the DNCR Act).

Is TAB required to comply with the Telemarketing Industry Standard?

48. TAB is a participant in the telemarketing industry as it engages in making telemarketing calls to offer, advertise or promote its services. Specifically, TAB employs account managers whose duties include making telemarketing calls to offer and/or promote its Tab X program.
49. It must therefore comply with the Telemarketing Industry Standard (see paragraph 109B(3)(a) and subsection 128(1) of the Telco Act).

Issue 2(a) calls

Did TAB make the calls during the prohibited call times?

50. As outlined in **Attachment B**, TAB made 17 calls to Australian numbers during the prohibited calling times between 12 February and 25 April 2024.

51. In making this finding, the ACMA has relied on the information about calls made during the relevant period provided by TAB in response to the Notice, including reviewing call recordings.
52. The ACMA found that the investigated calls were made during the following prohibited times;
 - a. weekday before 9am - 4 occasions between 12 February and 26 February 2024
 - b. Saturday after 5 pm - 4 occasions between 2 March and 9 March 2024
 - c. Sunday - 8 occasions between 25 February and 24 March 2024
 - d. public holiday (Anzac Day) --- 1 occasion on 25 April 2024

Did any exceptions to the prohibited calling times apply?

53. There is no evidence before the ACMA to indicate that TAB had been provided with express consent to make telemarketing calls during the specific prohibited calling times set out above. For such an exception to apply, TAB would need to demonstrate to the satisfaction of the ACMA, that it had such express consent and only made the call to when it applied.
54. The ACMA is therefore of the view that TAB has contravened subsections 8(1)(a), (d), (e) or subsection 8(3)(a)(v) on 17 occasions in relation to these calls.

Issue 2(b) calls

55. The issue 2(b) calls regard a total of 764 telemarketing calls made by TAB to Australian numbers between 1 February 2024 to 1 May 2024 that were assessed for compliance against each of the subsections under 9(2) regarding the provision of information during telemarketing calls.
56. Each of the subsections under s9(2) are considered distinct and separate. Accordingly, a failure to comply with any one of those requirements is considered a separate contravention of section 9(2).

Did TAB fail to provide, as soon as the call started, the given name of the individual making the call (unless the call is made solely using a recorded or synthetic voice)?

57. For the reasons outlined in **Attachment B**, TAB failed to provide the given name of the individual when making calls as soon as the call started in relation to 34 of the 764 issue 2(c) telemarketing calls made between 1 February 2024 and 26 April 2024.
58. The ACMA is therefore of the view that TAB has contravened subsection 9(2)(a) of the Telemarketing Industry Standard on 34 occasions.

Did TAB fail to provide, as soon as the call started, the company name or registered business name of the employer of the individual making the call, or if these details do not exist, a name by which the organisation can be readily identified?

59. For the reasons outlined in **Attachment B**, TAB failed to provide the company name or registered business name of the employer of the individual making each call as soon as the call started for the 764 issue 2(c) telemarketing calls made between 1 February and 1 May 2024.
60. The ACMA is therefore of the view that TAB has contravened subsection 9(2)(b) of the Telemarketing Industry Standard on 764 occasions.

Did TAB fail to provide, as soon as the call started, the name of the person causing the call to be made (if not already mentioned)?

61. For the reasons outlined in **Attachment B**, TAB failed to provide the name of the person causing the call to be made as soon as the call started in relation to 47 of the 764 issue 2(c) telemarketing calls between 1 February 2024 to 26 April 2024.

62. The ACMA is therefore of the view TAB has contravened paragraph 9(2)(d) of the Telemarketing Industry Standard on 47 occasions.
63. ***Did TAB fail to provide, as soon as the call started, the purpose of the call?***
64. For the reasons outlined in **Attachment B**, TAB failed to provide the purpose of the call as soon as the call started in relation to 5 of the 764 issue 2(c) telemarketing calls between 8 March 2024 and 26 April 2024.
65. The ACMA is therefore of the view that TAB has contravened paragraph 9(2)(e) of the Telemarketing Industry Standard on 5 telemarketing occasions.
66. Accordingly, TAB has contravened section 9 of the Telemarketing Industry Standard on 867 occasions between 1 February 2024 and 1 May 2024.

Conclusion

67. The ACMA finds that there are reasonable grounds to believe that in relation to the Issue 1 calls TAB contravened:
- a. subsection 11(1) of the *Do Not Call Register Act 2006* by causing 283 telemarketing calls to be made to numbers on the Register between 1 February 2024 and 1 May 2024, inclusive. The details are set out in **Attachment A**, and;
68. The ACMA finds that there are reasonable grounds to believe that in relation to the Issue 2 calls TAB contravened:
- b. subsection 128(1) of the Telco Act on 867 occasions between 1 February and 1 May 2024, inclusive, specifically by contravening:

Issue 2(a) calls

- (i) paragraph 8(1)(a) of the Telemarketing Industry Standard in relation to the 4 telemarketing calls listed in **Attachment B**
- (ii) paragraph 8(1)(d) of the Telemarketing Industry Standard in relation to the 4 telemarketing calls listed in **Attachment B**
- (iii) paragraph 8(1)(e) of the Telemarketing Industry Standard in relation to the 8 telemarketing calls listed in **Attachment B**
- (iv) paragraph 8(3)(a)(v) of the Telemarketing Industry Standard in relation to the 1 telemarketing calls listed in **Attachment B**

Issue 2(b) calls

- (v) paragraph 9(2)(a) of the Telemarketing Industry Standard in relation to the 34 telemarketing calls listed in **Attachment B**
- (vi) paragraph 9(2)(b) of the Telemarketing Industry Standard in relation to the 764 telemarketing calls listed in **Attachment B**
- (vii) paragraph 9(2)(d) of the Telemarketing Industry Standard in relation to the 47 telemarketing calls listed in **Attachment B**
- (viii) paragraph 9(2)(e) of the Telemarketing Industry Standard in relation to the 5 telemarketing calls listed in **Attachment B**

Attachment(s)

Attachment A – DNCR Act contravention details

Attachment B – Telemarketing Industry Standard contravention details