

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> Telecommunications (Telemarketing and Research Calls) Industry Standard 2017
Findings	68 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 on the Do Not Call Register] 6,438 contraventions of subsection 128(1) of the <i>Telecommunications Act 1997</i> [Compliance with industry standards], as a consequence of contravening: - section 8 [Prohibited calling times] (on 65 occasions) and - section 9 [Information to be provided as soon as the call starts] (on 6,373 occasions) of the Telecommunications (Telemarketing and Research Calls) Industry Standard 2017
Date	22 December 2025

Background

1. The Australian Communications and Media Authority (**ACMA**) commenced an investigation under paragraph 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 24 July 2025.
2. The investigation concerned telemarketing calls TAB made or caused to be made to Australian numbers between 1 November 2024 and 10 June 2025. These were telemarketing calls TAB made to customers in its VIP Program, including calls to prospective TAB customers eligible to join the VIP Program.
3. The ACMA's findings are based on:
 - a. information, records and call recordings obtained from TAB under a compulsory information gathering notice (Notice) given on 24 July 2025,
 - b. records obtained by the ACMA from the Do Not Call Register (**DNCR**) operator on 28 August 2025,
 - c. TAB's response to the ACMA's letter of 22 August 2025, and
 - d. TAB's response to the ACMA's preliminary findings of 23 October 2025.
4. The telemarketing calls subject to contravention findings are collectively referred to as the 'investigated calls' set out in Table 1 below.

Table 1: Contraventions

Issue	Number of telemarketing calls	Number of contraventions	Legislation	Date
1 – calls to numbers registered on the DNCR	68	68	DNCR Act subsection 11(1)	1 November 2024 to 24 January 2025
2 (a) ¹ – calls during prohibited times	65	65	Telemarketing Industry Standard subsections 8(1) or 8(3) Telco Act subsection 128(1)	2 November 2024 and 5 June 2025
2 (b) – calls that failed to meet information requirements	3,196	6,373	Telemarketing Industry Standard subsection 9(2) Telco Act subsection 128(1)	1 November 2024 and 10 June 2025

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

Relevant legislative provisions

DNCR Act

6. Subsection 11(1) of the DNCR Act specifies that a person must not make, or cause to be made, a telemarketing call to an Australian number if the number is registered on the DNCR 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 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 checked 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. If a person wishes to rely on any of the exceptions, they bear the evidential burden (subsection 11(6) of the DNCR Act). This means that the person needs to provide or point to evidence that suggests a reasonable possibility that the exception applies.

¹ Issue 2 calls concern a total of 3,202 calls: 6 under Issue 2(a), 3,137 under issue 2(b) and 59 under both 2(a) and 2(b). This means there are 65 calls associated with Issue 2(a) and 3,196 with Issue 2(b) when accounting for overlap.

Telco Act and Telemarketing Industry Standard

9. The 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, as per subsection 128(3) of that Act.
12. Under subsection 8(1) of the Telemarketing Industry Standard, subject to subsections 8(3) and 8(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;
 - a. weekday before 9 am; or
 - b. weekday after 8 pm; or
 - c. Saturday before 9 am; or
 - d. Saturday after 5 pm; or
 - e. Sunday.
13. Under subsection 8(3), a caller must not make or attempt to make a call at any time on:
 - a. 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; or
 - b. A holiday on a weekday given in lieu of a public holiday mentioned in paragraph a.
14. Subsection 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, they 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 DNCR

19. To determine TAB's compliance with section 11 of the DNCR Act, the ACMA has addressed 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 designated as exempt from the prohibition on making telemarketing calls to numbers on the Register?
 - e. If not, were the investigated calls made to numbers on the DNCR?
 - f. Did TAB claim that the investigated calls were subject to any exceptions, including that they were made on the basis of consent?
 - g. If so, did TAB meet the evidential burden in relation to these claims?
 - h. If calls were claimed to be made on the basis of consent, and that consent was claimed to be express, were the calls made during an applicable period: specific, indefinite, or, in any other case, within 3 months as per clause 3 of Schedule 2 to the DNCR Act?
20. If these conditions or elements of the offence are met (and TAB has not raised an exception which is supported 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. The ACMA is satisfied that TAB made the Issue 1 investigated calls, based on evidence obtained from TAB, including the purpose, date, and time of each call, as well as a sample of call recordings.

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 goods 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 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.

If so, were the investigated calls designated as exempt from the prohibition on making telemarketing calls to numbers on the Register?

26. 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 same act, i.e., a government body, registered charity, registered political party or an educational institution.

Were the Issue 1 investigated calls made to numbers on the DNCR?

27. The ACMA conducted a point in time DNCR check² of each number to which an investigated call was made by TAB between 1 November 2024 and 1 February 2025, 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.
28. This check identified that each of the Issue 1 investigated calls was made to a number that had been on the DNCR for at least 30 days at the time of the call.
29. Therefore, TAB made the Issue 1 investigated calls to numbers that had been on the DNCR for at least 30 days up until the time the call was made for the purposes of subsection 11(1) of the DNCR Act.

If so, did TAB claim that the investigated calls were subject to any exceptions, including that they were made on the basis of consent? (If so, did TAB meet the evidential burden in relation to these claims.)

30. Under subsection 11(6) of the DNCR Act, TAB bears the evidential burden of demonstrating a reasonable possibility that any exceptions applied.
31. TAB made no claims to having exceptions for most of the Issue 1 investigated calls, however it made claims that 8 of the investigated calls set out in the ACMA's preliminary findings were subject to exceptions on the basis that it had inferred consent to make the calls as it had an ongoing business relationship with the account-holder.
32. The ACMA accepts that in 5 of the investigated calls, TAB produced evidence that pointed to a reasonable possibility it had an ongoing business relationship sufficient to demonstrate inferred consent. The ACMA has made no final findings for these 5 cases.
33. The ACMA does not accept that the information TAB provided was sufficient to demonstrate inferred consent in 3 cases where the circumstances involved account-holders who had previously withdrawn consent and had limited contact with TAB after the withdrawal, albeit they still had an open account with TAB.

If calls were claimed to be made on the basis of consent, and that consent was claimed to be express, were the calls made during an applicable period: specific, indefinite, or, in any other case, within 3 months as per clause 3 of Schedule 2 to the DNCR Act?

34. TAB did not claim that any of the Issue 1 investigated calls were made with the express consent of the call recipients. Therefore, the applicable period outlined in clause 3 of Schedule 2 to the DNCR Act does not apply to these calls.

Conclusion Issue 1

35. TAB contravened subsection 11(1) of the DNCR Act on 68 occasions between 1 November 2024 and 24 January 2025 by making:
- a. 60 calls to DNCR-registered numbers where consent was not obtained or otherwise held by TAB.

² 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. The check is made against the data held in the DNCR system operated by IVE Group.

- b. 8 calls to DNCR-registered numbers after the account-holders had withdrawn consent to receive marketing communications.

36. Details of these calls are provided at **Attachment A**.

Issue 2: Telemarketing Industry Standard

37. 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 Telco Act), the ACMA has addressed the following:

- a. Is TAB required to comply with the Telemarketing Industry Standard?
- b. If so, did TAB make, or cause to be made, the investigated calls?
- c. If so, were the investigated calls telemarketing calls?
- d. Did TAB make the investigated calls during prohibited calling times?
- e. If so, did any exceptions to the prohibited calling times apply because TAB had express consent in advance to make a call at the time the call was made? (If so, an offence is not established.)
- f. Did TAB provide each of the following as soon as each call started, as applicable:
 - i. The given name of the individual making the call (unless the call is made solely using a recorded or synthetic voice)?
 - ii. 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. The name of the person causing the call to be made (if not already mentioned)?
 - iv. The purpose of the call?

38. If these elements of the offence are met or not met as applicable, then contraventions are established.

Is TAB required to comply with the Telemarketing Industry Standard?

39. 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 services and/or promote its VIP program.

40. As a participant in the telemarketing industry, TAB must therefore comply with the Telemarketing Industry Standard (see paragraph 109B(3)(a) and subsection 128(1) of the Telco Act).

Did TAB make, or cause to be made, the Issue 2 investigated calls?

41. The ACMA is satisfied that TAB made the Issue 2 investigated calls, based on evidence obtained from TAB, including the purpose, date, and time of each call, as well as a sample of call recordings.

Were the Issue 2 investigated calls telemarketing calls?

42. For the purposes of the Telemarketing Industry Standard, a telemarketing call is defined under section 7 of the Telco Act and includes a telemarketing call within the meaning of the DNCR Act that is made to an Australian number.

43. Section 5 of the DNCR Act, in turn, defines a telemarketing call as one that, having regard to the content of the call, it would be concluded that one of the purposes of the call is to, amongst other matters, offer to supply, advertise or promote goods or services.

44. Section 5 of the Telemarketing Industry Standard notes that the content of that standard 'relates to making, attempting to make, or proposing to make a call'. Section 8 of the Telemarketing Industry Standard also reference attempts to make a call. Further, section 4 of the DNCR Act sets out that 'make' includes an 'attempt to make' a call.
45. Subsection 6(7) of the Do Not Call Register Regulations 2017 (the Regulations) state that a voice call is not a telemarketing call if:
 - a. the call is made in response to:
 - (i) an order or request by a customer or potential customer for goods or services; or
 - (ii) an inquiry or request by a customer or potential customer for information about goods or services; and
 - b. the primary purpose of the call is in relation to the inquiry, order or request; and
 - c. the customer or potential customer has not withdrawn the inquiry, order or request; and
 - d. the call is made within a reasonable time after the inquiry, order or request.
46. The ACMA is satisfied that at least one of the purposes of the Issue 2 investigated calls was to offer to supply TAB goods or services or advertise or promote TAB goods or services, including bonus bets or offers of tickets to sporting and other events. Accordingly, the Issue 2 investigated calls meet the definition for being telemarketing calls. The ACMA has then considered the exceptions under subsection 6(7) of the Regulations.
47. TAB submitted that a number of the Issue 2 investigated calls identified in the ACMA's preliminary findings do not meet the definition of a telemarketing call on the basis that the calls in question either:
 - a. went through to voicemail with no message left, and therefore cannot be considered commercial; or
 - b. were made by TAB in response to a prior missed call or SMS from the account holder in relation to what TAB states was an order or inquiry about goods or services, in line with the definition of a solicited call under subsection 6(7) of the Regulations.
48. TAB has stated that calls between its VIP customers and it were in relation to commercial services. The ACMA is therefore satisfied that even where calls made by TAB were not answered and no voicemail was left, that TAB was attempting to make a telemarketing call. On this basis, attempts to make calls for a commercial purpose meet the definition of a telemarketing call.
49. For a call to be considered 'solicited' under subsection 6(7) of the Regulations it must be made in response to an order, inquiry or request about information or goods and services by a customer or potential customer.
50. The ACMA accepts that where there was clear evidence provided by TAB of a prior contact by an account-holder that constituted an order, request or inquiry for information or about goods and services, calls made by TAB in response were likely to be solicited. Accordingly, calls that meet these conditions have been excluded from the ACMA's findings.
51. Where there was inadequate evidence provided by TAB to adequately support that a call or SMS was made for one of these purposes, for example, where the only evidence provided was that a call was made, without any evidence to support what the nature of the call was apart from TAB and the account-holder having a commercial relationship, the ACMA does not accept that this points to a reasonable possibility that they were solicited calls.
52. The ACMA is therefore of the view that the 3,196 Issue 2 investigated calls were telemarketing calls.

Issue 2(a) calls**Did TAB make the calls during the prohibited call times?**

53. 65 of the 3,196 Issue 2 investigated calls were made by TAB to Australian numbers during prohibited calling times between 2 November 2024 and 5 June 2025. These are referred to as the Issue 2(a) investigated calls and occurred on the occasions and dates noted in Table 2 below and at **Attachment B**.

Table 2: Telemarketing calls during prohibited times

Provisions	Prohibited times	Occasions	Date range
Paragraph 8(1)(a)	Weekday before 9am	30	5 November 2024 and 5 June 2025
Paragraph 8(1)(b)	Weekday after 8pm	5	5 December 2024 and 22 April 2025
Paragraph 8(1)(c)	Saturday before 9am	4	2 November 2024 and 15 March 2025
Paragraph 8(1)(d)	Saturday after 5pm	9	28 December 2024 and 3 May 2025
Paragraph 8(1)(e)	Sunday	10	12 January 2025 and 1 June 2025
Subparagraph 8(3)(a)(vii)	Boxing day	1	26 December 2024
Subparagraph 8(3)(a)(i)	New Year's Day	4	1 January 2025
Subparagraph 8(3)(a)(ii)	Australia Day	1	27 January 2025
Subparagraph 8(3)(a)(v)	Anzac Day	1	25 April 2025
Total		65	2 November 2024 and 5 June 2025

If calls were made during prohibited times, did any exceptions apply because TAB had express consent in advance to make a call at the time the call was made?

54. TAB claimed that it had obtained express consent in advance for 41 of the 65 Issue 2(a) investigated calls made during prohibited call times. The basis for this claim was that each call was preceded by either a missed inbound call from the account holder or an SMS sent by the account holder. These calls and SMS were presented by TAB as evidence of the relevant account holder's consent to be contacted.
55. Subsection 8(5) of the Telemarketing Industry Standard requires express consent to be given in advance by a relevant account holder or their nominee, to receive telemarketing calls on a day or time specified under subsections 8(1) and 8(3).
56. A missed inbound call or an SMS message does not constitute express consent to be contacted for telemarketing purposes, nor do they demonstrate that the account holder was aware of or agreed to the timing of the call. Without evidence of express consent that specifically authorised contact during the prohibited call times, TAB's claimed exception is unsubstantiated.
57. TAB did not make claims to have express consent for the remaining 24 calls made during prohibited calling times.

Conclusion Issue 2(a)

58. TAB contravened prohibited calling time provisions of the Telemarketing Industry Standard on 65 occasions between 2 November 2024 and 5 June 2025 as set out in Table 2 above. Details of these calls are provided at **Attachment B**.

Issue 2(b) calls

59. The 3,196 Issue 2(b) investigated calls were made by TAB to Australian numbers between 1 November 2024 to 10 June 2025. They were assessed for compliance with each of the provision of information requirements under subsection 9(2) of the Telemarketing Industry Standard.
60. Each of the obligations under subsection 9(2) are distinct and separate. Accordingly, a failure to comply with any one of those requirements is a separate contravention of the section, and one telemarketing call can involve multiple contraventions. Table 3 below sets out an overview of the contraventions.

Table 3: Telemarketing calls made without provision of required information

Provisions	Provision of information	No. of contraventions	Date range
Paragraph 9(2)(a)	Name of the individual making the call	2,696	1 November 2024 and 10 June 2025
Paragraph 9(2)(b)	Company name or registered business name of the employer	2,867	1 November 2024 and 10 June 2025
Paragraph 9(2)(e)	Purpose of the call	810	1 November 2024 and 10 June 2025
Total		6,373	1 November 2024 and 10 June 2025

Did TAB 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)?

61. TAB failed to provide the given name of the individual when making calls as soon as the call started for 2,696 of the 3,196 Issue 2(b) investigated calls made between 1 November 2024 and 10 June 2025 (as set out at **Attachment C**).
62. In response to the preliminary findings, TAB identified a subset of 1,025 calls where the customer uses the given name of the caller later during the call. However, the requirement is that the caller must give their given name as soon as the call starts.
63. The ACMA is therefore of the view that TAB has contravened paragraph 9(2)(a) of the Telemarketing Industry Standard on 2,696 occasions.

Did TAB 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?

64. 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 in relation to 2,867 of the 3,196 Issue 2(b) investigated calls made between 1 November 2024 and 10 June 2025 (as set out at **Attachment C**).
65. In response to the preliminary findings, TAB identified a subset of 91 calls where the customer referred to TAB or a reference to TAB is made later in the call. However, the requirement is that the caller identifies the company name or the registered business name as soon as the call starts

66. The ACMA finds that TAB has contravened paragraph 9(2)(b) of the Telemarketing Industry Standard on 2,867 occasions.

Did TAB provide, as soon as the call started, the purpose of the call?

67. TAB failed to provide the purpose of the call as soon as the call started in relation to 810 of the 3,196 Issue 2(b) telemarketing calls between 1 November 2024 and 10 June 2025 (as set out at **Attachment C**).

68. In response to the preliminary findings, TAB identified a subset of 44 calls where the purpose of the calls is mentioned at a later point in the call. However, the requirement is that the caller identifies the purpose as soon as the call starts.

69. The ACMA finds that TAB has contravened paragraph 9(2)(e) of the Telemarketing Industry Standard on 810 occasions.

Conclusion Issue 2(b)

70. TAB contravened the information provisions of the Telemarketing Industry Standard on 6,373 occasions between 1 November 2024 and 10 June 2025 as set out in Table 3 above. Details of these calls are provided at **Attachment C**.

Telco Act compliance

71. A contravention of the Telemarketing Industry Standard is a contravention of the Telco Act, as set out in subsection 128(1) of the Telco Act.

72. As TAB has contravened the Telemarketing Industry Standard on 6,438 occasions between 1 November 2024 and 10 June 2025, it has consequently contravened the Telco Act on 6,438 occasions during the same period.

Conclusion

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

- a. subsection 11(1) of the DNCR Act by causing 68 telemarketing calls to be made to numbers on the Register without consent between 1 November 2024 and 24 January 2025, inclusive, as set out at **Attachment A**; and
- b. subsection 128(1) of the Telco Act on 6,438 occasions between 1 November 2024 and 10 June 2025, inclusive, by contravening the Telemarketing Industry Standard as set out in tables 2 and 3 above and **Attachments B and C**.

Attachment(s)

Attachment A: DNCR Act contravention details

Attachment B: Telemarketing Industry Standard contravention details – s 8(1) & s 8(3)

Attachment C: Telemarketing Industry Standard contravention details – s 9(2)