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Australian Communications and Media Authority

Investigation Report

Summary	
Entity	SpinTel Pty Ltd (SpinTel)
Australian Company Number	082 087 689
Type of activity	Commercial electronic messaging
Relevant Legislation	*Spam Act 2003* (Cth)
Findings	At least 32,394 contraventions of subsection 16(1) [Unsolicited commercial electronic messages must not be sent]
Date	15 July 2026

Background

1. On 3 November 2025, the Australian Communications and Media Authority (**ACMA**) commenced an investigation under paragraphs 510(1)(ab) and (c) of the *Telecommunications Act 1997* (Cth) (the **Act**) into SpinTel Pty Ltd's (**SpinTel**) compliance with the *Spam Act 2003* (Cth) (the **Spam Act**), following consumer complaints and other intelligence held by the ACMA.
2. The investigation concerned commercial electronic messages (**CEMs**) sent to electronic addresses between 1 July 2025 and 30 September 2025 (**Relevant Period**).
3. The ACMA's findings are based on information obtained from SpinTel between 11 December 2025 and 9 June 2026, including in response to:
    a. the notice dated 6 November 2025 issued by the ACMA under section 521 of the Act;
    b. the request for further information given to it by the ACMA on 3 March 2026;
    c. the notice dated 1 April 2026 issued by the ACMA under section 521 of the Act; and
    d. the preliminary findings given to it by the ACMA on 6 May 2026 and 27 May 2026.
4. The CEMs subject to contravention findings are collectively referred to as the 'investigated messages', specifically, at least 32,394 CEMs sent in the Relevant Period in contravention of subsection 16(1) of the Spam Act (at **Attachment A**).
5. These consist of 32,389 investigated messages sent without consent, and at least 5 investigated messages sent more than 5 business days after an electronic account holder withdrew consent (by unsubscribing).
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; or

f. to advertise or promote a supplier, or prospective supplier, of goods or services; or […]

Consent – subsection 16(1)

8. 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.

9. 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)).

10. 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.

Designated commercial electronic message

11. 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.

12. Under Schedule 1 to the Spam Act, an electronic message is a designated CEM 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

13. Under subsection 16(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

14. To determine SpinTel's compliance with section 16 of the Spam Act, the ACMA has addressed the following:

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

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

    c. If so, were the investigated messages commercial?

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

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

    f. If not, did SpinTel claim that the investigated messages were subject to any exceptions?

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

15. 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 SpinTel a 'person' to which section 16 of the Spam Act applies?

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

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

17. SpinTel stated that it used a third-party platform to send the investigated messages.

Were the investigated messages commercial?

18. Section 6 of the Spam Act defines a CEM as an electronic message where a purpose of the message is to offer to supply, advertise or promote goods and services, having regard to:

    a. the content of the message

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

    c. the content located using links set out in the message.

19. The investigated messages included content encouraging former customers of SpinTel to return to SpinTel's telecommunications services, the selling of NBN plans, PBX systems, or mobile service plans and replying to positive reviews. Example messages are at **Attachment B**.

20. Based on the evidence provided, the ACMA is satisfied that at least one of the purposes of the investigated messages was to advertise or promote SpinTel's services.

21. In its submissions, SpinTel did not dispute these factual matters.

22. On the basis of the above matters, the ACMA therefore finds that the investigated messages are CEMs.

Did the investigated messages have an Australian link?

23. SpinTel's central management was based in Australia and the company was registered under the *Corporations Act 2001* (Cth) when the investigated messages were sent. Therefore, the investigated messages had an Australian link.

Were the messages designated?

24. The ACMA is of the view that the 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. SpinTel 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 SpinTel claim that any of the investigated messages were subject to any exceptions?

25. SpinTel claimed that for at least 32,389 investigated messages sent to non-active customers, between 1 July and 30 September 2025, it relied on inferred consent as set out in the Spam Act, on the basis that each recipient had a previous business relationship with SpinTel as a former customer. SpinTel claims that its practice was to send CEMs to customers between 6 and 12 months after a service was cancelled. The ACMA notes that at least 1,126 CEMs were sent to recipients who had ceased using its services between 2012 and late 2024.

26. In its letter dated 8 May 2026, TDX Law on behalf of SpinTel, referred to *Australian Communications and Media Authority v Clarity1 Pty Ltd* [2006] FCA 410 (***Clarity1***) as case law that is relevant to this matter. In particular, the correspondence referred to Nicholson J's judgment in that case which, in summary, found that it would be a reasonable inference that a person that previously displayed interest in the goods and services of a vendor on one occasion would wish to be contacted regarding future opportunities to purchase that business' goods and services unless they indicated to the contrary.

27. Further, SpinTel stated that customers were added to its marketing list at the time of account activation, consistent with SpinTel's Standard form of Agreement as extracted below:

> *"We believe that any correspondence or emails from Us or Our related parties are a valuable part of Our Service as they enable You to keep up-to-date with matters regarding Internet security, viruses, useful tools, promotions, sites of interest and other related matters. The correspondence and emails do not constitute Spam as We have a continuing business relationship with You. However, if You do not want to receive such commercial communication from Us please contact Us to unsubscribe, otherwise, We will continue sending You relevant information until You request Us to remove Your email address (this does not affect other electronic communications specifically regarding the provision of the Service of Your account)."*

28. SpinTel submits that customers who do not wish to receive CEMs can withdraw consent by unsubscribing in accordance with clause 6 of Schedule 2 to the Act. In the absence of receiving an unsubscribe request, SpinTel asserted its terms permitted it to continue sending CEMs to non-active customers.

29. Schedule 2 of the Spam Act provides that the definition of inferred consent is consent that can reasonably be inferred from the conduct, and the business and other relationships of the individual or organisation concerned. Further, the Explanatory Memorandum to the Spam Act (**the Explanatory Memorandum**) explains that inferred consent arises from the conduct or business relationship between the sender and the recipient, rather than from an explicit request or permission. That is, consent may be inferred from an existing relationship where it is reasonable, based on the conduct of the parties, to conclude that the recipient would expect to receive commercial electronic messages from the sender.

30. The ACMA does not accept SpinTel's claim that inferred consent existed for the purpose of sending CEMs to previous customers. The ACMA notes that while the above Agreement states that SpinTel may send correspondence and emails due to a 'continuing business relationship' (unless a request to unsubscribe is received), it is premised on these being part of the service provided. In the ACMA's view, this does not provide a sufficient basis to infer ongoing consent once the business relationship has ceased.

31. Furthermore, the ACMA notes that the facts of the *Clarity 1* matter related to email transactions involving the individual purchase of business seminars and related training programs. In that context, Nicholson J stated it could be reasonably inferred that the recipient would wish to be kept aware of the business offerings of the vendor.

32. As Nicholson J also noted in *Clarity 1*, at [96], the Explanatory Memorandum states at page 112 that the issue of consent is a question of fact to be considered according to each particular set of

circumstances. In the circumstances of the current case, which is not analogous to the circumstances of *Clarity 1*, the relevant consumers had entered into ongoing commercial relationships with SpinTel pursuant to a contract for the provision of ongoing services, which was subsequently terminated by the relevant consumers. It is the ACMA's view that this act of termination is a clear and objective indication that the consumer no longer wishes to maintain the relationship or expect to continue to receive CEMs.

33. Inferred consent requires consideration of the circumstances at the time the CEMs were sent, the nature of the relationship, the reasonable expectations attributable to message recipients and the relevance of the CEMs being sent. SpinTel's broad reliance on a prior contractual relationship in circumstances where the service had been actively terminated, together with a generic contractual clause in a subsequently terminated agreement, does not reasonably support an inference of consent.

34. SpinTel has not made any claim regarding the existence of express consent in these matters. However, for the avoidance of any doubt, the ACMA does not consider that the above extract from SpinTel's Standard form of Agreement is sufficient to demonstrate that it had express consent to send these messages, as, again, the Agreement is specific to the 'continuing business relationship' and is premised on the information relating the service being provided.

35. For at least 5 investigated messages sent after consent had been withdrawn SpinTel did not make any claim that those investigated messages were subject to any exceptions.

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

36. SpinTel did not meet the evidential burden in relation to its claims, as set out in the previous paragraphs.

37. Therefore, the consent exception in subsection 16(2) of Schedule 2 of the Spam Act is not satisfied.

Conclusion

38. The ACMA finds that SpinTel has contravened subsection 16(1) of the Spam Act on at least 32,394 occasions by sending CEMs without consent between 1 July 2025 and 30 September 2025, constituting:

    - At least 32,389 CEMs without inferred consent, and
    - At least 5 CEMs sent more than 5 business days after consent had been withdrawn.

Attachments

[redacted]

Attachment B – Example SpinTel CEMs

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CALL 13 22 10

FAST, UNLIMITED NBN PLANS FOR ALL BUDGETS

Get an nbn™ connection that's fast, flexible and affordable.

VIEW PLANS



Hi [redacted]

To thank you for being a customer, we'd love to help you get faster internet with our incredible nbn™ deals.

We have a range of unlimited nbn™ plans to suit any budget and family size. Our plans start at just $51.00 per month!

Check out our plans:

VIEW OUR PLANS

$51	$74	$80
Per Month	Per Month	Per Month
Up to 25Mbps Unlimited Data	Up to 500Mbps Unlimited Data	Up to 750Mbps Unlimited Data

VIEW PLANS

Need help?
Give our friendly customer service team a call on **13 22 10**.
They'll help you find the right plan.

Talk soon,
SpinTel

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Sales 13 22 10

Sent to [redacted]

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CALL 13 22 10

CAN WE WIN YOU BACK

$ $

with the best value in Australia?

Hi [redacted]

We were sorry to see you go but we're guessing you moved to another telco because they were offering a discount you couldn't resist.

We understand. Cutting costs wherever you can is a smart move.

But what happens when the discount period is up and you're paying your new telco's normal rate?

Your best move is to switch back to **SpinTel** because we're still the **multi-award-winning** Aussie telco with the **best-value plans** in the market.

nbn™ Broadband Internet from just $59.95 per month

VIEW LATEST NBN PLANS

Or call 13 22 10 to duel value with our friendly team.

AWARDED 22X FOR VALUE.

We've done our best for customers and Money Magazine has noticed, recognising SpinTel 22 times for value over our 20+ year history.

4.5 from 9073 reviews

GREAT REVIEWS.

As we've made improvements, customers have been responding and showing their satisfaction with better & better reviews.

PRODUCT REVIEW

"Thank you very much to all who helped me at SpinTel, and especially Don who made the transition to my new house phone and internet connection easy!"
IRENE, NSW

SEE WHAT YOU COULD SAVE.

Our pricing has been revamped to bring you even better value through our entire range. See what coming back could save you.

VIEW LATEST PLANS

Or call 13 22 10 to duel value with our friendly team.

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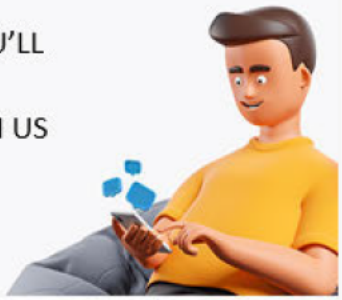
Sent to [redacted]

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CALL 13 22 10

REASONS YOU'LL LOVE GOING MOBILE WITH US

VIEW PLANS



Hi [redacted]

Thank you for being a SpinTel customer. We'd like to help you save money with our SPECIAL sim-only bundle mobile plans.

When you sign up to our sim-only deals, you'll get the simplicity and freedom of:

1. NO WAITING
Get a number within a day and get going instantly, no matter what phone you have.

2. NO CONTRACTS
No lock-in. Cancel anytime, for whatever reason, with zero termination fees.

CHECK OUT OUR GREAT PLANS

When you're looking for a SIM-only deal the last thing you want is to over-complicate your life. That's why we keep our plans easy to understand and use.

VIEW PLANS

Need help?
Give our friendly customer service team a call on **13 22 10**. They'll help you find the right plan.

Talk soon,
SpinTel

WHY TRUST US?

CANSTAR

mozo EXPERTS CHOICE 2025 AUSTRALIA'S BEST MOBILE PLAN PROVIDER

Money WINNER 2025

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Sales: 13 22 10

Sent to: [redacted]

Unsubscribe

SpinTel, Level 6, 50 York Street, Sydney NSW 2000, Australia

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MAKE DIGITAL CALLS FROM ANYWHERE WITH A PBX SYSTEM

VIEW PLANS



Hi [redacted]

Adapting your business for remote work can be tricky but it doesn't have to be with a PBX system.

What is a PBX system?

A PBX system is a business phone system that uses the Internet instead of copper phone lines. It's a great way to stay connected and save money.

Imagine not paying line rental fees and being able to make FREE calls between users! All you need is an Internet connection and handset.

It's quick to onboard, there's no lock in contracts and no hidden costs. Just pick a plan and the number of handsets you need. How easy is that!

Choose your phone plan and number of lines.

Our plans give you unlimited calls to Australian landlines and mobiles. Not bad for a plan that costs as little as $10 per month.





Choose your Handset

Looking for a standard desk phone? Maybe a wireless handset to chat on the go, or conference phones to keep everyone connected.

CHOOSE A PLAN

It's quick to onboard, there's no lock in contracts and no hidden costs. Just pick a plan and the number of handsets you need. How easy is that!

VIEW PLANS

Need help?
Give our friendly customer service team a call on **13 22 10**. They'll help you find the right plan.

Talk soon,
SpinTel

WHY TRUST US?

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[redacted]