



Infringement Notice

Spam Act 2003

I, Jeremy Fenton, an authorised person for the purposes of clause 9 of Schedule 3 to the *Spam Act 2003* (**Spam Act**), having reasonable grounds to believe that Commonwealth Bank of Australia ACN 123 123 124 (**CBA**), has committed one or more contraventions of a particular civil penalty provision,

HEREBY give an infringement notice (**the Notice**) under subclause 3(1) of Schedule 3 to the Spam Act to:

Commonwealth Bank of Australia

at

'Commonwealth Bank Place South'
Level 1, 11
Harbour Street
SYDNEY NSW 2000

Details of Alleged Civil Contraventions

It is alleged that CBA contravened:

- subsection 16(1) of the Spam Act by sending commercial electronic messages (**CEMs**) that had an Australian link, and which were not designated commercial electronic messages, without the consent of the relevant electronic account holder.
- subsection 18(1) of the Spam Act by sending CEMs that had an Australian link, and which were not designated commercial electronic messages, without a functional unsubscribe facility.

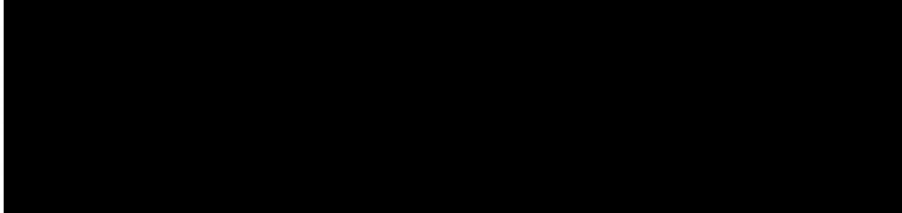
Schedule 1 to this Notice set out brief details of the alleged civil contraventions.

Amount of Penalty

The total pecuniary penalty (**the penalty**) for the alleged civil contraventions is \$3,552,000. The penalty is calculated in accordance with item 2 of the table under subclause 5(1) of Schedule 3 to the Spam Act, as set out in paragraph 4.1 of Schedule 1 to this Notice.

Payment of Penalty

The penalty should be paid to the Australian Communications and Media Authority (ACMA), on behalf of the Commonwealth, into the following account by 29 May 2023. Please include the narration "CBA – UCES" with your payment:



If the penalty is paid

If the penalty specified in the Notice is paid to the ACMA, on behalf of the Commonwealth, by 29 May 2023, the matters outlined in this Notice will not be dealt with by the Federal Court of Australia and any liability for the alleged contraventions that are the subject of this Notice is discharged.

If the penalty is not paid

If you do not pay the penalty by 29 May 2023, the ACMA may take action for the alleged contraventions.

That action may include the institution of civil penalty proceedings in the Federal Court. The penalties that the Court can impose are potentially significantly higher than that in a Notice (see section 25 of the Spam Act).

Withdrawal of the infringement notice

The ACMA may withdraw this Notice. To be effective the withdrawal must occur within 28 days after the Notice was given.

If you believe the Notice should be withdrawn, you should write as soon as practicable setting out the basis/reasons for this position. Your application should be addressed to me in the first instance. The ACMA may take this into consideration when deciding whether or not to withdraw this Notice.

If the Notice is withdrawn after the penalty is paid, the penalty will be refunded.

Please note that if this Notice is withdrawn, the ACMA may consider taking action, including under Part 4 of the Spam Act, for the alleged contraventions, the subject of this Notice.

DATE: 1 May 2023



Jeremy Fenton
Executive Manager
Consumer, Consent and Numbers Branch
Australian Communications and Media Authority

In accordance with Clause 4 of Schedule 3 to the Spam Act, brief details of each of the alleged civil contraventions are set out below.

1. Background

- 1.1. CBA is a registered company under the *Corporations Act 2001*, with a registered office at 'Commonwealth Bank Place South', Level 1, 11 Harbour Street, SYDNEY NSW 2000.
- 1.2. CBA is a multinational bank.
- 1.3. On 18 November 2022, the ACMA commenced an investigation into whether CBA had contravened the Spam Act.
- 1.4. Prior to commencing the investigation, the ACMA had received complaints from consumers alleging they had received CEMs without the ability to unsubscribe or after they had made attempts to unsubscribe from CEMs. The ACMA notified CBA that it may have a problem with its Spam Act compliance on 8 occasions between 24 June 2021 and 18 July 2022.

2. Matters giving rise to the Infringement Notice

- 2.1. During the period 30 November 2021 to 30 November 2022 (the relevant period), CBA sent electronic messages to consumers.
- 2.2. At least one of the purposes of the messages was to advertise or promote CBA's banking products or services to customers. Therefore, the messages described at paragraph 2.1 were CEMs, as defined in section 6 of the Spam Act.
- 2.3. The CEM's were not 'designated' CEMs as described in Schedule 1 to the Spam Act.
- 2.4. The CEMs had an Australian link as defined in section 7 of the Spam Act. They were sent by CBA, whose central management and control is in Australia.
- 2.5. Specific CEMs were sent between 27 May 2022 and 30 November 2022 in contravention of subsection 16(1) of the Spam Act.
- 2.6. Specific CEMs were sent between 30 November 2021 and 11 August 2022 in contravention of subsection 18(1) of the Spam Act.
- 2.7. The ACMA's investigation found that the alleged contraventions were due to manual process errors and inadequate assurance checks in relation to compliance activities.

3. Relevant civil penalty provisions of the Spam Act

3.1. Subsection 16(1)

- 3.1.1. Subsection 16(1) of the Spam Act provides that a person must not send, or cause to be sent, a CEM that has an Australian link and is not a designated message.
- 3.1.2. Subsection 16(2) of the Spam Act provides that subsection (1) does not apply if the relevant electronic account-holder consented to the sending of the message.
- 3.1.3. For the purposes of the Spam Act, consent is defined in Schedule 2 of that Act.
- 3.1.4. The CEMs sent by CBA to electronic addresses during the relevant period were sent after the relevant electronic account-holders had withdrawn consent in accordance with subclause 6(1) of Schedule 2 of the Spam Act.

3.1.5. The ACMA has reasonable grounds to believe that CBA has contravened subsection 16(1) of the Spam Act during the relevant period, as set out in this Notice.

3.1.6. Subsection 16(1) of the Spam Act is a civil penalty provision (subsection 16(11) of the Spam Act).

3.2. *Subsection 18(1)*

3.2.1. Subsection 18(1) of the Spam Act provides that a person must not send, or cause to be sent, a CEM that has an Australian link and is not a designated message, unless the CEM contains a statement to the effect that the recipient may use an electronic address set out in the CEM to send an unsubscribe message to the person who authorised the sending of the CEM (an unsubscribe statement).

3.2.2. The CEMs sent by CBA to electronic addresses during the relevant periods did not include an unsubscribe statement as described in subsection 18(1) of the Spam Act.

3.2.3. The ACMA has reasonable grounds to believe that CBA has contravened subsection 18(1) of the Spam Act during the relevant period, as set out in this Notice.

3.2.4. Subsection 18(1) of the Spam Act is a civil penalty provision (subsection 18(8) of the Spam Act).

4. The amount of the penalty

4.1. The total penalty specified in this Notice is \$3,552,000, calculated in accordance with the table in clause 5(1) of Schedule 3 to the Spam Act, as set out in the table below.

Penalties for contraventions of subsections 16(1) and 18(1) of the Spam Act

Date of contravention	Civil penalty provision allegedly contravened	Number of contraventions	Penalty units¹	Penalty imposed
Subsection 16(1) contraventions				
19 July 2022	Subsection 16(1) of the Spam Act	50	1,000	\$222,000
20 July 2022	Subsection 16(1) of the Spam Act	50	1,000	\$222,000
21 July 2022	Subsection 16(1) of the Spam Act	50	1,000	\$222,000
22 July 2022	Subsection 16(1) of the Spam Act	50	1,000	\$222,000
25 July 2022	Subsection 16(1) of the Spam Act	50	1,000	\$222,000
26 July 2022	Subsection 16(1) of the Spam Act	50	1,000	\$222,000
27 July 2022	Subsection 16(1) of the Spam Act	50	1,000	\$222,000
28 July 2022	Subsection 16(1) of the Spam Act	50	1,000	\$222,000
29 July 2022	Subsection 16(1) of the Spam Act	50	1,000	\$222,000
Total s.16(1)			9,000	\$1,998,000
Subsection 18(1) contraventions				
18 July 2022	Subsection 18(1) of the Spam Act	50	500	\$111,000
19 July 2022	Subsection 18(1) of the Spam Act	50	500	\$111,000
20 July 2022	Subsection 18(1) of the Spam Act	50	500	\$111,000
21 July 2022	Subsection 18(1) of the Spam Act	50	500	\$111,000
22 July 2022	Subsection 18(1) of the Spam Act	50	500	\$111,000

¹ At the time of the alleged contraventions, the amount of a penalty unit was \$222, as set by section 4AA of the *Crimes Act 1914*.

23 July 2022	Subsection 18(1) of the Spam Act	50	500	\$111,000
24 July 2022	Subsection 18(1) of the Spam Act	50	500	\$111,000
25 July 2022	Subsection 18(1) of the Spam Act	50	500	\$111,000
26 July 2022	Subsection 18(1) of the Spam Act	50	500	\$111,000
27 July 2022	Subsection 18(1) of the Spam Act	50	500	\$111,000
28 July 2022	Subsection 18(1) of the Spam Act	50	500	\$111,000
29 July 2022	Subsection 18(1) of the Spam Act	50	500	\$111,000
30 July 2022	Subsection 18(1) of the Spam Act	50	500	\$111,000
31 July 2022	Subsection 18(1) of the Spam Act	50	500	\$111,000
Total s.18(1)			7,000	\$1,554,000
Grand Total			16,000	\$3,552,000