

1 July 2013

David Blowers
Energy Sector Development Division
Department of State Development, Business and Innovation
GPO Box 4440
MELBOURNE VIC 3001

Via email: Esi.Review@dpi.vic.gov.au

Dear David

Review of the Energy Saver Incentive Scheme

Thank you for the opportunity to provide input to the Review of the Energy Saver Incentive (**ESI**) Scheme. In short, our comments are:

- the promotion of energy efficiency products and services through door-to-door distribution results in complaints, and risks consumer confidence in energy efficiency and ESI scheme;
- compliance with the Australian Consumer Law by businesses involved in the ESI scheme appears patchy, and regulators do not appear to view such compliance as a high priority;
- inclusion of products and services in the ESI scheme that rely on ongoing consumer behaviour should be reviewed; and
- the ESI scheme should be re-directed towards low-income and disadvantaged households.

About Consumer Action

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action offers free legal advice, pursues consumer litigation and provides financial counselling to vulnerable and disadvantaged consumers across Victoria. Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly.

Door to door distribution is problematic

Since 2011, we have published the website www.donotknock.org.au with the goal of empowering consumers through the distribution of Do Not Knock stickers, improving business practices in door to door selling, and collecting data about consumer experiences with door to

Consumer Action Law Centre

Level 7, 459 Little Collins Street Telephone 03 9670 5088
Melbourne Victoria 3000 Facsimile 03 9629 6898

info@consumeraction.org.au
www.consumeraction.org.au

door salespeople which is sent to the Australian Competition and Consumer Commission (**ACCC**) for enforcement action.

Over 300 consumers have so far submitted complaints to us about their experiences with door to door salespeople. Historically, we have received a significant number of complaints about the conduct of sales people in relation to the sales of energy contracts on behalf of energy retailers. Increasingly, this has grown to include contractors offering energy saving devices in an effort to meet the objectives of the ESI scheme.

Through complaints made via the do not knock website, it is becoming apparent that a significant problem with the scheme is that products like standby power controllers, and energy efficient lights and powerboards, are distributed door to door by small business contractors. Despite the popularity of this channel with some businesses (research published by Frost and Sullivan, commissioned by the ACCC estimated in 2012 that 1.3 million door to door sales were made in 2011- one for every 6.5 households in Australia¹), many householders find the practice intrusive and unwelcome.

In 2012, Consumer Action commissioned research into consumer attitudes toward door to door selling. It found that only 3% of people had a generally good opinion of this sales channel, and that 77% dislike the practice².

Consumer complaints submitted using the Do Not Knock website regularly complain about the conduct of energy efficiency salespeople visiting their premises. Complaints include:

- claiming to be "from the government"
- ignoring Do Not Knock stickers, which consumers expect to apply to all potential home visits
- visiting late at night, and
- not leaving immediately upon request.

Attachment A is a compendium of recent complaints that exemplify the issues raised by householders.

Our view is that using this distribution method undermines consumer confidence in the product being promoted, energy efficiency and the scheme over all. We strongly recommend that the distribution mechanism be revisited, and alternative distribution means be employed with an emphasis on collaborating and partnering with trusted community agencies to distribute energy efficiency devices. Local councils would seem to be an excellent potential distribution point, as would other community agencies. The Home Energy Saver Scheme³, which provides low-income consumers with advice on how to better manage their energy usage in their home, may be an appropriate scheme for partnership.

¹ Research into the Door to Door Sales Industry in Australia, p8. Online at: <http://www.accc.gov.au/system/files/Research%20into%20the%20door%20to%20door%20sales%20industry%20in%20Australia%20August%202012.pdf>

² Door to Door Sales: Consumer Views, available online at <http://donotknock.org.au/wp-content/uploads/2012/04/Door-to-door-sales-Consumer-views-2012-Consumer-Action-Law-Centre.pdf>

³ See <http://www.fahcsia.gov.au/our-responsibilities/communities-and-vulnerable-people/programs-services/financial-management-program/home-energy-saver-scheme/home-energy-saver-scheme>

Compliance Issues

Disappointingly, problems with the door-to-door distribution of energy efficient products doesn't appear to have been a compliance and enforcement priority for regulators.

Due to the volume of complaints we received about the conduct of door to door ESI distributors, Consumer Action raised the issue directly with the Essential Services Commission (**ESC**) in December 2012. The ESC's initial response indicated that they had recently written to scheme participants and reiterated that they were not to misrepresent themselves as being 'from the government' and the need to observe door knocking provisions of the Australian Consumer Law.

We subsequently provided the ESC with details of specific instances where consumers alleged potential misconduct by the ESI distributor, as requested by the ESC in this initial correspondence. The second response we received in March 2013 only reiterated the messages of the first, and did not indicate the information we provided would be used for further compliance and enforcement purposes.

Similarly, we raised the same concerns about ESI scheme participant's compliance with conduct requirements of unsolicited sales agreement provisions of the Australian Consumer Law (**ACL**) with Consumer Affairs Victoria (**CAV**). CAV advised that failing to leave the premises may amount to trespass—and advised that affected consumers should contact the ESI business, then the ESC, for resolution of a complaint. CAV advised it could provide information or advice where the device was valued over \$100.⁴

While we do note that there has been a decline in complaints about ESI participants in recent months, we continue to be concerned with the reluctance of regulators to actively pursue the issues raised by consumers and by Consumer Action (at least in any public sense).

Consumer use of products needs to be quantified

We are concerned that the ESI activities being promoted rely on ongoing consumer behaviour, such as the continued use of a stand by plug. Anecdotally, we have heard of some consumers becoming annoyed by devices and removing them (rendering them ineffective for the purposes of the ESI scheme), for example when a plug switches off when a television is in active use. We've also had reports of other service providers removing the stand by plugs because they interfere with the operation of other services and equipment. One consumer told us their pay television installer told her to remove the device.

It would be prudent for an independent assessment of the scheme to revisit those households who have agreed to use the products and assess whether the energy saving devices are still in use by the householder.

⁴ As many devices are provided for free, it is unclear to us or consumers what the cash value would be. In any event, we would note that there is a value to these items (i.e. provision of Victorian Energy Efficiency Certificates) and as such in our view the relevant conduct provisions of the ACL should apply.

As Victorian customers are paying for these energy saving devices through their electricity prices, it is imperative that all consumers should have the ongoing energy efficiency benefit.

Target activities toward low-income households

Consumer Action supports the ongoing State government commitment to promoting energy efficiency activities, but would point out that these kinds of schemes need to be sustainable, have public support and be accountable. It seems appropriate for the review to undertake an analysis to identify cost effectiveness and the distributional impact of the ESI scheme on householders.

Consumer Action's clients are amongst the most disadvantaged and vulnerable members of our community, as such, we know that some consumers need help to access and take advantage of programs that can deliver benefits to them. Through this review, should the benefits of energy efficient devices be demonstrable and the program is continued, future programs should specifically target—not through door to door distribution—low-income households who face greater barriers to the uptake of energy efficiency products. We support the Brotherhood of St Laurence's approach to this.⁵

Should you wish to discuss this submission further, please contact Sarah Wilson on 03 9670 5088 or at sarahw@consumeraction.org.au

Yours sincerely

CONSUMER ACTION LAW CENTRE



Gerard Brody
Chief Executive Officer



Sarah Wilson
Senior Campaigner

⁵ Damien Sullivan and Victoria Johnson, *The Power to Save: An equity assessment of the Victorian energy saver incentive in Metropolitan Melbourne* (2012), available at: http://www.bsl.org.au/pdfs/SullivanJohnson_Power_to_save_equity_assessment_of_VESI_Melbourne_2012.pdf.

Attachment A: Recent complaints about VEET scheme participants

Person attempting to distribute energy saving powerboards. This is the fifth time in 18 months that someone has come to our door with exactly the same product.

Our estate has a Facebook page and so for 5 people have mentioned him and three people have mentioned that he has ignored their "Do Not Knock" stickers.

- *Complainant from Point Cook, visited 5pm 21/6/2013. Complainant has a DNK sticker, didn't leave immediately upon request.*

They breached the "do not knock" laws then denied they were selling but said they were working for the government giving away items. At 4pm Saturday 13 April someone tapped on the glass at the front door) not bothering to press my doorbell When challenged why they did not obey the sign, they said they were not selling and actually were advised to say they were representing the government. They were adamant they were not selling. I extracted the phone and company name from their identification cards.

- *Complainant from Mill Park, Visited 4pm 13/6/2013. Complainant has a DNK sticker, and salesperson left immediately upon request.*

The first one was left standing at the door when he refused twice to leave. The second one left when asked [distributing solar powerboards].

- *Complainant from Ararat, visited 530pm and about 2pm on 26/4/2013 and 27/4/2013.*

I have a do not knock sticker on my door. My door was knocked on by a young man with an English accent wanting to install Embertec Emberplugs as part of the Victorian Energy Efficiency Target Program. When I pointed out the do not knock sticker he replied that they were free so he wasn't selling anything, implying that the do not knock sticker did not apply to him. I told him I was caring for a disabled child and did not have time to talk with him, which is why we got the sticker (!) and he left. I would like to know the legality of ignoring a do not knock sticker just because the product or service being promoted is allegedly free to the householder. In recent times I have also been knocked on by young people promoting "free" energy efficient light bulbs and chimney blocking devices. Obviously the manufacturers of these products are being paid, as are the door knockers themselves, so there is a profit motive, even if there is no cost to the householder. Most of all I am annoyed by the inconvenience of having to respond to intruders on my property flogging something I don't want, whatever it may be, while I have more important responsibilities which require my attention.

- *Complainant from Hawthorn East, visited midday 12/3/2013. Complainant has a DNK sticker, and salesperson left immediately upon request.*

Twice now I have had this happen with these power board people. They just don't understand the sticker, because they believe they are "not selling" anything. I'm going to punch someone next time, I'm so sick of the way they bang on my door non stop like it's a police raid, or the house is on fire!

- *Complaint from Campbellfield, visited 4pm 19/11/12. Complainant had a DNK sticker and salesperson had to be asked to leave more than once.*

I advised the person immediately on answering the door that she could see the "do not knock" sticker and I was not interested. She said she had seen the sticker and that it did not apply to her and kept going with the sales pitch. I told her I wasn't interested and asked her to leave and if she had a pamphlet she could leave it there on the doorstep. I came back over a minute later and she was still at my door, I told her again to leave and that she was breaking the law, and she again told me the sticker did not apply to her. Only after I got the company name and asked her name did she cover up her badge and walk off (after mumbling some rude comments at me).

- *Complainant from Bentleigh East, visited 4.45pm 8/1/2013. Complainant has a DNK sticker, and salesperson did not immediately upon request.*

For the second time, I had a person offering 'smart switches' knock on my door. When I pointed to the sticker and said they should not be at my door, the response was "oh, but I'm not selling anything". I work in the energy industry. I am fully aware that a smart switch is offered in trade for my RECS (Renewable Energy Certificates). The company which provides me with the device, may then sell my RECS. I do not accept that offering free smart switches / energy efficient light globes, is not a sales person. When the person advised they were not selling anything, I responded with "I know my rights, you shouldn't be knocking". They then left. Unfortunately I did not obtain the name of the company, as the sales person was not displaying any prominent identification.

- *Complainant from Lower Plenty, visited 11.10am 23/01/2012. Complainant has a DNK sticker, and salesperson left immediately upon request.*

The first door knocker said they were giving energy efficient products to households, when I said I already have all the items on the sheet in his hand (which I do) and so I'm not interested, he went on saying it's ok, I'm not selling anything...

The second knocker left fairly promptly when I said someone had been already. The third came to the door, when I opened it, he said "oh, has someone been here already". All three actually looked the same... After he left, my four year old even commented that it was the same man from earlier. I know they weren't selling, but I do not want a stranger in my house, or even to open my door to a stranger. Also, I don't trust that they don't want to sell me anything.

- *Complainant from Hastings, Vic, visited 3 times in one afternoon between 3pm and 7:55pm, 21 /11/2012.*

VEET program powerboard distributor (representing a company called "EET Consultant") knocked at our door, ignoring the "Do Not Knock" sign. When challenged said she said she didn't have to respect the sign because she wasn't a salesperson.

VEET doorknockers (apparently from this same company) knock regularly and always the same justification is given (don't need to respect the sign because not selling). It is evident that they're being told in training that they are exempt.

Why they think that a household which doesn't welcome doorknockers is going to care what sort of doorknockers they are is a mystery to me - all doorknockers wake the baby, it doesn't matter if money changes hands or not.

- *Complainant from Burwood East, visited 1pm on 23/10/12. Complainant has a Do Not Knock sticker and had to ask visitor to leave the premises more than once.*

Green Home Green Planet - Claimed to be from government agency.

Complainant from Brunswick, visited 2.30pm 9/11/2012. Complainant has a DNK sticker, and salesperson left immediately upon request.

At about 5:40 last night we received a knock on the door from a VEET program representative trying to provide and fit free plug-in electricity management devices. I immediately pointed out the "Do Not Knock" sign and asked him to leave. He argued with me on the grounds that he wasn't selling anything (ie that he didn't need to abide by the sign and that we should therefore welcome him).

When I insisted that we do not welcome door-knockers and that he should therefore leave, he became verbally aggressive and used foul language (incl "f_ing") in front of my 2 & 4 year old sons who had come to the door with me. He then left.

He had what sounded like an Irish accent, was in his early 20s with longish, somewhat curly brown/auburn hair, slim build and medium height. He did not identify which subcontractor he represented, only insisted that he was "from the Government".

We have never had this sort of language or aggression before but we have repeatedly received visits from VEET program representatives claiming that the "Do Not Knock" sign doesn't apply to them with some insistence and in each case they have had to be asked to leave more than once. We have had VEET program reps knocking perhaps 4-5 times in the past year.

These workers are clearly being told in their training that they are not obliged to respect "Do Not Knock" signage.

I immediately reported last night's incident to the relevant Vic State Gov complaints line and they also noted the apparent problem with these reps not respecting the "Do Not Knock" signs and not correctly identifying which company they represent.

I suggest consideration should be given to the wording on the "Do Not Knock" stickers. It seems to me that the "Salespeople please note..." wording is being interpreted as limiting the application only to those actually selling something in a literal sense.

- *Complainant from Burwood East, visited 5.40pm 9/8/12. Complainant has a Do Not Knock sticker and had to ask salesperson to leave more than once.*

At 6pm on Wednesday, a guy rang the door bell and tried to offer me free energy saving products. I said "Can't you see the Do Not Knock sticker?" He said "I don't care - that doesn't apply to me cause I'm not a salesperson anyway, I'm a canvasser!"

I asked for his name and read his ID tag - Tim Ruzutto from Live Green for Less. I contacted the company and was told that a manager would call me back the next day, and 2 days later I still haven't heard anything! Since this is trespass - can I call the Cops when they knock?

- *Complainant from Ringwood, visited 6pm 6/6/2012. Complainant had a DNK sticker and salesperson had to be asked to leave more than once.*

For the past 3 months, I am disturbed almost DAILY by people offering me "free" energy saving consultations, power plugs and shower heads. Despite a clearly visible "Do Not Knock" sticker, they always state that as what they are offering is "free" the sticker does not apply to them.

I struggle to earn a living and must work from home. Work telephone calls and meetings are continually interrupted by these people. Furthermore, my home office window is adjacent to my front door and some of these salespeople just tap on the glass and begin an unwelcomed sales pitch. This sales pitch always begins the same way, "Oh, don't worry I'm not "selling" anything, it's all FREE!"

I understand the government has introduced a scheme of putting energy saving devices into peoples' homes and therefore pay large amounts of money to all these new companies that supply these devices. For each consultation or device that they sell to an individual household at no cost to the householder, they bill a government department for the cost.

I am not just harassed by one company. There are several. Each day a different one comes knocking offering to peddle junk to me.

- *Complainant from Hawthorn, visited 4pm 10/10/2012. Complainant has a DNK sticker, and salesperson left immediately upon request.*