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To whom it may concern,

Banning telemarketing under the Victorian Energy Upgrades program

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Department of Environment, Environment and Climate Action's (**DEECA**) Consultation Paper on the design and implementation of the ban to address industry misconduct relating to marketing and sales within the Victorian Energy Upgrades (**VEU**) products and services.

We strongly support the Minister's intention to introduce a ban on telemarketing within the VEU program. We have long advocated for bans on telemarketing (as well as doorknocking) as inherently problematic sales channels, particularly in relation to the sales of energy-related products and services. We first identified problematic unsolicited selling in a joint paper with the Financial and Consumer Rights Council (**FCRC**) in 2007, *Coercion and harassment at the door: Consumer experiences with energy direct marketers*.¹ Since that time we have also produced several other reports exploring the consumer harm associated with unsolicited sales, including *Knock it off!*, our joint 2017 report with WEstjustice and Loddon Campaspe.² Although not directly focused on the VEU program, these reports clearly demonstrate the strong links between unsolicited sales and misleading, deceptive and/or high-pressure sales tactics.

Cold-calling and doorknocking is at best a nuisance, and at worst leads to consumers being pressured into signing up for products and services that they do not want, do not understand, and may be unable to afford. It is our view that unsolicited sales have no place in a well-functioning market. Acting to end problematic sales practices is particularly important for the integrity of the VEU program. This is due to the VEU program's place as a government program, and the important contribution it is making to help Victorians reduce their greenhouse gas emissions and save on their energy bills. Banning unsolicited sales will improve consumer engagement and trust in the VEU program, as well as protect people experiencing vulnerability and those on low or fixed incomes who

¹ Consumer Action Law Centre and the Financial and Consumer Rights Council (2007), [Coercion and harassment at the door: Consumer experiences with direct marketers](#)

² Consumer Action Law Centre, Loddon Campaspe and WEstjustice (2017), [Knock it off! Door-to-door sales and consumer harm in Victoria](#)

are often the targets of unsolicited sales. In response to questions in the consultation paper we recommend that the ban should:

- apply to all products and services targeted to residential customers (including cases of upselling)
- be expanded to include door-to-door sales
- be subject to a phase-in period of no more than 3 months

Once the ban is enacted, we also recommend that the government undertake advertising to ensure that Victorians are aware unsolicited sales are no longer permitted in the VEU program. More detail on these points is provided below. We also note that as our casework relates only to residential consumers, our comments only apply to households participating in the VEU program, rather than commercial businesses or industrial energy users.

About us

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy, and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians, and our advocacy supports a just marketplace for all Australians.

Response to selected questions from the consultation paper

1. Are there any situations that should be excluded from the scope of the telemarketing ban?

It is our view that any ban needs to be simple and easily understood. This position is echoed in the consultation paper, which notes that, 'A blanket ban on all telemarketing would be the simplest to communicate to consumers and establish a clear expectation among the public on what is permitted.'³ We also agree with the statement in the consultation paper that a blanket ban would, "...help to avoid any grey areas in implementing, interpreting and regulating the ban."⁴ Not only would a complete ban on telemarketing improve community trust in, and support for, the VEU program, but it would also make monitoring compliance simpler both for participating businesses and the regulator. Therefore, the ban on telemarketing should apply to all products available under the VEU program, as well as all businesses involved in the program.

A blanket ban would also align protections within the VEU program with sales of traditional electricity and gas supply, with retailers of traditional energy having been banned from cold-calling Victorians as of 31 December 2021. Ensuring equal protections apply across all energy products and services is essential to informed consumer engagement and trust in the market. There is no good reason for lesser consumer protections to apply to products available under the VEU program – by and large these are not niche products with limited consumer awareness that require spruiking via unsolicited sales channels. Rather than helping the clean energy transition, we consider that allowing telemarketing to persist in some areas would be counterproductive, harming trust in the program and dampening uptake. While noting the assertion in the consultation paper that a blanket ban may mean some non-vulnerable consumers may miss out on available upgrades, we consider the potential harm to all consumers through problematic sales methods outweighs any missed opportunities resulting from ending telemarketing in the VEU program.

As part of implementing a blanket ban on telemarketing, instances of upselling must also be captured. The consultation paper notes that complaints made about the VEU program include households that have already completed an energy upgrade subsequently receiving unwanted phone calls about other upgrades, indicating that problems already exist with telemarketing related to upselling. Having completed one upgrade should not be taken as a sign that a consumer necessarily wants to receive notifications about other available upgrades. Where further upgrades are available to consumers who have previously participated in the VEU program, notifications should be sent through less intrusive and problematic advertising channels, such as email. Again, it is our view that the potential harm to consumers (and the reputational harm to the VEU program) of allowing cold-calling to persist for cases of upselling outweighs the benefits associated with additional upgrades made via telemarketing.

There is a broader risk to consumers in allowing telemarketing to continue for upgrades. A loophole could be created where businesses could seek to entice consumers with an attractive initial upgrade (possibly a low or no-cost item) then use that initial upgrade as an opportunity to make subsequent unsolicited sales approaches for higher-value items.

To this end, we urge the government introduce a blanket ban on telemarketing for all products and services targeted at residential households, including where people have previously participated in the program. We consider that demand for the VEU program can be sufficiently driven through both digital and traditional media advertising. Where additional efforts are needed to drive consumer demand, we believe additional government marketing is preferable to any exemptions that would allow telemarketing to persist.

RECOMMENDATION 1. Introduce a blanket ban on all telemarketing under the VEU program (including cases of upselling).

³ Department of Energy, Environment and Climate Action (2023), Consultation paper on banning telemarketing under the Victorian Energy Upgrades program, p.8

⁴ Ibid, p.8-9

2. Should the ban cover doorknocking as well as telemarketing?

With respect to the questions raised around the design and implementation of the ban, we draw particular attention to the need for a prohibition on all forms of unsolicited sales, including doorknocking. The fact that sales of energy products and services via doorknocking result in consumer harm has already been acknowledged in Victoria with the government's recent ban on both telemarketing and doorknocking for traditional energy retailers, as well as the ban on doorknocking for retailers participating in the government's Solar Homes program. The harms linked to doorknocking (and the ensuing reputational risk) have also been recognised by industry, with many of the larger traditional energy and gas retailers voluntarily ceasing to use door-to-door sales prior to the government's announcement of a ban.

The problems inherent in telemarketing sales (unfair, high-pressure sales tactics and the nature of the interaction being 'sprung' on the consumer) are also present in doorknocking. If anything, these issues are heightened given the physical presence of the sales agent at the customer's home. If government fails to expand the current ban to include doorknocking, it is entirely possible that businesses will shift marketing budgets currently used for telemarketing into doorknocking. This would simply perpetuate the problem of misconduct linked to unsolicited sales within the VEU program that the proposed ban on telemarketing is attempting to address.

As noted in the consultation paper, "...the department is particularly concerned about cases where pressure tactics are used by door knockers on senior and vulnerable Victorians, who tell them (or imply) that participation in VEU is mandatory."⁵ Based on our casework experience of problems with door-to-door sales of rooftop solar, this concern is well-founded. Unscrupulous and commission-driven salespeople have used the complex nature of the product to their advantage, convincing people to sign up based on illusory, or over-stated, claims, such as that by installing a solar PV system they would never have another electricity bill again. In many cases reported to us, the individuals harmed were pensioners with little income. Based on our experience, these sales techniques disproportionately impact people experiencing vulnerability, who are likely to face more difficulty withstanding high-pressure sales tactics, or to assert their rights in the event of a bad deal. While the consultation paper notes that the VEU program does not offer many distributed energy resources, the problem lies primarily with the sales method itself, rather than the product being sold. Our previous experience has shown that direct selling businesses conducting door-to-door sales will often focus on groups viewed as 'easy targets' including seniors and people from culturally and linguistically diverse backgrounds. The commission-based remuneration schemes in place for sales agents also serve to promote aggressive, high-pressure sales behaviour. More detail about the problems linked to doorknocking are available in our joint 2017 report [Knock it off!](#)

While we understand the rationale for announcing a ban on telemarketing in the VEU program because this is largest driver of complaints, we are of the view that door-to-door sales are just as, if not more, problematic as telemarketing. A ban on doorknocking is just as important, particularly given the negative impacts door-to-door sales have on Victorians experiencing vulnerability. We also note that based on the data presented in the consultation paper, complaints about doorknocking are also increasing, albeit from a lower starting point than telemarketing complaints. Given what is already known about the harms associated with doorknocking, the logical step for government is to ban this sales method within the VEU program now, rather than waiting until this problem grows further in size.

RECOMMENDATION 2. The ban be expanded to include door-to-door sales.

⁵ Department of Energy, Environment and Climate Action (2023), Consultation paper on banning telemarketing under the Victorian Energy Upgrades program, p.9

6. When should the ban take effect?

As noted in the consultation paper, “While the number of complaints remain very low as a proportion of consumers benefitting from the program...they have increased significantly since 2021.”⁶ We also note that based on the data for 2023 so far, it appears that complaints related to marketing in the VEU program will increase again this year. Given the rise in complaint numbers, as well as the existing precedent for bans on unsolicited sales by traditional electricity and gas retailers, and the ban on doorknocking for Solar Homes retailers, we suggest that the government move quickly to enact a full ban.

From the consultation paper we note that retailers in the Solar Homes program (who strongly supported a door-knocking ban) had three months’ notice before it officially commenced. Similarly, industry in this instance also supports action on unsolicited sales, with the consultation paper noting, “Significantly, industry strongly supported more stringent requirements for regulation of the program, even if this meant imposing some burden on themselves. Many of these stakeholders argued for the phasing out of doorknocking and/or telemarketing under the VEU program.”⁷ Given the support from industry, the growing scale of the problem (based on growing complaints numbers), and the significant consumer harm associated with unsolicited sales we recommend as for the Solar Homes ban, industry should have a maximum of three months’ notice before the official commencement of the ban.

RECOMMENDATION 3. The ban be subject to a phase-in period of no more than 3 months.

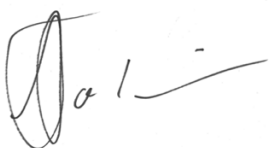
Finally, we recommend that once the specifics of the ban are decided upon, that the government should undertake a marketing campaign to promote the ban. Publicising the ban is an important step to equip people with the knowledge that unsolicited sales are no longer allowed under the VEU program, so that they can guard against any possible non-compliance. It will also deliver the broader benefit of enhancing Victorian’s confidence in the VEU program by making it clear that the government has listened to people’s concerns about unsolicited sales and acted to end this practice.

RECOMMENDATION 4. The ban be promoted through government advertising to raise consumer awareness.

Should you wish to discuss any of the issues raised in the included submission, please contact Luke Lovell, Senior Policy Officer at the Consumer Action Law Centre at luke@consumeraction.org.au or on (03) 9670 5088 for more information or to arrange a meeting.

Yours sincerely,

CONSUMER ACTION LAW CENTRE



Stephanie Tonkin | Chief Executive Officer

⁶ Department of Energy, Environment and Climate Action (2023), Consultation paper on banning telemarketing under the Victorian Energy Upgrades program, p.4

⁷ Ibid, p.8