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D24/10398

Ms Elizabeth Molyneux
Deputy Secretary, Energy
Department of Energy, Environment and Climate Action
Level 1
8 Nicholson Street
EAST MELBOURNE VIC 3002

25 January 2024

Dear Ms Molyneux,

REGULATORY IMPACT STATEMENT FOR THE VICTORIAN ENERGY EFFICIENCY TARGET AMENDMENT (PROHIBITION ON TELEMARKETING AND DOOR-TO-DOOR SALES) REGULATIONS 2024.

I would like to thank your staff at the Department of Environment, Energy and Climate Action (the Department) for working with the team at Better Regulation Victoria on the preparation of the Regulatory Impact Statement (RIS) for the Victorian Energy Efficiency Target Amendment (Prohibition on Telemarketing and Door-to-Door Sales) Regulations 2024 (the proposed Regulations).

As you know, the Commissioner for Better Regulation Victoria is required to provide independent advice on the adequacy of the analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects.

I am pleased to advise that the final version of the RIS received by us on 24 January 2024 meets the adequacy requirements set out in the *Subordinate Legislation Act 1994*.

Background and Problems

The Victorian Energy Upgrades (VEU) program is an incentive scheme that subsidises energy-efficient upgrades for households and businesses. The VEU program was established under the *Victorian Energy Efficiency Target Act 2007* (the Act). The program is overseen by the Department and is administered and regulated by the Essential Services Commission (ESC).

The program involves the installation of energy efficiency upgrades by authorised private businesses known as Accredited Providers (APs). These upgrades generate Victorian Energy Efficiency Certificates (VEECs), with each certificate representing one tonne of abated carbon emissions. APs sell VEECs to energy retailers, which are required to obtain and surrender a set number of VEECs per year to contribute to annual emissions reduction targets set by the Victorian Government. In 2022, energy retailers surrendered a total of 6.6 million certificates, with the target increasing to 7.3 million in 2025.

APs currently use various marketing methods to promote upgrades to consumers and businesses including telemarketing, door-to-door sales (doorknocking), digital and social media advertising, traditional media advertising and direct marketing such as promotional stalls and leaflets.

The Department explains that the proposed Regulations build on recently introduced Victorian Government reforms intended to protect consumers and promote participation in the VEU program. These include the introduction of a VEU Code of Conduct in July 2022 and expanded enforcement powers for the ESC under amendments to the Act which came into effect in 2023. The Code of Conduct requires APs and third parties engaged by them to meet minimum standards when interacting with consumers and providing accurate information on the VEU program.

In addition to VEU-specific protections, consumers are also covered by national consumer protection legislation and standards including Australian Consumer Law, the Do Not Call Register, the Telecommunications (Telemarketing and Research Calls) Industry Standard 2017, and the *Privacy Act 1998 (Cth)*.

The Department explains in the RIS that despite recent reforms to the program and existing consumer protections, industry misbehaviour related to VEU telemarketing and doorknocking is becoming more frequent and worse. It notes that there has been an increase in complaints about VEU telemarketing and doorknocking since 2022.

The Department notes that the Australian Communications and Media Authority (ACMA) advised in their submission that consumer complaints about telemarketing indicated increasing frustration about persistent and unwanted calls, telemarketers failing to identify themselves, or using abuse and pressure tactics. Similar complaints were also raised about doorknocking, particularly with regards to doorknockers ignoring 'Do Not Knock' stickers. The Department states in the RIS that the current regulatory regime is ineffective at preventing telemarketing misconduct due to obstacles presented to the ESC and ACMA with being able to identify the responsible parties.

In the RIS, the Department cites feedback from consumers and consumer advocacy groups supporting bans on both telemarketing and doorknocking. This feedback suggests that VEU-related marketing is harming consumers by causing nuisance and wasting time and poses additional risks to vulnerable consumers such as scams and safety risks. The Department highlights stakeholder feedback indicating that

marketing misconduct is resulting in reputational damage to the VEU program and discouraging participation due to the perception that it is a scam or nuisance.

Options and Impact Analysis

The Department analyses three options to address the problems associated with VEU telemarketing and doorknocking practises:

- **Option A (Telemarketing ban only)** – would prohibit telephone cold-calling to promote VEU upgrades from 1 May 2024.
- **Option B (Combined ban on telemarketing and doorknocking)** - the same as Option A, but would also ban doorknocking sales of VEU upgrades from 1 May 2024.
- **Option C (Phased ban on telemarketing and doorknocking)** - the same as Option B, but the doorknocking ban would commence on 1 August 2024.

All three options would continue to allow solicited marketing, cover all types of energy upgrades and consumers, allow digital, traditional media and direct marketing and provide powers for the ESC to monitor and enforce compliance.

The RIS assesses these options against a base case involving no policy or regulatory changes, with telemarketing and doorknocking remaining permitted under the VEU program using a Multi Criteria Analysis (MCA). The Department scored the options against four weighted criteria, with the results summarised in the table below.

Criterion	Weight	Option 1	Option 2	Option 3
Customer experience and program reputation	50%	+3.50	+6.50	+6.25
Costs to consumers	25%	-2.50	-5.00	-5.00
Impacts on the VEU industry	20%	-1.00	-3.00	-2.00
Costs to government	5%	-0.75	-1.00	-1.25
Total weighted score	100%	+0.89	+1.35	+1.41

The Department notes that all three options would increase customer experience and program reputation by saving time and preventing marketing misconduct. It estimates that about 15 thousand hours of consumers' time would be saved per year under Option A, while 182 thousand hours of time would be saved under Option B, and 174 thousand hours of time would be saved under Option C. The Options are expected to also reduce the harms associated with invasion of privacy, provision of misleading information, pressure tactics and the perception of scams or fraud. Options B and C score more highly due to the additional prevention of harms from doorknocking.

All options are assessed to result in costs to consumers. The Department states that VEEC prices may increase as a result of industry passing on the higher marketing costs needed to generate VEECs without doorknocking or telemarketing. Using VEEC futures price data, it estimates that Option A would result in an annual energy price increase of about \$2.90 for households and \$14.60 for businesses. Due to the higher

uncertainty about the impact of the doorknocking ban on VEEC prices, the Department estimates a range of increased annual energy prices of between \$5.50 and \$10.80 for households, and between \$27.70 and \$54.00 for businesses under Options B and C.

Using survey data, the Department notes that three APs (that account for 5.5 per cent of VEECs created) may exit the program under Option A and that six APs (that account for 9 per cent of VEECs created) may exit the industry under Options B and C. The Department estimates that these industry exits may affect the income of AP staff as they seek to find new employment. The lost income is estimated to be \$1.3m under Option A, \$4.6m under Option B, and \$2.9m under Option C. The Department notes that it does not expect the Options to have a net long-term effect on VEU program jobs. Option C has lower costs to industry than Option B due to the phased introduction of the doorknocking ban lowering industry costs.

The ESC would incur costs to enforce compliance over five years under the Options, which the Department estimates to be \$1.5m under Option A, \$1.9m under Option B, and \$2m under Option C.

The Department identifies Option C as the preferred option because it achieves similar benefits to consumers as Option B, but at a lower cost to industry because the phasing in of the doorknocking ban provides more opportunity to transition to alternative marketing methods.

Implementation and Evaluation

The Department will be responsible for implementing and evaluating the preferred option as part of its oversight role for the VEU program. The ESC will be responsible for the day-to-day monitoring and enforcement of the proposed marketing bans.

The telemarketing ban is intended to take effect from 1 May 2024 and the doorknocking ban is intended to take effect from 1 August 2024.

The Department explains that communication of the telemarketing ban to consumers, industry and other stakeholders started when the ban was first announced on 22 June 2023. This was followed by an initial public consultation process in July 2023, which sought feedback on the ban design and was used to inform analysis in the RIS. The Department notes that this timeline will have provided industry with ten months' notice of the telemarketing ban from its announcement and six months' notice of the doorknocking ban from the time this RIS is released for consultation.

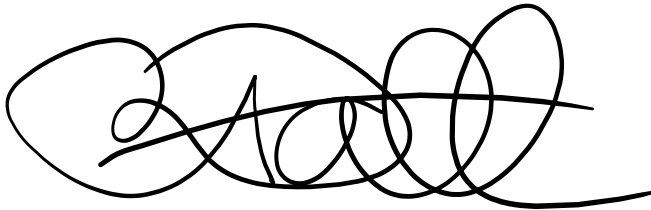
The Department notes that it will communicate to consumers through updates to websites, newsletters and factsheets, and by providing content for the ACMA and the Energy and Water Ombudsman Victoria (EWOV) to share with consumers. It explains

that it will inform the VEU industry about its responsibilities through targeted email and website communications and engagement with peak industry bodies.

The Department will continue to monitor consumer complaints about unsolicited marketing in conjunction with the ESC. In monitoring the proposed Regulations, the Department explains that it will also focus on the potential for unintended consequences such as APs shifting poor behaviour to other marketing methods. The Department and the ESC commit to formally evaluating the effectiveness of the bans once the doorknocking ban has been operating for 12 months. This evaluation will explore the impact on consumers and program reputation, consumer energy costs and competition and innovation within the VEU industry.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on (03) 7005 9772.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cressida Wall', with a large, stylized flourish extending to the right.

Cressida Wall

Commissioner for Better Regulation