

# Frequently asked questions – ‘Cold-call’ telemarketing and doorknocking bans

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These frequently asked questions have been prepared to help accredited persons and scheme participants understand the ‘cold-call’ telemarketing and doorknocking bans under the Victorian Energy Upgrades (VEU) program, their obligations, and how to comply.

The questions are not intended to be exhaustive. They seek to provide guidance to support you to meet your obligations, and an indication of how the Essential Services Commission (the commission) will monitor compliance and enforce the bans. We encourage you to consider how the bans will apply to your specific business and, where necessary, seek your own legal advice.

Other industry guidance materials are available on our [website](#) to support accredited persons and scheme participants understand their obligations under the ban, including resources to help educate consumers, employees, agents and sub-contractors. Materials include the updated VEU code of conduct guideline, industry fact sheets and the consumer fact sheet.

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## Frequently asked questions

### Scope of the bans

#### 1. Why has the Victorian government introduced the telemarketing and doorknocking bans?

The 'cold-call' telemarketing and doorknocking bans have been introduced in response to consumer complaints about problematic telemarketing and doorknocking practices under the VEU program. The bans aim to:

- protect Victorians consumers from high-pressure sales tactics and other inappropriate marketing practices
- improve consumer experience, participation and the VEU program's reputation to ensure the ongoing success of the program.

The commission is committed to the enforcement of the bans to achieve these outcomes and improve the experience of Victorian consumers under the VEU program.

#### 2. What is the scope of the telemarketing and doorknocking bans?

Under the bans, you can only telephone or visit **residential and business consumers** to market a VEU activity if you obtain 'express prior consent'.

From 1 May 2024, the following telemarketing activities are banned without express prior consent:

- making telemarketing phone calls
- requiring or allowing an employee, agent or contractor to make a telemarketing call
- purchasing consumer contact details that were obtained from a telemarketing call.

From 1 August 2024, the following doorknocking activities are banned without express prior consent:

- lead generating or marketing at a consumer's home or business premises
- requiring or allowing an employee, agent or contractor to lead generate or market at a consumer's home or business premises
- purchasing consumer contact details obtained when visiting a consumer's home or business premises.

The focus of the bans is on removing unsolicited calls and visits from the VEU program. The bans are not intended to stop accredited persons and scheme participants from responding to consumers who have asked for, requested, or given their permission to receive a call or visit to discuss VEU products or services.

The bans do not prohibit you from responding to a question or an enquiry from consumers to provide advice about potential upgrades under the VEU program.

### 3. What kinds of phone calls and visits are banned?

Under the bans, persons or businesses must not carry out lead generation or marketing of VEU activities in a phone call or visit unless the consumer gave 'express prior consent'.

Examples of activities that are not allowed under the bans include:

- Unsolicited phone calls to a person or visits to a home of business to generate leads or promote VEU activities.
- Calling or visiting past clients to ask if they would like any further upgrades under the VEU program.
- Proactively marketing or 'upselling' other products during or after an installation to generate further business.

### 4. What kinds of phone calls and visits are permitted under the bans?

The bans affect unsolicited marketing and lead generation activities only, as these have been a key source of consumer complaints and frustration. You can still telephone or visit consumers to do other permitted work. This includes work to:

- confirm or clarify information for a quote or contract
- arrange a pre-installation inspection
- arrange installation or delivery of a service agreed with the consumer
- arrange a repair, replacement, removal or remediation following installation
- contact the consumer to confirm the upgrade has been delivered appropriately (e.g. to conduct an audit call)
- provide follow-up support, information or to seek feedback about a delivered product or service, such as providing safety or recall information
- provide dispute resolution services.

When contacting consumers to engage in other permitted work, you can't use these calls to lead generate or market other VEU activities unless express prior consent is provided by the consumer.

Phone calls and visits where consumers have given express prior consent, including those responding to enquiries started by a consumer are also allowed under the bans.

## How to comply with the bans

### 5. What steps should I take to comply with the bans?

This depends on your current arrangements, however generally you should do the following:

- Have your company officers (for example, directors and senior managers) plan for how your company is preparing for the bans. If you have questions or concerns, consult the guidance material prepared by the commission, contact the commission for further information and seek legal advice if necessary.
- Review your controls to ensure your staff and contractors do not conduct unlawful telemarketing or doorknocking, including during installation and after-service contact. Controls may include contracts, policies, standard operating procedures, software settings, templates and training documents.
- Meet with your staff and contractors who have used telemarketing and/or doorknocking to ensure they understand the bans and explain your new approach to lead generation and marketing.
- Establish a record keeping system to comply with requirements under the ban to ensure express prior consent is clearly documented.
- Ensure appropriate induction, training and supervision is provided for staff and any contractors, including training to check whether consent has been withdrawn or expired before making a telephone call or visit.

### 6. What marketing and lead generation activity is permitted under the bans?

You can continue to advertise in a wide range of ways, provided you comply with relevant laws, including the [Australian Consumer Law](#). This includes:

- digital and traditional media advertising, such as newspapers, magazines, radio, television, social media and search engine marketing
- your website and social media channels
- hard copy mail drops (unless there is a 'no junk mail' sign)
- emails and SMS messages (if compliant with SPAM laws, e.g. you must obtain consent before sending, it must be easy to unsubscribe, and the sender must be clearly named<sup>1</sup>)
- shopping centres, billboards and sponsorships.

The commission will continue to check advertising and promotional activity within the program to find misleading and deceptive conduct and ensure compliance with the VEU code of conduct.

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<sup>1</sup> For more information see [Avoid sending SPAM : ACMA guidance](#) and [Consumer consent: expectations for businesses conducting telemarketing and e-marketing | ACMA](#).

Phone calls and visits where consumers have given express prior consent, including those responding to consumer initiated enquires are also allowed under the bans.

### **7. Can I make a telemarketing call to existing clients on my database to market other activities under the program?**

No. You are not able to do this unless you have received express prior consent from them to do so.

### **8. Can I contact existing clients on my database to get their consent for me to market other activities under the program?**

You can send consent forms for your client to complete via post.

Any contact you make with consumers via email or SMS must comply with SPAM laws. Generally, this means you cannot use email or text to obtain consent.<sup>1</sup>

You are prohibited from calling your existing clients to obtain consent to market other VEU activities.

### **9. If I have obtained telemarketing leads before 1 May 2024, can I contact the consumer to arrange for the installation after the ban commencement dates?**

You can contact the consumer to arrange an installation where the consumer has already agreed to receiving the installation or receiving a quote for the installation prior to 1 May 2024.

You are not allowed to contact the consumer, where they have not provided express prior consent, if the intent of the call is to obtain agreement from the consumer to undertake the installation (i.e. you are not able to lead generate or market on the call).

### **10. Can I purchase a list of leads under the bans?**

The bans prohibit buying consumer contact details gathered via cold-calls (telephone or home/business visits). Purchasing leads is a high-risk activity and you will need to take active steps to check the source of the leads, legality of the marketing, and validity of the consent.

You will be liable for non-compliance with the bans where you buy and/or use leads that have been bought in breach of the requirements, for example where express prior consent was not obtained.

You can't rely on the seller's statement that the leads were not gathered via cold-calls (telephone or doorknocking). If you are considering buying leads, you should seek legal advice to make sure you do not inadvertently breach the bans.

**11. If I am engaged in selling other products (non-VEU related) via a cold-call or doorknocking to consumers, can I ask for consent to return at future date to market VEU products at a later visit?**

No. During a cold-call phone call or visit, you are not allowed to do this as this action is considered lead generation.

**12. If I am undertaking an upgrade or installation, can I leave a fridge magnet with my details if they need my services again in the future?**

Yes. The focus of the ban is on unsolicited telemarketing and doorknocking. You are still able to leave information with the consumer about how to contact you in the future.

**13. I am an aggregator, how do I ensure scheme participants comply with the bans when creating certificates for work they have performed?**

All accredited persons must ensure that scheme participants conducting work on their behalf comply with the VEU code of conduct.

It is not sufficient to rely on a statement from the scheme participant that no telephone or doorknocking was used for marketing or lead generation for these activities. We expect effective controls to ensure that the bans have not been breached, including the setting of proper contractual terms with your scheme participants, and having adequate training and audit arrangements in place.

**Express prior consent**

**14. What is 'express prior consent'?**

'Express prior consent' means that a consumer has agreed to be telephoned or visited at their home or business premises by an identified person or business for the purposes of lead generation or marketing in relation to VEU activities.

'Express prior consent' can be obtained through a range of methods, including by the consumer:

- filling out a form, for example at a stall at a shopping centre
- completing an online enquiry form via your website
- sending an email requesting information about a product or service or to be contacted
- contacting your organisation over the phone requesting for information about a product or service or to be contacted. You will need to record this verbal consent as a written record.

## **15. What information do I need to collect for 'express prior consent' and what are the recordkeeping requirements?**

Where an accredited person or scheme participant obtains consent to telephone or call on a consumer at their home or business premises for the consumer to obtain information about prescribed activity(ies), a written record of express prior consent must be kept by the accredited person, evidencing:

- the identity of the consumer
- the accredited person(s) or scheme participant(s) the consumer has consented to being contacted by
- the prescribed activity(ies) the consumer has consented to obtaining information about
- whether the consumer is consenting to being contacted by telephone or a visit to their home or business premises
- when the consent expires
- where applicable, the date on which consent is withdrawn by the consumer.

We recommend you update your online enquiry form to record the information detailed above to ensure consent is appropriately recorded.

## **16. Can I obtain consent from the consumer to be contacted for VEU activities in general terms in a consent form, or does it need to be for a specific activity?**

You can obtain consent from the consumer to be contacted about multiple VEU activities or VEU activities in general terms in a consent form.

## **17. How long does 'express prior consent' last?**

'Express prior consent' lasts for three months, unless:

- The person withdraws their consent (which they may do at any time)
- The person agreed, at the time of giving express consent, that their consent would last for a longer period.



## **18. Can express prior consent be given to (a) a different organisation other than the organisation capturing the consent (b) a number of different organisations as part of the consent?**

Express prior consent can be obtained for a different organisation and can be obtained for multiple organisations as part of the consent. Capturing consent on behalf of other parties and on behalf of multiple parties is likely to increase risks of non-compliance and make record keeping requirements more complex.

If you have consent to contact a consumer and intend to refer the lead to one of your installation partners, we recommend you either:

- include the organisation in the consent form completed by the consumer
- contact the consumer to confirm that they consent to the referral and being contacted by your installation partner.

## **19. What steps should I take to ensure a consumer has provided express prior consent?**

To help ensure compliance with the VEU code of practice, we recommend businesses engaging in telemarketing or door-to-door sales visits to consumers under the VEU program:

- Check their records to ensure that the consumer has provided express prior consent and it still is valid prior to contact.
- Have a system that allows staff or contractors to check whether consumer consent is withdrawn or expired.
- Train staff and contractors to mark consent as withdrawn, and to check whether consent has been withdrawn or expired before making a telephone call or visit.

## **20. How is 'express prior consent' withdrawn? What should I do if a consumer withdraws consent?**

Consumers can withdraw their consent verbally or in writing to the accredited person or scheme participant. Examples include saying 'stop calling / visiting me', 'don't call / visit me again', or 'I'm not interested'.

You should record their withdrawal of consent so no one else in your business calls or visits them. If a consumer withdraws consent during a call or visit, you must end the call or leave the premises immediately.

## Compliance monitoring and enforcement

### 21. What penalties apply for breaches of the bans?

All accredited persons and scheme participants are expected to comply with the bans from commencement. The commission has strong enforcement powers available to deal with breaches, such as:

- refusing to register certificates or require surrender of certificates associated with misconduct
- imposing conditions on accreditation (including exclusion from certain prescribed activities, or a requirement to have installations independently audited before certificates are created)
- suspension from the program
- pursuing enforceable undertakings from company directors
- civil litigation or criminal prosecution
- public and/or industry communications about the breach and enforcement response.

Repeated breaches may result in long-term suspension or cancelation of accreditation.

### 22. How will the commission monitor compliance with the bans to ensure a level playing field?

The commission will actively monitor compliance through an expanded range of tools, including:

- directly contacting consumers who have received upgrades to monitor whether banned telemarketing or doorknocking was used in relation to the upgrades
- inviting and investigating tipoffs from consumers, accredited persons, scheme participants (and their employees, contractors and agents) about breaches of the bans
- sharing data and working together with other government entities and regulators to monitor and enforce compliance, including the Australian Communications and Media Authority, Consumer Affairs Victoria, and Solar Victoria.

### 23. What if I'm having a cup of tea with a consumer after I've installed a product, and we get talking about other energy efficiency opportunities. Can I recommend other VEU upgrades for them?

The focus of the ban is preventing poor customer outcomes and responding to community frustration about unsolicited telemarketing or doorknocking. The commission will be pragmatic in its compliance and enforcement effort and will not be targeting consensual conversations.

However, to protect yourself in this scenario, you should advise the consumer that:

- there are telemarketing and doorknocking bans in place under the program
- that if they consent, you can provide further information on other VEU upgrade opportunities.

To avoid doubt, keep records of the conversation and get them to complete a consent form.