



Telemarketing and doorknocking bans

Industry webinar

17 April 2024





Welcome

Dan Keely – Director Development
Victorian Energy Upgrades

Acknowledgement of Country



Dill-ba-din Balluk Biik – Protect Community and Country
Artist: Simone Thomson

Forum agenda

Time	Item
10.30am	Welcome
10.35am	Opening remarks from Commissioner Billings
10.40am	Ban overview – scope, timelines and industry support
10.50am	What the ban means in practice and how to comply
11.40am	Our compliance and enforcement approach
11.45am	Question and Answers
11.55am	Closing remarks

Housekeeping



This session is being recorded



Microphones are muted



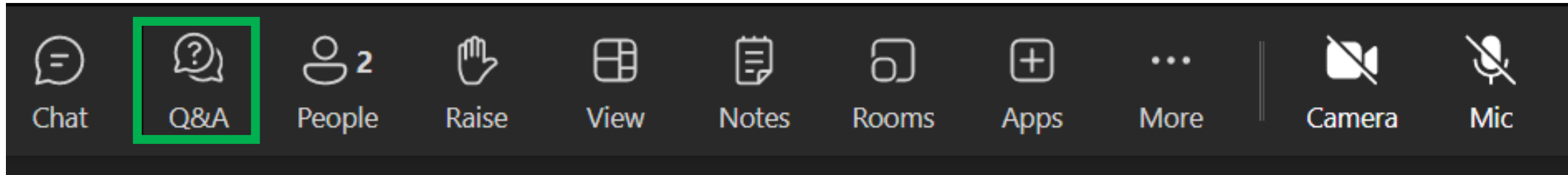
Ask a question: post in 'Q&A' panel



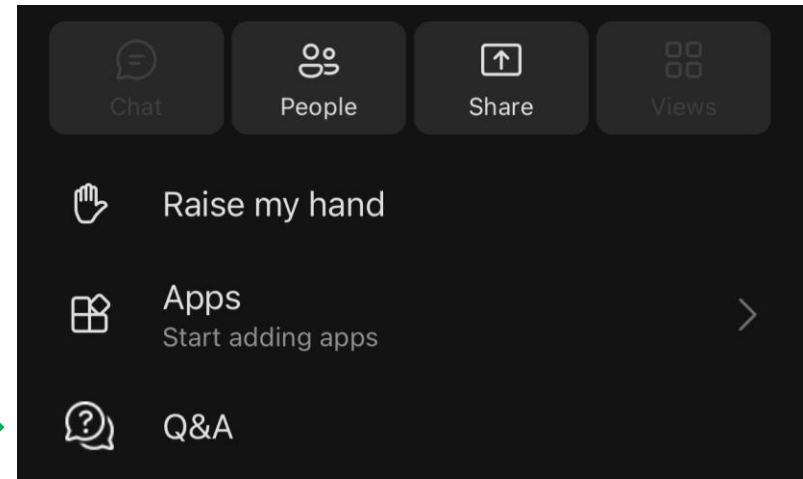
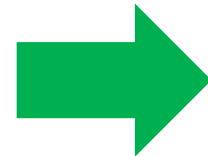
Video recording and presentation to be available on website post-forum

How to post a question

Desktop:



Mobile:



Submitting a question

- Please email questions about the ban rationale or design to:
energy.upgrades@delwp.vic.gov.au
- Please email questions specific to your business to:
veu@esc.vic.gov.au or call 03 9032 1310

Opening remarks

Rebecca Billings - Commissioner

Ban scope

Maureen Goey - Manager Planning &
Development



Ban on 'telemarketing' – clause 11B of Schedule 6 of VEET Regulations

From 1 May 2024, you will be prohibited from:

- making telemarketing calls without express prior consent
- requiring or permitting an employee, agent or contractor to make a telemarketing call without express prior consent
- purchasing consumer contact details that were obtained from a telemarketing call without express prior consent.

Things to note:

- Consent is taken to be withdrawn:
 - three months after the day of which the consent is given, or
 - at end of consent period specified by the consumer when giving consent.
- You do not contravene above provisions if:
 - the contravening act or omission was due to a reasonable mistake of fact
 - the business took reasonable precautions and exercised due diligence to avoid the contravening act or omission.

Ban on 'doorknocking' – clause 12 of Schedule 6 of VEET Regulations

From 1 August 2024, you will be prohibited from:

- lead generating or marketing a VEU activity at a consumer's home or business premises without express prior consent
- requiring or permitting an employee, agent or contractor to lead generate or market a VEU activity at a consumer's home or business premises without express prior consent
- purchasing consumer contact details that were obtained from calling at a consumer's home or business premises without express prior consent.

Things to note:

- You must leave the person's premises immediately on request.
- Consent is taken to be withdrawn:
 - three months after the day of which the consent is given, or
 - at end of consent period specified by the consumer when giving consent.
- You do not contravene above provisions if the contravening act or omission was due to a reasonable mistake of fact.

Enforcement pathway for breach of ban

The following clauses will be prescribed code of conduct requirements:

- The prohibition on lead generation or marketing through cold-calling (clause 11B).
- The prohibition on lead generation or marketing through door-to-door sales (clause 12(1)).

It is an offence to contravene a prescribed code of conduct requirement under section 14H of the Act.

- Section 14H of the Act is a civil penalty requirement. In the event of non-compliance, a civil penalty of 60 penalty units for a natural person or 240 penalty units for a body corporate may be imposed as well as other enforcement outcomes.
- This means the commission has a wide range of compliance and enforcement powers to respond to breaches of the ban.

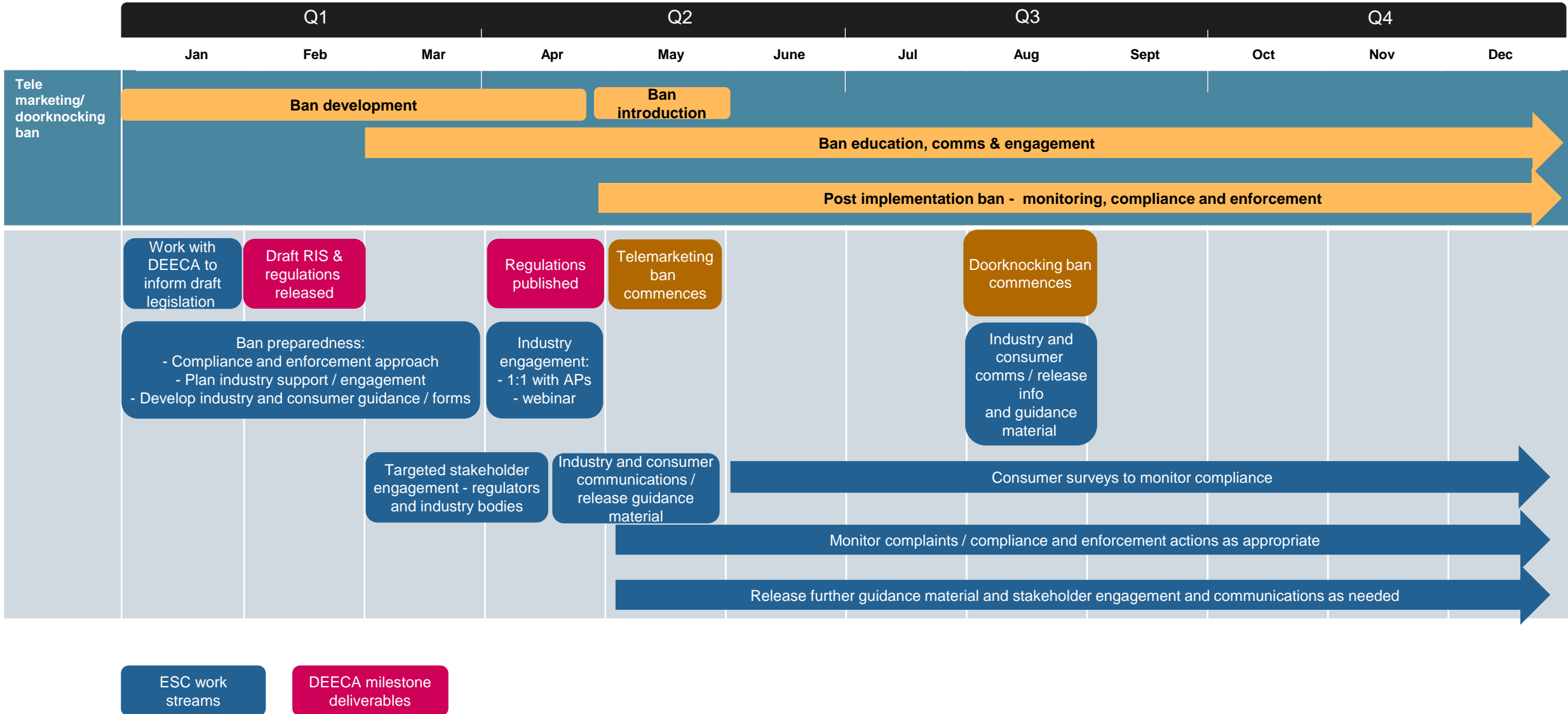
Ban timelines and industry support

Maria Koukoulas

Manager Engagement & Compliance



Ban and industry support timeline



ESC work streams

DEECA milestone deliverables

Administrative changes in support of ban

As per program update sent out on 8 April 2024, we have updated the VEEC assignment form and the VEEC creation form as follows:

- forms updated to allow the collection of consumer email addresses
- changes to 'Method of Lead Generation' field in VEEC creation forms (for activities 1, 3, 6, 15, 17, 30 and 32) to include selection of 'telemarketing with express prior consent' and 'door-to-door sales with express prior consent'

APs will need to update their VEEC assignment forms and VEEC creation forms by 1 May 2024



What the ban means in practice and how to comply

Stephanie Morrow

Specialist Advisor, Regulatory
Capability

What we will cover today

- How to prepare for the bans
- How else can I generate leads?
- What is consent?
- How do you keep a consent record?
- When is consent withdrawn?
- How to lawfully conduct telemarketing and doorknocking
- What are reasonable precautions and due diligence?

Key themes:

- Put the consumer at the centre of your practice
- If in doubt, err on the side of caution

Preparation

Accredited persons and scheme participants should take the following steps to prepare for the bans:

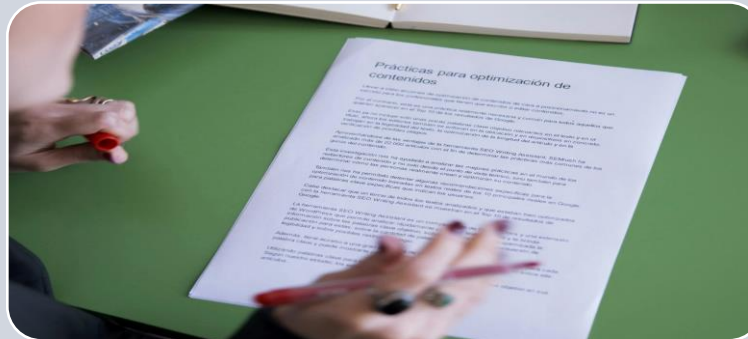
Company officers make a plan



Have your company officers meet and discuss how your company is preparing for the ban/s and what alternative marketing practices you will use.

Examples of company officers: directors and senior managers.

Review control measures



Review all your controls to ensure your staff and contractors do not conduct telemarketing or doorknocking, including during installation and after-service contact.

Example controls: policies, standard operating procedures, software settings, templates, contracts and training documents.

Provide appropriate training and education



Meet with your staff and contractors who currently perform telemarketing and/or door knocking to ensure they understand the ban and explain your new approach to lead generation and marketing.

Ensure appropriate induction and training is provided.

Marketing and lead generation

The following forms of marketing and lead generation are still permitted under the telemarketing and doorknocking bans:



- Digital advertising (e.g. search engine marketing and social media)
- Your website
- Social media posts
- Paid traditional media advertising – print, broadcast and digital (e.g. newspapers, magazines, radio, television)
- Shopping centres and retail stores
- Billboards, posters and banners
- Mail drops (unless there is a ‘no junk mail’ sign)
- Sponsorship of local sporting groups/schools/etc

If you have consent from the consumer:

- SMS messages (if compliant with the Spam Act and Regulations)
- Emails (if compliant with the Spam Act and Regulations)

Example consent form/record for consumers



RESIDENTIAL VEU CONSENT FORM

To receive a phone call for more information about our VEU activities for your residential premises, provide your contact details here:

Client Information

Client Name _____ Date _____

Home Phone _____ Mobile Phone _____ Email Address _____

I am over 18 years of age: Yes No

I need an interpreter Yes Language: _____ No

I need support to understand and agree to contracts: Yes No

I consent to Company X telephoning me to provide information about split system air conditioning, weather seals and shower roses under the VEU program: Yes No

I understand that my consent lasts for three months, but I can withdraw my consent at any time: Yes No



Business VEU Consent Form

To receive a phone call for more information about our VEU activities for your business premises, provide your contact details here:

First Name _____

Last Name _____

Date _____

Business Name _____

Position _____

Phone _____ Mobile _____

I consent to Company X telephoning the above number to speak to:

- Me
- any member of staff who answers the phone
- other (please list): _____

to provide information about pressure spray valves under the VEU program:

- Yes No

I understand that my consent lasts for three months, but I can withdraw my consent at any time:

- Yes _____

Consent – example

Scenario: Edith purchased a raffle ticket. On the back of the raffle ticket it says:

“by entering this lottery I consent to receiving marketing calls from Company X (an Accredited Person) about products available for installation under the VEU program”.

Question: What are the problems here?

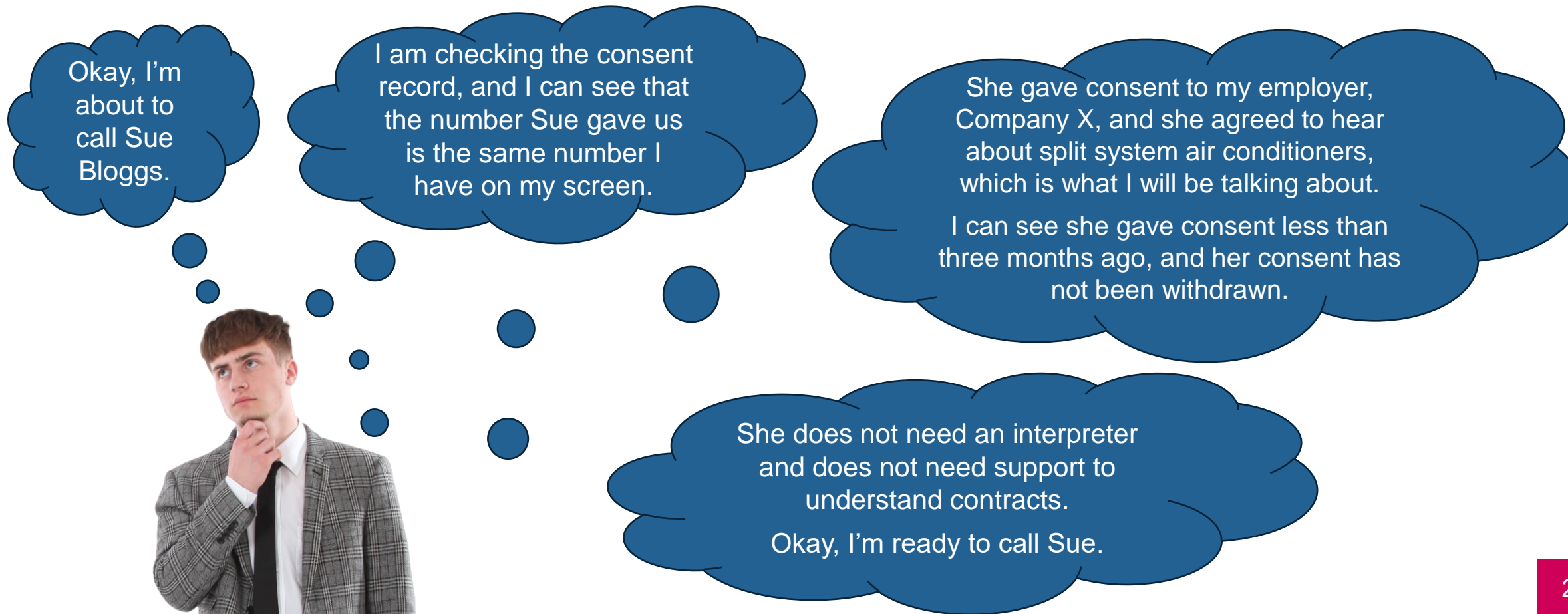
It may be problematic to seek consent in a non-VEU related document, because consent requires that Edith is adequately informed about what she is consenting to.

Small print or print on the reverse side of a form may not be sufficient for consent.



Preparing to make a telemarketing call – example

Scenario: Sam is a telemarketer employed by Company X. Company X has excellent controls in place, and Sam has been well trained. Let's see the process Sam goes through before he makes a phone call to Sue Bloggs, who has consented to a telemarketing call.



Okay, I'm about to call Sue Bloggs.

I am checking the consent record, and I can see that the number Sue gave us is the same number I have on my screen.

She gave consent to my employer, Company X, and she agreed to hear about split system air conditioners, which is what I will be talking about.

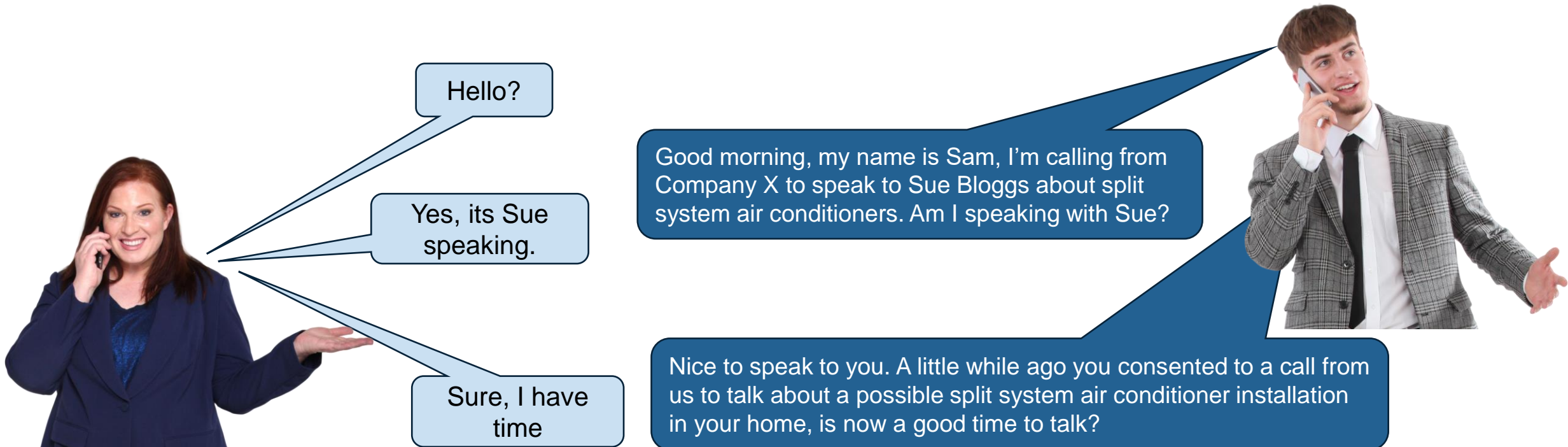
I can see she gave consent less than three months ago, and her consent has not been withdrawn.

She does not need an interpreter and does not need support to understand contracts.

Okay, I'm ready to call Sue.

The start of the telemarketing call: checking ID – example

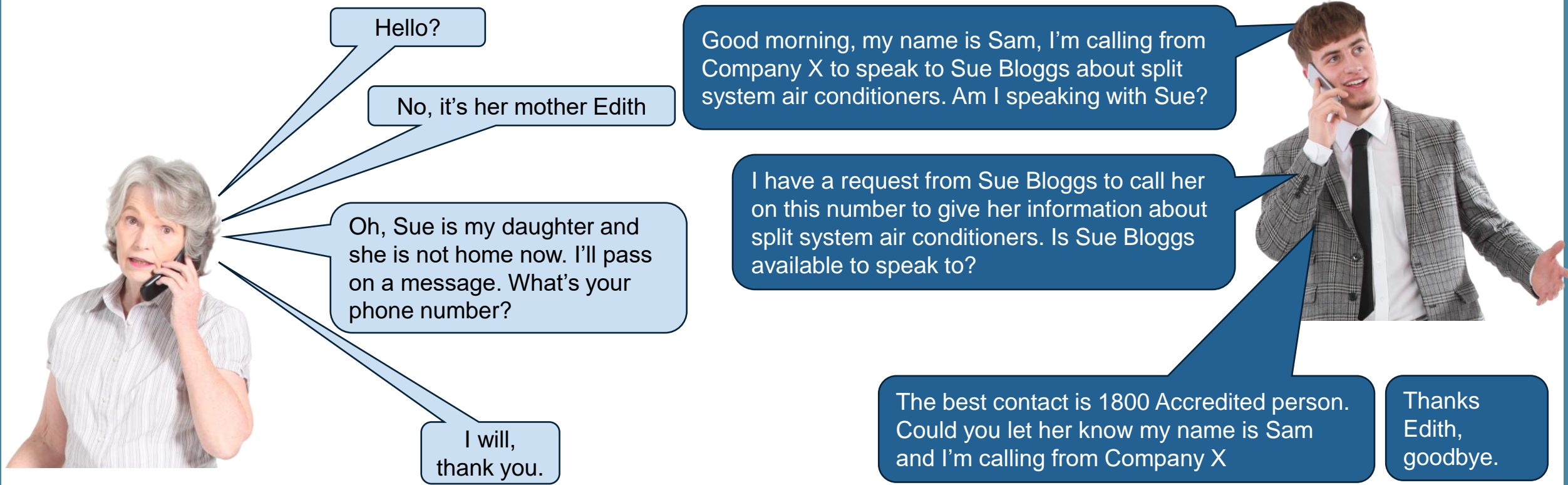
Scenario (Sam from Company X continued): Now that Sam is ready to make his call, let's see what he does on the phone, before he starts his marketing pitch.



It is essential that Sam checks with the consumer to ensure they are speaking to the right person, in this case Sue Bloggs, before they start providing information about the VEU program.

The start of the telemarketing call: checking ID – example

Scenario (Sam from Company X continued): What does Sam do if Sue doesn't answer the phone?



Has Company X breached the telemarketing ban rules?

No Company X has not breached the ban rules

Cold Calling – example

Scenario: Company X has not put controls in place to prevent cold calling, and Sam has not been properly trained. Edith has not given express prior consent for the call.

Question: what breaches has Company X committed?

A: breach of regulation 11B(1)(a) (making a cold call)

B: breach of regulation 11B(1)(b) (permit a cold call)

C: breach of regulation 11B(1)(c) (purchase a cold call lead)

Answer: Company X has made a cold call. It may also have permitted cold calls.



Good morning, I'm calling about an incredible opportunity to upgrade your home's heating and cooling under the VEU program.

We are currently offering a product from MegaCorp which uses much less energy than old-style space heaters...

Sorry, I'm not interested, you shouldn't be calling here!



Consent is given to a particular person

Scenario: Sue Bloggs has given express prior consent to PhoneCorp to call her about weather sealing.

PhoneCorp sells the consent record to an AP Caulk&Co.

Caulk&Co calls Sue Bloggs to market weather sealing products that Caulk&Co can install for her.

Question: has anyone breached the telemarketing ban rules?

Answer: Caulk&Co has made a cold call because Sue consented to PhoneCorp calling her, not Caulk&Co.

PhoneCorp may have permitted a cold call, by selling the consumer contact details to Caulk& Co.



Can I purchase leads from another company?

Strongly recommend that you seek legal advice

You will be held liable if leads were obtained in breach of obligations

Not sufficient to rely on the seller's statement that the leads were lawfully obtained

You must take positive steps to check the lawfulness of the lead generation



Aggregators

Question: If I am an aggregator accredited person, what steps do I need to undertake to ensure my scheme participants are complying with the ban when creating certificates for work they have performed?

Answer: Regulation 5 requires that you *ensure* that the scheme participant complies with the Code of Conduct. The same high standard is expected of aggregators as those who purchase leads.

You must:

- Not merely take statements “this work was done lawfully” at face value.
- Actually understand the scheme participant’s processes and check its work.

Gino has some creative ideas – example

Question: Can Gino get consent to telemarket/ doorknock during a phone call using these methods?



“Hi, I’m from Company X. Could I give you a call back to tell you about some energy efficiency products available at reduced cost through the VEU program?”

Answer: No. In both of these examples, Gino is conducting lead generation. He needs express prior consent to do this in a phone call.



“Hi Sue, we’re just checking you’re happy with the weather seals we installed last week. You are? Great. Would you like to hear about some other products we can install for you under the VEU program?”

Withdrawal of consent

Question: Which of the following statements constitute withdrawal of consent:

A. “Stop calling me”

B. “Don’t call me again”

C. “I’m not interested”

Answer:
D. All of the above

Consumers can withdraw consent in many ways, including those listed in the example on the left.

To comply, you should:

- Keep it simple: train your staff and contractors to ask the consumer if they are happy to continue, or want a break, whenever the consumer displays signs they might be uncomfortable, frustrated, anxious or unhappy.
- When consent is withdrawn, end your call/visit and mark the consent record as withdrawn.

Note: This is not an exhaustive list of things that constitute a withdrawal of consent.

Contacting consumers by phone

You can still make phone calls to consumers.

The following phone calls are still lawful:

- To confirm or clarify information
- To arrange a pre-installation inspection of the installation site
- To arrange installation/service after the consumer consented
- To arrange a repair, replacement, removal of installation
- To provide follow-up support, or any safety or recall information
- To provide dispute resolution services.





Summary of Consent

- Be clear
- Good consent records are detailed
- Don't try to hide the request for consent
- Consent is given to a particular person or company
- Start all your telemarketing calls and home/business visits by checking you are speaking to the right person
- You can continue using the phone for all your other functions
- Train your staff and contractors to recognise and record withdrawal of consent.

Reasonable mistake of fact: What is reasonable?

A mistake is reasonable when
you have:

1. actually considered whether or
not a particular fact exists, and

2. taken all reasonable steps to
avoid the mistake.



What are 'reasonable precautions' and how does someone exercise 'due diligence'?

You have effective controls in place to prevent breaches of the ban (policies, standard operating procedures, software settings, templates and training)

These controls must prevent *all three* types of breach:

1. making cold calls
2. requiring/permitting cold calls
3. acquiring cold call leads.

TRAINING

A hand holding a blue marker is shown underlining the word 'TRAINING' in a large, blue, hand-drawn font. The hand is positioned at the bottom right of the word, with the marker tip touching the bottom line of the letter 'G'.

Reasonable precautions and due diligence: some things to consider



Lead generation and marketing work should be regularly audited.



Design your controls to minimise human error



Identify *all* your controls, update them all, and set dates for future review.



Give consumers all the Information they need to make an informed decision



Keep clear and detailed records



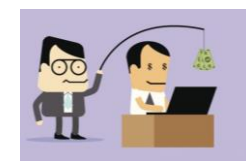
Have a simple method to record withdrawal of consent



Staff and contractors are adequately trained and supervised.



Keep the consumer at the centre of your policies.



Eliminate cold calling incentives

Summary

- You will need to take at least three key steps to prepare for the bans:
 - updating all your controls;
 - meeting with company officers to decide your business approach going forward, including your lead generation and marketing plans;
 - training all relevant staff and contractors.
- When you put the consumer at the centre of your policies, you're on the right path for compliance.
- When in doubt, err on the side of caution.
- Your best defence against misconduct is good preparation.

We are here to help, and we want to hear from you!





Our compliance and enforcement approach for the ban

Stephanie Morrow

Specialist Advisor, Regulatory
Capability

The commission's role in compliance and enforcement

A fair playing field for all accredited persons

- Firm but fair
- Support to comply is available to you

Help us help you

- Genuine efforts to prepare and comply are taken into account
- Self reporting is encouraged: also let us know how you will prevent future breaches
- Tell us if you hear about others breaching the bans

Increased customer engagement

- Post-installation consumer surveys

What will happen to those who breach the bans?

- **Enforcement tools include:**
 - Penalty notices
 - Imposing conditions, such as requiring an external auditor to review activities prior to certificates being created
 - Suspension of accreditation
 - Cancellation of accreditation
 - Civil litigation
 - Criminal prosecution
- **Officers who permit breaches of the ban will be held liable**
 - Enforceable undertaking
 - Civil proceedings
 - Criminal prosecution



Questions and answers

Facilitator: Maureen Goey

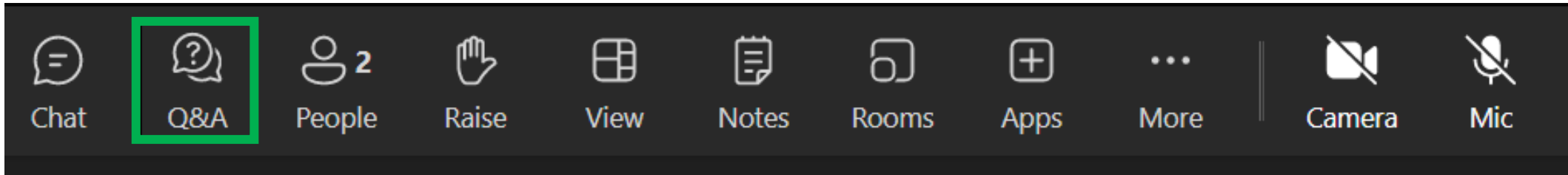
Panel:

Stephanie Morrow, Specialist Advisor,
Regulatory Capability

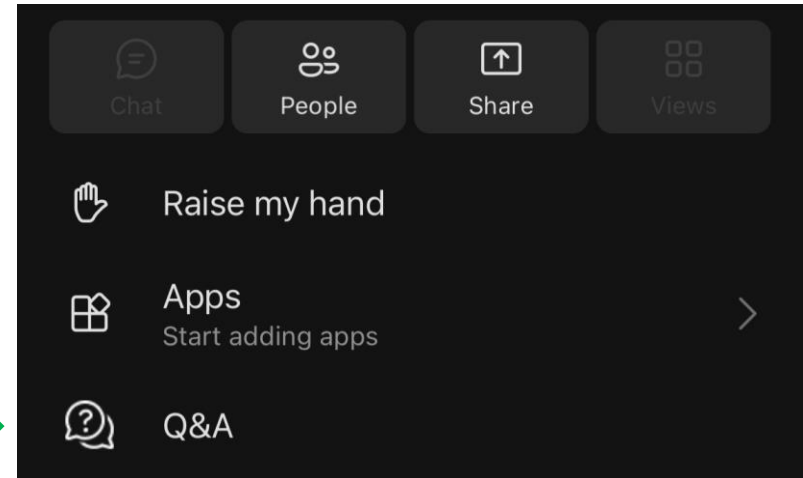
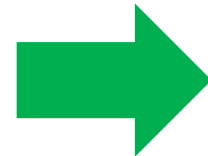
Maria Koukoulas, Manager,
Engagement & Compliance

How to post a question

Desktop:



Mobile:



VEU Support & DEECA contact

Questions and support to prepare for the ban:

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Questions about the ban rationale or design:

Sent to DEECA at energy.upgrades@delwp.vic.gov.au