

VEU Code of Conduct workshop – 14 July 2022

Open forum – Questions and Answers

What sort of enforcement can/will be taken against those who aren't accredited persons? Poor practices by sub-contractors are not always easy to monitor, prevent or even anticipate

The code is designed to protect consumers. It makes accredited persons accountable for the actions of scheme participants (including sub-contractors) in that any misconduct by such a person will make the certificate ineligible for registration.

For the time being, the commission's enforcement actions are focused on accredited persons, not scheme participants. The commission will send education and warning letters to scheme participants where appropriate.

The commission notes that if VEET Act reforms are passed through parliament later this year, they will increase the commission's ability to take action against scheme participants, including lead generators.

If an accredited person has a written agreement with its contractors to meet the code of conduct and that contractor steps outside those agreed terms without the accredited person's knowledge, what is the commission's position regarding liability on the accredited person? Shouldn't more responsibility be placed on lead generators?

The code is designed to protect consumers. Accredited persons cannot contract out of their responsibility to ensure that scheme participants comply with the law.

An agreement with scheme participants that they will comply with the code is unlikely to be sufficient. Further, simply asking scheme participants whether they have complied with the code is unlikely to fulfil your obligation.

As an accredited person, it is your responsibility to set up processes that give you confidence the scheme participants involved in certificate creation comply with the code. Accredited persons must know the identity of every scheme participant and the role they played in the process.

The commission considers that good practice will include satisfying yourself of the compliance history of each scheme participant and becoming familiar with their processes, risk management and compliance protocols, as well as periodically reviewing their work to check compliance. The actual methods and arrangements will depend on your business model and the commission recommends you seek legal advice.

Accredited persons have to keep records of compliance with the VEU program's requirements. Ultimately, with accreditation in the program comes the responsibility for ensuring consumers are treated in a manner consistent with the code.

Was it discussed that if this isn't properly regulated and governed by the commission like some circumstances in the past, it creates an unfair playing field where accredited persons using lead generators not exactly following the code but getting away with it have a competitive advantage?

The commission will enforce the code and will not hesitate to take action where we find breaches with the code.

Where lead generators are found to have breached the code, certificates cannot be created and will not be registered.

Furthermore, if the VEET Act reforms are passed through parliament later this year, they will increase the commission's ability to take action against scheme participants, such as lead generators, in appropriate circumstances. Note, however, that the code is designed to place ultimate responsibility upon accredited persons to ensure compliance by scheme participants.

Can you give guidance on how accredited persons should deal with inbound lead sources (i.e. where customers have contacted installation businesses for equipment upgrades independent of the VEU program) in terms of how the code should be complied with?

Inbound lead sources could potentially occur in many different contexts, including at shopfronts or via websites. The answer will depend on the circumstances of each case. However, if parts of the code relate only to activities that are **never undertaken** in the course of generating the certificate, those parts of the code will not apply. The clearest example of this are the clauses related to door-to-door lead generation and marketing at residential premises: clauses 10 and 12, which do not apply when lead generation or marketing occurs in another context, for example, over the phone, or when a consumer enters a shopfront.

You should carefully review the definition of "lead generation" and "marketing" in the code. They are defined very broadly. Lead generation includes following up with a person after an initial approach made by the consumer. Marketing covers how accredited persons promote their goods and services across various media, including in person, telephone or online. Therefore, we envisage many consumer-initiated transactions will still involve lead generation and marketing activity by the accredited person.

Once the code of conduct workshops over the coming weeks have concluded, if there is sufficient interest, we may publish guidance on how accredited persons can ensure their lead generation and marketing complies with the code.

Regarding the dispute resolution process, can we access a template that we can customise to suit the small business accredited person?

At this stage, the commission does not intend to produce a template and recommends accredited persons seek their own advice. However, we will continually evaluate the rollout of the code. This will inform the resources we provide in the future.

Do accredited persons have 20 business days to resolve a complaint or 20 calendar days?

Accredited persons have 20 business days to take all reasonable steps to complete their internal dispute resolution process.

Does the commission have a minimum warranty period, as free products are not protected under Australian Consumer Law?

Products and services supplied under the Victorian Energy Upgrades program are not free. There is always consideration i.e. some form of payment. Under the program, even if a product or service is supplied free of charge, consideration comes in the form of the assignment of rights to create certificates. This means Australian Consumer Law – including guarantees – applies.

Is the workshop being recorded?

The workshop was not recorded. However, we have summarised the session and uploaded the PowerPoint presentation.

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