



Victorian Energy Upgrades Program Compliance and Enforcement Policy

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1. Our policy

1.1. Purpose of this policy

The purpose of this Victorian Energy Upgrades (VEU) program compliance and enforcement policy (policy) is to outline for program participants and Victorian energy consumers, our approach to promoting and enforcing compliance with the VEET Act, VEET Regulations and PBA Regulations.

This policy is made under section 13 of the Essential Services Commission Act 2001 (ESC Act) and applies to our VEU program functions.

1.2. Policy context

1.2.1. VEU program objectives

The VEU program objectives are:

- a) reduce greenhouse gas emissions
- b) encourage the efficient use of electricity
- c) encourage investment, employment and technology development in industries that supply goods and services which reduce the use of electricity and gas by consumers.

Our primary mechanism for achieving these objectives is to accredit persons to carry out energy efficiency activities in Victoria under the VEU program. Accreditation conditions include obligations to comply with a range of requirements and processes that must be followed to protect energy consumers.

1.2.2. Our role as VEU program administrator

The commission is responsible for the general administration of the VEU program. As part of administering the VEU program, we promote compliance with regulatory obligations through monitoring, validation and audit activities, and enforcement actions.

The requirements of the VEU program are set out in the:

- VEET Act
- VEET Regulations and PBA Regulations
- VEET Guidelines (set requirements, with which program participants must comply)
- Guidance documents (provide information to program participants in relation to our administration of the VEU program).

Accredited persons are authorised to engage in certain prescribed activities, subject to meeting their obligations as set out in the above documents.

Relevant entities have obligations under the VEET Act and VEET Regulations to purchase certificates.

1.2.3. Achieving compliance

Program participants are required to:

- know their regulatory obligations under the VEU program and show that they are compliant with those regulatory obligations
- self-monitor and report breaches of regulatory obligations
- respond to and rectify breaches, including handling customer complaints.

Our aim in communicating with program participants, and monitoring and auditing compliance, is to promote active compliance cultures by all program participants. We expect that program participants will:

- interpret obligations in accordance with the objectives of the VEET Act
- have a good understanding of the standard of conduct required to achieve compliance
- actively identify non-compliance
- be cooperative in working with us to address non-compliance.

If non-compliance with the VEU program does occur, we expect timely and effective resolution.

Our aim in using our enforcement powers is to secure compliance of individual program participants and across program participants as a whole with the requirements of the VEU program. Our enforcement powers are:

Give warnings or impose conditions on accreditation: In certain circumstances we may give warnings or impose a restriction or condition on an accredited person's accreditation (section 40A of the VEET Act).

Surrender of certificates: In certain circumstances we may require the surrender of certificates if they are improperly created (section 40 of the VEET Act).

Suspension or revocation of accreditation: We may suspend or revoke an accredited person's accreditation in accordance with the process set out in the VEET Act (sections 14 and 14A of the VEET Act).

Declarations and orders: The commission has specific powers to seek declarations and orders from a Court for a failure to pay a shortfall penalty or a failure to comply with certificate surrender notice (sections 37 and 39 of the VEET Act).

Prosecution: The VEET Act specifies that failure to comply with certain provisions will be an offence for which a prescribed maximum penalty is payable. These are criminal offences for which

charges may be laid and prosecuted against the relevant participant, either an individual or a company (sections 20, 38, 40, 51, 54, 61, 68, 69 and 72 of the VEET Act).

Details of the commission's enforcement powers are contained in Schedule 1.

2. Our approach

We have a range of options for achieving compliance. These include:

- specifying compliance requirements in the VEET Guidelines
- clarifying standards of conduct through communication with program participants
- issuing and updating guidance documents
- agreeing administrative solutions with program participants
- taking enforcement action.

2.1. Our guiding principles

Our approach to compliance and enforcement will be guided by the following principles:

1. **responsiveness:** we will undertake our work in a timely manner, ensuring we limit uncertainty for affected stakeholders
2. **proportionality:** we will seek to ensure that our response is commensurate with the nature and extent of non-compliance identified
3. **consistency:** we will respond to similar situations with a consistency that provides predictability for program participants as to our approach
4. **accountability:** we will be transparent in our compliance and enforcement processes, and make public the outcomes of our compliance and enforcement actions, in accordance with our statutory reporting obligations.

2.2. Promoting and securing compliance

How a program participant meets its obligations is a matter for that participant.

To clarify program participants' obligations we will:

1. meet with program participants and other stakeholders individually, or through VEU stakeholder forums, meetings and industry groups to identify and clarify uncertainties about compliance issues
2. based on our discussions with the program participants, consider if our current practices and requirements need to be amended to reflect changing business practices
3. consider publishing guidance documents, which explain how we will apply this policy to particular situations.
4. publish our compliance and enforcement decisions, and statements of reasons

We require program participants to have effective compliance monitoring and reporting systems in place to demonstrate compliance with their obligations. We identify potential breaches through:

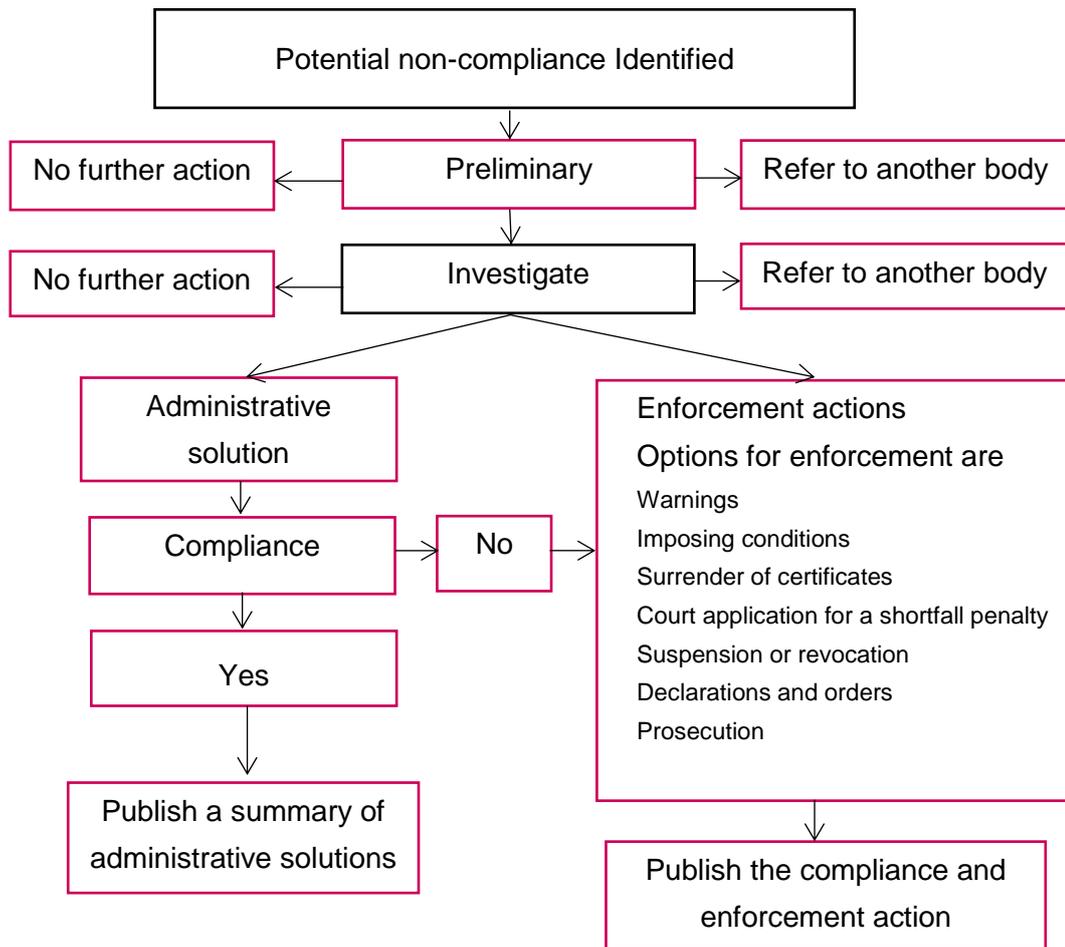
- a) self-reporting by program participants

- b) the findings of compliance audits and the results of investigations
- c) reports of potential non-compliance from other external stakeholders (e.g. consumers, other regulatory agencies, whistle blowers).

When a potential breach is identified we will apply the compliance and enforcement pathway.

2.3. Compliance and enforcement pathway

The commission has developed a compliance and enforcement pathway to promote and secure compliance. The compliance and enforcement pathway is illustrated below.



- a) **Potential non-compliance identified** – When a potential non-compliance is identified, we make a preliminary assessment of the evidence. A preliminary assessment will involve determining what response to take, based on the information available at that stage. Following our preliminary assessment we will either:
- i. take no further action
 - ii. commence a formal investigation
 - iii. refer the matter to another regulator (e.g. Energy Safe Victoria or Consumer Affairs Victoria).
- b) **Investigation** – Where appropriate, we will investigate the conduct to enable us to decide whether non-compliance occurred, the extent of any non-compliance and whether enforcement action should be taken. An investigation will gather further information about the conduct and may require the use of our information gathering powers.
- c) **Post investigation options** - Following an investigation we will do one of the following:

- i. *Take no further action* – The investigation may find that there was no non-compliance, there is insufficient evidence to prove non-compliance, or the non-compliance requires no further action.
- ii. *Refer the matter to another regulator* (e.g. Energy Safe Victoria or Consumer Affairs Victoria).
- iii. *Administrative solution* – If we believe that non-compliance has occurred, we may seek an administrative solution.

Based on the investigation and information supplied by the program participant, and any other information available to us, administrative solutions we may consider include:

- a. issuing a letter raising our concerns about non-compliance and requiring compliance in the future
- b. seeking an administrative undertaking. The administrative undertaking may include requiring the program participant to:
 - carry out an audit to determine non-compliance,
 - submit a remediation plan outlining how it has or proposes to investigate, rectify and remedy the compliance issue, and prevent its reoccurrence
 - contact affected customers and offer an appropriate remedy.

If requested, a remediation plan is to be submitted to us in writing outlining how the program participant proposes to rectify and remedy the non-compliance and prevent reoccurrence. Administrative undertakings or remediation plans may be published on our website.

Once we are satisfied that all of the actions outlined in the administrative undertaking or remediation plan have been completed in a timely and effective manner, we will consider the compliance issue resolved.

If the program participant does not comply with the administrative undertaking or remediation plan, the commission may commence enforcement action.

- iv. *Take enforcement action* – If we believe that non-compliance has occurred and that an administrative solution is not appropriate or an administrative solution has not been complied with, we may commence enforcement action.

2.4. How we undertake an investigation

The purpose of an investigation is to determine if non-compliance has taken place and the extent of the non-compliance. We may gather evidence from program participants and third parties that hold information related to the compliance of the program participant.

We may need to use our information gathering powers to undertake the investigation. These powers include the power to obtain information or a document from a person where the information or document is relevant to the operation of the VEET Act. A summary of the commission's investigative powers is contained in schedule 2.

During an investigation, we will make all information requests in writing, and in accordance with any relevant notice provisions.

Once an investigation is completed we may conclude that:

1. there was no non-compliance
2. a non-compliance occurred and an administrative solution is sufficient to address the non-compliance; or
3. a non-compliance occurred and there is a need to take enforcement action.

2.5. How we decide an appropriate response

When a potential non-compliance is identified and during an investigation, we will assess the nature of the conduct having regard to the following compliance and enforcement factors, to the extent that they are relevant in the particular case to help us decide whether to seek an administrative solution or pursue enforcement action. The compliance and enforcement factors we will have regard to are:

- a) the scope, extent and nature of the breach
- b) the compliance history of the program participant
- c) the impact on consumer confidence in the VEU program

- d) whether the breach was self-identified and reported in a timely manner
- e) how and in what timeframe any customer complaints about the breach were addressed by the regulated entity
- f) whether the program participant has taken timely and effective steps to investigate the root causes of the non-compliance
- g) whether the program participant has responded in full and in a timely manner to our inquiries and requests for information or progress updates
- h) whether the program participant has taken timely and effective steps to resolve the non-compliance and prevent its reoccurrence
- i) whether the program participant has taken timely and effective steps to inform consumers about the non-compliance, and offer an appropriate remedy to affected customers
- j) whether the program participant has put in place effective processes to review and report on the progress of remediation
- k) any other relevant matter.

Our decisions about which enforcement action(s) to take will be informed by:

- i. the findings of the investigation
- ii. the compliance outcomes we aim to secure, including:
 - a. stopping the contravening conduct
 - b. addressing the impact of the contravention on customers
 - c. ensuring future compliance by the program participant and program participants generally.

All enforcement action(s) we take are governed by the relevant legislation and legal requirements.

2.6. Due process and procedural fairness

In exercising any power, we will comply with all legal and government policy requirements, including being a model litigant.

All investigations and enforcement actions will be undertaken in accordance with the requirements of procedural fairness.

The application of an enforcement power in a particular situation will take account of the relevant circumstances of the case.

Privacy law applies in relation to any information collected about individuals.

3. Reporting

Public reporting provides transparency of the compliance and enforcement outcomes we seek to achieve. It can also:

- a) enhance trust and confidence in the integrity of the VEU program
- b) assist program participants to compare their compliance levels with their industry counterparts and to identify areas for improvement

We will publish on the commission website all compliance and enforcement actions including remediation plans and the outcomes of those plans.

We will publish a summary of administrative actions undertaken, if we consider that it is necessary to promote protections for Victorian consumers.

4. Enforcement powers

The enforcement and compliance powers under the VEET Act fall into five categories:

1. Giving warnings and imposing conditions on accreditation
2. Surrendering of certificates
3. Suspension or revocation of accreditation
4. Seeking court declarations of non-compliance and court orders to compel compliance
5. Prosecution of offences under the VEET Act.

4.1. Giving warnings or imposing conditions on accreditation

Under section 40A, if the commission believes on reasonable grounds that an accredited person may have committed any offence against the VEET Act; or repeatedly but unintentionally:

- i. created certificates that do not comply with the requirements of the VEET Act or the regulations; or
- ii. failed to comply with the requirements of the VEET Act or the regulations relating to the recording or carrying out of prescribed activities.

The commission may do one or more of the following:

- a) warn the accredited person;
- b) reprimand the accredited person;
- c) impose a condition or restriction on the accreditation of the accredited person.

4.2. Surrender of certificates

Section 40 gives the commission the power to order in writing that a person surrender certificates to the commission within a period specified by the commission. This may occur where:

- an accredited person fails to comply with a certificate surrender notice issued by the commission for breach of undertaking under section 10(2)
- the commission considers that the certificate does not comply with the requirement of the VEET Act or regulations or does not have evidence to show it complies
- the commission reasonably believes the certificate has been created in contravention of section 20
- a person is found guilty of an offence against section 20.

4.3. Powers to suspend or revoke accreditation

The commission has the power to suspend or revoke the accreditation of an accredited person in the following circumstances:

Section	Reason for suspension or revocation	Period of revocation or suspension
14(1)	The accredited person is convicted of an offence under section 20 of the VEET Act	Period commission determines is appropriate, but not exceeding two years
14(2)	The accredited person is convicted of an offence under section 20 of the VEET Act where that accredited person has previously had its accreditation suspended under section 14(1)	Period that the commission determines is appropriate
14(3)	The commission believes on reasonable grounds that an accredited person: <ul style="list-style-type: none"> (a) has committed an offence against the VEET Act; or (b) has breached an undertaking given to the commission under section 10(2) 	Period commission determines is appropriate, but not exceeding 12 months
14(3A)	The commission may, by written notice, suspend the accreditation of an accredited person if the commission believes on reasonable grounds that the person has repeatedly but unintentionally: <ul style="list-style-type: none"> (a) created certificates that do not comply with the requirements of this Act or the regulations; or (b) failed to comply with the requirements of this Act or the regulations relating to the recording or carrying out of prescribed activities. 	Period commission determines is appropriate, but not exceeding 12 months
14(5)	Accreditation has been improperly obtained	Period commission determines is appropriate, including permanently
14A	The commission may, by written notice, suspend or revoke the accreditation of an accredited person who has: <ul style="list-style-type: none"> (a) breached a condition or restriction imposed under section 14B or 40A; or (b) failed to comply with an order under section 40; or (c) failed to undertake an audit required under section 19A. 	Revocation or suspension for a period the commission determines is appropriate, but not exceeding two years

A person whose accreditation is suspended or revoked has the right under section 56 of the VEET Act to request the commission to reconsider the decision to suspend or revoke.

4.4. Declarations and orders

The commission has specific powers to seek declarations and orders from a Court under sections 37 and 39 of the VEET Act in the following circumstances.

- **Section 37 - Failure to pay shortfall penalty.** If a relevant entity fails to pay an energy efficiency shortfall penalty in accordance with a shortfall notice issued under section 36, the commission may apply to a Court for:
 - a declaration that the relevant entity has contravened section 27 (having an energy efficiency shortfall where the relevant entity makes a scheme acquisition); and
 - an order requiring the relevant entity to pay the applicable shortfall penalty.
- **Section 39 – Failure to comply with certificate surrender notice.** If the commission considers that an accredited person has breached an undertaking under section 10(2) of the VEET Act, it may issue a certificate surrender notice under section 38 in respect of the number of certificates for which a double benefit was obtained. If those certificates are not surrendered in accordance with the notice, the commission may apply to a Court for:
 - a declaration that the accredited person has breached an undertaking given under section 10(2); and
 - an order requiring the person to surrender the number of certificates specified in the order.

4.5. Prosecution of offences

The VEET Act specifies that failure to comply with certain provisions will be an offence for which a prescribed penalty (or maximum penalty) is payable in each case. These are criminal offences for which charges may be laid and prosecuted against the relevant participant, either an individual or a company. VEET Act offences are:

Section	Description of offence	Applies to	Penalty units
20(1)	Creation of certificates by a person who is not an accredited person.	Any person	60 individual 240 corporate
20(3)	Creation of certificates for a prescribed activity which took place before the accredited person applied for accreditation.	Accredited persons	60 individual 240 corporate
20(4)	An accredited person creates a certificate while suspended.	Accredited persons	60 individual 240 corporate

Section	Description of offence	Applies to	Penalty units
20(5)	An accredited person creates a certificate where that person: (a) has previously created a valid certificate under this Act in respect of that reduction in greenhouse gas emissions; or (b) has knowledge that another person has previously created a valid certificate under this Act in respect of that reduction in greenhouse gas emissions.	Accredited persons	60 individual 240 corporate
20(6)	An accredited person creates a certificate where a benefit has already been obtained under prescribed greenhouse gas scheme.	Accredited persons	60 individual 240 corporate
20(7)	An accredited person creates a certificate which that person knows: (a) contains incorrect information in respect of a prescribed activity; or (b) does not comply with the requirements of the VEET Act or the regulations for creating certificates or recording prescribed activities.	Accredited persons	60 individual 240 corporate
38	An accredited person fails to comply with a certificate surrender notice issued for breach of undertaking under section 10(2).	Accredited persons	600 + 1 per certificate not surrendered
40	An accredited person fails to comply with order to surrender certificates where: – The commission considers that the certificate does not comply with the requirement of the VEET Act or regulations or does not have evidence to show it complies – The commission reasonably believes the certificate has been created in contravention of section 20 – The person is guilty of an offence against section 20.	Any person convicted	600 + 1 per certificate not surrendered
51	A person fails to produce documents to, or answer questions asked by an authorised officer, without a reasonable excuse.	Any person	60 for individual or corporate
54	A person fails to provide an authorised officer with reasonable facilities and assistance.	Occupier of premises	60 individual 240 corporate

Section	Description of offence	Applies to	Penalty units
61	A person fails to comply with a written notice from the commission requiring information or documents or appearance before the commission.	Any person	60 individual 240 corporate
68	A person gives materially false or misleading information or documents to the commission.	Any person	60 individual 240 corporate
69	A person fails to provide a document required to be provided under the VEET Act by a specified time without reasonable excuse.	Any person	60 individual 240 Corporate
72	An accredited persons or a relevant entity fails to keep relevant records.	Accredited persons and relevant entities	Up to 60 individual Up to 240 corporate

5. VEU investigative powers

The VEET Act provides the commission and authorised officers with a number of investigative powers.

Part 7 of the VEET Act sets out the powers of the commission's authorised officers. The role of an authorised officer is to monitor compliance with the VEET Act, including the verification of information provided by a participant. For those purposes authorised officers have a range of search powers. They are:

5.1. Monitoring warrants overview

Section 55(1) of the VEET Act provides that an authorised officer may apply to a magistrate for a warrant under this section in relation to premises.

A monitoring warrant can authorise the entry to a premises, and a search of that premises as well as the authority to seize items, take photographs, inspect documents, take extracts and secure goods on that premises. The authorised officer may require the person to answer questions and produce documents.

The monitoring warrant can also specify when the entry can take place.

5.2. Entry to premises by consent

An authorised officer can seek to enter and search premises with the consent of the occupier of the premises. Once on the premises the authorised officer can search that premises as well as seize items, take photographs, inspect documents, take extracts and secure goods on that premises. The authorised officer may also ask the person to answer questions and produce documents. This power may be exercised:

- at any reasonable time of the day
- without force and on production of the identity card
- in accordance with the monitoring powers set out in section 48
- after informing the occupier of the premises of the purpose of the entry and their right to refuse entry, and obtaining a written acknowledgement in accordance with section 46(1) and (2).

5.3. Powers for gathering evidence

In addition to the monitoring and entry powers of authorised officers, the commission has substantial powers to obtain information and documents that are ‘relevant to the operation of the VEET Act in accordance with section 60. Pursuant to these powers, the commission may, by written notice given to any person, require the person:

- to give to the commission, within a period of not less than 10 business days and in the manner and form specified in the notice, information relevant to the operation of the VEET Act
- to produce a document within the period and in the manner specified in the notice
- to appear before the commission at a time and place specified in the notice to give any information, either orally or in writing, or produce any document.

The commission must have reasonable grounds for believing that the relevant person has the specified information or document.

Glossary

Accredited person means a person accredited by the Essential Services Commission (commission) to create certificates in relation to prescribed activities.

Compliance means requirement to comply with the Victorian Energy Upgrades (VEU) program.

Enforcement means the use of the Victorian Energy Efficiency Target (VEET) Act 2007 (the VEET Act) and Victorian Energy Efficiency Target Regulations (VEET) 2018 (the VEET Regulations) to enforce compliance with the requirements of the VEU program.

Prescribed activities are activities carried out under the Act, the VEET Regulations and Victorian Energy Efficiency Target (Project-Based Activities) Regulations 2017, which will reduce greenhouse gas emissions.

Relevant entity means a person who sells electricity or gas to customers in excess of certain thresholds.

Program participant means a relevant entity or an accredited person.

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