



Important changes to the program 1 July 2023

Tuesday 11 July 2023

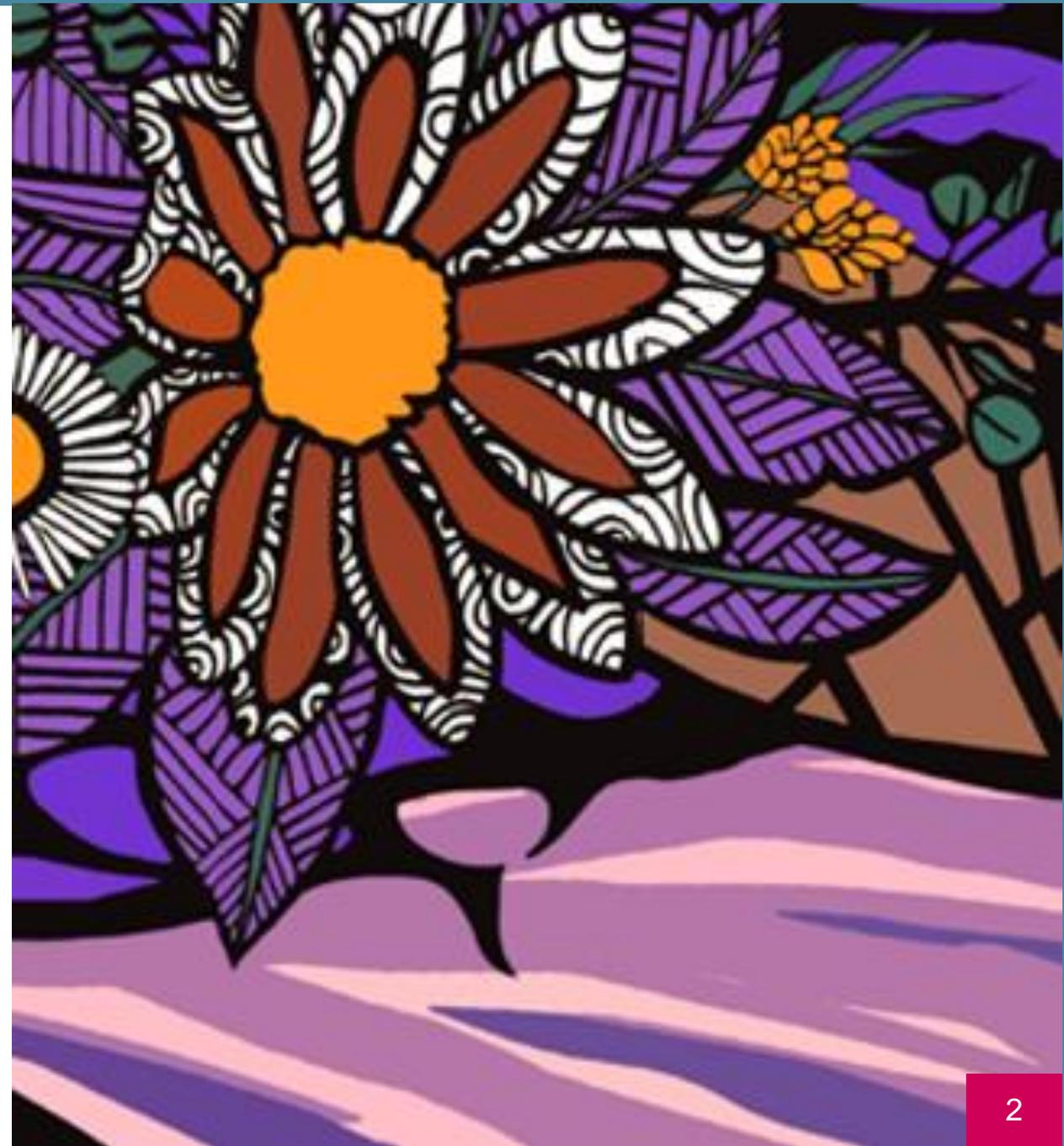


Acknowledgement of Country

We acknowledge the Traditional Owners of all the lands wherever you are today. For the commission, we are joining you from the lands of the Wurundjeri people of the Kulin nation.

We pay our respects to Elders, past and present, and extend that respect to all Aboriginal and Torres Strait Islander people here today.

Barring Djinang artwork by Jade Kennedy.
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Focus of today

- Outline the main changes that came into effect 1 July:
 - Program fees
 - Accreditation applications and renewal
 - Fit and proper person
 - Competent and capable
- Questions and answers

Housekeeping

Please:

-  keep your microphone muted
-  put questions into the chat
-  raise your hand to ask a question during Q&A
 - any questions not answered during session will be addressed afterwards
 - all responses to questions will be made available on the website
-  note that this session is being recorded



Opening remarks

Commissioner Rebecca Billings

Overview

Gabrielle Henry

Executive Director, VEU

Changes to program fees

Description of Fee	Fee
Application for accreditation (section 9(1)(a) of the VEET Act)	\$3,000
Application for renewal of accreditation (section 9(1)(b) of the VEET Act)	\$1,000
Application for approval of a project impact report, where there has been no prior approval of an application for a project impact report for the project (regulation 11 of the PBA Regulations)	\$500
Application to list a product on the ESC Register (regulation 32 of the VEET Regulations)	\$500
Lodgment of an energy acquisition statement (section 33 of the VEET Act)	\$3,122
Request for reconsideration of a reviewable decision (section 56 of the VEET Act)	\$750
Application for registration of a certificate (section 22(3)b) of the VEET Act) (note: the application for registration may also be referred to as creation)*	\$1.00

Changes to accreditation process

1. Expiry of accreditation
2. Conditions on accreditation
3. Fit and Proper Person and Competent and Capable Person tests

These changes have required us to create a new accreditation and renewal application process and form.

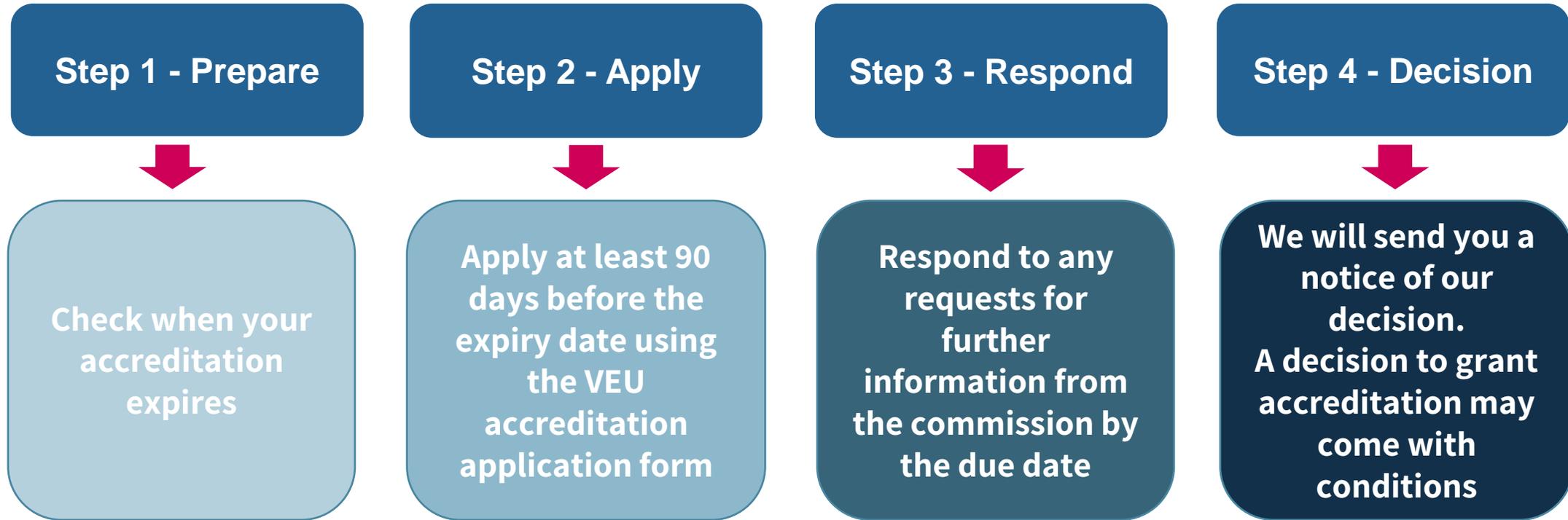
Changes to Accreditation Form

- More streamlined and sequential – applies to any application (new or renewing)
- Avoids multiple forms based on activity
 - relevant information only
 - avoids duplication of information/evidence provision across multiple activities
 - form completion and record keeping efficiencies
 - assessment efficiency benefits
- Separates AP specific general information from activity specific (Parts A and B)
- Includes information about scheme participants – who and how engaged
- Updated application guide to support applicants

New and additional evidentiary requirements

- Organisational chart – whole of company, VEU specific
- Key personnel resumes (e.g. CEO, training manager, compliance manager, installation manager)
- Contracts (or contract templates) for scheme participants and/or employees representing the accredited person
- Statement of compliance with any accreditation conditions or restrictions (if applicable)
- Statement of prescribed activities undertaken in the current accreditation period (if any)

Renewing your accreditation



- The commission will send a notification to each accredited person individually
- Accredited persons can also access the commission's declaration on the accreditation transition period and expiry dates for accredited persons **on our website.**

Procedural Fairness

Where commission staff:

- a) think that the commission may impose a condition on your accreditation that you have not asked for; and/or
- b) think that the commission may refuse the application; and/or
- c) intend to include evidence in their briefing to the commission that the applicant did not provide

the applicant will be advised of these matters in writing and given an opportunity to comment and provide further evidence (if they wish to do so).

Who is an officer and senior manager?

Section 9 of *Corporations Act 2001* defines an 'officer' of a corporation to include:

- its directors and company secretary;
- persons who make, or participate in making, decisions that affect the whole, or a substantial part, of the business of a corporation;
- persons who have the capacity to significantly affect a corporation's financial standing;
- persons in accordance with whose instructions or wishes, the directors of a corporation are accustomed to act.

A senior manager is an employee who falls outside this definition, but is still a key decision-maker for applicant's work within the VEU program.

Fit and proper person

- Wide scope for judgement and for rejection of applications
- Very broad concept
- Commission must err on the side of caution
- Section 11(3) of the VEET Act:

- (3) ... the ESC must refuse a person's application for the grant or renewal of accreditation if—
- (a) the ESC is not satisfied that the person is a fit and proper person for the purposes of accreditation; or
 - (b) the ESC is not satisfied that the person is a competent and capable person for the purposes of accreditation

Fit and proper person (continued)

What information will the commission take into account?

Section 11(4) of the VEET Act says:

- (4) In determining an application for the grant or renewal of accreditation, the ESC may have regard to any available information about—
 - (a) any previous conduct of the applicant in exercising powers and performing duties as an accredited person; and
 - (b) the prescribed activities (if any) undertaken by the applicant while accredited.

Fit and proper person (continued)

What information will the commission take into account? (continued)

Section 10B of the VEET Act says: 'in determining whether a person is a fit and proper person, the ESC may have regard to any relevant matter, including...'

- A finding of guilt under the VEET Act and Regulations
- A finding of guilt within the last 10 years, for an indictable offence, or an energy efficiency regime, or an offence which, if committed in Victoria, would constitute an indictable offence
- A finding of guilt for an offence involving dishonesty or fraud
- A pending charge for any of the above
- A failure to comply with any provision of the VEET Act and regulations, or conditions of accreditation
- Any improper or adverse conduct engaged in, including misleading, false or deceptive conduct, and a failure to disclose any information that has been requested or required by the commission

Continued on the next slide

Fit and proper person test (continued)

(Section 10B VEET Act, continued)

- If the applicant has been accredited in an energy efficiency program before, any suspension, revocation, cancellation or disqualification and the reasons for it;
- If the applicant has held an account to hold, transfer and surrender certificates for an energy efficiency program, any suspension or cancellation of the account, and the reasons for it.
- The applicant being or having been an officer of an externally-administered company under the Corporations Act
- A failure to comply with an order or decision made by an Australian court, tribunal or the commission
- A failure to disclose any of the above matters.

Fit and proper person test (continued)

Australian case law

Honesty is assessed by looking at the conduct, character and reputation of the applicant.

New documentation required:

New requirement for each officer and senior manager to provide information about themselves and supply a statutory declaration that the information is true and correct.

Impact of a criminal and/or compliance history

Not an automatic refusal of accreditation.

Competent and capable person test

Section 10C VEET Act:

In determining whether a person is a competent and capable person for the purposes of accreditation, the ESC may have regard to any relevant matter, including the following—

(a) the skills and expertise of the person exercising powers and performing duties as an accredited person, including undertaking a prescribed activity;

Example: The ESC may consider the skills and expertise of a body corporate as a whole and as well as the skills and expertise of key personnel at the body corporate.

(b) whether the person has the appropriate licensing and regulatory approvals for undertaking a prescribed activity;

(c) whether the person and any contractors or employees engaged by the person have appropriate professional accreditations for undertaking a prescribed activity or part of a prescribed activity;

Competent and capable person test (continued)

Section 10C VEET Act (continued):

- (d) the past performance of the person in undertaking a **prescribed activity**;
- (e) whether the person has appropriate policies and practices to ensure a **prescribed activity** is undertaken in compliance with relevant occupational health and safety legislation;
- (f) whether the person has complied with or incorporated any recommended practices for creating and executing contracts in accordance with this Act or any regulations or guidelines made under it;
- (g) whether the person has complied with their **CPD obligations**;
- (h) any other **prescribed** circumstances.

Competent and capable person test (continued)

Australian case law

Can you, the applicant, with your officers, staff and contractors, do the work that must be done, in compliance with the law, in line with best practice, with appropriate skill and knowledge?

Documentary proof required: all accredited persons

- Business Plan or annual report (specific pages) – skills and experience
- Licence and/or activity accreditation registers
- OH&S policies, organisational structures, lost time injury reports, workers compensation
- Record keeping policies
- Training materials
- Code of conduct specific material – compliance specific systems and processes, policies and internal manuals, audit policy and procedure, validation methods
- Complaints policies, procedures and process maps and annual complaints reporting
- Consumer data protection

Competent and capable person test (continued)

Documentary proof required: specific to prescribed activities

- Eligibility, installation and decommissioning protocols (all activities)
- Policies and processes for specific activities, including incorporation of relevant AS/NZS standards
- Assignment forms, including confirmation of compliance with relevant AS/NZS standards Business Plan or annual report (specific pages) – skills and experience
- Quality management and safety management assurance (e.g., ISO 9001, AS/NZS 4801)
- Activity specific training documentation (if not covered under Part A)

Any questions?



Concluding remarks

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Contact us

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