



Guide to Applications for Electricity Industry and Gas Industry Licences

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- Procedures for Applications for Electricity Licences and Electricity Licence Transfers (November 2006)
- Guidance Notes for Applications for Gas Licences and the Transfer of Existing Gas Licences (November 2006)
- Procedures for Applications for Gas Licences and Gas Licence Transfers (November 2006)

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1. Introduction

1.1. About this guide

The Essential Services Commission (the commission) is the independent regulator established by the Victorian Government to regulate prescribed essential utility services, including the electricity and gas industries.

One of the commission's statutory functions is to administer energy licensing in Victoria under Division 3 of Part 2 of the [Electricity Industry Act 2000 \(Vic\)](#) and Division 2 of Part 2 of the [Gas Industry Act 2001 \(Vic\)](#).

Any person who engages in the following activities must either be licensed by the commission, or be exempted from the requirement to hold a licence (refer to section 6 of this guide for further information on exemptions):

Electricity industry activities	Gas industry activities
<ul style="list-style-type: none">• Generation of electricity for supply or sale• Transmission of electricity• Distribution or supply of electricity• Sale of electricity (either by retail or through the wholesale market)	<ul style="list-style-type: none">• Provision of services by means of a distribution pipeline• Sale of gas by retail

This guide provides information and guidance to licence applicants about our approach to assessing applications and the information required to assess applications. The guide also includes information on variation, transfer and revocation of licences.

1.2. Assessment of licence applications

In deciding whether to grant or refuse a licence application, the commission is bound by the provisions of the [Essential Services Commission Act 2001 \(Vic\)](#), the [Electricity Industry Act 2000 \(Vic\)](#) and/or the [Gas Industry Act 2001 \(Vic\)](#).

The commission will not grant a licence application unless it is satisfied that:

- the applicant has and will maintain the technical capacity to comply with the conditions of licence
- the applicant is financially viable;¹ and
- the applicant is a fit and proper person to hold a Victorian electricity industry or gas industry licence.

In deciding whether to grant or refuse a licence application, the commission must have regard to its objectives under the [Essential Services Commission Act 2001 \(Vic\)](#), the [Electricity Industry Act 2000 \(Vic\)](#) and/or the [Gas Industry Act 2001 \(Vic\)](#).

Further information about these matters is provided in part 4 of this guide and in the respective licence application forms on our website.

All applications are assessed on a case-by-case basis. We may request additional information to assist with the assessment of the application. We may also depart from the process described in this guide if we believe the application needs more or different steps to be taken.

It is the applicant's responsibility to ensure that it provides accurate and relevant information and documentation. Applicants should not rely on us to search for or request information to support any application. The applicant must submit a completed licence application form with supporting documentation.

Applicants should note that this guide does not in any way detract from or amend any statutory or regulatory requirements.

1.3. Legislative framework

Before making an application, applicants should read and understand:

- the [Essential Services Commission Act 2001 \(Vic\)](#) (the ESC Act),
- the [Electricity Industry Act 2000 \(Vic\)](#) (the Electricity Industry Act), and/or
- the [Gas Industry Act 2001 \(Vic\)](#) (the Gas Industry Act) (together, the Industry Acts),
- other codes and guidelines that apply to licensees, such as the [Energy Retail Code](#) and the [Electricity Distribution Code](#).

¹ We may not have to be satisfied as to the applicant's financial viability, if the applicant is applying for a licence which includes a condition requiring compliance with the National Electricity Rules and the Rules include prudential requirements

All applicants must have a detailed understanding of the legislation and regulatory instruments relevant to their proposed licensable activities.

This guide should not be relied upon as substitute for legal advice and should be read in conjunction with the above legislation and instruments. In the event of inconsistency between this guide, the relevant legislation and regulatory instruments, the legislative and regulatory requirements apply. It is the responsibility of the applicant to ensure it is complying with its legal obligations when applying for a licence.

2. Applying for a licence

2.1. Who may apply for a licence

An application for a licence may be made by any legal person including individuals, incorporated associations and corporations.

Entities that are not a legal person (for example, an unincorporated joint venture) cannot apply for a licence.

2.2. How to apply for a licence

Applicants must complete the licence application form for the proposed licensable activity – retail licence application form, generation licence application form, transmission licence application form and/or distribution licence application form.

The application including attachments should be emailed (preferred) or in writing to the following address:

Electronically to: licensing@esc.vic.gov.au

In writing to: Essential Services Commission
8/570 Bourke Street
Melbourne VIC 3000

2.3. Application fee

The Industry Acts provide that an application for a licence, or a transfer of licence, must be accompanied by the application fee, if any, as fixed by us. There is currently no application or transfer fee.

3. The licensing process

3.1. The assessment process

There is no statutory timeframe to process a licence application. The time that we will take to process an application is usually 16 weeks or from eight to ten weeks **once the application is complete**. An application is considered complete once we have all information we need to take the application to commission for decision. In other words, when we have no need to request further information from the applicant.

The processing time includes the time taken for public consultation (usually four weeks), which we are obligated to do under the Industry Acts and review of submissions. It is important to note that assessment and decision timeframes can be affected by the details and circumstances of the application, the quality and standard of the material provided, and the number of submissions received in relation to the application.

Applications will be assessed on a case-by-case basis having regard to the requirements of the relevant legislation. We may engage external consultants (for example accountants or lawyers) to assist in assessing the information provided to us.

We encourage applicants to consult with other relevant entities to ensure they understand and will meet all relevant obligations. This includes relevant entities like the Australian Energy Market Operator, Energy Safe Victoria, licensed distributors, the Energy and Water Ombudsman (Victoria), and the Department of Health and Human Services.

3.1.1. Timing of the application

Applicants should ensure they provide all relevant information and material to the commission to allow sufficient time for the application to be assessed.

Applicants should apply for a licence once they have a firm plan to commence carrying out the proposed activity and are able to demonstrate that they meet the relevant criteria for being granted a licence. Applicants should confirm and be able to demonstrate that they have an ability to commence operation within a specific and reasonable timeframe should a licence be granted.

3.1.2. Consultation (publication of the licence application)

We are required to publish a notice of a licence application in a daily newspaper circulating in Victoria, and to invite interested persons to make submissions on the application.²

A copy of the application will also be published on our website.

We will publish notice of an application once we are satisfied that it is complete.

The Industry Acts do not prescribe a period for submissions. We will usually provide four weeks for submissions after notice of the application is published.

3.1.3. Commercial-in-confidence information

To fully inform the public about the licence application, we prefer all information provided by the applicant to be made publicly available.

However, publication of some sections of the application can be restricted if warranted for confidential or commercial-in-confidence reasons. Any information submitted on a confidential or commercial-in-confidence basis should be attached as schedules to the application and be marked as commercial-in-confidence. Applicants should also provide an explanation as to why the information is marked as confidential or commercial-in-confidence. Applicants should include clear cross-references, identifying the section to which the commercial-in-confidence information relates. Please note that we are not responsible for the identification of confidential or commercial-in-confidence information.

Where we consider that information has been inappropriately marked as confidential or commercial-in-confidence, we will discuss this with the applicant. Further, we may be required to release information the applicant may consider confidential under the Freedom of Information Act 1982 (Vic).

3.1.4. Submissions

We accept submissions from all interested persons. An interested person can include industry bodies, regulators, private sector operators, community groups and individual consumers.

All submissions received, except those that are commercial-in-confidence, are published on our website. Submissions are published in accordance with our [submissions policy](#).

² Section 19(6) of the Electricity Industry Act 2000 and section 26(2) of the Gas Industry Act 2001.

Where submissions are made, we will notify the applicant in writing and provide copies of any published submissions and summaries of any unpublished submissions. The applicant will be provided with an opportunity to respond to the submissions in writing.

3.1.5. Consideration of the application

We will consider the application following the submission period and the receipt of any response from the applicant in relation to the submissions.

In doing so, we consider all relevant material, including all material provided by an applicant in support of its application, any submissions made by interested persons and any responses by the applicant.

We may take into account material obtained from other sources and may seek advice from external consultants and others in relation to any relevant matters, including to review the accuracy and reliability of information provided by an applicant.

3.1.6. Decision and notification

Applicants will be notified in writing of our decision to grant or refuse an application and the decision will be posted on our website. Those who have made submissions will also be notified of our decision.

We will also publish any decision to grant a licence in the Victorian Government Gazette.³

In the event of a refusal to grant a licence, we will provide the applicant with our reasons for the refusal.⁴ While we will generally publish our decision to refuse an application, we will not generally publish our reasons for refusing the application.

Licences are issued subject to such conditions as are decided by us.⁵ A copy of standard licence conditions can be found on our [website](#). Where we propose to include a special condition in an applicant's licence, we will discuss this with the applicant prior to making our decision.

³ Section 30(a) of the Electricity Industry Act 2000 and section 39(a) of the Gas Industry Act 2001.

⁴ Section 19(8) of the Electricity Industry Act 2000 and section 26(4) of the Gas Industry Act 2001.

⁵ See section 20(2) of the Electricity Industry Act 2000 and section 28(2) of the Gas Industry Act 2001.

4. Content of licence applications

We may grant or refuse a licence application for any reason we consider appropriate, having regard to our objectives under the [Electricity Industry Act](#) and/or [Gas Industry Act](#) and the [ESC Act](#).⁶

Consistent with our objectives, an applicant's technical capacity and financial viability are central to the consideration of a licence application. We will also consider whether an applicant is a fit and proper person to hold a licence.

The applicant must complete the relevant application form available on our website.

It is incumbent on the applicant to provide sufficient information to enable the commission to understand the activities it is proposing to undertake. Applicants must also provide evidence to show that it can meet the above criteria. This may include independent verification that the applicant has the technical capacity to comply with the conditions of the licence and all applicable regulatory requirements, and is financially capable of commencing and sustaining the relevant licensable activity.

It is the applicant's responsibility to ensure that it provides us with accurate and relevant material. Applicants should not rely on us to search for or request information to support any application.

All applications are assessed on a case-by-case basis.

Important note: the information requirements set out in this guide is not intended to be an exhaustive list of the information that may ultimately be required by the commission in determining the application for a licence. The commission may request further information at any stage prior to making a final decision on the application for a licence. We may depart from the guide and add additional steps to our assessment at our discretion and where we consider it appropriate.

⁶ Section 19(1) of the Electricity Industry Act 2000 and section 26 of the Gas Industry Act 2001.

4.1.1 Information about the applicant and proposed activities

It is important that applicants provide sufficient detail to allow us to understand who they are, the activity or activities proposed to be undertaken, and the third parties involved with those activities.

Where significant control of an activity requiring a licence is contracted to another entity, the applicant will need to consider whether that entity may also require a licence.

4.1.2 Technical capacity

Our assessment of technical capacity falls within two broad categories:

- the capacity to operate and manage the relevant business, and
- the capacity to comply with the licence conditions (which includes complying with the relevant regulatory obligations, including legislation, codes and guides).

The applicant must demonstrate that it can satisfy these requirements, and will do so for the duration of any licence. The applicant is required to provide information that demonstrates:

- it has the business skills, knowledge, personnel, systems and ability to operate the relevant business,
- it has the capacity to manage risk and to operate an effective and functional risk management and compliance system consistent with the relevant Australian Standards, and

If an applicant intends to meet any material aspect of the technical capacity requirements by the use of contractors (including contracts with related entities), it must provide information on the contractors' experience and expertise. Applicants should be aware that as the licensee, the applicant is responsible for the compliance of all contractors and agents that provide services on the applicant's behalf. It is the licensee that would be subject to compliance action if those entities fail to comply.

Depending on the nature of the contractual relationship and the services being performed by entities other than the applicant, it may be necessary for these other entities to also be licensed in accordance with section 16 of the [Electricity Industry Act](#) or section 22 of the [Gas Industry Act](#). For example, if a generator engages another entity to sell its electricity through the National Electricity Market, then the other entity may require a licence to sell electricity.

Our assessment of technical capacity for retail licence applications includes the applicant's ability to support vulnerable customers (excluding large customer retail licence applications). Applicants need to demonstrate a full understanding of their legislative obligations to supporting vulnerable customers, including their obligations under the payment difficulty framework and family violence provisions.

4.1.3 Financial viability

Consistent with the requirements under the Electricity Industry Act, the commission must not grant an application for the issue of a licence unless the commission is satisfied that, in the case of an application to sell electricity, the applicant is financially viable.⁷

Although the Gas Industry Act does not contain the equivalent provisions, for consistency, the commission will assess gas retail applications in the same manner.⁸

The commission does not have to be satisfied as to the applicant's financial viability if the applicant is applying for a licence which includes a condition requiring compliance with the National Electricity Rules (which include prudential requirements). We generally do not assess financial viability for generation, wholesale, transmission and distribution licence applications, but we reserve the right to undertake an assessment if we consider it appropriate to do so. These types of licensable activities must meet the strict prudential requirements of the Australian Energy Market Operator.

Retail licence applications where the applicant intends to sell electricity to small customers and does not have authorisation with the Australian Energy Regulator are subject to a financial viability assessment. It is important to note that our financial viability assessment is limited to a point in time and should not be taken as an assessment of the applicant's ongoing financial capacity. The assessment that is undertaken is only for the purpose of the licence application and should not be relied upon for any other purpose by any person.

In assessing whether an applicant is financially viable, the applicant is generally required to demonstrate that it will have sufficient financial resources to commence and sustainably operate the retail business, and meet the service standards of small customers (if applicable).

The material that the commission requests of applicants varies depending on a number of things, including but not limited to:

- the applicant's target customers,
- whether it holds authorisation to retail energy with the Australian Energy Regulator, and/or
- whether the applicant will be registered as a market customer with the Australian Energy Market Operator

⁷ Section 19(2).

⁸ The objectives of the commission include, to the extent that it is efficient and practicable to do so, to promote a consistent regulatory approach between the electricity industry and the gas industry (s 10(a), Electricity Industry Act; s 18(a) Gas Industry Act)

- the innovation of the proposed business model.

Applicants intending to retail energy to large customers only or have authorisation to retail energy with the Australian Energy Regulator do not need to provide supporting documentation to demonstrate financial viability. Applicants still need to provide a statement that they have the financial resources to commence and sustainably operate the retail business (see retail application form).

Refer to the retail licence application form for detail on the financial viability information the applicant may need to provide.

Retail licensees selling energy to large customers are subject to a licence condition that restricts the selling of energy to large customers. The licensee can request a variation to remove this licence condition if it wants to sell energy to small and/or medium customers, at which point the commission may undertake a financial viability assessment.

4.1.4 Commission objectives

In deciding whether to grant or refuse a licence application, we must consider our objectives under the [Electricity Industry Act](#) and/or [Gas Industry Act](#) and the [ESC Act](#).

Our objective under the Essential Services Commission Act, when performing our functions and exercising our powers, is to promote the long term interests of Victorian consumers. In seeking to achieve this objective, we must have regard to the price quality and reliability of essential services and the matters set out in section 8A to the extent they are relevant.

Applicants must provide a statement on how granting a licence to you addresses the objectives outlined in:

- Section 8 of the Essential Services Commission Act (also see s 8A of the Essential Services Commission Act),
- Section 10 of the Electricity Industry Act, and/or
- Section 18 of the Gas Industry Act.

Refer to the relevant licence application form for more detail on the commission's objectives.

4.1.5 Fit and proper person

In deciding whether to grant or refuse a licence application, we will consider whether the applicant is a fit and proper person to hold a Victorian electricity or gas industry licence.

The concept of a 'fit and proper person' is established by common law and takes its meaning from its context, from the activities in which the person is or will be engaged, and the ends to be served by those activities.

In considering whether an applicant is a fit and proper person, we will have regard to the applicant's honesty, integrity and reputation. These are relevant factors as they can inform an assessment of the likelihood of future conduct.

In considering an applicant's suitability to hold an energy licence, we will also consider the conduct of directors, office holders or any person with significant managerial duties or influence in the applicant. We may also consider the conduct of related bodies corporate or entities that can exert control over the applicant.

We require applicants to disclose any conduct or event relating to the following broad areas:

- (a) bankruptcy and insolvency
- (b) disqualification from managing a company
- (c) criminal prosecutions
- (d) prosecutions or enforcement action taken under relevant laws
- (e) refused licence applications or licences that have been restricted, suspended or revoked
- (f) material failures to comply with regulatory requirements.

We require applicants to answer the questions set out in the application form.

Disclosure of one or more matters will not automatically lead us to conclude that the applicant is not fit and proper. We will consider a number of factors when a disclosure is made, such as the seriousness of the matter and the impact on consumers, the egregiousness of the conduct (for example, where the conduct involved dishonesty or a deliberate attempt to mislead us, this will be viewed more seriously), when the conduct occurred and the applicant's subsequent conduct.

5. Variation, transfer, and revocation of licences

5.1. Variation

A licence may be varied:⁹

- in accordance with the procedures set out in the licence, or
- by agreement between us and the licensee or
- by written notice from us after giving the licensee reasonable notice of the proposed variation and allowing the licensee an opportunity to respond to the proposed variation.

Where a licensee requests that we vary its licence or licence conditions, the licensee should provide sufficient information to enable us to assess the impact and significance of the variation to the current licensing arrangements.

5.2. Transfer

After a licence is granted, a licensee may apply to us to approve the transfer of its licence to another legal person.¹⁰

Applications must be in writing, and must include written confirmation from the transferee setting out its formal consent to the transfer.

The licensee must obtain and provide from the transferee all relevant information and necessary declarations set out in this guide and to follow the application procedure as if applying for a new licence.

A transfer of licence application must also be accompanied by a declaration in the form set out in this guide.

A standard condition of a licence is that the commission must be notified (usually within three business days) if there is a change of control of the licensee.

⁹ See sections 29(1) and (2) and 29A of the Electricity Industry Act and sections 38(1) and (2) and 38A of the Gas Industry Act.

¹⁰ See section 31 of the Electricity Industry Act and section 40 of the Gas Industry Act.

5.3. Revocation

A licence may be revoked in accordance with the procedures specified in the licence conditions.¹¹

Generally, licence conditions provide that we may revoke a licence:

- at any time at the request of or with the consent of the licensee or
- in some circumstances, without the consent of the licensee where it is consistent with our objectives.

Circumstances where we may revoke a licence without the licensee's consent include:

- where the licensee fails to comply with an undertaking or a final enforcement order
- where the licensee breaches any condition of its licence
- where information provided to us, including in the licence application, is found to be materially false or misleading
- the licensee's financial viability or technical capacity is such that we consider the licensee would be unable to satisfactorily meet its obligations under the licence
- the licensee fails to comply with a decision, direction, determination or arrangement made by or agreed with us, the Australian Energy Market Operator or the relevant minister
- where a petition or other application is presented or resolution passed for the winding up, liquidation or dissolution of the licensee, or notice of intention to propose such as resolution is given or the licensee enters into a scheme of arrangement or compromise or deed of company arrangement with any of its creditors
- an administrator, receiver or manager is appointed to any of the licensee's property
- the licensee ceases to carry on business or stops or wrongfully suspends payment to any of its creditors or states its intention to do so.

If we decide to revoke a licence without consent, we will issue a notice to the licensee that specifies the basis for the revocation of the licence and the date the revocation will take effect. We may withdraw the notice if the licensee remedies the basis for the revocation.

¹¹ See section 29(3) of the Electricity Industry Act and section 38(3) of the Gas Industry Act.

6. Exemptions

Section 17 of the [Electricity Industry Act](#) and section 24 of the [Gas Industry Act](#) provide that a person may be exempted from the requirement to obtain a licence. Exemptions are made by an Order made by the Governor in Council.

Exemptions may be of individual or general application.

A person may be exempted from the requirement to obtain a licence for electricity sale, supply or generation activities if they meet the requirements of the [General Exemption Order](#) made on 15 November 2017 and amended on 30 May 2019. The General Exemption Order only applies to electricity activities, not the sale or supply of gas.

Persons who are exempted from holding a licence under the General Exemption Order have obligations which include:

- registering their exemption with us (in most circumstances),¹²
- becoming a member of the Energy and Water Ombudsman (Victoria), and
- complying with relevant sections of the Energy Retail Code, Electricity Distribution Code and General Exemption Order.

If the applicant thinks it is exempted from holding a licence, the applicant should read the General Exemption Order to understand whether the activities fall within the scope of that exemption and what obligations may apply.

We have more information about exemptions on our [website](#) and in our [Registration Guideline for Exempt Persons](#).

¹² Unless the exemption is deemed, in which case it automatically applies and does not need to be registered with us.

7. Obligations once granted a licence

7.1. Ongoing obligations

Licences are issued subject to such conditions as are deemed to apply under the Industry Acts and those that are decided by the commission.

A copy of each licence we have issued can be found on [our website](#).

Energy licences require the licensee to comply with applicable Codes, Guidelines or other instruments issued by us, as well as other relevant requirements including legislation overseen by Energy Safe Victoria and national instruments such as the National Electricity Rules. These include, but are not limited to:

- Energy Retail Code
- Electricity Distribution Code
- Compliance and Performance Reporting Guideline
- Audit Guideline for Energy Businesses
- Code of Conduct for Marketing Retail Energy
- Electricity Customer Metering Code
- Electricity Customer Transfer Code
- Electricity System Code
- Gas Distribution System Code
- Connection of Embedded Generation Guideline
- Provision of Services by Distributors Guideline
- Connection and User of System Agreements Guideline.

Licences also, depending on the licence type, generally require the licensee to maintain ongoing technical capacity and financial viability.

Licensees must notify us:

- of any breach by it of the conditions of their licenses as soon as reasonably practicable after becoming aware of the breach
- where there is a change of control of the licensee (for example, where the licensee is purchased by another company).

Licensees must maintain comprehensive records regarding any activities undertaken pursuant to their licence for a period of at least seven years. The Licensee must provide the commission, as soon as reasonably practicable, with such information relating to activities undertaken pursuant to the licence as the commission may properly request.

7.2. Annual licence fees

Holding an electricity or gas licence incurs annual licence fees. These fees and charges are determined by the Assistant Treasurer, in consultation with the Minister for Energy, Environment and Climate Change, having regard to the total costs and expenses incurred by us in the exercise of our powers for or in connection with the performance of our functions and the achievement of our objectives in relation to the electricity and/or gas industry.¹³

Each annual determination by the Assistant Treasurer specifies the various licence fees apportioned annually to each of the licence categories within the electricity or gas sector.

Base Fees	2018-19 (\$)	2019-20 (\$)
Generator <200 MW	3,344	3,417
Generator 200-999 MW	10,032	10,252
Generator 1000 MW+	16,720	17,086
Transmission – Interconnector	8,360	8,543
Transmission – Statewide	16,720	17,086
Wholesale	N/A	3,417
Retailer (Electricity and Gas)	8,360	8,543

The licence fees determined by the Assistant Treasurer are administered by us. At annual intervals, we, on behalf of the Assistant Treasurer, will send to each licensee, depending on the licence category, an invoice for the licence fee in respect of the preceding financial period ending on 30 June. The invoice will contain the licensee's details, the amount payable and the payment terms and conditions. Licence fees are to be paid on receipt of an invoice via one of the payment options set out in the invoice.

¹³ See section 22 of the Electricity Industry Act 2000 and section 30 of the Gas Industry Act 2001.

