



Level 2, 35 Spring St
Melbourne 3000, Australia
Telephone +61 3 9651 0222
 +61 3 1300 664 969
Facsimile +61 3 9651 3688

GUIDANCE NOTES FOR APPLICATIONS FOR GAS LICENCES AND THE TRANSFER OF EXISTING GAS LICENCES

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DISCLAIMER

The Essential Services Commission (the Commission) has issued these Guidance Notes to provide information to potential applicants to assist them in making licence applications under the *Gas Industry Act 2001* (Vic).

The Guidance Notes contain general information and are not a substitute for legal, financial or other advice of a commercial and technical nature which may be required. Applicants are encouraged to obtain such advice prior to submitting an application. The Guidance Notes do not and are not intended to vary, derogate from or otherwise limit the Commission's statutory powers, functions and discretions. In particular, the Commission may depart from the statements contained in these Guidance Notes in relation to an application.

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The Essential Services Commission (the Commission) is the independent economic regulator established by the Victorian Government to regulate prescribed essential utility services, including electricity, gas, water, ports, grain handling and rail freight industries and aspects of the insurance industry.

One of the Commission's statutory functions is to administer the licensing of gas distribution and retailing activities. A person is prohibited from engaging in the sale or distribution of gas either as a principal or as an agent unless that person holds a licence to undertake the activity or has received an exemption from the Governor-in-Council (see chapter 2).

In undertaking this role, the Commission is guided by the provisions of the Gas Industry Act 2001 (GI Act) and the Commission's objectives under the Essential Services Commission Act 2001 (ESC Act). The Commission's primary objective is to perform its functions and exercise its powers to protect the long term interests of Victorian consumers with regard to the price, quality and reliability of essential services. In seeking to achieve its primary objective, the Commission must also have regard to the following facilitating objectives:

- to facilitate efficiency in regulated industries and the incentive for efficient long-term investment
- to facilitate the financial viability of regulated industries
- to ensure that the misuse of monopoly or non-transitory market power is prevented
- to facilitate effective competition and promote competitive market conduct
- to ensure that regulatory decision making has regard to the relevant health, safety, environmental and social legislation applying to the regulated industry
- to ensure that users and consumers (including low-income or vulnerable customers) benefit from the gains from competition and efficiency
- to promote consistency in regulation between States and on a national basis.

The Commission will not grant an application for the issue of a licence unless the Commission is satisfied that:

- the applicant has and will maintain the technical capacity to comply with the conditions of the licence, and
- the applicant is financially viable and will continue to be so.

The GI Act also enables the Commission to impose such terms and conditions on a licence as the Commission so determines.

The purpose of these Guidance Notes is to provide guidance to licence applicants on the information required from applicants and the Commission's approach to assessing applications in relation to issuing a retail licence.

The Guidance Notes should be read in conjunction with the *Procedures for Applications for Gas Licences and Gas Licence Transfers*. Section 26(3) of the GI Act provides for the Commission to decide the procedures that are to apply with respect to the issue of licences. The Procedures can be accessed on the Commission's website at www.esc.vic.gov.au.

Applicants should note that these Guidance Notes are for information purposes only and do not in any way derogate from or amend any statutory or regulatory requirements. The Commission may in processing an application, at its discretion and where it considers it appropriate, require additional information or depart from the process described in these Guidance Notes.

1.1 Information sources

Division 2 of Part 3 of the GI Act outlines the law with regard to the licensing of gas distribution and retail entities. A copy of the relevant legislation cited in these Procedures is available at <http://www.dms.dpc.vic.gov.au>.

The Commission's website (www.esc.vic.gov.au) provides details of the relevant and applicable codes and guidelines that apply to the distribution and/or retailing of gas in Victoria. All applicants must be familiar with and be able to demonstrate to the Commission that they have a detailed understanding of these provisions. Applicants can find information concerning these codes and guidelines on the Commission's website.

Applicants should also be aware of their responsibilities (if any) under the National Third Party Access Code for Natural Gas Pipeline Systems. These Codes can be located at the following website: <http://www.treasury.gov.au/documents>

1.2 Applicant's responsibilities

The applicant is responsible for providing the Commission with accurate and relevant documentation. This will ensure that the application is processed promptly and without delay.

All applications are assessed on a case-by-case basis. If insufficient information is provided with an application the Commission will generally specify and request additional information to be submitted before the application is considered further.

However applicants should note that it is their responsibility to provide all necessary detail with their application and should not rely on the Commission to search for or request information to support any application.

In Victoria, a person is required to hold a licence issued under the GI Act to distribute gas or sell gas, unless otherwise exempt under the provisions of section 24 of the GI Act. This requirement applies regardless of whether the person distributing or selling gas is doing so as a principal or as an agent of the principal.

Unless exempted, distributing or selling gas without a licence is an offence under the provisions of the GI Act. If found guilty, the penalty for the failure to hold a licence is up to 1200 penalty units and 120 penalty units for each day after the day on which a notice is served on the person by the Commission (refer to sections 22 and 23 of the GI Act).

The holder of a gas licence must also apply to the Commission if they wish to have the licence transferred to another party or entity or wish to surrender the licence.

Section 26 of the GI Act provides that the Commission may grant or refuse an application for a licence for any reason it considers appropriate, having regard to the objectives of the Commission under the GI Act and under the ESC Act.

2.1 Who may apply for a licence?

An application for a licence may be made by any legal person including, without limitation, individuals, partnerships, incorporated associations, unit and other forms of trusts and corporations. Entities that are not a legal person (for example, an unincorporated joint venture) cannot apply for a licence.

2.2 Form of the application

Chapter 3 of these Guidance Notes and its accompanying schedules set out the information that should be included in any application. Applicants should note that these Guidance Notes are a general statement of what will usually be required and the Commission may require the applicant to provide additional information.

Every application must be accompanied by a statutory declaration, confirming the accuracy and completeness of all information provided in the application. A sample statutory declaration is set out at schedule 3 to these Guidance Notes.

Applicants can view recent licence applications in the gas sector on the Commission's website at www.esc.vic.gov.au.

The Commission notes that a transfer of licence may attract the payment stamp duty to the State Revenue Office. As this is a matter of protecting State revenue, where a transfer arises, the Commission will require evidence that the transferor has obtained advice (either legal and/or accounting) concerning whether a duty is payable for the transfer.

2.3 Licence application fees and transfer fees

The GI Act provides that an application or licence transfer must also be accompanied by the application fee, if any, as fixed by the Commission (refer to section 25(3) of the GI Act). At the date of publication, no application or transfer fees have been prescribed under this section. Applicants should confirm with the Commission whether this has changed prior to lodging an application.

2.4 Annual licence fees

Holding a gas licence incurs annual licence fees. These fees and charges are determined by the Minister for Finance (in accordance with section 30 of the GI Act) having regard to the total costs and expenses incurred by the Commission in the exercise of its powers, performance of its functions and achievement of its objectives in relation to the gas industry.

Each annual determination by the Minister specifies the various licence fees apportioned annually to the licence categories within the gas sector. Copies of the Minister's Determinations are placed on the Commission's website each year.

The licence fees determined by the Minister for Finance are administered by the Commission. At annual intervals, the Commission, on behalf of the Department of Treasury and Finance, will send to each licensee, depending on the licence category within the sector, an invoice for the licence fee in respect of the preceding financial period ending on 30 June. The invoice will contain the detail of the licensee, the licence category, 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.

2.5 Requirements of holding a licence

The term of the licence and its conditions are at the discretion of the Commission (see section 28 of the GI Act). Section 29 of the GI Act outlines some of the types of conditions that can be included in a licence.

A copy of each current licence can be found on the Commission's website: www.esc.vic.gov.au. Applicants should note that the Commission may, consistent with section 28 of the GI Act, impose additional or alternative obligations on a particular licensee.

Applicants already holding a licence or having a direct or indirect interest in an entity holding a licence should be aware that some interests are prohibited and they should consult Part 6 of the GI Act, and where applicable, obtain independent advice.

By virtue of their licence, a distribution or retail licensee is generally required to comply with any applicable Codes, Guidelines or instruments issued by the Commission as well as other relevant requirements including the Gas Safety Act provisions and national instruments. These include, but are not limited to:

- the Energy Retail Code
- the Retail Gas Market Code
- the Code of Conduct for Marketing Retail Energy in Victoria
- the Gas Distribution System Code
- the National Third Party Access Code for Natural Gas Pipeline Systems
- the Retail Gas Market Rules.

The Codes, Guidelines and other instruments issued by the Commission can be found on its website: www.esc.vic.gov.au.

2.6 Transfer of a licence

After a licence is granted, it may be transferred with the Commission's approval (and following a public consultation process) (refer to sections 40(1)-(9) of the GI Act).

The Commission will require the existing licensee (the transferor) to apply to the Commission in writing (executed under seal, if a corporation) for the approval of the transfer of the licence to the transferee. The Commission will also require written confirmation from the transferee setting out their formal consent to the transfer.

The Commission will require the transferor to provide from the transferee all relevant information and necessary declarations set out in these Guidance Notes and to follow the process set out in the Procedures as if the transferee were applying for a new licence to be issued.

In addition to a Statutory Declaration, a transfer of licence application must also be accompanied by a declaration in the form set out at schedule 2 of the Guidance Notes.

2.7 Exemptions from the requirement to hold a licence

Section 24 of the GI Act provides for some persons to be exempted from the requirement to obtain a licence. Exemptions are by way of an Order made by the Governor in Council.

All enquires regarding exemptions should be made to the Department of Infrastructure (Energy and Security Division) – telephone (03) 9655 8888.

2.8 Gas Safety Act — Energy Safe Victoria

The *Gas Safety Act 1997* requires all licence applicants to complete and submit a gas safety case to Energy Safe Victoria (ESV) for each of their facilities prior to the commencement of trading. Once licensed, all licensees are required to submit a revised gas safety case for each facility at least every five years (see sections 45 and 46 of the *Gas Safety Act 1997*). The Commission is not responsible for monitoring applicants' and licensees' compliance with the requirements of the *Gas Safety Act 1997*. Applicants should contact Energy Safe Victoria (incorporating the former Office of Gas Safety) on telephone (03) 9341 3800 to inquire about the

requirements for completing a gas safety case. The applicant can also access information via the website of Energy Safe Victoria at <http://www.esv.vic.gov.au/>.

2.9 VENCORP

It is a requirement under the GI Act that applicants must also register as a market participant with VENCORP. An entity cannot trade in the market place until this process has been completed.

VENCORP can be contacted on telephone (03) 8664 6500 or via its website at <http://www.vencorp.com.au/html/index.htm>.

Consistent with the objectives of the Commission and the GI Act (see section 18), an applicant's financial viability and technical capacity are central to the consideration of an application for either a retail or distribution licence. The Commission will also consider whether an applicant is a fit and proper person to hold a licence and an applicant should be prepared to provide information as to its probity and that of its senior management.

It is incumbent on the applicant to provide evidence that it can meet the entry criteria. This may include independent verification that the licence applicant is financially viable and has the technical capacity to comply with the conditions of the licence and all applicable regulatory requirements.

Applicants should note that a licensee is required to maintain both its financial viability and technical capacity (and comply with all other licence requirements) for the duration of the licence.

3.1 Financial viability

Applicants applying for a gas licence are required to demonstrate their financial viability to the Commission.

The term 'financial viability' is not defined in any legislation. Hence, the Commission has not released a definitive test of what constitutes financial viability for new gas industry entrants.

The Commission's statutory obligation is to be satisfied that the applicant will, if granted a licence, be capable of establishing a sustainable business able to satisfy the interests of consumers. In considering these issues, the Commission does so for its own purpose and its conclusion is not to be relied upon for any other purpose by any other person. The Commission's assessment may be based on a combination of information sources, none of which is to be regarded as individually determinative.

The key areas of enquiry and documentary evidence that the Commission may need to examine in relation to a particular applicant will depend largely on the individual circumstances of that applicant (including, for example, the type of licence sought and corporate structure of the applicant).

For a list of the key factors which may be examined by the Commission in confirming an applicant's financial viability refer to schedule 1.

3.2 Technical capacity

The Commission's assessment of technical capacity for licensees falls within two broad categories:

- the capacity to operate and manage the relevant gas business; and

- the capacity to comply with the applicable regulatory requirements.

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 supporting documentation as evidence, amongst other things, that demonstrates that:

- it has the business skills, knowledge, personnel, systems and the ability to operate the relevant gas industry 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 (for example AS – 3806 of 2006), and
- it has the capacity to comply with regulatory requirements as specified in the GI Act, the licence and applicable codes and guidelines.

A list of the obligations that the applicant must demonstrate its technical capacity to undertake is set out in schedule 1.

If the 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 the Commission with copies of these contracts in their final form. Applicants should be aware that it is not acceptable to the Commission to state that they are unable to produce such contracts on the basis that they are 'confidential'. When entering into any such contract an applicant should ensure that the contract can be produced to the Commission. The Commission will treat the contents of such contracts as confidential (refer to paragraph 4.5).

In considering 'materiality', the number of different contracts will be considered and any group of like contracts will be taken together. However, it remains at the discretion of the Commission which contracts an applicant may need to provide.

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 (see section 22 of the GI Act).

The information requirements for establishing technical capacity are discussed in schedule 1.

3.3 Revocation or surrender of licence

Where the revocation of the licence is by agreement or the licence holder intends to surrender the licence, the Commission must ensure the protection of consumers and other third parties and demonstrate that it has acted prudently, reasonably and in conformity with its statutory duty.

Prior to the Commission agreeing to the surrender of a licence, the licensee must:

- Provide the Commission with a signed declaration confirming that:
 - all customers have been accounted for, that is, that they have already been transferred or novated to another licence holder (transferee) or will be so transferred by completion of the proposed transfer

- the customers who have been transferred or novated to another licence holder have done so under the same or more favourable terms and conditions
- confirmation that the transferee is willing to accept the customers on the same terms and conditions, and
- Provide written advice of the legal arrangements to be put in place in the event of litigation by an aggrieved customer within a 6year period following the revocation or surrender.

The time that the Commission will take to process a complete application is usually from 8 to 10 weeks, including public advertising and the provision to the Commission of public submissions. However, this depends largely on the circumstances of the applicant, the quality and standard of the documentation provided to the Commission 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.

In assessing an application for a licence, the Commission must have regard to its objectives under the GI Act (section 18) and the ESC Act. The Commission may engage the services of external consultants (for example accountants or lawyers) to assist in the assessment of the information provided to the Commission.

The Commission generally interacts with the applicant during the application phase providing guidance and feedback wherever possible. Therefore, applicants are encouraged to provide a draft application to the Commission before it is formally considered by the Commission. The type of information that the Commission will usually require to be included in an application is set out at schedule 1.

Whilst the Commission, where appropriate, assists the applicant to prepare the licence application prior to the applicant formally submitting the application, the applicant bears complete responsibility to provide the Commission with accurate, truthful and relevant documentation.

The Commission also encourages applicants to consult with other entities including the Energy and Water Ombudsman of Victoria (EWOV), VENCORP, the Department of Human Services and Energy Safe Victoria.

The Commission has developed *Procedures for Applications for Gas Licences and Gas Licence Transfers*. These Procedures describe the processing of a licence application by the Commission and can be obtained from the Commission's website: www.esc.vic.gov.au.

4.1 Publication of the licence application

Section 26 (2) of the GI Act requires publication of the application. On receipt of the formal licence application, the Commission will publish a notice in a daily newspaper circulating generally in the State of Victoria (for example, *The Age*) inviting the public to obtain a copy of the application and to make submissions consistent with the Commission's objectives at section 8 of the ESC Act. The Commission may also publish this notice in a local newspaper if it deems this is appropriate.

A copy of the application is also published on the Commission's website. Stakeholders registered with the Commission (including all other licensees) are individually notified of the application by way of e-mail.

The closing date for submissions is usually 4 weeks after the application is advertised, although this period may vary depending upon the application.

4.2 Commercial-in-confidence information

While it is the Commission's preference to provide as much detail as possible to the public (to assist with the submission process), the Commission acknowledges that an application may include commercial-in-confidence information.

Applicants should clearly mark any commercial-in-confidence information on each relevant page and place it in a stand-alone section of the application (see schedule 1). All such information should be clearly cross-referenced to the relevant section of the application.

Only information that is in fact commercial-and-in-confidence should be marked as such (that may include marketing strategies, contractual agreements, financial data and projections), as the public must have sufficient information to be able to make meaningful submissions to the Commission regarding the licence application.

No party will be provided information that the Commission agrees is commercial-and-in-confidence.

If the Commission does not agree with an applicant's designation of information as "commercial-and-in-confidence", the Commission will generally notify the applicant, although it has no obligation to do so, that it does not agree with designation of the information as being "commercial-and-in-confidence" prior to making the information available to the public.

4.3 Submissions

The Commission accepts submissions in relation to an application from all interested persons. An interested person can include other industry bodies, regulators, private sector operators and community or consumer groups. This process provides the wider community with the opportunity to comment on the scope and possible issues arising from an application and forms an integral part of the process for considering an application. This is consistent with Section 26 of the GI Act and Section 15 of the ESC Act.

All submissions received, except those which are commercial-in-confidence or not in accordance with the terms and conditions of publication, are published on the Commission's website (see www.esc.vic.gov.au/index902.html).

Once all submissions have been received, the Commission will notify the applicant in writing that submissions have been made and provide the applicant with copies of any published submissions and summaries of any unpublished submissions. This will provide the applicant with an opportunity to comment on the submissions and to clarify or respond to any issues raised.

The Commission will take into account all submissions in its assessment of a particular application and may contact the interested party or stakeholder to discuss any submission.

All enquiries regarding submissions should be directed in writing to the Manager, Licensing.

4.4 Final decision

Following completion of the submission process, the Commission will undertake a review of the application and any other information provided or obtained in relation to the application. In reviewing the accuracy and reliability of the information given by the applicant, the Commission may use external information such as the views of consultants appointed by the Commission. An applicant is given an opportunity to respond to any adverse comments made by such consultants or information derived from external sources.

The Commission considers all material relevant to an application, including all the material lodged in support of an application by an applicant, submissions made by interested persons and any other information including responses to that information by the applicant.

Applicants will be notified of the Commission's decision in writing (see section 26(4) - GI Act) and the decision will be posted on the Commission's website. The Commission's published final decision on the application may include specific comment on the submissions. The Commission is also required by legislation to publish its decision in the Victorian Government Gazette. Those who have provided submissions in relation to the application will be notified of the Commission's final decision.

In the event of a refusal to grant a licence, the Commission will provide to the applicant reasons for the refusal (see section 26(4)-GI Act). In the event the Commission refuses to grant a licence, the applicant may have rights of review and should consider obtaining legal advice in respect of such. Should the Commission refuse to grant a licence, and the applicant does not initiate any form of litigation arising from the decision, the Commission may publish the decision on its website. The Commission will not publish the grounds for refusing an application.

As set out in chapter 2, the Commission has the power to impose specific licence conditions as it sees fit (see sections 28 and 29 of the GI Act). Forms of current licences are located on the Commission's website.

SCHEDULE 1 CONTENT OF THE APPLICATION

The Commission does not have a specific licence application form. Rather, the Commission places the onus on the applicant to provide sufficient information in support of its application.

However, to provide guidance to applicants, the Commission has set out in this schedule a summary of the information that an applicant may be expected to provide. The information listed is not exhaustive and the Commission may require an applicant to submit additional information.

Section 1 Information on the applicant and nature of the application

The applicant should provide the following information:

- Name of the applicant
- The ABN or ACN details
- Registered, business and/or postal address
- Contact person on behalf of the applicant (name, title and contact details)
- Diagram of corporate or other structure (including details of any parent and related companies within the meaning of the Corporations Act 2001)
- Diagram of organisational structure (including composition of the board, management and other key personnel)
- A short summary of the experience of the key personnel
- A summary of all contracts and agreements entered into by the applicant that is relevant are to the application (including details of any outsourcing arrangements, supplier or customer contracts). Contracts with related parties are especially relevant and must be provided in full as applicable
- Incorporation details (including a copy of the applicant's Certificate of Registration, Memorandum of Association and Articles)
- If the applicant is an entity formed pursuant to a partnership, include a copy of the partnership agreement
- If the applicant is a trust, include a copy of the trust deed
- If the applicant is a special purpose or 'joint venture' company, include a copy of any joint venture agreement, shareholders' agreement and/or associated agreements
- If it is proposed to undertake some or most of the operational aspects of a licence, if issued, through a service company, copies of proposed agreements and the relationship with the service provider must be provided. If the applicant is domiciled outside Australia, certified documentation of the registration of the business or company and the constitution/rules from the country where the entity is registered. Additional information concerning corporate regulation in the foreign country may be required. (For those corporations registered and

incorporated in Australia, the Commission will undertake its own direct searches of the ASIC database.)

- If a non public company, trust or other non public entity, details of the names and addresses of shareholders, unit holders, beneficiaries or others having an interest in the entity
- Details of any prosecutions or regulatory complaint commenced against the applicant or any other company or person related to or associated with the applicant as defined by reference to the Corporations law or any key personnel in any jurisdiction, and the results or status of such prosecutions or complaints.

In regard to the application, the applicant should provide:

- Type of licence sought
- Date from which licence is sought
- Nature and scope of operations for which the licence is sought
- Details of current or former licences held in this and/or other jurisdictions
- Previous unsuccessful licence applications sought in this and/or any other jurisdictions
- Licences held by associates of the applicant. The term “associates” includes subsidiaries, parent and other related parties of the applicant as defined in the Corporations Law
- Licence conditions — if the applicant is seeking non-standard licence conditions, the nature and reasons for seeking these conditions should be explained. In such circumstances the applicant should also provide a draft outline of the proposed licence or ‘non-standard’ conditions compared with the current standard licence on the Commission’s website as at the date of the application.

The applicant should also provide information on existing activities both within and external to the gas industry:

- List experience of key personnel, the applicant and related parties within and external to the gas industry.
- Details of the broad nature of proposed participation in the Victorian gas industry.

Section 2 The Commission’s objectives

The applicant should review the objectives set out under sub-sections 8 (1) and (2) of the ESC Act and explain how the granting of a licence to the applicant would be consistent with those objectives.

Section 3 Information on financial viability

The applicant must provide to the Commission:

- a series of statements within the public component of the application that the applicant can meet and address the financial criteria; and
- a dedicated section [Commercial-and-in-Confidence] that provides the documentary evidence and support for the applicant’s case that it has

sufficient financial resources or access to such resources to sustain a viable business in the gas industry.

This section should include:

- Current balance sheet and financial data
- Significant contracts
- Annual Report
- Standard & Poor's or other acceptable rating
- Statements from internal/external auditors
- Statements from consultants including accountants and legal advisors
- Statement of assets and liabilities
- Shareholder register
- Certificate of registration/partnership agreement/trust deed
- Statements from banks/financiers, shareholders, the board or the parent company

Applicants must also provide a business plan covering the next 5 years that addresses the rationale supporting the applicant's case that it meets this criterion, and an assurance by the applicant that it has sufficient financial resources to sustain its operations.

Section 4 Information on technical capacity

For all licence applications, this section should include statements within the public component of its application that support that it has the expertise, knowledge and skill base to operate a viable gas business in the relevant field. In addition, this section should include details of:

- Contracts, including customer and supply contracts and outsourcing arrangements
- Statements from industry bodies including EWOV and other regulators
- Internal policies and procedures
- Business model plans
- Risk management policies
- Governance policies
- References for key personnel
- Australian Financial Services Licence — if applicable
- Demonstrations of billing and management systems — if applicable
- Complaints register and procedures
- Privacy statements
- Document retention policies
- Industry submissions and results of any research supporting the application

Information in support of a distribution licence application

In support of an application for a gas distribution licence, the applicant must provide:

- Details of experience in and knowledge of the gas industry

- A summary of the skills and experience of the directors and senior managers and their relevance to meeting the requirements of the licence
- Evidence that the applicant has the capacity to comply with the licence conditions, codes and guidelines relevant to its application
- If the applicant is to rely on another entity to provide staff and resources, a summary of the relationship between the applicant and this entity, including any formal agreements to provide services, and a summary of this other entity's experience in and knowledge of the gas industry, and technical capacity to meet the relevant requirements of the licence
- Confirmation that a gas safety case is in progress
- Risk, governance and compliance management and strategies
- Evidence that demonstrates that the entity can successfully operate a business within the gas industry

Information in support of a gas retail licence application

In support of a retail licence application, the applicant should provide information:

- Details of experience in and knowledge of the gas industry
- A summary of the skills and experience of the directors and senior managers and their relevance to meeting the requirements of the licence
- Evidence that the applicant has the capacity to comply with the licence conditions, codes and guidelines relevant to its application
- If the applicant is to rely on another entity to provide staff and resources, a summary of the relationship between the applicant and this entity, including any formal agreements to provide services, and a summary of this other entity's experience in and knowledge of the gas industry, and technical capacity to meet the relevant requirements of the licence
- An assurance by the applicant that it has sufficient financial resources to sustain its operations

The application must also provide information on its:

- capacity to operate a business:
 - Managing supplier contracts
 - Managing customer contracts
 - Customer account establishment and management
 - Customer service provision
 - Billing and collection
 - Appropriate management systems
- capacity to comply with regulatory requirements
 - Provision of information to distributor
 - Meter reading
 - Provision of information to customers
 - Privacy and confidentiality management
 - Customer information management system

- Management and compliance systems

In providing this information, the applicant should demonstrate its capacity to:

- manage supplier and customer contracts
- maintain customers' accounts accurately and securely
- provide customer service at least to the standards as specified in the relevant codes and guidelines
- manage and undertake customer billing and collection
- maintain appropriate management, governance and reporting systems consistent with codes and guidelines and any applicable Australian Standards (AS-3806, AS – 8000)
- maintain appropriate management and records systems.

Applicants must demonstrate that they have documented Procedures, processes and practices in place in order to achieve these outcomes and to facilitate the training of personnel that reflect, amongst other things, the applicant's application of the relevant industry standards, and in particular, the Commission's codes and guidelines. For example, staff involved in the marketing of gas to new or potential customers must be appropriately trained in the licensee's obligations.

Manage supplier and customer contracts

Applicants should demonstrate their ability to successfully manage supplier contracts. This includes the capacity to:

- in the case of a retail licence applicant, enter supply contracts for the purchase of gas
- account for and settle energy purchases and/or network service charges
- manage risk by having contingency arrangements and to establish processes to minimise any financial exposure.

Applicants should also demonstrate that they can successfully manage customer contracts. This includes ensuring that in the case of a retail licence:

- The terms and conditions of proposed contracts with customers (refer to the definition of customer in the GI Act) and potential customers will be in accordance with all relevant codes and guidelines.
- Where contracts with categories of customers differ from standards established under the various codes, clear statements of the differences are to be provided to the customers.
- Retail applicants should note that there is also an obligation to maintain accurate data on a website including the terms and conditions of contracts, exit arrangements and other relevant consumer information
- Terms and conditions of proposed contracts with customers clearly and accurately set out the customers' and retailers' rights and obligations and comply with the requirements of Fair Trading legislation or other relevant competition legislation such as the Trade Practices Act 1974 (Cth).
- Established protocols for dispute resolution processes are consistent with the Australian Standards and may include membership with the Energy and Water Ombudsman of Victoria (EWOV) (refer to EWOV's website at www.ewov.com.au) or membership of an alternative scheme acceptable to the Commission.

Customer account establishment and management

Clear processes for establishing and managing customer accounts are required. Key aspects include:

- the capacity to legally perform creditworthiness checks
- account establishment on an appropriate customer information system and consistency with the Privacy Act 1988 (Cth) and the National Information Privacy Principles
- the ability to maintain accurate and up to date records of customers' account histories, and
- established and precise protocols to undertake the closure of customer accounts (on request of a customer), including the ability of a retailer to send a final bill to customers within a reasonable period after receiving customer advice of the transfer or termination of contract.

Customer service provision

The ability to ensure a consistent and high level of service to customers is crucial, including providing evidence to demonstrate that an applicant can operate and sustain a gas business. Key aspects of successful customer service provision and account management include:

- a call centre to handle telephone calls from customers (and potential customers), including matters involving, amongst other things, account and billing issues and inquiries and the accurate recording of all interaction and exchanges with customers. (Note that if the applicant contracts out the services of a call centre to handle all customers' issues then the Commission must be provided with a copy of the contract)
- the capacity to record all inquiries and issues overseen by the call centre
- the capacity to handle customer correspondence by letter, fax or email
- the capacity to collect information for review and performance measurement purposes
- membership and participation in the Energy and Water Ombudsman Scheme (EWOV) or an alternative scheme acceptable to the Commission
- the capacity to handle complaints and resolve disputes (refer to Australian Standard AS 4269). The applicant must also demonstrate how disputes are managed within the corporate structure if they escalate, including escalation by the customer to EWOV.

Billing and collection

Applicants will be required to demonstrate that they are able to manage all aspects of the customer billing and collection processes. Key aspects of this include the demonstrated capacity to undertake:

- the provision of billing options for customers
- the generation of cyclical bills from meter readings or estimations
- interaction with distributors and VENCORP
- the printing and dispatch of bills to customers consistent with the provisions of the Energy Retail Code
- receipting of payments received and management of late payments

- payment difficulties management process
- reconnection of supply (retailer and customer obligations, time to reconnect, charges), and
- processes for the recovery of unpaid debts.

Note: If the billing arrangements are outsourced, the Commission must be provided with a copy of the contract between the parties.

Appropriate management systems

Applicants must demonstrate that they have established appropriate financial, operational and administrative systems including maintenance of accounting requirements commensurate, at a minimum, with the Australian Accounting Standards.

Meter reading

The applicant must demonstrate the capacity to either itself or through a meter data agent, undertake meter-reading activities such that meters are read at least once in every 12 month period.

Provision of information to customers

Information on service offerings to relevant customers must be in line with the Energy Retail Code and should detail:

- customer obligations
- retailer obligations
- pricing information and options
- a customer charter (containing minimum service standards)
- contract terms (terms and conditions of contract, termination provisions)
- meter reading schedule and/or estimation arrangements
- details of billing (billing period, how bills are issued, contents of bills, basis of bills)
- bill error handling
- payment (terms of payment, methods of payment, advance payment, late payment, instalments, concessions)
- complaint handling and dispute resolution processes (retailer's obligations, customer's rights, procedure, access to the Energy and Water Ombudsman Scheme)
- termination of supply (procedure)
- reconnection of supply (supplier and customer obligations, time to reconnect, charges).

Privacy and confidentiality management

Applicants must demonstrate their capacity to maintain confidentiality of customer data and to comply with relevant Commonwealth and State privacy legislation. This is amplified in the relevant provisions of the Energy Retail Code, the Gas Distribution Code, the Gas Retail Market Rules, the Code of Conduct for Marketing Retail energy in Victoria and all applicable guidelines issued by the Commission.

Customer information management system

A customer information system should be able to handle data and communication required for reporting to the Commission and licensed gas distributors. As a minimum this system should include the following information:

- customer contact details (including name, supply address, billing address and phone number)
- contract terms — prices and payment terms
- payments history (12 months)
- record of complaints
- consumption history
- billing history
- previous suppliers
- contact notes (record of each customer call)
- requests for no marketing information.

Management and compliance systems

Licence holders are expected to have a high commitment toward the overarching management of risk, governance and compliance. This is also highlighted in part with the gas safety case. The Commission will require evidence of systems relating to corporate governance, risk management and compliance with the relevant Australian Standards. This will facilitate compliance testing, reviews and audits as required by the Commission and as specified in licences.

Section 5 Commercial-in-confidence information

In order to fully inform the public about the licence application, the Commission prefers that all information provided by the applicant can be made publicly available.

However, some sections of the application can be withheld from the public if warranted for commercial-in-confidence reasons. Any information submitted on a commercial-in-confidence basis should be attached as schedules to the application and be marked as commercial-in-confidence, together with an explanation as to why the information is marked as such. Applicants should include clear cross-references, identifying the section to which the commercial-in-confidence information relates.

Where the Commission considers that material has been inappropriately identified by an applicant as commercial-in-confidence, it will, at its discretion, discuss this request with the applicant if it considers that such information should be publicly disclosed, for example for the purpose of inviting submissions. The Commission will discuss this with the applicant prior to releasing such information however its publication is at the discretion of the Commission.

SCHEDULE 3 STATUTORY DECLARATION

Statutory Declaration

I, of (insert address) being the (insert position) of the Applicant, *(insert name of applicant)* **Hereby DECLARE** that the information contained in this application, and attachments thereto upon which I have placed my signature, for the grant of a *(insert type of licence applied for)* licence under the Gas Industry Act 2001 is true and correct and that I make this declaration conscientiously believing the same to be true and in the belief that a person making a false declaration is liable to the penalties of perjury¹

Declared at in the State of Victoria

Signature of Declarant

This day of day of 200

.....

.....
Before me
(A person authorized by section 107A of the Evidence Act 1958 (Vic))

¹ Refer to section 107 of the Evidence Act