

# APPLICATION FORM FOR THE ISSUE OF A LICENCE BY THE ESSENTIAL SERVICES COMMISSION OF SA UNDER THE WATER INDUSTRY ACT

## *Application Form*

THIS REGULATORY DOCUMENT SHOULD BE READ IN CONJUNCTION  
WITH THE FINAL ADVICE







**Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012**

Application Form

## TABLE OF CONTENTS

Information for applicants before filling out this form	1
Purpose of this form	1
1. The Applicant	4
1.1. Identity of applicant	4
1.2. Legal identity of applicant	4
1.3. Address and Contact Details of applicant	4
1.4. Contact Person on behalf of applicant	5
1.5. Contact person for licence fees	5
2. The Licence	6
2.1. A detailed description of the retail services for which a licence is sought	6
2.2. Date from which Licence is sought	6
3. Suitability of Applicant to Hold a Licence	7
3.1. Standard of honesty and integrity shown by applicant	7
3.2. Standard of honesty and integrity shown by officers and major shareholders (if relevant) of the applicant	7
3.3. Names and addresses of the officers of applicant	9
3.4. Names and addresses of major shareholders of applicant (not relevant for local council applicants)	10
3.5. Details of the group members (not relevant for local council applicants)	11
3.6. Additional information	11
3.7. Financial resources available to the applicant	12
3.8. Human resources available to the applicant	12
3.9. Technical resources available to the applicant	13
3.10. Contracts	14
3.11. Suitable and appropriate infrastructure	15

**Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012**

Application Form

3.12. Risk management \_\_\_\_\_ 15

3.13. Licences held by the applicant in other Australian jurisdictions \_\_\_\_\_ 17

3.14. Previous unsuccessful licence applications in other Australian jurisdictions \_\_\_\_\_ 17

3.15. Licences held by associates of the applicant \_\_\_\_\_ 17

3.16. Compliance program \_\_\_\_\_ 17

3.17. Additional information \_\_\_\_\_ 18

4. Factors specified in the Essential Services Commission Act 2002 \_\_\_\_\_ 20

5. Application Fees \_\_\_\_\_ 21

6. Declaration \_\_\_\_\_ 22

**Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012**

Application Form

## INFORMATION FOR APPLICANTS BEFORE FILLING OUT THIS FORM

### *Purpose of this form*

This form is to be completed by persons making an application to the Essential Services Commission of South Australia (the **Commission**) for the issue of a licence to provide a retail service (or undertake any other activity for which a licence is required by the regulations) in the water industry in South Australia.

The Commission may consider joint applications from two or more persons who wish to hold a licence jointly. Persons making joint applications must ensure that each of the applicants completes a separate application form together with a covering letter explaining that the application is for a licence to be jointly held.

### *Basis for this form*

Section 19(1) of the *Water Industry Act 2012* (the **Act**) provides that an application for the issue of a licence must be made to the Commission in a form approved by the Commission. This is the form approved by the Commission.

### *Use of this form and applicant's responsibility*

For the purpose of this application form, a reference to the term "Officer" include the applicant's directors and secretary, and/or other persons who make or participate in making decisions that affect a substantial part of the business of the applicant (e.g. Chief Executive Officer, Chief Financial Officer, General Manager etc.).

Applicants should list the information requested in the spaces provided in this form and enclose additional information when required. Applicants must take all reasonable steps to ensure the information provided in the application form is complete, true and correct and are required to make a declaration to that effect. Failure to disclose information or misrepresent any matter relevant to such information may result in a licence not being issued or in the suspension or cancellation of a licence at a later time.

Applicants are responsible for providing the Commission with current, accurate and relevant information. 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 request additional information to be submitted before the application is considered further. This may cause delays in the assessment of the application.

## **Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012**

Application Form

### *Prior reading*

It is essential that licence applicants read the Commission's Water Bulletin – "*Licensing Arrangements for the Water Industry*" before they fill out this form. This Bulletin is available on the Commission's website [www.escosa.sa.gov.au](http://www.escosa.sa.gov.au) under water/licensing. Applicants should also familiarise themselves with the regulatory obligations set out in the Act and the Water Retail Code that will apply to entities that provide retail services.

### *Licence conditions*

Section 25 of the Act requires the Commission to impose certain conditions in licences. The Commission strongly recommends that applicants review these mandatory conditions. Applicants must be familiar with the relevant conditions and be confident that they can comply with the conditions. The Commission will have regard to the scale and nature of the operations undertaken by an applicant in imposing these conditions and will be available to consult with an applicant in this regard.

### *Consultation and Confidentiality*

The Commission will consult with relevant government, industry and consumer groups in the conduct of its licensing functions through a public consultation process. Consequently, applications and/or supporting information will be made available on the Commission's website and in hard copy from the Commission's office for this purpose.

If applicants believe that they are providing confidential information when completing this form they should write "this information is confidential" after any such information. It is the applicant's responsibility to ensure this is clearly highlighted on the form. Applicants should also provide a 'non-confidential' version of the form capable of publication on the Commission's website.

The Commission will use information supplied in applications and in support of applications in accordance with the requirements of Part 5 of the *Essential Services Commission Act 2002*. Applicants claiming confidentiality are encouraged to familiarise themselves with Part 5. Applicants should note that the Commission may be required to disclose confidential information in some circumstances.

**Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012**

Application Form

*How to lodge an application*

Applicants should send their completed application form in writing and electronically.

In writing to:      Essential Services Commission of SA  
                                 GPO Box 2605  
                                 Adelaide SA 5001

Electronically to: [licensing@escosa.sa.gov.au](mailto:licensing@escosa.sa.gov.au)

*Application fee*

Applicants must also enclose an application fee (which is to be set by the Treasurer) with their application. This fee must be received by the Commission in cleared funds before it can commence assessing an application.

*Annual licence fee*

Holding a licence incurs an annual licence fee. The licence fees are set by the Treasurer, however, are collected by the Commission. At annual intervals, the Commission, on behalf of the Department of Treasury and Finance, will send to each licensee an invoice for the relevant annual licence fee. Licence fees are to be paid on receipt of an invoice via one of the payment options set out in the invoice.

A licence cannot be issued until the first annual licence fee has been paid.



# 1. THE APPLICANT

*Applicants must answer all questions in this section.*

## 1.1. Identity of applicant

*State the full name of the applicant. The applicant should be the person/entity that will be providing a retail service (e.g. retail or distribution operations etc). The Commission can also consider joint applications from two or more persons who wish to jointly hold the licence. Joint applicants should each complete an application form, and submit their application forms at the same time, with a covering letter explaining that a joint application is being made.*

**Name:**      Michell Infrastructure Pty Ltd ACN 600 617 534 .....

.....

## 1.2. Legal identity of applicant

*Provide information about the applicant, (i.e. whether the applicant is a natural person, proprietary limited or public company, partnership or local government body etc). If the applicant is a body corporate, please also state the jurisdiction in which the applicant is registered, and the applicant's ABN/ACN.*

Proprietary limited company (ACN 600 617 534) registered in South Australia .....

.....

## 1.3. Address and Contact Details of applicant

**Business Address:**

C/- Mutual Trust, Level 33, 360 Collins St, Melbourne.....

.....

**State:**      Victoria .....      **Post Code:**      3000 .....

**Postal Address (if different to Business Address):**

.....

**State:**      .....      **Post Code:**      .....

**Telephone:**      03 9605 9523.....

**Facsimile:**      03 9605 9599.....

**E-mail:**      brad.simmons@mutualtrust.com.au.....

**Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012**

Application Form

**1.4. Contact Person on behalf of applicant**

*The full name, title and contact details of a person to whom the Commission can direct enquiries and correspondence about the application.*

**Full Name:** Brad Simmons .....

**Title:** Director, Wealth Management, Mutual Trust .....

**Business Address:**

Mutual Trust, Level 33, 360 Collins St, Melbourne .....

**State:** Victoria..... **Post Code:** 3000 .....

**Postal Address (if different to above):**

.....

**State:** ..... **Post Code:** .....

**Telephone:** .....

**Facsimile:** .....

**E-mail:** .....

**1.5. Contact person for licence fees**

*The full name or title of the person to whom the Commission can direct enquiries and correspondence about licence fees.*

**Full Name:** As above.....

**Title:** .....

**Business Address:**

.....

**State:** ..... **Post Code:** .....

**Postal Address (if different to above):**

.....

**State:** ..... **Post Code:** .....

**Telephone:** .....

**Facsimile:** .....

**E-mail:** .....

## 2. THE LICENCE

*Applicants must answer all questions in this section.*

### 2.1. A detailed description of the retail services for which a licence is sought

*For example:*

*Water: drinking- residential and/or non-residential;*

*Water: non-drinking – residential and/or non-residential;*

*Sewerage: residential and/or non-residential; and*

*Sewerage – trade waste – non-residential.*

*Applicants should provide detailed information in respect of where the retail services will be provided and to whom (i.e. type and number of customers)*

The applicant seeks a licence to supply a related entity, Michell Wool Pty Ltd (ACN 165 515 604) with water (non-drinking) for strictly non-residential purposes.

The applicant will be re-supplying recycled stormwater supplied to the applicant by a related entity, Michell Pty Ltd (ACN 109 004 024). Michell Pty Ltd is supplied with recycled stormwater by the City of Salisbury.....

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### 2.2. Date from which Licence is sought

*If the applicant seeks to have the licence issued by a certain date, provide this date. Please note that the Commission does not undertake to issue the licence by this date. Applicants should usually allow the Commission a minimum of eight weeks to consider an application, as a public consultation period of several weeks forms part of the Commission’s consideration of licence applications.*

31 January 2015 .....

### 3. SUITABILITY OF APPLICANT TO HOLD A LICENCE

*Applicants must answer all questions in this section.*

#### 3.1. *Standard of honesty and integrity shown by applicant*

*In deciding whether the applicant is a suitable person to hold a licence, the Commission may:*

- consider the applicant's previous commercial and other dealings, and*
- the standard of honesty and integrity shown in those dealings.*

*Please provide information that will assist the Commission in its consideration of this matter. If the applicant:*

- has been found guilty of any criminal offence,*
- has been successfully prosecuted under any Territory, State or Commonwealth legislation (such as the Australian Securities and Investments Commission Act 2001 or the Competition and Consumer Act 2010); or*
- has been the subject of disciplinary action,*
- details of such matters must be disclosed. Failure to disclose such information or misrepresent any matter relevant to such information may result in the cancellation of a licence.*

*The Commission may use the service of an external expert to assist with the assessment of the applicant's standard of honesty and integrity.*

The applicant has not been convicted of any criminal offence nor prosecuted under any State or Commonwealth legislation. The applicant welcomes any further enquiries by the Commissioner. ....  
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#### 3.2. *Standard of honesty and integrity shown by officers and major shareholders (if relevant) of the applicant*

*Applicants should address responses to this question in the same manner as 3.1 above.*

Each officer, shareholder and group member of the applicant (as detailed in sections 3.3, 3.4 and 3.5) has not been convicted of any criminal offence nor prosecuted under any State or Commonwealth legislation. The applicant welcomes any further enquiries by the Commissioner. ....

**Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012**

Application Form

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**Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012**

Application Form

**3.3. Names and addresses of the officers of applicant**

*State the names and addresses of the officers of the applicant. "Officers" of the applicant include the applicant's directors and secretary, or other persons who make or participate in making decisions that affect a substantial part of the business or operations of the applicant that will be licensed.*

**Full Name:** David Ronald Michell .....

**Date of Birth:** 10 May 1959 .....

**Office Held:** Director .....

**Business Address:**

181 Melbourne St, North Adelaide .....

**State:** SA ..... **Post Code:** 5006 .....

**Full Name:** Peter John Michell .....

**Date of Birth:** 11 October 1968 .....

**Office Held:** Director .....

**Business Address:**

181 Melbourne St, North Adelaide .....

**State:** SA ..... **Post Code:** 5006 .....

**Full Name:** .....

**Date of Birth:** .....

**Office Held:** .....

**Business Address:**

.....

**State:** ..... **Post Code:** .....

*(attach additional pages if necessary)*

3.4. *Names and addresses of major shareholders of applicant (not relevant for local council applicants)*

State the full names and addresses of the major shareholders of the applicant.

**Full Name:** Michell Pty Ltd (ACN 109 004 024) .....

**Date of Birth (if applicable):** .....

**Office Held:** Shareholder .....

**Business Address:**

181 Melbourne St, North Adelaide.....

**State:** SA..... **Post Code:** 5006 .....

**Full Name:** .....

**Date of Birth (if applicable):** .....

**Office Held:** .....

**Business Address:**

.....

**State:** ..... **Post Code:** .....

**Full Name:** .....

**Date of Birth (if applicable):** .....

**Office Held:** .....

**Business Address:**

.....

**State:** ..... **Post Code:** .....

*(attach additional pages if necessary)*

**Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012**

Application Form

**3.5. Details of the group members (not relevant for local council applicants)**

*This is information about entities controlled by the applicant, or by the ultimate parent entity of the applicant (if applicable).*

The applicant is wholly owned by **Michell Pty Ltd** (ACN 109 004 024) .....

Michell Pty Ltd is wholly owned by **Roubaix Holdings Pty Ltd** (ACN 139 894 027) .....

Roubaix Holdings is owned by entities and trusts controlled by **Mr David Michell** and **Mr Peter Michell** (see above details in directorship section).....

.....

**3.6. Additional information**

*Please answer the following questions.*

- *Is the applicant a resident of, or does it have permanent establishment in, Australia? If the answer to this question is “no”, please provide further details.*

Yes .....

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- *Is the applicant under external administration (as defined in the Corporations Act 2001) or under a similar form of administration under any laws applicable to it in any jurisdiction? If the answer to this question is “yes”, please provide further details.*

No .....

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- *Is the applicant immune from suit in respect of the obligations under the Water Industry Act 2012? If the answer to this question is “yes”, please provide further details.*

No .....

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- *Is the applicant capable of being sued in its own name in a court of Australia? If the answer to this question is “no”, please provide further details*

Yes .....

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**Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012**

Application Form

**3.7. Financial resources available to the applicant**

*Provide information about the financial resources available to the applicant which provides sufficient evidence of the current and ongoing financial capacity of the applicant to effectively provide the relevant retail services (e.g. bank guarantees, credit history and business continuity arrangements).*

*If the applicant is a company, please enclose a copy of the audited (and Board approved) profit and loss statement and balance sheet for the previous two financial years, including the director’s report and the audit opinion. If the applicant is a subsidiary company, please also provide a copy of the audited profit and loss statement and balance sheet of the applicant’s parent company for the previous two financial years.*

*If an applicant is a local council, please enclose a copy of the audited profit and loss statement and balance sheet for the previous two financial years.*

*Applicants should also submit copies of business plans which detail the strategic direction of the applicant, including its objectives, identified opportunities in the market place and forecast results.*

The applicant is wholly owned by, and is financially supported by, Michell Pty Ltd. Audited financial statements for Michell Pty Ltd for the period ended 30 June 2013, which include comparable prior year figures, are attached to this application as Attachment 1. **Attachment 1 is confidential.**.....

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**3.8. Human resources available to the applicant**

*Provide information about the human resources available to the applicant, for example, the number of employees and the experience of these employees in providing the services for which the licence is sought. If the applicant will employ contractor/s to assist with the licensed operations, please provide the name of that contractor/s, and details about the experience of the contractor/s in such operations and details of the processes in place to ensure the contractor/s will comply with the regulatory obligations imposed by the licence.*

The applicant has engaged Melbourne-based financial services firm, Mutual Trust, to manage its day to day administration and finances. The applicant has also engaged law firm Thomson Geer to provide legal services and to advise as necessary on compliance with the Act and any licence conditions; and WaterFind to provide technical consulting services.....

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**Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012**

Application Form

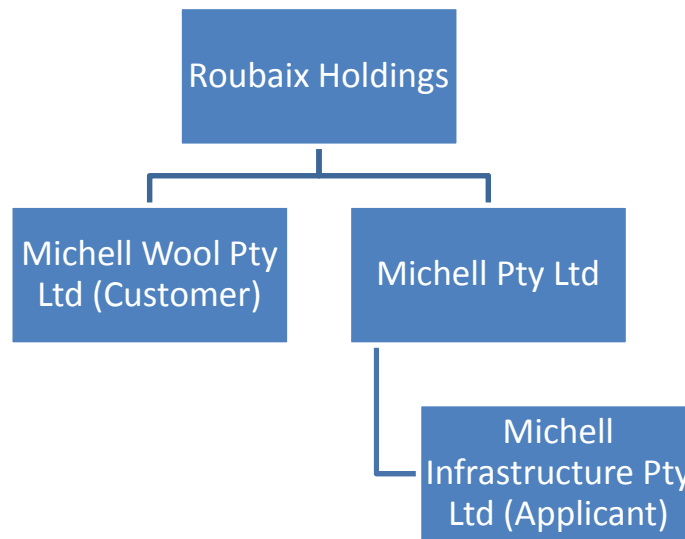
**3.9. Technical resources available to the applicant**

*Applicants are asked to provide details about the availability of technical resources to be used in carrying out the services for which a licence is sought. The information should include details about the technically qualified staff available to the applicant and (if relevant) of experience gained in similar operations.*

*Applicants must also provide sufficient details of the systems and processes to be used to market and/or communicate with customers, to provide bills, to follow up payments and process customer move-ins and move-outs and deal with customer enquiries and complaints.*

The applicant has engaged law firm Thomson Geer to provide legal services and to advise as necessary on compliance with the Act and any licence conditions; and WaterFind to provide technical consulting services.

As there will be only one non-residential customer, which customer is a related entity of the applicant (see response to question 2.1), customer enquiries and complaints (if any) will be dealt with at a group level by Roubaix Holdings, the ultimate holding company of both the applicant and the customer. An illustration of the group structure is outlined below:



As the applicant will be relying exclusively on infrastructure provided by the City of Salisbury (see response to question 3.11), there will be no need for the applicant to retain its own technical staff. Any technical issues regarding water quality that arise will be referred (via Michell Pty Ltd) to the City of Salisbury. ....

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**Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012**

Application Form

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**3.10. Contracts**

*Applicants must provide reasonable evidence that they are able to meet reasonably foreseeable obligations under contracts for the sale and supply of water or the sale or supply of sewerage services (or both) as the case may be. Such contracts would include contracts whereby the applicant is reliant on a supply of water or specific sewerage service from a third party which is intends to on sell to its customers.*

The applicant will acquire water from Michell Pty Ltd pursuant to a contract substantially in the form attached to this application as Attachment 2.

**Attachment 2 is confidential.**

The applicant will supply water to its customer, Michell Wool Pty Ltd, pursuant to a contract substantially in the form attached to this application as Attachment 3.

**Attachment 3 is confidential.**

The applicant notes in particular that under the agreement between the applicant and its customer, either party may terminate the agreement with immediate effect if the applicant's right to receive water from Michell Pty Ltd ceases or is suspended. In that event, the applicant could terminate its agreement to supply Michell Wool Pty Ltd and therefore, the practical risk of the applicant failing to meet its contractual obligations for the sale and supply of water to its customer is negligible.....

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**Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012**

Application Form

**3.11. Suitable and appropriate infrastructure**

*The Commission may not issue a licence unless it is satisfied that the infrastructure to be used in connection with the relevant service is appropriate for the purposes for which it will be used. Applicants are therefore asked to provide a detailed description of the infrastructure that will be utilised by the applicant in providing the retail services for which the licence is sought and verify that the infrastructure has been (or will be) developed in accordance with relevant Australian Industry Codes and Australian Standards with reference to technical specifications or reports.*

*If an applicant does not own the infrastructure to be used in delivering the relevant retail services, the applicant must provide information regarding the appropriateness of that infrastructure and of the binding arrangements that are (or will be) in place with the owner of the infrastructure in regards to the use of the infrastructure.*

The applicant’s parent company, Michell Pty Ltd, holds a water supply agreement with the City of Salisbury, entitling Michell Pty Ltd to receive an amount of water delivered to its premises at 1506 Main North Road, Salisbury South. Michell Pty Ltd has agreed to supply that water to the applicant, who in turn intends to on-supply that water to Michell Wool Pty Ltd.

All infrastructure required to deliver the water to Michell Pty Ltd's premises is provided and maintained by the City of Salisbury, itself a licensee under the Act. The applicant's customer will take water from the water delivery point to which it is delivered by the City of Salisbury. Therefore the applicant will not be required to own or operate any infrastructure to be used in connection with the supply of water to its customer. ....

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**3.12. Risk management**

*Provide confirmation and reasonable evidence that the applicant’s management has identified the risks associated with the retail services it intends to provide and has established, utilises and relies upon risk management systems and processes which are adequate, accurate and current to address those risks. A copy of the applicant’s risk management strategy should be submitted.*

**Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012**

Application Form

The licence sought by the applicant is for the purpose of facilitating the supply of non-drinking water between members of the same corporate group. As the customer (Michell Wool Pty Ltd) will be using the water supplied, the applicant has identified that the proposed arrangement is likely to constitute provision of a "retail service" as defined in the Act and therefore a licence is required.

Water quality and infrastructure issues are addressed in the agreement between the City of Salisbury and Michell Pty Ltd. The applicant is essentially passing through an entitlement to use water provided by the City of Salisbury. The permitted use of the water (non-drinking) is unchanged and the applicant makes no representations to the customer as to the quality of the water to be provided.

There is a risk in principle that the City of Salisbury might fail to deliver water to Michell Pty Ltd, in breach of its contractual obligations. In that event, the applicant retains the right to terminate the agreement between the applicant and the customer. Therefore contractual risk of non-supply is negligible.

Given the intra-group nature of the proposed arrangement, any administrative issues in connection with the supply of water should be negligible and will be addressed as and when they arise by the applicant's parent company, Michell Pty Ltd. ....

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**Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012**

Application Form

**3.13. Licences held by the applicant in other Australian jurisdictions**

*If the applicant holds, or has previously held, a retail services licence or equivalent in other Australian jurisdictions please provide details. If a licence previously held has been suspended or cancelled, please provide details.*

N/A.....  
.....  
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.....

**3.14. Previous unsuccessful licence applications in other Australian jurisdictions**

*Please state whether the applicant has applied for a water retail licence or equivalent in another Australian jurisdiction and not been issued with a licence, and provide relevant details.*

N/A.....  
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.....

**3.15. Licences held by associates of the applicant**

*If an associate of the applicant (within the meaning of the Corporations Act) holds a water retail licence in South Australia or in other Australian jurisdictions, please provide details.*

N/A.....  
.....  
.....

**3.16. Compliance program**

*Applicants are required to submit a copy of their Compliance Program which details what compliance systems the applicant has (or will have) in place and a description of how these systems will ensure compliance with the applicable regulatory obligations imposed by a licence and the Water Retail Code. The Commission expects that a Compliance Program will, as a minimum, document:*

- the obligations that will apply to the applicant;*
- the processes that are (or will be) in place to ensure the applicant’s compliance with obligations;*
- details on how compliance is monitored;*



**Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012**

Application Form

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## 4. FACTORS SPECIFIED IN THE ESSENTIAL SERVICES COMMISSION ACT 2002

*In considering a licence application, the Commission must have as its primary objective the protection of the long term interests of consumers with respect to the price, quality and reliability of essential services, and must also have regard to the need to:*

- a) promote competitive and fair market conduct;*
- b) prevent misuse of monopoly or market power;*
- c) facilitate entry into relevant markets;*
- d) promote economic efficiency;*
- e) ensure consumers benefit from competition and efficiency;*
- f) facilitate maintenance of the financial viability of regulated industries and the incentive for long term investment;*
- g) promote consistency in regulation with other jurisdictions.*

*If the applicant believes that information about their application would assist the Commission in its consideration of these factors, the applicant should provide such information below.*

N/A.....

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**Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012**

Application Form

## 5. APPLICATION FEES

Applicants for a licence must pay the Commission an application fee which is fixed by the Treasurer. Please enclose this fee with the application. An application cannot be considered until this fee has been received.

## 6. DECLARATION

All information in this application for the issue of a licence to authorise the provision of retail services in the water industry in South Australia must be verified by a Statutory Declaration of the applicant, in accordance with the provisions of the *Oaths Act 1936 (SA)*<sup>1</sup>, stating that the information contained in the application is true and correct to the best of the applicant's knowledge, information and belief.

In conjunction with this declaration, evidence of the relevant authority of the declarant to sign on behalf of the applicant must also be provided to the Commission.<sup>2</sup>

### Statutory Declaration

I ..... PETER JOHN MICHELL .....  
of ..... 93 TYNTE ST. NORTH ADELAIDE 5006 .....

do solemnly and sincerely declare that the information contained in this Application for the issue of a licence to authorise the provision of retail services in the water industry in South Australia is true and correct to the best of my knowledge information and belief.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1936*.

Date ..... 27/11/2014 .....

Signature ..... [Signature] .....

(Where the applicant is a body corporate, the declaration must be made by a person authorised by body corporate to sign on its behalf)

Declared at: NORTH ADELAIDE this 27<sup>th</sup> day of Nov. 2014

Before me: [Signature] .....

(Signature of Justice of the Peace or other person authorised under the *Oaths Act 1936*)

**ANDREW ROWAN ROFF**  
**A Commissioner for taking affidavits**  
**in the Supreme Court of South Australia**

- 1 Or equivalent legislation in other Australian jurisdictions.
- 2 The Commission will accept a copy of a Board or Council minute (or circulating resolution) giving approval for the declarant to sign on behalf of the applicant as evidence of the relevant authority.

**Application form for the issue of a licence by the Essential Services Commission of SA under  
the Water Industry Act 2012**

Application Form

**ATTACHMENT 1  
Audited Financial Statements  
This information is confidential**

**Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012**

Application Form

**ATTACHMENT 2**

**Form of supply agreement between Michell Pty Ltd and the applicant**

**This information is confidential**

**Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012**

Application Form

**ATTACHMENT 3**

**Form of supply agreement between the applicant and Michell Wool Pty Ltd**

**This information is confidential**





THE ESSENTIAL SERVICES COMMISSION OF SOUTH AUSTRALIA

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GPO Box 2605 Adelaide SA 5001

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