



Application Form for the Issue of a Water Licence

By the Essential Services Commission of SA
under the Water Industry Act

May 2020

Enquiries concerning this form should be addressed to:

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Table of contents

- Glossary of terms iii
- Information for applicants before filling out this form 1
 - Purpose of this form 1
 - Basis for this form 1
 - Use of this form and applicant’s responsibility..... 1
 - Prior reading 1
 - Licence conditions..... 1
 - Variation of licence conditions 2
 - Consultation and Confidentiality2
 - How to lodge an application3
 - Application fee.....3
 - Annual licence fee.....3
- 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 4
 - 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 8
 - 3.4 Names and addresses of major shareholders of applicant (not relevant for local council applicants)..... 8
 - 3.5 Details of the group members (not relevant for local council applicants)..... 9
 - 3.6 Additional information..... 9
 - 3.7 Financial resources available to the applicant..... 10
 - 3.8 Human resources available to the applicant 10
 - 3.9 Technical resources available to the applicant..... 11
 - 3.10 Contracts..... 11
 - 3.11 Suitable and appropriate infrastructure 12
 - 3.12 Risk management..... 12

3.13 Licences held by the applicant in other Australian jurisdictions	13
3.14 Previous unsuccessful licence applications in other Australian jurisdictions.....	13
3.15 Licences held by associates of the applicant	13
3.16 Compliance program	13
3.17 Additional information	14
4 Factors specified in the Essential Services Commission Act 2002	15
5 Application Fees	15
6 Declaration.....	16

Glossary of terms

Commission	Essential Services Commission, established under the Essential Services Commission Act 2002
ESC Act	Essential Services Commission Act 2002
Treasurer	Treasurer for the South Australian Government
Regulator	Technical Regulator

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.

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 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.

Variation of licence conditions

As part of the Commission's licensing function, it has the power to vary (or add to) conditions that are imposed on a licence it has issued. Specifically, under section 28 of the Act, the Commission has the power to vary a licence at any time, subject to statutory procedural requirements, including providing a licensee with reasonable notice of a proposed variation and allowing it the opportunity to make representations on that variation.

There is a broad range of factors that might be potential 'triggers' for the Commission to consider varying a licence, or adding new conditions. These include factors both external and internal to a licensee, and may include (without limitation):

- ▶ material changes in market operations, outcomes or structures;
- ▶ changes to applicable national or State legislation, rules or policy;
- ▶ the findings of a formal inquiry undertaken by the Commission;
- ▶ substantive changes to operations which would have a genuine connection to or impact on the operations authorised under a licence;
- ▶ an application by a licensee to vary its licence (for example, to add or remove retail operations); and
- ▶ evidence of upgrades or material changes to a licensee's business or operational practices relating to operations authorised under a licence.

In considering a potential licence variation, the Commission must consider the factors specified in section 6 of the Essential Services Commission Act 2002 (which sets out the Commission's primary statutory objective and other relevant considerations), the objects of the Act (as set out in section 3 of that Act). It will also be informed by any information submitted by a licensee to which the variation may apply, through public consultation and by engagement with regulatory agencies involved in the electricity supply industry.

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.

How to lodge an application

Applicants should send their completed application form in electronically (preferred) or in writing.

Electronically to: licensing@escosa.sa.gov.au

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

Application fee

Applicants must also enclose an application fee¹ (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 fees² 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 Available at <https://www.escosa.sa.gov.au/industry/water/licensing/licence-fees>

² Available at <https://www.escosa.sa.gov.au/industry/water/licensing/licence-fees>

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:

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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.

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1.3 Address and Contact Details of applicant

Business Address:

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State: Post Code:

Postal Address (if different to Business Address):

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State: Post Code:

Telephone:

Facsimile:

E-mail:

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:

Title:

Business Address:

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State: Post Code:

Postal Address (if different to above):

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State: Post Code:

Telephone:

Facsimile:

Email:

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:

Title:

Business Address:

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State: Post Code:

Postal Address (if different to above):

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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)

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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 twelve weeks to consider an application, as a public consultation period of several weeks forms part of the Commission’s consideration of licence applications.

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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); and/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.

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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.

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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:
Date of Birth:
Office Held:
Business Address:
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State: Post Code:

Full Name:
Date of Birth:
Office Held:
Business Address:
.....
State: Post Code:

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:
Date of Birth (if applicable):.....
Office Held:

Business Address:

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State: Post Code:

Full Name:

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

Office Held:

Business Address:

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State: Post Code:

Full Name:

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

Office Held:

Business Address:

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State: Post Code:

(attach additional pages if necessary)

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).

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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.

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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.

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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.

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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

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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3.16 Compliance plan

Applicants are required to submit a copy of their Compliance Plan 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;
- ▶ details of how non-compliance will be reported and rectified; and
- ▶ details of any internal audit programs in place that review (or will review) the effectiveness of the Compliance Program from time to time.

3.17 Additional information

The Commission encourages applicants to provide any additional information they consider would be of assistance in supporting the application. Please provide below.

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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.

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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)³, 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.⁴

Statutory Declaration

I

of

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

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:this day of20....

Before me:

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

³ Or equivalent legislation in other Australian jurisdictions.

⁴ 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.



The Essential Services Commission
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