

Revised template for gas retail licence (for consultation)

[Licensee name], [Licensee ACN]

Issued on [date]



Gas Retail Licence

This Licence is issued pursuant to section 26 of the *Gas Industry Act 2001* (Vic).

Date

This Licence is issued on **[date]**.

Licensee

This Licence is issued to:

[Licensee name] (Licensee ACN) (the Licensee)

[Licensee business address]

THE COMMON SEAL of the)
ESSENTIAL SERVICES COMMISSION)
was affixed pursuant to the authority)
of the Commission on **[date]**)

.....
Kate Symons

CHAIRPERSON

Part A - Interpretation

1 Definitions

1.1 Unless the contrary intention appears, a term has the meaning shown opposite it:

Act	the <i>Gas Industry Act 2000</i> (Vic)
Administrator	means an administrator appointed by the Commission under section 41 of the Act in respect of the Licensee's Retail Business
AEMO	the Australian Energy Market Operator Limited (ACN 072 010 327)
Business Day	a day other than a Saturday, Sunday or a public holiday in Victoria
Code of Practice	means a Code of Practice <u>applying-made</u> under Part 6 of the ESC Act or relevant legislation
Commission	the Essential Services Commission established under the ESC Act
Energy Retail Code of Practice	means the code of practice of that name made under Part 6 of the ESC Act
ESC Act	the <i>Essential Services Commission Act 2001</i> (Vic)
Licensee	[Name] (ABN/ACN)
Minister	the person who is, from time to time, the Minister administering the Act
Objectives	the objectives of the Commission specified in section 18 of the Act and section 8 of the ESC Act
Retail Business	means the business that a Retailer carries on under its Retail Licence or exemption granted under the Act
Retail Licence	a licence, granted under the Act, authorising the holder thereof to sell gas
Retailer	a person who holds or is exempt from holding a Retail Licence
Standard Gas Licence Conditions for Gas Retail	the document of that name as approved by the commission on [date] (as varied from time to time in accordance with law)

1.2. In this Licence, unless the context otherwise requires:

- i. headings and footnotes are each for convenience only and do not affect the interpretation of this Licence;
- ii. words importing the singular include the plural and vice versa;
- iii. words importing a gender include any gender;
- iv. an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency;
- v. a reference to a condition, clause, or part is to a condition, clause, or part of this Licence;
- vi. a reference to any statute including the Act and regulation, proclamation, Order in Council, ordinance, code, guideline, procedure or by-law includes all statutes, regulations, proclamations, Orders in Council, ordinances, codes, guidelines, procedures or by-laws varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations, Orders in Council, ordinances, by-laws and determinations issued under that statute;
- vii. a reference to a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document;
- viii. a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns;
- ix. other parts of speech and grammatical forms of a word or phrase defined in this Licence have a corresponding meaning;
- x. a period of time:
 1. which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
 2. which commences on a given day or the day of an act or event is to be calculated inclusive of that day;
- xi. an event which is required under this Licence to occur on or by a stipulated day which is not a Business Day may occur on or by the next Business Day.

2 Notices

2.1 A notice under this Licence is only effective if it is in writing, and dealt with as follows:

- i. if given by the Licensee to the Commission – addressed to the Chief Executive Officer of the Commission at the address specified below or as otherwise notified by the Commission:

Essential Services Commission
Level 8, 570 Bourke Street

Melbourne VIC 3000
- ii. if given by the Commission to the Licensee – given by the Chief Executive Officer of the Commission and addressed (and marked for attention of) the Chief Executive Officer of the

Licensee at the physical or email address specified below or as otherwise notified by the Licensee:

[Licensee name, ~~and address and email for service~~]

A notice is to be:

- iii. signed by or on behalf of the person giving the notice and delivered by hand; or
- iv. signed by or on behalf of the person giving the notice and sent by pre-paid post; or
- v. transmitted electronically by or on behalf of the person giving the notice by electronic mail ~~or facsimile transmission.~~

2.2 A notice is deemed to be effected:

- i. if delivered by hand – upon delivery to the relevant address;
- ii. if sent by post, in accordance with section 160(1) of the Evidence Act 2008 (Vic);
- iii. if transmitted electronically – in accordance with the Electronic Transactions (Victoria) Act 2000 (Vic).

2.3 A notice received after 5.00pm, or on a day that is not a Business Day, is deemed to be effected on the next Business Day.

Part B – Licence

3 Grant of the Licence

3.1 This Licence was first granted on [date] and has been varied on the dates set out in Schedule 1 of the Licence.

3.2 Subject to clauses 3.3 and 9, in exercise of its powers under section 26 of the Act, the Commission grants the Licensee a licence to sell gas by retail on the terms and conditions set out in this Licence.

3.3 This Licence is subject to any prohibition set out in any Order in Council issued and in force under the Act.

4 Variation

~~4.1 For the purpose of section 38(1)(a) of the Act, t~~he Commission may vary this Licence in accordance with section 38 of the Act~~the procedures set out in this clause 4.~~

~~4.2 Where the Commission is of the opinion that a proposed variation to the Licence is consistent with its Objectives and:~~

- ~~i. is of an administrative or trivial nature; or~~
- ~~ii. required urgently;~~

~~the Commission may issue a notice to the Licensee varying this Licence accordingly.~~

~~4.3—A notice issued under clause 4.2 will include:~~

- ~~i. the terms of the variation~~
- ~~ii. the purpose of the variation~~
- ~~iii. confirmation that the Commission is of the opinion that a proposed variation to the Licence is consistent with its Objectives and satisfies the criteria in subclauses 4.2.i. or ii; and~~
- ~~iv. the date upon which the variation will take effect~~

5 Transfer

5.1 This Licence may be transferred in accordance with section 40 of the Act.

6 Revocation

6.1 The Commission may revoke this Licence:

- i. at any time at the request of, or with the consent of, the Licensee; or
- ii. in accordance with the Act.

~~6.2—Where consistent with its Objectives, the Commission may revoke this Licence if:~~

- ~~i. the Licensee fails to comply with enforcement action under Part 7 of the ESC Act, including an undertaking, an order made by a court or a compliance notice;~~
- ~~ii. the Licensee breaches any condition of this Licence, including any condition deemed to apply by the Act or made by a Minister under section 33AB of the Act;~~
- ~~iii. the Licensee breaches any requirement of a Code of Practice;~~
- ~~iv. any information provided by the Licensee, including in its application for the Licence, is found to be materially false or misleading;~~
- ~~v. the Licensee's financial viability or technical capacity is such that the Commission considers that the Licensee would be unable to satisfactorily meet its obligations under this Licence, a Code of Practice or the Act.~~
- ~~vi. the Licensee fails to comply with a decision, direction, determination or arrangement (including any arrangement concerning load shedding) (as the case may be) made by or agreed with the Commission, AEMO or the Minister; or~~
- ~~vii. following any one of the following events:~~
 - ~~1. a petition or other application being presented, or resolution being passed, for the winding up, liquidation or dissolution of the Licensee or notice of intention to propose such a resolution being given, or the entry of the Licensee into a scheme of arrangement or compromise or deed of company arrangement with any of its creditors;~~

~~2. the appointment of an Administrator, a receiver or receiver and manager or official manager or agent of a secured creditor to any of the Licensee's property;~~

~~3. the Licensee ceasing to carry on business or stopping or wrongfully suspending payment to any of its creditors or stating its intention to do so;~~

~~and the Commission determines that the event, or actions arising from the event, would, or would be likely to, result in the inability of the Licensee to meet its obligations under this Licence.~~

~~6.36.2~~ Where the Commission ~~decides~~ proposes to revoke this Licence, the Commission will issue a notice to the Licensee, specifying:

i. the basis upon which the Commission proposes to revoke ~~is revoking this~~ Licence; and

ii. the date upon which the revocation is proposed to ~~will~~ take effect, such date to be:

1. in the case of a breach of clauses ~~8 or 9.1~~ of the Standard Gas Licence Conditions for Gas Retail, ~~or where clause 6.2.i of this Licence applies~~, or where in the Commission's opinion it is appropriate that the Licence be revoked in a shorter time frame having regard to its Objectives and the events or circumstances that gave rise to the notice being issued, no less than 5 Business Days after the date upon which the notice is issued; and

2. in all other cases, no less than 20 Business Days after the date upon which the notice is issued;

iii. that the Licensee has the opportunity to make representations on the matter and the time and date and manner in which those representations must be made.

~~—and, subject to clause 6.4, this Licence will be revoked on the date specified in the notice.~~

6.3 The Commission must consider any submissions received by the licensee prior to making a decision to revoke the licence.

6.4 Where the Commission decides to revoke this Licence, the Commission will issue a notice to the Licensee specifying:

i. the basis upon which the Commission is revoking the Licence; and

ii. the date upon which the revocation takes effect, being no earlier than the date specified in the notice issued pursuant to clause 6.2;

and this Licence will be revoked on the date specified in the notice.

~~6.4 The Commission may, at its discretion and by written notice to the Licensee, withdraw a notice issued under clause 6.3 at any time prior to the revocation date specified in the notice if the Commission considers that it is otherwise appropriate to withdraw the notice.~~

Part C – Licence Conditions

7 Status of the requirements in this part

~~7.1~~—A failure by the Licensee to meet any of the requirements set out in this Part C;

~~7.2~~—is a breach of a civil penalty requirement for the purpose of the ESC Act; ~~and~~

~~7.37.1~~ ~~is a breach of a condition for the purposes of clause 6.2.ii of this Licence.~~

8 Standard Gas Licence Conditions for Gas Retail

8.1 The Licensee must comply with the Standard Gas Licence Conditions for Gas Retail as may be varied from time to time in accordance with section 38 of the Act.

9 Special Licence Conditions

9.1 [Insert as applicable]

Note: The conditions identified in Part C of this Licence are not an exhaustive list of a Licensee's obligations. A licensee is required to comply with additional obligations as set out in the Act and instruments made under that Act. In particular, obligations are placed on the Licensee in Codes of Practice, in particular the Energy Retail Code of Practice.

Schedule 1 – Variations to the Licence

Date	Variation
[Insert as applicable]	[Insert as applicable]