

Regulatory Sandboxing Draft Trial Projects Guidelines

Explanatory statement and
notice of consultation

April 2022

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Notice of consultation on the proposed Trial Projects Guideline

The Australian Energy Regulator (AER) will be required to make and publish Trial Projects Guidelines under the proposed regulatory sandbox legislative framework.¹

In developing this guideline, the proposed regulatory sandbox legislative framework directs that we are to consult in accordance with the Rules Consultation Procedures, set out in clause 8.9 of the National Electricity Rules (NER). The Rules Consultation Procedures require publication of a notice of consultation inviting submissions on the matters raised in this report. In accordance with these procedures, we give notice of consultation on our draft Trial Projects Guidelines.

Request for submissions

Interested parties (including energy market bodies and Registered Participants) are invited to make written submissions to the AER regarding this paper and the accompanying draft Trial Projects Guidelines by the close of business, 3 June 2022.

The AER will be available to meet with interested parties on the issues raised in this paper. We will seek to publish the substance of all meetings unless a confidentiality claim is made.

Submissions should be sent electronically to: [regulatorysandbox@aer.gov.au](mailto:regulatorysandbox@ aer.gov.au)

We ask that all submissions sent in an electronic format are in Microsoft Word or other text readable document form.

To request a meeting or if you would like to ask a question about the AER's proposed regulatory sandbox, please email the AER at: [regulatorysandbox@aer.gov.au](mailto:regulatorysandbox@ aer.gov.au)

Confidentiality

To facilitate an informed and transparent consultative process we prefer all submissions to be publicly available. The AER will treat all submissions as public documents unless otherwise requested, and blanket confidentiality claims generally will not be accepted.

Parties wishing to provide a submission that contains confidential information are requested to:

- clearly identify the information that is the subject of the confidentiality claim, and provide reasons for the claim; and

¹ The 'proposed regulatory sandbox legislative framework' comprises: the Statutes Amendment (National Energy Laws) (Regulatory Sandboxing) Bill 2020, the National Electricity Amendment (Regulatory sandboxing) Rule 2020, the National Energy Retail (Regulatory sandboxing) Rule 2020 and the National Gas (Regulatory sandboxing) Rule 2020, National Electricity (South Australia) (Regulatory Sandboxing) Variation Regulations 2020, National Energy Retail (Regulatory Sandboxing) Variation Regulations 2020, National Gas (South Australia) (Regulatory Sandboxing) Variation Regulations 2020. <https://www.energy.gov.au/government-priorities/energy-ministers/energy-ministers-publications/regulatory-sandboxing-legislation-consultation>

- provide a separate, non-confidential version of the submission in a form suitable for publication.

The AER does not generally accept blanket claims for confidentiality over the entirety of the information provided and such claims should not be made unless all information is truly regarded as confidential. The identified information must be genuinely of a confidential information and not otherwise publicly available.

For further information regarding the use and disclosure of information provided to us, see the ACCC/AER Information Policy, published June 2014. Please direct any queries about this issues paper, or about lodging submissions, to regulatorysandbox@aer.gov.au

Consultation process

Our proposed engagement with stakeholders to amend the guidelines is set out in Table 1.

Table 1: Indicative timetable for the development of the Trial Projects Guidelines

Milestone	Indicative date
Initiation of consultation and publication of issues paper	10 November 2021
Submissions to issues paper close	28 January 2022
Draft guideline and notice of consultation on draft guideline published	19 April 2022
Written submissions on the draft guideline close	3 June 2022
Final guideline published	Subject to the passing of legislation

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1 Introduction

The Australian Energy Regulator (AER) is consulting on our preliminary position and reasons for the proposed content of the Trial Projects Guidelines.

The new regulatory sandbox framework will facilitate trials of innovative projects in part by giving the AER a new power to issue trial waivers. A trial waiver temporarily exempts an innovator from having to comply with specific rules that are acting as regulatory barriers to allowing an innovative trial to proceed.

1.1 Trial Projects Guidelines

To provide guidance on how the AER will assess trial waiver applications and carry out our other functions in relation to trial projects, the AER is required to develop and make the Trial Projects Guidelines. These guidelines will provide details on how we will consider and grant trial waivers, as well as how we will oversee the conduct and outcomes of trial projects.² The Trial Projects Guidelines must be developed and amended in accordance with the Rules Consultation Procedures.³

This document should be read alongside the draft Trial Project Guidelines published in conjunction with this paper. For the purposes of the Rules Consultation Procedures, this explanatory statement details our conclusions, as well as the procedure we followed in considering the development of the draft Trial Project Guidelines, our underlying reasons, and a notice inviting submissions on the draft guideline. The legislative and rule requirements for the guidelines are set out in the [AER's Regulatory Sandboxing Issues Paper](#).

We will publish the final Trial Projects Guidelines provided the regulatory sandboxing legislation is passed and once we have satisfied requirements under the Rules Consultation Procedures. In the interim, we intend to follow the draft Trial Projects Guidelines in our assessment of trial waiver applications. This may give us an opportunity to update and refine the Guidelines once we have gained some experience in assessing trial waiver applications.

1.2 Relationship with other regulatory instruments

Under the National Energy Rules, the AER already has the ability to grant a waiver or an exemption from certain National Energy Laws and Rules. These include:

- waivers from the requirement to hold a retailer authorisation when selling energy to another person for use at premises
- exemptions from the requirement to register as a network service provider if engaged in an electricity distribution or transmission activity
- waivers for network service providers from the requirement to comply with certain network ring-fencing obligations.

Each of these existing waiver and exemption functions is set out in separate guidelines that explain the basis on which the AER will grant waivers or exemptions from those specific

² Draft NER clause 8.14.

³ See NER Rule 8.9.

Laws and Rules.⁴ The new trial waiver function is separate from these existing waiver functions. A person seeking a waiver or an exemption from these requirements will need to apply under the existing arrangements rather than via a trial waiver. In providing feedback to an innovator the AER could refer a trial proponent to these processes if appropriate.

There may be circumstances in which an innovator may require an exemption from a requirement in existing guidelines to implement a trial project which falls outside the scope of these guidelines and would instead be considered within the regulatory sandboxing toolkit. If compliance with a procedure or guideline is a rule requirement, the AER is able to waive compliance with that requirement and require compliance with the remainder of the guideline or procedure as a condition of granting the trial waiver. This is noted in clause 2 of the draft Trial Projects Guidelines.

This approach would apply to any procedure or guideline made under the Energy Rules if compliance is required by a provision the Energy Rules.

1.3 Stakeholder consultation to date

We published an Issues Paper in November 2021 to facilitate stakeholder feedback on our initial views on how we would implement the IES, assess requests for trial waivers, and the proposed contents of the Trial Projects Guidelines. In December 2021 we held two workshops to share views on our proposed approach to delivering regulatory sandboxing, which over 160 stakeholders attended.

We received 7 submissions in response to the Issues Paper. Generally, stakeholders were supportive of the AER's proposed approach to implementing the sandboxing toolkit, as outlined in the Issues Paper. We received feedback on specific issues, which we have considered in developing the draft Trial Projects Guideline and this Position Paper. A full list of issues raised and our response is set out in Appendix A.

Our website contains our Issues Paper and the draft guidelines that accompanies this explanatory statement. Presentations from the workshops and all material that stakeholders have submitted to date are also available.⁵

⁴ See the AER's website for the [Retail Exempt Selling Guideline](#), [Electricity Network Service Provider Registration Exemption Guideline](#) and Ring-fencing guidelines for [electricity distribution](#) and [electricity transmission](#). Gas Distribution and Transmission Ring-fencing obligations of gas service providers are governed under the National Gas Rules. Note that the guidelines for Retail Exempt Selling, Electricity Network Service Provider Registration Exemption and Ring-fencing Guidelines for Electricity transmission are currently under review.

⁵ AER, [Trial projects guidelines – Regulatory sandboxing](#).

2 Application for a trial waiver

The section relates to section 3 of the draft Trial Projects Guidelines.

2.1 Form of application for a trial waiver

Clause 3.1 of the draft Trial Projects Guidelines requires applicants to use a standardised, online form to submit applications for a trial waiver via the regulatory sandboxing website. All fields must be completed to be a valid application.

Requiring applicants to use a standardised, specified format to apply for a trial waiver will allow the AER to review the information provided more quickly to determine whether the information requirements have been met. It will also minimise the need for the AER to request further information from the applicant, thereby providing a faster process.

Following stakeholder feedback, the AER still considers that the form should not be part of the Guidelines, allowing the AER to update it as required without have to conduct consultation to address largely administrative issues. This will allow us to easily improve the application process, including the information that must be provided, as we learn from early trial waiver applications.

2.2 Information requirements

The AER's preliminary position is that in addition to the information requirements stipulated in the rules, applicants for a trial waiver should be required to provide details of how the applicant's project meets the eligibility requirements and the innovative trial principles and a detailed description of the trial project, as well as general company information.

Clause 3.2 of the draft Trial Projects Guidelines details the information that we consider a trial waiver application must include. These requirements are similar to those proposed in the Issues Paper, with a few additions and amendments in response to stakeholder feedback.

In addition to the information requirements proposed in the Issues Paper, we propose to require applicants (and project partners, if relevant) to explain how they will collect, use, manage and disclose customer information to maintain privacy. We consider this important information to ensure consumers and their information are appropriately protected. We have also amended the requirement for an applicant to *demonstrate* the benefits to consumers from the trial, to instead require an applicant to *identify* the benefits.

Finally, while the applicant may meet the information requirements, the AER may request additional information during the assessment process to assist in our assessment.

2.3 Treatment of confidential information

For trial waiver applications, trial waiver applicants will specifically be required to identify *trial projects confidential information*, which is a defined term under the Energy Laws and Rules (see clause 1.2 of the draft Trial Projects Guidelines).

Information that is identified by an applicant as trial projects confidential information will be treated as confidential information received by the AER for the purposes of the NEL, NGL

and NERL.⁶ The AER is only permitted to disclose such information in the circumstances set out in section 44AAF of the Competition and Consumer Act 2010 (CCA), and the relevant sections of the NEL, NGL and NERL.⁷ For applications pertaining to Victoria, Trial Project Confidential Information means trial waiver information submitted to the ESC that is confidential or commercially sensitive.

Generally, the AER anticipates relying on the public consultation process to elicit views from market bodies and regulators on trial waiver applications. However, in limited circumstances it may be helpful to inform our assessment of a trial waiver application for the AER to share confidential information, including trial projects confidential information, with other government bodies and/or regulators. In this instance, the AER will seek the written consent of applicants. We would only propose to share information that we consider essential to allow us to assess a trial waiver application. While applicants will not be obliged to provide their consent, withholding consent could make it more difficult for the AER to satisfy ourselves that a trial waiver application meets the necessary requirements to be granted a waiver.

There may be circumstances where AEMO could participate commercially in a sandboxing trial. In this instance, the AER and AEMO will work together to ensure any potential conflicts, as well as confidential information, are appropriately managed. The draft rules require that in considering whether to grant a trial waiver, the AER must have regard to, among other things, whether the extent and nature of the trial project confidential information claimed by the applicant may impair:⁸

- the AER's ability to provide appropriate public transparency in relation to the conduct and outcomes of trial projects; or
- the appropriate development of regulatory and industry experience arising from the trial project.

That is, the AER may decide not to grant a trial waiver if we consider that the findings of a trial will not be able to benefit the wider industry as a result of the extent of confidentiality claimed by the trial proponent. Trial waiver applicants should take this into account in deciding which information they consider to be confidential.

For the purposes of knowledge sharing, the AER will work with innovators to identify what information may be published. In doing so, we will also be guided by our obligations under the Energy Laws and Rules, CCA, the Privacy Act 1988 (Cth) and the general law.

⁶ See NEL Part 3 Division 6; NGL Chapter 10 Part 2 Division 1; NERL Part 8 Division 3.

⁷ See, NEL Part 3 Division 6; NGL Chapter 10 Part 2 Division 1; NERL Part 8 Division 3.

3 Approach to assessing and granting trial waivers

This section relates to section 4 of the draft Trial Projects Guidelines.

3.1 Timeline

Our preliminary position is that we will aim to finalise trial waiver applications within 3 months, but that the guidelines would specify a six month timeframe since it is difficult to know how long applications will take to assess until we have some experience. The time will commence when the AER notifies the applicant that the application meets the information requirements and has been accepted (clause 4.1(a) of the draft Trial Projects Guidelines).

We also propose a “stop the clock” provision if further information is required to finalise our decision. While some applications may be relatively straightforward, others may require technical and legal expertise across multiple market bodies. Clause 4.1(b) of the draft Trial Projects Guidelines sets out a provision for the AER to “stop the clock”. The clock will be paused from the date of the notice from the AER to the applicant requesting further information until the information has satisfactorily been provided. This could occur even after an application is accepted as complete if, during our assessment, additional information is necessary to finalise our assessment.

We will encourage applicants with more complex applications to meet with AER staff prior to submitting an application to ensure the application contains all the relevant information. We propose to collect data on how long each application takes to assess and will update the guidelines if appropriate once we have gained experience and therefore a better understanding of the required timeframes.

3.2 Satisfying the information requirements and eligibility requirements

3.2.1 Information requirements

Our preliminary position is set out in the Issues Paper and is in clauses 4.2(b)(i) and (ii) of the draft Trial Projects Guidelines. That is, we will consider whether all fields in the application form have been satisfactorily addressed, and whether the information provided is sufficient to form a view on whether the trial waiver application should progress to the consultation and assessment phases.

We will advise the applicant once we have assessed the application as complying with the information requirements and that the application has been accepted. After receiving an application, we may request further information if necessary to enable us to review the application.⁹ This is enabled in clause 4.2(c) of the draft Trial Projects Guidelines.

3.2.2 Eligibility requirements

Clause 4.2 of the draft Trial Projects Guidelines sets out our proposed approach to assessing whether the eligibility requirements and innovative trial principles are met. As part of our initial assessment process, we will also consider whether the application could be carried out satisfactorily without a trial waiver and whether the application is misconceived or lacking in

⁹ Draft NER clause 8.15.1(c); Draft NERR clause 175(3); Draft NGR clause 135M(3).

substances, as required under the National Energy Rules and set out in clauses 4.2(b)(iii) and 4.2(b)(iv) of the draft Trial Projects Guidelines.

Our preliminary position is that we will include an additional eligibility requirement in the Trial Projects Guidelines that obliges the applicant to have an exit strategy in place to qualify for a trial project waiver. This is set out in clause 4.2(f) of the draft Trial Projects Guidelines. The exit strategy should be able to be implemented if the trial ends early, as well as where the trial ends due to the waiver expiring. We expect the content of the exit strategy will differ depending on the nature of the project. The applicant will also need to provide an estimate of how long the exit strategy will take to complete.

In deciding whether the applicant meets the eligibility requirements and innovative trial principles, we will assess their responses to these issues which must be provided as part of the information requirements. To do so we will draw on our internal expertise, as well as from AEMO, the AEMC and the ESC as required, and stakeholder submissions.

The table below sets out the types of factors the AER intends to have regard to in assessing each of the eligibility requirements and innovative trial principles.

Table 2: Factors the AER will consider in assessing trial waiver applications

Requirement	Assessment factors
Eligibility requirements under the Energy Rules	
Whether the carrying out and monitoring of the trial project is likely to contribute to the development of regulatory and industry experience	<p>The AER will consider factors such as:</p> <ul style="list-style-type: none"> the nature of the trial project, such as whether the project is proposing new or materially improved approaches in relation to energy markets or energy supply the aims and objectives of the trial project the extent to which the project can inform improvements to the regulatory framework the extent to which the project can be rolled out more broadly by both the trial proponent and potentially other parties to the benefit of consumers
Whether the trial project may have an adverse effect on the safety, reliability or security of supply of energy and the measures that the applicant will take to avoid or mitigate such risks	<p>The AER will consider factors such as:</p> <ul style="list-style-type: none"> the provisions of the laws/rules the applicant is seeking a waiver from and the role those provisions play in maintaining the safe, reliable and secure supply of energy the applicant's proposed risk management plan advice from AEMO
Whether the trial project may have an adverse effect on AEMO's operation and/or administration of the power system, the market, the declared distribution systems and declared transmission system for gas or markets for natural gas and the measures that the applicant will take to avoid or mitigate such adverse effects	<p>The AER will consider factors such as:</p> <ul style="list-style-type: none"> the provisions of the laws/rules the applicant is seeking a waiver from and the role those provisions play in allowing AEMO to perform its functions the applicant's proposed risk management plan AEMO's views on the trial project
Whether the extent and nature of the trial project confidential information claimed by the applicant may impair: 1) the AER's ability to provide appropriate public transparency in relation to the conduct and outcomes of trial projects; or	<p>The AER will consider factors such as:</p> <ul style="list-style-type: none"> the nature of the trial project confidential information claimed by the applicant how the claimed confidential information relates to the proposed aims, objectives and success criteria for the trial project

<p>2) the appropriate development of regulatory and industry experience arising from the trial project.</p>	<ul style="list-style-type: none"> the ability to publish sufficient information to allow the wider industry to understand the nature of the project and learn from its outcomes, potentially aggregated with other case studies the ability to publish sufficient information to help support a change to the regulatory framework to the benefit of consumers
<p>Innovative trial principles – Energy Laws</p>	
<p>Whether the trial project is focused on developing new or materially improved:</p> <ul style="list-style-type: none"> approaches to the use or supply of, or demand for, electricity customer connection services or customer retail services natural gas services 	<p>The AER will consider factors such as:</p> <ul style="list-style-type: none"> the nature of the trial project the aims and objectives of the trial project whether the project could lead to cost savings, add value to existing services (e.g. through improved quality, safety or reliability and security) or introduce new services that consumers value whether similar projects have been implemented previously or are currently being used elsewhere
<p>Whether the trial project is likely to contribute to the achievement of the national energy objectives</p>	<p>The AER will consider factors such as whether the trial project will improve:</p> <ul style="list-style-type: none"> efficiency of investment in energy services efficiency of operation of energy service efficiency of use of energy service <p>and, in doing so, lower the price consumers pay or improve the quality, safety and reliability and security of energy services and/or the overall energy system</p>
<p>Whether the trial project is able to demonstrate a reasonable prospect of giving rise to materially improved services and outcomes for consumers of energy</p>	<p>The AER will consider factors such as:</p> <ul style="list-style-type: none"> the nature of the trial project the aims and objectives of the trial project whether the project could lead to cost savings, add value to existing energy services (e.g. through improved quality, safety or reliability and security) or introduce new energy services that consumers value whether the project could improve outcomes for consumers experiencing vulnerability whether the benefits to consumers from the improved services and outcomes are likely to outweigh any risks associated with the project evidence of the organisation's operational and financial ability to carry out the proposed trial project
<p>Whether the trial project maintains adequate consumer protections, including whether the trial project may involve risks to consumers and (if so), how those risks might be mitigated</p>	<p>The AER will apply the Consumer Risk Assessment tool developed by the Energy Security Board. The AER will also consider factors such as:</p> <ul style="list-style-type: none"> The type of risks associated with the trial project, such as financial, safety or security The magnitude of the risks The probability of the risks eventuating The types of consumers that could be impacted, particularly the impact on consumers experiencing vulnerability The complexity of the trial and associated risks and whether it is reasonable for consumers to give their explicit informed consent to take on that risk Whether the risks can be appropriately managed or mitigated

	<ul style="list-style-type: none"> Whether the risks associated with the trial are appropriately allocated between the trial waiver applicant, any retail customers participating in a trial project and, if relevant, other parties.
Whether the trial project is unable to proceed under the existing regulatory framework	<p>The AER will consider factors such as:</p> <ul style="list-style-type: none"> The nature of the trial project the provisions of the laws/rules the applicant is seeking a waiver from whether there are alternative approaches the applicant could pursue, including seeking a waiver or exemption under alternative frameworks (e.g exempt seller, ring-fencing etc)
Whether the trial project has moved beyond research and development stages but is not yet established, or of sufficient maturity, size or otherwise commercially ready, to attract investment	<p>The AER will consider factors such as:</p> <ul style="list-style-type: none"> the nature of the trial project the aims and objectives of the trial project whether the project has gone through any initial trials or testing
Whether the trial project may negatively impact AEMO's operation of the national energy systems and national energy markets or AEMO's facilitation of customer connection services and customer retail services and, if there are impacts, how those impacts can be mitigated	<p>The AER will consider factors such as:</p> <ul style="list-style-type: none"> the provisions of the laws/rules the applicant is seeking a waiver from and the role those provisions play in allowing AEMO to perform its functions the applicant's proposed risk management plan AEMO's views on the trial project
Whether the trial project may impact on competition in a competitive sector of a national energy market	<p>The AER will consider factors such as:</p> <ul style="list-style-type: none"> The energy market(s) in which the trial project would operate, if any Whether the project could reduce competition in that market Whether trialling the project would confer an unfair competitive advantage on the applicant that could be detrimental to competition in an energy market, including the potential for cross-subsidisation and discrimination Whether the trial project could reduce the ability of consumers to switch their energy supplier
Innovative trial principles – Energy Regulations	
Whether the trial project is able to be trialled and evaluated	<p>The AER will consider factors such as:</p> <ul style="list-style-type: none"> whether there are other barriers to the project proceeding that cannot be resolved through a trial waiver evidence of the organisation's operational and financial ability to carry out the proposed trial project the aims, objectives and proposed success factors of the trial project and the extent to which these are measurable and so can be evaluated
Whether there is potential for the trial project to be successfully expanded	<p>The AER will consider factors such as:</p> <ul style="list-style-type: none"> whether the trial project is scalable whether the trial project is applicable across multiple jurisdictions and customer types
Whether the trial project will provide for public sharing of knowledge, information and data resulting from the trial project.	<p>The AER will consider factors such as:</p> <ul style="list-style-type: none"> the aims, objectives and proposed success factors of the trial project the trial project confidential information claimed by the applicant

The AER is not permitted to grant a trial waiver to a trial project that is materially similar to a trial project for which a trial rule has been made or which is the subject of a request for a trial Rule. However, there is no requirement for the AER to consider whether the trial project is materially similar to a trial project that is already the subject of a trial waiver application. As such, we expect that if we have multiple applications for similar projects that all meet the eligibility requirements and innovative trial principles, we may grant multiple trial waivers (see clause 4.2(i) of the draft Trial Projects Guidelines).

The AER is required to have regard to whether a trial project meets the eligibility requirements and innovative trial principles in deciding whether to grant a waiver, but there is no requirement that the AER must be satisfied that all requirements and principles are met to grant a waiver. This flexibility is appropriate, since there may be circumstances where not all requirements and principles are met, but there is merit in a trial proceeding. However, the AER is more likely to grant a trial waiver where we are satisfied that a trial project meets all the innovative trial principles, as set out in clause 4.2(g) of the draft Trial Projects Guidelines.

Ultimately, the AER needs to be satisfied that the trial project is likely to contribute to the national energy objectives. This is reflected in the innovative trial principles and is the basis on which the AER is generally required to perform its functions or exercise its powers.¹⁰

3.3 Terminating an application for a trial waiver

The circumstances under which the AER may terminate our consideration of an application and the steps we must follow if we intend to do so are set out in the draft rules. For completeness, we have included them in clause 4.3 of the draft Trial Projects Guidelines.

We will also consider whether the process has elicited any information about the regulatory arrangements that may be incorporated in the knowledge sharing arrangements, despite the application not progressing. For example, the process could highlight areas of the regulatory framework that could be clarified, or case studies that could provide useful information to innovators on the regulatory sandboxing website. Any such information would be anonymised or used with the applicant's permission.

3.4 Consumer protection measures

A critical purpose of the Energy Laws and Rules is to safeguard consumers. In deciding to provide a trial waiver, consumers – both those participating in the trials and potentially other consumers – could be exposed to additional risks. The AER's role will be to assess whether the potential risks associated with providing the waiver are outweighed by the potential benefits of the trial, and whether risks are appropriately allocated between the trial waiver applicant, the trial participants and, if relevant, other parties.

The AER will ensure consumers continue to be protected in providing trial waivers. For example, we would expect current protections that provide critical protections to consumers relating to safety and security, including for life support customers, to remain. Similarly for protections that support consumers experiencing vulnerability such as hardship schemes.

There are a number of consumer protection measures that we consider will be standard conditions of granting a trial waiver, unless the trial project proponent provides a strong

¹⁰ See, NEL section 16(1)(a); NERL section 205; NGL section 28(1).

reason why they should not apply. These conditions are set out in clause 4.4(a) of the draft Trial Projects Guidelines and are:

- 1) **Explicit informed consent must be obtained from retail customers before they participate in a trial project.** Customers must be clearly, adequately, and fully made aware of all matters relevant to their consent, including the specific purpose of their consent. Relevantly, a customer must be made aware that they are participating in a trial, understand the terms and conditions of the trial, and understand their rights and obligations associated with the trial. This includes their ability to opt out of the trial project at any time, if applicable. To constitute explicit informed consent, consent must be obtained:
 - in writing signed by the customer
 - by electronic communication generated by the customer, or
 - verbally, if the verbal consent is recorded in such a way that it can be verified and made the subject of an electronic communication generated by the customer.

We will require the trial waiver applicant to provide information on how they will obtain and record explicit informed consent of retail customers participating in the trial project. We also propose to request those records be provided to us from time to time for the purposes of assessing compliance with the explicit informed consent provisions, as permitted in the draft rules.¹¹

- 2) **Retail customers must be able to opt out of the trial project at any time and for any reason.** To facilitate this, a trial project proponent must have identified a process by which trial participants are able to opt out. The process may include the recovery of any assets or equipment installed by the trial project proponent, such as a battery or device. The proposed opt out process is subject to AER approval and forms part of the information requirements for a trial waiver application. Opt outs, including the circumstances in which we may consider waiving this condition, are discussed further in section 5.3.
- 3) **Retail customers participating in a trial project must have access to a dispute resolution process.** There must be a clear process by which retail customers participating in a trial project are able to raise a dispute or complaint with the trial project proponent in relation to the trial project and have it resolved. The AER will have regard to the Australian Government's [Key Practices for Industry-based Customer Dispute Resolution](#) when assessing dispute resolution processes in a trial waiver application. Customer complaints is one measure that proponents may be required to report on, as discussed in section 3.5.

The draft Trial Projects Guidelines also provides for the AER to impose consumer protection measures in addition to these as a condition of granting a trial waiver (clause 4.2(b)). It is difficult to predict the types of risks that could arise from potential trials, which are likely to vary from project to project, and so we consider it likely that projects will need to be assessed on a case-by-case basis. As such, we reserve the right to impose additional consumer

¹¹ Draft NER clause 8.13(b); Draft NERR clause 174(2); Draft NGR clause 135L(2).

protection measures on individual trial waivers as we see fit. Consumer risk assessment factors are outlined in Box 1.

Box 1: Consumer risk assessment factors

In deciding whether to grant a trial waiver, the types of factors the AER will consider in assessing the risk to consumers include but are not limited to:

- The type of risks, such as financial, safety or security
- The magnitude of the risk
- The probability of the risk eventuating
- The complexity of the trial and associated risks and whether it is reasonable for consumers to give their explicit informed consent to take on that risk
- Whether the risk can be appropriately managed or mitigated
- Whether risks associated with the trial are appropriately allocated between the trial waiver applicant, retail customers participating in the project and other parties.

In assessing whether the potential risks associated with granting a trial projects waiver are outweighed by the benefits, the AER will have particular regard to whether there might be potential consumer vulnerability impacts. This includes both consumers experiencing vulnerability, and whether granting a trial waiver could inadvertently cause vulnerabilities.

In both assessing risks to consumers and considering whether additional consumer protections may be necessary as a condition of a trial waiver, we will draw on the Consumer Risk Assessment tool developed by the Energy Security Board (see clause 4.2(f) of the draft Trial Projects Guidelines). This tool is designed to provide a process for assessing benefits and risks for consumers and allows market bodies to identify “where new consumer protections or other measures may be needed, reflecting the potential of a new arrangement, product or service to cause harm”.¹² We consider this tool will be useful in the context of sandboxing, which is intended to encourage innovative new products and services while ensuring consumers are appropriately protected.

3.5 Reporting obligations

The AER’s preliminary position is that reporting obligations will be defined on a case-by-case basis, using a risk-based approach, and that we would leverage third-party reporting requirements wherever possible.

We will require proponents to submit to the AER via the sandboxing website:

- regular progress reports, the frequency and content of which will be established as a condition of the trial waiver, and
- an outcomes report once the trial project is complete.

¹² Energy Security Board, Post-2025 Market Design: Final advice to Energy Ministers, Part C – Appendix, 27 July 2021, p26.

Public versions of these reports, omitting confidential information, will be published on the regulatory sandboxing website.

We expect the scope of trials and the associated risks to the market, grid and consumers will differ depending on the nature and duration of the trial, and so a one size fits all approach to the frequency and level of detail of progress reporting is unlikely to be fit for purpose. Project risks could relate to retail customers participating in the trial, other retail customers, market participants, and/or AEMO's ability to perform its functions. Risks could be financial or could relate to the safe, secure and reliable supply of energy.

For low-risk projects that last more than one year, our preliminary position is that proponents must submit progress reports annually. This will allow us to monitor the progress of the project, as well as monitor compliance with the conditions of the trial waiver and the risks associated with the trial on a regular basis, without imposing a high administrative burden on proponents. For trials with greater risk or uncertainty, we may impose more frequent reporting. This approach is set out in clause 4.5(a) of the draft Trial Projects Guidelines.

Regular progress reports throughout the trial will provide important evidence to support any rule change request to allow the trial project to become business as usual prior to the trial waiver expiring and will provide an important means by which the benefits of making a trial permanent can be communicated. Progress reports should be available to all interested stakeholders to inform their own views on the relative benefits of any proposed rule change.

Clause 4.5(c) of the draft Trial Projects Guidelines sets out guidance on the potential content requirements of the progress and outcomes reports. More detailed reporting requirements may be imposed on higher risk projects.¹³

In determining progress reporting requirements, we will also take into account any reporting that is already required as a result of other processes.¹⁴ For example, trials that are funded by ARENA or state governments will likely already be required to meet detailed reporting requirements in order to meet milestone payments. We will not seek to duplicate these reports provided we are able to have full access to them and, where relevant, these reports are publicly available. However, we may require additional information to ensure we are able to appropriately monitor the trial and ensure knowledge sharing is able to occur.

At the conclusion of the trial, participants will be required to submit to the AER and publish a final report documenting the trial outcomes. This will address similar issues to the progress reports. In addition, we propose the final outcomes report will be required to include a survey of the experiences of trial participants and, if relevant, the views of AEMO and other market participants affected as a result of the trial.¹⁵ This will be important to document not just the trial waiver applicant's view of the success or otherwise of the trial, but to understand the impact on the trial participants and wider market.

¹³ See clause 4.5(d)(i) of the draft Trial Projects Guidelines.

¹⁴ See clause 4.5(b) of the draft Trial Projects Guidelines.

¹⁵ See clause 7.1(b)(iii) of the draft Trial Projects Guidelines

3.6 Duration

Our preliminary position is that trial waiver applicants will be required to propose a trial length – up to five years as required under the national energy laws – as part of the information requirements, and that the AER would assess the reasonableness of that proposal. The AER expects that in most cases we will likely grant a trial waiver for the duration nominated by the applicant, unless there is a reason to diverge from this. In considering whether the proposed duration is reasonable, we expect to take into account factors including, but not limited to:

- the minimum timeframe likely required to obtain useful results
- the degree and nature of any risks posed for consumers participating in the trial
- the type of upfront investment required for the trial
- the applicant's market exit strategy
- feedback obtained during the consultation process, if relevant.

3.7 Consultation on a proposed trial waiver

Generally, the AER expects to consult on trial waiver applications except where a case is made by the trial waiver applicant that there is unlikely to be an impact on other registered participants or retail customers, other than on those who are participating in the trial.

Our preliminary position is that we will conduct the following public consultation process, as set out in clause 4.7 of the draft Trial Projects Guidelines:

- Publish a notice on our website advising that a trial waiver has been received and inviting submissions from interested stakeholders.
- Publish a consultation paper or other information to facilitate consultation.
- Invite submissions, either written or verbal via a public forum or one-on-one meetings.

The consultation period will be at least 20 business days from when the notice advising of the consultation is published. This is a change from the Issues Paper, which suggested that consultation would be for a maximum of 20 days.

The consultation process will provide an opportunity for all stakeholders to assess the potential impact of a proposed trial project on their stakeholders or operations, and present their concerns. If there may be adverse impacts on another market participant, we will take this into account in deciding whether the project meets the eligibility requirements and innovative trial principles and in crafting any trial waiver conditions if the waiver is granted.

3.8 Evidence of a trial waiver

The obligations on the AER to issue a certificate as evidence of a trial waiver in relation to evidence of trial waivers and establish a trial waiver certificate register are set out in the draft rules. For completeness we have included these requirements in clause 4.8 of the draft Trial Projects Guidelines.

4 Overseeing the conduct and outcomes of trial projects

This section relates to section 5 of the draft Trial Projects Guidelines.

4.1 Monitoring trials carried out under trial waivers

Our preliminary position is that monitoring of trial projects carried out under trial waivers will primarily be conducted via the regular progress reports. While in most instances regular reporting will be sufficient, there may be circumstances where additional monitoring may be appropriate, e.g. due to the nature or level of risk involved. Additional tools could include regular reviews of the trial project or regular audits. This approach is set out in clauses 5(a) and 5(b) of the draft Trial Projects Guidelines.

Trial waiver applicants will be subject to the AER's Compliance Procedures and Guidelines in relation to any conduct or activities that are already covered by these. For any conduct or activities permitted under the trial waiver but not subject to the Compliance Procedures and Guidelines, the AER may impose additional obligations as part of the trial waiver conditions.

Non-compliance with reporting milestones or conditions of the trial waiver or concerns raised by AEMO, market participants and/or customers may also trigger more extensive monitoring, a review of the trial and/or a compliance audit.¹⁶ If required, any compliance audits would be carried out in accordance with our Compliance Procedures and Guidelines. We may vary the conditions of, or revoke, a waiver as a result of compliance breaches.

4.2 Monitoring trials carried out under trial rules

The AER is also required to monitor trial projects that are carried out under trial rules (see clauses 5(d) and (e) of the guideline). Trial projects operating under trial rules may be subject to specific provisions relating to the oversight of the conduct and outcomes of these projects. In this instance, the AER will monitor trial projects in compliance with these requirements.

The AEMC has the power to impose a requirement on a trial project proponent to submit one or more reports to the AER in relation to the trial project.¹⁷ Where applicable, the AER may use such reports to monitor trial projects carried out under trial rules. If a proponent fails to comply with the reporting requirements specified in a notice, the AER may recommend the AEMC revoke a trial Rule early. The AEMC may either revoke the trial rule or vary or revoke a requirement imposed on the proponent, or impose further requirements.¹⁸

The AER may also ask a proponent to provide information to allow us to carry out our monitoring function. If the proponent does not comply with any reasonable request for information for the purpose of allowing us to carry out our monitoring function, the AER may recommend to the AEMC that a trial rule be repealed.

¹⁶ See clause 5(f) of the draft Trial Projects Guidelines.

¹⁷ Draft NEL section 104B(2); Draft NERL section 262B(2); Draft NGL section 314B(2).

¹⁸ Draft NEL section 104B(5); Draft NERL section 262B(5); Draft NGL section 314B(5).

5 Extension, early termination and opt outs

This section relates to section 6 of the draft Trial Projects Guidelines.

5.1 Extension of a trial waiver

This section sets out:

- the circumstances under which the AER will grant an extension to a trial waiver
- the process by which a proponent can apply for an extension to their waiver

5.1.1 Reasons for an extension

An extension is only likely to be appropriate in limited circumstances, primarily:

- Where the trial project proponent has submitted a rule change request to the AEMC to make a permanent change to the Energy Rules that would allow the project to continue without the need for a trial waiver, effectively allowing the project to become business as usual. Due to the time it takes for a rule change to be made, in practice it is likely that a trial waiver applicant will need to submit a rule change request well in advance of the trial's scheduled end date. A trial waiver extension can provide a backstop to allow the trial project to continue in compliance with the rules if the AEMC has not been able to complete this process by the trial waiver expiration date.
- Where additional time would enable the trial to generate valuable knowledge and where that knowledge could be shared with, and benefit, the wider industry. Even where a rule change has not been made, and so the trial must be wound up, there may be valuable insights to be gained by allowing the trial to continue for an additional period of time.

The AER is unlikely to look favourably on a request for an extension to allow additional time to fully comply with the Energy Rules following the expiration of a trial waiver. In applying for a trial waiver, applicants will be required to provide an exit strategy that includes a process for how the trial project proponent will exit the trial and return to BAU, how trial participants will return to their previous supply arrangements, and how long the exit strategy will take to complete. The purpose of the exit strategy is to ensure the applicant does not operate in a way that is non-compliant following the expiry of the waiver. It is also important to ensure continuity and certainty of supply for trial participants if the trial is not successful and/or does not lead to a permanent change in regulatory arrangements. We expect the exit strategy to conclude in sufficient time prior to the expiry of the trial waiver.

We do not propose to include these reasons in the Trial Projects Guidelines so as not to rule out other reasonable circumstances for extending a trial waiver.

5.1.2 Process for applying for an extension

Clause 6.1 of the draft Trial Projects Guidelines sets out the process for applying for a trial waiver extension. Our preliminary position is that trial project proponents that wish to extend a trial waiver must notify the AER at least 3 months prior to the commencement of the exit strategy, instead of 3 months prior to the expiry of the waiver proposed in the Issues Paper. This is to give the AER sufficient time to review the information provided, assess the validity of the application and, if necessary, consider whether any changes should be made to the trial waiver conditions, before a proponent is required to commence its exit strategy.

However, we encourage trial project proponents to contact the AER as early as possible to discuss the need and reasons for a proposed request for extension.

When requesting an extension, the trial project proponent will be required to provide:

- the reasons why the extension is sought
- any changes in circumstances in relation to the trial project that may affect our assessment of the trial project
- an updated exit strategy or evidence that the existing exit strategy remains appropriate, even where a rule change request has been submitted, this will be necessary if the rule change is delayed or not made.

The AER may request additional information be provided to support the request and/or to inform our assessment.

Clause 6.1(b) of the draft Trial Projects Guidelines sets out the factors the AER will take into account when considering extending a trial waiver. In assessing whether the trial project continues to meet the eligibility requirements, the innovative trial principles and any other matters required under the Energy Rules we do not expect the assessment process to be as intensive as it is for initial trial waiver applications. Rather, we will focus on any changes in circumstances associated with the trial project and how this might impact the eligibility requirements and innovative trial principles.

The AER will also consider whether the conditions under which the original trial waiver was issued remain appropriate, or whether to vary, revoke or impose new conditions.¹⁹

The AER can determine the duration of the waiver, subject to any limits imposed through energy regulations. The AER considers a maximum of a one-year extension is appropriate. This should provide sufficient time for any rule change to progressed or additional results obtained, without the project effectively becoming BAU. Limiting extensions to one year also provides certainty to other market participants and trial participants.²⁰

The trial project proponent will be reissued with a trial waiver certificate that sets out the new expiry date and any amendments to the trial waiver conditions.²¹ The certificate will be published in the trial waiver certificate register the AER must establish (see section 3.8).

5.2 Early termination

The ability to terminate a trial project early is critical to ensure the ongoing safe and secure operation of the system and to protect consumers. However, we also note that the threat of having a trial waiver revoked may inhibit innovators' confidence in rolling out trial projects and could be disruptive to consumers participating in a trial. As such we expect that terminating a trial project early will be a last resort.

Except in the case of an emergency, we anticipate that we would enter into discussions with a trial project proponent prior to notifying them of an intention to revoke a trial waiver or

¹⁹ See clause 6.1(c) of the draft Trial Projects Guidelines.

²⁰ See clause 6.1(d) of the draft Trial Projects Guidelines.

²¹ See clause 6.1(e) of the draft Trial Projects Guidelines.

recommend a trial rule be repealed before its scheduled expiry date. We would explore alternative courses of action wherever possible, such as amending the trial waiver conditions and/or increased monitoring. However, if we are unable to address our concerns by other means, there may be circumstances when we resort to terminating a trial project early.

The next two subsections set out:

- the reasons why the AER may consider terminating a trial project early, and
- the process for terminating a trial project early.

5.2.1 Reasons for terminating a trial project early

Table 3 sets out the AER’s preliminary position on why we may revoke a trial waiver early (see clause 6.2(a) of the draft Trial Projects Guidelines) and why we may recommend to the AEMC that a trial rule be repealed before its scheduled expiry (see clause 6.2(e) of the guidelines). For trial waivers the reasons for revocation are generally the same as those in the Issues Paper, with the addition of non-compliance with any obligations under the guidelines. We have refined the reasons for recommending a trial rule revocation.

Concerns about a trial project, and so the possibility of early termination, may be identified by us through the reporting and monitoring requirements. Concerns may also be raised by a customer or registered participant affected by the trial, AEMO, or any other concerned party.

Table 3: Reasons for terminating a trial project early

Reasons for revoking a trial waiver	Reasons for recommending a trial rule revocation
Non-compliance with any condition(s) of the trial waiver	Non-compliance with the trial Rule or any requirements imposed by notice by the AEMC on a proponent under NEL section 104B, NERL section 262B or NGL section 314B
Non-compliance with any obligations under the Trial Projects Guidelines	Non-compliance with other obligations under the National Energy Laws, National Energy Rules and/or National Energy Regulations
Non-compliance with other obligations under the National Energy Laws, National Energy Rules and/or National Energy Regulations	Concerns about the ongoing safe, secure and reliable operation and/or administration of the power system, the market, the declared distribution systems and declared transmission system for gas or markets for natural gas
Concerns about the ongoing safe, secure and reliable operation and/or administration of the power system, the market, the declared distribution systems and declared transmission system for gas or markets for natural gas	Concerns about the ongoing safety of trial participants
Concerns about the ongoing safety of trial participants	Other risks to trial participants, other consumers or market participants that may emerge during the trial
Other risks to trial participants, other consumers or market participants that may emerge during the trial and cannot be mitigated to the AER’s satisfaction through new trial waiver conditions	Failure to permit a retail customer to opt out of a trial project unless otherwise agreed with the AER or otherwise stipulated in a trial Rule or notice issued by the AEMC under NEL section 104B, NERL section 262B or NGL section 314B
A permanent change to the National Energy Rules is made that addresses the identified barrier and so the trial waiver is no longer required	Failure to respond to any reasonable request for information from the AER for the purposes of allowing the AER to carry out its functions in relation to the monitoring of the conduct and performance of trial projects

The trial waiver has been granted on the basis of false or misleading information	A permanent change to the National Energy Rules is made that addresses the identified barrier and so the trial Rule is no longer required
The trial waiver applicant notifies the AER that it wishes to end the trial project early.	The trial Rule has been granted on the basis of false or misleading information

5.2.2 Process for terminating a trial project early

The process by which the AER will revoke a trial waiver is set out in clause 6.2(b) of the draft Trial Projects Guidelines. In summary, this process provides an opportunity for the proponent to respond to a notice from the AER notifying the proponent that we intend to revoke the trial waiver and the reasons for doing so, which we will take into account before making a final decision to revoke a waiver. If the reason we intend to revoke a trial waiver relates to a safety or security of supply issue, the proponent must suspend the trial project immediately. For transparency, the AER will publish its reasons for revoking a waiver.

The process by which the AER will recommend to the AEMC that a trial rule is repealed prior to its expiry date is set out in clause 6.2(f) of the draft Trial Projects Guidelines. This is similar to the process for revoking a trial waiver.

The AER considers this approach will provide due process for trial project proponents and other stakeholders involved in trial projects, while maintaining important consumer, market and system protections.

5.3 Opting out of projects

Our default position remains the same as our initial view – that customers participating in a trial project must be able to opt out of the trial at any time and on any grounds. This applies to trials being conducted under both a trial waiver and a trial rule. This position is set out in clause 6.3(a) of the draft Trial Projects Guidelines.

However, we acknowledge there may be circumstances where it is not practicable for a customer to opt out, or where the costs of doing so are high. These circumstances are likely to be project-specific and so are best assessed on a case-by-case basis.

For trial projects operating under a trial waiver, we propose to incorporate consideration of the grounds on, and process by, which a retail customer can opt out into the trial waiver application process. As noted above, our default position will be that a retail customer can opt out of the trial at any time and for any reason. Unless otherwise agreed by the AER, this will form a condition of the trial waiver. The trial waiver applicant must identify an opt-out process as part of the trial waiver application process, which will be subject to approval by the AER. This is set out in clauses 6.3(c) to 6.3(e) of the draft Trial Projects Guidelines. Failure to allow a customer to opt out of a trial will then be a failure to comply with a condition of the trial waiver, in which case the trial waiver may be revoked.

To ensure trial participants are aware of their ability to opt out, where applicable, retail customers participating in a trial project must be informed of their ability to opt out as part of the explicit informed consent process. The AER will have regard to the Office of the

Australian Information Commissioner's (OAIC) [Australian Privacy Principles guidelines](#) when assessing opt-out provisions in a trial waiver application.²²

Where a trial project proponent wishes to limit the grounds upon which a retail customer may opt out, or remove the ability to opt out, they must provide their reasons in their trial waiver application. In assessing such requests, the AER will consider factors such as:

- the practicability of allowing individual consumers to opt out
- the potential costs or other implications for the trial project, include the outcomes of and potential learnings from, the trial project, if customers are able to opt out.

A proposal to restrict, or remove, the ability for customers to opt out will form part of our consideration of whether a trial project meets the eligibility requirements and innovative trial principles. In particular, it will be relevant to our assessment of whether the trial project maintains adequate protections, including whether the trial project may involve risks to consumers and (if so), how those risks might be mitigated.

Trial projects operating under trial rules may be subject to specific requirements stipulated in the trial rule in relation to the ability of retail customers to opt out and/or the process by which they may do so. Specific requirements could also be imposed via a notice issued by the AEMC in connection with a trial rule.²³ In the absence of opt outs being addressed in the trial rule or notice we propose that, the default position be that retail customers are able to opt out of the trial on any grounds by contacting the proponent, unless otherwise agreed by the AER.

Should a retail customer participating in a trial project apply to the AER to opt out of a trial project, the AER will refer the retail customer to the trial project proponent. The proponent must then allow the retail customer to opt out of the trial project unless otherwise agreed with the AER or otherwise stipulated in a trial Rule or associated notice.²⁴ As noted in section 5.2, a failure to permit a retail customer to opt out of a trial project is a reason why the AER may recommend to the AEMC that trial rule be revoked early.

²² Chapter B section B.40 lists factors that can better establish an individual's implied consent through opt-out mechanisms.

²³ The energy laws permit the AEMC to impose requirements on a proponent in connection with a trial rule via a notice. Proponents must comply with those requirements. If they do not, the AER may recommend that a trial rule be revoked early.

²⁴ See clause 6.3(b) of the draft Trial Projects Guidelines.

6 Conditions for trial waivers

This section relates to section 7 the draft Trial Projects Guidelines.

In the Trial Projects Guidelines we do not propose to limit the conditions that we might impose since the nature and scope of individual trials could vary widely and therefore the appropriate conditions could also vary. However, for transparency, we have included a list of possible conditions in clause 7.1 of the draft Trial Projects Guidelines that we may consider imposing. These are in addition to the consumer protection measures set out in section 3.4.

In the Issues Paper we considered including a potential standard trial waiver condition that would allow us to amend the waiver conditions part way through a trial in the event that the risk profile of a project changes over time. Following stakeholder feedback, we do not propose to include this in the guidelines as standard. However, we note that trial projects could last up to five years, and that circumstances surrounding the project could change significantly over this time. As such, we will carefully consider what conditions may be required for trial projects on a case-by-case basis, with consideration to the duration of the project, the risks associated with the project, and/or the uncertainty of circumstances at the time of its commencement. This may include a condition that the AER may amend waiver conditions for projects deemed particularly risky or uncertain.

Examples of the matters that the trial waiver conditions may address include, but are not limited to:

- 1) **The frequency with which progress reports must be submitted to the AER and the milestones that the progress reports must report against** (see section 3.5).
- 2) **The content of the outcomes report** (see section 3.5).
- 3) **An obligation on the trial proponent to conduct a survey of the experiences of the trial participants** (see section 3.5).
- 4) **Any monitoring requirements in addition to progress reporting** (see section 4).
- 5) **An obligation for the trial project proponent to report any changes to the circumstances under which the trial waiver was granted.**

As noted above, in some circumstances there may be limited information about how a trial might proceed. A trial project waiver will be granted based on the information provided by the applicant prior to the trial commencing. If the circumstances change, such as the risks associated with the project or the operational or financial capability of the proponent, it may be appropriate to revisit the conditions of the waiver, noting the circumstances under which the AER may change, revoke or add conditions (see below).

- 6) **An obligation on the trial project proponent to participate in knowledge sharing events and activities.**

Knowledge sharing is a core component of the regulatory sandboxing toolkit, including the trial waiver. The AER may require proponents to participate in events and activities, such as public forums and workshops, to share insights and learnings from trial projects. This could be specific to the trial project, or more generally about participating in the regulatory sandbox.

7) **A requirement for the trial project proponent to complete a survey in respect of, among other things, the process for obtaining a trial waiver and implementing a trial project.**

The AER will endeavour to continually update and improve its approach to granting trial waivers to ensure the regulatory sandbox is achieving its purpose of allowing innovative new trials to proceed by removing red tape, while maintaining appropriate consumer, market and system protections. Feedback will provide an important input into improving our processes, particularly where the process can be streamlined to reduce the administrative burden on innovators.

8) **A requirement that a trial project must be suspended if the AER gives the proponent a notification that revocation of a trial waiver is being considered on safety or security of supply grounds** (see section 5.2).

9) **A requirement that a proponent comply with the Trial Projects Guidelines.**

Trial project proponents will be required to comply with any additional obligations covered by the Trial Projects Guidelines.

The AER is permitted under the Energy Laws and Rules to vary the conditions of a trial waiver during the course of the trial in certain circumstances, including:

- with the agreement of the trial project proponent. This could occur, for example, where initial outcomes from the trial suggest that alternative reporting and/or knowledge sharing conditions may be appropriate, or more generally that one or more of the conditions prove not to be fit for purpose following the practical implementation of the trial project.
- where the applicant has not complied with the existing conditions of the trial waiver. As discussed in section **Error! Reference source not found.**, if an applicant breaches any of the conditions of a trial waiver the AER may conduct a review of the trial project and/or more extensive monitoring. An outcome of this could be a variation of the conditions of the trial waiver or, if necessary, the AER could revoke the trial waiver altogether (see section 5.2).

If we impose a new condition, revoke a condition or vary a condition, the AER will reissue the trial waiver certificate with the amendments to the trial waiver conditions.

Appendix A: Response to submissions

This appendix provides a summary of issues raised in submissions and our response to them.

Stakeholder	Issue raised	AER response
General issues		
AusNet/Mondo (p3); Powerlink (p3); TransGrid (p1)	Network businesses were generally supportive of the sandboxing toolkit and identified a number of areas where the tools could be useful. For example, AusNet/Mondo suggested sandboxing could be used to explore changes to market settlement process, bespoke loss factor calculations for generators and batteries with a high proportion of locally consumed energy, DNSPs and TNSPs deploying energy storage solutions through partnerships with behind the meter providers and the use of hydrogen to decarbonise gas networks. Powerlink suggested sandboxing could be used to explore alternative pricing approaches and the contingent projects framework. TransGrid considered sandboxing is important for the transition to decarbonisation, particularly in promoting new technologies to assist in addressing operational challenges as a result of decarbonisation.	Noted.
AEC (p1); Red/Lumo (p1)	The AEC and Red/Lumo noted that much can be done within the existing frameworks and sandboxing should not be viewed as an alternative to either these existing processes or improvements to these processes e.g. through regular reviews and allowing any entity to propose a rule change.	The AER agrees that regulatory sandboxing should not be viewed as an alternative, but rather as a complement to existing processes and frameworks. For example, trial waivers will not change the ability of any entity to submit a rule change to the AEMC, and we would encourage proponents to go down that path if they consider they already have the evidence to support a rule change request. However, sandboxing provides additional tools to allow innovators to trial new approaches, services or models that may be in the long term interests of consumers but could otherwise not be trialled. In doing so, these trials can provide additional evidence to support permanent changes to the rules.
Red/Lumo (p1)	Red/Lumo considered the AER must avoid eroding ring-fencing guidelines and other measures that are core to competitive markets.	DNSPs will continue to be able to apply for waivers from specific elements of the ring-fencing guidelines under existing processes. Where a DNSP proposes to conduct a trial project and a waiver from the ring-fencing guidelines is required to facilitate the trial, the trial project must meet the eligibility requirements and innovative trial principles. Innovative trial principle (h) requires that we take into account whether the trial project may impact on competition in a competitive sector of a national energy market. In considering whether a trial project meets this

Stakeholder	Issue raised	AER response
		principle we will consider, among other things, the potential for cross-subsidisation and discrimination.
Powerlink (p3)	Powerlink considered the AER should be cautious about articulating plans in a definitive way before legislation is passed.	The purpose of early consultation is to allow the toolbox to be implemented as soon as possible once the legislation has passed. However, we note that the legislation could change and we will make any necessary updates as required. The AER also will conduct a formal consultation process on the Trial Projects Guidelines, in accordance with the Rules Consultation Procedures, once the legislation has passed.
Prioritising enquiries and waivers		
AusNet/Mondo (p3)	AusNet/Mondo proposed two additional criteria for prioritisation: projects that have the potential to provide the greatest customer benefit in activating renewable technology and that have broad application; and projects that can demonstrate extensive customer engagement and/or that involve partnering with local community organisations.	Generally, we do not consider it appropriate for the AER to prioritise specific technologies. We also expect such projects could be captured by the cross-industry support criterion. However, we agree that projects that can demonstrate support from local communities or consumers should be prioritised and have included this as a criterion.
TransGrid (p2)	TransGrid considered there should be a focus on projects that address operational challenges.	The AER agrees that trial projects focussed on addressing existing and emerging operational challenges in the NEM should be prioritised and have included this as an additional prioritisation criterion for Trial Waiver applications. This addition can be found in our Positions Paper .
AEC (p1-2)	AEC did not support using commercial success to prioritise enquiries or waivers on the basis that the AER is not in a position to judge the likelihood of commercial success	The AER considers it would be difficult to assess prior to a trial whether a project is likely to succeed in the market. As such, we have removed likelihood of commercial success as a criterion for prioritisation. This change can be found in our Positions Paper .
Powerlink (p4)	Powerlink considered the AER should consider the broader implications of prioritising projects that benefit consumers in vulnerable circumstances since these projects could entail higher risks. Powerlink was also concerned about using information requirements to ration demand	Supporting consumers experiencing vulnerability is a strategic priority for the AER. It is not a requirement for enquiries to relate to consumer vulnerability, nor is this an eligibility requirement for trial waivers. However, in times of high demand this is one of the factors we will consider in prioritising enquiries and trial waiver applications. The information requirements are not intended in and of themselves to be a mechanism to ration to demand. Rather, we are simply recognising that applicants will need to have a well thought through project to qualify for a trial waiver and, as such, this will discourage applications for projects that are not sufficiently developed to qualify for a trial waiver.
Confidential information		
AusNet/Mondo (p3-4)	Ausnet/Mondo noted that the AER has strong processes in place already to deal with confidential information, and that these should apply to regulatory sandboxing as well as be adopted by other parties	Noted. We agree that confidential information should only be shared that we consider necessary to help us provide an answer to an enquiry or to

Stakeholder	Issue raised	AER response
	<p>receiving confidential information for the purpose of answering an enquiry or helping to assess a trial waiver application.</p> <p>Ausnet/Mondo also noted that the transfer of confidential information should be kept to a minimum.</p>	<p>assist us in assessing whether a trial waiver application meets the eligibility requirements and innovative trial principles.</p>
Powerlink (p4)	<p>Powerlink requested the AER provide clarification on:</p> <ol style="list-style-type: none"> 1. the extent to which the AER envisages sharing confidential information with the full range of bodies identified in the CCA and Regulation; and 2. what processes/arrangements are in place to manage confidential information, noting that the AER as Memoranda of Understanding with some of the relevant entities. <p>Powerlink was also concerned that the AER may not have the legal authority to require applicants to agree to the provision of confidential information to other government bodies and regulators.</p>	<p>The AER has amended the approach to sharing confidential information for the purposes of a trial waiver. We will now seek written consent from an applicant prior to sharing any confidential information, including trial projects confidential information. If the AER seeks such consent, the applicant will not be obliged to consent in order for their waiver application to be considered. However, this may make it difficult for the AER to satisfy itself that the eligibility requirements and innovative trial principles are met.</p>
Red/Lumo	<p>Red/Lumo noted that any information should only be used for the purpose it was given, particularly in relation to AEMO</p>	<p>Noted.</p> <p>See section 2.3 for further discussion on AEMO's involvement in supporting trial waiver assessments.</p>
IES		
Powerlink (p3)	<p>Powerlink agreed with the AER's initial views on the scope of the IES</p>	<p>Noted</p>
AusNet/Mondo (p4)	<p>AusNet/Mondo considered the scope of the IES should not include advice to parties other than the applicant</p>	<p>We note that any informal steers or feedback will be tailored to the applicant only, except to the extent that the information provided is used to develop and inform web guidance material that will be publicly available on the regulatory sandboxing website.</p>
AusNet/Mondo (p4)	<p>AusNet/Mondo suggested the AER could publish the volume of enquiries, wait times and feedback survey scores.</p>	<p>We agree that publishing the volume of enquiries would be useful and are considering the best format for this.</p> <p>We do not intend to publish wait times for enquiries since the time it takes the AER to close an enquiry will depend on the complexity of the enquiry and whether input from other market bodies is required. As such, we do not consider wait times to be a meaningful measure in this context.</p> <p>We will consider publishing high level survey feedback on the IES. However, the survey is primarily intended as a tool for us to improve the service.</p>
Red/Lumo (p2)	<p>Red/Lumo considered the AER must obtain consent from businesses to use information, even where it's anonymised.</p>	<p>The consent process for knowledge sharing will form part of the initial enquiry application, and the AER will work with innovators to identify</p>

Stakeholder	Issue raised	AER response
		what confidential information may be published on a consent only basis. De-identified and aggregate information sharing is an essential component of regulatory sandboxing to ensure that benefit is distributed equitably in the market. This is discussed further in our Positions Paper .
Form of application		
Powerlink (p5)	Powerlink considered that the trial waiver application form should form part of the guidelines on the basis that the draft rules require an application to be made in the form prescribed in the guideline. Powerlink also noted that the AER could do minor updates without having to follow the Rules Consultation Procedures	The AER considers that the form itself should not be part of the Trial Projects Guidelines. We consider the ability for the AER to prescribe the form of an application in the Trial Projects Guidelines to be sufficiently broad to include prescribing that the applicant must complete the form on the web portal. While the AER could do minor updates without having to follow the Rules Consultation Procedures, we consider that keeping the application form separate will allow us to easily improve the application process, including the information that must be provided, as we learn from early trial waiver applications.
Information requirements		
Powerlink (p4); Red/Lumo (p2)	Powerlink noted that the information requirements should not delay or create an unnecessary barrier to projects. Similarly, Red/Lumo noted the need to balance information requirements to make sure they don't act as a disincentive to using the regulatory sandboxing tools	We agree that the information requirements should not be a barrier to using the trial waiver function. However, the AER must have access to sufficient information to allow us to evaluate whether a project meets the eligibility requirements and innovative trial principles. The proposed information requirements reflect the minimum information the AER considers necessary for us to conduct our assessment. The detailed information will also provide a basis on which to determine trial waiver conditions if a trial waiver is granted.
ENA (p1); TransGrid (p2)	The ENA and TransGrid suggested the AER consider a “tiered application approach”, with low risk applications subject to less onerous requirements than higher risk applications.	The AER is required to have regard to the eligibility requirements and innovative trial principles, irrespective of whether a trial project may be low or high risk. Further, we are not in the position to evaluate the relative risk level of a project until the necessary information has been provided. However, we agree with the general principle that, wherever possible, low risk projects should be subject to less onerous requirements and this is reflected in our proposed approach to monitoring and reporting.
Powerlink (p6)	Powerlink considered the following information should be required: <ol style="list-style-type: none"> 1. How the informed consent of participants will be obtained 2. How trial applicants and partners will collect, use, manage and disclose information to maintain privacy 	We agree that applicants should be required to provide details on how the informed consent of participants will be obtained and how participants' data will be collected, used, managed and disclosed. This information will help inform our assessment of whether the trial project

Stakeholder	Issue raised	AER response
	Powerlink also considered a number of the questions could be consolidated into an evaluation plan that would identify the types of benefits they would measure and how they would monitor and assess changes throughout the trial project.	maintains adequate consumer protections. As such, we have included this requirement as part of the general information on consumer impacts. The information requirements have been structured so that the applicant can easily identify, and the AER can easily assess, how the proposed trial project meets the eligibility requirements and innovative trial principles. In addition, we ask for information such as the objective of the project and the success criteria. These will allow both the trial proponent and the AER to assess how the project is progressing and as such we do not consider an evaluation plan is necessary.
ENA (p2); Powerlink (p5)	ENA and Powerlink noted that it may be difficult for an applicant to <i>demonstrate</i> the benefit of a trial to customers, and instead should <i>identify</i> the benefits to customers.	We agree, and have made this amendment.
AusNet/Mondo (p4-5)	AusNet/Mondo agreed with the proposed list of information requirements but considered that applicants should also be required to include the potential negative impacts to the operation of regulated network service providers, similar to the requirements to consider the impact on AEMO's ability to carry out its functions	We propose to require applicants to include a risk assessment as part of their application. This must include an assessment of risks to consumers, other market participants – including network businesses – and AEMO. Further, in most instances we expect to conduct consultation on application requests. We consider this is sufficient to understand the potential impact of a trial project on network service providers and their ability to carry out their regulatory functions.
Timeline		
AusNet/Mondo (p4)	AusNet/Mondo considered that instead of naming a timeframe, the AER should publish the applications being progressed along with a timeframe.	The AER is required under the National Electricity Rules to name a timeframe in the Trial Projects Guideline.
Powerlink (p4)	Powerlink considered a tiered approach should be adopted, with an expedited timeframe for lower risk projects	We have proposed a maximum time in the Trial Projects Guideline of 6 months, however we will endeavour to complete less complex applications within 3 months. We expect that lower risk projects would also be less complex.
Eligibility requirements		
AusNet/Mondo (p4); Powerlink (p4); TransGrid (p2).	AusNet/Mondo, Powerlink and TransGrid agreed an exit strategy is useful, particularly where trial participants are using equipment or receiving a service from a third party. Powerlink added that eligibility criteria should be broad to encourage new and existing businesses to be innovative	Noted
TransGrid (p2).	TransGrid considered an exit strategy should address how a project could be deployed on a larger scale and how benefits can be maintained following the end of a trial.	The key purpose of the exit strategy will be to ensure that consumers are protected at the end of the trial by having certainty about what service or product they will transition to (if relevant) and that the trial

Stakeholder	Issue raised	AER response
		proponent is compliant with the rules and laws once the waiver no longer applies. Applicants can provide further detail in their exit strategy.
AEC (p2)	<p>The AEC considered the eligibility requirements should consider:</p> <ol style="list-style-type: none"> 1. the material social benefit of a trial 2. the physical and financial impacts on others 3. the risks to customers 4. preventing free rider situations such as funding private infrastructure or extensive free legal advice 	<p>These issues are generally captured by the innovative trial principles or other processes. The AER does not have a role in funding trials. Any funding approved by the AER as part of a revenue determination will need to comply with chapters 6 and 6A of the rules. Finally, the purpose of sandboxing is to allow trials to occur in a real-world environment. Stakeholders will have an opportunity to comment on applications for trial waivers that impact them, and the AER will take submissions into account in deciding whether to grant a waiver.</p>
Consumer protection measures		
Powerlink (p3)	Powerlink agreed with the AER's initial views on consumer protection measures.	Noted
AEC (p2-3)	<p>The AEC noted that AEMC review of the current consumer protection regime in 2019 and their 2020 Retail Energy Competition Review are a good starting place for considering consumer protections. The AEC also noted that the Victorian review of embedded networks and the AEMC's Standalone Power Systems framework both generally apply the standard consumer protection regime.</p>	<p>Noted. We may take these reviews into account when considering consumer protections, particularly where a trial waiver application relates to issues covered by these reviews.</p>
AEC (p2-3); Red/Lumo (p2)	<p>The AEC noted that the National Energy Customer Framework has been in place for over a decade, and may no longer be fit for purpose. The AEC also suggested that the regulatory sandbox could be used to test different billing styles. Red/Lumo considered that the AER's willingness to waive a consumer protection may mean that the protection is not appropriate in its current form and should be subject to review.</p>	<p>Sandboxing allows the regulatory framework, including consumer protections, to be tested – particularly in the context of new technologies and the services they may provide consumers. As such, trials conducted using the sandboxing tool may provide evidence to support permanent changes to the rules.</p>
AusNet/Mondo (p5)	<p>AusNet/Mondo considered explicit informed consent should be sufficient consumer protection for sandboxes except in hydrogen trials where some non-participating customers may opt to electrify</p>	<p>Explicit informed consent is an important requirement, particularly if customers are unable to opt. However, additional protections may be required for some projects and we do not propose to limit them. Further, there may be some circumstances in which we agree not to require explicit informed consent as a waiver condition, in which case alternative protection measures may be appropriate.</p>
Reporting obligations		
AusNet/Mondo (p5-6); Powerlink (p6)	<p>AusNet/Mondo considered that sandboxing reporting should mirror the requirements used by ARENA, including lessons learnt and performance monitoring. They considered any additional considerations, such as the views and experiences of AEMO and other market participants, would</p>	<p>In determining progress reporting requirements, we will take into account any reporting that is already required as a result of other processes, including those funded by ARENA. However, we may require information</p>

Stakeholder	Issue raised	AER response
	add administrative costs. They also considered the views of others may not reflect the successful delivery of a trial since trials can be disruptive. In contrast, Powerlink considered that the views and experiences of trial participants and other relevant market bodies should be incorporated into public reporting of outcomes.	in addition to third-party reporting requirements to ensure we are able to appropriately monitor the trial and ensure knowledge sharing occurs. We consider it important to document not just the trial waiver applicant's view of the success or otherwise of the trial, but to understand the impact on the trial participants and wider market.
Powerlink (p6)	Powerlink considered that reporting should be sufficiently detailed to allow peer review of the methodology and results.	We agree that reporting will be important to inform other stakeholders' understanding and views on trial projects and, as such, must provide a certain level of detail.
ENA (p3); Powerlink (p6)	The ENA agreed that reporting requirements should be flexible. They considered that reporting requirements should depend on project duration. Powerlink supported annual reporting at a minimum for trials longer than a year, and generally thought reporting should be flexible to accommodate how quickly results could be realised.	We agree with these views. For low-risk projects that last more than one year, our preliminary position is that proponents must submit progress reports annually. For riskier projects we may impose more frequent reporting.
Duration		
AusNet/Mundo (p5); Powerlink (p6); SAPN (p2).	AusNet/Mundo considered most projects would be in the range of 2-4 years. Five years or more is normalising a project, and less than 2 years may be insufficient to obtain results. Powerlink considered the duration should primarily be determined by how quickly results can be realised. SAPN considered the AER should have regard to the time it may take for a regulatory barrier to be addressed	We agree with these views, and have incorporated them into the factors we will consider in determining whether the duration proposed by an applicant is reasonable.
Consultation		
AusNet/Mundo (p5); ENA (p1); Powerlink (p6)	AusNet/Mundo considered that 20 business days is sufficient to comment on trial waiver applications. In contrast, the ENA and Powerlink considered that consultation should be for a minimum of 20 business days and that some trial waiver applications may require additional consultation time	We agree there may be circumstances in which the consultation period should extend for more than 20 business days where there are complex issues to consider or significant impacts on other stakeholders. As such, the consultation paper will be specified in the notice and will be for at least 20 business days.
ENA (p1); SAPN (p2)	The ENA and SAPN considered it important that NSPs are consulted. SAPN suggested the AER should require applicants to consult with NSPs and other affected participants before any trial proceeds and demonstrate it has taken reasonable steps to mitigate any adverse impacts on NSPs	The consultation process will provide an opportunity for NSPs to assess the potential impact of a proposed trial project on their operations and present their concerns.
Red/Lumo (p2-3)	Red/Lumo noted that consultation is important as it provides an opportunity to consider whether a wider review is necessary rather than a narrow exemption for one participant	Noted

Stakeholder	Issue raised	AER response
Extension of a trial waiver		
Powerlink (p3); AusNet/Mondo (p6)	Powerlink agreed with the AER's initial views on waiver extensions or variations. AusNet/Mondo also agreed that extensions should largely be limited to projects that have submitted a rule change request.	Noted
Early termination		
AusNet/Mondo (p6)	Ausnet/Mondo agreed with the list of reasons the AER proposed	Noted.
Powerlink (p6)	Powerlink considered the following processes be considered: 1. The guidelines specify the minimum time an applicant will have to respond to the AER's proposal to terminate 2. The AER offer trial participants opportunity to respond to an early termination proposal.	The AER has amended the process to include a minimum response time of five business days, noting that if there is a safety or security of supply issues the proponent will need to cease the trial immediately. The AER will take account of any information provided by the trial project proponent before deciding to revoke a waiver. The proponent may include information from trial participants, but, it is not practical to separately invite trial participants or other stakeholders to respond.
Opting out of trial projects		
Powerlink (p3)	Powerlink agreed with the AER's initial views on opt-outs.	Noted.
AusNet/Mondo (p6)	AusNet/Mondo generally agreed with the AER's initial views on opt-outs, but noted there may be some cases where opting out early may result in costs or special conditions, such as hydrogen trials.	We acknowledge there may be circumstances where it is not practicable for a customer to opt out, or where the costs of doing so are high. Our revised approach allows applicants to make a case as to why opt outs should not apply for their specific project for the AER's consideration.
AEC (p3-4)	The AEC considered trial proponents should propose the mechanism or mitigations to address opt outs (or inability to opt out) in complex cases.	Agreed. Applicants are required to identify an opt-out process as part of the application process.
Conditions for trial waivers		
AusNet/Mondo (p7); ENA (p3); Powerlink (p7)	AusNet/Mondo, the ENA and Powerlink all raised concerns about the proposal that the AER be able to vary the trial waiver conditions mid trial.	Following stakeholder feedback, we do not propose to include this in the guidelines as a standard condition.
Other matters		
Powerlink (p7)	Powerlink considered the guidelines should set out the process through which proponents can seek time-limited exemptions from AER and/or AEMO procedures and guidelines	The AER's waiver function does not extend to procedures and guidelines, only the National Energy Rules and certain elements of the national energy laws. However, a proponent would be able to seek a waiver from a rule requiring compliance with procedures or guidelines.
Powerlink (p7)	Powerlink considered the AER should specify timeframes and/or criteria for regular reviews of the guideline	The AER expects to review the guidelines once we have gained experience in assessing and monitoring trial waivers.