

AER Regulatory Sandbox – Innovator workshop

Summary of meeting – 8 December 2021

On Wednesday 8 December, 3-5 pm (AEDT) the Australian Energy Regulator (AER) hosted a workshop to provide an opportunity for innovators to share their views on our proposed approach to delivering regulatory sandboxing.

This summary outlines the key topics discussed at the workshop, including views expressed at the workshop, without ascribing comments to any one individual or organisation.

1 Introduction

The AER is establishing a Regulatory Sandboxing function that aims to help energy innovators and start-ups navigate complex regulatory frameworks and enable the trial of new products and services that will deliver greater choice and cheaper energy options for consumers.

On 10 November 2021, the AER released an issues paper seeking feedback on our proposed approach to delivering the Regulatory Sandboxing toolkit.

On 8 December, the AER hosted a workshop for innovators as part of the consultation process.

The workshop included presentations from AER staff and representatives from the Australian Energy Market Commission (AEMC), Victoria's Essential Services Commission (ESCV), the Australian Energy Market Operator (AEMO) and the Australian Renewable Energy Agency (ARENA).

The agenda was as follows:

1. Introduction
2. The sandboxing toolkit
3. Innovation enquiry service
4. Sandbox trials
5. Knowledge sharing
6. Next steps

A copy of the slides is available on the AER website.

2 Key issues discussed at the workshop

Innovation Enquiry Service

The AER confirmed that the IES will collaborate with state regulators in answering queries on market entry under current regulatory frameworks.

The IES is not exclusively available to new entrants and smaller players, and businesses of all sizes are encouraged to approach the IES. However, as the purpose of the IES is to

transmit regulatory knowledge, the AER will prioritise users without extensive regulatory resources or ability to access this knowledge on their own.

Although the IES is a 'first stop shop' for innovation enquiries, it is not intended to replace existing pathways or contacts within the AER or other market bodies. The IES can collate information from multiple teams and stakeholders to provide guidance. The IES can also identify specific teams and contacts relevant to particular enquiries, and refer innovators where appropriate.

The IES can clarify current regulatory frameworks and what barriers might exist for a trial project, and in this way can help innovators develop robust trial waiver applications.

- The AER welcomes feedback on whether the IES should offer more extensive assistance with trial waiver applications.

Similarly, clarifying regulatory frameworks and barriers means the IES can help inform innovators seeking to submit a permanent rule change request to the AEMC. The IES will refer innovators to the appropriate team within the AEMC for assistance with preparing the rule change request itself.

Innovators conducting feasibility studies can approach the IES for guidance, particularly if this feasibility study is being undertaken to inform a trial waiver or trial rule change application.

The AER will take on board requests for a 'worked example' of a project facilitated by the IES. The UK energy regulator Ofgem's Innovation Link Fast Frank Feedback service publishes case studies and success stories on its website which are a useful reference point for the kinds of projects IES guidance could assist in developing.

The ACCC is not a formal project partner of the sandbox toolkit. However, the IES (and the sandbox waivers assessment team) may approach the ACCC for guidance on the *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019*, Part XICA of the *Competition and Consumer Act 2010*, the consumer data right in relation to energy and competition issues.

The IES is not intended to function as an innovation hub which makes introductions and facilitates partnerships between compatible projects. The IES scope and FAQs will include instructions on how to access innovation hubs, and it is the AER's hope that partnerships will organically increase due to sandbox toolkit knowledge sharing and greater visibility of what activity is possible in the market.

- The AER will take on board and consider suggestions that incorporating elements of innovation hubs into the IES would be beneficial.

Trial waiver and trial rule change functions

The trial waiver function is limited to the National Gas Rules, National Energy Retail Rules and National Electricity Rules, and the section(s) of the National Gas Law, National Energy Retail Law and National Electricity Law relating to registration.

- If a barrier falls within these frameworks, it could theoretically be waived by the AER. However, the granting of waivers is subject to assessment and consultation.
- Similarly, trials of innovative energy technology (outside of traditional gas and electricity) would only be granted a trial waiver if that technology is governed by these frameworks.

ESCV will provide waivers from Victorian regulatory frameworks to facilitate trial projects via bespoke licenses, collaborating with other market bodies where appropriate.

- ESCV waivers can provide exemptions from s.16 of the *Electricity Industry Act 2000* and s.22 of the *Gas Industry Act 2001*.

AEMO confirmed that that they could participate commercially in a sandbox trial.

- When assessing waiver applications for trials in which AEMO is a commercial participant, AEMO could either sit out of the assessment, or
- A separate team of AEMO staff could assist the AER with the trial waiver assessment, with appropriate information safeguards in place.

If a project can be delivered through a retail or network exemption, then this project may not be a suitable candidate for a trial waiver or trial rule change.

- Trial waivers and trial rule changes should only be sought in relation to projects not possible under current arrangements. IES guidance and pre-lodgement discussion with the sandbox team can help identify what regulatory frameworks might apply and whether a trial waiver or trial rule change application could be suitable.
- An innovator could apply for a trial waiver and a retail or network exemption at the same time.

Trial waivers will not replace ring-fencing waivers, and the two will operate as complementary but separate mechanisms.

'Innovation' is not a defined term under the proposed sandboxing legislation. Trial waiver and trial rule change applicants will be required to address a set of Innovative Trial Principles contained in the proposed legislation, which are a set of criteria by which a project can be established as genuinely innovative.

Trial waivers and trial rule changes can be extended by up to one year. In granting an extension, the AER, AEMC and ESCV will consider whether an extension would yield valuable regulatory insights.

The proposed legislative requirement that retail customers must be able to opt-out of trial projects could require some duplication of infrastructure. The degree to which this affects feasibility will depend on the nature of the project.

Knowledge sharing and reporting on trial outcomes to share regulatory learnings with policy makers and the market will be a condition on the grant of a trial waiver.

- Should multiple innovators request trial waivers targeting the same rules, they could be referred to the AEMC to request a permanent rule change.

The sandbox service will not prevent proponents from directly approaching market bodies should they have questions specific to that body (for example, approaching AEMO with questions about system security). However, innovators seeking trial waivers or trial rule changes are encouraged to approach the AER first, so the sandbox team can efficiently coordinate input from project partners.

Confidential information

The AER confirmed that the sandbox toolkit will only disclose information provided by innovators to other regulatory bodies with the innovator's consent, and on the basis that this

information is kept confidential, should not be disclosed further, and is only used for the purpose of answering the enquiry or assessing the trial waiver application.

- These provisions will be specified in a legal disclaimer provided to the innovator at the beginning of the enquiry or trial waiver application process.

Written submissions and requests for bilateral meetings can be arranged by contacting the AER sandboxing team (regulatorysandbox@ aer.gov.au)

Questions and comments taken on notice

- What definition of microgrid are we using to determine eligibility?
 - Is the regulation risk for Microgrids more due to lack of demonstration projects as proof regulation can be met, rather than insurmountable regulation?
 - Does Distributed Energy Integration Program include thermal energy distribution (consider large precinct scale)
 - Perhaps if ask my question another way - will all FRMPs be obliged to accept customers using a sandbox proponents technology?
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3 Next steps

We invite stakeholders, energy consumers and other interested parties to make submissions on the Regulatory Sandboxing issues paper by Friday, **28 January 2022**.

In March 2022, we will publish a preliminary positions paper on the content we intend to include in the Trials Projects Guidelines, which will include a preliminary draft of the guidelines for consultation.

Following consultation, the IES will be launched in Q2 2022. Applications for trial waivers will open once sandboxing legislation has commenced.