

28 January 2022

Regulatory Sandboxing Issues Paper
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Submitted electronically at: regulatorysandbox@aer.gov.au

Dear Sir/Madam

Regulatory Sandboxing Issues Paper

The Australian Energy Council (AEC) welcomes the consultation opportunity in the Australian Energy Regulator (AER) issues paper on the proposed regulatory sandboxing guideline.

The AEC is the industry body representing 21 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

The AEC can see value in the AEMC being able to test rules changes before any reforms are implemented, where this is practical or possible. However, in general, we don't see the discrete need for the rules relaxation sandbox. The AEC is aware that many retailers have worked with dozens of innovators and new businesses and haven't to date identified any specific need for such. Our view is that much can be done within the previous framework.

However, the AEC acknowledges that the AER guideline is likely to proceed, and as such we welcome the opportunity to contribute to the consultation on a clear and strong guideline. The AEC has not responded to every question in the consultation.

Question 4 – Proposed Innovation Enquiry Service: what's in and out of scope? What information should the AER capture and publish about the use of the sandboxing website?

Along with the proposed general "steer" as to the coverage of regulation to the trial, the AEC's view is that the initial advice should also provide advice about participant obligations. This should especially leave no doubt with the applicant as to what will happen with data and findings associated with the trial, as well as with the trial applicants' intellectual property.

Question 5 – Timeline: What factors should the AER consider in determining a timeline in which we will assess trial waiver applications?

The AER's prioritisation for the trial waiver applications is proposed to be on a first-in, first-served basis. First in first served is an easily decided and administrable measure, and therefore AEC believe that only if demand is very high should any further criteria be applied.

If the demand threshold is crossed then priorities based upon cross industry support, yielding new insights, commencement readiness and benefit vulnerable customers as proposed in the paper are appropriate. However, the AEC would not support judgments on the likelihood of success being included, as the proponents are much better placed than the AER to judge the commerciality of trials.

Question 6 – What additional eligibility requirements should be included in the Trial Projects Guidelines and that the AER should have regard to in assessing trial waiver applications?

The AEC seeks clear and strong guidelines, and the strict application of these criteria on any actual relaxation of rules. Adjunct to the priorities discussed in the response to question 5 above, as an additional minimum we contend these must consider:

- The material social benefit. This is more important than a technical fascination, or for minor unique business models whether they are profit driven or otherwise, that may be the basis of the proposal. This social benefit is not the same as the AER assessing commercial viability as referred to above.
- The physical and financial impacts on others. “In-market” tests should be ring-fenced from the rest of the market. To test an idea with impacts on others outside the trial, the tests could be conducted in a non-live, simulated environment.
- The risks to customers. This requires that an emphasis on strong consumer protections remains, to avoid creating a weakened consumer protection regime to specifically enable sandbox environments.
- Preventing free rider situations. The AER has made it clear in its paper that ensuring that customers aren’t funding substantial private infrastructure, or extensive free legal advice, for businesses, is its objective. We agree that the guidance framework shouldn’t be funding substantial advice requirements to test business models or ideas.

Question 9 – Consumer protection measures: What factors should the AER consider in assessing whether sufficient consumer protection measures are in place?

As noted above, an emphasis on strong consumer protections will help ensure that sandbox trials do not trivialise the existing consumer protection regime. The AEMC conducted a review¹ of the current consumer protection regime for both traditional and new energy products and services in 2019. AEC considers the issues raised in that review, along with the 2021 Final Report into Energy Competition, would be a good starting place for the AER to seek guidance on factors to consider in assessing whether sufficient consumer protection measures are in place in trial environments.²

Further, in terms of the essentiality of the full suite of consumer protection provisions, the recent review into embedded networks in Victoria has, in its advice to Government, set out that the consumer protection regime for what we might call mainstream energy customers must generally be applied to all energy customers.³ Similarly in its recent review of the regulatory frameworks for

¹ AEMC, Consumer protections in an evolving market, <https://www.aemc.gov.au/market-reviews-advice/consumer-protections-evolving-market> . Chapters 9, 10, and 11.

² Sandbox Trial Proponents without retailers may not be able to address the main mechanisms to address payment difficulties identified by the AEMC to include payment and hardship plans, government energy assistance payments and restrictions around disconnections for customers facing payment difficulties due to hardship. (AEMC 2020 Retail Energy Competition Review, Final Report p.111). These protections are in place because energy is an essential service.

³ Department of Environment, Land, Water and Planning - Embedded Networks Review Final Recommendations. Recommendation 6 is that all consumers living in all types of residential private networks should have access to equal or equivalent consumer protections as on-market customers. Recommendation 8 is that all private network customers should have access to the energy retail on the same terms as on-market customers. <https://s3.ap-southeast-1.amazonaws.com/energy-reports/2021-06-24-embedded-networks-review-final-recommendations.pdf>

distributor led Stand Alone Power Systems (SAPS), the AEMC finalised an approach where retailers provided the full suite of consumer protections to SAP customers.⁴ The conclusions of each of these reviews has been subject to a much broader stakeholder engagement and consideration than a waiver application.

However, it is also worth noting that current NECF arrangements have been in place for over a decade and may no longer be fit for purpose for either traditional or new energy products and services. Regulatory sandbox arrangements could provide an opportunity to test new arrangements in a controlled environment. For example, the current AER Billing Guideline is subject to much interest and differing point of views on the purpose and need for regulatory intervention in bill design and information provision. The regulatory sandbox could enable testing of different billing styles (from less to more prescriptive) to understand how consumers will in reality behave and respond. This could inform better billing formats than ‘controlled room’ behavioural consumer testing. How DER pricing, consumption and costs are represented on a bill alongside more traditional energy information requirements can also be tested and understood. This will ensure billing regulations are not only fit for purpose for traditional energy consumption, but also can confidently cater for a growing range DER products and services.

From a customer perspective, unless customers are owning and operating their own generation or reticulation systems the source of their energy supply is in the most part of limited interest to many of them⁵. Customers could expect to have the same rights in terms of supply and service, a situation borne out by years of access to standard pricing and conditions in remote and regional Australia that stands regardless of the technical nature of generation and reticulation. Whilst sandboxing still creates opportunities to test preferences in the new energy context, customer expectations may be even greater, not lower, with further assurances sought by customers as to a guarantee of participation and a right to value creation with their DER for one example.

Question 14 – Opting out of trial projects What issues should the AER consider in setting out the process by and grounds upon which a customer may opt out of a trial project?

Consumers do not necessarily make (economically) rational choices. The frustrations that market observers experience when consumers do not make what experts have deemed to be the correct choice has launched a myriad of competition reviews. In the case of trial participation, trial proposers will be similarly frustrated. Commonly people may refuse to participate in a trial even if it makes no material difference to them, frustrating trial proposals.⁶ Conversely, customers can also be persuaded by a compelling reason to participate, such as financial reward.

Trials such as blended gases or hydrogen offer no opportunity for customers to opt out. There is an inherent contradiction in the view that customers should be made aware of the inability to opt out of a trial when the proponent is seeking the customers explicit informed consent. The AER could therefore consider specific notification requirements for trials such as these involving direct consumer participation or impact, or those that will affect either power or gas quality or interruption, will likely generate a consumer response for an opt out. These are complex and perhaps best

[southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/4116/4237/7213/Embedded Networks Review - Final Recommendations Report.pdf](https://southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/4116/4237/7213/Embedded_Networks_Review_-_Final_Recommendations_Report.pdf)

⁴ AEMC, Distributor led SAPS Draft Report December 2019 summary of recommendation p.2 .

https://www.aemc.gov.au/sites/default/files/2020-01/Updating_the_regulatory_frameworks_for_distributor-led_stand-alone_power_systems_-_draft_report_-_final.pdf

⁵ There may be interest in renewables or distribution technologies in some customer groups and we acknowledge that, but in the most part not.

⁶ Customers connected to the grid may feel they have a diminished capacity to refuse to participate, and therefore see this as impacting on their exercising of free will. A range of inducements or appeals and alternatives such as opt out can help address the feeling of undue pressure.

considered on a case by case basis. The AER's advice should be that the trial proponent propose the mechanism or mitigations to address opt out (or inability to opt out) in such cases.

Any questions about this submission should be addressed to David Markham by email to david.markham@energycouncil.com.au or by telephone on (03) 9205 3107.

Yours sincerely,

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