

# Regulatory sandboxing – Trial Project Guideline

Final decision

29 June 2022



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## Executive summary

Following a series of recommendations made by the Independent Review into the Future Security of the National Electricity Market,<sup>1</sup> and a review by the Australian Energy Market Commission, the former Energy Council of the Council of Australian Governments endorsed the development of a national regulatory sandboxing framework.

The framework is intended to facilitate trials by new and existing energy market participants of innovative concepts in Australia's electricity and gas markets. Our most recent Victorian Energy Market Report found that while Victorian energy consumers may value innovation in the retail energy market, it appears that the product offerings currently available are not meeting their needs.<sup>2</sup> However, we believe consumers have a growing appetite for innovative energy products, which should incentivise businesses to invest in innovation.

We will continue focusing on contributing to a regulatory environment that supports such innovation and believe that trials facilitated in the regulatory sandbox have the potential to both benefit the long-term interests of energy consumers and enable increased adoption of renewable energy. As our energy system transitions away from carbon-intensive sources and Victoria pursues a legislated 2050 net-zero carbon emissions target, new innovative technologies can help reduce the costs of providing secure and reliable energy supplies, as well as contribute to reducing emissions.

A regulatory sandboxing framework allows eligible businesses to trial an innovative product or service in Victoria, with a temporary waiver from existing rules for a time-limited period. The trials will allow these concepts to be tested in a controlled setting, as well as inform future changes to the energy rules on a more permanent basis.

A regulatory sandbox has been established in Australia's financial services sector, overseen by the Australian Securities and Investment Commission.<sup>3</sup> Regulatory sandboxes have also been implemented in overseas energy markets, such as Ofgem's Innovation Link in Great Britain.<sup>4</sup>

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<sup>1</sup> Dr Alan Finkel, *Independent Review into the Future Security of the National Electricity Market*, June 2017.

<sup>2</sup> [RPT - Victorian Energy Market Report - March 2022 - 20220331.pdf \(esc.vic.gov.au\)](#)

<sup>3</sup> ASIC Enhanced Regulatory Sandbox: <https://asic.gov.au/for-business/innovation-hub/enhanced-regulatory-sandbox/>.

<sup>4</sup> Ofgem: [Innovation Link: https://www.ofgem.gov.uk/energy-policy-and-regulation/policy-and-regulatory-programmes/innovation-link-share-your-energy-ideas](https://www.ofgem.gov.uk/energy-policy-and-regulation/policy-and-regulatory-programmes/innovation-link-share-your-energy-ideas).

Laws that commenced on 1 June 2022 in Victoria give the commission new powers to grant time-limited trial waivers to applicants for innovative energy projects.<sup>5</sup> These waivers will operate alongside licences and exemptions as a distinct authorisation category that enable entry into Victoria’s energy market.

The commission is required to prepare and issue a Trial Project Guideline that informs a trial waiver applicant about how to apply, as well as the processes followed by the commission in relation to the consideration of the application. The purpose of this document is to outline the commission’s final decision regarding the Trial Project Guideline to support regulatory sandboxing in Victoria.

A regulatory sandboxing framework is also being established in the National Energy Market. The Australian Energy Regulator (AER) is currently consulting on its draft trial projects guidelines and explanatory statement. The commission has had regard to the AER’s draft guidelines in making our final decision.

## Summary of our final decisions

A summary of our final decisions, which reflect our approaches to the commission’s Trial Project Guideline, is outlined in the following table. The reasons for our approach are detailed in Chapter 2 of this paper.

Final decision	Summary of our final decision	Change from our draft decision
1	<p><b>Process for revising the commission’s Trial Project Guideline</b></p> <p>We will publicly consult in line with our Charter of Consultation and Regulatory Practice.</p>	No change.
2	<p><b>Identification of existing regulatory barriers</b></p> <p>We will adopt the same approach as the AER and require an applicant to identify the regulatory barriers that prevent or hinder their project from proceeding in the Victorian framework.</p>	No change.

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<sup>5</sup> Energy Legislation Amendment Act 2021: <https://www.legislation.vic.gov.au/bills/energy-legislation-amendment-bill-2021>.

3	<p><b>Form of trial waiver applications and information requirements</b></p> <p>Trial waiver applications must be made using a web portal, when available, via the central regulatory sandboxing website, consistent with the AER’s proposed approach.</p> <p>An applicant can apply for a Victorian trial waiver and a national trial waiver in a single application form once the trial waiver portal becomes available. Trial waiver applications must meet information requirements specified in the guideline and application form.</p> <p>This is a similar approach to the AER, noting the AER’s information requirements may vary to the Victorian framework.</p>	<p>Modified – Additional information requirements have been included in relation to dispute resolution and disconnection processes in response to submissions and the requirements of the trial waiver Orders in Council.</p>
4	<p><b>Exit strategy</b></p> <p>Trial waiver applicants are required to have an exit strategy in place for their trial project. The strategy may vary, depending on the type of trial project and activity they are undertaking.</p> <p>This is a similar approach to the AER, which requires an exit strategy for all trial projects, but is more focused on trials in the energy retail market.</p>	<p>No change.</p>
5	<p><b>Timeframes for trial waiver applications</b></p> <p>We aim to determine trial waiver applications within six months following receipt of a complete application. Applications may be determined earlier if they meet the information requirements and the application has been accepted.</p> <p>This aligns with the AER’s proposed approach, which has a set timeframe of six months in their guideline.</p>	<p>Modified – Consistent with the AER’s proposed approach, we will aim to determine trial waiver applications within a maximum of six months but may determine some applications sooner.</p>
6	<p><b>Trial waiver order requirements</b></p> <p>Orders in Council specify a number of matters we must have regard to when granting, varying or extending trial waivers. These matters include most of the trial waiver eligibility requirements in the draft National Electricity Rules and National Gas Rules.</p>	<p>Modified - The eligibility requirements in the draft guideline have been replaced with the trial waiver order requirements.</p> <p>These requirements include the matters that were eligibility requirements in the draft guideline, in addition to a</p>

		number of other matters specified in the trial waiver orders. <sup>6</sup>
7	<p><b>Victorian innovative trial principles</b></p> <p>Orders in Council specify five additional innovative trial principles. These principles are the same as the innovative trial principles under the national framework.</p> <p>The commission must have regard to the trial principles in determining whether a trial project is genuinely innovative. This means our approach to assessing an application will be similar to the AER.</p>	<p>Modified –</p> <p>The draft guideline proposed adding five additional innovative trial principles. These principles are now matters the commission must have regard to, by reason of their inclusion in the trial waiver orders.</p>
8	<p><b>Consultation on trial waiver applications</b></p> <p>We will publicly consult on all trial waiver applications in line with legislative requirements and our Charter of Consultation and Regulatory Practice.</p> <p>We may also consult with other agencies such as the AER, the Australian Energy Market Operator, Energy Safe Victoria and the Energy and Water Ombudsman (Victoria), where relevant. This is a similar approach to the AER.</p>	No change.
9	<p><b>Monitoring and reporting</b></p> <p>We will determine reporting and monitoring obligations on a case-by-case basis when considering trial waiver applications, so that those requirements can be tailored to specific projects. There will be minimum mandatory compliance reporting requirements as part of the conditions of a trial waiver, similar to that of licensees.</p> <p>We may also impose conditions for a trial waiver holder to provide regular progress reports and outcome reports. This is a similar approach to the AER, which proposes mandatory reporting for all trial projects but</p>	<p>Modified – We have clarified that all trial waivers will include compliance-related conditions, including mandatory compliance reporting for trial waiver holders.</p>

<sup>6</sup> Orders made pursuant to section 53 of the Electricity Industry Act and section 54 of the Gas Industry Act (<http://www.gazette.vic.gov.au/gazette/Gazettes2022/GG2022S286.pdf>).

	with the details of reporting requirements set on a case-by-case basis.	
10	<p><b>Knowledge sharing</b></p> <p>We will adopt the approach in the national framework regarding reporting requirements that promote knowledge sharing. This means our approach to knowledge sharing will be consistent with the AER.</p>	No change.
11	<p><b>Confidential information</b></p> <p>Should a trial waiver be granted by the commission, we will require applicants to identify any information they consider is confidential in their trial waiver application and during the period of their trial project.</p>	No change.
12	<p><b>Extension of trial waivers</b></p> <p>We will require trial waiver holders to apply for, where relevant, an extension of at least six months before the scheduled expiry of the trial waiver. An application for an extension must include an interim outcomes report documenting the trial project outcomes to date.</p> <p>This is a different approach to the AER, where trial waiver holders are required to apply at least three months prior to the implementation of the trial waiver holder's exit strategy.</p>	No change.
13	<p><b>Variation of trial waivers</b></p> <p>The commission can vary the conditions of a trial waiver in certain circumstances. Trial waiver holders must apply in writing if they are seeking a variation by agreement with the commission.</p> <p>This is a different approach to the AER, which is focused on variations as a result of non-compliance with trial waiver conditions.</p>	No change.
14	<p><b>Revocation of trial waivers</b></p> <p>We have specified a range of reasons why the commission may revoke a trial waiver before its scheduled expiry. This is similar to the AER's approach to reasons for revocation in the AER's draft trial projects guidelines.</p>	No change.



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**Conditions for trial waivers**

No change.

Trial waivers will include conditions that are consistent with the commission's standard licence conditions, codes of practice and other rules in the commission's framework. An exception to this will be the obligations that the commission determines will not apply to a particular trial waiver.

Conditions will be determined on a case-by-case basis by applying consistent principles and having regard to the commission's statutory objectives. We will also have regard to the nature of the proposed trial project, risks for participants, and how the project proponent intends to manage any risks. These will vary between projects and the activities that a trial waiver authorises.

Consumer protection conditions related to explicit informed consent, opting out and dispute resolution will apply to all trial waivers unless the commission determines otherwise.

This is similar to the AER's proposed approach, noting that the national framework will operate by relieving trial waiver holders of the obligation to comply with particular provisions in the national energy laws and rules.

**Commencement of regulatory sandboxing**

Date	Milestone
1 June 2022	Energy Legislation Amendment Act 2021 came into effect
1 July 2022	Regulatory sandboxing – Trial Project Guideline comes into effect
Later in 2022	Consideration of the AER's final Trial Projects Guidelines and potential amendment to the commission's guideline

## Consultation

The final guideline has been developed in consultation with a range of stakeholders and forums including AER's workshops and formal feedback to our draft decision paper.

The commission presented at the AER's stakeholder workshops in December 2021 as part of its consultation on its Regulatory Sandboxing Issues Paper and had regard to the submissions the AER received.<sup>7</sup>

We released our draft decision paper and draft guideline in April 2022 and provided four weeks for stakeholders to make submissions. As set out in [Appendix C](#), we received three submissions. Stakeholders were generally supportive of our draft decisions and suggested some amendments they considered would improve our proposals.

We would like to thank stakeholders for their involvement and contributions to the process in developing the commission's Trial Project Guideline.

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<sup>7</sup> AER Regulatory Sandboxing Issues Paper, available at: <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/trial-projects-guidelines-regulatory-sandboxing>.

# Context

## Overview

Victoria's new regulatory sandboxing framework enabling innovators to trial new products and services in the energy market commenced on 1 June 2022.

Under the *Energy Legislation Amendment Act 2021*, which makes amendments to the *Electricity Industry Act 2000*, the *Gas Industry Act 2001* and the *Essential Services Commission Act 2001*, the commission can grant a time-limited trial waiver to innovators who sell, supply, generate or transmit electricity and gas.<sup>8</sup> This will allow the trialling of innovative technologies, approaches, business models, products and services in the Victorian market. The new framework will give the commission the power to place enforceable conditions on trial waivers.

Trial waivers will operate alongside licences and licence exemptions as a distinct authorisation category that enables entry into Victoria's energy market.

The commission is required to publish a Trial Project Guideline by 1 July 2022. This sets out our approach, information and process requirements, and explains how decisions on trial waiver applications will be made. This chapter provides an overview of regulatory sandboxing and our role. The commission's role and objectives are further explained in [Appendix A](#).

### Energy Ministers' endorsement of regulatory sandboxing

The Australian Energy Market Commission (**AEMC**) released its final report on regulatory sandbox arrangements on 26 September 2019. This was to enable proof-of-concept trials in the national electricity and gas markets for the purpose of testing – in a controlled setting – whether changes should be made to energy rules on a more permanent basis.<sup>9</sup>

At its meeting on 22 November 2019, the former Council of Australian Governments' Energy Council (**the Council**) agreed with the AEMC's recommendations to introduce a regulatory sandbox toolkit. The Council asked the AEMC to provide further advice on rule changes, including stakeholder feedback on the proposed rule drafting provided in the AEMC's final report and a final recommended package of rule changes.

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<sup>8</sup> Energy Legislation Amendment Act 2021: <https://www.legislation.vic.gov.au/bills/energy-legislation-amendment-bill-2021>.

<sup>9</sup> AEMC, Market Reviews Advice – Regulatory Sandboxes, available at: <https://www.aemc.gov.au/market-reviews-advice/regulatory-sandboxes>.

This package of reforms is now being implemented across jurisdictions that the commission, the AER and the AEMC regulate.

As Victoria has some different arrangements to regulate energy markets, the Victorian-specific *Energy Legislation Amendment Act 2021* was passed in September 2021 to give effect to regulatory sandboxing from 1 June 2022 in this state.<sup>10</sup>

## Development of a trial project guideline

Under both the Victorian and national frameworks, the commission and the AER are required to develop a Trial Project Guideline to support the regulatory sandboxing framework. The commission's Trial Project Guideline provides Victorian-specific guidance to innovators on:

- the requirements to trial a project in Victoria
- how the commission will administer trial waivers in Victoria
- the trial waiver application requirements.

The commission was required to make and publish a Trial Project Guideline by 1 July 2022.

## Consideration of the AER's guideline

The commission is required to have regard to the AER's final guidelines when making our Trial Project Guideline. As the national rules and law changes have been delayed, the AER has not yet been able to finalise its Trial Projects Guidelines. Therefore, the commission is not yet able to have regard to the AER's final guidelines.

The delay of the national framework did not impact the commencement of the Victorian framework on 1 June 2022. The commission will consider the AER's final guidelines once they are made, as required by legislation, to determine if amendments to the commission's guideline are required. If amendments are needed, we will consult on our proposed amendments to the guideline.

The commission has been engaging closely with the AER to establish the regulatory sandboxing framework, including in relation to our Trial Project Guideline. The commission has had regard to the draft trial projects guidelines issued by the AER for consultation in developing our Trial Project Guideline. In doing so, we have sought to achieve consistency where possible and appropriate.<sup>11</sup> The commission has also presented at the AER's stakeholder workshops as part of its consultation

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<sup>10</sup> Energy Legislation Amendment Act 2021: <https://www.legislation.vic.gov.au/bills/energy-legislation-amendment-bill-2021>.

<sup>11</sup> AER draft Trial Projects Guidelines and explanatory statement, available at: <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/trial-projects-guidelines-regulatory-sandboxing/draft>.

on its Regulatory Sandboxing Issues Paper and had regard to the submissions the AER received.<sup>12</sup>

Our Trial Project Guideline adopts the same structure and much of the same content as the AER's draft guidelines, and only contains differences to reflect:

- the different legislative framework, including the requirements of the trial waiver orders
- the commission's statutory objectives
- some minor policy differences that are outlined in this decision
- changes to terminology and wording for clarity and consistency with the legislative framework.

Our Trial Project Guideline includes notes at the start of each section, referencing the equivalent section of the AER's draft guidelines and the key provisions that contain material differences from the AER's draft guidelines. The key differences are explained in this final decision.

Victorian trial waivers will cover all activities that require a gas or electricity licence granted by the commission to operate in Victoria – that is, electricity retail, generation, distribution and transmission, and gas retail and distribution. This means there are differences in some terminology and content of our guideline as compared to the AER's guideline to reflect the scope of activities included in the Victorian sandboxing framework.

### **Trial waiver orders**

The Governor in Council, by Order published in the Government Gazette, can specify a range of matters the commission must have regard to when determining trial waiver applications. Orders under the *Electricity Industry Act 2000* and *Gas Industry Act 2001* were published in the Government Gazette (**trial waiver orders**).<sup>13</sup>

[Appendix B](#) contains an overview of the matters the commission is required by Victorian legislation and the trial waiver orders to include in our Trial Project Guideline.

### **Our final decision**

This final decision outlines the commission's approach to the Trial Project Guideline for regulatory sandboxing in Victoria. Our approach includes consideration of the AER's final guideline as required by legislation and amendments to the commission's Trial Project Guideline, if necessary, once the AER's final guidelines are made.

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<sup>12</sup> AER Regulatory Sandboxing Issues Paper, available at: <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/trial-projects-guidelines-regulatory-sandboxing>.

<sup>13</sup> The trial waiver orders in council, available at <http://www.gazette.vic.gov.au/gazette/Gazettes2022/GG2022S286.pdf/>.

## Other key differences between the Victorian and national frameworks

### Separate trial rule function

The Victorian regulatory sandboxing framework deviates from the national framework with respect to a separate trial rule function.

In the national framework, the AEMC will have a new power to make temporary rule changes in order to allow trial projects to proceed. Due to differences in the regulatory framework, this is not a feature of the Victorian framework. In Victoria, a trial waiver holder will not be automatically subject to the obligations of a licensee or an exempt person. However, a trial waiver is subject to any conditions the commission considers appropriate.

Unless otherwise determined by the commission, the conditions of a Victorian trial waiver will include conditions that are consistent with the commission's standard licence conditions and code requirements for the activity covered by the trial waiver.

### Commission's objectives

The commission must have regard to a range of statutory objectives and considerations when exercising its powers and performing its functions with respect to trial waivers. These are not identical to the statutory objectives to be taken into account by the AER and include the objectives of the commission under the *Essential Services Commission Act 2001*, the *Electricity Industry Act 2000* and the *Gas Industry Act 2001*.

The commission's overarching objective is to promote the long-term interests of Victorian consumers with respect to the price, quality and reliability of essential services. The objectives and other matters outlined in [Appendix A](#) that the commission must have regard to in achieving its statutory objectives will be considered when it is exercising its powers and performing its functions for trial waivers. The commission will also have regard to these objectives when considering potential conditions for trial projects.

### Trial waiver order requirements

The trial waiver orders set out a number of matters the commission must have regard to when granting, extending or varying a trial waiver. These matters include the eligibility requirements that apply under the national framework. However, they also include a range of other matters that the AER is not required to have regard to under the national framework.

## Regulatory sandboxing framework

In order for the sandboxing framework to apply to Victoria's energy market, new provisions in the *Electricity Industry Act 2000*, the *Gas Industry Act 2001* and the *Essential Services Commission*

*Act 2001* commenced on 1 June 2022. These legislative amendments provide the commission with new powers to waive eligible trial projects from Victorian regulatory obligations for a time-limited period. This will allow trial applicants to conduct proof of concept trials of an innovative technology or business model by temporarily waiving specific regulatory obligations.

This framework enables proof-of-concept testing of new technologies and services, which enables regulators and legislators to determine if permanent rule or law changes should be made to the energy framework.

## **Key aspects of trial waivers**

In Victoria, trial waivers will operate alongside licences and licence exemptions as a distinct authorisation. They will authorise a person or entity to undertake any of the activities that normally require an electricity or gas licence pursuant to section 16 of the *Electricity Industry Act 2000* and section 22 of the *Gas Industry Act 2001*.

### **Innovative trial principles**

Trial waivers require project proponents to demonstrate that their project meets the innovative trial principles specified in the legislation and trial waiver orders.

The commission must have regard to the innovative trial principles when determining whether a trial project is genuinely innovative in connection with granting a trial waiver. This also applies where the commission is considering whether a trial project continues to be genuinely innovative in connection with extending the duration of a trial waiver.

### **Duration of trial waivers**

Trial waivers have a maximum duration of five years with the possibility of a once-off one year extension. An applicant may also apply for a shorter trial waiver duration. The commission may grant an extension if it is satisfied that the trial project continues to meet the trial waiver order requirements and be genuinely innovative. The commission will also need to ascertain if there is a need for the trial project to continue while regulatory or legislative changes are made to transition the product or service involved in a trial project into the regulatory framework on an ongoing basis.

### **Conditions**

The trial waiver provides an opportunity for innovators to experiment in a real-world environment by temporarily waiving specific regulatory obligations required for licensed or exempt activities.<sup>14</sup> The

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<sup>14</sup> There are licence exemptions specified in the 2017 General Exemption Order for persons who undertake certain electricity activities and meet the conditions of the exemption.

commission will have regard to a trial project and waiver application on a case-by-case basis to determine what conditions will apply to trial waiver projects. The guideline sets out the types of standard conditions that will apply to waivers unless the commission determines otherwise.

### **Trial waiver determinations and register**

The commission will make a written record of its decision in relation to a trial waiver application by way of a trial waiver determination.

A copy of the trial waiver and determination, excluding any confidential information, will be published on the commission's website as soon as practicable after a trial waiver determination is made.

The commission is required to establish and maintain a register of trial waivers.<sup>15</sup> The register will be published on the commission's website, and contain:

- the name of the trial waiver holder
- a description of the activity that will be undertaken under the trial waiver
- the date of expiry of the trial waiver
- information about where a copy of a trial waiver may be accessed
- any other information the commission determines appropriate.

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<sup>15</sup> Section 67(1) of the Electricity Industry Act 2000 (Vic).



## Trial Waiver Orders

The *Electricity Industry Act 2000* and *Gas Industry Act 2001* provide that the Governor in Council, by Order published in the Government Gazette, may:

- specify matters the commission must have regard to when determining whether to:
  - grant a trial waiver
  - extend the period of a trial waiver
  - vary a trial waiver including conditions of a trial waiver
  - revoke a trial waiver
- specify innovative trial principles that the commission must have regard to
- specify conditions that the commission must or may make a trial waiver subject to
- specify the process for the making or amendment of the commission’s Trial Project Guideline.

Orders were published in the Government Gazette on 7 June 2022. The Orders specify:

- eleven additional matters the commission must have regard to when granting, extending or varying a trial waiver
- five additional innovative trial principles
- three additional matters the commission must provide for in the Trial Project Guideline.

Each of these matters has been included in the final Trial Project Guideline.

## Working with other market bodies and jurisdictions

The commission is consulting closely with the AER to ensure that – where possible and appropriate – there is a common approach to considering trial waiver applications, and consistency between the national and Victorian regulatory sandboxing frameworks.

The commission may also, where appropriate and with consent from the applicant to disclose confidential information, consult and share information with other market bodies in relation to trial waiver applications. This may include Energy Safe Victoria, AEMO and the Energy and Water Ombudsman (Victoria) (EWOV).

## New regulatory sandboxing website and portal

The AEMC’s final recommendations included the establishment of an Innovation Enquiry Service. While not required by the package of legislative and rule changes in the national framework, the AER has nearly finalised the development of a new website for regulatory sandboxing across all participating jurisdictions, including Victoria, to support the regulatory sandboxing framework. We have been engaging closely with the AER during the development of the new website - the Energy Innovation Toolkit.

Energy Innovation Toolkit includes resources such as case studies, market maps, and other information to help innovators navigate the regulatory frameworks relevant to their project. The Energy Innovation Toolkit is expected to launch in June 2022 as part of the implementation of regulatory sandboxing nationally. The Energy Innovation Toolkit will also house the Innovation Enquiry Service portal which will provide a centralised hub for innovators to submit enquiries and seek informal feedback specific to their trial project and the Victorian trial waiver application portal.

Once the national legislation to empower the AER to make decisions on trial waivers has passed the South Australian parliament, the AER will launch its trial waiver application form in the portal. The portal will enable innovators to apply for a Victorian trial waiver and a national trial waiver in a single application form. The AER does not require the legislation to be passed to launch the website or the Innovation Enquiry Service.

### **Application form**

We have developed a trial waiver application form which will be available on the commission's website to assist applicants with understanding the commission's information requirements for a trial waiver application prior to lodging an application through the AER's portal. The application form will also be utilised as a back-up should the AER's trial waiver portal be unavailable for an extended period.

# Trial Project Guideline final decisions

## Legislative requirements and consistency with the national framework

The key processes and innovative trial principles set out in the Energy Legislation Amendment Bill 2021 are reflected in our Trial Project Guideline. We have also had regard to the content of the AER's draft trial projects guidelines in developing our proposed approach to the guideline.<sup>16</sup>

The guideline covers the following areas:

- Process for revisions to the guideline.
- Information about trial waivers and their relationship to other regulatory instruments.
- Process and requirements for making a trial waiver application, including the treatment of confidential information.
- Timeframes for considering trial waiver applications.
- Trial waiver order requirements and innovative trial principles the commission will consider when making decisions regarding trial waivers.
- Circumstances in which the commission may terminate consideration of a trial waiver application.
- Consultation on trial waiver applications.
- Duration of trial waivers.
- Publication of trial waivers and application determinations.
- Monitoring of trial projects, including compliance and reporting obligations.
- Extension, variation, and revocation of trial waivers.
- Requirements relating to participants being able to opt out of trial projects.
- Conditions of trial waivers.

If a trial project intends to operate in Victoria and in other jurisdictions, applicants are likely to need trial waivers from both the commission and the AER. An applicant will be able to apply for a Victorian and AER trial waiver with one application through the trial waiver application portal. Under Victorian legislation, the commission must have regard to the trial projects guidelines made by the AER under the National Electricity Rules. Where possible and appropriate, we will seek to achieve consistency between the commission's and the AER's guidelines.

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<sup>16</sup> AER draft Trial Projects Guidelines and explanatory statement, available at: <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/trial-projects-guidelines-regulatory-sandboxing/draft>.

## Our final decision

This section of the document details our final decisions. These include contextual information regarding the legislative framework, stakeholder feedback and our response. Some of our decisions relate to key differences between our Trial Project Guideline and the AER's draft trial projects guidelines.

### Final decision 1: Process for revising the commission's Trial Project Guideline

#### Our draft decision

Our draft decision was that other than for minor or administrative amendments which may be made by publishing details of the amendments, we would consult on any amendments to the Trial Project Guideline in accordance with our Charter of Consultation and Regulatory Practice.

We proposed to consult on proposed amendments following:

- the commission's review of the AER's final trial projects guidelines or any future amendments to the AER's trial projects guidelines, given the consultation that will occur as part of those amendments
- the making of any additional trial waiver Orders under section 53 of the *Electricity Industry Act 2000* or section 54 of the *Gas Industry Act 2001*, which prescribes certain administrative matters the commission must include in the guideline.

We considered that our proposed approach would enable the commission to act promptly to update the Trial Project Guideline should minor or consequential changes be needed.

#### Stakeholder feedback on our draft decision

No feedback was provided by stakeholders regarding our process for reviewing the commission's guideline.

#### Our final decision

We are proceeding with the decision as proposed in our draft decision.

### Final decision 2: Identifying the existing regulatory barriers to trial projects

#### Our draft decision

We proposed to adopt the same approach as the AER and require an applicant to identify the regulatory barriers that prevent or hinder their project from proceeding in the context of the Victorian framework. This included identifying the particular provisions of the *Electricity Industry Act 2000*, the *Gas Industry Act 2001*, codes of practice, guidelines or other instruments that would prevent the trial project from proceeding without a trial waiver.

We proposed that the conditions of a trial waiver will usually include conditions which are consistent with the commission's standard licence conditions and conditions that the trial waiver comply with codes of practice and guidelines relevant to the activities undertaken in the trial project, except for any provisions that the commission decides should not apply.

We considered this would achieve an efficient and proportionate approach to setting the conditions of a trial waiver. It would also provide clarity as to why a trial waiver is the appropriate authorisation for the activities, rather than the licensing or exemption frameworks, and which specific provisions should not apply to an applicant's project.

### **Stakeholder feedback on our draft decision**

No stakeholder feedback was provided regarding the requirement for an applicant to identify the regulatory barriers that prevent or hinder their project from proceeding in the Victorian framework.

### **Our final decision**

We are proceeding with the decision as proposed in our draft decision.

## **Final decision 3: Form of trial waiver applications and information requirements**

### **Our draft decision**

We proposed that trial waiver applications must be made using a web portal located at the central regulatory sandboxing website, consistent with the AER's proposed approach.<sup>17</sup> Trial waiver applications will be required to meet the information requirements specified in our guideline and application form for trial waivers in Victoria.

Our draft Trial Project Guideline outlined the key information required for a trial waiver application. The application form will be available on the commission's website and the trial waiver application portal. The Victorian trial waiver application form will include some additional information that is required in the context of trial waivers in Victoria's regulatory sandboxing framework.

We considered this approach would provide an appropriate level of consistency with the national requirements, while accounting for the additional information requirements needed in the Victorian context. It also provides flexibility to update the application form over time, should the need arise.

As a first step, trial project proponents should utilise the resources on the new regulatory sandboxing website, including the Innovation Enquiry Service, to determine what regulatory barriers may exist for their project. Once applicants have identified the regulatory barriers and have decided to apply for a trial waiver, they are encouraged to discuss their proposed trial project and

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<sup>17</sup> Link to the regulatory sandboxing website - Energy Innovation Toolkit: [www.energyinnovationtoolkit.gov.au](http://www.energyinnovationtoolkit.gov.au).

application with commission staff prior to submitting the application through the online portal. This will assist applicants to understand the application process and information requirements.

Applicants are encouraged to consult with AEMO, Energy Safe Victoria, EWOV or any other relevant bodies regarding the trial project and their proposed risk management plan for the project prior to submitting their application. Applicants will be required to provide the commission with details of any consultation they have undertaken with these bodies as part of the application process.

### **Stakeholder feedback on our draft decision**

Telstra asked that we extend our information requirements in the guideline to include instructions for applicants who are not members of EWOV's dispute resolution scheme, and what is expected in relation to dispute resolution requirements for trial project participants.

EWOV stated that membership of its dispute resolution scheme should be required for all trial waiver holders to ensure consumers involved in trial projects have access to dispute resolution services. Furthermore, EWOV contends that customers in Victoria would naturally assume that complaints arising from trials could be handled by its dispute resolution service. EWOV said that its dispute resolution scheme will provide key insights into the trends and issues customers are experiencing to inform the development of consumer interests for the future of sandboxing.

### **Our final decision**

We will proceed with our decision regarding the information requirements for an application to include how trial project participants can raise a dispute in relation to the proposed trial project, as well as the processes and procedures in place to resolve disputes.<sup>18</sup>

We have extended the information requirements regarding dispute resolution to include EWOV as the primary external dispute resolution scheme. We expect that EWOV will be the appropriate dispute resolution body for most trial waivers, particularly for trial waiver projects involving residential and small business customers. However, we have retained flexibility for applicants to demonstrate why an alternative approach may be appropriate in certain circumstances.

We will require an applicant to provide supporting documents to demonstrate the following:

- The internal and external processes and procedures that will apply to resolve disputes.

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<sup>18</sup> The trial waiver orders made under section 53 of the Electricity Industry Act and section 54 of the Gas Industry Act provide that the commission must have regard to matters in relation to the grant, extension or variation of a trial waiver. This includes that the proponent provides access to dispute resolution. See <http://www.gazette.vic.gov.au/gazette/Gazettes2022/GG2022S286.pdf>

- Whether the proponent is, or will become, a member of EWOV, and whether customers will have access to EWOV's dispute resolution services.
- If customers will not have access to EWOV, what alternative form of external dispute resolution will apply, and an explanation of why the proponent considers that approach to be appropriate.
- A description of what consultation the proponent has undertaken with EWOV in relation to dispute resolution.

The final guideline contains minor changes to the information requirements for consistency with the trial waiver orders. This includes a new requirement that, where a trial project directly involves the supply or sale of electricity or gas to a customer (as defined in the relevant trial waiver order), the application must include a description of the proponent's processes in relation to disconnection of energy supply.

We have also published a copy of the trial waiver application form on our website to assist applicants with understanding the commission's information requirements for a trial waiver application prior to lodging an application through the AER's trial waiver portal. The trial waiver application form will also be utilised as a back-up should the AER's portal be unavailable for an extended period.

## **Final decision 4: Exit strategy**

### **Our draft decision**

We proposed to require an applicant to have an exit strategy in place for their project. This describes the arrangements the trial proponent will put in place so that all trial project participants will revert to their pre-existing supply arrangement or move onto suitable alternative arrangements that comply with all relevant regulatory requirements, when the trial ends for any reason.

Given that trial projects will only be in effect on a time-limited basis, we considered this would be relevant to the commission when deciding on a trial waiver application. This proposed approach is similar to the AER's draft trial projects guidelines, except the requirements for the exit strategy are described in more general terms given the broader scope of activities that could be covered by a trial waiver under the Victorian legislative framework. We note not all trials will necessarily include retail customers.

We also considered that an exit strategy would assist in providing certainty for all parties regarding transitioning participants out of the trial project and note that requirements to have an exit strategy have been utilised in the British and Singaporean regulatory sandbox frameworks. This is particularly relevant where the commission or government do not implement a regulatory or legislative change, respectively, to remove any barriers for a particular project on an ongoing basis.

The exit strategy should be able to be implemented if the trial ends early, as well as where the trial ends due to the trial waiver expiring. The approach for an exit strategy may differ depending on the nature of the trial project.

### **Stakeholder feedback on our draft decision**

No stakeholder feedback was provided regarding the requirement for an applicant to have an exit strategy in place for their trial project.

### **Our final decision**

We are proceeding with the decision as proposed in our draft decision.

## **Final decision 5: Timeframe for considering trial waiver applications**

### **Our draft decision**

The legislation requires the Trial Project Guideline to set out the period within which the commission will aim to make a trial waiver determination. We proposed to adopt a similar approach to the AER regarding timeframes for decisions for trial waiver applications. The draft guideline provided that the commission will aim to make a determination regarding a trial waiver application within six months once the application meets the commission's information requirements and has been accepted.

The commission would not count the time taken for an applicant to provide the commission with additional information in order for the commission to assess the application.

### **Stakeholder feedback on our draft decision**

AGL and Telstra did not support our aim to determine applications within six months after the application is completed and accepted. AGL raised concerns it would risk forcing applicants to redesign their business models to go to market in order to avoid additional time constraints. Telstra's concern was that it did not align with the AER's proposed approach, and that the commission's approach does not support applicants seeking to undertake cross-jurisdictional trials. Both stakeholders stated the timeframe to make determinations on trial waiver applications should be reduced to two to three months.

### **Our final decision**

While we note the AER's preliminary position in their explanatory statement states it will aim to finalise trial waiver applications within three months, the AER's draft guidelines provided the timeframe for making decisions on trial waiver applications is six months. The AER's explanatory



statement notes that 'it is difficult to know how long applications will take to assess until we have some experience'.<sup>19</sup>

Therefore, we will proceed with the six-month timeframe to reflect the same approach as the AER's draft guidelines. It is important to note that applications may be determined sooner than six months.

The commission will aim to make a determination earlier than six months, subject to:

- the applicant providing all the required information
- the information provided by the applicant is at the level of quality required to make a determination
- no significant issues are raised during consultation on the application.

## **Final decision 6: Trial waiver order requirements**

### **Our draft decision**

We proposed to adopt all of the eligibility requirements specified in the draft National Electricity Rules, except for the criteria relating to adverse impacts on the electricity system. This is due to the criteria duplicating an innovative trial principle we included in the draft guideline.<sup>20</sup>

### **Stakeholder feedback on our draft decision**

No feedback was provided by stakeholders regarding eligibility requirements.

### **Our final decision**

The trial waiver orders have been made since our draft decision was published and specify several matters that the commission must have regard to when granting, extending or varying a trial waiver.

These include the three matters we included as eligibility criteria in our draft guideline. They also include the following other matters we must have regard to in making decisions:

- Where a trial project directly involves the supply or sale of electricity or gas to a customer, or the provision of services by means of a distribution pipeline. whether the proponent has obtained the explicit informed consent of the customer to participate in the trial project.

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<sup>19</sup> AER draft Trial Projects Guidelines explanatory statement, p10.

<sup>20</sup> Section 8.15.4 of the Regulatory Sandboxing – Draft Rules – Consultation Version – September 2020, available at: [https://web.archive.org.au/awa/20210603165248mp\\_/https://energyministers.gov.au/sites/prod.energycouncil/files/publications/documents/Regulatory%20Sandboxing%20-%20Draft%20Rules.pdf](https://web.archive.org.au/awa/20210603165248mp_/https://energyministers.gov.au/sites/prod.energycouncil/files/publications/documents/Regulatory%20Sandboxing%20-%20Draft%20Rules.pdf).

- Where a trial project directly involves the supply or sale of electricity or gas to a customer, the proponent's processes in relation to disconnection.
- Where a trial project involves the supply or sale of electricity or gas to a customer, whether the proponent provides access to dispute resolution.
- Whether the proponent has a process allowing for a customer to opt out from participating in the trial project.
- How the proponent will address the needs and requirements of any customers experiencing vulnerability who are or may participate in a trial project.
- The proponent's operational, technical and financial ability to carry out the trial project.
- The potential customer impacts associated with the trial project.
- The proponent's exit strategy.
- How the project will be monitored, reported on and evaluated.
- Whether the trial project is unable to be conducted without a trial waiver.
- Whether the trial waiver will be appropriately limited in time, scope and scale.

As a result of the trial waiver orders, the eligibility criteria in the draft guideline have been replaced with the trial waiver order requirements.

## **Final decision 7: Victorian innovative trial principles**

### **Context**

The Victorian innovative trial principles are consistent with the innovative trial principles specified in the national framework. The *Electricity Industry Act 2000* and *Gas Industry Act 2001* provide that in deciding to grant a trial waiver, the commission must be satisfied that the trial project is genuinely innovative.

Under the Electricity Industry Act and Gas Industry Act, the commission must have regard to the following innovative trial principles when determining whether a trial project is genuinely innovative:

- Whether the trial project is focused, or will continue to focus, on developing new or materially improved approaches to the use or supply of, or demand for, electricity or gas.
- Whether the trial project is likely to contribute to the achievement of the objectives of the commission under the Electricity Industry Act, the Gas Industry Act and the Essential Services Commission Act.
- Whether the trial project is able to demonstrate, or will continue to demonstrate, a reasonable prospect of giving rise to materially improved services and outcomes for customers who purchase electricity or gas.
- Whether the trial project maintains, or will continue to maintain, adequate customer protections for customers who purchase electricity or gas.

- Whether the trial project may involve risks to such customers and, if so, how those risks might be mitigated.
- Whether the trial project is unable to proceed, or continue to proceed, because of the Electricity Industry Act, the Gas Industry Act, or any instrument made under those Acts.
- Any other principle specified under a trial waiver order.

The trial waiver orders include the following additional innovative trial principles:

- 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.
- Whether the trial project may negatively impact:
  - AEMO's operation of the national electricity system and national electricity market
  - AEMO's operation of systems relating to natural gas (including AEMO's performance of its declared system functions), and markets and auctions for natural gas, and how any potential impacts may be mitigated.
- Whether the trial project is able to be trialled and evaluated.
- Whether there is potential for the trial project to be successfully expanded.
- Whether the trial project will provide for public sharing of knowledge, information and data resulting from the trial project.

### **Our draft decision**

At the time of our draft decision, the trial waiver orders had not been made. Accordingly, we proposed to include five additional innovative trial principles in our Trial Project Guideline to align the Victorian innovative trial principles with those in the impending national legislation and regulations.<sup>21</sup> Those additional principles match the principles detailed in the previous section that were subsequently included in the trial waiver orders.

We considered this approach would promote consistency between Victorian and national regulation in line with the commission's objectives under the *Essential Services Commission Act 2001*, as outlined in [Appendix A](#).

Where a trial project does not meet all of the innovative trial principles, the draft guideline provided that the applicant should outline the reasons for this, in order to assist the commission with its consideration of the trial waiver application.

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<sup>21</sup> Regulatory Sandboxing Legislation Consultation: <https://www.energy.gov.au/government-priorities/energy-ministers/energy-ministers-publications/regulatory-sandboxing-legislation-consultation>.

## Stakeholder feedback on our draft decision

No feedback was provided by stakeholders regarding the additional innovative trial principles.

## Our final decision

There is no substantive change between the draft and final guidelines. The wording in the final guideline has been amended to reflect that the five additional innovative trial principles proposed in the draft guideline are now required under the trial waiver orders.

## Final decision 8: Consultation on trial waiver applications

### Our draft decision

As required by the *Electricity Industry Act 2000* and *Gas Industry Act 2001*, our draft Trial Project Guideline set out the circumstances in which we may refuse or terminate our consideration of an application. These circumstances are consistent with the approach in the AER's draft guideline. This includes situations where the application does not contain the required information, does not demonstrate why the project cannot proceed without a trial waiver, or is misconceived or lacking in substance.

We proposed to publicly consult on all trial waiver applications in line with our Charter of Consultation and Regulatory Practice and in line with the approach outlined in decision 8.

The commission will consider if an application meets the information requirements. If there do not appear to be grounds for terminating consideration of the application, the commission will publish the application and all supporting material provided by the applicant, other than confidential information.

In consulting on a trial waiver application, the commission will publish a notice on its website stating that an application has been received, and that submissions on the application are being sought from interested stakeholders.

Submissions must be in written form and will be published on the commission's website. In certain circumstances, the commission may accept verbal submissions – for example, through public forums or meetings. In these cases, a summary of those submissions will be published on the commission website.

We proposed that the consultation period will generally be 20 business days. However, additional consultation time may be warranted for more complex applications. This is in line with the commission's Charter of Consultation and Regulatory Practice.

Depending on the nature of the trial project, the commission may also consult with any person or organisation it considers relevant, including:

- the AER
- AEMO, in relation to whether the trial project may negatively impact its operation of the relevant electricity or gas markets and systems, and how any such impacts can be mitigated
- Energy Safe Victoria, in relation to whether the trial project may have an adverse effect on safety, and how any such effects can be mitigated
- EWOV, in relation to dispute resolution processes for the trial project.

### **Stakeholder feedback on our draft decision**

AGL proposed that consultation should only be required unless a proposed trial waiver:

- is unlikely to have an impact on other registered participants
- is unlikely to have a direct impact on retail customers other than those who provide explicit informed consent to participate in the trial project.

### **Our final decision**

We note that it is a legislative requirement for the commission to consult on all trial waiver applications pursuant to section 56 of the *Electricity Industry Act 2000* and section 57 of the *Gas Industry Act 2001*. Therefore, we are proceeding with the decision as proposed in our draft decision.

## **Final decision 9: Monitoring and reporting**

### **Our draft decision**

We proposed to determine, on a case-by-case basis, the requirements for monitoring the conduct and outcomes of trial projects for which a trial waiver has been granted. We also proposed that performance and compliance will be assessed against the conditions of the trial waiver.

In most cases, the commission expects to monitor the conduct and outcomes of trial projects for which a trial waiver has been granted using the reporting obligations outlined in decision 9. However, the commission may determine additional monitoring and reporting requirements for a trial project. In doing so, the commission will consider the identified risks resulting from the trial project, including:

- risks to trial participants or other customers
- risks to the safe, reliable and secure supply of electricity or gas
- risks to AEMO's operation of the relevant electricity or gas markets and systems
- any other risks identified by the proponent in the risk management plan for the trial project.

We proposed to determine specific reporting obligations on a case-by-case basis in a way that takes into account the nature of the trial project. The reporting obligations will be a condition of the trial waiver.

Trial waivers may include conditions requiring successful applicants to submit progress reports and outcomes reports to the commission. This will be conducted at certain intervals which the commission considers appropriate for a particular project. However, we would also consider the reporting obligations imposed by the AER on a trial project and would seek to be consistent where the commission considers it appropriate to do so.

Trial waiver holders are required to report breaches of conditions of their trial waiver to the commission.

Some of the types of reports trial waiver holders may be required to submit to the commission include:

- progress reports at least once per year
- more frequent progress reports if specified as a condition of the trial waiver – for example, where the commission considers this is necessary for monitoring or for knowledge sharing purposes
- an outcomes report documenting the trial project outcomes, which must be submitted to the commission by the date specified in the trial waiver conditions.

In determining reporting obligations for a trial project, the commission will have regard to the opportunity to utilise third-party reporting requirements in relation to the trial project, such as reports to the Australian Renewable Energy Agency (**ARENA**) for projects under that scheme.

Examples of matters that the commission may require to be addressed in progress and outcomes report include:

- whether the trial project is meeting the agreed indicators, milestones and success criteria
- details of any complaints or issues raised by participants
- the effectiveness of the trial project in promoting benefits to consumers
- any new risks arising during the trial project, and how these are being managed
- insights on identified barriers to the relevant innovation associated with the trial project
- insights on potential amendments to relevant legislation, codes of practice, guidelines, exemption Orders or other instruments
- compliance with the trial waiver conditions, including measures the proponent has undertaken to ensure compliance with the trial waiver conditions, any breaches of the trial waiver conditions, and actions taken to rectify the breach
- any other issues the commission requires to be included as part of a condition of granting a trial waiver.

## Stakeholder feedback on our draft decision

EWOV stated that our proposal for reporting relies on a self-monitoring model and only requires reporting on a case-by-case basis, which may result in trial waiver holders not approaching the commission when required. Additionally, EWOV stated it would be unlikely that the commission would be aware of misconduct due to the nature of the self-monitoring, and that there should be consistency with the AER's proposed approach to mandatory reporting.

EWOV proposed that a hybrid approach should be used and provided an example of Ofgem's Innovation Link in Great Britain (regulatory sandboxing framework). They added that Ofgem notes additional monitoring and reporting requirements may be necessary depending on what activities the innovator is undertaking in their project. However, Ofgem have consistent, and core reporting and monitoring requirements for all innovators.

## Our final decision

A self-monitoring model with obligations to report breaches is one aspect of our approach to compliance, monitoring and reporting for trial waivers. This is consistent with our approach to our existing licensing functions. However, our final guideline makes clear that we will also impose mandatory compliance-related conditions for all trial waivers. This is consistent with the commission's standard licence conditions, unless otherwise determined by the commission.

These standard compliance conditions will include, but not be limited to, monitoring of compliance, reporting of breaches, provision of information and audits or compliance reviews. A trial waiver holder will also be required to report on:

- their compliance with the trial waiver conditions, including the measures the trial waiver holder has undertaken to ensure compliance with the trial waiver conditions
- any breach of the trial waiver conditions, including breaches of codes of practice, guidelines and other instruments that apply to the trial waiver
- actions taken to rectify any breach.

We also expect that all or most trial projects will be required to submit progress reports and outcomes reports in accordance with the guideline.

In addition to self-monitoring, the commission may also monitor trial waivers through receipt of intelligence through complaints, trial participant surveys, commission audit reports, and third-party reports. The commission will have compliance and enforcement powers in relation to trial waiver conditions under the *Essential Services Commission Act 2001*, with contravention of a trial waiver condition potentially attracting a civil penalty under that Act.

## **Final decision 10: Knowledge sharing**

### **Context**

Learnings from projects conducted under a trial waiver arrangement will help promote benefits to consumers and provide insights about barriers to innovation. This will in turn inform further design and reform of the regulatory framework.

The national rules include a knowledge sharing principle requiring the AER to consider whether the trial project will provide for public sharing of knowledge, information and data resulting from the trial project. To meet this requirement, the AER's draft trial project guidelines include a range of reporting provisions.

### **Our draft decision**

We considered there could be benefits in having a similar approach to the AER when considering trial waiver applications and promoting consistency between national and Victorian frameworks. To achieve this, we proposed to include an innovative trial principle regarding knowledge sharing to align with the national framework.

We proposed that the commission would determine the conditions for reporting obligations and knowledge sharing regarding trial waivers on a case-by-case basis. We consider this provides the commission with the flexibility to adapt these obligations to a particular project, so they are fit for purpose.

### **Stakeholder feedback on our draft decision**

No feedback was provided by stakeholders.

### **Our final decision**

Our final decision is unchanged. We note the innovative trial principle regarding knowledge sharing is now adopted in the trial waiver order.

## **Final decision 11: Confidential information**

### **Our draft decision**

We proposed that a trial waiver applicant must identify any information in their application that they consider to be confidential. We proposed the same approach for any reports or other information provided to the commission by a trial waiver holder during the course of their trial. Furthermore, an applicant or trial waiver holder must include reasons for claiming confidentiality over information or documents.

As part of the application form for a trial waiver, the applicant will give their consent to the commission publishing the non-confidential parts of the application and supporting materials.



As discussed in decision 6, we proposed to adopt most of the eligibility criteria specified in the draft amendments to the national framework.<sup>22</sup> These criteria include a requirement that the commission will have regard to whether the extent and nature of the confidential information claimed by the proponent may impair:

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

We proposed that a trial waiver applicant would be required, at the time of submitting their application, to give their consent to allow the commission to disclose information. This will include confidential information regarding a trial waiver to other government bodies or regulators, where relevant to a particular entity's functions.

If the information being disclosed is confidential information, the commission will take all steps it considers reasonable to maintain confidentiality of that information with the recipient.

### **Stakeholder feedback on our draft decision**

Telstra stated that confidential information should not be disclosed to other parties without the commission seeking written consent prior to sharing the confidential information.

### **Our final decision**

We are proceeding with our draft decision that a trial waiver applicant will be required, at the time of submitting their application, to give their consent to allow the commission to disclose confidential information regarding a trial waiver to other specified government bodies or regulators, where relevant to a particular entity's functions. This is consistent with the AER's proposed approach and with Telstra's submission, the commission will only share confidential information where the applicant has consented to that sharing or where required by law.<sup>23</sup> Where the Victorian framework differs from the national framework is the definition of 'trial project confidential information'. The proposed South Australian legislation defines 'trial project confidential information' as information that is identified by an applicant as being confidential. Under the Victorian framework, an applicant may identify information that is confidential. However, depending on the nature of the information, the commission may not regard the information as confidential. Trial waiver applicants should be aware the trial waiver orders require that in considering whether to grant, vary or extend a trial

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<sup>22</sup> Section 8.15.4(4) of the Regulatory Sandboxing – Draft Rules – Consultation Version – September 2020, available at: [https://web.archive.org/au/awa/20210603165248mp\\_/https://energyministers.gov.au/sites/prod.energycouncil/files/publications/documents/Regulatory%20Sandboxing%20-%20Draft%20Rules.pdf](https://web.archive.org/au/awa/20210603165248mp_/https://energyministers.gov.au/sites/prod.energycouncil/files/publications/documents/Regulatory%20Sandboxing%20-%20Draft%20Rules.pdf).

<sup>23</sup> See for instance section 61(3) of the Essential Services Commission Act 2001.

waiver the commission must have regard to, among other things, whether the extent and nature of the confidential information claimed by the applicant may impair the commission's ability to provide appropriate public transparency in relation to the conduct and outcomes of trial projects. Trial waiver applicants should take this into account in deciding which information they consider to be confidential. The final guideline contains some minor wording changes to simplify references to confidential or commercially sensitive information.

## Final decision 12: Extension of trial waivers

### Our draft decision

We proposed that a trial waiver holder that wishes to extend the duration of a trial waiver must apply to the commission for an extension at least six months before its expiry. This will give the commission sufficient time to consider the application. This is a slightly different approach to that which is proposed in the AER's draft trial projects guidelines. In the AER's proposal, trial waiver holders are required to apply to the AER at least three months prior to the implementation of the trial waiver holder's exit strategy, rather than before the scheduled expiry of the trial waiver.

As the commission may require different types of exit strategies to reflect the scope of activities that may be undertaken in Victorian trial projects ([refer to decision 4 in this paper](#)), we consider six months to be a more appropriate timeframe for a trial waiver applicant to seek an extension.

We proposed that the trial waiver holder must provide:

- reasons why the trial waiver holder requires the trial waiver to be extended
- an interim outcomes report documenting the trial project outcomes to date
- any changes in circumstances in relation to the trial project that may affect the commission's assessment of the trial project against the eligibility requirements and the innovative trial principles
- an updated exit strategy, or evidence that the existing exit strategy remains appropriate

In deciding whether to grant an extension of a trial waiver, the factors the commission will have regard to include:

- the reasons provided by the trial waiver holder as to why a trial waiver should be extended
- whether the trial project continues to meet the eligibility requirements, innovative trial principles, and any other matters required by the *Electricity Industry Act 2000*, *Gas Industry Act 2001* or trial waiver Orders.

If the commission grants the extension of a trial waiver, changes to the conditions may be made where appropriate.

An extension of a trial waiver may only be granted once for a maximum period of up to one year, in line with the legislative constraints on the duration of trial waiver extensions.

The trial waiver register will be updated to reflect any extension that is granted by the commission. This will include a record of the application for an extension, the commission's decision, and any updated trial waiver.

### **Stakeholder feedback on our draft decision**

Telstra stated that the commission should have an approach consistent with the AER in relation to the extension application process to allow alignment with trial releases. The AER's draft guideline provided that a trial waiver holder must notify the AER at least three months prior to the commencement of the exit strategy.

### **Our final decision**

The Victorian legislative framework differs to the national framework regarding the scope of activities. The Victorian framework covers a broad scope of activities that could be covered by a trial waiver. In line with our draft decision, we have decided that a trial waiver holder wishing to extend the duration of a trial waiver must apply to the commission for an extension at least six months before its expiry.

We consider this approach is clearer than the AER's proposed approach of requiring an application at least three months prior to commencement of the exit strategy, particularly given the broader range of activities that could be covered under the Victorian framework and the potential greater diversity in exit strategies. This six-month period will allow sufficient time for the commission to decide on the extension application and for the trial waiver holder to implement its exit strategy if the commission refuses to grant an extension.

For consistency with the trial waiver orders, the final guideline provides that the commission must also have regard to the trial waiver order requirements when making a decision whether to extend a trial waiver.

### **Final decision 13: Variation of trial waivers**

#### **Context**

The commission may vary a trial waiver or a trial waiver condition. The commission may also impose further conditions or modify the existing conditions of a trial waiver.

The commission may make such variations:

- on its own initiative, in accordance with section 60 of the *Electricity Industry Act 2000* or section 61 of the *Gas Industry Act 2001*, after notifying the trial waiver holder of its intention to do so, and after providing an opportunity for the trial waiver holder to respond
- by agreement with a person granted a trial waiver, under section 61 of the *Electricity Industry Act 2000* or section 62 of the *Gas Industry Act 2001*.

The commission will consult with the trial waiver holder before imposing further conditions or modifying the existing conditions of a trial waiver. The trial waiver register will be updated to reflect any variation, including the commission's record of its decision to vary a trial waiver.

### **Our draft decision**

We proposed that where a trial waiver holder seeks to vary the conditions or other particulars of its trial waiver, it must make that application in writing to the commission. This application must provide sufficient information to enable us to assess the impact and significance of the variation with respect to the current conditions of a trial waiver. This is consistent with our approach to licence variation applications.<sup>24</sup>

### **Stakeholder feedback on our draft decision**

No feedback was provided by stakeholders regarding the variation of trial waivers.

### **Our final decision**

We are proceeding with the decision as proposed in our draft decision. For consistency with the trial waiver orders, the final guideline provides that the commission must have regard to the trial waiver order requirements and innovative trial principles when making a decision as to whether to vary a trial waiver.

## **Final decision 14: Revocation of trial waivers**

### **Context**

The commission may revoke a trial waiver in accordance with the *Electricity Industry Act 2000*, *Gas Industry Act 2001* and the commission's Trial Project Guideline.

### **Our draft decision**

We proposed to include the following reasons in our guideline regarding when the commission may terminate a trial waiver before its scheduled expiry date:

- Non-compliance with any condition of the trial waiver.
- Non-compliance with any obligations under this guideline.
- Non-compliance with any relevant obligations under the *Electricity Industry Act 2000* or *Gas Industry Act 2001*.

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<sup>24</sup> Section 5.1 of the Essential Services Commission: Guide to Applications for Electricity Industry and Gas Industry Licences – Version 1.1 – 9 December 2020, available at: <https://www.esc.vic.gov.au/sites/default/files/documents/Guide%20to%20Applications%20for%20Electricity%20Industry%20and%20Gas%20Industry%20Licences%20-%20December%202020.pdf>

- Concerns about the ongoing safe, reliable and secure supply of electricity or gas.
- Concerns about the impact of the trial project on AEMO's operation of the relevant electricity or gas markets and systems.
- Concerns about the ongoing safety of trial project participants.
- Other risks to trial project participants, other consumers, or market participants that may emerge during the trial and cannot be mitigated to the commission's satisfaction through new or amended trial waiver conditions.
- A permanent change to the *Electricity Industry Act 2000*, *Gas Industry Act 2001* or relevant codes of practice, guidelines, exemption Orders or other instruments is made, which addresses identified barriers to the trial project and means the trial waiver is no longer required.
- The trial waiver has been granted on the basis of false or misleading information.
- Insolvency of the trial waiver holder.
- The trial waiver holder notifies the commission that it wishes to end the trial project early.
- Any matter specified under a trial waiver Order as a matter the commission must have regard to in determining whether to revoke a trial waiver.
- Where the commission considers it appropriate for any reason, having regard to the commission's statutory objectives under the *Electricity Industry Act 2000*, *Gas Industry Act 2001* and *Essential Services Commission Act 2001*.

If, having regard to these or any other matters, the commission decides to revoke a trial waiver, the commission will:

- notify the trial waiver holder that it intends to revoke the trial waiver and the reasons why
- invite the trial waiver holder to make submissions within a time specified in the notice, which will be at least five business days
- take account of any submissions or information provided by the trial waiver holder before deciding to revoke the trial waiver
- issue a notice to the trial waiver holder specifying the date on which the trial waiver will be revoked and require the trial waiver holder to implement its exit strategy by that date.

Where the commission intends to revoke the trial waiver due to a safety, reliability or security of supply issue, the trial waiver holder must cease the trial project immediately upon notification that the commission intends to revoke the trial waiver.

As soon as practicable after revoking a trial waiver, the commission will publish a notice on its website specifying the date on which the revocation takes effect, and the reasons for the revocation.

### **Stakeholder feedback on our draft decision**

No feedback was provided by stakeholders regarding the revocation of trial waivers.

## Our final decision

We are proceeding with the decision as proposed in our draft decision.

### Final decision 15: Trial waiver conditions and protections for participants

#### Context

A trial waiver under the Victorian legislative framework has a different legal effect to a trial waiver under the national framework. A trial waiver under the *Electricity Industry Act 2000* or *Gas Industry Act 2001* is an alternative to holding a licence. The activities covered by the trial waiver are regulated by the conditions of the trial waiver.

In contrast, an AER trial waiver only relates to specific provisions of the national energy laws and rules in relation to which the applicant seeks a waiver. Where a person is issued with an AER trial waiver, they are not required to comply with those provisions of the national energy laws and rules that are specified in the AER trial waiver. However, all other provisions of the national energy laws and rules continue to apply.

This difference impacts the conditions of a trial waiver, with the conditions under the Victorian framework needing to cover a broader range of issues.

The conditions of a trial waiver will be determined by the commission in line with the legislative framework. The commission must also have regard to the achievement of its objectives, including promoting protections for customers.

#### Our draft decision

We proposed that a trial waiver would include conditions that are consistent with the commission's standard licence conditions, codes of practice and other rules in the commission's framework. An exception to this will be the obligations that the commission determines will not apply to a particular trial waiver.

Trial waiver conditions will include protections for participants of a trial project, and be determined on a case-by-case basis having regard to:

- the nature of the proposed trial project
- risks for participants
- how the project proponent proposes to manage any risks.

Consistent with the AER's draft trial projects guidelines, trial waivers will generally be subject to the three default conditions requiring the trial waiver holder to:

- obtain explicit informed consent from trial project participants

- allow trial project participants to opt out of the trial project, in accordance with an opt out process approved by the commission
- provide trial project participants with access to a dispute resolution process.

Under the Victorian framework, each condition of a trial waiver is a civil penalty provision for the purposes of the commission's enforcement framework. Contraventions of civil penalty provisions may lead to the commission taking enforcement action.<sup>25</sup>

### **Stakeholder feedback on our draft decision**

No feedback was provided by stakeholders regarding trial waiver conditions and protections for participants.

### **Our final decision**

We are proceeding with the decision as proposed in our draft decision.

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<sup>25</sup> Part 7 of the Essential Services Commission Act 2001 (Vic).

## Next steps

### Commencement of regulatory sandboxing

Date	Milestone
1 July 2022	Regulatory sandboxing – Trial Project Guideline commences
Later in 2022	Consideration of the AER’s final Trial Projects Guidelines and potential amendment to the commission’s guideline

### Revising the commission’s Trial Project Guideline

The Trial Project Guideline may require amendments following the commission’s review of the AER’s final trial projects guidelines or any future amendments to the AER’s trial projects guidelines.

The Trial Project Guideline may also require amendment if any additional trial waiver orders are made under section 53 of the *Electricity Industry Act 2000* or section 54 of the *Gas Industry Act 2001*, which prescribes certain administrative matters the commission must include in the guideline.

We will consult on any future proposed amendments and ensure consultation is in accordance with our Charter of Consultation and Regulatory Practice.



## Appendix A: Role of the commission

The commission is Victoria's independent economic regulator of essential services. Primary legislation passed by the Victorian Parliament sets out the objectives and expectations for the commission in the regulation of energy markets.

The *Essential Services Commission Act 2001 (Vic)* sets out the commission's overarching objective to promote the long-term interests of Victorian consumers.<sup>26</sup> In seeking to achieve this objective, the commission must have regard to the following matters to ensure they are relevant in any particular case:

- Efficiency in the industry and incentives for long term investment.
- The financial viability of the industry.
- The degree of, and scope for, competition within the industry, including countervailing market power and information asymmetries.
- The relevant health, safety, environmental and social legislation applying to the industry.
- The benefits and costs of regulation, including externalities and the gains from competition and efficiency, for:
  - consumers and users of products or services, including low income and vulnerable consumers
  - regulated entities.
- Consistency in regulation between States and on a national basis.
- Any matters specified in the empowering instrument.

The commission is also guided by objectives specified in the *Electricity Industry Act 2000* and *Gas Industry Act 2001*.<sup>27</sup> The objectives of the commission in these Acts are:

- to the extent that it is efficient and practicable to do so, promote a consistent regulatory approach between the electricity industry and the gas industry
- to promote the development of full retail competition
- to promote protections for customers, including in relation to assisting customers who are facing payment difficulties.

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<sup>26</sup> Section 8 of the *Essential Services Commission Act 2001 (Vic)*.

<sup>27</sup> Section 10 of the *Electricity Industry Act 2000 (Vic)* and Section 18 of the *Gas Industry Act 2001 (Vic)*.

## Appendix B: Content required by legislation

### Statutory requirements for the Trial Project Guideline

The following table outlines the statutory requirements the commission must have regard to in making the Trial Project Guideline, pursuant to the *Energy Legislation Amendment Act 2021* amendments to the *Electricity Industry Act 2000 (EI Act)* and *Gas Industry Act 2001 (GI Act)*.

Preparation and issue of Trial Project Guideline pursuant to section 63 of the EI Act and 64 of the GI Act	EI Act section	GI Act section	Reference in guideline
How an application must be made, including the steps proponents must take to identify confidential information submitted as part of an application.	63(2)(a)	64(2)(a)	3.1
The approach that the commission proposes to take in performing its functions and exercising its powers to grant a trial waiver.	63(2)(b)	64(2)(b)	4
The timeline within which the commission will aim to make a determination of a trial waiver application.	63(2)(b)	64(2)(b)	4.1
The process the commission proposes to follow when determining whether to refuse to consider a trial waiver application.	63(2)(c)	64(2)(c)	4.3
The consultation process that the commission must undertake on a trial waiver application.	63(2)(d)	64(2)(d)	4.4
The process the commission proposes to follow for the purpose of determining whether to grant an extension to the period of a trial waiver.	63(2)(e)	64(2)(e)	6.1
The process the commission proposes to follow for the purpose of determining whether to revoke a trial waiver.	63(2)(f)	64(2)(f)	6.3
The steps persons granted trial waivers must take to identify confidential information submitted to the commission as part of a trial project.	63(2)(g)	64(2)(g)	5.5
Any matter that a trial waiver Order requires to be specified in the guidelines.	63(2)(h)	64(2)(h)	See below

Guidelines developed and issued by the commission may specify any other matter that the commission considers necessary, including those relating to: <ul style="list-style-type: none"> <li>• applications</li> <li>• decisions on applications</li> <li>• termination of consideration of an application</li> <li>• extensions of trial waivers</li> <li>• variations of trial waivers</li> <li>• revocations of trial waivers.</li> </ul>	63(3)(a)	64(3)(a)	4.2, 4.6, 5.1
<b>Consideration of AER's trial projects guidelines pursuant to section 65 and 66 of the Energy Legislation Amendment Act 2021</b>	<b>EI Act section</b>	<b>GI Act section</b>	<b>Reference in guideline</b>
In preparing, issuing and amending the Trial Project Guideline, the commission must have regard to the AER's Trial Projects Guidelines, as defined in Chapter 10 of the National Electricity Rules.	65(1)	66(1)	1.6
<b>Matters that must be included in the Trial Project Guideline pursuant to the Orders in Council</b>	<b>EI Act Order</b>	<b>GI Act Order</b>	<b>Reference in guideline</b>
Matters the commission must have regard to in relation to the grant, extension or variation of a trial waiver.	Part 2	Part 2	4.2 Box 1
Additional innovative trial principles.	Part 3	Part 3	4.2 Box 2
Matters the commission may examine when considering a proponent's opt out proposal and a proponent's request to restrict the circumstances in which participants may be able to opt out.	Part 4 (a)	Part 4 (a)	6.4
The approach the commission will take in determining the conditions of trial waivers, including customer protection conditions.	Part 4 (b)	Part 4 (b)	7
The approach the commission will take in determining monitoring and reporting obligations.	Part 4 (c)	Part 4 (c)	5

## Appendix C: Stakeholder submission to draft decision paper and guideline

The following stakeholders made submissions to our draft decision regarding our draft Project Trial Guideline:

- AGL Energy Limited
- Telstra Corporation Limited
- Energy and Water Ombudsman (Victoria).