

31 January 2019

Mr John Pierce AO  
Chair  
Australian Energy Market Commission  
Level 6, 201 Elizabeth Street  
Sydney NSW 2000

### **Submission to Regulatory Sandbox Arrangements - Consultation paper**

Dear Mr Pierce,

Thank you for the opportunity to provide a submission to the AEMC's recently published Regulatory Sandbox Consultation paper.

Energy Networks Australia is the national industry body representing businesses operating Australia's electricity transmission and distribution and gas distribution networks. Member businesses provide energy to almost every household and business in Australia.

Energy Networks Australia strongly supports development of regulatory sandboxes that allow innovative projects which are in the interests of consumers to be more easily tested and implemented.

Innovation is a key driver of long term customer value and will always have a place in the Australian energy system. The regulatory sandbox initiative should be actively pursued by AEMC and COAG Energy Council with design principles centred on promoting the long-term interests of customers consistent with the National Electricity and Gas Objectives.

Further specific responses to the questions posed in the Consultation paper are set out in [Attachment A](#).

Please feel free to contact ENA's General Manager - Economic Regulation Garth Crawford ([gcrawford@energynetworks.com.au](mailto:gcrawford@energynetworks.com.au) or 03 9103 0400) if you should wish to discuss any aspect of this response.

Yours sincerely,



**Andrew Dillon**  
CEO

**Attachment A**

**RESPONSE TO CONSULTATION PAPER QUESTIONS**

<p><b>QUESTION 1: OTHER SANDBOX EXAMPLES</b>          Are there other examples of regulatory sandbox arrangements that are relevant when considering these arrangements for the NEM?</p>	<p>ENA is not aware of any further comparable sandbox arrangements beyond those discussed in the Consultation paper.</p>
<p><b>QUESTION 2: OTHER RELEVANT TRIALS</b>          What other proof-of-concept trials are relevant when considering formal regulatory sandbox arrangements for the NEM?</p>	<p>The examples provided appear to summarise likely areas.</p> <p>One additional issue to consider may be opportunities to conduct limited exploratory ‘paper trials’ on a voluntary basis of alternative revenue and pricing models, such as TOTEX-based approaches, as discussed in the recent ENA-CSIRO <i>Network Transformation Roadmap</i>.</p>
<p><b>QUESTION 3: BARRIERS TO PROOF-OF-CONCEPT TRIALS</b>          (a) Are proof-of-concept trials being inhibited by current market regulations or processes?          (b) If so, what are the potential barriers to proof-of-concept trials that might be addressed by a regulatory sandbox initiative?</p>	<p>Some aspects of existing NER/NGR provisions have limited the scope and capacity of parties to potentially negotiate and agree upfront to outcomes in the New Reg trial process.</p> <p>Greater flexibility around review timelines, and the degree to which consumer perspectives can guide AER assessments on proposal allowances, may have assisted in the proof of concept trial, whilst not representing a critical barrier to the trial itself.</p>
<p><b>QUESTION 4: ACCESS TO GUIDANCE ON THE REGULATORY FRAMEWORK</b>          (a) Is there a lack of access to guidance for innovative new entrants on navigating the energy regulatory framework?          (b) If so:          • What type of guidance is needed?</p>	<p>New entrants and project proponents should be able to access guidance on the energy regulatory framework. This should promote lower barriers to entry for innovative new participants, promoting the long-term interests of consumers.</p>

<ul style="list-style-type: none"> <li>• Who should provide it?</li> <li>• Should guidance be coordinated across the AER, AEMO and AEMC?</li> <li>• How should the provision of guidance be funded?</li> <li>• Should an application be required in order to gain access to detailed guidance? If so, what criteria should apply?</li> </ul> <p>(c) Is there a role for binding advice from market bodies on certain aspects of the regulatory framework to support proof-of-concept trials?</p>	
<p><b>QUESTION 5: TRIALS UNDER AER ENFORCEMENT DISCRETION</b></p> <p>(a) Is the AER’s ability to issue no action letters, provide waivers and exemptions, and use its enforcement discretion sufficient to facilitate proof-of-concept trials in the NEM? If not, why?</p> <p>(b) Is there a need for a more formal process for proponents of proof-of-concept trials to seek a no action letter?</p> <p>(c) Should no action letters that facilitate innovation or proof-of-concept trials be made public?</p>	<p>While these measures may be sufficient in some cases, in others, such as AER’s rule and legislative obligations, they may not be sufficient to fully permit one-off limited trials. Alternative permissions or rule amendments may therefore be appropriate.</p>
<p><b>QUESTION 6: THE NEED FOR A FORMAL REGULATORY SANDBOX</b></p> <p>(a) Would formal regulatory sandbox arrangements, where some regulatory requirements are relaxed on a time-limited basis whilst appropriate safeguards remain in place, serve to better facilitate proof-of-concept trials in the NEM?</p> <p>(b) What other regulatory tools are needed to facilitate proof-of-concept trials?</p>	<p>Yes. Trialling of Stand Alone Power Systems arrangements to the benefit of all customers is an example of a highly prospective area for ‘sand-boxing’.</p> <p>Other core elements which would be important would be:</p> <ul style="list-style-type: none"> <li>• Certainty in how details of the trial will be interpreted under the rules and whether or not the trial is compliant.</li> <li>• Likely consequences if there are risks of negative customer outcomes from the trial</li> <li>• Certainty about the process for extending the trial period to do further testing or collect more data if required</li> </ul>

<p><b>QUESTION 7: DESIGN OF A FORMAL REGULATORY SANDBOX ARRANGEMENTS, IF REQUIRED</b></p> <p>(a) If required, should the objective of the formal regulatory sandbox arrangements be to facilitate further proof-of-concept trials in the NEM? If not, what should the objective be?</p> <p>(b) If required, what metrics should be used to measure the success of a formal regulatory sandbox arrangement?</p> <p>(c) If required, what should be the high-level criteria for accessing a regulatory sandbox arrangement?</p> <p>(d) How could fairness be addressed in the case where proponents of similar trials apply to access sandbox arrangements but only a limited number of trials can be accepted?</p> <p>(e) If required, what should be the key features of a formal regulatory sandbox arrangement for the NEM?</p> <ul style="list-style-type: none"> <li>i) What regulatory arrangements should be within scope to consider for relaxation?</li> <li>ii) What should be the safeguards for consumers</li> <li>iii) What obligations should be placed on the participants (e.g. knowledge sharing requirements)?</li> </ul>	<p>The objective of the formal sandbox arrangements should be to promote innovative and flexible proof of concept trials that promote the long-term interests of consumers.</p> <p>To provide consistency with this objective, the metrics for the sandbox should be drawn from the elements of the National Electricity /National Gas Objectives, which also serve as the AEMC’s rule-making test. This would allow rule changes based on the trials to be informed by evidence relating to the same issues and test.</p> <p>The proponent with the sandbox proposal that best maximises contribution to the NEO/NGO should be successful. As part of this, any proposals compromising the most critical elements of the NEO/NGO should be out of scope, for example, safety of the public, consumers and workers must be maintained at all times.</p> <p>Fairness can also be addressed by ongoing disclosure requirements that ensure information from trials are publicly available.</p>
<p><b>QUESTION 8: TRIALLING INNOVATIVE REGULATORY PROCESSES</b></p> <p>How could formal regulatory sandbox arrangements be used to trial changes to regulatory arrangements to guide adoption of reforms across the market?</p>	<p>Usually reforms will be required because there is an innovative concept, the concept is the focus and the required regulatory reforms can be trialled on a small scale, while ensuring consumer protections to the greatest extent possible.</p> <p>Formal regulatory changes could be an output of the sandbox trial, and would permit framework changes to be informed by live market conditions and learnings, rather than changes being assessed on an abstract or theoretical basis.</p>