

Regulatory Sandbox Arrangements Consultation Paper

Response by Energy Startup - Benjamin Walsham - 2019-01-31

Introduction

Thank you for this opportunity to provide input into this project.

As an organisation seeking to develop innovative energy products and technology, the ability to navigate the regulatory framework is of paramount importance, and a significant challenge. At the same time, the development of our products is occasionally constrained or complicated due to unintended consequences of regulations that were developed for a technological and social environment that is vastly different to today.

We see clear and obvious value in a regulatory sandbox.

QUESTION 1: OTHER SANDBOX EXAMPLES

Are there other examples of regulatory sandbox arrangements that are relevant when considering these arrangements for the NEM?

No comment.

QUESTION 2: OTHER RELEVANT TRIALS

What other proof-of-concept trials are relevant when considering formal regulatory sandbox arrangements for the NEM?

It is important to consider what is NOT included here. These are large-scale trials, with many of the benefits and advantages accruing to parties who would likely be performing the trials even without additional support from regulatory bodies.

None of the trials being performed directly benefit customers. (Note that we accept that these trials have broad value to the industry, and indirect customer benefits.)

QUESTION 3: BARRIERS TO PROOF-OF-CONCEPT TRIALS

- a) *Are proof-of-concept trials being inhibited by current market regulation or processes?*
- b) *If so, what are the potential barriers to proof-of-concept trials that might be addressed by a regulatory sandbox initiative?*

Yes.

There is no question that proof-of-concept trials are being inhibited by current market regulation or process. The challenges are not simply that regulation is prohibitive (although in many cases it is), but that the regulation is large, complex and bureaucratic. Trials do not even begin, as the risks and costs associated with compliance are prohibitive.

We strongly support the concept of “access to guidance on the regulatory framework”. If well implemented this could clarify the elements of regulation that are applicable to specific initiatives, reducing risk of projects.

One specific barrier that a regulatory sandbox concept could address is unintended consequences of existing regulation. Rules are intended to support an outcome and are based on the assumptions that

were in place when they were created. As technological capabilities improve, these assumptions may become invalid. Regulators are aware of this and regularly modify rules to support changes. However, this process is reactive and directly inhibits innovation, as the cost of innovation must include the costs of meeting irrelevant (or detrimental) regulation, or the cost of getting the regulation changed.

Regulatory sandbox arrangements could allow for innovators to meet the PURPOSE of rules, while exempting them from constraints associated with implementation of those rules.

QUESTION 4: ACCESS TO GUIDANCE ON THE REGULATORY FRAMEWORK

- 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?*
 - *Who should provide it?*
 - *Should guidance be coordinated across the AER, AEMO and AEMC?*
 - *How should the provision of guidance be funded?*
 - *Should an application be required in order to gain access to detailed guidance? If so, what criteria should apply?*
- c) *(c) Is there a role for binding advice from market bodies on certain aspects of the regulatory framework to support proof-of-concept trials?*

Yes. Guidance in a range of different forms would be of value.

There is a very large body of regulation associated with the energy industry. This ranges from how to deal with high voltage power lines, to carbon emissions, to how to deal with an angry customer. Simply guiding an organisation towards the applicable regulations would provide confidence that a potential new market entrant has accurately assessed the risks and costs associated with compliance.

We have no preference on WHO provides the guidance, but we strongly recommend that it should be coordinated as broadly as possible, including not just national bodies but also jurisdictional regulators. In cases where jurisdictional guidance cannot be offered, it should be clear that additional regulations exist and how and where additional support can be provided.

We have no view on how guidance should be funded. We do have view that if you seek payment from innovators themselves, you will make the service inaccessible to those who could benefit most from it. Supporting innovation and encouraging new entrants has market benefits that extend well beyond the innovator, and this should be encouraged.

Application processes within the industry are typically significant bureaucratic efforts. They require a lot of work from the organisation applying, take an extended period to be reviewed, rewritten and assessed. If this process is more costly than, say, seeking external legal advice, then it is clearly pointless. Access to the service should be as broad as possible, to encourage early-stage organisations.

We do not believe binding advice is necessary. If it can be achieved without extending the process or making it more costly, then of course this would be preferred. However, this seems unlikely to be achievable. This would be more appropriate to fall under a more formal sandbox arrangement.

QUESTION 5: TRIALS UNDER AER ENFORCEMENT DISCRETION

- 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?*
- b) *Is there a need for a more formal process for proponents of proof-of-concept trials to seek a no action letter?*
- c) *Should no action letters that facilitate innovation or proof-of-concept trials be made public?*

The AER process is opaque and inaccessible to early stage innovators. They also do not have a mandate to support innovation, so the tools above are currently insufficient to support innovation and proof-of-concept trials.

A more formal process for seeking exemptions may resolve these issues, however a simple tweaking of existing processes is likely to be insufficient, considering the purpose of these processes needs to be fundamentally expanded.

We have no position on making these exemptions public.

QUESTION 6: THE NEED FOR A FORMAL REGULATORY SANDBOX

- 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?*
- b) *What other regulatory tools are needed to facilitate proof-of-concept trials?*

Yes. See question 3.

QUESTION 7: DESIGN OF A FORMAL REGULATORY SANDBOX

ARRANGEMENTS, IF REQUIRED

- 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?*
- b) *If required, what metrics should be used to measure the success of a formal regulatory sandbox arrangement?*
- c) *If required, what should be the high-level criteria for accessing a regulatory sandbox arrangement?*
- 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?*
- e) *If required, what should be the key features of a formal regulatory sandbox arrangement for the NEM?*
 - *What regulatory arrangements should be within scope to consider for relaxation?*
 - *What should be the safeguards for consumers?*
 - *What obligations should be placed on the participants (e.g. knowledge sharing requirements)?*

As previously discussed, we believe the objective of a formal regulatory sandbox should be to support innovations and organisations that would not otherwise perform the trial. It should be to encourage innovation, not to simplify operational testing and increase knowledge consolidation within large, incumbent organisations.

To this end, the ASIC model appears to be more appropriate. However it is structured, a regulatory sandbox should:

- Be accessible to early stage startups
- Attempt to minimize additional obligations on the participant

We believe that many regulations have unintended consequences, and that a regulatory sandbox arrangement should be able to relax these rules, while supporting more suitable alternatives. A range of consumer protection safeguards fall into this category.

QUESTION 8: TRIALLING INNOVATIVE REGULATORY PROCESSES

How could formal regulatory sandbox arrangements be used to trial changes to regulatory arrangements to guide adoption of reforms across the market?

No position.