

Part 1 Preliminary

Division 1 Introduction and definitions

3 Definitions

Note—

Words and expressions used in these Rules have the same meanings as they have, from time to time, in *the Law* or relevant provisions of *the Law*, except so far as the contrary intention appears in these Rules. See clause 13 of Schedule 2 to the NGL (as applied by section 8 of *the Law*).

In these Rules—

eligibility requirements means the requirements for grant of a trial waiver, as specified in rule 178(1);

information requirements means the information that is required to be contained in an application for a trial waiver in accordance with rule 175(2);

trial project confidential information means information regarding a trial project and submitted to:

- (a) the AER in, or in connection with, an application for a trial waiver; or
- (b) the AEMC in, or in connection with, a request for the making of a trial Rule, that is identified by the applicant as being confidential;

Trial Projects Guidelines means guidelines of that name made and published by the AER under the NER;

Part 13 Trial waivers, trial Rules and trial projects

Division 1 Preliminary

174 Purpose

- (1) The purpose of this Part 13 is to make provision for:
 - (a) the granting of trial waivers by the AER to enable trial projects to be carried out;
 - (b) the information that is required to be provided to the AEMC in an application for the making of a trial Rule; and
 - (c) oversight and monitoring by the AER of trial projects that are carried out under trial waivers or trial Rules.
- (2) For the purposes of this Part 13:
 - (a) **explicit informed consent** to participating in a trial project is given by a retail customer to a person carrying out, or involved in the carrying out, of a trial project where:
 - (i) the person, or another person acting on behalf of that person, has clearly, fully and adequately disclosed all matters relevant to the consent of the retail customer, including each specific purpose or use of the consent; and
 - (ii) the retail customer gives consent to participating in the trial project:
 - (A) in writing signed by that retail customer;
 - (B) by electronic communication generated by that retail customer; or
 - (C) verbally, so long as the verbal consent is recorded in such a way that it can be verified and made the subject of a record under paragraph (b).
 - (b) Whenever a person is required to obtain explicit informed consent of a retail customer under this Part or under the *Trial Projects Guidelines*, the person must:
 - (i) create a record of each explicit informed consent in such format and including such information as will enable:
 - (A) the *AER* to verify the person's compliance with the relevant requirements under this Part or under the *Trial Projects Guidelines* relating to explicit informed consent; and
 - (B) the person to answer enquiries from a retail customer relating to the customer's explicit informed consent;
 - (ii) retain that record for at least 2 years; and
 - (iii) on request by a retail customer and at no charge, provide the customer with access to a copy of the record of any explicit informed consent given by that customer.

- (c) It is established that the required explicit informed consent is not obtained if:
 - (i) the retail customer raises the issue with the trial applicant either by asserting that the consent was not obtained or by requesting production of a record of the consent;
 - (ii) the issue is so raised within 12 months after the date of commencement of the trial project; and
 - (iii) the trial applicant either admits that the consent was not obtained or does not produce a satisfactory record of the informed consent as soon as practicable, but in any event within 10 business days, after the issue is so raised.
- (d) **retail customer** means a person who is a customer of a retailer or an exempt seller.

Division 2 Trial waivers

175 Application for a trial waiver

- (1) An application for the grant of a trial waiver must be made to the AER in the form (if any) prescribed in the *Trial Projects Guidelines*.
- (2) An application must contain the following information (the **information requirements**):
 - (a) details of the particular sections of the *Law* and/or provisions of these Rules in respect of which the person seeks a trial waiver;
 - (b) identification of the *trial project confidential information*; and
 - (c) any other information specified in the *Trial Projects Guidelines*.
- (3) After receiving an application for the grant of a trial waiver, the AER may, by notice in writing, request the applicant to provide, by a specified date, such further information as the AER may require in connection with the proposed trial project and the requested trial waiver.
- (4) For the purposes of Part 8 Division 3 of the *Law*, information provided by an applicant to the AER in, or in connection with, an application for a trial waiver that is not identified as *trial project confidential information* is not information given to the AER in confidence. Disclosure of such information by the AER is authorised use and disclosure for the purposes of section 44AAF(2) of the *Competition and Consumer Act 2010*.

176 Initial consideration of a proposed trial waiver

- (1) Subject to subrule (2), after receiving an application for the grant of a trial waiver, the AER may terminate its consideration of the application at any time if:
 - (a) the AER considers that the application does not comply with the information requirements;

- (b) the applicant does not respond to a request for further information under rule 175(3) by the specified date, or the AER considers that the applicant has not provided a sufficient response to such a request;
 - (c) the AER considers that the proposed trial project can be carried out satisfactorily without a trial waiver; or
 - (d) the AER otherwise considers that the application is misconceived or lacking in substance.
- (2) If, having regard to the matters set out in subrule (1), the AER considers that it should terminate its consideration of an application, the AER:
- (a) must notify the applicant in writing that it has, and the reasons why it has, formed that view, and invite the applicant to make submissions or to provide further information within 7 days; and
 - (b) must take account of any submissions or information so provided by the applicant before deciding to terminate its consideration of the application.

177 Consultation regarding a proposed trial waiver

- (1) Subject to subrule (3), the AER must carry out public consultation in relation to a proposed trial waiver, unless it is satisfied that the proposed trial waiver and trial project:
- (a) is unlikely to have an impact on other regulated entities; and
 - (b) is unlikely to have a direct impact on retail customers other than those who provide explicit informed consent to participate in the trial project.
- (2) The AER must consult AEMO in relation to any potential impact of a proposed trial waiver and trial project on AEMO's operation of:
- (a) the *power system* (as defined in the National Electricity Rules);
 - (b) the *market* (as defined in the National Electricity Rules);
 - (c) the *declared distribution systems* and *declared transmission system* for gas (as defined in the National Gas Law); or
 - (d) markets for natural gas.
- (3) The *Trial Projects Guidelines* must specify the procedures by which the AER will carry out public consultation in relation to a proposed trial waiver.

178 Eligibility requirements

- (1) The AER may only grant a trial waiver if it is satisfied that, in addition to the matter specified in section 205A(2) of the *Law*:
- (a) the trial project is genuinely innovative;
 - (b) the trial project has the potential to lead to better services and outcomes for consumers;
 - (c) the trial project is unable to be conducted without a trial waiver;
 - (d) the trial waiver will be appropriately limited in time, scope and scale;

- (e) adequate consumer protections will be maintained in connection with the trial project; and
 - (f) that any other eligibility requirement specified in the *Trial Projects Guidelines* has been satisfied,
- (the *eligibility requirements*).
- (2) In considering whether to grant a trial waiver, the AER must have regard to:
- (a) whether the carrying out and monitoring of the trial project is likely to contribute to the development of regulatory and industry experience;
 - (b) whether the trial project may have an adverse effect on the safety, reliability or security of supply of energy and the measures that the applicant will take to avoid or mitigate such risks;
 - (c) whether the *trial project* may have an adverse effect on AEMO's operation of:
 - (i) the *power system* (as defined in the National Electricity Rules);
 - (ii) the *market* (as defined in the National Electricity Rules);
 - (iii) the *declared distribution systems* and *declared transmission system* for gas (as defined in the National Gas Law); or
 - (iv) markets for natural gas,
 and the measures that the applicant will take to avoid or mitigate such adverse effects; and
 - (d) whether the extent and nature of the *trial project confidential information* claimed by the applicant may impair:
 - (i) the AER's ability to provide appropriate public transparency in relation to the conduct and outcomes of trial projects; or
 - (ii) the appropriate development of regulatory and industry experience arising from the trial project.
- (3) In considering whether to grant a trial waiver, the AER may have regard to any other matter it considers relevant, including (but not limited to) any relevant consideration that may be specified in the *Trial Projects Guidelines*.

179 Extension or variation of a trial waiver

- (1) The AER, having regard to the matters set out in rules 178(2) and (3), may extend a trial waiver for a further specified period if the AER remains satisfied of:
- (a) the matter specified in section 205A(2) of the *Law*; and
 - (b) the *eligibility requirements*.
- (2) The *Trial Projects Guidelines* may provide for any additional mandatory requirements and any relevant considerations for the extension of a trial waiver.
- (3) The AER may:

- (a) prior to the scheduled expiry of a trial waiver, impose such further conditions, or modify the existing conditions of the trial waiver, with the agreement of the applicant; or
- (b) if it extends a trial waiver, impose such further conditions, or modify or retain the existing conditions of the trial waiver, as it considers appropriate.

180 Evidence of a trial waiver

- (1) A certificate signed by a person (or persons) authorised by the AER certifying that a person named in the certificate has been granted a trial waiver, and setting out:
 - (a) the extent and duration of the trial waiver; and
 - (b) any conditions subject to which the trial waiver was granted,is evidence of the trial waiver.
- (2) The *AER* must establish, maintain and publish on its website a register of all certificates issued under subrule (1).

Division 3 Trial Rules

181 Request for a trial Rule

- (1) For the purposes of section 253A(3)(a) of the *Law*, a request for the making of a trial Rule must contain the following information:
 - (a) the name and address of the person making the request;
 - (b) a detailed outline of the proposed trial project;
 - (c) an explanation of how the proposed trial project will or is likely to lead to the achievement of the national energy retail objective;
 - (d) an explanation of the expected benefits and costs of the trial project for consumers and other market participants and the innovation that it may lead to;
 - (e) a description of the proposed trial Rule;
 - (f) a summary of the person's previous engagement with the AER, AEMO or any jurisdictional regulator in relation to the trial project;
 - (g) an explanation of why the trial Rule is needed in order to conduct the trial project;
 - (h) an explanation of how consumer protections will be maintained under the trial Rule, including whether and how the explicit informed consent of retail customers participating in the trial project will be obtained;
 - (i) the applicant's approach to consumer engagement and dispute management;
 - (j) an explanation of how risks to the safety, reliability and security of supply of energy will be avoided or mitigated;
 - (k) an explanation of whether the *trial project* may have an adverse effect on *AEMO's* operation of:

- (i) the *power system* (as defined in the National Electricity Rules);
 - (ii) the *market* (as defined in the National Electricity Rules);
 - (iii) the *declared distribution systems* and *declared transmission system* for gas (as defined in the National Gas Law); or
 - (iv) markets for natural gas;
- (l) evidence that the person has the operational and financial ability to carry out the trial project;
 - (m) identification of the *trial project confidential information*;
 - (n) an explanation of how the *trial Rule* is likely to contribute to the development of regulatory and industry experience; and
 - (o) an outline of the trial closure process, and how participating retail customers will revert to their pre-existing supply arrangements after closure of the trial project.
- (2) For the purposes of section 24 of the *Australian Energy Market Commission Establishment Act 2004* (SA) (as applied by section 223 of the *Law*), information provided by an applicant to the AEMC in, or in connection with, a request for the making of a trial Rule that is not identified as *trial project confidential information* is not information given to the AEMC in confidence.

Division 4 Monitoring of trial projects

182 Application

This Division applies in relation to trial projects conducted under trial waivers and trial Rules.

183 Compliance monitoring

- (1) A person to whom a trial waiver is granted must comply with all conditions upon which the trial waiver is granted.

Note

The AEMC recommends to the COAG Energy Council that this clause be classified as a civil penalty provision under the National Energy Retail Regulations.

- (2) A person who applies for the making of a trial Rule must comply with the trial Rule.

Note

The AEMC recommends to the COAG Energy Council that this clause be classified as a civil penalty provision under the National Energy Retail Regulations.

- (3) The AER must monitor compliance with:
 - (a) any conditions on which a trial waiver is granted; and
 - (b) the provisions of a trial Rule.

Early termination and opting out of trial projects

The *Trial Projects Guidelines* must provide for processes by which and grounds upon which:

- (a) a retail customer participating in a trial project may apply to the AER to opt out of a trial project;
- (b) the AER may:
 - (i) terminate a trial waiver before its scheduled expiry; or
 - (ii) recommend to the AEMC that the AEMC repeal a trial Rule before its scheduled expiry,

including provision for the AER to do so either on its own motion, or upon application by the trial applicant, a retail customer or Registered Participant (as defined under the National Electricity Rules) affected by the trial project, or AEMO; and

- (c) a person to whom a *trial waiver* is granted must allow a *retail customer* to opt out of a *trial project*.