

14 October 2020

Shaun Sullivan
Chair of the Senior Officials
Former COAG Energy Council

Submitted via email [energycouncil@industry.gov.au]

Dear Mr Sullivan,

Regulatory Sandboxing Legislation Consultation

Energy Networks Australia welcomes the opportunity to provide a submission to the former Council of Australian Government (COAG) Energy Council's regulatory sandboxing consultation package, which includes draft amendments to the National Electricity Law, National Energy Retail Law and National Gas Law to support the introduction of a regulatory sandbox framework.¹

Energy Networks Australia (ENA) is the national industry body representing Australia's electricity transmission and distribution and gas distribution networks. Our members provide more than 16 million electricity and gas connections to almost every home and business across Australia.

ENA strongly supports the implementation of a regulatory sandbox framework within which participants can test innovative concepts under relaxed regulatory requirements on a time-limited basis. With appropriate safeguards, a regulatory sandbox framework can deliver long-term benefits to customers through innovation and technology development, which would otherwise be constrained by or outside of existing regulations.

Key messages

- » Innovation is a key driver of long-term customer value. **ENA strongly supports regulatory sandboxes that allow innovative projects, which are in the long-term interests of customers, to be more easily tested and implemented.**
- » The regulatory sandbox framework should be broad in nature and should not limit the scope of potential innovation that is able to be trialled.
- » All forms of energy and types of services should be in scope under the **regulatory sandbox framework**, including the ability to trial implementation of other fuel sources. The current approach of stipulating 'natural gas' services may prevent trials of alternative forms of energy including hydrogen and renewable gas.
- » ENA supports the establishment of the innovation inquiry service recommended by the AEMC, which will provide guidance and feedback to interested trial participants.

¹ Former COAG Energy Council, [Regulatory Sandboxing Legislation Consultation](#), 16 September 2020.

ENA strongly supports implementation of a regulatory sandbox framework & proposes amendments for further consideration

We strongly support the Australian Energy Market Commission's (AEMC) recommendation to introduce a regulatory sandbox toolkit to better facilitate and coordinate proof-of-concept trials. Well-designed regulatory sandboxes will provide for a regulatory framework that is better equipped to respond to the rapid change in the energy sector and deliver customer benefits through innovation.

The scope of trials allowed for under the regulatory sandbox framework should be broad in nature to capture diverse forms of innovation. A broad scope for potential innovation and trials means that the chance of delivering customer benefits is maximised through both a broader range of potential trials and a potentially higher number of trials, which is particularly pertinent given the current transformation of the energy sector. Conversely, legislating a narrow scope for trials could exclude opportunities for innovation that have the potential to deliver customer benefits.

Maintaining a broad scope for innovation will not hinder the quality of trials. The Australian Energy Regulator (AER) will still undertake a rigorous approval process, including assessing applications against the innovative trial principles and trial eligibility criteria as required by legislation.

1.1 Particular law provisions across the NEL, NERL or NGL that the AER may need the ability to waive

The Consultation Paper asks stakeholders whether there are particular laws that the AER may need the ability to waive for the purposes of a trial. This is a particularly difficult task, given that it will only become apparent which provisions of legislation might be contravened when a new innovation is proposed. In the interests of a broad scope for innovation, ENA considers it important that the AER not be restricted from waiving any particular law provisions as long as the AER demonstrates that it has had sufficient regard to the innovative trial principles.

1.2 Duration of waiver

The Consultation Paper states that a waiver duration of up to five years is considered to provide sufficient time to undertake a trial project and this duration is reflected in the Draft Laws. The Consultation Paper also states that it is expected that the AER would grant a trial waiver for a duration that is sufficient for the relevant project but would not exceed five years.

ENA supports the AER assessing the duration of each waiver/temporary rule change on a case by case basis (noting the 5-year limit) and considers that there may be value in reflecting this expectation in the Draft Rules or Law.

1.3 Innovative trial principles

The Consultation Paper states that trial projects are intended to be those that are genuinely innovative and as such, ENA has concerns with the following proposed innovative trial principle:

- » *whether the best solution to a regulatory barrier is not yet clear*, found at 7B(g) of the National Electricity Law, 13A(g) of the National Energy Retail Law and 24A(g) of the National Gas Law.

This innovative trial principle appears to mandate that the AER and AEMC must consider whether the ‘best’ solution to a regulatory barrier is not yet clear when assessing if a trial waiver should be granted or a trial rule should be enacted.

ENA’s view is that it is unreasonably difficult and subjective to assess whether the ‘best’ solution to a regulatory barrier has been found as innovation can mean that the solution currently deemed to be the ‘best’ solution may not remain the best in the future.

ENA does not consider that a potentially innovative trial project should be rejected on the basis that the ‘best’ solution is already thought to have been identified. ENA therefore encourages Senior Officials to reconsider the inclusion of this proposed innovative trial principle.

1.4 Scope of the regulatory sandbox framework

ENA is concerned that the Draft National Gas Law² may prevent trials that would seek to blend or integrate other forms of energy like hydrogen and biomethane into the gas network through explicit reference to ‘*natural gas*’ as it is currently defined in the National Gas Law³.

ENA strongly believes that the National Gas Law should not limit the form of energy or gas that is able to undertake trials under the regulatory sandbox framework. There are potentially significant customer benefits from renewable gas opportunities, and it would be in customers’ best interests if gas networks and other market participants were able to undertake trials of different forms of energy.

Gas distribution networks are actively exploring the potential for renewable gases such as hydrogen and biomethane to be used in conjunction with or as a substitute for natural gas. Renewable gases are promising future fuels that have the potential to decarbonise the gas network.

Although the source of electricity generation may differ, electricity is homogenous as it comprises only electrons, whereas gas is heterogenous in that the product has the potential to not only consist of natural gas, but other types and forms of gas as well. It is not only possible, but likely that the future of gas will consist of renewable gases. This is evidenced in key recent releases, including the [National Hydrogen Strategy](#), which determined a domestic hydrogen industry could generate \$11 billion per year in

² Part 4 32(3) of the National Gas Law, section 2 *trial* project definitions and Part 4 33 24A of the National Gas Law, Innovative Trial Principles

³ Natural Gas is defined as ‘a substance that (a) is in a gaseous state at standard temperature and pressure; and (b) consists of naturally occurring hydrocarbons, or a naturally occurring mixture of hydrocarbons and non-hydrocarbons, the principal constituent of which is methane; and (c) is suitable for consumption;’ under Chapter 1 of the [National Gas Law](#).

GDP⁴, and the Federal Government's [technology roadmap](#), which identified hydrogen cost innovation as a priority technology stretch goal.⁵

Gas distribution networks are undertaking small-scale blending projects in order to develop the skills and experience so that they are prepared for technology developments in the future. Current trials can proceed without the regulatory sandbox framework, but future projects pursuing scale-up, different blends and/or other innovations may not be eligible.

ENA considers it inappropriate to constrain the scope of potential innovation in the gas sector to just natural gas. Doing so would limit the ability to trial renewable gas innovations and could undermine Federal Government initiatives to reduce the cost and increase the scale of Australia's hydrogen industry.

Action 3.12 of the National Hydrogen Strategy recommends completing a review that would consider the application of the National Gas Law to hydrogen and recommend options to best address regulatory ambiguity and remove unnecessary regulatory barriers.⁶

It is ENA's understanding that this review is currently being undertaken by the Federal Department of Industry, Science, Energy and Resources and that the definition of 'Natural Gas' is a known concern. In this context, it makes sense that trials of hydrogen, biomethane and other types of gases would be in scope under a regulatory sandbox framework as small-scale trials are the natural first step before larger investments take place.

1.5 Safety, reliability and security of supply obligations are paramount

Distributors are required to maintain safety, reliability and security of supply. In circumstances where a potential trial is likely to impede on a network business' obligation to delivery energy in a safe, secure and reliable way, then that trial should not be permitted to proceed.

Where it is highly unlikely but possible that a potential trial could impede a networks business' capability to deliver safety, reliability or security of supply, the trial applicant should have to demonstrate that it has taken all reasonable precautions to significantly mitigate the likelihood of impacting core distributor functions before the AER can grant a trial waiver or rule.

⁴ COAG Energy Council 2019, *National Hydrogen Strategy*, November 2019, p. 17 [available at: <https://www.industry.gov.au/data-andpublications/australias-national-hydrogen-strategy>]

⁵ COAG Energy Council 2020, *Technology Investment Roadmap: First Low Emissions Technology Statement 2020*, 2020, [available at: <https://www.industry.gov.au/sites/default/files/September%202020/document/first-low-emissions-technology-statement-2020.pdf>].

⁶ COAG Energy Council 2020, *National Hydrogen Strategy*, (2020), p. 80 [available at: <https://www.industry.gov.au/data-andpublications/australias-national-hydrogen-strategy>].

ENA acknowledges the draft clause that requires the AER to have regard to a trial's impact on core distributor functions⁷, and further reiterates our support that this proposed package of reforms, when implemented, does not override a network service provider's obligations regarding safety, reliability, and security of supply.

ENA supports the establishment of the innovation inquiry service

ENA supports the implementation of the innovation enquiry service recommended by the AEMC, which will provide guidance and feedback to interested trial participants and will streamline the assessment and approval process. Publication of information requests and responses, where appropriate, will increase transparency and ensure that inquiries of similar nature are dealt with efficiently.

We once again welcome this consultation and thank the Senior Officials for the opportunity to provide input. If you wish to discuss any of the matters raised in this letter further, please contact Chris Gilbert, Senior Economic Advisor, at cgilbert@energynetworks.com.au.

Yours sincerely,



Andrew Dillon
Chief Executive Officer

⁷ 8.15.4(a)(2) of the National Electricity Rules, 135MC(1)(b) of the National Gas Rules, and 178(1)(b) of the National Energy Retail Rules.