

# Regulatory sandboxing - Trial Project Guideline

Draft for consultation – Version 1

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# 1. About this guideline

**Note:** This section is equivalent to section 1 of the draft AER trial projects guidelines, with appropriate modifications to reflect the Victorian legislative framework. The equivalent of section 1.2 of the draft AER trial projects guidelines is contained in sections 1.4, 3.3 and 5.4 of these guidelines. This section contains material differences from the draft AER guidelines due to differences in the relevant legislation.

## 1.1 Authority for this guideline

- 1.1.1 This guideline is made under section 63 of the Electricity Industry Act and section 64 of the Gas Industry Act.
- 1.1.2 This guideline applies to:
- (a) any person who applies for a trial waiver under the Electricity Industry Act or Gas Industry Act; and
  - (b) any person who has been granted a trial waiver under the Electricity Industry Act or Gas Industry Act.
- 1.1.3 The commission will apply a consistent process and principles when assessing electricity or gas trial waiver applications and administering trial waivers under the Electricity Industry Act and Gas Industry Act. The relevant provisions of the Electricity Industry Act and Gas Industry Act are identical except for minor wording differences to reflect whether the provisions relate to electricity or gas and cross-references to other sections of the relevant Act.

## 1.2 Objective and purpose of this guideline

- 1.2.1 The objective of this guideline is to:
- (a) facilitate innovative trial projects to be carried out in Victoria through trial waivers granted by the commission as an alternative to a licence or exemption, where doing so is likely to promote the long-term interests of consumers of gas or electricity services and contribute to the achievement of the commission's objectives under the Electricity Industry Act, Gas Industry Act and Essential Services Commission Act
  - (b) provide transparency regarding the process and principles the commission will apply when performing its trial waiver functions; and

- (c) promote consistency between the commission's approach to trial waivers and the AER's approach to AER trial waivers, to the extent appropriate.

1.2.2 The purpose of this guideline is to set out:

- (a) how to apply for a trial waiver;
- (b) the approach the commission proposes to take when considering trial waiver applications;
- (c) the steps that a person applying for a trial waiver or granted a trial waiver must take to identify confidential information and how the commission will manage information identified as confidential information;
- (d) the approach the commission proposes to take in performing its other trial waiver functions including setting conditions for trial waivers, overseeing the conduct of trial projects, granting extensions to trial waivers and varying or revoking trial waivers; and
- (e) each of the other matters required or permitted to be specified in this guideline under the Electricity Industry Act, Gas Industry Act or trial waiver orders.

### **1.3 Commencement**

1.3.1 This guideline commences on 1 July 2022.

### **1.4 Confidentiality**

1.4.1 This guideline specifies:

- (a) the steps trial waiver applicants must take to identify confidential information submitted as a part of an application;
- (b) the steps trial waiver holders must take to identify confidential information submitted to the commission as part of a trial project; and
- (c) the commission's process for managing information that is identified by trial waiver applicants or trial waiver holders as confidential information.

1.4.2 In determining whether to grant or extend the period of a trial waiver, the commission will have regard to factors including whether the extent and nature of the confidential information claimed by the trial waiver applicant or trial waiver holder may impair:

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

## **1.5 Definitions**

1.5.1 The glossary at the end of this guideline defines words and acronyms used in this guideline.

## **1.6 Process for revisions to this guideline**

1.6.1 The Electricity Industry Act and Gas Industry Act provide that, in preparing and issuing this guideline, the commission must have regard to the AER trial projects guidelines. As a result of delays to the enactment of the legislation governing the AER trial projects guidelines, the commission was required to issue version 1 of this guideline prior to the AER issuing its trial projects guidelines.

1.6.2 In preparing and issuing version 1 of this guideline, the commission had regard to a draft of the AER trial projects guidelines and consultation undertaken by the AER in developing those guidelines.

1.6.3 When the AER trial projects guidelines are issued or subsequently amended by the AER, the commission will review this guideline and consider whether amendments are appropriate for consistency with the AER trial projects guidelines.

1.6.4 The commission may amend this guideline from time to time in accordance with section 64 of the Electricity Industry Act and section 65 of the Gas Industry Act.

1.6.5 The commission will consult on any amendments to this guideline in accordance with its Charter of Consultation and Regulatory Practice, other than:

- (a) minor or administrative amendments, which will be made by publishing details of the changes made;
- (b) amendments made following the commission's review of initial AER trial projects guidelines issued by the AER, or following the commission's consideration of subsequent amendments made to the AER trial projects guidelines; or
- (c) amendments which the commission considers necessary following the making of any trial waiver orders.

1.6.6 When amending this guideline, the commission will have regard to the AER trial projects guidelines.

## 2. Relationship with other regulatory instruments

**Note:** This section is equivalent to section 2 of the draft AER trial projects guidelines, with appropriate modifications to reflect the Victorian legislative framework. There is no equivalent of section 2.1 in the AER draft guidelines. Section 2.1 explains the effect of a trial waiver under the Victorian legislation and how that is different to the effect of an AER trial waiver. This section contains material differences from the draft AER guidelines.

### 2.1 Effect of a trial waiver

- 2.1.1 A trial waiver granted by the commission relieves a person from the requirements under the Electricity Industry Act or Gas Industry Act to obtain a licence in respect of the relevant activity specified in the trial waiver.
- 2.1.2 A trial waiver can apply to any activities that would otherwise require a licence from the commission under the Electricity Industry Act or Gas Industry Act. Accordingly, a trial waiver may cover any of the following activities as they are defined in section 16 of the Electricity Industry Act or section 22 of the Gas Industry Act:
- (a) supply or sale of electricity;
  - (b) generation of electricity for supply or sale;
  - (c) transmission of electricity;
  - (d) distribution of electricity;
  - (e) sale of gas by retail; or
  - (f) providing gas services (other than the sale of gas by retail) by means of a distribution pipeline.
- 2.1.3 An Order in Council under section 8 of the Gas Industry Act provides that ‘gaseous fuel (other than natural gas as defined in the Act) is not to be gas for the purposes of Parts 3 and 4 of the Act’.<sup>1</sup> Accordingly, a trial waiver under the Gas Industry Act must relate to ‘natural gas’ services as defined in the Act.
- 2.1.4 The effect of a trial waiver under the Electricity Industry Act or Gas Industry Act is different to an AER trial waiver. A trial waiver under the Electricity Industry Act or Gas Industry Act is

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<sup>1</sup> See Victorian Government Gazette S197, 29 October 2002.

an alternative to holding a licence and the activities covered by the trial waiver are regulated by the conditions of the trial waiver.

- 2.1.5 In contrast, an AER trial waiver removes the obligation to comply with specific provisions of the national energy laws and rules. 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, but all other provisions of the national energy laws and rules continue to apply.

## **2.2 Relationship with other regulatory instruments**

- 2.2.1 The Electricity Industry Act and Gas Industry Act prohibit a person from engaging in specified activities unless the person holds a licence, or is exempted, or holds a trial waiver in respect of the relevant activity.<sup>2</sup> Hence, a trial waiver is an alternative to a licence issued by the commission, or an exemption issued by the Governor in Council under the Electricity Industry Act or Gas Industry Act.

- 2.2.2 The commission's power to grant trial waivers is separate from the Governor in Council's power to exempt a person from the requirement to obtain a licence in respect of activities specified in an Order in Council. The General Exemption Order 2017 exempts a range of activities from the requirement to hold a licence.<sup>3</sup> Prior to applying for a trial waiver, applicants should review the General Exemption Order and ensure that the trial project is not already exempt under that order.

- 2.2.3 Trial waivers are intended to be used where a trial project would otherwise be unable to proceed because of a requirement under the Electricity Industry Act or Gas Industry Act or any instrument made under those Acts. For example, the trial project may not be able to proceed without a trial waiver due to the requirements of statutory licence conditions under those Acts or the requirements of codes of practice or guidelines made by the commission. A trial waiver application must clearly explain the nature of the regulatory requirements that would prevent the trial project from proceeding without a trial waiver.

- 2.2.4 Trial waivers are available to any person or body that proposes to undertake a trial project that tests an approach in relation to the supply of, or demand for, electricity or gas.<sup>4</sup> A trial waiver proponent may be a licensee or a person who is exempt from the requirement to

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<sup>2</sup> See section 16 of the Electricity Industry Act, and section 22 of the Gas Industry Act.

<sup>3</sup> See <https://www.energy.vic.gov.au/legislation/general-exemption-order>.

<sup>4</sup> Section 54(1) Electricity Industry Act; Section 55(1) Gas Industry Act.

obtain a licence because of an Order in Council.<sup>5</sup> In those circumstances, the application must clearly explain why a trial waiver is sought and why the trial project would be unable to proceed, or continue to proceed, in accordance with the proponent's existing licence or exemption.

2.2.5 Proponents seeking a trial waiver from the commission under the Electricity Industry Act or Gas Industry Act should consider whether they may also require an AER trial waiver under the national energy laws and rules. Where a proponent may also require an AER trial waiver, the proponent should refer to the trial projects guidelines published by the AER.

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<sup>5</sup> As provided for in sections 54(8) of the Electricity industry Act and 55(8) of the Gas Industry Act.

## 3. Applying for a trial waiver

**Note:** This section is equivalent to section 3 of the draft AER trial projects guidelines, with appropriate modifications to reflect the Victorian legislative framework.

### 3.1 Form of application

- 3.1.1 A trial waiver application must be made to the commission using a web portal accessed via the regulatory sandboxing website [\[link to the website will be included once it is live\]](#). All fields must be completed to be a valid application.
- 3.1.2 A copy of the application form is available on the commission's website for information and to assist with preparing an application.
- 3.1.3 Applicants are encouraged to discuss their proposed trial project and application with commission staff prior to submitting the application to assist them to understand the application process and information requirements.

### 3.2 Information required in an application

- 3.2.1 An application for a trial waiver must contain the information required by the application form, including:
- (a) an explanation of why a trial waiver is required for the trial project to proceed, or continue to proceed, including details of:
    - (i) the activities for which a trial waiver is sought that would otherwise require a licence under the Electricity Industry Act or Gas Industry Act; and
    - (ii) the particular provisions of the Electricity Industry Act or Gas Industry Act, or codes of practice, guidelines or other instruments made by the commission under those Acts or the Essential Services Commission Act, that would prevent the trial project from proceeding without a trial waiver;
  - (b) identification of the confidential information in accordance with section 3.3;
  - (c) general information regarding the proponent, including:
    - (i) the legal name, ACN and address of the proponent;
    - (ii) details of the proponent and any other organisations that will carry out the proposed trial project; and

- (iii) details of any current or previous licences under the Electricity Industry Act or Gas Industry Act held by the people referred to in paragraph (ii);
- (d) a description of the trial project, including:
  - (i) details of the trial project;
  - (ii) the aims, objectives and success criteria for the trial project;
  - (iii) the number, type, size and location of proposed trial project participants and how they will be recruited;
  - (iv) the proposed duration of the trial project; and
  - (v) details of any current exemptions under the Electricity Industry Act or Gas Industry Act that may apply to the activities undertaken as part of the trial project;
- (e) how the trial project meets each of the eligibility requirements;
- (f) how the trial project meets each of the innovative trial principles;
- (g) a description of the potential customer impacts associated with the trial project, including where relevant given the nature of the trial project:
  - (i) identification of the benefits to electricity or gas customers from the trial;
  - (ii) how customers experiencing vulnerability will be supported;
  - (iii) how appropriate consumer protections will be maintained through the trial; and
  - (iv) how the privacy of trial project participants will be maintained, including how personal information will be collected, used, managed and disclosed;
- (h) a description of the risk management plan for the trial project, including:
  - (i) a description of the risks for trial project participants, other customers or other electricity or gas market participants and how those risks will be managed;
  - (ii) the processes in place to monitor and respond to potential risks; and
  - (iii) a description of any consultation the proponent has undertaken with AEMO, Energy Safe Victoria, the Energy and Water Ombudsman (Victoria) or any other relevant bodies regarding the trial project and the proposed risk management plan;
- (i) evidence of the proponent's operational, technical and financial ability to carry out the trial project, including the specific financial information required in the application form

- (j) a trial project exit strategy that describes the arrangements that the proponent will put in place so that:
  - (i) when the trial project ends for any reason, including if the trial waiver is revoked or the proponent becomes insolvent or is otherwise unable to continue the trial project, 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; and
  - (ii) if a trial project participant opts out of the trial project before the trial project ends, that trial project participant will revert to its pre-existing supply arrangement or move onto suitable alternative arrangements that comply with all relevant regulatory requirements;
- (k) how trial project participants:
  - (i) will provide their explicit informed consent to participate in the trial project and how this consent will be recorded, or if it is proposed that explicit informed consent will not be obtained, the reasons why this should be the case;
  - (ii) can raise a dispute in relation to the proposed trial project and the processes and procedures in place to resolve disputes; and
  - (iii) can opt out of the proposed trial project or, if it is proposed that trial project participants should not be able to opt out of the trial project or that there should be restrictions on the circumstances in which trial project participants can opt out, the reasons why this should be the case;
- (l) how the trial project will be monitored, reported on and evaluated, including how learnings will be shared; and
- (m) any other information required by the commission.

3.2.2 After receiving an application for a trial waiver, the commission may request the applicant to provide further information the commission may require in connection with the proposed trial project and the requested trial waiver. Any such request will be made in writing and specify the date by which the information must be provided.

### **3.3 Confidential information**

3.3.1 A trial waiver applicant must identify any information in its application that it considers to be confidential and/or commercially sensitive. Before granting a trial waiver the commission must consult on the application, which will involve the commission publishing the

application and all supporting material provided by the applicant, other than confidential information (see section 4.4 in this guideline).

3.3.2 Where a trial waiver applicant identifies information as confidential and/or commercially sensitive, the trial waiver applicant must:

- (a) where only part of a document is claimed as containing confidential and/or commercially sensitive information, clearly identify that part of the document and provide a public version of the document; and
- (b) include with the application, reasons for the identification of the information as confidential and/or commercially sensitive.

3.3.3 Where the commission considers that information subject to an applicant's confidentiality claim may not be confidential and/or commercially sensitive, the commission will give the claimant the opportunity to make submissions prior to making any decisions as to any disclosure.

3.3.4 Any information, including confidential information, which an applicant provides to the commission in, or in connection with, an application for a trial waiver may be disclosed if permitted or required by law.<sup>6</sup>

3.3.5 Trial waiver applicants should be aware that in considering whether to grant a trial waiver the commission will have regard to, among other things, whether the extent and nature of the confidential information claimed by the applicant may impair:

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

3.3.6 The application form for a trial waiver will require the applicant to give its written consent to allow the commission to disclose any of its information, including confidential information, to other government bodies or regulators, where relevant to that entity's functions relating to trial waivers. 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. The applicant must also agree to a legal disclaimer and a privacy statement relating to trial waivers.

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<sup>6</sup> See for instance section 61(3) of the Essential Services Commission Act.

## 4. Approach to considering and granting trial waivers

**Note:** This section is equivalent to sections 4.1 to 4.3 and 4.6 to 4.8 of the draft AER trial projects guidelines, with appropriate modifications to reflect the Victorian legislative framework. Sections 4.2, 4.4 and 4.6 contain material differences from the draft AER guidelines. The structure of section 4.2 differs from the draft AER guidelines to combine the relevant factors the commission will have regard to into a consolidated list. Similar provisions to sections 4.4 and 4.5 of the draft AER guidelines are contained in sections 5 and 7 of this guideline.

### 4.1 Timeline for trial waiver application determinations

- 4.1.1 The commission will aim to determine trial waiver applications within six months of notifying the applicant that the application appears to meet the commission's information requirements and has been accepted.
- 4.1.2 The commission may stop counting the time taken to assess an application if additional information from the applicant is required. Any days from the date that the commission issues a notice to the applicant requesting further information to the date that the information is satisfactorily provided to the commission will be disregarded for the purpose of calculating the period in section 4.1.1.

### 4.2 Assessing whether the application requirements are satisfied

- 4.2.1 When assessing whether to grant a trial waiver, the commission will have regard to:
- (a) whether the applicant has satisfied the information requirements;
  - (b) whether the applicant has satisfied the eligibility requirements set out in Box 1;
  - (c) the innovative trial principles set out in Box 2;
  - (d) the customer risk assessment factors set out in Box 3;
  - (e) whether the information provided by the applicant is sufficient for the commission to determine whether the trial project meets the eligibility requirements and innovative trial principles;
  - (f) whether the applicant has proposed an appropriate exit strategy;
  - (g) whether the trial project could be carried out satisfactorily without a trial waiver;

- (h) the objectives of the commission under the Essential Services Commission Act, Electricity Industry Act and Gas Industry Act, and any matters the commission must have regard to when exercising its functions under those Acts or the trial waiver orders;
- (i) any other any relevant considerations specified in this guideline; and
- (j) any other matter the commission considers relevant.

4.2.2 Under the Electricity Industry Act and Gas Industry Act, the commission:

- (a) must be satisfied that the trial project is genuinely innovative; and
- (b) must not grant a trial waiver if it reasonably considers that the trial project is unlikely to be carried out.

### **Box 1: Eligibility requirements**

The commission will have regard to the following eligibility requirements when determining whether to grant a trial waiver or extend the period of a trial waiver:

- (1) whether the carrying out and monitoring of the trial project is likely to contribute to the development of regulatory and industry experience;
- (2) whether the trial project may have an adverse effect on the safety, reliability or security of supply of electricity or gas and the measures that the proponent will take to avoid or mitigate such risks; and
- (3) whether the extent and nature of the confidential information claimed by the proponent may impair:
  - a) the commission's ability to provide appropriate public transparency in relation to the conduct and outcomes of trial projects; or
  - b) the appropriate development of regulatory and industry experience arising from the trial project.

### **Box 2: Innovative trial principles**

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

- (a) 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;
- (b) whether the trial project is likely to contribute to the achievement of the objectives of the commission under this Act and the Essential Services Commission Act;
- (c) 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;
- (d) whether the trial project maintains, or will continue to maintain, adequate customer protections for customers who purchase electricity, including whether the trial project may involve risks to such customers and, if so, how those risks might be mitigated;
- (e) whether the trial project is unable to proceed, or continue to proceed, because of this Act or any instrument made under this Act;
- (f) any other principle specified under a trial waiver order.

The innovative trial principles under the Gas Industry Act are the same as above except paragraphs (a), (c) and (d) refer to gas instead of electricity.

The commission will apply the following additional innovative trial principles:

- (1) 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;
- (2) whether the trial project may negatively impact AEMO's operation of the national electricity system, national electricity market or any relevant gas markets or systems and, if there are impacts, how those impacts can be mitigated;
- (3) whether the trial project is able to be trialled and evaluated;
- (4) whether there is potential for the trial project to be successfully expanded; and
- (5) whether the trial project will provide for public sharing of knowledge, information and data resulting from the trial project.

Where a trial project does not meet all of the innovative trial principles, the applicant must outline the reasons for this to assist the commission with its consideration of the trial waiver application.

### **Box 3: Customer risk assessment factors**

In applying innovative trial principle (d) in Box 2, the matters the commission will have regard to include:

- the type of risks to trial project participants or other customers, such as financial, safety or system security risks;
- the magnitude of the risks;
- the probability of the risks eventuating;
- the complexity of the trial project and associated risks and whether it is reasonable for trial project participants to give their explicit informed consent to take on those risks;
- whether the risks can be appropriately managed or mitigated; and
- whether the risks associated with the trial project are appropriately allocated between the applicant, trial project participants and, if relevant, other parties.

The commission is unlikely to grant a trial waiver if it considers the potential risks to trial project participants or other customers outweigh the potential benefits of the trial project. The commission will consider risks including those relating to safety, system security, and potential impacts on customers experiencing vulnerability.

## **4.3 Terminating consideration of a trial waiver application**

4.3.1 The commission may refuse to consider, or terminate its consideration of, a trial waiver application at any time if:

- (a) the commission considers that the application does not comply with the information requirements;
- (b) the applicant does not respond to a request for further information by the specified date, or the commission considers that the applicant has not provided a sufficient response to such a request;
- (c) the commission considers that the applicant has not provided sufficient information to demonstrate that the trial project is unable to proceed, or continue to proceed, without a trial waiver; or
- (d) the commission considers that the application is misconceived or lacking in substance.

- 4.3.2 If, having regard to these matters, the commission considers that it should refuse to consider, or terminate its consideration of, an application, the commission will:
- (a) notify the applicant in writing that it has formed that view, and the reasons why it has formed that view, and invite the applicant to make submissions or to provide further information within five business days; and
  - (b) take account of any submissions or information provided by the applicant before deciding to terminate its consideration of the application.

#### **4.4 Consultation on a trial waiver application**

- 4.4.1 The commission will consult publicly on all trial waiver applications.
- 4.4.2 If the commission considers that the application appears to meet the information requirements and there do not appear at that time to be grounds for terminating consideration of the application under section 4.3, the commission will publish the application and all supporting material provided by the applicant, other than confidential information.
- 4.4.3 In consulting on an application, the commission will publish a notice on its website stating that an application for a trial waiver has been received and seeking submissions on the application from interested stakeholders. The commission may publish such information as it considers appropriate, including the application and any attachments to the application (other than confidential information).
- 4.4.4 Submissions generally must be in written form. Written submissions will be published on the commission's website, other than confidential submissions. In certain circumstances, the commission may accept verbal submissions (for instance via public forums or meetings), but where this is the case, a summary of those submissions will be published on the commission website.
- 4.4.5 The consultation period will be determined in line with the commission's Charter of Consultation and Regulatory Practice and will generally be 20 business days. For more complex applications, the commission may allow additional time for consultation.
- 4.4.6 The commission may also consult with any person it considers relevant given the nature of the trial project, including:
- (a) the AER;
  - (b) AEMO in relation to whether the trial project may negatively impact AEMO's operation of the relevant electricity or gas markets and systems and how any such impacts can be mitigated;

- (c) 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; and
- (d) EWOV in relation to dispute resolution processes for the trial project.

## **4.5 Duration of a trial waiver**

- 4.5.1 The duration of a trial waiver will be determined by the commission on a case-by-case basis and will be for no more than five years.
- 4.5.2 A trial waiver may be extended for a maximum one year in accordance with section 6.

## **4.6 Publication of trial waivers, determinations and register**

- 4.6.1 The commission will make a written determination in relation to a trial waiver application.
- 4.6.2 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 is made.
- 4.6.3 The commission will establish and maintain a register of trial waivers. The register will be published on the commission's website.
- 4.6.4 The register will contain:
  - (a) the name of the trial waiver holder;
  - (b) a description of the activity that will be undertaken under the trial waiver;
  - (c) the date of expiry of the trial waiver;
  - (d) information about where a copy of a trial waiver may be accessed; and
  - (e) any other information the commission determines appropriate.
- 4.6.5 If the commission extends a trial waiver under section 6.1, varies a trial waiver under section 6.2 or revokes a trial waiver under section 6.3, the commission will:
  - (a) publish on its website a record of its decision and, where relevant, an updated version of the trial waiver; and
  - (b) update the register.

## 5. Overseeing the conduct and outcomes of trial projects

**Note:** This section is equivalent to sections 4.5 and 5 of the draft AER trial projects guidelines, with appropriate modifications to reflect the Victorian legislative framework. There is no equivalent of section 5.4 in the AER draft guidelines, but this section is consistent with section 1.4 of the AER draft guidelines.

Section 5.4 is included to meet the requirements of section 63(2)(g) of the Electricity Industry Act and section 64(2)(g) of the Gas Industry Act. The commission's amended compliance and enforcement functions under section 10AA of the Essential Services Commission Act include monitoring compliance, enforcing compliance, and investigating contraventions by persons granted trial waivers, of trial waiver conditions.

Sections 5.1 and 5.2 have been modified from the draft AER guidelines for consistency with additional commission requirements and the commission's objectives and functions under the Essential Services Commission Act. An equivalent of section 5(d) of the AER's draft guidelines has not been included because it relates to AEMC trial rules and there is no equivalent to trial rules under the Victorian legislation.

### 5.1 Monitoring of trial projects

- 5.1.1 The commission will determine the requirements for monitoring of the conduct and outcomes of trial projects for which a trial waiver has been granted on a case-by-case basis. Performance and compliance will be assessed against the conditions of the trial waiver.
- 5.1.2 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 set out in section 5.2. In determining the monitoring and reporting requirements for a trial project, the commission will consider the identified risks resulting from the trial project, including:
- (a) risks to trial project participants or other customers;
  - (b) risks to the safe, reliable and secure supply of electricity or gas;
  - (c) risks to AEMO's operation of the relevant electricity or gas markets and systems; and
  - (d) any other risks identified by the proponent in the risk management plan for the trial project.

## 5.2 Reporting

- 5.2.1 The commission will determine reporting obligations on a case-by-case basis. The reporting obligations will be a condition of the trial waiver.
- 5.2.2 Trial waivers may include conditions requiring a trial waiver holder to submit to the commission progress reports and outcomes reports.
- 5.2.3 Trial waiver holders may be required to submit to the commission and publish:
- (a) progress reports at least once per year;
  - (b) 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; and
  - (c) an outcomes report documenting the trial project outcomes, which must be submitted to the commission by the date specified in the trial waiver conditions.
- 5.2.4 In determining reporting obligations for a trial project, the commission will have regard to the opportunity to leverage third-party reporting requirements in relation to the trial project.<sup>7</sup>
- 5.2.5 Examples of matters that the commission may require be addressed in progress reports and outcomes report are:
- (a) whether the trial project is meeting the agreed indicators, milestones and success criteria;
  - (b) details of any complaints or issues raised by trial project participants;
  - (c) the effectiveness of the trial project in promoting benefits to consumers;
  - (d) any new risks arising during the trial project and how these are being managed;
  - (e) insights about the identified barriers to the relevant innovation associated with the trial project;
  - (f) insights for potential amendments to relevant legislation, codes of practice, guidelines, exemption orders or other instruments; and
  - (g) any other issues the commission requires to be included as part of a condition of granting a trial waiver.

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<sup>7</sup> For example, a trial project that is subject to funding through the Australian Renewable Energy Agency (ARENA) will involve knowledge sharing reports for ARENA, and such reports may be leveraged for these trial waiver purposes.

- 5.2.6 It will be a condition of a trial waiver that a trial waiver holder is required to report on:
- (a) their compliance with the trial waiver conditions, including the measures the trial waiver holder has undertaken to ensure compliance with the trial waiver conditions;
  - (b) any breach of the trial waiver conditions, including breaches of codes of practice, guidelines and other instruments that apply to the trial waiver; and
  - (c) actions taken to rectify any breach.

### **5.3 Additional monitoring and reporting obligations**

- 5.3.1 The commission may require a trial waiver holder to provide additional information in relation to a trial project for the purposes of overseeing the conduct and outcomes of trial projects.
- 5.3.2 More extensive monitoring may be implemented where the commission considers it appropriate, including in the event of:
- (a) non-compliance with reporting requirements or any other condition of the trial waiver; or
  - (b) concerns or complaints raised about the trial project by any person affected by or interested in the trial project.

### **5.4 Confidential information**

- 5.4.1 Where a progress report, outcomes report or any other information provided by a trial waiver holder to the commission includes confidential or commercially sensitive information, the trial waiver holder must:
- (a) where only part of a document is claimed as containing confidential or commercially sensitive information, clearly identify that part of the document;
  - (b) provide reasons for the identification of the information as confidential or commercially sensitive; and
  - (c) provide a public version of the progress report or outcomes report with the confidential or commercially sensitive information removed that can be published for the purpose of knowledge sharing.
- 5.4.2 Where the commission considers that information subject to a confidentiality claim may not be confidential or commercially sensitive, the commission will give the claimant the opportunity to make submissions prior to making any decisions as to any disclosure.

## 6. Extension, revocation, variation and opting out

**Note:** This section is equivalent to section 6 of the draft AER trial projects guidelines, with appropriate modifications to reflect the Victorian legislative framework. Sections 6.1.1, 6.2 and 6.3 contain material differences from the draft AER guidelines. An equivalent of sections 6.2(d) to (f) of the AER's draft guidelines has not been included because they relate to AER recommendations to the AEMC to repeal a trial rule and there is no equivalent to trial rules under the Victorian legislation.

### 6.1 Extension of a trial waiver

- 6.1.1 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 the expiry of the trial waiver to give the commission sufficient time to consider the application. The trial waiver holder must provide:
- (a) reasons why the trial waiver holder considers the trial waiver should be extended;
  - (b) an interim outcomes report documenting the trial project outcomes to date;
  - (c) 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; and
  - (d) an updated exit strategy or evidence that the existing exit strategy remains appropriate.
- 6.1.2 In deciding whether to grant an extension to a trial waiver, the factors the commission will have regard to include:
- (a) the reasons provided by the trial waiver holder why a trial waiver should be extended; and
  - (b) whether the trial project continues to meet the eligibility requirements, innovative trial principles and any other matters required by the Electricity Industry Act, Gas Industry Act or trial waiver orders.
- 6.1.3 If it extends a trial waiver, the commission may impose further conditions, or modify or retain the existing conditions of the trial waiver, as it considers appropriate.
- 6.1.4 An extension of a trial waiver will only be granted once for a maximum period of up to one year.

6.1.5 The commission will publish a record of its decision regarding an application for an extension.

## **6.2 Variation of a trial waiver**

6.2.1 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:

- (a) on its own initiative in the circumstances set out in section 60 of the Electricity Industry Act or section 61 of the Gas Industry Act, after notifying the trial waiver holder of its intention to do so and after providing an opportunity for the trial waiver holder to respond; or
- (b) by agreement with a person granted a trial waiver, under section 61 of the Electricity Industry Act or section 62 of the Gas Industry Act.

6.2.2 The commission will consult with the trial waiver holder before imposing further conditions or modifying the existing conditions of a trial waiver.

6.2.3 Variation applications must be made in writing by trial waiver holders to the commission. An application for a variation must provide sufficient information to enable the commission to assess the impact and significance of the variation with respect to the current conditions of a trial waiver.

6.2.4 If there is a proposed transfer of the activities from the trial waiver holder to another person, that person will have to apply for a trial waiver as described at section 3 of this guideline. That will require a new proponent to apply to the commission at least six months before the proposed transfer of activities.

## **6.3 Revocation of a trial waiver**

6.3.1 The commission may revoke a trial waiver in accordance with the Electricity Industry Act or Gas Industry Act and this guideline. Reasons for which the commission may terminate a trial waiver before its scheduled expiry date include:

- (a) non-compliance with any condition of the trial waiver;
- (b) non-compliance with any obligations under this guideline;
- (c) non-compliance with any relevant obligations under the Electricity Industry Act or Gas Industry Act;
- (d) concerns about the ongoing safe, reliable and secure supply of electricity or gas;

- (e) concerns about the impact of the trial project on AEMO's operation of the relevant electricity or gas markets and systems;
- (f) concerns about the ongoing safety of trial project participants;
- (g) 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;
- (h) a permanent change to the Electricity Industry Act, Gas Industry Act or relevant codes of practice, guidelines, exemption orders or other instruments is made that addresses the identified barriers to the trial project and means the trial waiver is no longer required;
- (i) the trial waiver has been granted on the basis of false or misleading information;
- (j) insolvency of the trial waiver holder;
- (k) the trial waiver holder notifies the commission that it wishes to end the trial project early;
- (l) 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; or
- (m) 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.

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

- (a) notify the trial waiver holder that it intends to revoke the trial waiver and the reasons why, and invite the trial waiver holder to make submissions within a time specified in the notice, which will be at least five business days;
- (b) take account of any submissions or information provided by the trial waiver holder in accordance with paragraph (a) before deciding to revoke the trial waiver; and
- (c) 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.

6.3.3 Section 6.3.2 does not apply where the commission intends to revoke the trial waiver due to a safety, reliability or security of supply issue, in which case the trial waiver holder must cease the trial project immediately upon notification that the commission intends to revoke the trial waiver.

6.3.4 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.

## **6.4 Opting out of a trial project**

6.4.1 Trial project participants must be able to opt out of the trial project at any time and for any reason unless otherwise agreed by the commission in accordance with this section or any conditions specified in a trial waiver.

6.4.2 Proponents that do not wish to allow trial project participants to opt out of their trial project, or wish to restrict the circumstances in which trial project participants may be able to opt out, must include as part of their trial waiver application the reasons why they consider trial project participants should not be able to opt out of the trial project. Any proposal to restrict or remove the ability for trial project participants to opt out will inform the commission's consideration of whether a trial project meets the eligibility requirements and innovative trial principles.

6.4.3 When considering whether to agree to restrict the ability of trial project participants to opt out of a trial project, the commission may consider:

- (a) whether it is practicable for a trial project participant to opt out given the nature of the trial project;
- (b) the likely impact of the trial project on trial project participants;
- (c) the likely impact on the outcomes of the trial project if trial project participants opt out;
- (d) the innovative trial principles; and
- (e) any other matter the commission considers relevant to achieving its objectives.

6.4.4 Unless otherwise agreed by the commission, the requirement that trial project participants must be able to opt out and, if relevant, the circumstances in which they may do so, will be a condition of a trial waiver.

6.4.5 Trial waiver applicants must set out the process by which a trial project participant may opt out of a trial project as part of their trial waiver application. The opt out process must be approved by the commission.

## 7. Conditions of trial waivers

**Note:** This section is equivalent to sections 4.4 and 7 of the draft AER trial projects guidelines, with appropriate modifications to reflect the Victorian legislative framework. This section contains material differences from the draft AER guidelines.

### 7.1 Approach to determining the conditions of trial waivers

7.1.1 In granting a trial waiver, the commission may impose any conditions the commission considers appropriate.

7.1.2 Unless otherwise determined by the commission, the conditions of a trial waiver may include the following default conditions:

- (a) reporting and monitoring obligations in accordance with section 5;
- (b) consumer protection conditions in accordance with section 7.2;
- (c) compliance conditions in accordance with section 7.3.3;
- (d) an obligation to conduct a survey of the experiences of the trial project participants;
- (e) an obligation to report any changes to the circumstances under which the trial waiver was granted, including any material changes to the information contained in the trial waiver application; and
- (f) any condition or class of conditions that a trial waiver order specifies that the commission must make a trial waiver subject to in accordance with section 55 of the Electricity Industry Act or section 56 of the Gas Industry Act.

7.1.3 Nothing in this guideline prevents the commission from imposing additional conditions on a trial waiver holder.

### 7.2 Consumer protection conditions

7.2.1 Unless otherwise determined by the commission, the conditions of a trial waiver will require the trial waiver holder to:

- (a) obtain explicit informed consent from trial project participants before they participate in a trial project;
- (b) allow trial project participants to opt out of the trial project at any time and for any reason in accordance with an opt out process that is approved by the commission; and

- (c) provide trial project participants with access to dispute resolution in the event of a dispute relating to the trial project.

### **7.3 Compliance obligations**

- 7.3.1 Trial waivers are an alternative to holding a licence for certain activities under the Electricity Industry Act or Gas Industry Act. Licence holders are regulated under the Electricity Industry Act or Gas Industry Act, the conditions of their licence, and codes of practice, guidelines and other instruments made by the commission under those Acts and the Essential Services Commission Act.
- 7.3.2 The commission's standard licence conditions, codes of practice, guidelines and other instruments have been developed over time after extensive public consultation to contain a comprehensive set of regulatory requirements that promote the long-term interests of electricity and gas consumers and contribute to the achievement of the objectives of the Electricity Industry Act, Gas Industry Act and Essential Services Commission Act.
- 7.3.3 Trial waivers are intended to be used to overcome regulatory barriers where a trial project would otherwise be unable to proceed because of a requirement under the Electricity Industry Act or Gas Industry Act or any instrument made under those Acts. Under section 3.2 of this guideline, a trial waiver application must specify the particular provisions of the Electricity Industry Act or Gas Industry Act, or codes of practice, guidelines or other instruments made under those Acts or the Essential Services Commission Act, that would prevent the trial project from proceeding without a trial waiver.
- 7.3.4 Unless otherwise determined by the commission, the conditions of a trial waiver will:
  - (a) include conditions that are consistent with the commission's standard licence conditions for the activities covered by the trial waiver; and
  - (b) require the trial waiver holder to comply with the codes of practice, guidelines and other relevant commission instruments listed in the trial waiver conditions,  
  
except for:
    - (c) any conditions or provisions that the trial waiver application proposes should not apply to the trial project and the commission agrees and specifies in the trial waiver conditions as not applying to the trial project; and
    - (d) any other conditions or provisions that the commission considers are not relevant or appropriate for the trial project and specifies in the trial waiver conditions as not applying to the trial project.

7.3.5 The commission has compliance and enforcement powers in relation to trial waiver conditions under the Essential Services Commission Act. Contravention of a trial waiver condition attracts a civil penalty under that Act.<sup>8</sup>

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<sup>8</sup> See section 54A(1)(a)(b) Essential Services Commission Act (a provision introduced by section 89 Essential Services Commission (Compliance and Enforcement Powers) Amendment Act 2021).

# Glossary

Term	Definition
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
AER trial projects guidelines	The trial projects guidelines made by the AER under the National Electricity Rules
AER trial waiver	A trial waiver granted by the AER under the national energy laws and rules
application	An application for a trial waiver in accordance with this guideline and section 54 of the Electricity Industry Act or section 55 of the Gas Industry Act
business day	A day that is not a Saturday or Sunday or a public holiday appointed under the <i>Public Holidays Act 1993 (Vic)</i>
commission	Essential Services Commission
customer risk assessment factors	The factors set out in Box 3 in section 4
Electricity Industry Act	<i>Electricity Industry Act 2000 (Vic)</i>
eligibility requirements	The eligibility requirements set out in Box 1 in section 4 of this guideline
Essential Services Commission Act	<i>Essential Services Commission Act 2001 (Vic)</i>
EWOV	Energy and Water Ombudsman (Victoria)
exit strategy	An exit strategy for the trial project that addresses the matters referred to in section 3.2.1(j)
explicit informed consent	Has the meaning set out in section 7 of the Energy Retail Code of Practice, except those references in that section to a 'retailer' are to be read as references to the trial waiver holder
Gas Industry Act	<i>Gas Industry Act 2001 (Vic)</i>
guideline	This Regulatory Sandboxing - Trial Project Guideline
information requirements	The information that must be contained in an application under section 3 and the application form, including any additional information requested by the commission under section 3.2.2

innovative trial principles	The principles set out in Box 2 in section 4 of this guideline, which includes the principles set out in section 52 of the Electricity Industry Act or section 53 of the Gas Industry Act as applicable <sup>9</sup>
national energy laws and rules	The National Electricity Law, National Electricity Rules, National Gas Law, National Gas Rules, National Energy Retail Law and/or National Energy Retail Rules
proponent	A person that proposes to undertake a trial project and submits an application for a trial waiver in accordance with this guideline and the Electricity Industry Act or Gas Industry Act
register	The register of trial waivers established by the commission under section 67 of the Electricity Industry Act and section 68 of the Gas Industry Act
trial project	Has the meaning given to it in the Electricity Industry Act or Gas Industry Act as applicable
trial project participant	A customer or other person that participates in a trial project
trial waiver	An exemption granted under section 54 of the Electricity Industry Act or section 55 of the Gas Industry Act <sup>10</sup>
trial waiver holder	A person that is granted a trial waiver
trial waiver information	Has the meaning given to it in the Electricity Industry Act or Gas Industry Act as applicable
trial waiver orders	A trial waiver order made under section 53 of the Electricity Industry Act or section 54 of the Gas Industry Act

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<sup>9</sup> Note that where this glossary refers to terms that are defined in the Electricity Industry Act or Gas Industry Act or matters that are set out in those Acts, the relevant provisions of those Acts are identical except for minor wording differences to reflect whether the provisions relate to electricity or gas and cross-references to other sections of the relevant Act.

<sup>10</sup> As defined in section 3 of the Essential Services Commission Act.