



Regulatory sandboxing – Supplementary information for trial waiver applications

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Introduction

About this document

The Essential Services Commission (the commission) is the independent regulator established by the Victorian Government to regulate prescribed essential utility services, including the electricity and gas industries.

One of the commission's statutory functions is to administer trial waivers in Victoria under the Electricity Industry Act 2000 (Vic) and the Gas Industry Act 2001 (Vic) to waive eligible trial projects from Victorian regulatory obligations for a time-limited period. This will allow trial applicants to conduct proof of concept trials of an innovative technology or business model by temporarily waiving specific regulatory obligations.

This document provides general information to assist trial waiver applicants with preparing their application. This document should be read in conjunction with the commission's Trial Project Guideline which outlines our approach, information and process requirements and how decisions on trial waiver applications will be made in more detail.

Assessment of trial waiver applications

In deciding whether to grant or refuse a trial waiver application, the commission is bound by the provisions of the [Essential Services Commission Act 2001 \(Vic\)](#), the [Electricity Industry Act 2000 \(Vic\)](#), the [Gas Industry Act 2001 \(Vic\) and Orders in Council made under those Acts \(trial waiver orders\)](#).

When assessing whether to grant a trial waiver, we will have regard to:

- whether the applicant has satisfied the information requirements set out in the application form and Trial Project Guideline
- the trial waiver order requirements set out in the trial waiver orders and Trial Project Guideline
- the innovative trial principles set out in the Trial Project Guideline to assess whether the trial project is genuinely innovative
- 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
- any other any relevant considerations specified in the Trial Project Guideline
- any other matter the commission considers relevant.

All applications are assessed on a case-by-case basis. We may request additional information to assist with the assessment of the application. We may also depart from the process described in this document if we believe the application needs more or different steps to be taken.

It is the applicant's responsibility to ensure that it provides accurate and relevant information and documentation. Applicants should not rely on us to search for or request information to support any application. The applicant must submit a completed application form with supporting documentation.

Applicants should note that this document does not in any way detract from or amend any statutory or regulatory requirements.

Legislative framework

Before making an application, applicants should read and understand the relevant parts of:

- the [Essential Services Commission Act 2001 \(Vic\)](#) (the ESC Act)
- the [Electricity Industry Act 2000 \(Vic\)](#) (the Electricity Industry Act)
- the [Gas Industry Act 2001 \(Vic\)](#) (the Gas Industry Act) (together, the Industry Acts)
- the trial waiver orders
- the [Trial Project Guideline](#)
- other codes and guidelines that apply to the activities that will be covered by the application, such as the [Energy Retail Code of Practice](#) and the [Electricity Distribution Code of Practice](#).

All applicants must have a detailed understanding of the legislation and regulatory instruments relevant to their proposed activities.

This document should not be relied upon as substitute for legal advice and should be read in conjunction with the above legislation and instruments. In the event of inconsistency between this document, the relevant legislation and regulatory instruments, the legislative and regulatory requirements apply. It is the responsibility of the applicant to ensure it is complying with its legal obligations when applying for a trial waiver.

Effect of a trial waiver and types of activities

A trial waiver granted by the commission relieves a person from the requirements under the Electricity Industry Act 2000 (Vic) and/or Gas Industry Act 2001 (Vic) to obtain a licence in respect

of the relevant activity specified in the trial waiver.¹ A trial waiver applies for a time-limited period and is subject to conditions imposed by the commission.

A trial waiver may cover any of the following activities as they are defined in section 16 of the Electricity Industry Act 2000 or section 22 of the Gas Industry Act 2001:

Electricity activities	Gas activities ²
<ul style="list-style-type: none">• supply or sale of electricity• generation of electricity for supply or sale• transmission of electricity• distribution of electricity	<ul style="list-style-type: none">• sale of gas by retail• providing gas services (other than the sale of gas by retail) by means of a distribution pipeline.

Relationship with other regulatory instruments

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.³ 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.

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.⁴ 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.

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

¹ There are also separate licence exemptions specified in the 2017 General Exemption Order for persons who undertake certain electricity activities and meet the conditions of the exemption.

² 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' (see Victorian Government Gazette S197, 29 October 2002). Accordingly, a trial waiver under the Gas Industry Act must relate to 'natural gas' services as defined in that Act.

³ See section 16 of the Electricity Industry Act, and section 22 of the Gas Industry Act.

⁴ See <https://www.energy.vic.gov.au/legislation/general-exemption-order>.

must clearly explain the nature of the regulatory requirements that would prevent the trial project from proceeding without a trial waiver.

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.⁵ A trial waiver proponent may be a licensee or a person who is exempt from the requirement to obtain a licence because of an Order in Council.⁶ 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.

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

⁵ Section 54(1) Electricity Industry Act; Section 55(1) Gas Industry Act.

⁶ As provided for in sections 54(8) of the Electricity industry Act and 55(8) of the Gas Industry Act.

Applying for a trial waiver

Who may apply for a trial waiver

An application for a trial waiver may be made by any legal person including individuals, incorporated associations and corporations.

Entities that are not a legal person (for example, an unincorporated joint venture) cannot apply for a trial waiver.

How to apply for a trial waiver

As a first step, trial project proponents should utilise the resources on the Energy Innovation Toolkit website, including the Innovation Enquiry Service portal to determine what regulatory barriers may exist for their project.⁷

Once applicants have identified the regulatory barriers and have decided to apply for a trial waiver, they are encouraged to refer to the [Trial Project Guideline](#) and this document on the commission's website to inform them of the application process and the type of information that will be required to support their application. An applicant can discuss their proposed trial project and application with commission staff prior to submitting the application through the Energy Innovation Toolkit.

If an applicant is unable to access the Energy Innovation Toolkit an applicant can contact the commission's regulatory sandboxing team at regulatorysandbox@esc.vic.gov.au.

Engagement with other bodies

Before submitting an application, trial project proponents are encouraged to engage with other relevant regulatory bodies in relation to the proposed trial project, including the AER, Australian Energy Market Operator (AEMO), Energy Safe Victoria (ESV) and the Energy and Water Ombudsman (Victoria) (EWOV).

As part of the application form, proponents will be required to explain what consultation they have undertaken with AEMO and ESV in relation to the risk management plan for the project and with EWOV in relation to dispute resolution processes for the project.

⁷ Link to the Energy Innovation Toolkit: www.energyinnovationtoolkit.gov.au.

Form of application for a trial waiver

The Trial Project Guideline requires applicants to use the online form to submit applications for a trial waiver via the Energy Innovation Toolkit website. Applicants will be required to upload their supporting information and documents to the online form. The application form on the commission's website may only be used to submit an application if the online form or the Energy Innovation Toolkit website are not operational for an extended period of time.

The trial waiver application process

Timeline for trial waiver application determinations

The commission will aim to make a determination regarding a trial waiver application within six months from notifying the applicant that the application meets the commission's information requirements and has been accepted. Applications may be determined earlier if they meet the information requirements and no significant issues are raised by stakeholders during consultation.

The commission will not count the time taken for an applicant to provide the commission with additional information in order for the commission to assess the application.

Confidential information

To fully inform the public about the trial waiver application, we prefer all information provided by the applicant to be made publicly available.

However, publication of some sections of the application can be restricted if warranted if they contain confidential information. Any information submitted on a confidential basis must be identified in the application form. Applicants must also provide an explanation in their form as to why the information is marked as confidential. Please note that we are not responsible for the identification of confidential information. This applies to any reports or other information provided to the commission by a trial waiver holder during the course of their trial.

Where we consider that information has been inappropriately marked as confidential, we will discuss this with the applicant. Further, we may be required to release information the applicant may consider confidential under the Freedom of Information Act 1982 (Vic) and may disclose it to other government agencies listed in the consent form as part of the application process.

Applicants should be aware that when assessing an application, we are required to consider whether the extent and nature of the confidential information claimed by the proponent may impair:

- our ability to provide appropriate public transparency in relation to the conduct and outcomes of trial projects; or
- the appropriate development of regulatory and industry experience arising from the trial project.

Submissions

We accept submissions from all interested persons.

All submissions received, except those that are commercial-in-confidence, are published on our website. Submissions are published in accordance with our submissions policy.

Consideration of the application

We will consider the application following the submission period and the receipt of any response from the applicant in relation to the submissions.

In doing so, we consider all relevant material, including all material provided by an applicant in support of its application, any submissions made by interested persons and any responses by the applicant.

We may take into account material obtained from other sources and may seek advice from external consultants and others in relation to any relevant matters, including to review the accuracy and reliability of information provided by an applicant. We may consult with other bodies we consider are relevant given the nature of the application, including the AER, AEMO, ESV and EWOV.

Decision and notification

Applicants will be notified in writing of our decision to grant, refuse or extend a trial waiver and the decision will be published on our website as soon as practicable. Those who have made submissions will also be notified of our decision.

We will publish any decision to grant a trial waiver on our website. We will also maintain a register of trial waivers on our website.

In the event of a refusal to grant a trial waiver, we will provide the applicant with our reasons for the refusal.

Trial waivers are issued subject to such conditions as are decided by us. The Trial Project Guideline explains the types of standard conditions that will apply to most trial waivers.

Commission's objectives

In deciding whether to grant a trial waiver, we must consider our statutory objectives under the Essential Services Commission Act 2001, Electricity Industry Act 2000 and Gas Industry Act 2001. Our overarching objective is to promote the long-term interests of Victorian consumers with respect to the price, quality and reliability of essential services.

The trial waiver application process

Information required in an application

This section summarises the information that is required to be included in an application. It focuses on those areas where the applicant will need to provide supporting information. The full list of required information is set out in the copy of the application form on our website.

Organisation details

The applicant must provide its organisational details, including full legal name, ABN, ACN and contact details.

Applicants will be required to provide their corporate or other structure details including any other partner organisations that will carry out the proposed trial project. The supporting information must be presented in a diagram (including any parent and related companies within the meaning of the Corporations Act 2001) along with an organisational chart that includes the composition of the board, management, and other key personnel responsible for the key functions.

Current registrations, licences, exemptions and previous licences

Applicants will be required to provide details of any current or previous licences they have held under the Electricity Industry Act or Gas Industry Act. This also applies to their partner organisations. 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 will also need to be provided.

If an applicant is registered with AEMO as a market participant, they will need to provide supporting documentation. If the applicant is intending to register, they will need to provide details of the inquiries made. If the applicant is not intending to register with AEMO as a market participant, reasons must be provided.

Fit and proper person

In deciding whether to grant or refuse a trial waiver application, we will consider whether the applicant is a fit and proper person to hold a Victorian trial waiver.

The concept of a 'fit and proper person' is established by common law and takes its meaning from its context, from the activities in which the person is or will be engaged, and the ends to be served by those activities.

In considering whether an applicant is a fit and proper person, we will have regard to the applicant's honesty, integrity and reputation. These are relevant factors as they can inform an assessment of the likelihood of future conduct.

In considering an applicant's suitability to hold a trial waiver, we will also consider the conduct of directors, office holders or any person with significant managerial duties or influence in the applicant. We may also consider the conduct of related bodies corporate or entities that can exert control over the applicant. An applicant must disclose any conduct or event relating to the following broad areas:

- bankruptcy and insolvency
- disqualification from managing a company
- criminal prosecutions
- prosecutions or enforcement action taken under relevant laws
- refused licence applications or licences that have been restricted, suspended or revoked
- material failures to comply with regulatory requirements.

Disclosure of one or more matters will not automatically lead us to conclude that the applicant is not fit and proper. We will consider a number of factors when a disclosure is made, such as the seriousness of the matter and the impact on consumers (for example, where the conduct involved dishonesty or a deliberate attempt to mislead us, this will be viewed more seriously), when the conduct occurred and the applicant's subsequent conduct.

Project partners

Some proponents may have partner organisations that will carry out the proposed trial project. If the applicant's partner organisations are subcontractors or other agents, only the 'coordinating entity' needs to submit the application. As part of the application the commission may require evidence of the agreements between the organisations.

Where waivers are required for multiple entities, each partner must submit a waiver. As part of the application process, the commission may need evidence that the joint application has authority to bind the coordinating entity as well as the partners for which the joint waivers will be provided.

Details of the trial project

Description of the trial project

An applicant will be required to provide details of the trial project that includes the aims, objectives and success criteria for the trial project.

Information required in an application

An applicant will need to advise the commission the number, type, size and location of proposed trial project participants and how participants will be recruited to participate in the trial project.

The applicant will need to advise the proposed duration of the trial project, which must not exceed five years, in line with the legislative constraints on the duration of trial waivers.

Identification of regulatory barriers

An applicant will be required to identify and explain 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 or continue to proceed that would otherwise require a licence under the Electricity Industry Act or Gas Industry Act.

Engagement with other bodies

Applicants must explain what other government or regulatory agencies they have previously engaged with in relation to the project.

Prior to submitting an application, proponents should engage with all relevant agencies including AEMO and ESV in relation to the risk management plan for the project and with EWOV in relation to dispute resolution processes for the project.

Eligibility criteria and trial waiver order requirements

As part of the application, applicants will need to describe how their trial project addresses the requirements of the trial waiver orders. These requirements include matters that are equivalent to the 'eligibility criteria' for a trial waiver application to the AER as well as a range of additional matters specified in the trial waiver orders.

The key information that is required in relation to these requirements is explained below.

Applicants should see Box 1 in section 4.2 of the Trial Project Guideline for a full list of the trial waiver order requirements.

Customer impacts

A description of the potential customer impacts associated with the trial project will need to be provided in an application form, including where relevant given the nature of the trial project:

- identification of the benefits to electricity or gas customers from the trial and how these benefits will be measured
- how customers experiencing vulnerability will be supported
- how appropriate consumer protections will be maintained through the trial
- how the privacy of trial project participants will be maintained, including how personal information will be collected, used, managed and disclosed.

Where the trial project may affect customers experiencing vulnerability, applicants are expected to consult with relevant organisations that represent customers prior to submitting the application and explain the outcomes of that consultation in the application.

Risk management plan

An applicant will need to provide a risk management plan for the trial project to demonstrate they have identified the risks for trial project participants, other customers or other electricity or gas market participants associated with the trial project and how those risks will be managed. The risk management plan must include the systems and processes in place to monitor and respond to potential risks and a description of any consultation they have had with relevant market bodies regarding the trial project and the proposed risk management plan.

Sufficient financial resources

In deciding whether to grant a trial waiver application, we must be satisfied the applicant has the financial ability to carry out the proposed trial project. An applicant will be required to provide documentation to demonstrate their financial resources, whether that be from a government agency funding the trial project or financing from a private third party to carry out the proposed trial project.

It is important to note that our assessment of financial ability is limited to a point in time and should not be taken as an assessment of the applicant's ongoing financial capacity. The assessment that is undertaken is only for the purpose of the trial waiver application and should not be relied upon for any other purpose by any person.

In assessing whether an applicant is financially viable, the applicant is generally required to demonstrate that it will have sufficient financial resources to commence and sustainably operate the trial project, and meet the service standards of small customers (if applicable).

Information required in an application

Technical capacity

Our assessment of technical capacity falls within two broad categories:

- the capacity to operate and manage the relevant business, and
- the capacity to comply with the trial waiver conditions (which includes complying with the relevant regulatory obligations, including legislation, codes and guides).

The applicant must demonstrate that it can satisfy these requirements and will do so for the duration of the trial project. The applicant is required to provide information that demonstrates:

- it has the business skills, knowledge, personnel, systems and ability to operate the relevant business and
- it has the capacity to manage risk and to operate an effective and functional risk management and compliance system consistent with the relevant Australian Standards.

Our assessment of technical capacity includes the applicant's ability to support vulnerable customers (excluding large customer trial waiver applications). Applicants need to demonstrate a full understanding of their legislative obligations to supporting vulnerable residential customers, including their obligations under the payment difficulty framework and family violence provisions.

Opting out

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. The application must explain how participants can opt out 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.

Exit strategy

Applicants must describe how trial project participants will revert to their pre-existing supply arrangements or move onto suitable alternative arrangements that comply with all relevant regulatory requirements after exiting the trial project, for example if the trial ends for any reason or the participant opts out of the trial.

Explicit informed consent

Applicants will need to explain in their application how trial project participants 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.

Information required in an application

Dispute resolution

Customers must be able to raise a dispute in relation to their participation in a trial project. The applicant must demonstrate the trial project will have the processes and procedures in place to resolve disputes. This will ensure Victorian trial waiver participants have access to external dispute resolution.

As part of consumer protection conditions on a trial waiver, a trial waiver holder will be required to have internal and external dispute resolution processes in place.

We expect that most trial waiver holders will be required to become a member of the Energy and Water Ombudsman (Victoria) (EWOV), particularly if the trial project engages in electricity or gas retail or distribution activities for residential and small business customers. An applicant must contact EWOV prior to submitting a trial waiver application and explain in the application what consultation it has undertaken with EWOV. Applicants will need to provide supporting documents to demonstrate they are a member of EWOV or have approached EWOV about joining the scheme.

If trial project participants will not have access to EWOV, the application must explain what alternative form of external dispute resolution will apply and why the proponent considers that approach to be appropriate.

Disconnection processes

Where the proposed trial project involves the supply or sale of electricity or gas to small customers, the applicant must provide a description of its processes in relation to disconnection of customers' energy supply.

Safety, reliability and security

The applicant must explain whether it expects there to be any risks to the safety, reliability or security of supply of electricity or gas as a result of the project. If any risks are expected, the applicant must explain how they will be avoided or mitigated.

Monitoring and reporting of a trial project

An applicant will need to describe how the trial project will be monitored, reported on and evaluated, including how learnings will be shared.

A trial waiver will include mandatory compliance reporting requirements and may include conditions requiring a trial waiver holder to submit to the commission progress reports and outcomes reports.

Matters that we may require to be addressed in progress and outcomes reports are:

Information required in an application

- whether the trial project is meeting the agreed indicators, milestones and success criteria
- details of any complaints or issues raised by participants
- the effectiveness of the trial project in promoting benefits to consumers
- any new risks arising during the trial project and how these are being managed
- insights on identified barriers to the relevant innovation associated with the trial project
- insights on potential amendments to relevant legislation, codes of practice, guidelines, exemption Orders or other instruments
- compliance with the trial waiver conditions, including measures the proponent has undertaken to ensure compliance with the trial waiver conditions, any breaches of the trial waiver conditions and actions taken to rectify the breach
- any other issues the commission requires to be included as part of a condition of granting a trial waiver.

Victorian innovative trial principles

In deciding whether to grant a trial waiver or extend the duration of a trial waiver, we must have regard to the innovative trial principles specified in the legislation, trial waiver orders and the Trial Project Guideline in determining whether a trial project is genuinely innovative.

Applicants must provide an explanation of how their trial project meets each of the innovative trial principles. If an innovative trial principle does not apply to the project, an applicant will need to outline the reasons why it is not applicable. The commission takes each of the innovative trial principle into account in determining whether a trial project is genuinely innovative.

The innovative trial principles are:

- 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 and/or gas.
- Whether the trial project is likely to contribute to the achievement of the objectives of the commission under *Electricity Industry Act 2000*, *Gas Industry Act 2001* and the *Essential Services Commission Act 2001*.⁸
- 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 and/or gas.

⁸ Applicants must explain how their trial project will contribute to the achievement of the objectives outlined in section 8 of the Essential Services Commission Act 2001 (also see section 8A of the Essential Services Commission Act), section 10 of the Electricity Industry Act 2000, and/or section 18 of the Gas Industry Act 2001.

- Whether the trial project maintains, or will continue to maintain, adequate customer protections for customers who purchase electricity and/or gas, including whether the trial project may involve risks to such customers and, if so, how those risks might be mitigated.
- Whether the trial project is unable to proceed, or continue to proceed, because of the Electricity Industry Act and/or Gas Industry Act or any instrument made under that Act.
- 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.
- Whether the trial project may negatively impact the Australian Energy Market Operator'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.
- Whether the trial project is able to be trialled and evaluated.
- Whether there is potential for the trial project to be successfully expanded.
- Whether the trial project will provide for public sharing of knowledge, information and data resulting from the trial project.

Document version control

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