



AGL Energy Limited
ABN: 74 115 061 375
Level 24, 200 George St
Sydney NSW 2000
Locked Bag 1837
St Leonards NSW 2065
t: 02 9921 2999
f: 02 9921 2552
agl.com.au

Department of Industry, Science, Energy and Resources
Submitted via email: energycouncil@industry.gov.au

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Regulatory Sandboxing Legislative Amendments, September 2020

AGL Energy (**AGL**) welcomes the opportunity to respond to the draft *Statutes Amendment (National Energy Laws) (Regulatory Sandboxing) Bill 2020 (Draft Bill)* published with the Consultation Paper, *Regulatory Sandboxing Legislative Amendments*, September 2020.

AGL is one of Australia's largest integrated energy companies and the largest ASX listed owner, operator, and developer of renewable generation. AGL is also a significant retailer of energy and telecommunications, providing solutions to around 4.2 million across Australia. Our product and service suite includes innovative offerings to promote continued customer uptake and participation of distributed energy resources (DER).¹

AGL supports the Draft Bill.

We believe the regulatory sandbox package of reforms will provide an important opportunity to accelerate the development of technologies and business models in the national energy markets to deliver greater benefits to consumers.

We recommend the innovative trial principles informing the Australian Energy Regulator's (**AER**) and Australian Energy Market Commission's (**AEMC**) determinations on the granting of a trial waiver or making of trial rules contemplate a range of additional matters to broaden the scope of the arrangements.

We consider a five-year time horizon for the granting of trial waivers and/or making of trial rules may be too long, given the current pace of technological change and market reform, and risks unfairly advantaging trial proponents. Based on our experience in a range of trials with the Australian Renewable Energy Agency (**ARENA**), we would recommend a 3-year time horizon with a power to extend on formal application.

Our feedback on key elements of the Draft Bill are contained in the **Attachment**. Should you have any questions in relation to this submission, please contact Kurt Winter, Regulatory Strategy Manager, on 03 8633 7204 or KWinter@agl.com.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Elizabeth Molyneux'.

Elizabeth Molyneux

GM, Policy and Markets Regulation

¹ Our current DER product and service offerings include our leading-edge Virtual Power Plant, our retail offer for electric vehicle owners, and our electric vehicle subscription service. See AGL's Virtual Power Plant, https://www.agl.com.au/solar-renewables/solar-energy/bringyourownbattery?cide=semr&qclid=EA1aIQobChMlicjKmKuP5wIVyjUrCh2eXwvVEAAYASAAEgLZRPD_BwE&qclsrc=aw.ds; AGL EV Plan, available at <https://www.agl.com.au/electric-vehicles>; AGL Electric Vehicle Subscription, available at <https://www.agl.com.au/get-connected/electric-vehicles/ev-subscription>.



ATTACHMENT

Innovative Trial Principles

To ensure the regulatory sandbox arrangements best serve the long-term interests of consumers, we recommend the innovative trial principles contemplate the following matters:

1. In the context of assessing whether a trial project's focus on *developing new or materially improved approaches to the supply of, or demand for, electricity* under trial principle a), also provide for:
 - *Circumstances where there is evidence that the application of a rule is not fit-for-purpose in serving the long-term interests of consumers.* As we stated in our submissions to the AEMC's Draft Report and Draft Rules,² we believe some trial projects can demonstrate that the long-term interests of consumers can be improved without necessarily fulfilling a strict interpretation of the innovation requirement. We foresee opportunities for proponents to seek regulatory waivers based on evidence that the application of a particular existing rule is no longer fit-for-purpose in serving the long-term interests of consumers. The national energy rules (both NER and NERR) were written two decades ago for an energy system where energy flowed one way and consumers by enlarge were passive users that relied on traditional modes of communication (e.g. telephone and mail). Many of these rules are no longer fit-for-purpose and the AEMC's recent competition review³ considered in detail the adequacy of the current NERR arrangements. Allowing access to regulatory sandbox arrangements to test these rules and alternatives will enable evidence-based reform to the rules in a manner that provides confidence any changes are in the long-term interest of consumers.
 - *The broad range of behind-the-meter (BTM) innovation.* The continued development of new business models focused on behind-the-meter assets may necessitate a broader framing of this trial principle to enable the trialling of unique services approaches. Examples include customer participation in the provision of ancillary services and network support services through BTM orchestration, independent of the supply of energy and/or complementary services that enable customers to integrate and optimise BTM solutions, such as electric vehicle smart charging infrastructure and technology solutions that support improved visibility and efficiency. The wording provided in trial principle a) that is framed by reference to *approaches to the supply of, or demand for, electricity* may need to be broadened to facilitate the diversity of innovation use cases such as those highlighted above.
2. In the context of assessing *adequate consumer protections* under trial principle d), we believe the regulatory sandbox arrangements should consider whether a trial project provides equivalent consumer protections having regard to other industries. In our view, that may be particularly appropriate where a trial crosses into adjacent industries such as data, telecommunications and transport.
3. In assessing whether a trial project has *moved beyond research and development* under trial principle f), consider whether any foundational customer insights has been gathered. Ensuring trial proponents provide evidence of preliminary customer research will assist guard against speculative trials and ensure the trial project has reached sufficient maturity to justify relaxing the regulatory framework.

² See further AGL submission to AEMC's Draft Rules on Regulatory Sandbox Arrangements (21 February 2020), Available at <https://thehub.agl.com.au/articles/2020/02/submission-in-response-to-regulatory-sandbox-draft-rules>; AGL submission to AEMC's Draft Report on Regulatory Sandbox Arrangements (9 August 2019), Available at <https://thehub.agl.com.au/articles/2019/08/submission-in-response-to-the-aemcs-draft-report-on-regulatory-sandbox>.

³ See further <https://2020.aemc.gov.au/competition-review/feature-article/consumer-protection>.



4. We believe principle h), which assesses potential negative impact to AEMO's operations should be limited to having a *material* impact.
5. Include an additional principle that assesses the potential impact to competition. Whilst competition considerations are implicit in the achievement of the national electricity objective, we believe explicit consideration would support a balanced approach to trial development, guarding against trials that may demonstrate increased efficiency in one aspect of the energy supply chain at the expense of competition and customer choice.

Regulatory waiver power

AGL supports the conferral of a broader rule exemption function to the AER with tight and well defined boundaries on the areas in which the AER can enable trial waivers as well as the empowerment of the AER to grant trial waivers, through more detailed provisions made under the Rules and in the Trial Project Guidelines.

We support and agree these powers are well defined through the Draft Bill so that AER's Guidelines are limited to how they will grant exemptions that relate to provisions of the National Electricity Rules (NER), the National Energy Retailer Rules (NERR) and the National Gas Rules (NGS) as well as a limited ability to waive the provisions of section 12 of the *National Electricity Law* that governs registration (given the crossover between Chapter 2 of the NER and section 12 of the NEL).

We support the requirement to carry out public consultation in relation to a proposed trial waiver, in accordance with the Rules. We consider that the Draft Rules appropriately balance the protection for commercial information and intellectual property with the need for trial projects to contribute to regulatory and industry experience. As we stated in our submissions to the AEMC's Draft Report and Draft Rules the AER could draw upon the Australian Competition and Consumer Commission's Guidelines for Authorisation of Conduct (nonmerger) and the public benefit tests prescribed therein to inform when stakeholder consultation would be required.

We also support that the AER be given responsibility for monitoring trial projects, whether they be conducted under a trial waiver or a trial rule by using its existing information gathering powers.

Trial rules

AGL also welcomes the empowerment of the AEMC to make trial Rules, with information required to be included in a trial Rule change request as set out in the associate rules.

AGL supports the proposed amendment in the Draft Bill to the definition of market initiated proposed rule in the NEL, NERL and NGL to include a trial rule and the definition for trial rule, to mean a rule for the purposes of a trial project.

We also support the proposed Trial Rule process that appropriately balances the need for due process with expediency, including that:

- The process should be less than 10 weeks long;
- One round of stakeholder consultation is required; and
- The AEMC is not required to make a draft determination.