



Response to the review of the
Enhanced Regulatory Sandbox
ERS Consultation

Introduction

Piper Alderman welcomes the opportunity to provide this submission in relation to the review of the Enhanced Regulatory Sandbox (**ERS**) and provide input towards shaping future iterations of ERS. One of Australia's oldest law firms with a national reach, Piper Alderman also operates one of the largest specialist teams in Australia focused on blockchain and digital assets. We have deep technical and legal experience in the fintech and digital asset space, having served Australian and global clients at the forefront of innovation in the digital economy. Over the past decade, we have been deeply engaged in key Government consultations concerning regulatory approaches to digital assets.

We advise start-ups, digital currency exchanges, financial institutions and investors, analyse innovative products and services, act in controversies, advise on taxation and assist in restructuring matters.

The principal author of this submission is Steven Pettigrove, a Partner in the Financial Services and Fintech team at Piper Alderman and Head of the Blockchain Group. Steven is ranked a Band 2 Fintech lawyer in Australia by the prestigious Chambers & Partners and is co-author of Australia's first blockchain textbook "Law of Code: Blockchain and Digital Assets in Australia" published by Lexis Nexis.

The views within are the authors' own and should not be taken as being representative of the views of the other partners of Piper Alderman.

We take a politically neutral position when considering policy, underpinned by a belief in the economic and social benefits of technology and innovation, and a focus on what regulation means at a practical level for both businesses and their customers and users.

We welcome the review of ERS and the provision of further guidance and shaping of the program. In reviewing the ERS, it is

important that policymakers take into account the Government's stated objectives of supporting innovation, competition and productivity, as well as the evolving nature of technology-enabled financial services and international developments in sandbox design. Maintaining alignment with and, where merited, leading global best practice will be critical to protecting consumers while ensuring that Australia remains an attractive jurisdiction for innovative firms to test, develop and scale their offerings within the domestic regulatory perimeter.

We thank Treasury for the opportunity to contribute to this Consultation and trust that our feedback, together with that of other stakeholders, will help foster innovation and enhance the effectiveness of the ERS program.

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With thanks to William Deeb and Tahlia Kelly

Executive Summary

Technological innovation in relation to financial technology, including AI, blockchain and digital assets, continues to gather pace internationally and domestically.

Against this backdrop, many jurisdictions around the world, including the European Union, the United Kingdom, Singapore and Hong Kong, are actively exploring and implementing sandbox frameworks to allow for financial innovation. These includes specialised sandboxes for digital market infrastructure, tokenisation and stablecoins.

While there are ongoing efforts in Australia to promote innovation and emerging financial technologies in a sandbox environment, current programs have had limited uptake and success after participating in the program.

A key limitation of the current framework is its heavy reliance on prescriptive eligibility criteria to mitigate consumer risk. While consumer protection is an appropriate regulatory objective, the criteria do not sufficiently acknowledge existing safeguards that materially reduce consumer risk in practice, including disclosure obligations, client money obligations, and the continued application of robust consumer protection frameworks (i.e., Australian Consumer Law). This has resulted in scale-based restrictions that constrain participation regardless of a firm's maturity, governance capability or testing objectives, limiting the commercial and strategic value of participating in the ERS.

It is also important to take into account international developments in the context of Australia's competitive position as a hub for technology innovation. An ill-fitting attempt to allow for testing new financial product and service offerings without a clear off-ramp pathway to obtaining an Australian Financial Services Licence (**AFSL**) risks driving

innovation overseas or encouraging regulatory arbitrage – offshore operators accessing the Australian market and depriving consumers of the very protections secured by Australian laws.

While we acknowledge Treasury's proposed reforms to the ERS, it is important that the ERS remains responsive to international regulatory developments and continues to evolve to support Australia's competitiveness as a destination for financial innovation, encourage high-quality applicants to test and scale locally, and ensure that innovative business models are developed and supervised within the Australian regulatory perimeter.

Submissions to questions

We have focused our submissions on the following questions identified in the ERS Consultation Paper.

Q1 What are the benefits and limitations of the current ERS?

The ERS has potential to serve as an important mechanism in the Australian financial regulatory landscape by enabling live market testing of innovative financial products and services under regulatory oversight, before their risks and benefits are fully understood. This structure seeks to support innovation while maintaining appropriate consumer protections.

However, the current formulation of the ERS limits the extent to which these benefits can be realised, particularly for ventures seeking to achieve broader market adoption and long-term scalability within Australia.

In practice, most innovative start-ups cannot wait for 6-12 months to obtain a licence before conducting market testing or commencing the product iteration lifecycle. The lengthy AFSL application process,

coupled with the current restrictive eligibility criteria, means Australia must do more to be internationally competitive. These factors are critical in order to retain and attract talent and capital to Australia. With the right policy settings, Australia is a highly attractive market to foster and develop innovation which can produce significant benefits to consumers and the economy. In a highly competitive global market, with mobile talent, the ERS can play an important role in fostering domestic innovation and export gains.

Framing of consumer risk

It is important that the ERS is focused on facilitating innovation while mitigating consumer risks. However, the current eligibility criteria do not acknowledge several existing and complementary protections that materially reduce consumer risk in practice.

In particular:

- eligible participants are required to comply with the financial product disclosure rules in Division 2 of Part 7.9 of the Corporations Act;
- eligible participants must also comply with client money obligations under Divisions 2 and 3 of Part 7.8 of the Corporations Act;
- participants must be a member of AFCA; and
- eligible participants remain subject to the Australian Consumer Law, including prohibitions on misleading or deceptive conduct, unfair contract terms and false representations. These obligations apply regardless of regulatory status and provide consumers with a robust enforcement and remedial framework.

Compensation arrangements also apply and, in our view, should be applied flexibly where insurance is not commercially available by reference to adequate alternatives (e.g. bond or capital requirements).

These safeguards and the time-bound nature of the sandbox permit a relaxation of eligibility criteria and conditions to allow scope for meaningful scalability. As we discuss further below, the ERS should be viewed as a stepping stone to commercialisation and full licensing rather than a walled garden.

Lack of off-ramping

The ERS lacks a structured or expedited pathway to licensing for participants that wish to continue operating beyond the sandbox period.

In practice:

- participants that operate within the sandbox are required to undertake a full licensing process at the expiry of the sandbox period in order to continue operating; and
- there is limited recognition of a participant's sandbox experience, testing outcomes or demonstrated compliance when progressing to authorisation.

As a result, sandbox participation appears to function as a temporary regulatory carve-out rather than a transitional step towards full market entry.

This approach contrasts with the approach of sandbox models internationally. In the United Kingdom Financial Conduct Authority's (**FCA**) model, participation is supported by designated case management, with testing outcomes intended to inform

subsequent licensing discussions.¹ Similarly, regimes within the European Union contemplate ongoing regulatory dialogue, allowing learnings from sandbox participation to feed into longer-term regulatory and licensing outcomes.²

In our view, provided a licence application is made on a timely basis, sandbox participation should remain open until determination of the application.

Q2 What outcomes should the ERS aim to achieve, and how should success be measured?

A redesigned ERS should target the following outcomes:

1. regulatory certainty for participants: provide clearer pathways to licensing authorisation for sandbox participants, including through less restrictive eligibility and operating criteria and designated case-manager engagement during testing and tailored feedback to support subsequent licensing decisions;
2. safe market testing while allowing for scalability: the ERS should continue to facilitate live market testing subject to applicable laws, but in a way that enables firms to refine products, validate business models and identify consumer risks with flexibility to scale according to business type (i.e. start-up, Australian incumbent etc). Applications for class or individual or no action relief should be encouraged to permit testing of innovative products within a controlled environment; and

3. regulatory learning that aid policy formation, inform regulatory settings and supports innovation: the ERS should generate regulatory insights that inform broader policy development, more flexible regulatory settings, and support innovation. For example, successful sandbox participation could demonstrate eligibility for modified regulatory settings or regulatory relief.
4. data based outcomes: the ERS should be judged by how many participants enter and successfully transition to licensing and commercialisation and by reference to ASIC enforcement data and economic impact. This should feed a continuous feedback loop to encourage uptake of the ERS, optimise policy settings and ensure consumer protection.

Q4 How can the ERS be amended to provide a more structured pathway to an Australian financial services or credit licence?

The ERS could be amended to provide a more structured and effective pathway to obtaining an AFSL or ACL by directly linking sandbox participation with the subsequent authorisation processes.

Specifically, the history of sandbox participation (i.e. demonstrated history of compliance, lack of breaches and disclosure reporting) should be explicitly recognised within applications as evidence of valued relevant experience for organisational competence.

The formal recognition of sandbox participation and compliance would reinforce the ERS's role as a bridge between

¹See
<<https://www.fca.org.uk/firms/innovation/regulatory-sandbox>>, accessed on 11 February 2026.

² See <<https://digital-strategy.ec.europa.eu/en/news/launch-european-blockchain-regulatory-sandbox>>, accessed on 11 February 2026.

innovation and full market entry, while maintaining appropriate regulatory standards.

We also recommend an expedited pathway to licensing (e.g., a 6-month assessment period) for participants with a demonstrated history of sandbox compliance. This would incentivise increased participation in the ERS and, in turn, drive higher uptake of the sandbox. Greater participation would enhance the quality and breadth of regulatory learnings, which would improve the overall effectiveness of the regime.

Q6 How can the current eligibility criteria be improved to increase participant uptake?

Participant uptake under the ERS could be improved by reforming the eligibility criteria to more closely align with international best practice, particularly the approach adopted by the FCA. The current framework adopts a highly prescriptive approach (as discussed in Q1), imposing multiple cumulative thresholds at the point of entry.

Broad-based product eligibility criteria

Traditionally, many financial product innovations do not fit neatly within existing categories of products and services defined in regulation. In our view, technical definitional matters should not be an impediment to participation (e.g. AI driven products or digital assets). In our view, any product which reasonably meets the general definition of a financial product should be permitted to participate, perhaps subject to specific carve out for high risk products like derivatives or margin lending.

Reframe the public benefit test as a consumer benefit test

The current requirement that applicants demonstrate a net “public benefit” (that outweighs any consumer detriment) could be refined to align more closely with international practice by focusing instead on “consumer benefit”.³

A consumer-benefit framing would:

- better align with the underlying purpose of the ERS as a mechanism for testing consumer-facing innovation, and capture benefits to subsets of consumers that may not demonstrate a clear benefit to the public at large;
- provide clearer guidance to applicants; and
- reduce uncertainty around how broader public interest considerations are assessed and balanced at the eligibility stage.

However, consumer benefit should also encompass indirect benefits driven by infrastructure and product innovation. Alternatively, a standalone digital market infrastructure sandbox may be considered.

Avoid subjective innovation test

In order to attract innovation, a subjective assessment of “innovation” or difference to existing products should not be required. Given the diversity and changing nature of business models, this is not something that is amenable to easy quantification. It should be sufficient that the product is innovative in the

³ See
<<https://www.fca.org.uk/firms/innovation/regulatory-sandbox/eligibility-criteria?>> accessed on 11 February 2026.

sense that it is new and not widely offered to consumers.

Redefine consumer exposure caps

The ERS should move away from fixed consumer exposure caps as a primary eligibility control and instead adopt a “readiness”-based approach, consistent with the FCA model.

Under the current framework, the aggregate consumer exposure limits constrain participation regardless of a firm’s maturity, governance capability or the nature of the testing product/service. While these caps mitigate risk, they can unnecessarily exclude otherwise well-prepared applicants and limit the commercial viability of participating in the sandbox.

By contrast, the FCA model assesses whether an applicant is sufficiently developed to test, having regard to factors such as governance, risk controls, financial resourcing, consumer safeguards and operational capability.

Adopting a similar approach in the Australian ERS would involve:

- reframing consumer exposure limits as testing parameters informed by readiness and business model, rather than as fixed eligibility barriers; and
- allow ASIC greater discretion to tailor its approach to testing based on the specific risks, business model and testing objectives of each participant.

This would enable the ERS to accommodate a broader range of applicants while maintaining appropriate consumer protections. It would also better align risk controls with demonstrated capability, rather than applying uniform caps that may not reflect actual consumer risk.

Alternatively, monetary exposure caps could be trigger an obligation to apply for licensing but allow flexibility to remain in the sandbox until an application is determined or end-date.

If Treasury is committed to fostering responsible innovation that balances consumer protection with the need for Australia to remain internationally competitive, the ERS must become a more viable pathway for a broad array of innovative firms to test and scale new business models in collaboration with government. This submission provides practical insights into how those objectives could be more effectively achieved.

We thank you for considering our submission and would be pleased to answer any questions you may have concerning the above.



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