

INDEPENDENT REVIEW OF THE ENHANCED REGULATORY SANDBOX: TERMS OF REFERENCE

Context

1. The Enhanced Regulatory Sandbox (ERS), introduced in 2020, allows individuals and businesses to test certain innovative financial services or credit activities without first obtaining an Australian financial services (AFS) licence or Australian credit licence (credit licence). ASIC administers the ERS on behalf of the Australian Government.
2. The ERS is intended to promote Australia's FinTech capability by supporting start-ups and innovative businesses to develop, test and launch their innovative financial and credit services and products. The ERS aims to encourage competition and innovation that delivers choice for consumers, while minimising risks to consumers or the integrity of the financial system.
3. Section 4 of the *Treasury Laws Amendment (2018 Measures No.2) Act 2020* requires an independent review of the ERS to commence as soon as practicable 12 months after the ERS Regulations commenced.
4. The review will support the Government's broader productivity agenda by promoting more responsive and adaptive regulatory settings, thereby strengthening economic efficiency and national competitiveness. It is an opportunity to assess whether the existing ERS design and regulatory framework facilitates innovation.
5. The review will assess whether the current ERS meets minimum legislative requirements and remains operationally fit-for-purpose. It should also consider how the ERS can be repositioned as a core feature of a more agile regulatory ecosystem to support future innovation and faster adoption of novel business models, having regard to the Government's fiscal strategy, priorities and regulatory approach.

Scope of the review

6. The reviewer should consider whether the ERS is achieving the Government's objective of promoting innovation within the Australian financial technology sector while balancing associated consumer harm and other risks.
7. With regards to the overall operation of the ERS, the reviewer will consider:
 - 7.1. Whether the eligibility criteria to access the ERS exemptions and other elements of its design remain fit-for-purpose;
 - 7.2. The current administration of the scheme by ASIC, including whether the scheme is being administered consistently in a way that achieves its objectives and those of Government;
 - 7.3. The extent to which the application process for an AFS or credit licence could be streamlined to reduce administrative burden, and any other complementary changes to broader regulatory settings and arrangements should be considered;
 - 7.4. Whether the eligibility criteria and current administration of the ERS are appropriately technology-neutral, including but not limited to potential AI use cases in the future;
 - 7.5. Having regard to similar schemes in other countries, whether further amendments are required to achieve the objectives of the scheme, both now and into the future. These objectives include evolving the ERS into a more adaptable platform that enables experimentation with new business models and help improve understanding of regulatory and legal settings. This should also include consideration of relevant policy frameworks in

comparable jurisdictions to ensure alignment with global best practices to support the Government's objectives.

8. The reviewer will develop an evaluation framework to consider how the effectiveness of the ERS should be assessed over time, with consideration to what constitutes 'best practices' for international sandboxes.
9. In considering the above, the independent reviewer will consult with ASIC, other relevant government bodies and non-government stakeholders.

Governance

10. The independent reviewer will report to the Assistant Treasurer and Minister for Financial Services.
11. The review will be conducted by an independent reviewer who has financial industry / policy / regulatory experience.

Resources

12. The independent reviewer will be supported by a Treasury secretariat, responsible for providing research and briefing support, organising stakeholder meetings, and the preparation and publication of the review final report.

Deliverables

13. The independent reviewer will deliver a written report which will include the review's findings and, where appropriate, recommendations for amendments to the ERS.
14. The report must be provided to the Assistant Treasurer and Minister for Financial Services within six months of commencing the review.