Law Council
OF AUSTRALIA

Business Law Section

13 February 2026

Ms Maha El Dimachki
Independent Reviewer
Enhanced Regulatory Sandbox Review
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: ERSreview@treasury.gov.au

Dear Ms El Dimachki,

Independent Review of the Enhanced Regulatory Sandbox

1. This submission, concerning the Independent Review of the Enhanced Regulatory Sandbox (**ERS**) is made by the Financial Services Committee of the Business Law Section of the Law Council of Australia (the **Committee**).

2. The Committee welcomes the opportunity to provide feedback on the Treasury consultation paper released in December 2025 and the terms of reference announced on 31 October 2025, and thanks Treasury for the extension of time to respond. The Committee's responses to the consultation questions are informed by the practical experience of its members, including senior legal practitioners working in financial services regulation, fintech, digital assets and licensing.

3. The Committee acknowledges the important role that the ERS plays within Australia's financial innovation ecosystem, and supports the Government's objective of reviewing the ERS to ensure it remains fit for purpose, particularly in light of the significant financial services reforms currently underway, including the changes made by the *Treasury Laws Amendment (Payments System Modernisation) Act 2025* (Cth) and the proposed changes under the *Corporations Amendment (Digital Assets Framework) Bill 2025*.

Key Points

4. The key matters the Committee wishes to bring to the reviewer's attention are as follows:

   (a) The ERS has experienced limited uptake since its commencement in September 2020, with only 19 entities accepted from 103 applications. This suggests that there may be design and structural issues that warrant consideration beyond minor refinement.

Telephone +61 2 6246 3788 • *Email* mail@lawcouncil.au
PO Box 5350, Braddon ACT 2612 • Level 1, MODE3, 24 Lonsdale Street, Braddon ACT 2612
Law Council of Australia Limited ABN 85 005 260 622
www.lawcouncil.au

(b) The absence of a structured pathway from sandbox participation to full licensing under the Australian financial services licence (**AFSL**) or Australian credit licence (**ACL**) regime significantly undermines the practical utility of the ERS and should be a priority for reform.

(c) The scope of the ERS should be expanded to accommodate emerging financial products and services, including digital asset platforms, tokenised assets, stablecoins and payment services, to ensure alignment with the Government's broader financial services reform agenda.

(d) The current eligibility criteria, including the $5 million aggregate exposure limit and the $10,000 individual retail client exposure limit, are too restrictive to attract meaningful participation from a broad range of innovative firms.

(e) The role of the Australian Securities and Investments Commission (**ASIC**) in administering the ERS should evolve from a passive notification-based model to a more engaged, collaborative supervisory approach, consistent with international best practice.

Submissions

Question 1: Benefits and limitations of the current ERS

5. The Committee considers that the ERS provides a valuable, if currently underutilised, mechanism for enabling innovation in financial services. The principal benefits of the current ERS include:

(a) providing a defined regulatory exemption framework, underpinned by the Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2020 (Cth) and the National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2020 (Cth) (collectively, the **ERS Regulations**), which provides legal certainty to participants regarding the scope of their exemption;

(b) enabling testing of innovative financial services and credit activities in a live market environment with real consumers, without requiring an AFSL or ACL; and

(c) incorporating consumer protection safeguards, including membership of the Australian Financial Complaints Authority (**AFCA**), compensation arrangements and disclosure obligations.

6. However, the Committee considers that the current ERS has limitations that may explain its limited uptake:

   (a) No pathway to licensing: Unlike sandbox models in comparable jurisdictions such as the United Kingdom and Singapore, the ERS does not appear to provide a structured pathway from sandbox participation to an AFSL or ACL. This means that participants who successfully complete sandbox testing must still undertake the full licensing application process, which can be lengthy and resource-intensive, without any formal recognition of, or credit for, their participation in the ERS. This significantly reduces the practical incentive for firms to participate.

   (b) Restrictive exposure limits: The $5 million aggregate customer exposure limit and $10,000 individual retail client exposure limit may constrain the ability of participants to conduct meaningful market testing at a scale that would generate commercially useful data and insights.

   (c) Limited regulator engagement: The notification-based model, under which ASIC has 30 days to respond to a notification before the exemption is enlivened, involves minimal ongoing interaction between ASIC and sandbox participants. There also appears to be no mandatory reporting requirement and no formal feedback mechanism, and the Committee understands that insights from sandbox testing may not currently inform the broader licensing process in a structured way.

   (d) Narrow scope of eligible activities: The current range of eligible financial services and products does not appear to extend to several rapidly developing areas of financial innovation, including digital asset platforms, tokenised asset settlement and certain payment services that are now the subject of dedicated legislative reform.

   (e) Innovation and net public benefit tests: While the Committee supports the principle of these tests, their application can be uncertain. The assessment of whether a product or service is "genuinely new or a significant improvement" involves a degree of judgment that may create uncertainty for applicants and present challenges for consistent assessment by ASIC.

Question 2: Desired outcomes and success measurement

7. The Committee considers that the ERS should aim to achieve the following outcomes:

   (a) proactively facilitate the development and testing of genuinely innovative financial products and services in a controlled, real-world environment;

   (b) provide a meaningful and structured pathway for sandbox participants to transition their application for an AFSL or ACL following the end of the testing period;

(c) generate insights for ASIC and policymakers about emerging financial technologies and business models, which can inform regulatory development through genuine engagement with industry innovators;

(d) maintain adequate consumer protection while enabling proportionate regulatory flexibility for innovative firms; and

(e) support Australia's competitiveness as a destination for financial innovation and fintech investment, globally.

8. The Committee suggests that success should be measured by reference to a combination of quantitative and qualitative indicators, including the number and diversity of applications and acceptances, the proportion of participants that successfully transition to hold an AFSL or ACL, the range of products and services tested, stakeholder satisfaction (from both participants and ASIC) and, where identifiable, the contribution of sandbox-tested innovations to market competition and consumer outcomes.

Question 3: Accommodating a broader range of innovative firms

9. The Committee considers that the following amendments would assist in accommodating a broader range of firms:

(a) Tiered participation: The ERS could introduce tiered participation thresholds that scale with the risk profile and maturity of the participant. For example, early-stage start-ups could operate under the current exposure limits, while more mature firms (including established entities testing new products and international fintech firms) could access higher exposure limit thresholds subject to meeting enhanced risk management and consumer protection requirements.

(b) International entrants: The ERS should expressly accommodate international fintech firms seeking to enter the Australian market. This could include reciprocal recognition arrangements with sandbox programmes in comparable jurisdictions, such as the United Kingdom's Financial Conduct Authority (**FCA**) and the Monetary Authority of Singapore (**MAS**), to reduce duplicative regulatory testing and enhance regulatory advancement and alignment, globally.

(c) Existing licensees: While the ERS currently permits licensed businesses to participate for financial or credit services not covered by their existing AFSL or ACL authorisations, the Committee considers that the parameters for this participation could be clarified and streamlined. Industry broadly will benefit from established firms testing innovations and new technologies and, on that basis, the Committee considers that firms should have access to use the sandbox to test adjacent innovations without jeopardising their existing AFSL or ACL.

Question 4: Structured pathway to licensing

10. The Committee considers that the creation of a structured pathway from sandbox participation to an AFSL or ACL application is among the most significant reforms that could be made to the ERS. The current absence of such a pathway is, in the Committee's view, a primary reason for the limited uptake of the ERS.

11. The Committee recommends that the following elements be considered:

    (a) Accelerated licensing track: Participants who successfully complete sandbox testing and demonstrate compliance with the applicable conduct and disclosure conditions should be eligible for an expedited AFSL or ACL application process. ASIC's assessment of the licensing application should be able to take into account the applicant's track record during the sandbox period, including compliance history, complaints data and AFCA outcomes, if any.

    (b) Transitional licensing: Consideration should be given to introducing a transitional or restricted licence category that bridges the gap between sandbox participation and being subject to all AFSL and ACL requirements. This could involve a time-limited licence with conditions that reflect the entity's stage of development, analogous to the approach adopted in the United Kingdom.

    (c) Pre-lodgement engagement: The ERS framework should formalise a process for pre-lodgement engagement between ASIC and sandbox participants, so that licensing requirements and expectations are communicated clearly during the sandbox period, rather than on a self-service basis, after the exemption expires.

Question 5: Broadening the scope of products and services while upholding tech-neutrality

12. The Committee considers that the scope of the ERS should be broadened to reflect the current financial services reform landscape. In particular:

    (a) Digital asset platforms and tokenised custody platforms: The proposed *Corporations Amendment (Digital Assets Framework) Bill 2025* would introduce two new categories of regulated financial products, being digital asset platforms and tokenised custody platforms. The ERS should be amended to permit testing of services relating to these new product categories, including custody and dealing in digital assets, so that innovative firms can begin testing while the full licensing regime is being finalised.

    (b) Payment services: The *Treasury Laws Amendment (Payments System Modernisation) Act 2025* (Cth), which received Royal Assent on 19 September 2025, and the associated exposure draft legislation for the regulation of payment service providers, introduce new categories of financial products and services including tokenised stored value facilities, payment instruments and payment services. The ERS should be expanded to accommodate testing of these new product and service types.

(c) Tokenised asset settlement: As noted in the consultation paper, the ERS does not currently allow entities to test the use of tokenised assets for clearing and settlement. The Committee supports expansion into this area, noting the success of Project Acacia as a precedent for bespoke regulatory relief in the wholesale digital asset space.

(d) AI-enabled financial services: The Committee considers that the ERS should be sufficiently broad to accommodate the testing of existent and inevitable artificial intelligence-enabled financial services, including robo-advice, automated credit assessment and AI-driven compliance tools (regtech), consistent with the requirement in the terms of reference for the ERS to be appropriately technology-neutral.

13. In broadening the scope, the Committee recommends that the ERS Regulations be amended to adopt principles-based definitions of eligible activities, rather than prescriptive lists that require frequent amendment to keep pace with technological change. This approach would better uphold the principle of technology neutrality.

Question 6: Improving eligibility criteria to increase participant uptake

14. The Committee recommends the following amendments to the eligibility criteria (with a view to increasing participant uptake):

(a) Increase exposure limits: The $5 million aggregate exposure limit and $10,000 individual retail client limit should be increased to levels that permit commercially meaningful testing. The Committee suggests that the limits could be tiered based on the type of product or service, the risk profile of the activity and whether the participant serves wholesale or retail clients.

(b) Extend the testing period: The current 24-month maximum testing period may be insufficient for firms testing complex financial products that require longer development and market validation cycles. The Committee recommends consideration of an extension mechanism (for example, up to 36 months) subject to ASIC approval and continued compliance with applicable conditions.

(c) Clarify the innovation test: The innovation test should be clarified, potentially through additional guidance from ASIC, to provide applicants with greater certainty about the threshold for demonstrating that a product or service is "genuinely new or a significant improvement". The Committee considers that the test should be applied flexibly and should encompass not only novel technology but also novel applications of existing technology to new use cases or markets.

Question 7: ASIC's effectiveness at enabling financial innovation and suggestions for improvement

15. The Committee acknowledges that ASIC has taken positive steps to support financial innovation through its Innovation Hub. The Innovation Hub provides a useful point of contact for fintech businesses seeking to navigate the regulatory framework and has facilitated informal engagement with innovators. However, the Committee considers that ASIC's effectiveness in enabling financial innovation could be improved in the following ways:

    (a) Dedicated resourcing: The Innovation Hub should be adequately resourced to provide timely and substantive guidance to innovators. The Committee understands that processing times for both sandbox notifications and AFSL applications can be lengthy, which may create uncertainty and impose costs on innovative firms.

    (b) Proactive engagement: ASIC should adopt a more proactive model of engagement with sandbox participants and the broader fintech sector. This could include regular industry roundtables, published guidance on emerging issues and structured feedback loops between sandbox participants and ASIC's licensing and policy teams.

    (c) Transparency: ASIC could improve transparency around the ERS by publishing anonymised data on applications received, reasons for rejection, types of services tested and outcomes achieved. This would assist potential applicants in assessing the viability of sandbox participation and promote confidence in the framework.

    (d) Coordination with other regulators: Financial innovation frequently engages the mandates of multiple regulators, including the Australian Prudential Regulation Authority (**APRA**), the Reserve Bank of Australia (**RBA**) and the Australian Transaction Reports and Analysis Centre (**AUSTRAC**). The Committee recommends that the ERS framework facilitate coordinated engagement across regulators, potentially through the Council of Financial Regulators.

Question 8: Key barriers to financial innovation in Australia

16. From the Committee's perspective, the key barriers to financial innovation in Australia include:

    (a) Licensing complexity and timeframes: The AFSL and ACL application processes are complex, time-consuming and costly. For early-stage firms, the legal and compliance costs associated with obtaining a licence can be prohibitive. The complexity of the authorisation framework, which requires applicants to identify precise authorisations for each financial product and service, can be particularly challenging for firms with novel business models that do not fit neatly within existing product categories.

(b) Regulatory uncertainty: Uncertainty about how existing regulatory frameworks apply to emerging technologies and business models remains a significant barrier. This is particularly acute in the digital assets space, where the regulatory perimeter has historically been unclear. The Committee notes that the Government's reform programme, including the proposed digital asset platform and the enacted payments system modernisation legislation, is addressing this issue, but the transition period creates its own uncertainty.

(c) Access to capital: The Committee understands that Australian fintech businesses face more challenges in accessing capital and growth funding compared to their peers in the United States, the United Kingdom and Singapore. The relatively smaller domestic market and the cost of regulatory compliance can make Australia less attractive to investors.

(d) Fragmented regulatory landscape: Innovative financial services may be subject to overlapping regulatory obligations under the *Corporations Act 2001* (Cth), the *National Consumer Credit Protection Act 2009* (Cth), the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth), the *Privacy Act 1988* (Cth), and, depending on the product, other legislative instruments. Navigating this fragmented landscape is costly and can deter innovation, particularly by smaller firms. The Committee acknowledges that the Australian Government has committed to investigating simplification of the corporate and financial services legal regime, and looks forward to concrete proposals to advance this objective.

(e) Stage-specific barriers: The barriers vary by stage of development. Start-ups face acute challenges relating to licensing costs, access to initial funding and regulatory navigation. Established firms face different challenges, including the rigidity of existing licence conditions and the risk of regulatory action if new product testing is characterised as falling outside current authorisations. International entrants face the additional barrier of needing to understand and comply with Australia's unique regulatory architecture.

Question 9: Other enabling factors for fintech and innovation in Australia

17. The Committee identifies the following additional enabling factors for fintech and innovation in Australia:

(a) Consumer Data Right (**CDR**): The CDR framework, particularly as it applies in the banking sector, has the potential to support innovation by enabling new entrants to access consumer data with consent. The Committee supports the Government's continued expansion and refinement of the CDR as a foundational enabler of financial innovation.

(b) Proportionate regulation: The principle of proportionate regulation, whereby regulatory obligations are scaled to the size, complexity and risk profile of the regulated entity, is critical to supporting innovation. The Committee supports the application of this principle in the design of the ERS and in the broader regulatory framework.

(c) Industry collaboration: Formal and informal mechanisms for proactive and ongoing collaboration between regulators, established financial institutions and fintech businesses can support innovation. Accelerators, incubators and industry sandboxes operated by established institutions have demonstrated value in comparable jurisdictions.

Question 10: Role of government and other regulators in supporting financial innovation in Australia

18. The Committee considers that the Government has a critical role to play in supporting financial innovation in Australia through:

    (a) ensuring that the regulatory framework is clear, proportionate and technology-neutral;

    (b) ensuring legal frameworks support proactive, transparent and confidential regulator engagement regarding innovative products and services;

    (c) investing in enabling infrastructure, including the CDR, Digital ID and the New Payments Platform.

    (d) providing targeted policy support, such as the ERS and tax incentives for research and development in fintech; and

    (e) ensuring that regulatory reform, including the payments system modernisation and digital assets legislation, is progressed in a timely and coordinated manner.

19. In relation to other regulators, the Committee considers that:

    (a) APRA should consider how its prudential framework can accommodate innovative business models, particularly in the payments and digital assets space, without imposing disproportionate compliance burdens on smaller firms;

    (b) the RBA should continue to engage with industry on the development of new payments infrastructure and the use of tokenised assets in settlement, building on initiatives such as Project Acacia;

    (c) AUSTRAC should provide clear and accessible guidance on how AML/CTF obligations apply to innovative financial services (for example, the guidance and kits provided to the legal and accounting sectors relating to recent changes through Tranche 2), particularly in the digital assets sector, and should work with ASIC to ensure that regulatory requirements are coordinated; and

    (d) the Council of Financial Regulators could serve as a coordination mechanism for innovation policy across the regulatory agencies, to minimise duplication and ensure a consistent approach.

Question 11: Comparison between Australia global best practice or other comparable jurisdictions

20. The Committee considers that Australia's ERS compares unfavourably with the regulatory sandboxes in the United Kingdom, Singapore and Hong Kong in several respects:

    (a) United Kingdom: The FCA's regulatory sandbox incorporates structured case management, providing sustained regulator engagement throughout the testing period. The FCA also provides a clear pathway from sandbox participation to full authorisation and has developed thematic sandboxes (including a Digital Sandbox and a stablecoin-specific cohort) to address emerging areas of innovation.

    (b) Singapore: The MAS has developed multiple iterations of its sandbox framework, including distinct frameworks for simpler propositions and for the provision of financial grants to innovative first movers. This graduated approach enables a broader range of firms to participate.

    (c) Hong Kong: The Hong Kong Monetary Authority has established structured feedback loops and cross-agency coordination mechanisms, and has recently introduced a stablecoin-issuer-specific sandbox to support emerging policy priorities.

21. By contrast, Australia's ERS operates as a notification-based exemption framework with comparatively limited regulator engagement, no directly linked licensing pathway, relatively low exposure limits, and a scope that has not kept pace with recent developments in financial services innovation.

Question 12: Lessons from overseas sandbox models which could be adapted to strengthen the ERS

22. The Committee recommends that the review consider the following lessons from overseas models:

    (a) Case management model: Assigning dedicated case managers to sandbox participants ensures ongoing dialogue between the regulator and innovators, and is likely to generate better regulatory intelligence while providing firms with more meaningful support.

    (b) Graduated entry: Offering multiple entry pathways that are calibrated to the complexity and risk profile of the applicant's proposition expands availability and ensures suitability across the potential participant cohort.

    (c) Thematic cohorts: Thematic or sector-specific cohorts allow regulators to focus resources and develop targeted expertise while testing a critical mass of related innovations simultaneously.

(d) Financial support: Overseas models that provide, or connect participants with, financial grants, offer a precedent for considering whether direct financial incentives could support ERS participation in Australia.

(e) Cross-border collaboration: Several jurisdictions have established bilateral or multilateral arrangements for mutual recognition of sandbox participation. The Committee recommends that the review consider whether such arrangements could assist international firms seeking to test innovations in Australia, and Australian firms seeking to expand overseas.

Question 13: Sector or technology-specific sandboxes

23. The Committee supports the establishment of sector or technology-specific sandboxes in Australia, in addition to the general-purpose ERS. Thematic sandboxes offer the advantage of more targeted regulatory oversight, tailored consumer protections and the ability to develop regulatory expertise in specific areas of innovation.

24. The Committee considers that the following types of sandboxes should be prioritised:

(a) Digital assets and tokenisation: Given the significant legislative reform programme underway in this area, a dedicated sandbox for digital asset platforms, tokenised custody platforms, stablecoins and tokenised asset settlement would complement the proposed regulatory framework and assist both ASIC and industry in preparing for the new licensing requirements for this sector.

(b) Payments innovation: The introduction of new payment service provider categories under the payments system modernisation reforms creates an opportunity for a thematic sandbox focused on innovative payment services, including cross-border payments, stablecoin-based payments and embedded finance.

(c) AI and tech in financial services: Given the rapid growth in the use of artificial intelligence and bespoke technological solutions in financial services, including for automated advice, credit assessment, fraud detection and compliance, a dedicated sandbox could assist ASIC in understanding the risks and opportunities presented by the use of these technologies and inform the development of appropriate regulatory responses (including guidance).

25. The Committee notes that thematic sandboxes should be designed to complement, not replace, the general-purpose ERS. Thematic sandboxes should be deployed selectively where there is a clear policy rationale and sufficient regulatory interest to justify dedicated oversight.

Question 14: Other relevant considerations

26. The Committee wishes to raise the following additional matters for the reviewer's consideration:

    (a) Regulatory certainty for exiting participants: The current framework provides limited guidance on the position of entities that exit the sandbox without obtaining an AFSL or ACL. The Committee recommends that the review consider what obligations and protections should apply during the wind-down period, including in relation to existing client relationships.

    (b) Data sharing and insights: The ERS would be more valuable if it generated insights that inform broader regulatory policy. The Committee recommends that mandatory reporting obligations be introduced for sandbox participants, and that ASIC publish periodic reports on ERS outcomes and emerging trends observed through sandbox activity.

Conclusion and further contact

27. The Committee supports the Government's initiative in conducting this review, and considers that a well-designed ERS has the potential to make a meaningful contribution to financial innovation in Australia. The Committee encourages the reviewer to recommend reforms that address the structural limitations of the current framework, particularly the absence of a streamlined licensing pathway, the narrow scope of eligible activities and the limited level of regulator engagement in the process.

28. The Committee would be pleased to discuss any aspect of this submission. Please contact the Committee's Funds and Wealth Management Lead, Celeste Norman [redacted], if you would like to do so.

Yours faithfully



Adrian Varrasso
Chair, Business Law Section