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Submission on Draft Retail Exempt Selling Guideline and Draft Network Exemptions Guideline (Version 8)

Thank you for the opportunity to comment on the AER's Notice of Draft Decision (18 August 2026), which incorporates the Draft Retail Exempt Selling Guideline (Version 8) and the Draft Network Exemptions Guideline (Version 8). We write further to our joint submission of 24 April 2025 on the Version 7 Draft instruments,[1] and ask that this additional submission be read together with that earlier submission.

At the outset, we commend the AER for the further refinements reflected in the version 8 drafts. In particular, we welcome the introduction of the R9 registrable retail exemption class for commercial retrofits, the new metering-data confidentiality and security conditions, the revised definition of 'retrofit', and the fuller set of worked examples in the draft Network Guideline. In our view these changes are responsive to the concerns raised across the consultation and improve the workability of the framework.

Our purpose in this supplementary submission is a narrow one. We seek to identify where, in our respectful view, the Version 8 drafts have not yet resolved the specific matters we raised in April 2025, and to offer some targeted, drafting-level suggestions directed at resolving them before the guidelines are finalised. As in our earlier submission, our concern is to 'future proof' the framework so that all customers are duly protected relevant to their circumstances, and all embedded network owners, operators and intermediary businesses are aware of their obligations.

Our central concern remains unchanged. The exemptions framework continues to be built around a single on-sale and on-supply transaction, from the parent meter to the child meter, whereas new technologies and uses, in particular the installation and operation of electric vehicle (EV) charging infrastructure, are introducing further layers of commercial transaction behind the child meter. As we explain below, Version 8 addresses part of this situation for network exemptions. Even so, in our view the current draft version still leaves the downstream on-sale and on-supply to end-users unresolved; it does not take up our earlier submission that the AER give clearer content to the terms 'premises' and 'used for premises' in the Exemptions Guidelines.

Against that background, the need for express clarification remains. Although our detailed comments and proposed amendments are set out in the accompanying submission, we wish to emphasise at the outset that this is our principal concern. We therefore respectfully call on the AER to give further consideration to this issue, provide clear and unambiguous definitions of these important terms in the context of embedded networks, and include those definitions among the Terms in the Version 8 Exemption Guidelines.

Yours sincerely,

[redacted]

Dr Rowena Cantley-Smith and Dr Anne Kallies
Submitted: Tuesday 15 September 2026

[1] R Cantley-Smith and A Kallies, *Submission on Draft Retail Exempt Selling Guideline and Draft Network Exemptions Guideline (Version 7)* (24 April 2025) (April 2025 submission), https://www.aer.gov.au/documents/dr-rowena-cantley-smith-and-dr-anne-kallies-submission-draft-retail-exempt-selling-and-draft-network-exemptions-guidelines-versions-7.

Contents

1. INTRODUCTION AND SCOPE OF THIS SUBMISSION 4

2. CHANGES IN VERSION 8 WE SUPPORT 4

3. DISTINGUISHING THE SECONDARY SETTLEMENT POINT REFORMS FROM OUR CONCERNS ABOUT DOWNSTREAM TRANSACTIONS 5

3.1 WHAT THE SECONDARY SETTLEMENT POINT REFORMS DO 5
3.2 HOW 'PREMISES' IS UNDERSTOOD FOR SECONDARY SETTLEMENT POINTS 6
3.3 HOW OUR CONCERN DIFFERS: LAYERED TRANSACTIONS IN EMBEDDED NETWORKS, NOT SSPS 7
3.4 WHY THE DISTINCTION MATTERS FOR THIS REVIEW 9

4. DRAFT RETAIL EXEMPT SELLING GUIDELINE (VERSION 8) 9

4.1 'PREMISES' AND 'FOR PREMISES' REMAIN UNDEFINED 9
4.2 THE SECONDARY TRANSACTION BEHIND THE CHILD METER IS STILL NOT CAPTURED 10
4.3 THE PROTECTION OF THE DOWNSTREAM END-USER 10
4.4 INTERACTION WITH OTHER REGULATORY REGIMES 11

5. DRAFT NETWORK EXEMPTIONS GUIDELINE (VERSION 8) 11

5.1 CLASS NDO3 AND EV CHARGING: WELCOME PROGRESS, AND A REMAINING GAP 11
5.2 THIRD-PARTY OPERATION AS AGAINST SELF-OPERATION BY THE NETWORK OWNER 12
5.3 CONSISTENCY BETWEEN THE TWO GUIDELINES 12

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The authors collaborate on energy law publications and research projects. This supplementary submission may be treated as a public document.

Key Submissions

In August 2026, the AER released the draft Retail Exempt Selling Guideline (Version 8), the draft Network Exemptions Guideline (Version 8), and the related draft Notice of Decision for consultation. The six submissions set out below identify the targeted drafting changes we ask the AER to make before finalising the Version 8 guidelines. These proposed regulatory changes are directed to one practical objective: ensuring that multiple downstream transactions behind the child meter are expressly characterised, consistently regulated, and accompanied by clear consumer protections.

No.	Key submission	What the AER should do	Why it matters
1	**Clarify "premises" and "used for premises".**	Include positive interpretive guidance on when energy is sold "to a person for premises" under section 88 of the *National Energy Retail Law* (the NERL), including for movable loads such as EVs.	This would remove uncertainty about whether the test turns on where the sale occurs and align the Retail Guideline with the site-based understanding used for secondary settlement points.
2	**State the status of downstream sales behind a child meter.**	Expressly state whether a further sale of electricity by an EV charging operator or other downstream seller requires authorisation or exemption, and identify or create the applicable class if required.	This would ensure intermediary businesses understand their obligations and that legal risk is not transferred to operators and end-users by silence.
3	**Identify consumer protections at each transaction layer.**	Clarify which protections apply to pricing, information, dispute resolution, life support and hardship at each recognised transaction layer within an embedded network.	This would make clear whether downstream end-users are protected, and if not, that the framework intentionally leaves them outside its coverage.
4	**Resolve the NDO3 EV charging ambiguity.**	Clarify whether NDO3 covers only supply to an EV charging station within an exempt network, or also supply from the station to final end-users behind the child meter.	This would prevent the EV charging examples from being read as resolving behind-the-meter on-supply when the downstream transaction remains unstated.
5	**Clarify self-operation by the embedded network owner or operator.**	Clarify practical application of the Guidelines by adding a worked example or note confirming which class and conditions apply where the embedded network owner or operator itself operates the EV charging station and on-sells to end-users.	This would assist SMEs to understand and comply with the Guidelines by clearly distinguishing self-operation from the third-party Company B scenario and stating the regulatory position in both configurations.
6	**Align the retail and network guidelines.**	Cross-reference and align the two guidelines so downstream sales and on-supplies are treated consistently across both instruments.	This would simplify compliance and ensure a downstream seller or supplier can identify its retail and network obligations from either guideline.

1. Introduction and Scope of this Submission

In our April 2025 submission[2] we agreed with the AER that the exemptions framework, which was designed to regulate a relatively homogenous market in which the on-supply of energy was regarded as incidental to the relationship between a landlord or body corporate and the occupants of a site, is no longer fit for current, emergent or future purposes.[3] In that submission we drew attention, through a series of hypothetical factual scenarios, to four matters which in our view required clarification:

(i) What constitutes the 'premises' for the purposes of section 88 of the National Energy Retail Law (the NERL);

(ii) What 'used for premises' means, and in particular whether the sale of electricity to charge an EV is a sale 'to a person for premises';

(iii) Whether a secondary transaction at or behind the child meter (our 'Company B' EV charging scenario) is captured by the retail and network exemptions frameworks, and what protections, if any, are afforded to the end-user; and

(iv) How different commercial arrangements, in particular third-party operation as against self-operation by the embedded network owner, are to be distinguished under the network exemption classes.

In this submission we consider how far the Version 8 drafts address each of these matters, and offer our suggestions accordingly. Where we refer to the draft instruments, we have used the AER'S tracked Version 8 drafts published with the Notice of Draft Decision.[4]

At the outset we note that the refinements introduced by the Version 8 drafts, in particular the R9 registrable retail exemption class and the move to self-certification for wholly commercial retrofits, are directed largely at adjacent problems: the administrative burden of the first-layer, parent-to-child on-selling transaction, together with disclosure standardisation and single-customer flexible trading. They do not displace our central concern; if anything, they reinforce it.

The downstream on-sale and on-supply gap we continue to identify is most acute in genuine multi-occupant embedded networks, for example a holiday park or shopping centre in which the embedded network operator supplies a site, a charging operator runs the EV chargers at premises within that site, and final EV users buy charging services from that operator at those premises. In those settings the reforms simplify the layer about which least concern arises (the first-layer on-sale to child-meter customers) while leaving unresolved the second-layer sale and on-supply from the charging operator to the EV driver, which is the precise transaction our suggestions below address.

2. Changes in Version 8 we support

Before turning to our remaining concerns, we wish to set out our support for a number of the Version 8 changes, which in our view, are responsive to the broader consultation and improve the regulatory framework governing this area:

- **The new R9 registrable retail exemption class:** We agree that the introduction of a dedicated registrable class for commercial retrofits, to be registered in conjunction with the R1 and/or R5 classes, together with self-certification under the Network Guideline, is a proportionate means of reducing burden for lower-risk commercial sites while preserving the core consumer protections.[5]

[2] R Cantley-Smith and A Kallies, April 2025 submission (n 1), https://www.aer.gov.au/documents/dr-rowena-cantley-smith-and-dr-anne-kallies-submission-draft-retail-exempt-selling-and-draft-network-exemptions-guidelines-versions-7.

[3] AER, Notice of draft decision (n **Error! Bookmark not defined.**) 4; and see Cantley-Smith and Kallie, April 2025 submission (n 1) 3, adopting the AER's characterisation in the *Review of the AER exemptions framework for embedded networks - Draft Decision* (2025) 4.

[4] AER, Notice of draft decision, draft Retail Guideline (Ver 8) and draft Network Guideline (Ver 8) (n **Error! Bookmark not defined.**), https://www.aer.gov.au/documents/exemption-guidelines-review-2026-notice-draft-decision-august-2026. Note: pinpoint page references in our footnotes accord with the draft documentation available at the time of submission.

[5] AER, Notice of draft decision(n **Error! Bookmark not defined.**) 9-11 and s 4.1 (new class R9); Daft Retail Guideline (n **Error! Bookmark not defined.**) Table 2 (class R9).

We also agree that these changes should not extend to residential or mixed sites, where the consumer protection risks are greater.

- **The new metering-data conditions:** We support the introduction of the confidentiality-of-metering-data and security-of-metering-installation conditions for off-market customers in exempt networks. This is, in our view, a sensible response to the gap identified by ESCOSA. It is particularly important as metering data underpins secondary settlement point and flexible-trading arrangements.[6]
- **The revised definition of 'retrofit':** We consider that recasting a retrofit as the conversion of a brownfield site, being a site with multiple premises each separately connected to the local distribution network, into an embedded network with a metered parent connection point supplying those premises through metered child connection points, better reflects the AER's policy intent and the way retrofitting is understood in the sector.[7]
- **The expanded worked examples in the Network Guideline:** We welcome the fuller set of examples dealing with EV charging, single user networks, embedded networks with secondary settlement points, and transitional arrangements. These materially improve the accessibility of the framework, and our suggestions below are intended to build upon them rather than to displace them.

3. Distinguishing the secondary settlement point reforms from our concerns about downstream transactions

Before turning to our detailed comments, we wish to address a distinction which is, in our respectful view, central to this consultation, and also may otherwise be overlooked. Both the secondary settlement point (SSP) reforms reflected in version 8 and the downstream transaction we raise (our Company B / EV charging scenario) involve a further layer of activity behind the meter.

In our view that *prima facie* similarity may tend towards misunderstandings about which particular relationship is regulated, and by which part of the regulatory framework. Specifically, while these transactions may at first appear to be covering the same situation, the two arrangements are, on analysis, structurally opposite. They were designed to address different problems facing different parties. As such, the SSP reforms do not, in our view, resolve our concerns about the lack of regulatory clarity regarding multiple downstream transactions behind the meter. If anything, they place it in sharper relief.

3.1 What the secondary settlement point reforms do

The SSP reforms derive from the AEMC's 2024 flexible trading rules[8] and are directed at empowering customers to manage their own consumer energy resources (CER). A customer may designate an additional metering point on their "premises" so that a particular load (for example an EV charger or a battery) may be settled separately. This arrangement also means that these activities may be managed by a third party, while the customer remains on its existing retail plan for all other usage.

[6] AER, Notice of draft decision (n **Error! Bookmark not defined.**) 6 and s 5.1 (proposed general conditions 1.20 (Confidentiality o f metering data) and 1.21 (Security of metering installations)); citing ESCOSA, *Review of electricity metering requirements - Final decision* (May 2026) s 4.2.

[7] AER, Notice of draft decision (n 1) 16 ('Definition of "retrofit"'); Draft Network Guideline (n 1) Glossary, definition of 'Retrofit'.

[8] AEMC, *National Electricity Amendment (Unlocking CER benefits through flexible trading) Rule 2024* and *National Energy Retail Amendment (Unlocking CER benefits through flexible trading) Rule 2024* (15 August 2024). See also AEMC, *Unlocking CER benefits through flexible trading*, Rule determination (15 August 2024) 80-82. The relevant provisions commence on 1 November 2026.

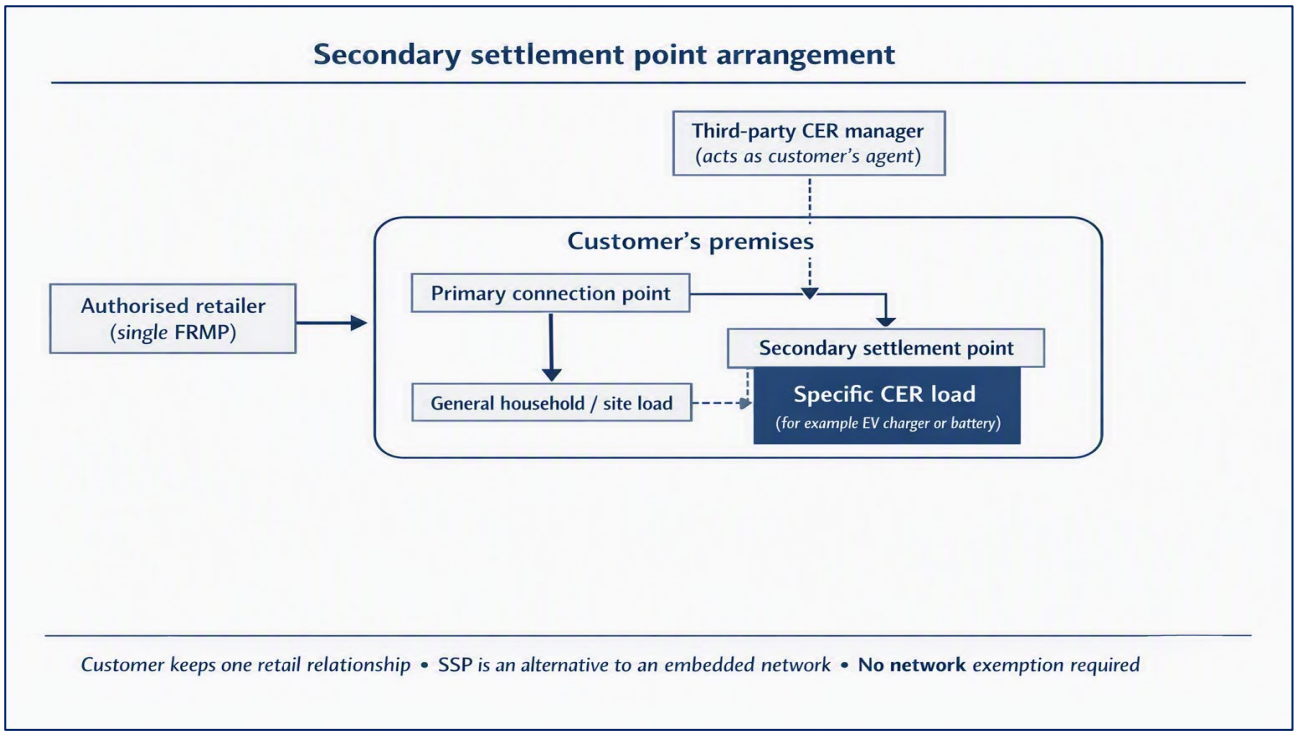


Figure 1. Simplified secondary settlement point arrangement.

We understand that the following three features define the reform:

- **First, the customer retains a single retail relationship**: for a small customer, only one entity (an authorised retailer) may be the financially responsible market participant (FRMP) for both the primary connection point and any secondary settlement points within the premises.[9]
- **Secondly, the reform provides an *alternative* to embedded networks**: rather than a layer within an embedded network, this conforms with the AEMC's stated preference for new entrants to adopt flexible trading rather than establish embedded networks.[10]
- **Thirdly, the reform deliberately moves the qualifying activity *out* of the exemptions framework**: the amended definition of 'distribution system' excludes a 'single user network' and an 'excluded metering installation', with the express result that such arrangements require no network exemption. Where a third party controls CER behind an SSP, the arrangement concerns the management of the customer's resources rather than the on-sale of electricity to further consumers; the precise contractual and market role of that third party will depend on the applicable arrangement.

3.2 How 'premises' is understood for secondary settlement points

It is essential, in this context, to advise how the term 'premises' is understood for the purposes of the SSP reforms, because the same undefined term does a great deal of work in these changes.

Specifically:

- The draft Network Guideline defines a secondary settlement point as '[a] metering installation within the premises of an end user that has been established as a secondary settlement point in accordance with clause 7.2.6 of the NER',[11] and the accompanying note explains that flexible

[9] AEMC, *National Electricity Amendment (Unlocking CER benefits through flexible trading) Rule 2024* (15 August 2024) cl 2.3.4(b2), as noted in the Notice of draft decision (n 1) 8.
[10] AEMC, *Unlocking CER benefits through flexible trading*, Rule determination (15 August 2024) 80-82; AER, *Exemption guidelines review - Consultation paper* (18 May 2026) (Consultation paper) 6.
[11] AER, Draft Network Guideline (n 1) Glossary, definition of 'Secondary settlement point (SSP)', cross-referring to National Electricity Rules cl 7.2.6.

trading enables customers to establish secondary settlement points 'within their premises (including within embedded networks)'.[12]

- The term 'premises' is therefore doing genuine definitional work, for a secondary settlement point exists only *within* a premises.

Yet neither the draft Network Guideline nor the underlying rule defines 'premises'. The only anchor is the cross-reference to clause 7.2.6 of the National Electricity Rules, which governs *how* an SSP is established, and not what a premises *is*. The draft Retail Guideline, for its part, continues to state expressly that the NERL 'does not define "premises"'; that the AER considers the term has a 'broad application' and that it takes 'a pragmatic approach to interpreting it'.[13] We set out our ongoing concerns relating to the absence of an appropriate, clear definition subsequently. (see Section 4)

Although 'premises' is again left undefined, the architecture of the SSP reforms in our view constrains what it must mean in that setting. The small-customer rule presupposes a single premises, identified by a single primary connection point, within which additional (secondary) settlement points may be nested. The neighbouring concepts of 'single user network' and 'excluded metering installation' are each anchored to 'the limits of a site'. Moreover, the discussion of customer classification treats 'premises' as discrete physical locations capable, in defined circumstances, of aggregation.[14] Accordingly, "premises" for SSP purposes carries a concrete, site-based meaning: a fixed and bounded location, identified by its primary connection point, within which metering may be arranged. That is a considerably more definite meaning than the 'broad application' and 'pragmatic approach' to which the same word is left open to in the Retail Guideline.[15]

We draw this to the AER's attention because it exposes a clear tension:

- If 'premises' is truly broad enough to extend, as the Retail Guideline's language suggests it might, to a vehicle or to the space a vehicle occupies while charging, then the simple 'one premises, one primary connection point' architecture of the SSP reforms is less settled than it appears.
- Alternatively, if 'premises' in the SSP context is said to have the fixed, connection-point-anchored meaning that its structure requires, then the AER already has available to it a workable, location-based understanding of the term. If so, then there is, in our respectful view, no good reason to leave the section 88 sale question resting upon an undefined 'pragmatic approach'.

Our suggestion below (Suggestion 1) therefore asks the AER for no more than that it make explicit, and apply consistently across both guidelines, the understanding of 'premises' upon which it has, in substance, already proceeded.

3.3 How our concern differs: Layered transactions in embedded networks, not SSPs

The downstream transaction we raise is, with respect, the reverse of the SSP model in each of the respects noted above. It introduces a *new commercial seller* (Company B), which acquires electricity at the child meter and on-sells and on-supplies it to a fresh set of end-users (EV drivers), rather than a customer managing its own load.

[12] AER, Draft Network Guideline (n 1), Note to s 1 ('Flexible trading arrangements').
[13] AER, Draft Retail Guideline (n 1) 4, Section 2 Are you an energy seller? The identical formulation appeared in the version 7 draft and was the subject of comment in Cantley-Smith and Kallie, April 2025 submission (n 2) 6.
[14] AER, Notice of draft decision (n 1) 7-8 (customer classification and aggregation of eligible premises); draft Network Guideline (n 1) Glossary, definition of 'Single user network'.
[15] AER, Draft Retail Guideline (n 1) 4.

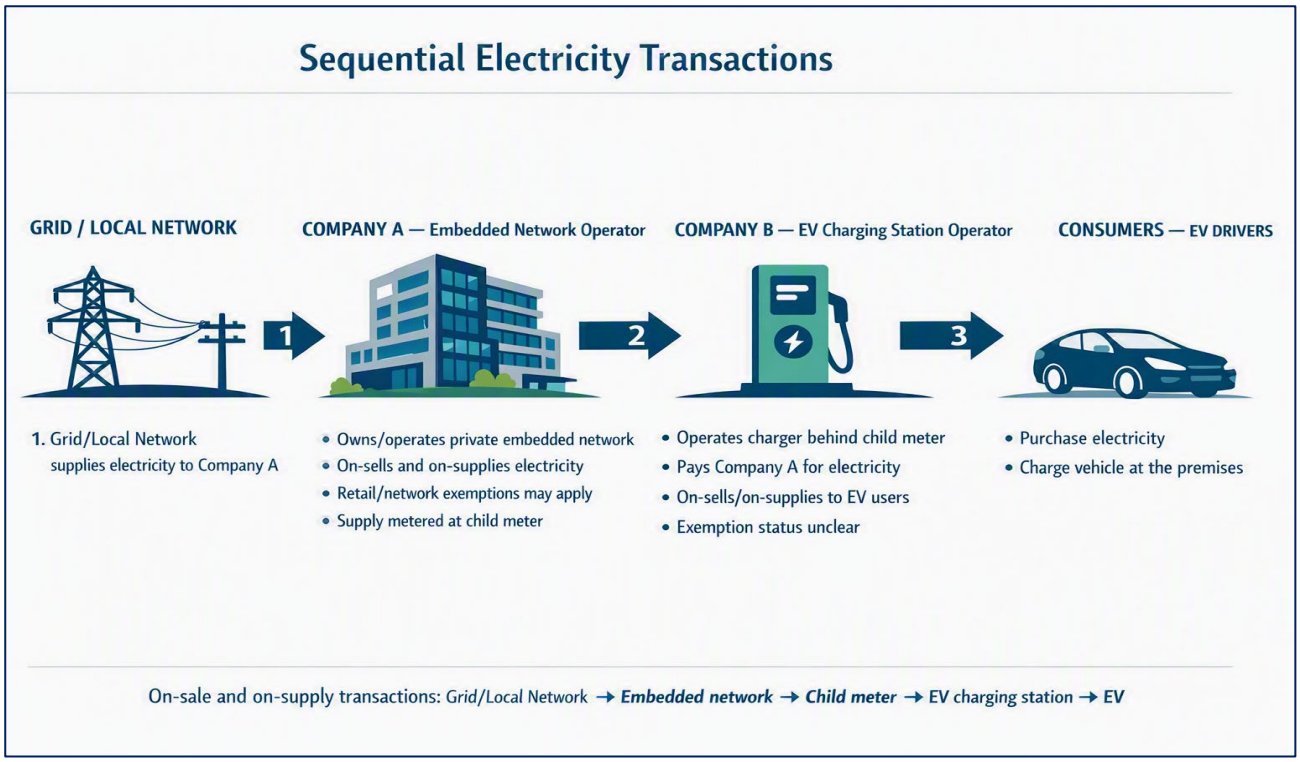


Figure 2. Transactional Layers in Embedded Networks[16]

This secondary or subsequent transaction sits within an embedded network, behind the child meter, and depends upon that existing network, rather than operating as an alternative to an embedded network, as the AER expressly states of the SSP model. The downstream sale arguably falls within section 88 of the NERL and the Exempt Selling Guideline's definition of 'on-selling', while the associated supply raises a separate question under the network exemptions framework. Neither question is addressed expressly. We summarise the distinction in the following table.

Feature	Secondary settlement point reform	Downstream (Company B) EV scenario
Direction of the reform	Deregulation - carve activity out of the exemptions framework.	A gap - activity may fall within s 88 but is unaddressed.
Relationship to embedded networks	An alternative to embedded networks.	A layer inside an embedded network, behind the child meter.
Additional transactional layer	Between the customer (or its agent) managing its own load and network/retail provider.	Between the EV charging station (an intermediary on-selling and on-supplying to new end-user) and EV driver (customer/end-user).
Retail relationship	A single authorised retailer remains FRMP.	A new, possibly unregulated, seller is introduced.
Consumer protection	Existing Retail Rules protections continue to apply.	Unclear: uncertain whether any protection attaches to the end-user.
Network exemption required?	No - excluded from the 'distribution system' definition.	Unclear: arguably on-selling within a site/premises.

[16] We note that for the purposes of this discussion, additional complexities associated with additional, potentially separate on-supply and on-sale transactions (e.g., Company B may have contractual arrangements with further businesses relating to the on-supply and/or on selling of electricity behind the meter) and potential supply and sale from the EV driver back into the embedded network are not considered.

If the AER determines that this is not the case, these activities, and possible associated secondary or subsequent transactions, should be deliberately and expressly carved out of this part of the regulatory framework. The existing arrangements also leave end-users without clarity about the consumer protections available under the electricity regulatory framework, because it is uncertain whether any exemption class or associated conditions apply to the second transaction. By contrast, the SSP customer retains an authorised-retailer relationship and the attendant protections.

3.4 Why the distinction matters for this review

We draw the distinction for two reasons. First, the SSP-related examples in the draft Network Guideline deal with EV charging infrastructure behind a meter and are therefore topically close to the concern illustrated by our Company B scenario. However, each example concerns a single-user or customer-managed arrangement rather than an on-sale to third parties. Secondly, without an express distinction, those examples may be read as resolving the regulatory treatment of all behind-the-meter transactions even though the particular downstream on-sale and on-supply layer identified in this submission remains unaddressed. The omission is significant because multiple transactions can, and increasingly do, arise behind the meter as new electricity services develop. Without express treatment of those transactions, the draft Network Exemptions Guideline (Version 8) may be read as resolving the regulatory arrangements for all behind-the-meter activity, even though the particular on-sale and on-supply layer we identify remains unaddressed and potentially unregulated.

The AER has shown that it can, and will, define behind-the-meter arrangements with precision when it chooses to do so, having drawn careful boundaries around ‘secondary settlement points’, ‘single user networks’ and ‘excluded metering installations’. The absence of any equivalent treatment of downstream transactions is, we respectfully submit, an omission that can be remedied, and not an inherent impossibility. Our suggestions in sections 4 and 5 ask the AER to do for the downstream transaction what it has already done for the SSP layer: to state clearly whether it falls within or outside the framework and, if within, to identify the applicable class and conditions.

4. Draft Retail Exempt Selling Guideline (version 8)

4.1 ‘Premises’ and ‘for premises’ remain undefined

In our April 2025 submission we suggested that the AER give greater content to the question of when energy is sold ‘to a person for premises’ under section 88 of the NERL, because the interpretation of that phrase determines both the pricing conditions and consumer protections that apply, and the obligations imposed upon embedded network owners, operators and intermediary businesses.[17]

With respect, Version 8 does not take up that suggestion. The draft Retail Guideline retains, unchanged, the statement that the NERL does not define ‘premises’ or ‘for premises’. The AER considers the term to have a ‘broad application’ and adopts a ‘pragmatic approach’ to its interpretation. As we observed previously, and as developed in section 3.2 above, that approach does not resolve the anterior question of how ‘premises’ and ‘for premises’ apply to a particular transaction, or whether the resulting interpretation protects the interests of the embedded network owner or operator, an intermediary business, or the final end-user. The exemption tables continue to express the criterion only as ‘Energy is used for premises within the limits of a site owned, occupied or operated by the person’, without addressing the movable-load case we raised, including EVs, mobile telephones, and laptops.

We also note a change which sharpens rather than resolves the difficulty. The version 6 Network Guideline footnote stating that ‘as a vehicle is not a premises, the AER does not regulate the sale of energy for vehicles’[18] was already absent from the version 7 drafts, and it does not reappear in either version 8 draft. Its removal is, in our view, correct, because that reasoning erroneously focused upon how the electricity is used *after* the sale, rather than upon where it is sold. However, to remove the

[17] Cantley-Smith and Kallie, April 2025 submission (n 2) 6-7; *National Energy Retail Law* (the NERL) s 88(1).
[18] AER, *Electricity Network Service Provider Registration Exemption Guideline* (version 6, March 2018) 52, n 41, referred to in Cantley-Smith and Kallie, April 2025 submission (n 2) 6.

statement without substituting any positive guidance leaves stakeholders with no articulated position at all upon whether the on-sale (and on-supply) of electricity to charge an EV is a sale 'for premises'. Silence, with respect, is not neutrality; it transfers the interpretive risk to exempt sellers, intermediaries and consumers.

In our view, the guidance and definitions should confirm that the analysis turns on where the sale occurs—namely, the premises at which electricity is supplied and sold behind the parent and child meters—and not on how the electricity is subsequently used. The AER might usefully draw on established principles of statutory interpretation, including applicable interpretation legislation and decisions of the High Court of Australia. In our view, consistency with the understanding of 'premises' already adopted in substance for secondary settlement points, or an express alternative, would be desirable.

Suggestion 1: We suggest that the AER include in the Retail Guideline positive interpretive guidance on when energy is sold 'to a person for premises' under section 88 of the NERL, expressly addressing energy sold to charge a movable load, such as an EV, at a location within an embedded network. We also request that, as part of this clarification, definitions of 'premises' and 'for premises' be included among the Terms in the Exemption Guidelines (Version 8).

4.2 The secondary transaction behind the child meter is still not captured

The principal matter we raised in April 2025 remains unresolved. The R9 class, like the R1, R2 and R5 classes, is directed at the on-selling of metered energy by the site owner or operator (or its appointee) to customers *at* the child meter, within the limits of a site the seller owns, occupies or operates.[19] It does not address the further sale that occurs when a customer at a child meter, namely our Company B operating an EV charging station, itself on-sells electricity to end-users behind that child meter.

This matters because, as we noted in April 2025, the charging of an EV, outside genuinely 'free' arrangements, ordinarily involves both a supply and a contract of sale: the EV charging operator is at once selling and supplying electricity to the driver. On the face of the section 88 language, and given the AER's own broad reading of 'premises', that downstream sale is, in our view, capable of falling within section 88, in which event Company B would itself require an authorisation or an exemption. The associated downstream supply may also require separate consideration under the network exemptions framework. Yet the draft Retail Guideline neither confirms nor excludes the retail position, and the R9 class criteria presuppose a single on-selling layer.

Suggestion 2: We suggest that the AER state expressly in the Retail Guideline whether a further sale of electricity behind a child meter, for example by an EV charging operator that has itself acquired electricity from the embedded network owner, is a 'sale of energy … for premises' requiring the downstream seller to hold an authorisation or exemption. If it is, the Guideline should, in our view, identify which existing class (if any) accommodates it, or provide for a class or condition to do so. If it is not, the Guideline should say so, and explain the consequences for the legal and related protections of the end-user.

4.3 The protection of the downstream end-user

A related matter, likewise, unresolved in version 8, is the question of what protections attach to the end-user of the downstream transaction. Where the first transaction (parent to child) attracts the R1 or R5 conditions, including the pricing restriction that prevents an exempt seller charging above the standing offer price of the relevant local area retailer, it does not follow that the second transaction (child meter to end-user) attracts any equivalent protection. If the downstream sale sits outside the framework altogether, the price and terms upon which the end-user is charged are, as we read the drafts, unconstrained by the exemptions regime. We raise this not to prescribe an outcome, but because in our respectful view the position ought to be made clear on the face of the guidelines.

[19] Draft Retail Guideline (n 1) Table 2 (classes R1, R2, R5 and the new class R9). Class R9 is expressed to be registered in conjunction with the R1 and/or R5 class exemptions.

Suggestion 3: We suggest that the AER clarify, for each layer of transaction it recognises within an embedded network, which consumer protections (as to pricing, information, dispute resolution, and life support and hardship) apply, and to which customers. Where a downstream transaction falls outside the exemptions framework, we suggest that the Guideline make that consequence explicit, so that end-users and operators alike may understand the position.

4.4 Interaction with other regulatory regimes

As in April 2025, we note, without inviting the AER to resolve it, that if the child-meter-to-vehicle sale were to be characterised as a transport-fuel service, questions of fuel-taxation equivalence and licensing may in due course arise for policy makers. We recognise that this question sits outside the scope of the AER's responsibilities. We restate it only to underline the value of the AER settling the threshold question of characterisation within its own remit, since that characterisation carries consequences beyond the energy framework, and to encourage the AER, as we did previously, to consider the electrification of transport in a more holistic way.

5. Draft Network Exemptions Guideline (version 8)

Related clarifications should be considered in the context of on-supplying electricity to consumers in embedded networks. As we noted in April 2025, section 11(2) of the National Electricity Law prohibits a person from engaging in the activity of owning, controlling or operating a distribution system unless the person is a Registered participant or is exempted by the AER.[20]

5.1 Class NDO3 and EV charging: welcome progress, and a remaining gap

We welcome two improvements to the treatment of EV charging in the draft Network Guideline:

- First, the worked example dealing with EV charging now works through a shopping-centre embedded network in which Company A supplies Company B (operating EV charging stations) by way of the embedded network, and confirms that Company A's supply is a deemed exemption under class NDO3, with the underlying on-selling to Company B assessed as a registrable exemption.[21]

- Secondly, a new footnote to class NDO3 clarifies that no network exemption is required if the charging facility is directly connected to a Network Service Provider.[22]

These changes resolve the *upstream* and the *direct-to-grid* cases. They do not, in our view, resolve the case we raised. The example states that Company B supplies electricity to the customers of the charging stations, but it says nothing as to whether Company B requires a network exemption for *that* downstream on-supply to end-users at or behind the child meter. The NDO3 activity descriptor, '[e]lectric vehicle charging stations within an exempt network', is in our view genuinely ambiguous upon this point: it may be read as covering only the supply *to* the charging station, or as also covering the supply *from* the station to end-users.

The ambiguity is, in our view, heightened by the Guideline's own definition of 'on-selling' as an arrangement in which a person acquires electricity from another and sells it for use within the limits of a site.[23] Upon that definition, Company B's on-supply from the charging station to end-users appears to be on-selling within a site, yet the example leaves its exemption status unstated. As with the Retail Guideline, the earlier explanatory statement (that the supply of electricity from a charging facility to a vehicle is a service to the transport sector, not regulated by the AER) has been removed and not

[20] National Electricity Law s 11(2); Cantley-Smith and Kallie, April 2025 submission (n 1) 7-8.
[21] Draft Network Guideline (n **Error! Bookmark not defined.**), worked example on EV charging in an embedded network, and a ccompanying footnote treating the activity of owning the shopping centre as a registrable exemption. The example and footnote numbering should be confirmed against the final published guideline.
[22] Draft Network Guideline (n **Error! Bookmark not defined.**) Appendix A (deemed exemption classes), class NDO3, footnote t o the effect that '[n]o network exemption is required if the charging facility is directly connected to an NSP'.
[23] Draft Network Guideline (n **Error! Bookmark not defined.**) Glossary, definitions of 'On-selling, selling' and 'Sell'.

replaced,[24] with the result that there is no longer any articulated position at all upon the downstream supply.

Suggestion 4: We suggest that the AER clarify, in the NDO3 activity description and in the accompanying example, whether on-supply behind the child meter (from the charging station to end-users) is within the scope of the exemption classes. We reiterate our April 2025 suggestion that the NDO3 activity be expressed as, for example, 'Supply to an electric vehicle charging station within an exempt network'. If the AER does not intend to capture the on-supply from the charging station to final consumers, we suggest that the exclusion be stated expressly, together with the reason for it and its consequence for the protection of the end-user.

5.2 Third-party operation as against self-operation by the network owner

In our April 2025 submission we asked how the classes distinguish between an embedded network operator that installs and operates a charging station through a third party and one that does so itself. Version 8 does not directly answer this. The worked example addresses the third-party case (Company A supplies Company B). It does not address the case in which Company A both operates the embedded network *and* itself operates the charging station and on-sells to end-users; nor whether, in that configuration, the activity is on-supply within class NDO3 (with the requisite conditions applying) or falls to be assessed under some other class.

Suggestion 5: We would respectfully suggest that the AER add a short, worked example, or a note to the existing example, addressing the position where the embedded network owner or operator itself operates the EV charging station and on-sells to end-users, and confirming which network exemption class and conditions apply in that configuration.

5.3 Consistency between the two guidelines

As the retail and network frameworks are, as the AER observes, closely linked and usually progressed together for the same site, the downstream-transaction question ought to be answered consistently across both instruments.[25] It would be undesirable for the Network Guideline to treat Company B's downstream on-supply as within (or outside) an exemption class while the Retail Guideline remained silent upon whether Company B's downstream sale required a retail exemption. We would encourage the AER to align the two treatments, and to cross-reference them, so that an operator reading either guideline reaches the same conclusion as to its obligations.

Suggestion 6: We suggest that the AER ensure the retail and network guidelines treat the downstream (behind-the-child-meter) transaction consistently, and that they cross-reference the relevant provisions, so that the retail and network obligations of a downstream seller and supplier such as Company B may be identified from either instrument.

[24] AER, *Electricity Network Service Provider Registration Exemption Guideline* (version 6, March 2018) 52; referred to in Cantley-Smith and Kallie, April 2025 submission (n 1) 8. The explanation is not reproduced in the version 8 draft.

[25] Notice of draft decision (n **Error! Bookmark not defined.**) 9 (retail and network processes 'closely linked in practice and o ften progressed concurrently for the same site').