



# NVES—Exemptions Principles

August 2024

The overarching premise of these exemptions principles is that it should enable as many vehicles as possible to be captured by the NVES, within the shortest feasible timeframe and as simply as possible, while ensuring that manufacturers can continue to supply the types of vehicles Australians like to drive.

This document sets out the legislative requirements to inform the design of any exemption determinations made under the *New Vehicle Efficiency Standard Act 2024* (the Act), as well as specific policy considerations that should inform any exemption determination made under the Act.

## Legislative authority under the Act

Section 29 of the Act provides that the Minister may, by legislative instrument, determine that a class of vehicle has exempt vehicle status.

Vehicles that are exempt under a determination made under section 29 will not be counted as a Type 1 vehicle under subsection 13(2) or a Type 2 vehicle under subsection 14(2) as the case may be. Consequently, these vehicles will not be included in the calculation of the interim emissions value, or the final emissions value, for a person<sup>1</sup> to whom section 17 applies.

Section 33 of the Act provides that when making a determination under the Act, the Minister must consider the objects of the Act, and may consider any submission made as part of public consultation in relation to the determination, as well as any other matters the Minister considers relevant such as Australia's CO<sub>2</sub> emissions reduction performance against its agreed targets under the Climate Change Convention, the Kyoto Protocol and the Paris Agreement.

## Objects of the Act

The Act provides that the Minister must have regard to objects of the Act when making any determination. Those objects are set out in Section 3 of the Act as follows:

- (a) establish a vehicle emissions standard covering certain vehicles, that will:
  - (i) create economic incentives for the manufacturers and suppliers of such vehicles to provide models to the Australian market that emit less carbon dioxide; and
  - (ii) provide consumers in Australia with a choice of vehicles that meet their work and lifestyle needs while also meeting the environmental expectations of the community; and

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<sup>1</sup> For the purposes of the Act, a person is taken to mean a supplier of passenger and light commercial vehicles to whom the NVES Act applies.

- (iii) be transparent, flexible and able to be calibrated over time according to policy needs; and
  - (iv) be robust and based on the best available evidence and data; and
- (b) reduce carbon dioxide emissions in the transport sector, thereby contributing to the achievement of Australia’s greenhouse gas emissions reduction targets; and
- (c) give effect to certain obligations that Australia has as a party to the following:
  - (i) the Climate Change Convention;
  - (ii) the Kyoto Protocol;
  - (iii) the Paris Agreement

## NVES Guiding Principles

The NVES Guiding Principles as set out in the final NVES Impact Analysis should inform the consideration of the making of any exemption determination<sup>2</sup>.

- **Effective:** Effective in reducing CO<sub>2</sub> transport emissions from new cars.
- **Equitable:** All Australians can access the vehicles they need for work and leisure. Intervention needs to be equitable, and not unduly negatively impact any particular group of people or part of Australia.
- **Simple and transparent:** Intervention emphasises simplicity and transparency in design and operation.
- **Credible and robust:** Intervention should be designed with the latest and best analysis available, drawing on the expertise of industry, the environmental community, academia and others.
- **Enabling:** Vehicles with the best emissions and safety technology to be available to Australians. Avoid increasing the average age of vehicles in the fleet so there are no inadvertent safety impacts.<sup>3</sup>

## Specific Exemption Policy Considerations

Any determination made under the Act is required to consider the objects, and specific provisions under the Act and should consider the Guiding Principles of the NVES. The environmental, market and administrative impact of exempting a class or category of vehicles under the Act should also be considered.

The following environmental, market and administrative parameters should be considered when making any exemption determination. These are:

### Environmental parameters:

- a) Minimise the number of vehicles affected
- b) Minimise the time-length of any exemption

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<sup>2</sup> These principles were developed in the design of the NVES and can be found in the Impact Analysis - see [Cleaner, Cheaper to Run Cars: The Australian New Vehicle Efficiency Standard | The Office of Impact Analysis \(pmc.gov.au\)](#)

<sup>3</sup> *Cleaner, Cheaper to Run Cars: The Australian New Vehicle Efficiency Standard Consultation Impact Analysis*, February 2024, 23.

### Market parameters:

- a) Exemptions should be competitively neutral
- b) Exemptions should relate to vehicles for which there are no close substitutes in the current market

### Administrative parameters:

- a) Establishing and applying any exemption should be as simple as possible.
- b) Minimise the administrative burden on regulated entities.

### Exclusion from exemption consideration

- An exemption to the Standard will **not** apply to named models of vehicles or particular named manufacturers.
- Exemptions are not administrative; meaning for the purpose of the NVES Act, a person **cannot** make an application to be exempt from the Standard. An exemption determination will not exempt named persons with obligations under the NVES Act, nor any of the specific vehicle types they may sell in Australia.

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## Note on Legal Constraints and Process

### i. Restrictions within the NVES Act.

Several sections of the NVES Act set out restrictions on the power to make declarations under section 29 and other sections in Part 2 of the Act. As set out above, foremost amongst these are the requirement in subsection 33(a) that the Minister must consider the objectives of the Act, when making any such determination. This restricts the scope of any determinations to one that support the object and purposes of the Act. While this is set out in the NVES statutory law, this requirement also replicates a common law requirement on the exercise of such powers.

The NVES Act also requires public consultation (under section 36) before the determination is made, and allows, but importantly does not require, the Minister to take into account any submissions made in that consultation.

The Minister also has to publish her/his reasons for making the determination. These will be considered by the Senate Standing Committee for the Scrutiny of Delegated Legislation (see below) when they review the actual instrument that contains the determination.

### ii. Restrictions within the Legislation Act 2003.

The Legislation Act applies to all delegated legislation made by the Commonwealth, unless an Act has a more specific provision or provides that some of its requirements do not apply. While the Legislation Act would require consultation in certain circumstances<sup>4</sup>, the more specific provisions on public consultation the NVES Act are the ones that apply to the NVES determinations. These require all proposed determinations to be put out for public consultation rather than ones that may affect business or competition.

*Sunset clauses:* The Legislation Act provides that a legislative instrument sunsets after 10 years of being made, unless the Attorney General is satisfied that this should be deferred.<sup>5</sup> Thus any

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<sup>4</sup> Section 17 of the *Legislation Act* says a rule maker must consult where there is a 'direct or substantial indirect effect on business' or 'likely to restrict competition' – s 17(1).

<sup>5</sup> See ss 50-51 of the *Legislation Act 2003*

determination under the NVES Act will automatically cease after 10 years unless a shorter period is set out within it.

### iii Scrutiny principles applied by the Senate Standing Committee for the Scrutiny of Delegated Legislation

Under the Legislation Act, all legislative instruments are subject to disallowance by Parliament.<sup>6</sup> This ensures it retains some oversight over all law making. The Standing Committee for the Scrutiny of Delegated Legislation is the primary committee that reviews delegated legislation from a technical perspective. Senate Standing Order 23(3) requires the Senate Committee to scrutinise each instrument to ensure that it is in accordance with its enabling Act and otherwise complies with all legislative requirements.<sup>7</sup> In summary its consideration considers compliance with statutory requirements, the protection of individual rights and liberties, and principles of parliamentary oversight.

The full list of the Committee's scrutiny principles is:

- Principle (a): compliance with legislative requirements;
- Principle (b): constitutional validity;
- Principle (c): scope of administrative powers;
- Principle (d): adequacy of consultation;
- Principle (e): drafting;
- Principle (f): access and use;
- Principle (g): adequacy of explanatory materials;
- Principle (h): personal rights and liberties;
- Principle (i): availability of independent review;
- Principle (j): matters more appropriate for parliamentary enactment;
- Principle (k): exemption and deferral from sunseting;
- Principle (l): modification of primary legislation; and
- Principle (m): other technical scrutiny grounds.

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<sup>6</sup> The power to review delegated legislation is contained in Part 2 of Chapter 3 of the Legislation Act, in particular, s 38 in respect of formal tabling & s.42 for the disallowance process.

<sup>7</sup> Further information can be found at:

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Guidelines#:~:text=Senate%20Standing%20order%2023\(4,of%20interest%20to%20the%20Senate.](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Guidelines#:~:text=Senate%20Standing%20order%2023(4,of%20interest%20to%20the%20Senate.)