



Environmental
Defenders Office

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Director, Fuel Efficiency Standards
Surface Transport Emissions and Policy Division
Department of Infrastructure, Transport, Regional Development, Communications and the Arts

By email: cleanercars@infrastructure.gov.au

Attention: Director, Fuel Efficiency Standards

Consultation on the fuel efficiency standard: ‘cleaner, cheaper to run cars for Australia’

Environmental Defenders Office (**EDO**) welcomes the opportunity to make a submission in response to the consultation paper on the design of an Australian fuel efficiency standard (**FES**).

EDO has long advocated for reforms to address emissions from the transport sector, and that transport planning should be better linked to strategic planning and emissions reduction targets.¹ Given transport emissions account for 19% amount of Australia’s emissions and the sector is projected to be the largest source of emissions by 2030,² the implementation of a FES is a long overdue measure in addressing climate change. EDO also notes the co-benefits to decarbonising the transport sector – particularly the public health benefits from reducing air pollution.

EDO supports the implementation of a fuel efficiency standard in Australia and makes several recommendations in relation to its design and operation.

1. The fuel efficiency standard must ensure rapid emissions reduction.

Australia’s historical reticence in introducing a FES means that we have fallen behind comparable countries in attracting low and no emissions vehicles. The design of the new FES must take this into account, as Australia must now do more, and more rapidly, to catch up with similar markets like New Zealand, the United States and Europe. EDO **recommends** the FES begin as soon as possible – by at least 1 July 2024.

Moreover, to meet our own domestic emissions target of net zero by 2050 and to keep global heating below 1.5C in line with our Paris Agreement obligations, the FES must ensure Australia is on a trajectory for all new vehicles sold by 2035 to be zero emissions.³

¹ [EDO Roadmap for Climate Reform \(2022\)](#); [EDO Submission on reducing emissions from the transport sector \(2017\)](#).

² Department of Climate Change, Energy, the Environment and Water, ‘Reducing transport emissions’ available at <https://www.dcceew.gov.au/energy/transport>.

³ Ketan Joshi, ‘IEA says all new cars must be electric by 2035. Will Australia do it?’, *The Driven* (May 19 2021), available at <https://thedriven.io/2021/05/19/iea-says-all-new-cars-must-be-electric-by-2035-to-meet-climate-goals/>, International Energy Agency, *Net Zero by 205 Roadmap (2022)*, available at <https://www.iea.org/reports/by-2030-evs-represent-more-than-60-of-vehicles-sold-globally-and-require-an-adequate-surge-in-chargers-installed-in-buildings>.

EDO therefore **recommends** the FES reflect the urgency of the emissions reduction task by ensuring Australia reaches 100% zero emissions from new car sales by 2035 at the latest. This objective should be legislated in the new act as a final target (0g CO₂/km), even if progressive annual standards have not yet been determined. This target must be the case regardless of whether dual or single vehicle classes/targets are established.

Similarly, EDO **recommends** the new legislation to establish the FES incorporates Australia's international commitments and domestic climate targets in the objects.⁴

2. The legislative framework should guarantee continuous ambition.

As reflected in the Consultation Paper's design assumptions, the FES must be mandatory for all manufacturers to be effective, and enforceable in legislation. It is not clear at this stage whether the standards will be legislated directly in the primary Act, created through delegated legislation, or a mix,⁵ but EDO **recommends** key principles and policy features must be contained in the primary legislation to ensure certainty.

For example, EDO **recommends** the legislation specify that a review must take place every three years. The terms of reference for this review should include measurement of achievement against domestic and international emissions reduction targets; impact of the FES on supply of low and zero emissions vehicles; consistency with the Electric Vehicle Strategy or other relevant emissions plans; efficacy and integrity of the scheme including use of credits; and equity and affordability. Review of the scheme must require input of expert advice⁶ and public consultation.

EDO also **recommends** the legislation contain a principle of non-regression, which stipulates that future FES must always be more ambitious than those previous.

If standards are implemented through delegated legislation, the discretion of the decision maker must be strictly constrained to ensure continuous ambition and improvement in achieving emissions reductions in line with the non-regression principle. In this circumstance, EDO also **recommends** decisions made to adjust and update the FES have legislated transparency and accountability parameters, including the publication of reasons.

3. The scheme must have integrity and drive compliance.

Integrity of the new scheme is essential for achieving the required emissions reductions. EDO is opposed to flexibility mechanisms which risk undermining the operation of the scheme. Strong compliance mechanisms must be in place to ensure efficacy.

Any credits created internal to the scheme must be designed with the overarching focus of the FES in mind – to encourage suppliers to increase supply of low and zero emissions vehicles. Providing abundant and long-lived credits does not do this. If crediting is allowed, EDO **recommends** overachievement credits have a limited lifespan to incentivise compliance, for example linked to

⁴ *Climate Change Act 2022* (Cth) s 10; *Paris Agreement*, opened for signature 22 April 2016, [2016] ATS 24 (entered into force 4 November 2016).

⁵ See e.g., *Land Transport Act 1998* (NZ) s 175.

⁶ For example, from the Climate Change Authority. A specialist body may also be established by the new legislation, like the Fuel Standards Consultative Committee established by the *Fuel Quality Standards Act 2000* (Cth) – membership, expertise and conflict of interest provisions would need to be contained in the legislation.

the review timeframe. Similarly, the time allowed for a supplier to carry forward a debt from underachievement must be significantly shorter (if available at all), given the option for suppliers to instead purchase credits to meet their obligations rather than be subject to a penalty.

EDO **does not support** the use of off-cycle credits, super credits or other multipliers. They risk undermining the integrity of scheme through creation of perverse incentives for suppliers, crediting for business-as-usual activities, and allowing suppliers to meet FES with little change to vehicle fleets.⁷ They also risk reducing the transparency of the scheme, as the actual emissions reduced by the scheme would be less than the reported average annual emissions ceiling when such credits are used.

The interaction between penalties and credits is also crucial. EDO **recommends** the penalty for underachievement must be set at a level which exceeds the cost of not complying, and be applied per non-compliant vehicle per unit (grams of CO₂ per kilometre of excess emissions) over the target. A higher penalty will obviously provide a greater incentive for compliance. It will also mean that suppliers are incentivised to overachieve and generate more valuable credits. Therefore, the penalty rate must be set in line with other comparable countries (e.g. the EU) to make Australia more attractive for suppliers.⁸

EDO also **recommends** the legislation provide for a range of compliance mechanisms in addition to the imposition of financial penalties – including public disclosure of non-compliance. Anti-avoidance provisions, penalties for fraudulent reporting, and provision for audits should also form part of the compliance framework.

4. Transparency of data is critical.

EDO agrees that transparency of the scheme is essential for public confidence in its operation. EDO **recommends** that the FES be underpinned by publicly available data about the state of the market and impact of the standards. Data must be frequently updated, and free to access.

EDO **recommends** the compilation and publication of data should be undertaken by the Regulator, independent from the industry. As noted above, EDO also **recommends** a compliance framework which penalises suppliers for providing false or misleading information or a failure to comply with transparency arrangements. Specifically, any data relating to use of credits to meet the annual standard must be publicly available, and EDO **recommends** the true emissions abatement achievement must be recorded separate from any credits which may have been used to meet the target in a given year.

EDO **supports** the Department of Infrastructure, Transport, Regional Development, Communications and the Arts acting as the Regulator for the new scheme. Adequate funding for the Department to undertake these regulatory functions is therefore essential, and EDO recommends cost recovery form a percentage of this, as an implementation of the ‘polluter pays’ principle.

⁷ See, Audrey Quicke, the Australia Institute, ‘Fuelling Efficiency’ (Discussion Paper, August 2022) available at <https://australiainstitute.org.au/wp-content/uploads/2022/08/P1269-Fuel-Efficiency-Standards-WEB.pdf>.

⁸ About \$200 AUD. See Department of Infrastructure, Transport, Regional Development, Communications and the Arts, The Fuel Efficiency Standard (Consultation Paper, 19 April 2023) 27.

Conclusion


The FES is only one policy measure contributing to the transport decarbonisation task, and EDO acknowledges that wholesale emissions reduction in the transport sector must include investment in active and public transport, not only policy adjustments relating to privately owned electric vehicles. It is also not enough to simply transition the passenger fleet to electric where the electricity grid remains reliant on fossil fuels. The electrification of the vehicle fleet, through policy measures like the FES, must match the grid becoming renewable.

The implementation of a fuel efficiency standard in Australia is a long overdue reform, and must be shaped by this context – the delay has only increased the urgency of the emissions reduction task. EDO urges the government to quickly implement a FES that is ambitious, equitable, and effective.

For further information, please contact rachel.walmsley@edo.org.au or (02) 9262 6989.

Yours sincerely,

Environmental Defenders Office

A handwritten signature in black ink, appearing to read 'R Walmsley', written in a cursive style.

Rachel Walmsley

Head of Policy and Law Reform