

Explanatory Statement

Issued by the Authority of the Minister for Infrastructure, Transport, Regional Development
and Local Government

New Vehicle Efficiency Standard Act 2024

New Vehicle Efficiency Standard Determination 2024

Authority

The *New Vehicle Efficiency Standard Determination 2024* is made under paragraph 29(1)(c) of the *New Vehicle Efficiency Standard Act 2024* ('NVES Act' or 'NVES' used interchangeably) and ahead of the NVES Act commencing (in reliance on subsection 4(1) of the *Acts Interpretation Act 1901*).

Vehicles that are exempt under a determination made under paragraph 29(1)(c) will not be counted as a Type 1 vehicle under paragraph 13(2)(b) or a Type 2 vehicle under paragraph 14(2)(b). Consequently, these vehicles will not be included in the calculation of the interim emissions value, or the final emissions value.

Section 33 of the NVES Act provides that when making a determination under Sub-division B of Division 4 of Part 2 of the NVES Act, the Minister must consider the objects of the NVES 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. This may include, for example, considering Australia's carbon dioxide (CO₂) emissions reduction performance against its agreed targets under the Climate Change Convention, the Kyoto Protocol and the Paris Agreement.

Purpose

Currently, light vehicles up to 3.5 tonnes gross vehicle mass (GVM) are required to undergo a CO₂ emissions test under Australian Design Rule (ADR) 81/02 before entry onto the Australian market. The NVES Act applies to vehicles up to 4.5 tonnes GVM. Vehicles between 3.5 to 4.5 tonnes GVM are not required to undergo a CO₂ emissions test under the ADRs. Vehicles between 3.5 to 4.5 tonne GVM require an exemption to the NVES Act as they cannot lawfully comply without supply of a CO₂ emissions value (for which they require a test).

The ADRs are Australia's national standards for road vehicle safety, anti-theft and emissions. All new road vehicles manufactured in Australia and imported new or second-hand vehicles, must comply with the relevant ADRs when they are first supplied to the Australian market. When a vehicle is first used on an Australian road, the relevant state or territory government legislation generally requires that it complies with the relevant ADRs as at the time of manufacture.

The purpose of the determination is to exempt certain vehicles from the NVES Act. It is appropriate for the determination to be made to enable the development of a new or amended

ADR to require the collection of CO₂ data for vehicles with a GVM between 3.5 and 4.5 tonnes.

Background

The determination applies to vehicles between 3.5 and 4.5 tonne GVM at the time of importation that are not currently subject to CO₂ testing requirements under the ADRs. A determination to exempt vehicles within this category is necessary to allow for the development of a new or amended ADR that mandates a CO₂ testing requirement for vehicles between 3.5 to 4.5 tonnes GVM, ensuring that vehicles within that weight range can comply with the CO₂ reporting requirements under the NVES Act.

The NVES Act at section 10 defines road vehicle as having the same meaning as in section 6 of the *Road Vehicles Standards Act 2018*. The road vehicle definition also includes any partly completed or unassembled vehicle and certain vehicles that become road vehicles because they have been entered on the RAV under a vehicle type approval. The exemption applies to vehicles within the meaning of this definition.

Over the life of this determination it is proposed that a new or amended ADR for CO₂ emissions testing will be developed which is likely to result in exempt vehicles progressively being required to report their CO₂ emissions to comply with the national road vehicle standards, and thus be brought under the application of the NVES Act.

The determination aligns with the design principles outlined in the Impact Analysis in that it is administratively simple, and the policy principles provided in conjunction with the publication of the draft determination. In addition to this, by exempting vehicles between 3.5 and 4.5 tonne GVM, addresses the technical challenge of ensuring light passenger vehicles under 4.5 tonnes GVM are compliant with the NVES Act as soon as practicable, through development of an amended or new ADR 81.

Summary of the Exempt Vehicles Determination

Details of the instrument are set out in [Attachment A](#).

Consultation

Paragraph 36(2)(b) of the NVES Act requires the Minister to publicly consult on the proposed determination for at least 60 days. On the Minister's behalf, the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the department) opened public consultation on 9 August 2024 by publishing a notice on the department's website including a draft of the proposed determination, and closed public consultation on 8 October 2024. The department received 73 submissions in total from automotive industry peaks and motoring associations, car manufacturers, electric vehicle associations, groups representing farming and regional communities, international organisations, climate groups, government and individuals.

Industry stakeholders generally agreed to the proposed determination, but raised the following additional issues:

- Small Volume Manufacturers (SVM): Some stakeholders reiterated desire for an exemption for SVM, suggesting that an exemption should be competitively neutral and that the current proposal is inconsistent with other jurisdictions (such as the EU, UK and USA). Some stakeholders argued that this was inconsistent with the equity principle outlined in the Impact Analysis.
- Emergency Services and Military Vehicles: Some stakeholders argued that exemptions should apply to emergency service and military vehicles. They argued that this could be accomplished through providing proof of the supply at the time of entry onto the RAV.
- Exemption requests based on technical criteria: In addition to the feedback on the proposed determination, stakeholders sought a range of additional exemptions on the basis of technical design and performance criteria. Generally, these criteria included arguments that vehicles with high towing capacity, possessing specific cargo carrying attributes, chassis attributes and off-road capability be exempt from the NVES. Exemptions on the basis of technical criteria are were considered not within scope of the exemption policy principles and the objects of the NVES Act.
- Timing: A number of organisations were critical of the timeframe for the introduction of an ADR that would mandate CO₂ testing, reiterating lack of testing facilities available overseas and within Australia.

Ninety per cent of submissions provided to the consultation from individuals (those not associated with an organisation or group), opposed the introduction of an exemption to the NVES Act.

Prior to the mandatory public consultation period on the determination, the department consulted extensively for more than 12 months. In February 2024, the department published its Consultation Impact Analysis and opened public consultation, which received around 9,000 submissions to the process. Following analysis of submissions to the public consultation, the department delivered its Decision Impact Analysis revealing the proposed settings for the NVES. The department heard from stakeholders on the matter of exemptions, and stakeholder views on what vehicle classes should be exempt from the NVES has been canvassed widely.

Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment B.

Details of the *New Vehicle Efficiency Standard Determination 2024*

Section 1 – Name

This section provides that the name of the instrument is the *New Vehicle Efficiency Standard Determination 2024*.

Section 2 – Commencement

This section provides for the instrument to commence at the same time as the *New Vehicle Efficiency Act 2024* (the NVES Act) commences.

Section 3 – Authority

This section provides that the instrument is made under paragraph 29(1)(c) of the NVES Act, which provides that the Minister may, by legislative instrument, determine that a class of road vehicle has exempt vehicle status. Subsection 4(1) of the *Acts Interpretation Act 1901* allows this instrument to be made ahead of the NVES Act commencing.

Section 4 – Interpretation

This section provides definitions which are specific to the instrument. In particular, this section introduces the new term, *ADR on Carbon Dioxide Emissions*, meaning a national road vehicle standard determined under section 12 of the *Road Vehicle Standards Act 2018* which:

- (a) provides for testing a vehicle's carbon dioxide emissions; and
- (b) is the source of that vehicle's emissions number to be entered onto the RAV.

The NVES Integration Date means end of the day on 31 December of the year in which an ADR on Carbon Dioxide Emissions is first applicable. This means if an ADR on Carbon Dioxide Emissions requires carbon dioxide testing to commence a particular year, the affected vehicles would be brought into the NVES on the first day of the following year.

Moreover, section 4(3) highlights that where ADR 81/02 is in force, it does not preclude the creation of other ADRs to require the testing of carbon dioxide emissions.

The note accompanying section applies definitions from the NVES Act. For example, the definition of *RAV* (short for Register of Approved Vehicles) under section 10 of the NVES Act is incorporated into the instrument.

Section 5 – Repeal

This section provides that the instrument is repealed on the end of day on 31 December 2029. This date coincides the last day of the headline limits set in section 22 of the NVES Act.

Section 6 – Exempt Vehicles

This section provides that the class of road vehicle to have exempt status for the purposes of the NVES Act are those vehicles to which an ADR on Carbon Dioxide Emissions does not apply, until the earlier of the following points in time:

- i. the NVES integration date applicable for the relevant vehicle; and
- ii. the date of repeal of the instrument.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

New Vehicle Efficiency Standard Determination 2024

This disallowable legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

Currently, light vehicles up to 3.5 tonnes gross vehicle mass (GVM) are required to undertake a CO₂ emissions test under Australian Design Rule (ADR) 81/02. The *New Vehicle Efficiency Act 2024* (NVES Act) covers vehicles up to 4.5 tonnes GVM. Vehicles between 3.5 to 4.5 tonne GVM do not presently have an Australian CO₂ test, and therefore cannot comply with the requirements of the NVES to provide a CO₂ number.

The determination, made under paragraph 29(1)(c) of the NVES Act, once in effect, will temporarily exempt vehicles between 3.5 and 4.5 tonne GVM at the time of importation, that are not currently subject to an Australian CO₂ test, from the requirement to give a CO₂ value under the NVES Act. It is appropriate for the determination to be made to enable the development of a new or amended ADR to require the collection of CO₂ data for vehicles with a GVM between 3.5 and 4.5 tonnes.

This exemption for vehicles within this category is necessary to allow for the development of a new or amended ADR to make CO₂ testing a requirement for vehicles above 3.5 tonne GVM. This is essential to ensure that those vehicles can be compliant with the NVES. The instrument supports the operation of the NVES.

Human rights implications

This disallowable legislative instrument is technical in nature and does not engage any of the applicable rights or freedoms outlined in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Conclusion

This disallowable legislative instrument is compatible with human rights as it does not raise any human rights issues.