

Senator Jess Walsh
Committee Chair, Senate Standing Committees on Economics - Legislation
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via email: economics.sen@aph.gov.au

17 August 2022

Dear Senator

Application of the Treasury Laws Amendment (Electric Car Discount) Bill 2022

The National Automotive Leasing and Salary Packaging Association (**NALSPA**) welcomes the opportunity to make a submission on the provisions of the *Treasury Laws Amendment (Electric Car Discount) Bill 2022* (the **Bill**).

Background to NALSPA and Motor Vehicle Packaging Arrangements in Australia

NALSPA is the peak industry body for the salary packaging and novated lease sector.

NALSPA's members¹ help over 800,000 Australian employees utilise their pre-tax salary to package a number of different employment-related benefits. One of the key employer-provided benefits that employees salary package under Australian taxation law is a motor vehicle via a novated lease arrangement.

With a novated lease, the costs associated with the finance and operation of a vehicle are packaged into a single, regular, fixed, payroll deduction, generally comprising a mix of pre-tax and post-tax dollars. Overall, vehicles that are the subject of a novated lease are a much younger and healthier carpark than the overall Australian carpark. NALSPA members currently administer over 200,000 employer-provided salary packaged vehicles.

In support of employers and employees across Australia, the current Tax/Fringe Benefits Tax (**FBT**) regime plays a critical role in the Australian automotive market by helping to facilitate the salary packaging and management of employer provided vehicles. Importantly, these arrangements see approximately 115,000 vehicles sold per annum, equivalent to approximately 10% of all new car sales in Australia.

¹ NALSPA's members include Fleetcare, SG Fleet Group (including SG Fleet, NLC and LeasePlan), the McMillan Shakespeare Group (including Maxxia and RemServ), and SmartGroup Corporation (including SmartSalary, SmartLeasing, SmartFleet, Advantage Salary Packaging, AccessPay and Autopia).

NALSPA Support and Commentary Concerning the Bill

NALSPA members embrace the electrification of the Australian motor vehicle fleet. Its members also recognise the role that novated leasing and salary packaging can have in facilitating employer and employee understanding and take up of Zero and Low Emissions Vehicles (**ZLEVs**) and is committed to an orderly transition **which preserves choice** whilst helping to addressing the various barriers impeding Australia's transition to ZLEVs as we work to de-carbonise land transport.

Accordingly, NALSPA commends the Federal Labor Government's pre-election policy announcement to provide an FBT exemption for certain electric cars, and as such the Association fully supports the introduction of the Bill which aims to enact the policy commitment.

This policy was shaped with the intention of reducing Australia's carbon dioxide emissions and making electric cars "*cheaper so that more families who want them can afford them*", on the basis that electric cars are perceived as being currently unaffordable for the majority of Australians and, further, in relatively low supply ("*this policy will also encourage car manufacturers to import and supply more affordable electric models in Australia*").

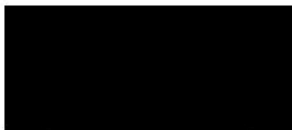
NALSPA and its members are of the view that the Bill will enable and promote the increased adoption of ZLEVs in Australia. However, we contend there is a need to further amend and where appropriate make clarification to the current FBT legislation, by developing key provisions within the Bill in order to **most effectively promote and encourage** an increase in the take-up of such vehicles.

Specifically, the current draft of the Bill has raised queries in relation to the breadth of the proposed concession and whether by potentially expanding its coverage, as appropriate, this will ensure better alignment with the initial policy intent of incentivising the use of ZLEVs by Australian consumers. Importantly, NALSPA also wants to ensure that any potential unintended consequences are satisfactorily addressed prior to finalisation of the Bill.

Having collated feedback on the Bill through engagement with our members, we enclose a submission to the "Senate Standing Committees on Economics - Legislation" regarding identified uncertainties associated with the Bill's effectiveness in promoting the take-up of ZLEVs. This submission sets out key areas of analysis and our proposed Bill considerations.

Please find enclosed our submission at **Appendix A**.

Yours sincerely



Rohan Martin
Secretary and Director

Encl.

Appendix A

Proposal I: Consider providing long-term certainty surrounding the application of the Bill

The purpose of the Bill is to increase the take up of ZLEVs through the FBT exemption. In this regard, although the Bill does not specifically include a time limit or sunset, the Explanatory Memorandum notes the operation of the FBTAA amendments will be reviewed **after three years** “*in light of electric car take up*”.

In this regard, rather than incentivise the take up of ZLEVs, the suggested finite nature of these FBT concessions may instead serve as a barrier to ZLEV purchases or leases, potentially closer to the end of the three-year period (i.e., an employer or employee looking to take up a ZLEV in 2024 may only have a few months of exemption) or, with current lengthy delivery times, as early as 12 months into the 3-year initial exemption period.

This has the real potential to significantly impact the policy outcome and its intent. This is all the more challenging given that there are no defined measures that have been communicated to assess “*electric car take up*” - for example, if this is communicated and reported periodically, it will ensure clarity for market participants in assessing potential take-up of an EV rather than an ICE. Further, there appears to be a lack of definition as to **the future state of the exemption** - this uncertainty could again have a potentially significant impact on the policy outcome.

Additionally, on the basis that the **3-year period** is back-dated to commence from 1 July 2022, combined with the legislation not yet taking effect, employers/employees are not yet committing to ZLEV acquisitions, instead waiting to see the final legislated position - this presents a further squeeze on the timeline.

In this regard, one option may be for the Bill to include a **grandfathering provision**, as a means of providing certainty and allowing the policy intent to be achieved, and the output from the policy appropriately reviewed and assessed, for the full three-year period.

For example, following changes to the statutory rates for car fringe benefits introduced in the 2011 Federal Budget, a grandfathering treatment applied to car benefits whereby the taxable value of car fringe benefits, which were subject to FBT prior to 10 May 2011, were calculated in accordance with the former statutory formula (based on the “financial commitment” to the car).

We propose a similar “grandfathering” treatment be considered for ZLEV arrangements which are entered into on or after 1 July 2022 and within the three-year period. This ensures clarity and fairness for participants, and offers ease of administrative practicality particularly in multi-year leasing arrangements. The Government may also consider drawing integrity measures around this - for example, by limiting the maximum leasing period.

Proposal II: Consider extending the application of the Bill to include costs associated with ZLEVs

The Explanatory Memorandum indicates that the FBT exemption for eligible ZLEVs “*will include any associated benefit in running the car for the period the car fringe benefit was provided*”. This is in reference to the proposed FBT amendments which will extend to “car expenses” (for example, per section 53 of the *Fringe Benefits Tax Assessment Act 1986 (FBTAA)*), which are defined in section 136(1) of the FBTAA as being “*an expense incurred in respect of (a) the registration of, or insurance in respect of, the car; (b) repairs to or maintenance of the car; or (c) fuel for the car*”.

It is evident from both the pre-election policy announcement and the Explanatory Memorandum that the intention of the FBT exemption is to remove any tax barriers in relation to the provision of ZLEVs to employees (including under salary-packaging arrangements). However, this intent may not be met through the current drafting of the Bill, due to the fact that numerous associated running costs do not arguably meet the FBT definition of a “car expense”. Examples of such costs include, but are not limited to:

- In-home charging infrastructure and support services (e.g., in addition to the equipment cost, the ancillary costs of installation, equipment upgrade where necessary and ongoing maintenance);
- Road user charges (applicable on a jurisdictional basis - e.g., the road-user charge for Victorian-registered zero and low emission vehicles²);
- Vehicle battery replacements; and
- Vehicle subscription costs (e.g., Tesla’s Premium Connectivity subscription to enable access to Live Traffic Visualisation, Satellite-View Maps, etc.).

Whilst each of the above costs might arguably fall within the intent of the phrase “associated benefit in running the car” where provided by the employer, there is **considerable uncertainty** whether each of these benefits meets the FBT definition of a “car expense” and, due to limited existing ATO guidance, there is a genuine risk that the Australian Taxation Office (**ATO**) may interpret, and publicly advise taxpayers, that these costs are not exempt.

For example, as noted above, “car expense” is defined to mean an expense incurred “*in respect of ... fuel for the car*”. Further, the phrase “in respect of”, in the context of employment “*includes by reason of, by virtue of, or for or in relation directly or indirectly to ...*”. Applying these definitions, it is arguable that in-home charging costs are included “by reason of” or “in relation directly to” recharging (i.e., “fuel”). However, this is open to debate and different interpretations, thereby creating uncertainty. It is foreseeable that the ATO would limit the application of the FBT exemption for charging costs to the electricity expense.

²https://www.vicroads.vic.gov.au/registration/registration-fees/zlev-road-user-charge?__cf_chl_tk=13aSGwp81G_6WqY1CRajudOF_bfnjzYeUmY2Yv9sdLM-1660173930-0-gaNycGzNCGU

Importantly, from a policy likelihood of success perspective, the absence of an FBT exemption (where the ATO interprets that broader charging costs are not “car expenses”) surrounding such costs may in all likelihood impact upon the attractiveness of acquiring a ZLEV, given there are a number of additional

ZLEV related costs which may not be eligible for concessional treatment under the proposed amendments.

Relevantly, for a ZLEV, these costs are not nominal. For example, a typical home EV charging unit from leading EV hardware provider JET Charge, the Wallbox Pulsar Plus, currently costs \$1,781 plus installation (estimated at between \$750-\$1,000 for a typical installation), whilst a Tesla wall connector could cost up to \$1,000 and installation an additional \$1,500. Similarly, a Tesla Model S battery costs in the range of \$12,000 - \$15,000 (plus additional costs for service and labour).

In recognition of the obstacle which ‘associated EV costs’ are to consumers in regard to their purchase consideration of an EV, many overseas jurisdictions already have in place subsidy arrangements with regards to home EV charging costs – these include Norway, France, California, Germany, Sweden, China and Iceland, just to name a few.

Where such costs are subject to the separate FBT provisions (that is, the cost is not FBT exempt under the Bill), it will in all likelihood impede the take-up of ZLEVs as, even with the tax concessions for the car itself, the additional costs (with no exemption) adversely impact the overall economic benefit.

It is highly recommended that consideration be given to extending the application of the FBT exemption to associated costs through including a different definition of “car expenses” for ZLEVs, which is broader and includes all the costs noted.

Proposal III: Consider easing the limitations imposed on second-hand acquisitions

The Explanatory Memorandum states the “*purpose of the policy is to increase the take up of electric cars*”, however the Bill presents the following limitations with respect to second-hand acquisitions:

- The exemption only applies where the original retail price was below the relevant luxury car tax threshold (being \$84,916 for 2022-23); and
- The exemption does not apply to a car which was previously acquired and used prior to 1 July 2022 (i.e., when acquired first-hand).

The Bill focuses on the notional increase in the take-up of electric cars from current state (i.e., effectively, only post 1 July 2022 vehicles are eligible provided the original purchase price is below the threshold). This creates an artificial barrier for take-up, particularly for individual taxpayers and businesses who may only be able to afford a second-hand vehicle (should these be lower in cost than a first-hand), directing them to an alternate vehicle (despite the existence of the concession).

For example, a small business with a nominal fleet of three vehicles may only be able to acquire EVs second-hand due to cost barriers, however, they would not have access to the exemption because the original acquisitions were over the luxury car threshold (even though their acquisition is at a *lower price*).

Furthermore, the limitation on the first retail price of the car raises practical challenges. For example, if an EV has changed hands multiple times, it may be unclear as to whether the vehicle was originally purchased for below the luxury car tax threshold, or if it was originally acquired and used after 1 July 2022. This will present additional administrative effort for employers, with respect to evidence that may not be readily available.

We understand that the policy intent is to increase take-up and, therefore, increase supply and lower costs. However, in our view, allowing for such second-hand acquisitions to qualify only enhances the take-up as, for example, current EV owners who are ineligible for the concession can sell their vehicles (which qualify for the exemption for the acquirer) and take-up new vehicles (also qualifying for the exemption).

As the pre-election policy noted, currently only five electric cars can be acquired in Australia for under \$60,000 and there are no electric cars for under \$40,000. \$60,000 is a sizeable outlay, even with FBT concessions; particularly when considering the volume of traditional internal combustion engine (**ICE**) cars that can be acquired for below that amount. Allowing second-hand acquisitions, which may be more price-competitive with ICEs (particularly as market supply in Australia increases), will enhance take-up and deliver on the overall policy intent.

Consideration should be given, therefore, to whether the current legislative limitations can be eased in favour of integrity measures to regulate the acquisition of second-hand ZLEVs (for example, ensuring that the second-hand acquisition must not be between the same employee and employer such as in a sale and leaseback transaction).

Further, where the Bill remains on the current basis of restricting certain second-hand acquisitions, the Bill does not define documentary requirements around the first holding and usage (e.g., registration date, original invoice from seller etc.); in particular, and as noted above, this could be challenging in some instances in relation to evidencing the acquisition price for an on-sale that may have exchanged hands a few times.

Proposal IV: Consider harmonisation of the Luxury Car Tax threshold and Car Cost Limit

The Bill states that a car benefit will be an exempt benefit where “*no amount of luxury car tax (within the meaning of the A New Tax System (Luxury Car Tax) Act 1999) has become payable on a supply (within the meaning of that Act) or importation (within the meaning of that Act) of the car before the benefit is provided*”. That is, for the exemption to apply, the luxury tax value of the electric car must not exceed the luxury car tax threshold (**LCT threshold**) at the time the car was first sold in a retail sale.

The limitation of such a requirement is that the LCT threshold for FBT exemption purposes (\$84,916 for fuel efficient vehicles³ for 2022-23) does not align to the car cost limit which is utilised for income tax and Goods and Services Tax (**GST**) purposes (\$64,741 for 2022-23).

³ A fuel-efficient car is a car which has a fuel consumption that does not exceed seven litres per 100 kilometres as a combined rating under the vehicle standards in force under section 7 of the *Motor Vehicle Standards Act 1989*. For completeness, a separate LCT threshold applies to other vehicles (i.e. non-fuel efficient cars), however, it is assumed for the purposes of this submission that ZLEVs which are cars will meet the definition of a fuel-efficient car.

This misalignment is important in the context of employer leased ZLEVs (including under salary packaging arrangements) which are above the car cost limit, though they qualify for the FBT exemption (i.e., below the LCT threshold). This is because Division 242 of the *Income Tax Assessment Act 1997* operates to treat the lease as a notional purchase, financed by a notional loan by the lessor to the lessee. That is, the employer (and not the lease provider) is entitled to deductions for the interest component of lease payments (which is assessable to the lease provider) and the decline in value of the car but is not entitled to a deduction for the capital components of lease payments.

Therefore, effectively, in these circumstances, the deduction an employer can claim is limited to the depreciation calculated on the car cost limit, which is less than the luxury tax threshold to which the FBT exemption will apply. This 'reduction' in the income tax deduction available to an employer leads to an increase in effective costs, which are typically then passed by the employer to the employee to fund the benefit provision. More importantly, this mismatch may diminish the incentive for employers to take up ZLEVs under lease arrangements and for employees under packaging arrangements.

Separately, a taxpayer who purchases an electric vehicle which is greater than the car cost limit is only able to claim a maximum GST credit of one-eleventh of the car cost limit. Again, this limitation may dissuade take-up and therefore, the overall impact of the policy.

These issues may be addressed by harmonising the car cost limit, and subsequent GST credit limit, with the LCT threshold (at least for ZLEVs subject to the FBT exemption).

Separately, though connected to the LCT threshold, the Bill also does not make it clear how the LCT threshold should be determined - for example, if the ZLEV on its own is under the LCT threshold, however, accessories (e.g., self-driving computer) are added to the vehicle, the exemption should continue to apply in our view, however, this should be made clear through the text of the Bill.

Proposal V: Consider whether the definition of ZLEV needs to be expanded

Currently, the definition of a ZLEV includes "battery electric vehicles", "hydrogen fuel cell electric vehicles" and a "plug-in hybrid electric vehicle".

Queries have been raised by some employers and leasing / salary packaging administrators, in particular with respect to "plug-in hybrid electric vehicles", whether there is a minimum battery size/range or specification to qualify. The current draft of the Bill suggests that there is no restriction, however, it may be prudent to qualify this either through the text of the legislation or through the Explanatory Memorandum.

Further, given the advancements in technology, it is feasible that new vehicles are developed that may not meet one of the definitions noted for the exemption, albeit the vehicle would objectively be low or zero emission. Accordingly, the Bill could potentially also include scope for further declarations through regulation or legislative instrument or ATO pronouncements where such vehicles qualify (particularly in the event that the exemption is extended beyond 3 years).

Proposal VI: categorising exempt car benefits for ZLEVs as 'excluded' fringe benefits

An employee will have a reportable fringe benefit amount (RFBA) if the total taxable value of certain fringe benefits provided to the employee is greater than \$2,000. An employee's RFBA is used to calculate or determine a number of liabilities or levies, including:

- Medicare levy surcharge;
- Division 293 tax on superannuation contributions;
- Repayments for Higher Education Loan Program, Trade Support Loan and other various student loans; and/or
- Child support obligations.

Furthermore, an employee's entitlement to, or eligibility for, the following are dependent on the employee's RFBA:

- Parental leave pay;
- Family Tax Benefit Part A and Part B family assistance payments;
- Private health insurance rebate; and/or
- Offset of non-commercial business losses.

In its current form, the Bill requires an employer to disregard the FBT exemption for ZLEV benefits when determining whether an employee has a reportable fringe benefit amount (**RFBA**). Therefore, the "taxable value" of a ZLEV benefit is considered by an employer for RFBA purposes as if the exemption was not applied.

As reasoned in the Explanatory Memorandum, this is to "*ensure fairness in the tax and transfer systems*", given that an employee's RFBA is used to calculate various entitlements or liabilities. However, in our view, this approach has the potential to significantly (and adversely) affect employees, particularly where employers make a unilateral decision to update their fleets to ZLEVs from ICEs.

As highlighted by the Labor Government in its pre-election policy announcement, there are only five electric cars available in Australia for under \$60,000. By comparison, an ICE sedan could cost as low as \$20,000. Whilst an employer may be able to economically justify the transfer of fleet cars to ZLEVs, an employee in this instance will likely have a significant RFBA and potential economic impact for the various programs noted (e.g., decreased childcare rebate; increased education-loan repayments; etc.). In the alternative, employees may be forced into making post-tax contributions to offset some of this impact, such that the net cost to the employee increases.

Using a comparative differential of \$40,000 in cost price, this **could be a \$15,095 RFBA**. Assuming an individual whose "repayment income" for education-loan purposes was \$55,000, this increases their "repayment income" to \$70,095, translating to a move from a 1% repayment rate (on \$55,000) to a 3.5% repayment rate on (\$70,095). This is an illustration of the significant impact that could result and does not correlate to the intention to "*ensure fairness*".

To address this, the Federal Government may consider excluding exempt car fringe benefits for ZLEVs from reporting requirements, providing a reduction in the RFBA to be reported (e.g. a 50% reduction), or alternatively, limiting the instances where there is a need for reporting.

Proposal VII - Consider extending the application of the Bill to include non-cars

In order for the FBTAA amendments to apply to a vehicle, the vehicle must first be considered a “car” for FBT purposes. That is, the vehicle must be a “*motor vehicle⁴ (except a motorcycle or similar vehicle) designed to carry a load of less than 1 tonne and fewer than 9 passengers*”. The Explanatory Memorandum reinforces the position that the proposed amendments are specifically limited to cars by confirming “*there is no change to the treatment of fringe benefits involving the use of other electric vehicles that are not cars, such as motorbikes*”.

Therefore, it would appear that, in its current form, the Bill would not apply to electric bikes (**e-bikes**) since it is the ATO’s position that an e-bike is not considered a car⁵. However, e-bikes present an alternative to passenger cars which are likely to be more cost-effective than an electric car for consumers and emit less carbon dioxide than the use of an ICE vehicle.

As noted in the Federal Government’s pre-election policy announcement, passenger cars contribute to almost 10 per cent of Australia’s carbon dioxide emissions. Therefore, the Federal Government should consider expanding the eligibility requirements of the proposed FBT amendments to include electric motor vehicles which may not be “cars” to be used as alternatives to passenger cars, including e-bikes, e-scooters, as an example.

In addition, many vehicle fleets comprise vehicles designed to carry greater than one tonne vehicles (for example, utility vehicles and certain dual cabs). These fall outside of the definition of a car for FBT purposes also.

Whilst there are currently limited electric vehicles of this nature, it would not be unreasonable to forecast that this circumstance will change in the near future. An exemption for such vehicles will become important to achieve the stated policy intent, plus encourage manufacturers and importers to provide such vehicles for the Australian market.

⁴ Motor vehicle meaning “*any motor-powered road vehicle (including a 4 wheel drive vehicle)*” per the ITAA.

⁵ Per ATO Class Ruling 2020/68 - *E-stralian Pty. Ltd. – use of an electric bicycle by an employee (ATO CR 2020/68)*, it was found that e-bikes are considered motor vehicles but are not cars, on the basis that an e-bike is a bicycle powered by a motor and thus considered a motor cycle (which is specifically excepted from being a car per the ITAA). The type of motor was said to not affect the classification of the vehicle.