Australian
Finance
Industry
Association

17 August 2022

Senator Walsh
Chair
Senate Economics Legislation Committee
Submitted via email to: economics.sen@aph.gov.au

Dear Senator Walsh

Inquiry into the Treasury Laws Amendment (Electric Discount) Bill 2022

The Australian Finance Industry Association (AFIA)[1] appreciates the opportunity to respond to the Inquiry into the Treasury Laws Amendment (Electric Car Discount) Bill 2022 (**'the Bill'**).

AFIA is the only peak body representing the entire finance industry in Australia. We represent 158 members, including bank and non-bank lenders, neobanks, finance companies, fintechs, providers of vehicle and equipment finance, car rental and fleet providers, and service providers in the finance industry.

We are the voice for advancing a world-class finance industry, with our members who are at the forefront of innovation in consumer and business finance in Australia. Our members finance Australia's future.

We collaborate with our members, governments, regulators and customer representatives to promote competition and innovation, deliver better customer outcomes, and create a resilient, inclusive and sustainable future.

[1] www.afia.asn.au

FOREWORD TO OUR SUBMISSION

AFIA supports exempting zero and low emissions vehicles ('ZLEVs') from Fringe Benefits Tax ('FBT') via the Bill's amendments to the *Fringe Benefits Tax Assessment Act 1986* (Cth) ('the Act').

Australians are increasingly choosing to purchase ZLEVs. Concerns around climate change and energy efficiency are leading to rapid changes in consumer behaviour. These attitudes are combining with lower costs driven by technological innovation to increase ZLEV uptake.[2]

The need to transition towards forms of personal transport which are less reliant upon fossil fuels is being hastened by current inflationary trends in petrol prices, driven by global factors, which are causing Australians to pay more for fuel. In 2022, Australian petrol prices have hit 14-year highs, with many in our capital cities being forced to pay over $2 a litre.[3]

AFIA represents many companies involved in the provision of car finance, car rental, fleet management, novated leasing or salary sacrifice arrangements who welcome added incentives encouraging ZLEV uptake.

In recent years, sales of electric vehicles in Australia have increased significantly from less than 3,000 in 2017 to over 20,000 in 2021.[4] There was even an increase of 194.49% in sales between 2020 and 2021 alone.[5] This is a positive trend, leading to lower emissions and more sustainable lifestyles.

Lowering our emissions from cars and other forms of personal transportation is crucial to effectively combatting climate change.

The Climate Change Authority (CCA) estimates 10 percent of all Australia's emissions come from light vehicles, and 16 percent from the transport sector.[6] Given this, reducing the number of high emissions vehicles is good for consumers and the environment.

Lower emissions in the transport sector will be essential to meeting the Government's target to lower emissions by at least 43 percent on 2005 levels by 2030.[7]

---

[2] Electric Vehicle Council, '*State of Electric Vehicles*' (March 2022), 5: EVC-State-of-EVs-2022-1.pdf (electricvehiclecouncil.com.au).
[3] Dinah Lewis Boucher, 'Why is petrol so expensive in Australia? And when will petrol costs go down?', *ABC* (online 24 June 2022): www.abc.net.au/news/2022-06-24/why-is-fuel-so-expensive-in-australia-when-will-petrol-go-down/101167378.
[4] Electric Vehicle Council, '*State of Electric Vehicles*' (March 2022), 5: EVC-State-of-EVs-2022-1.pdf (electricvehiclecouncil.com.au).
[5] Ibid.
[6] Climate Change Authority, *'Opportunities to reduce light vehicle emissions in Australia'*: Opportunities to reduce light vehicle emissions in Australia | Climate Change Authority
[7] Climate Change Bill 2022, cl 10(1)(a).

However, despite significant strides, Australia still lags other developed nations, necessitating further incentives to transition towards ZLEVs. Only 2 percent of all cars sold were electric in 2021. In the United States this number was 5 percent, in New Zealand it was 6 percent and in the United Kingdom it was 15 percent. Indeed, the average across all EU nations was 17 percent, with Norway at 72 percent, Sweden at 45 percent and the Netherlands at 30 percent.[8]

Therefore, while improvements have been made in sustainable transportation in Australia in recent years, there is still much more work required. Consistent with the legislation's intention to lower emissions and encourage the use of more eco-friendly technologies, AFIA proposes recommendations which would make the suggested scheme simpler and more accessible. This would better deliver the desired environmental outcomes by further lowering emissions.

At present, there are aspects of the details of this bill which run contrary to its purported intention to increase the uptake of ZLEVs. Exclusions and complications in the proposed legislation may distort or dampen incentives for consumers to move to ZLEVs.

The proposals outlined in **Attachment A** seek to address these concerns, ensuring the bill most effectively delivers on its laudable purpose of encouraging consumers to make socially conscious transport decisions which lower emissions and protect the environment.

CLOSING COMMENTS

Thank you for the opportunity to provide this submission. We look forward to participating in ongoing dialogue on this issue. Should you wish to discuss our submission, or require additional information, please contact me at [redacted]

Yours sincerely,

[redacted]

Sebastian Reinehr
Senior Policy Adviser

[8] Electric Vehicle Council, *State of Electric Vehicles* (March 2022), 5: EVC-State-of-EVs-2022-1.pdf (electricvehiclecouncil.com.au).

ATTACHMENT A: DETAILED DISCUSSION OF LEGISLATIVE PROVISONS AND PROPOSED ALTERNATIVE MEASURES

EXECUTIVE SUMMARY

This Attachment details several measures to improve the Bill's proposed FBT exemption by making it easier to access, understand and administer. If adopted, these proposals will broaden uptake of ZLEVs, leading to greater emissions reduction and more effectively combating climate change, in line with the Bill's purpose.

AFIA recommends the Committee consider the following proposals:

1. increasing the limit for ZLEVs to be eligible for the FBT exemption.
2. expanding eligibility for the FBT exemption to vehicles other than cars.
3. providing certainty for businesses and consumers by grandfathering the benefits of this scheme for contracts concluded in the first three years before the Government's proposed review.
4. more effectively including second-hand ZLEVs in the scheme.
5. aligning the depreciation limit for ZLEVs with any threshold for the Bill's scheme, to incentivise employers to provide ZLEVs to their employees.
6. aligning the GST input credit for ZLEVs with any threshold for the Bill's scheme, to incentivise suppliers of ZLEVs not to pass on additional costs.
7. excluding FBT exempt benefits related to ZLEVs from reportable income for tax purposes.
8. including home chargers in the Bill's FBT exemption for ZLEVs.
9. including broader tax incentives for ZLEVs for small business owners and their employees, who are not as likely to access fringe benefits.

PROPOSAL 1 – THE COMMITTEE SHOULD CONSIDER INCREASING THE LIMIT ON ELIGILITY FOR THE FBT TAX EXEMPTION, SO MORE CARS ARE ELIGIBLE

Clause 1 of the Bill would insert a proposed new s 8A(1)(c) into the *Fringe Benefits Tax Assessment Act 1986*. This would mean only vehicles valued under the Luxury Car Tax (LCT) threshold for fuel efficient vehicles would be entitled to the proposed exemption from FBT.

The LCT threshold is determined on an indexed basis in accordance with s 25-1 of the *A New Tax System (Luxury Car Tax) Act 1999* (Cth).

The current LCT threshold for fuel efficient vehicles is $84,916 for financial year 2022/23.[9] This means a ZLEV valued over $84,916 would not be eligible for any discount flowing from the proposed FBT exemption. Such a threshold may unintentionally deter people from purchasing ZLEVs.

Currently, many ZLEVs are more expensive than alternative models. The Explanatory Memorandum accompanying the legislation agrees with this proposition, noting that part of the rationale for the removal of FBT from ZLEVs is that it will:[10]

> *[I]ncrease competition in the market for cars by decreasing the price differential relative to internal combustion engine cars.*

In acknowledging the higher cost of many ZLEVs, the Treasurer said in his Second Reading Speech on 27 July 2022, that part of the reason for introducing the legislation was:[11]

> *More and more Australians are interested in the benefits of owning an electric vehicle—but they remain unaffordable for many motorists.*

For example, a March 2022 survey of electric vehicles available in Australia found that of 69 models listed as 'available now' for purchase in Australia, 36 models (or 52 percent of all models surveyed) costed more than the proposed threshold of $84,916.[12]

By way of illustration, a Kia EV6 GT, which seats 5 people costs over $100,000, compared with lower costs for similar non-ZLEV 5-seaters.[13]

Recommendation 1:

Given the additional cost often involved in purchasing a ZLEV, increasing the threshold and thereby broadening the proposed FBT exemption would create wider incentives for consumers to shift to ZLEVs of all types.

---

[9] Australian Taxation Office, 'Luxury car tax rate and thresholds' (accessed on 4 August 2022): https://www.ato.gov.au/rates/luxury-car-tax-rate-and-thresholds/
[10] Explanatory Memorandum, Treasury Laws Amendment (Electric Car Discount) Bill 2022, 3 [1.4].
[11] Commonwealth, Parliamentary Debates, House of Representatives, 22 July 2022, 23 (Dr. Jim Chalmers, Treasurer).
[12] Electric Vehicle Council, '*State of Electric Vehicles'* (March 2022), 44-46: EVC-State-of-EVs-2022-1.pdf (electricvehiclecouncil.com.au).
[13] Wheels, '2023 Kia EV6 GT: Near-$100k super EV lands in Australia for tuning' (accessed on 16 August 2022): 2023 Kia EV6 GT arrives in Australia for local tuning (whichcar.com.au).

PROPOSAL 2 – THE COMMITTEE SHOULD CONSIDER EXPANDING THE ELIGIBILITY FOR THE FBT EXEMPTION TO ALL VEHICLES, NOT JUST VEHICLES DEFINED AS 'CARS' FOR FBT PURPOSES

The Bill refers throughout to vehicles which are described, for statutory purposes, as 'cars.'[14]

For fringe benefits tax purposes, 'car' has a specific meaning. A car is a vehicle which is not a motorcycle or bike and carries either:[15]

- Less than one tonne, or;
- Fewer than nine passengers.

This definition of 'car' comes from s 995-1 of the *Income Tax Assessment Act 1997*. It is incorporated into the *Fringe Benefits Tax Assessment Act 1987* by section 136 of the latter Act.

The Explanatory Memorandum indicates covering only statutory 'cars' is the intention of the Bill, expressly stating:

> *The FBT exemption relates to car fringe benefits and therefore will only apply to vehicles that are 'cars' for FBT purposes.*[16]

The inclusion of only vehicles falling within the statutory definition of cars is narrow. It excludes other types of vehicles which, if adopted, would also lead to lower emissions.

For example, there are at least 29 models of two-wheeled electric vehicles which would not be covered by this definition.[17] These two-wheeled vehicles have an average cost of $9,895.[18] This is significantly cheaper than the cost of a similarly clean car. The Committee should consider extending the exemption to two-wheeled electric vehicles as well as cars.

The Bill's current language, in limiting the FBT exemption to statutory cars, could also exclude other vehicles with substantial emissions reductions potential, including electric buses, and 21 commercially available electric vans and trucks which could carry 9 passengers or more or a load of over one tonne.[19]

---

[14] See, for example, Clause 1's heading to the proposed new s 8A.
[15] Australian Taxation Office, 'Car fringe benefits tax (FBT) guide for small business' (accessed on 4 August 2022): www.ato.gov.au/Business/Bus/Car-fringe-benefits-tax-(FBT)-guide-for-small-business/#:~:text=A%20car%20fringe%20benefit%20commonly,private%20use%20of%20the%20employee.
[16] Explanatory Memorandum, Treasury Laws Amendment (Electric Car Discount) Bill 2022, 3 [1.7].
[17] Electric Vehicle Council, '*State of Electric Vehicles*' (March 2022), 49: EVC-State-of-EVs-2022-1.pdf (electricvehiclecouncil.com.au).
[18] Ibid, 49 calculated by averaging the figures the table titled 'Electric two wheelers'.
[19] Electric Vehicle Council, '*State of Electric Vehicles*' (March 2022), 50-1: EVC-State-of-EVs-2022-1.pdf (electricvehiclecouncil.com.au).

<u>Recommendation 2:</u>

Therefore, AFIA recommends the FBT tax exemption proposed by the Bill be extended to more classes of personal transportation, instead of only covering statutory 'cars'. This should include two-wheeled vehicles, vans, trucks and other vehicles which would otherwise meet the definition of a ZLEV under Clause 1 of the Bill.[20]

Including a broader range of vehicles than just statutory 'cars' would more effectively meet the Government's stated policy aim of encouraging:[21]

> *[R]oad users to reduce Australia's carbon emissions from the transport sector.*

PROPOSAL 3 – THE COMMITTEE SHOULD CONSIDER PROVISIONS GRANDFATHERING THE BENEFITS OF THIS SCHEME FOR CONTRACTS CONCLUDED IN THE THREE YEARS PRIOR TO THE REIVEW

The purpose of this Bill is to incentivise permanent shifts in behaviour, whereby road users make a lasting switch away from traditional transportation and towards ZLEV's.

In other contexts, the Government rightly points to the need for certainty in policy settings related to lowering emissions and combatting climate change.

The Prime Minister has said the Government's emissions reduction agenda broadly is designed to:[22]

> *[P]rovide the certainty industry and investors have been seeking.*

On introducing this legislation, the Treasurer said in his Second Reading Speech:[23]

> *We know that Australian businesses are desperate for clearer guidance...*

Given this emphasis on certainty in emissions reduction policy throughout the Government's broader agenda, it is notable the FBT tax exemption for ZLEV's has not been approached in the same way.
In his Second Reading Speech the Treasurer said the ZLEV FBT exemption will be: "reviewed after three years."[24]

This uncertainty is also reflected in the Explanatory Memorandum which states:[25]

---

[20] Specifically, the proposed new ss 8A(2)-(5).
[21] Explanatory Memorandum, Treasury Laws Amendment (Electric Car Discount) Bill 2022, 3 [1.2].
[22] Prime Minister Anthony Albanese, 'Stronger action on climate change' (16 June 2022): www.minister.industry.gov.au/ministers/bowen/media-releases/stronger-action-climate-change
[23] Commonwealth, Parliamentary Debates, House of Representatives, 22 July 2022, 21 (Dr. Jim Chalmers, Treasurer).
[24] Ibid, 24.
[25] Explanatory Memorandum, Treasury Laws Amendment (Electric Car Discount) Bill 2022, 4 [1.8].

> *The review will consider electric car take up at that time, whether this tax concessions should be continued, and if so, in what form.*

This three-year time frame creates significant uncertainty for many people who may benefit from the proposed legislation. It has the potential to especially adversely affect employees who gain their car fringe benefits through novated leasing arrangements with their employer, many of which can last for longer than three years and often up to five years.[26]

According to AFIA members providing novated leasing services to employers and employees who would benefit from the proposed FBT tax exemption of ZLEV's, the average length of leases which might be covered by this change is approximately 42 months.

Recommendation 3:

Given the Government's own clearly stated ambition of providing certainty for businesses and consumers in the realm of emissions reduction policy, AFIA suggests the Government publicly commit to grandfathering in legislation any benefits flowing from the Bill's FBT exemption for contracts concluded in the first three years of the policy.

AFIA would further recommend that any decision to change the policy settings on this issue should be preceded by broad and public consultations with industry and consumer groups. Any such consultation should be announced 12-months in advance of a final decision and provide clearly established timeframes for feedback, comment, and review to all parties who might be interested in participating.

PROPOSAL 4 – THE COMMITTEE SHOULD CONSIDER PROVISIONS TO ENSURE PURCHASES OF SECOND-HAND VEHICLES ARE NOT UNDULY EXCLUDED FROM THE FBT EXEMPTION

Clause 7(1) of the Bill makes it clear that the proposed FBT tax exemption would only apply to 'benefits provided on or after 1 July 2022.'

Clause 7(2) clarifies that the FBT exemption applies only if:

> *[T]he earliest time when a person both held and used was at or after the start of 1 July 2022.*

---

[26] Easifleet, 'What Happens at the End of My Novated Lease?' (accessed online on 4 August 2022): https://www.easifleet.com.au/blog/what-happens-end-novated-lease/#:~:text=Typically%2C%20a%20novated%20lease%20will,end%20of%20the%20novated%20lease.

These Clause would have the effect of excluding from the proposed FBT exemption any vehicles for which the first retail sale was before 1 July 2022. This would mean that vehicles purchased second hand, after this date, would be excluded from the exemption.

This concern is illustrated via the example provided in the Explanatory Memorandum, outlined below:[27]

> *For example, if Zena acquires an electric car on 1 April 2022 and makes that car available for the private use of her employee Jack, to provide car fringe benefits from that date for 4 years, the benefits provided from 1 July 2022 will not be exempt. Additionally, if Zena were to instead sell the car to another employer after Jack had used it for only 2 years (i.e. on 1 April 2024) the benefit that that employer may provide to its employees for the use of the electric car will also not be exempt.*

Under the example above, a car fringe benefit provided by an employer to an employee is not covered by the proposed exemption if it was provided before 1 July 2022, even if there is an intervening sale after 1 July 2022, to a second and distinct employee.

This unintended consequence seems to be contrary to the stated intention in the Treasurer's Second Reading Speech that the proposed policy will:

> *[I]ncrease the number of second-hand electric vehicles on the market..*

It is true the number of second-hand ZLEVs available will be increased downstream by the FBT exemption's stimulating demand for new ZLEVs. However, persons purchasing second-hand ZLEVs will not benefit from this Bill, as the quotation from the Explanation Memorandum above makes clear.

This is undesirable for two reasons. Firstly, because it contradicts the Bill's central objective, to encourage the uptake of ZLEVs. Secondly, by including new cars in the proposed exemption but not second-hand cars, the Bill inadvertently discriminates against those who may not be able to afford a brand new ZLEV. This is at odds with the Treasurer's stated view in his Second Reading Speech that the proposed FBT exemption is good policy because it makes ZLEVs more affordable where they are currently "unaffordable for too many Australian motorists."[28]

As the Treasurer even noted in his Second Reading Speech:

> *There are only 10 electric and plug-in hybrid cars on the domestic market selling for less than $60,000 at the moment…*

---

[27] Explanatory Memorandum, Treasury Laws Amendment (Electric Car Discount) Bill 2022, 6 [1.16].
[28] Commonwealth, Parliamentary Debates, House of Representatives, 22 July 2022, 24 (Dr. Jim Chalmers, Treasurer).

Recommendation 4:

AFIA recommends, given Government's stated intention is to encourage ZLEV uptake and make ZLEVs more affordable for those who would not otherwise access to them, the proposed FBT exemption should be broadened so it clearly applies to ZLEVs purchased second-hand, after 1 July 2022, even where those vehicles first retail purchase was before 1 July 2022.

PROPOSAL 5 – IF THE CURRENT ELIGIBILITY THRESHOLD OF $84,916 IS MAINTAINED, THE COMMITTEE SHOULD CONSIDER PROVISIONS THAT ALIGN THE CAR DEPRECIATION LIMIT OF $64,741 WITH THE ELIGIBILITY THRESHOLD FOR THE FBT EXEMPTION OF $84,916

As outlined in **Proposal 1** above, the current language of Clause 1's proposed insertion of the new section 8A(1)(c) into the principal legislation would mean that only cars which are valued at under the Luxury Car Tax threshold for fuel efficient vehicles of $84,916 would qualify for the proposed FBT exemption.

However, this threshold is different to the current depreciation limit for cars of $64,741.[29] This latter limit is set under section 40-230 of the *Income Tax Assessment Act 1997.*

In **Proposal 1**, AFIA suggested the eligibility threshold for the Bill's proposed FBT exemption should be increased.

Even if our recommendation in **Proposal 1** is not adopted, for the reasons outlined below, AFIA recommends the two thresholds should be aligned to provide a simpler scheme for calculating the benefits flowing from the proposed FBT exemption. This would make the scheme more easily administrable and maximise incentives for ZLEV uptake, in line with the policy objectives of the Bill.

The variation between the two thresholds, of $64,741 for the car depreciation limit and $84,916 for eligibility for the proposed FBT exemption, is most important in the context of novated leasing agreements and salary sacrifice arrangements.

The Explanatory Memorandum for the Bill stipulates that the FBT tax exemption is intended to cover cars provided under such arrangements, outlining:[30]

> *[T]he exemption is available notwithstanding that the car fringe benefit is provided under a salary packaging arrangement between an employer and employee.*

---

[29] Australian Taxation Office, 'Depreciation and capital expenses and allowances – Assets and Exclusions - Cars' (accessed on 6 August 2022): [Assets and exclusions | Australian Taxation Office (ato.gov.au)]

[30] Explanatory Memorandum, Treasury Laws Amendment (Electric Car Discount) Bill 2022, 6 [1.18].

The Treasurer's Second Reading Speech on this Bill also expressly references the impact of the legislation on novated leasing and salary sacrifice arrangements, indicating:[31]

> *The cost to employees of entering into salary sacrificing arrangements in order to lease an eligible electric car will now be less than it previously would have been.*

In the novated leasing and salary sacrifice context, an employer will purchase a car on behalf of an employee. The employee will have use of the vehicle. However, the employer is deemed, under Division 242 of the *Income Tax Assessment Act 1997*, to be the notional lessee of the vehicle.

Under such arrangements, the employer who purchases the car then levies charges on their employee to fund the value of the lease.

The employer, who notionally purchased the vehicle, can also claim depreciation on the value of the asset, up to the threshold of $64,741.

Allowing employers to claim such depreciation where ZLEVs are purchased encourages employers to provide ZLEVs and provides incentives for their employees to move to ZLEVs. This in turn lowers our emissions, achieving the Bill's core policy objective.

By way of example, currently, if an employer provides a car under a novated lease to their employee which is valued at $60,000 (i.e. under the depreciation limit for cars of $64,741), then the employer can claim depreciation of the full value of that car.

The employer then becomes entitled to a tax deduction, equivalent to the value of the depreciation of the car in a given tax year. This is equivalent to 25 percent of the value of the car, calculated on a diminishing basis the longer the car is held, for a period of up to 8 years.[32]

So, if an employer provides a $60,000 car under a novated lease to an employee, the employer would be entitled to the following tax deductions, outlined in **Table 1**. These deductions both help to pay for the cost of the car and incentivise employers to provide this option to their employees.

In the context of ZLEVs being provided, these incentives increase ZLEV uptake, lowering emissions.

---

[31] Commonwealth, Parliamentary Debates, House of Representatives, 22 July 2022, 23 (Dr. Jim Chalmers, Treasurer).
[32] Australian Taxation Office, 'Deemed depreciation rate - cars' (accessed on 6 August 2022): Assets and exclusions | Australian Taxation Office (ato.gov.au). See too Australian Taxation Office, *Income tax: effective life of depreciating assets (applicable from 1 July 2022)*, (TR 2022/1, 29 June 2022).

TABLE 1 – TAX DEDUCTIONS CLAIMABLE BY EMPLOYERS PROVIDING CARS VIA NOVATED LEASES UNDER EXISTING LAW FOR A $60,000 CAR [33]

	Car Value (A)	Value After Depreciation (B)	Tax Deduction (C)[34]
Year 1	$60,000	$45,000	$15,000
Year 2	$45,000	$33,750	$11,250
Year 3	$33,750	$25,313	$8,438
Year 4	$25,312.50	$18,984	$6,328
Year 5	$18,984.37	$14,238	$4,746

Under the figures in **Table 1**, an employer providing an employee with a car under a novated lease would be able to claim the deductions in **Column C** against their taxable income.

In total, this amount to deductions of $45,762 over a 5-year lease.

For employers paying the standard corporate tax rate of 30 percent, this is equivalent to a benefit of $13,729.

This Bill proposes, for ZLEVs valued over the cost depreciation limit of $64,719, employers can only claim deductions for the depreciation of the ZLEV up to that limit. This means they would not receive a deduction for the actual value of the depreciation of the ZLEV, but instead only for a fictional and arbitrary statutory depreciation amount.

In the context of novated lease agreements between an employer and an employee, this will mean the employer will likely pass any additional costs (i.e. the value of the actual depreciation of the ZLEV) onto the employee through higher charges in their novated lease.

As **Table 2** outlines, these additional costs unnecessarily complicate the scheme and could dampen incentives for employees to seek new ZLEVs, notwithstanding the existence of the FBT exemption, as they would not be receiving the full benefit of the proposed FBT exemption in the context of ZLEVs costing over $64,719.

This is especially concerning given, as detailed at length in **Proposal 1** of this submission, there is ample evidence, which the Government accepts, indicating ZLEVs remain more expensive than other vehicles.

[33] Calculations are indicative only and should be independently verified with reference to any individual arrangement based on a range of variables unique to each purchase situation.
[34] Column C is equal to 25% of Colum A, i.e. the ATO's allowable depreciation rate for cars.

Table 2 outlines how the Bill's failure to address the variance between the cost depreciation threshold and the proposed FBT exemption eligibility threshold could create additional costs to employees seeking to purchase ZLEVs through novated leasing arrangements with their employers.

TABLE 2 – LOST INCENTIVES DUE TO THE DIFFERENCE IN THE COST DEPRECIATION THRESHOLD AND THE ELIGIBILITY THRESHOLD FOR THE PROPOSED FBT EXEMPETION FOR CARS COSTING $84,000[35]

	Value (A)	Claimable Depreciation (B) [36]	Real Depreciation (C) [37]	Lost Incentives (D) [38]
Year 1	$84,000[39]	$16,185	$21,000[40]	$4,815
Year 2	$48.556[41]	$12,138	$15,750[42]	$3,611
Year 3	$36,416	$9,104	$11,813[43]	$2,709
Year 4	$27,312	$6,828	$8,860[44]	$2,032
Year 5	$20,484	$5,121	$6,645[45]	$1,524

Column B above shows the amount of depreciation that would be claimable under this Bill, if the cost depreciation threshold for cars of $64,741 continues not to be aligned with the eligibility threshold for the FBT exemption of $84,916.

Column C above shows the amount of depreciation that would be claimable were the Bill amended so that the actual value of the depreciation of an $84,000 ZLEV were claimable under the Bill.

Column D indicates the difference between tax deductions that would be provided under the Bill as it stands, compared to if the two thresholds were aligned.

From the analysis above that failure to align the two thresholds will mean, totalling the costs in **Column D of Table 2,** there will be significantly fewer tax incentives for ZLEVs costing over the current cost

---

[35] Calculations are indicative only and should be independently verified with reference to any individual arrangement based on a range of variables unique to each purchase situation.
[36] This is equivalent to 25% of $64,741, i.e. the cost depreciation threshold for cars, at a diminishing rate over 5 years.
[37] The actual rate of depreciation on a car with an initial sale value of $84,000.
[38] The difference between Column B and Column C in Table 2.
[39] Below the proposed eligibility threshold for the FBT exemption of $84,916.
[40] Based off the real value of $84,000 in Year
[41] Based off the inappropriate fictional threshold of $64,741 in Year 1, not the actual value of $84,000.
[42] 25 percent of the real depreciated value of $63,000 in Year 2.
[43] 25 percent of the real depreciated value of $47,250 in Year 3.
[44] 25 percent of the real depreciated value of $35,438 in Year 4.
[45] 25 percent of the real depreciated value of $26,578.50 in Year 5.

depreciation threshold, due to it being different from the proposed eligibility threshold for the ZLEV FBT exemption.

This unintended consequence of the Bill will mean any additional costs incurred by employers in providing ZLEVs under novated leases to their employees will be passed on to those employees.

Additional costs to employees with dimmish their likelihood of transitioning to ZLEVs and limit the efficacy of this measure in increasing ZLEV uptake, lowering our emissions and combating climate change.

Recommendation 5:

AFIA suggested in **Proposal 1** that the eligibility threshold for the FBT exemption of $84,916 should be increased, to better encourage uptake of all forms of ZLEVs, noting that they are accepted by the Government to be more expensive than other vehicles.

If AFIA's recommendation in **Proposal 1** is not adopted, AFIA recommends, at the very least, the cost depreciation limit be increased so it aligns with the proposed eligibility threshold for the FBT exemption.

If **Proposal 1** is not followed, an additional provision should be inserted into the Bill, amending section 40-230 of the *Income Tax Assessment Act 1997* (and any other relevant legislation), so the cost depreciation limit for cars is increased to $84,916.

As **Table 2** outlines, this would create more incentives for ZLEVs purchased through novated leasing arrangements between an employee and an employer. These extra incentives would more effectively achieve the objectives of the Bill, by encouraging a greater number of people to move to ZLEVs.

Harmonisation of the relevant thresholds also makes the scheme more easily understandable, accessible, and administrable. This would better lower emissions and combat climate change.

PROPOSAL 6 – IF THE CURRENT ELIGIBILITY THRESHOLD OF $84,916 IS MAINTAINED, THE COMMITTEE SHOULD CONSIDER PROVISIONS INCREASING THE THRESHOLD OF $64,741 FOR RECEIPT OF GST TAX INPUT CREDITS FOR COMPANIES SUPPLYING CARS TO EMPLOYERS WHO THEN PROVIDE NOVATED LEASES TO THEIR EMPLOYEES

The kinds of novated leasing and salary sacrifice services often provided by employers to employees are explained in detail in **Proposal 5**. As indicated above, both the Second Reading Speech and the Explanatory Memorandum anticipates these services will be covered by the proposed FBT exemption.[46]

Proposal 5 recommended aligning the cost depreciation threshold of $64,741 with the proposed eligibility threshold for the Bill's proposed FBT exemption of 84,916.[47]

Proposal 6 deals with similar issues. However, focuses on the impact that failure to align to two thresholds will have on the suppliers of ZLEVs for GST purposes. That is, the companies who provide ZLEVs to employers, who then subsequently make those ZLEVs available for use by the employee.

Under section 69-10 of the *A New Tax System (Goods and Services Tax) Act 1999*, those who supply goods to third parties are entitled to an 'input tax credit' which is equivalent to 1/11th of the purchase price of the good which is to be on-sold.[48]

The rationale for this input tax credit under the GST regime is that the GST is intended to be a tax which is payable at the point of sale by the end-user. In other words, the party purchasing a ZLEV for the purposes of this Bill should be the person who bears the cost of paying the GST, not wholesale providers of cars or other parties further up the supply chain.[49] GST credits ensure that GST is payable once, not multiple times.

However, under s 69-10 of the *A New Tax System (Goods and Services Tax) Act 1999*, suppliers of cars can only claim an input tax credit up to the 'car limit.'[50]

That is to say suppliers of cars who then later sell them to employers who provide novated leasing and salary sacrifice services to their employees can only claim a maximum GST input tax credit of 1/11 of $64,741 (equivalent to $5886).

---

[46] Explanatory Memorandum, Treasury Laws Amendment (Electric Car Discount) Bill 2022, 6 [1.18]. See too Commonwealth, Parliamentary Debates, House of Representatives, 22 July 2022, 23 (Dr. Jim Chalmers, Treasurer).
[47] See the Bill's Cl 1 and insertion of the proposed new section 8A(1)(c) into the *Fringe Benefits Tax Assessment Act 1986*.
[48] Section 69-10(1)(c)
[49] Australian Taxation Office, 'When you can claim a GST credit' (accessed on 6 August 2022): When you can claim a GST credit | Australian Taxation Office (ato.gov.au).
[50] Section 69-10(1)(c)

This is so even though the car may be worth significantly more than $64,741 under the proposed FBT tax exemption, which applies to cars worth up to $84,916 (1/11th of which would be $7,720).

By way of example, **Table 4** below indicates the difference between the GST tax input credit which would be available to suppliers of cars at certain price points under the proposed Bill, compared to what should be available if the GST input tax credit threshold were aligned with the proposed eligibility threshold for the FBT exemption under the Bill.

TABLE 4 – GST INPUT TAX CREDIT CALCULATIONS FOR ZLEV SUPPLIERS

Car value	Available Credit Under Bill	Credit That Should Exist
$65,000	$5,866	$5,909
$70,000	$5,866	$6,364
$75,000	$5,866	$6,818
$80,000	$5,866	$7,273
$84,916	$5,866	$7,720

As is clear from **Table 4**, there will be a variation between the input tax credit *actually* available to suppliers under the proposed Bill and the input tax credit that *should be* available for them in order to recoup the cost of GST payable on the good that should be paid by the end-user, not upstream suppliers.

These additional costs will likely be passed on to the employer, who is notionally purchasing the vehicle for the purpose of novated leasing and salary sacrifice arrangements under Division 242 of the *Income Tax Assessment Act 1997*.

Additional costs passed on to employers providing novated leasing and salary sacrifice agreements to their employees will likely in turn be passed on to those employees, via additional charges under the arrangement.

Such additional costs to be borne by those driving ZLEVs covered by the Bill's proposed FBT exemption will disincentive the adoption of the desired behaviour. This will mean fewer drivers will shift to ZLEVs. Consequentially, the Bill will not achieve its stated objectives regarding emissions reduction as effectively as it otherwise might.

Recommendation 6:

AFIA would recommend either:

1. **Proposal 1** be adopted, increasing the eligibility threshold for ZLEVs to be covered by the FBT tax exemption and similar amendments be made to section 69-10 of the *A New Tax System (Goods and Services Tax) Act 1999,* ensuring suppliers of cars can claim a higher amount of GST input tax credits for vehicles they on-sell to consumers.

2. If **Proposal 1** is not adopted, at the very least the threshold for suppliers of ZLEVs outlined in **Proposal 6** should be changed via amendments to the *A New Tax System (Goods and Services Tax) Act 1999,* so the threshold for suppliers to claim input tax credits of $64,741 is aligned with the proposed threshold for FBT exemptions on ZLEVs of $84,916.

The adoption of either course above would lead to greater incentives for drivers to switch to ZLEVs, which would further lower emissions and better combat climate change, in line with the Bill's stated objectives. Either course above would also make the scheme more easily understandable, accessible, and administrable. This would encourage greater uptake of ZLEVs.

PROPOSAL 7 – THE COMMITTEE SHOULD CONSIDER PROVISIONS WHICH WOULD ENSURE VEHICLES COVERED BY THE FBT EXEMPTION ARE NOT INCLUDED IN REPORTABLE INCOME FOR TAX PURPOSES

The purpose of this scheme is the provision of tax incentives encouraging the uptake of ZLEVs. However, the effect of the Bill is that car fringe benefits which are exempted a person's 'assessable income' for tax purposes are nevertheless included in their 'reportable income' for tax purposes.[51]

It is almost certain that the effect of Clause 3 of the Bill's proposed new section 135P(3) of the *Fringe Benefits Tax Assessment Act 1986* would mean ZLEVs which are exempt from FBT by this Bill are nevertheless included in the definition of 'reportable income' for tax purposes. Clause 3 states that in working out the value of an employee's 'reportable income':

> *[D]isregard section 8A (Exempt car benefits: zero or low emissions vehicles).*

In other words, when calculating a person's 'reportable income', the core provision of this Bill, exempting ZLEVs from FBT, must be considered irrelevant. This is curious.

[51] For a general discussion of the difference between 'assessable' and 'reportable' income, see Australian Taxation Office, 'Types of income – assessable income' (accessed on 6 August 2022): Types of income | Australian Taxation Office (ato.gov.au).

Further, it is made clear by the Explanatory Memorandum that the intention of the Bill is to include ZLEVs in a person's 'reportable income', even though they would be tax exempt for the purposes of calculating 'assessable income.' The Explanatory Memorandum specifically states:[52]

> *Car fringe benefits for zero or low emissions cars that are exempt from FBT will be included for the Purposes of determining a current employee's reportable fringe benefits amount for each FBT year. The amendments effectively add back to the employee's individual fringe benefits amount the taxable value of the car benefit as if the exemption had not occurred.*

It continues:[53]

> *This is designed to ensure fairness in the tax and transfer systems, noting that the reportable fringe benefits amount is used to calculate and determine various liabilities and entitlements. These include calculating the Medicare levy surcharge, determining entitlement to certain tax offsets, and determining eligibility for certain family assistance payments.*

The inclusion of FBT exempt car benefits in the definition of reportable income seems to contradict the Bill's purpose, which is to provide tax incentives for the uptake of ZLEVs.

An example of how this will practically impact the effectiveness of ZLEV FBT exemption can be seen through the effect it would have on an individual's repayment of their student loans via the HECS-HELP scheme, assuming they were also receiving an FBT exempt ZLEV as part of their reportable income. HECS-HELP repayments are determined based off 'reportable income', not 'assessable income.' The impact of this difference is demonstrated in **Table 4**.

---

[52] Ibid at 7 [1.23].
[53] Explanatory Memorandum, Treasury Laws Amendment (Electric Car Discount) Bill 2022; Commonwealth, Parliamentary Debates, House of Representatives, 22 July 2022, 23 (Dr. Jim Chalmers, Treasurer), 7 [1.24].

TABLE 4 – THE IMPACT OF THE BILL INCLUDING OTHERWISE FBT EXEMPT ZLEVs ON AN INDIVIDUAL EARNING $60,000 IN SALARY'S 'REPORTABLE INCOME'

SALARY	ZLEV VALUE	ZLEV FRINGE BENEFIT [54]	REPORTABLE INCOME	HECS-HELP REPAYMENTS[55]
$60,000	$0 (i.e. no car)[56]	$0	$60,000	$1,500
$60,000	$45,000	$7,959	$67,959	$2,379
$60,000	$50,000	$8,844	$68,844	$2,410
$60,000	$55,000	$9,728	$69,728	$2,440
$60,000	$60,000	$10,612	$70,612	$2,824
$60,000	$65,000	$11,497	$71,497	$2,859
$60,000	$70,000	$12,381	$72,381	$2,895
$60,000	$75,000	$13,265	$73,265	$2,931
$60,000	$80,000	$14,150	$74,150	$2,966
$60,000	$84,000	$14,857	$74,857	$3,369

Table 4 above was calculated assuming a modest salary of $60,000 annually and a HECS-HELP loan of $40,000. Based off this analysis, including car fringe benefits for ZLEVs in the calculation of 'reportable income' for tax purposes, even where they are FBT exempt under the Bill, could lead wage earners on $60,000 a year to be paying up to $1,869 more per annum in tax, via additional HECS-HELP loan repayments.

As noted in the Explanatory Memorandum, including FBT exempt ZLEVs in 'reportable income' also impacts tax payable by persons using those vehicles for the purpose of other Government programs like: the Medicare Levy, Family Tax Benefits Part A and B and certain tax concessions related to superannuation.[57] Additional tax being payable for any of these programs due the receiving an FBT exempt ZLEV will dimmish incentives for ZLEV uptake and undermine the purpose of the Bill.

Recommendation 7:

AFIA suggests including otherwise FBT exempt car fringe benefits for ZLEVs in the definition of 'reportable income' for tax purposes is therefore unwise. Forcing those on modest salaries who would otherwise wish to switch to ZLEVs to pay additional tax, via the inclusion of such benefits in 'reportable

[54] Calculated using Australian Taxation Office, 'Fringe benefits tax (FBT) car calculator' (accessed 6 August 2022): Questions | Fringe benefits tax (FBT) car calculator.
[55] Calculated using the Australian Taxation Office's 'Study and training support loans repayment calculator' (accessed 6 August 2022): Questions | Study and training support loans repayment calculator, assuming a salary of $60,000 and a HECS-HELP loan of $40,000.
[56] This hypothetical assumes no other reportable income, fringe benefits or deductions.
[57] Explanatory Memorandum, Treasury Laws Amendment (Electric Car Discount) Bill 2022, 7 [1.24].

income' will discourage them from moving to ZLEVs. This undermines the Bill's fundamental objective of increasing ZLEV uptake to lower emissions and combat climate change.

AFIA recommends the Bill (and any other relevant legislation) be amended to specifically exclude car fringe benefits related to ZLEVs from the definition of 'reportable income' for tax purposes.

PROPOSAL 8 – THE COMMITTEE SHOULD CONSIDER PROVISIONS CLARIFYING THAT HOME CHARGERS FOR ELECTRIC VEHICLES ARE ACCESSORIES TO THE VEHICLE AND THEREFORE ALSO FBT EXEMPT

Under Clause 2 of the Bill, it is unlikely the cost of home chargers purchased for ZLEVs covered by the proposed FBT exemption would be included in the benefits provided by the Bill.

The Explanatory Memorandum claims the FBT exemption will also include any 'associated benefit' in running a car under section 53 of the *Fringe Benefits Tax Assessment Act 1986*.[58] However, this section stipulates that it only extends to expenses which are defined as 'car expenses.'[59]

'Car expenses', defined under section 136 of the *Fringe Benefits Tax Assessment Act 1986*, only include expenses related to:

1. Registration and insurance;
2. Repairs or maintenance;
3. Fuel.

This definition excludes the purchase or installation costs of home chargers for ZLEVs purchased under the proposed FBT exemption.

AFIA recommends that for FBT purposes, home chargers should be deemed as an 'accessory' to the ZLEV.[60] This would mean that the cost of home chargers would be included in the 'cost price' of ZLEVs purchased under the scheme, as determined by the formula outlined in the definition of 'cost price' under section 136 of the *Fringe Benefits Tax Assessment Act 1986*.

Deeming home chargers an accessory to ZLEVs purchased under the Bill would therefore include the cost of purchasing a home charger in the FBT exemption, which would better incentivise uptake of ZLEVs and achieve the purpose of the Bill.

---

[58] Explanatory Memorandum, Treasury Laws Amendment (Electric Car Discount) Bill 2022, 5 [1.13].
[59] See s 53(3).
[60] Australian Taxation Office, 'Fringe benefits tax - a guide for employers – determining the base value of a car' (accessed on 7 August 2022): [Fringe benefits tax - a guide for employers | Legal database (ato.gov.au)](ato.gov.au).

Home chargers can cost up to $2,500 for the hardware alone and $1,000 in installation costs.[61]

Under the Bill as it stands, this would pose a significant upfront and out-of-pocket cost to employees driving ZLEVs. This will make them less likely to switch to ZLEVs.

Further, incentivising the installation of home chargers is desirable as it ensures a reliable power source for ZLEVs to be recharged and takes pressure of the public charging infrastructure network, which is already under stress and still being fully developed.[62]

<u>Recommendation 8:</u>

For the foregoing reasons, AFIA recommends that Clause 2 of the Bill be amended so that it changes sections 53 and 136 of the *Fringe Benefits Tax Assessment Act 1986* (and any other relevant legislation), to ensure the cost of purchasing and installing home chargers is included in the FBT exemption proposed by the Bill.

PROPOSAL 9 – THE COMMITTEE SHOULD CONSIDER PROVISIONS WHICH WOULD CREATE INCENTIVES FOR SMALL BUSINESS OWNERS AND OTHER PRIVATE PURCHASERS WHO CANNOT ACCESS FBT EXEMPTIONS TO MOVE TO ZLEVs

Fringe Benefits which would be covered by the Bill's proposed FBT exemption generally relate to benefits, in this case ZLEVs, which are provided by employers to their employees.[63]

However, many Australians may not have access to ZLEVs via the types of fringe benefits which this Bill would cover in its present form. This could be because they either own or work for small businesses who do not provide such benefits.

Small Business Loans Australia estimates that of 2,361,778 business which exist is Australia:[64]

1. 31.8 percent employ fewer than 20 employees;
2. 25.7 percent employ fewer than 5 employees;
3. 25 percent have a turnover of less than $50,000.

---

[61] EVSE, 'How much does it cost to set up an EV Charging Station?' (accessed on 7 August 2022): How much does it cost to set up an EV Charging Station? - EVSE Australia.
[62] Rachel Dexter, 'All charged up: Councils push for kerbside car charging', *The Age* (accessed on 7 August 2022): Melbourne councils push for kerbside electric vehicle charging (theage.com.au).
[63] Australian Taxation Office, 'Fringe benefits tax' (accessed on 7 August 2022): Fringe benefits tax (FBT) | Australian Taxation Office (ato.gov.au).
[64] Small Business Loans Australia, 'Australian Small Business and Family Enterprise Report for 2022: Australian small business and family enterprise report for 2022 (smallbusinessloansaustralia.com).

According to the Commonwealth Government's *Small Business and Family Enterprise Ombudsman*, small businesses, i.e. those employing fewer than 20 people, employ over 4.7 million people or 41 percent of the business workforce.[65]

Recommendation 9:

AFIA recommends, given many owners and employees of small businesses and family enterprises will not be able to access the FBT exemption proposed by the Bill in its current form, the Committee should consider adding additional provisions which amend all relevant legislation to extend additional incentives for small businesses and individual's paying personal income tax to access ZLEVs.

This would more effectively achieve the Bill's stated objective of encouraging ZLEV uptake to lower emissions and combat climate change.

AFIA further recommends that the Commonwealth Government should work with the States, Territories and Local Governments to ensure:

1. There is a consistent, nationally harmonised definition of the statutory term ZLEV.
2. There are clear, public, promoted and consistent eligibility requirements for all Commonwealth, State, Territory and Local Government programs which provide incentives for the uptake of ZLEVs.

AFIA believes broader, more consistent, and nationally harmonised frameworks for legislated incentives encouraging ZLEV uptake would more effectively achieve the Bill's desirable aims of lowering emissions and combating climate change.

[65] Government's Small Business and Family Enterprise Ombudsman, *Small Business Counts* (December 2020): ASBFEO Small Business Counts Dec 2020.