



australian network of **environmental defender's offices**

Submission on Light Vehicles CO₂ Emissions Standards for Australia

30 November 2011

The Australian Network of Environmental Defender's Offices (**ANEDO**) consists of nine independently constituted and managed community environmental law centres located in each State and Territory of Australia.

Each EDO is dedicated to protecting the environment in the public interest. EDOs provide legal representation and advice, take an active role in environmental law reform and policy formulation, and offer a significant education program designed to facilitate public participation in environmental decision making.

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Submitted to:

CO₂ Emissions Standards
Vehicle Emissions and Environment Section
Surface Transport Policy
Department of Infrastructure and Transport
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Introduction

The Australian Network of Environment Defenders Offices (**ANEDO**) welcomes the opportunity to make a submission on the development of light vehicle CO₂ emissions standards. These standards are an important opportunity to reduce the carbon intensity of Australia's transport sector, and will complement the national carbon price.

We support the introduction of strong new standards for light vehicles in Australia. They are a good way to reduce the carbon intensity of our motor vehicle fleet. To make them as good as they can be, they need to be designed carefully and effectively, as part of a broader set of policies aimed at reducing Australia's transport emissions.

The following submission makes a number of recommendations for doing that. As a network of environmental lawyers, our submission will focus on the policy and regulatory aspects of the scheme, and avoid matters of science or economics. We have therefore not answered all of the questions in the Discussion Paper.

Our submission is grouped into three sections, each corresponding to a section of the Discussion Paper, and answering the questions posed therein:

1. Reducing Transport Emissions (section 2 of the Discussion Paper)
2. Targets (section 3.1 of the Discussion Paper)
3. Regulatory Models (section 3.2 of the Discussion Paper)

The sections of the Discussion Paper that each part of the submission addresses, and the questions that it answers, are set out in more detail in the footnotes to each sub-heading.

We are happy to provide further information on our submission, including through meetings or hearings, if that would be helpful. Please contact Michael Power on (03) 8341 3100 or michael.power@edo.org.au for more information.

Summary of Recommendations

1. Reducing transport emissions

- Light vehicle CO₂ emissions standards need to be matched with complementary policies to reduce motor vehicle use and drive a shift to zero-emissions transport.

2. Targets

- The scheme should use rolling five year national targets.
- The first two targets, for 2015 and 2020, should be set now.
- The 2015 and 2020 targets must be set at an ambitious and credible level.
- Future targets should be set on the advice of the Climate Change Authority.
- A single set of targets should be set for all light vehicles. Separate targets for cars and light trucks should not be set.
- The target should be calculated on a purely performance-based standard, without multipliers for new low-emissions or zero-emissions technologies.

3. Regulatory models

- Targets for individual manufacturers should be set on a 'footprint' basis.
- The scheme should be implemented by inserting a new Part into the *Motor Vehicle Standards Act 1989* (Cth), along with other necessary amendments.
- The scheme should allow 'pooling' between manufacturers, so long as it does not introduce undue complexity or compromise into the scheme.
- Banking and trading should only be allowed if the mechanism to implement them does not introduce undue complexity or compromise to the scheme.
- The scheme should include a wide range of enforcement mechanisms including financial penalties, 'name and shame' powers, enforceable undertakings, injunctions, periodic audits, executive officer liability and criminal offences.

1. Reducing transport emissions

The carbon price mechanism announced as part of the *Clean Energy Future* policy package does not apply a carbon price to fuel for light vehicles.¹ This makes it even more important to develop complementary policies to reduce emissions from this sector.

National CO₂ emissions standards for light vehicles are a great step in that direction, but they are only one part of the policy solution. They only apply to new light vehicles — they do nothing to reduce emissions from existing vehicles, and they do nothing to discourage motor vehicle use in favour of other, cleaner modes of transport.

Whilst CO₂ emissions standards are a credible option for reducing emissions from the light vehicle fleet over time, they need to be complemented by other policy measures that shift commuters towards cleaner modes of transport in the medium-term.

Examples of such policies include:

- investment in public transport (whether public, or public-private);
- support for renewable-powered electric vehicles and alternative fuels (through tax concessions or public finance, for example);
- planning cities that lend themselves to sustainable transport (for example, reducing urban sprawl, facilitating walking and cycling, etc);
- investing in low-emissions intercity transport (for example, high-speed rail between Melbourne, Sydney and Brisbane) to reduce emissions from air travel;
- removing fossil fuel subsidies (for example, the tax concession for petrol used in mining operations); and
- reducing freight emissions by investing in better freight rail networks, and encouraging more localised production and distribution to reduce demand.

This submission will not explore these options any further. They are mentioned here only to show the broad range of policy measures that are required to comprehensively address transport emissions not covered by the national carbon price. Success in tackling transport emissions will require the federal government and its state counterparts to recognise the opportunities here, and accept their shared responsibility to act.

Recommendation:

- Light vehicle CO₂ emissions standards need to be matched with complementary policies to reduce motor vehicle use and drive a shift to zero-emissions transport.

2. Targets

The success and credibility of the scheme depends on ambitious and effective national targets for reducing CO₂ emissions. They are entirely critical to its success or failure.

2.1 Staged targets²

ANEDO supports setting staged short and medium term targets. They allow the government to plot a trajectory from where we are to where we need to be. This gives

¹ *Clean Energy Plan* Appendix A p 105.

² See section 3.1.1 of the Discussion Paper, and questions 1-3.

business more certainty as to what is required from them. It also gives the public more certainty that long-term targets will actually be achieved.

Setting firm targets for 2015 and 2020 is a reasonable approach. This will give manufacturers certainty in the short to medium-term, and allow them to make the investment decisions required to achieve these targets.

Beyond 2020, ANEDO supports a series of rolling five-year targets for 2025, 2030, and so on. These targets should each be set five years in advance, to allow the scheme to respond to developments in the local vehicle market, and in the emissions profile of Australia's transport sector.

Those targets are best set on the advice of the Climate Change Authority (CCA) established under the *Clean Energy Future* policy package. As the expert authority charged with planning and reporting on Australia's progress towards its 2020 and 2050 emissions reduction targets, the CCA is the natural body to determine what contribution light vehicles should make to those overall reductions.

Setting targets on the advice of the CCA also delivers integrity and probity. As an independent body of experts, it will ensure that targets are set based on what is actually required and actually achievable, rather than pressure from lobbyists and private interests.

Recommendation:

- The scheme should use rolling five year national targets.
- The first two targets, for 2015 and 2020, should be set now.
- Future targets, for 2025 and beyond, should be set on the advice of the Climate Change Authority.

2.2 Credible reductions³

The starting point for setting an appropriate target should not be what is easy, but what is necessary. Although it is important to consider what improvements from a given base year are achievable, it would be a mistake to set targets by picking a base year and working out what percentage reductions businesses are willing to accept. It is therefore important to avoid giving undue weight to a base year and a 'percentage reduction approach'.

The target needs to be ambitious. As noted in the Discussion Paper, the target needs to be sufficiently tighter than business-as-usual reductions to justify regulatory intervention.⁴ If it merely requires business-as-usual reductions, then it will impose compliance costs on businesses for no reason.⁵ As a network of environmental lawyers, ANEDO does not have the scientific or commercial expertise to advise what specific targets are scientifically necessary and practically achievable. But it is critical that the 2015 and 2020 targets are set so as to be both of these things.

³ See sections 3.1.2-3 of the Discussion paper, and questions 4-6.

⁴ Discussion Paper, p 10.

⁵ Discussion Paper, p 10.

As mentioned above, further targets (for 2025, 2030 and so on) should be set on the advice of the CCA, to ensure that light vehicles make an appropriate contribution to Australia's overall emissions reduction challenge.

Recommendation:

- The 2015 and 2020 targets must be set at an ambitious and credible level.
- Future targets should be set on the advice of the Climate Change Authority.

2.3 No split targets⁶

ANEDO supports a single set of CO₂ targets for all light vehicles. Splitting the targets into one for passenger cars and one for light trucks risks encouraging the use of SUVs and larger vehicles. Similar problems occurred under the US CAFE standards, and should not be repeated in an Australian scheme. To encourage consumers to shift to lighter and more efficient vehicles, and to avoid unfairly penalising smaller car manufacturers who are 'early movers' in reducing carbon intensity, the scheme should set targets for all light vehicles.

Recommendation:

- A single set of targets should be set for all light vehicles. Separate targets for cars and light trucks should not be set.

2.4 Performance-based standard⁷

ANEDO supports a target calculated on a purely performance basis, rather than one that allows bonuses or multipliers for new technologies like electric vehicles. We recognise the importance of government support for zero-emissions vehicles like electric vehicles, and (as noted above) think it is vital for federal and state government to design policies to support their development (like tax concessions, grants, and seed funding). However, using the CO₂ emissions standard to achieve this goal risks undermining the veracity and integrity of the targets, and introduces problems into the scheme.

Recommendation:

- The target should be calculated on a purely performance-based standard, without multipliers for new low-emissions or zero-emissions technologies.

3. Regulatory Models

Setting credible targets is the most important step to making the scheme credible. But it is also important to ensure that the regulatory scheme designed to implement that target is effective. The following sections recommend how to do that.

3.1 Methodology for setting targets⁸

ANEDO supports a 'footprint'-based model for setting individual targets.

We prefer a foot-print model over a mass-based model because:

⁶ See section 3.1.5 of the Discussion Paper, and question 9.

⁷ See section 3.1.6 of the Discussion Paper, and question 10.

⁸ See section 3.2.1 of the Discussion Paper, and questions 12-14.

- It is based on utility: i.e. cars with a larger footprint can carry more goods and people. It thereby avoids penalising those who cannot or should not avoid using larger cars (like families or friends who car-pool, for example).
- It avoids perverse incentives, created by a mass-based model, to avoid making CO₂ emissions reductions that rely on reducing the mass of the vehicle.
- It is slightly more favourable to small car manufacturers.
- It may be harder to manipulate than a mass-based model.

As an attribute-based model, the footprint model (and the mass-based model, for that matter) requires reductions from the makers of small efficient vehicles and the makers of large inefficient vehicles alike. Unlike a flat target, it does not reward early movers who make small efficient cars, and does not penalise those who make larger inefficient cars. This makes it even more important to design other policy measures to encourage a shift toward less emissions-intensive modes of transport (smaller cars, trains, bicycles, etc).

Recommendation:

- Targets for individual manufacturers should be set on a ‘footprint’ basis.

3.2 Legislation required⁹

ANEDO prefers including the new scheme in the *Motor Vehicle Standards Act 1989* (Cth) (**‘MVS Act’**). This has the benefit of ensuring that all federal standards for motor vehicles are in the one place, and it allows the scheme to be administered through some of the same mechanisms as under the MVS Act. However, to account for the differences between the two schemes (uniform standards v sales dependent average level of performance, for example) it would be best to include the CO₂ emissions standards as a new Part of the MVS Act.

Recommendation:

- The scheme should be implemented by inserting a new Part into the *Motor Vehicle Standards Act 1989* (Cth), along with other necessary amendments.

3.3 Flexibility mechanisms¹⁰

ANEDO supports allowing manufacturers to pool together to meet targets, so long as care is taken to ensure that the scheme is not unduly complicated and the national target is not compromised. Anything that allows manufacturers to avoid unnecessary costs while meeting the overall environmental objective is a welcome addition.

For the same reasons, ANEDO supports a mechanism to allow manufacturers to bank and trade emissions reductions above their target. Banking also encourages manufacturers to make deeper reductions earlier, thus producing more vehicles at that increased efficiency. However, designing a mechanism to allow banking and trading which does not unduly complicate or compromise the scheme is hard. The creation of annual targets and tradeable credits should be treated with caution, lest they confuse the scheme or require compromises to an otherwise suitable design.

⁹ See section 3.2.4 of the Discussion Paper, and question 15.

¹⁰ See sections 3.2.5 and 3.2.6 of the Discussion Paper, and questions 20-23.

Recommendation:

- The scheme should allow ‘pooling’ between manufacturers, so long as it does not introduce undue complexity or compromise into the scheme.
- Banking and trading should only be allowed if the mechanism to implement them does not introduce undue complexity or compromise to the scheme.

3.4 Sanctions for non-compliance¹¹

To ensure that Australian manufacturers actually meet the targets, the scheme needs enforcement mechanisms strong enough to deter them from failing to meet them, but not so disproportionate or unrealistic that the prospect of enforcement is only theoretical.

For that reason, ANEDO does not support excluding Australian manufacturers from the market if they fail to meet their target. This remedy is so harsh that a government is more likely to change the target for a manufacturer than it is to impose the penalty.

Equally, a name and shame approach on its own is clearly an insufficient deterrent.

The best approach is to include a wide range of enforcement mechanisms to allow the regulator to apply the mechanism most appropriate to the situation. ANEDO therefore supports the inclusion of the following mechanisms in the scheme:

- Large financial penalties, the same as those used under the EU scheme (i.e. (\$130 (adjusted for inflation) per g/km over target) x (no. of vehicles registered to that manufacturer in that year)).
- Enforceable undertakings and/or injunctions, allowing the regulator to require a manufacturer to ‘make good’ the shortfall in emission reductions.
- Anti-avoidance provisions comparable to those in the *Clean Energy Act 2011* (Cth)
- Periodic audits to ensure that manufacturers are reporting accurately and complying with the scheme.
- Criminal offences for intentional or reckless breaches of the Act.
- Executive officer liability for financial or criminal penalties.

Recommendation:

- The scheme should include a wide range of enforcement mechanisms including financial penalties, ‘name and shame’ powers, enforceable undertakings, injunctions, periodic audits, executive officer liability and criminal offences.

For more information in relation to this submission please contact Michael Power, Lawyer – Law Reform (EDO Vic), on Michael.power@edo.org.au or (03) 8341 3100.

¹¹ See section 3.2.7 of the Discussion Paper, and questions 24-25.