15 September 2023

Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

Via email: EnforcementCoordination@accc.gov.au

EVC Submission to Consultation on Draft Guidance

The Electric Vehicle Council (EVC) welcomes the opportunity to respond to the ACCC consultation on Draft Guidance on Environmental and Sustainability Claims (**Draft Guidance**). The EVC is the national peak body for the electric vehicle (EV) industry in Australia. Our mission is to accelerate the electrification of transport for a sustainable and prosperous future. Representing members across the EV value chain, including car, bus and truck manufacturers, importers, fleet operators, charging infrastructure suppliers, network providers, battery recyclers, financiers and professional services, the EVC is deeply committed to fostering responsible practices within the industry.

The Draft Guidance rightly recognises that environmental claims have become a significant factor for consumers when making purchasing decisions. Accordingly, it is critical that all environmental claims made by the EV industry are evidence-based. The EVC and its members remain committed to ensuring that consumers are provided with accurate and up-to-date information to make informed decisions that contribute to sustainability objectives, including a reduction in transport emissions to help achieve Australia's legislated climate targets.

Representations about future sustainability actions

The EVC agrees with the need for adequate assessment and planning to quantify emissions reductions and present accurate representations about future actions (as per page 14 of the Draft Guidance). It is vitally important that that all government and private sector fleet electrification strategies are not just headline targets, but are actually deliverable, and that performance against these targets is consistently measured.

Setting clear, achievable, and measurable goals is crucial to prevent strategies from becoming misleading or devoid of practical significance to consumers. To date, there remains significant room for improvement across both government and private sector electrification strategies in terms of transparency of fleet targets. This includes publication of headline targets and inadequate disclosure of the proportion of vehicles that may be excluded under particular transition strategies e.g. vehicles stated to not have a fit-for-

purpose zero emission replacement. This presents challenges for measuring progress towards net-zero emissions targets and reduces certainty for consumers.

Consideration of lifecycle emissions and consistent terminology

The EVC supports improved awareness and publication of life-cycle emissions to provide consumers with comprehensive information about the environmental impacts of their purchasing decisions. This information will empower consumers to make more informed choices that align with their values. The EVC is currently finalising for publication a life-cycle emissions tool which will compare differences between average battery EVs (BEVs) and petrol vehicles across different vehicle segments (see extract below).

Lifecycle Emissions of Battery EVs (Extract)

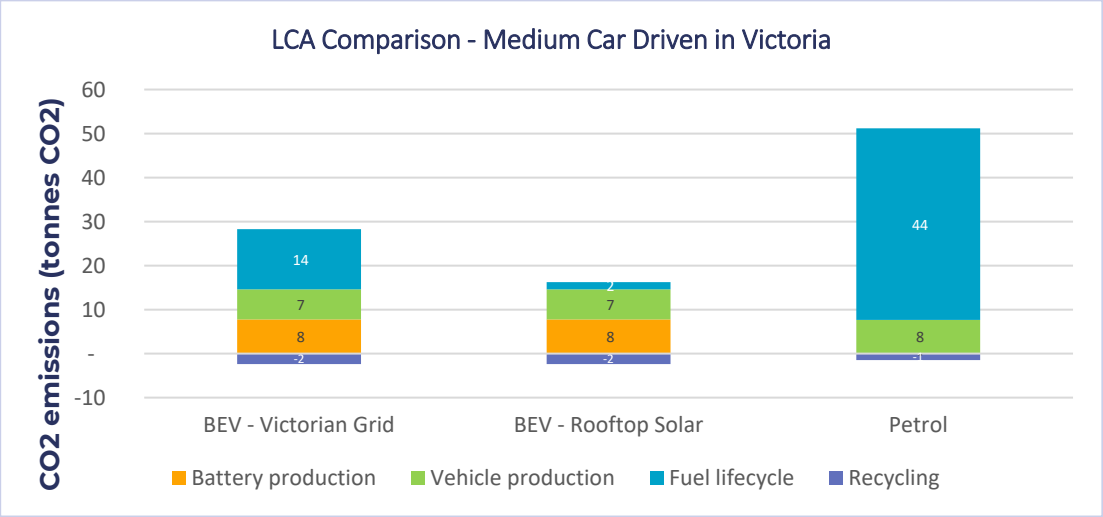
There are a lot of variables that affect a vehicle's emissions. It's complex and can be hard to understand. We have worked with EU experts at Transport & Environment to make an easy-to-use calculator which can help you understand the general differences in lifecycle emissions between battery EVs and petrol vehicles.

Petrol and diesel cars, or ICE vehicles, produce most of their pollution as tailpipe emissions. This pollution is created by burning fossil fuel in the engine to propel the vehicle.

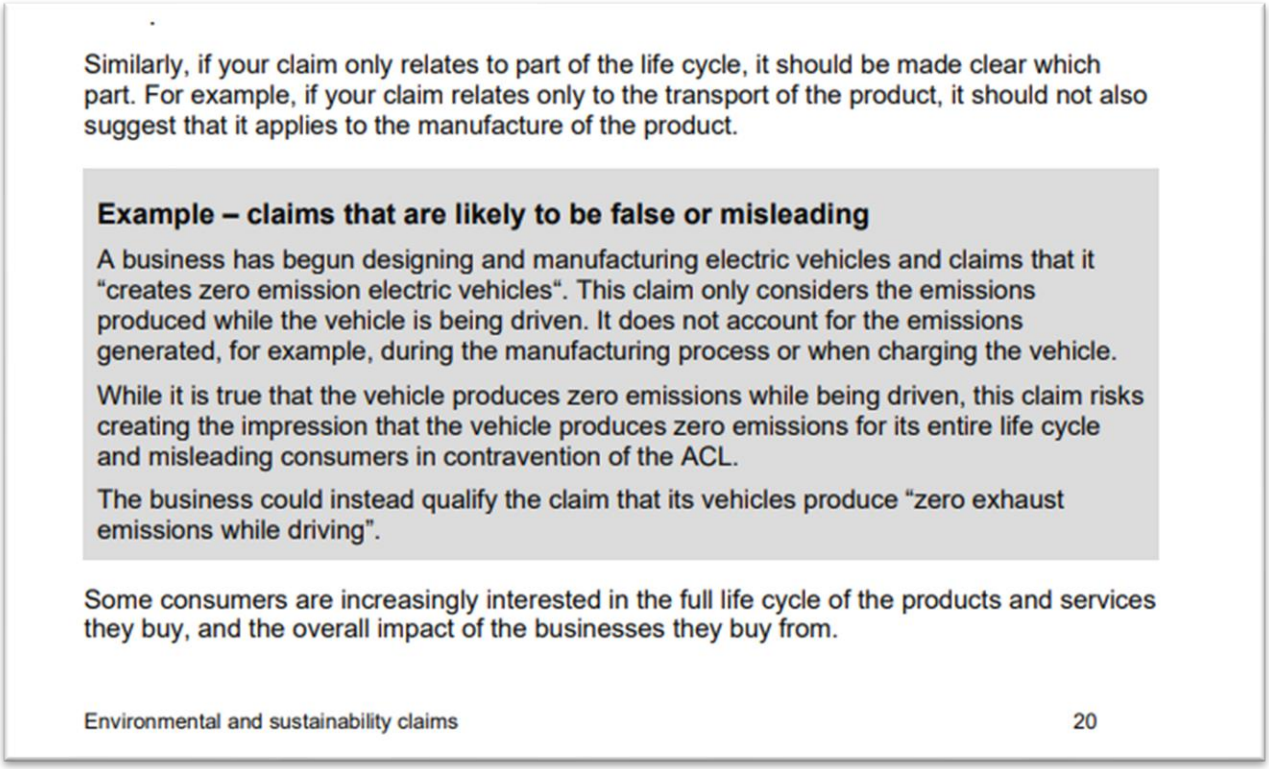
In contrast, battery EVs use electricity stored in the vehicle's battery to power one or more electric motors which propel the vehicle. As a result, BEVs do not produce any tailpipe emissions. Over their lifetime, the level of emissions generated by a BEV largely depends on the type of electricity used to charge the vehicle. Unlike petrol vehicles, which effectively have the same rate of emissions for their operating life, BEV emissions will continue to fall as the electricity grid continues to get cleaner.

The manufacturing of both petrol vehicles and EVs creates emissions. At present, BEV manufacturing emissions are generally higher than petrol vehicles as battery production remains resource and energy intensive, though continual advancements in battery technology will allow this to improve over time.

Emissions from battery production are expected to continue to fall over the coming years, from global moves to decarbonise supply chains from mining through to manufacturing. (…)



We appreciate the need for improved transparency about lifecycle emissions for all products, however we also note that it also important for consistent terminology to be used internationally. We note that page 20 of the Draft Guidance states concerns related to the use of "zero emission electric vehicle":



Similarly, if your claim only relates to part of the life cycle, it should be made clear which part. For example, if your claim relates only to the transport of the product, it should not also suggest that it applies to the manufacture of the product.

Example – claims that are likely to be false or misleading

A business has begun designing and manufacturing electric vehicles and claims that it "creates zero emission electric vehicles". This claim only considers the emissions produced while the vehicle is being driven. It does not account for the emissions generated, for example, during the manufacturing process or when charging the vehicle.

While it is true that the vehicle produces zero emissions while being driven, this claim risks creating the impression that the vehicle produces zero emissions for its entire life cycle and misleading consumers in contravention of the ACL.

The business could instead qualify the claim that its vehicles produce "zero exhaust emissions while driving".

Some consumers are increasingly interested in the full life cycle of the products and services they buy, and the overall impact of the businesses they buy from.

Environmental and sustainability claims 20

We agree that while a pure BEV will not generate exhaust or tailpipe emissions (which is crucial to achieving legislated CO_2 reduction targets), the emissions associated with the operational phase of a vehicle will depend on the relevant energy source used to charge the vehicle (whether rooftop solar, or grid emissions which will reduce as the energy system decarbonises). Similarly, for hydrogen fuel-cell vehicles (FCEVs), the source of hydrogen used to power the vehicle is an area that requires improved awareness by private sector and governments, particularly given the limited production of hydrogen from renewable energy sources.[1]

We would, however, like to clarify whether the use of the term "zero-emission vehicle" within a specified context, would raise concerns with respect to misleading conduct and contravention of the ACL.

It is generally understood and defined in policies and regulation, both within Australia and overseas, that "zero-emission vehicle" refers to vehicles with no tailpipe or exhaust emissions from their operation (whether they are battery electric vehicles, or hydrogen fuel-cell vehicles) (see Appendix 1). For example, the Australian Government's National Electric Vehicle Strategy (NEVS) defines a zero-emission vehicle (ZEV) as "a vehicle that emits no

[1] https://www.greenvehicleguide.gov.au/pages/LowAndZeroEmissionVehicles/HydrogenVehicleInformation.

pollutants from its operation. Electric-only vehicles (both BEVs and FCEVs are zero-emissions vehicles."[2]

The ACT Government's Zero Emission Vehicle Strategy 2022-30: "ZEVs are defined as cars, commercial vehicles, trucks, motorbikes and personal mobility devices, such as electric scooters, that produce zero tailpipe emissions. This includes battery electric vehicles (BEVs) and hydrogen vehicles."[3]

This is consistent with European regulation on CO_2 emission performance standards for new passenger cars and new light commercial vehicles,[4] which defines zero-emission vehicles as "battery electric vehicles, fuel-cell and other hydrogen powered vehicles," as well as references in California's pollutant emission standards which determine "Zero-emission vehicle" or "ZEV" to mean "a vehicle that produces zero exhaust emissions of any criteria pollutant (or precursor pollutant) or greenhouse gas, excluding emissions from air conditioning systems, under any possible operational modes or conditions."[5]

This is also consistent with the terminology adopted by other international bodies, including the International Energy Agency, International Council on Clean Transportation, and the Intergovernmental Panel on Climate Change.

While it is recognised that there are upstream emissions associated with production and energy use for all products, it is also important to maintain clarity in terminology to avoid confusion among consumers. All products have lifecycle emissions attached, and vehicles are no exception. The emphasis should be placed on transparently disclosing all environmental impacts rather than deviating from established definitional terms.

While the intention of the draft guidance is to be commended, we suggest the ACCC look to established definitions of terms such as "zero emission vehicles" to avoid potential confusion among consumers and maintain consistency on a global scale. Instead, it will remain important to ensure that the use of the term is unambiguous from the surrounding context, and that consumers are not given the false impression that there are zero lifecycle emissions associated with any vehicle, given all vehicles – regardless of powertrain – have lifecycle emissions.

Transparency of environmental benefits of different powertrains

Accordingly, while it is important to improve transparency about lifecycle emissions of electric vehicles, the ACCC should also consider development of guidance with respect to other powertrains, particularly as the global transition progresses to decarbonise transport.

There remains a substantial risk of the impact of both petrol-hybrids and plug-in hybrids (PHEVs) being overstated, providing the misleading impression that hybrid vehicles provide the same environmental benefits or emissions savings as a fully electric vehicle, which is

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[2] https://www.dcceew.gov.au/sites/default/files/documents/national-electric-vehicle-strategy.pdf.
[3] https://www.climatechoices.act.gov.au/__data/assets/pdf_file/0006/2038497/2022_ZEV_Strategy.pdf
[4] *Regulation (EU) 2023/851 of the European Parliament and of the Council of 19 April 2023 amending Regulation (EU) 2019/631 as regards strengthening the CO2 emission performance standards for new passenger cars and new light commercial vehicles https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32023R0851.*
[5] "California 2026 and Subsequent Model Year Criteria Pollutant Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," as of November 30, 2022 (adopted August 25, 2022), incorporated by reference in Section 1961.4(c)(1), Title 13, CCR https://ww2.arb.ca.gov/sites/default/files/2023-02/LDTPs_2026%2BMY_CP.pdf.

not the case.[6] This presents a particular challenge for consumers making a substantial and infrequent purchase decision.

While some consumers are not looking to purchase an EV, there are others that may be looking to make an environmentally conscious decision, and rely upon the information being provided at the point of sale. Accordingly, significant attention will need to be placed on the accuracy of information presented to a consumer who may be time-poor and is required to quickly balance considerations of cost with potential environmental benefits which may be inaccurate or misleading.

A further challenge remains the limited availability of real-world tailpipe emissions data for the Australian context. As part of our submission to the Federal Government's consultation on Fuel Efficiency Standards, we requested that the Government consider the opportunity to require future vehicles to be fitted with on-board fuel and energy consumption monitors (OBFCM), to collect data on real-world emissions, which has been compulsory for new passenger vehicles in the EU since 2021.[7]

Summary

The EVC welcomes the ACCC's Draft Guidance, which will serve as an important resource for businesses in ensuring the accuracy of all claims being made to consumers. With respect to representations made about future sustainability actions, we support improved transparency with respect to government and private sector electrification strategies to avoid misleading consumers and to ensure substantive progress toward net-zero emissions targets.

In addition, the EVC is very supportive of improved awareness of lifecycle emissions for all products. Our forthcoming lifecycle emissions tool aims to empower consumers with comprehensive and up-to-date information about the upstream and operational emissions for both BEVs and petrol vehicles.

We seek to clarify that "zero emission vehicle" should be understood as vehicles with no tailpipe or exhaust emissions from operation, as commonly defined in established policies and regulations, while recognising the risk remains that the way in which a product is marketed may create a misleading impression that must be addressed.

We recommend the ACCC to develop guidance for other powertrains, especially petrol-hybrids and PHEVs, to prevent overstatement of their environmental benefits relative to fully electric vehicles.

Continuous improvements are needed to transparency of sustainability disclosures across the automotive space, including the EV industry. The EVC is committed to working collaboratively to ensure that the principles outlined in the ACCC guidance provide clarity to business and consumers, while promoting transparency and accuracy in environmental claims.

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[6] Transport & Environment (2022) LCA Update, https://www.transportenvironment.org/wp-content/uploads/2022/05/TE_LCA_Update-June_corrected.pdf.
[7] https://electricvehiclecouncil.com.au/wp-content/uploads/2023/05/EVC-Submission-Fuel-Efficiency-Standard-Consultation-Paper-Response-May-2023.pdf.

If you have any questions on this submission, please contact Natalie Thompson, Senior Manager - Policy at: office@evc.org.au.

Thank you for your consideration of our submission.

Yours sincerely,

Behyad Jafari

Chief Executive Officer

Electric Vehicle Council

Appendix 1 – Additional Information

Zero-emission vehicle (ZEV)	A vehicle that emits no pollutants from its operation. Electric-only vehicles (both BEVs and FCEVs are zero-emissions vehicles.

Extract - National Electric Vehicle Strategy (p37). https://www.dcceew.gov.au/sites/default/files/documents/national-electric-vehicle-strategy.pdf

(10) The strengthened CO_2 emissions reduction requirements should encourage an increasing share of zero-emission vehicles to be deployed on the Union market while providing benefits to consumers and citizens in terms of air quality, strengthening energy security and efficiency, and the associated energy savings, as well as ensuring that innovation in the automotive value chain can be maintained. Within the global context, the Union automotive value chain must be a leading actor in the ongoing transition towards zero-emission mobility. The strengthened CO_2 emissions reduction standards are technology neutral in reaching the fleet-wide targets that they set. Different technologies are and remain available to reach the zero-emission fleet-wide target. Zero-emission vehicles currently include battery electric vehicles, fuel-cell and other hydrogen powered vehicles, and technological innovations are continuing. Zero- and low-emission vehicles, which also include well performing plug-in hybrid electric vehicles, can continue to play a role in the transition pathway. In that context, it is important to ensure accurate and complete data on the emission performance of those plug-in hybrid electric vehicles.

Extract - Regulation (EU) 2023/851 of the European Parliament and of the Council of 19 April 2023 amending Regulation (EU) 2019/631 as regards strengthening the CO2 emission performance standards for new passenger cars and new light commercial vehicles https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32023R0851

"Zero-emission vehicle" or **"ZEV"** means a vehicle that produces zero exhaust emissions of any criteria pollutant (or precursor pollutant) or greenhouse gas, excluding emissions from air conditioning systems, under any possible operational modes or conditions

Extract - "California 2026 and Subsequent Model Year Criteria Pollutant Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," as of November 30, 2022 (adopted August 25, 2022), incorporated by reference in Section 1961.4(c)(1), Title 13, CCR https://ww2.arb.ca.gov/sites/default/files/2023-02/LDTPs_2026%2BMY_CP.pdf