

Submission on the Inquiry into the transition to Electric Vehicles

5 April 2024

Contact: **Taylah Spirovski**
President, NSW Young Lawyers

Sarah Ienna
Submissions Lead, NSW Young Lawyers

Amelia Cook
Chair, NSW Young Lawyers Environment and Planning Law Sub-Committee

Contributors: Nayonika Bhattacharya, Amelia Cook, Rainer Gaunt, Stephanie Miller and Phoebe Saxon

The NSW Young Lawyers Environment and Planning Sub-Committee (**Sub-Committee**) makes the following submission in relation to the Standing Committee on Climate Change, Energy, Environment and Water's Inquiry into the transition to electric vehicles.

NSW Young Lawyers

NSW Young Lawyers is a Committee of the Law Society of New South Wales that represents the Law Society and its members on issues and opportunities arising in relation to young lawyers i.e. those within their first five years of practice or up to 36 years of age. Through its 15 sub-committees, each dedicated to a substantive area of law, NSW Young Lawyers supports practitioners in their professional and career development by giving them the opportunity to expand their knowledge, advance their career and contribute to the profession and community.

The NSW Young Lawyers Environment and Planning Sub-Committee is comprised of a group of volunteers and subscribers interested in our natural and built environment. The Sub-Committee focuses on environmental and planning law issues, raising awareness in the profession and the community about developments in legislation, case law and policy. The Sub-Committee also takes an interest in international environmental and climate change laws and their impact within Australia.

As set out in its Climate Change and the Law Policy Statement of 1 November 2019, NSW Young Lawyers accepts the science and wide-ranging effects of climate change, including as outlined by the United Nations Intergovernmental Panel on Climate Change in its leading expert reports. NSW Young Lawyers considers that Australia has the ability and a responsibility to rapidly reduce emissions and actively help to keep the world's emissions within its remaining 'carbon budget'.

NSW Young Lawyers recognises that there is a climate emergency, posing an unprecedented challenge for human rights and the rule of law. In order for there to be intergenerational equity and climate justice, as well as interspecies equity and ecological sustainability, the law needs to enable and require Australia to rapidly decrease CO₂ (and other greenhouse gas) emissions and to be legally accountable for their adverse contributions to the impacts of climate change.

Summary of recommendations

1. The Standing Committee must carefully consider how to best offer and maintain existing fiscal incentives for the uptake of electric vehicles within the confines of Australia's legal framework in order to remain competitive with international markets.
2. The Standing Committee must consider and evaluate the applicability of indirect consumer benefits as implemented in peer countries for introduction in Australia.
3. The Standing Committee should prioritise and further encourage the work being undertaken by states and territories to facilitate the rapid development of charging infrastructure and ensure infrastructure is readily available, easily accessible and cost-effective.
4. The Standing Committee should carefully review and consider examples of incentives for charging in peer countries and how similar incentives could be introduced to facilitate at-home charging infrastructure.
5. The Standing Committee should encourage and facilitate the introduction of some mechanism by which the regular review of state and territory planning frameworks and policies dealing with EVs to maintain consistency and efficacy at a federal government level and facilitate information sharing between states and territories.
6. The Standing Committee should ensure that information outlining any new or existing incentives is accessible, centralised and openly available to promote awareness and understanding across states and territories.
7. The Standing Committee should have careful regard to the impact of the High Court's ruling in *Vanderstock & Anor v State of Victoria* [2023] HCA 30 and how this may impact on any recommendations it makes on relevant tax incentives to encourage the uptake of EVs.

Introduction

1. The Sub-Committee welcomes the opportunity to provide recommendations to the House of Representatives Standing Committee on Climate Change, Energy, Environment and Water (**Standing Committee**) on the Inquiry into the transition to electric vehicles (**EVs**). In particular, the Sub-Committee wishes to comment on the following terms of reference:
 - A. the establishment of resources, systems and infrastructure required to support transition to EVs; and
 - B. the impact of moving from internal combustion engine vehicles, including fuel excise loss, existing auto industry component manufacturers and the environment.
2. In accordance with the vision, objectives and outcomes outlined in the federal Government's National Electric Vehicle Strategy published in April 2023, significant steps must be undertaken by government to facilitate an increase in the uptake of EVs to achieve our national emissions ambitions of 43% below 2005 levels by 2030 and net zero by 2050.¹
3. Australia remains lagging in the global uptake of EVs, with car sales of EVs accounting for just 3.8% of new car purchases in 2022, compared with a 9% global average, 15% in the United Kingdom and 17% in the European Union.² Whilst Australia's overall percentage remains behind its peer countries, the 2022 figures represent an 86% increase from 2021, and therefore indicate an increasing momentum in Australia towards the uptake of electric vehicles. This momentum needs to be carefully supported and facilitated by government and increased supply.
4. As such, the Sub-Committee makes the following comments and recommendations, including in relation to direct and indirect consumer incentives, planning law and charging infrastructure, and potential impacts on fuel excise, for the attention of the Standing Committee in the hope that they can assist in identifying key issues and facilitating next steps in the transition to EVs.
5. We note that references to EVs throughout this submission refer to and incorporate Battery Electric Vehicles (BEVs), Plug-in Hybrid Electric Vehicles (PHEVs) and Hybrid Electric Vehicles (HEVs).

¹ See *National Electric Vehicle Strategy: Increasing the Uptake of EVs to Reduce our Emissions and Improve the Wellbeing of Australians* (Report, Commonwealth of Australia, 2023)

<<https://www.dceew.gov.au/sites/default/files/documents/national-electric-vehicle-strategy.pdf>>.

² Ibid 6.

A. The establishment of resources, systems and infrastructure required to support the transition to EVs

6. The Standing Committee must consider how to best utilise and offer direct and indirect consumer incentives to not only support Australia's transition to electric vehicles, but also to align with the Australian and states' respective targets to reduce CO₂ emissions. As such, the Sub-Committee has outlined some examples of key direct and indirect incentives which could be considered. These incentives are particularly important in the difficult electric vehicle market landscape where vehicle prices are comparatively high, driving range is limited, and charging infrastructure is scarcely available (compared to fuel).³

Direct consumer incentives

7. The Sub-Committee submits that direct consumer incentives are the most effective in driving the uptake of electric vehicles, particularly those that are substantially fiscal.⁴ Australia has both at its federal, and its state and territory level, different fiscal incentives (for example, taxable income benefits) to promote the uptake of electric vehicles. This is consistent with the global landscape of the market of electric vehicles.
8. However, more competitive fiscal incentives will always be best to ease the transition to electric vehicles in Australia. For example, not only does France operate a 'bonus system' whereby owners of vehicles with comparatively high CO₂ emissions values pay a one-time penalty tax upon registration and low-emitting vehicles (<20g CO₂/km) are subsidised,⁵ it also offers a 'super bonus' to consumers who scrap old diesel cars (registered prior to 2011).⁶ Such an incentive both directly promotes the uptake of electric vehicles, but also indirectly aids the transition by offering a further incentive for those who leave the less favourable options behind.
9. However, as outlined below in the discussion of the High Court case of *Vanderstock & Anor v State of Victoria* [2023] HCA 30, the implementation of any direct incentives that may include tax reform must

³ See Pawel Bryła, Shuvam Chatterjee and Beata Ciabiada-Bryła, 'Consumer Adoption of Electric Vehicles: A Systematic Literature Review' (2023) 16(1) *Energies* 205 <<https://www.mdpi.com/1996-1073/16/1/205>>.

⁴ Uwe Tietge et al, *Comparison of Leading Electric Vehicle Policy and Deployment in Europe* (White Paper, May 2016) <https://theicct.org/sites/default/files/publications/ICCT_EVpolicies-Europe-201605.pdf> 68.

⁵ European Automobile Manufacturers' Association, *ACEA Tax Guide 2022* (Tax Guide, 2 June 2022) <<https://www.acea.auto/publication/acea-tax-guide-2022>> 110-12.

⁶ Ibid 113.

carefully consider the legality and the constitutional implications of such reforms within Australia's federal system where the federal government maintains exclusive control of duty excise.

10. Further to the above, it is important that any policy or legislative changes or recommendations ensure that a fair and reasonable balance is struck between imposing penalties or disincentives on the purchasing or maintaining of high emission vehicles and not unfairly impacting those who are unable to afford EVs.
11. The Sub-Committee recommends that Australia ensures it remains competitive with international markets and stays on track with its CO₂ emissions reduction targets by maintaining strong fiscal incentives for the uptake of electric vehicles.

Recommendation 1:

The Standing Committee must carefully consider how to best offer and maintain existing fiscal incentives for the uptake of electric vehicles within the confines of Australia's legal framework in order to remain competitive with international markets.

Indirect consumer incentives

12. Indirect consumer incentives are important in supporting any direct consumer incentives.⁷ Indirect incentives which promote EV uptake are necessary to bolster the day-to-day appeal of EVs over other vehicles. Some examples of indirect consumer incentives implemented by peer countries are as follows.

Free or reduced parking

13. The German city of Stuttgart offers free parking in public car parks for EVs,⁸ and certain boroughs in London offer free or reduced cost parking for EVs.⁹
14. Paris also offers free parking options for registered low emission vehicles. A light vehicle can park for free for 6 consecutive hours in the same paid parking space and an electric two-wheel drive is permitted to park for free in any paid parking space between 9:00am and 8:00pm. Owners (both residents and non-residents) are able to take advantage of this benefit simply by applying for a low emission vehicle permit.¹⁰

⁷ Tietge et al (n 4) 68.

⁸ Tietge et al (n 4) 18.

⁹ Transport for London, 'Electric Vehicles and Charge Points' (Web Page) <<https://tfl.gov.uk/modes/driving/electric-vehicles-and-rapid-charging>>.

¹⁰ 'Le Stationnement des Véhicules Basse émission et des 2-Roues Motorisés électriques (Web Page, 18 March 2024) <<https://www.paris.fr/pages/les-autres-offres-de-stationnement-2355/#generalites>>.

15. Amsterdam offers slightly varied benefits for EV owners. Parking spaces that are attached to charging stations are reserved for EVs and priority access is given to EV owners when applying for and obtaining city parking permits. The latter is a particularly attractive benefit in a context where owners of conventional cars can wait for several years for a permit, especially when applying for permits for the city centre.¹¹ However, if a charging parking space is in an area where paid parking is in force, a valid parking permit or payment for parking is required i.e. EV owners are not afforded free parking.
16. Norway has provided various indirect consumer incentives over the years of its roll out of its now well-established EV scheme. Initially, EVs were the subject of reduced or no road tax, however, since 2022, EVs are now fully taxed. Up to 2017, EVs did not incur toll road charges or charges on car ferries, and enjoyed free municipal parking. Since 2023, EVs are now liable for 70% of the amount charged for a toll road. EVs have been permitted to drive in bus lanes since 2005, however, from 2016, some local authorities have limited this access to EVs carrying a minimum number of passengers. From 2022, Norway has required that all publicly procured cars must be EVs.¹²

Recommendation 2:

The Standing Committee must consider and evaluate the applicability of indirect consumer benefits as implemented in peer countries for introduction in Australia.

Planning law and charging infrastructure

17. In addition to the direct and indirect consumer incentives set out above, readily available, easily accessible, and cost-effective charging infrastructure for EVs is one of the most persuasive incentives which will support Australia's transition to EVs. To combat the limitation in mobility of EVs compared to other vehicles, in a context where EVs are subjected to a limited driving range and consumers may experience "range anxiety", the development of abundant charging infrastructure must be prioritised. Further, research and development in fast charging technology should be funded and supported.
18. It is the Sub-Committee's view that Australians will be hesitant to purchase electric vehicles without accessible charging infrastructure, including publicly accessible superchargers and private chargers available in houses and apartment complexes.

¹¹ Tietge et al (n 4) 44-45; City of Amsterdam, 'Charging and Parking Electric Vehicles' (Web Page) <<https://www.amsterdam.nl/en/parking/electric-charging>>.

¹² 'Norwegian EV Policy' (Web Page) <<https://elbil.no/english/norwegian-ev-policy>>.

19. If Australia is to meet its electric vehicle targets, planning law should enable the rapid development of charging infrastructure by both the private and public sectors.
20. The Commonwealth will not be able to legislate in this area, as planning law is a state responsibility. However, to the extent that states and territories have not adopted planning provisions that specifically address and facilitate the streamlined development of electric vehicle charging infrastructure, the Commonwealth should encourage them to do so as part of its electric vehicle strategy.¹³

Recommendation 3:

The Standing Committee should prioritise and further encourage the work being undertaken by states and territories to facilitate the rapid development of charging infrastructure and ensure infrastructure is readily available, easily accessible and cost-effective.

Incentives related to charging infrastructure

21. A relevant obstacle to the transition to EVs is a general lack of opportunity for owners to charge EVs at home. The convenience of home charging makes the uptake of EVs very attractive and should therefore be prioritised in Australia's move to EVs.
22. Examples from peer countries demonstrate the different incentives which could be offered to support home charging and the installation of charging infrastructure more generally.
23. Since 2017, Norway has recognised a charging right for people living in apartment buildings.¹⁴
24. The UK has an Electric Vehicle Homecharge Scheme which subsidises the installation of private EV chargers to a maximum of 75% or 350 pounds of the total installation cost.¹⁵ Similarly, the French government grants tax credits for individuals who install private charging infrastructure for EVs of 75%, at a maximum of 500 euros per controllable load system.¹⁶

¹³ See, for example, amendments made in 2023 to the *State Environmental Planning Policy (Transport and Infrastructure) 2021* (NSW) (**T&I SEPP**) by way of the *State Environmental Planning Policy (Transport and Infrastructure) Amendment (Electric Vehicles) 2023* (NSW) which expressly permit the development of electric vehicle charging units as "exempt development", "development permissible without consent", and "development permissible with consent" in certain circumstances. However, we note that the T&I SEPP does not specify who is ultimately responsible for the cost of the additional electricity consumption that will flow from the installation of publicly available electric vehicle charging units.

¹⁴ Norwegian EV Policy' (n 12).

¹⁵ See 'Electric Vehicle Chargepoint Grant for Renters and Flat Owners' (Web Page, 1 April 2022) <<https://www.find-government-grants.service.gov.uk/grants/electric-vehicle-chargepoint-grant-for-renters-and-flat-owners-1>>.

¹⁶ 'Income Tax: Installation of Electric Vehicle Chargers (Tax Credit)' (Web Page, 1 January 2024) <<https://www.service-public.fr/particuliers/vosdroits/F35578?lang=en>>.

25. In relation to charging infrastructure more broadly, in 2013, the UK government delivered the Plugged-in Places program whereby public funds matched private investments in charging infrastructure. As a result, approximately 5,000 charging points were installed, 65% of which are publicly accessible.¹⁷
26. An example where a national scheme can then drive local incentives is in Glasgow. On the back of the UK's Plugged-in Places program, the Glasgow City Council funded electricity to make available free charging of EVs at the chargers which were installed as part of that program.¹⁸

Recommendation 4:

The Standing Committee should carefully review and consider examples of incentives for charging in peer countries and how similar incentives could be introduced to facilitate at-home charging infrastructure.

Provisions for public use

27. In NSW, the provisions in the *State Environmental Planning Policy (Transport and Infrastructure) 2021* (NSW) allow electric vehicle charging units to be installed with consent on public land for the use of the owner of the adjacent residential premises, where the charging unit is for non-commercial use, connected to the electricity meter of the owner or occupier of the premises, the cables are located underground and consent is obtained.¹⁹ These types of provisions will enable greater uptake of electric vehicles for dwellings that do not have off-street parking, however the cost of installation may currently be prohibitive.
28. These expanded provisions in the current NSW planning framework present an example of an attempt to facilitate an increase in the availability of charging units, however, their efficacy has not yet been measured and there may be unforeseen outcomes that require additional regulation in the future.

Developments in other states

¹⁷ See Office for Low Emission Vehicles, 'Plugged-in Places Programme' (Guidance) <<https://www.gov.uk/government/publications/plugged-in-places/plugged-in-places>>; Office for Low Emission Vehicles, 'Lessons Learnt from the Plugged-in Places Projects' (July 2013) <<https://assets.publishing.service.gov.uk/media/5a7c699bed915d696ccfc9a1/plugged-in-places-lessons-learnt.pdf>>.

¹⁸ Tietge et al (n 4) 26.

¹⁹ See *State Environmental Planning Policy (Transport and Infrastructure) 2021* (NSW) cl 2.124B.

29. While the Sub-Committee's expertise primarily relates to the NSW legal framework, it understands other states have also introduced policies and incentives to encourage the uptake of EVs and the development of the necessary infrastructure to support such uptake.²⁰
30. Noting the differing legislative frameworks and policy incentives being implemented across Australia, the implementation of some mechanism by which key lessons from the experiences of states and territories could be regularly reviewed may be of some benefit at the federal level. This could also facilitate information sharing as to policy successes between states and territories.

Recommendation 5:

The Standing Committee should encourage and facilitate the introduction of some mechanism by which the regular review of state and territory planning frameworks and policies dealing with EVs to maintain consistency and efficacy at a federal government level and facilitate information sharing between states and territories.

Promoting awareness of EVs and their associated incentives

31. To support the direct and indirect consumer incentives such as those outlined above, adequate measures to promote consumer awareness are required. Transparent and accessible information will only encourage the uptake of EVs, particularly where the message communicated is one which makes clear that EVs are a stable, long-term strategy that will be supported by the federal and/or relevant state governments on a continuing and unfaltering basis. It is important to acknowledge that consumers' contemplation of the risks and benefits of EVs will play a significant role in choosing to transition to an EV, and thus the most clear and straightforward incentives and marketing strategies are the ones likely to be most effective.²¹
32. An example abroad is the establishment by the United States Department of Energy of an Alternative Fuels Data Center where, among other things, any person can access information about fuel and vehicle types, laws and incentives related to alternative fuels and 'advanced' vehicles, the number of Clean Cities and Communities coalitions²² established in a State, and statistics about vehicle registrations, fuel

²⁰ See, for example, State of Queensland, 'Electric Vehicle (EV) Charging Infrastructure' (Practice Note, November 2018) <https://www.statedevelopment.qld.gov.au/__data/assets/pdf_file/0016/18142/practice-note-electric-vehicle-charging.pdf>; Government of South Australia, 'Electric Vehicles' (Energy and Mining, Web Page) <<https://www.energymining.sa.gov.au/industry/modern-energy/electric-vehicles>>; State of Victoria, 'Victoria's Zero Emissions Vehicle Roadmap' *Environment, Land, Water and Planning* (Roadmap, May 2021) <https://www.energy.vic.gov.au/__data/assets/pdf_file/0031/583726/Zero-emission-vehicle-roadmap.pdf>.

²¹ See, for example, Bryla, Chatterjee and Ciabiada-Bryla (n 3).

²² Clean Cities and Communities is a United States Department of Energy partnership to advance clean transportation nationwide. The more than 75 Clean Cities and Communities coalitions that have been established work locally in urban,

consumption and prices, and electricity sources and vehicle emissions.²³ The website allows users to filter by State, fuel type, fleet type, and access maps and vehicle cost calculators.

33. Further to the above, the dissemination of information about the location of available charging units is essential for the uptake of electric vehicles. The amendments to the T&I SEPP in NSW provide a relevant example of advertising signage able to be located on an electric vehicle charging unit provided that the requirements of the T&I SEPP are met.²⁴ This is a positive inclusion in those provisions, as the location of charging stations may be inconspicuous without appropriate signage. The provisions do not specify that the advertising signage is restricted only to advertising the electric vehicle charging unit itself, so it may be open for electricity supply authorities and public authorities to utilise the advertising space to promote other commercial interests.

Recommendation 6:

The Standing Committee should ensure that information outlining any new or existing incentives is accessible, centralised and openly available to promote awareness and understanding across states and territories.

B. The impact of moving from internal combustion engine vehicles, including fuel excise loss, existing auto industry component manufacturers and the environment

34. Fuel excise in Australia is charged by the federal government under its power to impose 'duties of customs and excise' under s. 90 of the Constitution. Therefore, as EV use increases and the use of petrol vehicle decreases, this will mean a loss of revenue for the federal government. The fuel excise is a flat sales tax imposed on petrol and diesel, currently set at 48.8 cents per litre and is a major source of revenue for the federal government.
35. As confirmed by the recent High Court decision *Vanderstock & Anor v State of Victoria* [2023] HCA 30 (***Vanderstock***), it remains open to the federal government to impose a road use charge (based on the number of kilometres travelled) on electric vehicle users (which is does not currently charge) to compensate for the loss in fuel excise.

suburban, and rural communities to strengthen the United States' environment, energy security, and economic prosperity. See <https://cleancities.energy.gov>.

²³ See US Department of Energy, 'Alternative Fuels Data Center' (Web Page) <<https://afdc.energy.gov>>.

²⁴ *State Environmental Planning Policy (Transport and Infrastructure) 2021* (NSW) ss 2.124, 2.124B, 2.124D, 2.124E, 2.124F.

36. In *Vanderstock*, the High Court ruled that a road use charge imposed on users of ‘zero or low emissions vehicles’ (ZLEV) under Victorian legislation was invalid on the basis that it imposes a duty of excise within the meaning of s. 90 of the Constitution, which is an exclusive power of the Commonwealth. It was held that a tax on goods imposed at the stage of consumption (in this case, distance travelled) answered the description of a duty of ‘excise’, which are ‘inland taxes’ on goods. The decision confirms that states will not be able to charge EV users based on distance travelled. At [197]:

[197] Sections 90 and 92 of the Constitution combine to create the constitutional imperative that such market or markets as might exist now or in the future in Australia for ZLEVs or any other goods must exist within a free trade area comprising the whole of the geographic area of Australia. Throughout that free trade area, the people of Australia are guaranteed equality in such taxes as they are required to bear as consumers of ZLEVs or of any other goods. To that end, any tax on ZLEVs or any other goods - whether imposed at the stage of their importation into Australia or production or manufacture in Australia or at any subsequent stage in their distribution, sale, ownership, control, use, resale, reuse or destruction in Australia or export from Australia - can be imposed only by uniform national legislation.

[198] The exclusivity of the power of the Commonwealth Parliament to impose duties of excise ensures that such uniform laws of trade or commerce or taxation as the Commonwealth Parliament has chosen to enact (in the form of the exemption from fringe benefits tax and the removal of customs duty) or might afterwards choose to enact for the purpose of stimulating the demand for ZLEVs, so as to reduce greenhouse gas emissions and to fulfil Australia's international responsibilities under the Paris Agreement, cannot be distorted or impeded by State or Territory taxes on ZLEVs or on other goods. And if the projected diminution in revenue from the existing fuel excise attributable to the increasing take-up of ZLEVs is to be offset through the introduction of some other tax on ZLEVs or on other goods, that new tax on goods can only be imposed by the Commonwealth Parliament.

37. As extracted above, s 90 of the Constitution creates a constitutional imperative for the federal government to maintain exclusive control on the duty of excise is so that it can execute policy through “uniform national legislation”. This is particularly relevant for the example of EVs noting the types of tax incentives and burdens that have been introduced elsewhere globally (and within Australia as was the example here),
38. The Standing Committee is in a unique position to form a view and make relevant recommendations on how such a uniform law (if any) could operate in Australia to best encourage the uptake of EVs. As such, the Standing Committee should have careful regard to the impacts of this decision on any recommendations it makes.
39. The taxing of EVs has been confirmed to be the legislative domain of the federal government. Accordingly, it is essential that any tax incentives implemented are introduced by the federal government who can appropriately taxes EVs to facilitate uptake and to achieve the objectives of its EV policy.

Recommendation 7:

The Standing Committee should have careful regard to the impact of the High Court's ruling in *Vanderstock & Anor v State of Victoria* [2023] HCA 30 and how this may impact on any recommendations it makes on relevant tax incentives to encourage the uptake of EVs.

Concluding Comments

NSW Young Lawyers thanks you for the opportunity to make this submission. If you have any queries or require further submissions, please contact the undersigned at your convenience.

Contact:



Taylah Spirovski

President

NSW Young Lawyers

Email: president@younglawyers.com.au

Alternate Contact:



Amelia Cook

Chair

NSW Young Lawyers Environment and Planning Sub-Committee

Email: envirolawexec@gmail.com

Alternate Contact:



Sarah Ienna

Submissions Lead

NSW Young Lawyers

Email: submissions.YL@lawsociety.com.au