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HOUSE OF REPRESENTATIVES

NEW VEHICLE EFFICIENCY STANDARD BILL 2024

NEW VEHICLE EFFICIENCY STANDARD (CONSEQUENTIAL AMENDMENTS) BILL 2024

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Infrastructure, Transport, Regional Development and Local Government the Hon Catherine King MP)

NEW VEHICLE EFFICIENCY STANDARD BILL 2024

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OUTLINE

The New Vehicle Efficiency Standard Bill 2024 will establish a new vehicle efficiency standard (NVES) for Australia. The NVES will reduce carbon dioxide (CO_2) emissions from new cars, sport utility vehicles, utes and vans, and stimulate the provision of low and zero emissions vehicles into the Australian market.

The Government is committed to reducing greenhouse gas emissions to meet our Nationally Determined Commitments (NDC) under the Paris Agreement - reducing greenhouse gas emissions to 43% below 2005 levels by 2030 and reaching net zero by 2050. The passage of the *Climate Change Act 2022* enshrined these targets in law. To achieve these objectives, the Government must pursue emissions reductions across every sector, including from light vehicles, made up of passenger vehicles and light commercial vehicles. The NVES will contribute to the protection of human, plant and animal life by assisting in global efforts to limit climate change, and by reducing the noxious emissions from vehicles that impact on human health. The NVES is designed based on objective criteria that are country-agnostic and common to similar measures adopted in other countries.

The NVES Bill specifies a CO_2 emissions target for each regulated year. At the end of each year, the number of vehicles a supplier brings into the market and the CO_2 emissions for each vehicle supplied are tallied up. If the result is below the target for that supplier it will be issued credits to be known as 'units' equivalent to the grams of CO_2 per kilometre below the target. If the result is above the target, the supplier will have the next two years to reduce the amount to zero by earning units or trading with other suppliers. At the end of that time period, the supplier will contravene a civil penalty provision if their final emissions value remains above zero. Over time, the specified CO_2 target is reduced, to incentivise suppliers to bring increasingly efficient vehicles to the Australian market.

The NVES Bill does not ban, or prevent the supply of any particular vehicle. Instead, it rewards suppliers that supply less polluting cars (below the specified CO_2 level that applies to that vehicle), and provides for penalties to be imposed on suppliers of more polluting cars (above the specified CO_2 level that applies to that vehicle).

There are two types of vehicles referred to in the NVES Bill. Type 1 vehicles are passenger vehicles (such as sedans, hatchbacks and most sports utility vehicles (SUVs)) designed to carry lighter loads. Type 2 vehicles are light commercial vehicles' (such as vans, utilities and some heavier SUVs) designed to operate with heavier loads that require more energy to move. The Bill includes mechanisms to ensure that type 2 vehicles are not unduly penalised applying a higher (less stringent) CO_2 emissions target for these vehicles. The Bill also includes a mechanism to ensure that both type 1 and type 2 vehicles have targets appropriate to their weight by adjusting the CO_2 emissions target for each individual vehicle's mass.

The NVES Bill does not prescribe how suppliers are to meet CO_2 emissions targets. Suppliers are free to make arrangements that best suit their own businesses.

The Bill contains a range of secondary obligations that vehicle suppliers must comply with working in tandem with the *Road Vehicle Standards Act 2018* (RVSA) to establish a streamlined framework for suppliers bringing vehicles to Australia. The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the department) is already the regulator for the RVSA, and the Bill adapts these powers to enforce NVES. The Bill also enables the creation of rules to support the regulatory framework.

The Bill is supported by the New Vehicle Efficiency Standard (Consequential Amendments) Bill 2024 (Consequential Bill), which amends the *Clean Energy Regulator Act 2011* and the *Road Vehicle Standards Act 2018* (RVSA) to facilitate implementation of the NVES framework.

Why is the Bill necessary?

Australians are being left behind as consumers in major economies across the world benefit from more fuel-efficient cars and greater access to new low and zero emissions technology. The approximately one million new cars sold in Australia each year are not currently required by law to meet any level of fuel efficiency. Over 85 per cent of cars sold worldwide are covered by a standard similar to the NVES.

Light vehicles produce around 11 per cent of Australia's carbon dioxide (CO_2) emissions, and are largest contributor to greenhouse gas emissions in the transport sector. On average passenger cars in Australia emit 40 per cent more CO_2 than the European Union (EU), 20 per cent more than the United States (US) and 15 per cent more than New Zealand. This means Australians are paying more for every kilometre we drive.

The NVES will enable Australia to catch up to the US and EU average vehicle emissions intensity levels by around 2028/2029. The NVES will deliver abatement of about 321 million tonnes of CO_2 by 2050, and about 80 million tonnes of CO_2 abatement by 2035.

Australians will accrue around $86 billion in net benefits by 2050. This includes around $95 billion in fuel savings by 2050. The introduction of the NVES will compel global car manufacturers to supply the same advanced emissions technology to Australia they already supply to other advanced economies.

Key principles

The NVES legislation will provide a framework for effective emissions reduction in the light vehicle fleet.

Incremental improvements made in response to a voluntary fuel efficiency standard, designed by the Federal Chamber of Automotive Industries, did not provide sufficient incentive for manufacturers to bring more fuel-efficient vehicles to Australia. Average emissions from new passenger vehicles have only marginally decreased since the introduction of the voluntary standard, and average emissions for new light commercial vehicles have risen.

The regulation of vehicles supplied to Australia, including the regulation of noxious emissions has historically been managed through Australian Design Rules (ADRs) under the

RVSA. The Australian Government aims to harmonise ADRs with United Nations (UN) regulations wherever possible. However, there is no equivalent UN regulation that sets a limit on fuel consumption or CO_2 emissions from road vehicles and, as the NVES will apply to a cohort (fleet) of vehicles across a specific time period, it requires new standalone legislation.

The Bill provides emission targets for a supplier's fleet of regulated road vehicles for the calendar years 2025 to 2029, gradually increasing in stringency. For later years, the Bill enables targets for vehicle suppliers to be set by the Minister in a legislative instrument. A review of the scheme will be undertaken in 2026 to determine the effectiveness of the legislation.

As part of this Bill's compliance and enforcement powers, the Bill triggers the *Regulatory Powers (Standard Provisions) Act 2014* (the Regulatory Powers Act). The Regulatory Powers Act includes a standard set of provisions to deal with monitoring, investigation and the use of civil penalties, infringement notices, and enforceable undertakings in the enforcement of legal obligations. In addition, the Bill allows the Secretary to compel the production of information or documents for certain purposes and includes the ability for the Secretary to seek adverse publicity orders and non-punitive orders from a court. Including this suite of enforcement powers allows any contravention of the Bill be addressed in a way that matches the seriousness of the offence.

The NVES is comparable with frameworks established overseas, but calibrated to the unique conditions in Australia – to ensure Australians have access to more efficient vehicle models across the range of vehicles Australians need for work and leisure

The Bill leverages international experience, such as in the United States, New Zealand Japan, and the European Union, to establish a framework that is specifically designed for Australian conditions. The NVES is calibrated to reflect the mix of vehicles Australians need for work and leisure. while still providing a strong incentive for suppliers to increase the fuel efficiency of the vehicles supplied across their ranges. Suppliers to the Australian market have emphasised that a regulated mechanism to reduce tailpipe CO_2 emissions will enable them to secure a greater supply of more fuel-efficient vehicles from their parent companies, including hybrids and electric vehicles. The inclusion of an upper breakpoint setting a fixed notional CO_2 target for vehicles above a specified mass will discourage suppliers from providing heavier vehicles simply to gain a higher CO_2 target. The inclusion of a lower breakpoint is designed to protect the continued supply of smaller more affordable vehicles to the Australian market.

The Bill is comparable to international frameworks and includes:

- a headline CO_2 limit that reduces annually;
- separate linear mathematical formulae defining the notional CO_2 targets for individual passenger vehicles and light commercial vehicles which are tallied at the end of each year;
- trading of units (credits) that are generated if suppliers overachieve on their targets;
- penalties for suppliers that fail to meet their CO_2 targets, by accruing or purchasing units to offset the supply of vehicles above the notional target.

The design of the NVES, developed through consultation, draws on the best analysis available. There is ongoing opportunity for stakeholders to provide feedback on operational matters. A mandated review of the Act will ensure it continues to operate effectively, including that it provides an ongoing and effective contribution to the legislated targets under the *Climate Change Act 2022.*

The framework provides flexibility to account for the rapidly changing vehicle market, and also provides safeguards to hold decision makers to account

The Bill contains provisions for the Minister to make legislative instruments specifying a range of matters. This includes:

> the headline limit, which is the target in CO_2 in grams per kilometre specified each year after 2029. The headline limits for the years 2025 to 2029 are specified in clause ^22 of the Bill;
> the 'mass adjustment factor' (or MAF), which is the mechanism that adjusts the headline limit for vehicles in the type 1 (Passenger Vehicle) and type 2 (Light Commercial Vehicles) so that the target is calibrated to the mass of each vehicle;
> reference 'mass in running order' (or reference MIRO), which is based on the average mass of the fleet of vehicles sold two years earlier;
> 'upper breakpoint' is the upper limit for the 'mass adjustment factor'. The target for vehicles heavier than the upper breakpoint does not change, meaning that there is a 'cap' on how heavy a vehicle can be to receive a less stringent target; and
> 'lower breakpoint' is the lower limit for the 'mass adjustment factor'. The target for vehicles lighter than the lower breakpoint does not change, meaning that there is a 'floor' on the target applicable to a lighter vehicle.

The mathematical relationship of these matters is set out in detail in the Impact Analysis.

The use of legislative instruments in this way enables the Minister to update the inputs to the formulae to reflect changes in the mix of vehicles supplied to Australia. This means if vehicles supplied to Australia become heavier or lighter, the Minister can adjust these parameters to ensure the CO_2 target for an average vehicle by mass continues to align the headline CO_2 target for that vehicle type. The Minister is also able to adjust the headline limits after the initial period specified. To maintain the integrity of the framework, strong governance structures have been included in the Bill. Before adjusting parameters, the Minister will be required to consult on a draft determination (in most cases for 60 days, and in the case of reference MIRO and MAF, for 30 days) and publish reasons when making a determination. In addition, new headline limits set by the Minister must be less than previous headline limits, meaning that the stringency of the targets beyond 2029 must increase.

While legislative instruments enable the Government to adjust the framework to suit altered market conditions, the inclusion of the headline limits for the years 2025 to 2029 in the Bill itself, and the requirement to consult publicly before legislative instruments are made that affect the stringency of the standard will ensure the overall intent of the scheme is maintained.

The Bill emphasises simplicity and transparency

To provide accessible information to both consumers and industry stakeholders, CO_2 emissions (in grams per kilometre) and MIRO will be recorded for each vehicle provided on the Register of Approved Vehicles (RAV) under the RVSA. The RAV is publicly searchable by Vehicle Identification Number (VIN), providing consumers and fleets with an accessible source of information about vehicles.

The provision of key information on the RAV will play a crucial role in supporting the compliance and enforcement of the NVES by providing an accurate source of data to determine when a contravention of the Bill may have occurred. The time and source entries onto the RAV will be recorded to assist in the deterrence of fraudulent behaviour.

Vehicles with the best emissions and safety technology be available to Australians

Advanced safety features are typically included in newer vehicle models along with low emission technology. Many of the most up-to-date safety features are beyond those required through ADRs and will not generally be included in the range of older vehicle models that have been supplied to Australian markets in the absence of a fuel efficiency standard.

In addition to reducing CO_2, lower emission vehicles also bring lower noxious emissions and a wide range of health benefits which are set out in detail in the Impact Analysis.

Financial impact statement

The Government committed $7.4 million in funding in the 2023-24 budget for the design, implementation and management of a new vehicle efficiency standard over 4 years. The resourcing needs for the administration of the new vehicle efficiency standard and the Registry are being considered in the 2024-25 Budget context.

Impact Analysis

An impact analysis was prepared on the introduction of a new vehicle efficiency standard, based on the feedback received from stakeholders and the Australian public. The Office of Impact Analysis assessed the impact analysis and determined that it was good practice and met Australian Government best practice regulation requirements (**OBPR22-03502**).

The impact analysis supports this explanatory memorandum and has also been published on the Office of Impact Analysis website: www.oia.pmc.gov.au.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

New Vehicle Efficiency Standard Bill 2024

New Vehicle Efficiency Standard (Consequential Amendments) Bill 2024

These Bills are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bills

This package of Bills will establish the New Vehicle Efficiency Standard and make consequential amendments to related Acts.

The purpose of the New Vehicle Efficiency Standard Bill 2024 (NVES Bill) is to reduce CO_2 emissions from new road vehicles and stimulate the provision of low and zero emissions vehicles into the Australian market. It achieves this by establishing a new vehicle efficiency standard to regulate the carbon dioxide emissions of certain road vehicles.

The standard works by setting emissions targets for vehicles covered by the standard ('covered vehicles'). Entities that provide a covered vehicle for the first time in Australia ('suppliers') will be required to enter the number of grams of carbon dioxide emissions (in grams of carbon dioxide per kilometre) for the vehicle (an 'emissions number') onto the Register of Approved Vehicles (RAV) (under the *Road Vehicle Standards Act 2018* (RVSA)). At the end of each year, an interim emissions value for the supplier is worked out by comparing, for each covered vehicle for the supplier for the year, the emissions number of the vehicle against an emissions target. If the vehicle produces fewer emissions than its target, a negative number is generated; if not, a positive number or zero is generated. These numbers are summated to obtain the person's interim emissions value for the year.

If the interim emissions value is less than zero, the Secretary will issue the supplier units. If the interim emissions value is above zero, the supplier will have the next two years to reduce the amount to zero by earning units or trading units with other suppliers. At the end of that time period, the supplier may contravene a civil penalty provision if they fail to achieve a final emissions value below zero.

To ensure compliance, the NVES Bill includes supporting offences and enforcement powers to ensure the most proportionate and effective regulatory response. The NVES Bill also provides for the rules to set out matters to support the regulatory framework of this Act.

The purpose of the New Vehicle Efficiency Standard (Consequential Amendments) Bill 2024 (Consequential Bill) is to introduce amendments to related legislation to support the implementation of the vehicle efficiency standard.

Noting the Bills together promote the same objectives, the human rights implications of the Bills are considered together as follows.

Human rights implications

The Bills engage the following rights:

- Right to life and right to health
- Right to a fair trial and fair hearing rights
- Right to the presumption of innocence
- Right of privacy and reputation
- Right to minimum guarantees in criminal proceedings

Right to life and right to health (vehicle tailpipe emissions)

Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) includes a duty on the Australian government to take appropriate steps to protect the right to life of those within its jurisdiction. The United Nations Committee General Comment 6 (1982) states: '…the Committee has noted that the right to life has been too often narrowly interpreted. The expression "inherent right to life" cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures.'

Article 12 (1) of the International Covenant on Economic Social and Cultural Rights (ICESCR) contains the right to health – that is, the right to the enjoyment of the highest attainable standard of physical and human health. The ICESCR has stated that the right to health extends to the underlying determinants of health such as a healthy environment.

The key objective of the Bills is to increase the supply and uptake of low and zero emission vehicles. The Bill incentivises the fitment of technologies that reduce fuel consumption and exhaust emissions by setting an emissions target for covered vehicles provided to Australia. This promotes the right to life and the right to health (and a healthy environment) by increasing the fitment of technology to new vehicles that:

- reduce the community's exposure to harmful exhaust emissions; and
- reduce greenhouse gas emissions that contribute to climate change and severe weather events that can impact on an individual's rights to life and health.

Right to a fair trial and fair hearing (civil penalties)

The Parliamentary Joint Committee on Human Rights Practice Note 2 provides that civil penalty provisions may engage criminal process rights under Articles 14 and 15 of the ICCPR, regardless of the distinction between criminal and civil penalties in domestic law. When a provision imposes a civil penalty, an assessment is required as to whether it amounts to a 'criminal' penalty for the purposes of ICCPR.

The civil penalty provisions in the NVES Bill should not be considered 'criminal' for the purposes of human rights law. The majority of provisions are aimed at objectives that are regulatory or disciplinary in nature. For instance, most provisions do not apply to the general public, but to a sector or class of people who should reasonably be aware of their obligations under the NVES Bill (i.e. suppliers of road vehicles) and should be considered 'disciplinary'

rather than 'criminal'. In some cases, the civil penalty provisions in the NVES Bill are provided as disciplinary alternatives to the punitive or deterrent criminal offences.

Civil penalties add to the flexibility of regulatory law by allowing for the punishment of non-compliance without the consequences associated with criminal liability. They provide an alternative to the unnecessary extension of the criminal law into regulatory areas. Civil penalties will also enable an effective disciplinary approach to dealing with non-compliance by corporations. Further, the normal principles of administrative law apply to the exercise of powers in the NVES Bill, such as reasonableness, proportionality and natural justice. However, where certain civil penalty provisions could limit human rights – such as by reversing the onus of proof – the provisions are reasonable, proportionate and adapted to achieve a legitimate objective.

The penalties applied to most of the civil penalty provisions in the NVES Bill are low when compared to criminal penalties. All of the proposed civil penalties are pecuniary penalties (rather than a more severe punishment like imprisonment) and there is no sanction of imprisonment for non-payment of penalties. There are higher penalties that could apply for breaches of clause 17 of the NVES Bill. Clause 17 imposes a duty on a supplier of covered vehicles to ensure that, at the start of the final reconciliation day, their final emissions value for the year is zero or less. The maximum penalty for contravention of this duty is determined by reference to the person's final emissions value multiplied by $100. This penalty amount has been benchmarked against the penalties that apply to suppliers of vehicles under comparable schemes internationally and reflects the mid-range of the penalties that apply internationally. Large civil penalties could arise under clause 17, but this would be proportionate to the number of covered vehicles provided by the supplier and the estimated cost of compliance, while accounting for the potential adverse economic impacts of climate change, now and in the future, of CO_2 emissions on humans and ecosystems.

In addition, the right to a fair and public hearing is afforded to *individuals*, whereas vehicle suppliers will generally be corporations, given the nature of the vehicle industry and the requirements imposed under road vehicle type approvals under the RVSA. For these reasons, the higher penalties are considered to be reasonable, necessary and proportionate and consistent with Australia's human rights obligations in relation to the right to a fair trial and fair hearing.

Right to a fair trial and fair hearing (infringement notices)

The NVES Bill engages the right to a fair and public hearing through the creation of an infringement notice scheme (Part 5, Division 6 of the NVES Bill). An infringement notice can be issued by an infringement officer for contraventions of civil penalty provisions that are enforceable under the NVES Bill.

If it were only possible to seek application of a civil penalty, this would create a potential barrier to appropriate enforcement of minor breaches and less serious contraventions of the NVES Bill. The ability to issue an infringement notice will enable the Department to respond quickly to an alleged contravention and provide an additional enforcement option to respond in a manner proportionate to the level and seriousness of the breach.

The right of a person to a fair and public hearing by a competent, independent and impartial tribunal is preserved by the NVES Bill as it allows a person to elect to have the matter heard

by a relevant court rather than pay the amount specified in the infringement notice. This right will be stated on an infringement notice, ensuring that a person issued with an infringement notice is aware of their right to have the matter heard by a relevant court. It should also be noted that payment of the infringement is not an admission or finding of guilt or liability against the person issued with an infringement notice.

As noted above, there are higher penalties that could apply for breaches of clause 17 of the NVES Bill and an infringement notice could be issued for contraventions of these provisions. Clause 82(1) of the NVES Bill also modifies section 104(2) of the Regulatory Powers Act to allow for an infringement notice to be issued for a contravention of clause 17 for an amount that is half the maximum penalty that a court could impose on the person for that contravention. If the standard ratio under section 104(2) of the Regulatory Powers Act applied, the amount would be significantly lower than the penalties that apply internationally. If the penalty was lower the anticipated cost of compliance (by supplying more efficient vehicles), suppliers may make an economic decision to pay the penalty instead of supplying more efficient vehicles. This would undermine the objectives of the NVES Bill to reduce CO_2 emissions from new road vehicles and stimulate the provision of low and zero emissions vehicles into the Australian market.

In addition, the right to a fair and public hearing is afforded to *individuals*, whereas vehicle suppliers will generally be corporations, given the nature of the vehicle industry and the requirements imposed under road vehicle type approvals under the RVSA. It is expected that the infringement notices issued to individuals under clause 17 of the NVES Bill would be lower than that issued to corporations and proportionate to the conduct of that individual. For these reasons, the infringement notice scheme created through the NVES Bill is considered to be reasonable, necessary and proportionate and consistent with Australia's human rights obligations in relation to the right to a fair and public hearing.

Right of privacy and reputation (enforcement powers)

Article 17 of the ICCPR prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence, and unlawful attacks on a person's reputation. The right to privacy includes respect for informational privacy, including in respect of storing, using and sharing personal information, and the right to control the dissemination of this information. It also provides that persons have the right to protection of the law against such interference or attacks. The rights contained in Article 17 of the ICCPR may be subject to permissible limitations where limitations are authorised by law and are non-arbitrary. For limitations to be non-arbitrary they must be reasonable, necessary and proportionate to a legitimate objective.

The compliance and enforcement powers included in the Bills, most of which are drawn from the Regulatory Powers Act, provide for powers to enter premises, which enables a number of monitoring and investigation powers to be exercised on those premises (Part 5, Divisions 3 and 4 of the NVES Bill and Items 3 and 4 of the Consequential Bill). These powers include the ability to search the premises, inspect documents or things on the premises, ask questions and take extracts or copies of documents. There is also the power to compel the production of information or documents for certain purposes (Part 5, Division 2 of the NVES Bill).

These powers are necessary for supporting compliance and enforcement of the NVES Bill, which in turn protects the right to life and the right to health. These powers achieve this by ensuring that relevant information required to assess compliance with the NVES Bill is

accessible and available to departmental officers and inspectors when required. However, these clauses may operate to limit the right to privacy as they involve the collection of information that may include personal information, enable entry to premises, searching of premises and the copying and sampling of information. However, a number of protections are in place to ensure that any interference with the right to privacy is lawful and to protect this right.

The powers drawn from the Regulatory Powers Act can only be exercised in particular circumstances. Entry to premises is only allowed with consent or a warrant. For entry under consent, this includes a requirement that the consent of the occupier is given voluntarily. A warrant to enter premises may only be granted if there are reasonable grounds for investigating or monitoring. Inspectors entering premises under a warrant must provide an announcement before entry, give details of the warrant to the occupier and provide identification to the occupier.

The Secretary may only compel the production of information if they reasonably believe a person as capable of giving information or producing documentation that is relevant for the purposes of investigating compliance with certain offences and civil penalty provisions in the NVES Bill. A person would not be required to provide information if they are not capable of doing so or they are not able to locate a document after a reasonable search.

These threshold tests are designed to ensure that any interference with the right to privacy is lawful and is only to ensure compliance with the NVES Bill. The provision and use of personal information occurs to the extent that it is necessary, reasonable and proportionate to administering the NVES Bill.

Right of privacy and reputation (adverse publicity orders and non-punitive orders)

The NVES Bill engages the right to privacy and reputation through the introduction of Adverse Publicity Orders (APOs) (Part 5, Division 9) and Non-Punitive Orders (NPOs) (Part 5, Division 10). The Consequential Bill also engages the right to privacy and reputation through the introduction of NPOs into the RVSA (Part 4, Division 5A).

APOs and NPOs allow the Secretary, among other things, to seek a court to make an order requiring the person to publish, at the person's expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order. APOs and NPOs are only available where a person had engaged in conduct that contravenes a provision of the NVES Bill or a relevant provision of the RVSA. APOs and NPOs can draw public attention to a particular wrongdoing and the measures that are being taken to rectify it. These powers are necessary for supporting compliance and enforcement, as well as to deter conduct breaching the NVES Bill, which in turn protects the right to life and the right to health.

These clauses may operate to limit the right to privacy and reputation, as they involve the publishing of information that may include personal information, as well as information that adversely affects a person's reputation (for example, information about a person's wrongdoing). A number of protections are in place to ensure that any interference with the rights to privacy and reputation is lawful and to protect these rights. Publication of information may only be ordered by a court, and the content of the publication is also determined by a court. Further, the court can only order an APO or an NPO if a person has

been found by the Court to have breached a provision of the NVES Bill or a relevant provision of the RVSA. An APO or an NPO cannot be made against a member of the general public. The limitation to the right to privacy and reputation therefore only occurs to the extent that it is necessary, reasonable and proportionate to administering the NVES Bill and the RVSA.

Right of privacy and reputation (Provide for publication of certain information on the Regulator's website)

Clause 86 of the NVES Bill engages the right to privacy by requiring the Secretary to publish certain information (including personal information) on the Department's website in relation to:

- a person's interim emissions value for the year;
- the name of each person who has a registry account;
- the number of units held in each registry account; and
- such other information as is prescribed by the rules.

Publishing this information is reasonable and necessary to provide transparency on the operation of the NVES Bill and proportionate for the scrutiny of the NVES Bill's contribution to meeting Australia's climate targets. A statement of compatibility with human rights, including the right to privacy, would be prepared in relation to any legislative rules made under this provision.

These clauses do not limit the prohibition on unlawful or arbitrary interference with privacy. The NVES Bill provides a lawful basis for obtaining, storing and sharing personal information appropriately. The provision and use of personal information occurs to the extent that it is necessary, reasonable and proportionate to administering the NVES Bill.

Right to minimum guarantees in criminal proceedings (right to be free from self-incrimination)

The NVES Bill provides powers for authorised officers to ask questions and seek production of documents in certain situations as part of monitoring and investigation or in response to a notice to produce (clauses 72, 74 and 75). Through the application of the Regulatory Powers Act, it is an offence to fail to answer the questions of an authorised person or to produce document required to be produced by an authorised person. A person will be liable for a civil penalty for failing to comply with a notice to produce under clause 72(4).

While these powers are expressed to be subject to limited defences and exceptions, the Bill relies on the common law presumption against abrogation of core rights to preserve the privilege against self-incrimination and legal professional privilege. Additionally, the Regulatory Powers Act makes certain that the privilege against self-incrimination and legal professional privilege have not been abrogated by the NVES Bill. Essentially, the Bill adopts the explicit provisions in the Regulatory Powers Act promoting the right to minimum guarantees in criminal proceedings. These protections guarantee the fair trial rights protected in articles 14(3)(d) and (g) of the ICCPR by limiting the operation of the questioning powers provided by the Bill.

Conclusion

The Bills are compatible with human rights because they promote the protection of human rights and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Minister for Infrastructure, Transport, Regional Development and Local Government, the Hon Catherine King MP

NOTES ON CLAUSES – NEW VEHICLE EFFIENCY STANDARD BILL 2024

Part 1 - Preliminary

Clause ^1: Short Title

1. Clause ^1 provides that the Bill, when enacted, may be cited as the *New Vehicle Efficiency Standard Act 2024.*

Clause ^2: Commencement

2. This clause provides for the commencement of the Bill. Each clause of the Bill specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table.
3. The whole of the Bill will commence on 1 January 2025. This provides advanced notice of the commencement date and allows time for industry to become familiar with the Bill and the overall reforms before binding targets under the Bill commence.
4. Commencing the Bill on 1 January 2025 also enables the Government to finalise the necessary arrangements for commencement and implementation of the scheme, such as establishment and finalisation of administrative arrangements and IT systems, recruitment of any additional staff required to assist with managing the scheme, and the provision of advice and assistance to ensure industry is ready for commencement.

Clause ^3: Objects of this Act

5. Clause ^3 sets out the three objects of the Act. The first object is to establish a vehicle emissions standard covering certain vehicles that will:
    - Create economic incentives for the manufacturers and suppliers of those vehicles to provide models to the Australian market that emit less carbon dioxide;
    - Provide consumers with a choice of vehicles that meet their work and lifestyle needs while also meeting the environmental expectations of the community;
    - Be transparent, flexible and able to be calibrated over time according to policy needs; and
    - Be robust and based on the best available evidence and data.
6. The second object is to reduce carbon dioxide emissions in the transport sector to contribute to the achievement of Australia's greenhouse gas emissions reduction targets.
7. The third object is to give effect to certain obligations Australia has under the United Nations Framework Convention on Climate Change, the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the Paris Agreement.

Clause ^4: Simplified outline of this Act

8. This clause provides an overview of the Bill, outlining new concepts and key elements of the new vehicle efficiency standard. The Bill will establish a new vehicle efficiency standard to regulate the carbon dioxide emissions of certain road vehicles. The new vehicle efficiency standard works by setting emissions targets for vehicles covered by the standard.
9. Simplified outlines are included in Bills to assist readers to understand the key elements and provisions of the legislation. The simplified outline is not intended to be

comprehensive and readers should rely on the substantive provisions of the Bill for a comprehensive understanding of the Bill.

Clause ^5: Crown to be bound

10. Clause ^5 provides that the Bill will bind the Crown in each of its capacities. This means that the Commonwealth and state and territory governments will be bound to comply with the provisions of the Bill.
11. Clause ^5 further provides however, that the Bill will not make the Crown liable to be prosecuted for an offence.

Clause ^6: Extension to external Territories

12. This clause provides that the Act applies in all external Territories of Australia (Christmas Island, the Cocos (Keeling Islands), Norfolk Island, the Coral Sea Islands Territory, Ashmore and Cartier Islands and Heard Island and McDonald Islands).

Clause ^7: Extraterritorial application

13. Clause ^7 provides that the Bill will extend to acts, omissions, matters and things outside Australia. This ensures that the Commonwealth can regulate persons under this Bill if they are located outside Australia. For example, where a person enters a ***covered vehicle*** onto the Register of Approved Vehicles (RAV) outside of Australia. This provision ensures that the Bill can regulate any acts, omissions, matters and things that the person does relevant to ***covered vehicles***.
14. Extraterritorial application is necessary for the operation of this Bill due to the majority of vehicle manufacturing occurring overseas. A person may enter a ***covered vehicle*** onto the RAV from outside Australia. If the Bill were construed as applying only in relation to things done in Australia, it may not capture ***covered vehicles*** entered on the RAV by persons not in Australia.
15. Without exterritorial application, the Bill would not be effective in regulating Australia's vehicle fleet to reduce carbon dioxide emissions in the transport sector or contributing to the achievement of Australia's greenhouse gas emissions reduction targets.

Clause ^8: Constitutional basis of this Act

16. This clause provides for the constitutional basis for the Bill. The Bill is comprehensively supported by the treaty implementation aspect of the external affairs power in the Australian Constitution (section 51(xxix)) as giving effect to Australia's obligations to reduce greenhouse gas emissions under:
    - the United Nations Framework Convention on Climate Change [1994] ATS 2 (the *Climate Change Convention*);
    - the Kyoto Protocol to the United Nations Framework Convention on Climate Change [2008] ATS 2 (the *Kyoto Protocol*); and
    - the Paris Agreement [2016] ATS 24 (the *Paris Agreement*).

Clause ^9: Additional operation of this Act

17. This clause provides for the additional operation of the Bill in the event that any part of its operation is otherwise subject to successful constitutional challenge. It sets out various heads of constitutional power that can be relied upon to support the operation of the Bill.
18. This clause is intended to ensure that the Bill is given the widest possible operation consistent with Commonwealth legislative power.
19. The legislative powers referred to in this clause are as follows:
    - Corporations power (section 51(xx) of the *Constitution*);
    - Trade and commerce power (section 51(i) of the *Constitution*);
    - Territories power (section 122 of the *Constitution*).
20. 'Activity' as it appears in this clause, carries its ordinary meaning and would relevantly include the entry of a vehicle on the RAV, an element required to engage the key obligation under clause ^17 of the Bill.

Clause ^10: Definitions

21. Clause ^10 provides definitions for the Bill. Notes are provided on the key definitions under the Bill.
22. ***Australia's greenhouse gas emissions reduction targets*** mean the greenhouse gas emissions reduction targets in the *National Greenhouse and Energy Reporting Act 2007*.
23. ***civil penalty provision*** has the same meaning as in the Regulatory Powers Act.
24. ***Climate Change Convention*** means the United Nations Framework Convention on Climate Change done at New York on 9 May 1992, as amended and in force for Australia from time to time.
25. ***Climate Change Department*** means the Department administered by the Minister administering the *Climate Change Act 2022*.
26. ***Climate Change Minister*** means the Minister administering the Climate Change Act 2022.
27. ***concessional RAV entry approval*** means a vehicle granted a concessional RAV entry approval under the *Road Vehicle Standards Rules 2019*.
28. ***engage in conduct*** means to do an act or omit to perform an act.
29. ***Environment Department*** means the Department administered by the Minister administering the *Environment Protection and Biodiversity Conservation Act 1999*.
30. ***Environment Minister*** means the Minister administering the *Environment Protection and Biodiversity Conservation Act 1999*.
31. ***Federal Register of Legislation*** means the Federal Register of Legislation established under the *Legislation Act 2003*.
32. ***inefficient vehicle*** means a covered vehicle with an emissions number for a year that is greater than its emissions target for the year.
33. ***interim reconciliation day*** for a year means the first 1 February after the end of the year. For example, the ***interim reconciliation day*** for 2025 is 1 February 2026.
34. ***introductory period*** means the 5 year period beginning on 1 January 2025.
35. ***Kyoto Protocol*** means the Kyoto Protocol to the United Nations Framework Convention on Climate Change done at Kyoto on 11 December 1997, as amended and in force for Australia from time to time.
36. ***national road vehicle standard*** means a national road vehicle standard made by the Minister under Section 12 of the *Road Vehicle Standards Act 2018* (RVSA)(also known as Australian Design Rules or ADRs).

37. ***Paris Agreement*** means the Paris Agreement done at Paris on 12 December 2015, as amended and in force for Australia from time to time.
38. ***RAV*** (short for Register of Approved Vehicles) is an online, publicly accessible database created under the RVSA. The RAV contains technical information on certain road vehicles supplied to Australia.
39. ***registered holder*** means the person in whose registry account there is an entry for a unit.
40. ***Registry*** means the New Vehicle Efficiency Standard Unit Registry established under clause ^51. This maintains a registry of units held by a vehicle supplier.
41. ***Regulatory Powers Act*** means the *Regulatory Powers (Standard Provisions) Act 2014*.
42. ***relevant court*** means the Federal Court, the Federal Circuit and Family Court of Australia (Division 2) or a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.
43. ***road vehicle*** has the same meaning as in the RVSA (see section 6 of the RVSA).
44. ***road vehicle type approval*** has the same meaning as in the RVSA.
45. ***Secretary*** means the Secretary of the Department administering this Act.
46. ***vehicle category*** means a vehicle category that is specified in a national road vehicle standard under the RVSA that specifies categories of road vehicles. In 2024 the *Vehicle Standard (Australian Design Rule – Definitions and Vehicle Categories) 2005* specified the categories of road vehicle.
47. ***vehicle subcategory*** means a subcategory of a vehicle category that is specified in a national road vehicle standard under the RVSA that specifies subcategories of categories of road vehicle. In 2024 the *Vehicle Standard (Australian Design Rule – Definitions and Vehicle Categories) 2005* specified the subcategories of road vehicle.
48. ***year*** means calendar year (1 January to 31 December)

Part 2 – New vehicle efficiency standard

Clause ^11: Simplified outline of this Part

49. Clause ^11 provides an overview of Part 2 of the Bill. Part 2 establishes the new vehicle efficiency standard and outlines the vehicles to be covered by the standard and the emissions targets for those vehicles. Failure to achieve relevant targets may result in a civil penalty.
50. Simplified outlines are included in Bills to assist readers to understand the key elements and provisions of the legislation. The simplified outline is not intended to be comprehensive and readers should rely on the substantive provisions for a comprehensive understanding of this Part of the Bill.

Clause ^12: Covered vehicles

51. Clause ^12 sets out what a ***covered vehicle*** is, with different requirements depending on whether the vehicle is covered under a type approval pathway or concessional RAV entry approval pathway (see the *Road Vehicle Standards Rules 2019* for further information on approval pathways).
52. For vehicles in the type approval pathway, a vehicle is a covered vehicle for a person for a year if:
    - the vehicle is a type 1 or type 2 vehicle (see clauses ^13 and 14); and
    - the person holds a ***road vehicle type approval*** for that vehicle; and

- the person, or another person authorised by this person, enters the vehicle onto the ***RAV*** during the year, or if the year is 2025, the vehicle is entered on to the ***RAV*** between 1 July 2025 and 31 December 2025; and
- the entry of the vehicle onto the ***RAV*** is the first time the vehicle is entered onto the ***RAV***.

53. For vehicles in the concessional RAV entry approval pathway, a vehicle is a covered vehicle for a person for a year if:
    - the vehicle is a type 1 or type 2 vehicle (see clauses ^13 and 14); and
    - the person holds a ***concessional RAV entry approval*** for that vehicle; and
    - the vehicle is entered onto the ***RAV*** during the year, or if the year is 2025, the vehicle is entered on to the ***RAV*** between 1 July 2025 and 31 December 2025; and
    - the entry of the vehicle onto the ***RAV*** is the first time the vehicle is entered onto the ***RAV***; and
    - the vehicle is in a class of vehicles determined to be covered by this paragraph in an instrument in force under clause ^28.
54. Vehicles in the concessional RAV entry approval pathway are not covered vehicles for the purposes of the Act unless the Minister chooses to make a determination to include them (see clause ^28 for further detail).
55. For the 2025 calendar year, this provision provides that only vehicles entered onto the ***RAV*** from 1 July 2025 will be considered ***covered vehicles***. The intent is to provide for a transition period for industry.
56. The concept of a covered vehicle is important as it defines what vehicles are subject to the NVES and the key duty in the Act is for a person to ensure their final emissions value for all covered vehicles they entered onto the RAV in a particular year is less than zero (see clause ^17).

Clause ^13: Type 1 vehicles

57. This clause sets out that a vehicle is a type 1 vehicle if it is a passenger car (MA), a forward control passenger vehicle (MB), a light off-road passenger vehicle (see clause ^15) or it is in a class of vehicle determined to be a type 1 vehicle in an instrument in force under clause ^29 (MA, MB are vehicle categories under the *Vehicle Standard (Australian Design Rule – Definitions and Vehicle Categories) 2005*. However, a road vehicle is not a type 1 vehicle if it is in a class of vehicle determined to be a type 2 vehicle in an instrument in force under clause ^29, or it is an exempt vehicle (see clause ^16 for information on exempt vehicles).
58. The type of vehicle is important because type 1 and type 2 vehicles have different headline limits (see clause ^22), mass adjustment factors (see clause ^23), upper breakpoints (see clause ^26), reference MIROs (see clause ^27) and potentially different lower breakpoints (see clause ^25). These numbers are used to determine the emissions target for a vehicle for a year (see clause ^21).

Clause ^14: Type 2 vehicles

59. This clause sets out that a vehicle is a type 2 vehicle if it is a light goods vehicle (NA), in the NB1 subcategory of medium goods vehicle (NB), a heavy off-road vehicle (see clause ^15) or it is in a class of vehicle determined to be a type 2 vehicle in an instrument in force under clause ^29 (NA and NB are vehicle categories under the *Vehicle Standard (Australian Design Rule – Definitions and Vehicle Categories) 2005*). However, a road

vehicle is not a type 2 vehicle if it is in a class of vehicle determined to be a type 1 vehicle in an instrument in force under clause ^29, or it is an exempt vehicle (see clause ^16 for information on exempt vehicles).

60. The type of vehicle is important because type 1 and type 2 vehicles have different headline limits (see clause ^22), mass adjustment factors (see clause ^23), upper breakpoints (see clause ^26), reference MIRO (see clause ^27) and potentially different lower breakpoints (see clause ^25). These numbers are used to determine the emissions target for a vehicle for a year (see clause ^21).

Clause ^15: Off-road passenger vehicles

61. This clause sets out when a vehicle is a ***heavy off-road passenger vehicle*** or a ***light off-road passenger vehicle***.
62. A vehicle is a ***heavy off-road passenger vehicle*** if the vehicle is in the MC (off-road passenger vehicle) category, with a rated towing capacity entered on the ***RAV*** of 3 tonnes or more, and the vehicle chassis is determined by an instrument made by the Minister under clause ^30 or otherwise is a body on frame chassis within the ordinary meaning of this expression (MC is a vehicle category under the *Vehicle Standard (Australian Design Rule – Definitions and Vehicle Categories) 2005*.
63. The intent of the instrument making power under clause ^30 is to allow the Minister to resolve any debates that may arise regarding the meaning of the expression 'body on frame chassis' provided by subparagraph ^15(1)(c)(ii).
64. A vehicle is a ***light off-road passenger vehicle*** if it is an off-road passenger vehicle (MC) and is not a ***heavy off-road passenger vehicle***.
65. The differentiation between heavy and light off-road passenger vehicles is important as this determines whether an MC category vehicle (off-road passenger) is a type 1 and type 2 vehicle (clauses ^14 and ^15). This classification is important because type 1 and type 2 vehicles have different headline limits (see clause ^22), mass adjustment factors (see clause ^23), upper breakpoints (see clause ^26), reference MIRO (see clause ^27) and potentially different lower breakpoints (see clause ^25). These numbers are used to determine the emissions target for a vehicle for a year (see clause ^21).

Clause ^16: Exempt vehicles

66. This clause sets out that a vehicle is an exempt vehicle if the gross vehicle mass (GVM) exceeds 4.5 tonnes or if it is in a class of vehicle determined to be an exempt vehicle in an instrument in force under section ^29.
67. The New Vehicle Efficiency Standard is not designed to cover vehicle with a gross vehicle mass of over 4.5 tonnes because these types of vehicles require a heavy vehicle licence and are generally not used for personal transport.
68. The Minister also has the power to exempt other vehicles. It is anticipated that this provision would be used to exempt vehicles supplied for a special purpose (such as an emergency services vehicle either apparent at the point of import or not) and where there are no suitable vehicles available in the market that could comply with the New Vehicle Efficiency Standard without affecting its intended purpose.

Clause ^17: Duty to ensure that final emissions value is zero or less

69. Clause ^17 provides that if there is a ***covered vehicle*** for a person for a year beginning on or after 1 January 2025, the person must ensure that, at the start of the ***final***

reconciliation day for the year, the person's final emissions value is zero or less. A person who does not meet this duty is liable for a civil penalty, with the penalty amount being the person's ***final emissions value*** for the year multiplied by $100 (see clause ^90 for indexation of the penalty amount)

70. For the 2025 calendar year, only vehicles entered onto the RAV from 1 July 2025 will be considered *covered vehicles* (see clause ^12).
71. A ***final emissions value*** for a year is determined by the formula under clause ^18. The ***final reconciliation day*** for a year is the third 1 February after the end of the year. For example, for 2025 the final reconciliation day is 1 February 2028.
72. This clause sets up the key duty in the Act for a person who supplies a ***covered vehicle*** to ensure that at the ***final reconciliation day*** their ***final emissions value***, which is the ***interim emissions value*** minus any units used to reduce this value (see clause ^18), is zero or less.
73. At the end of a year, a person's ***interim emissions value*** will be calculated using a formula (see clause ^19) on the ***interim reconciliation day***, which is the first of February the following year (for example, the ***interim emissions value*** for 2025 will be calculated on 1 February 2026 – see clause ^19). If the ***interim emissions value*** is above zero the person will then have two years to reduce that to zero before the ***final reconciliation day*** when the ***final emissions value*** is calculated (for 2025 the ***final emissions value*** will be calculated on 1 February 2028).
74. If a person is a registered holder of one or more units, the person's ***interim emissions value*** can be reduced by extinguishing those units under clause ^42. A person will be a registered holder of units where the person is issued units under clauses ^39 to ^41, receives units via a transfer from another registered holder of units (see clause ^45) or receive units through transmission by operation of law (clause ^68).
75. Units can only be used to reduce a ***final emissions value*** to zero, it cannot be reduced below zero (see clause ^42). Requests to extinguish units to reduce a final emissions value must be made no later than 31 December of the year prior to the year the ***final reconciliation day*** occurs (2025 requests must be made no later than 31 December 2027 - see clause ^42).
76. The penalty in this clause is not expressed in penalty units, contrary to the general principle set out in the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers (Guide). However, the Guide also provides that there are limited circumstances where the expression of penalties in dollars may be appropriate. In this case, the proposed penalty of $100 per excess gram is intended to encourage compliance by being set at a level that will ensures an economically rational supplier will choose to comply by supplying more efficient vehicles over paying a penalty.
77. The maximum penalty for contravention of this duty is determined by reference to the person's final emissions value multiplied by $100. This penalty level has been benchmarked against the penalties that apply to suppliers of vehicles under comparable schemes internationally and reflects the mid-range of the penalties that apply internationally, such as the EU (€95 per g/km) and from 2025 in New Zealand (NZD $54.00 or $67.50 per g/km depending on the importer). Large civil penalties could arise under clause ^17, but this would be proportionate to the number of covered vehicles provided by the person and the cost of improving light vehicle efficiency. It also reflects the potential adverse economic impacts of climate change, now and in the future, of CO_2 emissions on humans and ecosystems.

Clause ^18: Final emissions value

78. This clause provides that the ***final emissions value*** for a person is the persons ***interim emissions value*** (IEV) for the year (see clause ^19) minus the number of units that have been extinguished by the person under clause ^42 to reduce the ***final emissions value*** for the year (U).
79. A person may hold units where the person had an ***interim emissions value*** in a year that was less than zero (see clause ^39). A person may also hold units they received via a transfer from another person (see clause ^45) or transmission by operation of law (clause ^68). There are two other situations in which a person can gain units, but these situations will not arise often – see clauses ^40 and ^ 41.
80. Units can only reduce a ***final emissions value*** to zero, it cannot be reduced below zero (see clause ^42).

Clause ^19: Interim emissions value

81. Clause ^19 provides that the interim emissions value for a person is calculated using the following formula:

$$\sum_i (E_i - ET_i)$$

82. The ***interim emissions value*** is the sum total of the difference between the ***emissions number*** (***E***) and the ***emissions target*** (***ET***) for each type of ***covered vehicle*** entered onto the ***RAV*** multiplied by the number of each type of covered vehicle (***i***) entered. The result is rounded to the nearest whole number and rounded up if the first decimal place is a 5 or more. Type of ***covered vehicle*** means each variant in this situation as a vehicle type approval may cover multiple variants with different ***emissions numbers***.
83. If a person's ***interim emissions value*** is less than zero they will be issued units (see clause ^39) and if it is more than zero the person will have two years to reduce that to zero before the final emissions value is calculated (see clause ^18).
84. Using a sum total formula allows for vehicles with an ***emission number*** above the ***emissions target*** to be balanced out by vehicles with an ***emissions number*** below the ***emissions target***. If a person cannot balance across its own vehicles in a year they can reduce the ***interim emissions value*** to zero by extinguishing (surrendering) units held by the person (see clause ^42).
85. To provide transparency on the operation of the Bill, clause ^86 requires that the Secretary publish a person's ***interim emissions value*** on the Department's website.

Clause ^20: Emissions number

86. Clause ^20 provides that the ***emissions number*** for a vehicle for a year is the number of grams of carbon dioxide emissions that are declared by the supplier (in grams of carbon dioxide per kilometre) on the ***RAV*** for that vehicle at the start of the ***interim reconciliation day*** for the year. The ***emissions number*** for a covered vehicle is used in the formula that determines a person's ***interim emissions value*** for a year (see clause ^19).
87. The number of grams of carbon dioxide a vehicle emits is measured in accordance with the test procedure specified under the RVSA. The test procedure used in Australia in 2024 to determine carbon dioxide emissions of road vehicles is known as the New European Driving Cycle (NEDC), adopted in United Nations (UN) Regulation No. 101. In December 2023, the Australian Government announced it will mandate stricter noxious emission standards for light vehicles (known as Euro 6d) for newly approved

light vehicle models supplied for the first time from December 2025 and all new light vehicle units supplied from July 2028. Euro 6d adopts an improved test procedure for measuring fuel consumption and emissions known as the Worldwide harmonised Light vehicles Test Procedure (WLTP). The WLTP is adopted in UN Regulation No. 154.

88. The ***emissions number*** is the number in the RAV entry for the vehicle at the start of the ***interim reconciliation day*** (1 February the following year). This is because it is possible to correct a RAV entry to fix an error in the ***emissions number***.

Clause ^21: Emissions target

89. This clause provides that the ***emissions target*** for a vehicle is calculated using the following formula:

$$HL + MAF(DM - RM)$$

90. The ***emissions target*** is the ***headline limit*** (***HL***) plus the ***mass adjustment factor*** (***MAF***) multiplied by the total of the ***designated MIRO*** (***DM***) minus the ***reference MIRO*** (***RM***) all for the vehicle for the year.
91. The ***emissions target*** is a key element of the formula that determines a person's ***interim emissions value*** (see clause ^19). The ***headline limit***, ***mass adjustment factor***, ***designated MIRO*** and ***reference MIRO*** are set in clauses ^22, ^23, ^24 and ^27 respectively.

Clause ^22: Headline limit

92. Clause ^22 provides what the ***headline limit*** for a vehicle for a year is. The ***headline limit*** is used in the formula to calculate the ***emissions target*** for a vehicle (see clause ^21).There are two different mechanisms for setting the ***headline limit*** – 'the years in the introductory period' and 'later years'.
93. The ***headline limit*** for the years in the introductory period (2025-2029 inclusive), is set out in the table in clause ^22, with column 2 containing the headline limits for type 1 vehicles and column 3 containing the headline limits for type 2 vehicles (see clauses ^13 and 14 for the definitions of type 1 and 2 vehicles). The ***headline limit*** number for each year is the CO_2 target for all covered type 1 and type 2 vehicles supplied in a year. It is intended to equal the notional emissions target for a vehicle with a ***designated MIRO*** equal to the ***reference MIRO*** (see clauses ^24 and 27 for designated and reference MIRO). The headline limits in the table for 2025 to 2029 are set in terms of the New European Driving Cycle (NEDC) test procedure currently mandated by Vehicle Standard (Australian Design Rule 81/02 - Fuel Consumption Labelling for Light Vehicles) 2008.
94. After the end of the introductory period (for 2030 and beyond), the headline limits for ***Type 1*** and ***Type 2*** vehicles for a year will be determined in an instrument made by the Minister under clause ^31. If there is no instrument the ***headline limit*** will be the ***headline limit*** for the previous year.
95. It is not appropriate to set the headline limits for vehicles for 2030 and beyond now because the vehicle market and technology that will be available in 2030 and beyond is uncertain. A more stringent test procedure for measuring emissions (known as the WLTP) will also be phased in for new vehicles supplied to Australia from 2025 to 2028. By enabling future headline limits to be set by ministerial determination, this will enable the Minister to have regard to changes in technology and test procedures and the needs of the Australian vehicle market.

96. To allow sufficient time for suppliers to make changes, ***headline limits*** must be determined at least 2 years before the start of the year in which they apply to provide advance notice to affected people of what the headline limit is (see clause ^31).
97. Public consultation is also required as part of the process of making a determination to ensure affected people can have a say (see clause ^36).

Clause ^23: Mass adjustment factor

98. This clause sets out the ***mass adjustment factor*** for a vehicle, which is used in the formula to calculate the ***emissions target*** for a vehicle (see clause ^21). A ***mass adjustment factor*** is a factor applied to determine the amount a vehicle's notional ***emissions target*** will change if its ***designated MIRO*** varies from the ***Reference MIRO.*** Different mass adjustment factors apply to ***Type 1*** and ***Type 2*** vehicles***.***
99. For the year 2025, the ***mass adjustment factor*** for ***Type 1*** vehicles is 0.0663 and for ***Type 2*** vehicles it is 0.0324. For years after 2025, the ***mass adjustment factor*** for ***Type 1*** and ***Type 2*** vehicles will be determined in an instrument made by the Minister under clause ^32. If there is no instrument, the ***mass adjustment factor*** will be the ***mass adjustment factor*** for that type of vehicle for the previous year.
100. The ***mass adjustment factor*** needs to be set on a yearly basis because the mix of vehicles supplied to Australia will vary over time. These changes will be driven by new technology, updated regulatory requirements for safety and emissions, and shifts in consumer preferences. Setting the ***mass adjustment factor*** by ministerial determination will enable the Minister to account for changes in the Australian vehicle market.
101. Mass adjustment factors must be determined at least 6 months before the start of the year in which they apply to provide advance notice to affected people of what the ***mass adjustment factor*** is (see clause ^32). Public consultation is also required as part of the process of making a determination to ensure affected people can have a say (see clause ^36).

Clause ^24: Designated MIRO

102. Clause ^24 provides how to determine the ***designated MIRO*** for a vehicle, which is used in the formula to calculate the ***emissions target*** for a vehicle (see clause ^21). The ***MIRO number*** for a vehicle for a year is the mass in running order (MIRO) in kilograms in the ***RAV*** entry for the vehicle at the start of the ***interim reconciliation day*** (1 February of the following year). The number is not the number that was entered when the ***RAV*** entry was created for the vehicle because it is possible to correct a ***RAV*** entry to fix an error in the ***MIRO number***.
103. The ***designated MIRO*** for a vehicle for a year is the ***lower breakpoint*** if the vehicle's ***MIRO number*** is less than or equal to the ***lower breakpoint*** (see clause ^25 for further information), or the ***MIRO number*** if the vehicle's ***MIRO number*** is between the lower and upper break points, or the ***upper breakpoint*** if the vehicle's ***MIRO number*** is greater than or equal to the ***upper breakpoint*** (see clause ^26 for further information).

Clause ^25: Lower breakpoint

104. This clause sets out the ***lower breakpoint*** for a vehicle, which is used to help determine the ***designated MIRO*** for a vehicle (see clause ^24). For the years in the introductory period (2025-29 inclusive), the ***lower breakpoint*** for both type 1 and type 2 vehicles is 1,500 kilograms. After the end of the introductory period (for 2030 and

beyond), the lower breakpoints for type 1 and type 2 vehicles for a year will be determined in an instrument made by the Minister under clause ^31, or if there is no instrument the ***lower breakpoint*** will be the ***lower breakpoint*** for the previous year.

105. The ***lower breakpoint*** is the MIRO number at which a vehicle's notional ***emissions target*** ceases to decrease by the ***mass adjustment factor***. This is intended to ensure the standard does not unduly impact on the availability of smaller vehicles, which generally produce lower emissions.

106. It is not appropriate to set the lower breakpoints for vehicles in 2030 and beyond now because the mass of vehicles likely to be supplied to Australia in 2030 is not yet known. These changes will be driven by new technology, updated regulatory requirements for safety and emissions, and shifts in consumer preferences. Setting the ***Lower breakpoints*** by ministerial determination will enable the minister to account for changes in the Australian vehicle market.

107. ***Lower breakpoints*** must be determined at least 2 years before the start of the year in which they apply to provide advance notice to affected people of what the lower breakpoints are (see clause ^31). Public consultation is also required as part of the process of making a determination to ensure affected people can have a say (see clause ^36).

Clause ^26: Upper breakpoint

108. This clause sets out the ***upper breakpoint*** for a vehicle, which is used to help determine the ***designated MIRO*** for a vehicle (see clause ^24). For the years in the introductory period (2025-29 inclusive), the ***upper breakpoint*** for a type 1 vehicle is 2,200kg and for a type 2 vehicle is 2,400 kilograms. After the end of the introductory period (for 2030 and beyond), the upper breakpoints for type 1 and type 2 vehicles for a year will be determined in an instrument made by the Minister under clause ^31, or if there is no instrument the ***upper breakpoint*** will be the ***lower breakpoint*** for the previous year.

109. The ***upper breakpoint*** is the ***MIRO*** number at which a vehicle's notional ***emissions target*** ceases to increase by the ***mass adjustment factor***. This is intended to ensure the standard does not unduly encourage the supply of heavier vehicles, which generally produce higher emissions and may increase safety risks, particularly for vulnerable road users such as pedestrians.

110. It is not appropriate to set the ***upper breakpoints*** for vehicles in 2030 and beyond now because the mass of vehicles likely to be supplied to Australia in 2030 is uncertain. These changes will be driven by new technology, updated regulatory requirements for safety and emissions, and shifts in consumer preferences. Setting ***upper breakpoints*** by ministerial determination will enable the minister to account for changes in the Australian vehicle market.

111. Upper breakpoints must be determined at least 2 years before the start of the year in which they apply to provide advance notice to affected people of what the upper breakpoints are (see clause ^31). Public consultation is also required as part of the process of making a determination to ensure affected people can have a say (see clause ^36).

Clause ^27: Reference MIRO

112. Clause ^27 specifies the ***reference MIRO*** used in the formula to calculate the ***emissions target*** for a vehicle (see clause ^20). The ***reference MIRO*** is based on the average mass of vehicles sold in Australia and serves as a reference point. If a vehicle's ***MIRO*** is greater than the reference ***MIRO*** it will have a higher emissions target than the

headline limit. If a vehicle's ***MIRO*** is lower than the reference ***MIRO*** it will have a lower emissions target than the ***headline limit***. Separate reference MIROs apply to ***Type 1*** and ***Type 2*** vehicles.

113. For the year 2025, the ***reference MIRO*** for type 1 vehicles is 1,723 kilograms and for type 2 vehicles it is 2,155 kilograms. For years after 2025, the ***reference MIRO*** for type 1 and type 2 vehicles will be determined in an instrument made by the Minister under clause ^30, or if there is no instrument, the ***reference MIRO*** will be the ***reference MIRO*** for that type of vehicle for the previous year.

114. The ***reference MIRO*** needs to be set on a yearly basis because the average mass of vehicles supplied to Australia will change. These changes will be driven by new technology, updated regulatory requirements for safety and emissions, and shifts in consumer preferences. Enabling the ***reference MIRO*** to be set by ministerial determination will allow it to account for changes in the Australian vehicle market.

115. Reference MIRO must be determined at least 6 months before the start of the year in which they apply to provide advance notice to affected people of what the ***reference MIRO*** is (see clause ^32). Public consultation is also required as part of the process of making a determination to ensure affected people can have a say (see clause ^36).

Clause ^28: Concessional RAV entry approval pathway

116. Clause ^28 provides that the Minister may determine that a class of road vehicle with a concessional RAV entry approval is subject to the NVES by legislative instrument. Vehicles with a concessional RAV entry approval are not covered by the NVES, but this clause provides the capability for a class of these vehicles to be brought into the NVES. This will give the minister the ability to respond if a person seeks to avoid the requirements of the NVES by using the concessional RAV entry approvals to supply high emitting vehicles. A determination made under this clause must commence at the start of a year to align with the targets applying on a calendar year basis.

117. Before making a determination under this clause the Minister must consider the objects of the Act and may consider any submissions made as part of public consultation and any other relevant matters the Minister considers relevant (see clause ^33). Public consultation for a minimum of 60 days is required to ensure affected people can have a say (see clause ^36). The Minister is also required to publish the reasons for the determination (see clause ^34).

118. A determination made under this clause is a legislative instrument and is subject to disallowance and sunsetting (see the *Legislation Act 2003*).

Clause ^29: Status for class of vehicle

119. This clause provides that the Minister may make a legislative instrument to determine that a class of vehicle has type 1, type 2 or exempt status. The Minister is allowed to determine that a vehicle that falls within the definition of a type 1 vehicle in clause ^12 is either a type 2 vehicle or an exempt vehicle. The Minister is also allowed to determine that a vehicle that falls within the definition of a type 2 vehicle in clause ^13 is a type 1 vehicle or an exempt vehicle.

120. The Minister needs the ability to determine the status for a class of vehicle because vehicles supplied to perform a specific purpose (such as an emergency vehicle) may not be able to comply with the NVES without impacting on their intended purpose. The Minister also needs the ability to determine that a vehicle is a type 1 or type 2 vehicle to

address circumstances where a person seeks to avoid the requirements of the NVES, or have less stringent requirements, by placing a vehicle in a particular regulatory category.

121. Before making a determination under this clause the Minister must consider the objects of the Act and may consider any submissions made as part of public consultation and any other relevant matters the Minister considers relevant (see clause ^33). Public consultation for a minimum of 60 days is required to ensure affected people can have a say (see clause ^36). The Minister is also required to publish the reasons for the determination (see clause ^34).

122. A determination made under this clause must commence at the start of a year to align with the targets applying on a per year basis. The determination must also be registered on the Federal Register of Legislation at least 3 months before it commences to provide sufficient advance notice to people impacted by the determination. A determination that commences on 1 January 2025 does not need to be registered at least 3 months beforehand, this is due to the anticipated short amount of time between the passage of the Bill and 1 January 2025. A determination made under this clause is a legislative instrument and is subject to disallowance and sunsetting (see the *Legislation Act 2003*).

Clause ^30: Heavy off-road passenger vehicles

123. Clause ^30 provides that the Minister may make a legislative instrument to determine a chassis definition for the purposes of classifying a vehicle as a *heavy off-road passenger vehicle* under clause ^15.

124. Where a determination has not been made under this clause, subparagraph ^15(1)(c)(ii) provides that a chassis will be considered as a 'body on frame chassis' within the ordinary meaning of that expression. The intent of allowing a determination to define a chassis for the purposes of clause ^15 is to allow the Minister to resolve any debates regarding the definition in subparagraph ^15(1)(c)(ii).

125. A determination made under this clause must commence at the start of a year to align with the targets applying on a per year basis. The determination must also be registered on the Federal Register of Legislation at least 3 months before it commences to provide sufficient advance notice to people impacted by the determination. A determination that commences on 1 January 2025 does not need to be registered at least 3 months beforehand, this is due to the anticipated short amount of time between the passage of the Bill and 1 January 2025. A determination made under this clause is a legislative instrument and is subject to disallowance and sunsetting (see the *Legislation Act 2003*).

Clause ^31: Headline limit and breakpoint

126. This clause provides that the Minister may make a legislative instrument to determine the ***headline limit***, ***lower breakpoint*** or ***upper breakpoint*** for a particular year for type 1 and type 2 vehicles.

127. The Minister can only determine a number for the ***headline limit*** for a particular year that is lower than the corresponding ***headline limit*** for the previous year when based on the same test procedure. The requirement that the ***headline limit*** must be lower than previous year's limit is an important design feature of the NVES. It ensures vehicle manufacturers are incentivised to continue developing and supplying more efficient vehicles and that greenhouse gas emissions from light road vehicles continue to reduce over time.

128. The Bill provides for the Minister to set a ***headline limit*** with a higher number than the previous number if it is based on a more stringent test procedure. The headline limits for 2025 to 2029 inclusive were determined using the New European Driving Cycle (NEDC)

test cycle, as this is the test currently mandated in Australia to measure CO_2 emissions from light vehicles. However, a new Euro 6d noxious emission standard will be phased in for new light vehicles supplied from 2025 to 2028. This will mandate a more stringent test procedure (known as the WLTP) to measure emissions from new vehicles and will require an increase in the ***headline limit*** to maintain an equivalent NVES.

129. It is not appropriate to set the ***headline limits*** for vehicles for 2030 and beyond now because the vehicle market and technology that will be available to improve vehicle efficiency in 2030 and beyond is uncertain. Setting future headline limits by ministerial determination will enable the minister account for changes in Australian vehicle market.

130. Similarly, it is not appropriate to set the breakpoints for vehicles in 2030 and beyond now because the mass of vehicles likely to be supplied to Australia in 2030 is uncertain. These changes will be driven by new technology, updated regulatory requirements for safety and emissions, and shifts in consumer preferences. Setting breakpoints by ministerial determination will enable the minister to account for changes in the Australian vehicle market.

131. Headline limits and lower and upper breakpoints must be determined at least 2 years before the start of the year in which they apply to provide sufficient notice to affected people of what the ***headline limit***, ***lower breakpoint*** and ***upper breakpoint*** are.

132. Before making a determination under this clause the Minister must consider the objects of the Act, and may consider any submissions made as part of public consultation and any other relevant matters the Minister considers relevant (see clause ^33). Public consultation for a minimum of 60 days is required to ensure affected people can have a say (see clause ^36). The Minister is also required to publish the reasons for the determination (see clause ^34).

133. A determination made under this clause is a legislative instrument and is subject to disallowance and sunsetting (see the *Legislation Act 2003*).

Clause ^32: Mass adjustment factor and reference MIRO

134. Clause ^32 provides that the Minister may make a legislative instrument to determine the ***mass adjustment factor*** or ***reference MIRO*** for a particular year for type 1 and type 2 vehicles.

135. The ***mass adjustment factor*** and ***reference MIRO*** needs to be set on a yearly basis because the mix of vehicles supplied to Australia will vary over time. These changes will be driven by new technology, updated regulatory requirements for safety and emissions, and shifts in consumer preferences. Setting the ***mass adjustment factor*** and ***reference MIRO*** by ministerial determination will enable the minister to account for changes in the Australian vehicle market.

136. The ***mass adjustment factor*** and ***reference MIRO*** must be determined at least 6 months before the start of the year in which they apply to provide advance notice to affected people of what the ***mass adjustment factor*** and ***reference MIRO*** are.

137. Before making a determination under this clause the Minister must consider the objects of the Act, and may consider any submissions made as part of public consultation and any other relevant matters the Minister considers relevant (see clause ^33). Public consultation for a minimum of 30 days is required to ensure affected people can have a say (see clause ^36). The Minister is also required to publish the reasons for the determination (see clause ^34).

138. A determination made under this clause is a legislative instrument and is subject to disallowance and sunsetting (see the *Legislation Act 2003*).

Clause ^33: Making a determination under this Division

139. This clause sets out the requirements for the Minister when making a determination under Division 4 of Part 2 of the Bill. When making a determination, the Minister must consider the objects of the Act. The Minister may also consider any submissions made during the public consultation process in response to a notice under clause ^36(1) and any other matters they consider relevant.
140. The Bill allows the Minister to set a number of key parameters by determination to enable the key parameters to be able to be changed quickly and regularly in line with changes to the vehicle market and technology (see clauses 28, 29, 30, 31 and 32 for more detailed explanations).
141. The public consultation requirements outlined in clause ^36 provide a safeguard around the determination making power to ensure people affected by these determinations are aware of proposed changes and can have a say in the process.

Clause ^34: Publication of reasons

142. Clause ^34 provides that the Minister must publish a notice of a determination made under Division 4 of Part 2 of the Bill on the Department's website. The notice must set out the reasons for the Minister's decision to make the determination and if submissions were made as part of the public consultation, which submissions, if any, the Minister considered.
143. This is one of the safeguards around the Minister's determination making power. It will allow people affected by these determinations to understand why the Minister has made a determination and what matters and submissions the Minister considered.

Clause ^35: Incorporation of other instruments

144. A determination made under Division 4 of the Bill may apply, adopt or incorporate any matter contained in an instrument or writing in force or existing at a particular time or in force or existing from time to time.
145. As a determination may specify complex technical requirements adopted in a national or international road vehicle standard, it may apply, adopt or incorporate any matter contained in an instrument or writing in force or existing at a particular time or in force or existing from time to time (see clause ^35). This enables the incorporated document (which could be lengthy) is taken to be part of the legislative instrument without having to replicate its terms in the text of the legislative instrument.
146. The benefit of incorporation by reference is that the incorporated document (which could be lengthy) is taken to be part of the legislative instrument without having to replicate its terms in the text of the legislative instrument. The appropriateness of incorporating particular provisions or matters by reference is something that the Government would be expected to consult about when preparing a determination, in accordance with clause ^36 of this Bill and Part 3 of the *Legislation Act 2003*.
147. Allowing the adoption of a variety of documents and standards into determinations as both in force at a particular time and in force from time to time, ensures that Australia can respond to innovations and improvements in the complex global regulatory environment of road vehicles efficiently and effectively, ensuring Australia has access to the latest technology available in other advanced economies.
148. The documents incorporated into these legislative instruments are likely to be national road vehicle standards (also known as Australian Design Rules or ADRs) made under the

RVSA or technical standards developed and agreed to by the United Nations consistent with Australia's obligations under the 1958 Agreement and 1998 Agreement. Both the ADRs and equivalent UN standards for road vehicles are freely and publicly available. If these standards were being adopted as in force from time to time, this would be consistent with regulations agreed under the RVSA and at an international level.

149. It should be noted that ADRs and UN standards may incorporate, by reference, International Standards Organisation standards or other similar written material. This is the main reason why the drafting is as broad as it is. International Standards Organisation documents and Australian Standards documents are agreed standards that are available to the public, but generally not free to access. These are usually government and industry agreed standards, but cannot be directly incorporated into Australian law due to intellectual property rights applying to the standard. While not freely available, they are readily accessible to the entities that will need to comply with them. This is consistent with the current approach to road vehicle regulation in Australia.

150. Other standards could be adopted in a determination under this division include the standards of other nations, including the United States of America, Japan, and the European Union. These standards are generally publicly available.

151. While the drafting could be narrowed to just these entities, the ability to adopt other public documents outside of these sources is vital to the flexibility and adaptability in the way Australia chooses to adapt to shifts in the automotive landscape and respond to disruptive technologies.

152. Public consultation requirements provide a safeguard around the determination making power to ensure people affected by these determinations are aware of the proposed changes and can have a say in the process (see clause ^36).

153. Subject to copyright requirements, any material incorporated by reference will be made freely available. Where instruments adopted or incorporated include reference to content that is not freely available and subject to copyright, this content will be available for viewing at the Department's offices in Canberra

Clause ^36: Public consultation

154. This clause provides that minster must undertake public consultation prior to making a determination under Division 4 of Part 2 of the Bill. The Minister must publish a notice on the Department's website that includes a draft of the proposed determination, the reasons for making the determination and invites any person to make a written submission to the Department within the public consultation period specified in the notice. The rules can also prescribe additional requirements for the notice.

155. The public consultation period must be at least 30 days for ***mass adjustment factor*** and ***reference MIRO*** (see clause ^32) and 60 days for all other determinations. The Minister may arrange for submissions received during the public consultation process to be published on the Department's website, except where the author has requested in writing that the submission not be published. The Minister is not allowed to make the determination before the end of the public consultation period.

156. This is one of the safeguards around the Minister's determination making power. It will allow people affected by these determinations to have a genuine say on a draft determination, knowing that there are set timeframes for the public consultation and that the Minister cannot make the determination within those set timeframes.

Part 3 –Units issued in respect of covered vehicles

Clause ^37: Simplified outline of this Part

157. Clause ^37 provides an overview of Part 3 of the Bill. Part 3 outlines matters relating to units issued in relation to vehicles covered by the new vehicle efficiency standard, including their transfer and extinguishment.
158. Simplified outlines are included in Bills to assist readers to understand the substantive provisions of legislation. The simplified outline is not intended to be comprehensive and readers should rely on the substantive provisions for a comprehensive understanding of this Part of the Bill.

Clause ^38 – How units are issued etc.

159. Clause ^38 provides that units that are issued under Division 2 of Part 3 are issued by the Secretary making an entry for the unit in the person's ***registry account***.
160. This clause also clarifies that units may be issued to a person under more than one provision in the Division for the same vehicle covered by the standard. For example, additional units may be issued if a person has their unit balance corrected after an adjustment is made to correct a ***RAV*** entry in relation to the vehicle (clause ^40) or to reflect that the vehicle was entered onto the ***RAV*** but was destroyed before it was provided to the Australian market (clause ^41).
161. Units must be issued into a ***registry account***, as these units only exist within the electronic ***Registry*** system. Clause ^53 provides that a person may apply for the Secretary to open an account on the ***Registry***.
162. The requirement for units to be issued into a ***registry account***, together with the requirement to publish information relating to the number of units held in each account (clause ^86), ensures transparency and facilitates the transfer of units between persons.

Clause ^39: Interim emissions value less than zero

163. Clause ^19 outlines how a person's ***interim emissions value*** is determined. At the end of each year, the emissions number of each ***covered vehicle*** for the person for the year is compared against an emissions target. If the vehicle produces fewer emissions than its target, a negative number is generated; if not, a positive number or zero is generated. These numbers are summated to obtain the person's ***interim emissions value*** for the year.
164. Clause ^39 provides that where a person's ***interim emissions value*** for a year is less than zero, the Secretary will issue the person units. The person will be issued a number of units that is equal to the absolute value of a person's ***interim emissions value*** for a year. For example, if a ***person's interim emissions*** value for a year is -200, the absolute value is 200. If the person has a ***registry account*** they will be issued 200 units.
165. For the 2025 calendar year, only vehicles entered onto the ***RAV*** from 1 July 2025 will be considered ***covered vehicles*** (clause ^12).
166. A person's ***interim emissions value*** for a year is determined on the ***interim reconciliation day***, which is the first of February the following year (for example, the ***interim emissions value*** for 2025 is 1 February 2026).
167. The Secretary must issue the units as soon as possible after the ***interim reconciliation day*** for the year, by making an entry for the units in the person's ***registry account*** (refer clause ^38). However, the Secretary must not issue a unit under this clause if the person

doesn't have a ***registry account*** and does not apply under clause ^53, to open a ***registry account***, within one year after the ***interim reconciliation day*** for the year.

Clause ^40: Adjusted RAV values

168. Section 11 of the Road Vehicle Standards Rules 2019 provides the power for the Department to correct errors on the ***RAV***. It is possible that a ***road vehicle type approval*** holder may request a ***RAV*** update due to entering incorrect data for a vehicle or vehicles, such as entering the wrong ***emissions number*** or ***MIRO number***. This clause allows a person to have their unit balance corrected after the ***interim reconciliation day***, if impacted by an update to the ***emissions number*** or ***MIRO number***.
169. Under clause ^40, a person with a ***registry account*** may apply to the Secretary for the issue of a specified number of units to account for an ***adjusted emissions number*** and/or ***adjusted MIRO number RAV*** for a ***covered vehicle***, where the adjustment would result in a lower ***interim emissions value***. The application must be in writing and meet any requirements to be prescribed by the rules.
170. This clause also provides that the rules may prescribe that applications be accompanied by a fee. The purpose of any fee would be to enable the costs associated with processing the application to be recovered. Any fees prescribed for opening an account cannot amount to a tax.
171. Any units issued under this clause must not exceed the difference between the person's ***interim emissions value*** for the year, and the number equal to what the person's ***interim emissions value*** for the year would be if it were worked out using the corrected ***RAV*** figures.
172. The Secretary must provide written notice to the applicant if a decision is made to not issue units, or to issue fewer units than the number of units specified in the application. Reasons for the decision must also be provided to the applicant.
173. A decision on whether to issue units under the clause is a reviewable decision (clause ^89).

Clause ^41: Destroyed vehicles

174. Section 11 of the Road Vehicle Standards Rules 2019 provides the power for the Department to correct errors on the ***RAV***, including the ability to remove a vehicle from the ***RAV***.
175. There are a small number of ***road vehicle type approval*** holders who have been granted approval to add vehicles to the ***RAV*** while offshore. This means that there is a small chance that a vehicle added to the ***RAV*** while offshore, could then be destroyed in transit and never be provided to the Australian market. In these cases the ***RAV*** entry for the vehicle may be removed under section 11 of the Road Vehicle Standards Rules 2019.
176. Clause ^41 allows a person to have their unit balance corrected if the Secretary is satisfied that a ***covered vehicle*** was destroyed before the ***final reconciliation day*** for the year and the vehicle was not provided to a consumer for the first time in Australia. For the purposes of this clause *providing* a vehicle includes the provision of the vehicle due to a sale, exchange, gift, lease, loan, hire or hire-purchase.
177. To be issued units under this clause, the person must make an application to the Secretary for a specified number of units to be issued to the person for a specified ***covered vehicle***. The application must be in writing and meet any requirements to be prescribed by the rules. For example, the rules may prescribe information that is required

to accompany an application to allow the Secretary to be satisfied that the vehicle was, in fact, destroyed and not provided to an Australian consumer.

178. This clause also provides that the rules may prescribe that applications be accompanied by a fee. The purpose of any fee would be to enable the costs associated with processing the application to be recovered. Any fees prescribed for opening an account cannot amount to a tax.

179. The intent of this clause is to provide for one or more units to be issued, where the person would have otherwise received those units, but for that vehicle being entered on the ***RAV*** and included in the person's ***interim emissions value*** for the year. The number of units issued in respect of the vehicle must not exceed the difference between the ***emissions number*** for the vehicle for the year and the ***emissions target*** for the vehicle for the year (the ***destroyed vehicle adjustment***). The ***destroyed vehicle adjustment*** for the year must be more than zero and the person must have a ***registry account*** for units to be issued under this clause.

180. A decision on whether to issue units under the clause is a reviewable decision (clause ^89).

Clause ^42: Units extinguished for purpose of reducing final emissions value

181. Clause ^19 outlines how a person's ***interim emissions value*** is determined. At the end of each year, the emissions number of each ***covered vehicle*** for the person for the year is compared against an emissions target. If the vehicle produces fewer emissions than its target, a negative number is generated; if not, a positive number or zero is generated. These numbers are summated to obtain the person's ***interim emissions value*** for the year.

182. If the ***interim emissions value*** is above zero, the person must ensure that this value is reduced to zero by the ***final reconciliation day***. A person who does not meet this duty is liable for a civil penalty under clause ^17.

183. Clause ^42 allows a person with an ***interim emissions value*** above zero for a year, to reduce this value by offsetting the balance using units held by that person in their ***registry account***. These units may be units the person has been issued under clause ^39, ^40 or ^41, or units held by the person in their ***registry account*** after being transferred to them from another ***registry account*** holder under clause ^45 or by operation of law under clause ^68.

184. Under this clause, the registered holder of units must provide a written request to the Secretary to extinguish any or all of its units to reduce the person's ***final emissions value*** for the year.

185. The request must be made in accordance with any requirements prescribed in the rules and be made during the period beginning at the start of the ***interim reconciliation day*** for the year (the first 1 February the following year) and ending on the second 31 December after the end of the relevant year. For example, if a person has an ***interim emissions value*** above zero for the 2025 calendar year, the written request to extinguish units to reduce this emissions value must be made between 1 February 2026 and 31 December 2027. A person may make more than one request during this period under this clause.

186. Requiring requests to extinguish units under this clause to be made no later than the second 31 December after the end of the relevant year will ensure that the requests can be actioned by the Secretary, and the person's ***interim emissions value*** reduced, before the ***final reconciliation day*** (subclause ^17(2)) when a civil penalty will apply for a ***final emissions value*** above zero.

187. The Secretary must extinguish the relevant units by removing the entry for those units from the person's ***registry account*** within 15 business days after a request is made. There

may be circumstances where the Secretary may refuse to extinguish a unit, as provided by clause ^46.

Clause ^43: Units extinguished other than for purpose of reducing final emissions value

188. Clause ^43 allows a person to extinguish one or more units held in their ***registry account***, other than for the purpose of reducing the person's ***final emissions value***.
189. A unit will be extinguished through the passage of time, three years after being issued (clause ^44). However, the voluntary closure of ***registry accounts*** under clause ^56 requires that no units remain in the account. This clause provides a means to reduce the person's ***registry account*** balance to ensure no units remain in the account before an application is made to close the account. This provides an alternative option to the person reducing their balance by transferring their units to another person under clause ^45.
190. This clause would also allow for the registered owner of units to voluntarily extinguish their units to contribute to stronger national climate change mitigation by reducing the supply of units available to be used by another entity for the purposes of meeting their emission targets. This allows entities to contribute to additional global abatement.
191. To extinguish units under this clause, the person must make a written request to the Secretary, in accordance with any requirements prescribed in the rules.
192. The Secretary must extinguish the relevant units by removing the entry for those units from the person's ***registry account*** within 15 business days after the request is made. Clause ^46 provides for circumstances in which the Secretary may refuse to extinguish a unit.

Clause ^44: Units extinguished 3 years after issue unless extinguished earlier

193. Clause ^44 provides for the extinguishment of a unit, if the unit has not already been extinguished for the purpose of reducing a ***final emissions value*** (clause ^42) or for another purposes (clause ^43).
194. If a unit is issued under clause ^39 for an ***interim emissions value*** less than zero and has not already been extinguished, this clause provides that the unit must be extinguished on 1 February, 3 years after being issued by the Secretary. For example, if the Secretary issues the unit on the ***interim reconciliation day*** for 2025, which is 1 February 2026, the Secretary must extinguish the unit on 1 February 2029.
195. If a unit is issued under clause ^40 or ^41 in relation to an adjusted ***RAV*** entry or a ***destroyed vehicle adjustment***, this clause provides that the unit must be extinguished 3 years after being issued by the Secretary.
196. The extinguishment of units under this clause is actioned by the Secretary removing the entry for the unit from the ***registry account*** of the registered owner of the unit. Once extinguished, units cease to exist.

Clause ^45: Request to transfer units

197. Clause ^45 provides for the transfer of units from one person's ***registry accoun***t to another person's ***registry account***. The intent of this clause is to reflect any trade of units between parties.
198. The transferor must provide a written request to the Secretary to transfer one or more specified units from its ***registry account*** to the ***registry account*** of the other person (the transferee). The request must meet the requirements, if any, prescribed by the rules. For example, the rules may make provisions for matters such as the form of a request to

transfer units; and any information that should accompany this request, such as the account number of the originating registry account; the account number of the receiving registry account and the specified units which are to be transferred.

199. The Secretary must action the request within 15 business days after the request is made, by updating the ***Registry*** to remove the entry for the specified units from the ***registry account*** of the person initiating the transfer (the transferor) and the making of an entry for the units in the receiving ***registry account*** (the account of the transferee).
200. Clause ^46 provides for circumstances in which the Secretary may refuse to transfer a unit.

Clause ^46: Secretary may refuse to extinguish or transfer units

201. Clause ^46 provides that the Secretary may refuse to affect a request to extinguish units under clauses ^42 or ^43, or to transfer units under clause ^45 if the Secretary is satisfied that it is prudent to do so to ensure the integrity of the ***Registry*** or to prevent, mitigate or minimise abuse of, or criminal activity involving the ***Registry***.
202. The Secretary may also refuse to action such requests if the person has or may have contravened a civil penalty provision of the Act (other than clause ^17) or committed an offence in relation to the ***Registry*** (Division 4 of Part 4), an offence against Part 2 of the RVSA, or an offence against the *Crimes Act 1914 or Criminal Code* to the extent that it relates to the Act.
203. As soon as practicable after refusing to action a request to extinguish or transfer the units, the Secretary must give written notice of the refusal to the person who requested the transfer. The notice must invite the person to request the Secretary to cease refusing to transfer or extinguish the units. Any request to the Secretary in response to this notice must be in writing, set out the reasons for the request and meet any requirements prescribed by the rules. The Secretary may request that the person provide further information in connection with the request within a specified period.
204. The Secretary must make a decision on the request, to either cease to refuse to transfer or extinguish the units, or to continue to refuse to transfer or extinguish the units.
205. The Secretary is not required to given any prior notice of a refusal under this section, however, the Secretary must take all reasonable steps to ensure that a decision on whether or not to continue to refuse to transfer or extinguish units is made within 7 days of the request being made, or if the Secretary has further information, within 7 days of the person providing the requested information to the Secretary.
206. The Secretary must provide written notice of the decision as soon as practicable after the decision is made.
207. A decision to continue to refuse to transfer or extinguish units under this clause is a reviewable decision (clause ^89).

Clause ^47: Units are personal property

208. Clause ^47 provides that a unit is personal property and, subject to the Act, is transmissible by assignment, will and operation of law. Units may be extinguished in accordance with the Act.
209. The policy intent in adopting this approach is to reduce uncertainty for holders of units, and promote market confidence in and development of the market.

Clause ^48: Ownership of units

210. Clause ^48 provides that the registered holder of a unit is the legal owner of the unit and, subject to the Act, may deal with the unit as its legal owner and give good discharges for any consideration for any such dealing.
211. A person who deals with the registered holder of the unit as a purchaser is only protected if they are dealing in good faith for value and without notice of any defect in the title of the registered holder.

Clause ^49: Equitable interests in relation to units

212. Clause ^49 provides that the Act does not affect the creation or enforcement of, or any dealings with, or the enforcement of equitable interests in relation to a unit. This has been included for the avoidance of doubt.

Part 4 – The Registry

Clause ^50 – Simplified outline of this Part

213. Clause ^50 provides an overview of Part 4 of the Bill. Part 4 provides for the creation of the New Vehicle Efficiency Standard Unit Registry and dealings with the registry accounts, including opening and closing accounts and obligations of account holders. This Part also provides for a number of offences and civil penalties in relation to the registry.
214. Simplified outlines are included in Bills to assist readers to understand the substantive provisions of legislation. The simplified outline is not intended to be comprehensive and readers should rely on the substantive provisions for a comprehensive understanding of this Part of the Bill.

Clause ^51: The New Vehicle Efficiency Standard Unit Registry

215. This clause provides for the creation of the New Vehicle Efficiency Standard Unit Registry. The purpose of the ***Registry*** is to act as a registry for units issued by the Secretary.
216. The ***Registry*** is to be established and maintained by the Secretary, by electronic means. An electronic registry provides an efficient, reliable and low-cost method for tracking units held and traded by eligible persons.
217. To ensure transparency and allow efficient trading of units between participants, clause ^86 provides that the Secretary must publish certain information relating to the ***Registry***, including the name of each person with a ***registry account*** and the number of units in each ***registry account***. The rules may provide for the publication of additional information about the ***Registry***.
218. The ***Registry*** is not a legislative instrument for the purposes of the *Legislation Act 2003* and does not prescribe a substantive exemption from the operation of this Act. The ***Registry*** has a purely administrative function and does not determine or alter the law.

Clause ^52: Assistance of Clean Energy Regulator

219. Clause ^52 allows the Clean Energy Regulator to assist the Secretary to perform the Secretary's role in providing the ***Registry***, if so requested, by providing services in relation to establishing and maintaining the ***Registry***.

Clause ^53: Application to open registry account

220. Clause ^53 provides that a person may apply for the Secretary to open an account on the ***Registry***, to be known, if approved, as the person's ***registry account*** (refer clause ^55).
221. Applications to open a ***registry account*** must be made in writing and meet any requirements prescribed by the rules. For example, the rules may make provisions for matters such as the form of a request to open an account; and any information that should accompany this request including how the information should be verified.
222. This clause also provides that the rules may prescribe that applications be accompanied by a fee. The purpose of any fee would be to enable the costs associated with processing the application to be recovered. Any fees prescribed for opening an account cannot amount to a tax.

Clause ^54: Request for further information

223. Clause ^54 provides that the Secretary may, by written notice, require a person who makes an application to open a ***registry account*** under clause ^53, to provide further information within a specified period.
224. Despite the operation of subclause ^55(1), which requires the Secretary to decide an application, if the requested information is not provided the Secretary may cease considering whether to decide the application.

Clause ^55: Opening of registry account

225. This clause provides that the Secretary must decide whether or not to open a ***registry account*** if a person makes an application under clause ^53.
226. The Secretary must not open a ***registry account*** unless satisfied that:
    - The person has a ***covered vehicle*** for a year (unless the application to open the ***registry account*** is accompanying a declaration of transmission in accordance with clause ^68);
    - The person does not have another ***registry account***; and
    - The person is a fit and proper person, having regard to whether the Secretary has previously closed a ***registry account*** of the person under clause ^57, any matters prescribed by the rules, and any other matters the Secretary considers relevant.
227. If the Secretary refuses to open a ***registry account*** under this clause, the Secretary must give the person written notice of the decision and reasons for the decision. A decision to refuse to open a ***registry account*** under this clause is a reviewable decision (see clause ^89).
228. To ensure transparency and allow efficient trading of units between participants, clause ^86 provides that the Secretary must publish the name of each person with a ***registry account*** on the Department's website.

Clause ^56: Voluntary closure of registry account

229. Clause ^56 provides for a person to apply to the Secretary to close their ***registry account***. The application must be made in writing and meet any requirements prescribed by the rules. For example, the rules may make provisions for matters such as the form of a request to close the registry account.
230. The rules may also prescribe that applications be accompanied by a fee. The purpose of any fee would be to enable the costs associated with processing the application to be recovered. Any fees prescribed for closing an account cannot amount to a tax.
231. The Secretary may close the person's ***registry account*** provided there are no units in the account. This means that an account holder would need to have either extinguished or transferred any remaining units prior to submitting an application (see clauses ^42, ^43 and ^45) or wait until their units have been extinguished due to the passage of time (see clause ^44 (units extinguished three years after issue unless extinguished earlier)). The ***Registry*** must keep a record of each closure of an account under this clause.

Clause ^57: Unilateral closure of registry account

232. To allow the Secretary to respond to contraventions, clause ^57 gives the Secretary the power to close a ***registry account*** without the account holder's consent.
233. The Secretary may close a ***registry account*** under this clause if satisfied that the account holder has committed an offence against Division ^4 of Part ^4 of the Act; Part 2 of the RVSA; or an offence under the *Crimes Act 1914* or the *Criminal Code* to the extent it relates to the Act.
234. The Secretary may also close a ***registry account*** under this clause if satisfied that the account holder has contravened a civil penalty provision of the Act (other than section ^17) or Part 2 of the RVSA.
235. At least 30 days prior to closing the account, the Secretary must give the account holder a written notice to advise the person of the proposed closure and that any units held in the ***registry account*** when the account closes will be extinguished. The notice must meet any requirements prescribed by the rules.
236. To ensure that the Secretary is accountable for decisions taken under this clause, closure of ***registry accounts*** under this clause must be recorded in the ***Registry***.
237. A decision to close a ***registry account*** under this clause is a reviewable decision (clause ^89).

Clause ^58: Corrections of clerical errors, obvious defects or unauthorised entries etc.

238. Clause ^58 allows the Secretary to alter the ***Registry*** to correct a clerical error or obvious defect. Examples of clerical errors or obvious defects may include a typographical error or an entry which is clearly incorrect prima facie.
239. The Secretary may also alter the ***Registry*** under this clause to correct entries that were made without sufficient cause, or that wrongly existing, or were wrongly removed. These entries may result from, for example, the unauthorised actions of a hacker.
240. Corrections must occur within four years after the error is made.
241. Surveillance of the ***Registry*** by the Secretary should alert the Secretary immediately to any unauthorised entries to the ***Registry***. This clause will allow the Secretary to immediately respond to, and correct, entries made by persons who have hacked into the ***Registry*** to change their own, or other, accounts for their own benefit.

242. The Secretary may make the alterations as a result of a written application to the Secretary by a person, or on the Secretary's own initiative. An application under this clause must be made in writing and meet any requirements prescribed by the rules. For example, the rules may make provisions for matters such as the form of an application.
243. The rules may also prescribe that applications be accompanied by a fee. The purpose of any fee would be to enable the costs associated with processing the application to be recovered. Any fees prescribed for making a correction to the ***Registry*** cannot amount to a tax.
244. If the Secretary refuses to alter the ***Registry*** in response to an application, the Secretary must give written notice of the decision to the applicant. As the power to maintain the ***Registry*** inherently involves correction of errors to ensure that the ***Registry*** properly records the interests of account holders, this is an exercise of an administrative power conferred on the Secretary. A decision of the Secretary to correct an entry in the ***Registry***, or to refuse to do so, is a reviewable decision (clause ^89).
245. The Secretary must publish a notice on the Department's website, setting out the details of any alteration made to the ***Registry*** .
246. The power exercised by the Secretary under this clause must not be exercised contrary to clause ^47 (Units are personal property), or contrary to a decision of a court in proceedings under clause ^59 (Rectification of the ***Registry*** by court order)).

Clause ^59: Rectification of Registry by court order

247. The courts have historically had a role in making decisions in relation to the content of registers that record title to property.
248. Clause ^59 provides that a person aggrieved by any of the following matters may make an application for rectification of the Registry to a ***relevant court***:
    - the omission of an entry from the Registry;
    - an entry made in the Registry without sufficient cause;
    - an entry wrongly existing in the Registry;
    - an error or defect in an entry in the Registry;
    - an entry wrongly removed from the Registry.
249. The Secretary may also apply to a ***relevant court*** for a rectification order if the Secretary is concerned about any of those matters. For example, there may be some circumstances where there are ongoing contractual disputes between ***registry account*** holders regarding the trade of units, and title to those units, and the Secretary would prefer the court to decide these matters and any resulting rectification to the ***Registry***.
250. A ***relevant court*** includes the Federal Court, the Federal Circuit and Family Court of Australia (Division 2) or a court of a State or Territory that has jurisdiction in relation to matters under the Act.
251. If an application is made under this clause (other than by the Secretary) the Secretary must be given a notice of the application, whose representative may appear and be heard; and must appear if so directed by the court.
252. In proceedings under this clause, the court may decide any question that is necessary or expedient to decide in connection with the rectification of the ***Registry*** and may make such order as it thinks fit directing the rectification of the ***Registry***. An order made by the court must not be expressed to take effect before the order is made.
253. The Secretary must comply with an order of the court directing rectification of the ***Registry***.

Clause ^60: False or misleading information

254. Clause ^60 provides that a person is liable to a civil penalty if the person provides information to the Secretary that is false or misleading in a material particular, in compliance or purported compliance with the Bill. A civil penalty would also apply where a person provides information that omits any matter or thing, without which the information is false or misleading in a material particular.
255. False information, for the purposes of this clause, is information that is not true, regardless of whether or not you know that it is false. Similarly, for this clause, misleading information is when it gives a false impression, is unclear, or deceptive, including by omitting relevant or helpful information to a situation for the purpose of compliance or purported compliance with the Bill.
256. The purpose of this civil penalty provision is to maintain the integrity of the ***Registry*** and to ensure that it accurately reflects unit holdings and actions such as transfers. The clause also ensures that information provided in response to a notice to produce under clause ^72 is accurate, to support investigations of relevant offences and civil penalty provisions under the Bill.
257. The maximum civil penalty applicable if a person breaches clause ^60 is 60 penalty units. The level of the civil penalty reflects the seriousness of providing false or misleading information to the Secretary and represents a clear disincentive for non-compliance. The maximum penalty for this offence aligns with the comparable penalty in section 32 of the RVSA.

Clause ^61: False Registry copies or extracts

258. Producing or tendering a document in evidence which falsely purports to be a copy or extract from an entry in the ***Registry*** is an offence under clause ^61 of the Bill.
259. Conduct of this type impacts upon the integrity of the ***Registry*** and the reliance third parties may place upon it. For example, conduct could involve the creation of a document which purports to show that the perpetrator has a substantial holding of units. This could then be used to sell these counterfeit units to innocent purchasers.
260. The standing of the ***Registry*** as an accurate source of information about unit holdings and transfers is also recognised elsewhere in the Bill. For example, the Secretary may supply a copy of or extract from the ***Registry*** under clause ^67. This facilitates proceedings by avoiding the need to produce an original.
261. Tendering a false document in evidence of an entry from the ***Registry*** could therefore have a significant impact on the functional integrity and reputation of the NVES.
262. To reflect the seriousness of this conduct, a maximum penalty of 12 months imprisonment or 60 penalty units, or both applies to this offence to provide sufficient deterrent effect. The maximum penalty for this offence aligns with the penalties for other comparable false representation offences including section 137.2 of the *Criminal Code*, section 24 of the *Australian National Registry of Emissions Units Act 2011* and the offences identified in Annexure A of the Guide. The penalty also aligns with the standard penalty/ imprisonment ratio provided section 4B of the *Crimes Act 1914*.

Clause ^62: Contravention of requirement in relation to registry account

263. Clause ^69 provides that rules may be made for or in relation to the ***Registry***. This may include rules that provide for requirements in relation to ***registry accounts***. For example, as the rules may provide for the suspension of ***registry accounts***, the rules may also

include associated requirements on a ***registry account*** holder while their account has been suspended.

264. Under clause ^62, a person commits an offence and is liable to a civil penalty if the person is subject to a requirement under the rules in relation to a ***registry account*** and they contravene that requirement.

265. A maximum penalty of 120 penalty units applies to both the offence and civil penalty in clause ^62. The civil penalty is intended to reflect the seriousness of non-compliance with a requirement in the rules in relation to a ***registry account***. The availability of the criminal penalty is appropriate for the circumstances where higher culpability is present, and the fault elements of the offence are made out. The penalties align with comparable penalties in section 16 of the RVSA.

266. Section 15.4 of the *Criminal Code* (extended geographical jurisdiction – category D) applies to the offence. Category D jurisdiction means that an offence will apply whether or not the conduct, or the result of conduct, occurs in Australia and will extend to conduct by any person outside Australia, even where there is no equivalent offence in the law of the local jurisdiction.

267. However, the practical operation of the application of Category D jurisdiction has been modified by the content of the offence provision. Specifically, the offence is linked back to Australia as it is concerned with a registry account holder's operation of their ***registry account***.

268. As ***registry account*** holders can be located outside Australia, extended geographical jurisdiction is necessary to ensure they are required to comply with requirements in relation to ***registry accounts*** and any contraventions of these requirements will be regulated. As compliance with requirements in relation to ***registry accounts*** by account holders is necessary to ensure the integrity of the ***Registry***, the regulatory scheme would be compromised without extended geographical jurisdiction.

Clause ^63: Contravention of condition imposed on registry account

269. Clause ^69 provides that rules may be made for or in relation to the ***Registry***. This may include rules that provide for the Secretary to impose conditions on ***registry accounts***. Examples of such conditions include conditions about retaining specified records or providing specified information to the Secretary on request. Such conditions may be necessary to ensure the integrity of the ***Registry*** and purported transactions in relation to ***registry accounts***, such as transfers of units.

270. Under clause ^63, a ***registry account*** holder commits an offence and is liable to a civil penalty if they contravene a condition of their ***registry account***.

271. A maximum penalty of 120 penalty units applies to both the offence and civil penalty in clause ^63. The civil penalty is intended to reflect the seriousness of non-compliance with a requirement to comply with conditions on a ***registry account***. The availability of the criminal penalty is appropriate for the circumstances where higher culpability is present, and the fault elements of the offence are made out. The penalties align with comparable penalties in section 28 of the RVSA.

272. Section 15.4 of the *Criminal Code* (extended geographical jurisdiction – category D) applies to this offence. However, the practical operation of the application of Category D jurisdiction has been modified by the content of the offence provision. Specifically, the offence is linked back to Australia as it is concerned with a registry account holder's operation of their ***registry account***.

273. As ***registry account*** holders can be located outside Australia, extended geographical jurisdiction is necessary to ensure they are required to comply with conditions in relation

to their ***registry account*** and any contraventions of conditions will be regulated. As the retention of records and the provision of information by ***registry account*** holders to the Secretary upon request is necessary to ensure the integrity of the ***Registry***, the regulatory scheme would be compromised without extended geographical jurisdiction.

Clause ^64: Failure of former registry account holder to retain record

274. Clause ^69 provides that rules may be made for or in relation to the ***Registry***. This may include rules for the keeping of records in relation to a ***registry account*** and rules that provide for the Secretary to impose conditions on ***registry accounts***. This may include conditions requiring the retention of records in relation to a ***registry account***, which may extend after a ***registry account*** has been closed.
275. Under clause ^64, a person commits an offence and is liable to a civil penalty if they had a ***registry account*** that was closed under clause ^56 (voluntary closure of registry account) or ^57 (unilateral closure of registry account), the Secretary imposed a condition on the account that the person would retain a record, and the person does not retain the record. The person would only be required to retain the record for the 7-year period starting on the day the record is made.
276. The intent of this provision is to ensure that records are retained for 7 years, even after the registry account was closed. It should be noted that a record includes electronic records, including but not limited to emails, computer generated documents and databases.
277. Non-compliance with the requirements to retain records may result in the Department being unable to verify the validity of past transactions in the ***Registry***. This could adversely impact the integrity of the ***Registry*** and purported transactions in relation to registry accounts, such as transfers of units.
278. A maximum penalty of 60 penalty units applies to both the offence and civil penalty in clause ^64. The civil penalty is intended to reflect the seriousness of non-compliance with a condition that requires a ***registry account*** holder to retain records. The availability of the criminal penalty is appropriate for the circumstances where higher culpability is present, and the fault elements of the offence are made out. The penalties align with comparable penalties in section 30 of the RVSA.
279. Section 15.4 of the *Criminal Code* (extended geographical jurisdiction – category D) also applies to this offence. However, the practical operation of the application of Category D jurisdiction has been modified by the content of the offence provision. Specifically, the offence is linked back to Australia as it is concerned with a former ***registry account*** holder's ***registry account***.
280. As former ***registry account*** holders can be located outside Australia, extended geographical jurisdiction is necessary to ensure they are required to retain records and any failure to do so will be regulated. As information will need to be retained by a ***registry account*** holder to ensure the integrity of the ***Registry***, the regulatory scheme would be compromised without extended geographical jurisdiction.

Clause ^65: Failure of former registry account holder to provide information

281. Clause ^69 provides that rules may be made for or in relation to the ***Registry***. This may include rules that provide for the Secretary to impose conditions on ***registry accounts***. An example of such a condition includes a condition requiring a ***registry account*** holder to provide specified information (for example, records required to be retained by the

registry account holder), for as long as this information is required to be retained. The period of retention may extend to after a ***registry account*** has been closed.

282. Under clause ^65, a person commits an offence and is liable to a civil penalty if they had a ***registry account*** that was closed under clause ^56 (voluntary closure of registry account) or ^57 (unilateral closure of registry account), a condition was imposed on that account that required the person to provide specified information to the Secretary upon request and the person does not comply with such a request.
283. The intent of this provision is to ensure that former ***registry account*** holders are required to provide information or documents that a condition in relation to their registry account requires them to provide, even after the ***registry account*** is no longer active and open.
284. Non-compliance with requests by the Secretary to provide this information may result in the Department being unable to verify the validity of past transactions in the ***Registry***. This could adversely impact the integrity of the ***Registry*** and purported transactions in relation to ***registry accounts***, such as transfers of units.
285. A maximum penalty of 60 penalty units applies to both the offence and civil penalty in clause ^65. The civil penalty is intended to reflect the seriousness of non-compliance with a requirement of a provide information on request, if requested by the Secretary. The availability of the criminal penalty is appropriate for the circumstances where higher culpability is present, and the fault elements of the offence are made out. The penalties align with comparable penalties in section 30 of the RVSA.
286. Section 15.4 of the *Criminal Code* (extended geographical jurisdiction – category D) applies to this offence. However, the practical operation of the application of Category D jurisdiction has been modified by the content of the offence provision. Specifically, the offence is linked back to Australia as it is concerned with a former ***registry account*** holder's ***registry account***.
287. As former ***registry account*** holders can be located outside Australia, extended geographical jurisdiction is necessary to ensure they are required to comply with requests by the Secretary to provide information or documents and failure to do so will be regulated. As the provision of information to the Secretary upon request by ***registry account*** holders is necessary to ensure the integrity of the ***Registry***, the regulatory scheme would be compromised without extended geographical jurisdiction.

Clause ^66: Suspension of operation of the Registry

288. Clause ^66 provides for the temporary suspension of ***Registry*** operations. There may be times when the Secretary will need to temporarily suspend the operation of the Registry to ensure its integrity. The Secretary may also need to suspend the operation of the Registry to prevent, mitigate or minimise the effect of abuse or criminal activity relating to the Registry. For example, the Secretary may need to suspend the operation of the Registry if the Secretary believes that a person has hacked into the Registry and is in the process of transferring units from one person's account into another. If this happens, the Secretary will need to be able to stop any subsequent transactions until such time as the criminal activity has ceased.
289. The operation of the ***Registry*** may also be temporarily suspended to allow maintenance to be carried out.
290. The Secretary may defer taking action, such as entering and removing units from the ***Registry***, until the suspension ends.
291. Where the operation of the ***Registry*** is suspended, notice of the suspension must be published on the Department's website. This will help account holders to make

arrangements to minimise disruption or inconvenience during the period that the operation of the ***Registry*** is suspended.

Clause ^67: Evidentiary provisions

292. Clause ^67 provides that the Secretary may supply a certified true copy or extract from the ***Registry***. The rules may prescribe the charging of a fee for supplying a certified copy or extract.
293. Any fees prescribed would only be charged for the purpose of recovering the costs of supplying a certified copy or extract only. Any fees charged cannot be in a form that would amount to a tax.

Clause ^68: Transmission of units by operation of law etc.

294. Clause ^68 deals with the lawful transmission of a unit held in the ***registry account*** of a person (the transferor) to another person (the transferee), other than through a transfer request actioned under section ^45. The intent of this clause is to deal with the transfer of units in situations such as bankruptcy and external administration.
295. Such a transmission, is of no force until the Secretary transfers the unit in accordance with this clause.
296. This clause provides that within 90 days of the transmission, the transferee must provide to the Secretary a declaration of the transmission, meeting any requirements prescribed by the rules, and any evidence of the transmission that may be specified in the rules. This timeframe allows the new owner of the units ample time to provide proof of that ownership. However, if special circumstances warrant an extension, the Secretary may also further extend this 90-day period. The Secretary may exercise this power to extend the 90-day period on the Secretary's own initiative or on written application made to the Secretary by the transferee. If made in response to an application, notice of a decision on whether or not to extend the 90-day period must be provided to the applicant.
297. If the transferee already has a ***registry account***, the Secretary must, as soon as practicable after receiving the declaration of transmission, transfer the unit from the transferor's ***registry account*** to the transferee's ***registry account***.
298. There may be circumstances where the transferee does not already have a ***registry account***. In such cases, the declaration of transmission must be accompanied by an application under clause ^53 to open a ***registry account*** in the name of the transferee. As soon as practicable after the Secretary has opened a ***registry account*** in the name of the transferee, the Secretary must transfer the unit from the transferor's ***registry account*** to the transferee's ***registry account***.
299. The Registry must set out a record of the declaration of transmission where the Secretary transfers a unit under this clause.

Clause ^69: Rules for or in relation to the Registry

300. Clause ^69 provides that the rules may provide for or in relation to the keeping of the ***Registry***. This may include providing for:
    - requirements in relation to ***registry accounts***;
    - suspending ***registry accounts***;
    - identifying ***registry accounts***;
    - identifying units;
    - registering equitable interests in relation to units held in the ***Registry***;

- including information in the ***Registry***;
- keeping of records by current and former ***registry accounts*** holders;
- the provision of information to the Secretary by ***registry accounts*** holders;
- making applications to the Administrative Appeals Tribunal for review of decisions made by the Secretary in relation to the ***Registry***.

301. Rules may also provide for the charging fees in relation to the ***Registry***; however, any fees prescribed must not be such as to amount to a taxation.

302. The rules may provide that the Secretary may impose conditions on a ***registry account***, including a condition that the person in whose name the account is opened under subclause ^55(1)(a) retain a specified record in relation to the account for a period of 7 years starting on the day the record is made, and a condition that if the Secretary requests that the person in whose name the account is opened under subclause ^55(1)(a) provide the Secretary with specified information that is relevant to the account within a specified period, the person comply with the request.

303. The ***Registry*** is an administrative tool to record the issuing of units and transactions relating to the ***Registry***. Substantive provisions relating to this function have been included in the Bill. The intent is that administrative matters which complement the legislative framework may be included in the rules to provide for flexibility in managing the ***Registry*** and the content of, or matters to be specified in applications and other matters relating to transactions by ***registry account*** holders.

304. While ***registry account*** holders are generally corporations rather than individuals, the opportunity for an individual to apply to the AAT for the review of decisions made in respect of the use or disclosure of personal information is anticipated to be prescribed in the rules. The Bill does not intend to provide a more limited right for an individual to access and/or amend their personal record than is provided in the *Privacy Act 1988* or *Freedom of Information Act 1982*.

Part 5 – Compliance and enforcement

Clause ^70: Simplified outline of this Part

305. Clause ^70 provides an overview of Part 5 of the Bill which applies the ***Regulatory Powers Act*** in relation to the new vehicle efficiency standard.

306. Simplified outlines are included in Bills to assist readers to understand the key elements and provisions of the legislation. The simplified outline is not intended to be comprehensive and readers should rely on the substantive provisions for a comprehensive understanding of this Part of the Bill.

Clause ^71: Appointment of inspectors

307. This clause empowers the Secretary of the Department to appoint the following persons to be inspectors:
- an SES employee, or acting SES employee, in the Department;
- an APS employee who holds or performs the duties of an Executive Level 1 or 2 position or an equivalent position in the Department;
- a person appointed as an inspector under section 49 of the RVSA.

308. The Secretary can only appoint someone as an authorised person where they are satisfied that the appointee has the knowledge or experience necessary to properly exercise the powers of an inspector. Relevant factors for the Secretary's consideration would include but not be limited to:

- educational or training qualifications;
- whether the person had a strong working knowledge of the NVES and Regulatory Powers Acts;
- previous experience as an inspector; and
- any experience exercising monitoring or investigation powers.

309. The Secretary would be able to issue directions to authorised persons about how they use the powers. An inspector is required to comply with any directions of the Secretary in exercising their powers. Such a direction would not be a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003*, and subclause ^71(4) is merely declaratory of this and intended to assist readers.

Clause ^72: Secretary may require person to give information etc.

310. Clause 72 gives the Secretary the power to require a person to give information, or produce a document, to an inspector. The notice must specify how the person is to give the information or produce the document and the period the person has to give the information or produce the document, which must be at least 14 days after the day the notice is given. The notice must also specify the effect of subsection 72(4), which specifies that a person is liable for a civil penalty if they reuse or fail to comply with the order and sections 137.1 and 137.2 of the Criminal Code.
311. The Secretary may only exercise this power if the Secretary reasonably believes that a person is capable of giving information, or producing a document that is relevant for the purposes of investigating certain offence or civil penalty provisions of the Bill. These offence and civil penalty provisions predominantly relate to the Registry. The power is also limited by the common law privilege against self-incrimination in relation to individuals and legal professional privilege.
312. The power provides an alternative method to obtain information about possible contraventions of the Bill to the monitoring and investigation powers in clauses 74 and 75. For example, if the Secretary reasonably believes that a person (such as an employee or a related entity of a ***registry account*** holder) may have information about compliance with a relevant offence or civil penalty provision under the Bill, they may consider it more appropriate to issue a notice under clause 72. In other instances, the surrounding circumstances may indicate it is more appropriate for an authorised person to seek physical access to the person's premises utilising the monitoring and investigation powers in clauses 74 and 75. A combination of these options may be appropriate in some circumstances.
313. A person will be liable to a civil penalty if the person refuses or fails to comply a notice given under this clause. The maximum civil penalty applicable for refusing or failing to comply is 60 penalty units. This penalty reflects the seriousness of a failure to respond to a notice to produce and the need to deter non-compliance. The penalty has been determined balancing comparable penalties in section 71 of the *National Greenhouse and Energy Reporting Act 2007* with the cost of court proceedings.
314. This civil penalty would not apply to the extent that the person is not capable of complying with the notice (see subclause 72(5)). Under section 96 of the ***Regulatory Powers Act***, the person would bear the evidential burden of establishing that they are not capable of complying with the notice. This standard provision applies for this exception as it is peculiarly within the knowledge of that person. It would be significantly more difficult and costlier for the authorised applicant to prove that a person subject to a notice to produce was capable of complying with it. However, that person may more easily provide evidence that illustrates that they were not capable of complying with the notice.

315. Subclause 72(6) also provides that the civil penalty would not apply if a notice relates to the production of documents and a person proves that, after a reasonable search, the person is not aware of the documents and the person provides a written response to the notice which describes the scope and limitations of the search. Subclause 72(7) provides that a determination as to whether a search is reasonable for the purposes of subclause 72(6)(b) may take into account:
    - the nature and complexity of the matter to which the notice relates;
    - the number of documents involved;
    - the ease and cost of retrieving a document relative to the resources of the person who was given the notice; and
    - any other relevant matter.

Clause ^73: Retention of documents

316. Clause 73 provides for the retention of documents which have been produced to an inspector in accordance with a notice under clause 72. Specifically, the inspector may take possession of, and make copies of or take extracts from, the documents. The inspector may retain the document for as long as is necessary for the purposes of the investigation to which the documents relate. If a person would be entitled to inspect a document if it were not in the possession of the inspector, the inspector must allow the person to inspect the document at all reasonable times for as long as they retain the document.

Clause ^74: Monitoring powers

317. Clause 74 provides authorised persons with monitoring powers by triggering Part 2 of the ***Regulatory Powers Act***. Part 2 of the ***Regulatory Powers Act*** creates a framework for monitoring whether provisions of the Bill have been, or are being, complied with. Subclause 74(1) provides that a provision of the Bill (other than clause 17) or an offence provision of the *Crimes Act 1914* or the *Criminal Code*, to the extent that it relates to this Bill, is subject to monitoring under Part 2 of the ***Regulatory Powers Act***. When there is reference to the "Act", this includes any legislative instruments under the Act (in accordance with clause 10 of the Bill).
318. Clause 17 is not subject to monitoring under Part 2 of the ***Regulatory Powers Act*** because whether a person has complied with their duty under clause 17 is based on a point-in-time ***final emissions value*** – i.e. whether at the start of the ***final reconciliation day*** for the year, the person's ***final emissions value*** for the year is zero or less. A person's final emissions value is determined by reference to information that is already available to the Department. The vehicle category and the ***emissions numbers*** of ***covered vehicles*** will be recorded by suppliers on the RAV, ***emissions targets*** are determined by reference to matters prescribed in the Bill and instruments, and the Secretary issues, extinguishes and transfers units under the Bill. As such, monitoring compliance with clause 17 is not necessary, noting the application of subclause 74(2).
319. Subclause 74(2) provides that information given in compliance or purported compliance with a provision of the Bill is also subject to monitoring under Part 2 of the ***Regulatory Powers Act***. Part 2 of the ***Regulatory Powers Act*** creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection and powers to ask questions and seek the production of documents. These powers can be used to monitor whether the information provided to the Secretary when issuing, extinguishing or transferring units is correct. If it is necessary to monitor whether the information entered

onto the RAV about a ***covered vehicle*** is correct, the monitoring powers in section 50 of the RVSA may be utilised.

320. Subclause 74(3)(a) provides that a provision of Part 2 of the RVSA is related to the provisions mentioned in subclause 74(1) and the information mentioned in subclause 74(2). The provisions in Part 2 of the RVSA have been identified as related provisions because they provide for the regulation of road vehicles and road vehicle components, including by creating offences and civil penalty provisions that apply if road vehicles are imported without relevant approvals or are provided to consumers without being on the ***RAV***. A vehicle will only be a ***covered vehicle*** under this Bill if it is entered onto the ***RAV***, and information entered onto the ***RAV*** about the ***covered vehicle*** will be key to determining compliance with this Bill. Additionally, it is expected that an authorised person may exercise powers under the Bill and the RVSA, as clause 71(1)(c) provides that an inspector appointed under section 49 of the RVSA may be appointed as inspector under this Bill. The provisions in Part 2 of the RVSA have therefore been identified as related provisions so that authorised persons who enter premises to exercise monitoring powers under this Bill may also secure evidence of the contravention of a provision in Part 2 of the RVSA (in accordance with the ***Regulatory Powers Act***).

321. The authorised applicants for the purposes of clause ^74 are the Secretary and an SES employee or acting SES employee; an inspector is an authorised person and an issuing officer is a magistrate and a Judge of a ***relevant court*** (see clause 10 for the definition of ***relevant court***).

322. An authorised person may be assisted by other persons in exercising powers or preforming functions or duties under Part 2 of the ***Regulatory Powers Act***. Section 23(1) of the ***Regulatory Powers Act*** allows for an authorised person to be assisted by other persons in exercising powers or performing functions or duties under Part 2, if that assistance is necessary and reasonable and another Act empowers the authorised person to be assisted. For example, assistance may be sought where:

- no other authorised persons are available to assist;
- the person has specialist expertise in the subject matter of the monitoring;
- there may be a large amount of material found that needs to be secured quickly;
- another person is more familiar with specific premises; or
- an authorised person needs assistance to move a heavy item that the officer cannot move on their own.

323. Subclause 74(5) provides that Part 2 of the ***Regulatory Powers Act***, as that Part applies in relation to the provisions mentioned in subclause 74(1) and the information mentioned in subclause 74(2), extends to every external Territory. This is necessary because the Bill (clause 6), the *Crimes Act 1914* (section 3A), and the *Criminal Code* (section 3A) extend to the external Territories.

Clause ^75: Investigation powers

324. Clause 75 provides authorised persons with investigation powers by triggering Part 3 of the ***Regulatory Powers Act***, which creates a framework for gathering material in relation to the contravention of offence and civil penalty provisions. Part 3 of the ***Regulatory Powers Act*** includes powers of entry, search and seizure.

325. Subclause 75(1) provides that a provision is subject to investigation under Part 3 if it is an offence provision of this Bill, a civil penalty provision of this Bill (other than clause ^17) or an offence provision of the *Crimes Act 1914* or the *Criminal Code*, to the extent that it relates to this Bill. Clause 17 is not subject to investigation under Part 3 of

the ***Regulatory Powers Act*** for the same reasons identified in relation to the monitoring powers in clause 74.

326. For the purposes of Part 3 of the ***Regulatory Powers Act***, as that Part applies in relation to evidential material that relates to a provision mentioned in subclause 75(1), a provision of Part 2 of the RVSA is related to that evidential material. The provisions in Part 2 of the RVSA have been identified as related provisions for the same reasons identified in relation to the monitoring powers in clause 74. This provision allows an authorised person who enters onto premises to exercise investigation powers under this Bill to also seize evidence of the contravention of a provision in Part 2 of the RVSA (in accordance with the ***Regulatory Powers Act***).

327. The authorised applicants for the purposes of clause ^75 are the Secretary and an SES employee or acting SES employee; an inspector is an authorised person; an issuing officer is a magistrate and a Judge of a ***relevant court*** (see clause 10 for the definition of ***relevant court***) and the Secretary is the relevant chief executive officer.

328. Subclause 75(3) allows an authorised person to be assisted by other persons in exercising powers or preforming functions or duties under Part 3 of the ***Regulatory Powers Act***. Section 53(1) of the ***Regulatory Powers Act*** allows for an authorised person to be assisted by other persons in exercising powers or performing functions or duties under Part 2, if that assistance is necessary and reasonable and another Act empowers the authorised person to be assisted. For example, assistance may be sought where:

- no other authorised persons are available to assist;
- where the person has specialist expertise in the subject matter of the investigation;
- where there may be a large amount of material found that needs to be seized quickly;
- another person is more familiar with specific premises; or
- where an authorised person needs assistance to move a heavy item that the officer cannot move on their own.

329. Subclause 75(4) extends the application Part 3 of the ***Regulatory Powers Act***, as that Part applies in relation to a provision mentioned in subclause 75(1), to every external Territory. This is necessary because the Bill (clause 6), the *Crimes Act 1914* (section 3A) and the *Criminal Code* (section 3A) extend to the external Territories.

Clause ^76: Civil penalty provisions

330. Clause 76 provides that each civil penalty provision of the Bill is enforceable under Part 4 of the ***Regulatory Powers Act***. Part 4 creates a framework for the use of civil penalties to enforce civil penalty provisions.

331. For the purposes of Part 4 of the ***Regulatory Powers Act*** this clause provides that an authorised applicant is the Minister, the Secretary and an SES employee or acting SES employee. The relevant court in relation to the civil penalty provisions in the Bill is a relevant court as defined in clause ^10.

332. Subclause 76(4) makes clear that Part 4 of the ***Regulatory Powers Act***, as it applies to the civil penalty provisions in the Act, does not make the Crown liable to a pecuniary penalty. Subclause 76(5) provides that Part 4 of the ***Regulatory Powers Act*** extends to every external Territory, as it applies in relation to the civil penalty provisions of this Bill.

333. The civil penalty provisions in clauses 17, 60, 62, 63, 64 and 65 are enforceable under Part 4 of the ***Regulatory Powers Act***, whether or not the conduct constituting the alleged contravention occurs in Australia and whether or not a result of the conduct constituting the alleged contravention of the civil penalty provision occurs in Australia. The practical

operation of this extended jurisdiction has been modified by the content of the civil penalty provisions. Specifically, these provisions are linked back to Australia as they relate to ***covered vehicles*** entered on the ***RAV*** or are concerned with a ***registry account*** holder's operation of their ***registry account***.

334. It is necessary for clause 17 to have extended jurisdiction as a person with a ***covered vehicle*** under this Bill can be located outside of Australia and may enter a vehicle onto the ***RAV*** from outside Australia. Without extended jurisdiction, the Bill may not regulate a person who enters ***covered vehicles*** onto the ***RAV*** outside of Australia, which may compromise the operation of this key duty and the regulatory scheme.
335. Clauses 62, 63, 64 and 65 apply to ***registry account*** holders, who will often be internationally based entities located outside of Australia. Clause 60 will also apply to ***registry account*** holders who provide information to the Secretary in compliance or purported compliance with the Act. Without extended jurisdiction for these civil penalty provisions, conditions and requirements to provide accurate information and keep records may be unenforceable.

Clause ^77: Infringement notices

336. This clause provides that civil penalty provisions of the Bill are subject to an infringement notice under Part 5 of the ***Regulatory Powers Act***. Part 5 of the ***Regulatory Powers Act*** creates a framework for using infringement notices in relation to provisions.
337. It is important to note that payment of an infringement notice is not an admission of guilt or liability. If a person issued with an infringement notice pays the penalty by the time specified, then civil proceedings cannot be initiated in relation to the alleged contravention and the matter is finalised without an admission of guilt or liability. Alternatively, if a person wishes to dispute an infringement notice, then they can decide to not pay the infringement notice amount. However, if they do not pay the infringement notice amount, civil penalty proceedings can be brought against them in a relevant court. The content of an infringement notice issued under this Bill will be consistent with the ***Regulatory Powers Act*** and the Guide, unless otherwise modified in accordance with clause 82.
338. For the purposes of exercising powers under Part 5 of the ***Regulatory Powers Act***, an infringement officer is the Secretary and an SES employee, or an acting SES employee, in the Department and the Secretary is the relevant Chief Executive.
339. Subclause 77(4) extends the application of Part 5 of the ***Regulatory Powers Act***, as that Part applies in relation to a provision mentioned in subclause 77(1), to every external Territory. This is necessary because the Bill extends to the external Territories (clause 6).

Clause 78: Enforceable undertakings

340. This clause provides authorised persons with the power to accept and apply to a court for orders enforcing undertakings by triggering Part 6 of the ***Regulatory Powers Act***. A provision is enforceable under Part 6 of the ***Regulatory Powers Act*** if it is an offence provision or a civil penalty provision of this Bill (other than clause ^17), or an offence provision of the *Crimes Act 1914* or the *Criminal Code*, to the extent that it relates to this Bill.
341. Clause 17 is not subject to enforceable undertakings because there are various ways for an entity to fulfil its duty to ensure that, at the start of the ***final reconciliation day*** for the year, the person's ***final emissions value*** for the year is zero or less. The way the person

chooses to fulfil their duty (for example, through the kinds of vehicles they choose to provide or through earning or acquiring units etc) is a commercial decision for the person.

342. For the purposes of exercising powers under Part 6 of the ***Regulatory Powers Act***, an authorised person is the Minister, the Secretary and an SES employee, or an acting SES employee, in the Department. The relevant court in relation to the civil penalty provisions in the Bill is a relevant court as defined in clause ^10.

343. Subclause 78(4) provides that an authorised person must publish an undertaking given in relation to the provision on the Department's website. Publishing enforceable undertakings will ensure transparency in the process, including by making persons with ***covered vehicles*** aware of the undertakings made by competitors.

344. Subclause 78(5) provides that Part 6 of the ***Regulatory Powers Act***, as that Part applies in relation to the provisions mentioned in subclause 78(1), extends to every external Territory. This is necessary because the Bill (clause 6), the *Crimes Act 1914* (section 3A) and the *Criminal Code* (section 3A) extend to the external Territories.

Clause ^79: Duty to ensure that final emissions value is zero or less – civil penalty

345. Clause 79 provides that the corporate multiplier in section 82(5) of the ***Regulatory Powers Act*** does not apply to clause 17. This means that regardless of whether the civil penalty provision was contravened by a person or a body corporate, the maximum penalty a court may order is the penalty in clause 17. This modification ensures that the penalty that may be ordered by a court for a contravention of clause 17 remains proportionate to the number of ***covered vehicles*** provided by a person and the cost of improving light vehicle efficiency.

Clause ^80: Duty to ensure that final emissions value is zero or less – ancillary contraventions

346. Clause 80 provides that section 92 of the ***Regulatory Powers Act*** does not apply in relation to the civil penalty provision in clause 17 of the Bill. Section 92 of the ***Regulatory Powers Act*** provides for ancillary contraventions of civil penalty provisions including where a person attempts to contravene; aids, abets, counsels or procures the contravention or is otherwise directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision. If an ancillary contravention is established, that person may be taken to have contravened the civil penalty provision.

347. The responsibility for meeting the duty in clause 17, and the liability to pay a pecuniary penalty ordered by the Court for failure to meet the duty, is intended to apply only to the person who has a ***covered vehicle*** for a year (that is, the legal entity that holds the relevant approval for that vehicle under the RVSA). The way the person chooses to fulfil their duty (for example, through the kinds of vehicles they choose to provide or earning or acquiring units etc) is a commercial decision for the person, the responsibility for which should remain with that person.

348. Section 92 of the ***Regulatory Powers Act*** has been disapplied to make this intention clear. Disapplying this section also avoids the potential for an employee or officer of a corporation with ***covered vehicles*** being taken to have contravened clause 17 and consequently liable for the potentially large penalties that could apply for contraventions of clause 17.

Clause ^81 Duty to ensure that final emissions value is zero or less – mistake of fact

349. Clause 81 provides that section 95 of the ***Regulatory Powers Act*** does not apply in relation to the civil penalty provision in clause 17 of the Bill. Section 95 of the ***Regulatory Powers Act*** provides that a person is not liable to have a civil penalty order made against them for a contravention of a civil penalty provision if:
    - the person was under a mistaken but reasonable belief about whether or not facts existed; and
    - had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.
350. Clause 17 requires a person to ensure that, at the start of the final reconciliation day for the year, the person's ***final emissions value*** for the year is zero or less. A person's final emissions value is determined by reference to their ***interim emissions value*** (clause 18). The interim emissions value is calculated according to ***emissions values*** of the person's ***covered vehicles*** and the emissions targets that apply to these vehicles (clause 19).
351. Suppliers who have obtained approvals to provide ***covered vehicles*** under the RVSA will have been put on notice about the requirements for the Bill when applying for those approvals, including the need to ensure that information entered onto the RAV is correct. Accordingly, it is questionable whether would ever be under a mistaken but reasonable belief about these matters.
352. As clause 17 is central to the effective operation of the regulatory scheme and to reduce the likelihood of non-compliance, section 95 of the ***Regulatory Powers Act*** has been disapplied to make it clear that a person may not rely on a mistake of fact about these matters to avoid liability for a contravention of clause 17.

Clause ^82: Duty to ensure that final emissions value is zero or less – infringement notice

353. This clause modifies section 104(2) of the ***Regulatory Powers Act*** to allow for an infringement notice to be issued for a contravention of clause 17 for an amount that is half the maximum penalty that a court could impose on the person for that contravention.
354. The Guide notes that if the amount payable under an infringement notice is too low it will be an inadequate deterrent and may simply be paid by the guilty and innocent alike as a cost of doing business. If the standard ratio under section 104(2) of the ***Regulatory Powers Act*** applied, the amount would be significantly lower than the penalties that apply internationally (EU (€95 per g/km) and from 2025 in New Zealand NZD $54.00 or $67.50 per g/km depending on the importer). If the penalty was lower the anticipated cost of compliance (by supplying more efficient vehicles), suppliers may make an economic decision to pay the penalty instead of supplying more efficient vehicles. This would undermine the objectives of the NVES Bill to reduce CO_2 emissions from new road vehicles and stimulate the provision of low and zero emissions vehicles into the Australian market.
355. Subclause 82(2) modifies section 104(1)(e)(iii) in relation to infringement notices that relate to contraventions of clause 17. Specifically, the infringement notice would state the person's ***final emissions value*** for the year at the start of the ***final reconciliation day*** for the year, as this information is more relevant than the time and day of, and the place of, the alleged contravention.

Clause ^83: Adverse publicity order in relation to duty to ensure that final emissions value is zero or less

356. Clause 83 allows a relevant court, on application of the Secretary, to make an adverse publicity order, which is a punitive order, where a person has contravened clause 17. An adverse publicity order requires the person:
    - to disclose to specified persons specified information that the person has possession of or access to; and
    - to publish, at the person's expense, and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order.
357. The ability to seek this order provides a non-monetary incentive for persons with ***covered vehicles*** to ensure ongoing compliance with clause 17, in order to avoid reputational damage. It will also facilitate consumer choice by alerting consumers to non-compliance with clause 17 and the measures that are being taken to rectify it, allowing them to respond accordingly.
358. Subclause 83(2) identifies a specific example of an adverse publicity order that may be made by court, which would require a person to disclose or publish information about the person's ***inefficient vehicles*** for a year. Under clause 10, an ***inefficient vehicle*** for a person for a year, means a ***covered vehicle*** for the person for the year whose ***emissions number*** for the year is greater than its ***emissions target*** for the year. However, the court may also choose to require a person to disclose or publish other information. This provision does not limit a relevant court's powers under any other provision of Part 5 of the Bill.

Clause ^84: Non-punitive orders

359. Clause 84 allows a relevant court, on application of the Secretary, to make a non-punitive order, where a person has engaged in conduct that contravenes a provision of the Bill.
360. A non-punitive order can include orders that are for the purpose of ensuring that a person does not engage in conduct, similar conduct, or related conduct, for a particular time period (which must not be more than 3 years). These orders include:
    - an order requiring the person to establish a compliance program for employees or other persons involved in their business, to ensure their awareness of responsibilities and obligations in relation to the conduct;
    - an order requiring the person to revise the internal operations of the person's business which led to the person engaging in the conduct;
361. A non-punitive order can also require an advertisement to be published, at the person's expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order.
362. The ability to seek a non-punitive order provides an alternative method for encouraging future compliance with the provisions of the Bill by a person who has contravened a provision of the Bill. For example, the Secretary could apply to a court for an order that officers, employees or agents (e.g. sales and marketing personnel) of a corporation are educated as to the corporation's obligations under the Bill.
363. Subclause 84(3) identifies a specific example of a non-punitive advertisement order that may be made by a court, which would require a person to disclose or publish information about the person's ***inefficient vehicles*** for a year. Under clause 10, an ***inefficient vehicle*** for a person for a year, means a ***covered vehicle*** for the person for the

year whose ***emissions number*** for the year is greater than its ***emissions target*** for the year. However, the court may also choose to require a person to disclose or publish other information. This provision does not limit a relevant court's powers under any other provision of Part 5 of the Bill.

Part 6 – Miscellaneous

Clause ^85: Simplified outline of this Part

364. Clause ^85 provides an overview of Part 6 of the Bill which deals with miscellaneous matters.
365. Simplified outlines are included in Bills to assist readers to understand the key elements and provisions of the legislation. The simplified outline is not intended to be comprehensive and readers should rely on the substantive provisions for a comprehensive understanding of this Part of the Bill.

Clause ^86: Publication of information

366. Clause 86 requires the Secretary to publish the following information on the Department's website:
    each person's interim emissions value for a year (see clause ^19);
    the name of each person who has a registry account (see clause 55); and
    the number of units held in each registry account.
367. The ***interim emissions value*** for a person for a year must be published as soon as practicable after the interim reconciliation day for the year (the first 1 February after the end of the year). The Secretary is required to ensure the information published is kept up-to-date.
368. The publication of information provides transparency in the operation of the Bill. The publication of information about the holding of units also contributes to market transparency and allows people interested in trading units to have access to relevant information to allow for efficient trading. The rules may also provide for the publication of other information. After further development of rules to support the legislation, it might be considered desirable to publish information like: the Final Emissions Value for each person, the total amount of emissions offset through the extinguishment of units, and/or the total amount paid under infringement notices, for example.

Clause 87: Sharing of information

369. Clause 87 allows the Secretary to share information obtained under the Bill, other than personal information, with the following entities for the specified purposes outlined in this clause:
    - The Clean Energy Regulator;
    - The Environment Department;
    - The Climate Change Department;
    - An international body of an intergovernmental character for the purposes of monitoring obligations under international agreements relating to climate change;
370. Rules may also be prescribed to allow the sharing of information, other than personal information, with another person or body, for the purposes prescribed by the rules.
371. This clause is necessary so that information can be shared between the relevant entities to ensure compliance with national and international laws and regulations, particularly

those relating to climate change. For instance it will provide authorisation under Information Privacy Principles (IPP) 6.2 and 8.2(c) of the *Privacy Act 1988* for any personal information, and under IPP 9.2(c) for any government related identifiers.

372. Sharing information with the Clean Energy Regulator may be necessary as part of its function under clause ^52, in assisting the Secretary in relation to the establishment and maintenance of the Registry.

373. As Australia is a participant in international agreements relating to climate change, information gathered through this Bill may need to be shared with the Environment or Climate Change Departments, or an international body, to fulfil Australia's reporting obligations or assist with administering these international agreements.

Clause 88: Delegation

374. Clause 88 allows the Secretary to delegate any or all of his or her functions or power under the Bill to a SES or acting SES employee in the Department. For example, the decision on whether to issue a unit under clause 39.

375. The functions and powers that are delegated under this clause also include the functions or powers the Secretary has as a relevant chief executive, authorised applicant or infringement officer for the purposes of a provision of the ***Regulatory Powers Act*** because they have been invoked by this Bill.

376. The intent of delegating all functions and powers of the Secretary, including those that are derived from the ***Regulatory Powers Act***, is to ensure that decision making powers under the Bill are still carried out efficiently and effectively in an operational environment where the Secretary may not have the capacity to undertake all functions and powers conferred upon the Secretary by the Bill.

377. In exercising a function under a delegation, the delegate must comply with any direction given by the Secretary. This is intended to ensure that powers exercised by the delegate are exercised appropriately and consistently.

378. Importantly, the Bill does not allow for delegation of any of the Ministers powers. The Ministers powers include the power to determine the ***headline limit***, the ***lower breakpoint*** and the ***upper breakpoint*** under clause ^31, the ***mass adjustment factor*** and ***reference MIRO*** under clause 32, a class of vehicle with a ***concessional RAV entry approval*** is a covered vehicle under clause 28, the status of a class of vehicle under clause 29 and the definition of a chassis for a ***heavy off-road passenger vehicle*** under clause 30. These powers are key to the operation of the NVES and meeting Australia's emissions targets, and thus for accountability the Minister is the appropriate person to exercise such powers.

Clause 89: Reviewable decisions

379. This clause authorises six types of decisions by the Secretary to be reviewable by the Administrative Appeals Tribunal (AAT). These are:

A) Relating to Part 3 - Units

- Decisions to not issue units or to issue fewer units than applied for, under sub-clause 40(4) or under sub-clause 41(4);
- Decisions to continue to refuse to take an action under sub-clause 46(8)(b) when the Secretary is requested to extinguish or transfer units under clause 46;

B) Relating to Part 4 - The Registry

- Decisions to refuse to open a Registry account under subclause 55(1)(b)
- Decisions to close a Registry account under clause 57

- Decisions to refuse to alter the Registry under sub-clause 58(1) following an application.

380. These decisions affect the rights and interests of a person under this Bill and therefore it is appropriate that these decision are reviewable on their merits by the AAT.

Clause 90: Indexation

381. This clause contains a mechanism for future indexation of the *civil penalty* in clause 17 only, to ensure that the penalty remains effective and appropriate. The rest of the penalties in this Bill are expressed in penalty units, which are indexed under subsection 4AA(3) of the *Crimes Act 1914*. The method of indexation for the clause 17 civil penalty is different in that it adopts the date of 1 January as the annual adjustment day rather than every three years on 1 July. This approach was adopted in the Bill to ensure the penalty amount is adjusted more frequently by introducing an indexation formula in subclause 90(1) to be applied annually to the monetary penalty in clause 17 from 1 January 2029.

382. A formula is specified for calculating the penalty amount where the indexation factor for a given year is greater than one. The formula is the penalty amount immediately before the indexation day multiplied by the indexation factor for the indexation day. This is to ensure the penalty amount is not reduced where the indexation factor is below one. The indexation factor for a day is index number for the reference quarter divided by the index number for the base quarter.

383. The amounts for this clause are to be worked out using published index numbers for the Consumer Price Index, disregarding index numbers published in substitution for previously published index numbers (except where the substituted numbers are published to take account of changes in the index reference period). The Australian Bureau of Statistics (ABS) revises these figures from time to time, when further information has been collected and analysed. The purpose of this provision is to avoid the result of the indexation having to be revised later if the ABS changes its calculation.

384. If the penalty amount has been changed due to indexation, the Secretary must publish the new penalty amount as soon as practicable after the indexation day by notifiable instrument. A failure by the Secretary to do so does not invalidate the indexation.

385. The definitions in this clause provide that indexation day means 1 January 2029 and each later 1 January. This is because clause 17 starts applying in 2025, and the final reconciliation day for 2025 is 1 February 2028. This means that penalties under clause 17 will not be issued until 2028 at the earliest, therefore indexation of the penalty will start in 2029. Subclause 90(7) also provides for September quarter All Groups Consumer Price Index numbers to be used in the annual calculation (in contrast the section 4AA of the Crimes Act uses March quarter figures).

Clause 91: Compensation for acquisition of property

386. Section 51(xxxi) of the *Constitution* allows the Parliament to make laws for the acquisition of property on just terms from any state or person for any purpose in respect of which the Parliament has power to make laws.

387. This clause provides that if there is an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person (colloquially known as a historic shipwrecks clause).

388. It also provides that if the amount of compensation cannot be agreed upon between the Commonwealth and a person, the person may institute proceedings in a relevant court to recover an amount of compensation that the court determines reasonable.

Clause 92: Rules

389. Clause 92 allows the Minister to make legislative rules required or permitted by the Bill, or necessary or convenient to be prescribed for carrying out or giving effect to the Bill. Subclause 92(3) is a standard provision that limits this rule-making power by making it clear that the rules cannot contain significant provisions such as those that create an offence or civil penalty; provide arrest, detention, or entry, search, and seizure powers; impose a tax; set out any appropriation of commonwealth funds, or amend the text of the Bill.
390. Subclause 92(2) provides that despite subsection 14(2) of the *Legislation Act 2003*, the rules may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in another instrument or other writing, as in force or existing from time to time. The intent of this subclause is to allow for the rules to refer to relevant technical requirements such as those specified in the Australian Design Rules or international standards (for example, the United Nations standards for motor vehicles) The ability to apply, adopt or incorporate other writing or instruments is vital to the flexibility and adaptability of Australia's response to changes in automotive technology. This flexibility enhances the ability to appropriately include technical requirements, such as test procedures, and helps ensure that determinations will keep step with industry. Allowing these technical documents to be incorporated as in force or existing from time to time will ensure that the rules remain in alignment with these technical documents. The appropriateness of incorporating particular provisions or matters by reference is something that the Government would be expected to consult about when preparing a determination, in accordance with clause ^36 of this Bill and Part 3 of the *Legislation Act 2003*.
391. Any material incorporated by reference in the rules will be made freely and readily available. Where instruments adopted or incorporated under the rules in accordance with this clause include reference to content that is not free to access, this referenced material will also be available to view at the Department's offices in Canberra.

Clause 93: Review of operation of Act

392. Clause 93 provides that the Minister must cause a review of the Act to commence prior to 31 December 2026. The purpose of this review is to determine how the legislation is operating so far, whether it is starting to achieve its stated objectives and whether it should be amended. As part of the review a written report must be prepared. A copy of that report must be tabled in both Houses of Parliament within 15 sitting days of the Minister receiving the report.

NOTES ON CLAUSES – NEW VEHICLE EFFIENCY STANDARD (CONSEQUENTIAL AMENDMENTS) BILL 2024

Clause ^1: Short Title

393. Clause ^1 provides that the Bill, when enacted, may be cited as the *New Vehicle Efficiency Standard (Consequential Amendments) Act 2024*.

Clause ^2: Commencement

394. This clause provides that the whole of the Act commences at the later of the start of the day this Act receives Royal Assent and immediately after the commencement of the *New Vehicle Efficiency Standard Act 2024*. However, the provisions do not commence at all if the *New Vehicle Efficiency Standard Act 2024* does not commence.

Clause ^3: Schedules

395. Clause ^3 provides that the legislation that is listed in the Schedule is amended or repealed as set out in the items specified in the Schedule. There is one Schedule to this Bill, which contains amendments to the *Clean Energy Regulator Act 2011* and the RVSA.

Schedule 1 – Amendments

Clean Energy Regulator Act 2011

Items 1 and 2 - Section 3; Section 4 (after paragraph (n) of the definition of climate change law)

396. Item 1 inserts subsection (ca) into section 3 of the *Clean Energy Regulator Act 2011* (CER Act). Section 3 is the simplified outline of the CER Act. The *New Vehicle Efficiency Standard Act 2024* (NVES Act) is inserted into the list of Acts the Clean Energy Regulator has functions under as new subsection (ca).
397. Item 2 inserts paragraph (na) into section 4 of the CER Act. Section 4 of the CER Act contains definitions used in the CER Act. The NVES Act is inserted into the definition of climate change law as new subsection (na). Under section 12 of the CER Act, the Clean Energy Regulator has the functions conferred on it by a climate change law and therefore will also have any functions conferred on it by the NVES Act .
398. The consequential amendments support the role of the Clean Energy Regulator in clause ^52 of the New Vehicle Efficiency Standard Bill 2024 to potentially provide assistance to the Secretary to perform their functions and exercise their powers in relation to the establishment and maintenance of the Registry if requested.

Road Vehicle Standards Act 2018

Items 3 and 4 - At the end of subsection 50(3); At the end of subsection 52(2)

399. Item 3 adds paragraph (c) into subsection 50(3) in the RVSA. Subsection 50(3) lists the provisions related to the provisions mentioned in subsection 50(1) and the information mentioned in subsection 50(2) for the purposes of Part 2 of the ***Regulatory Powers Act***. Item 3 adds a provision of Division 4 of Part 4 of the NVES Act as new paragraph (c). The provisions in Division 4 of Part 4 of the NVES Act have been identified as related provisions as they provide for offences and civil penalties in relation to the Registry established under the NVES Act. Registry account holders under the NVES Act are the same entities that hold approvals under the RVSA. Additionally, it is expected that an authorised person may exercise powers under the NVES Act and the RVSA, as clause 71 of the NVES Bill provides that an inspector appointed under section

49 of the RVSA may be appointed as inspector under the NVES Act. The provisions in Division 4 of Part 4 of the NVES Act have therefore been identified as related provisions so that authorised persons who enter premises to exercise monitoring powers under the RVSA may secure evidence of a contravention of a provision in Division 4 of Part 4 of the NVES Act (in accordance with the ***Regulatory Powers Act***).

400. Item 4 adds paragraph (c) into subsection 52(2) in the RVSA. Subsection 52(2) lists the provisions related to evidential material that relates to a provision mentioned in subsection 52(1) for the purposed of Part 3 of the ***Regulatory Powers Act***. Item 4 adds a provision of Division 4 of Part 4 of the NVES Act as new paragraph (c). The provisions in Division 4 of Part 4 of the NVES Act have been identified as related provisions for the same reasons identified in relation to Item 3. This provision allows an authorised person who enters onto premises to exercise investigation powers under the RVSA to also seize evidence of the contravention of a provision of Division 4 of Part 4 of the NVES Act (in accordance with the ***Regulatory Powers Act***).

Items 5 and 6 – At the end of section 48; After Division 5 of Part 4

401. Items 5 and 6 insert new Division 5A into the RVSA. New section 58A allows a relevant court, on application of the Secretary, to make a non-punitive order, where a person has engaged in conduct that contravenes a provision of Part 2 of the RVSA.

402. A non-punitive order under new section 58A can include orders that are for the purpose of ensuring that a person does not engage in conduct, similar conduct, or related conduct, for a particular time period (which must not be more than 3 years) (subsection 58A(2)(a)). These orders include:

- an order requiring the person to establish a compliance program for employees or other persons involved in their business, to ensure their awareness of responsibilities and obligations in relation to the conduct; or
- an order requiring the person to revise the internal operations of the person's business that led to the person engaging in the conduct.

403. A non-punitive order can also require an advertisement to be published, at the person's expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order (subsection 58A(2)(b)).

404. The ability to seek a non-punitive order provides an alternative method for encouraging future compliance with the provisions of Part 2 of the RVSA by a person who has contravened one of these provisions. For example, the Secretary could apply to a court for an order that officers, employees or agents of a corporation are educated about the importance of ensuring information (for example, a covered vehicle's emissions number) entered onto the Register of Approved Vehicles kept under the RVSA is correct.

405. Subsection 58A(3) identifies a specific example of a non-punitive advertisement order that may be made by a court, which would require a person to disclose or publish information about the person's ***inefficient vehicles*** for a year. Under subsection 58A(5), an ***inefficient vehicle*** for a person for a year has the same meaning as in the NVES Act. However, the court may also choose to require a person to disclose or publish other information. Subsection 58A(4) clarifies that this provision does not limit a relevant court's powers under any other provision of Part 4 of the RVSA.