

RESPONSE TO ACCC DRAFT 'MAKING EMISSIONS CLAIMS: A GUIDE FOR BUSINESS'

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FOREWORD



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The Australian Automotive Dealer Association (AADA) welcomes the opportunity to provide feedback on the ACCC Making Emissions Claims draft document. AADA will encourage dealers to read the resulting guide for business and pay close attention to compliance with Australian Consumer Law.

The AADA is the peak industry advocacy body exclusively representing franchised new car and truck dealers in Australia. There are over 3,900 new car and new truck dealerships, ranging from family-owned small businesses to larger and publicly owned businesses operating in regional areas and capital cities across the country.

The new vehicle retailing sector employs more than 64,000 people including approximately 7,500 apprentices, contributes over \$21.5 billion to the national economy, has a total turnover/sale of \$91.3 billion and generates in excess of \$8.2 billion in tax/duty revenue.

Our AADA feedback provided in this submission is specific to retailing of new vehicles, descriptions of vehicle emissions performance, and the sales, servicing and repairs under new car franchise or agency agreements.

The AADA welcomes the ACCC guidance, but recommends that the guide:

1. Recognises the position of franchisees and other small businesses in relation to emissions claims being made by their franchisors or other related larger businesses and provides guidance for businesses in these situations.
2. Recognises industries which have government mandated emissions reporting requirements on products, but have no say in informing those requirements.

Consumers buying new and used cars are clearly very interested in fuel economy and by extension emissions performance. It is a critical factor in many consumers purchasing decisions. While dealers are the customer-facing link in the new car sales process, they have very little influence on the emissions claims being made about the product.

This is because marketing claims about vehicles are generally made by the large car manufacturers to which dealers are franchised as well as the fact that statements about vehicle emissions are strictly regulated under the Vehicle Standard (Australian Design Rule 81/02 — Fuel Consumption Labelling for Light Vehicles) 2008¹. Dealers do not make independent assessments or statements about the fuel consumption or emissions of new vehicles they offer for sale.

Consumers are informed by a mandatory label² applied by the manufacturer which must appear on the new vehicle windscreen at the point of sale. Emissions information is also available for consumers via the Green Vehicle Guide³ using the same data at a website published by the Commonwealth Government.

The AADA believes it is important that Australian Consumer Laws are fully understood and complied with along the whole automotive supply chain. Dealers being one link but also reliant on the compliance of manufacturers and all others in the chain.

FRANCHISED NEW VEHICLE DEALERS



FRANCHISED NEW VEHICLE DEALERS

Australian automotive dealers operate under franchise or agency agreements. The franchisors are either international vehicle manufacturing companies or Australian distributors on behalf of international vehicle manufacturers. There is a structural power imbalance between new motor vehicle manufacturers on the one part and retail new motor vehicle dealers on the other.

An automotive franchise or agency agreement provides the franchisee with a business opportunity, but it also comes with limitations, directions, rules, policies, and franchisor inputs which the franchisee must navigate.

In relation to the emissions of the vehicles they sell, franchisee or agency dealers have no influence over statements made about vehicle emissions performance or emissions during manufacture. The dealer is not involved in the strict arrangements of the Australian Design Rule Regulations (ADRs) which apply to the testing and reporting of vehicle emissions data. ADR testing results disclosed on the ADR fuel consumption and emissions label are regulated and intensely scrutinised.

It is widely acknowledged that franchisee new car and new truck dealers are disadvantaged by the imbalance of power in the relationship with their significantly larger and much more powerful vehicle manufacturer franchisors.

VEHICLE FUEL CONSUMPTION AND EMISSIONS LABELLING IS MANDATORY



VEHICLE FUEL CONSUMPTION AND EMISSIONS LABELLING IS MANDATORY

A mandatory fuel consumption label must be affixed on the windscreen of each new vehicle offered for sale. The existence of the label is well recognised by consumers. Variations to the mandatory labelling cannot be made by dealers.

The label informs consumers and the test results are widely quoted by the vehicle manufacturer. Few products are so exactly regulated as motor vehicles with many standards, laws, and regulations in place providing for consumer protection, emissions performance, and safety.

The information on the ADR label⁵ is sourced from a regulated test result supplied by the vehicle manufacturer. The dealer is not involved in the testing or labelling.

The importance of the test is that all vehicles are tested to meet emissions standards under the same testing regime and therefore results are comparable across brands, models and variants.

A new label format will apply to newly approved vehicle models supplied for the first time from 1 July 2026 and all new light vehicles supplied from 1 July 2028⁶.

DEALERS HAVE NO CONTROL OVER NEW VEHICLE EMISSIONS CLAIMS



STATEMENTS ABOUT NEW VEHICLE EMISSIONS ARE BEYOND THE CONTROL OF DEALERS

The fuel consumption and emissions results displayed on the ADR label are often used by the vehicle manufacturer in their own manufacturer devised and managed advertising campaigns.

The design, specifications, construction methods, manufacture, and performance of vehicles (including emissions performance) are beyond the control of the new vehicle retailer. Vehicles perform on the road according to a range of in service factors influenced by driving style, loads carried, terrain travelled, and frequency of maintenance.

Dealers have no oversight or control of vehicle emissions performance on the road, manufacturer advertising about emissions, or the manner in which vehicles are used by consumers on the road.

OEM COMMUNICATIONS



OEM MARKETING AND MESSAGING

Vehicle manufacturers often use the ADR fuel consumption and emissions testing results as a marker to inform vehicle owners of vehicle emissions performance. OEM marketing is controlled by the marketing departments of the franchisor and statements about vehicle emissions referred to as originating from ADR testing.

Relevant to the seven prompts in the ACCC draft document, the AADA notes that it is common for the use of ADR fuel consumption and emissions numbers to be accompanied by qualifying words supplied by the manufacturer to make it clear that the testing result is mandated by the ADR, for example:

This is an estimated figure calculated with reference to ADR 81/02 and is made on the assumption the vehicle is at maximum factory fuel/energy capacity. It does not take into account factors such as individual driving habits, terrains and driving conditions which may vary depending on the driver and the vehicle.

Therefore making a clear statement consistent with prompts 1, 3 and 6 is important so that the consumer can understand the quoted figures are sourced from a Government mandated ADR testing result.

The wording of the ADR official label applied to the vehicle also supports this position, where it says; *Vehicle tested in accordance with ADR81/02. Actual fuel consumption and CO2 emissions depend on factors such as traffic conditions, vehicle condition and how you drive.*

Dealers may refer to government regulated fuel consumption and emissions information but have no control of testing, the results, display, or public dissemination of this information supplied by the vehicle manufacturer.

ADR LABEL IS NOT ADVERTISING



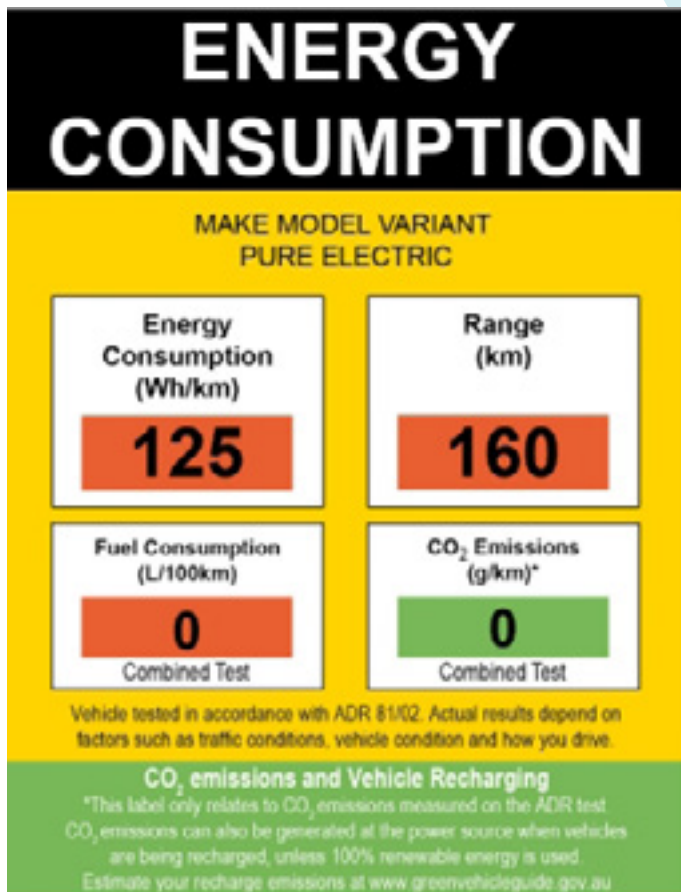
THE ADR LABEL IS NOT ADVERTISING

A case decided in the High Court found that a dealer and Mitsubishi Motors Australia Pty Ltd by application of the ADR fuel Consumption label to a vehicle had not misled the consumer in contravention of s18 of the Australian Consumer Law⁶.

The consumer who had purchased a new Mitsubishi Triton vehicle claimed to have been misled when the vehicle's fuel consumption exceeded the fuel consumption described on the ADR label.

In part the High Court said: *In circumstances where the appellants were bound, respectively, to apply and to maintain the fuel consumption label on the respondent's vehicle, a label the form and content of which were dictated by ADR 81/02, the appellants did not, by that conduct, breach s 18 of the ACL⁷.*

The ADR label must appear in the regulated form using data determined by the regulated test. The content of the label is not decided by the manufacturer or the dealer. It is reasonable and not misleading for manufacturers and dealers to refer to ADR 81/02 testing, such a reference should not be regarded as misleading under the ACL.



Source: Green Vehicle Guide, <https://greenvehicleguide.gov.au/pages/ToolsAndCalculators/FuelConsumptionLabel>

NEW VEHICLE EFFICIENCY STANDARD



NEW VEHICLE EFFICIENCY STANDARD - CREDITS/ DEBITS

The operation and management of the New Vehicle Efficiency Standard (NVES) and arrangements as to manufacturer credits or debits are entirely in the hands of vehicle manufacturers. The AADA would not expect that franchisee dealers would make statements regarding credits, debits or compliance with NVES.

CONCLUSION



CONCLUSION

It is important to the AADA and dealers that the Australian Consumer Law is well understood, and compliance is followed up and down the automotive industry supply chain.

Claims made in vehicle advertising must not mislead consumers and it should be clear that environmental or emissions reduction claims are supportable with evidence. However, as the whole matter of vehicle emissions and labelling of vehicles is comprehensively regulated, the AADA observes that there is no room for dealers to move, and the regulated ADR label provides the definitive answers to consumer questions about a vehicle's emissions.

The AADA encourages the use of the seven guiding prompts to assist business to review statements about emissions and ensure compliance with the ACL.

It is reasonable for dealers to refer to the ADR label fixed to the new vehicle and should not be regarded as misleading under the ACL.

The AADA feedback is provided with an open invitation to continue discussions at a meeting arranged to answer questions regarding this feedback.

REFERENCES

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2. Fuel Consumption label, <https://www.infrastructure.gov.au/infrastructure-transport-vehicles/vehicles/vehicle-safety-environment/fuel-consumption-label>
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4. ADR 82/01 Vehicle Standard (Australian Design Rule 81/02 — Fuel Consumption Labelling for Light Vehicles) 2008, <https://www.legislation.gov.au/F2008L00649/latest/text>
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6. AADA Dealer Bulletin, <https://www.aada.asn.au/wp-content/uploads/2023/12/2023.12.13-AADA-DB-HC-Decision-on-Fuel-Labeling2.pdf>
7. MITSUBISHI MOTORS AUSTRALIA LTD (ACN 007 870 395) & ANOR v BEGOVIC [2023] HCA 43, <https://www.hcourt.gov.au/sites/default/files/assets/publications/judgment-summaries/2023/hca-43-2023-12-13.pdf>



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