

# Bus Australia Network Submission: Review of Easy Access to Suitable Routes

## Bus Industry Confederation



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## Bus Industry Confederation

# Overview of the Bus Industry Confederation

The BIC represents the interests of the bus and coach operators, manufacturers and suppliers to the industry in Australia.

The BIC Objectives are to:

- promote the development and viability of the bus and coach industry in Australia
- foster public understanding of the contribution made by the bus and coach industry to Australia's economy, society and environment
- promote and support industry related research and development
- promote the use of public transport as a viable alternative to the motor car
- promote policies and actions that are environmentally responsible
- encourage investment in public transport infrastructure
- foster and promote a viable Australian bus manufacturing industry.

## The Bus Australia Network

The *Bus Australia Network* (BAN) consists of the bus associations of New South Wales, Victoria, Queensland, Tasmania, South Australia and Western Australia and the federal representative body, the *Bus Industry Confederation* (BIC).

The BIC and State Association members carry more than 1.5 billion urban public transport passengers per year and makes up 5 per cent of the total urban passenger task. The coach sector of the bus industry, comprising long distance, tourist and charter operators moves more than 1.5 million domestic travellers and makes up 8 per cent of the total non-urban passenger task. The school bus is the second most popular mode for travel to school after the car with about one quarter of all school children traveling to school by bus.

The Bus Industry, which includes bus operators, bus manufacturers and parts and service suppliers, employs more than 50,000 people nationally. The BAN promotes the efficient and sustainable growth of public transport in Australia as well as the benefits of bus and coach transport.

Generally, the bus and coach industry is divided between the contracted sector (bus operators who have a contract with a relevant State or Territory Government to provide regular passenger or school bus services) and the non-contracted sector which undertakes long distance, tourist and charter services. In most states and territories bus and coach operators must be accredited to undertake public passenger services, irrespective of the type of bus service being provided.

There is some overlap between the two sectors of the industry. For example, some contracted bus operators also undertake charter work. The industry also includes new types of bus transport; for example, "On-Demand" bus services are currently being trialled in NSW and are included in some new contracts; and in Victoria, the industry is taking a lead with such services through the introduction of a demand responsive transport booking platform.

There is also a significant variation in the size of operators within each sector. The contracted sector can involve metropolitan operators with more than 1,000 buses and rural operators with one school bus. Likewise, in the long distance, tourist and charter sector, there are operators with vehicle numbers ranging from one to several hundred.

Therefore, in addition to a significant difference between a truck and a bus, there are also differences within the bus and coach sector that requires consideration when reviewing the HVNL.

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## *The Review of HVNL – General Comments*

- a) The HVNL should recognise that one size does not fit all when it comes to HV law – different sectors have different needs – HVNL needs to recognise the difference between truck and bus and the task undertaken including technical issues with vehicles and contracted operations – including specific recognition of a national minimum safety standard for accreditation for buses and coaches.
- b) The HVNL needs to have a stronger performance and risk-based approach, that provides operational flexibility, is less prescriptive and offers performance based /alternative compliance approaches for operators to meet the law. This should include incentives to do so and recognise good compliance performance. This should include greater acceptance of technology as a compliance tool – The HVNL should not prescribe the technology only the compliance performance outcome and establish an appropriate alternative compliance enforcement regime that allows on road enforcement resources to be better targeted and for good operators to get on with the job.
- c) The HVNL maintenance group is unnecessary –the law should be allowed to work and not be under constant scrutiny and review (generally by jurisdictions) where there are issues raised or problems, due to things like idiosyncratic industry operational needs or state differences. This would be better dealt with through NHVR and specific regulation to address these types of issues. The HVNL maintenance group is a contributing factor to promulgating state by state HV laws and undermining national uniformity.
- d) The HVNL should be considered, when it comes to buses, in the context of the future passenger task and future impacts on the task such as population growth and congestion and automation and the efficient functioning, for example, of cities and the transport network and not in isolation of these broader societal outcomes.
- e) The HVNL should become more focussed on the use of technology to manage legal access by different productive vehicles to use the road network – the current arrangements are inadequate in managing and monitoring access.
- f) A PBS for bus system is required. The current PBS system is not suitable for buses, limits productivity for buses and adds costs because it is based on “old school paradigms” about infrastructure, safety, environment rather than an approach that focusses on productivity and positive societal outcomes that passenger transport can deliver.
- g) Existing exemptions to the HVNL should be retained and only reviewed in the context of adoption nationally as part of the HVNL review.

In terms of our submission, the BAN has prepared a response to each of the fourteen (14) questions posed in the Issues Paper. These are set out below.

### *Q1: Why do access decision timeframes vary so significantly? To what extent does the HVNL cause or allow access decision delays?*

On the information provided in the NTC Issues Paper (p.41), decision-making seems to take less time when road managers are used to dealing with access applications and take more time when they are unfamiliar with the process. Prior to the HVNL many access decisions were taken by the state road authorities, and currently many local governments lack the expertise and resources to make timely and objective decisions on access. Moreover, local governments are less likely to make favourable access decisions since they are beholden to residents who are more likely to be opposed to heavy vehicles operating in their local area.

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The HVNL has played a part in the current access delays and decisions. Road managers have no incentive or obligation in the HVNL to respond to a request within the approval timeframe. The HVNL requires amendment to ensure that there is such an obligation.

Moreover, when local government denies access there are few options for the operator or the NHVR to intervene. The access approvals process is opaque and does not provide operators with clarity of the decision-making process, or any realistic avenue to appeal. Access can be denied on the basis of broad parameters such as a 'risk to public safety', with no obligation on the road manager to explain or detail their reasoning. The right to natural justice and government transparency in decision making are principles of administrative law, yet these principles are lacking in the HVNL.

In general, there are too many levels of government involved, and a lack of expertise and competence – particularly at the local government/council level.

*Q2: Most road managers can grant consent within seven days. Given this is the case, should we reduce the 28-day timeframe currently in the HVNL? Should we introduce a mechanism to deal with a nil response?*

The current 28 day consent timeframe should be reduced. 7 days should be the maximum response time for standard applications. The NHVR needs the regulatory power to resolve delays.

The goal should be to replace permits with notices wherever possible, and to involve road managers in the negotiation of conditions for notices, e.g. by class of vehicles, speed restrictions, routes and access hours. We note that the NTC is working on a pre-approved route strategy for Class 2 vehicles including buses and coaches, which is highly desirable for the bus industry.

The onus needs to be reversed and nil responses within 7 days should be considered to constitute consent. Any conditions imposed by local government/council road managers (assuming they continue as road managers) should be applied based on local issues, but these need to be justified with a clear and appealable statement of reasons.

*Q3: Is vehicle classification useful? Does the new HVNL need a vehicle classification system and, if so, should it be different from the current system?*

We acknowledge that some form of vehicle classification is useful, however the current classifications of Class 1, 2 and 3 Restricted Access Vehicles (RAV), and PBS Vehicles operating under CML or HML is extremely confusing and bureaucratic

Currently, buses between 12.5 and 14.5 metres in length (Controlled Access Buses) are classified as Class 2 Heavy Vehicles. Strong consideration needs to be given to putting these vehicles into their own class. Buses perform very differently on the roads to other Class 2 vehicles because of the way they are designed. Without their own class, buses and coaches are simply lumped in with freight/trucks.

The BAN believes that buses and coaches should have general access up to 14.5 metres (or at minimum 13.5 metres) in length. However, if RAV criteria is to continue to apply to buses and coaches, it should only apply to vehicles over 14.5 metres (or, as a minimum, over 13.5 metres). Consideration should be given to the performance of buses and coaches with steerable tag axles.

There is a need to introduce national standards for digital mapping systems used to display approved networks. The routes approved for different vehicle types should be enabled by selecting the vehicle type via a legend menu on the digital map.

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In NSW, a digital CAB network map displays approved routes and denied routes for CABs operating under the National Class 3 Controlled Access Bus Exemption Notice 2019. This currently includes State roads only and requires approved council roads to be included on the map.

### *Q4: What are the challenges road managers face under the HVNL access decision-making framework? Which road managers do it well, and why? Why are some road managers struggling with access?*

It is clear that some road managers don't know their network well nor understand the heavy vehicle access process, i.e. that denial of a Higher Productivity Vehicle merely results in more lower productivity vehicles on council roads. Some local governments err on the side of extreme conservatism when it comes to access.

A number of road managers do not have the necessary skill set and/or resources to efficiently assess and make a decision on access. They also do not understand the positive economic and social impacts of access for buses and coaches. Rather, buses and coaches are lumped into the freight/truck category. Inconsistent funding of roads (both for maintenance and upgrades) impacts on decision making where road managers are fearful of damage to road networks under their control.

There is also too much arbitrary community influence in decision making, which negatively impacts economic output. The NTC needs to review what 'community needs' actually mean for bus and coach access. 'Local amenity' should be much better defined than it has been in the past. Bus and coach services provide a significant positive community benefit, including transporting people with a disability safely and efficiently within and outside their communities.

### *Q5: Should the law allow for external review of access decisions?*

The HVNL needs to allow for external review of road manager decisions, particularly where the road manager is a local government/council. There should be an administrative appeals-type body to review the decision in the event of a negative decision, and the decision of this review body should be binding on the parties. In circumstances where an appeal has been lodged, the HVNL should require that the appeal be heard and resolved within a defined timeframe e.g. 7 days. Such a timeframe is required to not only ensure it is resolved but also to address the business imperatives of the applicant.

Regarding the review of local government/council decisions, the HVNL should permit the applicant to seek a review of a negative decision. It appears that the ability to request a review of a negative access decision is limited to the NHVR; our view is it should be extended to the applicant.

### *Q6: Have we covered the issues with access under the current HVNL accurately and comprehensively? If not, what else should we consider?*

HVNL needs to accommodate the specific access risks that need to be managed/controlled. These can be different for different jurisdictions, and consequently failing to understand these has a significant impact on an operator's ability to readily achieve access. For example, neighbouring local government/councils may have different issues or views e.g. road condition, community consultation, curfews, etc., that they want to take into account when considering one single route application.

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The HVNL needs to accommodate the fact that contemporary buses and coaches pose a significantly reduced risk to public safety. Bus and coach engineering has changed considerably over time. Buses and coaches are better built, and the weight that they can carry safely has increased. They have better turning circles, excellent visibility of other road users, stop efficiently, and pose no greater overtaking risk than many light vehicle combinations such as a car towing a caravan or trailer.

First and last mile access needs to be addressed, especially for Controlled Access Buses which access a variety of sites that change regularly and may need to travel through multiple local government/council areas based on the tourism/charter need. For example, these large capacity vehicles need to pick up and set down students from school on local streets for sports transfers, excursions and camps.

### *Q7: How can the new HVNL work, most likely with other reforms, to best support optimised use of our transport assets and vehicles?*

Ideally, the HVNL would minimise regulatory interference and leave operational risk management to industry. It would seek to regulate safety on the road only, not attempt to regulate all aspects of transport.

We would support the NTC proposal (p.59) that infrastructure spending be prioritised to road authorities that approve access, as an incentive for local governments to act in the broader national interest when it comes to the benefits of providing greater access.

If a road manager is able to unlock economic and social potential in their road or road-related infrastructure, then there should be some flow back from an investment perspective to support the maintenance of that asset. This could be linked to either federal or state funding arrangements. There needs to be some incentive for road managers to be proactive.

Road managers need to maintain assets to a designated standard (for pavement, geometry, etc.) - then vehicles can be designed around this. Access needs to be the rule, not the exception (see response to Q8 below).

### *Q8: How can the new HVNL expand as-of-right access and generalise access authorisations? Can we remove time limits for notices, for example?*

Buses and coaches should be provided with more general access i.e. buses and coaches up to 14.5 metres (or up to 13.5 metres as a minimum) should be classified as general access vehicles.

To the greatest extent possible, notices rather than permits should be used for road access approvals. This would free up much of the industry's resources. We are currently in a highly unproductive situation where operators of the same type of vehicle have to obtain multiple permits to access a particular road for a limited period of time. If a permit allows road access to a vehicle of a certain type, all vehicles of that type should be permitted.

The bus and coach industry understand that in the process of seeking consent from a road manager, the NHVR is to request for the road manager to consider the route to be included as a route approved under the gazette notice. It appears that this is not happening as intended, as operator permits for controlled access buses to use specified routes have been approved without consideration to include these in the list of approved routes covered by the gazette notice.

Notices should be perpetual for vehicles that come within the size, mass and type of vehicle identified in the Notice, unless specific circumstances change, e.g. weather damage to a road or bridge.

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### *Q9: Do we have the right tools to implement access decisions? How can we modernise the tools for access authorisations?*

There needs to be an agreed national approach on road classification, road data, vehicle data, etc. This should be a key program to ensure that the NHVR, State Road authorities, industry and especially local councils are aligned to facilitate access approvals.

All necessary information should flow through to the NHVR to assist in decision making.

Notices should be preferred to individual permits for various vehicle classes, and access authorisations should be able to be made and assessed, with progress reviewed by the operator, on-line.

### *Q10: How can the new HVNL accelerate access decisions? Is a proactive approach possible?*

HVNL can try to facilitate proactivity, but the problem seems to lie with different jurisdictions and local government road managers. As a result, we recommend the following strategies as a way of accelerating access decisions:

- Preconditioning routes wherever practicable to optimise the opportunities for general and as-of-right access.
- Transition from permit applications to notices as far as practicable.
- Route assessments should not be required unless there is a very specific need e.g. an extremely innovative or exceptional vehicle. Access should be the rule not the exception.
- Network vehicles need to be aligned based on task, size, mass, location etc.

In summary, the Bus Australia Network believes that NHVR needs:

1. An agreed road network that is clearly linked to vehicle classifications, with the opportunity for innovation to allow enhanced access outcomes.
2. All access approvals to be managed by NHVR with input where required from State and Territory jurisdictions, and without the involvement of local government/councils.
3. Road network availability to be considered a given, except where road managers can justify exclusions based on:
  - a. Accidents
  - b. Special infrastructure (bridges, etc.)
  - c. Dimensions.

A program should be put in place to fix these issues (and not keep access restrictions in place as a 'roadblock').

4. An agreed national approach for a digital mapping system and the data that will underpin the system, and jurisdictions to have an agreed timeframe to upgrade their systems to accept the data from industry.

If it is decided that road managers should retain access rights, then they would need to respond to an applicant with an actual decision within 7 days, otherwise the NHVR should approve the access request. If the road manager response is based on a 'poor' excuse for refusal, the NHVR needs the authority to review that decision and override it.

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### *Q11: How should the new HVNL implement access decision-making? Should it specify process and roles? What role is there for the operator? What improvements to access decision-making can be made?*

Conditions for access should be standardised and conditions types minimised as per p.63/64 by:

- Automating actions, handovers and decisions and removing any superfluous steps
- Automatic alerts to decision-makers and applicants in the event of a delay or process failure
- The use of non-binary decision models that focus on risk management.

As outlined at section 2.5.5 (p.30) road managers should not be able to simply refuse access. Rather, they should use a risk management approach to approve access *subject to a condition that will avoid or significantly minimise the damage, negative effects or significant risks or likelihood of these issues*. This should be possible under a risk management-based approach which would recognise mitigative action.

### *Q12: How do we reach consistent and predictable risk-based access decision-making? How can we make sure decision-making is transparent and fair?*

The following principles should be adopted in the HVNL to ensure access decision-making is transparent and fair:

- Operators should be able to easily track their access applications on-line i.e. who holds the application (NHVR, State Road Agency or local council) and how long they have had the application
- The NHVR and the operator should be alerted when the application has been held beyond the timeframe allocated in the legislation for an access decision
- Where no response is made by the road manager within a certain timeframe, the legislation should consider the application as approved, with the onus on the road manager to provide reasons why access should be denied
- Any reasons for denying access should be detailed. Broad generalisations such as 'safety' should not be sufficient to deny access; rather the reasons provided should be able to be objectively tested e.g. 'the bridge on Smith Road is not engineered to carry vehicles in excess of 23 tonnes', etc.
- A permit approval for one class of vehicle should be automatically extended by Notice to all vehicles of the same class. This requires a more descriptive classification than the current Class 1 to 3 Restricted Vehicle categories (refer to our comments at Q3).

### *Q13: How do we best share the risk management responsibilities between parties with a role in heavy vehicle access?*

The HVNL should seek to limit risk management to the responsibilities of each party (NHVR, road managers, and operators), and let each look after its own risk area. There is a need to stop regulatory spread and cross-checking, which escalates compliance costs for all parties.

Access should be linked to the performance of an operator. If an operator is proven to be poor in their risk management process etc., then access can be restricted to 'standard' access.

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***Q14: How do we manage the accountability of parties with a role in heavy vehicle access?***

As discussed previously, we strongly support a risk-based approach that provides improved access arrangements for parties demonstrating good safety and vehicle outcomes. The operator needs to demonstrate compliance through systems that can be managed through the NHVR and roadside enforcement.

We suggest moving to an electronic and trackable system so that information is freely available to facilitate decision making on access and enforcement. This would be enhanced by the creation of a history of vehicle types and access, to better inform long term strategies and access arrangements. This could be done progressively as an output of access approvals.

Further inquiries relating to this submission can be directed to Mr Michael Apps, Executive Director, Bus Industry Confederation on (02) 6547 5990.