

15 August 2019

National Transport Commission

Easy access to suitable routes

INTRODUCTION

1. EROAD is a technology company specialising in regulatory vehicle telematics, providing services in New Zealand, Australia and the United States.
2. We appreciate the opportunity to provide this submission. Representatives of EROAD are available to speak on the submission at your convenience.

ABOUT EROAD

3. EROAD believes every community deserves safer and more productive roads that are sustainably funded. This is why EROAD develops technology solutions that enable the better management of vehicle fleets, support regulatory compliance, improve driver safety, and reduce the costs associated with driving.
4. EROAD also provides valuable data analytics to universities, government agencies and others who research, trial and evaluate future transport networks. This aggregated and anonymised data enables those who use the roads to influence the design, management and funding of future transport networks.
5. In 2018 EROAD received the Brake Fleet Safety Award acknowledging EROAD's positive impact in creating safer drivers, vehicles and roads. EROAD products and services have received multiple awards and the company appears in the Deloitte Fast 50 Master of Growth, Asia Pacific. EROAD was also a finalist in the 2019 Hi-Tech Company of the Year award.
6. EROAD (ERD) is listed on the NZX, and employs almost 300 staff located across Australia, North America and New Zealand.
7. If you would like to know more about EROAD, you can visit <https://www.eroad.com.au/>

INTRODUCTORY POINTS

8. The subject of road access is intimately related to the subjects of road ownership, road funding, road asset management, and vehicle design. While it is possible to separate the regulatory components of each into distinct sections or statutes, the 'lived reality' requires that they be managed together. The challenge for a new HVNL is to improve what it can on its own, and to be designed to accept and make the most of parallel and future improvements in the surrounding, inter-dependent, systems.
9. The HVNL will provide a regulatory and philosophical scaffold that could either help or hinder the Heavy Vehicle Road Reform programme. Care will be needed to ensure that the tendencies introduced into the system via a reformed HVNL work with the proposed direction of travel for any Independent Price Regulator and the creation of the means for a credible Forward-Looking Cost Base. Changes to the HVNL need to add momentum to supply side reforms.



COMMENT ON THE DRAFT REGULATORY PRINCIPLES

Draft regulatory principle 1: The fundamental goal of new HVNL access arrangements should be to make the best, most efficient use of infrastructure, vehicles and resources so we can:

- ensure safety for all road users
- efficiently deliver Australia's freight task
- support our domestic services and economy
- promote competitiveness in international trade.

10. EROAD agrees with this principle.

Draft regulatory principle 2: Access decisions should apply as broadly as possible, so they're needed less often. It should be possible to implement decisions using a choice of instruments.

11. EROAD considers horizontal and vertical equity are important guidelines for the application of this principle. Thus:

- a. Any user of a route proposing to operate at similar or better (i.e. lesser) level of risk to an already permitted user should enjoy the same access rights as the already permitted user.
- b. The permissible uses of a route with a given designed method of construction, level of service, and maintained condition should be determined according to an objective methodology that is applied consistently to all types of route.

EROAD notes, therefore, the importance of the work signalled in the Transport and Infrastructure Council Communique of 9 November 2018, "to develop a nationally consistent service level standard for roads, to categorise roads by their function and set customer-focussed service levels for each road category".

12. EROAD considers that two significant challenges for this principle are that:

- a. While roads may be public assets, they are not public goods: they are rival and excludable. Therefore, there will be a point when the additional marginal user cannot be treated the same as pre-existing users, except by restricting access for all or adjusting levels of service to suit.
- b. While roads are long-life assets, they deteriorate over time even if only lightly used, and more quickly the more heavily used they are. The suitability of a route for the current nature and scale of access will vary over time according to its maintained condition.

EROAD notes, therefore, the current state of asset management capabilities and practices, e.g. as described by the Australian Local Government Association in their 2018 report *National State of the Assets*. There is an ongoing need to lift the quality and consistency of these capabilities and practices across local road managers if the system is to be properly equipped to respond to these two challenges.



Draft regulatory principle 3: Access decision-making should be simple, consistent, fair and transparent. It should be proactive wherever possible. Decisions in response to a request should be made quickly.

13. EROAD agrees with this principle.

Draft regulatory principle 4: Access decision-makers, beneficiaries, facilitators and enforcement should have clear responsibilities and accountabilities.

14. EROAD agrees with this principle.

RESPONSES TO THE SPECIFIC QUESTIONS ASKED

Question 1: Why do access decision timeframes vary so significantly? To what extent does the HVNL cause or allow access decision delays?

15. Variability always comes down to people and systems. People lack time, experience and/or skills. Systems don't exist or have failed to keep pace with changing requirements.
16. Care needs to be taken not to confuse allowing owners to assert their ownership interests with regulatory delay:
 - a. A HVNL that tries to force a certain quality of practice onto road managers may also force a scale of expenditure onto local governments that cuts across their rights and responsibilities to select and deliver baskets of services to their communities/constituencies in accordance with their accountabilities to those communities.
 - b. Generally speaking, communities usually (and not unreasonably) expect nationally imposed minimum standards, that exceed local needs and/or are intended to serve outsiders, to be supported by national subsidies.
 - c. That the HVNL currently works within this general constraint is a positive thing.

Question 2: 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?

17. See also the response to question 1.
18. To the extent the timeframes lack teeth, then they are a guide intended to encourage practice that conforms to some reasonable standard. As such, shortening the timeframe may serve well to improve the timeliness of decision-making by promoting a new 'reasonable' standard. It is worth noting that actions that are able to be left unattended for significant periods of time are far more at risk of being forgotten as new demands creep in.
19. A nil response needs to be taken as a refusal. Someone outside the road manager is not likely to be able to make an informed decision to the contrary, and is not liable for any downstream costs such a decision might impose. Any process introduced needs to work with and through the relevant road manager to get an explicit decision.
20. Over the medium to long-term, technological solutions should be introduced to eliminate the manual component of routine decisions, so that the process need only be for the timely



resolution of exceptions, and these can be harmonised more easily across jurisdictions. See also the response to question 3.

Question 3: Is vehicle classification useful? Does the new HVNL need a vehicle classification system and, if so, should it be different from the current system?

21. Vehicle classification is useful for a range of regulatory purposes, so long as the classification is based on attributes that are relevant to each regulatory purpose.
22. Consistent vehicle classification, working in conjunction with consistent road classification and with complete information on current maintained road states, would enable significantly simplified permitting, including substantial automation.
23. Note that a vehicle classification system to inform road asset management and access rights should be the same vehicle classification system as applies for price-setting, given the central place considerations of vehicle road wear and stress should play in each of these areas.

Question 4: 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?

24. See the response to question 1.

Question 5: Should the law allow for external review of access decisions?

25. See also the response to question 3.
26. Meta-data relating to access permits should be made available so that future applicants can see what has been allowed where and under what conditions. Review should be possible where a different decision has been reached despite the absence of material differences in circumstances. However, transparency around access permits should reduce the number of requests for review by providing better contextual information to all parties (better decisions, more clear reasoning).

Question 6: Have we covered the issues with access under the current HVNL accurately and comprehensively? If not, what else should we consider?

27. See also the introductory comments and comments on the draft regulatory principles.

Question 7: How can the new HVNL work, most likely with other reforms, to best support optimised use of our transport assets and vehicles?

28. See the response to question 3.

Question 8: How can the new HVNL expand as-of-right access and generalise access authorisations? Can we remove time limits for notices, for example?

29. See also the response to question 3.
30. The question of which vehicles and/or under what circumstances as-of-right access should be allowed is heavily dependent on the quality and level of service offered by the asset in question. The impediments to greater as-of-right access are less likely to lie within the HVNL, and more likely to be attributable to:



- a. The absence of common road and vehicle classifications
 - b. The lack of investment in bringing actual levels of service and maintained states up to the level implied by a road's functional classification.
31. Notices should have a life consistent with the expected duration of a road's capacity to operate at the level implied by that notice.
32. Perhaps what is needed is a simplified process to renew a notice – either incrementally in the anticipation of planned and committed maintenance or renewal work occurring soon, or for a new full-length term because the anticipated maintenance or renewal work has occurred?

Question 9: Do we have the right tools to implement access decisions? How can we modernise the tools for access authorisations?

33. See the responses to questions 3 and 10.

Question 10: How can the new HVNL accelerate access decisions? Is a proactive approach possible?

34. See also the response to question 3.
35. Where the underlying data is available and able to be integrated, then access applications could be largely automated. Human involvement could be minimised, being required only on an exceptions basis. While the law needs to allow for such integration and automation, the primary barriers lie outside the law, e.g. electronic asset and vehicle registers, electronic means of attesting to and verifying adherence to special operating conditions, etc.

Question 11: 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?

36. See also the responses to questions 2, 3, 5, and 10.
37. The new HVNL needs to be careful to respect ownership and funding rights and responsibilities. It should not act to alienate the rights of control from a party if the executor of the powers appropriated under a new HVNL is also not prepared or able to take on the funding and risk management responsibilities.
38. The HVNL could prescribe the relevant criteria for decision-making. It could also prescribe responsibilities for road managers to maintain current and publicly available information on the applicable standards for the various roads under their management. The onus would be on the operator to provide necessary and complete information to demonstrate that they satisfy (ex ante) all such criteria as relate to each segment of a proposed route, and will have the means to demonstrate (ex post) that they in fact complied with those criteria.

Question 12: How do we reach consistent and predictable risk-based access decision-making? How can we make sure decision-making is transparent and fair?

39. See the responses to questions 2, 3, 5, and 10.

Question 13: How do we best share the risk management responsibilities between parties with a role in heavy vehicle access?



- 40. See also the response to question 11.
- 41. The road manager is best placed to manage general risks. The road manager should be responsible for setting and maintaining standards and restrictions appropriate to the level of service and current maintained condition of its roads, and issuing access permits on the basis of this information.
- 42. The operator is best placed to manage the specific risks. The operator should be responsible for ensuring a vehicle is operated in accordance with the conditions attached to its use of any given road section on its route.
- 43. There are numerous other parties that are also peripherally involved, and their contribution is mediated by the degree to which they help or hinder one of the two primary parties (the road manager and the operator). Under a safe systems approach, the influence of these parties, and the potential power they hold in the system, needs to be acknowledged. There may be value in acknowledging the general duties and chain of responsibility that applies in this domain.

Question 14: How do we manage the accountability of parties with a role in heavy vehicle access?

- 44. See also the response to question 13.
- 45. Accountability is not just about making people face the consequences of making bad decisions. It is also about recognition and reward. Also, it is as much about the conduct of the regulator (in this case, the road manager) as it is about that of the regulated party (the operator).
- 46. The overall tendency of the current regulatory framework is towards finding and reacting to operator breaches, not operator compliance, nor road manager breaches or compliance.
- 47. It seems particularly difficult, however, to take meaningful action *against* a non-compliant road manager. Thought needs to be given, then, to whether there are appropriate incentives in place to encourage and reward good practice by road managers, and what these might look like/how they might be enabled and scaffolded, within a new HVNL. Funding certainty is clearly one form of reward for a road manager that provides timely and appropriate road access: this is another example of how the issue of access is intimately concerned with road funding reform.
- 48. Similarly, there is a case for providing greater rewards for demonstrably, proactively and consistently compliant operators (e.g. self-permitting). While it might be argued that the road access gained is the reward, at the system level it might be more appropriate to think in terms of the access to access – reduced red tape for trusted participants – as the more meaningful way of accounting for good performance. More thought is needed, therefore, around how to recognise the operator within the whole regulatory framework so that it can be used as a leverage point to manage down bad behaviours and reward good behaviours.

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