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RE: 'Easy Access to Suitable Routes' Discussion Paper

On behalf of the South Australian Freight Council's (SAFC) Executive Committee and Membership I thank you for the opportunity to comment on the 'Easy access to suitable routes' Discussion Paper.

As you may be aware, SAFC is the State's peak, multi-modal freight and logistics industry group that advises all levels of government on industry related issues. SAFC represents road, rail, sea and air freight modes and operations, freight services users and assists the industry on issues relating to freight logistics across all modes.

Access is an area of particular angst for the road freight industry – not because decision making is universally restrictive or poor, but because of the highly disparate outcomes across Australia.

It is also an area where the HVNL is not the sole determinant of whether outcomes are good or bad – there are a raft of other issues including regulatory culture(s), organisational capacity and knowledge, and processes that are not determined by law.

Responses to the individual questions posed in the paper are below.

Should you wish to discuss any element of this submission further, please feel free to contact me on (08) 8447 0664 or via email knapp.evan@safreightcouncil.com.au.

Yours Sincerely,



Evan Knapp
Executive Officer,
SA Freight Council.

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

There are over 500 local councils that act as road managers under the law – each have varying abilities, competencies and skills, regulatory culture, knowledge and staffing levels. No two decision makers are identical; therefore it is unsurprising that decision timeframes vary wildly.

To put it another way, if standardised systems, culture, knowledge and processes deliver standardised decision timeframes; the fact that 500 plus different organisations deliver significantly varied results is to be expected.

By allowing (or requiring) these 500 plus road managers to make access determinations, the HVNL is implicitly allowing this variation and subsequent delays in a significant portion of cases.

Given this is a ‘from first principles’ review, the NTC should examine whether there is a need for so many different decision makers to be enshrined in the law. Other options (such as delegations, or automatic decisions by the NHVR on precedent) should be thoroughly examined.

SAFC does not specifically contend that councils should lose their current responsibilities under the revised law – there are valid arguments for their views to be considered given their responsibilities for a significant portion of the road network. However, enhancement options should be examined.

Noting the vastly different outcomes observed from high volume of permit councils to low volume of permit councils (Figure 11, page 41) it appears that there may be benefit in pushing decision making powers up from individual councils to regional local government associations, where the enhanced volume of permits would allow for specialist skills to be purchased from the jobs market. High volume councils could be exempt, or could still benefit from sharing costs. This is just one potential example that should be examined.

In relation to road manager approvals for access, Councils are administering a system for which they gain no revenue to pay for high skill staff. All permit application revenue goes to the NHVR, but they do not undertake the full process. A review of revenue vis a vis responsibility should also occur.

The HVNL doesn’t permit enforcement of decision making timelines, therefore it allows delays. This should be rectified.

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?

Any law without a mechanism to deal with a non-compliance essentially permits that non-compliance. There must be a mechanism to deal with a nil response – it should be to automatically grant the permit after the decision period elapses (28 days). To ensure that this is done safely, the NHVR should be able to add any reasonable conditions to an automatically granted permit, with these subject to standard review provisions.

If such a provision were introduced, we would not suggest a reduction in the outer limit response timeframe.

Given the above discussion (under question 1) in regards to the lack of revenue for councils that corresponds with their responsibilities under the law, SAFC suggests that any move to provide a portion of permit revenue to councils should be linked to timely performance of the task – i.e. a decision within 7 days. This provides an incentive for councils to reform internally to deliver better outcomes for industry.

In combination, these two methods provide an *incentive* for good service, and a *guarantee* of service within statutory timeframes.

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?

Figure 11 clearly demonstrates that inexperience costs time, with ‘high volume of permit’ road managers outperforming ‘low volume of permit’ road managers in providing consistently good turnaround times. As previously noted, there may be benefit in pushing decision making powers up from individual councils to regional local government associations, road authorities or other bodies, where the enhanced volume of permits would allow for specialist skills to be purchased from the jobs market. High volume councils could be exempt, or could still benefit from sharing costs.

A delegation power may need to be included in the law to allow the above to happen.

Poor outcomes for small volume of permit road managers could also be linked to funding, as suggested in several sections (e.g. 3.2.2, 3.3.1). While providing a small part of the permit service, the NHVR is accruing all the revenue. A more equitable split based on tasks undertaken could alleviate this.

Lastly, figure 13 (p42) reveals an absolutely unacceptable divergence in road manager performance in NSW. Given the lack of other reasonable explanations, we can only deduce that this results from a different regulatory culture – one that cannot be allowed to continue.

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

A fundamental tenet of administrative justice is that all regulatory decisions should be externally reviewable. Many jurisdictions maintain tribunals for this particular purpose, e.g. SA Civil and Administrative Tribunal (SACAT) or Victorian Civil and Administrative Tribunal (VCAT).

Decisions of the NHVR are both internally and externally reviewable, however those of Road Managers are not. While the NHVR has the power to ask a Road Authority (State or Territory government) to review a road managers decision, this power has never (to our knowledge) been used. An inaccessible or unused power has no benefit to industry, and is practically equivalent to no review power at all.

Access seekers need the ability to instigate an external review into a road manager decision themselves. Relying on the NHVR to instigate a review by a road authority of a road manager decision has proven to be a non-viable method. It must also be recognised that road authorities are also road managers – therefore a request to review a decision for a road they have control over would not constitute an ‘external review’.

Such reviews need to be able to be decided quickly and at low cost, given that a permit delayed too long may have no use ('justice delayed is justice denied').

Given their particular focus, the Jurisdictional-based Administrative Appeals Tribunals (also known as Civil and Administrative Tribunals) may be the most appropriate external review entities.

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

The discussion paper generally covers the issues with access under the current HVNL, although not all stakeholders will agree with every element raised as an issue.

In particular the statement that 'risk controls are insufficient' (s3.5) is challengeable. While no individual method is perfect, there is a viable argument to be made that in combination they deliver good coverage. This not to say they can't be improved – by expansion and improvement of the Safe-T-Cam system, for example.

With regards to s3.6.3 'Road Manager Incentives', Refusing to permit a RAV access to a portion of the network does not necessarily immediately lower or prevent wear and tear on the road system. Often this will simply result in using a larger number of less efficient vehicles, with more total axles, which may actually increase wear and tear – along with a variety of other negative externalities including noise, fumes, etc.

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

Road Managers, as a class, form the majority of the problems identified with access. SAFC intends no criticism of any individual road manager in making this statement – many do an excellent job. However having so many decision makers with disparate knowledge and skill levels, different regulatory cultures, different resources and with little direct financial incentive to grant access is a problem. While it may not be a specifically HVNL related issue, there would be a significant benefit in taking a holistic look at road manager issues with access across Australia.

SAFC agrees with the discussion paper's contention that the new HVNL *'should make it more difficult to make access decisions against the greater national interest'* (s4.1.2). Ensuring that all access decisions can be reviewed in a timely and economic fashion is key – see our answer to question 5 above.

Access also needs to be considered in a more strategic and holistic fashion. With so many decision makers and little official/mandated interaction between them, it is unsurprising that there are disparate outcomes. In South Australia, Councils (through their Regional LGAs) have started to look at their networks in a much improved fashion, delivering regional transport plans that identify key cross-regional freight routes.

'Data for access' (not enforcement) as exposed in section 4.1.3 is an interesting concept that should be explored further. If industry is going to accept such a change (and the costs involved in acquiring the telematics and providing the data), it will need to deliver new access, not be added as a new requirement for current access.

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?

SAFC supports the discussion paper's contention that *'the new law should support a transition to as-of-right alternatives to broaden access'* (p61).

One of the prime methods for doing so should be through recognition of precedents. We endorse the NTC's contention that *'Access decision making should be predictable and repeatable, independent of personal bias or other subjective reasoning'* (s4.3.4, p63). Approval of a first time permit should allow for future identical/substantially similar permits to be granted automatically – potentially by the NHVR alone as road manager assessments have already been completed. Once a reasonable (set) number of permit operations have been undertaken over a reasonable (set) time period and the local impacts are known, the route should be added to a notice. The time and number of operation triggers should be developed in consultation with road managers and industry.

Given that routes can be removed from notices at any time, there is no need for time limits on notices. These increase administrative burden/cost for no appreciable benefit.

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

SAFC supports using GIS systems to present access data, such as the RAVnet system in use in SA, or the NHVR's own system. We agree that there should be no need for papers to be carried in cab to prove access rights.

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

Firstly, making HVNL maximum timelines enforceable (as discussed above) will cut off unreasonably slow decision making.

The enhanced use of precedent in decision making will also accelerate the process (see the answer to Q8). This should be built in to supporting electronic approvals tools and processes.

The steps outlined by the NTC in section 4.3.2 would also enhance the speed of decision making, and are generally supported – particularly the use of tools that ensure an application is moving through the process in a timely fashion.

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?

Specifying a process in law has both benefits and costs. It can assist in holding organisations in the process to timelines, but also makes process improvements harder and slower to implement.

Processes, decision making tools and definitions should be common across all decision makers (including all road managers).

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?

Transparency can be delivered by providing operators 'view' access to the electronic permit approvals system. This can be delivered via policy, rather than through legislation/regulation.

With regards to consistency and predictability, the use of precedent to guide decision making is paramount (see the answer to Q8). The ability for an operator to ask for an external review of a decision will also support this goal, as two substantially similar permit applications will be expected to deliver similar access outcomes (see the answer to Q5).

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

SAFC agrees that road managers should be able to delegate decision making to other competent parties. One such suggestion is to regional local government authorities (see answer to Q4). Where an access precedent has been established (and route assessments completed), it would greatly speed up the process if the NHVR was able to replicate a previous decision without reference back to the road manager.

As previously discussed, all decisions should be reviewable for reasons of administrative justice (see the answer to Q5).