

# Toll Group submission on “*Easy access to suitable routes*”, National Transport Commission June 2019

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## **Purpose**

To articulate Toll’s perspective on the existing and potential legal framework for vehicle access in Australia

## Introduction

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With over 125 years' experience, Toll Group, proudly part of Japan Post, operates an extensive global logistics network across 1,200 locations in more than 50 countries. Our 40,000 employees provide a diverse range of transport and logistics solutions covering road, air, sea and rail to help our customers best meet their global supply chain needs.

Toll Group welcomes the opportunity to provide feedback on the third paper released as part of the Review into the Heavy Vehicle National Law (HVNL). The *Issues Paper* produced by the National Transport Commission (NTC) is comprehensive in its consideration of where and how the HVNL can be improved with regards to access.

In summary, Toll Group acknowledges and supports most of the Australian Trucking Association's key principles of focus for the NTC in regard to access as follows:

1. Enforceable standards and orders
2. External review
3. Ability for local government to delegate their access decision-making role
4. Acknowledging precedents in access decisions
5. Extending the period and applicability of authorisation
6. Process improvements and reduced processing timeframes
7. Expanding as-of-right access
8. Creation of a notification network
9. Not duplicating bridge assessments

However, there remains a challenging issue to this consultation process. Improvements to access under the HVNL review are limited without the development of service level standards and road funding reform as being progressed in the Heavy Vehicle Road Reform (HVRR) program. Access authorisations are often impeded, delayed or denied because of lack of information: about the service standards of a particular road or road infrastructure, about what remedial work is required to facilitate access, and at what cost. While these reforms are pursued separately the productivity latent in the system will remain unlocked. Toll Group calls on the NTC to advocate for the HVNL review and the supply-side elements of the HVRR program to be conjoined as soon as possible.

## Summary of Recommendations

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Toll Group calls on the NTC to consider:

1. Advocating a position to the Transport Infrastructure Council that Heavy Vehicle Road Reform and the HVNL Review must be considered in parallel given service level standards and access are fundamentally linked.
2. A comprehensive education campaign to counter public concerns about "monster trucks". A lack of education means that more frequent and polluting trips may be preferred over fewer and safer trips by high productivity vehicles.
3. Differentiating permit fees according to the safety, emissions and productivity rating of the vehicle configuration to promote newer, safer, greener trucks.
4. Vehicle registration must be managed nationally to remove the waste and inefficiency of interstate transfers. This will deliver a genuinely "national" plate.
5. Removing the ability for road managers to refuse access without advising the applicant the conditions, mass or alternative route at which access would be granted.
6. Including a provision in the HVNL that would compel a response to an access request if timeframes are not met. This could be through a penalty, a default granting of access where a nil response is received or (more optimally) devolving decision making to the NHVR.

7. The provision of comprehensive, up-to-date road maps that match road service standards with vehicle types and mass. These maps should be a single source of truth for operators, road managers and regulators alike.
8. The introduction of an external review process for road manager decisions, including applications where no decision has been made after a certain period of time.
9. The recognition of access precedents in the issuance of permits to avoid multiple operators paying multiple times for the same assessment.
10. The removal of time limits for notices as they can be revoked or suspended by road managers at any point if need be.
11. A change to the way time periods are calculated so that time begins when the application is submitted, not when an NHVR staff member opens it or refers it to a road manager.

## Preamble: Access and Heavy Vehicle Road Reform

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*“The success or failure of the regulator largely hinges on its ability to promote robust and transparent decisions regarding access, because this is where the greatest productivity benefits are to be had”.<sup>1</sup>*

The fundamental importance of road freight transport to the Australian economy and the missed productivity opportunities engendered by the current system are well known. The Heavy Vehicle National Law Regulation Impact Statement,<sup>2</sup> the recent National Freight and Supply Chain Strategy,<sup>3</sup> the Harper Review<sup>4</sup> and the ATA-commissioned Deloitte review<sup>5</sup> have all made this case and Toll will not re-prosecute it.

The latent productivity identified in all these reviews cannot be unlocked until we address a fundamental systemic problem.

The problem is this: road managers are not sufficiently incentivised to grant access. The existing road infrastructure funding model encourages an asset preservation mind-set because there is no direct relationship between granting access and funding to maintain/upgrade the asset. Road managers may also feel professionally (and even personally) liable if a structural failure occurs on their network.

While many road managers, particularly in regional areas, recognise the importance of road freight to their community, they are also answerable to that community for the condition of roads, culverts and bridges. Unsurprisingly, the road managers responsible for the 80% of Australian roads under local government jurisdiction may feel a greater obligation to their rate payers than transport operators seeking to travel in and around their communities. They can therefore exercise their power under s.156A(1)(ai) of the Heavy Vehicle National Law

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<sup>1</sup> National Transport Commission, *Heavy Vehicle National Law Regulation Impact Statement*, 2011, p. 55

<sup>2</sup> National Transport Commission, *Heavy Vehicle National Law Regulation Impact Statement*, 2011

<sup>3</sup> Transport and Infrastructure Council, *National Freight and Supply Chain Strategy*, August 2019

<sup>4</sup> Harper, Andersen, McCluskey et al, *Competition Policy Review Final Report*, March 2015

<sup>5</sup> Deloitte Access Economics, *Economic Benefits of Improved Regulation in the Australian Trucking Industry*, March 2019

(HVNL) to refuse consent because “the mass or dimension authority will, or is likely to, cause damage to road infrastructure”.

This connection between infrastructure funding, access and productivity was made as early as 1998 when increased mass limits for road-friendly vehicles was first mooted.<sup>6</sup> It was recognised that a sustainable funding model for upgrading and maintaining bridges was required to facilitate access. The commonwealth, states and territories could not agree on the funding model and two decades later the issue remains unresolved.

Unless this dead-lock is broken, access issues will remain. The answer lies in drawing the road reform (under the auspices of the Commonwealth) and HVNL review together. A funding system that directly links road access to asset maintenance (with appropriate community service obligations) will give road managers greater confidence to “sweat the asset”.

Road funding reform will also head off a looming fiscal challenge. The growth in low emission vehicles is driving fuel excise collection down.<sup>7</sup> Government revenues from registration fees will also fall as younger generations reject driver licences and car ownership in favour of ride-sharing and public transport.<sup>8</sup> The projected influx of autonomous vehicles will only exacerbate this trend.

Toll Group calls on the National Transport Commission to advocate a position to the Transport Infrastructure Council that the road reform and HVNL Review must be conjoined. They cannot proceed in isolation from one other.

We recognise that road user funding is outside the remit of the HVNL review but it is so fundamental to access that it cannot be avoided.

Toll offers the following responses to the questions posed by the NTC that are within its ambit. Toll considers that questions 10-14 duplicate previous questions and so has left these unanswered.

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

In Toll’s experience the delays caused or allowed by the HVNL occur for the following reasons:

- There is a lack of co-ordination between third party approvals (e.g. utilities and rail operators), road managers and the NHVR. Although the NHVR nominally acts as the “co-ordinator” between these bodies, Toll’s permitting area does considerable leg-work to prompt action along the decision-making chain. Empowering “case managers” to handle and drive a permit from application to approval would be helpful. This is largely a question of leadership.
- Although the law stipulates that road managers must “have regard to approved guidelines” when making their decisions about mass and dimension (s.156(3)), it is questionable if this occurs in all cases. We note that, at present, the approved

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<sup>6</sup> National Road Transport Commission, *Regulatory Impact Statement: Increased mass limits for road-friendly heavy vehicles*, April 1998

<sup>7</sup> Infrastructure Partnerships Australia, *Road Pricing and Transport Infrastructure Funding: Reform Pathways for Australia*

<sup>8</sup> Monash University, “No keys to this future: millennials ditch cars for transit”, <https://www.monash.edu/news/articles/no-keys-to-this-future-millennials-ditch-cars-for-transit>

guidelines are not accessible on the NHVR website as they are “currently being updated”.<sup>9</sup> This leaves road managers to navigate a plethora of existing state-based guidelines,<sup>10</sup> compliance with which is difficult to enforce and prove.

- Road managers may require detailed route/bridge assessments at their discretion. Advice published on VicRoads’ website on how to obtain a bridge assessment indicates a five-step process with a wide variance in cost. (Between \$1,000 to upwards of \$50,000).<sup>11</sup> There is no hard limit on the timeframe.
- “Amenity” is an admissible, but broad, reason for refusing consent. Public concerns about “monster trucks” mean that more frequent and polluting trips may be preferred over fewer and safer trips by high productivity vehicles. While “amenity” can be a valid reason for refusing access, it needs to be grounded in objective fact.
- Some local councils require decisions to be made at full Council meetings rather than delegating decisions to staff members.
- The law does not stipulate a timeframe for the NHVR to “pre-assess” applications. There is therefore no accountability on the NHVR for prompt processing of applications. Further, the application is only “counted” from the point when a NHVR staff member opens it, not from when it is submitted. Toll typically waits 5 to 7 days before a submission is counted in the portal.
- The official “clock” only begins ticking once the road manager has received the application from the NHVR. The “28 days” KPI thereby provides a misleading impression of timeliness.
- There is no “circuit breaker” if a road manager does not make a decision within a stipulated timeframe. Under s.156, a road manager must decide to give or not give consent after 28 days, or 14 days after giving the NHVR a notice of objection, or not more than 6 months if agreed to by the Regulator. There is no power in the HVNL to compel a response if these timeframes are not met. Figure 1 below is a snap-shot from Toll’s permit portal taken 5th August 2019. The average permit request time in the system is just over 72 days: well over the nominal 28 day period.

Figure 1: Snapshot of permit portal, Toll Group 5 August 2019

New Permit	Performance Bas...		Closed - Withdrawn	211d	27-Sep-2016	01-Apr-2019	34 m A-double Physi..
New Permit	Performance Bas...		Closed - Withdrawn	49d	27-Sep-2016	01-Apr-2019	34 m A-double Rene..
New Permit	Performance Bas...		Completed	44d	05-Oct-2016	01-Apr-2019	Boral NSW Marulan ..
New Permit	Performance Bas...		Completed	7d	05-Oct-2016	01-Apr-2019	Permit 14795 (West ..
Amend Permit	Performance Bas...		Closed - Withdrawn	0d	27-Oct-2016	01-Apr-2019	P8215 VA update
New Permit	Performance Bas...		Completed	8d	31-Oct-2016	01-Apr-2019	Case No. 45229 Rer..
New Permit	Performance Bas...		Application Refused	115d	03-Nov-2016	01-Apr-2019	Boral QLD v3
New Permit	Performance Bas...		Completed	114d	18-Nov-2016	01-Apr-2019	34 m A-double HML ..

<sup>9</sup> <https://www.nhvr.gov.au/road-access/local-government-road-managers/guidelines-for-granting-access> Accessed 17/8/19

<sup>10</sup> For example: <https://www.rms.nsw.gov.au/documents/business-industry/heavy-vehicles/route-assessment-guidelines.pdf>; <https://www.tmr.qld.gov.au/-/media/busind/Heavyvehicles/multicomboveh/Assessing-routes/Route-Assessment-Guidelines-for-Multi-Combination-Vehicles-in-Queensland.pdf?la=en>; <https://www.nhvr.gov.au/files/0018-pbsnetworkclassqlines.pdf>

<sup>11</sup> <https://www.vicroads.vic.gov.au/business-and-industry/heavy-vehicle-industry/registration-permits-curfews-and-compliance/how-to-obtain-a-bridge-assessment>

o	Application	Application type	Case progress	Case status ▾	Durations	Submitted date ▾	Modified date	Application nickname
				Not: New, Assigned ▾		not empty ▾		
	Amend Permit	Performance Bas...		Completed	8d 113d	30-Mar-2017	01-Apr-2019	Boral (Chinchilla, Ra...
	Amend Permit	Performance Bas...		Completed	8d 106d	30-Mar-2017	01-Apr-2019	Boral (Rail, Stapylton)
	New Permit	Performance Bas...		Completed	2d 36d	24-May-2017	20-Jun-2018	30m A-double (Big ...
	New Permit	B-Double		Completed	6d 14d 5d	25-May-2017	20-Jun-2018	Hitachi (4.6)
	New Permit	Performance Bas...		Completed	147d	19-May-2017	01-Apr-2019	Boral (Springhill v1)
	Amend Permit	Performance Bas...		Completed	119d	15-May-2017	01-Apr-2019	Boral (Waurm Ponds,...
	New Permit	Performance Bas...		Completed	5d 2d 28d 3d	19-May-2017	01-Apr-2019	Boral (Springhill v2)
	New Permit	Performance Bas...		Completed	2d 36d 2d	24-May-2017	20-Jun-2018	30m A-double (Big ...

- The HVNL gives the road manager the power to give or refuse consent, but not to advise the applicant of the conditions, mass or alternative route at which access would be granted. The applicant is left to “guess” and make multiple applications until they hit on the acceptable formula.

## 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?

Toll agrees in principle with both components of this question. However, reducing the 28 day timeframe at s.156 (1(ai)) will make little difference if the other reasons for extending decision-making timeframes at s.156 remain.

Where a road manager does not respond, the HVNL could be amended to apply a penalty to the road manager or to grant access by default where a nil response is received. More feasibly, decision-making could devolve to the NHVR at this point.

These options address the symptom but not the cause of conservative or delayed access decisions as per our preamble.

## 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?

The vehicle classification system is useful in that it provides guidance on how prime movers and trailers may be combined safely and utilised on the appropriate road network. The system would benefit from greater detail about makes and models that may be incompatible.

Our experience suggests that road managers can be confused about the classification system. For example, local councils in the eastern states sometimes consider PBS A-double combinations to be “road trains” because they look similar. As road trains are prohibited on the network, access to PBS A-doubles is rejected likewise. The solution lies in ensuring the vehicle classification scheme is readily understandable and that road managers are suitably trained in its interpretation.

Rationalising and centralizing the multitude of gazette and access notices that are used by each state to control access for the classes of RAVs would also be welcome.

## 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?

The reasons that some road managers struggle with access are largely historical. The Regulation Impact Statement of 2011 established a formal decision-making role for road



managers, including at the local government level. Although this function had nominally existed prior, in reality decision-making often occurred at the state-level or the requirement for permits was ignored altogether. As the Queensland Audit Office noted in 2016:

*“Before the HVNL, operators were required to obtain approval to access the road network from all road managers along the chosen route. However, industry stakeholders told us that many local government road managers were not involved in the access approval arrangements. This is because, in some cases, operators only sought approval for the state and territory roads or sought approval from local government informally i.e. verbally from Council staff or through the local police; or not at all. There is no data on the extent to which the heavy vehicle industry complied with the statutory access requirements pre-HVNL.”<sup>12</sup>*

The HVNL has imposed greater discipline and probably improved compliance in terms of fewer operators “running hot”, but not necessarily equipped road managers to make defensible, timely decisions.

The challenges facing road managers are comprehensively canvassed in Austroads’ *Local Road Access for High Productivity Freight Vehicles* and do not need restating.<sup>13</sup>

As the NTC paper acknowledges, road managers may have little training or competence in interpreting approved guidelines and making sound, defensible decisions. Smaller councils may not have in-house access to pavement analysis and bridge formulae nor the means to access them externally.

The fact that there is no right of external review means that road manager decisions (or infinite delay of decisions) are beyond objective scrutiny. Road managers have, therefore, limited impetus to change.

There may be a place for formal training in how to interpret approved guidelines and make evidence-based assessments.

Comprehensive, up-to-date road maps that match road service standards with vehicle types and mass are essential. These maps should be a single source of truth for operators, road managers and regulators alike. (Presently, an operator utilising the NHVR Journey Planner is advised not to rely on the information but to consult the relevant state body). These maps would be vastly improved by the inclusion of functional characteristics relevant to heavy vehicle operations such as load limits, height restrictions, lane widths, posted speed limits etc. Some of this information is readily available through the ARRB survey data sets and should be incorporated into the NHVR Journey Planner.

We also note that some road managers may rely on permits as a defacto measure of network use. This can be much better addressed by a technologically-enabled mass, distance, location charging and funding model or, at the least, GPS-enabled telematics.

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

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<sup>12</sup> Queensland Audit Office, *Heavy Vehicle Road Access Reforms*, Report 20: 2015-16, June 2016, p.25

<sup>13</sup> Austroads, Research Report AP-R559-18, *Local Road Access for High Productivity Freight Vehicles*, February 2018

As a matter of legal principle Toll supports an external review process as conducive to transparency.

At the moment, the HVNL only permits external review of the NHVR's decisions, not those of the road manager.

To effect this, the HVNL would need to be amended such that an indefinitely deferred decision is considered a "decision" for the purposes of external review.

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

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The NTC has canvassed the issues accurately and comprehensively.

We further note that where permits are issued, the period granted is sometimes much less than the period requested. Toll recently requested a three year permit for a twin-steer road train in South Australia that required the consent of three road managers. One of the road managers would only grant consent for three months, meaning that a renewal was required shortly after commencing operation.

It would be helpful to understand why class 1 permits are issued by the state entity in Queensland and New South Wales. This would appear to be inconsistent with the objective of minimising duplication outlined in the Regulation Impact Statement.

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

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As the NTC paper points out, refusing access to high productivity or safer, greener vehicles doesn't ground the freight. It simply transfers it onto different vehicles that make more trips.

*"The trucks don't stop if HPV access is denied. Rather, the same amount of freight moves through the same route on more trucks, at higher costs, with higher safety risk, and with higher environmental and amenity impacts".<sup>14</sup>*

These perverse outcomes can be changed by:

- synchronising PBS design approval with access approval
- educating road managers and the community at large about the benefits of HPVs<sup>15</sup> and challenging the "monster trucks" narrative
- differentiating permit fees according to the safety, emissions and productivity rating of the vehicle configuration

An education campaign needs to contain facts about the benefits of high productivity vehicles. For example, the Tasmanian Government recently approved access to three A-Doubles on Toll's network under a 12-month trial. This is a first for Tasmania and brings huge benefits to Toll, its customers and the community.

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<sup>14</sup> National Transport Commission, *Easy access to suitable routes*, June 2019, p.59

<sup>15</sup> We note Austroads' finding that a local road manager was convinced that trucks with 20% more payload capacity would result in 20% more trucks on the road. See Austroads, Research Report AP-R559-18, *Local Road Access for High Productivity Freight Vehicles*, February 2018, p. 17



A-Doubles have two 40-foot trailers – carrying four containers, compared to B-Doubles that can only carry three. High-level benefits of the trial include:

- Annual trips saved: 558
- Annual km saved: 167,400 km
- Annual fuel saved: ~100,000 litres
- Annual carbon emissions saved: 272 tCO<sub>2</sub>-e.

The law also needs to grapple with the waste and inefficiency caused by vehicle registration remaining a state function. If an operator wishes to deploy a vehicle in a state different to the nominated garaging address it must cancel registration in one state, apply for registration in another and potentially take the vehicle off the road network for the purposes of an inspection. This makes a mockery of the “national” plate and incentivises national carriers to use the vehicles nominated in the garaging address, even if they are not the most ideal vehicles in their fleet for the task. State-based registration fees also subvert the philosophy of “the money follows the truck”.

### **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?**

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Toll Group recommends that:

- general access limits should reside in the primary legislation while all concessionary schemes should be set out in regulations and supported by accreditation systems
- the law should recognise precedent in the issuance of permits. Currently, there is no provision for the NHVR to issue a permit based on a consent provided previously. Indeed, as the Queensland Audit Office points out, such a clause was drafted for the HVNL but was removed during negotiations, thus “reducing the extent to which the new access management arrangement could meet this expectation [that the time to obtain a permit would reduce under the HVNL]”.<sup>16</sup> Unless conditions have materially changed (for example environmental disaster or changes to land use planning), previous consents should be re-issued.
- time limits be removed for notices as they can be revoked or suspended by road managers at any point if need be.
- approved PBS concepts should be transitioned to “as of right” access.
- road managers should be able to delegate decision-making to the NHVR where it lacks expertise.

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

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As noted above, mapping tools that provide potential routes for vehicle configurations, concessionary loads and cargo would be ideal. This would take the “guess work” out of what is likely to be approved by various road managers.

If a route assessment is conducted as per s.159, then the results of the assessment should be considered “live” for a specified period of time, obviating the need for another

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<sup>16</sup> Queensland Audit Office, *Heavy Vehicle Road Access Reforms*, Report 20: 2015-16, June 2016, p.33

assessment on the same road or road infrastructure. Currently, there is no visibility of assessments conducted or indeed whether multiple operators are paying multiple times for the same assessment.<sup>17</sup>

Access authorisations are often impeded, delayed or denied because of lack of information: about the service standards of a particular road or road infrastructure, about what remedial work is required to facilitate access, and at what cost. This could be addressed by a specific Infrastructure Australia project, but cannot be managed over the longer period without service level standards and road funding reform.

Toll welcomes the customer portal introduced by the NHVR as enhancing transparency and enabling operators to track application progress. The portal is enabling the identification of bottlenecks in the system. However, the NHVR's process is to roll all applications into a "permit container" for that specific combination. This involves closing the application and opening another one on the relevant permit container. As noted earlier, this may take a few days and the operator loses visibility of the original submission date as there is no "carryover" (or even linkage) with the original application.

It would be more efficient if the NHVR issued permits for *categories* of vehicle. Current practice is to issue permits for a specific combination (e.g. an 18-axle AB-triple as distinct from a 17-axle AB-triple).

Policies on vehicle design "tolerance" might save road managers having to assess very similar vehicles on the same routes. At the moment, if a trailer wheelbase dimension is slightly altered (say from 10mm to 20mm) on a permit, common practice is for road managers to reassess the application.

Toll questions whether it is practical or necessary for drivers to have to carry often lengthy paper-based permits.

## Questions 10 – 14

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Toll has no further comments.

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<sup>17</sup> By way of example, the VicRoads website says of bridge assessments that "VicRoads can track past jobs in *some* instances" [My emphasis]. <https://www.vicroads.vic.gov.au/business-and-industry/heavy-vehicle-industry/registration-permits-curfew-and-compliance/how-to-obtain-a-bridge-assessment>