

11 September 2019



Mr Peter Harris  
Chair, Heavy Vehicle National Law Review Expert Panel  
National Transport Commission  
Level 3, 600 Bourke Street  
Melbourne, VICTORIA, 3000

Dear Mr Harris

**Re: Submission – Easy access to suitable routes**

The National Farmers' Federation welcomes the opportunity to provide a submission on the National Transport Commission's issues paper 'Easy access to suitable routes'. We also look forward to engaging further with the Review, including providing input on the remaining three issues papers on the Heavy Vehicle National Law (HVNL).

The NFF is the peak national body representing farmers and, more broadly, agriculture across Australia. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF. The NFF is committed to advancing Australian agriculture by developing and advocating for policies that support the profitability and productivity of Australian farmers. This includes road rules that support efficient domestic supply chains which, in turn, contribute to the international competitiveness of Australian agriculture.

As the peak industry body representing Australian agriculture, the NFF has a significant interest in the outcome of the HVNL Review. Agriculture is worth nearly \$60 billion annually to the Australian economy. Essential to the productivity of our industry is the ability of farmers to move machinery and freight on public roads in a safe, efficient and timely fashion.

For these reasons, the NFF welcomes a comprehensive review of the HVNL, including of its foundational principles. This submission builds on the key asks in our first submission, '*A risk-based approach to regulating heavy vehicles*'.

To preface our response to the specific questions of this paper, we would like to draw attention to a point made by the NTC. This is that 'The freight task doesn't change in response to access being granted or otherwise. Access decisions only affect the types of vehicles used and the number of movements needed. The amount of road freight transported in Australia is independent of the types of heavy vehicles used'.<sup>1</sup>

If access is denied to a particular vehicle, the freight which would have been transported by that vehicle does not disappear. It is transported by a different vehicle, or perhaps by a

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<sup>1</sup> National Transport Commission 2019, 'Easy access to suitable routes', p. 52.

different combination of vehicles. In 2016, the number of heavy vehicles operating on Australian roads decreased by approximately 900. This was because the NHVR approved 2893 PBS vehicles during this period.<sup>2</sup>

We note the twelve questions in the issues paper, and provide responses to questions 2, 3, 4, 5, 6, 8, and 11.

**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?**

As stated in our response to the first of the NTC's issues papers '*Risk-based regulation*', the NFF agrees with HVNL Draft Regulatory Principle Six 'The future HVNL should deliver better safety, productivity and efficient regulatory outcomes.' Since productivity is lost when operators are required to wait for a permit, a HVNL that delivers outcomes which are both safe and productive should reduce the permit application timeframe as much as possible without compromising safety.

While most road managers grant consent within seven days, the average end-to-end time for a permit application is far above this at 18.89 days (although this does not include Class 1 processing times in NSW and QLD).<sup>3</sup> The Moree Plains Shire Council case study which features in the issues paper is evidence that road managers are able to achieve permit turnaround times of just several days when they streamline internal processes.<sup>4</sup>

Furthermore, a report from the Queensland Audit Office has found that many operators would rather 'run hot' than wait for a permit<sup>5</sup>. This practice is clearly antithetical to safety. While the NFF acknowledges that drivers who break the law are never justified in doing so, the fact that this is happening so often suggests the 28 day timeframe acts as a deterrent to undergoing the proper permit process. This strengthens the case for reducing the timeframe on the grounds of safety.

The case study in the issues paper which details an operator in South Australia having to wait over 200 days for their permit to be approved demonstrates the problems which arise from the NHVR having no power to deal with a delayed or nil response by road managers.<sup>6</sup>

While the NFF is not calling for any particular mechanism or powers which would enable the NHVR to deal with a delayed/nil response, we would like to point out that reducing the permit response timeframe will be of little consequence if this timeframe is unenforceable. The South Australian case study demonstrates that road managers can – and will – ignore timeframes if there are no consequences for doing so.

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<sup>2</sup> National Transport Commission 2019, 'Easy access to suitable routes', p. 52.

<sup>3</sup> National Transport Commission 2019, 'Easy access to suitable routes', p. 40.

<sup>4</sup> National Transport Commission 2019, 'Easy access to suitable routes', p. 46.

<sup>5</sup> Queensland Audit Office 2016, 'Heavy Vehicle Road Access Reforms, p. 25.

<sup>6</sup> National Transport Commission 2019, 'Easy access to suitable routes', p. 60.

*Recommendation 1: Significantly reduce the permit response timeframe.*

**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?**

A risk-based approach to regulating heavy vehicles should result in fewer restrictions being imposed on operators of agricultural vehicles, since they pose fewer risks than other heavy vehicles. As mentioned in our submission to the first issues paper, large agricultural vehicles are involved in only 56 accidents per year, and only 0.15% of all accidents result in a death.<sup>7</sup>

A risk-based law, which imposes different levels of regulation on different vehicles, must have some way of differentiating vehicles based on their level of risk. To this extent, the vehicle classification system is indispensable to the HVNL.

While the NFF does acknowledge that many of the issues with access decision making arise from road managers lacking expertise on heavy vehicle classifications,<sup>8</sup> we believe that the classification of RAVs based on mass and dimension should remain in the new HVNL. The issues with access should be remedied in other ways.

**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 NFF recognises that access decisions often require expertise on heavy vehicles and a significant time investment. Road managers have limited resources to access applications and undertake detailed route assessments. They often have a lack of established asset management information on their road networks and key assets. Also, they have to follow multiple laws when making access decisions, including the HVNL and local government rules and by-laws.<sup>9</sup>

Further evidence of road managers lacking expertise and resources is presented by Deloitte in their paper ‘Economic benefits of improved regulation in the Australian trucking industry’. The paper claims that ‘Local road managers often have few resources and limited technical OSOM knowledge’.<sup>10</sup> The NFF has found that road managers sometimes deny access because of unfounded concerns about safety or local amenity impacts.<sup>11</sup>

We note the Moree Plains case study and its implication that many of these challenges can be removed if road managers make changes to their processes around access applications. We also note that there is no consistent route assessment framework applied by road managers. Use of the *Registered Access Vehicle Route Assessment Tool* is not mandatory<sup>12</sup>.

<sup>7</sup> Franklin, R. C., 2018, ‘Large Agricultural Vehicles on Roads in Australia’.

<sup>8</sup> National Transport Commission 2019, ‘Easy Access to Suitable Routes’, p. 44.

<sup>9</sup> National Transport Commission 2019, ‘Easy Access to Suitable Routes’, p. 46.

<sup>10</sup> Deloitte 2019, ‘Economic Benefits of Improved Regulation in the Australian Trucking Industry’, p. 31.

<sup>11</sup> National Farmers’ Federation 2017, ‘Submission to the National Freight and Supply Chain Strategy’, p. 13.

<sup>12</sup> National Transport Commission 2019, ‘Easy Access to Suitable Routes’, p. 45.

Managers assess routes using inconsistent criteria, resulting in inconsistent access decisions. The *Approved Guidelines for Granting Access* are also not used consistently<sup>13</sup>

The NFF opposes the ability of road managers to use inconsistent criteria on the grounds that it does not promote economic productivity. The ATA makes this argument in their submission ‘Easy Access to Suitable Routes Issues Paper’:

*‘Local government access decisions have an impact beyond their own road network, impacting other road networks, the economy and the ability to freely move goods about within the wider Australian community. As such, it is reasonable to impose enforceable standards on granting access on the role of local government decision makers as their decisions have ramifications beyond their own road network’.*<sup>14</sup>

Basically, denying access imposes costs which are borne by people and parties outside the jurisdiction of the road manager who denied the access. The issues paper identified higher costs to households via increased freight costs for essentials and limits on our key export industries, such as agriculture.<sup>15</sup> Enforceable and mandatory guidelines for route assessments would ensure these externalities are accounted for in access decisions.

These guidelines should reflect the realities of operating a heavy vehicle in rural and regional areas.

*Recommendation 2: The criteria used by road managers to make access decisions should be made consistent between jurisdictions.*

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<sup>13</sup> National Transport Commission 2019, ‘Easy Access to Suitable Routes’, p. 49.

<sup>14</sup> Australian Trucking Association 2019, ‘Easy Access to Suitable Routes HVNL Review Issues Paper’, p. 14.

<sup>15</sup> National Transport Commission 2019, ‘Easy Access to Suitable Routes’, p. 58.

## 5) Should the law allow for external review of access decisions?

We include below a Queensland case study to inform consideration of this questions.

### Case Study 1:

A member of a farming organization purchased a feedlot, 14km off a main road. The feedlot currently has the capacity to hold 10 000 head of cattle, with plans by the owner to upgrade into a facility capable of holding 30 000 head of cattle. It is used both as a feedlot and as a holding facility for cattle to be exported from the closest port.

The 14km road running from the main road to the feedlot is paved for one half of its length and the final 7km is gravel, running past several hobby farms. So as not to disturb his neighbours with dust from the gravel, the owner is working towards building a new access road, with current support from the state and federal governments and local council.

In the meantime, access is still required to bring cattle (and feed) into and out of the feedlot. The owner has applied for a temporary permit for B-Double access to the property. Without B-Double access, vehicles carrying 6 decks of cattle must stop outside the turnoff to his property, decouple, and then bring cattle into the feedlot 2 decks at a time, a process that takes roughly 5 hours. It is estimated that with B-Double access, this process would take 20 minutes.

Two different governments have jurisdiction over two different parts of the road. The Queensland State Government, through the Department of Transport and Main Roads, approved a permit for access to their portion of the road. The local council denied a permit for access to theirs on the basis of a stretch of the road that included a culvert which needed upgrading.

As there is no way for an applicant to directly contact local road managers, the NHVR was contacted to organize a meeting with local council to discuss alternative options for access. The owner offered that he was happy to pay to fix any problems with the road, including the culvert, to ensure access. A meeting between the owner and the council was agreed to, however, the council failed to attend. Attempts to get in contact with the council since have been met with silence.

The issue highlighted in this case study is not that the council rejected the permit application. The issue is that the owner indicated his willingness to work with the council to find alternative solutions and the council repeatedly failed to respond. Because there is no external review mechanism within the existing law, there is now no recourse for this feedlot owner, and trucks must continue to decouple at the intersection until a new access road is built, which may take months to years to complete.

Draft Regulatory Principle Five of the HVNL asserts that ‘enforcement decisions must be able to be reasonably challenged’. We came out in favour of this principle in our submission

to the issues paper ‘Risk-based regulation’ and have previously called explicitly for independent third-party review of decisions.<sup>16</sup> This position remains unchanged. One argument for external review can be made from our previous recommendation: if access decisions cannot be reviewed then the criteria on which they are made cannot be enforced.

A road manager can refuse to grant a permit if they are satisfied that:

- Authorisation is likely to cause damage to road infrastructure or impose negative effects on the community or pose significant risks to public safety, and;
- It is not possible to grant the authority subject to a condition that will avoid or significantly minimise the damage, negative effects or significant risk or likelihood of these issues.<sup>17</sup>

In the above case study, the feedlot owner offered to pay for the repair of the culvert which the local council had used as their reason for denying access. On the face of it, this seems to be ‘a condition that will avoid or significantly minimise the damage’. Yet access was denied anyway. The feedlot owner must continue the inefficient practice of decoupling his B-doubles, despite the permit being refused on (seemingly) unjustified grounds. This situation might not have occurred had an external review mechanism been in place.

The NFF has no view on what type of review mechanism should exist, so long as it has sufficient power to enforce compliance with access decision-making criteria.

As well as the introduction of this mechanism, which would be a legislative change, we also recommend a mechanism in the NHVR portal which would allow applicants to directly communicate with road managers instead of communicating through the NHVR. If necessary, the mechanism could contain a feature to limit the number of communications from the applicant to the road manager. Allowing direct communication should not greatly increase workloads, as road managers are already being contacted about applicant concerns by the NHVR. This would not require any legislative change. The upside would be a simplification in the process of communication. We note that several industry representatives made this same point at the NTC’s Heavy Vehicle Access Workshop.

*Recommendation 3: The access decisions of road managers should be open to external review.*

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

Difficulties with first and last mile access present issues for agricultural transport. The NFF case study presented on page 56 of the issues paper highlights these issues. To complete an entire journey, operators must either use less productive vehicle combinations for the entire journey, de-couple trailers for larger combinations to pass through local government areas, or drive a substantially longer route. This situation is not compatible with the goal of economic efficiency.

<sup>16</sup> National Farmers’ Federation 2017, ‘Submission to the National Freight and Supply Chain Strategy’, p. 13.

<sup>17</sup> National Transport Commission 2019, ‘Easy Access to Suitable Routes’, p. 30.

The NFF supports revising the criteria on which road managers decide access to reflect the fact that using HPVs on infrequent occasions on ultra-low traffic rural roads is very low risk.<sup>18</sup> The JCU study previously mentioned testifies to this point.

On the question of productivity benefits, we would draw attention to the First and Last Mile Freight Pilot Project in Queensland. The pilot produced a benefit-cost of ratio of 1.27 by enabling larger, heavier and more productive freight vehicles access to local roads.<sup>19</sup>

*Recommendation 4: The criteria used by road managers to make access decisions should reflect the fact that using HPVs infrequently on ultra-low-traffic rural roads is very low risk.*

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

We note that changes in road usage do not change the amount of funding available to road agencies for construction and maintenance in the short-term<sup>20</sup>. Changes in road usage do, however, have an immediate effect on the wear and tear of the road. This means that road managers currently have an incentive to deny access on the grounds that they are not compensated for the damage done to their road network by heavy vehicles.

This disconnect between the funding of roads and their use is precisely the issue which the Heavy Vehicle Road Reform (HVRR) program seeks to rectify. We would therefore suggest that these two reforms programs work together to remove this incentive.

*Recommendation 5: The HVRR program should coordinate with the HVNL review to remove the incentive for road managers to deny access due to concerns about infrastructure damage.*

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

We include below a second case study to inform our response to this question.

<sup>18</sup> National Farmers' Federation 2017, 'Submission to the National Freight and Supply Chain Strategy', p. 14.

<sup>19</sup> National Transport Commission 2019, 'Easy Access to Suitable Routes', p. 56.

<sup>20</sup> National Transport Commission 2019, 'Easy Access to Suitable Routes', p. 55



## Case Study 2:

A haulage company services 15 feedlots in south-east Queensland on a regular basis – 5 days a week, 52 weeks per year.

The operations of feedlots are unlike those of cattle stations, which may buy or sell cattle only a few times a year. Instead, roughly the same number of cattle enter and exit every day, meaning regular access for vehicles of the same size, number and at roughly the same times each day is required.

Almost every road in the area around the feedlot requires a permit, for every different vehicle operated by the company. The roads are managed by two different authorities – the Toowoomba Regional Council (TRC), and the Queensland Department of Transport and Main Roads (DTMR).

Despite the fact that the freight task is a single task – one company, servicing the same feedlots, with the same vehicles, on the same days each week - many different permits are required from multiple road managers. There is inconsistency between the decisions of the state and local governments, with TRC favouring permits with a length of three years and DTMR favouring permits with a length of one year, meaning permits for one road and its intersection may be differing in their duration.

The majority of roads in this area are not gazetted for B-Doubles, despite the national Notice. TRC states that the roads are not up to the standard that exists in their guideline and therefore cannot be gazetted under the Notice. However:

- a) Other regional councils serviced by the haulage company gazette roads for B-Double access on roads that are in no better condition than those of the Toowoomba region (a statement supported by some within the Local Government Association of Queensland);
- b) No alternative routes have been proposed that could be gazetted;
- c) Permits for B-Double access are always granted by TRC;
- d) It can be argued that the current risk assessment guidelines are too strict. For example, it is unlikely that there will ever be funding to upgrade every regional and local road to two lanes. Yet regional councils do gazette single lane roads under the B-Double Notice if the roads are otherwise sound. The risk appetite for gazetting varies from region to region with little apparent consideration for the freight task.

Shortfalls in the risk assessment approach are not limited to TRC. Permit assessments in this region by DTMR often take the same length of time regardless of the size of the vehicle. For example, the haulage company may apply for a permit for an A-Double and the Type II road train for the same road and same destination. The assessment time is often the same for both vehicles or sometimes even longer for the A-Double, even after the much larger Type II road train has already been approved. Additionally, DTMR do not use pre-approvals in this region, slowing assessments down even further.

Finally, funding for road upgrades are often not negotiated between state and local governments. If a road is partially owned by council and partially owned by the state, or, as is more often the case, a road is owned by council and the intersection is owned by the state, issues often arise when the state government will not fund their portion to fix access to the council road, or vice versa.

Toowoomba council have been holding meetings for three years to attempt to understand the freight task in the area and develop alternative routes or conditions to solve these problems. However, after three years of consultation, nothing has changed – no alternatives have been developed and no funding has been secured to upgrade the roads. There has been no external review in this time because there is no mechanism in the HVNL for external review, despite the clear struggles of TRC, industry and DTMR in this area.



The recently gazetted National Class 1 Agricultural Vehicle and Combination Mass and Dimension Exemption Notice has substantial benefits for the agricultural industry. As the NHVR acknowledges,

*‘The improvement of the regulatory environment governing agricultural vehicle and combination operation on public roads will improve the productivity of Australia’s farming industry, provide increased support for drought-affected communities, and improve road safety and infrastructure protection’.*<sup>21</sup>

This highlights the advantages of gazetted, as-of-right networks over permits.

### **Access Precedents and Equivalent Vehicle Combinations**

The NFF asks that the NTC consider the viability and potential benefits of several of the recommendations made in the Australian Trucking Association’s submission. These recommendations are:

- Acknowledge precedents in access decisions. There would need to be safeguards against access being refused because the road manager wants to avoid setting a precedent.
- Authorisations should apply for longer periods, if not ongoing, and that they should apply to equivalent vehicle combinations.<sup>22</sup>

Acknowledging precedents in access decisions would solve the problem outlined in case study 2. If the vehicles entering and exiting these feedlots are of the same size and number, and accessing the feedlot at the same time every day, then an access precedent would negate the need for each of these trucks to seek a permit.

### **Telemetry-based Assurance Program**

One of the functions currently served by permits is that they provide road managers with accurate information about the vehicle movements on their roads<sup>23</sup>. This gives road managers an incentive to grant access through permits rather than notices. One possible way around this is the introduction of a Telemetry-based Assurance Program. High priority routes identified by industry could be gazetted on the condition that heavy vehicles using that route give telemetric data to road managers. This would allow road managers to grant access through notices while retaining accurate information about the vehicle movements on their road. We ask that the benefits and viability of this sort of program be considered by the NTC.

### **Removing Time Limits on Notices**

We also ask that the NTC consider the viability of removing time limits on notices. The time limit creates the potential problem of a new road manager who may disagree with the decisions of the previous one. If a road has been assessed and access has been approved under a Notice, an assurance program should be sufficient for future access. A provision could be included in Notices stating that routes gazetted under a Notice may need to be reviewed on an as-needs basis when the conditions of the route have significantly changed, i.e. a flood event has destroyed the road or a newer route has been developed.

<sup>21</sup> <https://www.nhvr.gov.au/road-access/national-harmonisation-program/national-class-1-agricultural-vehicle-and-combination-notice>

<sup>22</sup> Australian Trucking Association 2019, ‘Easy Access to Suitable Routes HVNL Review Issues Paper’, p. 12.

<sup>23</sup> National Transport Commission 2019, ‘Easy Access to Suitable Routes’, p. 39.

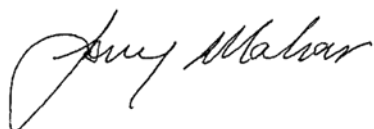
**11) How should the new HVNL implement access decision-making? Should it specify process and roles? What role is there for the operator? What improvements to access decision-making can be made?**

The NFF has previously asked that local governments be allowed to delegate their role as road managers to the NHVR.<sup>24</sup> We reiterate the point here, but add the caveat that this should not be done without an assessment of whether the resources and processes of the NHVR are best suited to the task.

We also ask that it be considered whether a trigger point be established where the NHVR must review the status of unresolved applications.

Please do not hesitate to contact Prudence Gordon, General Manager, Trade and Economics ([pgordon@nff.org.au](mailto:pgordon@nff.org.au), or 0404670434) should you have any questions with regards to this submission.

Yours sincerely



**TONY MAHAR**  
**CEO**

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<sup>24</sup> National Farmers' Federation 2017, 'Submission to the National Freight and Supply Chain Strategy', p. 13