



NATIONAL ROAD TRANSPORT ASSOCIATION

Submission to the National Transport Commission

HVNL Review: Consultation Regulation Impact Statement: Access

30 October 2020

Introduction

1. The National Road Transport Association (NatRoad) is pleased to make comments on the *HVNL Review Consultation Regulation Impact Statement (CRIS)*¹ prepared by Frontier Economics and published by the National Transport Commission (NTC) on 25 June 2020. This is the sixth submission in a series of submissions on the CRIS. The submissions generally follow the chapter headings of the CRIS.
2. We also note the publication of the NTC document *HVNL 2.0 A Better Law Scenario*.² (Better Law) That document sets out one possible scenario for a future law.
3. NatRoad is Australia's largest national representative road freight transport operators' association. NatRoad represents road freight operators, from owner-drivers to large fleet operators, general freight, road trains, livestock, tippers, car carriers, as well as tankers and refrigerated freight operators.
4. This submission responds to most of the issues raised in Chapter 9 of the CRIS. Because this area is so critical to productivity, we have explored a response to all of the options, inclusive of the many sub-options.
5. Access is a key driver of productivity, as has been made evident by the recent publication of the National Heavy Vehicle Regulator's (NHVR) heavy vehicle productivity plan³ (Plan) and the publication of the Productivity Commission's report *National Transport Regulatory Reform*.⁴
6. As with the position on fatigue, NatRoad members have provided feedback that reform to this area of the law should be given priority, including that there should be an acceleration of this area of reform that could proceed ahead of the main restructuring of the HVNL. That step could be to introduce laws which enabled the NHVR's Plan to be implemented on an accelerated timetable.
7. By way of example, NatRoad points to NHVR proposals to open up access to PBS vehicles on equivalent prescriptive gazetted networks such as those for 26 metre B doubles. This would be done in co-operation with road managers. The NHVR says that this should be done "through notices initially and by changes to the HVNL."⁵ Arising from this proposal and other elements of the Plan, **the NTC and the NHVR should caucus with industry about immediate reforms that would benefit productivity.**

Access System Imperfect

8. The CRIS identifies the rationale for constraints on heavy vehicles accessing public roads as threefold. It says that heavy vehicles could otherwise:

¹ https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.ntc-hvnlawreview.files/5715/9304/9833/HVNL_RIS_25_June.pdf

² <https://www.ntc.gov.au/sites/default/files/assets/files/HVNL-2.0.pdf>

³ *Heavy Vehicle Productivity Plan 2020-2025* August 2020 <https://www.nhvr.gov.au/files/202008-1171-heavy-vehicle-productivity-plan-2020-2025.pdf>

⁴ <https://www.pc.gov.au/inquiries/completed/transport/report>

⁵ Above note 3 at p 14

- *create risks to community safety from heavy vehicles, or from other motorists interacting with heavy vehicles*
 - *reduce public amenity from noise or congestion and*
 - *contribute to road pavement and infrastructure damage where vehicles access unsuitable roads.*⁶
9. The CRIS then says that: “The heavy vehicle access system matches vehicles to routes to mitigate these external costs.”⁷ To the extent that the system currently facilitates heavy vehicle access the “matching” suggested is more an attempt than a reality, as NatRoad’s submission on access earlier in the review process made clear. Further, “matching” vehicle classes to networks for access is complex. Frequently, road managers do not have sufficient expertise concerning heavy vehicle classifications and/or the characteristics of some heavy vehicles. These are factors which may complicate and delay access decisions, and relate to the Productivity Commission’s recommendation that adequate resourcing be provided to road managers⁸.
10. The CRIS touches on linkages between road funding reform and access. These linkages are vital: heavy vehicle operators should not be required to pay for roads which they cannot access. That proposition should be a foundational matter when examining road funding for the future: if heavy vehicles cannot access parts of the road network then they should not be required to pay for that part of the network. Neither should they be forced to take particular routes that are tolled. That undermines basic principles of fairness.
11. Responding to the dual economic and health crises caused by the COVID-19 pandemic places pressure on all road users in the short term. But, in the medium term, structural challenges which existed before the pandemic will remain. In particular, congestion on networks that are already under strain will increase, particularly in urban areas where freight and passenger transport share the same road infrastructure.
12. With the majority of economic activity now occurring in major cities, urban freight will be as critical for future growth as traditional long-distance freight, a trend accelerated by online ordering and other emerging technologies. These issues require a significant change in Government’s approach to planning, investment charging and road funding, such as making permanent the curfews on deliveries that have been lifted because of the pandemic and re-considering lifting restrictions on arterial roads. Urban arterials are usually multi-functional but provide service to through traffic, particularly heavy vehicles, as a primary function. This basic function is denied in respect of a number of important arterial roads, for example in Melbourne, where restrictions and curfews apply.
13. In addition, access restrictions are often able to be attributed to the current road funding model which does not link the cost of road use with road investment. It is therefore

⁶ Above note 1 at p124

⁷ Ibid

⁸ Above note 4 Recommendation 10.5 at p322

difficult for road managers to recover the full cost of supplying, maintaining or upgrading road infrastructure so that it is suitable for heavy vehicles. As a result, road managers, including local governments, restrict heavy vehicle access as a perceived means to protect road assets. This criterion rather than facilitating efficient freight movements becomes the primary motivator of decisions. It is a factor more in play than those set out at paragraph 8 above. This is acknowledged in the Better Law document where it is said:

*Much of the challenge in improving access relates to engineering limitations, ageing infrastructure and **funding constraints**.*⁹

14. These factors and the over-reliance on the issue of permits¹⁰ has led NatRoad and others to propose that the system should move to one where permits are an exception for access rather than the norm. In the current system even when journeys are low risk or routes have been the subject of numerous prior successful permit access decisions and risks are already known, operators still need to apply for permits. The system is weighed down with the permit process. NatRoad has consistently sought that the as-of-right network be expanded in order to deliver the economic gains that are generated by a more productive freight sector.¹¹
15. In addition, members have sought that we stress that industry has acquired knowledge about how to best match appropriate vehicles with routes, and that the authorities should transparently publish approved vehicle and weight access data. Operators have the best knowledge of the transport task they wish to complete. Give operators the knowledge of what has been approved, and they will match the highest performing, prior approved vehicle to the most efficient route.
16. The system should move from one based on individual route assessments for individual vehicles to one proposed by the NHVR as follows:

*(A)ccess for a range of vehicles (that demonstrate the same level of performance). This can be achieved through road managers assessing and consenting to an agreed set of infrastructure parameters (e.g. the maximum mass or dimension limits for a given road or bridge). Any vehicle that is determined to be able to be safely accommodated within the agreed infrastructure parameters would be granted access under an expedited access model (to be determined).*¹²
17. NatRoad urges an outcome from the HVNL review process where expedited access is the central aim and where infrastructure parameters referred to above would be objective and

⁹ Above note 2 at p 18 NatRoad emphasis

¹⁰ The National Heavy Vehicle Regulator processed over 40,000 single access permits in 2018-2019: above note 3 at p 6

¹¹ These are clearly set out in a Deloitte's report submitted to the NTC by the Australian Trucking Association in the earlier stages of the review: Deloitte Access Economics, March 2019, *Economic benefits of improved regulation in the Australian trucking industry* (mentioned at above note 1 p 128)

¹² Above note 3 p16

transparent, reinforcing the call made in paragraph 7 of this submission for industry and regulators to agree these priorities urgently. This would be further facilitated by NHVR publishing the prior approved vehicles and weights for bridges and roads for general industry to use for operator decision making, as noted in paragraph 15 above.

18. As NatRoad set out in the submission regarding the NTC Issues Paper on access:¹³

*Pre-approved routes for all classes of heavy vehicle in each local government area should be a matter that local governments and other road managers are required to develop. These pre-approved routes could then be co-ordinated into the provision of route maps for various classes and combinations so that operators were able to plan their freight routes against this map.*¹⁴

19. Accordingly, NatRoad supports Option 9.2(a), as discussed below, and summarised in the Better Law document thus:

*The current HVNL provides an expedited process for a narrow set of access decisions, which allows a quick response. This process would not be limited to permit renewals, but applied as far as is reasonable in the future law.*¹⁵

20. The CRIS acknowledges the parlous state of heavy vehicle access arrangements. It sets out five broad reform options, each of which contain sub-options. These reform areas are now each addressed. We believe that given the central importance of this subject area, each option and its variants should be discussed.

The Various Options: mass

21. The CRIS rightly indicates that general access limits have not changed since the 1990s due to unresolved policy and engineering issues. The CRIS then contains options which seek to address this issue. The first three options “would allow for increasing mass limits as-of-right access to those currently allowed under concessional mass limits (CML).”¹⁶

22. The full suite of options under this subject heading are now set out so as to facilitate the discussion which follows:

- *Option 9.1a: Increase GML to CML for all operators;*
- *Option 9.1b: Increase GML to CML for enrolled operators;*
- *Option 9.1c: Increase GML to CML conditionally to operators where an approved on-board mass system is used and data provided.*

¹³ https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.ntc-hvlawreview.files/1315/6038/6656/Easy_Access_to_Suitable_Routes_Issues_Paper.pdf

¹⁴ https://www.ntc.gov.au/submission_data/464 at para 10

¹⁵ Above note 2 at p18

¹⁶ Above note 1 at p 131

- *Option 9.1d provides for general access length to be increased from 19 metres to 20 metres, with three sub-options. This option would ideally be combined with one of (a)-(c) above as otherwise the benefits of either change would be limited.*
- *Option 9.1e is a further option which would create a new category of “enhanced general access” for vehicles that meet certain standards and would effectively combine elements of 9.1b-d.¹⁷*

23. NatRoad supports measures that would increase general access in respect of mass. Not all journeys will be at these levels but the capacity of operators to undertake journeys with increased mass limits will add to network efficiencies. This step would be a good way to get across-the-board productivity. Hence, we support option 9.1(a) but would like to see an objective assessment of the reach of the option. We do not agree that the general road network requires to be assessed. The CRIS indicates risks as follows:

(T)he only potential risk appears to be that more vehicles operating at CML may impose costs in the form of road damage, crashes or public amenity that would not arise if the majority of vehicles were limited to current GML. Broad application of CML may, however, require a further assessment of the road network capability to accommodate the higher limits. This reflecting that increased access is also an engineering issue of network capability.¹⁸

24. We do not believe that there is data which correlates heavy vehicles operating at CML with increased crash risk or a cost to public amenity. These CRIS factors are highly speculative. The other considerations, potential road damage and the need to assess “the network” in its entirety, appear to contradict the direction of the Plan and the slow but sure pre-characterisation of road systems as to capabilities and weaknesses, the latter normally evident in the capacity of bridges and culverts as expressed in the current CML system. Having said that, NatRoad acknowledges the general engineering proposition associated with increased axle loadings:

Where the number of vehicle movements on a road increases, the structural wear will generally increase in proportion with the increasing movements if the axle loads remain constant. By contrast, the load-wear-cost relationship results in an exponential function that means even small increases in individual axle loadings induce disproportionately large decreases in road pavement structural life.¹⁹

25. Despite this proposition, in essence, the CRIS should be clearer about CML – the CML concessions (up to 5% of greater mass for the same vehicle class as under GML) are contingent on National Heavy Vehicle Accreditation Scheme (NHVAS) enrolment and meeting mass management accreditation. It is not an engineering assessment that links to

¹⁷ Above note 1 p131

¹⁸ Above note 1 at p148

¹⁹ *Impact of heavy vehicle traffic on road pavements*

https://rcaforum.org.nz/sites/public_files/images/THE%20IMPACT%20OF%20HEAVY%20VEHICLE%20TRAFFIC%20ON%20ROAD%20PAVEMENTS.pdf at p5

network capability: CML vehicles are able to access the same network as currently applies to the particular vehicle class, except where prohibited by a load limit specified for a road, bridge or causeway by a sign or notice.²⁰ Member feedback is that the extent of the impact of this increase in practice may not be significant but further empirical work on the proposal is needed.

26. We do not support constraints on the extension across the board of a 5% mass increase, as envisaged in options 9.1(b). Enrolment doesn't affect the impact of vehicles on roads and NatRoad opposes linking access conditions to mere administration of this kind. Further the work being undertaken at present to assess service levels of roads, as part of Heavy Vehicle Road Reform (HVRR)²¹, could and should assist to establish the relevant network capabilities.

27. In respect to 9.1(c), we note that yet again the CRIS invokes enforcement issues as a basis of supporting the use of an operator enrolment system or a system where certified on board mass and data sharing were requirements. The CRIS says:

*Operator enrolment and mass data sharing would provide the NHVR and police with mass compliance information to inform a risk-based enforcement approach. Operators who demonstrate compliance with CML would be less likely to be stopped for roadside checks.*²²

28. The aforementioned extract assumes a great deal about the enforcement and compliance regime. The CRIS says it would require on board mass devices (OBM) to be purchased at a cost identified as \$1,000-\$1,500 per axle group per vehicle²³. That is a cost which has not been assessed in aggregate but which would be likely prohibitive. The Plan says there are currently 924,860 registered heavy vehicles and trailers.²⁴ Assume conservatively an average 3 axle groups at \$1,000 per group for the fleet and the cost would be just under \$2.8 billion (this of course does not take into account any current fitted OBMs as this is new technology and fitment is rare). Plus, this broad costing ignores monies that would need to be expended on ongoing maintenance and calibration of the OBMs.

29. Contrast this cost estimate with the CRIS's assertion that "as the vehicle fleet turns over, the incremental costs of OBM are likely to be very small increasing the likelihood that OBM would be installed."²⁵ There are no numbers or a timeline associated with this assertion. It is speculation only and the Australian fleet's turnover would lead to a very slow uptake of the technology if it were not mandated within an ADR.

²⁰ <https://www.nhvr.gov.au/road-access/mass-dimension-and-loading/concessional-mass-limits>

²¹ See in particular <https://www.infrastructure.gov.au/roads/heavy/files/hvrr-consultation-paper-20200904.pdf>.

²² Above note 1 at p132

²³ Above note 1 p148

²⁴ Above note 3 at p3

²⁵ Above note 1 p148

30. The assessment of the benefits of this option in turn relies on issues of increased compliance as an underpinning, hardly worth the staggering figure referred to in paragraph 28:

(T)his sub-option would provide some additional benefits as it would enable road managers and road authorities to benefit from aggregated or de-identified data on usage of their network. Similarly, the regulator would benefit from detailed mass records as this would highlight compliant and non-compliant operators.²⁶

31. We question the utility of using mandated OBM devices as an enforcement measure – as we have emphasised throughout the current process and in our submissions in response, members don't want to be punished for minor breaches (or have to explain false positives, as with IAP). In this context, in responding to an earlier draft of this submission a member indicated as follows:

On board scales are never going to be 100% accurate when loading on non-certified surfaces. Drivers can get to "know" each loading area to judge the accuracy of their scales and load accordingly, sometimes higher than allowed, sometimes lower than allowed when referring to weights displayed on truck scales, however once at weigh bridge on certified surface axle weights are compliant. This will create lots of false axle loads. From an enforcement point of view this could be seen as good, as drivers will be forced to deliberately underload. However, this of course will be a huge efficiency loss.

32. Members are clear: they want technology that is supportive, not punitive. Hence, we reiterate our concern that the CRIS does not better analyse current compliance with and enforcement of the HVNL given that it was noted as the number one concern of NatRoad members when the review commenced. Technology should be used to support drivers. The outcome of the HVNL review on the use of technology as a data generator relating to compliance, enforcement and assurance is a critical concern. Members tell us they have a lack of trust in providing data to governments. The main concern is that the data would be used for enforcement rather than for other purposes, such as safety, a matter thrown into sharp relief by the discussion of the use of OBM.
33. Further the option of enrolment is presented as appropriate because, by allowing increases to mass limits this would provide an incentive for operators to enrol with the NHVR. However, that begs the question of the costs and benefits of "enrolment" or "licensing" in a generic sense and the attendant costs and benefits which will be the subject of further work by NatRoad together with the ATA in the course of responding to the CRIS. As indicated in prior submissions, we believe that the topic of assurance should be considered after all of the other subject areas.

34. For all of these reasons, we oppose options 9.1(b) and (c).

²⁶ Ibid

The Various Options: Length

35. Option 9.1(d) is described in paragraph 22 above. Under this option general access length would be increased from 19 to 20 metres, a matter proposed by NatRoad in the earlier review submission on access. We support the additional metre being applied to all vehicles, as set out in the first of the three sub options in this subject area, although we also support greater lengths for sleeper cabins, as discussed below.
36. The three sub options about applying the additional length parameter are: (Option 1) the additional metre could be provided to all vehicles, (Option 2) applying it to vehicles with a non-exhaustive list of “safety features” and applying the additional metre to a larger sleeper cabin (Option 3).
37. There is uncertainty about Option 3. The CRIS says: “Vehicles with sleeper cabins could be afforded an additional metre of length **to be used only for** the purpose of adding an extra meter for the sleeper cabin.”²⁷ But then it says: “This option would be combined with one of the options above and also with options 9.1a-9.1c.”²⁸ We are not sure if the reference to “options above” includes Options 1 or 2 but from the context that seems unlikely, particularly as the Better Law document says “This extra length could not be used to increase freight carriage capacity.”²⁹ This is not clarified in the CRIS’s assessment of the sub-options with the statement being made that:
- If additional space is provided for more combinations of restricted access vehicles for the sleeper cabin, then there will be no direct productivity or efficiency benefits, however, some safety benefits may result.*³⁰
38. NatRoad policy is that the most practicable and safest system for increasing volumetric load capacity is to increase the length of the heavy vehicle. We believe that Option 1 should be introduced. We also fully support Option 3. As we said in the submission on heavy vehicle standards made in the earlier phase of the HVNL review³¹ NatRoad would urge a change in dimensions, particularly length to 20 metres, for general access where the additional space is utilised to accommodate a larger sleeping berth, that is larger than is currently prescribed.³² This step would add substantially to the ability of drivers to be properly rested after sleeping in the cabin of heavy vehicles. The problematic issue is that it appears operators are being asked to “trade off” this additional metre for the sleeper capacity against an additional metre for pay load.
39. In 2017 NatRoad proposed that the NHVR should work with road managers and industry stakeholders to develop a policy to guide the consistent application of both the PBS and

²⁷ Above note 1 at p133 NatRoad emphasis

²⁸ Ibid

²⁹ Above note 2 at p17

³⁰ Above note 1 p148

³¹ https://www.natroad.com.au/sites/default/files/uploaded-content/field_f_content_file/natroad_submission_-_ntc_issues_paper_-_vehicle_standards_and_safety.pdf

³² Ibid at para 44

prescriptive standards to heavy vehicles with increased volumetric load capacity.³³ That policy is here rearticulated – it would appear to be possible to combine Option 1 and 3 in this context. And where is the other discussion of dimensions such as height and width in this context (noting Chapter 10)?

Option: Enhanced General Access

40. Option 9.1(e) is nicely summarised in the Better Law document as follows:

*This option would allow vehicles to operate at up to concessional mass limits (CML) and up to 20-metre lengths, provided those vehicles meet a set of criteria such as specific vehicle safety features or emissions standards.*³⁴

41. The CRIS refers to this option as a “hybrid.”³⁵ The OBM requirement is mentioned, as is compliance with “emissions standards” but not to a specified level. The CRIS analysis of this option is insufficient to establish the boundaries of the various requirements with the CRIS noting that “administering a new system would add to compliance costs for government and for industry.”³⁶ We agree but the extent of the regulatory constraints/requirements have not been set out so it is difficult to quantify and have a view about these costs as against the benefits of moving to CML and 20 metres within the new system. We therefore maintain our support for Option 9.1(a).

Access and decision-making processes

42. Option 9.2 has a number of sub-options. The CRIS indicates that the NHVR will have an enhanced role in the process of improving decision-making, saying that the NHVR should take a more proactive role.³⁷ That observation underlines the call made by NatRoad at paragraph 7 of this submission.

43. Option 9.2(a) “would recognise precedent and risk in the access decision-making process.”³⁸ The option is said to be built on an expansion of current section 167 HVNL so that it would include equivalent or lower risk applications and fast track consent via the NHVR. NatRoad supports the idea that where permits are necessary, they should be able to be renewed prior to expiration or re-applied for on an equivalent or lower risk basis. We note that the notions of equivalent or lower risk are tentatively proposed in the discussion of this option but that the CRIS proposes that the “definitions and scenarios related to equivalent and lower risk would be developed in consultation with industry, government, the NHVR and road managers.”³⁹

³³ NatRoad submission 3 February 2017 to the NTC on the Discussion Paper *Increasing heavy vehicle volumetric load capacity without increasing mass limits* <https://www.ntc.gov.au/news/ntc-identifies-possible-options-increasing-volume-not-mass-heavy-vehicles>

³⁴ Above note 2 at p 18

³⁵ Above note 1 at p148

³⁶ Above note 1 p149

³⁷ Above note 1 p136

³⁸ Ibid

³⁹ Ibid

44. This proposal is, in NatRoad’s view, non-controversial and could be part of an accelerated reform process that would emanate from the round table that NatRoad proposes in paragraph 7 of this submission. Access and its speedy grant are very important elements of productivity and this matter should be expedited. We support an expedited process being included in an immediately reformed HVNL (covering issues related to fatigue management and access) and in a future HVNL. This is an ideal area for risk based assessment.
45. Option 9.2(b) would provide road managers with the flexibility to delegate their access decision-making powers on a voluntary basis. The road manager would retain liability. The CRIS suggests a range of parties to whom the delegation could be made:
- the NHVR • the relevant road authority • another local government or organisation of councils • a private business • any other suitability-qualified person.*⁴⁰
46. The delegation to the NHVR makes sense. That would assist with consistency in decision making, a matter that NatRoad believes is frequently absent from the current system. A broader based delegation process is not therefore favoured as the quality of decision making and the consistency of decision making could be put at risk. Whilst the CRIS indicates that this option is “largely procedural”⁴¹ and therefore unlikely to impose greater risk or costs on any party, we disagree. There is obviously a cost for the road manager in outsourcing this responsibility. There is also a risk of inconsistent application of decisions, a matter that affects productivity and can have a systemic effect on industry that might not be positive. We refer to the analogous situation with building certifiers.⁴²
47. We therefore only support delegation to the NHVR and the contemporaneous application of centrally devised mandated criteria for the exercise of decisions that would be appealable from the road manager and/or the NHVR.
48. Option 9.2(c) would “provide a real-time ‘single source of truth’ for road access in the form of a geospatial map.”⁴³ It is this kind of supportive technology that NatRoad favours.
49. The CRIS, however, makes it plain that whilst the geospatial map would be given authority and legal standing in the HVNL, it would only be available to operators who are “enrolled” as proposed in Chapter 7 of the CRIS and who share telematics data. No rationale for this limitation is set out. That limitation should not be present. It is opposed.
50. All operators pay for the NHVR’s services through an amount collected as part of their registration costs. Hence, all operators should benefit from a service that goes to the nub of proper use of the road system. Operators and drivers would provide information on the

⁴⁰ Above note 1 at p137

⁴¹ Above note 1 at p 150

⁴² See here for a manifestation of this problem <https://www.smh.com.au/national/nsw/certifier-of-sydney-s-worst-tower-for-defects-under-investigation-20200614-p552ct.html>

⁴³ Above note 1 at p137

route and vehicle configuration to the system. The system would assess the information and provide a suggested route and map for the particular vehicle with a particular configuration, an ideal system to first bridge the gap between an antiquated permit system and complete pre-approval and complete technological assessment of access. NatRoad strongly favours this development albeit that the CRIS indicates that it has not yet been costed. This is supportive technology and is therefore endorsed and should be costed as part of the review process.

Risk-based approach to vehicle classes

51. Option 9.2(d) is not similar to the other options in 9.2. It purportedly links the decision-making process to the classification of heavy vehicles, saying that:

*The purpose of vehicle classification is to simplify decisions in some form; for example, to group a class of vehicles on which the same level of network access would be appropriate. This makes decision making more efficient and potentially increases the equity of decisions to users, through more consistent treatment.*⁴⁴

52. It's trite to note that the HVNL and regulations prescribe the mass and dimension requirements for heavy vehicles. These are categorised as either general access vehicles or restricted access vehicles (RAV). RAVs currently are categorised into three classes.⁴⁵ The CRIS says that the intent of option 9.2(d) is to "change existing categorisations to more closely categorise vehicles by the risk they present to the network."⁴⁶
53. The major rationale proposed for this change (which is on its face sensible) is once more related to enforcement, with the idea being that there should be a disconnect between the vehicle's class and the penalty for an offence. Instead there would be an emphasis on the characteristics of the harm on the basis that: "Sanctions aligned to characteristics will be more proportionate to harms."⁴⁷
54. The CRIS provides two implementation sub-options. Option 1 would reduce the current three vehicle classes to two categories: freight and passenger and oversize over mass. As well as the example relating to enforcement, this proposed change is proposed as beneficial because "reducing the classes to two and grouping vehicles and combinations by frequency (high versus low or infrequent) and primary purpose/use will assist road managers to determine the impacts and risk profile more effectively."⁴⁸
55. All elements of the rationale appear sensible, but the categorisation in this context is confusing. This confusion is epitomised where the CRIS says that

⁴⁴ Above note 1 at p 138

⁴⁵ Explained simply here <https://www.nhvr.gov.au/files/201706-0172-ce1-restricted-access-vehicles.pdf>

⁴⁶ Above note 1 at p138

⁴⁷ Ibid

⁴⁸ Above note 1 p139

Where 'freight and passenger' vehicles generally have higher volumes, oversize and overmass vehicles often travel less frequently and are generally targeted moves to specific areas or for a specific purpose. A road manager will utilise the above assessment criteria however the risk profile may be applied differently due to the lower number of moves and the additional controls that can be applied.⁴⁹

We do not understand how these statements would help in practice. What on earth do they mean?

56. In addition, the substance of this paragraph was called into question by one of NatRoad's members when commenting on an earlier draft of this submissions saying:

A lot of the Class 2 permits are for seasonal, bulk movement activities to particular, but ad hoc locations (eg 500t to this address this week, then 500t to another address next week), whereas the Class 1 permits I work with are quiet often regular movements on key routes not covered under gazette notice or network, and only the last mile has infrequent use, but having said that the last mile could have 10 to 20 trips. This is further complicated by the ad hoc nature of regional transport where it is very hard to define when a particular freight movement will become regular or be spasmodic.

57. The CRIS also talks about the development of "envelopes" which would "determine the prescribed mass and dimension limits and promote a timely and risk-based approach to granting access."⁵⁰ This is sketchy to say the least. It begs the question of the criteria to underline the development of the "envelopes" that would be able to be replicated across all non- general access heavy vehicles, albeit a risk-based approach is supported. But it is unclear how this would occur. Nor would it assist with how the transition from current notices and permits to a new system could occur with precision; nor is the cost of that transition assessed.
58. Option 2 is even more difficult to make objective or palpable with the CRIS saying that the option "involves categorising vehicles by risk or relevant factors for a given issue (e.g. location, mass), rather than applying all possible factors."⁵¹ The CRIS says that in respect of access, vehicles would be classified into three definitive categories "by the authority needed (i.e. general, authorisation or exemption)."⁵² But the current classes sought to be rationalised relate to where a general categorisation is not available. What or how the categories of "authorised" or "exempt" (from what?) would be applied are not outlined. Whilst NatRoad supports a move to a system that is more risk based, the uncertainties surrounding what has been proposed means that this option (with either sub-option) cannot be supported. This proposition is reinforced where the impact of this change is assessed in the CRIS.

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ Above note 1 at p140

⁵² Ibid

59. The CRIS acknowledges that the change “may require some resources to re-assess existing notices and permits to reflect new vehicle categories and to update the current IT arrangements. Education and information would need to be provided to road managers on these new permit categories.”⁵³ But it then reaches the unexplained conclusion that “This is not expected to be material and would be coupled with an education campaign to explain all the new sections and processes under the HVNL.”⁵⁴ In examining the amorphous way that this option is proposed, this assessment seems wildly optimistic and reinforces NatRoad’s rejection of the proposal.

Third party consent requirements

60. The CRIS is correct in identifying that obtaining third party consents (which often rests with the operator rather than being the responsibility of the NHVR to obtain as the CRIS implies) is a major cause of access delay. Option 9.2(e) deals with this issue.

61. Given the proposition in the last paragraph, the sub-option labelled Option 1 is not considered appropriate. It would remove the legislative obligation on the NHVR to consult with third parties. Instead in some way, “operators would be required to consider their whole journey, including whether any third-party consents are needed”⁵⁵ something which operators currently must undertake. That is the process now forced on operators and which is the impediment that reform should address. It cannot be addressed whilst the requirement to meet consent requirements in other legislation remains in force.

62. Option 2 is better. This says that third parties would be listed “as a party in the decision-making process that must make a decision within the statutory period of 28 days.”⁵⁶ First, yes third parties should be listed as required to provide consent. But, secondly, in practice the 28 days can blow out considerably. Currently, under s 156 HVNL, road managers have 28 days from the NHVR’s request to decide whether to give consent. But requests for information in effect postpone the time period’s operation until a response is provided. Roads managers are able to request extensions of time up to 6 months.

63. To avoid delays NatRoad’s policy, set out in the initial submission made about access, is that a permit should be deemed to be issued where a road manager fails to act within 7 days. Alternatively, the road manager would consciously need to trigger a mechanism that indicates the matter is unusual or requires special consideration. This should also apply to third party agencies.

64. We agree with the CRIS’ proposal that third parties would be required to register their assets and infrastructure with the NHVR to ensure the portal identified where third-party consent is required. The onus would be on the third party to ensure this information is kept

⁵³ Above note 1 p 150

⁵⁴ Ibid

⁵⁵ Above note 1 p 140

⁵⁶ Ibid

up to date. If not registered as proposed then consent should be deemed to be given. We therefore support Option 9.2(e), sub-option 2. But we note that a costing of this obligation should be a precursor to introduction of the relevant reform.

Amendments to access decision-making criteria (Option 9.2f)

65. This option is very broadly stated: “Under this option, the HVNL would enable road managers have regard to strategic transport network considerations and the impacts that could arise from fleet effects rather than just individual vehicles when considering requests for access. Access decisions would include whole-of-network impacts and strategic network management issues to deliver better safety and transport efficiency outcomes.”⁵⁷
66. How would this option work in practice? How would the potential misuse as a generalised form of denial of access alluded to in the CRIS be nullified? These problematic questions are considerations that would make this option something which should not be considered. Plus, modal shifts are not something that road managers control. This is a complex policy area and one that should not be considered inferentially or where road managers should be pulling the levers.
67. Mode development and mode shift are dependent on economic and geographic factors with rail freight facing a significant set of capacity problems. In Australia, the development and productive capacity of the rail network is limited by infrastructure constraints. As noted by the Productivity Commission:

*Overall, inconsistencies between rail infrastructure procedures inhibit the scope for rail businesses to operate across the country, reducing the potential productivity, competition and safety benefits.*⁵⁸

68. Further the benefits of any modal shift are highly dependent on contestability of the particular freight task, a matter not in the immediate purview of road managers with the following observation being pertinent:

*In general, a modal shift towards water borne – and railway transport gives rise to longer transport times and thus the necessity of bigger local stocks. In addition, the need for pre- and post-haulage for water borne – and railway transport can lower the environmental benefit of these transport modes, depending on the distance over which the road transport has to take place.*⁵⁹

Permit timeframes and Procedures (Option 9.3)

69. Under the HVNL there are no implications arising for road managers from access decisions that exceed statutory timeframes. In addition, decisions by road managers are open to internal review only, but with the NHVR’s decision subject to external review.

⁵⁷ Above note 1 p 141

⁵⁸ <https://www.pc.gov.au/inquiries/completed/transport/draft/transport-draft.pdf> at p 9

⁵⁹ <https://www.ctc-n.org/technologies/modal-shift-freight-transport>

70. There are no sanctions imposed on road managers for not meeting the requisite timelines. There is also no consistent approach to the issue of consent both across and within each road manager's jurisdiction. The way in which risks to infrastructure and the public are assessed is not currently consistently applied by road managers, reinforcing NatRoad's opposition to Option 9.2(f) criteria being introduced.
71. Option 9.3 contains a number of options to deal with these problems.
72. Option 9.3(a) contains two sub-options that relate to proposed amendments to statutory requirements. The existing period of 28 days is retained in each. NatRoad suggested a period of 7 days in our earlier submissions. We still believe that to be a more suitable time frame.
73. Option 1 involves a two stage time frame. The procedure is not immediately discernible from the explanation in the CRIS but the nub of this option is explained thus:
- If the road manager failed to advise that a route assessment was required (within 7 days) or failed to make a decision within the 28-day period, the NHVR would deem the road manager to have referred the access decision and forward the request to the road authority (considered a deemed referral). The NHVR portal would send an automatic notification to the applicant advising them the application was referred due to a nil response by the road manager.⁶⁰*
74. The procedure draws on the current process in s163 of the HVNL but substitutes the current three or six month periods in s163(3) with a 28 day period. The problem with the proposed process is that failure to make a decision within the 28 day period for road managers and road authorities are deemed refusals. The NatRoad position is that they should be deemed acceptances.
75. We note that the Better Law document says:
- This approach shortens the time to determine whether a route assessment is required and fixes the decision-making process failure caused by a nil response.⁶¹*
76. NatRoad believes a more radical approach is required; there must be an impetus in the system so that a failure to make a decision is deemed consent, not refusal.
77. Sub-option 2 incorporates similar procedures but acknowledges that a 7 day time frame is more appropriate for access requirements. A 28-day statutory timeframe would be imposed on OSOM or exemption category access applications (including deemed refusal for a nil response) and a 7-day statutory timeframe would be imposed on freight and passenger vehicles or authorisation category access applications (including deemed refusal for a nil response). How this distinction would work in practice is not clear but reinforces NatRoad's policy stance that 28 days is far too long a period, across-the-board, to trigger a deemed refusal or a deemed acceptance.
78. Option 9.3(b) deals with reviewability of access decisions. Option 9.3 would enable an applicant to have their access decision reviewed by a third party, with the alternative reviewer set out in two sub-options.
79. Option 1 discusses the possible establishment of an independent review panel. But the CRIS option indicates a restricted role for the panel, that is a review of deemed

⁶⁰ Above note 1 p142

⁶¹ Above note 2 at p18

refusals only. This would be a process review, not a decision-merit review.

80. Option 2 deals with proposed merit reviews being facilitated through existing jurisdictional or court processes. As we expressed in our earlier submission, NatRoad seeks a radical overhaul of the current system not reliance on the slow, extant system.
81. If there is a lower level of reform applied in this area, we support road manager's decisions being open to external review by people with expertise who would be bound by the mandatory standards discussed below. That panel/group of experts' decision would be a merit view and their decision would supplant the original road manager decision (or non-decision). The composition of that Panel should have representatives from industry but its complete make-up would depend on the final outcome.

Increasing the responsiveness of access decision-making (Option 9.4)

82. Option 9.4 is supported in that it proposes the access decision-making process be moved from primary legislation to regulations or standards. NatRoad agrees that this would permit refinement of subordinate rules.
83. In our earlier submission on access, we indicated that the current guidelines on access should be binding on road managers and all other participants in the process. We note that in the discussion of this option it is said that "It is expected that the 'NHVR Approved Guidelines for Granting Access' would be further developed into a regulation or standard. These guidelines are currently referred to in the HVNL and need to be considered when making access decisions."⁶² This is encouraging – the guidelines should be mandated and applied consistently on that basis.

Pilots and escorts (Option 9.5)

84. Each State and Territory has different requirements for pilots and escorts required for OSOM movements. These need to be harmonised.
85. NatRoad has no concerns about the method of harmonisation or the best approach to pilot accreditation at this stage of the review. Establishing a nationally harmonised pilot and escort accreditation scheme to be administered by the NHVR should be a decision reached in the current context with stakeholder operators who conduct this work to be consulted on any proposals before they are finalised. In addition, we agree that the future law should also permit authorised officers to have suitable traffic management powers, when undertaking escort duties. These powers would not apply at other times and in context should be non-controversial.
86. There should be as low a cost process as possible associated with harmonisation. The CRIS says:

*The costs associated with the proposed options are likely to relate to developing training competencies suitable for use in all jurisdictions. However, these costs are not expected to be material given the existence of schemes in jurisdictions already, which could be adapted under either the single or dual tiered pilot approaches.*⁶³
87. We disagree. Costs of moving to the "highest common denominator" could be extensive. More costing analysis is recommended when the details of how the

⁶² Above note 1 p144

⁶³ Above note 1 at p152

reform is proposed to proceed are crystallised.

Conclusion

88. The central issue of what would incentivise a road manager to provide greater access to heavy vehicles is not the central proposition explored in this chapter unfortunately and, therefore, save for the option in 9.1(a), there is little in this chapter that would positively affect productivity. Compare that with the Better Law document which says:

*The future HVNL should support quick, simple and transparent access decision making. It should prioritise productivity – where it is safe and reasonable.*⁶⁴

89. In addition, as we have mentioned in the early part of this submission, the CRIS necessarily only touches on linkages between road funding reform and access. These linkages are vital: NatRoad policy is that heavy vehicle operators should not be required to pay for roads which they cannot access. That simple proposition should be a foundational matter when examining road funding for the future.

⁶⁴ Above note 2 at p18