



Municipal Association of Victoria

Submission Paper

***National Transport Commission
Heavy Vehicle National Law Review
Consultation RIS***

November 2020

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While this paper aims to broadly reflect the views of local government in Victoria, it does not purport to reflect the exact views of individual councils. This submission has been endorsed by the MAV Freight Policy Reference Group and developed in consultation with member councils.

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1 Introduction

The Municipal Association of Victoria (MAV) is the peak representative and advocacy body for Victoria's 79 councils. Formed in 1879, the MAV is the official voice of local government in Victoria under the Municipal Association Act, 1907. Our role is to represent the interests of local government, ensure the sector's long-term security and provide policy and strategic advice, capacity building programs and insurance services to local government.

The MAV welcomes the opportunity to provide a response to the National Transport Commission (NTC) Heavy Vehicle National Law (HVNL) review consultation regulation impact statement (RIS). We have limited our submission to proposals relating to access in Chapter 9, as they have the greatest relevance to councils as local road managers.

The MAV's 2019 submission to the response to HVNL Easy Access to Suitable Routes Issues Paper outlines in some detail the priorities and challenges for councils in applying the HVNL, issuing permits and authorising access, and managing the 'first and last kilometre' of the freight task.

When consulting with councils on the proposals in the RIS, the feedback reinforced our previous position that councils should continue to be the decision-maker for general and restricted access to local roads through notices, pre-approvals and permits. Our positions in relation to some of the proposals relating to streamlining and expediting permit approvals reflect this principle.

The MAV encourages the NTC to continue to explore opportunities for supporting councils in their role as road managers, which may in turn improve efficiencies and confidence in decision-making and improve turnaround times. Support includes access to data and technology, and targeted funding for local government infrastructure assessment and investment.

Topic: Access

Summary of MAV positions

Option 9.1: Expand as of right general access	
Option 9.1a: Increase GML to CML for all operators	Not support
Option 9.1b: Increase GML to CML for enrolled operators	Not support
Option 9.1c: Increase GML to CML conditionally to operators where an approved on-board mass system is used and data provided.	Support in principle
Option 9.1d: General access length increase Option 1: The additional metre could be provided to all vehicles	Not support
Option 9.1d: General access length increase Option 2: The additional metre could be provided to vehicles that can demonstrate they have safety features installed.	Support in principle
Option 9.1d: General access length increase Option 3: Additional space for the sleeper cabin in restricted access vehicles	Support in principle
Option 9.1e: Create enhanced general access category	Support in principle

Option 9.2: Improving the efficiency of the decision-making process for authorising access	
Option 9.2a: Recognise precedent and expand expedited process to including equivalent or lower risk applications	Not support
Option 9.2b: Opt-in road manager delegation	Support in full
Option 9.2c: Geospatial map given authority in the law	Support in principle
Option 9.2d: Alternative option: Vehicle classification system	
Option 9.2d: A risk-based approach to vehicle classes Option 1: Vehicle categories are (1) freight and passenger and (2) oversize overmass.	Not support
Option 9.2d: A risk-based approach to vehicle classes Option 2: Categories are: (1) existing authorisation category (captures existing class 2 vehicles) and (2) exemption categories (captures existing class 1 and class 3) / Risk-based approach to vehicle classification	Not support

Option 9.2e: Third party consent requirements Option 1: Remove third party consent requirements	Not support
Option 9.2e: Third party consent requirements Option 2: Capture third parties in access decision-making process and impose statutory timeframes	Support in part
Option 9.2f: Amendment to access decision making criteria	Support in principle

Option 9.3: Amendments to permit timeframes and procedures	
Option 9.3a: Statutory timeframe, deemed referral and refusal for nil response Option 1: 28-day statutory timeframe with deemed referral and deemed refusal for nil response — This option has a total statutory timeframe of 28-days for all vehicles.	Not support
Option 9.3a: Statutory timeframe, deemed referral and refusal for nil response Option 2: Varying timeframes for different vehicle categories	Not support
Option 9.3b: Review of access decisions Option 1: An independent review panel	Support in part
Option 9.3b: Review of access decisions Option 2: Referral to an existing jurisdictional tribunal or court	Not support

Option 9.4: Increase the responsiveness of access decision-making	
Option 9.4: Increase the responsiveness of access decision-making	Support in part

Option 9.5: Pilots and escorts	
Option 9.5a – National Operational Accreditation Scheme (single-tiered pilot approach)	Support in principle
Option 9.5b – National Operational Accreditation Scheme (dual-tiered pilot approach)	Not support

2 Response to proposals

Option 9.1: Expand as of right general access		Summary	Discussion
Option 9.1a: Increase GML to CML for all operators	Not support	Under this option all heavy vehicles would be able to access the network at current CML.	Does not automatically generate productivity or other benefits. Increased limits should be linked to improved safety and data as per option c
Option 9.1b: Increase GML to CML for enrolled operators	Not support	Under option 9.1b heavy vehicle operators who enrol with the NHVR would be able to access the network at CML.	Does not automatically generate productivity or other benefits. Increased limits should be linked to improved safety and data as per option c
Option 9.1c: Increase GML to CML conditionally to operators where an approved on-board mass system is used and data provided.	Support in principle	Under this option heavy vehicles with a certified on-board mass (OBM) system and data sharing capabilities would be able to access the network at CML. Operators would need to share the OBM data with road managers and regulators to provide certainty that vehicles are complying with mass limits on approved routes. This could be achieved through sharing data using new or existing telematics applications.	There is potential for improved safety and access to data for road managers with this option.
Option 9.1d: General access length increase Option 1: The additional metre could be provided to all vehicles	Not support	General access length is currently specified at 19 metres in regulations to the HVNL. The HVNL also provides that a 25m B-double may be up to 26m long if it meets certain operating conditions. Under this option general access length would be increased from 19 metres to 20 metres with the additional metre provided to all vehicles.	It is acknowledged that international truck lengths are heading in this direction. However, this option does not automatically generate productivity or other benefits. Increased limits should be linked to improved safety and data as per option 2
Option 9.1d: General	Support in	General access length is currently specified at 19	New European trucks are heading towards becoming 20m in length. These are the newest

<p>access length increase</p> <p>Option 2: The additional metre could be provided to vehicles that can demonstrate they have safety features installed.</p>	<p>principle</p>	<p>metres in regulations to the HVNL. The HVNL also provides that a 25m B-double may be up to 26m long if it meets certain operating conditions.</p> <p>Under this option general access length would be increased from 19 metres to 20 metres with the additional metre provided to vehicles that can demonstrate they have safety features installed</p>	<p>and safest trucks which are likely to come on to the Australian market. If they are safer and more efficient, this should be encouraged subject to appropriate standards and sharing of data.</p>
<p>Option 9.1d: General access length increase</p> <p>Option 3: Additional space for the sleeper cabin in restricted access vehicles</p>	<p>Support in principle</p>	<p>General access length is currently specified at 19 metres in regulations to the HVNL. The HVNL also provides that a 25m B-double may be up to 26m long if it meets certain operating conditions.</p> <p>Under this option general access length would be increased from 19 metres to 20 metres with this additional meter would be provided only for additional space in a sleeper cabin.</p>	<p>New European trucks are heading towards becoming 20m in length. These are the newest and safest trucks which are likely to come on to the Australian market. If they are safer and more efficient, this should be encouraged subject to appropriate standards and sharing of data.</p>
<p>Option 9.1e: Create enhanced general access category</p>	<p>Support in principle</p>	<p>Rather than granting increased general access for all vehicles, an approach of granting general access on conditions could be pursued.</p> <p>The legislation could be structured to allow requisite safety features, technology and data sharing requirement to be updated when needed with associated grandfathering provisions for existing vehicles.</p> <p>This option needs to be considered in coordination with the vehicle classification system requirements discussed in option 9.2d.</p>	<p>Option 9.1e could help encourage newer and safer vehicles and establish a legislative framework which could support the Heavy Vehicle Road Reform (HVRR).</p> <p>An “enhanced general access” category would establish that enhanced access to the road network by heavy vehicles, now and in the future, will only be applied to cleaner, safer vehicles where data is provided to support the current and future use of the road network</p>

Option 9.2: Improving the efficiency of the decision-making process for authorising access		Summary	Discussion
Option 9.2a: Recognise precedent and expand expedited process to including equivalent or lower risk applications	Not support	This option would recognise precedent and risk in the access decision-making process. The HVNL currently allows for an expedited procedure for the renewal of previously consented mass or dimension authorities. In 2019 around one-third of consent applications were for the renewal of previously granted mass or dimension authorities. This option would expand the current expedited process to include equivalent or lower risk applications and fast track consent via the NHVR.	There is a risk that an individual approval for one vehicle could establish a default approval for multiple similar or smaller vehicles without fresh consideration of the application. Road conditions may have changed or an increase in volume of vehicles may be significant for a subsequent consideration. Road managers can already consider precedent to guide decision making without recognising it in the law.
Option 9.2b: Opt-in road manager delegation	Support in full	The HVNL would be amended to provide an express opt-in power for road managers to delegate access decision-making. Road managers would not be compelled to delegate their decision-making power but would have a choice about whether to exercise this delegation.	This would permit road managers to share or centralise the function which may provide an opportunity for more efficiency. Note that the liability for the decision would rest with the road manager who owns the infrastructure and network.
Option 9.2c: Geospatial map given authority in the law	Support in principle	The geospatial map would be given authority and legal standing in the HVNL and would provide information on approved routes, 'no go' zones and precedent decisions.	An authorised geospatial map is supported in-principle. Considerable work will be required to design and cost a system to support this concept and will need to consider road manager systems and approaches to deciding access and how the system will operate with and support the HVNL. The map would rely upon an appropriate geo portal that is updated frequently with accurate information. This would enable self-service geospatial data to be accessible, providing tools for

			<p>exploration, analysis and reporting.</p> <p>In the future, the map could replace permits and notices and be used as the authority to move. It could be coupled with other in-vehicle telematics systems, such as OBM, IAP or RIM, to provide road managers with data on road use and assurance that vehicles are accessing the right parts of the network.</p>
Option 9.2d: Alternative option: Vehicle classification system			
<p>Option 9.2d: A risk-based approach to vehicle classes</p> <p>Option 1: Vehicle categories are (1) freight and passenger and (2) oversize overmass.</p>	Not support	<p>This option would reduce the current three vehicle classes to two categories: freight and passenger and oversize overmass.</p> <p>The ‘freight and passenger’ category would include the existing Class 2 and 3 vehicles.</p> <p>The ‘oversize overmass’ category would include the existing Class 1 OSOM vehicles, special purpose vehicles, agricultural vehicles, some Class 3 vehicles and Class 2 vehicles transporting oversize loads.</p>	<p>The proposed changes don’t appear to deliver any significant benefits other than a slight simplification. A more comprehensive review of heavy vehicle classifications in the context of heavy vehicle road reforms may be an appropriate alternat reform pathway.</p>
<p>Option 9.2d: A risk-based approach to vehicle classes</p> <p>Option 2: Categories are: (1) existing authorisation category (captures existing class 2 vehicles) and (2) exemption categories (captures existing class 1 and class 3) / Risk-based approach to vehicle classification</p>	Not support	<p>This option would reduce the current three vehicle classes to two categories: existing authorisation categories and exemption categories.</p>	<p>The proposed changes don’t appear to deliver any significant benefits other than a slight simplification. A more comprehensive review of heavy vehicle classifications in the context of heavy vehicle road reforms may be an appropriate alternat reform pathway.</p>

<p>Option 9.2e: Third party consent requirements Option 1: Remove third party consent requirements</p>	<p>Not support</p>	<p>The purpose of option 9.2e is to reduce delays caused by third party consent in the access decision-making process. This option removes the legislative obligation on the NHVR to consult with third parties. Operators would be required to consider their whole journey, including whether any third-party consents are needed.</p> <p>Existing obligations in third party legislation would be maintained and need to be considered.</p>	<p>Third party consents such as water authorities need to be considered as part of the permit process. Removing them as a required consent creates a risk that third party assets are not appropriately considered in access decisions.</p>
<p>Option 9.2e: Third party consent requirements Option 2: Capture third parties in access decision-making process and impose statutory timeframes</p>	<p>Support in part</p>	<p>This option includes third parties being listed as a party in the decision-making process that must make a decision within the statutory period of 28 days. This would mean the HVNL, and the NHVR, has greater influence over the third party making the decision. Third parties would be required to comply with the same process as road managers and road authorities.</p> <p>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 up to date. The NHVR portal would automatically flag assets or infrastructure that are owned by a third party when the application is submitted. If the third party did not respond with the statutory timeframe, the decision would be automatically refused. The applicant would have the ability to seek a review of the decision.</p>	<p>The problem has been identified as a lack of timeliness in third-party responses, however, the solution proposes statutory obligations on third parties to provide (and maintain) asset and infrastructure lists to the NHVR. The NHVR's knowledge of which third party to contact in which circumstances is not listed as an issue.</p> <p>It is understood that problems with third-party consent have never been discussed with third parties at a national level.</p> <p>Imposing a statutory timeframe may not reduce delays. It is recommended that consultation be undertaken with third party asset owners.</p>
<p>Option 9.2f: Amendment to access decision making criteria</p>	<p>Support in principle</p>	<p>The HVNL provides that road managers may decide not to grant consent for access only if specific circumstances apply (e.g. access would</p>	<p>Road managers need to manage the transport system as an integrated network which means considering the needs of all road users, the</p>

	<p>damage infrastructure, impose adverse effects on the community or pose a significant safety risk).</p> <p>The HVNL currently does not support road managers in considering access along contestable routes where a mode shift between road and rail can have significant implications for the transport system as a whole. The current law only supports road managers considering access for individual vehicles rather than considering the effects of fleets of vehicles.</p> <p>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.</p> <p>Provisions to guide the use of this circumstance when considering access will be required to ensure it is not misused as a general reason for not granting access.</p>	<p>integrated use of transport modes (e.g. the relationship between road and rail) and the provision of a safe and efficient system for the benefits of the whole community.</p> <p>The HVNL currently provides no ability for road managers to consider freight movement access along contestable routes where a mode shift between road and rail can have significant implications for the transport system as a whole.</p> <p>The current law only allows road managers to consider access for individual vehicles rather than considering the effects of fleets of vehicles. Access decisions need to include whole-of-network impacts and strategic network management issues to deliver better safety and transport efficiency outcomes.</p>
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Option 9.3: Amendments to permit timeframes and procedures		Summary	Discussion
<p>Option 9.3a: Statutory timeframe, deemed referral and refusal for nil response</p> <p>Option 1: 28-day statutory timeframe with deemed referral and deemed refusal for nil response — This option has a total statutory timeframe of 28-days for all vehicles.</p>	<p>Not support</p>	<p>The road manager would need to indicate to the applicant via the portal whether a route assessment is required within the first 7 days of receiving the application. Road managers would have the remainder of the 28-day statutory period to make a decision on consent and conditions and advise the NHVR.</p> <p>Road managers would be required to give a decision of: yes (with or without conditions) or no (with a statement of reasons).</p> <p>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). This approach shortens the time to determine whether a route assessment is required</p>	<p>Simply mandating a faster response won't necessarily reduce delays. The most complex cases which can take longer than 28 days typically require more information or more complex decision making. Most decision are already made within 28 days.</p>
<p>Option 9.3a: Statutory timeframe, deemed referral and refusal for nil response</p> <p>Option 2: Varying timeframes for different vehicle categories</p>	<p>Not support</p>	<p>This option has two statutory timeframes to acknowledge the risk and complexity of different applications. 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).</p>	<p>Improvements in access response times require operational and system improvements rather than legislative amendments. Option 9.2c "Geospatial map given authority in the law" is the ideal starting point to create a framework to support operational improvements in the access decision making process.</p>

<p>Option 9.3b: Review of access decisions Option 1: An independent review panel</p>	<p>Support in part</p>	<p>The independent review panel could review deemed refusals only. The panel would comprise qualified personnel and a council member and would be led by the NHVR. The panels would either be established in each jurisdiction, or as a national panel (similar to the PBS panel). There would need to be a time limit for an applicant to seek a review. This could be similar to land use planning law which requires appeals to be made within 6 months of a deemed refusal or decision. The law would provide clarity around how this time is counted. The independent review panel would perform a technical assessment of the application and provide a recommendation within 28 days. The recommendation of the independent review panel would be published. This recommendation would not override the road manager's decision. The law would require the road manager to make their decision in light of the independent review panel's recommendation.</p>	<p>Option 9.3 is supported in part with the following provisions being supported:</p> <ul style="list-style-type: none"> • the concept of an independent review panel (IRP) being able to review road access decisions made by road managers from both a technical and procedural perspective, and • the proposal that the IRP's decision would not be binding on a road manager, and that the decision would be made public. <p>Membership of the panel should be made up of representatives from each State and Territory and representatives from local council. The IRP should be able to call on expert advice from other bodies such as industry experts, ARRB and the NHVR.</p>
<p>Option 9.3b: Review of access decisions Option 2: Referral to an existing jurisdictional tribunal or court</p>	<p>Not support</p>	<p>This option involves expanding the current administrative (merits based) review process to include access decisions (not deemed refusals), including those by road managers and road authorities. This would allow applicants to seek external merits review of decisions by road managers at their state or territory's tribunal or court. The decision of the tribunal or court would replace the decision of the original decision-maker. The appeal could result in a different finding of fact and a different decision. The applicant would be required to pay any costs involved with seeking an external merits review. The road manager or road authority would also be responsible for costs.</p>	<p>Option 1 above is preferred compared to use of an existing administrative tribunal. Option 1 can be better tailored to the specific purpose of reviewing access decisions and would be expected to have a lower barrier to engage.</p>

Option 9.4: Increase the responsiveness of access decision-making		Summary	Discussion
<p>Option 9.4: Increase the responsiveness of access decision-making</p>	<p>Support in part</p>	<p>Option 9.4 involves the access decision-making process being moved from the primary legislation to regulations or standards. This would allow the process to be responsive to changes while maintaining oversight. The regulations or standards would be called up in the law. This would allow refinement as needed while maintaining ministerial oversight. This option would rely on the reforms considered in Chapter 5 being progressed.</p> <p>The regulations or standards would contain decision making processes (including roles and responsibilities of parties) and considerations for access (including a requirement to consider productivity, safety, infrastructure, amenity or the environment and perform a comparison against general access vehicles and any existing notices).</p> <p>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.</p>	<p>Option 9.4 is supported in part, as statutory obligations for government or regulatory agencies belong in either primary legislation or regulations. The obligations around legislative decision-making processes belong in primary legislation, while some of the more detailed requirements could possibly be placed in a regulation.</p> <p>The placement of access decision-making provisions in standards is not supported. Standards should be used for technical requirements that apply to regulated parties such as the heavy vehicle industry. Government decision making processes do not belong in Standards.</p> <p>Any changes to the access decision making framework would have wide ranging implications across road managers, industry and the general public and therefore require ministerial oversight.</p>

Option 9.5: Pilots and escorts		Summary	Discussion
<p>Option 9.5a – National Operational Accreditation Scheme (single-tiered pilot approach)</p>	<p>Support in principle</p>	<p>The first option is for the HVNL to establish a nationally harmonised pilot and escort accreditation scheme to be administered by the NHVR. The approach for pilot competency would be based on the single tier Western Australian model. The Western Australian approach requires the driver to hold a heavy vehicle pilot licence. The licence is granted if the driver:</p> <ul style="list-style-type: none"> • applies and pays for the licence • holds an open driver’s licence • passes an Assessment of Fitness to Drive for Commercial Drivers examination, and • passes a Western Australian Heavy Vehicle Pilot training course from a registered training provider. <p>This single-tier approach would involve developing training competencies. Training competencies would be established using the Western Australian accreditation pilot category. This would allow for a proven accreditation methodology to be applied broadly and simply with minimal implementation delay.</p> <p>Exemptions from pilot accreditation for some types of oversize movement is important and would be provided. The predominant type of movement that is relevant is wide agricultural equipment. This equipment is normally driven or towed by road between farm gates for short distances in rural areas.</p>	<p>Option 9.5a, to implement a National Operational Accreditation Scheme (single-tiered pilot approach) to pilots and escorts, is supported in-principle.</p> <p>Further work is required to detail how the training and licencing of certified pilots would operate, when escort services would be required and how an exemption for agricultural equipment could operate.</p> <p>A cost benefit analysis of the proposal, which includes the potential increased cost to industry in circumstances where pilot services are currently provided by drivers who are not certified or licenced, is required.</p>

<p>Option 9.5b – National Operational Accreditation Scheme (dual-tiered pilot approach)</p>	<p>Not support</p>	<p>The second option is for the HVNL to establish a nationally harmonised dual-tiered pilot and escort accreditation scheme to be administered by the NHVR.</p> <p>A tier 1 pilot would be suitable for accompanying ‘small’ oversize loads (e.g. 3.5m to 4.5m wide) or assisting Accredited Pilots who are accompanying ‘small to medium’ oversize loads (e.g. 3.5m to 5.5m wide). Registered Pilots be required to successfully complete competency-based assessments.</p> <p>A tier 2 pilot would be suitable for accompanying ‘small to medium’ oversize loads (e.g. 3.5 to 5.5m wide) or assisting Escorts accompanying ‘large’ oversize loads (e.g. greater than 5.5m wide). Accredited Pilots would be required to successfully complete competency-based assessments.</p> <p>Again, exemptions from pilot accreditation for some types of oversize movement is important and will be provided.</p>	<p>Option 9.5b, a dual tiered pilot approach, is not supported. Instead Option 9.5a “National Operational Accreditation Scheme (single-tiered pilot approach) to pilots and escorts” is supported in-principle.</p>
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