



AUSTRALIAN
LOCAL GOVERNMENT
ASSOCIATION

Submission to the National Transport Commission

In response to the Heavy Vehicle National Law Review Regulatory
Impact Statement (RIS)

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1. Introduction

The Australian Local Government Association (ALGA) appreciates the opportunity to make this submission to the National Transport Commission (NTC) in response to matters raised in the NTC's Heavy Vehicle National Law (HVNL) Review Regulatory Impact Statement – 25 June 2020.

ALGA is the national voice of local government. It is a federated body of state and territory local government associations that represent 537 local government authorities across the country. Local Government's expenditure is directed towards the provision of local infrastructure and services across the nation. These include housing and community amenities; transport and communications; recreation and culture; and general public services.

It should be noted that at an aggregate level, local government undertakes its work while being more than 80% self-funded. However, many rural and regional councils do not have the means to collect the same revenues as their urban and larger regional counterparts and are consequently much more reliant on external funding sources. Adequate grant levels are certainly critical for these councils to be able to function in the best interests of their residents and to equalize the availability services and infrastructure across the country.

As an asset manager, local government believes that major project prioritization and selection, particularly of new road projects, needs to be appropriately balanced against the maintenance and renewal requirements of existing essential assets. In other words, asset formation should only occur in the context of detailed asset management plans, ideally integrated asset management plans across the three levels of government.

Local roads constitute around 75 per cent of national roads by length. Most road freight journeys start or finish on a local road. For local government, efficient infrastructure – particularly roads, but also airports and rail (for bulk products such as grain), is vital to ensure the sustainability of our cities and regional and rural councils, which enables them to maintain their significant contribution to the Australian economy.

2. Local government – a partner supporting heavy vehicle access

Local roads play an essential role in the efficient movement of freight around Australia. As local roads managers, councils are the custodians of this critical infrastructure on behalf of all road users – residents, visitors, business and industry.

When the HVNL was introduced in 2014, its remit was to regulate the use of Heavy Vehicles (HVs) on roads in a way that promotes public safety, industry productivity and efficiency as well as encouraging efficient, innovative and safety business practices. Amongst other things, it focuses on ensuring that heavy vehicles and their drivers are safe and **that they are operating on suitable routes to minimise public safety risks.**

Access by all kinds of HVs to public roads is controlled because unfettered access to public roads could otherwise:

- Create risks to community safety, or from other motorists interacting with HVs;
- Reduce public amenity from noise or congestion; and
- Contribute to road pavement and infrastructure damage where HVs access unsuitable roads.

The HV access system should, as far as possible, match vehicles to routes to mitigate these external costs. It needs to be plainly acknowledged that irrespective of existing HVNL legislation and regulation difficulties, much of the challenge in improving access is related to engineering constraints and ageing bridges and pavements. While aspects of access policy and decision-making processes can be refined, it must be recognized that engineering constraints cannot be reformed quickly or without cost.

3. Access related possible reform options and sub-options

Having considered the broad scope of the NTC Review, ALGA believes that the ACCESS Chapter 9 in the NTC's HVNL Review RIS is the most important area for local government to focus on and respond to, as the options are reviewed below.

9.1 Changes to general access

The RIS itself states that "General access limits have not changed since the 1990s due to unresolved policy and engineering issues. Mass and dimension limits have not kept pace with advances in the heavy vehicle fleet, despite vehicles becoming safer, more efficient and longer over those years. While the HV fleet is becoming safer, the infrastructure (bridges and culverts) does not get stronger, unless they have been upgraded.

Option 9.1e Expansion of Concessional Mass Limits (CML)

In the first instance, we would oppose increasing GML to CML as a default position. Rather than granting increased general access for all vehicles, an approach of granting general access on conditions, should be pursued.

We would support providing more options for operators to achieve CML, including enrolment (9.1b), on board mass (9.1c) and through creating an enhanced general access category (9.1e). For example, this approach could see new legislation being structured to allow requisite safety features, technology and data sharing requirements to be updated when needed.

On a cautionary note, a broad application of CML should require a further assessment of the road networks capability to accommodate the higher limits CML scheme. NTC would need to test views on whether further infrastructure and road

assessments would be likely to be required to accommodate an expanded CML scheme.

9.2 Permits and authorisation processes

NTC states that the current process results in the issue of a large numbers of permits, which creates administrative and compliance burdens for operators and roads managers, and asserts that it can also unduly delay the granting of access. Information obtained from the NHVR indicates timeframes also differ by the type of application – whether its for a new permit, amended permit or a permit renewal – noting not surprisingly that new permits take the longest to process.

Option 9.2a Recognise precedent and expand expedited process to include equivalent or lower risk applications.

This option would recognise precedent and risk in the access decision-making process. This would free up road manager resources by not having to provide consent where it has previously been provided. It should also promote consistency in access decisions and move towards a risk-based approach to access. We note in 2019 around one third of consent applications were for the renewal of previously granted mass or dimension authorities.

We understand that at this stage there is very limited information regarding what vehicle types may be equivalent or lower risk, other than those detailed in the NHVR's OSOM Reference Vehicle Guide.

We acknowledge recognising precedence would be beneficial for both road manager and operators. However, the definitions and various scenarios that could come into play will need to be discussed, tested, agreed and finalised. Local government would see participating with other stakeholders in settling the definitions and scenarios related to finalising equivalent and lower risk processes as a sensible approach.

Option 9.2b Allow for opt-in road manager delegation

This option would provide road managers with the flexibility to delegate their access decision-making powers, should they choose. For some road managers it could alleviate some of the resourcing and expertise constraints road they face.

ALGA is aware that there has been some appetite from regional road managers where individual councils have small populations and as a result limited capacity to handle the road manager function. ALGA would support delegation on an opt-in basis only.

We note the NTC's assertion that "The liability for the decision would rest with the road manager who owns the infrastructure and road network", should councils wish to delegate their access decision-making powers. We believe that the liability for decisions should always follow decision making, varied only by formal agreement. There is a need for further clarity regarding how this option can be managed.

Option 9.2c Geospatial map given authority in law

The purpose of this option is to provide a real-time 'single source of truth' for road access in the form of a geospatial map. This option would provide the heavy vehicle industry with reliable and accurate map information that would be given authority and legal standing in the HVNL, and would provide information on approved routes, 'no go' zones and precedent decisions. The map would be available to operators who are enrolled and share telematics data.

ALGA supports, in principle, this option proceeding. The option to have a single source of truth would be beneficial to transport operators and road managers alike. We note in the future the map could replace permits and notices and be used as the authority to move, as well as a range of other abilities. However, further information relating to how this data is obtained is yet to be worked through. We look forward to receiving and understanding further details on how and when the pathway of this initiative will be laid out.

Option 9.2d A risk-based approach to vehicle classes

There are currently three classes of Restricted Access Vehicles (RAVs) under the HVNL. Matching vehicles classes to networks for access could result in consequential complications and some vehicles are themselves inherently challenging to assess for access.

The purpose of streamlining vehicle classification is to simplify decisions in some form. For example, group a class of vehicles on which the same level of network access would be appropriate. In principle, this makes decision-making more efficient. The introduction of vehicle envelopes theroretically should assist in determining if previous assessments have been made, and an access decision being more effective.

The HVNL Review is clearly seeking to strengthen a risk-based approach to the operation of the HV industry. Changing existing categorisations to more closely categorise vehicles by the risk they present to the networks, should make decision-making more efficient and increase the equity of decisions to users through more reliable treatment. ALGA supports this approach but acknowledges that this initiative will be a challenge.

Option 9.2e Third party consent requirements

The purpose of option 9.2e is to reduce delays caused by third party consent in the access decision-making process.

The HVNL RIS puts forward two alternative ways this problem can be addressed:

- Option 1: Remove third party consent requirements; and
- Option 2: Capture third parties in the access decision-making process and impose statutory timeframes.

As things stand, irrespective of the two options flagged above, the existing obligations in third party legislation still have to be maintained until existing HVNL legislation can be amended or withdrawn. That means the HVNL is still obligated to consult with third parties, and HV operators are still required to carefully consider the various routes they intend to use for their whole journey. At this point, ALGA has no strong views on the options that have been put forward. We await to see what response third parties will take on the two options contained in the HVNL RIS.

Option 9.2f Amendments to access decision-making criteria

The HVNL provides that road managers may decide not to grant consent for access only if specific circumstances apply e.g. access would damage infrastructure, impose adverse effects on the community or pose a significant safety risk.

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.

Under this new option, the HVNL would enable road managers to have regard to strategic network considerations and impacts that could arise from fleet effects, rather than 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.

Enabling road managers to have regard to strategic transport network considerations and impacts that arise from fleet effects, rather than just individual vehicles when considering requests for access, could provide better flexibility for road managers to maintain and improve their road networks.

Under this option, access decisions would include whole-of-network impacts and strategic network issues to deliver better safety and transport efficiency outcomes. We appreciate there will be a need for provisions to guide the use of this circumstance, when considering access, to ensure it is not misused as a general reason for not granting access. ALGA and our State/Territory Local Government Associations would need to participate directly in the development of the provisions for this new guide. In principal though, ALGA considers that this new option should be progressed further.

9.3 Timeframes and reviews

Option 9.3a Statutory timeframe, deemed referral and refusal for nil response

The NTC has developed two options relating to amended statutory timeframes for consultation.

- Option 1: 28-day statutory time frame with deemed referral and deemed refusal for nil response – this option sets out a two-stage statutory timeframe of 28 days for all vehicles.
- Option 2: Varying Timeframe for different vehicle categories – 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 applications (including deemed refusal for a nil response) and a 7-day statutory timeframe imposed on freight and passenger vehicles or authorisation category applications (Incl. deemed refusal for a nil response).

ALGA supports Option 1: 28 days statutory timeframe as the preferred option. As mentioned in ALGA's submission to NTC's Easy Access to Suitable Routes issues paper, the average decision timeframe sits at an average of 5 days for local road managers (if less than 28 days). There are examples where road managers will need more time, sometimes beyond 28 days, if access applications are convoluted, require better information from HV operators, and/or route assessments are required.

ALGA supports a deemed refusal for no response from a road manager.

ALGA strongly opposes deemed referral in the absence of an explicit formal agreement with the referral agency (NHVR) around liability for decisions.

Option 9.3b Review of access decisions

Under the current law only access decisions made by the NHVR are subject to an appeal (external review). Decisions by road managers are not. Option 9.3b would enable an applicant to have their access decision reviewed by a third party. This third party could be either:

- Option 1: An independent review panel – 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; or
- Option 2: Referral to an existing jurisdictional tribunal or court – This option involves expanding the current administrative (merits 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.

ALGA sees Option 1, the independent review panel, as the preferred level of review. This review panel should be properly motivated to improve access decision-making and having due regard to proper process. We would also expect this review panel to be able to give proper regard to infrastructure capacity, public safety, amenity and reducing road risks in determining its access decision.

If this initiative does go ahead, an external review process will take time and funding to implement. These costs should not be borne by local government road managers. It is worth remembering that local road manager's resources are a balance between road infrastructure, upgrades, and maintenance as well as funding various types of other services expected by the Councils' communities.

9.4 Access decision making

Option 9.4 Increasing the responsiveness of access decision-making

The framework for access decision-making is set out in the HVNL itself. Changes therefore require changes in the law, which generally sees long lead times and delays.

Option 9.4 involves the access decision-making process being moved from the primary legislation to regulations and standards.

ALGA supports this option, as it will allow the policy process to be more responsive to changes, while maintaining oversight. The decision-making process needs to be responsive to future changes, backed up by checks and balances to ensure that the framework around the regulations and standards is evidence based. ALGA is regularly participating with the jurisdictions in various Heavy Vehicle fora to improve the quality of these types of policies. We also note the reforms being considered in Chapter five of the HVNL Review RIS.