

Draft
LGNSW Submission on *A risk-based approach*
to regulating heavy vehicles: Issues Paper

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1. Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to make a submission to the National Transport Commission Heavy Vehicle National Law Review. This submission focuses on the questions outlined in *A risk-based approach to regulating heavy vehicles* – Issues Paper 1. The Heavy Vehicle National Law (HVNL) was introduced in 2012 to help harmonise legislation between jurisdictions to ensure safer and more efficient journeys between states.

Role of councils:

A key objective of councils is to ensure the well-being of their local communities and sustainable protection and management of their road infrastructure assets. Increased freight access always generates inherent reservations about safety, concerns about reduction in road asset lifespans (and the lack of funding to upgrade and maintain these assets), as well as concerns about the amenity impacts on local communities. LGNSW recognises that there are several challenges diminishing the potential effectiveness of the legislation as outlined in the issues paper. We support changes that help to reduce administrative burdens for all key stakeholders and which result in the safest and most efficient journeys wherever possible.

Councils are under increasing pressure to provide access to the local road network by the federal and state governments as well as industry. While LGNSW recognises the importance of the heavy vehicle industry to the Australian economy, we maintain that councils are best placed to make access decisions to their road networks. They have a legitimate role and expertise in assessing suitable local road routes (in terms of safety and impact on infrastructure). We caution against making changes that skew the legislation in any way that favours the needs of the heavy vehicle industry at the expense of the role and responsibilities of councils as managers of the local road network.

First and last mile considerations:

At the same time, we recognise that neither state or federal governments have a clear understanding of the key ‘first and last mile’ hotspots on the local road network in NSW. We strongly recommend that priority is given to properly mapping and assessing their suitability to support freight movement. A rigorous assessment of ‘first and last mile’ hotspots would help inform all parties about the areas of the local networks that will support the freight task. Importantly, it would also allow easier and more informed decision-making regarding access and would help to ensure road funding is properly targeted.

In the absence of such fundamental information and due consideration being given to all the underlying issues affecting access decisions, we strongly caution against any changes to the HVNL that could undermine or weaken councils’ fundamental role in managing their local road networks and any inherent risks to their communities. At stake here is a council’s ability to manage the risks to their communities and this should not change in a revised law.

This submission:

This submission is structured as follows:

- Section 2 clarifies LGNSW’s understanding of the Issues Paper;
- Section 3 provides LGNSW’s position on risk-based legislation;
- Section 4 contains specific comments in response to the 10 questions raised in the Issues Paper;
- Section 5 provides additional comments; and
- Section 6 – conclusion.

This is a draft submission awaiting review by the LGNSW Board. Any revisions made by the Board at that time will be forwarded in due course.

2. Background

- The Australian Government National Transport Commission (NTC) is seeking feedback on how to best redevelop the HVNL so that it better meets its original objectives. The focus of *A risk-based approach to regulating heavy vehicles: Issues Paper* is to address concerns from industry and the federal government that in practice the current HVNL is not meeting its original objectives as intended. The original objectives of the law include:
 - (a) promotes public safety; and
 - (b) manages the impact of heavy vehicles on the environment, road infrastructure and public amenity; and
 - (c) promotes industry productivity and efficiency in the road transport of goods and passengers by heavy vehicles; and
 - (d) encourages and promotes productive, efficient, innovative and safe business practices.
- The NTC proposes that the current HVNL is too prescriptive and inflexible, creating unintended burdens on the heavy vehicle industry, drivers and operators.
- The paper proposes that the HVNL be redesigned around a more contemporary risk-based approach to legislation that is less prescriptive and more focused on the outcomes of the legislation and its impacts.
- LGNSW recommends that the NTC ensures that the proposed changes to the legislation fairly reflect the interests of *all* stakeholders and that its focus is on ensuring safety, compliance and the long-term sustainability of all road networks.

3. LGNSW position on risk-based regulation

- LGNSW supports re-writing the Heavy Vehicle National Law so that it is less prescriptive and more performance-based so that it properly reflects best practice in contemporary legislative approaches and is more flexible.
- LGNSW supports a national HVNL that is consistent in both its letter and application across jurisdictions as it will enhance compliance and enforcement, delivering better safety and efficiency.
- LGNSW supports an HVNL that takes advantage of technology, so it is less paper focused, and simplifies the process of compliance, administration and enforcement to reduce the administrative burden on both industry and road managers.
- LGNSW supports an HVNL that is outcomes-focused and reduces administrative burden, provided road safety remains a top priority.
- LGNSW supports an HVNL that is responsive to changing circumstances on the proviso that all stakeholders are fully consulted on the proposed amendments.
- LGNSW supports an HVNL that can yield greater productivity and efficiency improvements, provided safety and compliance remain overarching priorities.
- LGNSW does *not* support any changes to the HVNL that would undermine the authority of councils to grant or deny access to their local road network. LGNSW believes it is incumbent on the state and federal governments to fund the necessary network analysis that will help councils process applications more efficiently, with more information, along with any further outreach that is necessary.

- The purpose of the NHVL is ensuring heavy vehicles operate safely while delivering an efficient service. A safe journey comprises a suitable route – one that minimises public safety risks and excessive impact on road infrastructure (given heavy vehicle mass and dimensions). Councils are the only party that can determine if a route is safe with respect to local roads given their depth of local knowledge.

4. Responses to the Issues Paper Questions

Question 1: Have we covered the issues with the current HVNL accurately and comprehensively? If not, what do we need to know?

The paper comprehensively identified the issues related to the HVNL legislation and challenges experienced by organisations implementing and applying the legislation. LGNSW notes that while the current HVNL legislation has had its critics, it has been effective in making the roads safer by raising awareness of heavy vehicle road safety and managing issues like fatigue and chains of responsibility. Without it, the roads would be less safe. Regulation of heavy vehicles has changed the way organisations manage risk. The outcome for councils in the management of their fleets has been greater awareness and a desire to ensure a quality approach in the way these fleets are managed and the expectations councils place upon employees to support the process.

At the same time, we recognise that the legislation can be improved by adopting a risk-based approach that focuses on its outcomes, so that it places less of an administrative burden on all parties, from road managers to regulators and industry operators. LGNSW's strongest concern about the review is that it appears to have an inherent bias towards industry. This is concerning for local government because of the potential that it will be skewed towards benefiting industry at the expense of all spheres of government being able to effectively and holistically manage the road network. We therefore urge that the redeveloped legislation retains the existing balance of powers in the regulation of the heavy vehicle industry.

Question 2: What does the current HVNL do well? What should we keep from the current law? What do non-participating jurisdictions' regulations, or comparable regulations from other sectors, do better than the current HVNL that we might incorporate in the new law?

Some councils have advised LGNSW that HVNL has facilitated the adoption of work health and safety (WHS) principles into the way councils manage their heavy vehicle fleets. There is a natural synergy between the two, linked by a risk-based approach. It has elevated safety awareness and created an opportunity for a conversation about the conditions under which councils operate and the risks inherent in operations. It has given councils an opportunity to talk about driver behaviour and set expectations of what is, and what is not, acceptable. Similarly, councils have advised that the HVNL fits in well with other initiatives such as drug and alcohol testing and has given greater credence to what it means to be fit to work.

From the perspective of councils as road managers, the current HVNL does a good job of protecting the role of councils as road managers, providing them the right to grant or veto requests for access to the road networks that they operate, maintain and manage. Councils are in the best position to make access decisions related to their road networks. However, unlike state and federal governments, under current road pricing arrangements, councils cannot collect revenue from heavy vehicle operators for the use of the roads they manage. If the heavy vehicle industry wants improved access to council roads that cannot currently provide the service level required, then consideration must be given to ways in which the industry can contribute to improvement in the levels of service in local government areas where they require access. Unless the current road pricing arrangements change, councils' rights to manage access decisions on their local road networks must be maintained.

Question 3: Do you support using the proposed risk management approach to test current policy and to develop and test policy options? How can the proposed approach be improved?

In principle, LGNSW supports the proposed risk management approach to test current policy and to develop and test policy options. The issues paper clearly articulates that the value in adopting this approach to the remaking of the HVNL is the potential to preserve the intended outcomes of the legislation while helping to reduce the administrative and regulatory burden on all parties. The issues paper also highlights the benefits of this approach to regulation as it is less prescriptive and more flexible. However, as LGNSW has cautioned, the balance of control within the legislation should remain firmly in the hands of regulators and road managers as this will ensure both optimal road safety outcomes as well as the sustainable management of vital community roads infrastructure. LGNSW and councils recognise the importance of providing heavy vehicle access for communities, businesses and the economy, but access should never be prioritised over safety considerations or the ability of the available infrastructure to support access requirements. Ideally, the final version of the revised legislation should strike an appropriate balance between prescriptive, performance-based and principles-based law, after comprehensive engagement with all stakeholders.

Question 4: Does the object or scope of the HVNL need to change? If so, how?

The current law exists to ensure safe and efficient heavy vehicle journeys. In the view of LGNSW and its members, the object and scope of the existing legislation is appropriate and does not need to change. We note, however, that the issues paper makes no reference to the concept of ensuring that efficient use of road infrastructure is also handled in a manner that is sustainable. The Australian Road Research Board (ARRB) has undertaken research¹ demonstrating that local roads are not designed to the same standard as regional, state or national roads, despite the fact that they play a vital role in freight connectivity. The research clearly demonstrates that increased freight movements result in the shortened planned lifespan of these roads, which in turn compromises road safety as the condition of these roads deteriorates. Providing equal access for freight movements on local roads (as enjoyed by the freight industry on major arterials) without consideration of this reality is unrealistic and unsustainable.

Question 5: Do you agree that national consistency is a goal that we should strive for, acknowledging it may mean compromise for participating and non-participating jurisdictions alike to be nationally agreeable?

National consistency is a goal that should be the aim of any legislation with national carriage. Though some compromises may be necessary to arrive at a law that can be equally applied across the nation, the role councils play under the current legislation as road managers is not one of them, as we believe it would put the safety objective of the HVNL at risk.

Question 6: Do you agree we should simplify the law by placing obligations as low in the legislative hierarchy as we can? How do we balance agility and flexibility in the law with suitable oversight when deciding where obligations should reside?

Obligations under the HVNL should specifically relate to two principles: (i) what is reasonably practicable; and (ii) what a party knows, or should know.

This is best achieved through a performance-based approach. If the legislation can be designed in a way that gives industry options as to the approach that best suits their business

¹ ARRB Project No: 009335 *Technical Basis for Estimating the Incremental Cost Impact on Sealed Local Roads from Additional Freight Movement* (2015)

practices, then it seems feasible that a balance between obligations, agility and flexibility can be achieved. If the requirements under the legislative approach are reasonable and industry operators are clear about their obligations under the law, making the legislation more agile and flexible is a worthwhile goal. This will, of course, depend on whether oversight arrangements can be tailored to fit this approach.

Question 7: How do we encourage the use of technology and data for regulatory purposes? What do operators, regulators and road managers need or want?

The best way to encourage the adoption of technology and data for regulatory purposes is to make it mandatory where possible. If the industry is compliant with the legislation, it should not have any concerns about having tracking technology fitted to vehicles. Not only will this help deliver regulatory transparency, it will also deliver vital data necessary to determine where first and last mile pinch points are, so that suitable mitigations can be developed. The collection of this data would need to be properly secured by the regulatory authority responsible (NHVR) as it may contain data that is sensitive and commercial-in-confidence. However, where feasible, industry should be encouraged to adopt technology that gives governments and other decision makers open access to data for the benefit of both regulators and the industry. Informing the industry about the regulatory and access benefits that come from adopting technology and sharing data may be particularly important in encouraging any voluntary installation of this type of equipment in heavy vehicle fleets.

Question 8: What areas of the current law are particularly problematic because they are process or administration focused? Can you detail the impacts?

Councils have advised LGNSW that the access permit process would be less burdensome from an administrative perspective if the NHVR Portal had a much more complete data set. Rather than having to review applications for access permits on a permit-by-permit basis, councils would be able to use the Portal to see where access has previously been granted or not granted, and what the rationale was for the decision-making process. The more data in the Portal available about vehicle types, swept paths, loadings, mass, dimensions, previous access permits for example, the easier it will be for councils to process access permits.

Question 9: How could the law regulate heavy vehicles in a way that accommodates diversity, while retaining consistency and harmonisation across Australia?

From a council perspective, it appears that the heavy vehicle/freight industry wants to have equal access to local roads as they do on major arterials and considers councils an impediment to this access. If it was the case that all roads were of an equal standard and enjoyed equal levels of funding for upgrades and maintenance, this might be a reasonable proposition. This would deliver the type of consistency and harmonisation that the industry wants from an access permission perspective.

However, this is far from the case. To remove councils from the decision-making process, when they have principal funding and maintenance responsibility for a local road network that is not built to the same specifications as state and federal highways, would have detrimental outcomes for councils, road safety and their local communities. A diversity of decision makers perform an essential function in the current heavy vehicle law and this should remain the case for any remaking of the legislation, for the simple reason that there is a wide diversity of road asset conditions and across the country.

Question 10: In a broad sense, what tools do the regulator and enforcement agencies need to respond appropriately to compliance breaches? What recourse and protections do regulated parties require?

With regard to HVNL compliance, the regulators in NSW (Roads and Maritime Services and NSW Police) have combined to provide an effective public demonstration of dealing with breaches. This overt demonstration of regulatory authority has done much to drive public and organisational consciousness about the appetite of the regulators to enforce the legislation. Our observation is that the regulators have adequate powers to respond to breaches.

5. Additional considerations

LGNSW is particularly concerned about the following remarks made in the Issues Paper (p. 40):

The HVNL aimed to provide consistent practices to administer and enforce the law. The HVNL established a veto power for access decisions to local governments in the prescribed access decision-making process. This introduced the inefficiency of multiple decision-makers, many of whom are under-resourced and inexperienced in a regulatory function that they had either not previously had or had seldom exercised. The result is often a long and laborious process for operators, regulators and road managers alike, with associated financial cost and delays (Australian Livestock and Rural Transporters Association, 2017, p.9; National Farmers' Federation, 2017, p. 13).

The issues captured in these remarks highlight that the capacity and suitability of the local road network for heavy vehicles, in increasing volumes, presents one of the key challenges to delivering a safe and efficient journey end-to-end, in line with the objectives of the HVNL. The statement also assumes that applications provided to councils by the industry are universally of a high standard and should be processed quickly – councils advise that this is not always the case. Further, as noted by the Standing Council on Transport and Infrastructure:

To date, neither transport nor land use planning has delivered complete freight routes that extend from origin to destination...As a result, local roads that form the first and last mile section of a freight route are not designed for access by Higher Productivity Vehicles (HPVs). (National Land Freight Strategy – A Place for Freight report, 2012, p.17)

To blame the current legislation for giving councils a veto power is far from the root cause of access issues on first and last mile corridors on council roads. There are underlying systemic issues with local road infrastructure and its suitability for supporting the freight task, particularly in rural and regional areas, that make councils best placed to make route access decisions – this is the reason that councils were given these veto powers in the first instance. To remove the right for councils to make access decisions related to the road infrastructure that they manage will lead to increased risk of asset damage, road failure and potentially enormous rebuilding costs, along with increased road safety risks for heavy vehicle drivers, other road users and the community.

Further, the lack of any clearly defined understanding of what are the key first and last mile corridors means that existing road funding programs targeted at improving infrastructure to support the freight task are not being targeted strategically; rather, the result is a series of unrelated council applications for funding that are approved or denied based on meeting certain eligibility criteria. This leads to a piecemeal solution that is not being strategically addressed. Having this level of understanding will also facilitate the right level of support and outreach from agencies state and federal agencies to councils to assist with the increasing freight task.

Similarly, funding also needs to be made available to properly determine the asset condition of key first and last mile corridors, once they have been identified, to further assist in council decision making processes. As recommended by Austroads:

Funding to outsource road asset audits and assessments may alleviate much of the burden on a participating municipality. It may assist with ensuring that the assessment process is conducted in a timely and efficient manner, setting the municipality up for more streamlined PBS access in the future.

This process would benefit from a framework that ensures consistency of assessments and assessment costs across municipalities, so that there is a fair and equitable result. In considering equity, however, one must note that many rural and regional councils do not have the means to collect the same revenues as their urban counterparts. Consequently, they are much more reliant on external funding sources, and may be eligible for higher priority. (Local Road Access for High Productivity Freight Vehicles, 2018, p.65):

Disenfranchising councils is a band-aid response that, if it were to occur, could lead to serious road safety consequences and detrimental road asset impacts. The real solution is to properly map the local road network from a freight suitability perspective, identify the first and last mile pinch points and provide proper support in the ways outlined here to help address the issues.

6. Conclusion

LGNSW is broadly in favour of the key points raised by this paper in terms of adopting a more contemporary approach to legislative design. We support any change that:

- is based on risk analysis and control;
- has the right object, coverage and scope;
- is responsive and flexible, and supports innovation and technology;
- is nationally harmonized, subject to all jurisdictions having input through all stages;
- is underpinned by what is reasonably practicable;
- is proportional to risk and harms; and
- delivers better outcomes for *all* stakeholders.

As previously stated in this submission, LGNSW has significant concerns that the redrafting of the HVNL could undermine the important and legitimate decision-making role of councils and shift the current balance in favour of the industry. If this was to occur, it is highly probable that this could increase road safety risks and undermine the sustainability of local road networks that are already underfunded and straining to meet projected increases in freight movements.

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