

National Transport Commission

Heavy Vehicle National Law Review – C-RIS

LGA of SA Submission

October 2020

Introduction

About the LGA of SA

The Local Government Association of South Australia (LGA of SA) welcomes the National Transport Commission's (NTC) review of the Heavy Vehicle National Law (HVNL) and appreciates the opportunity to provide feedback to the *HVNL Review Consultation Regulation Impact Statement*.

The LGA of SA is the voice of local government in South Australia, representing all 68 individual councils across the state. We provide leadership, support, representation and advocacy on behalf of South Australian councils, for the benefit of the community.

The LGA of SA is a strong advocate for legislation and policies that achieve better outcomes for councils and the communities they represent. Councils, with appropriate opportunities, can be part of the solution in addressing the challenges Australia faces in ensuring liveable, vibrant and economically prosperous communities.

Local government as a partner in supporting heavy vehicle access

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

Since it was introduced in 2014, the HVNL has required every road manager to consent to heavy vehicle access on its roads. This has been welcomed by South Australian councils, and as local road managers they should continue to be the decision-maker through a system that includes general access and restricted access (including by notice, pre-approval and permits).

The intention of requiring certain heavy vehicles to obtain authorised access is to reduce risks to public safety, to minimise negative effects of noise, emissions or traffic congestion, and to manage the impacts on public infrastructure. It is this holistic view that councils as road managers give when considering access. However, it needs to be recognised that the HVNL was a significant change for local government, and many councils feel that they have been *empowered* but not *supported* or sufficiently resourced to undertake their role.

The LGA of SA refers the NTC to the Austroads Research Report; *Local Road Access for High Productivity Freight Vehicles*¹, (Austroads 2018), which was compiled following broad consultation and provides a comprehensive outline of the many challenges local road managers face when assessing heavy vehicle access. It provides recommendations towards addressing the contemporary barriers to local road access.

South Australian councils are ready to work together, and with the State and Federal government, to undertake regional planning to provide the basic building blocks for project identification, prioritisation and investment. This will unlock local and regional productivity through investment that improves access for freight vehicles and connectivity between local roads and preferred state and national freight networks.

While working within the scope of the NTC review, consideration needs to be given to ensure that any changes to the Heavy Vehicle National Law holistically address these issues with the focus of this submission on Chapter 9 – Access.

¹ <https://austroads.com.au/publications/freight/ap-r559-18>

Response to specific questions of the Issues Paper

Question 9.1: Is it reasonable to increase mass and dimension limits for general access? Under option 9.1, which sub-option would be the preferred way to increase mass and dimension limits?

The Regulation Impact Statement (RIS) itself outlines 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 the past 30 years”²

Even though the heavy vehicle fleet is becoming safer, the infrastructure (bridges and culverts) does not get stronger, unless they have been upgraded.

Option 9.1e – provides a balanced approach, however, would exclude On-Board Mass (OBM) as a mandatory requirement. This would be supported as the preferred approach.

Question 9.2: Under sub-options 9.1a to 9.1c, how much would an increase to Concessional Mass Limits (CML) reduce to need to apply for permits?

Minimal, impacting a small number of applications for Performance Based Standard (PBS).

Currently, PBS vehicles in South Australia require a permit to operate, unless it operates under the National Class 2 PBS Level 1 and 2A truck and dog trailer authorisation notice.

Others, operators are not required to apply for a permit to operate at concessional mass limits (CML) as they are able to obtain this increase if they operate in line with Schedule 2 of the *Heavy Vehicle (Mass, Dimension and Loading) National Regulation*. To benefit from the gains of CML, operators must participate in the National Heavy Vehicle Accreditation Scheme.

Therefore, local road managers do not generally receive requests for access at CML, as operators that meet the requirements outlined in the *Heavy Vehicle (Mass, Dimension and Loading) National Regulation* have access, unless the vehicle is a PBS vehicle.

As CML offers up to a 5% increase in mass, in most cases, local road managers may be required to undertake a full network assessment to determine if the infrastructure could accommodate this for as of right access. Any results could restrict access to what is currently provided as structures may need to be load limited.

Question 9.3: Under sub-option 9.1c, would the benefits of CML outweigh the costs of OBM for operators? Would the data provided by OBM systems provide regulators and road managers with the right information to make investment and planning decisions?

Determining whether the benefits of CML could outweigh the costs of OBM for operators would be a commercial decision for operators.

The ability for road managers to receive, interpret and utilise data from OBM systems would be impacted by several factors such as their size, capability, and capacity. It is essential that road managers have the appropriate tools and information ensuring that there is a centralised and easy to use system for obtaining and interpreting this data could assist in more informed investment and planning decisions.

² Source: HVNL Review Consultation Regulation Impact Statement, page 131, section 9.4.1 What is the problem?

The outcomes of investment and planning decisions may be long term before seeing fruition, however the investment of OBM systems for operators is immediate. Therefore, the cost of implementing OBM systems may not provide the immediate access that operators seek as road managers seek to understand and ensure that operators are complying with mass limits.

Question 9.4: Under sub-option 9.2a, what would be the costs and benefits of a precedent approach for operators and road managers?

Recognising precedence would be beneficial for road managers and operators alike, however the definition and scenarios would need to be discussed and agreed. At this point in time there is very limited information about what vehicle types may be equivalent or lower risk, other than those outlined in the National Heavy Vehicle Regulator (NHVR) OSOM Reference Vehicle Guide available as part of the NHVR's [pre-approval pack](#).

The application would require some form of identification that it falls within the 'precedent' expedited process and the reason for its expedition – for example, if it was due to it being deemed a lower risk, it should outline the previous case and vehicle combination that it had been compared too in order for it to have met the criteria.

The benefit to road managers would be that they would be assisted with determining vehicle hierarchy, identifying routes that had already been consented too.

On initial review, there would be minimal to no cost for road managers as this would assist those councils that do not have the capacity to review cases regularly in the NHVR Portal.

Question 9.5: Would road managers exercise the delegation power proposed in option 9.2b? Why or why not?

There has been some appetite from regional road managers where individual council areas have a limited population, and therefore minimal capacity to undertake the road manager function, to delegate the access decision making.

Greater clarity would need to be provided in relation to the "liability for the decision would rest with the road manager who owns the infrastructure and network" when delegating this power.

In most circumstances, local road managers would retain this power, however the option does have merit to be considered moving forward.

Question 9.6: Would operators benefit and use a geospatial map as proposed in option 9.2c? What would be the costs for road managers to input the data and keep it updated?

The *Heavy Vehicle National Law* currently references "stated map" as the legally approved network. At this point in time the NHVR provides a representation of heavy vehicle networks as provided by the state road authorities. The option to have a single source of truth would be beneficial, however further information relating to how this data is obtained is yet to be worked through. This option also states that the "system would assess the information and provide a suggested route and map for the particular vehicle". This statement relies on a routable dataset of which local road managers do not have this information, nor at this point in time the capacity to provide this extra information. The operational cost for road managers is not yet able to be determined as the scope of this work has not yet been determined.

It should also be noted that there are several complementary scoping projects being undertaken as well as spatial projects that are ongoing would need to be considered moving forwards that will consider the impacts on local road managers. These include the:

- National Heavy Vehicle Regulator's - National Spatial Solutions Program
- Stategrowth Tasmania and Local Government assessment and representation of access
- Austroads – Road Asset Data Standard - which is looking at the development and maintenance of data standard and priority datasets.
- Transport Certification Australia – and the programs and services they provide in relation to telematics and related spatial information from higher productivity freight vehicles.

As part of this option, consideration of the *Australian Government Public Data Policy Statement*³ which recognises the importance of effectively managing national resources and “commits to optimise the use and reuse of public data; to release non-sensitive data as open by default; and to collaborate with the private and research sectors to extend the value of public data for the benefit of the Australian public”.

However before the sharing of open data at a national level can be achieved there needs to be agreed standards on the metadata being used in order to provide consistency of information as well as any interactivity with existing council spatial systems in order to minimise the resource implications for different standards as well as the required skills in spatial system.

Question 9.7: Under option 9.2d, which option would make it easier to adopt a risk-based approach to vehicle classification?

The HVNL Review represents a focus on risk-based approach to regulation. The option closest to this aim is the implementation of *Option 2: Risk-based approach to vehicle classification*. However, in adopting this approach will require a re-education of all parties as well as the development of nationally consistent envelopes and ‘template vehicles’ for assessment. Further, the application process through the NHVR Portal should pre-identify based on vehicle details the ‘risk profile’ of the vehicle and recommended envelope.

It should be noted however that current class 1 vehicle such as oversize overmass vehicles, special purpose vehicles and agricultural vehicles are reviewed on their merit and conditions applied to mitigate risks identified by the road manager. Moving to a risk-based approach to vehicle classification does not necessarily mean that access will be able to be provided if the route assessment deems that the route is not suitable for the vehicle envelope.

The introduction of a vehicle envelopes should theoretically assist in determining if previous assessments have been undertaken and an access decision being more effectively. Local road managers tell us that they need the right information within applications, and better tools and knowledge to perform their roles.

Question 9.8: Under option 9.3a, which option would provide more transparent, quick and cost-effective decisions?

In line with the spirit of risk management, Option 2: varying timeframes for different vehicle categories would appear on the surface to provide a quick decision. However, this option is not able to be wholly considered as there are proposals to amend the vehicle categories and classes therefore change both the vehicle category and timeframe simultaneously could increase the number of erroneous decisions.

³ Source: <https://web.archive.org/web/20190327220551/https://www.pmc.gov.au/resource-centre/public-data/australian-government-public-data-policy-statement>

The LGA of SA supports Option 1: 28 days statutory time frame as the preferred option. As outlined in the LGA of SA's submission to the *Easy Access to Suitable Routes* issues paper, the average decision timeframe currently sits at an average of 5 days for local road managers (if less than 28 days). There are examples where the road manager will need more time, sometimes longer than 28 days, when access requests are complicated, require more information from operators, and/or route assessments need to be carried out.

There is no evidence to suggest that reducing the statutory timeframe will drive efficiencies for consenting to simple access requests, address NHVR processing times, or assist councils to undertake the more complex assessments. To the contrary, local road managers tell us that they need the right information within applications, and better tools and knowledge to perform their roles.

The consultation within the *Austrroads 2018* report notes that some local road managers believe that such a proposal may result in unintended approvals that risk public safety. Others have experienced bureaucratic errors within NHVR indicating that the regulator's function needs to be more robust to ensure that approvals would not be mistakenly given under a regime with shorter statutory timeframes and penalties for nil response.

Question 9.9: Under option 9.3b, which option would provide the right level of review? Would operators and road managers spend time and money seeking an external review?

Option 1: An independent review panel would be the preferred level of review. An independent review panel ought to be motivated by improving confidence in decision-making and due process. Any independent review should still give full and proper consideration to infrastructure capacity, public safety, amenity and appropriate conditions to reducing risks. Councils should not bear any future responsibility for consequences (such as liability for road safety and damage to infrastructure) when their access decisions have been overturned by a third party.

Similarly, an external review process will without doubt take time and funding to properly implement. These costs should not be borne by local government road managers.

Local road manager resources are currently a balance between expenditure, revenue and the types of services expected by the local community and they would not have the resources for all reviews to be referred to an existing jurisdictional tribunal or court.

South Australian councils vary widely on size, types and levels of economic activity, terrain, demographics, focus on innovation, etc. Some of the proposed rules are par-for-the-course for large metropolitan councils. However, if the same requirement was imposed on a small rural council, for example, they would need to reduce other council services. The extra burden(s) may even threaten their sustainability.

It should also be noted that despite having the authority to seek a review of local road manager access decisions by a state road authority (s 163 of the HVNL), the NHVR has not once used this power. Further consideration ought to be given to testing this process within the current HVNL, noting that state and local government spheres are quite independent in this regard.

Question 9.10: Would the structure proposed in option 9.4 be responsive to future changes?

The decision-making process needs the ability to be responsive to future changes, as long as there are checks and balances in place to ensure that there is structure around the standard and its evidence based, and not biased towards any stakeholder or state.

Expanding the NHVR Approved Guidelines for Granting Access would provide a solid basis, taking into consideration a number of reviews undertaken in relation to assessment guidelines with a focus on both sealed and unsealed roads and different classes of vehicles or vehicle envelopes.

Question 9.11. Would a single or dual-tiered pilot approach be preferred under option 9.5?

A single-tier pilot approach would be the preferred option for reviewing a national operational accreditation scheme. This will provide consistency in training, as well as flexibility should loads be different dimension when loaded as well as ensuring consistent training across jurisdictions.

Exemptions for certain types of oversize movements should only be considered where road safety is taken into consideration and not provided as a blanket exemption.

Question 9.12. Are there other costs or benefits that we should consider in the impact assessment?

Expanding as of right access under option 9.1 has a strong focus toward industry/operator views. The expansion to as of right access should take into consideration infrastructure protection as well maintenance costs for local roads. Whilst many of the benefits identified relate to reduced administrative burden, it does not necessarily take into account the consequential impacts on maintenance, road upgrades or network wide assessment costs to local road managers to consider, assess and implement this type of option.

Question 9.13. Are you aware of any data that may assist us in quantifying the magnitude of any of the costs or benefits associated the options presented in this chapter?

At the writing of this submission, the LGA of SA is unaware of data that may assist in quantifying the options proposed.

Question 9.14. Are there any other policy options or refinements to these policy options which you think should be considered? If so, please explain what they are, and the advantages and disadvantages compared to the options set out in this chapter.

Option 9.2e which relates to third party consents requirements can have impacts on road manager decisions, especially when a third party owns or managers an asset on a council road. There should be some consideration for either including third party with assets either as part of the process / in the NHVR Portal (as per option 2) or provide greater clarity to both the road manager and third parties in relation to their obligations.

Member councils have raised concerns that the HVNL is weighted towards approval regardless of whether the road is suitable or not. While access is being provided with conditions applied to minimise impacts on the road network as councils find that refusals due to road geometry are not accepted by the NHVR.