Submission to: National Transport Commission

Title: Discussion paper: Enforcement approaches for speeding heavy vehicles

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1. **About the Australian Trucking Association**

The ATA is the peak body representing the Australian trucking industry. Its members include state and sector-based trucking associations, leading transport companies and businesses with expertise in transport and truck technology.

2. **Summary of recommendations**

1. The NTC should not proceed with its proposal for an evidentiary provision that deems a speed limiter noncompliant if a heavy vehicle is detected travelling at or above 115 km/h.

2. The NTC should not proceed with its proposal for a power to immediately ground heavy vehicles travelling 15 km/h or more over posted or default speed limits.

3. The NTC should proceed with the ATA proposal to support the grounding of heavy vehicles for speeding offences of 15 km/h and above the open road 100 km/h limit when the detected speeding occurs on a flat road.

3. **Introduction**

The NTC released a discussion paper in May 2016 containing two proposals to amend the *Heavy Vehicle National Law* (HVNL) in an attempt to improve heavy vehicle compliance with road speed limits.

The two NTC proposals would create two new vehicle-related offences in the HVNL as follows:

**Proposal 1:** An evidentiary provision that deems a speed limiter noncompliant if a heavy vehicle is detected travelling at or above 115 km/h.

**Proposal 2:** A power to immediately ground heavy vehicles travelling 15 km/h or more over posted or default speed limits.

Previously in 2015, the ATA Council agreed to the following related policy positions:

- To endorse and maintain the ATA position of support for vehicle grounding for speeding offences 15 km/h above the open road 100 km/h limit, when the speeding occurs on a flat road.
- Not to endorse the NTC proposal for speed limiter devices to be deemed non-compliant in the event of speeds of 115 km/h and above.

The ATA has reviewed the range of new legal instruments and enforcement measures in place today, including the HVNL itself, the punitive financial penalties available, the chain of responsibility and enhanced enforcement activity including dedicated safety cameras. The ATA now believes that the two NTC proposals as they are written will not significantly improve safety and prove complicated to administer in law and impractical to enforce on the road.

However, the ATA maintains support for practical attempts to curb excessive speeding by heavy vehicles. Therefore, the **ATA continues to endorse its longstanding position to ground trucks for speeding offences 15 km/h and more above the open road 100 km/h limit, when the speeding occurs on a flat road.**

4. **Proposal 1: Provision to deem a speed limiter non-compliant**

The ATA does not endorse the NTC proposal to insert an evidentiary provision into the HVNL that would deem a speed limiter to be non-compliant if the heavy vehicle is detected travelling at or above 115 km/h. This would wrongly target chain parties beyond the driver who is directly responsible for vehicle speed.
While it is reasonable to expect a company or owner to take all reasonable steps to ensure their employees and agents do not tamper in any way with speed limiting devices, to enact a deeming or derivative liability provision is an unreasonable step. Generally speaking, the more serious the offence the more scrupulous the law should be in relation to proving it, and a “supervisory principle” is not a ground on which to reverse ‘onus of proof.’

There are also strong legal requirements placed on operators and on other parties already. As the NTC discussion paper notes, a ‘deeming provision’ similar to Proposal 1 exists in the NSW Road Transport Act 2013 (and Road Transport (General) Regulation) and yet excessive speeding events still occur. As the NTC paper also notes, despite the legal requirement for compliant speed limiter devices in trucks, the presence of a non-compliant device “does not cause a driver to speed”.

Nor it must be said, does the act of speeding mean the speed limiter is malfunctioning or non-compliant. Speed limiter devices were made compulsory in trucks in 1990, and today they are best understood as a setting within the engine management system that starves an engine of fuel once the set speed limit (in this case, 100 km/h) is exceeded. The speed limiter is not a brake, however, and the presence of a speed limiter does not affect the driver’s decision to comply with posted speed limits.

The only party in the chain of responsibility able to exert direct control over the downhill speed of a speed-limited truck is the driver, and all the best intentions of policy and monitoring systems cannot ensure that any driver applies the ancillary brake or service brakes appropriately. Vehicles including trucks can and do roll off hills, often as a fuel-saving technique. Although some speed limiters can address this kind of “over-run”, these are not typical. Most engine/exhaust brakes are incapable of limiting a truck’s speed when rolling off even a moderate gradient without actually gearing down. Most cruise control systems do not manage a truck’s speed other than to reduce engine power.

Operators know vehicle behaviour is ultimately controlled by the driver so despite putting many resources into good scheduling, education and training and monitoring drivers, in general operators can only take action after an event. Driver behaviour must therefore remain the key target of speed management because it is, and has always been, the driver’s responsibility to manage their travelling speed.

Some other current legal requirements in relation speed limiter devices include:

- Under HVNL s. 60 (1), it is an offence to use a vehicle, or allow it to be used, that contravenes a vehicle standard applying to that vehicle, on a road. It is also already against the law to tamper deliberately with an operational speed limiter. However, unless a vehicle is detected speeding while travelling on flat ground (i.e. level within a 1% gradient), it would be an error to deem a speed limiter non-compliant and thus its owner/operator liable for an offence.

- Under section 13 A (1) of the Motor Vehicle Standards Act 1989, it is an offence to do something that results in the modification of a vehicle in a way that renders it non-standard.

- Under regulation 11 of the NSW Act, the maximum speed limit for a vehicle of ≥4.5 t GVM is set to 100 km/h. It also gives duties to certain parties in the chain of responsibility to take steps to ensure their activities, schedules and arrangements do not cause a driver to exceed speed limits.

- Section 162 (2) of the same legislation already allows for proof that a truck was driven at a speed of greater than 115 km/h per hour on a road to be prima facie evidence that its speed limiter device was non-compliant at the time it was travelling at that speed.

Industry feedback suggests that operators given defect notices for ‘non-compliant’ speed limiters (after a detected speeding event) are then obliged to have them checked although there is often nothing wrong with them. A speed limiter can only be checked if the vehicle is in top gear on a flat road over a measured distance, or by using a dynometer. Feedback suggests the cost to an operator when forced to have a speed
limiter checked for compliance is generally between $200 and $300. This cost of course, does not include time off the road or the cost of the defect or penalty notice itself.

The long-standing industry issue with most speed management measures is about the degree of control that operators have over their vehicle’s speed. The ATA family has consistently asked that policy proposals from all jurisdictions ensure that the degree of control and influence is adequately catered for when determining suitable enforcement measures for speeding offences.

Recommendation:

The NTC should not proceed with its proposal for an evidentiary provision that deems a speed limiter noncompliant if a heavy vehicle is detected travelling at or above 115 km/h.

5. Proposal 2: Power to ground heavy vehicle

Consideration of the national freight task; the safety record of the heavy vehicle sector; and myriad new legal requirements, enforcement approaches and policy reforms particularly since 2008, has led the ATA to decline to support Proposal 2 and maintain its longstanding support for heavy vehicle grounding for speeding offences of 15 km/h and above the open road 100 km/h limit, when the speeding is on a flat road.

It should be noted that Proposal 2 as it is posed in the discussion paper is much broader than envisaged by industry and allows for the grounding of vehicles exceeding posted speed limits below 100 km/h. In a situation of speeds less than 100 km/h, truck speed is determined by the driver and the speed limiter does not play a role in limiting the speed of the vehicle. It would be ludicrous to issue a major defect notice for example when there is no defect to fix.

Proposal 2 as written could see trucks grounded on busy local roads or other unsafe locations and it would have the effect of penalising both the driver’s employer and the ultimate customer through delay and/or freight spoilage. Further, the prospect of grounding a truck travelling at 75 in a 60 km/h zone shows how it represents a penalty that is out of proportion to the offence, as well as targeting the wrong parties.

Instead, further more practical speed management measures are supported. These include, for example, the recently announced Monash Freeway speed trial that will (amongst other changes to traffic speeds), require all trucks to travel at a maximum of 90 km/h along a 10 km section of that freeway. According to reports, the second stage in the 18 month trial will ban all trucks from the right-hand lane, along with the 90 km/h speed limit in force, to gauge the effectiveness of imposing the two measures at the same time.\(^1\)

It should be noted that ATA member association, the VTA, has thrown its support behind the trial for its potential to create productivity and safety improvements but adds that “support for speed reductions only extends to the trial on this section of the Monash because the conditions here are quite particular to this road”. The ATA family also endorses this practical position, and looks forward to reviewing the real-world outcomes of the freeway trial.

Recommendations:

The NTC should not proceed with its proposal for a power to immediately ground heavy vehicles travelling 15 km/h or more over posted or default speed limits.

The NTC should proceed with the ATA proposal to support the grounding of heavy vehicles for speeding offences of 15 km/h and above the open road 100 km/h limit when the detected speeding occurs on a flat road.