Title: Enforcement approaches for speeding heavy vehicles

Type of report: Policy paper

Purpose: For decision

Abstract: This policy paper details recommendations relating to two proposals to complement existing regulatory measures and to provide an additional deterrent to heavy vehicle speeding under the Heavy Vehicle National Law: an evidentiary provision that deems a speed limiter noncompliant if a vehicle is detected travelling at or above 115 km/h and/or a power to immediately ground heavy vehicles travelling 15 km/h or more over posted or default speed limits.

Key words: Speed, enforcement, heavy vehicle, safety, speed limiter, deeming, grounding, Heavy Vehicle National Law, HVNL

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Foreword

The NTC is an independent statutory body established by the National Transport Commission Act 2003 (Cth). The NTC has ongoing responsibilities to develop and maintain uniform or nationally consistent road, rail and intermodal reforms to improve safety, productivity and environmental outcomes.

Despite the introduction of a range of regulatory and speed detection tools, heavy vehicle speeding remains a significant safety issue, with heavy vehicles still over represented in fatal and serious crash statistics.

In November 2014 Australia’s transport ministers requested the National Transport Commission (NTC) to assess two proposals put forward by stakeholders for changes to the Heavy Vehicle National Law (HVNL) to address heavy vehicle speeding. These were:

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.

This policy paper sets out recommendations in relation to the two additional measures proposed by stakeholders to improve the regulation of heavy vehicle speeding. These recommendations were informed by stakeholder feedback on the NTC’s paper, Enforcement Approaches for Speeding Heavy Vehicles, that was released for public consultation in May 2016.

I would like to thank jurisdictions, stakeholders and NTC staff for their work in preparing this paper.

David Anderson PSM
Chairman
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Executive summary

The National Transport Commission (NTC) is investigating whether changes to the Heavy Vehicle National Law (HVNL) are required to improve heavy vehicle compliance with speed limits.

In particular, the NTC is examining two proposals for amendments to the HVNL:

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.

In May 2016 the NTC published a discussion paper on these proposals. Eighteen submissions were received. With the exception of one confidential jurisdiction submission, only one other submission was received from state and territory road transport agencies. However, submissions were also received from industry, police and the National Heavy Vehicle Regulator.

As this policy paper discusses, stakeholders are divided in their support for the proposals. A number of industry stakeholders also expressed concern about the evidence presented in the discussion paper to show the deterrent effect of the proposals. In addition, stakeholders differ in their views on the effectiveness of the current suite of speed compliance tools.

Accordingly, based on: the stakeholder submissions received; the absence of any additional evidence being provided through the discussion paper consultation process to show how the proposals would have a deterrent effect; the broader context of heavy vehicle and road reforms; and having regard to the Council of Australian Governments (COAG) Principles of Best Practice Regulation, the NTC considers that neither proposal 1 nor proposal 2 should be adopted, and that there should not be any changes to the law at this time.

The recommendations in this paper were endorsed by Australia’s transport ministers at their November 2016 meeting.

| Proposal 1: An evidentiary provision that deems a speed limiter noncompliant if a heavy vehicle is detected travelling at or above 115 km/h | NTC recommendation: That proposal 1 not be adopted. |
| Proposal 2: A power to immediately ground heavy vehicles travelling 15 km/h or more over posted or default speed limits | NTC recommendation: That proposal 2 not be adopted. |
1 Context

Key points
- Higher speeds are strongly associated with a greater likelihood of crashing and more serious crash outcomes.
- Heavy vehicles are over-represented in fatality and serious injury crash statistics.

1.1 Objectives

The National Transport Commission (NTC) is investigating whether changes to the Heavy Vehicle National Law (HVNL) are required to improve the regulation of heavy vehicle speeding. The aim is to ensure all parties comply with speeding requirements and to reduce the number of heavy vehicle crashes where speed is a contributing factor.

1.2 Background

Heavy vehicle speeding is still a significant safety issue in the road transport industry. Since the 1990s, a range of regulatory and speed detection tools have been introduced by governments to help address heavy vehicle speeding and to ensure compliance with speed limits. Available data shows that a high proportion of heavy vehicles exceed speed limits on open and urban roads (Mooren et al., 2014). It is estimated that if all heavy vehicles were to comply with speed limits all the time, there would be a 29 per cent reduction in crashes (Mooren et al., 2014).

Stakeholders proposed two additional measures be included in the HVNL to complement existing measures and to provide an additional deterrent to heavy vehicle speeding:
- an evidentiary provision that deems a speed limiter noncompliant if a heavy vehicle is detected travelling at or above 115 km/h, and/or
- a power to immediately ground heavy vehicles travelling 15 km/h or more over posted or default speed limits.

As noted in the National Road Safety Action Plan 2015–2017 Action 10, agreed by the Transport Industries Ministerial Council in November 2014, the NTC was asked to assess these proposals to encourage safer road use by strengthening the speed compliance provisions of the HVNL.

In May 2016 the NTC published the Enforcement Approaches for Speeding Heavy Vehicles Discussion Paper for public consultation.

These proposals, and the stakeholder feedback provided in response to the discussion paper, are discussed in section 4 of this paper.

1.3 Consultation process

As part of developing the discussion paper, the NTC undertook preliminary consultation and received data from:
- Department of Planning and Transport Policy, South Australia
- Department of State Growth, Tasmania
- Department of Transport and Main Roads, Queensland
- Main Roads Western Australia
- South Australia Police
- Tasmania Police
- Transport for New South Wales
- VicRoads
- Victoria Police
- Western Australia Police
The discussion paper sought stakeholder feedback on the proposals and the following questions:

**General:**

1) Are current speed compliance tools for heavy vehicles effective in securing compliance? If not, why not?

2) Are any additional speed compliance tools required to enhance the existing measures to reduce heavy vehicle speed? Why?

**Proposal 1:**

3) Do you support the introduction of an evidentiary provision that deems a speed limiter noncompliant if a vehicle is detected travelling at or above 115 km/h? Why?

4) Would the introduction of an evidentiary provision be consistent with the agreed amendments to the HVNL’s chain of responsibility regime? Why?

5) Should the existing speed threshold adopted in New South Wales (115 km/h) be re-evaluated? If so, why and at what level should this threshold be set?

6) What defences, if any, should apply if an evidentiary provision that deems a speed limiter noncompliant is introduced? Why?

**Proposal 2:**

7) Do you support the introduction of an additional heavy vehicle grounding power for speeding heavy vehicles? Why?

8) Should this power be applied to all heavy vehicles detected at a level above any speed limit or should it only apply to those detected at a level above the 100 km/h speed limit? Why? What should the threshold be?

9) If a grounding power is created, how could the issue of sensitive, perishable or live loads be managed? How could the issue of liability for grounded loads be managed?

10) If a grounding power is created, what should the time period for grounding be? Why?

**Both proposals:**

11) If you support the adoption of both proposals, should the evidentiary provision and grounding power operate together or separately? Why? Are there other means by which these proposals could be adopted?

Eighteen submissions, including one confidential submission, were received in response to the discussion paper:

- Australian Logistics Council (ALC)
- Australian Trucking Association (ATA)
- Bob Cumming
- Gas Energy Australia (GEA)
- Greg Byrnes
- John Lambert
- National Heavy Vehicle Regulator (NHVR)
- New South Wales Police Force
- Peter Kazzi
- South Australia Police
- South Australian Freight Council (SAFC)
- Stuart Greig
- Toll Group
- Truck Industry Council (TIC)
- VicRoads
- Victoria Police
- Western Australia Police
- confidential jurisdiction submission.
This policy paper represents the conclusion of this investigation and consultation process. It provides policy recommendations for ministers’ consideration in relation to the two proposals.
2 Problem statement

As the discussion paper noted, the road transport industry is large and diverse, with the size of operations ranging from Australia’s largest companies to small or one-person operations. Significantly, these smaller operations are estimated to comprise 60 per cent of the industry.

Despite significant improvements in road safety since the 1960s, the transport industry remains hazardous (Chain of Responsibility Taskforce, 2014, p. 3). A recent Australian study (Mooren et al., 2014) reported that heavy vehicles comprise only 3 per cent of registered vehicles and 8 per cent of total vehicle kilometres travelled but were involved in 18 per cent of fatal and serious injury road crashes. These high crash rates have contributed to making road freight transport one of the most dangerous industries in which to work. The most recent Fatal Heavy Vehicle Crashes Australia Quarterly Bulletin (Bureau of Infrastructure, Transport and Regional Economics, 2014) reports that 171 fatal heavy vehicle crashes occurred in the 12-month period from September 2014 to September 2015. Figure 1 indicates the number of fatal crashes over previous years for articulated heavy vehicle, rigid heavy vehicles and buses.

Figure 1: Fatal crashes involving heavy vehicles (each point shows the number of fatal crashes during the preceding 12 months)

Source: Bureau of Infrastructure, Transport and Regional Economics, 2014

Crash-related cost of heavy vehicle speeding

As the discussion paper also noted, heavy vehicle crashes impose significant costs on society through injuries to road users resulting in loss of work time, medical costs (and related impacts), road asset damage and the cost of traffic congestion due to crashes. Reducing the incidence of heavy vehicle crashes could lead to significant savings. Factors that can reduce risks of crashes include improvements in heavy vehicle roadworthiness, improvements in fatigue management, improved speed limit compliance and improvements in vehicle construction and road design (Bureau of Infrastructure, Transport and Regional Economics, 2014).

Safety risk of heavy vehicle speeding

A speeding heavy vehicle represents a significant risk to public safety. Speeding may involve driving at speeds above the posted speed limit or driving at speeds inappropriate for the conditions. Increased speed means not only an increased risk of crashing but also increased severity if a crash occurs. A heavy vehicle that is travelling at high speeds and is involved in a crash poses a risk of death or disabling injury to other road users.

Previous analyses undertaken by the NTC of speeding in heavy vehicle road transport has indicated:

- Speeding is a significant factor in heavy vehicle crashes and is likely to be a greater risk with heavy vehicles than lighter vehicles (NTC, 2005, p. 8).
There is a high cost to the community from fatalities and injuries from heavy vehicle crashes where speeding is a factor (NTC, 2005, p. 16).

Heavy vehicle drivers can be put under external pressure to meet deadlines, which can influence on-road speeding (NTC, 2005, p. 10).

Speeding heavy vehicles attract higher operating and maintenance costs but also achieve a competitive advantage over operators who do not speed (NTC, 2005, p. 14).

Considerable community concern exists about sharing the roads with speeding heavy vehicles from a safety aspect. This problem is being compounded by the projected doubling of the freight task over the next 15 years, which is likely to see more trucks on the road (NTC, 2005, p. 16).

Incidents of heavy vehicle speeding

Data provided by FleetEffect, a commercial provider of electronic compliance services to heavy vehicle operators, indicates that in the 12 months from September 2014 to September 2015, 10,252 speeding incidents were recorded for around 210 vehicles. This equates to almost 50 speeding events per vehicle. While the number of incidents involving speeding in excess of 110 km/h was small (less than 3 per cent), FleetEffect still logged 286 instances of speeding at these levels.

More significantly, speeds in excess of 100 km/h were logged on 7,763 occasions in one calendar year. This equates to 75 per cent of all speeding incidents recorded by FleetEffect.

Community concern about heavy vehicle speeding

Heavy vehicle drivers are not at fault in all heavy vehicle serious crashes. However, they are over-represented in fatal and serious injury crash statistics.

A 2015 National Truck Accident Research Centre (NTARC) report (National Truck Accident Research Centre, 2015) describes 549 ‘serious loss crashes’. Of these crashes, the NTARC found that inappropriate speed was the ‘predominant cause’ of these crashes, accounting for 27 per cent of claims registered across eight years (National Truck Accident Research Centre, 2015).

Significantly, these figures have remained consistent in the four reports the NTARC has issued since 2002, meaning the proportion of crashes arising from inappropriate speed is not declining. It should be noted that the NTARC report criteria includes ‘inappropriate speed for the conditions’, which may still be within the posted speed limits (National Truck Accident Research Centre, 2015).

Although the literature generally recognises speed as a major cause of road incidents, the most recent Community Attitudes to Road Safety – 2013 Survey Report (Department of Infrastructure and Regional Development, 2013) indicates that many Australians are becoming less conscious of the risks of speeding and also that they are more likely to tolerate or accept these risks than previously.

2.1 Stakeholder feedback on the problem statement

The discussion paper did not include any questions in relation to the problem statement. However, a number of stakeholders expressed concern with the problem statement and the data relied on in the discussion paper.

In particular Toll Group expressed concern that the data quoted in the discussion paper to support the proposed policy interventions did not differentiate the target heavy vehicle population (12 tonne and above) from the non-target (4.5 to 12 tonne) heavy vehicle population, concluding that it was ‘impossible to use this data as definitive evidence that vehicles 12 tonne and above are significantly more problematic than other categories of vehicle’.

In addition, Toll Group expressed concern that ‘a narrow policy focus on high-end speeding events for vehicles above 12 tonne may not yield the best road safety results’:

Although high-order speeding can have serious and even fatal consequences, these proposals may miss the mark.

For rigid trucks, the Bureau of Infrastructure, Transport and Regional Economics (BITRE) reports that in recent years around 60% of fatal crashes occurred on roads where the
posted speed limit was 90 km per hour or less. Similarly, the National Truck Accident Research Centre in its 2015 report found that inappropriate speed for the prevailing conditions continued to be the predominant cause with major truck crashes, accounting for 27% of claims registered.

Toll’s work with Engistics suggests that, counterintuitively, the most likely speed for serious load restraint incidents is 40 to 60km/hr. This is because it involves enough braking force to overcome friction, and continues long enough to create a risk of propelling the load through the vehicle cabin. In contrast, at lower speeds braking deceleration involves a sharp peak of short duration. At higher speeds, braking deceleration is more modest, but it lasts for many seconds.

In a similar vein, GEA noted:

... the data provided in the discussion paper related to a maximum speed enforcement limit for heavy vehicles of 100 km/h, with the assumptions based on this limit. However, the discussion paper goes on to explore enforcement using speed limiters technology based on a 115km/hr level, without any analysis of the exceedances at this level. This raises a question as to how many exceedances occurred at the 115km/hr level in the 10,252 samples reported and further would these exceedances have been captured by roadside enforcement. Section 1 does identify 286 instances of speeding in excess of 110 km/h. Further analysis of these 286 instances by vehicle and usage would prove beneficial in targeting enforcement activities.
3 Current compliance and enforcement tools for heavy vehicle speeding

Key points
- Speeding can be both a driver and a vehicle (speed limiter) offence.
- Chain-of-responsibility parties can also be held responsible for heavy vehicle speeding.
- There are currently a range of tools to manage and enforce speeding heavy vehicles in the HVNL and in state-based road safety Acts and regulations.

3.1 Current speed compliance tools for heavy vehicles

As the discussion paper notes there are two types of speeding offences: violation of posted speed limits and violation of speed capability controls.

The speed at which a vehicle is driven is at the discretion of the driver, subject to the capabilities of the vehicle. Where driving at a speed in excess of a posted limit is detected, sanctions are imposed on the driver.

Where a speed limiter is required, it is the responsibility of the operator of a vehicle or another responsible party (such as a party in the chain of responsibility) to ensure that the vehicle cannot be operated in excess of the designated speed. Violation of a speed limiter requirement is a vehicle-related offence, and any sanctions are imposed on the operator or other responsible party.

On this basis, speeding can be both a driver and a vehicle (speed limiter) offence. The driver can be subject to a behaviour offence, and the operator, or other responsible party, can be subject to an offence related to the condition of the speed limiter. In some circumstances, key off-road parties in the logistics supply chain can also be held responsible for heavy vehicle speeding.

Currently a range of tools are available to manage and enforce speeding heavy vehicles. These tools are to be found in state-based road safety Acts and regulations, and in the HVNL. All Australian states and territories except Western Australia and the Northern Territory are participating jurisdictions for the purposes of the HVNL and have applied the HVNL as a law of their jurisdictions.

The current available tools are outlined below.

3.2 Speed limits and on-road monitoring

Speed limits are regarded worldwide as a very effective method for controlling the speeds at which vehicles travel (Saifizul, Yamanaka, & Karim, 2011, p. 1068). Speed limits are used in most countries to set the maximum (or minimum in some cases) speed at which road vehicles may legally travel on particular stretches of road. Most Australian jurisdictions enforce a maximum speed limit for heavy vehicles of 100 km/h in all circumstances. Some vehicle classes, such as road trains, are prohibited from travelling in excess of 90 km/h in some jurisdictions.

Speed limits are enforced in a variety of ways, a number of which are outlined below.

On-road enforcement

On-road enforcement is the major tool to control heavy vehicle speeds. This activity is almost universally the responsibility of the police in each jurisdiction, with supporting resources from transport and road authority personnel. The major focus of any activity remains the driver of the vehicle rather than off-road parties. There are some specific heavy vehicle operations, but in general on-road speed enforcement targets all road users.
**Speed detection**

Fixed and mobile speed cameras are a highly effective element of speed enforcement across the country. Cameras enable on-road enforcement to be undertaken across all vehicle types.

**Point-to-point speed cameras**

Point-to-point speed cameras involve measuring the average speed of heavy vehicles over long distances. Point-to-point enforcement works by measuring the amount of time it takes a heavy vehicle to drive between two points and then calculates the average speed of the vehicle. If the vehicle’s average speed is higher than the speed limit for the length of road, the driver will be taken to have breached the speed limit.

**Safe-T-Cam**

Safe-T-Cam operates currently in two states: New South Wales (NSW) and South Australia. Safe-T-Cam is an automated monitoring system designed to read the front numberplate of heavy vehicles to determine if the vehicle has travelled at excessive average speed, or has travelled beyond prescribed driving hours, between two or more of the Safe-T-Cam sites.

### 3.3 Sanctions against the driver

A framework of penalties consisting of fines and demerit points exists for speeding offences. It is underpinned by the theory that a financial penalty or loss of licence is an effective deterrent against speeding. The powers for these penalties are in state and territory legislation, with significant differences in penalties between jurisdictions. These differences are related to:

- vehicle classes (such as light vehicles and heavy vehicles)
- categories of speeding breakpoints
- the availability and use of fines and demerit point loss against each of these speeding breakpoints
- the availability and use of infringement notices (on-the-spot fines) for breaches of speed limits by drivers
- the availability and use of court sanctions (such as maximum fines and licence disqualification).

**Anti-hoon (anti-hooning) laws**

All jurisdictions have the power to seize vehicles or numberplates for breaches of traffic law. Under anti-hoon laws, authorised officers are able to immobilise and impound vehicles found travelling at very high speeds.

### 3.4 Speed limiters

Speed limiters are devices that limit the maximum speed of a vehicle. All heavy vehicles of more than 12 tonnes gross vehicle mass (GVM) and all buses more than 5 tonnes GVM are required to comply with the *Australian Design Rule 65/00 Maximum Road Speed Limiting for Heavy Goods Vehicles and Heavy Omnibuses* and be fitted with a speed limiter that is set to a maximum speed of no more than 100 km/h. ADR 65/00 also provides flexibility for jurisdictions to regulate speed limiter settings for other vehicles classes; for example, road trains are speed-limited to 90 km/h in South Australia and the Northern Territory.

A number of offences relate to speed limiters under the HVNL:

- section 60 (1), which requires a person not to use or permit the use of a heavy vehicle that contravenes a vehicle standard, including those that apply to speed limiters
- section 93 (1) and (2), which requires a person not to tamper with a speed limiter or to fit or direct the fitting of a speed limiter
- section 93 (3), which requires an operator not to use or permit the use of a speed limiter if they know it has been tampered with.
3.5 Penalties and sanctions for defective heavy vehicles

The following measures are available under both the HVNL and existing state and territory law for heavy vehicles that do not meet vehicle standard requirements.

Suspending and cancelling registration

All jurisdictions and the HVNL provide for the suspension of vehicle registration where a heavy vehicle defect notice relating to the vehicle has not been complied with, or where the vehicle does not comply with applicable vehicle standards such as not complying with the requirements for speed limiters.

Defect notices under the Heavy Vehicle National Law

Under the HVNL, a heavy vehicle defect notice may be issued to an unroadworthy heavy vehicle. There are two main categories of defects: minor and major defects. A minor defect notice will be issued in cases where the safety risk is not imminent and serious, and the vehicle may continue to be used on roads. A major defect notice is issued when a vehicle poses an imminent and serious safety risk. Defective speed limiters are not considered major defects, as once a vehicle has slowed down or stopped, the imminent safety risk caused by speeding is eliminated.

3.6 Chain of responsibility and the HVNL

Compliance with the HVNL is a responsibility that is shared by a number of clearly defined off-road parties in the road transport supply chain. The concept, known as ‘chain of responsibility’ (CoR), seeks to recognise the effects the actions, inactions and demands of off-the-road parties in the transport chain has on ‘on road’ driver behaviour. It also seeks to ensure that anybody who has control over the transport task can be held legally liable. Chapter 5 of the HVNL requires that chain of responsibility parties (all employers, prime contractors, operators, schedulers, loading managers, consignors and consignees, packers, loaders and unloaders) take measures to prevent heavy vehicle breaches of speed limits.

In November 2015 ministers endorsed reforms to the HVNL to clarify and restructure the obligations of parties in the chain of responsibility as positive, primary duties of care focused on ensuring safety through an outcomes-based approach to compliance. As with the provisions of the HVNL, these reforms will apply as law in all participating jurisdictions.

Although not a participating jurisdiction for the purposes of the HVNL, Western Australia also introduced chain of responsibility obligations into its Road Traffic (Vehicles) Act 2012 and associated regulations in April 2015. However, the Western Australian chain of responsibility obligations do not apply in relation to speed and fatigue, which remain driver-only offences. In addition, the Western Australian obligations apply to both light and heavy vehicles over 4.5 tonnes, as with the other obligations of the Road Traffic (Vehicles) Act.

Similarly to Western Australia, the Northern Territory is also not a participating jurisdiction for the purposes of the HVNL. However, unlike Western Australia, the Northern Territory does not include chain of responsibility as part of its own road safety law.

3.7 Telematics

Industry use of ‘telematics’ is becoming increasingly important as a tool to ensure compliance with speed limits. Telematics uses satellite tracking and wireless communication technology to remotely monitor where, when and how heavy vehicles are being operated on the road network. This includes the monitoring of speeding in real time and of driver behaviour.

Telematics systems typically comprise an in-vehicle device containing a series of sensors and inputs linked to a back office that captures, sends, stores and analyses information electronically.

Trucking operators have publicly reported the speed-related compliance benefits they are experiencing from the use of telematics. Some industry groups, such as the ALC, have also argued for the mandatory use of telematics for heavy vehicles to monitor compliance with speed-related requirements.
3.8 Speed information and education

Information can help educate parties about their responsibilities in relation to speed and speed limiter compliance. The following are examples of current initiatives.

**TruckSafe accreditation**

The Australian Trucking Association’s accreditation scheme ‘TruckSafe’ is based on a set of minimum standards a trucking business should meet. TruckSafe’s emphasis on maintenance training and education may contribute to improved speed limiter compliance and overall compliance with heavy vehicle speeding laws.

**Speed limiter maintenance guidelines**

The Commercial Vehicle Industry Association of Queensland, now a national industry body, the Heavy Vehicle Industry Australia (HVIA), has also developed compliance guidelines for the heavy vehicle industry for ADR 65/00, *Compliance Guidelines for the Heavy Vehicle Industry ADR65/00 Maximum Road Speed Limiting for Heavy Goods Vehicles and Heavy Omnibuses*. These guidelines provide guidance on workshop procedures for compliance with maximum road speed limiting and outline service provider obligations for vehicle repair and servicing. Providers who follow the guidelines produce an audit trail to help demonstrate their compliance with chain of responsibility requirements.

**Truck Industry Council policy on heavy vehicle speed limiters and ADR 65/00**

The TIC has developed a policy statement on heavy vehicle speed limiters and tampering with these devices, *TIC Policy on Heavy Vehicle Speed Limiters and ADR 65/00*. The statement outlines the key responsibilities of manufacturers and distributors of heavy commercial vehicles to ensure vehicles comply with ADR 65/00 speed limiter requirements.

**Australian Logistics Council National Logistic Safety Code**

The *National Logistic Safety Code* was developed by member companies of the ALC to help all parties understand their role and obligations in making the supply chain safe and compliant. The code applies to a range of supply chain activities including speed management.

3.9 Discussion paper questions and stakeholder feedback received

The discussion paper posed the following questions for stakeholder consideration.

1. Are current speed compliance tools for heavy vehicles effective in securing compliance? If not, why not?
2. Are any additional speed compliance tools required to enhance the existing measures to reduce heavy vehicle speed? Why?

The responses of industry, police and enforcement agencies to these questions was mixed.

In terms of industry feedback, the SAFC noted ‘current speed compliance tools are effective in securing majority compliance with speed requirements’. In this context, and referring to the tools and measures discussed, the SAFC stated that ‘there is already a vast array of compliance and enforcement measures available for addressing speed issues with heavy vehicles’. According to the SAFC, ‘these [measures] work well to encourage those with the ability to effect on-road actions to do so’. This view was also supported by the ALC.

In considering the need for further speed compliance tools, the ALC noted:

... there must be clear evidence justifying any changes to the law. In particular, there must be clear evidence to justify changing the usual operation of law requiring a prosecutor to prove beyond all reasonable doubt all integers of an offence before someone can be found guilty of an offence.
In this context, the ALC noted improvements in the safety performance of the heavy vehicle fleet. 'Data from the Bureau of Infrastructure, Transport and Regional Economics show fatal crashes involving articulated trucks decreased by an average of 4.4% annually over three years to March 2016’. According to the ALC, ‘any further extension of sanctions must satisfy the question: are there reasonable grounds to believe the creation or extension of an offence will lead to tangible improvement in safety outcomes?’.

Similarly, the ATA submitted:

... 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.

In contrast, the TIC was of the view that:

... there is sufficient evidence to suggest that some trucks are speeding as a result of deliberate and wilful modification of the vehicles speed limiter system/s and this would suggest that existing in-service compliance/enforcement tools/measures are not entirely effective and that such in-service compliance/enforcement could be improved.

This view was also supported by Victoria Police who noted that '[s]peed limiting devices can be easily over-ridden or re-programmed, or even bypassed by fitting non-specified tyres or differentials'.

Similarly to industry, police and enforcement agencies were divided in their views on the effectiveness of the HVNL’s current speed compliance tools.

Both South Australia Police and Victoria Police considered the current HVNL speed compliance tools generally 'adequate', with Victoria Police considering improvement notices ‘effective’ for chain of responsibility speeding offences. However, South Australia Police noted ‘difficulties in applying chain of responsibility or extended liability to off-road parties’.

VicRoads considered that:

Speed and red light cameras on arterial roads and point to point cameras on freeways are having somewhat an effect on heavy vehicle but are limited due to their fixed nature and known locations.

VicRoads also believed that additional mechanisms to achieve speeding compliance are considered necessary but that these could be future telematics options including IAP for recidivist speeders or making EWDs mandatory.

In contrast, the NHVR did not consider the current HVNL speed compliance tools effective in securing speed compliance:

Recent major speed enforcement operations undertaken by police or NHVR Service Providers have relied on powers and penalties not found in the HVNL. This includes operations that have produced 91% reductions in on-highway speeding in NSW.

The submission by the NSW Police Force also supported the NHVR conclusions, noting that the current NSW tools for speeding compliance have ‘demonstrated to be effective’, with the current provisions also allowing ‘other administrative sanctions that may be applied by the Roads and Maritime Services following vehicles detected for speeding’. In this context the NHVR suggested that ‘the higher priority for legislative reform should be provisions that support a systemic focus upon risk reduction, drive managerial action by parties higher in the chain of responsibility, support assignment of enforcement resources toward root-causes and complement the existing and long-standing focus on on-road behaviours’. For the NHVR, ‘legislative reforms of this type would also better leverage high capacity monitoring and detection technologies now available in fixed and mobile roadside, point-to-point and in-vehicle deployments’.

The SAFC and Toll Group also considered that the Safe-T-Cam system currently operating in South Australia and NSW should be expanded nationally to remove speeding dark zones.

Toll Group also supported the used of mandatory telematics and the notification of individual drivers’ speeding infractions to operators. Similarly GEA suggested that spatial data from roads
management agencies be made available to facilitate enhancement of existing in-vehicle monitoring and telematics systems.

As other tools, Victoria Police suggested operators should be “expelled’ from the National Heavy Vehicle Accreditation Scheme (NHVAS) for detected speeding offences, and that prohibition notices should also be issued for companies that have vehicles consistently in breach of speed limiter requirements.
4 Speed enforcement reform proposals

Key points
The NTC is investigating whether the compliance and enforcement tools for heavy vehicle speeding should be expanded to include:

- an evidentiary provision that deems a speed limiter noncompliant if a heavy vehicle is detected travelling at or above 115 km/h, and/or
- a power to immediately ground heavy vehicles travelling 15 km/h or more over posted or default speed limits.

This section details the reform proposals that were considered and the stakeholder feedback received on these proposals.

4.1 Proposal 1: Speed limiter deemed noncompliance (evidentiary provision)

As noted in the discussion paper, speed limiters aim to prevent a vehicle exceeding 100 km/h. Proposal 1 was to amend the HVNL to include an evidentiary provision that deems a speed limiter noncompliant if a heavy vehicle is detected travelling at or above 115 km/h. Under this proposal, evidence of speeding at or above 115 km/h would be taken as prima facie evidence that the speed limiter was defective, and this evidence could then be used to prove the following offences under the HVNL:

- that the vehicle was noncompliant with vehicle standard requirements (section 60), or
- that the speed limiter had been tampered with (section 93).

The purpose of this proposal was to create an evidentiary provision that avoids the technical challenges of determining speed limiter compliance. This means that an offence could be prosecuted more quickly and more efficiently than currently under either section 60 or section 93 of the HVNL.

As noted in the discussion paper, NSW has enacted a similar evidentiary provision in section 162 of the Road Transport Act 2013 (NSW) as a derogation to section 93(8A) of the HVNL Act 2013 (NSW). That state’s approach means operators must demonstrate compliance with ADR 65/00 before the heavy vehicle is allowed back onto the road. A defence is also available for vehicles with compliant speed limiters that are detected speeding downhill. Section 162 of the Road Transport Act provides:

162 Vehicles to be speed limited

(1) The responsible person for a vehicle to which this Part applies is guilty of an offence unless the vehicle is speed limiter compliant when the vehicle is being driven on a road.

Maximum penalty: 30 penalty units (in the case of an individual) and 150 penalty units (in the case of a corporation).

(2) In proceedings for an offence against this section, proof that the vehicle concerned was driven on a road at a speed of more than 115 kilometres per hour is admissible and is prima facie evidence that the vehicle was not speed limiter compliant at the time that it was travelling at that speed.

(3) It is a defence to a prosecution for an offence against this section if the defendant proves:

(a) that the vehicle was, at the time of the alleged offence, a stolen vehicle or a vehicle illegally taken or used, or

(b) that the vehicle is speed limiter compliant and that, at the time it was travelling at a speed of more than 115 kilometres per hour, the gradient of the length of road along which the vehicle was being driven at or immediately before that time, combined with
the speed at which the vehicle was travelling on that length of road, caused it to be driven at more than 100 kilometres per hour despite the vehicle being speed limiter compliant.

(4) In proceedings for an offence against this section, it is no defence that the defendant had a mistaken but reasonable belief as to the facts that constituted the offence.

Section 162(2) of the Road Transport Act is often referred to as a ‘deeming provision’ because the detection of a heavy vehicle at or above a designated speed is deemed as sufficient evidence of speed limiter noncompliance.

Currently an offence against section 60 of the HVNL is contingent on the detection of a defective speed limiter, which requires expert knowledge. Under the NSW provision the mere detection of a heavy vehicle moving at or above 115 km/h is evidence of a noncompliant speed limiter and constitutes an offence for the responsible person. ‘Responsible person’ is defined in the Road Transport Act as ‘the current or previous registered operator of the vehicle’ or ‘a person who has a legal right to possession of the vehicle’.

NSW has stated that it considers section 162 of its Road Transport Act an effective compliance tool that focuses on safety and removes the need to access the actual speed limiter device or prove deliberate tampering with speed limiters. Other states and territories have not introduced a speed limiter provision along the lines of the NSW provision. Until the introduction of the HVNL, Queensland also had a provision that enabled a speed-limited vehicle to be issued with a defect notice if the vehicle was detected travelling more than 115 km/h. This provision required re-certification of the speed limiter before the vehicle would be allowed back onto the road.

However, the discussion paper also noted that adopting an evidentiary provision in the HVNL similar to section 162(2) of the Road Transport Act may result in a different outcome to that achieved in NSW. The NSW provision provides that a ‘responsible person’ is guilty of an offence if the speed limiter is noncompliant (if the vehicle has been detected travelling at or above 115 km/h). In contrast section 60 of the HVNL provides that a ‘person’ must not use or permit to be used on a road a heavy vehicle that contravenes a heavy vehicle standard. A similar offence construction is also used in relation to the speed limiter tampering offences under section 93 of the HVNL.

Although adopting an evidentiary provision similar to the NSW provision would avoid the challenges of determining speed limiter compliance, to prove an offence under section 60 or 93 of the HVNL would still require evidence that the ‘person’ permitted the offending vehicle to be used. The HVNL offences are broader than the offence in section 162 of the Road Transport Act in that the HVNL offences cover all ‘persons’ who may have permitted the use of the vehicle, not just the person covered within the definition of a ‘responsible person’.

Advantages

The discussion paper noted that the advantages of amending the HVNL to include an evidentiary provision that deems a speed limiter noncompliant if a heavy vehicle is detected travelling at or above 115 km/h included that the proposal:

- allows detection of a noncompliant speed limiter without physical inspection
- is specifically aimed to stop speeding heavy vehicles
- targets the behaviour of off-road parties, such as the operator, to ensure compliance with speed requirements.

Disadvantages

As noted in the discussion paper disadvantages of the proposal include:

- deeming a speed limiter to be defective without definitive proof
- relieving authorised officers and the prosecution of the obligation to prove elements of the offence that would be within their capacity to discover (that the speed limiter was actually defective)
- introducing an evidentiary provision to be used with existing HVNL offences that does not exactly replicate the NSW offence
- that the only recourse available to the responsible party is to defend the charge in court.
**Issues for further consideration**

The discussion paper noted that if proposal 1 were to be progressed, consideration would also need to be given to the matters outlined below.

**Compatibility with agreed chain of responsibility amendments**

Transport ministers agreed in November 2015 to reformulate the chain of responsibility obligations of the HVNL as a primary duty on chain of responsibility parties to ensure the safety of their road transport operations. These reforms will also result in the removal of a number of offences that are covered by the scope of the primary duty. This includes the removal of existing deemed liability offences that hold off-road parties liable for breaches committed by the driver such as the current offence under section 219 of the HVNL in relation to speed.

The introduction of an evidentiary provision that deems a speed limiter noncompliant if a heavy vehicle is detected travelling at or above 115 km/h without proof that the speed limiter is actually noncompliant may be contradictory to the positive-duties approach taken under the agreed reforms. This is a concern that has been raised by some jurisdictions and industry bodies during preliminary consultation in the development of this paper.

**Determining speed thresholds**

Section 162(2) of the Road Transport Act provides some precedent as to the speed threshold that might be applied. However, the discussion paper noted that there may be some merit in re-evaluating the 115 km/h speed level. In particular, the discussion paper noted further consideration was required to ensure a speed threshold that was fair and that considers both technology advances and the shortcomings of speed limiters.

**Discussion paper questions**

The discussion paper posed the following questions for stakeholder consideration.

3. *Do you support the introduction of an evidentiary provision that deems a speed limiter noncompliant if a vehicle is detected travelling at or above 115 km/h? Why?*

4. *Would the introduction of an evidentiary provision be consistent with the agreed amendments to the HVNL’s chain of responsibility regime? Why?*

5. *Should the existing speed threshold adopted in New South Wales (115 km/h) be re-evaluated? If so, why and at what level should this threshold be set?*

6. *What defences, if any, should apply if an evidentiary provision that deems a speed limiter noncompliant is introduced? Why?*

**4.2 Stakeholder feedback – proposal 1**

Stakeholders are divided on proposal 1: an evidentiary provision that deems a speed limiter noncompliant if a heavy vehicle is detected travelling at or above 115 km/h. With the exception of VicRoads, enforcement agencies and police broadly supported proposal 1. However, VicRoads and industry largely did not support this proposal.

As the jurisdiction applying the evidentiary provision on which proposal 1 is based, the NSW Police Force supported proposal 1, noting that the defences available under the Road Transport Act should apply. Similarly, South Australia Police and Victoria Police also supported proposal 1, noting it would be ‘useful’.

South Australia Police was of the view further consideration was required to ensure the provision did not create other difficulties, such as requiring the survey of roads in order to certify their slopes. Victoria Police also questioned the proposed 115km/h threshold and suggested it should be re-evaluated. In particular, Victoria Police queried why the vehicle must be permitted to exceed the legal speed limit by 15km/h before the proposed provision was triggered.

The NHVR also supported proposal 1 and the inclusion of the evidentiary provision similar to the current section 162(2) of the Road Transport Act. Similarly to Victoria Police, the NHVR also considered that the speed threshold should be reassessed ‘based on best practice evidence of..."
relationships between heavy vehicle speeding and crash likelihood and severity. At the same time, the NHVR was also of the view that a ‘stronger and more effective expression of the chain of responsibility provisions of the HVNL should also be pursued, with a particular focus on improving current duties’.

In addition, and although not currently participating in the HVNL, Western Australia Police submitted that it was ‘not opposed to exploring the possibility and assessing the potential benefits and risks’ of proposal 1.

With the exception of South Australia, all police agencies that made a submission in response to the discussion paper were of the view proposal 1 was consistent with the recently agreed chain of responsibility reforms.

In contrast, key industry associations and VicRoads did not support proposal 1. In particular, the ATA did not support it, expressing concern that a deeming provision would ‘wrongly target chain parties beyond the driver who is directly responsible for vehicle speed’. The ATA stated:

> 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’.

In this context, the ATA also noted ‘driver behaviour’ must ‘remain the key target of speed management because it is, and has always been, the driver’s responsibility to manage their travelling speed’.

The ALC also did not support proposal 1. In the ALC’s view, ‘vicarious, collective or deemed liability should only be used in limited circumstances’. For the ALC, such reverse onus-of-proof provisions ‘cuts across the fundamental principle that an individual should be responsible only for his or her own acts and omissions’.

The ALC also expressed concern about the evidence provided in the discussion paper to support the proposal:

> No evidence has been presented to suggest that the mere fact of a speeding offence necessarily means that a speed limiter is faulty (because, for instance, a vehicle had recently been on a downhill run) or that someone had tampered with a unit.

> Moreover, no evidence has been provided as to how the imposition of this offence would act as a deterrent that would:

- improve driver behaviour;
- improve operator attention to detail to ensure road standards have been met;  
- dissuade tampering with equipment (as relevant).

The ALC concluded this statement by saying: ‘In the absence of evidence of a deterrent effect, “speed and efficiency in prosecutions” are insufficient grounds to impose a costly evidentiary burden on operators’. In addition, and having regard to the recent chain of responsibility reforms, the ALC was of the view proposal 1 was ‘contradictory to the positive duties approach implicit in the amendments to the HVNL agreed to by ministers’.

Similarly, Toll Group did not support proposal 1, querying the heavy vehicles to be covered by the proposal (12 tonne GVM only or all heavy vehicles regulated under the HVNL). Toll Group expressed technical concerns about the underpinning assumptions, namely that either the speed limiter was faulty and therefore in breach of vehicle standards, or that the speed limiter had been tampered with, stating ‘neither of these conclusions may be correct. It is possible for a compliant vehicle to be recorded above 115 km/hour on a steep gradient or where a driver places the vehicle in neutral on a downhill run’. Toll Group also expressed technical concerns about the duration of the speeding required to trigger the breach, noting that proposal 1 does not ‘stipulate how long the 115km/h speed would need to be sustained for in order to be an offence. Is it for one second? Two seconds? Six seconds?’.

In addition, Toll Group also questioned the proposal on ‘philosophical grounds’, stating:

> The trend in how chain of responsibility (CoR) is constructed is away from ‘deeming’ offences and towards positive obligations – an anomaly noted by the discussion paper.
Further, CoR is premised on the idea of parties with influence and power being held accountable. These proposals place most impost on the operator. There are instances where this is appropriate. However, there are occasions where operators take all reasonable steps but individual drivers elect to speed of their own volition.

Toll Group also expressed concern about how or if an enforcement officer would determine if the operator was in breach of section 60 or section 93, noting:

… the distinction between [section 60 and section 93] is important. A s.60 offence may occur through natural wear and tear or human calibration error. In contrast, tampering with a speed limiter involves intent to gain an advantage through fraud. The fact that the law recognises them as a different order of offence is made clear by their current maximum penalties: $6,300 for an offence against s.60(1)(a) and $10,490 against 93. A section 93 offence must proceed to court, where a section 60 offence can be expedited through an infringement. The HVNL clearly differentiates the magnitude of the offending, where the NTC’s proposal conflates them.

Toll Group also questioned the policy intent underpinning proposal 1, namely to avoid the technical challenges of determining speed limiter compliance and to allow an offence to be prosecuted more quickly and more efficiently than currently, noting:

These ‘technical challenges’ have been the source of some friction between industry and enforcement in the past. Speed limiter calibration, like brake testing, is an example where different testing methods can yield different results. A technical analysis is necessary to determine if equipment is merely faulty or has been tampered with. An operator charged under the proposal would have no choice but to proceed to court if they wished to challenge it.

VicRoads also did not support the introduction of an evidentiary provision because:

…the heavy vehicle speeding regulatory regime has moved away from a proscriptive approach with the pending introduction of the chain of responsibility amendments.

However, some smaller industry organisations and individuals were supportive of proposal 1, with the TIC expressing support for proposal 1 if the proposal was amended to deem ‘a speed limiter noncompliant if a vehicle is detected travelling at or above 115 km/h on an uphill or level grade, or on a downhill grade of [a specified] grade’. Similarly, the SAFC was ‘cautiously supportive’ of proposal 1, stating ‘the evidence of speed as a contributing factor to the incidence and severity of crashes is hard to ignore’. Peter Kazzi, representing Camhaul Pty Ltd, also supported proposal 1, on the basis that any vehicle detected at speeds of over 115km/hr would be noncompliant.

4.3 Proposal 2: Grounding speeding heavy vehicles

As noted in the discussion paper, the ATA proposed that the HVNL be amended to include power for enforcement officers to ground a heavy vehicle (to stop a heavy vehicle and prevent it from driving) if the vehicle is detected at 115 km/h or more above the open road 100 km/h limit on a flat road.

However, having regard to the matters discussed below, the discussion paper instead proposed as proposal 2 a power to immediately ground heavy vehicles travelling 15 km/h or more over posted or default speed limits.

The former National Road Transport Commission examined this proposal during the 1990s in its report Heavy Vehicle Speeding: An Analysis of Available Evidence, but did not proceed with any amendments at that time for a number of reasons (National Road Transport Commission, 1996):

- Giving enforcement officers the power to ground gives them the power to punish. Generally, the law requires punishment to be imposed by courts, not by police or other enforcement officers – this is even the case with traffic infringement notices, which give the defendant the right to have the notice heard in court.
- Grounding could potentially have an adverse impact where, for example, livestock or perishables are involved.

Enforcement Approaches for Speeding Heavy Vehicles November 2016
The exercise of a grounding power that leads to loss or damage (for example, because of late delivery or deterioration of the load) may expose enforcement officers to liability claims.

The use of grounding for speed offences is different from the use of grounding to prevent the continuation of an offence. For example, where a vehicle is over mass, it may be appropriate to prevent the vehicle proceeding further until the mass of the vehicle is made compliant. Likewise, where the driver has exceeded work-hour limits, it may be appropriate to ground the driver until the necessary period of rest has been completed. These considerations do not apply in the case of speeding. Once the vehicle is stopped, the offence ceases and the vehicle can be allowed to proceed without a further offence necessarily being committed. Grounding a heavy vehicle because of speed is therefore using the grounding power as a sanction or punishment.

The discussion paper noted that by grounding a vehicle for exceeding a particular speed, all off-road parties would be held responsible for the act of speeding. However, the discussion paper also noted that this approach would be a significant change in current speed enforcement practice, which primarily focuses sanctions on the driver.

Current comparable powers

There are no directly equivalent provisions to proposal 2 available for comparison under either state and territory road transport law or the HVNL.

However, and as noted in section 3, many jurisdictions have passed anti-hoon laws that provide enforcement officers with the powers to ground and impound vehicles travelling at excessive speeds.

Powers do currently exist to suspend or cancel the registration of a vehicle that is found not to comply with vehicle standards. The Transport Operations (Road Use Management) Act 1995 (Qld), Police Powers and Responsibilities Act 2000 (Qld) and the Road Safety Act 1986 (Vic) all prohibit the use of vehicles that have been found not to comply with safety requirements and standards, meaning that vehicles with defective speed limiters can be prevented from being driven on roads.

In addition, Chapter 9 of the HVNL empowers authorised officers to stop and enter heavy vehicles and to detain heavy vehicles. Section 513 of the HVNL gives authorised officers the power to immediately stop a heavy vehicle or to direct the vehicle to stop if they judge this necessary to monitor or investigate a contravention of the HVNL. Sections 526 and 533–535 of the HVNL empower authorised officers to issue defect notices for breaches of vehicle standard requirements and to ground a heavy vehicle for breaches of mass, dimension or loading requirements. A power to detain a heavy vehicle solely for the reason of exceeding a particular speed is not currently included in the HVNL.

Advantages

The advantages of amending the HVNL to include a power to immediately ground heavy vehicles travelling 15 km/h or more over posted or default speed limits include that the proposal:

- allows immediate action to be taken (on-the-spot grounding of heavy vehicles that have breached speed limits)
- ensures both on-road and off-road parties are held responsible for on-road actions
- provides strong incentive to comply with speed limits
- ensures noncompliant vehicles are removed from the road.

Disadvantages

Disadvantages of the proposal include that:

- the control of speed is directly and immediately within the control of the driver
- currently, speeding is treated as a driver-only offence
- a party that may have no direct responsibility for the vehicle speeding (such as an operator) could potentially be punished for the on-road actions of a driver
- once a vehicle has slowed down or stopped the imminent safety risk caused by speeding is eliminated
grounding a heavy vehicle gives a high degree of power to enforcement officers

grounding a heavy vehicle could potentially cause damage or harm to frozen, perishable, fragile or live loads

road transport agencies and their authorised officers could potentially be liable under civil law for the loss or damage of goods.

Issues for further consideration

The discussion paper noted that if proposal 2 were to be progressed, consideration would also need to be given to the matters outlined below.

Determining speed thresholds for grounding power

During the preliminary consultation a number of stakeholders suggested the grounding power should only apply in situations where the heavy vehicle has exceeded the national heavy vehicle speed limit of 100 km/h by 15 km/h or more and has reached these speeds on a stretch of flat road.

Impact upon perishable, fragile or live loads

During the preliminary consultation, some stakeholders expressed concern about the implications of proposal 2 for the transport of livestock as well as frozen, perishable and medicinal loads. As noted in the discussion paper, this also raises issues regarding the liability of road transport agencies and their authorised officers for the loss of or damage to goods.

The ATA suggested that should proposal 2 be progressed an appeal mechanism should also be included to ensure operators are immediately notified about a grounding and, if they choose, can appeal the grounding. In addition some jurisdictions have expressed concern about the suitability of many locations, particularly rural and remote areas, for storing grounded heavy vehicles. However, as noted in the discussion paper, these are existing challenges with the current HVNL grounding powers.

Timeframe for grounding

The discussion paper noted that if a grounding power for speeding was to be included in the HVNL, the law would need to prescribe the period of time for which a heavy vehicle could be grounded. The discussion paper suggested that this could be either a defined time period, or could be until a replacement driver is found for the vehicle to take over the driving task.

Authorised officer discretion

During preliminary consultation in the development of the discussion paper some stakeholders expressed concern about the responsibility imposed on authorised officers by proposal 2.

In particular, some jurisdictions expressed concern that a high degree of discretion would be vested in authorised officers and that each officer would have to determine:

- the risk presented to other road users if the vehicle was grounded
- the appropriateness of the site to ground a heavy vehicle
- whether and how to direct the vehicle to another site
- the likely impacts on the load if the vehicle were grounded.

As the discussion paper noted, careful implementation would be required to ensure authorised officers adopt a nationally consistent approach to the exercise of the proposed grounding power.

Discussion paper questions

The discussion paper posed the following questions regarding proposal 2 for stakeholder consideration.

7. Do you support the introduction of an additional heavy vehicle grounding power for speeding heavy vehicles? Why?
8. Should this power be applied to all heavy vehicles detected at a level above any speed limit or should it only apply to those detected at a level above the 100 km/h speed limit? Why? What should the threshold be?

9. If a grounding power is created, how could the issue of sensitive, perishable or live loads be managed? How could the issue of liability for grounded loads be managed?

10. If a grounding power is created, what should the time period for grounding be? Why?

4.4 Stakeholder feedback – proposal 2

With the exception of police agencies there was little stakeholder support for proposal 2 as set out in the discussion paper: a power to immediately ground heavy vehicles travelling 15 km/h or more over posted or default speed limits. However, the NHVR and a number of industry stakeholders did propose alternative approaches.

Police and enforcement agency views

The NSW Police Force supported proposal 2, applicable to all heavy vehicles, on the basis that an immediate grounding power was ‘more meaningful than a fine applied later’, affecting not only the driver but also the operator. For the NSW Police Force such a power provided a ‘visible sanction which has the ability to send a message to other drivers and operators’. Similarly, Victoria Police supported proposal 2 on the basis that a ‘speeding heavy vehicle presents a significant danger to other road users because of its size and mass, even at speeds below 100km/h’. For Victoria Police such a grounding power would make the operator, and other chain parties, ‘immediately aware of the speed breach through delaying their business practices and compelling the relevant parties to rectify a significant road safety issue’. Likewise, South Australia Police considered a grounding power would ‘ensure the operator is aware of the speeding offence’ and provide ‘greater incentive for the operator to put steps in place to prevent future offending’. All police agencies recognised the need for any such power to include contingencies for livestock or perishable goods. South Australia Police also recognised that the policy underpinning this proposal could be given effect in a number of ways, including through use of the current major defect notice provisions, by issuing the driver with an instant loss of licence notice or by impounding the heavy vehicle.

In contrast with policing agencies, the NHVR did not support proposal 2, questioning whether these powers were ‘already adequately available to roadside officers’. In addition, the NHVR noted that any benefit from the proposal would be limited, being ‘dependent on those offences detected at the roadside. They cannot be applied after the fact via a camera detected offence because of the time lag between detection and enforcement’. In this context the NHVR also noted:

… the majority of active on-road enforcement across Australia are conducted by Police rather than Road Transport Authorities. Some jurisdictions engage Third Party Providers to conduct on-road mobile speed camera activities and these parties/persons are not (nor should they be) empowered to enforce the additional powers contemplated.

As an alternative, the NHVR proposed ‘the option for Police to issue “cease work” directions (as per the HVNL fatigue provisions) to drivers detected operating at more than 15km/h over the posted speed limit’. Under this alternative:

- ‘The driver [would be] prohibited from operating a heavy vehicle for a stated period of time.’
- ‘The incident [would be] investigated within the context of the driver’s and the registered operator’s offence history, applying chain of responsibility principles to identify and address the underlying causes of the behaviour, such as if consignors and/or managers have applied excessive pressure on the driver.’

In the NHVR’s view this alternative proposal could be used in ‘cases where the vehicle is detected travelling 15km/h over posted speed limits but at speeds lower than 100km/h’ and would directly target the driver’s noncompliant behaviour and its causes.

VicRoads did not support proposal 2 and considered that there were practical difficulties with grounding vehicles querying:

(a) Under what circumstances should [the vehicle] be allowed to be moved
(b) Should the vehicle remain on the roadside of should it be towed
(c) If the vehicle is articulated, should the prime mover only be grounded; and
(d) How long should the grounding apply?

**Industry views**

Proposal 2 was also not supported by industry. In particular, the ALC did not support proposal 2 on the basis that '[a]ny “grounding” of a heavy vehicle imposes costs and burdens on consignors and consignees who are unable to have freight move down the logistics chain’. The ALC also noted that ‘unless a mechanical or driver impairment exists that directly impacts road safety, investing discretion in an enforcement officer to “ground” a vehicle is a disproportionate power to confer on an enforcement officer’. The ALC was critical of the discussion paper, noting that ‘there is a strong need for those proposing this idea to provide substantial, definitive evidence about why this is in the public interest. This is absent in the Discussion Paper’.

Likewise, the GEA, TIC and SAFC did not support the immediate grounding of heavy vehicles, raising concerns regarding the unintended consequences and enhanced public safety risk for dangerous goods transport. The SAFC also expressed concern that such a grounding power would empower authorised officers to impose punishments and would impinge on the responsibilities of the courts.

Toll Group also did not support proposal 2, questioning the proposal on same philosophical grounds as raised in relation to proposal 1. Toll Group stated:

> The trend in how chain of responsibility (CoR) is constructed is away from ‘deeming’ offences and towards positive obligations – an anomaly noted by the discussion paper.

> Further, CoR is premised on the idea of parties with influence and power being held accountable. These proposals place most impost on the operator. There are instances where this is appropriate. However, there are occasions where operators take all reasonable steps but individual drivers elect to speed of their own volition.

Peter Kazzi, representing Camhaul Pty Ltd, did not support proposal 2, stating that ‘the majority of good operators should not be made to suffer because of the non-compliant behaviour of drivers’.

The ATA also did not support proposal 2 as outlined in the discussion paper. For the ATA, proposal 2 ‘could see trucks grounded on busy local roads or other unsafe locations and would have the effect of penalising both the driver’s employer and the ultimate customer through delay and/or freight spoilage’. In addition, the ATA noted that proposal 2 was ‘much broader than envisaged by industry and [would allow] for the grounding of vehicles exceeding posted speed limits below 100 km/h’.

Instead, the ATA restated its support for its original proposal, namely that heavy vehicles should be grounded ‘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’ on the basis that there is still the need for ‘practical attempts to curb excessive speeding by heavy vehicles’.

As another alternative, the TIC suggested that truck drivers caught speeding above any speed limit should be grounded.
5 Adopting the proposals

The discussion paper considered how the proposals could be adopted and suggested two ways they could be implemented.

1. An evidentiary provision and an explicit speed grounding power

The discussion paper suggested that a provision could be inserted in the HVNL to empower authorised officers to ground heavy vehicles detected travelling at either 15 km/h over the posted speed limit or at 15 km/h over a 100 km/h limit. In the event that a heavy vehicle is detected at 115 km/h, the evidentiary provision would provide that the speed limiter of the vehicle was noncompliant and this could be used as evidence to prove offences under section 60 of the HVNL concerning compliance with vehicle standards and section 93 of the HVNL concerning tampering with speed limiters.

2. An evidentiary provision and amendment to the definition of a major defect

As an alternative the discussion paper suggested that the grounding power could be provided for under an amended definition of ‘major defect’ that includes using a noncompliant speed limiter. Using the evidentiary provision, a heavy vehicle detected travelling more than 115 km/h would be deemed as having a defective speed limiter. The defect vehicle provisions under section 526 of the HVNL would then provide for the vehicle to be issued a major defect notice stating that the vehicle must not be used on a road until the notice is cleared.

The discussion paper sought stakeholder feedback on these options. In addition, the discussion paper sought stakeholder suggestions as to how else these proposals could be adopted.

5.1 Discussion paper questions and stakeholder feedback received

The discussion paper also posed the following question for stakeholder consideration.

11. If you support the adoption of both proposals, should the evidentiary provision and grounding power operate together or separately? Why? Are there other means by which these proposals could be adopted?

However, and as noted earlier in this policy paper, few stakeholders supported the adoption of both proposals.

Of the stakeholders that were supportive of both proposals, Victoria Police considered the proposals should operate ‘[s]eparately, because this will allow for Authorised Officer discretion to be exercised dependant on the circumstances’. The New South Wales Police Force noted that section 60 and 93 offences could ‘operate independently or in conjunction with both proposals’; however, the interaction of the proposals was not expressly addressed. South Australia Police did not directly address how the proposals should operate.

TIC advised that if its alternative approach was adopted, the provisions should be applied separately, ‘as there may be circumstances where application of one and not the other power could be justified. For example, if the speeding offence is caused by a truck defect, as opposed to driver neglect’. 

6 Conclusions and recommendations

As discussed in section 3, police and enforcement agencies are divided on whether the current suite of speed compliance tools are effective in securing heavy vehicle speed compliance.

As discussed in section 4, key industry stakeholders are concerned about the evidence relied on and assumptions underpinning the two proposals as set out in the discussion paper:

- an evidentiary provision that deems a speed limiter noncompliant if a heavy vehicle is detected travelling at or above 115 km/h, and/or
- a power to immediately ground heavy vehicles travelling 15 km/h or more over posted or default speed limits.

As also discussed in section 4, stakeholders are divided in their support for the two proposals, with a number of industry stakeholders expressing concern about the evidence presented in the discussion paper to show the deterrent effect of either proposal. In this context, and despite some stakeholder support for both proposals, no additional evidence has been provided through the discussion paper consultation process to show how the proposals would have a deterrent effect. Concern has also been expressed by some industry stakeholders about the discretion both proposals would vest in enforcement officers and also the punitive nature of the proposed grounding power.

Stakeholders are also divided on whether the proposals, in particular the proposed deeming provision (proposal 1), are consistent with the policy approach underpinning the chain of responsibility reforms agreed by ministers in November 2015.

In addition, the NTC is of the view that the discussion paper proposals must be considered in the broader context of heavy vehicle and road reform. This includes the chain of responsibility reforms as well as government and industry efforts to improve road infrastructure, to provide more rest areas, and to reduce the age of the heavy vehicle fleet.

The Council of Australian Governments (COAG) has agreed that all governments will ensure that regulatory processes in their jurisdictions are consistent with the COAG Principles of Best Practice Regulation. In accordance with the COAG Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies these principles also apply to proposals to be considered by ministerial councils.

Critically, the COAG Principles of Best Practice Regulation require that in assessing potential responses to policy problems:

- a case for action is established before addressing the problem
- a range of feasible options are considered, and benefits and costs assessed
- the option that generates the greatest net benefit for the community is adopted.

Having regard to both the stakeholder feedback received and the COAG principles, the NTC makes the following recommendations.

Proposal 1: Speed limiter deemed noncompliance (evidentiary provision)

The NTC recommends that proposal 1: an evidentiary provision deeming a speed limiter noncompliant if a heavy vehicle is detected travelling at or above 115 km/h, not be adopted. This is on the basis that there is insufficient evidence to support the proposal and stakeholders are also divided in their views.

A legislative framework currently exists to manage responsibility for speeding vehicles. This framework includes offences in state and territory road transport laws targeted at drivers who speed, and also obligations under the HVNL for chain of responsibility parties whose business activities could potentially encourage drivers to speed.

On the basis of the stakeholder submissions received, and the evidence available, the NTC does not consider there is adequate evidence to indicate any gaps in the existing framework or that there will be gaps in the amended chain of responsibility framework once implemented. In addition, the NTC does not consider there is sufficient evidence to demonstrate how the imposition of such an
evidentiary provision would result in a reduction in driver speeding, greater attention of off-road parties to vehicle standard requirements or discourage the tampering of speed limiters.

Although proposal 1 avoids the challenges of determining speed limiter compliance, in the absence of evidence as to deterrent value, the NTC does not consider this a reason to adopt the proposal. As discussed in the discussion paper, and in this policy paper, the act of speeding does not necessarily mean a speed limiter is malfunctioning or noncompliant. There may be other factors that result in the vehicle speeding – for example, gradient. In addition, the adoption of an evidentiary provision deeming a speed limiter defective without definitive proof or inspection relieves authorised officers and the prosecution of the obligation to prove elements of the offence that would be within their capacity to discover. This reverses the burden of proof and imposes a cost on off-road parties who must rebut the evidential assumption that the vehicle was defective.

The NTC does not consider that the introduction of a deeming evidentiary provision is consistent with the positive duties approach taken under the agreed chain of responsibility reforms. As part of these reforms many of the existing HVNL deemed liability provisions are to be removed. Stakeholders have previously indicated that they believe such provisions are prescriptive, encourage a box-ticking mentality and are incompatible with a positive duty and outcomes-based approach to managing safety risks. Introducing a new deeming provision would be inconsistent with this policy approach.

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

**NTC recommendation:** That proposal 1 not be adopted.

**Proposal 2:** Grounding speeding heavy vehicles

Similarly to proposal 1, the NTC also recommends that proposal 2: a power to ground heavy vehicles travelling 15 km/h or more over posted or default speed limits, is not adopted. This is also on the basis there is insufficient evidence to support the proposal and stakeholders are also divided in their views.

The use of grounding for speed offences is different from the use of grounding to prevent the continuation of an offence. Once a vehicle is stopped, the offence ceases and the vehicle can be allowed to proceed without further offence. Grounding a heavy vehicle because of speed can therefore be considered a punitive measure that may impose costs on other supply chain parties who may have no control over the behaviour of the driver at the time of the offence. This raises issues of fairness and equity.

Giving enforcement officers the power to ground in these circumstances potentially gives enforcement officers the power to punish. Generally, the law requires punishment to be imposed by courts, not by police or other enforcement officers – this is even the case with traffic infringement notices, which give the defendant the right to have the notice heard in court. Under the immediate grounding of a vehicle, there would be no opportunity for the operator to raise an appropriate defence to stop the grounding.

The use of grounding for speed offences seeks to ensure off-road parties are held responsible for the act of driver speeding. However, this proposal does not impact on the driver, who may continue driving other vehicles, despite being the party directly responsible for the speed of the vehicle. Accordingly the NTC considers this proposal does not allocate responsibility fairly.

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

**NTC recommendation:** That proposal 2 not be adopted.
References


