

Notice of Proposed Rule Making

Electronic Work Diary (EWD) Policy Framework and Standards

NPRM:	1702
Date:	18/12/2017
Project:	Electronic Work Diary Project
Issued for public consultation by:	Productivity and Safety Division, NHVR

Audience:	This Notice of Proposed Rule Making (NPRM) will be of interest to: <ul style="list-style-type: none">• Drivers of fatigue-regulated heavy vehicles who use work diaries• Authorised officers, including police• Road transport agencies and regulators from states and territories• Transport operators and record keepers• Technology providers
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Consultation and Response:	Under section 3 of the <i>Heavy Vehicle National Law (HVNL)</i> , the National Heavy Vehicle Regulator (NHVR) has the function of encouraging and promoting productive, efficient, innovative and safe business practices for the operations of heavy vehicles in Australia.
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Where appropriate, the NHVR will consult with government, commercial, industrial, consumer and other relevant bodies and organisations in the performance of this function and the exercise of its corresponding powers.

In this NPRM, the NHVR is seeking feedback on how it intends to manage approvals of electronic recording systems for use as part of an Electronic Work Diary (EWD).

This NPRM contains the proposed EWD Policy Framework and Standards, which once finalised, set the requirements for systems to be approved and rules for use of EWDs as a voluntary alternative to the National Driver Work Diary.

To ensure clear and relevant rules are developed, the NHVR needs the benefit of the knowledge, experience and perspectives of members of the heavy vehicle community.

The consultation process contemplated on this policy framework is in keeping with the principles established by the NHVR in [Setting the Agenda – Strategies for a Safer, Productive and more Compliant Heavy Vehicle Industry 2016-2020](#).

You can help by providing feedback using the NHVR's online response form by 30 January 2018.

Purpose

The proposed Electronic Work Diary Policy Framework (herein EWD Policy Framework) and performance-based EWD Standards establish the core regulatory framework for administering the EWD provisions in the HVNL. The EWD Policy Framework is intended to allow the NHVR to commence approvals of electronic recording systems for use as part of an electronic work diary.

Electronic work diaries are electronic devices or systems capable of monitoring and recording drivers' work and rest information and have been available as a voluntary alternative to the paper-based National Driver Work Diary since 2008.

Previous state and territory governments declined to approve electronic recording systems for use as EWDs in the past, working instead with Transport Certification Australia to pilot EWDs and develop national standards.

The NHVR believes that EWDs can improve road safety and significantly reduce the administrative burden for the heavy vehicle industry through:

- improved data accuracy and transparency to drivers, transport operators and authorised officers
- provision of real time data which enables transport operators to respond immediately to actual breaches and monitor performance over time
- in-vehicle driver information which enables drivers to plan their work and rest and take action when alerted to an imminent or actual breach.

The EWD provisions in the HVNL are designed to avoid overly prescriptive or restrictive requirements, and facilitate the implementation of new technology in a dynamic and progressive environment. The EWD Policy Framework builds on this to provide clarity on issues associated with the EWD legislative framework and to allow for agile regulatory responses to operational issues faced in delivering and administering the EWD function.

Key issues addressed in the EWD Policy Framework (including EWD Standards):

- How the NHVR will set and monitor standards for EWDs and electronic recording systems, including requirements for systems developed 'in-house' by transport operators and those developed by technology providers for commercial use
- The proposed core regulatory approach in which the NHVR will assess and approve systems for use as EWDs and industry will collect and manage EWD information (instead of sending information to a government agency for management)
- How EWD information will be treated during roadside intercepts to ensure that EWD users are treated fairly when compared to written work diary (WWD) users
- Rules to allow drivers to continue working when EWDs are not working properly

By adopting this new EWD Policy Framework the NHVR hopes to

- lower costs associated with meeting record keeping requirements
- reduce duplication and paperwork
- integrate fatigue systems into business systems and provide greater visibility and management of schedules, rosters and fatigue risks for industry operators
- provide improved visibility of fatigue management and compliance, with consequential safety benefits.

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1 Reference Material

1.1 Definitions, acronyms and abbreviations

The acronyms and abbreviations used in this NPRM are listed in the table below.

Definition/acronym/abbreviation	Description
HVNL	Heavy Vehicle National Law (as in effect in each participating jurisdiction)
NFRM	Notice of Final Rule Making
NHVR/Regulator	National Heavy Vehicle Regulator
NPRM	Notice of Proposed Rule Making
EWD	An Electronic Work Diary (EWD) is an electronic device or system approved by the NHVR to monitor and record the work and rest times of a driver

1.2 References

1.2.1 Regulatory references

Regulations are available on the NHVR website:

Document	Title
Section 343, HVNL	Regulator's power to approve electronic recording systems for use as part of an EWD.

1.2.2 Consultation material

Document	Title
N/A	EWD Policy Framework
	EWD Standards

1.2.3 Other reference material

Strategic Directions

The NHVR's long term vision for the regulation of the Heavy Vehicle Industry in Australia.

Available at <https://www.nhvr.gov.au/files/201605-0342-nhvr-strategic-directions-2016.pdf>

Setting the Agenda 2016-2020

The NHVR's strategies for a Safer, Productive and more Compliance Heavy Vehicle Industry

Available at <https://www.nhvr.gov.au/files/201608-0329-nhvr-setting-the-agenda-2016-2020.pdf>



EWD Project - Reference Material - Austroads - AP-R386-11 - Performance-based Specification for Electronic Work Diary and Heavy Speed Monitoring - Research Report

Available at <https://www.onlinepublications.austroads.com.au/items/AP-R386-11>

EWD Project - Reference Material - NTC Policy Paper - Electronic systems for heavy vehicle driver fatigue and speed compliance - March 2011

Available at [http://www.ntc.gov.au/Media/Reports/\(6D058AA8-356C-A626-9A3B-20726E80273F\).pdf](http://www.ntc.gov.au/Media/Reports/(6D058AA8-356C-A626-9A3B-20726E80273F).pdf)

EWD Project - Reference Material - NTC Paper - Preparing Australia for Electronic Work Diaries Regulatory issues paper - October 2013

Available at [https://www.ntc.gov.au/Media/Reports/\(65801854-7059-AA62-C39A-38EB955CB63B\).pdf](https://www.ntc.gov.au/Media/Reports/(65801854-7059-AA62-C39A-38EB955CB63B).pdf)

EWD Project - Reference Material - TCA & RMS Final Report - Operational Pilot Electronic Work Diaries October 2013

Available at

http://roadsafety.transport.nsw.gov.au/downloads/electronic_work_diaries_oct2013.pdf

EWD Project - Reference Material - NTC Final Policy Paper - Electronic Work Diaries - June 2014

Available at [https://www.ntc.gov.au/Media/Reports/\(09E15645-A37B-745E-F9C5-D01BFFE782AB\).pdf](https://www.ntc.gov.au/Media/Reports/(09E15645-A37B-745E-F9C5-D01BFFE782AB).pdf)

2 Consultation

The NHVR is committed to working cooperatively with the heavy vehicle industry and other stakeholders to maintain and enhance road safety. The NHVR consulted extensively with government, police, and industry representatives in the development of the proposed EWD Policy Framework. The publication of this NPRM is the next step in consultation and will allow stakeholders to provide formal feedback on the EWD Policy Framework and Standards.

2.1 EWD working groups and past consultation

Due to the highly technical nature of the EWD Project, the NHVR created a number of specialist EWD reference groups to obtain technical advice and feedback.

2.1.1 Industry User Group

The EWD Industry User Group (IUG) was a joint industry/NHVR forum that brought together NHVR staff and representatives from a range of transport operators. This group comprised a mix of representatives of the heavy vehicle transport industry to leverage their knowledge and experience. Some representatives currently use similar technology, others have it but do not use, while others still were reluctant to use EWDs.

The IUG provided the heavy vehicle industry with the opportunity to define the requirements for EWDs and be formally involved during the development and formulation of the proposals contained in this NPRM. The NHVR also intends to use information from this group to develop guidelines and guided promotional activities/material that will focus on outcomes of the EWD system considered most valuable by the heavy vehicle transport industry.

2.1.2 Technology Provider Reference Group

This group was a principal point of contact for technology providers interested in developing electronic recording systems for use as EWDs. The group allows the NHVR to request feedback on aspects of the EWD implementation and leverage practical knowledge and experience. This group has met five times in the development of the EWD Policy Framework and has provided several recommendations to the NHVR for consideration by the EWD project team.

2.1.3 EWD Operational Reference Group (Government Stakeholders) (ORG)

This group was the principal point of contact for the NHVR to engage with operational and policing government stakeholders and obtain feedback on specific aspects of the implementation of EWDs. The ORG has met on several occasions in the development of the EWD Policy Framework and identified a number of issues and requirements for EWD operations. The NHVR recognises the need to provide assurance to these stakeholders on the integrity of the EWD implementation.

2.1.4 Government and other stakeholder forums

The following table identifies key government and other stakeholder groups that have been involved in the EWD project to date.

Group	Purpose
Transport Infrastructure Council (TIC)	TIC members are Roads and Transport Ministers from all jurisdictions (participating and non-participating).
Transport Infrastructure Council Senior	TISOC members comprise of Directors-General from

Officials Group (TISOC)	road and transport agencies, with representation from all jurisdictions (participating and non-participating), Australian Local Government Association and the NTC.
Heavy Vehicle Strategy Group (HSVVG)	The HSVVG group has been established under the Transport Infrastructure Council to progress key reform matters and is represented by all states and territories.
National Operational Strategy and Policy Advisory Group (NOSPAG)	NOSPAG members comprise of Deputy Directors-General and Deputy Secretaries, or equivalent, from road and transport agencies, with representation from all jurisdictions (participating and non-participating), Australian Local Government Association and the NTC to discuss strategic operational policy matters.
Industry Reference Forum (IRF) and Industry Operations Groups (IOGs)	The five dedicated operator groups for agricultural, crane, livestock and rural transporters, oversize/over mass, and safety management systems and technology meet regularly to discuss issues and concerns specific to that sector.
Australia New Zealand Policing Advisory Agency (ANZPAA)	ANZPAA provides policing policy and strategic advice, research capacity, knowledge management and information sharing services to Police Ministers and Commissioners throughout the Australian Commonwealth, its States and Territories, and New Zealand. ANZPAA is not an operational policing agency.

2.2 Consultation on this NPRM

The NHVR is issuing this NPRM and consultation draft of the proposed EWD Policy Framework and Standards in order to:

- provide the heavy vehicle industry with a clear and comprehensive expression of how EWDs will operate
- extend the opportunity to consider and comment formally on the proposed approach to a broader range of potential stakeholders, and
- allow members of the wider Australian community the opportunity to consider and comment on the proposed EWD assurance framework.

The NHVR intends to register and review each comment and submission received, but will not individually acknowledge a response unless specifically requested to do so. A summary of the comments provided in each submission will be published without attribution, as an appendix to any subsequent revised NPRM or Notice of Final Rule Making (NFRM). If consent is provided, the contributor's name will be published in a list of respondents included in the NFRM.

The period of public comment is between 18 December 2017 and 30 January 2018. At the end of the period for public comment, all submissions will be analysed and evaluated. Subsequent to the closing date for comments, an NFRM will be prepared in conjunction with the making of the final rule.

3 Proposed change

3.1 Background

The HVNL provides that fatigue-regulated heavy vehicle drivers working 100 kilometres or more from base (100+km), or operating under basic fatigue management (BFM) or advanced fatigue management (AFM), must keep formal records of their work and rest hours. Drivers are required to record their work and rest hours in the *National Driver Work Diary* - a paper-based record of drivers work and rest – or alternative records. The HVNL and earlier legislation provides that drivers may use an EWD as an alternative to the written work diary.

No electronic recording system has been approved for use as an EWD as road transport agencies have been reluctant to approve systems without technical standards and supporting infrastructure. However, a number of projects have progressed the development of an EWD, including

- an EWD Operational Pilot between 2011 and 2013;
- the National Transport Commission (NTC) publishing an Electronic Work Diaries Final Policy Paper in 2014; and
- amendments to EWD provision in the HVNL in 2016.

This NPRM proposed a way forward for the voluntary use of EWDs to record work and rest.

3.2 Case for change

The EWD Operational Pilot showed that, not only are EWDs technologically feasible but that they could deliver a range of safety, productivity and efficiency benefits.

In terms of safety, the NHVR believes that widespread adoption of EWDs will improve safety and significantly reduce the administrative burden for the Heavy Vehicle industry through:

- improved data accuracy and transparency to drivers, transport operators and authorised officers
- provision of real time data which enables transport operators to respond immediately to actual breaches and monitor performance over time
- in-vehicle driver information which enables drivers to plan their work and rest and take action when alerted to an imminent or actual breach.

EWDs will also:

- allow a simpler way for the driver of a fatigue regulated vehicle to record their work and rest times
- allow the driver, transport operators and authorised officers to more easily review past work and rest records to ensure compliance with fatigue laws
- automatically pre-populate some records to reduce the amount of time it takes for drivers to manually record work and rest information
- reduce the administrative burden for operators and drivers
- assist transport operators to monitor their business and improve their fatigue risk management. The NHVR believes that these potential benefits justify the removal of the current embargo on approval of electronic recording systems for use as part of an EWD.

3.3 Options considered and assessed by the NHVR

Having regard for previous proposals for providing consistent flexible fatigue management, the options considered by the NHVR on this issue are:

Option 1: Retain the current arrangements

Option 2: Discontinued model

Option 3: Endorsed approach

3.3.1 Option 1: retain the current embargo on approvals

The first option is to leave the current arrangements unchanged and continue not to accept applications for electronic recording systems to be approved for use as part of an EWD. A recent survey of heavy vehicles on Australian roads found that about 7% of heavy vehicles had some sort of electronic monitoring device fitted and in use. This is forecast to be growing even without formal regulatory recognition. Further, this option is the lowest cost to the NHVR as there is significant investment required by the NHVR and our service partners to develop and train staff in procedures to monitor electronic recording systems.

Whilst, the NHVR recognises that many businesses are equipping vehicles with driver monitoring technology without any regulatory recognition, this option does not address the potential efficiency and productivity benefits that are afforded by allowing industry to use EWDs.

This option would also prevent drivers from accessing practical operational benefits such as simpler and faster recording of work and rest information, compliance warnings and other assistance to avoid administrative non-compliance and to facilitate improved consistency in interpretation of fatigue rules. All of these benefits are especially important to drivers who have difficulty using the current written work diary.

3.3.2 Option 2: centralised EWD System Manager Model

The second option considered by the NHVR is to lift the embargo on approving EWDs and implement the extralegal model proposed by TCA and state and territory governments after the EWD Operational Pilot – creating a new centralised EWD System Manager. This model consists of:

- A highly prescriptive technical specification aligned with the TCA National Telematics Framework.
- The creation of a new government function - the EWD System Manager - to assess and approve EWDs and monitor EWD operations.
- Construction of a Remote Connection Access Framework and rollout of compliance assessment hardware and software to authorised officers across Australia.
- New operational administrative fees (e.g., per month/per vehicle) to fund the operations of the EWD service.

A detailed discussion of this model is available in the *FINAL REPORT Operational Pilot of Electronic Work Diaries and Speed Monitoring Systems* published after the pilot.

The NHVR conducted an extensive review of this approach and found -

- It is not legally supported and would require further changes to the HVNL to allow it to proceed. This means that EWDs could not begin prior to 2020 in the current legislative environment.
- It is too costly, unable to be fully cost recovered through operational administrative fees, and would need ongoing government subsidies to meet any shortfall in revenue from fees.

- Costs to industry would be a major disincentive to participation in the voluntary context.
- It would restrict drivers who want to swap between written and electronic work diaries, and initially restrict participation in EWDs for two-up drivers and drivers who swap between transport operators. It was estimated that these restrictions would significantly undermine the anticipated benefits of EWDs.
- It would limit innovation and restrict entry of a range of monitoring technology now available in the market.
- Transport operators who have developed their own systems would not be able to have those systems approved and, most likely, transport operators who have bought commercial systems would need to reinvest in replacement systems.

Whilst recognising that this approach would deliver a secure, national approach, the NHVR believes that it fails to deliver on the anticipated voluntary compliance and safety benefits. It would also likely attract adverse sentiment from industry and hamper the NHVR's attempts to support industry adopt better safety and fatigue risk management practices.

3.3.3 Option 3: Adopt the EWD Policy Framework and Standards

The third option considered by the NHVR is to lift the embargo on approving EWDs and adopt the EWD Policy Framework and Standards as the administrative policy guiding the NHVR's decision on EWDs. In this approach,

1. With NHVR Board approval, the NHVR sets performance based standards for electronic recording systems to be used as EWDs and approves candidate systems that meet the performance expectations.
2. Transport operators can develop their own or buy commercial systems for the fleet/drivers, enrol their drivers with their technology provider and arrange for their drivers to be trained to use the EWDs.
3. Drivers log into the EWD at the start of their shift and make work and rest declarations. Past EWD information is automatically downloaded so that drivers can comply with the requirement to carry their last 28 days of records. Drivers' EWD information is sent to their record keeper by the technology provider under contract to the transport operator. If a driver is approaching a work limit, the EWD can warn the driver of the potential breach.
4. If a driver is stopped at an intercept, the driver will hand the EWD to the authorised officer (or, if it is physically tethered to the vehicle, allow the officer to view it). All EWDs will have a standard roadside view that looks like the written work diary daily sheet. If the officer wants to copy the information, a picture of this screen can be taken, or the officer can have it sent via a secure email from the technology provider.
5. If the system is not working properly, the driver must notify either the NHVR or the record keeper who will in turn notify the NHVR, and arrange for the EWD to be fixed. Drivers can use supplementary records for up to seven (7) days or a National Driver Work Diary while the EWD is being repaired.

Further details can be found in the EWD Policy Framework and proposed performance standards for electronic recording systems to be approved attached to this NPRM as appendices.

3.4 The NHVR's preferred option for change

The NHVR preferred option is to adopt the EWD Policy Framework and Standards and lift the current embargo on approving electronic recording systems for use as an EWD.

This approach best meets the NHVR's high level requirements for EWD, because it:

- Meets the current HVNL requirements
- Reduces the regulatory burden in using EWDs
- Aligns with the NHVR's strategic direction to support coregulatory safety management systems
- Assists operators and drivers to manage their fatigue risk and comply with HVNL fatigue management obligation
- Allows interoperability between EWDs so that drivers can swap between written and electronic work diaries, between solo and two-up driver, and between employers using different approved EWDs
- Allows industry to transition existing systems and leverage existing capital expenditure
- Is financially sustainable for both the NHVR and industry
- Incorporates data accuracy, protection and sharing
- Provides like-for-like functionality with the written work diary or better
- Allows consistent and appropriate intervention
- Can be delivered to industry within budget and within a reasonable timeframe.

The other options could not meet all of these requirements.

3.4.1 Impacts on industry of the preferred option

The NHVR believes that the implementation of the preferred option provides the most cost effective and beneficial approach to commencing approvals of EWDs. Under this approach, use of EWDs will be voluntary, so only operators who choose to deploy EWDs in their fleet will be affected.

3.5 Key change proposals

Key aspects of the proposed change are detailed in the following key proposals.

3.5.1 Key Proposal 1

The NHVR lifts the embargo on approving electronic recording systems for use as part of an EWD and commences assessment, testing and approvals in accordance with the current HVNL provisions, EWD Policy Framework and Standards.

3.5.2 Key Proposal 2

The NHVR approves performance based, minimum standards for electronic recording systems contained in Appendix B of this NPRM.

These standards will include

- common data definitions and governance arrangements
- peer-to-peer interoperability between technology providers
- a standard roadside review, and
- compliance checking based on NHVR issued rule sets.

3.5.3 Key Proposal 3

The NHVR adopts the EWD Policy Framework as the basis for decisions on approving candidate electronic recording systems for use as an EWD and overseeing EWD operations.

The EWD Policy Framework is contained in Appendix A of this NPRM.

4 Implementation and review

4.1 Implementation timeframes

Following consideration of responses to this NPRM, the Regulator will prepare a summary of responses and revisions to the proposed EWD Policy Framework and Standards as considered necessary. These will be published in a Notice of Final Rule Making in early 2018.

The Regulator will analyse the nature and extent of the impact that these any amendments may have on industry to ensure an adequate timeframe is given for implementation.

The NHVR will send the EWD Policy Framework and Standards to the NHVR Board for approval in March 2018. Once approved, the NHVR can commence accepting candidate EWD systems for assessment and approval. Please note, however, that this may change depending on feedback received and timeframes for NHVR Board approval.

4.2 Transition

In conjunction with this NPRM, the Regulator is providing transport operators and technology providers the opportunity to register their intent to develop an EWD system for approval. This is designed to support:

- a) operators capitalising on their existing investment in current systems, further lowering the costs of participating in EWDs and providing another incentive to uptake; and
- b) technology providers developing EWDs based on existing commercial offerings, resulting in shorter development and approval timeframes and minimising the cost to bring the EWD to market.

The Regulator will provide information to industry on how to register a *Notice of Intent* to develop an EWD system on the NHVR website, and through regular communication channels, including the *On The Road* fortnightly publication, prior to the rule commencing.

The Regulator will prepare regulatory guidance on EWDs for drivers, record keepers, transport operators and technology providers and publish this guidance in addition to the EWD Policy Framework on the NHVR website prior to the commencement of operations.

4.3 Post-implementation reviews

The NHVR will implement an assurance framework in which The EWD Policy Framework, including the Standards, will be reviewed by the NHVR at least every two years. It may be reviewed earlier, if needed, to respond to changes to the HVNL, NHVR or technological ecosystems. Additional information is available from:

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