

# Notice of Final Rule Making 1702

## Notice of Final Rule Making 1702 - EWD Policy Framework and Standards

17 April 2018

<b>NFRM</b>	1702
<b>Project</b>	EWD Project
<b>Issued by</b>	Productivity and Safety Division, NHVR
<b>Audience</b>	<p>This Notice of Final Rule Making (NFRM) will be of interest to:</p> <ul style="list-style-type: none"> <li>• Drivers of fatigue-regulated heavy vehicles who use work diaries</li> <li>• Authorised officers, including police</li> <li>• Road transport agencies and regulators from states and territories</li> <li>• Transport operators and record keepers</li> <li>• Technology providers</li> </ul>
<b>Consultation and response</b>	<p>Readers should note that this Notice of Final Rule Making (NFRM) contains a summary of responses (SOR) to Notice of Proposed Rule Making 1702 (NPRM1702). This NFRM includes the NHVR’s summary disposition following the consultation as well as the detailed comments received by the NHVR (Appendix A).</p> <p>This NFRM finalises the public consultation process in respect of the NPRM1702.</p>

## Contents

Foreword .....	3
1. Reference material .....	4
1.1 Definitions, acronyms and abbreviations .....	4
1.2 References .....	4
2. Summary of responses .....	5
2.1 Distribution of NPRM1702 .....	5
2.2 Respondents .....	5
2.3 Analysis of responses .....	6
2.4 Demographics of responses .....	7
3. Final rule.....	8
3.1 Background.....	8
3.2 NHVR’s disposition .....	8
3.3 Impact of EWD approvals.....	8
4. Implementation, transition and review .....	9
4.1 Implementation timeframe .....	9
4.2 Transition.....	9
4.3 Post-implementation reviews.....	9
A.1 Key Change Proposal 1 – The NHVR lifts the embargo on approving electronic recording systems for use as part of an EWD.....	10
A.2 Key Change Proposal 2 – The NHVR approves performance based, minimum standards for electronic recording systems.....	12
A.3 Key Change Proposal 3 – The NHVR adopts the EWD Policy Framework as the basis for decisions on approving candidate electronic recording systems.....	16

## Tables

Table 1: Definitions, acronyms and abbreviations.....	4
Table 2: Respondents to NPRM1702 .....	6

## Figures

Figure 1: Analysis of responses for NPRM1702 .....	6
Figure 2: <a href="#">Representation of responses for NPRM1702</a> .....	6

## Foreword

On 18 December 2017, the National Heavy Vehicle Regulator (NHVR) published NPRM1702 – *EWD Policy Framework and Standards* for public consultation, which invited public comment on the proposed policy framework and standards for approval of electronic recording systems as EWDs.

This NFRM sets out the NHVR’s disposition to public comments received on the NPRM following publication of the proposed *EWD Policy Framework and Standards* which:

1. set the system requirements for systems to be approved, and
2. provide rules for the use of EWDs as a voluntary alternative to the National Driver Work Diary.

The NHVR received 25 responses to the NPRM1702. The majority of responses supported the proposed lifting of the embargo on EWD approvals, with only three contending that it would not be acceptable and two having no preference. A summary of responses (SOR), together with the NHVR’s disposition is attached to this NFRM in Appendix A.

Based on the feedback received, the NHVR proposes revising the *EWD Policy Framework and Standards* by:

- clarifying the assurance framework activities
- clarifying requirements for drivers reporting EWDs that are not working properly
- clarifying that transport operators should cooperate with authorised officers
- replacing the term “Enforcement view” with “Compliance View”
- reviewing the composition of the Unique Driver Identifier to draw digits from the end of driver licence numbers
- making other minor amendments to the *EWD Standards* to improve compliance interactions and consistency.

Once these documents have been revised, the NHVR intends to lift the embargo on approving electronic recording systems for use as a voluntary alternative to the written work diary, based on the revised *EWD Policy Framework and Standards*.

The NHVR thanks those who participated in the consultation on the issues addressed in the NPRM. The input of stakeholders who are directly or indirectly affected by change proposals is appreciated and valued in the regulatory development process.

Sal Petrocchio

**Chief Executive Officer**  
**National Heavy Vehicle Regulator**

April 2018

# 1. Reference material

## 1.1 Definitions, acronyms and abbreviations

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

Definition/acronym/abbreviation	Description
<b>AFM</b>	Advanced Fatigue Management ( <i>a work and rest option under the NHVAS Fatigue Management Module</i> )
<b>BFM</b>	Basic Fatigue Management ( <i>a work and rest option under the NHVAS Fatigue Management Module</i> )
<b>EWD</b>	Electronic Work Diary
<b>FRHV</b>	Fatigue-regulated heavy vehicle ( <i>as defined in the Heavy Vehicle National Law</i> )
<b>Creating historic data</b>	This is a new function which may be undertaken by the record keeper for a driver. Historic data includes work diary entries created by the record keeper manually, to enable an EWD to hold a continuous electronic record of driver information.
<b>HVNL</b>	Heavy Vehicle National Law ( <i>as in effect in each participating jurisdiction</i> )
<b>KCP</b>	Key Change Proposal
<b>NFRM</b>	Notice of Final Rule Making
<b>NHVR</b>	National Heavy Vehicle Regulator
<b>NPRM</b>	Notice of Proposed Rule Making

Table 1: Definitions, acronyms and abbreviations

## 1.2 References

### Regulatory references

Heavy vehicle regulations are available on the Queensland Legislation website

<https://www.legislation.qld.gov.au/>

The Australian Road Rules can be found on the Commonwealth Legislation website

<https://www.legislation.gov.au/>

Document	Title
<b>ARR</b>	National Transport Commission (Road Transport Legislation—Australian Road Rules) Regulations 2006
<b>HVNL</b>	Heavy Vehicle National Law 2012
<b>HV(FM)NR</b>	Heavy Vehicle (Fatigue Management) National Regulation
<b>NHVR Policy</b>	NHVR EWD Policy Framework
<b>Standards</b>	NHVR EWD Standards

### Advisory material

Advisory publications will be available on the NHVR's website <https://www.nhvr.gov.au/>

Document	Title
<b>HVAP1702A</b>	EWD Guidelines for drivers
<b>HVAP1702B</b>	EWD Guidelines for transport operators

<b>HVAP1702C</b>	EWD Guidelines for record keepers
<b>HVAP1702D</b>	EWD Guidelines for technology providers

## 2. Summary of responses

### 2.1 Distribution of NPRM1702

Following extensive consultation and discussions with industry members, government and technology developers, the NHVR issued NPRM1702 for public consultation from 18 December 2018 to 30 January 2018. Consultation with industry resulted in an extension to 9 February 2018.

The NHVR announced the publication of NPRM1702 in the 4 December 2017 edition of the *On The Road* newsletter. A reminder to lodge a submission was subsequently made in the 18 January 2018 edition. NHVR statistics indicate that these newsletters were opened by 5,409 and 6,273 external stakeholders respectively.

Between 18 December 2017 and 9 February 2018, the webpage containing NPRM1702, *EWD Policy Framework and Standards* was visited by 3,157 external stakeholders.

### 2.2 Respondents

Twenty five (25) respondents submitted comments on the NPRM. This number is the total respondent number returned to the Project Manager and may be different to the number of respondents for any given change proposal as not all respondents responded to all items.

The following respondents consented to having their names published:

<b>Representative</b>	<b>Organisation</b>
Mr Peter Anderson	<i>Victorian Transport Association (VTA)</i>
Ms Julia Collins	<i>National Road Transport Association (NatRoad)</i>
Ms Sally Fisher	<i>Transport Compliance Services Pty Ltd (TCS)</i>
Mr Rod Hannifey	<i>Truckright</i>
Mr Mark Heine	<i>EROAD Ltd (EROAD)</i>
Ms Belinda Irwin	<i>TOLL Group (TOLL)</i>
Mr Kevin Keenan	<i>Australian Livestock and Rural Transporters Association (ALTRA)</i>
Mr Michael Kilgariff	<i>Australian Logistics Council (ALC)</i>
Mr Trent Larsen	<i>Teletrac Navman</i>
Mr Ben Maguire	<i>Australian Trucking Association (ATA)</i>
Mr Gary Mahon	<i>Queensland Trucking Association Ltd</i>
Mr Lachlan McDonald	<i>Transport for Victoria (TfVictoria)</i>
Mr David McKinnon	<i>Fleet Agency</i>
Mr Darren Nolan	<i>Nolan's Interstate Transport</i>
Mr Ben Osbourne	<i>North Coast Petroleum Transport</i>
Mr Craig Olsson	<i>Linfox</i>

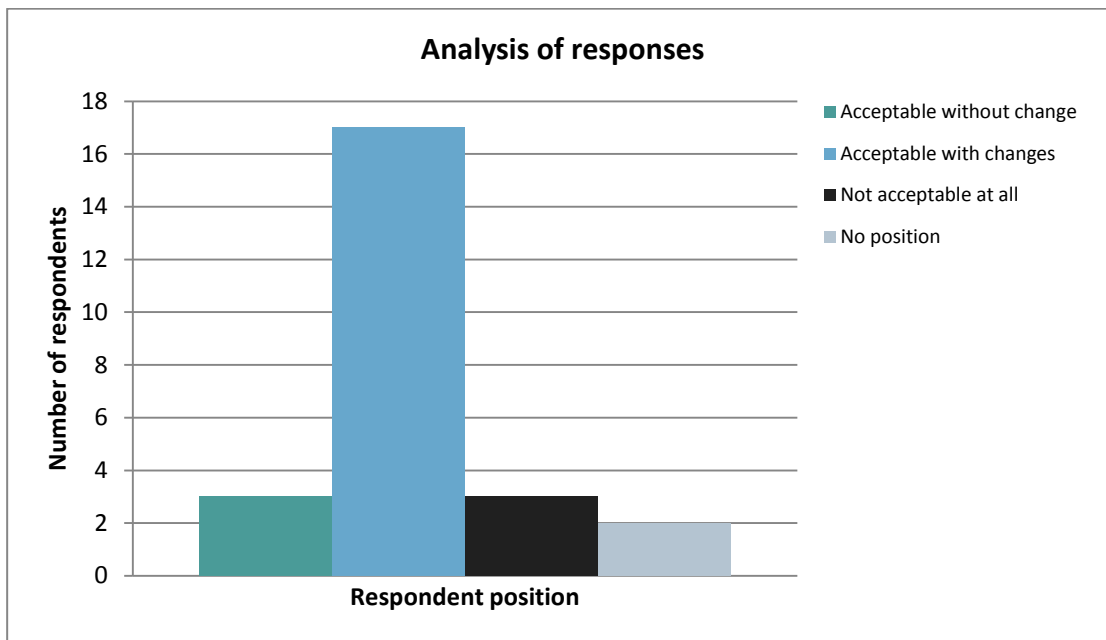
Mr Robert Smith	
Mr John Tsoucalas	<i>Fleet Effect</i>
Ms Jenine Turner	<i>Just Logistics Pty Ltd</i>
Mr Michael Williams	<i>Accreditation Manager</i>

**Table 2: Respondents to NPRM1702**

A further five respondents did not consent to having their names published including drivers and industry members.

### 2.3 Analysis of responses

The majority of responses (86%) supported the NHVR lifting the embargo on the approval of EWDs. Figure 1 summarises the responses received in the NPRM.



**Figure 1: Analysis of responses for NPRM1702**

Specifically:

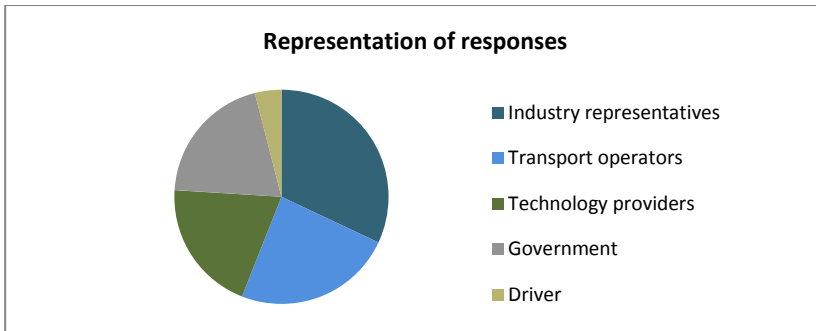
- Two (3) respondents supported the proposal without changes.
- Seventeen (17) respondents supported the proposal with changes.
- Three (3) respondents did not support the proposal at all.
- Two (2) respondents had no preference.

Not all respondents addressed the Key Change Proposal (KCP) in their submissions. Where the respondents addressed an item indirectly, the NHVR has attempted to associate the comments received to one of the four categories.

Appendix A contains a complete summary of responses submitted in response to *EWD Policy Framework and Standards* under the NPRM and the NHVR’s position on the feedback received.

## 2.4 Demographics of responses

The responses received by the NHVR are a representation from across the transport industry, technology providers and government departments/agencies.



**Figure 2: Representation of responses for NPRM1702**

The demographics of responses included:

- Eight (8) industry representatives
- Six (6) transport operators
- Five (5) technology providers
- Four (5) government entities
- One (1) heavy vehicle driver.

The NHVR notes that members of the Australian Trucking Association, including the Australian Livestock and Rural Transporters Association, National Road Transport Association, Queensland Trucking Association, and Victorian Transport Association have lodged individual submissions to the NPRM. The NHVR has accepted these submissions and given the feedback in them equal consideration.

## 3. Final rule

### 3.1 Background

In consulting with industry stakeholders, the NHVR sought detail from industry about current practices and experiences. Some critique on aspects of the fatigue management regulatory framework in general has been accepted. However, critique not specifically related to EWD operations and functionality have been assessed as being outside the scope of the NPRM but will be retained for future consideration in the overall management of road safety.

As a result of the comments received on the NPRM, the final rule contains some amended or new elements.

### 3.2 NHVR's disposition

The NHVR considered three options for providing more flexible fatigue management through the use of EWDs as a voluntary alternative to written work diaries. The NHVR's analysis of the feedback from the NPRM shows overwhelming support for the preferred option to adopt the *EWD Policy Framework and Standards* and lift the current embargo on approving electronic recording systems for use as an EWD. Accordingly, the NHVR's disposition is to lift the current embargo and commence EWD approvals based on the revised *EWD Policy Framework and Standards*.

Based on an analysis of the feedback provided, the NHVR reviewed the *EWD Policy Framework and Standards*. The NHVR has amended the *EWD Policy Framework* to:

- clarify the assurance framework activities
- clarify requirements for drivers reporting EWDs that are not working properly
- clarify that transport operators should cooperate with authorised officers.

The NHVR has revised the *EWD Standards* to:

- replace the term 'Enforcement view' with 'Compliance View'
- review the composition of the Unique Driver Identifier to draw digits from the end of driver licence numbers
- make other minor amendments to the *EWD Standards* for consistency

In addition to these changes, the NHVR will have the revised *EWD Standards* reviewed and endorsed by an independent body.

The NHVR will also write to the governing agency for the Australian Road Rules to have EWDs formally recognised as driver aids.

### 3.3 Impact of EWD approvals

The introduction of EWDs is undertaken within the regulatory framework approved by responsible ministers and does not change the fundamental regulatory requirements for drivers recording their work and rest hours.

Lifting the embargo on approvals allows industry to adopt EWDs in an entirely voluntary manner. The assessment of the responses to the NPRM concluded that the changes required to the *EWD Policy Framework and Standards* were minor and these have been considered in the NFRM.



## 4. Implementation, transition and review

### 4.1 Implementation timeframe

Upon NHVR CEO approval of the *EWD Policy Framework and Standards*, the NHVR will commence accepting candidate EWD systems for assessment and approval, from transport operators and technology providers.

This is designed to support:

- a) transport 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 EWDs to market.

At this point, the NHVR will be ready to allow drivers and other users to commence EWD operations.

It is anticipated that the NHVR will commence accepting applications in the final quarter 2017/18, once all preparations have been completed.

### 4.2 Transition

In preparation for EWD operations commencing, the NHVR will prepare regulatory guidance on EWDs for drivers, record keepers, transport operators and technology providers and publish this guidance on the NHVR website.

To assist authorised officers in carrying out the compliance checking function, the NHVR will provide targeted training standards and guidelines, consistent with the *EWD Compliance Policy*.

Given that EWDs are generally beneficial to industry and do not create any new specific requirements for enforcement, no transitional period has been contemplated for the introduction of EWDs.

The NHVR will continue to provide transport operators and technology providers the opportunity to apply for an EWD system approval into the future. Information for industry on how to register a *Notice of Intent* to develop an EWD system will remain on the NHVR website indefinitely, and continue through regular communication channels.

### 4.3 Post-implementation reviews

The NHVR will conduct a regular review, at least every two years, of the *EWD Policy Framework and Standards*. In addition to these reviews, the NHVR will monitor the uptake, approval process, functionality and performance of EWD systems on an ongoing basis. This may include service capability checks comparing data from heavy vehicle monitoring systems (e.g. Safe-T-Cam) against de-identified EWD information.

Given the NHVR’s disposition to commence approval of EWDs without any legislative changes, the NHVR will monitor and assess the operational and administrative functions of approved systems and report any issues to responsible ministers that may require consideration when the HVNL is next reviewed.

Additional information is available from Amanda Capper, EWD Project Manager.

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<b>Telephone</b>	1300 696 487 (1300 MY NHVR)

## Appendix A – Summary of responses to NPRM1702 – EWD Policy Framework and Standards

### A.1 Key Change Proposal 1 – The NHVR lifts the embargo on approving electronic recording systems for use as part of an EWD

#### A.1.1 Fair treatment of EWD users

Four respondents raised concerns about the potential for EWD information to be used for compliance purposes. One industry group argued that drivers should not be penalised for EWD system errors. One industry group, noting the proposed *EWD Compliance Policy* in the structure of the *EWD Policy Framework*, called for the NHVR to publish the draft policy as they felt unable to accept lifting the embargo without a clear undertaking that EWD users would not be subjected to unreasonable enforcement checking. Another industry group sought assurance that the NHVR will respond to any negative impact occurring with initial EWD implementation.

#### NHVR's disposition:

In terms of compliance treatment, the *EWD Policy Framework* already identifies perceptions of big-brother and enforcement inequity as barriers to industry uptake of EWDs and provides the foundation for fair and equitable treatment of EWD users. The stated purpose of the EWD function is to “shift the focus from traditional enforcement compliance uses, to include reporting and monitoring” (page 8, *EWD Policy Framework*). Multiple sections expand on this, with the EWD high level business requirements upon which the *EWD Standards* are based explicitly including “like-for-like functionality with written work diaries”.

The NHVR believes that the *EWD Policy Framework and Standards* provide an appropriate basis for ensuring fair treatment of EWD users.

However, given the strength of concerns, the *EWD Compliance Policy* sets the following explicit outcomes for EWD operations:

- EWDs must allow drivers and other parties to meet their regulated duties.
- EWD users are treated fairly.
- EWDs should not allow drivers or other parties to obscure offences.

To facilitate the fair treatment of EWD users outcome, the *EWD Standards* already require that potential work and rest breaches of less than 15 minutes not be shown as an investigation aid.

The NHVR will also publish industry education materials including a fact sheet specifically addressing compliance interactions.

#### A.1.2 EWDs as a voluntary alternative to written work diaries

Four respondents supported EWDs as a voluntary alternative to written work diaries only. One industry group requested the NHVR clarify that EWDs are ‘voluntary’. One respondent, a major transport operator, called for mandating EWDs.

#### NHVR's disposition:

Responsible ministers approved EWDs as a voluntary alternative to written work diaries and this is reflected in the *EWD Policy Framework and Standards*. The NHVR has no authority to mandate EWD contrary to ministerial directions.

The NHVR will not revise the *EWD Policy Framework and Standards*.

### **A.1.3 Greater industry guidance**

One respondent called for industry guidance material to be available. Others called for driver obligations for dealing with malfunctions to be clearly articulated in a guideline.

#### **NHVR's disposition:**

The *EWD Policy Framework* indicates that the NHVR will publish guidelines for drivers, transport operators, record keepers and technology providers.

The NHVR will retain this industry education in the *EWD Policy Framework and Standards*.

### **A.1.4 Cancellation/amendment of Approvals**

Two respondents raised concerns about the effect of amendments or cancellations of EWD approvals on transport operators and drivers.

#### **NHVR's disposition:**

The HVNL contains very specific provisions that specify the review and notification processes for amendments and cancellations. The *EWD Policy Framework and Standards* do not alter these provisions; however, the *EWD Policy Framework* adds to these provisions, forecasting that the NHVR will require technology providers exiting the scheme to provide drivers and other stakeholders with continued access to EWD information for 28 days after the approval ends so that drivers and record keepers can continue to comply with legal requirements to carry work records. This requirement will be managed through a legally binding condition of approval and use issued during the approval process.

The NHVR will not revise the *EWD Policy Framework* but may publish guidance on amendments and cancellations in the *EWD Guideline for technology providers*.

## A.2 Key Change Proposal 2 – The NHVR approves performance based, minimum standards for electronic recording systems

### A.2.1 Terminology describing graphical grid

A government department noted the proposed name for the graphical grid representation of EWD information (i.e. ‘Enforcement view’) should be replaced with ‘Compliance View’ in both the *EWD Policy Framework and Standards*.

#### NHVR’s disposition:

The NHVR believes that the proposed name is consistent with modern compliance theory and the tone of the *EWD Policy Framework and Standards*. The *EWD Policy Framework and Standards* will be revised to include the new term.

### A.2.2 Clarification of technical requirements

Several respondents had difficulty understanding or misunderstood various aspects of the *EWD Standards*. These include:

- clarifying the role and responsibility of NHVR and others in approving EWDs and implications of approval for compliance checking
- clarifying that an EWD is a driver aid under the definition in the Australian Road Rules (ARR).

#### NHVR’s disposition:

The NHVR has reviewed each of these requests and determined that no change to the *EWD Standards* is required. The NHVR will provide individual responses clarifying these technical misunderstandings directly to the respondents who raised them.

In addition, the NHVR will write to the relevant governing agency to confirm that EWD are driver aids. The NHVR will also include recommendations for display design developed and provided by Transport for Victoria in the *Guideline for Technology Providers*.

Before being finalised, the *EWD Standards* will be reviewed and endorsed by an independent body – the Australian Road Research Board (ARRB). ARRB will be briefed on all technical issues raised during consultation, prior to conducting their review of the *EWD Standards*.

### A.2.3 Minor amendments to technical requirements

Several respondents made suggestions for minor amendments to technical requirements specified in the draft *EWD Standards*. These include:

- including standard icons for entry into and navigation around the Compliance View
- replacing time and date with a date/time-stamp for the last whole minute
- replacing the requirement to check driver compliance every minute with checking driver compliance at relevant times for issuing a driver alert
- removing all policy and procedural requirements from the technical requirements
- revising terminology to improve consistency with the HVNL and *EWD Policy Framework* (e.g., under system access and data governance requirements we will clarify that an Authorised Officer may “transfer a report” rather than transfer data away).

**NHVR's disposition:**

The NHVR has reviewed each of these requests and determined that the proposed amendments to the *EWD Standards* are justified. The NHVR will revise the *EWD Standards* to incorporate the suggestions raised during consultation.

Before being finalised, the *EWD Standards* will be reviewed and endorsed by an independent body, ARRB. ARRB will be briefed on all technical issues raised during consultation, prior to conducting their review of the *EWD Standards*.

**A.2.4 Accuracy of automatic odometer readings**

Two transport operators were concerned that inaccurate readings from on-board sensors (ECU/odometer) may be false or misleading if this information was automatically pre-populated into drivers' EWD information.

**NHVR's disposition:**

The NHVR is aware of concerns about the accuracy of the odometers and engine control units. That is why the *EWD Policy Framework and Standards* allow for information to be pre-populated but gives drivers the ability to make manual entries or correct auto-populated information that they consider inconsistent or incorrect. To facilitate this, the NHVR will require technology providers to train drivers using approved systems that pre-populate odometer information on how to correct the data (if needed) as a condition of the approval for the system. The NHVR also notes that the HVNL contains legal protections if drivers could not reasonably know that their odometer was not working properly.

The NHVR will not change the *EWD Standards* to prevent pre-populated information from odometers or other sensors.

**A.2.5 Allowing drivers to manually record EWD information**

Five respondents supported the *EWD Policy Framework and Standards* allowing drivers to enter information at a later time, especially if that could not be recorded while the EWD was turned on.

One respondent noted that they had had issues with trucks fitted with EWD-like systems operating within oil refineries or terminals. In these areas, drivers must turn off and isolate all electronic components on the fatigue-regulated heavy vehicle. This led to black-out periods in drivers' data.

**NHVR's disposition:**

The *EWD Policy Framework and Standards* allow drivers to make manual entries at any time prior to accepting the information at the end of their day.

The NHVR will retain this requirement in the *EWD Standards*.

**A.2.6 Allowing drivers to correct incorrect EWD information**

Four respondents supported the *EWD Policy Framework and Standards* allowing drivers to correct their incorrect EWD information.

**NHVR's disposition:**

The *EWD Policy Framework and Standards* allow drivers to correct incorrect EWD information at any time prior to accepting the information at the end of their day.

The NHVR will retain this requirement in the *EWD Standards*.

### A.2.7 Creating historic data

Two respondents supported the *EWD Policy Framework and Standards* providing the facility for creating historic data based on a driver's WWD and supplementary records. However, a government agency questioned the legality of this function.

#### **NHVR's disposition:**

The *EWD Policy Framework and Standards* allow for the creation of historic data as a distinct data type to allow a continuous electronic record for use in accurately determining the driver's fatigue compliance and providing driver alerts for impending non-compliance only.

EWD information is the actual record of drivers work and rest information required under the HVNL. As historic data is not EWD information, is not purporting to be EWD information and is clearly distinguished from EWD information in the EWD display views, the NHVR believes that it cannot be interpreted as a duplicate work diary or false or misleading entry.

The NHVR also notes that, under the HVNL, drivers swapping between electronic and written work diaries are still required to carry their written work diaries for 28 days. Under the *EWD Policy Framework* official compliance checks will be based on the written work diary information.

Internal legal advice supports this arrangement and indicates that it does not violate the restrictions under section 330 of the HVNL.

The NHVR will not change the *EWD Standards*.

### A.2.8 Responsibility for training EWD users

One industry group raised concerns about EWD operations when communications fail (e.g. in tunnels or remote areas).

#### **NHVR's disposition:**

The *EWD Policy Framework and Standards* anticipate communications outages will occur and provides for EWD operations to continue when an EWD is out of range. The requirement for an EWD to retrieve and store the driver's previous 28 days' records means that driver alerts (of potential non-compliance) will not be disrupted due to poor communications.

If connectivity issues lead to inaccurate information, drivers may correct entries prior to their confirmation declaration (at the end of the day).

The NHVR will not change the *EWD Standards*.

### A.2.9 Requiring 2-up driving capability

Three respondents, one transport operator and two technology providers requested that the *EWD Standards* be amended to remove the requirement for EWDs to capture two-up driving arrangements in situations where the company only intends to employ solo drivers.

#### **NHVR's disposition:**

Under the HVNL, the NHVR cannot approve an electronic recording system for use as an EWD if it does not capture all the information required by the law, including two-up driving arrangements.

The NHVR will not change the *EWD Standards*.

### A.2.10 Preventing EWDs causing driver distraction

Two respondents recommended that fully prescribed measures be included in the *EWD Standards* to minimise the risks associated by driver distraction (in regards to driver alerts and data entry). One respondent also suggested that EWDs not display information or allow driver interactions when the engine is running, in order to avoid temptation for driver distraction.

#### **NHVR's disposition:**

The NHVR agrees that EWDs should not cause distractions that prevent drivers from safely operating fatigue-regulated heavy vehicles. By allowing for all driver interactions with the EWD to be done while the vehicle is stationary, there is no need for a driver to enter information or physically interact with the EWD whilst the vehicle is in motion. However, as EWDs are not required to be physically tethered to the vehicle, it is impossible to restrict driver interactions while the engine is running. The NHVR believes that the driver distraction risks are already addressed through adherence to the Australian Road Rules (ARR), which will apply to EWDs with dashboard displays.

Accordingly, the NHVR will not change the *EWD Standards* to specify requirements of displays. However, the NHVR will take the recommendations by Transport for Victoria into consideration during the assessment process for candidate EWD systems and will include them and references to the ARR in guidelines for technology providers.

Also, as EWDs are not explicitly recognised as driver aids under the ARR, the NHVR will write to the governing agency to have this formally recognised.

### A.2.11 Preventing EWDs causing driver distraction

Three respondents suggested the NHVR review the proposed construction of the Driver Unique Identifier in the *EWD Standards* to ensure uniqueness. One respondent, a government department, contends that the NHVR cannot include elements of drivers' date of birth in the construction of the Driver Unique Identifier.

#### **NHVR's disposition:**

The NHVR agrees that the uniqueness of the Driver Unique Identifier could be improved if the construction drew digits from the end of the driver licence number, rather than the front.

The NHVR will amend the *EWD Standards* to reflect this position.

However, the NHVR disagrees with removing drivers' date of birth from the construction of the Driver Unique Identifier. Only elements of the date of birth are incorporated into the identifier, the identifier is not displayed to anyone other than the drivers' transport operator, record keeper and technology provider (who are all bound by pre-existing privacy requirements) and the NHVR is not in possession of records with drivers' date of birth. Further, the use of an EWD is subject to driver consent.

Accordingly, the NHVR will not amend the *EWD Standards* to remove drivers' date of birth.

## **A.3 Key Change Proposal 3 – The NHVR adopts the EWD Policy Framework as the basis for decisions on approving candidate electronic recording systems**

### **A.3.1 Clarify assurance framework activities**

One industry group requested clarification around the assurance framework, suggesting that the NHVR will conduct “broad data-mining activities that are designed to detect non-conformance”.

#### **NHVR’s disposition:**

The *EWD Policy Framework* explicitly states that the scope of the assurance framework is to ensure that “the EWD function is operating effectively and efficiently in all areas” (page 12, *EWD Policy Framework*). Further, the end-to-end process for EWD operations does not show driver work and rest information going to the NHVR. In this context, it is clear that the NHVR will not be engaging in “data-mining activities” on driver/transport operator work and rest limit compliance.

The NHVR will review the quality assurance section of the *EWD Policy Framework* for tone.

### **A.3.2 Managing EWDs that are not working properly**

One respondent called for clause 3.2.4 of the *EWD Policy Framework* to be amended from - “notifying their record keeper or NHVR of any issues where the EWD is not working properly” to “notifying their record keeper if they become aware that their EWD is not in working order or has reason to suspect that their EWD is malfunctioning or has malfunctioned”.

#### **NHVR’s disposition:**

While the proposed text is more complex, it is consistent with the provisions in the HVNL. The NHVR agrees and will amend clause 3.2.4.

### **A.3.3 Cooperation with authorised officers**

One industry group noted that section 3.2 of the *EWD Policy Framework* mentioned drivers cooperating with authorised officers but did not mention transport operators cooperating with authorised officers. They asked for the policy to explicitly require transport operators to co-operate authorised officers.

#### **NHVR’s disposition:**

The NHVR believes such cooperation is desirable and consistent with several legal provisions that create positive duties to provide information to authorised officer in certain circumstances. The NHVR will amend clause 3.2.3 to include “cooperating with authorised officers investigating the driver’s compliance with HVNL fatigue management obligations in accordance with HVNL requirements”.

### **A.3.4 Terminology describing graphical grid**

A government department noted that the proposed name for the graphical grid representation of EWD information (i.e. ‘Enforcement view’) should be replaced with ‘Compliance View’ in both the *EWD Policy Framework and Standards*.



**NHVR's disposition:**

The NHVR believes that the proposed name is consistent with modern compliance theory and the tone of the *EWD Policy Framework and Standards*. The *EWD Policy Framework and Standards* will be revised to include the new term.

**A.3.5 Allowing drivers to manually record EWD information**

Five respondents supported the *EWD Policy Framework and Standards* allowing drivers to enter information at a later time, especially if that could not be recorded while the EWD was turned on.

One respondent noted that they had had issues with trucks fitted with EWD-like systems operating within oil refineries or terminals. In these areas, drivers must turn off and isolate all electronic components on the fatigue-regulated heavy vehicle. This led to black-out periods in drivers' data.

**NHVR's disposition:**

The *EWD Policy Framework and Standards* allow drivers to make manual entries at any time prior to accepting the information at the end of their day.

The NHVR will retain this requirement in the *EWD Policy Framework and Standards*.

**A.3.6 Allowing drivers to correct incorrect EWD information**

Four respondents supported the *EWD Policy Framework and Standards* allowing drivers to correct their incorrect EWD information.

**NHVR's disposition:**

The *EWD Policy Framework and Standards* allow drivers to correct incorrect EWD information at any time prior to accepting the information at the end of their day.

The NHVR will retain this requirement in the *EWD Policy Framework and Standards*.

**A.3.7 NHVAS auditor access to EWD information**

One respondent, a registered NHVAS auditor, questioned how NHVAS auditors will access EWD information for NHVAS audit purposes.

**NHVR's disposition:**

The NHVR believes that the only change is that the records may be electronic (EWDs must be able to provide printouts of EWD information or access to the information electronically). The *EWD Policy Framework* does not prevent or impede auditors accessing relevant electronic records from transport operators/record keepers.

The NHVR will not change the *EWD Policy Framework*.

**A.3.8 Meeting record keeping requirements for EWD users**

One transport operator providing labour hire drivers to other transport operators raised concerns about accessing their drivers' EWD information for when the driver works for another operator with an EWD system. Another respondent raised concern about transferring EWD records "at least once a day", and sought clarification on whether a 24 hour counting period was "a day".

**NHVR's disposition:**

Under the HVNL, the labour hire operator, as an employer of drivers, is their record keeper. The law allows the record keeper to meet their record keeping obligations if they have access to EWDs holding their drivers' information or have been given drivers' EWD information within 21 days.

In terms of EWD transferring drivers' EWD information to record keepers, the HVNL requires EWDs to alert drivers if EWD information is not sent to the record keeper at least once a day. The *EWD Policy Framework* adopts the specific terminology from the HVNL in terms of "at least once a day".

The NHVR will not change the *EWD Policy Framework*.

**A.3.9 Creating historic data**

Two respondents supported the *EWD Policy Framework and Standards* providing the facility for creating historic data based on a driver's written work diary and supplementary records. However, Transport for Victoria questioned the legality of this function.

**NHVR's disposition:**

The *EWD Policy Framework and Standards* allow for the creation of historic data as a distinct data type to allow a continuous electronic record for use in accurately determining the driver's fatigue compliance and providing driver alerts for impending non-compliance only.

EWD information is the actual record of drivers work and rest information required under the HVNL. As historic data is not EWD information, is not purporting to be EWD information and is clearly distinguished from EWD information in the EWD display views, the NHVR believes that it cannot be interpreted as a duplicate work diary or false or misleading entry.

The NHVR also notes that, under the HVNL, drivers swapping between electronic and written work diaries are still required to carry their written work diaries for 28 days. Under the *EWD Policy Framework* official compliance checks will be based on the written work diary information.

Internal legal advice supports this arrangement and indicates that it does not violate the restrictions under section 330 of the HVNL.

The NHVR will not change the *EWD Policy Framework*.

**A.3.10 Responsibility for training EWD users**

Two respondents requested clarity on who had the responsibility for training EWD users.

**NHVR's disposition:**

The *EWD Policy Framework* already states that

- the NHVR will publish training standards on regulatory requirements for EWD use;
- technology providers are responsible for training; and
- transport operators must work with their chosen technology provider to ensure drivers understand how to use their EWD.

The NHVR will not change the *EWD Policy Framework*, however may include specific guidance on training in the guidelines for drivers, transport operators, record keepers and technology providers.

**A.3.11 Responsibility for training EWD users**

One industry group raised concerns about EWD operations when communications fail (e.g. in tunnels or remote areas).

**NHVR's disposition:**

The *EWD Policy Framework and Standards* anticipates communications outages will occur and provides for EWD operations to continue when an EWD is out of range. The requirement for an EWD to retrieve and store the driver's previous 28 days' records means that driver alerts (of potential non-compliance) will not be disrupted due to poor communications.

If connectivity issues lead to inaccurate information, drivers may correct entries prior to their confirmation declaration (at the end of the day).

The NHVR will not change the *EWD Policy Framework*.

**A.3.12 Admissibility of EWD information**

One technology provider requested clarity of the requirement for EWD information to be evidentiary.

**NHVR's disposition:**

The HVNL does not allow the NHVR to approve an electronic recording system for use as an EWD if the EWD information it contains can not be used as evidence. The NHVR believes that evidentiary value is derived from the combination of:

- the *EWD Standards*
- NHVR assessment and testing
- conditions of approval and use set by the NHVR
- driver declarations confirming EWD information
- authorised officer processes
- NHVR assurance processes.

These, combined with the deeming provisions for EWD information in the HVNL, mean that EWD information should be evidentiary if the EWD system is operated by the technology provider and users as approved. In reviewing the NPRM, *EWD Policy Framework and Standards*, the National Prosecutions Group found no impediment to EWD information being evidentiary.

The NHVR will not change the *EWD Policy Framework*.

**A.3.13 Multiple interfaces under one approval**

One transport operator questioned if one EWD system could have multiple display devices.

**NHVR's disposition:**

The *EWD Policy Framework* allows for this. Candidate systems will be assessed against the *EWD Standards*. If the candidate system specifies different displays, so long as all components meet the *EWD Standards*, they can be approved. Any change to an element may require amendment to the approval (after relevant testing).

The NHVR will not change the *EWD Policy Framework*.

**A.3.14 Interoperability between approved EWDs**

Five respondents raised interoperability between approved EWDs as a concern. One transport operator and a freight customer industry group argued that government/the NHVR should establish a central driver registry. Three respondents did not support the *EWD Policy Framework* mandating interoperability between EWD systems, especially where transport operators prohibit secondary employment by their drivers. Two of these who could be potential technology providers were concerned about the quality of information from other technology providers and allowing access to information in their systems.

**NHVR's disposition:**

The HVNL was amended to specifically allow transport operators, record keepers and drivers to meet their record keeping provisions when they move between different EWD systems so long as the systems allow the parties to access drivers' past EWD information.

The NHVR believes that peer-to-peer communication represents the most efficient and cost effective way of delivering this capability, whilst also addressing industry concerns about government scrutiny of EWD information. The *EWD Policy Framework and Standards* provide for a federated distributed registry maintained by transport operators and technology providers directly. This delivers the same functional outcome as a central registry without government intervention, scrutiny or fees.

In order to protect proprietary interests of approval holders (i.e. technology providers or transport operators who have approved EWDs), the *EWD Standards* standardise the data definitions, interactions, communication process and data end-points (which is essentially the only 'commercial' information visible during peer-to-peer interactions).

The NHVR will not change the *EWD Policy Framework*.

**A.3.15 Responsibility for maintaining EWDs in working order**

One major industry group raised a concern that *EWD Policy Framework* made record keepers responsible for maintaining EWDs in proper working order. They questioned if technology providers, as the approval holders, should have their role made explicit in the *EWD Policy Framework*.

**NHVR's disposition:**

The HVNL places positive duties on record keepers with EWDs that are lost, stolen, destroyed, filled-up or malfunctioning to initiate appropriate actions to restore the EWD to working order. There are no explicit duties specified in the HVNL for technology providers. The *EWD Policy Framework and Standards* reflect this.

The NHVR agrees that technology providers should work with transport operators and their delegates to resolve units or systems that are not working properly. However, the arrangements between technology providers and transport operators are commercial, not regulatory, and do not require direct intervention by the NHVR.

There may be exceptions where the NHVR's assessment of candidate systems indicates a specific vulnerability to meeting the *EWD Standards*. The NHVR will use legal enforceable conditions of approval and use to ensure risks associated with all vulnerabilities are managed by the technology provider.

The NHVR will not change the *EWD Policy Framework*.

**A.3.16 Specifying head of power for EWD Policy Framework and Standards**

One government stakeholder requested that the NHVR specify the legislative head of power under which the *EWD Policy Framework and Standards* were created.

**NHVR's disposition:**

The HVNL authorises the NHVR to create administrative policies the NHVR deems necessary to implement its functions. The *EWD Policy Framework and Standards* have been developed under this provision.

The NHVR will not change the *EWD Policy Framework and Standards*.