



# EWD Compliance

## Policy

May 2018

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## Context

The *Electronic Work Diary Policy Framework* establishes the NHVR's approach to administering the Electronic Work Diary (EWD) provisions in the Heavy Vehicle National Law (HVNL).

The framework consists of the following documents which are designed to be read in conjunction with each other:

- EWD Policy Framework
- EWD Privacy Policy
- EWD Compliance Policy
- EWD Standards (including associated EWD Standards – Schedule A).

To access the full suite of documents, visit [www.nhvr.gov.au/EWD](http://www.nhvr.gov.au/EWD).

## Document properties

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## Purpose

This policy sets out the regulatory approach for compliance activities in relation to Electronic Work Diaries (EWDs).

This policy applies the National Heavy Vehicle Regulator’s (NHVR’s) key regulatory principles to the administration of the EWD provisions in the Heavy Vehicle National Law (HVNL or the law).

This policy addresses key operational aspects relating to the administration of EWDs and how the NHVR will manage these to ensure that EWD users are treated fairly and EWD information is accurate, accessible and of an evidentiary standard.

The policy positions in this document are implemented in the:

- specific requirements for EWDs in the *EWD Policy Framework* and *EWD Standards*
- procedures and training for authorised officers
- educational materials for drivers, record keepers, transport operators and technology providers.

## Factors affecting the NHVR’s compliance approach for EWDs

### NHVR’s strategic directions on compliance

1. The NHVR’s approach to compliance and assurance is described in *Setting the Agenda - Strategies for a Safer, Productive and more Compliant Heavy Vehicle Industry 2016 – 2020*. This document outlines the NHVR’s strategic priorities in encouraging industry to adopt compliant and safe practices in heavy vehicle operations.
2. Making the case that traditional approaches to regulation and enforcement are unsustainable and potentially ineffective, *Setting the Agenda* sets the following principles to guide compliance and assurance actions:

Principle	Description
<b>Safe</b>	Ensures a co-regulatory approach that supports a strong safety culture owned by the heavy vehicle industry, including all parties in the supply chain, based on risk management and continuous improvement.
<b>Evidence-based</b>	Use EWD data to identify successful strategies that can change unsafe and unlawful behaviour.

Principle	Description
<b>Fair</b>	Create a regulatory environment that is consistent and based on procedural fairness through the development of transparent and accountable policies, procedures and processes.
<b>Targeted</b>	Develop intelligence-driven risk models of key industry segments based on qualitative and quantitative data that enable the NHVR to design risk-based policies and strategies.
<b>Effective</b>	Ensure that only drivers and operators who have adopted safe business practices can continue to operate in the industry.

3. The NHVR has referenced these principles in determining the role of EWDs in compliance and assurance activities.

### Legal provisions relating to EWDs

4. The HVNL provides the NHVR with authority to approve electronic recording systems for use as an alternative to the Written Work Diary (WWD). The NHVR can only use this authority if the electronic recording system meets certain requirements. The most relevant for compliance activities is section 343 (2) (i) of the HVNL, which is reproduced below. The NHVR must be satisfied the system:
  - (i) is capable of readily reproducing, on being accessed by an authorised officer while the vehicle to which it or a part of it is fitted, or in which it or a part of it is used, is on a road, the information the system contains in a form that—
    - (i) is readily accessible by the officer; and
    - (ii) is reasonably capable of being understood by the officer; and
    - (iii) can be used as evidence.
5. Based on this requirement, it is clear that EWDs must provide opportunity for external review equivalent to that used for the WWDs. This is an important position as it enables the NHVR to regulate towards a ‘level playing field’—where EWD users cannot obscure breaches they commit and from which they could derive commercial advantage over users of WWDs.
6. Monitoring and reporting on driver compliance with work and rest limits is also a critical component of effective fatigue risk management systems. Drivers are more likely to comply with work and rest limits, reducing the fatigue risk associated with their operations.

## EWD end-to-end process

7. The EWD Policy Framework establishes the NHVR's approach to administering the EWD provisions in the HVNL and sets monitoring and assurance as a key operational function. The aim of this function is to provide an external measure to assist industry to safely manage driver fatigue by ensuring that drivers' EWD information is:
  - accessible for compliance and enforcement purposes
  - reliable for evidentiary purposes.
8. The key interactions in EWD operations, based on the EWD end-to-end process, are:
  - At intercept, or on investigation:
    - retrieve required EWD information
    - identify issues in driver EWD information
    - confirm facts associated with potential breaches
    - determine appropriate sanction(s)
    - capture and transmit relevant EWD information to the appropriate jurisdiction.
  - If necessary:
    - present relevant EWD information to court.
9. The EWD Policy Framework sets several essential requirements for EWDs relating to compliance and assurance activities:
  - Each driver will be uniquely identified.
  - EWDs must:
    - provide a secure method for authentication into the EWD so that a driver cannot make an entry under another driver's record
    - accurately monitor and record the driver's work and rest times
    - accurately record all other information required for the national driver work diary
      - allow a driver to confirm accuracy of the EWD information once
      - allow a driver to only login to one EWD at a time
      - allow authorised officers to make annotations
  - A driver's EWD information must be:
    - readily accessible by an authorised officer
    - reasonably capable of being understood by an authorised officer
    - presented in a standardised graphical representation
    - able to be used as evidence should an offence be detected.

## Compliance outcomes for EWD

10. Based on the essential requirements described, the NHVR has set the following compliance outcomes for all EWD users:
  - Approved EWDs must allow drivers and other parties to meet their regulated duties.
  - EWD users are treated fairly compared to users of WWDs.
  - EWDs should not allow drivers who commit offences to obscure these offences to derive unfair commercial benefit.
  - Focus should be on the safety of drivers and other road users and on deliberate or repeat offenders.
11. The following sections outline how the NHVR will achieve these outcomes.

### EWDs must allow drivers and other parties to meet their regulated duties

12. To facilitate administrative tasks associated with record keeping required under the HVNL:
  - Approved systems are required to:
    - guide drivers through information to be completed, step-by-step
    - alert drivers to impending breaches
    - allow drivers to check the information before confirming the records for the day.
  - The EWD Standards allow systems to provide automatic suggestions for information to be prepopulated based on the vehicle, Global Navigation Satellite System (GNSS) location, internal clock and odometer.
13. A requirement of the HVNL is that drivers carry the previous 28 days' work and rest records and give these records to their record keepers. To assist drivers to meet this obligation, all approved EWDs automatically load drivers' previous 28 days' of work and rest records into the EWD on login. Driver records are transmitted to the record keeper at least once per day. Drivers will be warned about communication failures that prevent this transmission.
14. The HVNL allows the requirement to give information to a record keeper to be satisfied, if the record keeper has access to the information electronically. The NHVR has standardised the data definitions for EWD information, technical requirements for collection and communication of information, and data interoperability protocols between EWD systems. The driver's unique identification is used to facilitate these requirements.

15. The final aspect of ensuring drivers and other parties can meet their regulatory obligations is providing drivers with alerts of potential non-compliances before they happen, through requirements in the EWD Standards. Approved EWDs will automatically incorporate rule sets published by the NHVR, based on legislated and approved work and rest rule hours. Drivers are responsible for monitoring their compliance with the work and rest requirements and must rest, when legally required, even if the EWD does not give an alert. Drivers will also be advised if the EWD is not functioning properly and will receive training on the processes to follow in this event.

### EWD users are treated fairly

16. Since EWDs were incorporated in the HVNL, there have been concerns that authorised officers may assess EWD information more vigorously at the roadside than WWD records. The NHVR's position on the use of EWD information is that drivers using EWDs should be treated fairly compared to users of WWDs. As EWDs may provide greater visibility of drivers' records at the roadside, the requirements about recording and interpreting EWD information must be equivalent to a WWD in three key aspects:

- Drivers control their work and rest records entered into the EWD.
- Drivers can review and correct their information.
- Minor breaches of less than 15 minutes should not be sanctioned unless there is an immediate safety concern or a pattern of deliberate and repeated non-compliance.

17. Each of these aspects is discussed as follows.

### Drivers control their work and rest record

18. EWDs can generate and store information based on sensors in the engine, odometer, and elsewhere throughout the vehicle. These sensors cannot determine who performed the activity that led to changes in the system. If these sensors were used to automatically record work and rest, it is possible that they would over-estimate drivers' work and potential fatigue. For example, a prime mover jockeying trailers around a depot for loading may record the movement as work for the driver because it doesn't know that a yard worker is in control. Accordingly, the NHVR requires drivers are in control of their work and rest record.

19. To do this, the EWD Standards do not allow for automatic generation of work and rest records. While approved systems may make suggestions based on sensors, drivers must be able to review and correct any information generated by the system.

Compliance checks and alerts on approved EWDs will be based on the corrected work and rest records.

### Drivers can review and correct EWD information

20. The requirements for approval and use of EWDs include reliability and malfunction management. To ensure that drivers are not penalised for errors in their EWD information caused by system malfunctions, the NHVR will only approve EWDs that allow drivers to review and, if necessary, correct EWD information recorded in their name.

21. When drivers correct information, the correction will be recorded as a separate event in the driver's record. Where the correction relates to the time of a work and rest change, compliance monitoring will be based on the time stated (confirmed) by the driver. All corrections to work and rest information will be indicated on the 'Compliance View' available to authorised officers.

22. Information that is not corrected is accepted by drivers as true and correct when drivers confirm the record (at the end of the day). This is equivalent to the driver signing off on the WWD daily sheet.

### Minor breaches less than 15 minutes

23. EWD information is recorded and counted in one minute intervals as opposed to 15 minutes for work and rest records in WWDs. To ensure equitable treatment of EWD users, the HVNL specifies that transgressions of work limits of eight minutes or less do not constitute a breach.

24. To ensure parity with users of WWDs, EWDs will not display work or rest breaches of 15 minutes or less in the Compliance View. However, drivers cannot use this policy as an excuse for not taking required short rest breaks. This policy does not alter the time a work rest change occurs; the amount of work or rest in a counting period; or the time a potential breach occurs.

25. If a minor breach is detected, a sanction should not be issued unless the authorised officer believes that there is an immediate safety risk or that the breach is part of a pattern of deliberate or repeated non-compliance. Under these circumstances these breaches could be managed by issuing the appropriate sanction, which is comparable to treatment of drivers using WWDs. As with WWDs, authorised officers must have regard to any comments relating to potential breaches included by the driver in their EWD information, when determining if a sanction is appropriate.

## EWDs should not allow drivers or other parties to obscure offences

26. As with WWDs, authorised officers are able to use EWDs to check drivers' compliance with work and rest limits. The EWD end-to-end process has been designed to allow authorised officers to perform roadside safety and compliance activities involving EWDs without specialist equipment, skills or training.
27. In this context, EWDs must allow authorised officers to:
- view and interpret drivers' EWD information
  - retrieve EWD information for use after the intercept (if needed)
  - make annotations to accompany drivers' EWD information
  - take appropriate compliance action (if required).
28. To facilitate viewing and interpreting drivers' EWD information, all approved EWDs must be able to take work and rest records and display them in a graphical grid view, similar to the approved standard for the WWD. This view is part of the Compliance View defined in the EWD Standards. Because this view is closely aligned with the WWD daily sheet, the role of authorised officers in interpreting drivers' EWDs is be much the same as for WWDs.
29. All EWDs are required to automatically check drivers' work and rest against rule sets published by the NHVR to provide drivers with alerts about potential non-compliances before they happen. To further assist authorised officers in checking driver compliance, the same rules sets will be used to generate a list of potential non-compliances in drivers' EWD information. These will be available for viewing by the authorised officer as an 'investigation aid'.
30. Investigation aids interpret facts in drivers' EWD information to highlight potential non-compliances and expedite the review process. They are not facts in and of themselves. Investigation aids do not contain all of the elements of an offence, so authorised officers will still need to review the facts associated with the potential breach before issuing a sanction. Because EWDs will hold and present at least the last 28 days of drivers' EWD information, authorised officers must check that potential non-compliances in the investigations aids have not already been managed.
31. To allow authorised officers to capture drivers' EWD information during an intercept, the EWD Standards specify a requirement that EWDs must allow authorised officers to email the relevant information to a nominated address. The nominated address is protected and not made available to the driver, record keeper or transport operator. The EWD

Standards also set the format and communication protocols for this request. Investigation aids are not included in the EWD information emailed to authorised officers.

32. The EWD Standards also stipulate a requirement that EWDs must allow authorised officers to make annotations to accompany the drivers' EWD information. This is equivalent to authorised officers writing on and signing drivers' daily sheets in their WWDs. The annotations are free-text fields that allow authorised officers to provide their ID/badge number, intercept location, date/time, the time the driver was held and other information as required. Annotations made by authorised officers are flagged on the Compliance View.

## Other issues

### Considerations for seizure of electronic recording systems

33. Generally, an EWD will not be subject to seizure.
34. Authorised officers have the power to seize a work diary under the HVNL. However, the seizure of an electronic recording system that incorporates an EWD may have consequences for other regulatory functions that are integrated into the system of which the EWD forms a part. Seizure of an EWD will only be considered where there is a legal need to ensure the preservation of evidence.
35. Authorised officer guidelines outline the appropriate protocols for the seizure of an EWD in situations where extenuating circumstances may exist (e.g. the vehicle is involved in a serious accident, cannot continue to operate and there is a reasonable belief that the electronic recording system may hold information that would assist in further investigations).
36. If an authorised officer suspects an EWD has been tampered with, alternative methods should be considered prior to a decision to seize.

### Extraterritoriality

37. The admissibility of EWD data is not restricted by extraterritoriality. The HVNL contains provisions that ensure EWD information is admissible in court for the prosecution of work and rest hour-related offences. EWD information is a 'document' and is admissible as evidence of the contents of that document. That is, identification of a breach and evidence collected in one jurisdiction can be presented in another jurisdiction.
38. Where an authorised officer in one jurisdiction identifies a potential breach that occurred in another



jurisdiction, the authorised officer may work with the relevant prosecution agency to resolve the issue.

## Statutory defences

39. There are two statutory defences in the HVNL available to a defendant for use in a court proceeding following an offence—one if a driver operating under Standard Hours has not taken a short rest break (s252), the other if a driver operating under Basic Fatigue Management (BFM) has not taken seven continuous hours of rest (s255).
40. These defences only apply in a court proceeding and are therefore not automatically available to the driver through the EWD and will not be shown on the Compliance View during a roadside intercept. Drivers may make comments in the EWD about the circumstances which may allow for these defences, just as in the WWD. These comments will be flagged on the Compliance View and be visible during the intercept.
41. In these circumstances, authorised officers should apply the same discretion that would apply to WWDs.

## Assurance

42. The NHVR maintains the management, performance oversight, audit and investigation functions on EWD operations.
43. The EWD Policy Framework (Assurance Framework) places the responsibility and accountability for regulatory fatigue compliance on industry participants and technology providers who have control over the EWD operating environment. Reporting of system malfunctions, communication and data transfer issues are essential to systems being approved. Legislative provisions provide the NHVR with a mechanism to sanction any party which fails to comply.
44. Checks and balances are undertaken through general surveillance, intelligence reports from authorised officers and intelligence from periodic comparison of EWD information against other compliance data sets (discrepancies may indicate EWDs that are not working properly).
45. EWD system approvals may be amended or cancelled should an investigation in response to allegations, incidents and/or post event analysis of data integrity identify technical or systematic failure to comply with the conditions of approval and use (e.g. allegation of non-compliance with rules by a technology provider).
46. Transport operators are responsible for controlling or directing the use of fatigue-regulated heavy vehicles and maintaining business practices that ensure that

their business operates in a compliant and safe manner. They are responsible for implementing and maintaining approved EWDs in conjunction with a technology provider and providing ongoing support to ensure that the record keeper and drivers use an EWD in accordance with the conditions of approval and use. Failure of transport operators to effectively manage their responsibilities may become the subject of a Chain of Responsibility (CoR) investigation.

47. Back office investigation of the record keeper may be triggered if an analysis of data suggests the transfer or integrity of data is or has been compromised; or the conditions of approval and use are not being met.

## Definitions

Refer to the:

- HVNL (Section 5, Definitions)
- [NHVR Glossary of Common Terms](#)

## Related legislation

- [Heavy Vehicle National Law Act 2012](#) [HVNL]
- [Heavy Vehicle \(Fatigue Management\) National Regulation](#) [HV(FM)NR]
- [Heavy Vehicle \(General\) National Regulation](#) [HV(Gen)NR]