



EWD Privacy

Policy

May 2018

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.

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Purpose

This policy sets out the approach to assure a person's personal information is dealt with in accordance with the *Privacy Act 1988* (Cth) (the Privacy Act) and the *Australian Privacy Principles* (the APPs).

This policy applies to all parties engaged in the handling of EWD information including:

- drivers
- transport operators
- record keepers
- technology providers
- authorised officers.

The development of this policy was consistent with the *Office of Australian Information Commissioner's 4A framework – a tool for assessing and implementing new law enforcement and national security powers*¹.

Factors affecting the privacy approach for EWDs

1. *Personal information* is any 'information or an opinion about an identified individual, or an individual who is reasonably identifiable:
 - a. whether the information or opinion is true or not; and
 - b. whether the information is recorded in a material form or not.'
2. According to the Office of the Australian Information Commissioner, this definition is deliberately broad and technology agnostic and includes information about a person's working habits and practices.
3. Under the *Privacy Act*, individuals are entitled to have their personal information protected from misuse through the application of the *APPs*.
4. The NHVR believes that all EWD information is 'personal information' as defined under the *Privacy Act* and should be protected from misuse. The following sections outline
 - what personal information is collected in EWD operations, when and by whom
 - the protections in place in the HVNL and Privacy Act to ensure personal information is managed appropriately
 - additional administrative actions required to protect driver's privacy.

¹ Office of the Australian Information Commissioner, 2011, '4A framework – A tool for assessing and implementing new law enforcement and national security powers', *Privacy Fact Sheet 3*

Collection, transfer and retention of personal information

5. The EWD end-to-end process specified in the *EWD Policy Framework* and *EWD Standards* describes how EWDs collect, communicate and store information on a driver's work and rest as prescribed by the HVNL. Personal information for drivers is collected, transferred or retained in the:
 - generation of a drivers' unique driver identification
 - making and sharing of work and rest declarations during day-to-day operations.

Generation of unique driver identification

6. A key component to allow drivers to move from one approved EWD system to another (work diary follows the driver) is the requirement for all EWD information for a driver to be linked to single, unique driver identifier (UDI).
7. Drivers are required to be registered with a technology provider to use an EWD. The technology provider creates a UDI using the protocol specified in the *EWD Standards* (based on details supplied by drivers and available on the driver licence). Drivers must consent to providing the driver licence for the creation of their UDI. A transport operator for a driver may request driver registration and UDI creation on behalf of a driver but only if they have prior consent of the driver to provide the information to the technology provider.

Making and sharing work and rest declarations

8. A driver logs in to the EWD at the start of a day, using the secure method of authentication provided by the technology provider and which is linked to the UDI. All subsequent declarations of work, rest or other activities are recorded against the UDI. When a declaration is made, the EWD records the date and time stamp and location (latitude/longitude as determined by the Global Navigation Satellite System (GNSS) and location name). Because of this level of detail and the link to the drivers' UDI, all of these records will be personal information as defined by the *Privacy Act*.
9. In the EWD end-to-end process, a driver's personal information will be shared with the driver's record keeper, the technology provider who holds the approval for the EWD used by the driver and, if the driver swaps between different EWD systems, the technology providers who hold the approval for any subsequent EWDs used by the driver.

10. To enable drivers to comply with their obligations under the HVNL to be able to produce the previous 28 days of records, the *EWD Standards* require the retention of these records by the technology provider. The technology provider may transfer a driver's previous 28 days of records to other technology providers if the driver moves from one approved EWD system to another

Roadside compliance checking

11. Under the HVNL, it is a requirement that any electronic recording system approved for use as an EWD must be able to present information to an authorised officer in a way that is accessible and readily understood. This is equivalent to the requirements for the written work diary, which mandate and enforce duplicates of drivers' daily sheets. This requirement means that authorised officers will also have access to drivers' personal information.
12. To fulfil this obligation, the *EWD Standards* require EWDs to have a 'compliance view' for roadside compliance checking. The driver presents the EWD to an authorised officer in the compliance view in order to allow the officer to check their work and rest records. The compliance view is only required to provide information in relation to the fatigue management requirements under the HVNL. Other non-regulatory commercial information may be protected in this view.
13. Authorised officers may send a copy of a driver's previous 28 days records from the EWD to their nominated email address. The nominated address is protected and not made available to the driver, record keeper or transport operator.
14. Other than for the checking of compliance, the NHVR does not handle, collect or retain personal information required for EWD use. Any use of EWD information by the NHVR for fatigue management research and/or planning will be de-identified to protect the privacy of individuals concerned. Obtaining EWD information for any purpose other than fatigue management under Chapter 6 of the HVNL must be by lawful warrant.

Current protections

15. EWD information is protected by multiple layers. The first layer is the NHVR privacy statement. This statement outlines the principles the NHVR applies to the collection, use and disclosure of personal information and can be found on the NHVR website at <https://www.nhvr.gov.au/privacy>.
16. Consistent with those principles, the NHVR has designed the requirements for an electronic

recording system that constitutes an EWD in such a way as to ensure so far as reasonably practicable, that the information collected for an EWD:

- is necessary for the purpose for which it is collected or a directly related purpose under fatigue management law
 - does not intrude to an unreasonable extent on the personal privacy of any individual to whom the information relates
 - is not excessive for that purpose
 - is accurate, complete and up to date.
17. The second layer comprises several legislative protections found in Part 13.4 of the HVNL. Penalties up to \$20,000 apply to NHVR employees, delegates and contractors for:
- using protected information other than for an authorised use, or
 - disclosing protected information without the consent of the person to whom the information relates, or
 - using EWD protected information other than for an EWD authorised use.
18. The final layer is the *APPs*. Some Australian private sector industry participants (transport operators, record keepers and technology providers) are subject to the *Privacy Act* and the *APPs* (businesses with over \$3 million turnover). State and territory transport authorities and police agencies are subject to privacy legislation or guidelines in each jurisdiction.

Keeping personal information private

19. The *EWD Policy Framework* and *EWD Standards* seek to adopt the highest common privacy standard to overcome the various privacy requirements of the jurisdictions. The NHVR has determined that not all technology providers will be captured by the defences outline in earlier paragraphs. In order to ensure that personal information is protected, the NHVR will require all technology providers, transport operators and record keepers to comply with the *APPs* as a core condition of approval and use of an EWD.
20. Because these requirements are incorporated into the conditions of approval and use of an EWD, any privacy violation is a breach of those conditions and would carry a sanction such as withdrawal of approval or use of an EWD. The impact on a person or organisation of that sanction might be significantly greater than penalties incurred by privacy legislation.
21. As a result, technology providers must apply the *APPs* in all their EWD operations that access or use a person's personal information and must:

- identify the information that will be collected, the way it will be collected, the ways the information will be used, and the purposes for which it will be used
- ensure the collection and storage of EWD information does not intrude to an unreasonable extent on the personal privacy of any individual to whom the information relates.

Other issues

Sharing of rule sets

22. The HVNL makes available four work and rest hours options: Standard Hours, Basic Fatigue Management (BFM), Advanced Fatigue Management (AFM) and Exemption Hours. Whilst Standard Hours and BFM are in the public domain, AFM is subject to an accreditation process. Accreditation information is commercially sensitive and may constitute personal information under the definition in the *Privacy Act*.
23. For EWDs to be able to check compliance of drivers operating under each work and rest option, the NHVR has developed rule sets based on each set of approved AFM and Exemption Hours, as well as for Standard Hours and BFM. These rule sets are machine-readable versions of the work and rest options. It is essential that technology providers have access to the rules sets so that they can develop compliant electronic recording systems. The NHVR has to balance the need to protect AFM information against the needs of technology providers to have access to rule sets for development of candidate electronic recording systems.
24. To protect AFM accreditation holders whilst still allowing technology providers to develop compliant systems, the NHVR will restrict access to AFM and Exception Hours rule sets to technology providers who hold a current EWD approval.

Commercialisation of driver data

25. Data associated with EWD information may have commercial value to technology providers for applications other than EWDs. Whilst the NHVR does not want to unnecessarily restrict the commercial activities of technology providers, the NHVR believes that this data should not be used if privacy of personal information cannot be maintained. Accordingly, the NHVR will set a core condition of approval and use that technology providers seeking to use data gained from EWD information of drivers must either:
- obtain prior written consent from the transport operator and drivers whose data will be used, or

- de-identify the data to such an extent that it is not possible for anyone to identify the individuals that the data relates to.

Definitions

Unless otherwise defined in the *EWD Policy Framework* and *EWD Standards*, key terms used in this document are defined within the HVNL.

Related documents and legislation

Privacy statement

- The NHVR Privacy Statement is available at <https://www.nhvr.gov.au/privacy>.

Related legislation

- [Heavy Vehicle National Law Act 2012](#) [HVNL]
- [Heavy Vehicle \(Fatigue Management\) National Regulation](#) [HV(FM)NR]
- [Information Privacy Act 2009](#)
- [Privacy Act 1988](#) (Cth)