

Driving while fatigued or drowsy is dangerous. For drivers of fatigue-regulated heavy vehicles (heavy vehicles over 12 tonnes GVM and fatigue regulated buses), fatigue is managed by work and rest limits set in the Heavy Vehicle National Law (the HVNL).

Heavy vehicle operators can choose to use either a Written Work Diary (WWD) or an approved Electronic Work Diary (EWD) to record their work and rest to show that driver fatigue is being managed in accordance with the law.

An EWD is any electronic recording system approved by the NHVR as meeting the EWD Standards. This recording system can include portable devices like smartphones, tablets or more traditional telematics devices.

This guideline outlines:

- *how record keepers for drivers of fatigue-regulated heavy vehicles can use EWDs to meet their record keeping obligations*
- *the legal obligations for record keepers to manage EWD operations.*

The role of record keepers

Under the HVNL, record keepers are responsible for collecting and keeping specific fatigue management information for drivers of fatigue-regulated heavy vehicles. By doing this, record keepers play an important role in monitoring driver compliance and fatigue risk.

In relation to EWDs, the primary role of record keepers is to manage and retain EWD information and to ensure that the EWD operations comply with the conditions of approval and use set by the NHVR.

Record keepers are responsible for:

- receiving and storing EWD information for drivers
- maintaining EWDs in proper working order including notifying the NHVR of any issues
- providing reports of EWD information to drivers and authorised officers as required by the HVNL
- cooperating with the NHVR and jurisdictional authorities with investigations relating to EWD operational activities.

The HVNL defines who the record keeper is for a driver. However, employers, accreditation holders and drivers may appoint third parties, including technology providers, to undertake record keeping functions. When this occurs, the law stipulates that both the record keeper and third party provider are legally responsible for the compliant execution of the record keeping function.

EWD obligations

EWD operations involve five different functions:

1. **Setting standards** – ensuring that technology approved for use as an EWD meets performance based standards set by the NHVR.
2. **Deployment** – supporting industry to prepare to use EWDs as a voluntary alternative to written work diaries.
3. **Day-to-day operations** – using EWDs to collect work and rest information.
4. **Assurance/enforcement** – using EWD information to check driver compliance with work and rest limits.
5. **EWD assurance** – checking that approved EWDs continue to function properly.

The following sections outline the obligations for record keepers for each of the five functions.

Setting standards

There are no explicit obligations for record keepers in setting standards for EWD.

Deployment

Depending on the structure of the business, there are no specific EWD obligations for record keepers in deployment. However, record keepers must receive relevant training on the technical and legal requirements of operating EWDs prior to commencing use of an EWD.

Record keepers may be requested by transport operators to work with technology providers to prepare drivers to use EWDs. This may include:

- obtaining drivers' consent to have their details shared with the technology provider
- providing driver licence details for nominated drivers to the technology provider
- delivery of secure driver authentication details to the driver, from the technology provider
- coordinating training of nominated drivers.

Day-to-day operations

Record keepers day-to-day obligations involve the following activities:

Sharing and keeping drivers EWD information

Under the HVNL, the requirement for drivers to give their work diary information to their record keepers is satisfied if their record keepers have access to the information from an approved EWD system.

For this provision to apply, record keepers must be able to access or receive reports from technology providers containing the complete record of EWD information for nominated drivers.

Sharing and keeping drivers EWD information (continued)

Record keepers must have access to, or keep this information for at least three years, in a way that ensures it is readable and reasonably capable of being understood, and capable of being used as evidence.

Record keepers must give drivers their EWD information (for each day the driver used the EWD) as soon as reasonably practicable after it is requested by the driver or immediately after the driver stops using an EWD to make work and rest declarations.

Maintaining EWDs in working order

The HVNL makes record keepers responsible for ensuring that EWDs are restored to proper working order.

Accordingly, when contacted by driver or, when they first suspect that the EWD is not working properly, record keepers are legally obligated to:

- instruct the driver to use written records until the EWD is restored to working order
- notify the NHVR of EWDs that are not working properly—the NHVR will provide advice of the timeframe for EWDs to be restored to working order
- arrange for the driver's EWD to be restored to working order within the period required.

Creating historic data for drivers

Drivers are permitted to swap between written and electronic work diaries. This may happen because the driver works for multiple transport operators—some with EWDs, some without—or for operational reasons within the business.

When drivers swap from a written to electronic work diary, record keepers may enter the drivers' work and rest entries from the written work diary into the EWD (if facility is available). This is known as creating historic data and is permitted by the *EWD Policy Framework*.

Historic data is not EWD information but by entering it into the EWD system, it allows for a continuous electronic record that can be used for driver alerts and compliance checking.

Drivers who have historic data must still carry their written work diary with them for 28 days. Record keepers must keep original records for period to which the historic data relates.

Reviewing driver records

If an error is detected when driver records are being reviewed, the record keeper should advise the driver of the error so that the driver can take appropriate action.

The HVNL does not allow anyone other than authorised officers or drivers to make entries in work diaries.

Assurance/enforcement

An authorised officer conducting an investigation may formally request a driver's EWD information from the record keeper. If this happens, the record keeper is legally obligated to comply with the request. To allow this, record keepers must be able to:

- retrieve the relevant EWD information
- provide the relevant EWD information relating to a driver to the authorised officer in a way that makes it easily understood (e.g. printout or electronic human readable documents).

If the record keeper or transport operator has engaged the technology provider to provide long term storage of drivers' EWD information, the agreement should cover what will be done if such a request is made.

Remember, transport operators and record keepers share legal responsibility for complying with the law, even when they have contracted certain obligations to third parties.

EWD assurance

There are no specific regular EWD assurance obligations for record keepers.

If required, record keepers must cooperate with requests from the NHVR and jurisdictional authorities during operations and investigations into EWD operations.

Where do I get help?

Contact your technology provider for specific information on using the EWD.

Visit www.nhvr.gov.au/fatigue for more information on fatigue management obligations under the HVNL.

Visit www.nhvr.gov.au/ewd for more information about EWD operations, including

- *EWD Policy Framework*
- *EWD Privacy Policy*
- *EWD Compliance Policy*
- *EWD Standards* (inclusive of Schedule A)
- EWD Guidelines for Drivers, Transport Operators and Technology Providers
- Frequently asked questions.

Visit www.nhvr.gov.au/ewd-notifications to notify the NHVR of an EWD that is not working properly.

DISCLAIMER - This guideline assists record keepers to use electronic work diaries according to the law. It is not an exhaustive list of requirements. Record keepers should ensure that they comply with all requirements in the Heavy Vehicle National Law, the Heavy Vehicle (Fatigue Management) National Regulations and other policies and standards.

This guideline is not legal advice. If necessary, you should obtain independent legal advice that takes into account your particular circumstances.