



ELECTRONIC WORK DIARY DRAFT POLICY FRAMEWORK AND STANDARD

AUSTRALIAN TRUCKING ASSOCIATION SUBMISSION

9 FEBRUARY 2018

1. About the Australian Trucking Association

The Australian Trucking Association (ATA) is the peak body representing trucking operators. Its members include state and sector associations, some of Australia's major logistics companies and businesses with leading expertise in truck technology. Through its members, the ATA represents many thousands of trucking businesses, ranging from owner drivers to large fleets.

2. Introduction

In the ATA's view technology could have a huge role to play in guiding and improving business and driver behaviour around fatigue management. The industry needs solutions that will be respected by its users if wide and rapid voluntary up-take of these technologies is to be achieved.

The most recent NTI Major Accident Investigation Report by NTARC says that we have seen no improvement in the fatigue result since 2009¹. The report questions the effectiveness of prescriptive driver hours when compared to the benefits of astute driver management that includes a focus on driver fitness for duty. Our current system of fatigue management does not properly incorporate what is known about the science of sleep. Fatigue must be considered as a biological condition and all drivers as individuals.

The perception that fatigue crashes occur because of long distance driving is simply not reflected in statistical analysis. NTARC crash data demonstrates that outward journeys from the home base (within 500 km) contribute to two out of three reported large losses. Most of these incidents occur on Mondays and Tuesdays (41.1% of major incidents).

This raises a clear need for fatigue management systems to incorporate more comprehensive driver management including monitoring of an individual driver's fitness for duty.

3. ATA Position

The importance of EWD standards and policy, of fatigue management, and the ultimate goal of improving safety requires genuine consultation. The ATA was first notified of the NHVR's consultation drafts on 22 December 2017, and offered an overview of the documents via teleconference on 8 January 2018, when we were informed that the consultation period would close on 31 January 2018. After writing to the NHVR an extension to 9 February was granted.

A consultation period of seven and a half weeks is not sufficient for genuine engagement with industry on this issue. This period is the busiest time of year for the industry followed immediately by a period in which many people take leave.

¹ NTI, NTARC [2017 Major Accident and Investigation Report](#)

Genuine engagement is critical to enable industry to generate discussion, form a response and finalise an appropriate, authentic and constructive submission.

After many years of development, final consultation on the technical and policy details of EWD's should not be rushed. A six month process, allowing industry to gain expert information technology and legal advice would be appropriate.

Further, the ATA understands that the NHVR is undertaking work on EWD tolerances and the handling of minor breaches. The ATA has long had concerns about EWD tolerances; we consider that they must be rectified before the EWD standards and policy are finalised.

From our point of view, the revised EWD tolerances must be incorporated into the legislation. It is not acceptable for the NHVR to deal with this concern by issuing enforcement guidelines or compliance policies that do not have the force of the law.

The current draft policy and standards offer insufficient tolerances and no flexibility, leaving drivers exposed to inconsequential technical breaches that will have no impact on safety. The inadequate numbers, capacity and frequency of formal rest areas nationwide exacerbates this issue. If for example, rest areas are overcrowded and a driver decides to politely move his/her vehicle to make room for another just one minute before the end of a 15 minute break they will find themselves in breach and have to recommence that rest period. This puts increased pressure on drivers and further affects rest area congestion.

The primary aim of EWDs must be to increase industry safety through better fatigue management by aiding drivers in achieving compliance - not to increase enforcement opportunities. Therefore, the ATA strongly objects to the requirement in the current EWD policy that users must provide authorised officers with a list of breaches dating back for a period of 28 days. The policy will not improve safety and effectively means that EWD users would be subject to more stringent rules than WWD users. This requirement will act as a deterrent for voluntary uptake of EWDs and must be removed from the policy and standards.

The ATA is working to find better fatigue management solutions by disrupting current thinking. Our commitment to discovering more innovative and practical solutions to tackle fatigue management includes our initiation of the driver fatigue management hackathon in April 2018. This hackathon has generated a huge amount of discussion and interest to date and will be attended and funded by industry.

The NHVR's consultation timeline disregards this pre-existing industry initiative, and indicates a lack of commitment to engage with industry and our initiative to improve fatigue management and realise real gains in road safety outcomes.

It is a missed opportunity for the NHVR to consider and incorporate concepts or solutions formulated through the hackathon. These concepts will be developed by a broad range of participants working together to offer an invaluable cache of expertise including: software developers, designers, industry experts, researchers, other related industries, regulators, truck drivers and business operators.

The hackathon presents an opportunity to investigate and consider innovative ideas for regulation and technical improvements that can advance the industry's management of fatigue and thus save lives.

As a result, the ATA is not able to endorse the NHVR's EWD Policy Framework or EWD Standards.

Recommendation

The NHVR should not proceed with the rollout of voluntary EWDs until:

- the fatigue regulations have been amended to include realistic EWD tolerances
- further action is taken to increase the quantity, capacity and quality of driver rest areas
- the standards are amended so that EWDs do not provide a list of breaches to enforcement officers dating back 28 days, because this requirement:
 - focuses on enforcement not safety outcomes
 - puts EWD users at a disadvantage in comparison to WWD users
 - will discourage voluntary uptake of EWDs
- a public statement has been issued by NHVR clarifying the meaning of a 'voluntary' EWD with specific reference to NHVAS, PBS, notice and permit conditions.

4. Technical comments on the current draft policy framework and standard

If, despite the ATA's recommendation above the NHVR does proceed with approval and endorsement of the EWD Policy Framework and Standards the ATA makes the following recommendations.

Policy Framework:

1. The tone of the policy framework and standards prioritises compliance and enforcement outcomes over improved safety. Doubling down on monitoring work and rest hours will not guarantee increased safety outcomes.
2. The policy statement claims that increased accuracy of driver work and rest records will encourage industry adoption of EWD's. The ATA is of the view that industry participation and uptake of EWD's will depend more on the provision of a fair and adequately flexible system.
3. Section 3.1.4 of the policy refers to the assurance and enforcement function as '*helping industry to safely manage driver fatigue*'. If EWD's are to increase safety the NHVR must respond above and beyond record keeping and enforcement of prescribed hours and minutes.

The fatigue state must be seen as a biological condition and drivers as individuals. Additional time must be taken to develop a more innovative solution than EWDs that merely assist enforcement. The outcomes of the ATA's driver fatigue hackathon should be considered before any EWD policy or standards are adopted.

4. Section 3.2.4 states that drivers are responsible for '*cooperating with authorised officers investigating the driver's compliance with fatigue management obligations under the HVNL*'. This same responsibility has been omitted in the previous section 3.2.3 under transport operator responsibilities.
5. Section 3.2.4 '*notifying their record keeper or the NHVR of any issues where the EWD is not working properly*' should read 'where they are aware that the EWD is not working properly'.
6. Section 3.2.5 requires that record keepers keep the dates fatigue regulated heavy vehicles were driven. There should be no references to recording the total of each

drivers work and rest times *'for each day'* – this should be amended to refer to the relevant 24 hour period only.

7. Section 3.2.5 also states that the law stipulates *'both the record keeper and third party provider are legally responsible for the compliant execution of the record keeping function'* - but does not clarify that the responsibility cannot be contracted out to a third party provider.
8. Section 3.2.5 refers to *'managing the EWD in proper working order'* states that record keepers are responsible for *'notifying the NHVR of **any** issues'* but the policy does not state how and when this notification is to be done. Additionally, this section refers to *'providing reports of EWD information to drivers and authorised officer as **required by the HVNL**'*. The policy should not assume that businesses operating trucks or drivers are familiar with every page of the NHVL and its regulations.
9. Section 4.1 - Legislative requirements, requires clarification:
 - Further detail regarding what is considered to be a 'malfunction' as opposed to an EWD that is technically working as programmed but with errors in algorithms; and
 - Clear definition is required around the term 'repeatedly' in reference to altering work and rest information. This needs to be changed to clarify that the driver is allowed to correct information as many times as they need until they confirm/submit the record i.e. at the end of the day.
10. *Appendix C.2 - Data elements*
 - *Reference ID 34 & 35* - This is only relevant if the driver's sleep rest ended at midnight. There should be no reference to days in this data or in the standards, only a reference to the 24 hour period.

Standard:

1. Clarification is required regarding the 'real-time' clock and exactly what this means and how it works from the home base, to avoid any driver confusion (Part 1.6).
2. Clarification is required regarding 'manual entry' circumstances (Part1.8 ii).
3. The standard does not discuss or offer an alternative for driver authentication if there is poor or no internet connectivity (Division 2 – Interfaces, 12. Driver authentication).
4. Parameters or limitations for driver data entry to record periods already confirmed by the driver (Division 2 – Interfaces, 13. Operational functionality 1.), requires clarification in the case of
 - a driver overlooking data that should have been entered but was not or
 - drivers' simply misentering information on a small touch screen.
5. Regarding operation of two-up recording - requirements (b), (c) and (d) require clarification including:
 - Details regarding simultaneous log in
 - Requirements for log in or log off for a resting two-up driver
 - The need for identification of each driver every change of work/rest.
6. Recording of a work rest change entry is stated to include confirmation of or adjusting (d) the registration (Division 2 – Interfaces, 13. Operational functionality 1.).

Clarification is required regarding why registration would need to be confirmed at every rest period and not only for vehicle changes during a working shift.

7. Driver notifications such as calculation warning should be required to advise the driver what they need to do (such as take a short break or commence a seven hour sleep break and include a specified time (Division 2 – Interfaces, 13. Operational functionality 3.d).
8. Clarification is required regarding work diary entries (Division 2 – Interfaces, 14. Additions, adjustments and confirmation 3.)
 - (a) *'at the end of each day'* (Is this a calendar day? If so this does not reflect a driver who is still working, for example at midnight)
 - (b) *'Prior to the start of a new period if the driver has entries greater than 24 hours old'*. Clarification or definition is required for the term 'new period'
 - *if a driver has two seven hour sleep breaks that end within a calendar day, they would have to confirm their record three times on that calendar day. The WWD simply requires each calendar day record to be signed off by the driver, which they would generally when they stop, after midnight for either a short rest or a sleep rest.*
9. There is a lack of information in the standard regarding how the driver must respond in the case of an EWD malfunction:
 - Do they revert to using a WWD and when do they commence this use?
 - What is the requirement in areas with poor or no internet connectivity?
 - Will warnings and the time they were issued be recorded as proof of the issue?
 - What is the legal position for the driver if the EWD fails to provide a warning and the driver is found to be in breach?
10. The ATA does not support EWDs providing information on potential non-compliances for 28 days, for the purposes of roadside inspection (Part 2, Division 3 – Equipment data management, 17. Data collection and record generation 2.b). 28 day old information would not have any current road safety significance and would – because the checking process would be automated - effectively subject EWD users to a higher level of enforcement scrutiny than WWD users.
11. Clarification is required regarding provision of driver access to data when transferring to other employers. Is this an automatic process? Are permissions required? Are there waiting periods? Does the inability to access data prevent a driver from using another EWD until they can access their data? (Refer Part3 – Technology provider, 24 System access requirements and data governance 1.).
12. Part 4 – Enforcement requirements, Division 1 – Roadside view, 26 Access requirements, should include provisions for:
 - Authorised officer identification and recording of identity on the EWD
 - Inability of driver to present information due to EWD malfunction
13. Part 4 – Enforcement requirements, Division 1 – Roadside view, 28. Work and rest changes
 - (d) - driver should only have to record the odometer reading at the start of each work period
 - (e) (iv) - clarification is required regarding what exemptions exist
 - (g) (ii) - use of the term 'historic' will be confusing to drivers, this should be changed to 'manual'.

14. The ATA does not support the inclusion of section 29. *Investigation aid*. EWD's should not be an enforcement tool.
15. Under 30. Authorised officer annotations (2) (a) the authorised officer's ID should be recorded.
16. The ATA does not support the Division 2 – Data transfer, 33. Roadside transfer (2) (a) standard.
 - The driver and/or record keeper should be entitled to know where an email containing their data has been sent.
17. Division 2 – Data transfer, 35 - Transaction acknowledgement (1) (a) should include the authorised officer's ID.
18. Clarification is required regarding Part 6 – Data interoperability 44. (4). Further information is required regarding how previous driver UDI's will be linked so that the onus is not on the driver to remember previous or lost UDI's.
19. Industry must see and be consulted on the rule sets as per Part 8 – Work and rest options 52. General (2).
20. What processes are in place to ensure that EWD providers have clear understanding of fatigue management complexities such as night hours, long hours etc. as assurance that EWD algorithms will be correct? Refer Part 8 – Work and rest options 53. Assessing work and rest change data against the rule sets (6).
21. Part 9 – Approvals 56. General (1) should be re-worded to clarify that an approval demonstrates that an EWD complies with the standards and correctly analyses work rest data.
22. In relation to the EWD schema:
 - In the Work Diary Object Schema, the purpose of the flagged time for Authorised Officer Annotations is unclear
 - In the Rule Set Data Schema, under amfAccreditationDetails, expiryDate is missing a format type
 - In the Work Diary Object Schema, the Authorised Officer Annotation is the only place where the use of the 'timestamp' property is unambiguous. This description should be reused for all other object types where applicable.