



Transport
for NSW

Mr Greg Martin
Chairman
National Transport Commission
Level 15
628 Bourke Street
Melbourne VIC 3000

Dear Mr Martin,

Thank you for providing the opportunity to comment on the NTC's *Preparing Australia for Electronic Work Diaries Regulatory issues paper*.

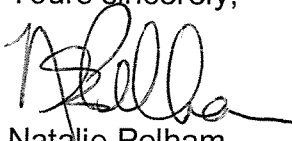
Electronic record-keeping offers significant benefits for heavy vehicle road safety, and the NSW Government strongly supports the increased use of this technology.

The NSW Government committed over \$5 million to an operational pilot of Electronic Work Diaries (EWDs) and Speed Monitoring Systems. This Pilot examined the use of EWDs as a voluntary alternative to the written work diaries. The Pilot established that electronic diaries are feasible and have the potential to generate safety and productivity benefits.

The attached table contains specific comments and recommendations and has been consolidated following consideration by TfNSW.

TfNSW will continue to work with the NTC to implement the use of Electronic Work Diaries under the new National Heavy Vehicle Regulator. If you or your staff wish to discuss the attached table in further detail, please do not hesitate to contact Dimi Rigas, Principal Manager National Intergovernmental Coordination on (02) 8265 7464 or at dimi.rigas@transport.nsw.gov.au.

Yours sincerely,

 5/12/13.

Natalie Pelham
General Manager
National Strategic Review and Priority Initiatives

TfNSW comments on the Electronic Work Diaries Regulatory Issues Paper – November 2013

PAGE	ISSUE	COMMENT
6	Section 2.4.2 – Meaning of work	Any variation to the definition of ‘work’ to permit a driver to check the EWD must not result in allowing a driver to spend the rest break making entries into the EWD or completing paperwork relevant to the driver’s work activities.
8	Section 2.4.4 – Counting periods of less than 15 minutes	<p>Removing the rounding for EWDs will provide some incentive for operators to start using them but it needs to be made clear how this will operate in practice such as:</p> <ul style="list-style-type: none"> ▪ For Standard Hours solo drivers, will three 20 minute breaks satisfy the requirement to have 1 hour of rest in any period of 11 hours? ▪ Will one break of 16 minutes and another break of 14 minutes satisfy the requirement to have 30 minutes rest in any period of 8 hours? ▪ What about a rest of 28 minutes and another of 2 minutes? <p>Any change must not erode the effectiveness of the required rest breaks.</p>
9	Section 2.4.6 – Meaning of ‘driver’s possession’	Generally in the law the concept of possession is wider than mere physical custody and encompasses control of an object even where that object is in a place remote from the person. The definition of ‘driver’s possession’ may also need to make clear that whatever is required to be in the driver’s possession must be in their immediate physical control.
10	Section 2.4.9 – Meaning of ‘supplementary record’.	The use of supplementary records rather than an existing WWD will maintain the distinction between the two forms of recording.
15	Section 2.4.19 - Indication to the driver that EWD information has been sent to	<p>TfNSW agrees that ‘similar form’ in sub-section 305 (5) of the HVNL should be clarified so that it extends to the identification of the driver’s longitudinal and latitudinal location.</p> <p>While the EWD should function in such a manner that it immediately alerts the driver if the system is malfunctioning it should be acceptable that it only indicate once a day that information has been transmitted/uploaded to the record keeper.</p>

PAGE	ISSUE	COMMENT
	the record keeper	
15	Section 2.4.20 - Documents produced by an approved electronic recording system	Agree with the introduction of an 'IAP type' provision in relation to EWD records and the reversal of the onus of proof.
17	Section 2.5 - priority law amendments	<p>Agree with those in priority 1 category, but suggest there are some in category 2 that should be in category 1 – they should be amended BEFORE implementation of EWD, otherwise there could be detrimental implications for enforcement. These are:</p> <ul style="list-style-type: none"> - clarify 'work' to allow driver to review EWD in rest break - clarify 'drivers possession' - expand drivers defence for malfunction of EWD -expand meaning of 'supplementary record' to include WWD - clarify what info the driver gives the record keeper - clarify keeping of 2 diaries simultaneously'
Compliance and Enforcement		
48	Section 4.2.2 – Treatment of small breaches	<p>TfNSW strongly disagrees with the recommendation that a tolerance for small breaches be enshrined in legislation.</p> <p>Instead it is suggested that officer discretion to be maintained enabling the application of a tolerance administratively.</p> <p>The policy intent behind EWDs is to take advantage of more accurate, reliable information to reduce fraudulent practices (such as keeping multiple log books and making false entries) to improve road safety.</p> <p>Legislating tolerances would make the system less accurate and contradict this policy intent. It sends the wrong message to the industry, and essentially offers all the benefits of electronic record keeping to industry while diminishing the benefits for regulators.</p>

Furthermore, as acknowledged in the paper in relation to speeding, tolerances are not published as the speed limit is a limit and not a guide.

Driving hours are also a limit and not a guide, and accordingly tolerances should not be enshrined in legislation. Schedules should be constructed to ensure that a driver is able to work within the limits of driving hours, accounting for traffic, hold ups, rest breaks etc (noting that a reasonable steps defence is available to drivers under standard hours).

Another potential benefit of EWD is to support the development of a safety culture among operators and drivers rather than relying on prescriptive/punitive roadside enforcement. There is the potential to explore more responsive co-regulation.

However, if the legislated tolerance approach is taken, there is a risk that it may undermine the likelihood of EWD effecting a cultural change in the approach to fatigue management among operators and drivers. A legislated tolerance takes away the responsibility of the parties to make realistic trip plans and comply with the law.

The policy discussion needs to focus less on providing tolerances and more on encouraging the transition to EWDs. Accordingly, a transition period (e.g. 2 years) may be appropriate during which equitable access to the current more generous counting rules under WWD is allowed for enforcement of small breaches.

This will encourage a safety culture in which drivers and operators take the responsibility for complying with the law and do not rely on tolerances as a "get out of jail card". If this approach is considered, a small tolerance may be appropriate to ensure drivers are not infringed for 1 or 2 minute breaches, which may be a deterrent to taking up EWDs.

However, the solution to this is not to put these tolerances in legislation as:

- This sends the message to industry that driving hours limits are not actually limits
- Operators may schedule (and drivers drive) to the tolerance, not to the limits (which is a

greater fatigue and road safety risk)

- legislation cannot be reviewed or changed easily

In relation to the suggested 8 minute tolerance, this appears excessive – especially given driving hours in Australia are already far more generous than those in other countries. A tolerance of just a few minutes (≤5 as per Professor Dawson’s advice (p47) that this amount is unlikely to increase fatigue risk) seems more appropriate. In addition and as already noted, drivers should be driving within the limits, not up to the limits – there should be no need to breach driving hours by 8 minutes.

It is also suggested that, if a tolerance is adopted, that it only be applied to standard hours schedules given that added flexibility already available to drivers on BFM and AFM schedules. This is consistent to the availability of the reasonable steps defence.

If a tolerance is adopted, of the approaches suggested Option 2 is preferred – creation of national internal guidelines. This will mean that a tolerance is still in place and all jurisdictions work to the same tolerances so ensures consistency across the States.

While the tolerance level should not be published, it may be made known within industry that a tolerance exists. This would not deter industry from taking up EWDs but would place the onus on industry to schedule work hours within the limits.

While it is important to take on board industry’s concerns about minor breaches, it is also important to consider the road safety risk, and the latter should take priority. Option 2 addresses both by:

- a) reassuring industry that there is a tolerance, but
- b) ensuring operators schedule (and drivers work) to driving hours limits rather than a known tolerance, therefore posing no greater risk to road safety.

A smaller tolerance (of up to 5 minutes) would not be considered an unacceptably greater risk to road safety and as such should not be penalised.

PAGE	ISSUE	COMMENT
57	4.2.3– enforceable time period	Maintaining 28 days is appropriate, and up to 3 months if required.
59	4.2.4 – treatment of drivers using both WWD & EWD	Agree with Option 3 – annotation of changes between the two methods
60	4.2.5 – confirming the GNSS generated location	Agree drivers should confirm Global Navigation Satellite System (GNSS) location/denote if not accurate. There may be slight differences in the geographic location found on GNSS and the actual location due to signal issues.
60	4.2.6 – voluntary use of EWD for local work	Agree – EWD is there to help manage fatigue. Fatigue can occur even if conducting local work. So if drivers are using it for local work all the better. NSW strongly supports EWDs being used for recording of local work on a non mandatory basis without additional compliance obligations