National Transport Commission

Electronic Systems for Heavy Vehicle Driver Fatigue and Speed Compliance:
Draft Position Paper

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FOREWORD

The National Transport Commission (NTC) is an independent body established under Commonwealth legislation and an Inter-Governmental Agreement and is funded jointly by the Commonwealth, states and territories. The NTC has an on-going responsibility to develop, monitor, maintain and review uniform or nationally consistent regulatory and operational reforms relating to road, rail and intermodal transport.

The Australian transport and logistics industry is using technology to improve its efficiency and business processes. This technology is becoming increasingly embedded into the business practices of this industry.

Most governments are keen to reduce ‘red tape’ for industry. This report identifies a way to cut duplication for industry by enabling the use of electronic work diaries to meet legislative record keeping requirements. At the moment, many drivers and companies have electronic systems that they would like to use to meet these requirements, but currently need to record the information in a paper-based diary. This report argues that electronic work diaries can be made available to industry by finalising the approval process, developing guidance material and making some minor legislative changes.

The use of technology as a tool to monitor compliance with the law is becoming commonplace. This report identifies the use of electronic monitoring systems for speed and fatigue for persistent offenders of heavy vehicle laws. A sanction already exists under transport law for persistent offenders but courts may not have the necessary knowledge about the available electronic monitoring devices to be able to effectively use them as part of a sanction. NTC argues that developing guidance material for courts about the electronic monitoring systems for speed and fatigue will help. These systems will require a high level of integrity to be acceptable.

I encourage you to make comment on this report. In particular, NTC is seeking comment from makers and users of telematic systems. Ways to make a submission are detailed in this report with submissions due by Friday 4 September 2009. After the public submission period closes, NTC will make all submissions relating to this report available on its website (www.ntc.gov.au). NTC will consider all submissions in developing the draft policy proposal. The draft policy proposal will also be released for public consultation. NTC will consider all submissions received on the draft proposal in developing the final proposal. The last step in the process is the submission of the final policy proposal to ATC for approval.

I acknowledge the work of NTC staff in developing this report, particularly Rob de Maid, Neil Wong, Tim Eaton and Karen Dowling.

Greg Martin
Chairman
The Australian Transport Council (ATC) has asked NTC to bring forward the “development of an Australian performance-based specification for electronic heavy vehicle speed and driver fatigue systems, enhancing the use of in-vehicle telematics and adding value to the Intelligent Access Program (IAP).”

Before a performance-based specification can be developed, it is important to consider the potential uses for such a specification. NTC therefore undertook consultation with industry and regulators to determine exactly what problems they faced, and the role of a performance-based specification for telematics in solving those problems.

Consultation revealed that stakeholders have quite different views on the role of telematics in the heavy vehicle industry and therefore had differing views on the ‘robustness’ of the specification and ultimately, any standards that underpin the specification.

The Australian transport and logistics industry has embraced the use of technology to improve its efficiency and business processes. Many businesses are already making extensive use of telematics to assist them in the efficient operation of the business and to help them discharge their duty to manage speed and fatigue under chain of responsibility legislation. Many of these businesses advocate the need for a performance specification so that they can fully integrate telematics into their compliance systems by replacing the statutory requirement for a written work diary. They argue that the requirements for the electronic diary should be no more onerous than the current requirements applying to paper-based written work diaries. This would allow them to utilise their existing telematics systems (at low cost) rather than upgrade them (at considerable expense).

Transport regulation does not hinder the use of electronic systems for compliance uses. For example, the national fatigue laws allow for the use of an electronic work diary as an alternative to the written work diary, and establishes a process for approval. This already constitutes a ‘performance specification’ of sorts. However, the requirements do not go as far as specifying the level of performance the electronic devices need to meet. For example, when using a paper-based diary the driver’s signature is accepted as a form of identification, conversely there are no specifications around how a driver should be identified on an electronic record. While the regulations leave scope for an applicant to describe how they would meet such a requirement electronically, regulators have been reluctant to consider applications for the use of electronic work diaries without further guidance on how an assessment should be undertaken.

Consultation with regulators has revealed that they too would like to provide an alternative to the written work diary, but would like the alternative to eliminate the shortcomings of the paper-based diary. They argue a robust electronic alternative can introduce greater reliability and better compliance with working hours and speed laws. They also assert that the use of sanctions such as supervisory intervention orders are somewhat restricted as there is no national specification for the use of telematics solutions for strict compliance purposes. If, for example, there was a robust performance specification for telematics devices monitoring speed and fatigue, courts could apply these requirements to persistent offenders and have confidence in the monitoring of compliance.

Consultation with industry and government has led to the identification of problems that may be resolved by setting performance-based specifications for speed and fatigue. The problems are:

- the inability to gain approval for an electronic work diary; and
the absence of guidance material to explain how supervisory intervention orders can be used for fatigue or speed compliance.

For the inability to gain approval for an electronic work diary, three options were examined: do nothing; developing guidance material consistent with the current legislation; and develop an approval process and an alternative compliance framework for electronic work diaries. This report explores these options and concludes that preferred option is to develop guidance material consistent with the current legislation to allow electronic work diaries to be approved. This option will require the development of:

- guidelines that provide certainty to industry and governments about the requirements of electronic work diaries consistent with the current legislation;
- an amendment to the Fatigue Authorities Panel rules;
- an application form; and
- a minor amendment package for the Model Law for Heavy Vehicle Driver Fatigue.

This option is designed to give applicants more certainty as to the requirements of regulators, while leaving the broadest possible scope for the uptake of this technology and minimising prescription.

The proposed approach to solving the problem relating to supervisory intervention orders is quite different because the nature of the problem itself is different. Courts would benefit from guidance material which addresses the application of telematics monitoring devices. For persistent offenders a high level of robustness is required. Australia already has a highly robust telematics option for monitoring location – the Intelligent Access Program. Additional specifications in the Intelligent Access Program for the use of fatigue or speed monitoring would provide appropriate offences for persistent offenders. This report advocates providing this guidance material for courts and indicates what level of robustness would be required.

Importantly, some key policy issues have arisen during consultation on this proposal. For example:

- Sanctions policy for speed and fatigue laws has been based on the historic approaches used to underpin surveillance of these laws. However, in a highly accurate and continuous monitoring regime, sanctions policy may need to be reconsidered. Transport drivers and operators have repeatedly expressed concerns about the potential to be monitored continuously and for equipment to accurately record breaches of very low consequence. This is because telematics devices can reliably identify work or rest hours breaches of under one second and very minor speed breaches, potentially resulting in the accumulation of severe penalties over a very short period of time. Given the likely safety benefit of building telematics monitoring into management systems, more detailed consideration of sanctions policy in a telematics environment is warranted.

- Should the electronic alternative to written work diaries prove to be expensive or onerous, it is unlikely to be taken up on any significant scale. In addition, the electronic record may identify very minor breaches which would not have been identified in a paper-based format, thereby subjecting the user to the risk of sanction. These are potentially very significant disincentives to voluntarily use an electronic work diary. Should Ministers want to improve compliance by taking advantage of telematics
options, it will be necessary to consider whether the written work diary should be retained as an alternative option, or dispensed with altogether.

While this report has identified these issues, two other NTC projects currently underway are more appropriate places to consider these broader issues. These other projects are the telematics strategy and the compliance strategy.
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1. INTRODUCTION

The National Transport Commission (NTC) has been instructed by the Australian Transport Council (ATC) to investigate the possibility of introducing electronic record keeping systems to monitor and record driver work/rest hours as well as vehicle speed. The directive requires the NTC to prepare a cost effective national policy framework and a regulatory impact statement. The directive notes that the NTC will evaluate systems with a view to the development of an open architecture approach that allows for competitive products to be offered as a solution to performance-based standards and specifications.

Specifically, the ATC has asked NTC to “bring forward the immediate development of an Australian performance-based specification for electronic heavy vehicle speed and driver fatigue systems, enhancing the use of in-vehicle telematics and adding value to the Intelligent Access Program (IAP).”

The ATC has, on a number of occasions indicated that it supports the use of telematics to promote safety, productivity and environmental improvement in the transport industry (see Appendix A for ATC’s vision, objectives and principles for transport). In August 2005 the ATC established Transport Certification Australia which is a national certification and audit organisation, owned by governments, that provides evidentiary standard telematics solutions. Transport Certification Australia’s primary function has been to support the development, implementation and maintenance of the Intelligent Access Program. The program has provided heavy vehicles with access, or improved access, to the Australian road network in return for global positioning system enabled monitoring of an evidentiary standard.

In 2007 the ATC endorsed the Heavy Vehicle Driver Fatigue Model Legislation (the model law) which allows the use of electronic alternatives to the paper-based work diary, subject to certain performance requirements being met. Despite this fact, no electronic systems have been approved.

Many operators in the heavy freight industry are making extensive use of telematics to enhance efficiency, ensure compliance and generally assist with business processes. From a due diligence and asset management point of view, operators are using telematics to monitor work/rest hours and vehicle speed. Beyond this the systems have also been used to manage staff rostering and to provide organisations with data to fuel strategic business decisions. Despite this, companies are currently unable to completely replace paper-based record keeping with regard to working hours because regulators are reluctant to consider application without more guidance. Therefore additional guidance about assessing these performance requirements is needed.

Ministers in all jurisdictions have introduced compliance-related telematics tools. Point-to-point speed measurement, for example, is used in several states, and supervisory intervention orders (which can impose telematics solutions on offenders) are available for use by courts under compliance and enforcement legislation. Some road agencies have also mandated telematics solutions as a permit or access condition.

This position paper seeks to identify the problems that need to be solved in regard to fatigue and speed, and the role of telematics in solving those problems. In doing so, it has been necessary to determine an appropriate minimum response to each problem, consistent with good regulatory practice. Undertaking a thorough analysis of each of the problems and canvassing solutions has led to recommendations which aim to resolve the problems with a minimum level of government intervention.
While this paper proposes what standards ‘ought’ to apply, NTC recognises that there may be technical and other reasons why the proposed approach cannot be delivered. Feedback is sought from all stakeholders on the practicalities associated with the proposed approach.

Austroads is currently developing some technical advice which will be useful input for this project. Austroads have engaged a consultant (Transport Certification Australia) to provide this advice. NTC has also established a technical advisory group with government and industry representatives. This group will provide advice and help assess the impacts of potential options. This will support the development of sound risk-based policy.

2. BACKGROUND

In order to better understand the task that ATC is seeking to resolve, it is important to understand the current operating environments for fatigue and speed compliance in the heavy vehicle sector.

2.1 Fatigue

Fatigue is a common contributor to heavy vehicle crash causation in Australia and around the world. In most developed countries, drivers of large commercial vehicles are subject to some form of regulation relating to driving or working time. These rules limit continuous driving time and may also require drivers to take minimum breaks or rest periods. This helps to reduce the risk of drivers becoming involved in fatigue-related incidents and thus improves road safety.

In order to monitor driver compliance with the rules governing work and rest, most countries require drivers to complete paper-based work diaries, where they declare what hours they have worked and what trips they have undertaken. In Australia, the model law requires drivers of heavy vehicles to use a written work diary in some circumstances, including:

- when they are engaged in work 100km+1 from their home base within a 28 day period; or
- when driving for an operator in a fatigue accreditation scheme (either Basic or Advanced Fatigue Management).

The model law also makes provision for the use of electronic diaries as an alternative to a written diary. Both diaries record the same information but the electronic diary produces data which can be easily interrogated by the operator allowing for efficient analysis and management of fatigue.

Currently there are no electronic diaries approved for use in Australia. However, many companies are already using electronic diaries in addition to the paper work diary for the business efficiency benefits. This duplication and double handling of data is inefficient and places unnecessary regulatory burden on operators. This regulatory burden in turn acts as a barrier to many operators who might otherwise opt for a streamlined and efficient electronic system.

Courts also have the power under transport law to issue supervisory intervention orders to persistent or systematic offenders2 as a sanction. Where a company persistently offends by

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1 These provisions are implemented through state-based legislation and may vary slightly in some states.
2 National Transport Commission (Compliance and Enforcement) Bill
breaching the allowable hours of work and rest, it is possible for a court to impose an order which requires that company to put in place management systems which could monitor work and rest hours very rigorously, perhaps through the mandatory fitment of satellite tracking equipment or other technologies. However, it is argued that because there is currently no ‘standard format’ for the issuance of such orders, they are rarely imposed.

Key points

- Fatigue is a major contributor to heavy vehicle crash causation in Australia and internationally.
- The national fatigue regulations impose many duties on parties in the logistics chain, including work and rest hour record keeping. These regulations provide two options for this record keeping: the default option of a paper-based work diary and an optional electronic-based means.
- The optional electronic-based record keeping has not been used due to the absence of agreed national processes or standards for the approval and use of them.
- Work and rest hours monitoring through the use of an electronic system could be used as a sanction.

2.2 Speed

Research shows that excessive speed is the other major contributor to heavy vehicle crash causation in Australia and internationally\(^3\). The problem of speeding in heavy vehicle road transport is characterised by a range of factors:

- Speeding is relatively common among heavy vehicles, similar to the situation with light vehicles.
- Analysis shows that speeding is a significant factor in heavy vehicle crashes, and is likely to pose a greater risk to these vehicles than for lighter vehicles.
- There is a high cost to the community from deaths and injuries from heavy vehicle crashes where speeding is a factor. The NTC estimated\(^4\) this to be $343 million per annum.
- It is not unusual for heavy vehicle drivers to be put under external pressure to meet deadlines which can influence on-road speeding.
- Speeding heavy vehicles attract higher operating and maintenance costs, but also achieve a competitive advantage over operators who do not speed.
- Speeding results in higher fuel consumption and greenhouse gas emissions.
- In certain areas in Australia, there are community concerns about the safety of sharing the roads with speeding heavy vehicles. This problem will be compounded by the projected doubling of the freight task between 2000 and 2020 which is likely to see more trucks on the road.

These factors, especially the regionalised community concern about sharing the roads safely with heavy vehicles, have the potential to hold back future productivity reforms for the road transport industry unless addressed.


\(^4\) Ibid.
The issue of speeding heavy vehicles has been an issue for some time in Australia. As such, there are many responses that attempt to address this problem. These responses include education, industry initiatives and enforcement (e.g. the use of speed cameras, radar devices, point-to-point cameras). The ‘safe systems’ approach to road safety is a more recent response that recognises that drivers will make errors and the road system (roads, vehicles and speeds) should make allowance for human error. As a result, the system should be designed and managed to reduce the risk of crashes, and to prevent serious injury or death if a crash does occur.

In 2007, ATC approved the Model Act on Heavy Vehicle Speeding Compliance. This national regulation introduced general and specific duties for transport parties for speed. These duties are for transport parties to take reasonable steps to ensure that their activities do not cause the driver to exceed speed limits. These regulations are relatively new and businesses are already using electronic speed systems as evidence they are taking reasonable steps.

While there are legal requirements for record keeping under the Model Act on Heavy Vehicle Driver Fatigue there are no general legal requirements in Australia for transport parties to keep heavy vehicle speed compliance records. Therefore, the situation is different to that described above for fatigue. There are also no general legal requirements for transport parties to use electronic systems for speed. It may be argued that the Australian Design Rule for speed limiting heavy vehicles results in the use of electronic speed limiters. However, this rule is performance-based and it is the vehicle manufacturers that are choosing to make their limiters electronic. Likewise, the national regulation for heavy vehicle driver speed compliance does not specifically require the use of electronic systems for speed compliance.

While there are no general legal requirements for the use of electronic systems for speed, there is scope to use them as part of a sanction. The Model Act on Compliance and Enforcement contains a sanction called a supervisory intervention order. This order could specify the use of electronic systems for speed monitoring. However, this sanction is only for use with persistent or systemic offenders.

The electronic systems for speed and other telematic uses is a growing industry. This is evidenced by the transport and logistics conferences, where in the exhibitors’ areas, many electronic products are available. These electronic speed management devices vary in their cost and function. Some systems, for example, provide information to drivers about the speed limits on roads whilst others provide information about the current and previous speed of the vehicle back to the operator of the heavy vehicle.

In summary, the regulatory framework does not require the general use of electronic systems for speed management. Therefore the use of electronic systems for speed falls to the free market. Despite this, many companies have chosen to take up the option to improve safety and discharge their duties to manage speed.

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**Key points**

- Excessive speed is a major contributor to heavy vehicle crash causation in Australia and internationally.
- There are a range of government and industry responses in place to address this problem.
- There are currently no regulatory requirements for speed record keeping or for the use of electronic systems.
• Speed record keeping and reporting could be used as a sanction.
• The free market for electronic systems for speed management is a growing industry.

### 3. THE IDENTIFIED REGULATORY PROBLEMS

Consistent with good regulatory practice, it is important to clearly describe the regulatory problems that are being asserted before examining their extent. Following this, it is necessary to canvass solutions that are proportionate to the problems identified. Through the initial consultation with stakeholders, two main problems have been asserted. It is NTC’s role to assess these arguments, seek evidence as to their scale and magnitude and determine if there is a role for government in addressing these. The two problems are described briefly below.

**Problem 1.** While the regulations for the use of electronic work diaries currently exist, approvals are being impeded by the absence of agreed national processes or guidance for their use in managing compliance.

**Problem 2.** There is an absence of guidance material to explain how supervisory intervention orders can be used for fatigue and speed compliance. This limits the effectiveness of this sanction.

In the consultation to date, some stakeholders have argued that there are all manner of fundamental problems that need resolution. Claims include:

- the written work diary is fundamentally flawed and should be replaced with a mandatory electronic system;
- the legal requirement for driver self declaration of work and rest time is flawed;
- sanctions policy for speed and fatigue are in need of overhaul; and
- it is not possible to integrate new technology without ‘purpose built’ legislation.

These are each important, strategic issues worthy of examination by stakeholders. However, they are best discussed and resolved in a forum that provides for a more holistic and comprehensive review of compliance and telematics. The scope of this report is limited to the immediate problems associated with enabling an electronic alternative to the written work diary and therefore reviewing the current written work diary is out-of-scope. However, NTC will be considering these broader issues in the development of a national telematics policy and a review of compliance policy in 2009/10.

This document strictly focuses on the two problems identified above. Problem 1 is discussed in section 4, with the options and NTC’s preferred option discussed into section 5. Problem 2 is discussed in section 6, with the options and NTC’s preferred option discussed into section 7.
4. THE ABSENCE OF AN APPROVAL PROCESS AND GUIDANCE FOR ELECTRONIC WORK DIARIES

4.1 Background

The recent Heavy Vehicle Driver Fatigue reform incorporates four major components:

- a new occupational health and safety style ‘general duty’ to manage fatigue;
- new ‘chain of responsibility’ provisions to ensure all parties in the transport chain carry some responsibility to managing driver fatigue;
- new record keeping provisions, which introduce a driver ‘work diary’ and new duties on drivers operators and other parties to maintain certain records for a prescribed period; and
- new hours of work and rest based on advice from fatigue experts.

This paper focuses primarily on the record keeping provisions under the new model law. Appendix C contains the relevant sections for the model legislation for electronic work diaries.

In order to enforce fatigue regulations, a record of drivers’ activities is necessary. The model law stipulates that all drivers operating regulated vehicles, and meeting specified conditions, must carry a work diary. Currently this diary is issued in a paper format by the state and territory road transport regulators, and is used to record work hours as part of a broader system designed to manage driver fatigue. In essence the requirements include:

- A driver must fill out their work diary if they are working 100 kilometres or more from their home depot or if they are working under basic fatigue management or advanced fatigue management.
- A record of 28 days of driver activity must be carried with the driver at all times.
- Drivers must record their work and rest periods in 15 minute blocks.

Since 1999 there have been provisions in fatigue legislation to allow operators to use approved electronic diaries. During this time there has been no clarification of the approval requirements or the process for seeking approval. NTC is not aware of the use of any approved electronic diaries from 1999 onwards under previous fatigue legislation.

The Model Law on Heavy Vehicle Driver Fatigue went a step further by including significant clarification of electronic record keeping. These new provisions require that:

- the system must be capable of accurately monitoring and recording the work and rest times of the driver of the vehicle; and
- any application for an electronic work diary for use in more than one state or territory be referred to the fatigue authorities’ panel for a recommendation.

Importantly, the record keeping requirements do not distinguish between written or electronic records, so enabling the use of electronic records instead of paper-based records, should not require significant legislative change.

The Model Law on Heavy Vehicle Driver Fatigue has now been in place in four states (Queensland, New South Wales, Victoria and South Australia) since September 2008. In addition, the provisions in those states’ legislation relating to work diaries and electronic work diaries are generally consistent with the model law. However, there have been few or
no recent applications from industry to use commercial electronic systems as an electronic work diary for work and rest hours compliance purposes.

4.2 What is the problem?

The problem is a regulatory failure (rather than a market failure). Companies are already using electronic systems for a variety of reasons, including monitoring drivers’ driving time for commercial purposes. The current national model legislation provides for the use of electronic work diaries, but there have not been any approvals issued for their use. There is a gap, or lag, between industry take-up of technology and its use for regulatory purposes.

The problem potentially has two dimensions:

- problems with applications for approval of electronic work diaries by companies that only operate trucks in one state or territory; and
- problems with applications for approval of electronic work diaries by companies that operate trucks in more than one state or territory.

This paper focuses primarily on problems with applications for multi state/territory approvals and makes the assumption that any problems with such applications should address concerns about single state/territory approvals.

An agency that has received an application for the approval of an electronic work diary for use in multiple states and territories can refer the matter to the Fatigue Authorities Panel. This panel has been established to make recommendations to regulators about the applications for Advanced Fatigue Management. The panel’s remit includes matters for the fatigue legislation, and as part of this can assess applications for electronic work diaries and make recommendations to agencies. The agency that received the original submission needs to consider the panel’s recommendation in its decision to either approve or reject the application. This approval process for an application spanning multiple states or territories is shown in Figure 1.

Figure 1. Approval process for electronic work diaries

At this stage, the Fatigue Authorities Panel is reluctant to consider an application without additional guidance to assess whether it meets the requirements of the legislation. In section 74(4), the model legislation states: in approving a type of electronic work diary, the Authority must have regard to any guidelines in relation to electronic diaries approved by
the Australian Transport Council by notice published in the Commonwealth Government Gazette. The absence of these guidelines has created the problem.

4.3 Why is it a problem?

Delays in the approval and use of industry’s existing electronic systems for regulatory purposes potentially pose the following problems:

- an unnecessary cost burden on industry from operating electronic systems for business purposes but continuing to use written work diaries for fatigue regulatory compliance purposes;
- it acts as a barrier to innovation and safety improvements by restricting the use of advanced systems to manage driver fatigue; and
- potential costs for government and industry of continuing to rely exclusively on current enforcement practices.

4.4 How significant is the problem?

This problem has existed since 1999. This problem is likely to be more significant today than it was in 1999 as electronic devices in vehicles are much more common today compared to ten years ago.

One way to estimate the significance of the problem is to quantify how many drivers and operators would seek to use this option. NTC, therefore, is seeking input from industry about the likely numbers of driver and operators that may consider using electronic work diaries.

NTC is also seeking stakeholders’ view about the significance of the problem. These might be broader views. One stakeholder, for example, has asserted that the problem is significant because it undermines the credibility of the regulatory framework by legislating a non-functioning system.

5. OPTIONS TO ADDRESS THE ABSENCE OF ANY APPROVALS FOR ELECTRONIC WORK DIARIES

NTC has identified three options to rectify the absence of an approval process for electronic work diaries. These options are:

- Option A1: do nothing (keep the status quo).
- Option A2: develop guidelines consistent with section 74(4) of the model legislation.
- Option A3: develop an approval process and an alternative compliance framework for electronic work diaries

These three options are described in more detail below.

5.1 Option A1: do nothing

The do nothing option is viable, however, it does not address the current problem and it is unlikely that regulators will start approving electronic work diaries without more guidance. The impacts of this option are:

- higher costs for regulated record keeping requirements for industry;
• it does not allow innovation and other value added functions to be integrated with the regulated record keeping requirements; and
• potential higher enforcement costs for governments.

The ATC approved the model law in February 2007. The focus for regulators to date with this reform has included the implementation of the model legislation and provision of information to industry about the new laws. The focus for regulatory decisions has been the approval of basic and advanced fatigue management applications from industry. As discussed above, regulators have been reluctant to consider applications for electronic work diaries to date.

5.2 **Option A2: develop guidelines consistent with section 74(4) of the model legislation**

This option seeks to develop guidelines consistent with section 74(4) of the model legislation to assist the approval process for both regulators and industry. It could be argued that regulators could still approve electronic work diaries without guidelines but in practice they have been reluctant to do so.

The current legislative requirements for electronic work diaries are expressed as performance-based standards. Performance-based standards describe the objective or outcome sought. This differs from prescriptive standards that outline a specific method. For example, a performance-based standard for vehicle braking would describe the minimum stopping distance. A prescriptive standard for braking would not only outline the minimum stopping distance but also the technology to do so. The problem with prescriptive standards is they do not keep pace with technology. In the example above, if the prescriptive standard for braking specified that the technology required was a drum brake, this would hinder the use of other technologies that may be better than drum brakes. Performance-based standards are, therefore, preferred over prescriptive standards as the regulations do not hinder improvements in technology.

The current situation is that while regulators are not willing to approve electronic work diaries without further guidelines, drivers can still meet their legislated record keeping by the use of the written work diary. The written work diary is well understood by industry, regulators and the legal system. While the written work diary may seem like old technology, it provides important characteristics:

- regulators have records of the written work diaries issued to drivers;
- it links the driver to the record (because the driver needs to sign each page);
- a record of the written work diary can be taken by the record keeper or an enforcement officer;
- courts understand the written work diary system; and
- it is tamper evident (e.g. changes to the written record are visible).

These characteristics are also applicable to the electronic work diary as they are specified in the model legislation. Therefore, guidelines are needed to help translate the characteristics from the paper to the electronic format.

In addition to the guidelines, NTC has identified two other documents that are needed to create a workable approval process. These are:

- the application form; and
an amended version of the Fatigue Authorities Panel rules which incorporates the process for approving electronic work diaries.

The application form is specified in the model legislation (section 74(2)): *the application must be in a form that is approved by the Australian Transport Council by notice published in the Commonwealth Government Gazette*. Once the guidelines are developed, the development of the application form will be straightforward.

The Fatigue Authorities Panel currently operates under a set of rules approved by the Australian Transport Council. These rules currently do not include any details about the approval process for electronic work diaries. Therefore additional rules are required.

When these documents are finalised, the Fatigue Authorities Panel should be able to make a recommendation about whether an application for an electronic work diary meets the legislative requirements. This will then enable a transport agency to make a decision to either approve or reject the application.

The guidelines are effectively a list of the issues which need to be resolved to allow the formation of a national approval process for electronic work diaries. Using the consultation undertaken to date, certain key aspects have been identified by stakeholders and will need to be addressed. To help the development of the guidelines and the approval process, this paper discusses these key aspects in the following sections.

### 5.2.1 The driver is a key part of the work diary system

In the model legislation, regulators may approve a ‘system’ for use as an electronic work diary. It is up to the applicant to specify this system.

The system for a written work diary is well understood. This system includes:

- a government agency issuing a numbered written work diary to a driver (section 73);
- the driver recording the required information into the written work diary, including signing each daily sheet (section 58);
- the driver must provide the record keeper with copies of the work diary records (section 62); and
- the driver must present records to an enforcement officer upon request (Model Law on Compliance and Enforcement).

The driver is a key part of the system for a written work diary. The driver is also responsible for recording information and providing this information to other parties.

Just as with a written work diary a driver using an electronic diary will be a key part of the system, as required by the legislation. Section 57, for example, requires the driver to record information at each work or rest change. In addition, section 74 has a requirement on an electronic work diary to have a mechanism to ensure the driver cannot alter any information that the driver records in the system once they have had the opportunity to confirm its accuracy. Therefore, while a system for an electronic work diary may automate the information to be entered (e.g., date, time, location, odometer reading); it is the driver who must confirm the information is correct before it becomes part of the permanent record.

As the driver is a key part of the system, applications will need to include documented procedures for the driver’s interaction with the electronic device. The application will also require documented operating procedures outlining the interactions of record keepers and enforcement officers with the device.
Key points

- Drivers are key parts of the systems for both written and electronic work diaries. Drivers are legally required to confirm the accuracy of the record before the information is entered into an electronic work diary.

- Applications will need to document how the driver (and other parties) will interact with the system for an electronic work diary.

5.2.2 Evidence

The model legislation allows for the use of both written work diaries and electronic work diaries and is structured such that the medium for recording information does not make a difference to the obligations of the driver or other parties.

Section 76C of the model legislation provides that a document produced by an electronic work diary is evidence of the matters contained in the document. This provision ensures that there is no doubt that the document produced by an electronic work diary can be used as evidence in the same manner as a document from a written work diary.

The Evidence Acts of most jurisdictions now provide mechanisms facilitating the use of computer data in court proceedings. In Victoria the Evidence Act 1958, for example, makes explicit provision for the admissibility of computer generated documents subject to a series of conditions and for the use of certificated evidence providing rebuttable probative evidence of the facts averred (section 55B). This reflects provisions set out in the Model Uniform Evidence Bill approved by the Standing Committee of Attorneys-General that provide for the admissibility and probative value of documents produced by processes, machines or other devices (see sections 146-147).

There are, however, some differences between written and electronic work diaries that may undermine confidence in the information recorded by the alternative. These relate to the integrity, collection, and security of the information.

With a written work diary, all the information in the diary is self-declared by the driver (section 58). This means that the driver is responsible for the accuracy and completeness of the information. However, with an electronic work diary, there is the capacity for some information to be captured automatically without input from the driver. For example, the electronic work diary could automatically record times using a digital clock and record locations using global positioning systems. Section 57 of the model legislation provides that the driver must record the information and therefore the automatic capture of some data may prevent a driver being responsible for information recorded in the electronic work diary.

It is important that the driver be allowed an opportunity to check and if necessary correct any data automatically captured by the electronic work diary to ensure that they can comply with the model legislation. This is currently outlined in section 74(e): [the system for an electronic work diary] has a mechanism to ensure that the driver cannot alter any information that the driver records in the system once the driver has had the opportunity to confirm the accuracy of that information.

The major function of a work diary is to record information about the working hours of a driver to assist with the enforcement of the offences in the model legislation. It is particularly important, therefore, that a driver can be associated with their work diary. If the diary’s association with a person can be proven, the document therefore fulfils one of the requirements of an integrity check and has significant value in any legal proceedings.
With a written work diary, this association is generally proven by the driver having to physically sign the document. To ensure written work diaries have integrity, section 58 of the model legislation requires a driver to sign and date each daily sheet. A signature is accepted by the law as evidence that the person named is responsible for that document and, more importantly, its contents.

With electronic records, an alternative method of associating the record with a person must be used. The law of evidence allows for the presumption that electronic communications have come from the person that they appear to have come from. This presumption can be rebutted by evidence to the contrary.

An electronic work diary is required to record the name and driver licence number of the driver, and this information could be input by the driver. The requirement to input this information could be replaced by an automatic system, such as smart cards or passwords. If such mechanisms are used, it is important that there be measures in place to minimise the risk of a person other than the driver using the mechanism.

The information from a work diary must be received and stored by the record keeper. With a written work diary, the record keeper receives a copy of each daily sheet completed by the driver in a secure form. With an electronic work diary, there is the potential for the information to be manipulated once received by the record keeper. The information recorded by the driver, therefore, needs to be stored in a secure format that cannot be changed by another party without the change being evident. Importantly this requirement does not preclude the record keeper from making a copy of the information and modifying it for their own management purposes.

### Key points

- Applications need to specify the mechanism to ensure that the driver cannot alter any information that the driver records in the system once the driver has had the opportunity to confirm the accuracy of that information.

- Applications need to specify the authentication procedures that match the driver with the records being entered into an electronic work diary.

- The applicant for an electronic work diary should describe how the information is stored in a way that cannot be changed by person without the change being evident.

#### 5.2.3 Data integrity

Drivers, employers, operators and enforcement agencies require access to a secure and reliable electronic record of driver work and rest activity to be able to demonstrate that there is compliance with driver fatigue legislation. In general terms, data recorded by an electronic record keeping system must be accurate, and once recorded, not susceptible to alteration.

There are a number of aspects to ensuring the security and reliability of these records, including driver identification and unity of record concerns.

Driver identification is important for electronic work diaries as it acts as both a security measure and as a device to link an individual to the information recorded. As such it has a significant impact on the quality or perceived quality of the original data input into the system. Without appropriate identification any individual could log on to a system and record information for another driver. This would contravene section 74(d), would
compromise confidence in electronic work diary data and could compromise system security.

There are two primary security and identification mechanisms used in the case of the paper work diaries. Firstly, the driver is issued with a single numbered diary after fulfilling certain identification checks and secondly, the driver is required to provide personal information and sign each page. Whilst the controlled issuing of a token or similar device is feasible with electronic work diaries (taking the place of diary issuance) and personal information must be recorded in the system, the lack of signature is a major gap both for security and for linking the driver to the information.

The lack of signature in an electronic world was dealt with many decades ago by the introduction of personal identification numbers. Given that, under section 71(2) a record keeper and a driver must ensure that a person does not tamper with the operation of an electronic work diary, both the driver and operator would be obliged to keep such a personal identification number a secret and thus it would act as a plausible method of verification. Further options such as biometrics would also be a plausible security and identification mechanism.

The management and format of the data following collection is unspecified in the legislation but the requirement to keep the information secure is found under section 71(2) which imposes a penalty for failure to protect the information from tampering. The model legislation however does not require the electronic work diary itself to have a mechanism to ensure that a record keeper does not alter the information recorded by the driver. This requirement could be made in the guidelines. Alternatively this requirement could be added to the model legislation in the section for approving electronic work diaries to ensure the application outlines how the record keeper fulfils this requirement.

Whilst concerns regarding tampering tend to dominate discussions relating to data integrity/security, some consideration must also be given to the protection of data from less clandestine events. Data may be lost or corrupted in numerous ways and it is necessary that the technology safeguard against such occurrences in order to eliminate or mitigate them. As with tampering this requirement to protect data is not specified in section 74 (approval of electronic work diaries) but is instead controlled by section 62(5) which requires the record keeper to keep records for at least three years. While this places the onus of risk management on the record keeper it may produce a monitoring regime which is too cumbersome for road agencies to comfortably manage. As with tamper resistance, it is recommended that a requirement for data protection be placed either in section 74 or added to the guidelines to manage this issue.

There are a number of levels of robustness that a system can be tested against to provide assurance that it has been designed to address identified security threats. One international system for this purpose is the common criteria\(^5\), which identifies seven different security evaluation assurance levels.

The NTC is seeking stakeholders’ views on the appropriate level of security to specify for an electronic work diary.

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\(^5\) Common criteria for information technology security evaluation is an international standard (ISO/IEC 15408) for computer security certification.
Key points

- The application for an electronic work diary needs to show how the records cannot be altered by a driver after confirming the accuracy of the information.

- However, the application process does not have a mechanism to show how the record keeper is prevented from altering the information. This mechanism could be specified in the guidelines or by amending the model legislation.

5.2.4 Roadside enforcement

The model legislation contains performance-based requirements for roadside enforcement (Section 74(h)). It states that the systems may be approved if it “is capable of readily reproducing, on being accessed by an authorised officer or a police officer while the vehicle to which it is fitted is on the road, the information it contains in a form:

(i) that is readily accessible by the officer; and

(ii) that is reasonably capable of being understood by the officer; and

(iii) that can be used as evidence.”

Also section 74C outlines the admissibility of documents produced by an electronic work diary. This relates to section (iii) above; that the information is contained in a form that can be used as evidence. This section states that: a document produced by an electronic work diary is evidence of the matters contained in the document.

The assessment of an application can be made against these sections of the model legislation. The following two examples have been formulated to assess the ability of the system to approve specific electronic work diaries. In these examples, we make the assumption that the information being provided is consistent with section 57 of the model legislation.

The first example is an electronic work diary system that has a printer in the vehicle. The printer can produce a printout of information in the electronic work diary for an enforcement officer. The printout meets the requirement as it is readily accessible by the officer, it is reasonably capable of being understood by the officer, and it can be used as evidence.

The second example is a system that uses a hand-held device to display the information in the electronic work diary. The system also produces an electronic copy of the electronic work diary that can be given to the officer at the roadside (it could on a data stick or compact disk at the roadside, or an email addressed to a site nominated by the officer). Assessing this example against the legislative requirements, the officer can see the work diary records in the display of the device and the information is readily accessible.

But is the information contained in a form that can be used as evidence? The answer to this depends on what the officer does next. If the officer detects a breach of the regulated work and rest hours requirements, the officer issues an infringement notice to the driver, noting the date and time of the breach in the infringement notice. The officer also request a copy of the information contained in the electronic work diary. The driver provides the officer with this information by emailing it to an address nominated by the officer. When the officer gets back to the station, they view the electronic document and confirm the breach they observed at roadside from the hand-held device and noted in the infringement notice. Note that this method is used by enforcement officers in the United States of America for the electronic work diary.
In the second example, the method of enforcement is different to the way evidence is obtained for written work diaries in Australia. This method could also be used, but it would require a change to the current enforcement method for work diaries.

In summary, the evidence obtained from the two examples described above would meet the requirements of the legislation, but would require consultation with, and training of, the enforcement community.

Key points
- Applications need to describe how section 74(4) - about roadside enforcement - will be met.
- The use of electronic work diaries would require changes to the way enforcement is currently undertaken for work diaries.

5.2.5 Other enforcement related areas

In some states and territories, enforcement officers do not enter the cabins of vehicles they are inspecting due to the occupational health and safety risk. Therefore, information from electronic work diaries needs to be visible to the enforcement officers from the roadside.

Applications need to outline how enforcement officers can annotate a driver’s electronic work diary as required under section 109 of the model legislation. For this and other enforcement issues, the guideline may outline the procedures for enforcement officers and needs to be submitted with the application. In approving the application, regulators should specify that these procedures be presented to the enforcement officers upon request, to check a driver’s work diary during a roadside check.

Key points
- The information from an electronic work diary needs to be visible to the enforcement officers from the roadside.
- Application need to show how enforcement officers can annotate a driver’s electronic work diary as required under section 109 of the model legislation.

5.2.6 Counting time

The model legislation outlines a specific method for counting time (see section 40). This method involves counting time in 15 minute blocks (e.g. 15, 30, 45, 60, 75 minutes). Work and rest times are counted differently. When counting work time there is a requirement to round up to the next 15 minute block. For example, a period of working for 17 minutes counts as 30 minutes work time. When counting rest time there is a requirement to round down. For example a period of rest of 17 minutes counts as 15 minutes rest time. If the rest time is less than 15 minutes, it is not counted as rest but as work time. For example, a period of rest of 12 minutes does not count as rest time.

Applications for electronic work diaries need to describe how the system meets the counting time requirement.

Initial consultation with some industry stakeholders suggests that electronic work diaries could fulfil the currently specified counting time method. However, these industry stakeholders argue that there will be minimal uptake of the voluntary electronic work diary option due to the impact of using this counting time method. An example of this impact is shown in Table 1. In this example, the solo driver is working under the standard hours
option that allows 12 hours of maximum work in a 24 hour period. The driver undertakes four work periods during a 24 hour period. The real time worked in this example is 12 hours. However, using the counting time method specified in the model legislation, the work time is 12 hours and 45 minutes. The three periods of 1 minute count not as 3 minutes, but as 45 minutes and forces the driver over the legally allowable threshold. To remain legal, the driver would only be able to undertake a work period of 2 hours 15 minutes in the last shift in the example. Industry argues that the counting time method acts as a barrier to using electronic work diaries as it ‘eats’ into a driver’s maximum work time.

Table 1. Work time example

<table>
<thead>
<tr>
<th>Daily work period</th>
<th>Actual time worked</th>
<th>Time with legally required rounding</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>3 hr 1 min</td>
<td>3 hr 15 min</td>
</tr>
<tr>
<td>2</td>
<td>3 hr 1 min</td>
<td>3 hr 15 min</td>
</tr>
<tr>
<td>3</td>
<td>3 hr 1 min</td>
<td>3 hr 15 min</td>
</tr>
<tr>
<td>4</td>
<td>2 hr 57 min</td>
<td>3 hr</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>12 hr</strong></td>
<td><strong>12 hr 45 min (illegal)</strong></td>
</tr>
</tbody>
</table>

While industry argues that this counting time method acts as a barrier, this counting time method is consistent for both written and electronic work diaries. With the written work diary, the driver could have rounded down from 3 hours 1 minute to 3 hours. Rounding down for working time is illegal. However, in practice it is difficult to detect the rounding of time. In reality, time could also be rounded down like this with an electronic work diary as the system requires a mechanism so the driver can confirm the accuracy of the records. Therefore, it could be argued that written work diaries and electronic work diaries have the same requirements, so this counting time method should not create a barrier for the uptake of electronic work diaries.

It could also be argued that there is a greater incentive for drivers to round down work time when the time resolution is 15 minute increments compared to smaller time increments. If a counting time method for electronic work diaries were for one second increments, there would be less incentive for drivers to round down working time.

The current requirements for counting time make it easier for drivers to add up their work and rest times in a written work diary. For example, adding up time rounded to the quarter hour (e.g. 3hr + 2½hr + 1½hr) is much easier than adding time where the resolution is seconds (e.g. 2hr 47min 39sec + 2hr 17min 5sec + 1hr 36min 12sec). However, with electronic work diaries, a computer can perform this calculation rather than the driver. Systems for electronic work diaries could be designed to provide information to the driver about compliance with the regulated work and rest time requirements. This would assist the driver in complying with the law. These functions would also make roadside compliance checks of electronic work diaries quicker compared with a written work diary where officers need to do the arithmetic.

An alternative time counting method for electronic work diaries is appropriate. This would not change the current regulated work or rest hours requirements but the way time is counted and recorded in a work diary. Arguably an appropriate time resolution to round to
would be one second. This would help to remove the incentive for a driver to round down working time. This time counting method should also be extended to counting rest time as well. Any alternative method would require the model legislation to be amended.

**Key points**

- Applications for electronic work diaries need to describe how their system meets the time counting method in the current legislation.
- An alternative time counting method is reasonable for electronic work diaries. An appropriate method would be to round time to the closest second. An amendment to the legislation would be required.

### 5.2.7 Location and odometer information

The information that a driver must record in a work diary includes details of a driver’s location. In a written work diary, the driver records their location (e.g. Dandenong, Mokoan rest area) at the start of work and immediately before and after each work/rest change. The application for an electronic work diary needs to describe the way the driver will record their location. There is a requirement for the system to allow the driver to confirm the accuracy of the information in the electronic work diary (section 74(e)). Therefore, the location information should be in a format that is understandable to the driver for them to confirm their location.

The driver is also required to record odometer readings in a work diary (section 57). For a written work diary, the driver records the vehicle’s odometer reading immediately before or after each work or rest change. For an electronic work diary, the odometer reading also needs to be recorded and the accuracy confirmed by the driver.

**Key point**

The application for approval of an electronic work diary needs to contain documented procedures for the driver to record and confirm the accuracy of the location and odometer information.

### 5.2.8 Providing drivers with printouts of information in an electronic work diary

There is a requirement (section 62) that the record keeper must give the driver a printout of the information recorded in the electronic work diary for any relevant days before the driver stops using the electronic work diary. However, the model legislation provides no information about the form of the information in the printout. This issue has also been identified with the electronic work diary in the United States of America.

To make it easier for the driver to keep their compliance with work and rest requirements, it could be argued that the printouts of the information in electronic work diaries should be in a form that makes compliance with work and rest requirements easy. This would also make it easier for enforcement officers to check compliance of printouts of information in electronic work diaries.

In the enforcement of written work diaries, enforcement officers have the power to take a duplicate copy of the information contained in the diary. Therefore printouts of

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information from electronic work diaries should be available in a form that allows an enforcement officer to obtain a similar duplicate if necessary.

### Key points

- The guidelines could provide some guidance on the printout of information in an electronic work diary to make it easier to comply with the work and rest hour requirements.
- The guidelines should specify that the printouts of information for the driver from the electronic work diary should be in duplicate to enable enforcement officers to take a copy of the record if needed.

### 5.2.9 Minimum requirements specified in the guidelines where necessary

The guidelines need to specify minimum requirements in some instances where there is ambiguity in the model legislation. These minimum requirements provide certainty to both applicants and regulators. For example, electronic work diaries would typically use an internal clock. The guidelines would set minimum requirements for the performance of these clocks to ensure their accuracy. These minimum requirements could be that the accuracy of the clock does not deviate by more than 10 seconds per day over a 28 day period.

It could be argued that minimum requirements should not be set because prescriptive legislation reduces industry’s ability to innovate to meet the broad performance-based requirements in the legislation. However, the counter argument is that without setting minimum requirements in some instances, not enough guidance will be provided to regulators to approve systems which will perpetuate the current problem. Where it is warranted and provides certainty to regulators and industry, minimum standards should be specified.

The guidelines would need to set minimum requirements for:

- internal clocks;
- driver identification; and
- data security.

NTC is seeking stakeholders’ view on setting these requirements and input as to whether minimum requirements are needed for other areas for electronic work diaries.

### Key points

- Where necessary, the guidelines should specify minimum requirements for some areas where the model legislation is ambiguous. This will provide certainty for industry in developing its applications and regulators in assessing the applications.
- NTC is seeking feedback about setting minimum requirements for internal clocks, driver identification and data security.

### 5.2.10 Expert advice

The Fatigue Authorities Panel has representatives from the Commonwealth, state and territory governments and meets as required. The panel does not have additional resources beyond its members and some secretariat resources. In the panel’s capacity to manage
advanced fatigue management applications, a decision was made that the applications should include advice from fatigue experts. Applicants pay the fatigue expert for their services, and this advice is submitted with the application. The Fatigue Authorities Panel rules set out the eligibility to become a fatigue expert and the process for applying to become a fatigue expert. The eligibility criteria are:

- a demonstrated high level of professional expert knowledge in work-related fatigue, particularly relating to driving or shift work; and
- a sound knowledge of the heavy vehicle industry; and
- demonstrated high professional and ethical standards in their field of expertise.

When reviewing the application process for electronic work diaries, one must consider whether expert advice is similarly required to support the application and at what stage this advice should be provided. As panel consists of regulatory staff that are unlikely to have the necessary technical expertise to assess the application for an electronic work diary and has limited resources available, this additional expert advice is necessary. As such, eligibility criteria for the technical expert would need to be established. These criteria are likely to include expert professional knowledge of telematics and information technology and demonstrated high professional and ethical standards in their field of expertise.

Whilst the fatigue expert required for the advanced fatigue management application is needed toward the start of the process to assist the organisation with system design, the technical expert for electronic work diaries is required at the end of the process, in order to certify that the system operates in the manner stated in the application. In the short term, while some uncertainty exists regarding system requirements, it is recommended that the Fatigue Authorities Panel approve electronic work diaries based on the documentation presented pending certification from an authorised telematics expert. This workflow structure will prevent companies from spending money certifying systems which the Fatigue Authorities Panel consider to be not fit for purpose.

The final question about the expert is, can a company submitting an application for an electronic work diary use one of their employees as the technical expert or do they need to be independent? A company using its staff members does not incur additional costs for an independent technical assessment. The drawback is the conflict of interest for the staff member assessing their company’s application. However, there is an incentive for the company to ensure that the technical assessment by their staff member is correct. This incentive is to keep their products being used as an approved electronic work diary. The model legislation provides the power for an agency to cancel the approval of an electronic work diary if it was found that the application for the approval was false or misleading. Therefore, the applicant has a strong incentive to ensure the application contains correct information. However, to ensure the technical advice is unbiased, the panel may wish to have an independent assessment. This is consistent with good governance.

**Key point**

- The Fatigue Authorities Panel is likely to require applications to be submitted with advice from an independent technical expert.

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5.2.11 Impacts of this option

The costs of this option are:

- The approval process is an additional cost to governments over the ‘do nothing’ option.
- There may be additional costs for industry in moving to electronic work diaries especially where businesses are currently using only the written work diary.

The benefits of this option are:

- It allows a regulatory process that the ATC has already approved to work as envisaged.
- Allows industry to use electronic work diaries as a regulatory alternative to the written work diary.
- Allows applicants of electronic work diaries to innovate with their devices to meet both regulatory requirements and business uses.

5.3 Option A3: develop an approval process and an alternative compliance framework for electronic work diaries

Consultation identified concerns that option A2 could be improved upon by taking the opportunity to overcome perceived inadequacies with the written diary rather than ingrain them by insisting on the same requirements for electronic diaries. The perceived inadequacies relate to the integrity of the information provided by the driver. This would result in a scenario where the requirements for electronic diaries are more rigorous than requirements for written diaries. In order to address the resulting incentive for truck operators to remain with the paper format, two options emerged:

1. abolish the paper work diary and make the electronic diary mandatory;
2. use audit-based compliance to provide some incentive for operators wishing to use the more robust electronic diary.

The issue of mandatory electronic diaries represents a significant strategic issue that is beyond the scope of this project. The matter will be addressed as part of a broader compliance strategy that NTC is undertaking.

The option of introducing an audit-based compliance requirement for the use of electronic diaries is broadly consistent with government policy whereby those operators demonstrating superior management of safety issues are granted some form of benefit such as improved access or a reduction of ‘red tape’. The objective of this policy is to improve compliance outcomes while enabling greater flexibility for industry. In this case, the superior management might be demonstrated by the use of electronic diaries which:

- continuously monitor driving time, as a subset of work time, and do not require the driver to input this information (the driver is still required to record non-driving work and rest times); and
- have third-party assurance that the system is being used as required.

The benefits that could accrue to the operators might include:

- allowing drivers to avoid roadside interrogation of their work and rest hours records, thereby saving time; and
- better enabling companies to demonstrate how they are discharging their chain of responsibility requirements for fatigue (and possibly speed), thereby reducing the chance of being served with minor infringement notices.
In practice, this model is likely to involve the development of rigorous auditing regimes which will take the place of roadside enforcement. The auditing regimes would function to identify poor fatigue management practices rather than identifying single non-compliances. It is therefore anticipated that this approach would increase the emphasis on comprehensive fatigue management as opposed to simple compliance assurance, and produce more positive safety outcomes.

This option is similar to the alternative compliance policy\(^8\) approved by ATC in 1997. The alternative compliance policy sought to provide operators of heavy vehicles with alternative ways to show they were meeting the laws for vehicle standards and mass. The benefit for industry for showing this voluntary compliance was meant to be reduced roadside enforcement. While alternative compliance has support from both industry and government, in finalising the policy there was pressure to include additional benefits, for example extra mass above general access levels. These additional benefits changed the policy from alternative compliance to a national permitting system. Once this happened, the benefits on offer provided a greater incentive for operators to join than the benefit of reduced roadside enforcement. A recent review by NTC was not able to determine whether operators in the national permitting system were subject to reduced roadside enforcement as there is only anecdotal evidence available from government and industry. In addition, roadside enforcement is often used to check against multiple laws (e.g. fatigue, vehicle standards, mass, loading restraint) whereas the alternative compliance might only apply for one law for the stopped vehicle. In practice, this makes it difficult to identify reduced roadside enforcement as a benefit.

Sanctions policy for speed and fatigue laws has been based on the historic approaches used to underpin surveillance of these laws. However, in a highly accurate and continuous monitoring regime, sanctions policy may need to be reconsidered. Transport drivers and operators have repeatedly expressed concerns about the potential to be monitored continuously and for the equipment to accurately record breaches of very low consequence. Telematics devices can, for example, reliably identify work or rest hours breaches of under one second and very minor speed breaches, potentially resulting in the accumulation of severe penalties over a very short period of time. Given the likely safety benefit of building telematics monitoring into management systems, more detailed consideration of sanctions policy in a telematics environment is warranted. NTC’s telematics strategy (under development) will address this issue.

The benefits of this option are:

- providing operators an alternative to the current written work diary requirements;
- the operators’ vehicles are not subject to work diary checks at roadside; and
- regulators receive information about non-compliances against regulated work and rest hour requirements through continuous electronic monitoring.

The costs of this option are setting up and maintaining this voluntary option.

The overall impacts of this option could be:

- Operators’ vehicles can still be inspected at roadside for compliance against other laws; this may not provide a major benefit to operators. Therefore the costs may outweigh the benefits for industry.

• If only small numbers of operators enter into this voluntary arrangement, the costs for
governments for setting up and maintaining this option may outweigh the benefits.
However, there will be a point where the number of operators in this arrangement
produces benefits that outweigh the costs. NTC has not undertaken any analysis of
these costs and benefits.

**Key points**

• This option provides continuous monitoring of regulated work and rest
requirements. As such, operators’ vehicles would not be subject to work diary
checks at roadside.

• This option automates the recording of driving time as part of work time, but
non-driving work and rest still require the driver to input this information.

### 5.4 Preferred option

NTC’s preferred option from the three presented above is option A2. This option seeks to
overcome the current regulatory failure in that no electronic work diaries have been
approved although legislation sets out this process. It can be achieved quickly, yet still
allows for future changes in policy direction resulting from the telematics and compliance
strategies.

NTC rejects the “do nothing” option (A1). This option does not rectify the problems with
the approval process, nor does it allow business to cut red tape. Many operators are
currently using both the regulated written work diary and their own electronic systems to
record the same information. Option A2 allows these operators to cease the duplication of
their record keeping systems and allows them to use a single electronic work diary that
meets their own business needs and the regulated requirements for work diaries.

Option A3 provides improved compliance outcomes with a different model of enforcement
that means no roadside checks of work diaries. However, this option is somewhat different
to option A2. Option A2 addresses an immediate problem. Option A3 provides a possible
future option, but it is unlikely to have major industry uptake as long as the current written
work diary is the regulatory default option. NTC sees merit in further consideration of this
possible future option as part of the telematics strategy.
6. THE ABSENCE OF GUIDANCE MATERIAL TO EXPLAIN HOW SUPERVISORY INTERVENTION ORDERS CAN BE USED FOR FATIGUE AND SPEED COMPLIANCE

6.1 Background

Traditionally, the main penalty for road transport breaches has been a fine imposed by a court. Maximum fines were quite low compared to fines for other offences and this, combined with the fact that they tended only to be imposed on drivers and operators, meant that road transport monetary penalties alone have not operated effectively as deterrents.

The national Road Transport Reform (Compliance and Enforcement) Bill was approved by ATC in 2003. The Bill introduced the chain of responsibility concept - that is, that all those parties with responsibility for activities that affect compliance with the road transport laws should be held legally accountable. In addition, the Bill contains a hierarchy of sanctions and penalties for parties that are not complying with transport laws (see Figure 2).

Appendix B contains a full description of these penalties and sanctions. These sanctions and penalties can be used to address non-compliance with fatigue or speed-related laws.

Figure 2. The hierarchy of sanctions under the national Compliance and Enforcement Bill

The administrative-based and court-imposed sanctions and penalties proposed in the Bill are intended to be effective deterrents. They have been tailored to address specific types of offenders (for example, first-time offenders, those who might benefit from compliance supervision, ‘systematic or persistent’ offenders) and specific consequences (for example, offences involving a risk to safety or the reaping of large commercial profits from the wrong-doing).
Used separately, or, where appropriate, in combination, these new sanctions and penalties will enable the most effective sanctions strategy or strategies to be applied to the particular offender and the particular circumstances.

In describing the regulatory problem below, the discussion focuses on the supervisory intervention order sanction. A supervisory intervention order is described in Figure 3. It can be called a ‘flexible’ sanction as the order can direct the offender to undertake a range of actions. These include changing management and operation practices through to reporting information on their compliance with the law.

**Figure 3. Supervisory intervention order**

<table>
<thead>
<tr>
<th>Supervisory intervention order</th>
</tr>
</thead>
<tbody>
<tr>
<td>A supervisory intervention order may be made by a court only upon application of the prosecutor or a road authority and only against a person who is found by the court to be a systematic or persistent offender. This order is intended to improve the person’s compliance performance and the court must consider the likelihood of the order achieving this aim when deciding upon whether to make the order.</td>
</tr>
<tr>
<td>A supervisory intervention order may direct the offender to:</td>
</tr>
<tr>
<td>• undertake acts to improve compliance, such as retraining or re-assigning staff, appointing a compliance auditor, obtaining expert advice, implementing operational changes and publishing compliance reports;</td>
</tr>
<tr>
<td>• report or disclose information on compliance; and</td>
</tr>
<tr>
<td>• conduct specific operations subject to the direction of the authority.</td>
</tr>
<tr>
<td>The order cannot extend beyond one year. Any costs associated with implementing the order will be the responsibility of the person against whom the order is made. The order may be made either instead of any other penalty or in addition to any other penalty, other than a prohibition order.</td>
</tr>
</tbody>
</table>

### 6.2 What is the problem?

The problem asserted to the NTC was that there is no guidance material to explain how supervisory intervention orders can be used for fatigue and speed compliance. It has also been asserted that because there are no electronic standards for fatigue or standard of a sufficient evidentiary quality, a supervisory intervention order cannot be issued using telemetric systems for non-compliance reporting. We explore this problem in more detail below by discussing any evidence to support the problem.

### 6.3 Why is it a problem?

This problem has possibly resulted in no supervisory intervention orders being issued to systematic or persistent offender for fatigue or speed compliance.

### 6.4 How significant is the problem?

Currently, NTC assesses the significance of the problem as small. This is because ATC approved the fatigue and speed model legislation in 2007 and it takes time for states and territories to implement the legislation in their jurisdictions. To date, the fatigue model legislation has been implemented in four states and the speed legislation implemented in
two states. In addition, for those states that have implemented the legislation, it will take time to build up evidence of a systemic or persistent offender. The Compliance and Enforcement legislation, for example, was approved by ATC in 2003 and contained mass, dimension and loading provisions. Since this time, the NTC is only aware of the use of a supervisory intervention order in one state for mass compliance.

6.5 What are the costs, risk or benefits of maintaining the status quo?

The implication of maintaining the status quo and not developing guidance material for the content of supervisory intervention orders is that road authorities and prosecutors won’t have this advice and they will need to develop the content of a supervisory intervention order. As the example for mass compliance shows, supervisory intervention orders have been issued without such guidance material. It may be more cost-effective to develop guidance material that can be used broadly by all road authorities and prosecutors seeking to issue a supervisory intervention order for speed and fatigue.

The benefits of maintaining the status quo is that no additional government resources will be required to develop this guidance material. Under the status quo option, road authorities and prosecutors are likely to search for such orders that have been previously imposed. Therefore, it is likely that these costs may be minimised for those road authorities and prosecutors that can access previously issued supervisory intervention orders for fatigue and speed compliance.

7. OPTIONS TO ADDRESS THE ABSENCE OF GUIDANCE MATERIAL TO EXPLAIN HOW SUPERVISORY INTERVENTION ORDERS CAN BE USED FOR FATIGUE AND SPEED COMPLIANCE

There are two options identified: do nothing or develop guidance material.

7.1 Option B1. do nothing (keep the status quo)

The do nothing option is a viable option as the significance of the problem is small. The main advantage of this option is it imposes no additional costs on governments.

7.2 Option B2. develop guidance material to explain how supervisory intervention orders can be used for fatigue and speed compliance

As discussed above, developing guidance material could help the road authorities and prosecutors in issuing supervisory intervention orders for fatigue and speed compliance. This guidance would include ways to improve compliance and ways to report or disclose information on compliance enforcement.

The key way for the transport supply chain to improve safety is to manage fatigue and speed. Research by National Transport Insurance indicates that almost half of serious heavy vehicle crashes have fatigue or excessive speed as causative factors. There are various things companies can do including training, developing and implementing management systems, and having company policies and processes about complying with fatigue or speeding laws. The guidance material can provide details about the tools available and how they could be written into a supervisory intervention order. An example

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of a tool for fatigue management is the use of fatigue management standards (e.g. the standard for advanced fatigue management) to build and implement management procedures. Another example of a tool for fatigue management is a commercially available system to monitor the drowsiness of drivers.

To underpin good management practices, feedback mechanisms are needed to assess whether fatigue or speed are being well managed. The guidelines should provide examples of these feedback mechanisms including:

- periodic third-party auditing of management systems; and
- electronic monitoring of on-road compliance (e.g. work and rest hours or speed) or management (e.g. the system that monitors the drowsiness of drivers).

Once a supervisory intervention order has been placed on an organisation as a sanction, the information from compliance monitoring should be made available to government. If the company is not complying with the requirements in the supervisory intervention order, then the government may choose to seek a further court decision with the supervisory intervention order or another type of sanction.

There may be limitations around some of these monitoring requirements. For example, it may be difficult to detect speeding of a monitored vehicle at all posted speed limits, but speed monitoring against a maximum speed of 100 km/h would be achievable. The guidelines can discuss what is currently achievable with monitoring.

The Intelligent Access Program currently provides a robust framework for electronic monitoring of vehicle location. The system continuously monitors location with non-compliance reports going back to governments. This framework could also be used for electronic monitoring of compliance with fatigue and speed laws in a supervisory intervention order. The capability to support this is currently being developed by Austroads in the form of additional specifications for compliance with fatigue and speed laws as part of the Intelligent Access Program. NTC considers that this capability can best be used as a mandatory sanction as part of a supervisory intervention order. The impacts of this option would be:

- the costs for developing this guidance material; and
- the benefit of the potential cost-saving for road authorities and prosecutors in using the guidance material for a supervisory intervention order. This saving is from legal staff not having to search to find what might be suitable requirements to place in an order.

The development cost of this guidance material would be low. This is in line with the minor benefits that would accrue from having this material available. This is due to the likelihood that only a few supervisory intervention orders will be issued annually for fatigue or speed once all states and territories have implemented the relevant legislation.

NTC is seeking further information about this option. These questions are:

- Is the lack of guidance material for supervisory intervention orders contributing to the absence of orders issued to date for fatigue or speed?
- If not, are there factors other than those identified that may contribute to the lack of these supervisory intervention orders being issued for fatigue or speed?
Key points

- Guidance material for the use of supervisory intervention orders for fatigue and speed could help road authorities and prosecutors in issuing these orders.
- The costs for developing these guidelines would be low. The benefits would also be low.

7.3 Preferred option

NTC’s preferred option is to develop guidance material to explain how supervisory intervention orders can be used for fatigue and speed compliance (option B2). The problem presented is not currently a significant problem. However, NTC asserts that the costs for developing this guidance material is low and is likely to assist the issuing of supervisory intervention orders for fatigue and speed.

8. CONSULTATION

The consultation to date on this project has been with a technical advisory group. This group has representatives from government and industry and has met once in May 2009.

The release of this position paper marks a broader consultation opportunity. NTC is seeking comment and feedback on this paper and the questions it poses. Details about how to make a submission are provide at the front of this report.

After the public submission period closes, NTC will make all submissions relating to this report available on its website (www.ntc.gov.au). NTC will consider all submissions in developing the draft policy proposal. The draft policy proposal will also be released for public consultation. NTC will consider all submissions received on the draft proposal in developing the final proposal. The last step in the process is the submission of the final policy proposal to ATC for approval.

9. CONCLUSION

This paper has identified and discussed two regulatory problems. It presents some options to either keep the status quo or seek to address the problem. NTC has undertaken an initial assessment of the costs, benefits and risks of each option in this paper. NTC’s preferred options are then presented.

Due to a lack of approved guidance material under section 74 of the model fatigue legislation, there is currently a regulatory failure as regulators are reluctant to consider applications for electronic work diaries. NTC’s preferred option will require the development of a draft proposal for this option. This proposal would consist of:

- guidelines that provide certainty to industry and governments about the requirements of electronic work diaries consistent with the current legislation. Where necessary, the guidelines should specify minimum requirements for some areas where the model legislation is ambiguous;
- an amendment to the Fatigue Authorities Panel rules. The panel is likely to require applications to be submitted with advice from an independent technical expert;
• an application form as specified in section 74(2); and

• a minor amendment package for the Model Law for Heavy Vehicle Driver Fatigue. This package would include an alternative counting time method and a requirement for electronic work diary systems to have a mechanism to ensure that a record keeper does not alter the information recorded by the driver.

The use of electronic work diaries would also require changes to the way enforcement is currently undertaken for work diaries.

Should the electronic alternative to a written work diary prove to be expensive or onerous, it is unlikely to be taken up on a wide scale. In addition, the electronic record may identify very minor breaches which would not have been identified in a paper-based format, thereby subjecting the user to the higher risk of sanction. These are potentially very significant disincentives to the voluntary use of an electronic work diary. Should ATC want to improve compliance by taking advantage of telematics options, it will be necessary to consider whether the written work diary should be retained as an alternative, or dispensed with altogether. NTC’s compliance strategy project will consider this issue further.

The other problem this paper discusses is the absence of guidance material to explain how supervisory intervention orders can be used for fatigue and speed compliance. NTC contends that it would be a relatively inexpensive exercise to develop guidance material for the courts to use supervisory intervention orders as an effective sanction for persistent speed and fatigue offenders. As such, NTC proposes that this material be developed. This guidance material should cover:

• improving management systems for work and rest hours compliance and speed compliance;

• record keeping improvements could be introduced to better identify ongoing compliance; and

• the option of equipping an offender’s vehicles with evidentiary quality telematics equipment which provides reliable data to authorities to determine ongoing compliance with fatigue and speed legislation. The Intelligent Access Program can be used as the framework for monitoring compliance with fatigue and speed laws as a mandatory sanction.
APPENDIX A: NATIONAL TRANSPORT POLICY FRAMEWORK’S VISION, POLICY OBJECTIVES AND POLICY PRINCIPLES

Source: ATC 2008.

Vision for Australia’s Transport Future

Australia requires a safe, secure, efficient, reliable and integrated national transport system that supports and enhances our nation’s economic development and social and environmental well-being.

Transport Policy Objectives

To achieve this vision, Australia’s Transport Ministers commit to the following policy objectives:

- **Economic**: To promote the efficient movement of people and goods in order to support sustainable economic development and prosperity.
- **Safety**: To provide a safe transport system that meets Australia's mobility, social and economic objectives with maximum safety for its user.
- **Social**: To promote social inclusion by connecting remote and disadvantaged communities and increasing accessibility to the transport network for all Australians.
- **Environmental**: Protect our environment and improve health by building and investing transport systems that minimise emissions and consumption of resources and energy.
- **Integration**: Promote effective and efficient integration and linkage of Australia’s transport system with urban and regional planning at every level of government and with international transport systems.
- **Transparency**: Transparency in funding and charging to provide equitable access to the transport system, through clearly identified means where full cost recovery is not applied.

Transport Policy Principles

Australia’s transport policy framework is underpinned by the following guiding principles:

- **Infrastructure pricing**: sending the appropriate signals to influence supply and demand for infrastructure;
- **Competitive markets**: establishing competitive markets wherever possible to minimise the need for regulation;
- **Private sector**: involve the private sector, where it is efficient to do so, in delivering outcomes;
- **National regulation**: a national perspective should be adopted where regulation is required;
- **National markets**: encourage national markets where possible; and
- **Customer**: Customer – focussed. Equitable access for all users.
APPENDIX B: SANCTIONS AND PENALTIES UNDER THE NATIONAL COMPLIANCE AND ENFORCEMENT BILL

Improvement notices
An improvement notice may be issued by an enforcement officer where there are reasonable grounds for believing that a person either has, or is contravening a road transport requirement or standard applying to a heavy vehicle or is likely to contravene the requirement or standard. This is an important sanction that has the potential to be applied in an educative and proactive manner.

Formal warnings
A formal warning may be issued for a minor breach where the officer believes the person had taken all reasonable steps to prevent the breach and was unaware of the breach.

An authority may decide to withdraw the formal warning and bring other proceedings instead. Withdrawal of the formal warning might occur when the authority learns that the person against whom it was issued has a poor compliance history. It could also be withdrawn if additional evidence comes to hand that suggests the breach was more serious or was committed intentionally.

Infringement notices
An infringement notice may be issued as an alternative to court proceedings for a less serious offence. An infringement penalty is proposed to be set at around 20 per cent of the value of the maximum monetary penalty that could be imposed by the court for the applicable offence. The infringement penalty for a body corporate is no different to that for an individual.

A record of the infringement notice may be used to aid a court determine whether a person is a systematic or persistent offender for the purposes of making either a supervisory intervention order or prohibition order (see below).

Fines
A fine will be available as a court-imposed penalty for any road transport offence.

The Bill provides that the maximum available fine for a corporation should be five times higher than that applicable to an individual. This will not mean that a court will impose an actual fine that is five times higher for a corporation. Instead, it will allow a court to apply a higher fine to a corporation than it would to an individual where the circumstances of the offence and the financial and other circumstances of a corporation warrant the higher fine.

The fines nominated in the Bill are indicative maximum fines only. They are intended as a guide to jurisdictions in setting appropriate maximum monetary penalties for these offences in their own legislation.

Commercial benefits penalties
The commercial benefits penalty is intended to deter those who seek to obtain an unfair competitive advantage by contravening the road transport law. This penalty may be up to three times the amount calculated to be the commercial benefit that was, or would have been, derived from the offence. In making its calculations, the court may consider the value per tonne per kilometre of the goods, the distance over which the goods were carried, or were to be carried, and the benefit received or to be received from committing the breach.
This innovative penalty does not have a precedent in other areas of regulation. It has been designed by the NRTC to tackle offenders who are reaping benefits from abusing the road laws.

**Supervisory intervention orders**

See Figure 3.

**Orders affecting driver licence or vehicle registration**

The court may suspend for a specified period or cancel the registration of any heavy vehicle of which the offender is the registered operator. This will have effect even if the order is made in a jurisdiction other than the one in which the heavy vehicle is registered. An offender may be disqualified from becoming a registered operator for a specified period not exceeding five years.

The court may also modify, suspend for a specified period or cancel a heavy vehicle driver licence or disqualify an offender from obtaining a heavy vehicle driver licence for a specified period not exceeding five years. The powers to affect registration and licences will generally be reserved for serious offences.

**Prohibition orders**

In the rare case of a systematic or persistent offender for whom no other penalty will be adequate, the Bill empowers a court to prohibit the offender from any involvement in road transport for a specified period of time.

As with the supervisory intervention order, a prohibition order may only be made by a court upon the application of the prosecutor or a road authority and only against a person who is found by the court to be a systematic or persistent offender.

**Compensation orders**

A compensation order is not strictly a sanction or penalty, but its consequences operate to similar effect.

Such an order requires an offender who has been found guilty of a road law offence to compensate a road authority for loss or damage to any road infrastructure caused or contributed to by a road law offence. The order may only be made if the court is satisfied on the balance of probabilities that the loss or damage was suffered as a result of the offence in respect of which the court has found the offender guilty.
APPENDIX C: THE NATIONAL TRANSPORT COMMISSION (MODEL LEGISLATION – HEAVY VEHICLE DRIVER FATIGUE) REGULATIONS 2007 RELEVANT TO ELECTRONIC WORK DIARIES

Subdivision 3.1.1 Work and rest time

36 What is work/rest hours option

A driver’s work/rest hours option at any particular time is whichever of the following applies to the driver at that time under this Act:

(a) standard hours;
(b) BFM hours;
(c) AFM hours;
(d) the hours specified in a work/rest hours exemption (whether or not granted in combination with an operator’s BFM or AFM accreditation).

Note Section 43 explains what standard hours are. Section 48 explains what BFM hours are. Section 52 explains what AFM hours are. Section 91 explains what a work/rest hours exemption is and provides that a work/rest hours exemption may be granted in combination with an operator’s BFM or AFM accreditation.

37 What is work time

(1) A driver’s work time is:

(a) the time that the driver spends driving a regulated heavy vehicle, whether or not it is on a road; and
(b) any other time that the driver spends doing tasks that are related to the operation of a regulated heavy vehicle, including for example:

(i) loading or unloading the vehicle; and
(ii) inspecting, servicing or repairing the vehicle; and
(iii) inspecting or attending to the load on the vehicle; and
(iv) attending to the passengers of a bus; and
(v) cleaning or refuelling the vehicle; and
(vi) performing marketing tasks in relation to the operation of the vehicle; and
(vii) helping with, or supervising, an activity mentioned in subparagraphs (i) to (vi); and
(viii) recording information, or completing a document, in accordance with this Act or otherwise, in relation to the operation of the vehicle.

(2) For subparagraph (1)(b)(vi), marketing tasks includes:

(a) arranging for the transport of passengers or goods; and
(b) canvassing for orders for the transport of passengers or goods.

(3) For paragraph (1)(a), driving includes:

(a) being in the driver’s seat of a regulated heavy vehicle while its engine is running; and
(b) being in a regulated heavy vehicle for the purpose of instructing or supervising the driver of the vehicle.

38 What is rest time

Rest time of a driver is time that is not work time of the driver.

39 What is a work/rest change

A work/rest change for a driver is:
(a) a change from work time to rest time; or
(b) a change from rest time to work time; or
(c) a change from being a solo driver to being a two-up driver; or
(d) a change from being a two-up driver to being a solo driver.

Subdivision 3.1.2 Counting time

40 Counting time, including work and rest time

(1) A period of work time of less than 15 minutes counts as 15 minutes work time.

   Examples
   - A period of working for 14 minutes counts as 15 minutes work time.
   - A period of working for 17 minutes counts as 30 minutes work time.
   - A period of working for 53 minutes counts as 1 hour work time.

(2) A period of rest time is counted in blocks of time of no less than 15 minutes.

   Examples
   - A period of not working for only 14 minutes does not count as rest time (because 14 minutes is less than 15 minutes).
   - A period of not working for 17 minutes counts as 15 minutes rest time (because 17 minutes is more than 15 minutes, but is less than 2 lots of 15 minutes i.e. 30 minutes).
   - A period of not working for 53 minutes counts as 45 minutes rest time (because 53 minutes is more than 3 lots of 15 minutes i.e. 45 minutes, but is less than 4 lots of 15 minutes i.e. 60 minutes).

(3) When counting time in a period, the time must not be counted from within rest time, but instead must be counted forward:

   (a) if counting rest time and one or more major rest breaks are relevant to the period, from the end of a relevant major rest break; or

   (b) in any other case, from the end of a relevant period of rest time.

Example

An authorised officer intercepts a driver on a Friday and inspects the driver’s work diary. The driver works standard hours. The officer examines the diary entries for the previous Monday. They show that the driver completed a 7 hour continuous rest break at 7 am on that day, started work at that time, worked until 12.15 pm, had a 1 hour rest break, then worked until 7.15 pm. For the purposes of determining the number of hours worked by the driver on that Monday, the officer must start counting from the rest period that finished at 7 am. Adding the periods 7 am to 12.15 pm and 1.15 pm to 7.15 pm results in a total of 11½ hours worked that day (which is permissible under this Act in isolation). The officer might also decide to calculate the number of continuous hours worked in the second work period that day – this requires that the counting start at the end of the rest period that finished at 1.15 pm, and results in a total of 6 continuous hours (which is not permissible under this Act under standard hours).
(4) If a driver undertakes a journey and is in a different time zone from the time zone of his or her base at the time when a period of time is relevant for the purposes of this Act, the period must be counted by reference to the time zone of the base.

Example

If it is necessary to determine the night hours of a driver with a base in Western Australia while the driver is in New South Wales on a journey, those night hours are the period between 12 midnight and 6 am in the Western Australian time zone in which the driver’s base is situated (even though those hours equate, for instance, to 3 am to 9 am Eastern Standard Summer Savings Time).

41 Counting time within the participating zone

In applying this Part to a driver, any time that is spent by the driver in another jurisdiction within the participating zone is to be treated in the same way as it would have been treated if the time had been spent in this jurisdiction.

Note Section 22 (4) explains what the participating zone is.

42 Counting time from outside the participating zone

(1) This section applies to a driver if the driver drives a regulated heavy vehicle into this jurisdiction from another jurisdiction within the non-participating zone.

Note Section 22 (5) explains what the non-participating zone is.

(2) If, within the last 7 days, the driver has spent any work time inside the participating zone, any time spent by the driver in the other jurisdiction within the non-participating zone is to be treated in the same way as it would have been treated if the time had been spent in this jurisdiction.

(3) If, within the last 7 days, the driver spent work time only in the non-participating zone:

(a) any time spent in the other jurisdiction before the start of the driver’s last major rest break before entering this jurisdiction is to be disregarded; and

(b) any time spent in the other jurisdiction after the start of that major rest break is to be taken into account; and

(c) any time spent by the driver in the non-participating zone (or another jurisdiction in the participating zone) after the start of that major rest break is to be treated in the same way as it would have been treated if the time had been spent in this jurisdiction.

Part 4 Duties relating to record keeping

Division 4.1 Key concepts for this Part

54 What is 100 km work and 100+ km work

(1) The driver of a regulated heavy vehicle is engaged in 100 km work if the driver is driving in an area that has a radius of 100 km or less from the driver’s base.

(2) The driver of a regulated heavy vehicle is engaged in 100+ km work if the driver is driving in an area that has a radius of more than 100 km from the driver’s base.
Drafting note Some jurisdictions may change 100 km to another number of kilometres.

55 What is a driver’s base and record location

(1) The base of a driver of a regulated heavy vehicle, in relation to particular work, is the place from which he or she normally does the work.

(1A) Despite subsection (1), if a driver has not recorded a base in his or her work diary in relation to particular work, for the purposes of this Act the driver’s base in relation to that work is the garage address of the vehicle.

(2) The garage address of a vehicle is:
   (a) if the vehicle is normally kept at a depot when not in use — the principal depot at which it is kept; or
   (b) if the vehicle is normally kept on a particular road or at a particular place when not in use — the home address of the registered operator whose home address is nearest to that road or place; or
   (c) in any other case — the home address of the registered operator whose name is first listed on the registration certificate for the vehicle.

(3) If a driver is a self-employed driver and an employed driver at different times, the driver may have 1 base as a self-employed driver and another base as an employed driver.

(4) If a driver has 2 or more employers, the driver may have a different base in relation to each employer.

(5) The record location of a driver is:
   (a) a place which the record keeper has instructed the driver is the record location; or
   (b) if the record keeper has not instructed the driver as specified in paragraph (a), the driver’s base.

Note Record keeper is defined in section 62 (2).

Division 4.2 Work diary requirements

56 Driver must carry work diary

(1) This section applies if a driver:
   (a) is engaged in 100+ km work; or
   (b) was engaged in 100+ km work in the last 28 days; or
   (c) is driving under BFM or AFM hours; or
   (d) was driving under BFM or AFM hours in the last 28 days; or
   (e) is driving under a work/rest hours exemption (whether or not granted in combination with an operator’s BFM or AFM accreditation); or
   (f) was driving under a work/rest hours exemption (whether or not granted in combination with an operator’s BFM or AFM accreditation) in the last 28 days.

Note Section 91 provides that a work/rest hours exemption may be granted in combination with an operator’s BFM or AFM accreditation.
(2) While driving a regulated heavy vehicle, the driver must keep in the vehicle a work diary that contains, for the last 28 days, the information required by section 57.

Court-imposed penalty: $6 000.

Note 1 If a driver’s work diary is destroyed, lost, stolen or stops being operational, section 59(1A) requires the driver to record information in a supplementary record. Section 59 does not apply if a driver forgets to take a work diary on a journey – in that circumstance the driver is liable to be prosecuted under this subsection.

Note 2 An authorised officer or police officer may require the driver to produce his or her work diary for inspection — see section 44 of the C & E Act.

(3) A work diary is:

(a) if the driver has used only a written work diary in the last 28 days — the written work diary; or

(c) if the driver has used only an electronic work diary in the last 28 days:

(i) the electronic work diary that the driver is currently using; and

(ii) printouts of the information in any other electronic work diary that the driver has used in the last 28 days that cover any periods during those 28 days that are not recorded in the electronic work diary that the driver is currently using; or

(d) if the driver has used a combination of a written work diary and an electronic work diary in the last 28 days:

(i) the written work diary; and

(ii) if the driver is currently using an electronic work diary— the electronic work diary; and

(iii) printouts of the information in any electronic work diary that the driver has used in the last 28 days that cover any periods during those 28 days that are not recorded in an electronic work diary that the driver is currently using.

(3A) If the driver has made any supplementary record in the last 28 days, as required by section 59(1A), for the purposes of sub-section (3) the work diary includes the supplementary record.

(4) A written work diary is a written work diary issued to the driver under section 73 or under a corresponding fatigue law.

(5) An electronic work diary is any system of recording information electronically:

(a) that has attached to each device that forms part of the system a label:

(i) that indicates that the device is, or is part of, an electronic work diary that is the subject of a current approval of the Authority under section 74; and

(ii) that states the number of the certificate of approval issued by the Authority in respect of the approval; and

(iii) that is in a form approved by the Authority; and

(b) that is the subject of a current approval of the Authority under section 74.
(5A) For the purposes of this Act, a person is entitled to rely on a label that appears to comply with subsection (5)(a) unless he, she or it knows, or reasonably ought to know, that the thing is not the subject of a current approval of the Authority under section 74.

(6) Subsection (2) applies irrespective of the number of days in the last 28 days on which the driver spent work time in relation to a regulated heavy vehicle.

57 Information that driver must record in work diary

(1) This section lists the information that a driver must record in his or her work diary on each day on which the driver:
   (a) engages in 100+ km work; or
   (b) is working under BFM, AFM hours or the hours specified in a work/rest hours exemption.

   Note Section 58 explains how the information must be recorded.

(2) The driver must continue to record the information until his or her next major rest break.

(3) Immediately after starting work on each of those days, the driver must record:
   (a) the day of the week and date; and
   (b) his or her name; and
   (c) his or her current driver licence number, and the jurisdiction where the licence was issued; and
   (d) whether he or she is working under standard hours (including whether the driver is working under standard hours for solo drivers of a bus), BFM hours, AFM hours or the hours specified in a work/rest hours exemption; and
   (e) if he or she is working under BFM or AFM hours or the hours specified in a work/rest hours exemption that was granted in combination with an operator’s BFM or AFM accreditation — his or her operator’s BFM or AFM accreditation number; and
   (f) details of his or her base, unless he or she has previously recorded those details in relation to the work and they are still current; and
   (g) details of the driver’s record location, unless the driver has previously recorded those details and they are still current; and
   (h) details of the time zone of the base.

   Court-imposed penalty: $2 000.
   Infringement notice penalty: $600.

(4) Immediately before or after each work/rest change on each of those days, the driver must record:
   (a) the nature of the work/rest change; and
   (b) the work time or rest time spent anywhere by the driver since the last work/rest change; and
   (c) the time and place of the work/rest change; and

   Note An abbreviation may be used by a driver to refer to a place provided that it is capable of being understood by a reasonable person and is not designed to confuse or be misleading.
   (d) the odometer reading at that time; and
(c) the registration number shown on the numberplate of each heavy motor
vehicle that the driver drives; and

(f) if the driver is or becomes a two-up driver — the following information
about the other driver in the two-up driving arrangement:
   (i) the other driver’s name; and
   (ii) the other driver’s driver licence number; and
   (iii) except in the case of a shared electronic work diary, the security or
        other identifying number of the other driver’s work diary and the
        name of the participating jurisdiction that issued that diary.

Court-imposed penalty: $2 000.
Infringement notice penalty: $600.

(4A) If the driver changes from one base or record location to another base or record
location after starting work on one of those days, he or she must record the
details of the other base or record location (as the case may be) immediately after
the change occurs.

Court-imposed penalty: $2 000.
Infringement notice penalty: $600.

(5) Immediately before finishing work on each of those days, the driver must record
the total of the work time and the total of the rest time that he or she has had that
day.

Court-imposed penalty: $2 000.
Infringement notice penalty: $600.

(5A) A driver in a two-up driving arrangement must, at the request of the other driver
to the arrangement, provide the other driver with any details the driver needs to
be able to comply with subsection (4)(f).

Court-imposed penalty: $2 000.
Infringement notice penalty: $600.

(6) An offence against this section is an offence of strict liability.

Note A spelling mistake made by a driver in completing a work diary may be considered an
honest and reasonable mistake of fact (and therefore provide a strict liability defence) if it is
capable of being understood by a reasonable person and is not deliberate or designed to confuse
or be misleading.

(7) However, if this section requires a driver to record information before beginning
to engage in 100+ km work on a day, it is a defence for the driver to prove that,
at the time of the offence:
   (a) he or she was unaware that he or she would be engaging in 100+ km work
       on the day; and
   (b) he or she recorded the information in his or her work diary as soon as
       practicable after becoming aware that he or she would be engaging in 100+
       km work on the day.

58 How driver must record information in work diary

(1) A driver must record information in a written work diary in this way:
   (a) the information for each day must be written on a separate daily sheet in a
       work diary that has not been cancelled by the Authority; and
(b) if the driver changes from one work/rest option to another work/rest option during a day, he or she must record any information for that day that relates to the period after the change occurs on a separate daily sheet; and

(c) information must be written on a daily sheet as required by the instructions in the work diary for recording information on daily sheets; and

(d) the daily sheets in the work diary must be used in turn from the front of the work diary; and

(e) each daily sheet must:
   (i) be signed and dated by the driver; and
   (ii) if the driver is driving under a two-up arrangement — signed by the other two-up driver; and

(f) information must be written on a daily sheet with enough pressure to ensure that a readable record of the information appears on the duplicate daily sheets; and

(g) other information must be written in the work diary as required by the instructions in the work diary for the recording of the information.

Court-imposed penalty: $2 000.
Infringement notice penalty: $600.

(2) A driver must record information in an electronic work diary in the way required by:
   (a) the Authority; or
   (b) if the Authority does not make a requirement — the manufacturer’s instructions for recording information in the work diary.

Court-imposed penalty: $2 000.
Infringement notice penalty: $600.

(3) A driver must record time in a work diary according to the time zone in the place where the driver’s base is, rather than the time zone in the place where the driver is.

Court-imposed penalty: $2 000.
Infringement notice penalty: $600.

(4) An offence against this section is an offence of strict liability.

59 Destroyed, lost, stolen or malfunctioning work diaries

(1) This section applies if a driver is unable to use a work diary because:
   (a) it is filled up, destroyed, lost or stolen; or
   (b) in the case of an electronic work diary:
      (i) it is malfunctioning; or
      (ii) a component of it is destroyed, lost or stolen.

(1A) During any period in which subsection (1) applies, the driver must record in a supplementary record any information that he or she is required by section 57 to record.

Court-imposed penalty: $4 000.
Infringement notice penalty: $800.
(1B) Sub-section (1A) ceases to apply when the first of the following events occurs:
(a) the driver is given a replacement work diary; or
(aa) in the case of an electronic work diary that is malfunctioning – the diary is brought into working order; or
(ab) in the case of an electronic work diary for which a component has been destroyed, lost or stolen – the driver is given a replacement component and the diary is brought into working order; or
(b) the expiry of 7 business days after the day on which the period in which the driver is unable to use the work diary started.

(2) A supplementary record is a record that:
(a) is not made in a written or electronic work diary; but
(b) is at least as accurate and understandable as, and is made in a similar form to, a record made in a written or electronic work diary.

Note As a supplementary record becomes part of a work diary once it is made (see section 56(3A)), it must be kept by the driver of a regulated heavy vehicle in the vehicle for 28 days after it is made (see section 56(2)), and it must be kept by the record keeper for 3 years after it is made (see section 62(5)).

(3) As soon as practicable (but within 2 business days) after the driver becomes aware that subsection (1) applies, the driver must give the Authority written notice, in a form approved by the Authority, of the relevant event that caused that subsection to apply.

Court-imposed penalty: $4 000.
Infringement notice penalty: $800.

(4) If a lost or stolen written work diary (the old work diary) is found by, or returned to, the driver after a replacement work diary has been issued to the driver, the driver must:
(a) immediately cancel any unused daily sheets in the old work diary by writing ‘cancelled’ in large letters across each unused sheet; and
(b) if the old work diary was found or returned:
(i) within 28 days after it was lost or stolen, immediately notify the Authority in writing that it has been found or returned, and must give it to the Authority as soon as is practicable after that 28 day period ends; or
(ii) in any other circumstances, give it to the Authority as soon as is practicable after obtaining it.

Court-imposed penalty: $4 000.
Infringement notice penalty: $800.

(4A) If a driver gives a work diary to the Authority under subsection (4), the Authority must:
(a) cancel any unused daily sheets in the diary; and
(b) return the diary to the driver.

(5) If the driver of a regulated heavy vehicle becomes aware or reasonably suspects that an electronic work diary fitted to the vehicle is malfunctioning, the driver must inform his or her record keeper of that as soon as practicable (but within 2 business days).
Section 62 (2) explains who the record keeper is.

Court-imposed penalty: $4,000.
Infringement notice penalty: $800.

(5A) If the Authority receives an application to replace the work diary of a driver from another jurisdiction in the participating zone, it must notify the corresponding Authority of that jurisdiction that it has received the application.

(6) Also, in the case of an electronic work diary that includes or forms part of an intelligent transport system approved under the IAP Act, if a person on whom an obligation to report a malfunction of or tampering with a system under that Act becomes aware or reasonably suspects that the electronic work diary is malfunctioning, the person must inform the record keeper of that as soon as practicable (but within 2 business days).

Court-imposed penalty: $4,000.
Infringement notice penalty: $800.

Persons who have obligations to report a malfunction or tampering under the IAP Act include operators of IAP vehicles, drivers of IAP vehicles, IAP service providers, TCA and IAP auditors.

(7) As soon as is practicable after being informed under subsections (5) or (6), the record keeper must ensure that the electronic work diary is examined and brought into working order.

Court-imposed penalty: $4,000.
Infringement notice penalty: $800.

(8) An offence against subsection (1A), (3), (4), (5), (6) or (7) is an offence of absolute liability.

(9) However, a person charged with the offence has the benefit of the reasonable steps defence.

Section 24 explains the reasonable steps defence.

60 Malfunctioning odometers

(1) It is a defence for an offence against subsection 57 (4) (d) for the driver to prove that:
(a) at the time of the offence, the odometer was malfunctioning; and
(b) within 2 business days after the offence, the driver had complied with subsection (3).

(2) The owner of a regulated heavy vehicle must ensure that an odometer that is fitted to the vehicle is maintained to the standard approved by the Australian Transport Council by notice published in the Commonwealth Government Gazette.

Court-imposed penalty: $4,000.
Infringement notice penalty: $800.

(3) If the driver of a regulated heavy vehicle becomes aware or reasonably suspects that an odometer fitted to the vehicle is malfunctioning, the driver must inform the following persons of that as soon as practicable (but within 2 business days):
(a) the owner of the vehicle; and
(b) if the driver is an employed driver — the driver’s employer; and
(d) the operator of the vehicle.

Court-imposed penalty: $4,000.
Infringement notice penalty: $800.

(4) As soon as is practicable after being informed under subsection (3), the owner of the regulated heavy vehicle must ensure that the odometer is examined and brought into working order.

Court-imposed penalty: $4,000.
Infringement notice penalty: $800.

(5) The driver’s employer and the operator of the vehicle must ensure that the owner complies with subsection (4).

Court-imposed penalty: $4,000.
Infringement notice penalty: $800.

(6) An offence against subsections (2), (3), (4) or (5) is an offence of absolute liability.

(7) However, a person charged with the offence has the benefit of the reasonable steps defence.

Note Section 24 explains the reasonable steps defence.

61 Duty on employers, prime contractors, operators and schedulers to ensure driver compliance

(1) These persons must ensure that a driver complies with the requirements of this Division:
(a) the employer of an employed driver; and
(b) the prime contractor of a self-employed driver; and
(c) the operator of a regulated heavy vehicle that is being, or to be, driven by a driver; and
(d) the scheduler of a driver of, or of the goods or passengers being or to be transported on, a regulated heavy vehicle that is being, or to be, driven by a driver.

Court-imposed penalty: $6,000.

(2) An offence against subsection (1) is an offence of absolute liability.

(3) However, a person charged with the offence has the benefit of the reasonable steps defence.

Note Section 24 explains the reasonable steps defence.

Division 4.3 Records relating to drivers

62 Information that record keeper must record

(1) This section applies to each record keeper for a driver.

(2) A record keeper is:
(a) if an employed driver is working under standard hours or under a work/rest hours exemption that was not granted in combination with an operator’s BFM or AFM accreditation – the employer; or

(b) if a self-employed driver is working under standard hours or under a work/rest hours exemption that was not granted in combination with an operator’s BFM or AFM accreditation – the self-employed driver; or

(c) if an employed or self-employed driver is working under an operator’s BFM or AFM accreditation or a work/rest hours exemption that was granted in combination with an operator’s BFM or AFM accreditation – the operator.

Note: Section 91 provides that a work/rest hours exemption may be granted in combination with an operator’s BFM or AFM accreditation.

(2A) Despite subsection (2), a record keeper may engage the services of another person to carry out some or all of the record keeper’s functions as a record keeper under this Act.

(2B) If such an engagement occurs:

(a) the record keeper remains liable for all obligations imposed on the record keeper under this Act; and

(b) the other person is also liable under this Act, in respect of any obligation imposed on the record keeper as a record keeper that is covered by the terms of the engagement, as if he, she or it was the record keeper.

(3) If the driver is engaging in 100 km work under standard hours, the record keeper:

(a) must record the following information as soon as possible after receiving it:

(i) the driver’s name, driver licence number and contact details; and

(ii) the dates on which the driver drives a regulated heavy vehicle on a road; and

(iii) the registration number shown on the numberplate of each heavy motor vehicle that the driver drives; and

(iv) the total of the driver’s work and rest times on each day when the driver drives a regulated heavy vehicle; and

(v) the total of the driver’s work and rest times for each week when the driver drives a regulated heavy vehicle; and

(vi) the driver’s rosters and trip schedules, including details of driver changeovers; and

(b) must keep a copy of payment records relating to the driver, including timesheet records if the driver is paid according to time at work.

Court-imposed penalty: $2 000.

Infringement notice penalty: $600.

(3A) If the driver is engaging in 100+ km work, or is working under a BFM or AFM accreditation or under a work/rest hours exemption (whether or not granted in combination with an operator’s BFM or AFM accreditation), the record keeper:

(a) must record:

(i) the driver’s name, driver licence number and contact details; and

(ii) the driver’s rosters and trip schedules, including details of driver changeovers; and

(b) must keep a copy of all duplicate pages and other copies of work diary entries given to him or her under subsection (8); and
(c) must keep a copy of payment records relating to the driver, including timesheet records if the driver is paid according to time at work.

Court-imposed penalty: $2 000.
Infringement notice penalty: $600.

(4) If the driver is working under a BFM or AFM accreditation, the record keeper must also record this information:
(a) any information required to be kept as a condition of the BFM or AFM accreditation; and
(b) any information required to be kept under the BFM or AFM standards and business rules.

Court-imposed penalty: $2 000.
Infringement notice penalty: $600.

Note If the record keeper is an operator working under a BFM or AFM accreditation, he or she also has a duty under sections 81 and 87 to keep other records.

(5) The record keeper must keep a record that is required to be kept under this section for 3 years after it is created.

Court-imposed penalty: $6 000.

(6) The record keeper must keep the records at the record location so that they are reasonably accessible to an authorised officer or police officer.

Court-imposed penalty: $2 000.
Infringement notice penalty: $600.

Note 1 Section 55 (2) explains what the record location is.

Note 2 An authorised officer or police officer may direct a record keeper to produce a record required to be kept by the record keeper — see section 44 of the C & E Act.

(7) The record keeper must keep the records in way that ensures:
(a) they are readable and reasonably capable of being understood; and
(b) are capable of being used as evidence.

Court-imposed penalty: $2 000.
Infringement notice penalty: $600.

Example A record keeper should keep copies of records in storage facilities that will ensure the records do not degrade or could become unreadable. This could include scanning relevant hard copy records and retaining them in electronic format if they remain clearly readable.

(8) Within 21 days after a day on which the driver drove a regulated heavy vehicle, he or she must give a copy of his or her work diary entries (including any entries made in any supplementary record) for that day to each person who was a record keeper for him or her on that day.

Court-imposed penalty: $2 000.
Infringement notice penalty: $600.

(8A) Subsection (8) does not apply with respect to any entries that are electronically transferred from an electronic work diary to the record keeper within the 21 day period referred to in that subsection.

(9) The record keeper must ensure that the driver complies with subsection (8).

Court-imposed penalty: $2 000.
(9A) If a driver uses an electronic work diary, the record keeper must ensure:
(a) that the information recorded in the diary on a specific day is electronically transferred to the record keeper within 21 days after that day; or
(b) that the driver complies with subsection (8).
Court-imposed penalty: $2,000.
Infringement notice penalty: $600.

(10) If a driver changes record keepers, the driver must, before driving a regulated heavy vehicle for the new record keeper, give the new record keeper a copy of the information recorded in any work diary that the driver was required to keep in the 28 days before the change occurred that relates to that 28 day period.
Court-imposed penalty: $2,000.
Infringement notice penalty: $600.

(11) If subsection (10) imposes a duty on a driver, the new record keeper must not require or allow the driver to drive a regulated heavy vehicle on the new record keeper’s behalf unless the driver has complied with subsection (10).
Court-imposed penalty: $2,000.
Infringement notice penalty: $600.

(12) If the driver’s work diary is an electronic work diary, the record keeper must give the driver a printout of the information recorded in the work diary for any relevant day on which the driver was using the electronic work diary before the driver stops using the electronic work diary.
Court-imposed penalty: $2,000.
Infringement notice penalty: $600.

(13) An offence against this section is an offence of absolute liability.

(14) However, a person charged with the offence has the benefit of the reasonable steps defence.

Note Section 24 explains the reasonable steps defence.

**Division 4.4 False work records etc.**

63 Definitions for this Division

In this Division:

*entry*, in a work record, includes an annotation made in the record by an authorised officer or police officer.

*work record* means a work diary or a record required to be kept under section 62.

64 False entries

(1) A person must not record an entry in a work record or a supplementary record that the person knows, or reasonably ought to know, is false or misleading in any significant respect.

Court-imposed penalty: $10,000.
(2) An offence against this section is an offence of strict liability.

**Drafting note** This section may not be needed in jurisdictions that already have a relevant offence provision that covers false entries.

### 65 Keeping 2 work diaries simultaneously prohibited

(1) A driver must not have in his or her possession more than 1 written work diary in which information can be recorded on a daily sheet.

Court-imposed penalty: $6 000.

*Note* A driver does not commit an offence against this subsection if the driver has another written work diary in his or her possession in which information can not be recorded because all the daily sheets are used up.

(2) A driver must not record information for the same period in more than 1 work diary.

Court-imposed penalty: $10 000.

*Example*

The driver must not record information for the same period in a written work record as well as in an electronic work diary.

However, it is not an offence for the driver to record in written diary information about the work done in the morning for Mrs A, and to record in electronic work diary information about the work done in the afternoon for Mr B.

(3) An offence against this section is an offence of strict liability.

### 66 Possession of purported work records etc prohibited

(1) A driver or record keeper must not have in his or her possession something purporting to be a work record if the driver or record keeper knows, or reasonably ought to know, that it is not a work record.

Court-imposed penalty: $10 000.

(2) An offence against this section is an offence of strict liability.

### 67 Defacing or changing work records etc prohibited

(1) A person must not deface or change an entry in a work record that the person knows, or reasonably ought to know, is correct.

Court-imposed penalty: $10 000.

*Note 1* The making of false or misleading statements in a work record is prohibited under section 183 of the C & E Act (False or misleading statements or records provided to Authority or officials).

*Note 2* Section 62 (7) requires a record keeper to ensure that records are kept in a way that ensures they remain readable and reasonably capable of being understood and that they are capable of being used as evidence.

(2) An offence against this section is an offence of strict liability.

### 68 False representation of work records prohibited

(1) A person must not falsely represent that a work record, or an entry in a work record, was made by the person.

Court-imposed penalty: $10 000.
(2) An offence against this section is an offence of strict liability.

69 Making entries in someone else’s work records prohibited

(1) A person must not make an entry in someone else’s work record.

Court-imposed penalty: $10 000.

(2) Subsection (1) does not apply to:
   (a) a person who is the nominee of a driver and makes the entry in the driver’s work diary as required by a work diary exemption applying to the driver; or
   (b) an authorised officer or police officer; or
   (c) a two-up driver who enters any of the information required by section 57(4)(f) in her or his fellow two-up driver’s work record, or who signs that work record.

(3) An offence against this section is an offence of strict liability.

70 Destruction of certain work records prohibited

(1) If a work record is required under this Part to be kept for a particular period by a person, the person or someone else must not destroy the record before the end of the period.

Court-imposed penalty: $10 000.

Note Section 62 (7) requires a record keeper to ensure that records are kept in a way that ensure that they remain readable and reasonably capable of being understood and that they are capable of being used as evidence.

(2) An offence against this section is an offence of strict liability.

71 Tampering with electronic work diaries prohibited

(1) A person must not tamper with the operation of an electronic work diary.

Court-imposed penalty: $10 000.

(2) A record keeper and a driver must ensure that a person does not tamper with the operation of an electronic work diary.

Court-imposed penalty: $10 000.

(3) If an electronic work diary being used by a driver includes or forms part of an intelligent transport system approved under the IAP Act, a person on whom an obligation to report a malfunction of or tampering with the system under that Act must ensure that a person does not tamper with the operation of an electronic work diary under this Act.

Court-imposed penalty: $10 000.

Note 1 Electronic work diary is defined in section 56 (5).

Note 2 Persons who have obligations to report a malfunction or tampering under the IAP Act include operators of IAP vehicles, drivers of IAP vehicles, IAP service providers, TCA and IAP auditors.
(4) A person tampers with an electronic work diary if the person engages in conduct that:
(a) results in the diary malfunctioning; or
(b) may result in the diary malfunctioning; or
(c) alters any of the data recorded by the diary; or
(d) may alter any of the data recorded by the diary; or
(e) results in inaccurate data being recorded by the diary; or
(f) may result in inaccurate data being recorded by the diary.

(4A) A person also tampers with an electronic work diary if the person tampers or otherwise interferes with any electronic signal that is sent to, or from, the diary, and that conduct has any of the effects listed in subsection (4).

(5) Subsection (1) does not apply to:
(a) a person who is repairing a malfunctioning electronic work diary in accordance with section 59 (7); or
(b) a person who is authorised by the Authority; or
(c) an authorised officer or police officer.

(6) An offence against subsection (1), (2) or (3) is an offence of absolute liability.

(7) However, a person charged with an offence against subsection (2) or (3) has the benefit of the reasonable steps defence.

Note Section 24 explains the reasonable steps defence.

(8) If a person is charged with an offence against subsection (1) and the alleged offence involves tampering or otherwise interfering with any electronic signal that is sent to, or from, an electronic work diary, it is a defence to the charge if the person proves that he or she was not aware, and could not reasonably be expected to have been aware, that the activity that constituted the alleged tampering or interfering would interfere with the electronic signal.

(9) Subsection (8) does not apply to a driver who was using the electronic work diary or to the driver’s record keeper.

Division 4.5 Written work diaries

72 Form of written work diaries

(1) A written diary must be in a format that allows information to be recorded in the format approved by the Australian Transport Council by notice published in the Commonwealth Government Gazette.

(2) A written work diary must contain:
(a) a unique identifying number for the work diary; and
(b) sequentially numbered sheets for making daily records; and
(c) provision for recording information on the daily sheets; and
(d) a duplicate of any application form in the work diary; and
(e) 2 duplicates of each daily sheet; and
(f) instructions for use of the work diary.
(3) A written work diary may contain an application form for the issue of another work diary.

(4) If a written work diary is used as required by the instructions in the work diary, information written on a daily sheet or application form will be automatically copied on to any duplicates of the sheet or form in the diary.

73 Issue of written work diaries

(1) A driver who wants to be issued with a written work diary (including a replacement work diary) must apply in person to the Authority.

(2) The application must be in the form that is approved by the Australian Transport Council by notice published in the Commonwealth Government Gazette.

(3) If the application form is for a written work diary to replace a written work diary that has been previously issued to the driver (the existing written work diary), the driver must give the existing written work diary to the Authority with the application, unless the existing written work diary has been destroyed, lost or stolen.

(4) If the driver gives the existing written work diary to the Authority, the Authority must:
   (a) cancel any unused daily sheets in the written work diary; and
   (b) return the written work diary to the driver when the Authority issues the replacement written work diary to the driver.

(5) If the application is for a written work diary to replace an existing written work diary that has been destroyed, lost or stolen, the application must:
   (a) state the work diary’s number and that it has been destroyed, lost or stolen; and
   (b) briefly outline the circumstances of the destruction, loss or theft.

(6) The Authority must issue a written work diary to a driver if the driver:
   (a) identifies himself or herself by showing the driver’s current driver licence to the Authority; and
   (b) pays an application fee prescribed by the regulations.

(7) If the Authority issues a written work diary to a driver, it must note the date, time and place of issue on the written work diary.

(8) The Authority may make other notes on the written work diary.

(9) If the Authority issues a written work diary to a driver from another jurisdiction in the participating zone:
   (a) it must notify the corresponding Authority of that jurisdiction of:
      (i) the identifying number for the work diary; and
      (ii) the driver’s name and licence number; and
      (iii) the time, date and place of issue; and
   (b) it must include with that notification either:
      (i) a statement of the reason why it issued the work diary; or
      (ii) a copy of the application it received for the issue of the work diary.
Division 4.6  Electronic work diaries

74 Approval of electronic work diaries

(1) A person who wants to have a particular type of electronic work diary approved by the Authority must apply to the Authority.

(2) The application must be in the form that is approved by the Australian Transport Council by notice published in the Commonwealth Government Gazette.

(3) The Authority may approve a system of recording information electronically for use as an electronic work diary for the purposes of this Act if it is satisfied that the system:
   
   (a) is suitable for fitting to, or for use in, a regulated heavy vehicle; and
   
   (b) has a mechanism that readily indicates to the driver of the vehicle that the system is, or is not, properly functioning; and
   
   (c) is capable of accurately monitoring and recording the work and rest times of the driver of the vehicle, and of recording any other information that a driver is required, under this Act, to record in a work diary; and
   
   (d) if the system is to be fitted to the vehicle and is to be used by more than one driver, is capable of ensuring:
      
      (i) that all of the information referred to in paragraph (c) can be accurately monitored or recorded (as the case may be) for each driver; and
      
      (ii) that the details recorded by, or in respect of a driver, are readily distinguishable from the details recorded by, or in respect, of any other driver; and
      
      (iii) that the name of each driver in respect of which details are recorded is shown whenever the details are accessed; and
      
      (iv) that a driver cannot record any information that a driver is required, under this Act, to record in a work diary in the system for, or on behalf of, another driver; and
      
   (e) has a mechanism to ensure that the driver cannot alter any information that the driver records in the system once the driver has had an opportunity to confirm the accuracy of that information; and
   
   (f) if the system is designed to enable the driver to send information to the driver's record keeper, has a mechanism that readily indicates to the driver that the information has, or has not, been sent to the record keeper; and
   
   (g) is capable of readily reproducing, on being accessed by the record keeper, the information it contains; and
   
   (h) is capable of readily reproducing, on being accessed by an authorised officer or a police officer while the vehicle to which it is fitted is on the road, the information it contains in a form:
      
      (i) that is readily accessible by the officer; and
      
      (ii) that is reasonably capable of being understood by the officer; and
      
      (iii) that can be used as evidence.

Note An electronic work diary may include or form part of an approved intelligent transport system under the IAP Act. Intelligent transport system is defined in the C & E Act.

(4) In approving a type of electronic work diary, the Authority must have regard to any guidelines in relation to electronic diaries approved by the Australian

(4A) If the Authority grants an application under this section, it must issue a numbered certificate of approval to the applicant.

(4B) In granting an application, the Authority may impose conditions in relation to the operation and maintenance of the diary.

(4C) An approval under this section covers any system that is identical to the system that was submitted to the Authority for approval.

(4D) Any identical system that is covered by an approval is also subject to any conditions that were imposed in relation to the approval.

(4E) A document that purports to be a certificate of approval issued by the Authority under this section is evidence that any system referred to in the document has been approved by the Authority as an electronic work diary under this section.

(5) The regulations may make further provision about the approval of electronic work diaries.

(6) If the Authority does not make the decision sought by an applicant, the Authority must also give the applicant a written notice that states:
   (a) the Authority’s decision; and
   (b) the reasons for the decision; and
   (c) that the applicant may apply to have the decision reconsidered.

74A Labelling of electronic work diary devices

(1) In this section, approved electronic work diary means a system of recording information electronically that is the subject of a current approval of the Authority under section 74 for use as an electronic work diary for the purposes of this Act, or that is identical to such a system.

(2) A person may place on any device that is, or that forms part of, an approved electronic work diary a label that indicates that the device is, or is part of, an approved electronic work diary.

Note Under section 56(5), placing a label of the sort described in this subsection on a thing makes the thing an electronic work diary for the purposes of this Act, provided the label states the number of the certificate of approval that applies to the thing, and provided the thing is the subject of a current approval under section 74 and is in a form that has been approved by the Authority.

(3) A person must not place on any device a label that indicates that the device is, or is part of, an approved electronic work diary if the device is not, or does not form part of, an approved electronic work diary.

Court-imposed penalty: $6 000.

(4) A person must not use as an electronic work diary for the purposes of this Act any device that has a label that indicates that the device is, or is part of, an approved electronic work diary if the person knows, or reasonably ought to know, that the device is not, or does not form part of, an approved electronic work diary.

Court-imposed penalty: $6 000.

(5) The existence of a label on a thing that indicates that the thing is, or forms part of, an approved electronic work diary, and that purports to show the number of a
certificate of approval, is evidence that the thing is an approved electronic work diary.

(6) An offence against subsection (3) or (4) is an offence of strict liability.

75 Variation or cancellation of approval — on application

(1) An application for variation or cancellation of the approval of an electronic work diary must be made to the Authority in writing.

(2) An application a variation must state clearly what variation is sought and outline the reasons for the application.

(3) The Authority, by written notice given to the applicant, may require the applicant to give the Authority any necessary additional information.

(4) The Authority must decide the application as soon as practicable after the Authority receives it.

(5) If the Authority decides to grant the application, the Authority must give the applicant written notice of that decision.

(6) The variation or cancellation takes effect:
   (a) when written notice of the decision is given to the applicant; or
   (b) at a later time stated in that written notice.

(7) If the Authority does not make the decision sought by the applicant, the Authority must also give the applicant a written notice that states:
   (a) the Authority’s decision; and
   (b) the reasons for the decision; and
   (c) that the applicant may apply to have the decision reconsidered.

75A Removal of electronic work diary approval label

(1) This section applies if the Authority cancels the approval of an electronic work diary.

(2) The person who, immediately before the cancellation took effect, held the approval must remove from any diaries in his, her or its possession any label that relates to the former approval.

   Court-imposed penalty: $6 000.

(2A) The Authority may direct the person who, immediately before the cancellation took effect, held the approval to notify in writing each person to whom he, she or it has supplied any diary under the approval that the approval has been cancelled and that any label on any such diary still in the person’s possession should be removed.

(2B) If the Authority gives a direction to a person under subsection (2A), the person must comply with the direction.

   Court-imposed penalty: $6 000.

(2C) With the consent of the Authority, a person may comply with subsection (2A) by publishing details of the cancellation, and any further details specified by the Authority, using at least 2 of the following methods:
   (a) by notice published in a newspaper specified by the Authority;
(b) by notice published in a journal or newsletter specified by the Authority;
(c) on a website specified by the Authority.

(2D) Nothing in this section prevents the Authority from publishing details of the cancellation by whatever means it thinks appropriate.

*Example* The Authority may publish the cancellation by gazettal or on a website.

(3) Any person who is aware that the approval of a diary in the person’s possession has been cancelled must remove from the diary any label that relates to the former approval.

Court-imposed penalty: $6 000.

(4) An offence against this section is an offence of absolute liability.

(5) However, a person charged with the offence has the benefit of the reasonable steps defence.

*Note* Section 24 explains the *reasonable steps defence*.

**75B Authority may permit the use of diaries whose approval has been cancelled**

(1) The Authority may, by notice published in the Gazette, permit the use of diaries whose approval has been cancelled:
(a) for a specified period not exceeding 1 year;
(b) on specified conditions.

(2) Despite anything to the contrary in this Act, a diary that is the subject of a notice under this section is to be treated as if it were an electronic work diary, unless it is being used contrary to any condition specified in the notice.

(3) The Authority may, by notice published in the Gazette, vary or revoke a notice under this section.

**76 Variation or cancellation of approval — without application**

(1) The Authority may vary an approval, without receiving an application, if the Authority is reasonably satisfied that 1 of the following grounds exists:
(a) that the application for the approval was false or misleading in a material respect, but the circumstances do not require its cancellation;
(b) that:
   (i) since the approval was given, a change has happened in relation to something that the Authority must consider in deciding whether to give an approval of that kind; and
   (ii) the approval would have been given as it is proposed to be varied if the change had happened before the approval was given.

(2) The Authority may cancel an approval, without receiving an application, if the Authority is reasonably satisfied that 1 of the following grounds exists:
(a) that the application for the approval was false or misleading in a material respect;
(b) that:

(i) since the approval was given, a change has happened in relation to something that the Authority must consider in deciding whether to give an approval of that kind; and

(ii) the approval would not have been given if the change had happened before the approval was given.

(3) If the Authority is satisfied that a ground exists to vary or cancel an approval, the Authority must give the person who holds the approval a written notice that:

(a) states the proposed variation or cancellation; and

(b) states the ground for the proposed variation or cancellation; and

(c) outlines the facts and other circumstances forming the basis for the ground; and

(d) invites the person to state in writing, within a specified time of at least 14 days after the notice is given to the person, why the approval should not be varied or cancelled.

(4) If, after considering any written statement made within the specified time, the Authority is reasonably satisfied that a ground exists to take the proposed action, the Authority may:

(a) if the proposed action is to vary the approval in a stated way — vary the approval in that way; and

(b) if the proposed action is to cancel the approval — cancel the approval, or vary the approval in any way.

(5) The Authority must give the person written notice of the Authority’s decision.

(6) If the Authority decides to vary or cancel the approval, the Authority must also give the person a written notice that states:

(a) the reasons for the decision; and

(b) that the person may apply to have the decision reconsidered.

(7) The variation or cancellation takes effect:

(a) when written notice of the decision, and the reasons for the decision, is given to the person; or

(b) at a later time stated in that written notice.

76A Notice of variation of approval

(1) This section applies if:

(a) the Authority varies the approval of an electronic work diary; and

(b) in the Authority’s opinion, the variation will, or is likely to, significantly affect the way the diary is to be used.

(2) The Authority may direct the person who, immediately before the variation took effect, held the approval to notify in writing each person to whom he, she or it has supplied any diary under the approval that the approval has been varied.

(3) If the Authority gives a direction to a person under subsection (2), the person must comply with the direction.

Court-imposed penalty: $6 000.
(4) With the consent of the Authority, a person may comply with subsection (3) by publishing details of the variation, and any further details specified by the Authority, using at least 2 of the following methods:
   (a) by notice published in a newspaper specified by the Authority;
   (b) by notice published in a journal or newsletter specified by the Authority;
   (c) on a website specified by the Authority.

(5) Nothing in this section prevents the Authority from publishing details of the cancellation by whatever means it thinks appropriate.

   Example The Authority may publish the cancellation by gazettal or on a website.

(6) An offence against this section is an offence of absolute liability.

(7) However, a person charged with the offence has the benefit of the reasonable steps defence.

Note Section 24 explains the reasonable steps defence.

76B How electronic work diary to be operated

(1) A driver using an electronic work diary must ensure that he or she operates and maintains the diary:
   (a) in accordance with the manufacturer’s specifications, as varied by any conditions imposed by the Authority; and
   (b) in compliance with any conditions imposed by the Authority that apply to the operation of the diary.

   Court-imposed penalty: $6 000.

(2) The record keeper of a driver using an electronic work diary must ensure that the driver complies with the requirements of subsection (1).

   Court-imposed penalty: $6 000.

(3) It is a defence to a charge of failing to comply with a particular specification of the manufacturer for the person charged to prove either:
   (a) that the specification was not integral to the effective operation of the diary;
   or
   (b) that what was done or not done with respect to the specification was in accordance with industry practice in relation to the handling or maintenance of a diary of that type from that manufacturer.

(4) An offence against subsection (1) or (2) is an offence of strict liability.

76C Admissibility of documents produced by an electronic work diary

(1) A document produced by an electronic work diary is evidence of the matters contained in the document.

(2) A statement as to the operation of an electronic work diary made in a document purporting to be signed by a person purporting to be involved with the operation of the diary is evidence of any fact contained in the statement.

Examples
   • a statement by a driver describing how the driver operated the electronic work diary
• a statement by the owner of an electronic work diary describing how the electronic work diary has been maintained
• a statement by the record keeper that certain data was transmitted to the record keeper by the electronic work diary

109 Duty on officers to annotate driver’s work diary

(1) This section applies if an authorised officer or police officer stops a driver for compliance purposes using a power conferred on the officer by the C & E Act.

(2) If the officer detains the driver for a period of 5 minutes or longer, the driver may ask the officer to record the following details in the driver’s work diary:
   (a) the officer’s identifying details; and
   (b) the time, date and place at which the officer stopped the driver; and
   (c) the length of time that the driver was stopped while the officer exercised his or her enforcement powers.

(3) An officer must comply with a request made under subsection (1).

(4) An officer may comply with subsection (2)(a) by recording either her or his name, or her or his identification number.

(4A) If more than one driver has been stopped at a place, and the drivers are spoken to by an officer in the order in which they were stopped, the counting of time for the purposes of subsection (2) only starts once the officer begins to speak to the driver for the purpose of pursuing any matter in respect of which the driver was stopped.

(5) The regulations may further limit the circumstances in which this section applies.

(6) In this section, for compliance purposes has the same meaning as it has in section 26 of the C & E Act.

Note Essentially a power is exercised for compliance purposes if it is used to find out whether laws are being complied with or to investigate breaches or suspected breaches of laws. Thus this section does not apply if an officer stops a vehicle, for instance, when there is a road block, an accident or a detour.

Division 7.3 Referral and mutual recognition of decisions

115 Referral of matters to the Panel

(1) This section applies if:
   (a) the Authority proposes to make a decision that may, or is intended to, have application in:
      (i) another participating jurisdiction; or
      (ii) more than 1 other participating jurisdiction; and
   (b) the decision relates to:
      (i) the grant of an AFM accreditation or an exemption; or
(ii) the variation, suspension or cancellation of a BFM accreditation, AFM accreditation or an exemption, if the original grant of the accreditation or exemption was made by a corresponding Authority; or

(iii) any other matter prescribed by the regulations.

(2) The Authority must inform the Panel of the proposed decision.

(3) The Panel may make a recommendation to the Authority about the proposed decision.

(4) If the Panel gives the Authority written notice of the recommendation and the reasons for the recommendation, the Authority must take note of the recommendations of the Panel when making the decision.

(5) The Authority may refer any other matter under this Act to the Panel for consideration.

116 Mutual recognition of certain decisions

(1) This section applies to a decision of a corresponding Authority that is in force, and was made:

(a) under a provision of a corresponding fatigue law that corresponds to a provision of the following sections:

(i) section 73 (Issue of written work diaries); or

(ii) section 74 (Approval of electronic work diaries); or

(iii) section 79 (Granting BFM accreditation); or

(iv) a section prescribed by the regulations; or

(b) about the variation or cancellation of the approval of an electronic work diary; or

(c) about the variation, suspension or cancellation of a BFM accreditation, AFM accreditation or exemption that was originally granted by the corresponding Authority.

(2) Except for circumstances that do not exist in this jurisdiction, the decision has effect in this jurisdiction as if it were a decision made by the Authority.

(3) The regulations may make further provision about mutual recognition of decisions made in another participating jurisdiction.

117 Mutual recognition of other decisions

(1) This section applies to:

(a) a decision of a corresponding Authority to which section 116 does not apply that is in force in the other jurisdiction; or

(b) a recommendation of the Panel in accordance with section 115.

(2) Except for circumstances that do not exist in this jurisdiction, the Authority may decide whether the decision or recommendation is to have effect in this jurisdiction as if it were a decision made by the Authority.

(3) A decision by the Authority under subsection (2) must be made in writing and is subject to any variations or conditions specified by the Authority.
Division 7.4   Notification and recording of decisions

118 Notifying other Authorities of decisions
(1) This section applies if the Authority makes a decision about:
   (a) the grant, variation, suspension or cancellation of a BFM accreditation, AFM accreditation or exemption; or
   (b) the approval, variation of an approval, or cancellation of an approval, of an electronic work diary.

(2) The Authority must give written notice of the decision to every corresponding Authority in the participating zone.

(3) If the Authority decides not to follow a recommendation of the Panel, or decides to apply a recommendation of the Panel subject to variations or conditions, the Authority must give written notice of the reasons for its decision to every corresponding Authority in the participating zone.

119 Register of decisions
(1) The Authority must keep a register of decisions currently in force in this jurisdiction if the decision:
   (a) was made by the Authority under this Act; or
   (b) has effect in this jurisdiction under section 116 and the Authority has received written notice of that decision under section 118; or
   (c) has effect in this jurisdiction under section 117.

(2) The Authority must record the cancellation or variation of any recorded decision in the register.

(3) The regulations may make further provision about the recording of decisions.

Division 7.5   Reconsideration and review of decisions

120 Decisions that may be reconsidered and reviewed
The following decisions of the Authority are decisions to which this Part applies:

<table>
<thead>
<tr>
<th>Item</th>
<th>Section under which decision made</th>
<th>Brief description of decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>74</td>
<td>decision not to approve an electronic work diary</td>
</tr>
<tr>
<td>2</td>
<td>75</td>
<td>decision not to vary the approval of an electronic work diary on application</td>
</tr>
<tr>
<td>3</td>
<td>76</td>
<td>decision to vary or cancel the approval of an electronic work diary without application</td>
</tr>
<tr>
<td>4</td>
<td>79</td>
<td>decision not to grant BFM accreditation</td>
</tr>
<tr>
<td>Item</td>
<td>Section under which decision made</td>
<td>Brief description of decision</td>
</tr>
<tr>
<td>------</td>
<td>----------------------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>5</td>
<td>79, 84 or 94</td>
<td>decision to give an accreditation or exemption for less than 3 years or the period sought by the applicant</td>
</tr>
<tr>
<td>6</td>
<td>80</td>
<td>decision to give a BFM accreditation subject to a condition (other than a statutory condition) not sought by the applicant</td>
</tr>
<tr>
<td>7</td>
<td>84</td>
<td>decision not to grant AFM accreditation</td>
</tr>
<tr>
<td>8</td>
<td>85</td>
<td>decision to give a AFM accreditation subject to a condition (other than a statutory condition) not sought by the applicant</td>
</tr>
<tr>
<td>9</td>
<td>94</td>
<td>decision not to grant a work diary exemption</td>
</tr>
<tr>
<td>10</td>
<td>94</td>
<td>decision not to give a work/rest hours exemption (or not to give the exemption for an employed driver sought to be covered by the exemption)</td>
</tr>
<tr>
<td>11</td>
<td>94</td>
<td>decision to give an exemption subject to a condition not sought by the applicant</td>
</tr>
<tr>
<td>12</td>
<td>95</td>
<td>decision not to vary or cancel an accreditation or exemption on application</td>
</tr>
<tr>
<td>13</td>
<td>98</td>
<td>decision to vary or cancel an accreditation or exemption except on application</td>
</tr>
<tr>
<td>14</td>
<td>102</td>
<td>decision not to give a replacement accreditation certificate or exemption</td>
</tr>
</tbody>
</table>

121 **Reconsideration of decisions**

(1) A person affected by a decision to which this Part applies (an *initial decision*) may ask the Authority in writing to reconsider the decision.

(2) The request must be made within:

(a) 28 days after the person, or someone else affected by the decision, was told of the initial decision, and given reasons for the decision, by the Authority; or

(b) any longer period allowed by the Authority.

(3) The request must state the decision sought by the person and outline why the decision should be made.

(4) The Authority must reconsider the initial decision and:

(a) confirm the decision; or

(b) vary the decision; or
(c) set the decision aside and substitute a new decision.

(5) If the decision was made in accordance with a recommendation of the Panel or another Authority, the Authority must inform the Panel or other Authority of the decision that the Authority proposes to make.

(6) The Panel or other Authority may make a recommendation to the Authority about the proposed decision.

(7) The Panel or other Authority must give the Authority written notice of the recommendation and the reasons for the recommendation within 21 days after being informed of the proposed decision.

(8) The Authority must take note of the recommendations of the Panel or other Authority when making the decision.

(9) Within 28 days after receiving the request, the Authority must give the person a written notice that states:
(a) the result of the reconsideration; and
(b) if the Authority does not make the decision sought by the person — the reasons for the reconsidered decision.

(10) The regulations may make further provision about the reconsideration of decisions.

122 Review of decisions by <relevant jurisdiction tribunal or court>
<Local provisions>

| Drafting note | Administrative review procedures before a competent tribunal or court may already be provided in jurisdiction legislation. |
APPENDIX D: SUMMARY OF INTERNATIONAL USES OF ELECTRONIC WORK DIARIES

European Union

The European Union legislator, in 1998, decided to introduce a new kind of recording equipment, the digital tachograph, in order to combat the high level of tampering which was believed to be occurring under the mechanical tachographs scheme. The specifications for the digital tachograph were adopted by the European Union legislator in 2002 and were published in the Official Journal of the European Union in April 2006.

Unlike the Australian and North American legislation which has allowed the voluntary use of similar systems, the European Union has mandated the use of the electronic monitoring devices and has favoured a prescriptive approach to compliance management rather than the development of performance-based standards. This prescriptive methodology has provided certain gains, such as the development of a streamlined enforcement process, but has also severely limited the possibility of commercial innovation.

This bias towards prescriptive technology, with little to no input from the driver, is in line with the previous technology, the mechanical tachograph, which itself is quite different to the written work diary used in Australia. Arguably these differences in technology highlight broader philosophical differences as to the management of fatigue. The European Union favours a compliance focus while Australia focuses more strongly on organisational fatigue management as demonstrated by the recent reforms to the Heavy Vehicle Driver Fatigue legislation.

The primary downside to the European Union digital tachograph is price. Whilst the system is very robust the high levels of security and data integrity have imposed significant cost on the operator and to a lesser extent, enforcement agents. As The European Union tachograph is mandatory, the high cost has had no impact on uptake which is an important aspect when considering the Australian voluntary use model.

Beyond security, one of the major benefits of the European Union tachograph is that the systems are interoperable. Under the current regime drivers are able to move from truck to truck and business to business, and as long as they have their driver identification, the driver’s hours are continually calculated. This not only provides certainty to the driver who can have faith in any warnings provided by the system but also provides certainty to the operator who is assured that a driver is within their prescribed working hours. Again this rigid adherence to driver hours is demonstrative of the European Union’s focus on compliance over fatigue management.

North America

Electronic work diaries or “electronic onboard recorders”, as they are known in North America, have been approved as an alternative to handwritten records in the United States and Canada for 20 years.

Since their first approval for use in October 1988 there have been repeated calls to mandate the use of these systems in order to improve road safety. Despite these calls the scheme has remained optional. While governments have been reluctant to impose the additional cost of these systems on operators, thousands of fleets have nonetheless adopted electronic work diaries and voluntarily met the cost of this technology.
The reason for this large scale uptake is the same reason that Australian operators are voluntarily using electronic work diaries. In short, many North American businesses see a commercial benefit in using these systems. Not only are there perceived benefits in managing fatigue related risk in order to protect the organisations people and assets, the systems are integral to their integrated management system, streamlining fleet movements and rostering.

It is asserted that increasingly complex U.S. and Canadian rules have intensified the burden on drivers and operators to keep their logs accurate. With every concession, exemption or exception for a segment of industry, hours-of-service rules have become harder to understand and calculate. Drivers and fleets have been put under increased pressure to comply as the repercussions of non-compliance have become harsher for all concerned. In this environment, shifting clerical tasks away from drivers has become a proven method of increasing staff satisfaction and thus staff retention.

The Federal Motor Carrier Safety Administration estimates that drivers using electronic logs spend 20 minutes less per day filling out paperwork than drivers using paper logs. Properly preparing handwritten logs is time-consuming, difficult and displaces part of the driver’s focus on the real job.

A comparison of the North American written versus electronic work diary systems is shown in Table 210.

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Table 2. Comparison of North American written and electronic work diary systems

<table>
<thead>
<tr>
<th>Issue</th>
<th>Paper logs</th>
<th>Electronic work diary systems</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accuracy</td>
<td>Driving time and other duty statuses are rounded to 15-minute intervals.</td>
<td>Driving time and other duty statuses are recorded to the nearest minute, maximising driver utilisation.</td>
</tr>
<tr>
<td>Addressing audits and violations</td>
<td>Sometimes difficult to manage and prone to error.</td>
<td>Violations are much less likely although may still occur. Any violations can be managed in an automated and disciplined manner.</td>
</tr>
<tr>
<td>Driver productivity</td>
<td>Dispatchers lack visibility to driver availability.</td>
<td>Many carriers have improved fleet-wide average driver productivity.</td>
</tr>
<tr>
<td></td>
<td>Drivers burdened with keeping up with their logs and avoiding hours-of-service violations.</td>
<td>Electronic work diaries have enabled fleets to better recognise and utilise drivers’ available hours in their dispatch operations, while also avoiding overburdening other drivers, which might lead to hours-of-service violations.</td>
</tr>
<tr>
<td>Back-office productivity</td>
<td>Administrative duties across an entire fleet of drivers can prove time consuming and are prone to breaches in compliance due to missing paperwork and inaccurate records.</td>
<td>Drivers and back-office staff alike appreciate going paperless. Efficiency, accuracy, and compliance assurance are seen as big improvements when paper is no longer needed.</td>
</tr>
<tr>
<td>Driver acceptance</td>
<td>There has been a belief that drivers will resist electronic work diaries, and in some of the early implementations they did.</td>
<td>The common experience today is that drivers do not want to go back to paper logs once they have become familiar with electronic work diaries due the efficiency and simplicity gained.</td>
</tr>
</tbody>
</table>