

Transport for NSW | Centre for Road Safety

NSW Drink and Drug Driving Reforms

Monitoring report 3

July 2021



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1 About the reforms

The NSW Drink and Drug Driving reforms that are part of the *Road Transport Legislation Amendment (Penalties and Other Sanctions) Act 2018* (the Act) implement key measures of the Road Safety Plan 2021. The Act draws on evidence from across Australian jurisdictions and globally, to enhance the penalty framework to increase deterrence of drink and drug driving and reduce road trauma. The Act includes:

- **The introduction of penalty notices for lower-range drink and drug driving first offenders**

The reforms aim to ensure penalties are consistently and swiftly applied to low, novice, and special range prescribed concentration of alcohol (PCA) and drug presence first offences. The Act enabled penalty notices (coupled with licence suspension) to be issued for novice, special and low range PCA offences and driving with the presence of an illicit drug offences that are a first time offence. This element of the reforms came into effect from May 2019. Through this report novice, special and low range PCA offences are referred to as lower-range offences when they are grouped together.

The timing of the issue of the penalty notice and the licence suspension is different for drink driving offenders compared to drug driving offenders. This is because while robust evidence of a drink driving offence can be obtained at the roadside or station (breath analysis), oral fluid samples require laboratory confirmation of the presence of illicit drugs.

- **The extension of mandatory alcohol interlocks to mid-range drink driving first offenders**

The Mandatory Alcohol Interlock Program (MAIP) was introduced by the NSW Government in February 2015 and was used for high-range PCA (a blood alcohol concentration of 0.15 or more), 'refusal', and all repeat offenders. Under the reforms, the requirement was extended to the next highest risk group, all mid-range offenders (a blood alcohol concentration between 0.08 and 0.149) convicted of a first offence. The extension came into effect from December 2018.

A new category of exemption was added for offenders convicted of a mid-range first offence only, which allows the court to issue an exemption if it is proven that an interlock order would cause severe hardship to the offender.

- **The option for vehicle sanctions at the roadside for high risk drink driving offenders**

NSW has a vehicle sanctions scheme (where a vehicle can be impounded or number plates confiscated) in place for 'hoon' offences (such as aggravated burnout, street racing, and speeding by more than 45km over the limit). This element of the reforms, which came into effect from December 2018 provides for the imposition of vehicle sanctions for certain repeat drink driving offences.

1.1 Monitoring and evaluation of the reforms

Monitoring reports are part of a larger program of work to evaluate the implementation and impact of the reforms. In 2020 an Operational Review was undertaken, and process and outcome evaluations are planned to take place between 2021 and 2025.

It is intended that monitoring reports tracking key metrics in the reforms will be released twice per year. This is the third report in the series; the second was released in February 2021 on the CRS website, and included data through June or September 2020, depending on data source. The data in this report builds on data presented in the January 2021 monitoring report, and includes data through December 2020 or March 2021.

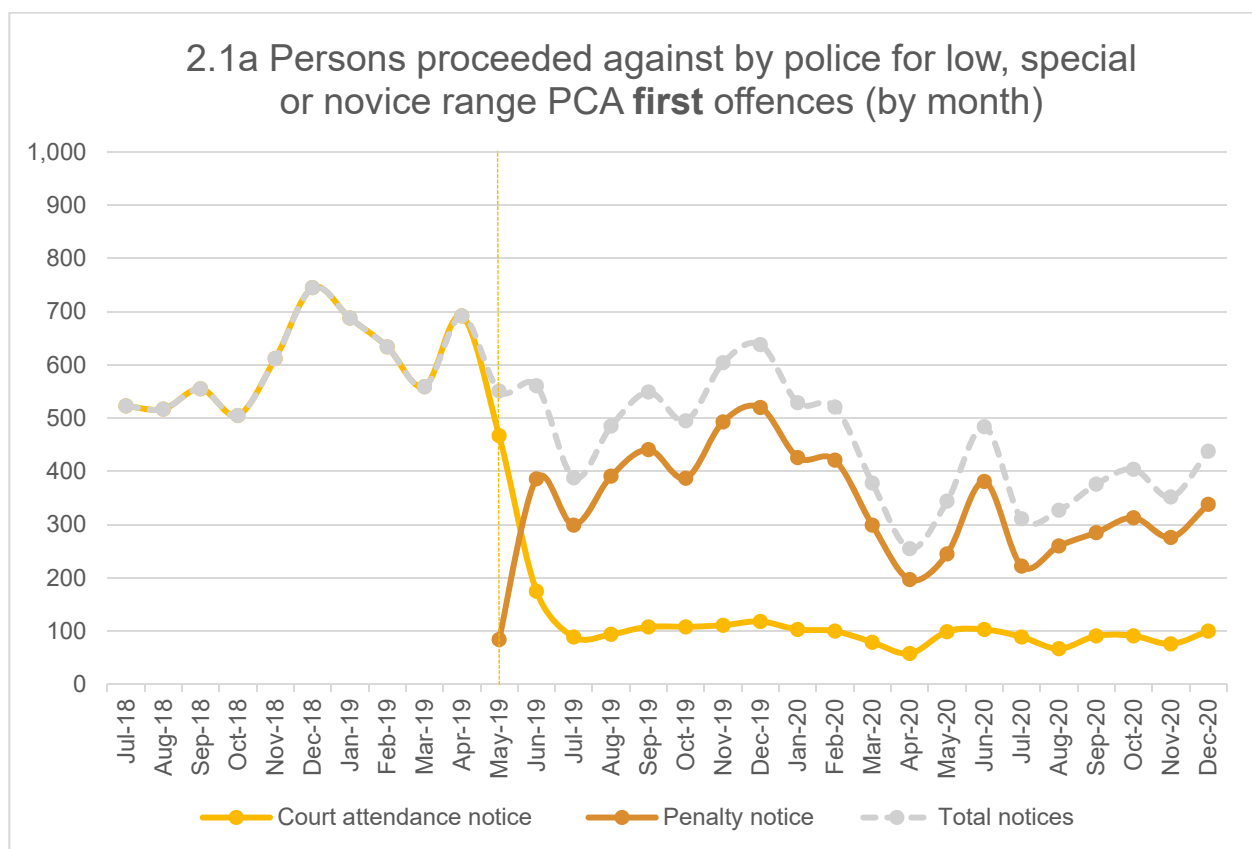
Selected metrics are outlined below to demonstrate implementation of key areas of the reforms. One external factor, number of RBTs and MDTs conducted has also been included.

2 Penalty notices for lower-range drink and drug driving first-time offences

Changes expected following implementation of this reform element included:

1. Decrease in number of persons issued with a court attendance notice
2. Increase in the number of persons issued a penalty notice
3. Decrease in the number of proven court appearances resulting in a non-conviction penalty (section 10)

2.1 Persons proceeded against for lower-range PCA offences

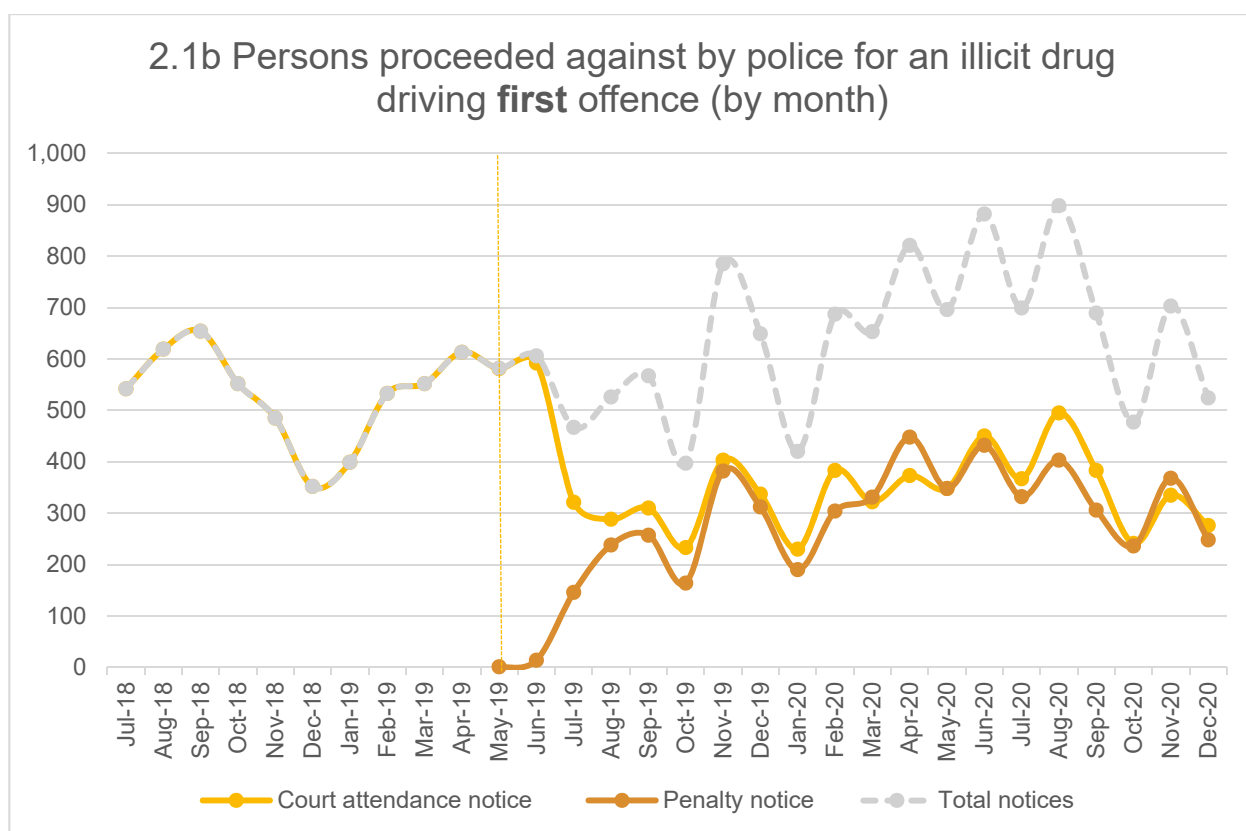


Source: NSW Bureau of Crime Statistics and Research – April 2021

In previous monitoring reports, the data for persons proceeded against by police for low, special or novice range PCA included both first-time and repeat offences. For this report, data filtered to include first offences only is available, and is used in graph 2.1a above.

This data is more suitable for monitoring of the reforms, because only first-time lower-range PCA offences are eligible to receive penalty notices, while second and subsequent offences are not. Across the period from July 2018 to December 2020, first time offences made up the majority of lower-range PCA offences (89.7 per cent), with second and subsequent offences making up the remainder, so the patterns reflected in the new filtered data are similar to what has been reflected in previous monitoring reports.

There is a drop in court attendance notices issued for first-time lower-range PCA offences from May 2019, when penalty notices and license suspensions for first-time lower range offences were introduced. From June 2019 onwards, the number of penalty notices issued for these offences has remained consistently higher than court attendance notices.

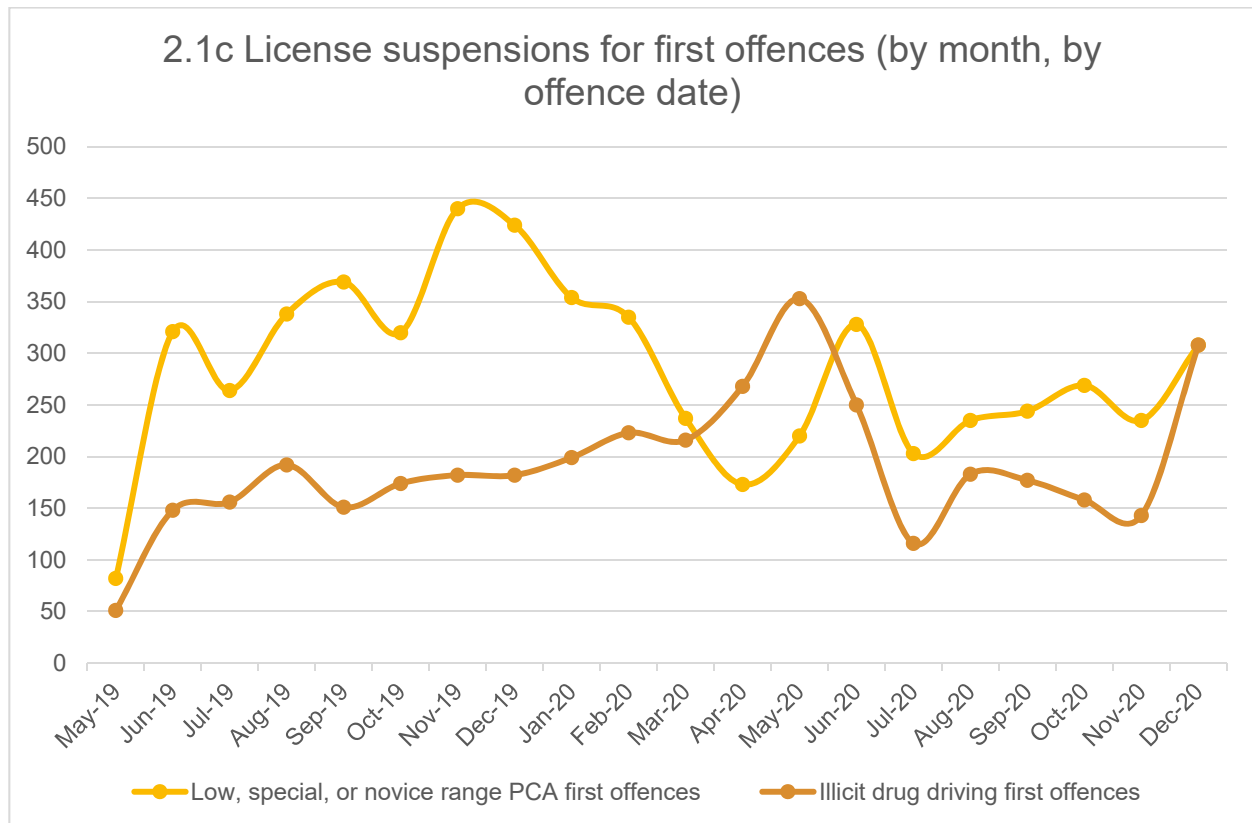


Source: NSW Bureau of Crime Statistics and Research – April 2021

In previous monitoring reports, data for illicit drug driving offences included both first-time and repeat offences. When the data included all illicit drug driving offences, the number of penalty notices issued remained lower than the number of court attendance notices.

Across the period from July 2018 to December 2020, the first-time offences made up just under three quarters of illicit drug driving offences (73.9 per cent), with second and subsequent making up the remainder. For illicit drug driving offences, filtering the data to only first offences has more impact on the patterns in the data than was the case for PCA offences above as they make up a smaller proportion of the offences.

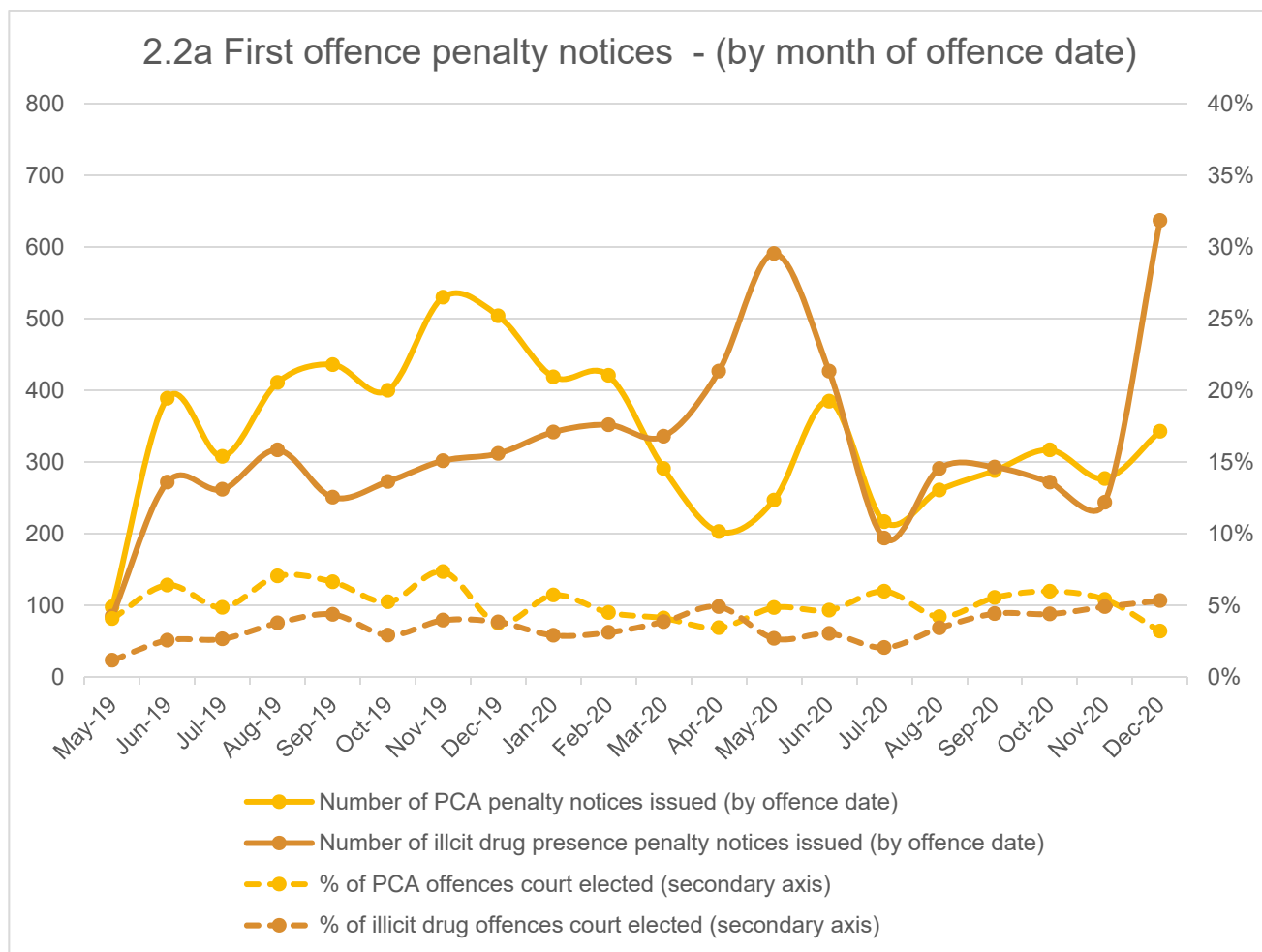
When the data is filtered to first offences only, the number of court attendance notices and penalty notices become similar, with the number of penalty notices exceeding court attendance notices in some months. The proportion of offences resulting in a penalty notice is still lower for illicit drug driving first offences than for lower-range PCA first offences.



Source: DRIVES – July 2021

Graph 2.1c includes new information sourced from the DRIVES database, which identifies license suspensions associated with lower-range PCA and illicit drug driving first offences, by offence date. These figures include suspensions that are issued and are later appealed. The pattern of offences is similar to graph 2.2a below which represents penalty notices issued for the same categories of offence, however the number of suspensions recorded is lower than the number of penalty notices.

2.2 Penalty notices issued and court elections



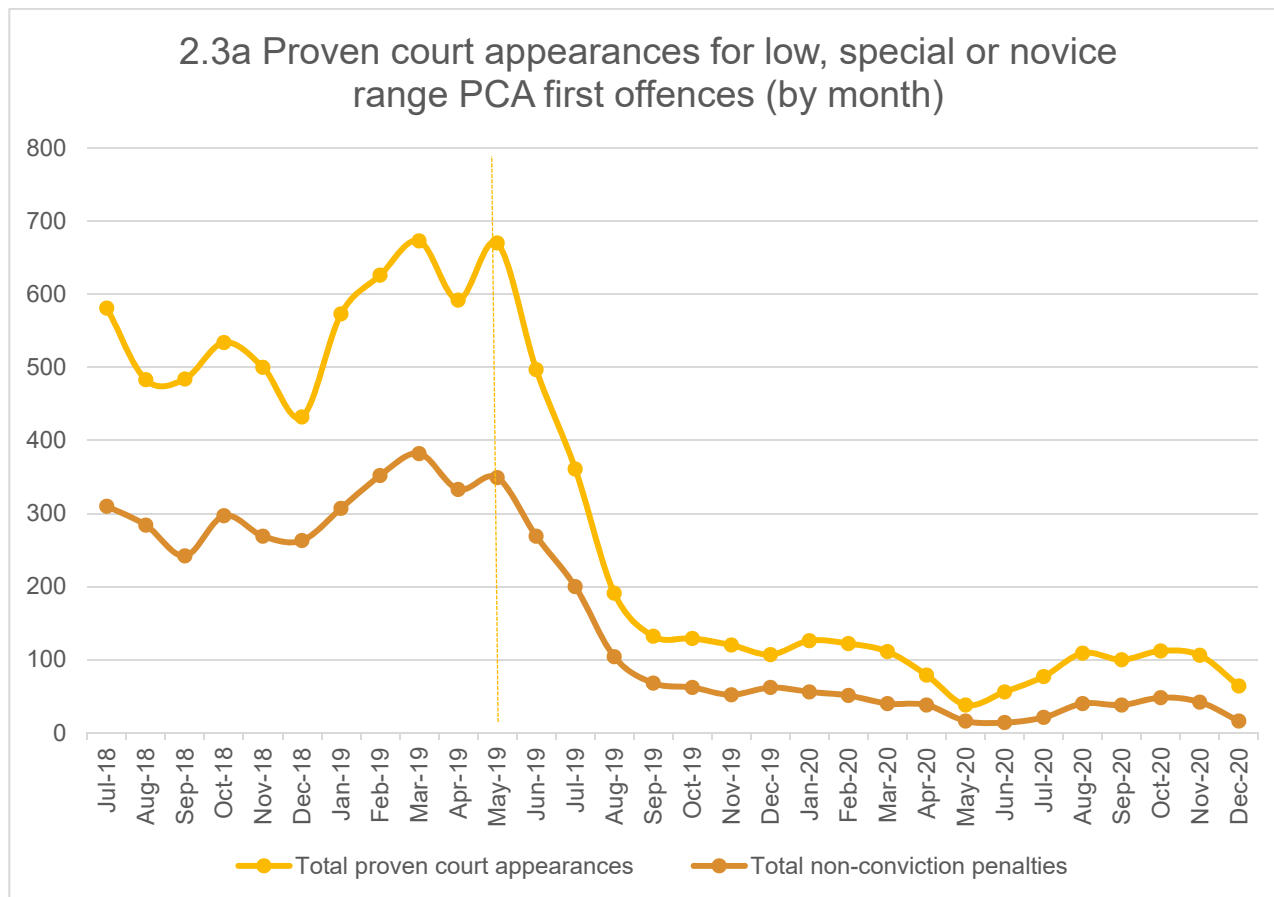
Source: Revenue NSW – June 2021

Note: The per cent court elected is calculated by identifying the number of PNs with an offence date in a particular month of issue, which have the status "CAN Issued" which indicates that a Court Attendance Notice has been issued for this offence.

Drivers who receive a penalty notice may elect to have their matter heard in court rather than pay the fine issued without a review in court. The rate of court election for first offence penalty notices has remained low. Across the entire period from May 2019 to December 2020, the rate of court election for first offence penalty notices was 4.5 per cent. For the new data since the last monitoring report (July 2020-December 2020), the rate of court election was 4.7 per cent. A preliminary impact assessment provided by Department of Justice (now Department of Communities and Justice) prior to implementation of the reforms estimated a higher court elect rate of 20 per cent.

Across the period from May 2019 to December 2020, the average rate of court election was higher for PCA offences (at 5.3 per cent) than for illicit drug presence offences (at 3.7 per cent).

2.3 First time lower-range offences resulting in a non-conviction penalty

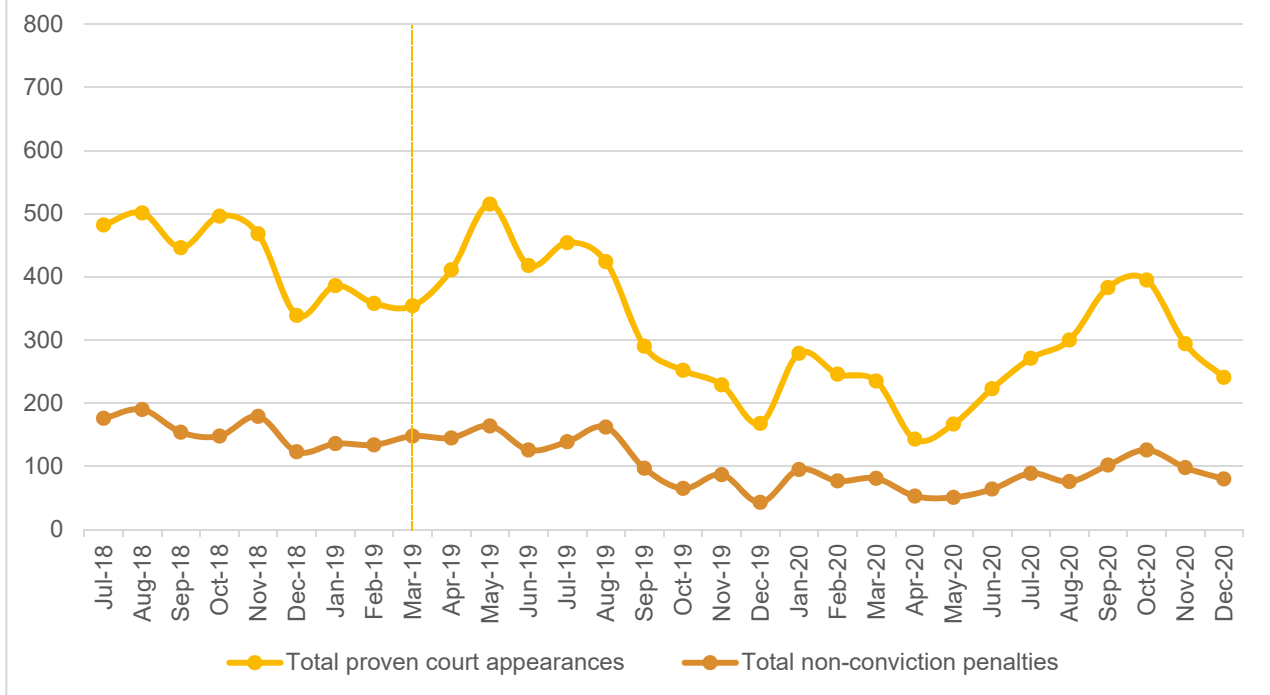


Source: NSW Bureau of Crime Statistics and Research –April 2021

After the introduction of first-time lower-range penalty notices in May 2019, there was an immediate drop in the number of total proven court appearances for lower-range PCA first offences, and reduction in proven court appearances resulting in a non-conviction penalty (also previously referred to as Section 10 orders). This data reflects the date of finalisation, so some legacy matters (initiated under pre-reform legislation, but finalised in the post-reform period) may be reflected especially in the months immediately following the reforms.

This data should be viewed alongside data from Section 2.2 which outlines first time lower-range PCA offences dealt with by penalty notice. Prior to the reforms, these offences would have been dealt with by court attendance notice. While drivers who receive a penalty notice may elect to have their matter heard in court rather than pay the fine, only a small proportion are choosing this option (5.3 percent across the period from May 2019 to December 2020).

2.3b Proven court appearances for illicit drug driving first offences (by month)



Source: NSW Bureau of Crime Statistics and Research – April 2021

The number of proven court appearances for first-time illicit drug driving also started to decrease in September 2019, slightly after the decrease noted for PCA offences. The previous report noted that this figure stayed under 300 per month until June 2020; however the new data included in this report indicates that the number of proven court appearances for illicit drug driving first increased from May 2020 onwards.

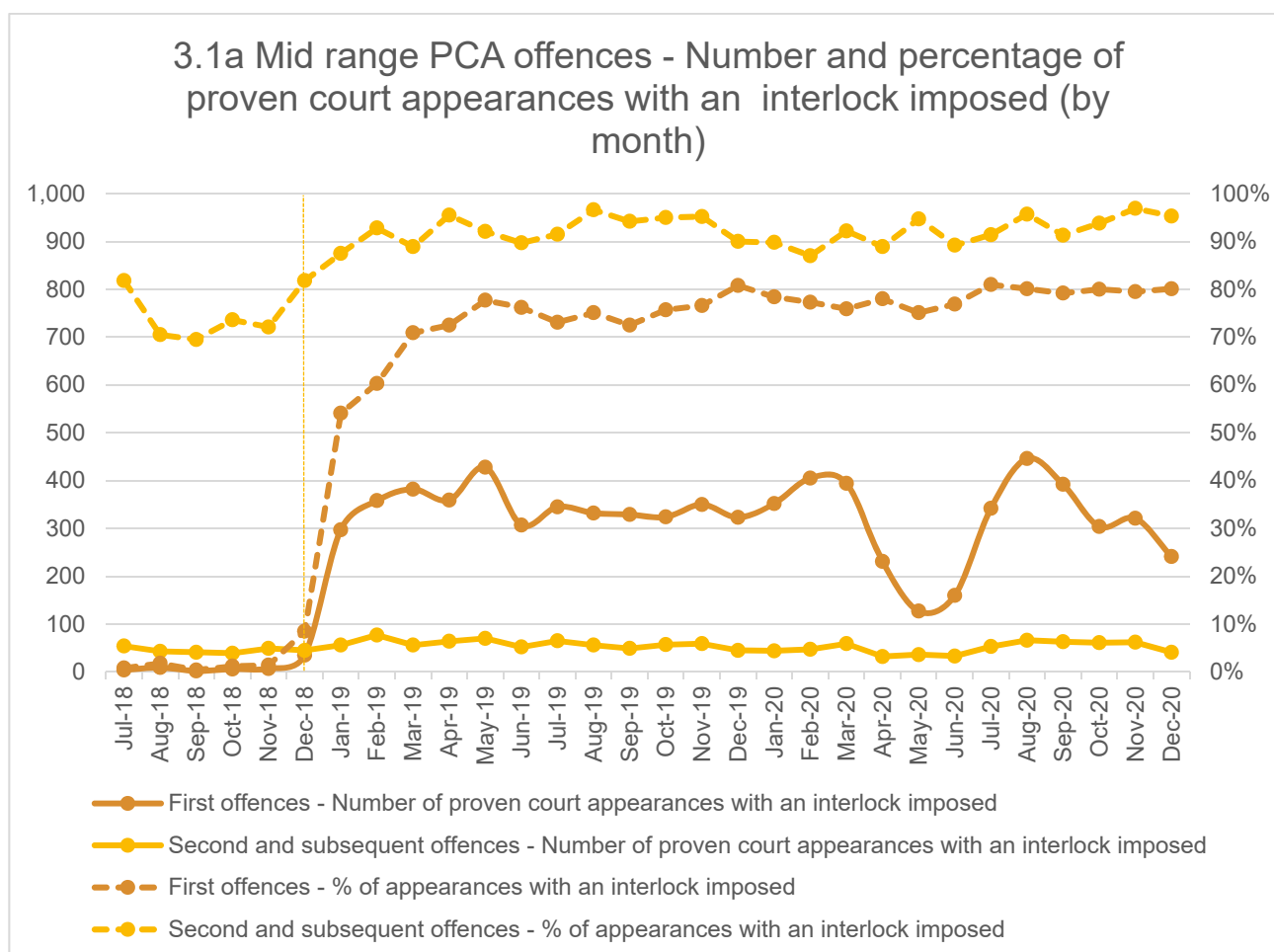
As noted in Section 2.2, many first offences for illicit drug driving are being dealt with by penalty notice, and the rate of court election of penalty notices for illicit drug presence offences is only 3.7 per cent.

3 MAIP for mid-range drink driving first-time offenders

Changes expected following implementation of this reform element included:

1. Increase in number and percentage of court appearances with an alcohol interlock imposed (MAIP order) for mid-range PCA offences.
2. Increase in total number of MAIP orders issued.
3. Increase in percentage of offenders granted an exemption.

3.1 Mid-range PCA offences and alcohol interlocks imposed



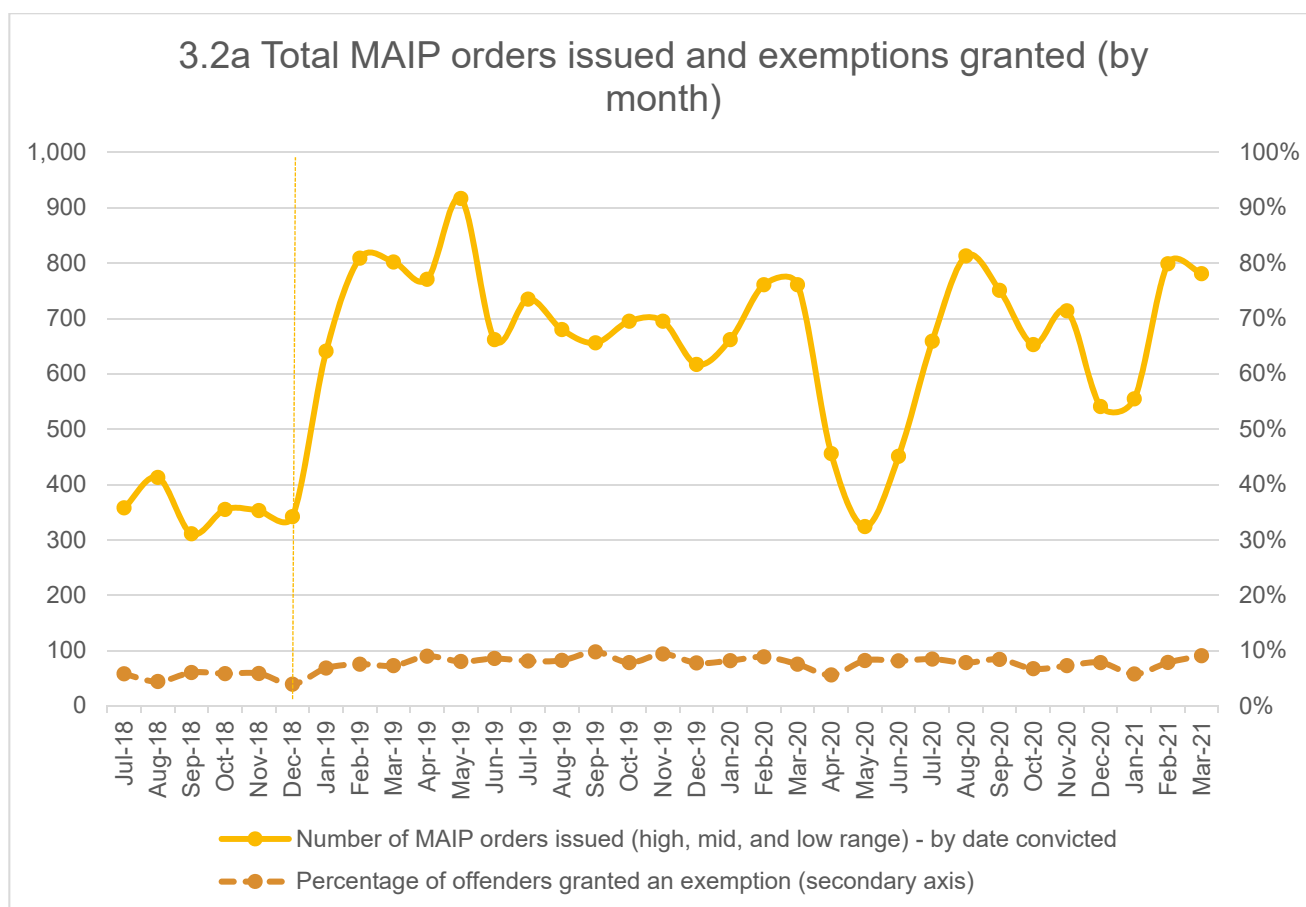
Source: NSW Bureau of Crime Statistics and Research – April 2021

Extension of MAIP to include first-time mid-range offences came into effect in December 2018. In December 2018, the proportion of proven court appearances with an alcohol interlock imposed for a mid-range PCA first offence was 8.5 per cent. By January 2019 this figure increased to 54.1 per cent, and from March 2019 to December 2020 has remained above 70.0 per cent each month. During the 2020 calendar year,

the proportion of proven court appearances with an alcohol interlock imposed for a mid-range PCA first offence each month was higher than 75.0 per cent.

There was a drop in the number of proven appearances across April, May and June 2020 which is likely due to interruptions to the court system during COVID-19 restrictions. The numbers from August 2020 onwards are similar to the period before COVID-19. Even during the period where the absolute number of proven appearances decreased, the proportion of proven appearances with an interlock imposed remained stable.

3.2 MAIP order exemptions

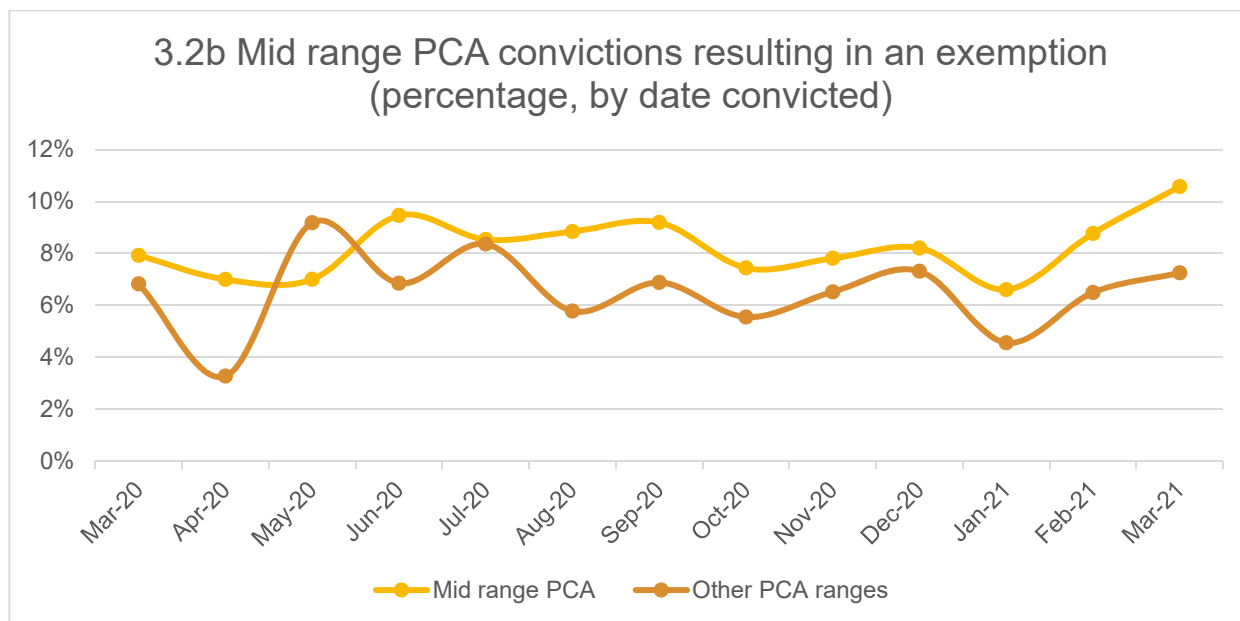


Source: Alcohol Interlock Unit – March 2021

After December 2018, the absolute number of MAIP orders issued across high, mid, and low range offences increased, and with the introduction of MAIP orders for first-time mid-range PCA offences. At the time the reforms took effect, it was not possible to divide the data for exemptions into PCA ranges, so this graph represents all MAIP offence categories.

The proportion of convictions that resulted an exemption increased from January 2019, which may have been caused by mid-range first-time offenders taking up the new severe hardship exemption category. Between July 2018 and December 2018, the

percentage of offenders receiving an exemption was 5.3 per cent. In the 2019 calendar year this increased to 8.2 per cent, and in 2020 it was 7.8 per cent.



Source: Alcohol Interlock Unit – March 2021

From March 2020, additional data was recorded that enables mid-range MAIP orders and exemptions to be identified. In most months, the proportion of mid-range convictions resulting in an exemption is slightly higher than for other PCA ranges, which may be related to the severe hardship exemption category (available to first time mid-range offenders only).

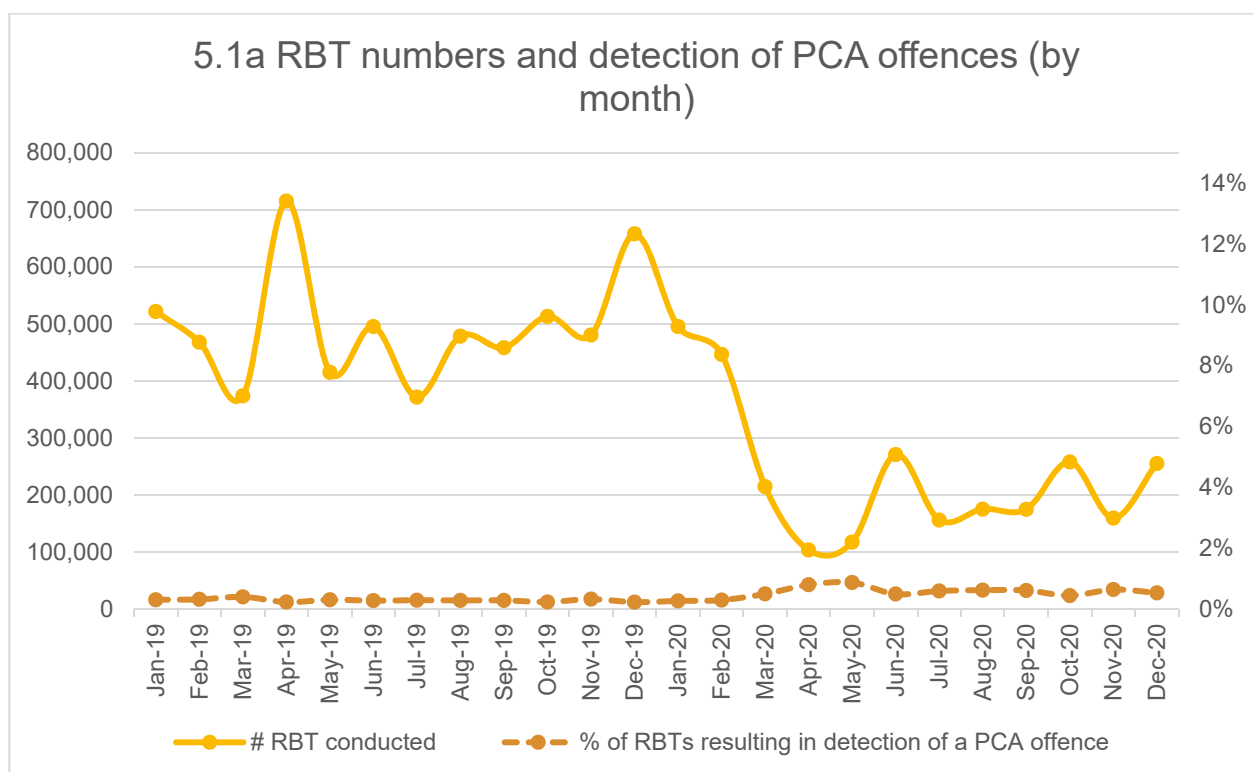
Across the period from March 2020 to March 2021 the proportion of mid-range PCA convictions resulting in an exemption was 8.4 per cent, while for other PCA ranges it was 6.6 per cent.

4 Vehicle sanctions for high-risk drink driving offenders

There have been five number plate confiscations for the offence type 'high-risk drink driving' in the period from December 2018 to March 2021 recorded in the Vehicle Sanction database managed by TfNSW. The total number of plate confiscations in that time frame was 708 (Source: Vehicle Sanction Database, TfNSW).

5 External factors

5.1 Mobile testing rates (RBT and MDT)



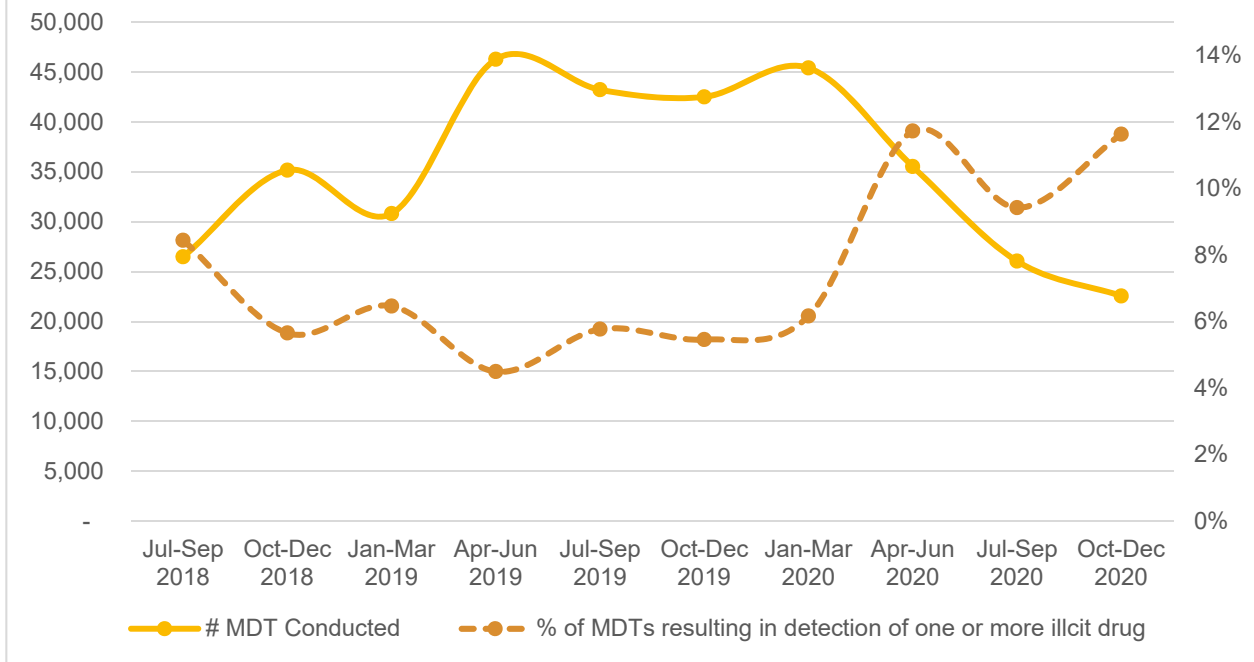
Source: NSW Police –May 2021

Note: The percentage of RBTs resulting in one of the specified offences is calculated using NSW Police data. It represents the number of PCA detections reported by NSW police divided by the number of RBTs conducted in that month. In previous reports data from BOCSAR was used to calculate the number of persons proceeded against for specific offences; it has now been updated to only include data from one source.

COVID-19 impacted on mobile testing rates for both RBT and MDT. In April 2020, only 103,669 RBT were conducted, or less than 15 per cent of tests conducted in April of 2019, when 714,145 tests were conducted. This level of RBT testing has remained lower than 2019 throughout the rest of the 2020 calendar year, with December 2020 tests (255,196) reaching only 39 per cent of the level of testing in December 2019 (657,673).

In 2020, a total of 2,828,124 tests were conducted, compared to 5,947,990 in 2019. This represents a decrease of 52 per cent in testing numbers between 2019 and 2020.

5.1b MDT numbers and detection of specified offences (by quarter)



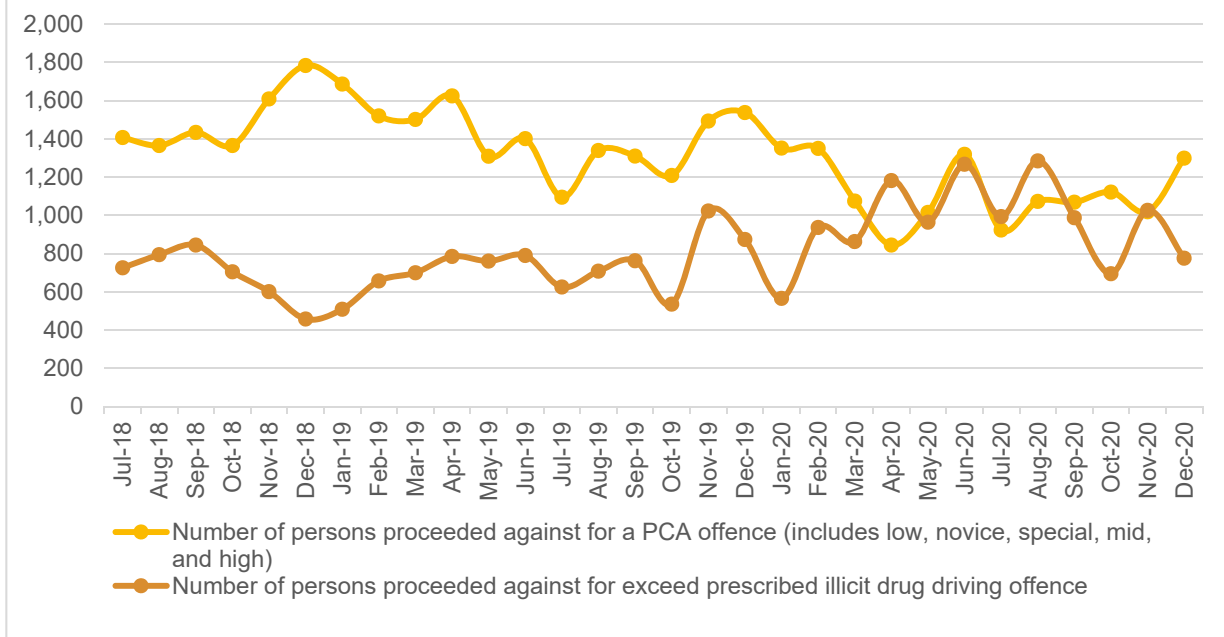
Sources: NSW Police, NSW Health – May 2021

Note: The percentage of MDTs resulting in one of the specified offences is calculated using NSW Police and NSW Health data. It represents the number of MDT samples that resulted in a positive result for one or more illicit drugs (NSW Health), divided by the number of MDTs conducted in that quarter (NSW Police).

The number of MDTs undertaken was also reduced during COVID-19. Across the period from April to June 2020, there were 35,532 MDTs conducted, compared to 46,269 tests across the same period in 2019. The 2020 figure represents just over 75 per cent of the 2019 figure. The number of MDTs undertaken continued to decline across the rest of 2020.

The proportion of MDTs resulting in an illicit drug driving offence continues to be higher than the proportion of RBTs that result in detection of a PCA offence.

5.1c Number of persons proceeded against for a PCA or illicit drug driving offence (both CAN and penalty notices)



Source: NSW Bureau of Crime Statistics and Research – April 2021

In 2019, there were 17,028 persons proceeded against for a PCA offence compared to 8,731 for an illicit drug driving offence. In 2020 the number of persons proceeded against for the offence types were more similar; there were 13,461 persons proceeded against for a PCA offence compared to 11,543 persons proceeded against for illicit drug driving offences.

Transport for NSW, Centre for Road Safety

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