

**Submission
No 3**

**INQUIRY INTO ROAD TRANSPORT LEGISLATION
AMENDMENT (PENALTIES AND OTHER SANCTIONS)
BILL 2018**

Organisation: NSW Government

Date Received: 21 September 2018



Transport
for NSW

NSW Government Submission

Standing Committee on Law and Justice

*Inquiry into Road Transport Legislation Amendment
(Penalties and Other Sanctions) Bill 2018*

September 2018

Contents

- Introduction..... 3
 - Purpose of this submission..... 3
 - The Bill 3
- Context..... 4
 - Drink and drug driving trauma on NSW roads..... 4
 - Deterring drink and drug driving..... 5
 - NSW Driver Disqualification Reforms 7
 - Community support for drug and alcohol safety measures 8
- Penalty and suspension notices for certain offences..... 8
 - Driver perceptions of drink and drug driving penalties..... 10
 - Appealing a police decision to issue an immediate roadside suspension..... 11
 - Conviction and fines 12
 - Potential effect on the number of Court matters..... 14
 - Report on drink driving sanctions and recidivism in Victoria..... 14
 - Aboriginal road safety outcomes and drink driving 15
- Other key aspects of the Bill 17
 - Expanding the Mandatory Alcohol Interlock Program..... 17
 - Development of a drink and drug driving education strategy..... 18
 - Refinements to the definition of ‘drug’ 19
 - Offence involving Sydney Harbour Bridge and disruption of traffic..... 21
- Monitoring and evaluation of the reform..... 22
 - Evaluation design 22
 - 1. Operational review after first 12 months..... 22
 - 2. Process evaluation and monitoring of behaviours and attitudes..... 23
 - 3. Outcomes evaluation 23
- Appendix A 24

Introduction

Purpose of this submission

This submission responds to an invitation from the NSW Legislative Council's Standing Committee on Law and Justice to provide input to the Inquiry into the Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018 (the Bill). The Committee is scheduled to meet on Monday 24 September 2018.

The submission:

- Outlines the strategic context and background to the Bill, including the road trauma and policy context;
- Responds to key issues raised in initial debate on the Bill, focussing on elements of the Bill which seek to introduce penalty notices and suspension in lieu of mandatory court attendance for lower range drink and drug driving first time offences; and
- Provides a summary outline of the Government's position on other matters raised in debate.

The Bill

The Road Safety Plan 2021 was launched by the NSW Government in February 2018 and features targeted and proven initiatives to address key trends, trauma risks and the types of crashes occurring on NSW roads – including drink and drug driving. In 2017, there were 392 deaths and around 12,000 serious injuries on NSW roads.

The Bill implements key measures of the Road Safety Plan 2021. It draws on research and practices from across Australian jurisdictions and internationally, to enhance the penalty framework to increase deterrence of drink and drug driving and, in turn, reduce trauma on our roads.

The Road Safety Plan recognises that we have made progress in saving lives on NSW roads through co-ordinated policies and programs that improve safety infrastructure and vehicle technology, enhance enforcement, strengthen licensing and educate road users – this is especially relevant in the context of drink and drug driving.

In 1980, 389 people were killed in alcohol related crashes in NSW, 30 per cent of the road toll. In 2017, preliminary data indicate that figure has dropped to 55 fatalities, around 14 per cent of the road toll. However, this still represents a key contributor to the NSW road toll.

The 0.05 blood alcohol limit has been in place for almost 38 years in NSW, and enforced through roadside breath testing for almost 36 years.

Over this period, measures to address trauma have combined public education campaigns, ongoing commitment to random breath testing, a zero alcohol limit for novice drivers, enhancements to strengthen penalties and improvements in vehicle and road design – a successful Safe System approach. Initiatives to date have had dramatic results, but 55 people still lost their lives last year and 425 were seriously injured in alcohol related crashes – 71 per cent of deaths (39 lives lost) were in country NSW.

In addition, in 2017, 81 deaths – or 21 per cent of the road toll – were from crashes involving a driver or rider with an illicit drug in his or her system.

To further reduce this trauma, the Road Safety Plan outlined new initiatives, based on evidence and research, which are reflected in the Bill, including:

- ensuring tough penalties, including licence suspension notices and fines, are consistently and swiftly applied to all lower range drink driving and drug presence first offenders.
- extending mandatory alcohol interlocks to mid-range drink driving offenders

- providing the option for vehicle sanctions at the roadside for high risk offenders
- extending the availability and requirement to complete a proven impaired driving education course to more offenders.

Context

Drink and drug driving trauma on NSW roads

While community attitudes to drink and drug driving, in particular drink driving, have changed dramatically since the 1980's, crash analysis, attitudinal research and offence data highlight that drink and drug driving remains a key challenge on NSW roads – especially in country areas.

From 2008 to 2017 there were a total of 570 fatal crashes involving alcohol, resulting in 634 fatalities - and illegal alcohol levels accounted for at least 17 per cent of all fatalities over this period.

While alcohol related fatalities have been generally trending down, since 2015 alcohol related fatalities have increased from a low of 45 fatalities in 2015 to 59 fatalities in 2016 and 55 fatalities in 2017. In 2014, there were 50 fatalities from illicit drug crashes - this had increased to 81 fatalities in 2017.¹

At the time of the Bill being debated in Parliament, at least 34 people had already lost their lives to drink driving in 2018, and at least 29 died in crashes involving a driver with an illicit drug in their system.²

The trauma particularly affects country NSW communities, from 2015 to 2017, 79 per cent of alcohol-related fatal crashes and 75 per cent of fatal crashes involving illicit drugs occurred on country roads.

There is clear scientific evidence that crash risk escalates as blood alcohol content increases however this does not mean that driving with lower levels of alcohol is safe.

The safest option, from both a crash and legal perspective, is not to drink before driving.

A driver with a blood alcohol concentration in the low PCA range, from 0.05 up to 0.079 – is two to four times as likely to be involved in a casualty crash compared to a sober driver. These drivers pose a serious risk to themselves and everyone else on the road.

Prevalence of drink and drug driving behaviour

A 2015 survey commissioned by Transport for NSW of NSW drivers' drink driving attitudes and behaviours found that almost half of the over 1,700 NSW drivers surveyed (47%) said they had risked driving over the legal limit at some point. In total, 12% of NSW drivers said they had taken the risk in the last six months.³

A further survey of NSW drivers, also completed in 2015, found that overall, 30 per cent of respondents who reported using illicit drugs also reported drug driving at some point in the

¹ It should be noted that there was an enhancement to the laboratory analytical methods for samples collected from fatal crashes in late 2014 which enabled more accurate identification of drugs.

² Note: Data available at 20 September 2018. Due to a lag in receiving drug and alcohol laboratory test results for fatal crashes – the figures reflect available alcohol related fatalities from 1 January 2018 to 31 July 2018, and illicit drug presence from 1 January 2018 to 30 June 2018.

³ Taverner Research (2015) 2014 Drink Driving: A Survey of NSW Drivers. Unpublished report for Centre for Road Safety, Transport for NSW

past. This equates to a population prevalence of 2%. A higher proportion, 43% of illicit drug using drivers reported driving within six hours of taking a drug and 13% had driven after taking illicit drugs at least once a month. Illicit drug driving was more prevalent among males and younger drivers (16-39 years).⁴

There was also a strong relationship between frequency of drug use and frequency of drug driving, with more frequent users reporting more frequent drug driving. There was no significant difference in the prevalence of drug driving between metropolitan and non-metropolitan respondents.

In general, self-reported drug drivers were less likely to see the risks associated with drug driving, with many (44%) believing that the drugs they take do not diminish their driving ability. Drug drivers also reported being much more willing to be a passenger in a vehicle driven by a driver under the influence.

Deterring drink and drug driving

NSW is not alone in facing the challenge of drink and drug driving.

The National Road Safety Strategy 2011-2020, to which all states and territories have signed up to, highlights the ongoing role of drink and drug driving in road trauma. The National Road Safety Action Plan 2018-2020, adopted in May 2018, identifies increasing drug testing, and strengthened efforts to address drink driving as priority and critical actions.

Drink driving

Australia is recognised as a world leader in effective action to address drink driving. NSW has been at the forefront of many of the policy changes that have contributed to the achievements in reducing drink driving over a 30 year period.

The NSW Government approach to drink and drug driving is underpinned by maximising deterrence – to prevent drink and drug driving and ensure offenders are deterred from reoffending by appropriate penalties, including loss of licence. This is based on Deterrence Theory, which proposes that people will avoid engaging in offending behaviours if they fear the perceived consequences of the act.⁵

Deterrence Theory shows that legal consequences are most effective when people perceive that:

- there is a high likelihood of detection, arrest, prosecution, conviction and punishment;
- the eventual penalty is certain and severe; and
- the penalty is administered swiftly

Countermeasures based on Deterrence Theory have been successfully applied internationally to improve road safety outcomes. Deterrence Theory consistently shows that the most powerful deterrent effects on offending behaviour are produced by the perceived threat of the certainty of apprehension; in this context, the perceived likelihood of being caught drink-driving. Thus, in order for the “fear of punishment” to be effective, motorists must believe that the likelihood of being caught is relatively high.⁶

The effectiveness of legal sanctions depends on the certainty, severity and swiftness of punishment. If people perceive it likely that they will be caught and receive harsh and swiftly

⁴ Taverner Research (2015) Illicit Drug Using Drivers in NSW. Unpublished report for Centre for Road Safety, Transport for NSW

⁵ Homel J, 'Policing and punishing the drinking driver. A study of specific and general deterrence' (1988) New York: Springer-Verlag.

⁶ Davey JD & Freeman JE 'Improving road safety through deterrence-based initiatives: a review of research' (2011) Sultan Qaboos University Medical Journal.

delivered punishment, they will be less likely to offend.⁷ This is a critical component of the drink-driving deterrence strategy in NSW, and has been identified as a key factor in the success of Australia's approach to reducing drink driving and alcohol-related trauma.⁸

When choosing whether or not to drink-drive, drivers balance the subjective risk of the negative consequences of drink-driving with their motives for engaging in the behaviour. Therefore, a principal objective of Deterrence Theory is to increase all drivers' perception of the risks associated with drink-driving.⁹ This may be achieved largely via two processes: specific deterrence, and general deterrence.

- *Specific Deterrence* – Occurs when a motorist who has been apprehended and punished for a drink-driving offence refrains from further drink-driving behaviour for fear of incurring additional punishment.
- *General Deterrence* – Occurs when a motorist refrains from drink-driving as a result of observing others being punished for a drink-driving offence or they are warned of the impending penalties for drink-driving or likelihood of being caught. Thus, the threat of enforcement and negative consequences that people want to avoid influences the behaviour of motorists generally, irrespective of whether or not they have ever been apprehended. The perception that there will be certain consequences and a high likelihood of being caught creates the motivation for behaviour change.

The certainty of punishment is intended to create both a general and a specific deterrent effect.

General deterrence is intended to prevent offending while specific deterrence is intended to prevent reoffending for fear of incurring additional punishment.

Achieving general deterrence, that is, deterring the maximum number of people is at the core of NSW's high visibility, high volume roadside random breath testing (RBT) and mobile drug testing (MDT). Enforcement activity provides a visible deterrence for road users, and the perceived certainty of enforcement is known to produce more positive behaviour change. The majority of road users are deterred from risky behaviour by the sanctions and penalties that are certain to flow and want to avoid, if they know enforcement will be conducted or they perceive a threat of enforcement.

Specific deterrence has been achieved through ensuring effective and severe sanctions, particularly for repeat offences.

This deterrence strategy has been extremely effective in deterring drink-driving. Since 1982, when RBT was introduced in NSW, fatal crashes involving alcohol have dropped from around 27 per cent of all fatalities to the lower but still significant rate of 14 percent in 2017. Police now conduct around five to six million random breath tests a year compared with some 900,000 tests conducted in 1983.

The amendments proposed in the Bill reflect another step forward in maximising deterrence through sanctions that are coupled with on-road police enforcement.

⁷ Moffatt S & Poynton S, 'The deterrent effect of higher fines on recidivism: driving offences' (2007) Crime and Justice Bulletin No 106, NSW Bureau of Crime Statistics and Research.

⁸ Homel J, 'Policing and punishing the drinking driver. A study of specific and general deterrence' (1988) New York: Springer-Verlag; Soole DA, Haworth NL and Watson BC 'Immediate licence suspension to deter high-risk behaviours' (2008) In Proceedings of High risk road users - motivating behaviour change: what works and what doesn't work? National Conference of the Australasian College of Road Safety and the Travelsafe Committee of the Queensland Parliament, Brisbane.

⁹ Davey JD & Freeman JE 'Improving road safety through deterrence-based initiatives: a review of research' (2011) Sultan Qaboos University Medical Journal.

Drug driving

Drug driving policy in NSW, as well as other Australian jurisdictions, has been built on the success of the highly successful and internationally recognised approach to RBT and drink driving – with a strong focus on deterring drivers from taking the risk of driving after drug use.

A two-tiered approach combines efficient, large scale roadside testing to create deterrence, with scope for strong action against impaired drivers – including drivers affected by pharmaceutical drugs.

Firstly, presence offences are detected from mobile drug testing (MDT) of drivers' saliva. As roadside testing can be undertaken anywhere, anytime, it is designed to deter drivers who have recently used illicit drugs from taking the risk of driving. As noted, 30 per cent of respondents who reported using illicit drugs also reported drug driving at some point in the past. A higher proportion, 43% of illicit drug using drivers reported ever driving within six hours of taking a drug.

MDT targets commonly used illegal drugs such as cannabis, speed/ice, ecstasy and cocaine that can impair driving and feature in the NSW road toll. The number of MDT tests is increasing to 200,000 tests by the end of 2020 as part of Road Safety Plan 2021, which will make it the largest roadside drug testing program in Australia.

Around 97% of drivers who tested positive at the roadside had their positive result confirmed in laboratory tests. Drivers are only charged with an offence if their laboratory result is positive.

Secondly, blood and urine testing, for the more serious offence of driving under the influence, applies to drivers who, when stopped by NSW Police, are visibly affected by a drug. This testing can identify drivers who have misused prescription drugs, illegal drugs or a combination of substances.

The evidence base underpinning crash risks of driving after drug use is more recent, complex and more variable, than the long term, clear and consistent research evidence of elevated crash risk with increasing levels of blood alcohol. In this context, it is appropriate to minimise the risk of driving after drug use as far as possible.

NSW Driver Disqualification Reforms

Driver licence disqualification reforms were introduced by the NSW Government in October 2017 to rebalance the system in favour of people who prove they can steer their lives back on track, while providing NSW Police with extra on-the-spot powers to punish repeat disqualified driving offenders.

The Bill is consistent with, and can be distinguished from, these broader disqualification reforms.

The disqualification reforms were targeted towards individuals serving lengthy disqualification periods as evidence showed that the imposition of long-term disqualification periods can actually increase the risk of reoffending in some cases and has a disproportionate social impact on vulnerable people, particularly those in regional and rural areas.

These reforms adopted recommendations of the Legislative Assembly Committee on Law and Safety and included a new power to allow courts to lift the disqualification period for those who can demonstrate a commitment to lawful behaviour and who have been compliant with their disqualification.

Under the disqualification reforms, a disqualified person must still remain offence free for a specified period of two or four years depending on their offences. Therefore, these disqualified drivers need to demonstrate their reformed behaviour over a long period before they are able to apply for a licence to return to lawful driving. To protect community safety, disqualified

drivers who have ever been convicted of serious driving offences involving death or grievous bodily harm, are never eligible to have their disqualifications lifted early.

The disqualification reforms are not aimed at drivers serving short-term suspension periods for reasons such as exceeding their demerit points threshold, committing high level speed offences (ie over 30 km/h over the speed limit), or those issued a roadside suspension by a NSW Police for certain serious driving offences.

While the disqualification reforms have not been in place for long enough to conclude the effect on long term road trauma outcomes, early analysis was published by the Bureau of Crime Statistics and Research in August 2018.¹⁰ This found there is currently no evidence of a negative impact on road safety. Importantly, the analysis notes that a downward trend in crashes involving unauthorised drivers pre-dated the reform. This highlights the positive effect other factors such as enhanced safety infrastructure and effective enforcement, have on road safety outcomes.

The BOSCAR study found that the reforms have resulted in a 56% reduction in the average duration of licence disqualifications and a 24% reduction in average prison sentences imposed for unauthorised driving offences. BOCSAR observed no change to the proportion of people receiving a licence disqualification from the court for unauthorised driving offences or the proportion receiving a custodial sentence.

As outlined in the Road Safety Plan 2021, the NSW Government remains committed to enhancing enforcement and delivering safer infrastructure, alongside ensuring appropriate penalties for drivers who do the wrong thing and pose a danger to others on NSW roads. This intent is not inconsistent with taking action to address the effect long term disqualification can have on those who have been compliant with their disqualification.

The NSW Government will continue to monitor the effect of the driver disqualification reforms on road safety outcomes in the longer term.

Community support for drug and alcohol safety measures

In 2017, extensive consultation was undertaken to develop the Road Safety Plan 2021. In total more than 4,000 people provided input into the Plan, and a further 16,000 were engaged online. A representative survey of 2,800 NSW residents asked which measures respondents felt were important to improving road safety and moving Towards Zero road trauma. The survey found that:

- 90% consider alcohol and drug testing important for road safety, and
- 84% supported alcohol interlocks for drink driving offenders.

The Bill has been developed based on well-established principles of deterrence theory and underpinned by strong community support for action to address drink and drug driving in the community.

Penalty and suspension notices for certain offences

The key debated reform of the Bill, and focus of this submission, is the proposal to introduce penalty and suspension notices in lieu of mandatory court attendance for lower range drink and drug driving offenders. The primary purpose of this element of the reform is to deliver more certain and, where feasible, immediate licence sanctions – which are a proven road safety countermeasure.

¹⁰ Bureau of Crime Statistics and Research (2018) Early indicators of the impacts of the NSW Driver Licence Disqualification Reforms, Issue paper no.135.

The certainty and swiftness of licence sanction – alongside, greater certainty of being caught, which the NSW Government is delivering through enhanced enforcement by NSW Police – are designed to deter all drivers from taking the risk, and in turn change behaviour and reduce trauma.

Key background

All drink and drug driving offences in NSW currently involve a driver being charged and require Court determination and sentencing. The time between arrest and a court determination for a low range PCA first offence is around 44 days. During this time, a low range offender retains their licence and can drive.

This is not consistent with practice in other jurisdictions across Australia.

In Victoria, South Australia, Western Australia, Tasmania and Northern Territory, Police can issue infringement notices for low range drink driving first offences where the driver is an unrestricted licence holder. Victoria, South Australia and the Northern Territory also allow infringement notices to be issued for the presence of an illicit drug where it is a first offence.

The key benefit of a notice based approach, coupled with licence sanction, is the opportunity to deliver more certain, severe, consistent and typically swifter penalties - maximising deterrence, the cornerstone of the successful NSW approach to addressing impaired driving.

In Victoria, the most comparable jurisdiction to NSW in population and scale of enforcement, Police have had the option to issue a Traffic Infringement Notice (TIN) rather than referring first time low to medium range drink driving offenders (up to 0.15 blood alcohol concentration (BAC)) to court since December 2001.

Between 2001 and 2018, ten demerit points were applied in Victoria for TIN drink driving offences at 0.05-0.07 BAC – not automatic loss of licence. In Victoria, this changed in April 2018 and licence sanctions are now systematically applied for all cases where a penalty notice is issued. The effect of the changes in Victoria is that mandatory licence cancellation and alcohol ignition interlocks now apply to all drink drivers at all blood alcohol levels in Victoria.

Administrative licence suspension laws relating to drink-driving have been evaluated in several studies, and have shown to be effective in different jurisdictions and using a variety of research methods. Laws relating to Police-issued drink-driving infringements resulting in licence suspension have been consistently found to reduce fatal crashes involving alcohol.¹¹

Appendix A provides examples of independent research outlining the benefit of immediate licence suspension in deterring drink driving, behaviour change and improved road safety outcomes. Almost all evaluations demonstrate that the beneficial impact of administrative licence suspensions can be largely attributed to the speed and relative certainty with which the sanctions are applied.¹² Several studies have shown immediate licence suspension to be a more effective deterrent of drink driving than suspensions that are applied later.¹³

Victorian research has also found a higher rate of drink driving offending occurs between detection and the start of a licence sanction—highlighting the importance of taking action as

¹¹ For example Ruhm CJ, 'Alcohol policies and highway vehicle fatalities' (1996), *Journal of Health Economics* 15(4):435-454; Kaplan S & Prato CG, 'Impact of BAC limit reduction on different population segments: a Poisson fixed effect analysis' (2007) *Accident Analysis & Prevention* 39(6):1146-1154.

¹² For example Mann RE et al, 'The early effects of Ontario's administrative driver's licence suspension law on driver fatalities with a BAC > 80 mg%' (2002) *Canadian Journal of Public Health* 93:76-80; Ross H, 'Administrative license revocation in New Mexico: An evaluation' (1987) *Law and Policy* 9:5-16; Voas RB et al, 'Impact of Ohio administrative licence suspension', (1998) *Proceedings of the 42nd Annual Conference of the Association for the Advancement of Automotive Medicine, Des Plaines IL: Association for the Advancement of Automotive Medicine*, pp 401-15..

¹³ Wagenaar A & Maldonado-Molina M, 'Effects of Drivers Licence Suspension Policies on Alcohol Related Crash Involvement: Long-Term Follow-Up in Forty-Six States' (2007) 31(8) *Alcoholism: Clinical and Experimental Research*

soon as possible.¹⁴ Beirness & Beasley showed that immediate roadside suspensions combined with other measures to enhance the certainty and perceived severity of drink-driving sanctions were associated with a substantial reduction in the prevalence of drink-driving.¹⁵ The decreases in drinking and driving were not restricted to specific sub-groups of drivers but were universal across age groups, sex, and communities. This provides the most compelling evidence for the road safety benefits of immediate licence suspensions, given the finding of a general deterrence effect among drivers, rather than only for specific drivers caught for drink driving.

Evaluations show that immediate licence suspensions are effective at preventing drinking and driving in both the general population and in the population of previously detected drinking drivers, leading to significant reductions alcohol related fatalities and re-offending (refer Appendix A).

Proposed changes

The Bill establishes penalty notices (coupled with licence suspension) for novice, special, low range prescribed concentration of alcohol (PCA) offences¹⁶ and driving with the presence of an illicit drug offence that are a first time offence. This option will be available to Police where a penalty notice for a drug or alcohol related offence has not already been issued, and the person has not been convicted of the same or an equivalent offence, in the previous five years.

The Bill also amends the *Road Transport Act 2013* to enable Police to issue an immediate licence suspension notice after a driver commits a novice, special or low range drink driving offence. The licence suspension applies for three months if the offender is issued a penalty notice, or, if the offender is required to attend court, until the charge is heard and determined in court. This effect is that roadside licence suspension may apply for all PCA drink driving offences in NSW, as it currently can for middle and high range PCA offences. This significantly strengthens the current framework, taking drink drivers off the road as soon as feasible after an offence.

The Bill also allows Roads and Maritime Services to apply a three month licence sanction (usually licence suspension) after an infringement for a drug or alcohol related offence. Where a licence suspension for these offences cannot be imposed by Police at the roadside in conjunction with a penalty notice (for example, drug presence first offences where the penalty notice is issued after laboratory results), Roads and Maritime Services can subsequently suspend a driver licence or visiting driver privileges.

This ensures that a driver always faces a three month licence sanction and is similar to the current process where a driver is detected speeding by over 30km/hr and has their licence subsequently suspended by Roads and Maritime Services.

Driver perceptions of drink and drug driving penalties

In 2017, Transport for NSW commissioned independent research to complete attitudinal research involving NSW drivers to explore awareness and perceptions of the current penalties for drink and drug driving offences, and to examine how an infringement-based penalty

¹⁴ Watson A et al, 'The impact of safety measures on the re-offence and crash rates of drink-driving offenders in Victoria' (2015) *2015 Australasian Road Safety Conference*, 14-16 October 2015, Gold Coast, Qld.

¹⁵ Beirness DJ & Beasley EE, 'Roadside surveys evaluating immediate roadside suspensions for drinking drivers in British Columbia, Canada (2013) Proceedings from the 2013 International Conference on Alcohol, Drugs and Traffic Safety.

¹⁶ Special range means a concentration of 0.02 grams or more, but less than 0.05 grams, of alcohol in 210 litres of breath or 100 millilitres of blood. 'Special category drivers' include a range of drivers required to comply with a 0.02 or lower BAC - public passenger and bus drivers, novice drivers, interlock licence holders and unauthorised drivers.

approach might be perceived, relative to the current court-based system. The program of qualitative research involved a series of 11 group discussions conducted across regional and metropolitan NSW.

This research found that most road users are able to quickly identify that an infringement-based system provides greater certainty that penalties will be applied, as well as a greater sense of immediacy around their application.

Many also believe that an infringement based approach has potential to be fairer, and deliver greater administrative efficiencies for taxpayers. Overall, perceptions of an infringement based approach were largely positive, however most road users indicated a belief that it would only be suitable for lower-range and first-time offences.¹⁷

Appealing a police decision to issue an immediate roadside suspension

Options available to an offender

An alleged offender who is issued an immediate licence suspension for lower range drink driving can appeal the Police decision. Processes to support court election and appeals are already in place.

Similar options are available where Police issue a penalty notice and an immediate licence suspension notice to a driver who has been detected exceeding the speed limit by 45 km/h.

Under current provisions, if an appeal is lodged against an immediate suspension (or the primary offence itself is Court elected), the suspension remains in place until the appeal is determined or decision stayed by the Local Court, or the primary offence that was Court elected is determined.

In 2017, 775 appeals were lodged in Local Courts against a Police decision to issue an immediate roadside suspension. The median time it took from lodgement to finalisation was 14 days (average time 23 days).

In determining an appeal against an immediate suspension, the Local Court can lift or vary the suspension only if satisfied that there are 'exceptional circumstances justifying a lifting or variation of the suspension (section 268 of the *Road Transport Act 2013*)'.

In determining 'exceptional circumstances', the Local Court can take into account factors outlined in the *Road Transport General Regulation 2013* (Clause 135A). This includes the person's need for a licence, potential danger to the community, and any other matter that the Local Court considers to be relevant. This is a reasonably broad discretion for the Court to consider the offender's circumstances.

Maintaining the licence suspension if an offender has court elected or appealed

Immediate licence suspensions can be applied in NSW road transport law for serious traffic offences to remove offenders who pose a risk from the roads.

Relevant serious offences currently include middle and high range drink driving, serious *Crimes Act 1900* offences involving a motor vehicle related death or grievous bodily harm, and excessive speeding (speeding by more than 45km/hr over the limit by an unrestricted licence holder, or by more than 30km/hr by a provisional or learner driver), as well as a number of other offence.

Where an offence is serious enough to warrant an immediate roadside suspension, it is consistent with the principle of removing serious offenders from the road for that licence

¹⁷ Snapcracker Research and Strategy (September 2017) *Penalties for drink and drug driving: Qualitative research report*. Unpublished research - Commissioned by Transport for NSW.

suspension to remain in place until a Court (through an appeal or determination of the offence) makes a determination otherwise.

It is appropriate given the seriousness of any drink driving offence, what is known about drink driving behaviour, and the intent of these reforms – which is to ensure proven, tough penalties are applied consistently to all offenders.

Survey research commissioned by Transport for NSW and involving over 1,700 drivers suggests that in NSW approximately 146,000 people per month drove whilst potentially over the legal limit. NSW Police detect a proportion of offenders - typically ranging from 1,600-1,800 drink driving offences per month.

This suggests, consistent with international research,¹⁸ that if an offender is caught drink driving in NSW at any level - it is likely they have taken the risk many times before.

As part of the NSW Government's record \$1.9 billion investment in road safety, roadside mobile drug testing program will double to 200,000 tests per year by 2020, and we more Highway Patrol Officers are being stationed in country NSW to target the road toll and to add to the delivery of random breath testing. This is to ensure all drivers perceive a high risk of being detected if drink or drug driving - to stop the behaviour before it occurs. Tragically, you are four times more likely to die on a country road than in a metropolitan area.

Taking immediate and certain licence action against all drink drivers is a reasonable and important step in further changing behaviour and reducing trauma, both amongst those who are detected, and those who have yet to be caught. The certainty and swiftness of the licence sanction - alongside greater certainty of being caught – combine to deter drivers from taking the risk. The effect of the reforms will be monitored from both an operational and road safety perspective (see Monitoring and Evaluation) to ensure the intended outcomes are achieved.

Conviction and fines

Non-conviction

Section 10 of the *Crimes (Sentencing Procedure) Act* 1999 enables a court, upon a plea or finding of guilt, to order the dismissal of charges without proceeding to record a conviction. The order can be made with or without conditions.

The key effect of non-conviction on the application of penalties under the Road Transport Act 2013 is that a licence sanction (disqualification), which is a proven strategy to address impaired driving, does not apply.

Over the three year period ending June 2017, 56 per cent of low range drink driving first offenders (9,228 out of 16,576 offenders in the analysis) received a non-conviction order in court (typically a 'section 10'). Similarly, 36 per cent of first offences for driving with the presence of an illicit drug resulted in non-conviction (5,369 out of 14,769 offenders).¹⁹

The NSW Bench Book highlights that 'Section 10 provides a useful safety valve for ensuring that justice can be served in circumstances where, despite a breach of the law, there are such extenuating circumstances or the matter is so trivial that punishment does not seem appropriate.'²⁰

The reform proposed in the Bill does not question the legality of current Court outcomes, or suggest that Courts are incorrect in recording a non-conviction. For this reason, a qualitative,

¹⁸ US studies indicate drivers are arrested once for every 80 trips they make with BACs over .08 (Ferguson, 2012, Cited in 'Countermeasures That Work: A Highway Safety Countermeasure Guide for State Highway Safety Offices, Eighth Edition (2015), at 1-2.

¹⁹ Source: Bureau of Crime Statistics and Research. Includes bond without conviction and no conviction recorded.

²⁰ Sentencing Bench Book, Section 10 dismissal of charges and conditional discharge, at [5-020]. Available at: https://www.judcom.nsw.gov.au/publications/benchbks/sentencing/dismissal_of_charges.html

case by case analysis of the rationale of the Courts for making the orders has not been attempted. Rather, with drink driving still contributing to 14% of the road toll and illicit drugs present in 21%, there is a strong argument for these offences to be dealt with by a strong and certain penalty.

However, there is sound and consistent evidence that removing a driver’s right to drive is an effective strategy to prevent drink driving.²¹ As outlined above, the NSW drug driving policy framework adopts a similar deterrence based model that has been successfully applied to tackle drink driving and reduce death and serious injury.

To deliver ongoing improvements in the penalty framework and consistent with maximising deterrence, the Bill seeks to increase the certainty of a proven road safety countermeasure as part of a holistic package of reform. This is coupled with increased enforcement.

The Bill also does not remove or diminish any current discretion of the Court to apply an appropriate sentence if the offender elects to have their matter and extenuating circumstances or other relevant factors considered by the Court.

Penalty notice fine level and maximum court penalty

The Bill proposes a penalty notice fine of \$561 (i.e., a Level 7 fine). In 2017, the average fine issued by Courts was \$482 for a low range PCA first offence and \$473 for a drug presence first offence.²² These amounts have remained consistent over time.

As outlined in the Bill, the maximum fine penalty for lower range PCA or drug presence first offence, is proposed to increase from 10 penalty units (\$1,100) to 20 penalty units (\$2,200). For a first offence, this is equivalent to typical maximum court fines for NSW Road Rules offences (generally 20 penalty units. For a second or subsequent offence, the maximum fine will increase from 20 (\$2,200) to 30 (\$3,300) penalty units.

These represent the maximum fines that a Court can impose. As is currently the case, the Court will apply judgment in ordering the most appropriate penalty based on the circumstances of the case. The intention is to send a clear message to the community that any drink driving or drug presence offence is considered at least as serious as other safety offences in the NSW Road Rules.

Amounts proposed for NSW penalty notices for drug and alcohol related offences are generally consistent with penalty notices for comparable offences in other jurisdictions (see table below).

Jurisdiction	Low range drink driving ‘first offence’	Presence of an illicit drug ‘first offence’
<i>NSW – Proposed penalty notice</i>	<i>\$561</i>	<i>\$561</i>
NSW Court (2017 Average)	\$482	\$473
Victoria	\$484*	\$484
South Australia	\$613	\$613
Northern Territory	\$400	\$400

*Victoria: Fine is in addition to the cost of an alcohol interlock, offender education course and a 3 month licence sanction.

²¹ Terer K & Brown R., ‘Effective drink driving prevention and enforcement strategies: Approaches to improving practice’ (2014) Trends & issues in crime and criminal justice No. 472, Canberra: Australian Institute of Criminology. <https://aic.gov.au/publications/tandi/tandi472>

²² Source: Bureau of Crime Statistics and Research.

Potential effect on the number of Court matters

The primary purpose of the Bill is to reduce fatalities and serious injuries and deliver enhanced road safety outcomes. A secondary outcome is the potential effect on Court matters.

In 2017, there were over 330,000 matters in the Local Court.²³ Drink and drug drive offences are among the most common traffic matters dealt with in the Court. It is estimated that lower range drink and drug drive first time offenders currently number more than 13,000 annually.

The number of drug presence first offences is expected to grow over the next three years due to increased enforcement. NSW is doubling its Mobile Drug Testing regime and will have the largest roadside illicit drug testing program in Australia by the end of 2020 – that is, 200,000 tests per year.

The degree of change in offence numbers will depend on the behavioural response of drivers to the combined influence of enforcement, the sanctions proposed in the Bill, and public education.

While the reforms ensure offenders can elect to have their matter heard in Court, and it is expected that some offenders will wish to seek consideration in Court or plead not-guilty to an offence, it is reasonable to expect a reduction in overall number of matters in the NSW Local Court.

The actual impact on the number of Court matters will depend on offender response to the reform and perception of the legitimacy of the sanctions and the resulting rate and numbers of offenders who elect to have their matter determined in Court.

The effect of the reforms will be monitored, including Court outcomes and road safety impacts (see Monitoring and Evaluation).

Report on drink driving sanctions and recidivism in Victoria

Parliamentary debate on the Bill has included multiple references to published Victorian research which appears to suggest that there is markedly higher recidivism in Victoria, where penalty notices are an option for certain drink driving offenders rather than mandatory Court attendance.

Comments reflect input from legal stakeholders:

'...the Victorian laws on which this bill is modelled have been in force since 1994, and those laws include mandatory education for those who are caught drinking and driving. In contrast, the New South Wales law mandates that individuals found in breach of the law are brought before the courts, and education programs are not mandatory here. However, the recidivism rate in Victoria is approximately 29 per cent while in New South Wales it is just 8.1 per cent. This statistical information is available in a September 2016 report titled, "The Effect of Sanctions on Victorian Drink-Drivers," and also via the NSW Bureau of Crime and Statistics and Research [BOCSAR]. Mr Sutton and others have therefore argued that our system is better than the Victorian system in encouraging drivers not to drink or to repeat their offence.' (18 September 2018, Legislative Council, Second Reading Debate, The Hon. Paul Green).

Importantly, these numbers are not comparable and do not support inferences that one system is better than the other.

The Victorian recidivism of 29 per cent quoted covers an 18 year period. It is based on offence and crash histories of drink drivers from 2006 to 2014 and looking back 10 years, as far back as 1996. Many countermeasures were not in place dating back to 1996.

²³ Local Court of New South Wales, *Annual Review 2017*. Available at: <http://www.localcourt.justice.nsw.gov.au/Documents/Annual%20reviews/13093%20Local%20Court%20Annual%20Review%202017%20v3%20accessible.pdf>

NSW BOCSAR research during a similar period (2002-2006) found drink driving recidivism of 15.5 per cent over a five year period.²⁴

There are a range of reasons why direct comparability in reported recidivism rates between NSW and Victoria should be avoided and treated with caution, including:

- Recidivism in Victoria is measured over a 10 year period, which is double the time period used in NSW. NSW uses a five year period for analysis, as this is consistent with the period in the *Road Transport Act 2013*. This is a key reason for Victorian figures appearing higher.
- The mix of targeted and general police enforcement strategies may differ resulting in different detection and recidivism rates across jurisdictions
- The 29 per cent recidivism rate in the Victorian study includes all drink driving offences – low, middle and high range. This includes offences that involve a mix of a court appearance and penalty notices.
- Many countermeasures were not in place dating back to 1996 during the Victorian study period. For example, penalty notices for lower level drink driving offences were coupled with demerit points – not an automatic licence loss, as is proposed in the Bill. Victoria subsequently moved away from a demerit point approach in April 2018 with a three month period licence sanction now systematically applied where a penalty notice is issued for a lower range drink driving offence.

It should be noted that the purpose of the Victorian research quoted was to use study periods dating back to 1996 to look at the benefits of countermeasures in Victoria, including licence sanctions, alcohol interlocks, and immediate licence suspension.

The rate of offending prior to, during and after licence bans was investigated. Higher recidivism occurs between being caught by Police and waiting for the licence sanction to be applied. Recidivism drops by 66-71 per cent and crashes drop by 78-82 per cent whilst the licence ban is in place. This is consistent with findings internationally of the road safety benefit of licence sanctions and disbenefit of delaying licence sanctions once detected by police.

Note: The NSW Bureau of Crime Statistics and Research (BOCSAR) advise that the 8.1% figure quoted refers to the number of persons found guilty of a low range drink driving offence as their principal offence in the Local Court who had another proven offence (on any type) within 12 months of their initial conviction. This is not a count of drink drinking recidivism.

Aboriginal road safety outcomes and drink driving

While the Bill includes reforms that will deliver road safety outcomes for all road users, particularly in country NSW, the barriers to legal and safe driving for some Aboriginal people are well-documented.

Crash statistics show that Aboriginal people are overrepresented in serious casualty road trauma compared to non-Aboriginal people²⁵.

Aboriginal and Torres Strait Islander people make up 2.9 per cent of the NSW population but are involved in approximately 4.7 per cent of serious casualty road trauma²⁶. Aboriginal people

²⁴ NSW Bureau of Crime Statistics and Research (2009) Drink-driving and recidivism in NSW. Contemporary Issues in Crime and Justice Number 135.

²⁵ April 2017 | Version: 2.0 Road Trauma Amongst Aboriginal and Torres Strait Islander People in NSW 2005 – 2015 Statistical Profile <http://roadsafety.transport.nsw.gov.au/downloads/aboriginal-road-trauma-2005-15.pdf>

²⁶ Centre for Road Safety, Road Crashes Analysis 2012 – 2016p (fatal and matched serious injuries).

face barriers to obtaining, retaining and regaining driver licences²⁷. The Aboriginal Licence Holders Statistical Report 2014 found that:

- Aboriginal licence holders are 2.7 times more likely to have had a driver sanction of any kind of imposed on them in the last six years, three times more likely to have had a fine default licence suspension issued and ten times more likely to have had a court disqualification.
- Aboriginal licence holders are substantially more likely to have committed alcohol related offences, unlicensed driving, licence conditions offences and seatbelt offences.²⁸

An internal *Austrroads Report on Improving Driver Licensing Programs for Indigenous Road Users and Transitioning Learnings to Other User Groups* indicates that evidence of the positive social and economic impact of reducing road trauma, reducing incarceration and contact with the justice system and enhancing access to education and employment can be implied from consideration of the benefits and costs of intervention through licensing programs.²⁹

The NSW Government has a suite of programs in place to improve the rates of Aboriginal driver licensing across NSW, including the Driver Licensing Access Program, Work Development Orders program and Transport Access Program.

Licensing support for Aboriginal people will be further consolidated and strengthened under the NSW Road Safety Plan 2021 by expanding support and mentoring programs for disadvantaged people. The Plan also commits to develop and implement an Aboriginal community engagement and capacity building program to support road safety in Aboriginal communities.

²⁷ [Auditor General's Report: Improving Safe and Legal Driving Among Aboriginal People](#), 2013

²⁸ The Aboriginal Licence Holders Statistical Report 2014, Safety and Compliance Division, NSW Roads and Maritime Services

²⁹ Austrroads Internal Report Improving Driver Licensing Programs for Indigenous Road Users and Transitioning Learnings to Other User Groups

Other key aspects of the Bill

Expanding the Mandatory Alcohol Interlock Program

Interlocks are devices that connect to the ignition of a vehicle and prevent it from starting if the driver cannot pass an alcohol breath test. Interlock programs are designed to enable offenders to return to licensing after an offence, but only if they completely separate drinking from driving.

The US Department of Transportation, National Highway Traffic Safety Administration has identified alcohol interlocks as an effective deterrent, and schemes are widespread across North America – with research indicating programs reduce drink driving re-offending by over 60 per cent and influence both first time and repeat offenders.³⁰

Recent analysis of the Victorian interlock program for repeat offenders, which has been in place longer than the NSW program, was published in late 2016. It found that during the alcohol interlock period there was an 81 per cent reduction in drink-driving offences in the group of offenders with an interlock compared to a 10 per cent reduction in a comparison group without an interlock.³¹

Interlock programs have been introduced in all states across Australia over the last 15 years, ranging from voluntary programs to mandatory programs which encompass more drink driving offenders. Expansion of alcohol interlock programs is recognised as a priority in the National Road Safety Strategy 2011-2020.³²

Since 1 February 2015, NSW courts are required to order offenders convicted of high range, repeat and other serious drink driving offences to complete a minimum licence disqualification and a period of participation in the interlock program. Since the start of the program to end June 2018, over 6,900 interlock licences have been issued in NSW.

Proposed changes

The bill extends the requirement for a court to issue a mandatory interlock order to include offenders convicted of a middle range PCA first offence or driving under the influence first offence where the offence involves alcohol and a motor vehicle. There are around 6,500 of these offenders per year.³³

Opportunity to exempt offenders from the interlock program

There are current provisions in the Road Transport Act 2013 which allow the Court to make an exemption order, rather than interlock order if:

- an offender has a medical condition which prevents the offender from providing a breath sample to operate the device, or,
- if an offender does not have access to a vehicle in which to install a device.

Approximately 5 per cent of relevant cases currently result in an exemption order and expanding exemption provisions is not proposed in the Bill.

Exemptions from mandatory alcohol interlock programs vary from state to state. In Victoria and South Australia, interlock exemptions are limited to medical conditions only. Western Australia

³⁰ US Department of Transportation, National Highway Traffic Safety Administration, 'Ignition interlocks: what you need to know' (2009) Department of Transportation, Washington, DC.

³¹ Vicroads, *The Effect of Sanctions on Victorian Drink-Drivers* (2016)

³² Australian Transport Council, 'National Road Safety Strategy 2011-2020'. Available at http://roadsafety.gov.au/nrss/files/NRSS_2011_2020.pdf

³³ Source: Bureau of Crime Statistics and Research

also offers exemptions for medical conditions and, reflecting the large distances to travel in that state, if a person lives a long distance from a service centre.

In NSW, there are alternative measures in place to assist offenders to complete their court ordered interlock.

The Act already includes an express obligation on Roads and Maritime Services to have a financial assistance scheme in place to support offenders to meet the costs of interlock services. A concession rate of 35 per cent off the full cost of the interlock is available to full rate pension recipients, low income Health Care Card holders and Department of Veterans Affairs Gold Card holders.

A Severe Financial Hardship scheme has also been established to provide short term financial assistance (up to 100 percent of standard program fees) to participants who apply for assistance and meet severe financial hardship criteria.

Technically, interlock devices can be installed on a wide range of vehicles used for work, including both light and heavy vehicles, and accredited providers are required to provide services in country NSW.

It is also important to note that offenders who are exempted from the interlock program receive disqualification periods that are longer than the upfront off-the-road period if they receive an interlock order. Exempting offenders, for example, on work grounds, may have the perverse outcome of resulting in a person being unable to work for longer than if they returned to licensing with an interlock installed.

The effect of exemptions will be considered in future evaluation of the outcomes of the current and expanded interlock program (see Monitoring and Evaluation of the Reform).

Development of a drink and drug driving education strategy

The NSW Government's Road Safety Plan 2021 acknowledges that education is an important component of a Safe System approach to improving road safety and change behaviour, complementing other strategies such as enhanced enforcement and penalties.

There are currently two key, but different education programs in NSW, which cater for drink and drug driving offenders. Neither is reaching all or most drink and drug driving offenders.

The Traffic Offender Intervention Program (TOIP) is an intervention program for traffic offenders regulated under the *Criminal Procedure Act 1986*. The program includes information about speeding, drink and drug driving, fatigue, distraction, vulnerable road users and vehicles and vehicle maintenance.

TOIP are typically run by community organisations and review of the program has found strong stakeholder support.³⁴ Of the 16,300 participants who attempted a course in 2016, over 50 per cent had drink (all PCA ranges) or drug drive presence offences.

Participation in the TOIP can be required by an order of a court. Some offenders also opt to undertake the course before their Court date, so that it may be raised in submissions to the Court and potentially considered in sentencing.

A more focussed drink and drug driving rehabilitation course is offered via the Sober Driver Program which is delivered by Corrective Services NSW and funded by the Community Road Safety Fund. The course is targeted at repeat and high risk drink driving offenders, and caters for 700-800 participants annually.

³⁴ Department of Justice and Transport for NSW - TOIP Review. Available at: <http://www.localcourt.justice.nsw.gov.au/Documents/Traffic%20Offenders%20Program/2017%20updates/Summary%20of%20TOIP%20review.pdf>

The Sober Driver Program includes topics to help participants understand the effects of drink driving on their self and others to build skills and strategies to avoid re-offending in the future. Only facilitators who have completed comprehensive training in group work skills and who have attended a program specific workshop may deliver the Sober Driver Program.

Over 10,000 participants have completed the Sober Driver Program since 2002, largely through Corrective Services as part of their Court order or supervision. An evaluation of the program has shown that it reduces repeat drink driving offending by almost half.³⁵

While current courses offer benefits, a new, holistic plan is needed that leverages the best from existing programs and considers new approaches to extend reach to more offenders.

Proposed changes

The bill provides that Roads and Maritime Services may require drink and drug driving offenders to complete an education course as prescribed by regulation. If the requirement is not met, Roads and Maritime Services may suspend a person's driver licence or refuse to issue one if an application is made.

Development of a drink and drug driving education strategy

The bill provides the legislative framework to enhance education requirements for offenders - the provisions will only commence once a comprehensive education strategy.

Transport for NSW will work with other agencies and key stakeholders including the Departments of Premier and Cabinet, Health, Education and Justice to examine best practice in the delivery of evidence-based adult education and targeted courses for different types of offenders to treat diverse patterns of behaviour.

This will include reviewing and leveraging the best from programs and approaches in other States and consultation with existing course providers in NSW. The strategy will also take into consideration remote and regional delivery of the program so that education is available to all offenders.

The inclusion of education as a component alongside penalties and other sanctions highlights the NSW Government's commitment to holistic reform that reduces reoffending and road trauma. The strategy to support this reform will aim to pair the right education course to more offenders to maximise the benefits that can be achieved through education.

Consultation and development of the new education strategy will commence in the 2018/19 financial year. Pending finalisation of the strategy, it is expected that the provisions in the Bill will commence in 2019/20.

Refinements to the definition of 'drug'

The term 'drug' in the Act currently encompasses a broad range of illegal and pharmaceutical drugs and alcohol, specifically:

- alcohol, and
- a prohibited drug within the meaning of the Drug Misuse and Trafficking Act 1985 and
- any other substance prescribed by the statutory rules as a drug (pharmaceutical drugs).

'Prohibited drugs' that are listed in the Drug Misuse and Trafficking Act 1985, are typically drugs that have psychoactive effects and may be dangerous and either do not have medicinal

³⁵ Mills KL et al, 'An outcome evaluation of the New South Wales Sober Driver Programme: a remedial program for recidivist drink drivers (2008) Drug and Alcohol Review 27(1):65-74.

value or have a medicinal use but may be misused. This includes, among many others, heroin, cocaine, cannabis, ephedrine, speed, ecstasy, LSD, barbiturates and fentanyl. It also includes synthetic opioids and analgesics such as oxycodone.

Drugs prescribed by the statutory rules as a 'drug' also already include common pharmaceuticals drugs including a large range of benzodiazepines, and codeine.

It is an offence, under section 112 of the Road Transport Act 2013, to drive under the influence of a 'drug'. If a substance is not a listed 'drug' it affects the likelihood of a successful drug driving prosecution, even if the substance is known to impair physical or mental faculties and there are Police observations that a person appeared affected when driving.

In January 2018, the Premier announced that, as a priority road safety action, the NSW Government would be completing a review to identify appropriate restrictions to balance the need of people taking medication and the safety of the broader community on the road.

The review sought input from NSW Health and the Pharmacy Guild of Australia, as well as Police and road safety experts and was led by the NSW Government Interagency Drink and Drug Driving Consultation Group. This Group includes representatives from the Departments of Premier and Cabinet, Justice, Health, Education and NSW Police.

The review identified an opportunity to enhance the current definition of 'drug' to address the risk of driving while affected by new pharmaceuticals, as well as substances that have no medicinal value regularly enter the drug market. With the current provision, drugs can only be added to the definition in the *Road Transport Act 2013* by new legislation or regulation. This does not reflect the realities of the modern drug market.

Proposed change

The bill amends the definition of drug to include, in addition to the current substances, any other substance that when taken by an ordinary person, may deprive that person of, or may impair, his or her normal mental or physical faculties.

This definition of 'drug' is most relevant to the offence of driving under the influence offence (section 112 of the Road Transport Act 2013), and when blood and urine is collected in mandatory testing after a fatal crash. Other jurisdictions, including Queensland, Victoria and Western Australia, already have similar broader definitions in their road transport law.

This change means that if a driver is detected driving while under the influence of a new type of illegal or pharmaceutical substance and the prosecution can establish that a substance meets this description then it will be considered a 'drug'.

This change does not fundamentally change the elements of a driving under the influence offence – or Police procedures at the roadside.

As is currently the case in a driving under the influence matter, evidence will still be required to prove, in addition to establishing that the substance is a 'drug', that the person charged actually was under the influence of the substance to the satisfaction of the Court.

This may include Police observations at the roadside, as well as the results of blood and urine analysis. Blood and urine analysis can identify the type and concentration of the drug, and expert opinion can also be provided which may differentiate between therapeutic levels of a substance, and non-therapeutic misuse.

Effect on roadside drug testing of oral fluid

The proposed change to the definition of 'drug' does not have an impact on the scope of Mobile Drug Testing of drivers' oral fluid. Random drug testing of oral fluid detects four types of illicit drug only. These are THC, the active component of cannabis, methylamphetamine (speed or ice), MDMA (ecstasy), and cocaine. There is no roadside testing of oral fluid for pharmaceutical drugs, and this reform does not change that position.

Offence involving Sydney Harbour Bridge and disruption of traffic

The Bill also proposes the creation of a new offence under the *Roads Act 1993* for conduct that results in damage, disruption or obstruction and certain other conduct on the Sydney Harbour Bridge and any other major bridges or tunnels. The new offence will attract a maximum court penalty of 200 penalty units (or \$22,000) and/or 2 years imprisonment which will align the penalty with an existing offence of trespassing at the Sydney Opera House under section 28A of the Sydney Opera House Trust Act 1961. The trespassing offence that applies to the Opera House was introduced in 2004 following an incident where two individuals scaled one of the sails and painted an anti-war protest slogan with red paint.

The Sydney Harbour Bridge, like the Opera House, is one of the State's most iconic structures. It is, therefore, considered appropriate that similar penalties are in place to provide greater deterrence against incidents of a similar nature.

It is the Court's responsibility to determine guilt or innocence, according to precedents set by previous cases and on the basis of evidence presented by the prosecution and the defence. Should a person be deemed guilty of an offence, it is up to the Court to base the penalty on the information and facts received during the hearing and can set the monetary fine within the limits set by legislation. Section 21A of the *Crimes (Sentencing Procedure) Act 1999* also allows a court to take into account any mitigating factors when determining the appropriate sentence for an offence. These include such things as whether the offender was fully aware of the consequences of his or her actions because of their age, mental health issue or any disability.

Monitoring and evaluation of the reform

Monitoring and evaluation activities are critical to gauge the road safety, community, offender, stakeholder and court impacts of the drink and drug driving reforms, consistent with good practice and the *NSW Government Program Evaluation Guidelines* (NSW Department of Premier and Cabinet)³⁶.

Overall, evaluation is expected to cover all aspects of the reforms included in the Bill and will:

- Inform the ongoing implementation and adaptation of reform elements to improve delivery, including court impacts.
- Inform the refinement of road safety policy settings, including any required legislative or regulatory updates.
- Assess impacts on road user behaviour.
- At a later date when trend data become available, assess impacts on road trauma outcomes.

Evaluation design

Evaluation and monitoring activities will be guided by a detailed evaluation framework, including program logic, detailed research questions and planned data collection underpinned by a clear evaluation design. The evaluation framework will be developed in 2018/19 in consultation between key agencies and the NSW Bureau of Crime Statistics and Research (BOCSAR).

Monitoring will occur from commencement – to identify and immediately address high priority operational issues. Subject to detailed scoping, it is expected that the formal review and evaluation will include at three key parts:

1. Operational review after first 12 months

A formal interim review will begin after the legislative changes have been in effect for 12 months.

This will deliver a report to the NSW Government on the first 12 month operation of the new penalties and processes. Pending availability of Court, Revenue, driving record and NSW Police data, this will be completed by 18 months after the start date of the legislation.

The review will aim to:

- assess the extent to which the reforms have been implemented as planned,
- identify any unintended consequences including delivery agency (especially NSW Police and Roads and Maritime), court and stakeholder views, and;
- identify potential improvements in delivery.

The interim review will involve, at a minimum, consultation with agencies and stakeholders and analysis of administrative and available Court and Police data. It will include an examination of court election and appeals (in consultation with Justice and BOCSAR), any discernible trends in offences for unlicensed driving and operational policing issues.

³⁶ NSW Department of Premier and Cabinet. Available at: <https://www.dpc.nsw.gov.au/tools-and-resources/evaluation-toolkit/evaluation-in-the-nsw-government/>

2. Process evaluation and monitoring of behaviours and attitudes

A process evaluation will follow two to three years after the changes come into effect. The process evaluation will enable a fuller assessment of the implementation of the reforms after a longer settling-in period, and will include key stakeholders and interlock service providers.

The process evaluation will include collection of early outcome evaluation data, which may also allow for monitoring of early changes in:

- community attitudes towards drink and drug driving,
- self-reported drink and drug driving behaviours,
- compliance rates for drink and drug driving, and;
- drink and drug driving recidivism.

Note: A process evaluation of the current Mandatory Alcohol Interlock Program (MAIP) for repeat and serious drink driving offenders (introduced February 2015), is in progress and scheduled for completion in 2018. Process and communication improvements will be considered in delivering the expansion of the MAIP program.

3. Outcomes evaluation

Evaluation of impacts on road trauma requires a minimum five-year period after implementation, due to the statistically variable nature of crash data. The outcomes evaluation will also consider the long term effect on drink and drug driving recidivism, and other relevant traffic offending.

Note: An outcomes evaluation of MAIP commenced in 2015 and is scheduled for completion in 2020-21 and will be considered in the evaluation design for the reform package.

Governance and delivery of evaluation activities

The monitoring and evaluation program will be led by Transport for NSW, in close partnership with Justice and NSW Police.

It is expected that evaluation activities and reporting will be undertaken by independent evaluator(s), including any required stakeholder consultations and/or consultation with offenders. Delivery options that are consistent with good practice principles will be developed as part of the evaluation framework.

Progress regarding evaluation activities and findings will be reported to the Interagency Drink and Drug Driving Consultation Group, which includes representatives from Departments of Premier and Cabinet, Justice, Health, Transport, Education, and NSW Police. The Group provides a forum for interagency input on drink and drug driving initiatives.

Appendix A

Examples of independent evidence and reviews showing the benefit of immediate licence suspension in deterring drink driving, creating positive behaviour change and improving road safety outcomes

Jurisdiction	Key relevant findings	Study reference
1. European Commission review of 18 European countries	<p>Analysis of empirical literature showed that the general deterrent approach includes three main factors that often overlap: certainty of the punishment (including the risk of detection), severity of the punishment (including the legal threat of sanctions and how they are imposed by judicial or administrative practice), and celerity, or swiftness, of the punishment (how quickly after the offence is committed the punishment is applied).</p> <p>The main general deterrent factor is the perceived risk of detection, accompanied by a high level of real risk of detection to achieve significant levels of general deterrence.</p> <p>This project concluded that the certainty and celerity of sanctions are crucial for both the general and specific deterrent impact of sanctions – above all, the immediate withdrawal/suspension of the driving licence and a high level of perceived risk of detection. Driving licence withdrawal has been shown to be a greater deterrent than other sanctions (e.g. imprisonment or fines).</p>	<p>Knoche, A. (2013). <i>DRUID: Overview of the Project Results</i>. Proceedings from the 2013 International Conference on Alcohol, Drugs and Traffic Safety.</p>
2. Ontario, Canada	<p>A systematic literature review identified studies that assessed the impact of specific drinking driving policies. The impact for the administrative licence suspensions was obtained directly from Ontario studies, as well as corresponding estimates from other jurisdictions and from meta-analyses provided comparable estimates of impact with evidence of 17% reduction in drinking driver fatalities for administrative license suspensions. The study found that administrative licence suspensions prevented 353 drink driving related deaths and 17,546 drink driving-related injuries in Ontario. These trauma savings were valued at \$5,018,312,892 for lives saved and \$790,476,112 for injuries saved using the Willingness to Pay method.</p>	<p>Stoduto, G. et al (2013). <i>Cumulative prevention benefits and costs saved by drink driving policies: Estimates for Ontario, 1970-2006</i>. Proceedings from the 2013 International Conference on Alcohol, Drugs and Traffic Safety.</p>

Jurisdiction	Key relevant findings	Study reference
3. Ontario, Canada	<p>Results show that immediate and certain countermeasures, applied by the police at the time that the driver is stopped at roadside, are effective in preventing drinking and driving in both the general population and in the population of recidivist drink drivers. The evaluation found a roadside 90-day administrative driver's licence suspension is given to a driver who has a measured BAC > 0.08% reduced recidivism by 66%.</p> <p>Results support the transportation safety literature demonstrating the effectiveness of roadside administrative license suspension law as a deterrent to drinking and driving. Numerous studies have shown that immediate roadside suspensions for drinking and driving are highly effective deterrents resulting in lower driver re-arrests and crashes. Research suggests that suspensions are more effective when their administration is not dependent upon the discretion of enforcement officers, and that longer suspensions are more effective than shorter ones (e.g. Ross, 1987; Ross & Gonzales, 1988; Chaloupka, Saffer & Grossman, 1993; Williams, Weinberg & Fields, 1991; Watson, 1998; Nichols & Ross, 1990).</p>	<p>Ministry of Transport (2015). <i>Evaluation of Ontario's drink driving countermeasures</i>. Published report prepared by Ministry of Transportation's Road Safety Research Office.</p>

Jurisdiction	Key relevant findings	Study reference
4. British Columbia, Canada	<p>The immediate roadside prohibitions (IRP) program combined immediate short-term roadside suspensions with vehicle impoundment and monetary penalties to enhance the swiftness, certainty and perceived severity of sanctions for drinking and driving. These measures were associated with a substantial reduction in the prevalence of driving with a BAC over 50 mg/dL and driving with a BAC over 80 mg/dL. The percentage of drivers with BACs of at least 50 mg/dL decreased by 44%, and BACs over 80 mg/dL decreased by 59%. The decreases in drinking and driving were not restricted to specific sub-groups of drivers but were universal across age groups, sex, and communities.</p> <p>Previous research has demonstrated the beneficial impact of administrative licence suspensions, largely attributed to the speed and relative certainty with which the sanctions are applied (Mann et al. 2002, Ross 1987, Voas et al. 1998). The new administrative measures introduced in British Columbia also had the essential characteristics of effective deterrence: they were applied immediately, were applied with a high degree of certainty, and they were considerably more severe than the previous administrative prohibitions that had been in place for many years.</p>	<p>Beirness, D. J. & Beasley, E. E. (2013). <i>Roadside Surveys Evaluating Immediate Roadside Suspensions for Drinking Drivers in British Columbia, Canada</i>. Proceedings from the 2013 International Conference on Alcohol, Drugs and Traffic Safety.</p>
5. Australian review of international evaluation studies	<p>A review of the empirical evidence suggests strong support for the effectiveness of administrative licence suspension laws. The laws have been found to have both a general and specific deterrent effect. Specifically, introduction of the laws has been found to be associated with reductions in fatal and injurious crashes, both overall and alcohol related, as well on a number of measures often used as a proxy for alcohol-related crashes including night-time crashes, single-vehicle crashes, and crashes among younger drivers. Furthermore, the laws have shown evidence of motivating behaviour change among drink driving offenders, with substantial reductions in drink driving recidivism and self-reported impaired driving, particularly when combined with alcohol treatment programs.</p>	<p>Soole, D. W., Haworth, N. L. & Watson, B. C. (2008). <i>Immediate licence suspension to deter high-risk behaviours</i>. In Proceedings OF High risk road users - motivating behaviour change: what works and what doesn't work? National Conference of the Australasian College of Road Safety and the Travelsafe Committee of the Queensland Parliament, Brisbane.</p>

Jurisdiction	Key relevant findings	Study reference
6. USA review of international evaluation studies	<p>A summary of 12 evaluations found Administrative Licence Revocation (ALR) and Administrative Licence Suspension (ALS) laws reduced crashes of different types by an average of 13% (e.g. Wagenaar, Zobek, Williams, & Hingson, 2000). A more recent study examining the long-term effects of license suspension policies across the United States concluded that ALR reduces alcohol-related fatal crash involvement by 5%, saving an estimated 800 lives each year (Wagenaar & Maldonado-Molina, 2007). This approach provides swift and certain penalties for DWI, rather than the lengthy and uncertain outcomes of criminal courts.</p> <p>The National Highway Transportation Safety Authority recommends that ALR laws include a minimum license suspension of 90 days (NHTSA, 2006a).</p>	<p>Richard, C. M., Magee, K., Bacon-Abdelmoteleb, P. & Brown, J. L. (2018). <i>Countermeasures that work: A highway safety countermeasure guide for State Highway Safety Offices, Ninth edition</i>. Report No. DOT HS 812 478). Washington, DC: National Highway Traffic Safety Administration.</p>
7. Australian review of international evaluation studies	<p>Licence disqualification/suspension needs systematic application as it is the most effective penalty for drink-driving. Evaluations from the United States also indicate licence suspension is an effective drink driving penalty (Wagenaar et al. 2007). Reports on research (e.g. Briscoe, 2004) conclude that increased penalties would have been more effective if combined with improved drink driving enforcement and importantly, a consistent application of licence disqualification.</p>	<p>Terer, K. & Brown, R. (2014). <i>Effective drink driving prevention and enforcement strategies: Approaches to improving practice</i>. Trends & issues in crime and criminal justice No. 472. Canberra: Australian Institute of Criminology.</p>
8. Victoria, Australia	<p>By tracking drink drivers in Victoria for almost 20 years, the study found that:</p> <ol style="list-style-type: none"> a. Licence bans for drink-driving have resulted in fewer crashes and offences. b. The time between detection for drink-driving and a licence ban taking effect is associated with high rates of offending. This confirms Queensland research which also found a high re-offence rate prior to the licence sanction being applied. c. Immediate licence suspension was effective in reducing drink-driving re-offending and crashes, as well as other casualty crashes when it was extended to a larger group of first-time drink drivers (from 0.1 BAC instead of 0.15 BAC). d. Alcohol ignition interlocks were effective in reducing re-offending. 	<p>Watson, A. et al (2015). The impact of safety measures on the re-offence and crash rates of drink-driving offenders in Victoria. Proceedings of the 2015 Australasian Road Safety Conference 14 – 16 October, Gold Coast, Australia.</p> <p>Watson, A. & Imberger, K. (2016). <i>The effect of sanctions on Victorian drink-drivers</i>. www.vicroads.vic.gov.au</p>

Jurisdiction	Key relevant findings	Study reference
9. Ontario, Canada	A significant intervention effect was found in Ontario, with administrative license suspension law being associated with an estimated reduction of 14.5% in the numbers of fatally injured drivers. No corresponding effect was observed in the control provinces.	Asbridge, M. et al (2009). <i>The effects of Ontario's administrative driver's licence suspension law on total driver fatalities: A multiple time series analysis</i> . <i>Drugs: Education, Prevention and Policy</i> , 16(2).
10. Ontario, Canada	This study evaluated the early effects of Ontario's administrative license suspension law on alcohol-involved driver fatalities. A significant intervention effect was found, with administrative licence suspension law associated with an estimated reduction of 17.3% in the proportion of fatally injured drivers who were over the legal limit.	Mann, R.E, Smart, R.G, Stoduto, G., Beirness, D.J., Lamble, R., & Vingilis, E. (2002). <i>The early effects of Ontario's administrative driver's licence suspension law on driver fatalities with a BAC > 80 mg%</i> . <i>Canadian Journal of Public Health</i> , 93, 176-80.
11. Ohio, USA	This evaluation examined the specific deterrent impact of the Ohio administrative license suspension law on DUI recidivism. The data support the conclusion that, under the administrative license suspension law, license suspensions were earlier and more certain. Consequently, the number of drunk-driving convictions, moving offenses, and crashes of first and multiple DUI offenders were significantly reduced in the 2 years after their arrest for DUI.	Voas, R.B., Tippetts, A.S., & Taylor, E.P. (1998). <i>Impact of Ohio administrative licence suspension</i> . Proceedings of the 42nd Annual Conference of the Association for the Advancement of Automotive Medicine. Des Plaines IL: Association for the Advancement of Automotive Medicine, pp 401-15.

Jurisdiction	Key relevant findings	Study reference
12. USA state-wide	This study evaluated the license suspension laws in each of 46 U.S. states using 1 to 2 decades of long-term follow-up data on fatal car crashes. Administrative license suspension policies have statistically significant and substantively important effects in reducing alcohol-related fatal crash involvement by 5%, representing at least 800 lives saved per year in the United States. Moreover, these laws have similar effects on drivers at all drinking levels--from lower-risk drivers below the legal alcohol limit to drivers at extreme levels of intoxication.	Wagenaar, A.C. & Maldonado-Molina, M.M. (2007). <i>Effects of drivers' license suspension policies on alcohol-related crash involvement: long-term follow-up in forty-six states</i> . <i>Alcoholism: Clinical Experimental Research</i> , 31(8):1399-406.
13. Manitoba, Canada	In Manitoba, there was a 27% decrease in driver fatalities with a positive BAC and a 44% reduction in repeat impaired driving offences among those subjected to administrative license suspension in the four years following its introduction	Beirness, D.J., Mayhew, D.R., Simpson, H.M., & Jonah, B. (1997). <i>The impact of administrative licence suspension and vehicle impoundment for DWI in Manitoba</i> . In C. Mercier-Guyon (Ed.), <i>Proceedings of the 14th International Conference on Alcohol, Drugs and Traffic Safety</i> , Vol. 2 (pp. 919–925).
14. New Mexico, USA	This study of New Mexico law examined evidence of a deterrent impact of administrative license revocation. Interrupted time-series analysis finds a permanent drop in the proportion of driver and pedestrian fatalities involving the presence of alcohol precisely at the time that the law went into effect.	Ross, H. (1987). <i>Administrative license revocation in New Mexico: An evaluation</i> . <i>Law and Policy</i> , 9, 5-16.