

Transport for NSW | Centre for Road Safety

# NSW Drink and Drug Driving Reforms

## Monitoring report 2

January 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 second report in the series; the first was released in July 2020 on the CRS website, and included data through September or December 2019, depending on data source. The data in this report builds on data presented in the July 2020 monitoring report, and includes data through June or September 2020.

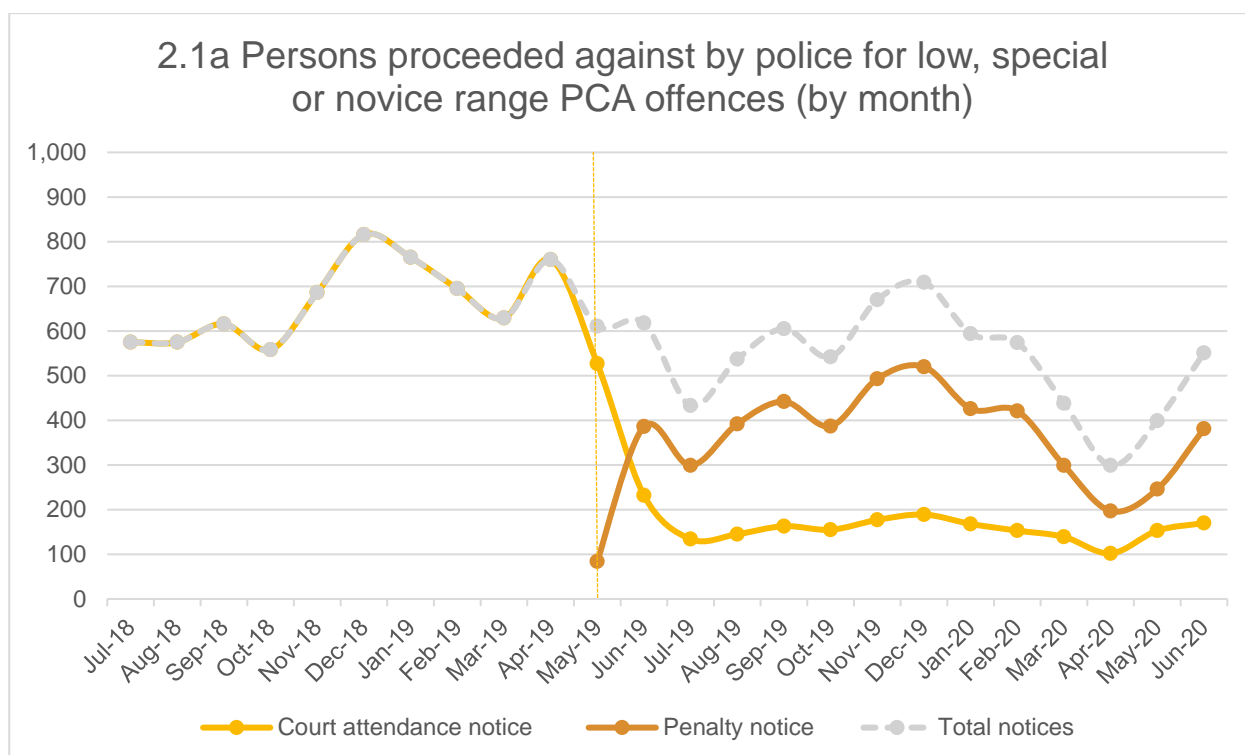
Selected metrics are outlined below to demonstrate implementation of key areas of the reforms. A section on mobile testing rates has also been included for random breath testing (RBT) and mobile drug testing (MDT).

## 2 Penalty notices for 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

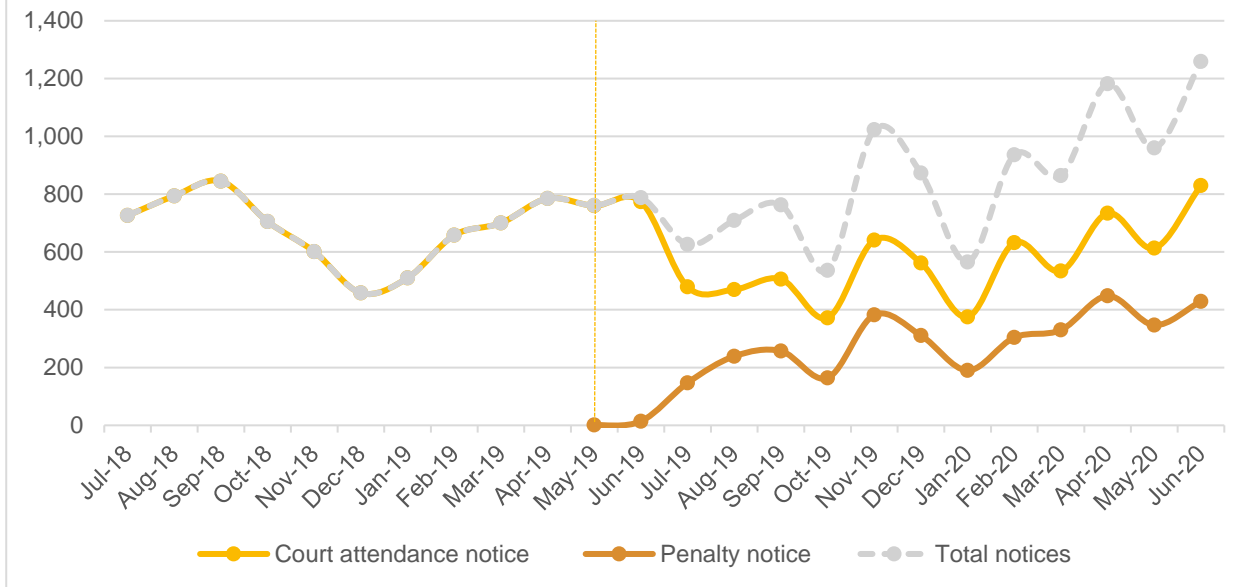


Source: NSW Bureau of Crime Statistics and Research – September 2020

This graph includes data for both first-time and repeat offences. The July 2020 monitoring report identified a drop in the number of court attendance notices issued for lower-range offences from May 2019, when penalty notices and license suspensions for first-time lower range offences were introduced, through to September 2019. Available data now covers the period through June 2020, and indicates that this trend has continued, with the number of court attendance notices for these offences remaining lower than the number of penalty notices issued each month.

The overall number of persons proceeded against for low, special, and novice range PCA offences dropped in April 2020. This timing corresponds with the height of new COVID-19 cases in NSW, and a decrease in levels of community activity and movement (including driving), in line with restrictions introduced by the NSW Government to deal with COVID-19. There was also reduced enforcement at this time (See Section 5 for more detail about RBT and MDT numbers).

## 2.1b Persons proceeded against by police for an illicit drug driving offence (by month)

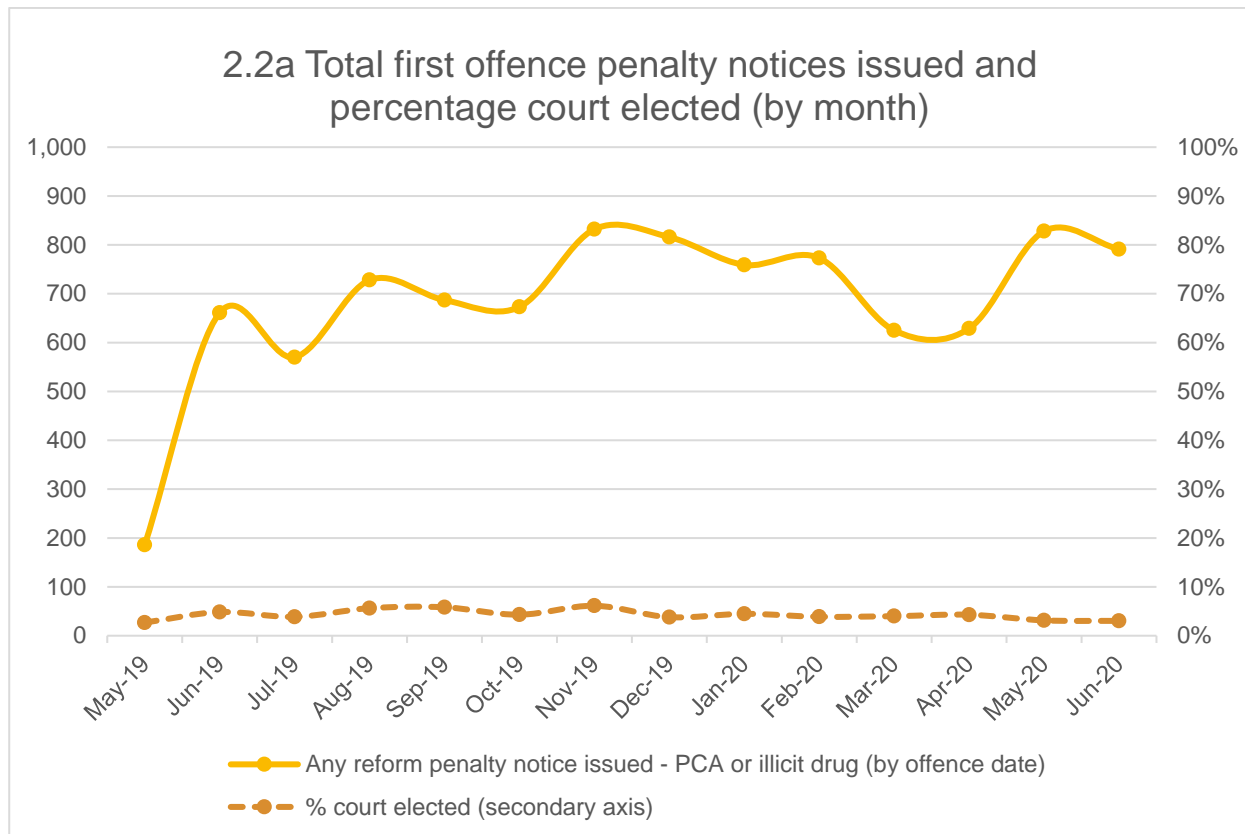


Source: NSW Bureau of Crime Statistics and Research – September 2020

This graph includes data for both first-time and repeat offences. In the July 2020 Monitoring Report, data through September 2019 showed that there was a drop in the number of court attendance notices issued for illicit drug driving offences, starting in July 2019. It was expected that this drop in court attendance notices, and corresponding increase in penalty notices, occurred later than for PCA offences because penalty notices for illicit drug driving cannot be issued on the spot, instead they are issued after laboratory confirmation of drug test results. Even when the data is extended through June 2020, the number of penalty notices issued for illicit drug driving offences remains lower than the number of court attendance notices issued.

This data shows that both the number of court attendance notices and penalty notices for illicit drug driving offences have been increasing since October 2019.

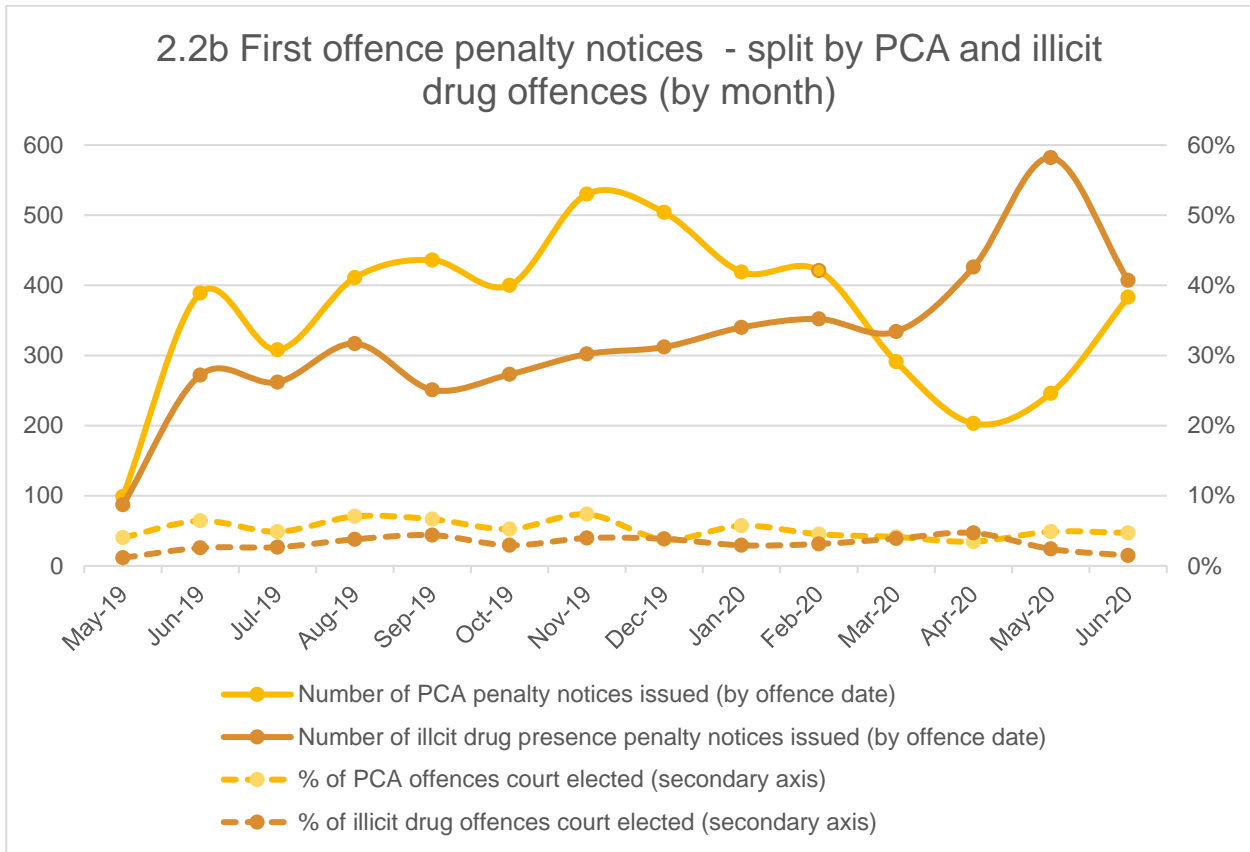
## 2.2 Penalty notices issued and court elections



Source: Revenue NSW – November 2020

Note: The total penalty notices figure includes all penalty notices introduced in the reforms (first time lower-range PCA and illicit drug offences); The per cent court detected is calculated by identifying the number of PNs with an offence date in a particular month of issue, that 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. The rate of court election for first offence penalty notices has remained low. Across the entire period from May 2019 to June 2020, the rate of court election for first offence penalty notices was 4.4 per cent. For the new data since the last monitoring report (January 2020-June 2020), the rate of court election was 3.8 per cent. A preliminary impact assessment provided by Department of Justice prior to implementation of the reforms estimated a higher court elect rate of 20 per cent.



*Source: Revenue NSW – November 2020*

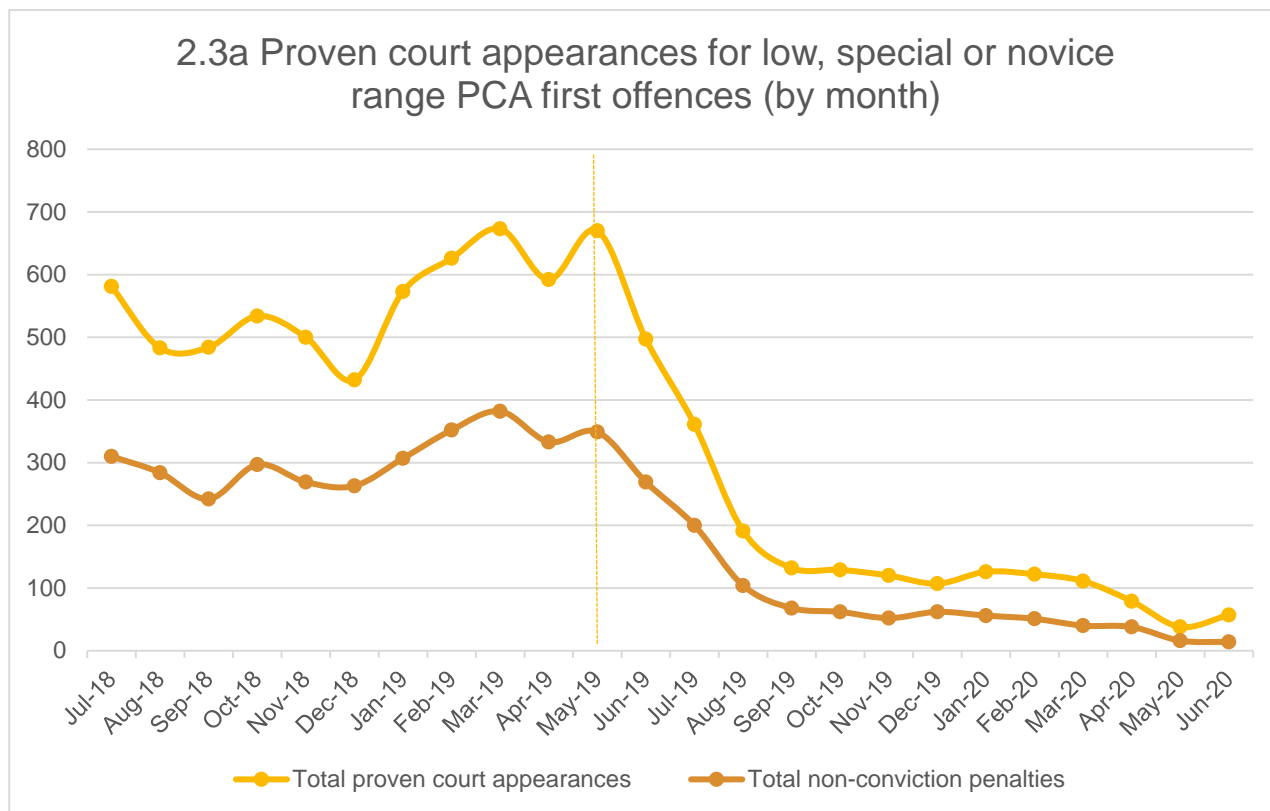
The data for first offence penalty notices in Figure 2.2a is grouped into PCA offences and illicit drug offences in Figure 2.2b above.

The number of penalty notices issued for illicit drug presence offences peaked in May 2020, when 582 penalty notices for illicit drug presence were issued. Meanwhile, in April 2020 the number of penalty notices for lower range PCA offences dropped to its lowest level since May 2019, with 203 penalty notices for lower-range PCA offences issued.

Across the period from May 2019 to June 2020, the average rate of court election was higher for PCA offences (at 5.4 per cent) than for illicit drug presence offences (at 3.2 per cent).



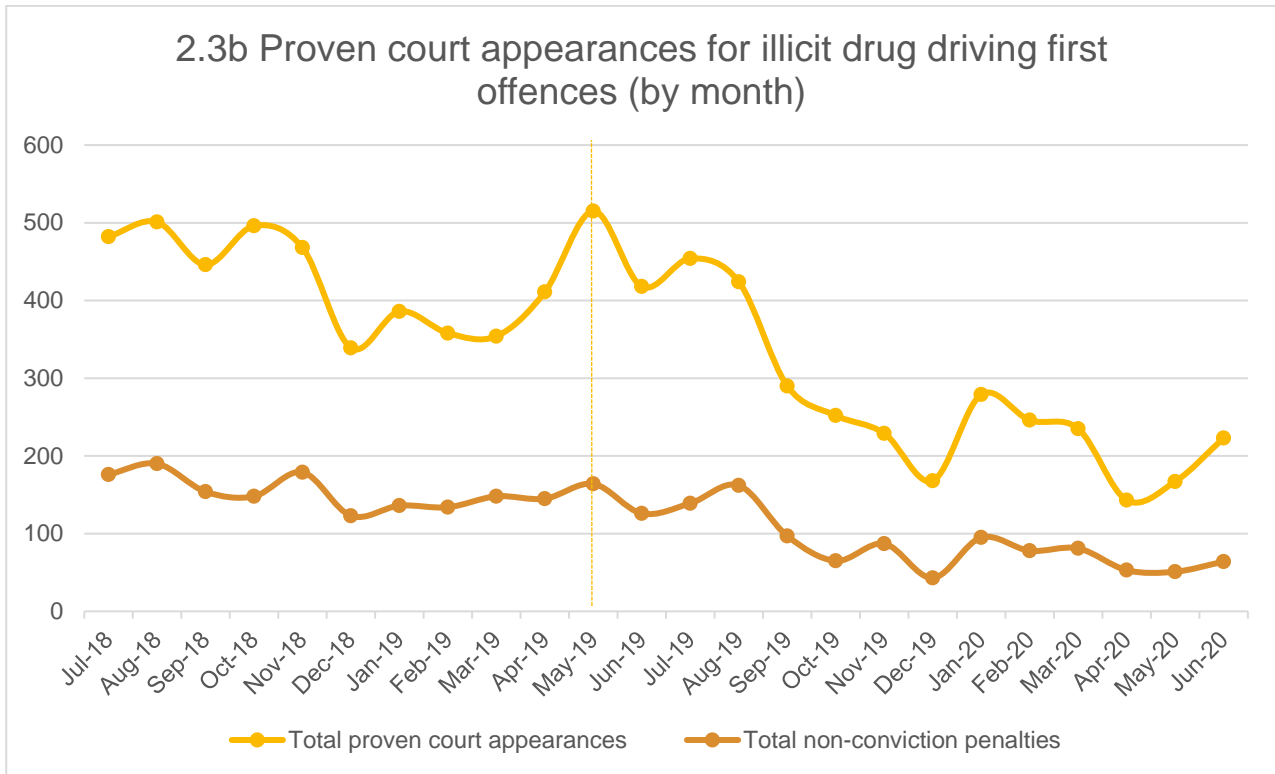
## 2.3 First time lower-range offences resulting in a non-conviction penalty



Source: NSW Bureau of Crime Statistics and Research –September 2020

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 finalized in 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 (5.4 percent across the period from May 2019 to June 2020).



*Source: NSW Bureau of Crime Statistics and Research – September 2020*

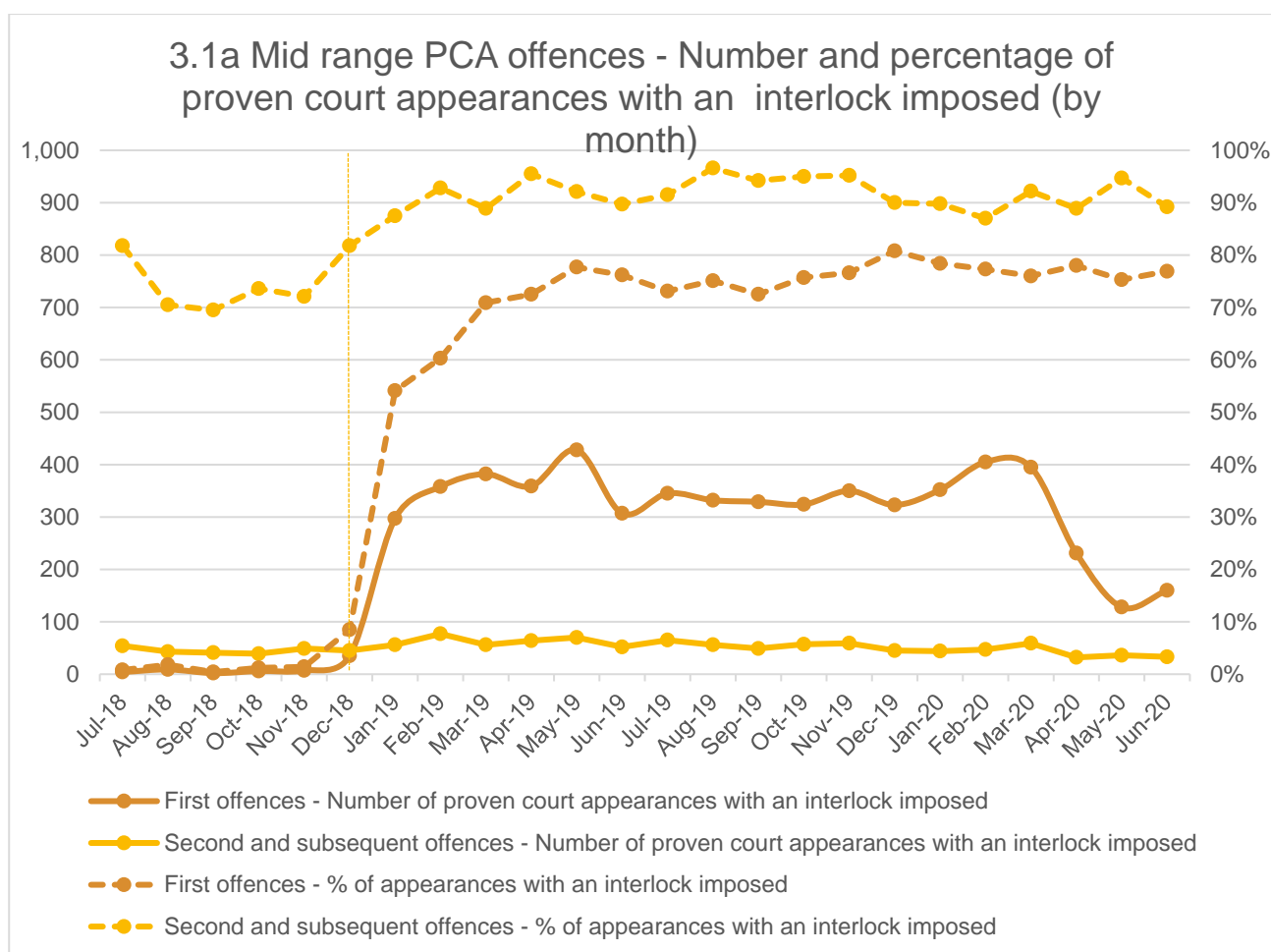
As noted in the July 2020 monitoring report, the number of proven court appearances for first-time illicit drug driving also started to decrease in September 2019 – that figure has remained at under 300 each month since September. As noted in Section 2.2, the rate of court election of penalty notices for illicit drug presence offences is only 3.2 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 a 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 – September 2020

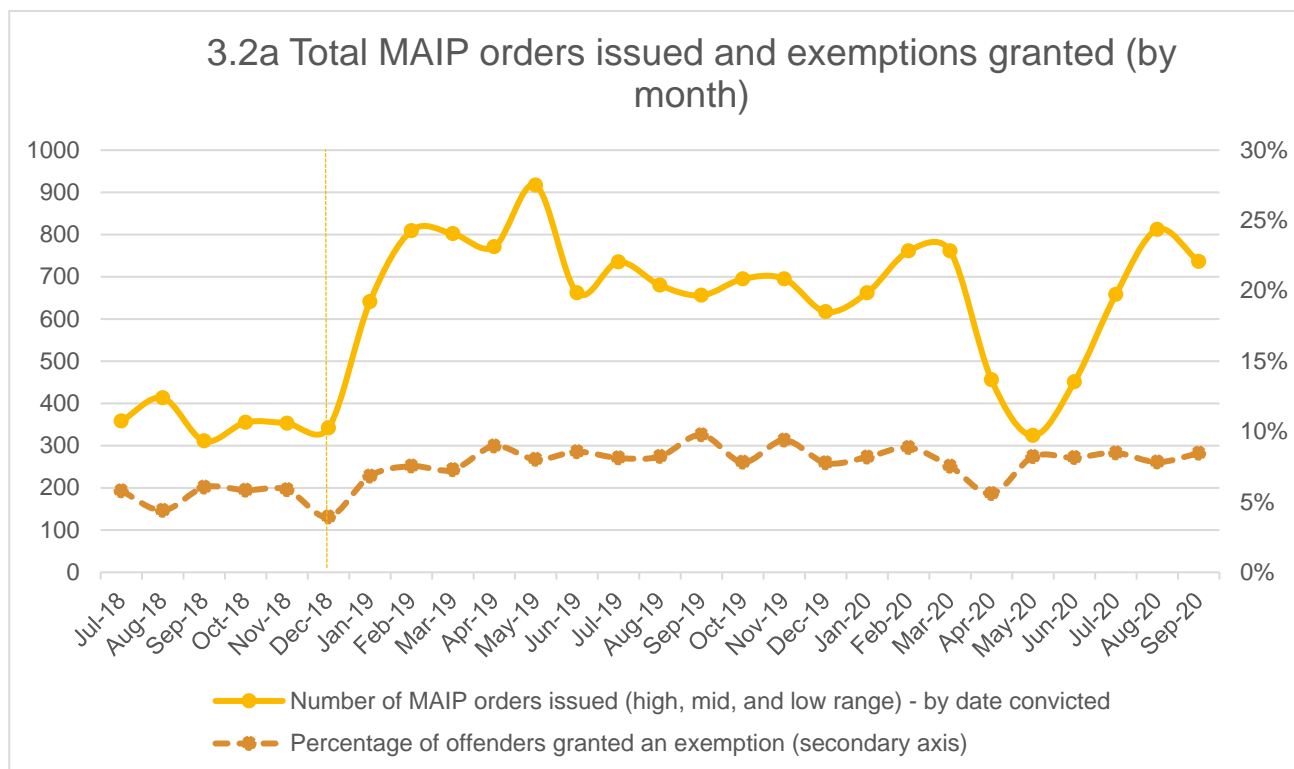
Extension of MAIP to include first-time mid-range offences came into effect in December 2018. In the six months leading up to the reforms (July to December 2018), the proportion of proven court appearances with an alcohol interlock imposed for a mid-range PCA first offence ranged between 0.8 per cent and 8.5 per cent. This figure

increased gradually following the extension; by January 2019 this figure increased to 54.1 per cent, and from March 2019 to June 2020 was above 70.0 per cent each month.

There was no change to the interlock policy for second and subsequent offences, which were already included in the Mandatory Alcohol Interlock Program. Prior to extension of the program, the proportion of proven court appearances with an interlock imposed was between 69.5 per cent and 81.8 percent. After the extension of the program to mid-range first time offences, the proportion of second and subsequent offences with an interlock imposed also appears slightly higher, ranging between 87.0 per cent and 96.6 per cent.

There was a drop in the absolute number of proven court appearances with an interlock imposed starting in April 2020; however the proportion of appearances with an interlock imposed remained about the same. The reduction in proven court appearances may be due to changes to court operations as part of the government's COVID-19 response. In response to the global COVID-19 pandemic, the NSW and federal governments implemented various measures to minimise personal contact and contain the spread of the virus. One of the measures involved postponing the first listing of summary matters involving no bail considerations.

## 3.2 MAIP order exemptions



Source: Alcohol Interlock Unit – October 2020

After December 2018, the absolute number of MAIP orders issued increased across high, mid, and low range offences, as expected. 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.

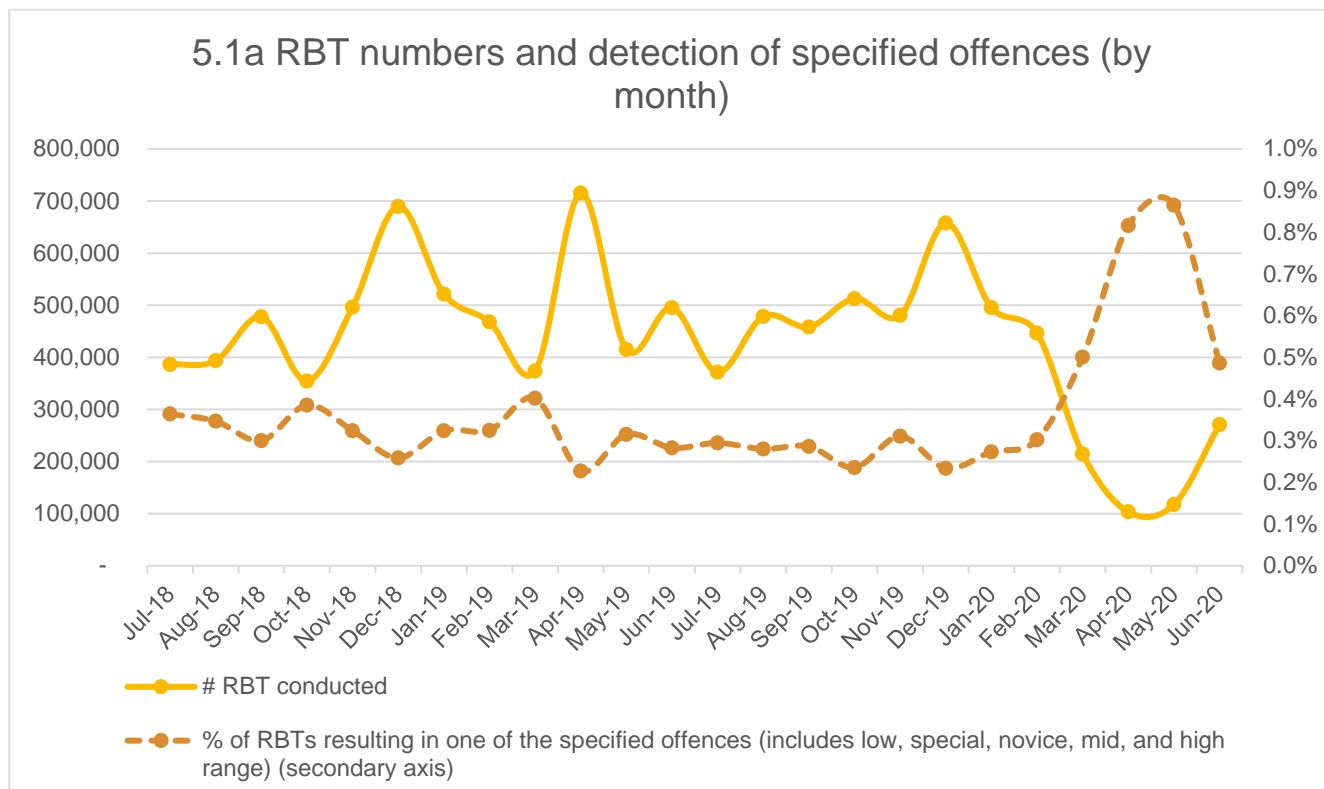
The proportion of offenders granted an exemption also increased from January 2019, which may have been caused by mid-range first time offenders taking up the new severe hardship exemption category. Between July 2018 and December 2018, the percentage of offenders receiving an exemption ranged between 3.9 and 6.0 per cent. Between January 2019 and September 2020, this figure ranged between 5.6 per cent and 9.8 per cent.

## **4 Vehicle sanctions for high-risk drink driving offenders**

There have been four number plate confiscations for the offence type 'high-risk drink driving' in the period from December 2018 to September 2020 recorded in the Vehicle Sanction database managed by TfNSW. The total number of plate confiscations in that time frame was 532. (Source: Vehicle Sanction Database, TfNSW)

## 5 External factors

### 5.1 Mobile testing rates (RBT and MDT)



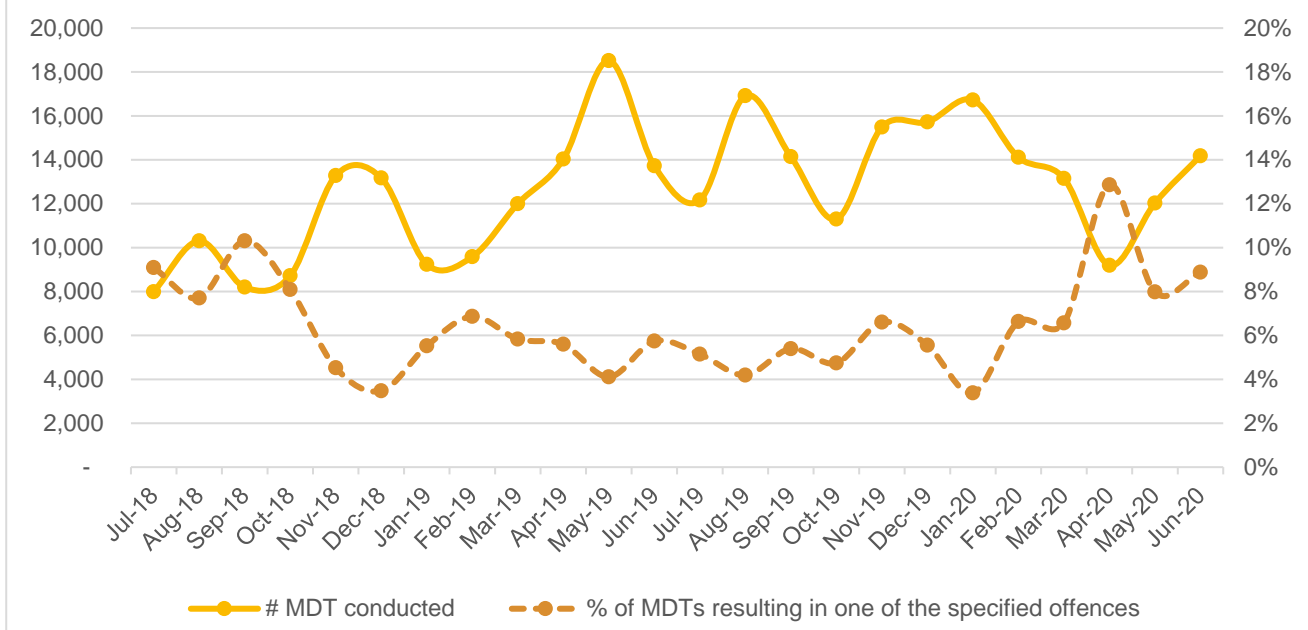
Sources: NSW Police and NSW Bureau of Crime Statistics and Research - September 2020

Note: The percentage of RBTs resulting in one of the specified offences is calculated using NSW Police and BOCSAR data. It represents the number of persons proceeded against for low, special, novice, mid, and high range PCA offences in a particular month (BOCSAR), divided by the number of RBT's conducted in that month (NSW Police).

COVID-19 impacted on mobile testing rates for both RBT and MDT. Since March 2020, the RBT volumes by month have been lower than in the same months in 2019. For example, the number of RBT conducted in June 2020 (270,993) was just over half of the number of tests conducted in June 2019 (495,216). In April 2020, during the height of new COVID-19 cases in NSW, only 103,669 tests were conducted, or less than 15 per cent of tests conducted in April of 2019, when 714,145 tests were conducted.

Across the period from April to June 2020, a total of 492,158 tests were recorded, compared to 1,625,439 in 2019. This 2020 figure represents just under one-third of the tests conducted in the year prior.

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



Sources: NSW Police, NSW Bureau of Crime Statistics and Research – September 2020

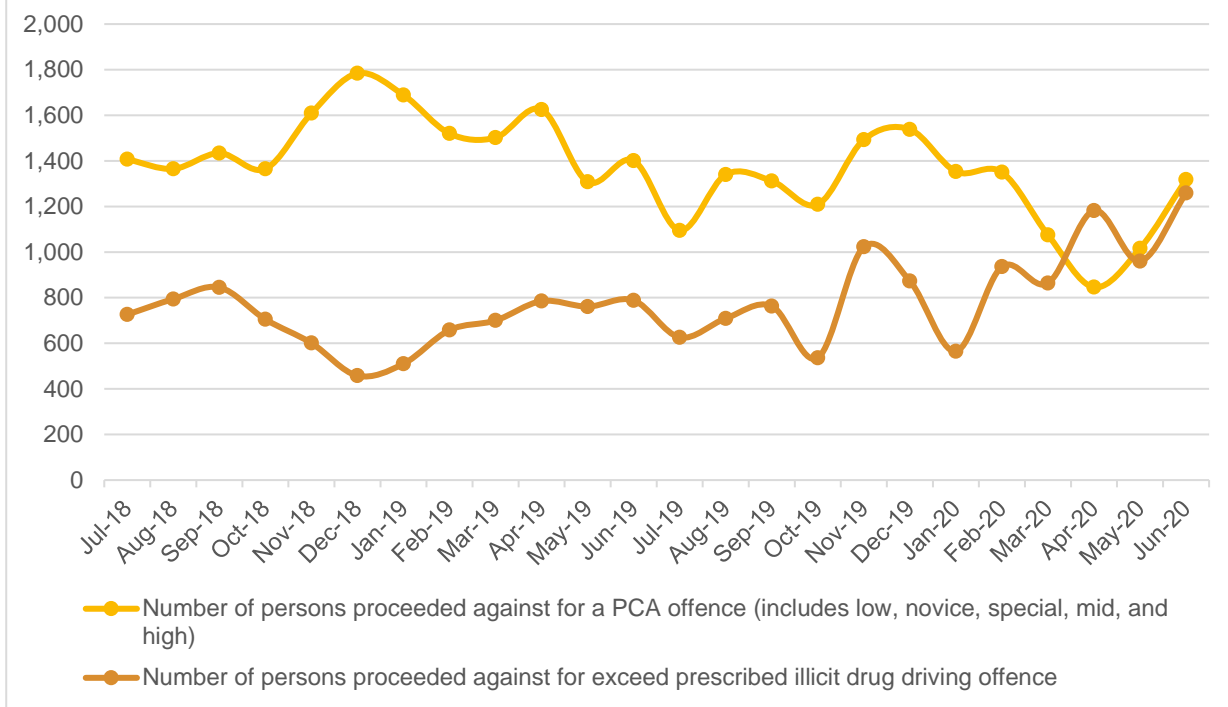
Note: The percentage of MDTs resulting in one of the specified offences is calculated using NSW Police and BOCSAR data. It represents the number of persons proceeded against for specific illicit drug driving offences in a particular month (BOCSAR), divided by the number of MDTs conducted in that month (NSW Police).

The number of MDTs undertaken was also reduced during COVID-19. Across the period from April to June 2020, there were 35,406 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.

While the overall number of MDTs remains lower than RBTs, the relative decrease in MDTs conducted has been smaller. The proportion of MDTs resulting in an illicit drug driving offence continues to be higher than the proportion of RBTs that result in one of the specified PCA offences.



### 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 – September 2020

In the July 2020 monitoring report, the number of persons proceeded against for a PCA offence each month was consistently higher than the number of persons proceeded against for illicit drug driving offences. During COVID-19, these figures have converged, with more persons proceeded against for illicit drug offences in April 2020, and close figures in May and June 2020.

**Transport for NSW, Centre for Road Safety**

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**January 2021**

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