

Transport for NSW | Centre for Road Safety

NSW Drink and Drug Driving Reforms

Monitoring report 4

January 2022



Contents

1	About the reforms	3
1.1	Monitoring and evaluation of the reforms.....	4
2	Penalty notices for lower-range drink and drug driving first-time offences	5
2.1	Persons proceeded against for lower-range PCA offences.....	5
2.2	Penalty notices issued and court elections	8
2.3	First time lower-range offences resulting in a non-conviction penalty	9
3	MAIP for mid-range drink driving first-time offenders.....	11
3.1	Mid-range PCA offences and alcohol interlocks imposed	11
3.2	MAIP order exemptions.....	12
4	Vehicle sanctions for high-risk drink driving offenders.....	14
5	External factors.....	15
5.1	Mobile testing rates (RBT and MDT)	15

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 fourth report in the series; the third was released in September 2021 on the CRS website, and included data through December 2020 or March 2021, depending on data source. The data in this report builds on data presented in the July 2021 monitoring report and includes data through June or September 2021.

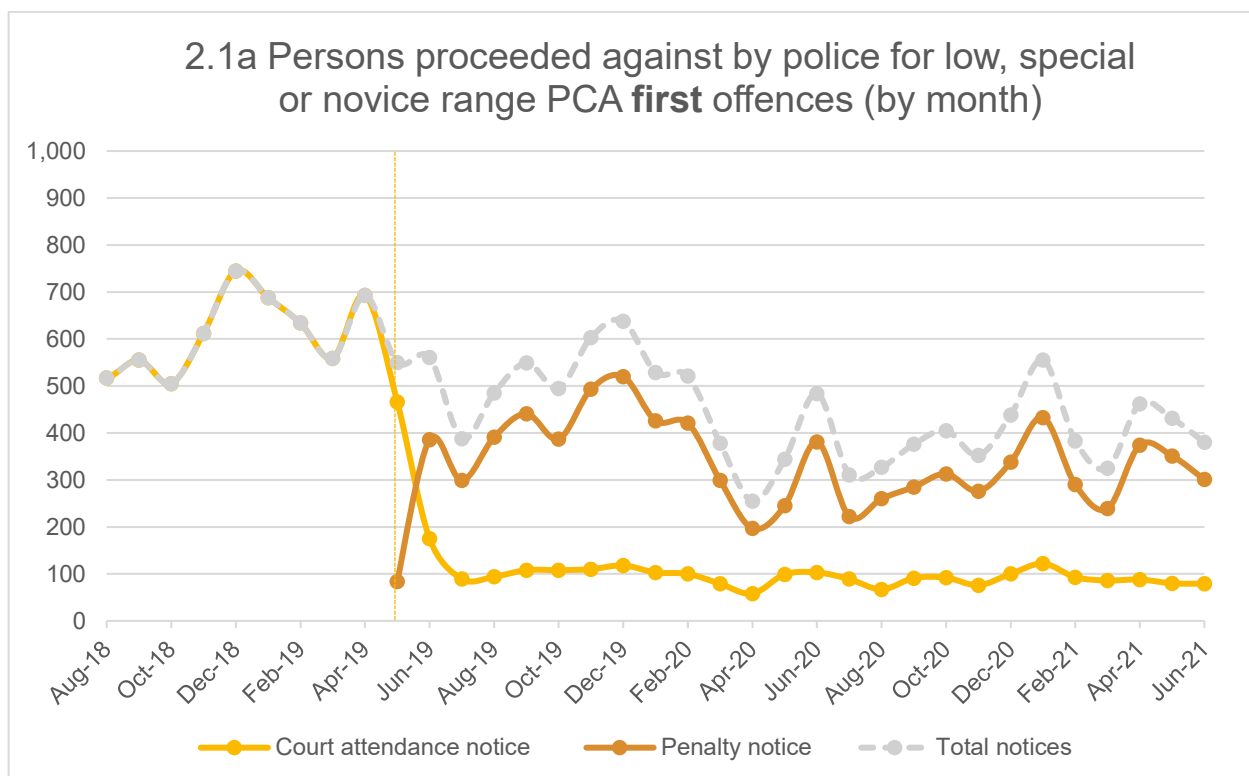
Selected metrics are outlined below to demonstrate implementation of key areas of the reforms. One external factor, the level of random breath testing (RBT) and mobile drug testing (MDT) conducted has also been included.

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

Changes expected following implementation of this reform element included:

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

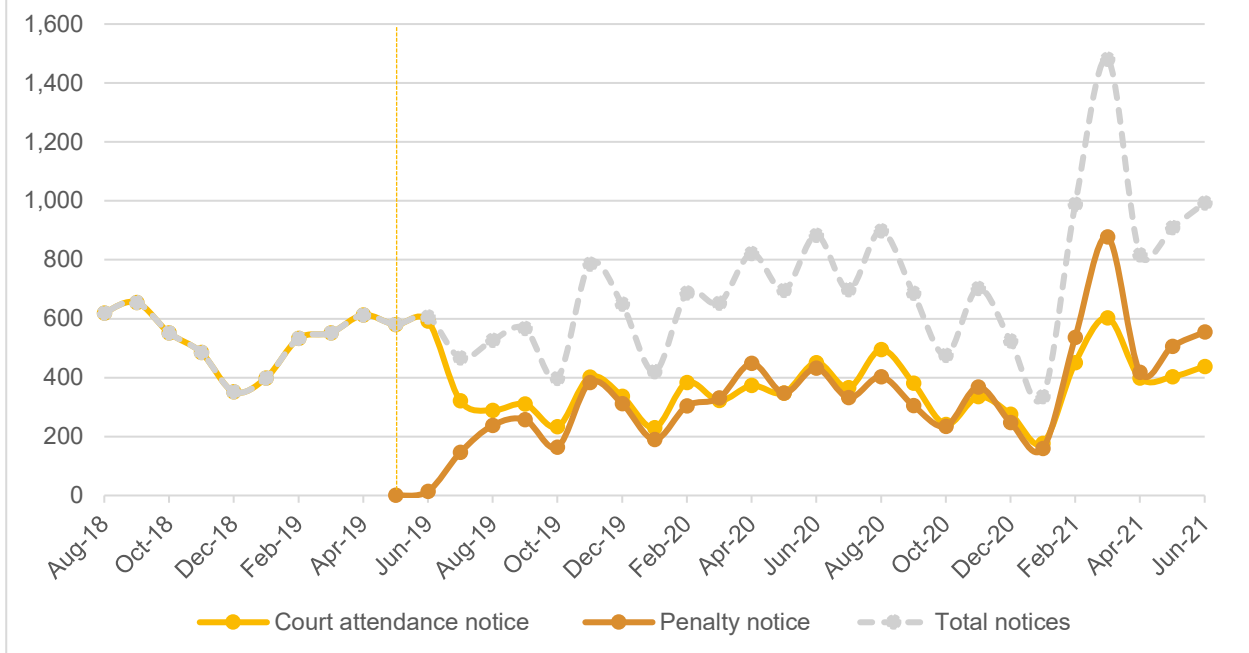
2.1 Persons proceeded against for lower-range PCA offences



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

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

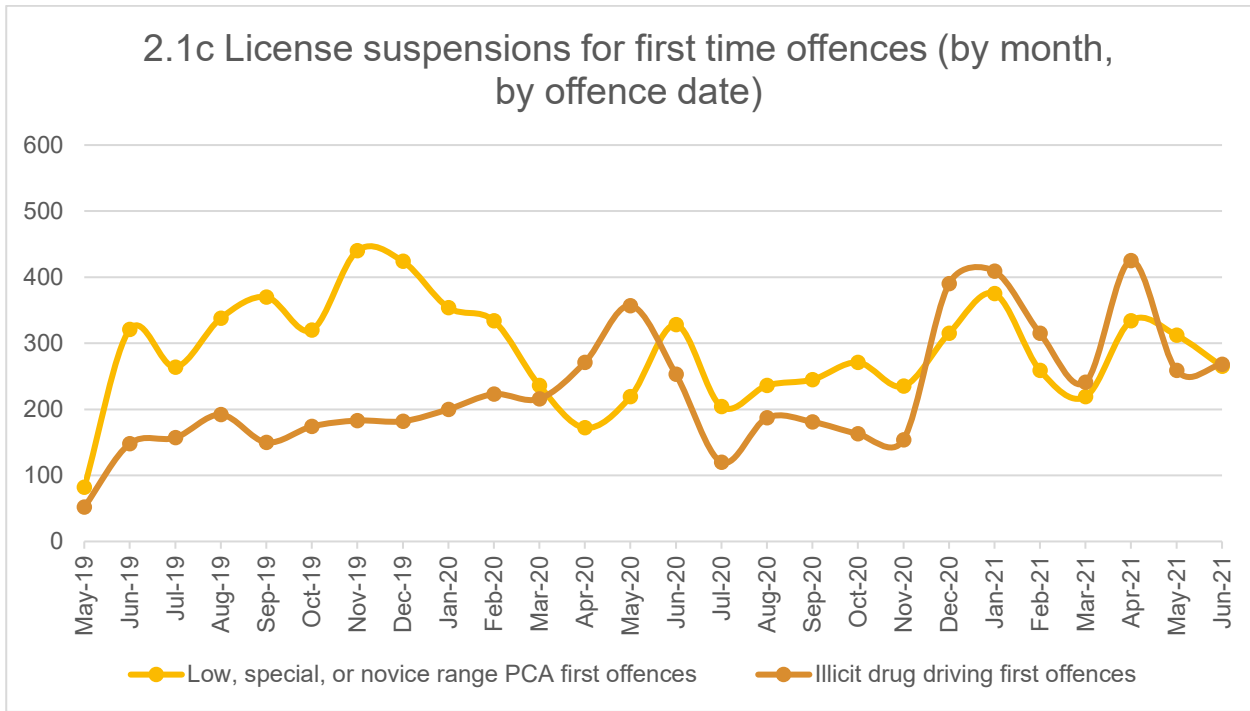
2.1b Persons proceeded against by police for an illicit drug driving **first** offence (by month)



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

A few months after the introduction of penalty notices for illicit drug driving first offences, the number of court attendance notices and penalty notices for this category of offence become similar, with the number of penalty notices exceeding court attendance notices in some months. The proportion of offences resulting in a penalty notice is still lower for illicit drug driving first offences than for lower-range PCA first offences.

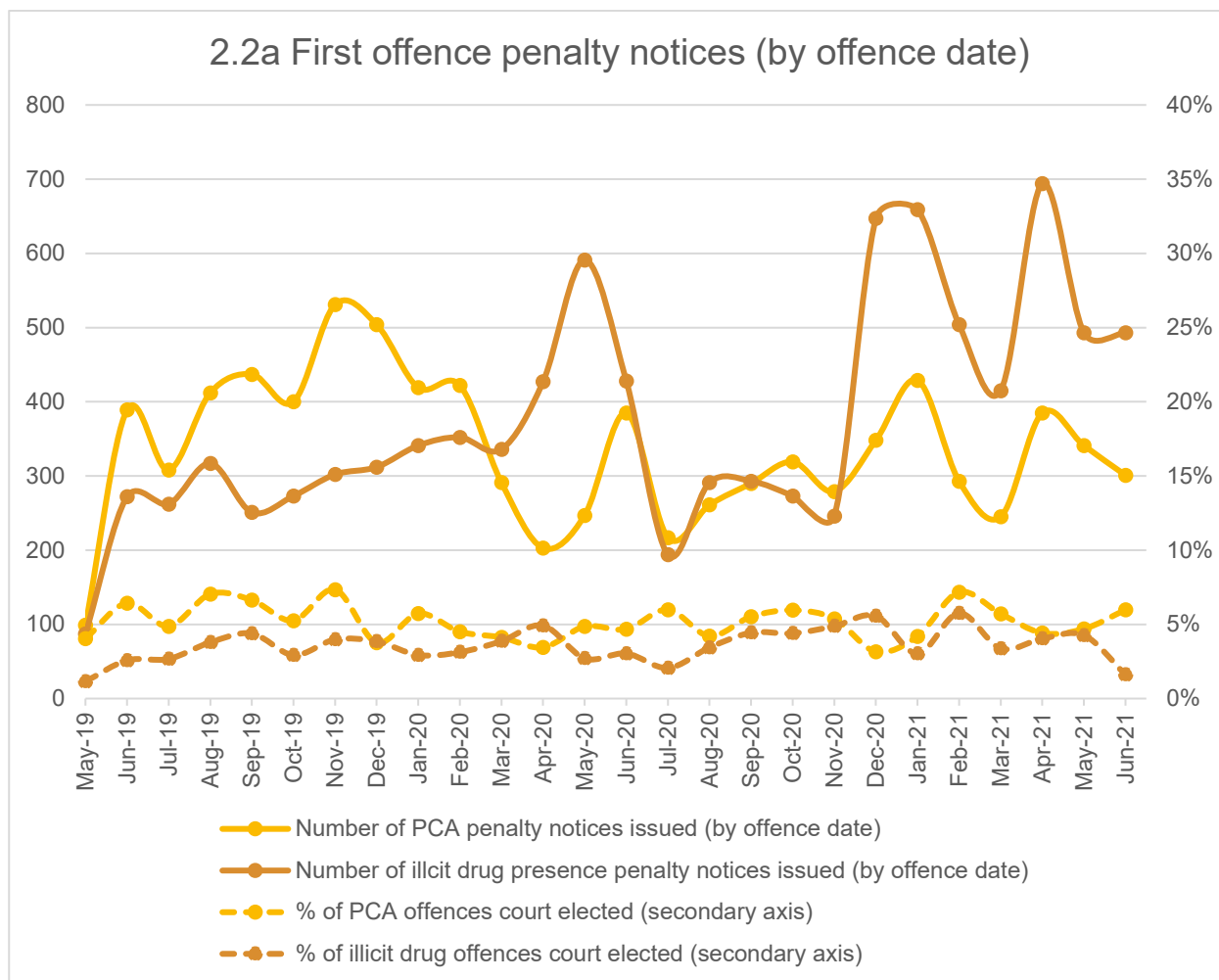
There is a sharp increase in the number of persons proceeded against for illicit drug driving first offences in February and March 2021 – there were 1,481 total notices in Mar 21, higher than any month since July 2018. In this month, the number of both court attendance notices (603), and penalty notices (878) increased; in this month the highest number of penalty notices for illicit drug driving first offences since introduction of the reforms was recorded.



Source: DRIVES – January 2022

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

2.2 Penalty notices issued and court elections



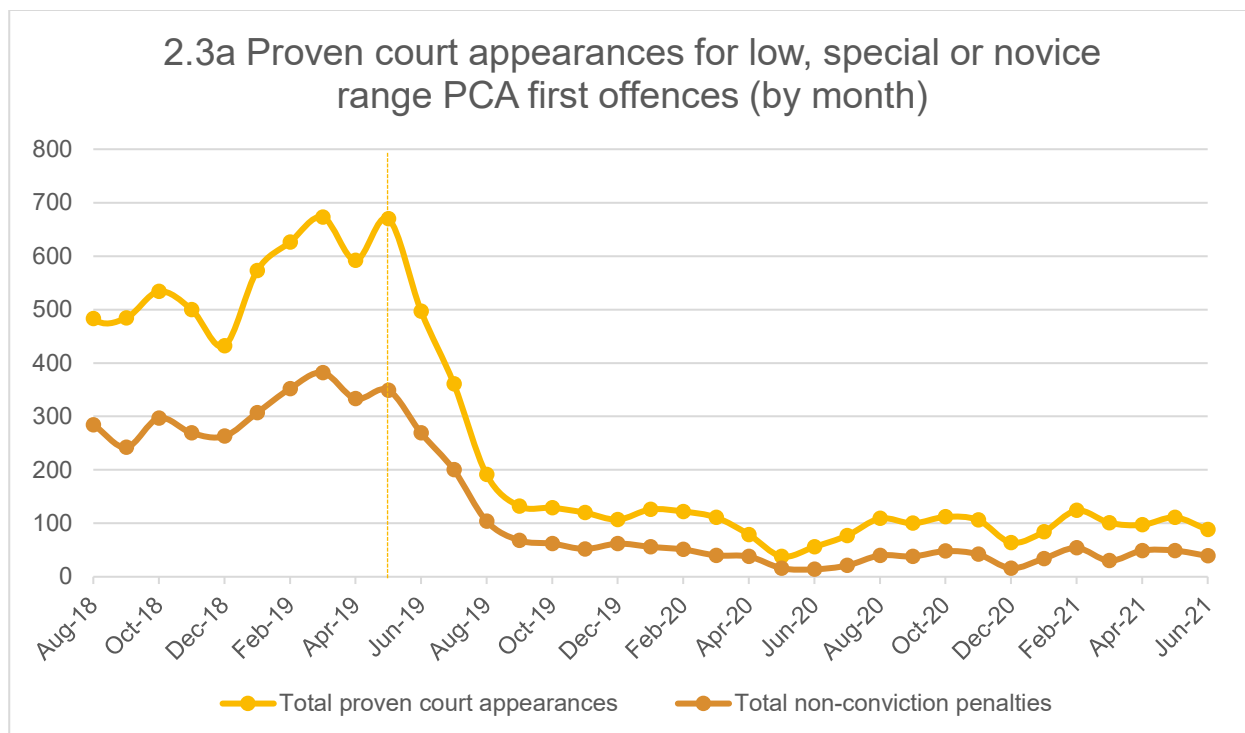
Source: Revenue NSW – November 2021

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

Drivers who receive a penalty notice may elect to have their matter heard in court rather than pay the fine issued without a review in court. The rate of court election for first offence penalty notices has remained low. A preliminary impact assessment provided by Department of Justice (now Department of Communities and Justice) prior to implementation of the reforms estimated a higher court elect rate of 20 per cent.

Across the entire period from May 2019 to June 2021, the rate of court election for first offence penalty notices was 4.4 per cent. The average rate of court election was higher for PCA offences (at 5.3 per cent) than for illicit drug presence offences (at 3.7 per cent).

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

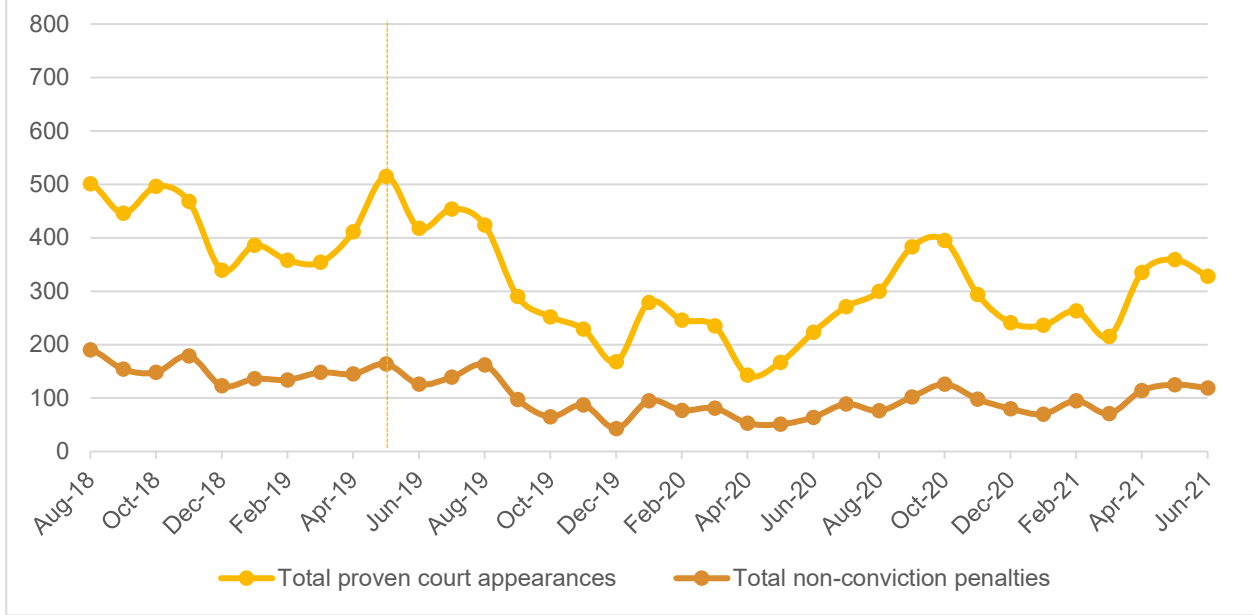


Source: NSW Bureau of Crime Statistics and Research – November 2021

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

This data should be viewed alongside data from Section 2.2 which outlines first time lower-range PCA offences dealt with by penalty notice. Prior to the reforms, these offences would have been dealt with by court attendance notice. While drivers who receive a penalty notice may elect to have their matter heard in court rather than pay the fine, only a small proportion are choosing this option (5.3 per cent of penalty notices for lower-range PCA offences across the period from May 2019 to June 2021).

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



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

The number of proven court appearances for first-time illicit drug driving also started to decrease in September 2019, slightly after the decrease noted for PCA offences. The decrease in proven court appearances for illicit drug driving first offences has not been as sharp as that for PCA.

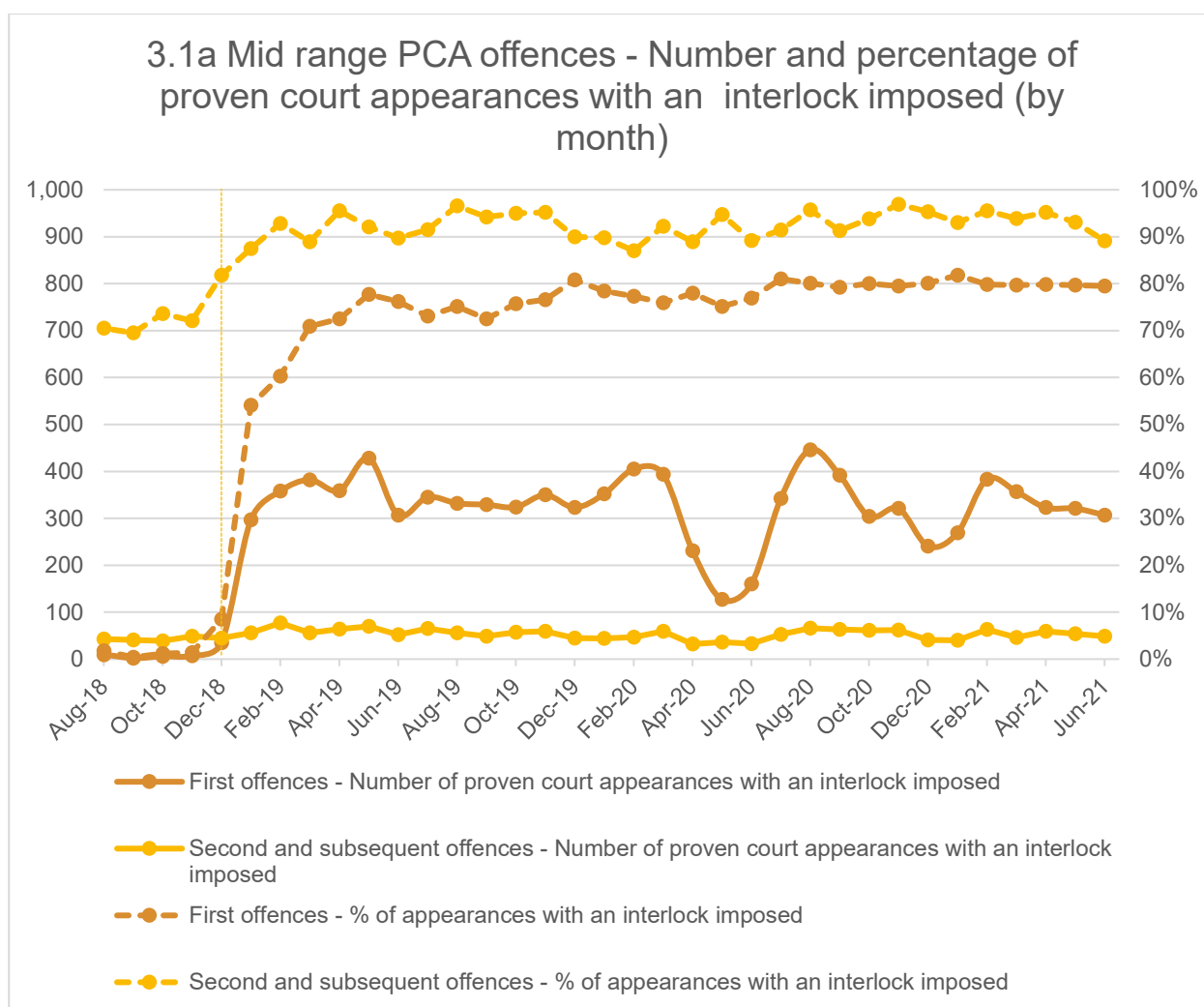
As noted in Section 2.2, many first offences for illicit drug driving are being dealt with by penalty notice, and the rate of court election of penalty notices for illicit drug presence offences is only 3.7 per cent.

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

Changes expected following implementation of this reform element included:

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

3.1 Mid-range PCA offences and alcohol interlocks imposed



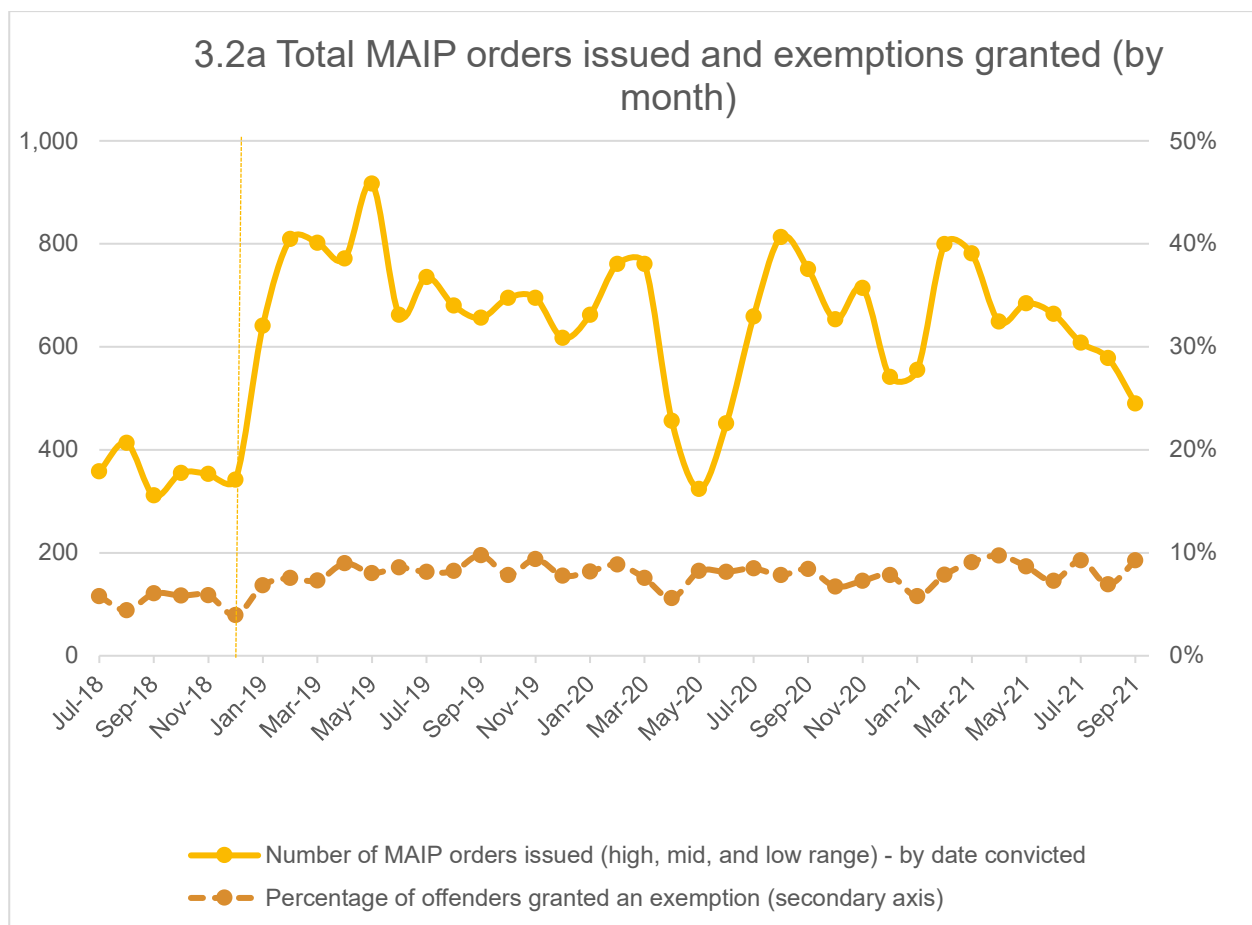
Source: NSW Bureau of Crime Statistics and Research – November 2021

MAIP was extended in December 2018 to include first-time mid-range offences. In December 2018, the proportion of proven court appearances with an alcohol interlock imposed for a mid-range PCA first offence was 8.5 per cent. By January 2019 this figure

increased to 54.1 per cent, and from March 2019 to June 2021 has remained above 70.0 per cent each month. During the 2020-21 financial year, the proportion of proven court appearances with an alcohol interlock imposed for a mid-range PCA first offence each month was 79.0 per cent or higher.

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

3.2 MAIP order exemptions

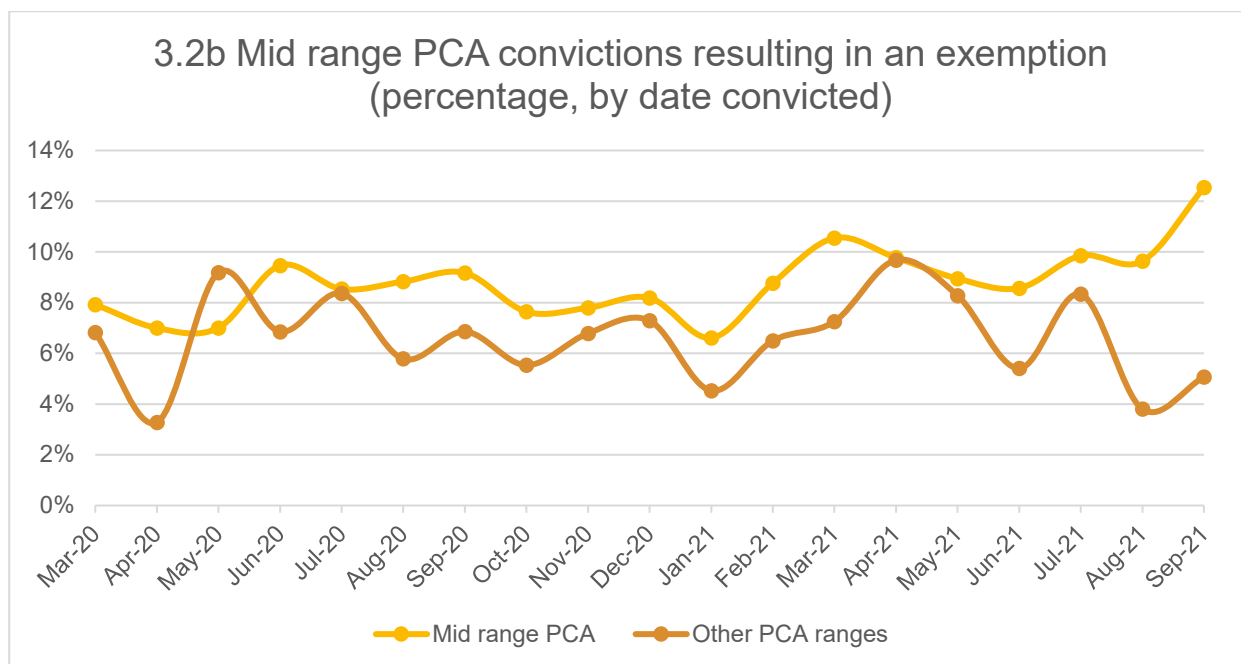


Source: Alcohol Interlock Unit – December 2021

After December 2018, the absolute number of MAIP orders issued across high, mid, and low range offences increased, and with the introduction of MAIP orders for first-time mid-range PCA offences (Note: The first-time lower range PCA offences outlined in Section 2 are not MAIP offences). At the time the reforms took effect, it was not possible to divide the data for exemptions into PCA ranges, so this graph represents all MAIP offence categories.

The proportion of convictions that resulted in an exemption increased from January 2019, which may have been caused by mid-range first-time offenders taking up the new

severe hardship exemption category. Between July 2018 and December 2018, the percentage of offenders receiving an exemption was 5.3 per cent. In the 2019 calendar year the proportion of offenders receiving an exemption was 8.2 per cent, in 2020 it was 7.8 per cent, and in the first 9 months of 2021 it was 8.2 per cent.



Source: Alcohol Interlock Unit – December 2021

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

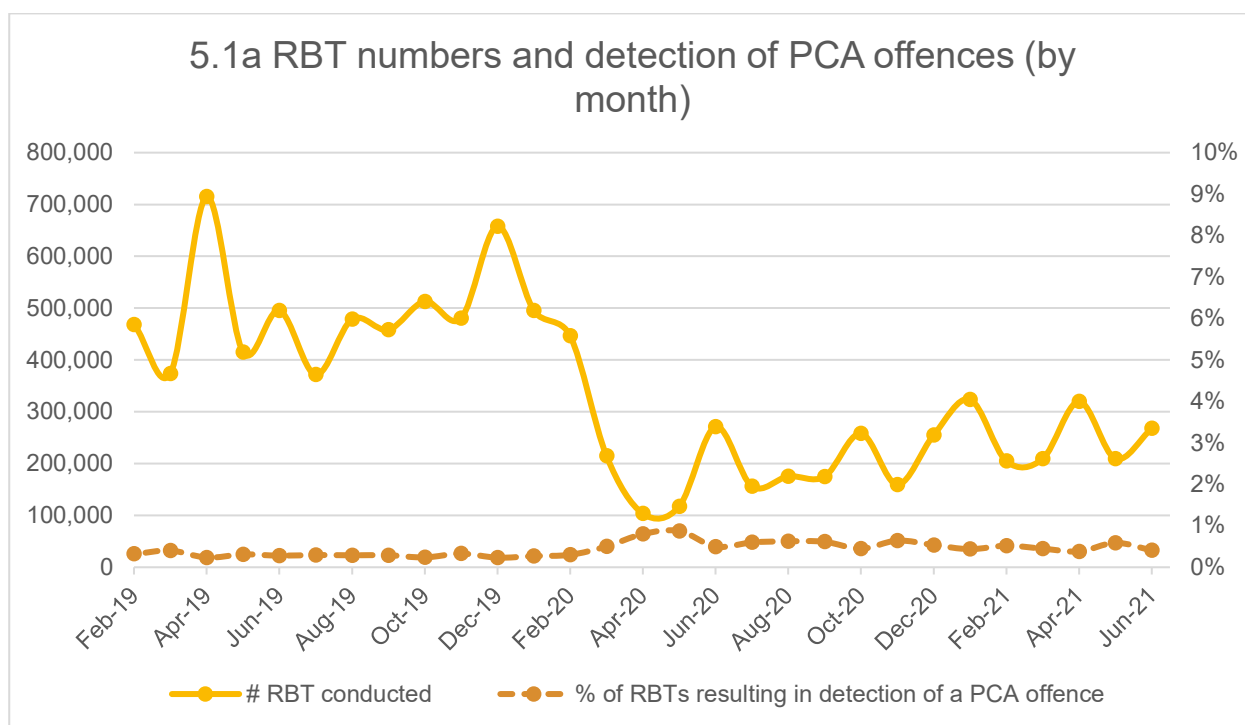
Across the period from March 2020 to September 2021 the proportion of mid-range PCA convictions resulting in an exemption was 8.8 per cent, while for other PCA ranges it was 6.6 per cent.

4 Vehicle sanctions for high-risk drink driving offenders

There have been six number plate confiscations for the offence type 'high-risk drink driving' in the period from December 2018 to September 2021 recorded in the Vehicle Sanction database managed by TfNSW. The total number of plate confiscations in that time frame across all eligible offence types was 1,098 (Source: Vehicle Sanction Database, TfNSW).

5 External factors

5.1 Mobile testing rates (RBT and MDT)



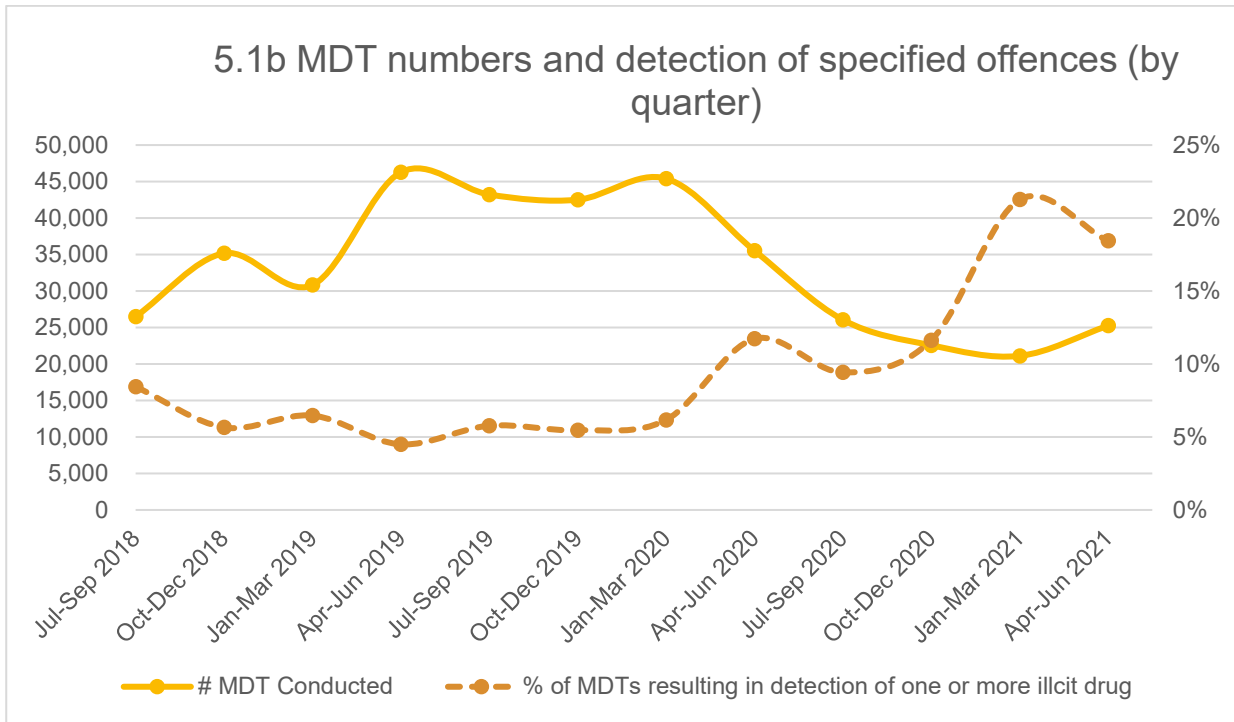
Source: NSW Police –December 2021

Note: The percentage of RBTs resulting in one of the specified offences is calculated using NSW Police data. It represents the number of PCA detections reported by NSW police divided by the number of RBT's conducted in that month. In the first two reports data from BOCSAR was used to calculate the number of persons proceeded against for specific offences; from the July 2021 report, it been updated to only include data from one source (NSW Police).

COVID-19 impacted on mobile testing rates for both RBT and MDT. In April 2020, only 103,669 RBT were conducted, or less than 15 per cent of tests conducted in April 2019, when 714,145 tests were conducted. In April 2021, the test numbers increased but were still lower than levels before COVID-19, with 319,602 tests conducted in the same month.

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

In the first half of 2021 (January to June) there were 1,534,804 tests conducted, lower than both the first half of 2020 (1,658,552) or 2019 (2,988,605). The level of testing in the first half of 2021 represents 93 per cent of the level undertaken in 2020, and 51 per cent of what was undertaken in 2019.



Sources: NSW Police, NSW Health – December 2021

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

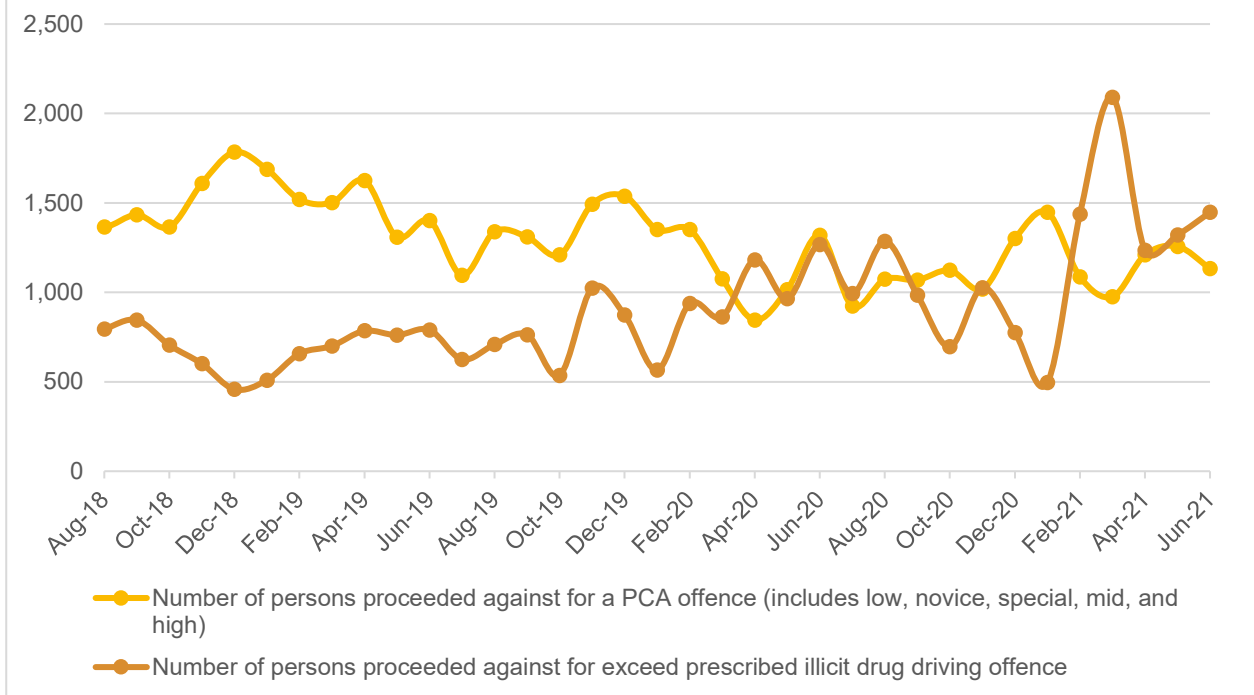
The number of MDTs undertaken was also reduced during COVID-19. The actual numbers of MDT undertaken before COVID-19 were smaller than the number of RBT, and the relative decline in MDT numbers has been lower.

Across the period from April to June 2020, there were 35,532 MDTs conducted, compared to 46,269 tests across the same period in 2019. The 2020 figure represents just over 75 per cent of the 2019 figure. The number of tests was even lower in the same period in 2021, with 25,244 tests undertaken.

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

In the first half of 2021, 19.7 per cent of MDT tests resulted in a detection. There was a peak in the January to March quarter of 2021, with 21.3 per cent of MDT tests resulting in a detection. By comparison, across the 2020 calendar year, the rate of detection was 9.3 per cent.

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 – November 2021

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

In the first half of 2021, the number of persons proceeded against for illicit drug driving offences (8,025) was higher than the number of persons proceeded against for PCA offences (7,109). In this period, the rate of detection for MDTs was 19.7 per cent, while the detection rate for RBTs was lower than 0.5 per cent.

Transport for NSW, Centre for Road Safety

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