

Transport for NSW | Centre for Road Safety

NSW Drink and Drug Driving Reforms

Operational Review

Summary Report

November 2020



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1 Key findings

- Overall, implementation processes for the NSW Drink and Drug Driving reforms have been very smooth. Key enablers for implementation included a successful communication strategy and key people with critical knowledge of the reforms.
- The reforms used existing administrative frameworks, which streamlined the implementation; however, this also means that any pre-existing issues with those frameworks were then extended to the new cohorts.
- Most reform elements are being implemented as planned. The exception to this is the vehicle sanctions for high-risk drink driving offenders.
- Most stakeholders reported strong awareness, knowledge and understanding of the goals and policy intent of the reforms.
- The review also highlighted some implementation challenges to be addressed. This included increased administrative burden for NSW Police Force associated with issuing first time lower-range penalty notices on paper, and perceived lower understanding of reform penalties by offenders among stakeholders who work in legal and frontline roles.
- Covid-19 has impacted on delivery of some services, including drink and drug driving detection, capacity at Service NSW centres, and provision of interlock services.
- There are some challenges in gathering data for process and outcome evaluations, due to the variety of data systems that are relied upon, and ability to access required data from those systems easily.

2 NSW Drink and Drug Driving Reforms

The NSW Drink and Drug Driving reforms are part of the *Road Transport Legislation Amendment (Penalties and Other Sanctions) Act 2018* (the Act), which implements 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 following elements of the reforms are currently being implemented, and in scope for the operational review:

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

The reforms aimed 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 20 May 2019.

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

The Mandatory Alcohol Interlock Program was introduced by the NSW Government in February 2015 and was used for persons convicted of high-range PCA (a blood alcohol concentration of 0.15 or more), 'refusal', and all repeat drink drive offences. Under the reforms, the mandatory alcohol interlock requirement was extended to first-time mid-range offenders (a blood alcohol concentration between 0.08 and 0.149) as well as first time offenders for driving under the influence (DUI) where the offence involves alcohol and motor vehicle. The extension came into effect from 3 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). From 3 December 2018, the option for vehicle sanctions was expanded to include certain repeat drink driving offences.

3 Evaluation of the reforms

The NSW Drink and Drug Driving reforms passed in October 2018 are part of the *Road Transport Legislation Amendment (Penalties and Other Sanctions) Act 2018*, and implement key measures of the Road Safety Plan 2021.

The Standing Committee on Law and Justice inquired into the Bill in September 2018. The Committee's report documents consideration about the impacts on regional and rural communities, Aboriginal people, disadvantaged people, and people who drive for a living.

During the inquiry, the NSW Government committed that the effect of the reforms would be monitored by independent evaluators, and this would be guided by an evaluation framework.

3.1 Evaluation Working Group

To respond to the need for evaluation of the reforms, the Centre for Road Safety (CRS) established a Drink and Drug Driving Reforms Evaluation Working Group (EWG) which includes representatives from Transport for NSW and other government agencies including Department of Communities and Justice, Legal Aid, Revenue NSW, and the NSW Police Force.

The group's remit is to develop and implement monitoring and evaluation activities, and in 2019 the group endorsed an evaluation framework which outlines an agreed approach to evaluation of the reforms that includes an operational review, as well as process and outcome evaluations.

3.2 Evaluation Framework

The evaluation framework outlines evaluation of the reforms in three phases. This approach to evaluation is intended to inform the ongoing implementation and adaptation of reform elements to improve delivery, inform the refinement of road safety policy settings, and assess impacts on road user behaviour, and road trauma outcomes.

Phase 1 of evaluation of the reforms is the operational review and development of a monitoring and evaluation plan for subsequent phases of evaluation. Phase 2 will be a Process Evaluation (2021-23) and Phase 3 will be an Outcomes Evaluation (2024-25).

4 Operational review

CRS commissioned ARTD Consultants (ARTD) to conduct Phase 1 of evaluation of the reforms. This included conducting an operational review of implementation and developing a monitoring and evaluation plan for subsequent phases of evaluation.

The purpose of the operational review was to provide early insight into implementation of the reforms, working in partnership with other agencies and departments to identify strengths and opportunities to improve delivery. Conducting the operational review early in the delivery of the reforms presents an opportunity to adjust implementation approaches, if required.

The operational review was a high-level investigation into the appropriateness, efficiency, and effectiveness of the reforms and their administration.

The monitoring and evaluation plan was developed in tandem with the operational review, and informed by findings from the review.

4.1 Evaluation questions

The key evaluation questions explored in the operational review were:

- To what extent are the reforms being implemented efficiently and effectively?
- What has worked well? What are the key challenges?
- To what extent are the reforms having a disproportionate impact on particular groups?
- How can delivery be improved?
- To what extent is the information required for a process and outcome evaluation being collected, documented and reported?

4.2 Evaluation methods

The operational review used a mixed-methods approach; the consultants drew on existing documentation and administrative data, as well as interviews with key internal and external stakeholders involved in design and implementation of the reforms including Department of Communities and Justice, Revenue NSW, NSW Police Force, Legal Aid NSW, Salvation Army, and interlock providers. Development and implementation of the operational review was overseen by the Evaluation Working Group.

ARTD conducted initial scoping interviews with six key stakeholders involved in planning of the reforms, to inform development of a program logic for the reforms. Building on the information gathered in the scoping interview phase, ARTD interviewed 29 additional stakeholders between May and July 2020. The interview guide included common questions for all stakeholders, as well as more targeted questions that related to stakeholders' roles.

ARTD completed analysis of the interview data using a coding framework and NVivo 10 software to undertake analysis that identified key themes raised by stakeholders (thematic analysis). Monitoring data from the Drink and Drug Driving Reforms Monitoring Report (July 2020) was incorporated into the analysis.

5 What has worked well

5.1 Efficiency of reform implementation

The review found that reform implementation activities have been completed mostly as planned. The reforms utilised existing sanctions and penalties, and expanded them to new offence categories, which contributed to the practical and smooth implementation of the reforms.

Stakeholders with knowledge of the operational aspects of the reforms generally reported that the implementation of the reforms was practical, and a seamless delivery process internally. The expansion of existing sanctions and penalties to new offence categories meant expanding existing work to additional cohorts, rather than creating new processes and systems.

Data from the July 2020 monitoring report for the reforms¹ was considered as part of the operational review, and indicated that police are implementing the reforms and issuing penalty notices for lower-range, first-time offences, as expected, and that court elections for those offences have remained low. From May 2019 to December 2019, there were 4,437 penalty notices issued for PCA and illicit drug driving offences and the percentage of penalty notices that were court elected ranged between 3.2 per cent and 6.6 per cent each month.

Monitoring data also indicate an increase in the proportion of mid-range PCA offences that result in a Mandatory Alcohol Interlock Order. From July to December 2018, the percent of proven court appearances with an alcohol interlock imposed for a mid-range PCA offence ranged between 8.1 per cent and 10.2 per cent. By January this figure increased to 57.6 per cent, and from April 2019 to September 2019 was above 70.0 per cent each month – noting data is for all mid-range offences.

The exception to strong implementation of reforms as planned was vehicle sanctions at roadside for high-risk drink driving offenders, which few stakeholders reported good knowledge of, and anecdotal evidence suggested that this reform is not as actively implemented.

5.2 Factors in successful implementation

Implementation of the reforms was supported by a successful communication strategy, appropriate level of awareness of details and goals of the reform among key stakeholders, and minimal requirements for changes to workloads and costs. Internal processes of communicating the reforms within organisations were reported as seamless.

Most stakeholders reported strong awareness, knowledge and understanding of the goals and policy intent of the reforms, and agreed that the goals are to reduce alcohol and drug related crashes, fatalities, and serious injuries in NSW, to create swifter and more certain penalties for drink and drug driving offences, and to increase compliance with NSW drink and drug driving legislation.

While some stakeholders indicated an increased workload due to the reforms, they also reported budget and resourcing increases that had mitigated the increased workload.

¹Transport for NSW Centre for Road Safety *NSW Drink and Drug Driving Reforms – Monitoring Report*, July 2020

6 Challenges

The operational review identified challenges in implementation of the reforms.

6.1 Paper based lower-range penalty notices

NSW Police Force have experienced an increased administrative burden when issuing penalty notices and licence suspensions for lower-range, first-time offences as these processes are now paper-based whereas other penalty notices are electronically issued through the MobiPol system. This manual process issue arises because police officers are required to carry paper-based notices for suspensions in their cars, and enter details of the offence into the electronic system once they return to the station, which can create delays.

6.2 Need for plain language communication materials

Several interviewees reported that their clients (offenders issued penalties under the reforms) had limited knowledge of the reforms before attending, to the extent that they may not understand why they were receiving a penalty notice, or that this process was different to receiving a court attendance notice as would have previously occurred. The content and language used in public communication materials was commented on, and interviewees noted the need for plain and simple language in the materials, which would be more understandable both for the general public, and frontline staff dealing with people who have committed offences.

6.3 Uncertainty among legal advisers

Legal advisers reported being uncertain about how to advise clients, noting limited understanding of the exceptional circumstances for which offenders can appeal licence suspensions for the lower-range offences. They also reported that because of the immediate penalty notices and licence suspension reforms, fewer first-time offenders are contacting them, reflecting a lost opportunity to guide first-time offenders about the appeal process, or guide them to support programs to address the offending behaviour.

6.4 Demand management for providers

Interlock providers are experiencing increased demand, and it is challenging for them to plan for increased capacity. They report that despite these challenges, they have so far been able to respond to this increased demand.

6.5 Covid-19

Covid-19 has also impacted implementation of the reforms, with some stakeholders reporting greater impacts than others. The biggest impacts were for stakeholders offering client-facing services, where mode of delivery and capacity were affected. Some of the reported impacts of Covid-19 were:

- changes in drink and drug detection and testing, particularly when it was announced that police would reduce stationary roadside random breath testing during the pandemic and transition to mobile random breath tests (RBTs)

- the driver testing for P platers and full licence holders ceasing for approximately three months during Covid-19 was disruptive for clients who had finished their disqualification period and wanted to sit a driving test
- reduced capacity in Service NSW Centres (knowledge testing areas), where only every second computer could be used in accordance with Covid-19 protocols
- challenges for interlock providers to install and service devices in a Covid-19 safe manner, limiting contact with customers and thoroughly cleaning vehicles and devices once serviced and installed
- some interlock service providers feeling uncertain about operating during the pandemic because they were not clear that they were classified as an 'essential' service
- customers questioning how hand sanitisers could alter the readings on interlock devices, with interlock providers offering guidance to minimise this risk.

6.6 Internal systems and collection of data

Some stakeholders experienced small internal procedural challenges when systems needed to be upgraded to manage increased demand in response to the reforms.

Availability of data to support process and outcome evaluations is also challenge, because of the variety of data systems that are relied upon, and the age of those systems. Accessing the data from different systems is a highly manual process with information held by multiple data custodians.

7 Reform impacts on particular groups

The operational review interviews explored stakeholder perceptions of whether reforms are having disproportionate or iterative impacts on particular groups, including Aboriginal and Torres Strait Islander people and their communities, and people living in rural and remote areas. Stakeholders, particularly those working in legal services report that they are observing disproportionate impacts of the reforms on vulnerable groups. Some of the issues or disproportionate impacts on vulnerable groups associated with existing sanctions and penalties have been amplified because they affect a larger cohort of people.

Stakeholders raised some concerns about the reforms, particularly regarding MAIP, that they reported observing across these groups. This included:

- Some stakeholders believe that cost burdens imposed by MAIP and penalty notices for lower-range offenders are unfair for people on lower incomes, even with existing concession rates and severe financial hardship options currently available many people lack financial capacity to pay penalties or obtain and maintain interlock devices.
- Inability to drive because of costs of MAIP or license suspensions may impact on larger groups within the Aboriginal and Torres Strait Islander community where more than one person may rely on a licenced driver/vehicle. They also have a disproportionate effect on those who make a living driving, and in rural communities where there is little or no public transport.
- Remote communities may incur additional costs in servicing MAIP devices due to the need to travel to undertake the servicing.

Stakeholders offered suggestions to mitigate adverse impacts, including investigation of further approaches to subsidise interlock devices, government or community-funded interlock devices provided to Aboriginal specific services for educative purposes, and development of community-led education.

As the operational review is an early assessment of implementation of the reforms, it has explored stakeholder perceptions of the impact of the reforms on groups they work with, although limited monitoring or outcomes data is available to provide additional evidence of the issues raised by stakeholders. The review has identified that administrative data to identify Aboriginal and Torres Strait Islander people is either not recorded or not reliable, and so other approaches to understanding the impact of the reforms need to be considered in the Monitoring and Evaluation Plan for the reforms.

8 Conclusions and areas for program improvement

Overall, most elements of the NSW Drink and Drug Driving reforms are being implemented successfully. Implementation processes for the reforms have been very smooth. Operational stakeholders have been able to establish and adjust internal processes and systems to respond to the changes. This was enabled through good timely communication and support from Transport for NSW with appropriate funding, and because of the relatively minor impact the reforms have had on workloads and costs for most stakeholders.

The review also highlighted some implementation challenges to be addressed.

The review also identified the following recommendations:

- Support the development and/or distribution of plain English education materials about the reforms to organisations who engage with offenders and the general public.
- Share monitoring data about the reforms more broadly with stakeholders.
- Address issues with manual processes for licence suspensions and vehicle sanctions.
- Further investigate impacts on vulnerable offenders to test the validity of concerns of legal services in relation to the experience of offenders.
- Focus on community-led and community-delivered public awareness raising about the reforms, particularly for Aboriginal and Torres Strait Islander people and their communities and those in rural and remote areas.
- Consider remedial responses alongside the penalties and sanctions introduced as part of the drink and drug driving reforms to address the offending behaviour. During the evaluation of the reforms consider other innovative programs and services to address the offending behaviour in a more therapeutic jurisprudential model.
- Consider publishing information about the discretionary circumstances police consider when issuing penalty notices and licence suspensions under the reforms.
- Consider publishing court data or guidance from/ for Magistrates about the ‘exceptional circumstances’ taken into account in the appeals process.

Transport for NSW, Centre for Road Safety

Website roadsafety.transport.nsw.gov.au

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