

Combined Drink and Drug Driving Offence

Implementation Review – Summary Report
February 2024

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1 Key Findings

The Combined Drink and Drug Driving Offence (the combined offence) was announced as part of the Saving Lives Accelerated Package on 19 November 2020 and operation of the offence came into effect on 28 June 2021.

In May 2022, Transport for NSW (Transport) commissioned an independent review of the combined offence that was conducted by ARTD Consultants. The review set out to answer the following evaluation questions:

- To what extent is the new combined offence being implemented efficiently and effectively?
- Are all the elements of implementation of the combined offence working efficiently?
- What has worked well? What are the key challenges?
- What issues need to be addressed to improve implementation?

The review found that:

- Overall, the combined offence has been implemented efficiently and effectively. The success of implementation is a significant achievement given the context of tight implementation timelines, involvement of multiple partner agencies, and the need to develop new implementation processes that are unique to the combined offence.
 - Communication to partners and stakeholders was a strength of implementation of the combined offence. Stakeholders reported good knowledge and understanding of the combined offence.
 - Administrative data indicate that the charging and court processes are progressing as expected.
- There are some challenges in implementation, which include reported uncertainty about application of the combined offence to lower range drink driving offences by some stakeholders. It is also reported that there are some cases where a mobile drug test may not always be routinely conducted as recommended following random breath tests showing mid or high range prescribed concentration of alcohol (PCA).
 - Areas for potential improvement include further training and communications to clarify application of the combined offence to reinforce police understanding of the process, and ensuring appropriate deployment and use of mobile drug test kits.
 - Further investigation of the prevalence of combined drink and driving would provide a benchmark for estimating the rate of detection and changes over time.
- Drawing on review findings, a series of recommendations to enhance the efficiency and effectiveness of the implementation of the combined offence are provided.

2 The Combined Drink and Drug Driving Offence

The combined offence was announced as part of the Saving Lives Accelerated Package on 19 November 2020. This package was introduced to supplement the Road Safety Plan 2021 and to help bring NSW towards our road trauma reduction targets.

Introduction of the combined offence was included in the package to address the significant risk posed by drivers who combine drink and drug use before driving – targeting drivers who use a combination of illicit drugs and alcohol, which can increase the risk of a fatal crash by 23 times. Of all NSW fatalities between 2017 and 2019, 17 per cent involved illegal levels of alcohol, 21 per cent involved illicit drug presence, and 6 per cent involved a combination of illicit drugs and alcohol.

The combined offence was designed to deter this high-risk behaviour. It aims to send a clear message to drivers that they are putting themselves and others at significant risk when driving while affected by a combination of alcohol and illicit drugs.

The combined offence applies to any driver (or supervising driver) detected with either:

- a middle or high range prescribed concentration of alcohol (PCA) combined with the presence of a prescribed illicit drug/s (first offence and second or subsequent offence within the past 5 years); or
- a lower range PCA (including low, novice, and special range) combined with the presence of a prescribed illicit drug/s, only if the driver committed a previous combined drink and drug driving offence in the past 5 years.

The combined offence applies to middle and high range PCA offences based on the evidence that most fatal crashes with both illicit drugs and illegal alcohol involve mid or high range PCA. In NSW, between 2015 and 2019 there have been 101 serious casualty crashes involving 101 drivers or riders with illegal levels of alcohol combined with prescribed illicit drug presence. These crashes resulted in the deaths of 98 people and the serious injury of a further 52. Eighty-five (84 per cent of those) involved drivers or riders with mid or high range alcohol levels. In addition to middle and high range offences, to reflect the increased risk presented by repeat offenders, lower range PCA combined offences apply when a prior combined drink and drug offence has been recorded.

In recognition of the increased risk of combining alcohol and drugs, the [maximum penalties for the combined offence](#) are higher than those for the equivalent drink and drug driving offences.

Operation of the offence came into effect on 28 June 2021.

2.1 Implementation of the combined offence

The combined offence was designed to be implemented as follows:

- All drivers suspected of committing a combined offence are required to attend court and are initially charged with two offences:
 - Drivers who fail a breath analysis are charged with the relevant drink driving offence (reflecting the PCA detected), and given an immediate licence suspension.
 - If they also test positive for drug presence, drivers are also charged with the combined offence.

- Consistent with current processes, drug samples are sent to the lab for confirmatory testing before the matter is heard in court.
 - If drug results are confirmed positive by the lab, the driver is required to attend court for the combined offence and the drink driving offence is withdrawn.
 - If the laboratory drug test results are negative (which occurs in less than 5% of cases), the combined offence is withdrawn and the drink drive offence will proceed.

It was intended that all drivers with mid range or high range PCA results (or lower range with a previous combined offence conviction) also complete an MDT.

A key aspect of implementing the combined offence was communication from Transport directly to stakeholders responsible for implementation of aspects of the new offence. Awareness raising and education activities were undertaken across Transport, the Department of Communities and Justice (DCJ), and the NSW Police Force (NSW Police). NSW Police amended their operating procedures for testing and charging and delivered training for police officers. Information was provided to magistrates to raise awareness of the combined offence and inform them of how the new offence works and the associated penalty framework. In addition, IT system changes took place across all three organisations.

2.2 Additional background: Other drink and drug driving offences in NSW

The NSW Drink and Drug Driving reforms passed in October 2018 implemented key measures to support the Road Safety Plan 2021. Those reforms also introduced new penalties related to drink and drug driving, and included:

- The introduction of penalty notices for drug driving first offenders and lower-range drink driving first offenders
- The extension of mandatory alcohol interlocks to mid-range drink driving first offenders
- The option for vehicle sanctions at the roadside for high-risk drink driving offenders.

Monitoring and evaluation work is being undertaken for these reforms, with summary reports available on the [Centre for Road Safety website](#). An operational review of the reforms was undertaken and [Summary Report](#) published in 2020.

3 Implementation Review

In May 2022, Transport commissioned ARTD Consultants (ARTD) to conduct a review of the implementation of the combined offence.

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

The review focused on the implementation of the combined offence, covering the period of policy development, implementation and initial operations (focussing on the first 12 months of operation from July 2021 to June 2022).

The review aimed to assess:

- awareness, knowledge, understanding, and experience of policy intent and implementation among law enforcement and other stakeholders
- communication around the combined offence to the community and stakeholders, including media generated, web hits and user sessions, social media metrics (reach, engagement, sentiment) and engagement and feedback from stakeholders, especially delivery / implementation partners
- how efficiently and effectively processes were put into practice, including NSW Police implementation of the roadside process, access to relevant information by the courts, and magistrate interpretation of the new rules.

3.1 Evaluation questions

The key evaluation questions for the review were:

- To what extent is the new combined offence being implemented efficiently and effectively?
- Are all the elements of implementation of the combined offence working efficiently?
- What has worked well? What are the key challenges?
- What issues need to be addressed to improve implementation?

3.2 Evaluation methods

The evaluation used a mixed methods approach. Methods included:

- semi-structured interviews with 15 stakeholders from Transport, NSW Police, magistrates and the DCJ.
- a review of background documents, communications materials and communications data, including media coverage, social media metrics and web analytics.
- analysis of administrative data relating to the combined offence, including driver testing, charges, convictions, and penalties.

4 What is working well?

The review found that overall, the combined offence has been implemented efficiently and effectively, and practices and procedures are operating mostly as intended. There have been no major problems or delays. Factors that have contributed to successful implementation so far have been identified in the review include effective engagement with partner agencies during the design and implementation stage, and effectiveness of communication materials provided by Transport before implementation, with clear and consistent key messages.

4.1 The combined offence has been implemented efficiently and effectively

Processes to implement the combined offence have been efficiently and effectively put into practice, including police implementation of the roadside process, access to relevant information by the courts, and magistrate interpretation of the new rules.

4.1.1 Updates to operating systems

Partner agencies were required to make changes to their systems to support implementation of the combined offence. Interviews with key stakeholders including Transport, DCJ, NSW Police and magistrates indicated that the information technology changes and broader systems to accommodate the combined offence were made as required, which supported:

- detection and prosecution of the new offence, especially by NSW Police and the Sanctions Unit, Customer Licensing, Transport; and
- processing and hearing of matters in court, especially by DCJ.

4.1.2 Police implementation of the roadside process

NSW Police amended their operating procedures for testing and charging and delivered training for police officers. NSW Police interviewees reported that roadside processes are generally working smoothly, with the combined offence thought to contribute to normalising mobile drug testing alongside random breath testing. Interviewees indicated that before the combined offence was implemented, drivers testing positive for alcohol typically did not receive a drug test and were charged with the PCA offence alone.

4.1.3 Charging and court processes

Some stakeholders identified the charging process as cumbersome (see 5.3 for more detail), as in the standard process two charges are laid for the offence; if the drug results are not confirmed positive by the lab, then the combined offence charge is withdrawn. However, stakeholders also reported that the process for withdrawing charges is operating effectively. Where laboratory drug tests are positive, prosecutors can withdraw the drink driving charge without authority from the police officer and proceed with the combined offence charge.

It was identified that a small number of cases occurred where a charge for the combined offence was incorrectly laid or outlined by a police officer; these were corrected once identified.

4.2 Communication to partners and stakeholders is a strength of implementation

Communication to partners and stakeholders was found to be a strength of implementation of the combined offence. Transport engaged broadly with stakeholders and addressed their different perspectives during the initial consultation and planning phase. Stakeholders reported good knowledge and understanding of the combined offence, and that communication to partner agencies and stakeholders was effective.

4.2.1 Stakeholder toolkit

In June 2021, Transport prepared a factsheet and communications toolkit for stakeholders. The factsheet was sent in confidence to partner agencies (NSW Police and DCJ in preparation for commencement of the offence. The communications toolkit included resources that stakeholders could use in their own communications, such as key messages, digital graphics, links to websites, and social media posts. The stakeholder toolkit with clear and consistent key messages was well received by stakeholders.

NSW Police stakeholders reported that they used the Transport materials as the basis for a police training package.

Information was also provided to magistrates to raise awareness of the combined offence and inform them of how the new offence works and the associated penalty framework.

4.3 Enforcement is occurring when a combined offence is detected

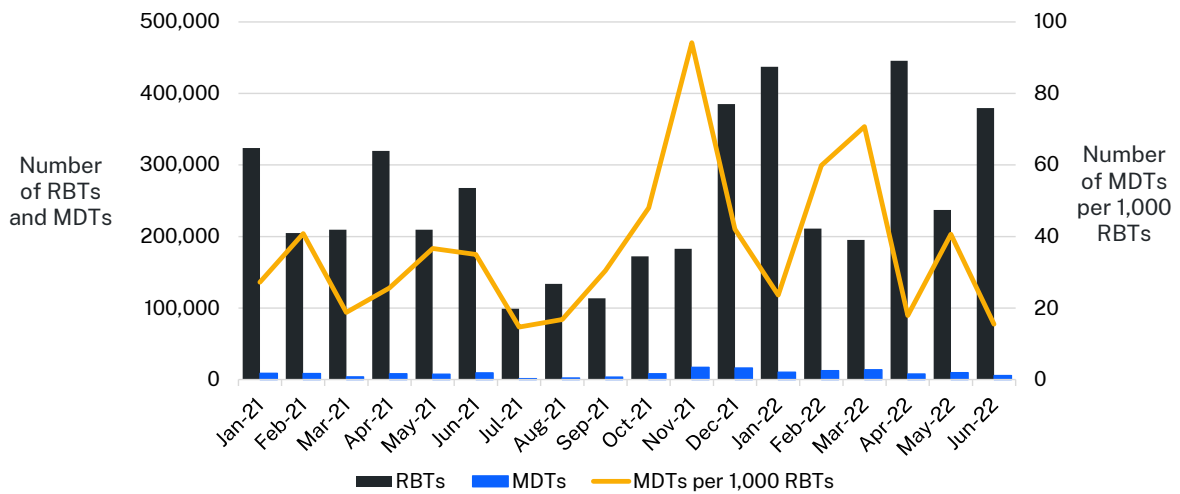
The implementation review included an assessment of available administrative data to understand implementation of the new offence, specifically in the first year of its operation (July 2021 to June 2022).

4.3.1 Number of tests delivered

In the administrative data, implementation of the combined offence was expected to align with an increase in the number of drivers receiving both random breath tests (RBTs) and mobile drug tests (MDTs) on the same occasion. However, data on the number of drivers receiving both tests are not recorded. Instead, the review examined the total number of RBTs and MDTs over time, expecting that the number of MDTs relative to RBTs would increase after the combined offence came into effect.

There did appear to be an upswing in the number of MDTs per 1,000 RBTs from September 2021 to November 2021, and again in February and March 2022 (Figure 1). The increase was not linear, and may not be sustained; it could not be confirmed whether it was due to enforcement of the combined offence. However, if other factors remained unchanged, it is in line with what would be expected to appear with active enforcement.

FIGURE 1. Recorded number of Mobile Drug Tests compared to Random Breath Tests

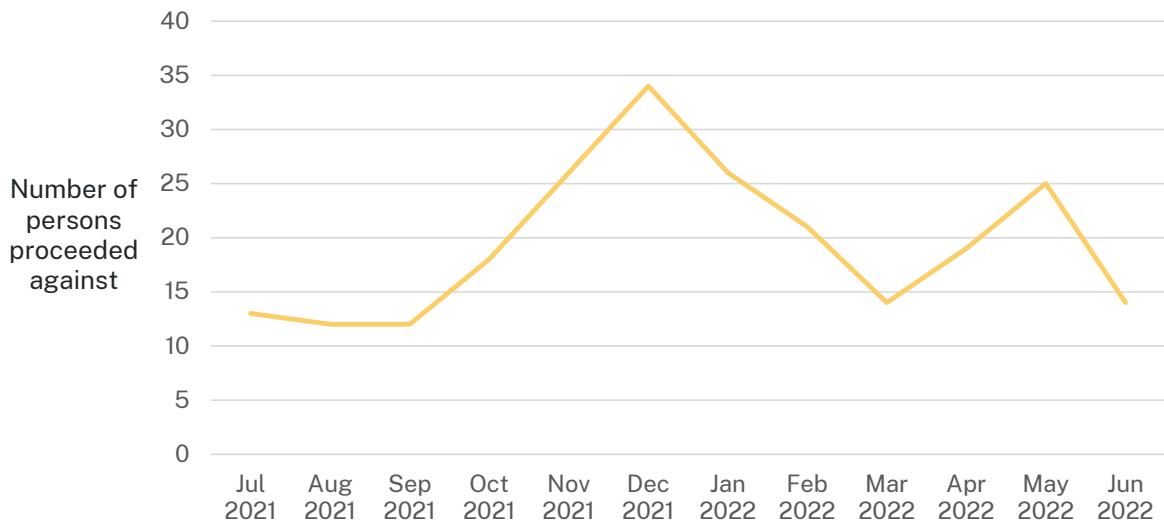


Source: NSW Police Force

4.3.2 Persons proceeded against for the combined offence

The administrative data show that the charging and court process has progressed as expected (Figure 2). Few drivers were proceeded against in the first few months (July to September 2021). Numbers increased from October to December 2021, then fluctuated between January and June 2022.

FIGURE 2. Persons proceeded against from July 2021 for all combined offences



Source: NSW Bureau of Crime Statistics and Research

The most common combined offence charge so far is a first offence for driving with mid range PCA and illicit drug presence. In the first year of implementation, from July 2021 to June 2022, there were 143 charges for this offence and 106 proven court appearances between September 2021 and August 2022.

5 What are the key challenges?

The review identified three key challenges in implementation of the combined offence: uncertainty about the application of the offence for lower range offences, inconsistency of drug testing for drivers that return a mid or high range alcohol reading, and the complexity of the administration processes.

5.1 Uncertainty about application of the combined offence for lower range offences

The combined offence applies to drivers detected with a lower range PCA combined with the presence of a prescribed illicit drug/s, only if the driver committed a previous combined drink and drug driving offence in the past 5 years, but this does not apply if the PCA offence was a standalone offence.

During the early stages of implementation of the combined offence, there were a small number of wrongful convictions for a first offence of lower range drink driving combined with the presence of illicit drugs. Without a prior combined offence conviction, only separate lower range PCA and presence of illicit drug charges are applicable.

5.2 Possible inconsistency of drug testing for drivers that return a mid range or high range alcohol reading

NSW Police reported that a mobile drug test may not always be routinely conducted following a random breath test showing mid range or high range PCA.

The reasons for this may justify further exploration. Some police officers reported that mobile drug test kits were sometimes unavailable. Others suggested that testing for both alcohol and drugs is not yet fully ingrained as business-as-usual.

NSW Police stakeholders reported that a mobile drug test may not always be conducted following a random breath test showing mid range or high range PCA or a lower range PCA with a previous combined offence.

This means it is likely that some potential combined offence charges are not being detected, with drivers instead being charged with only the relevant standalone PCA offence. More consistent testing would likely lead to increased detection of combined drink and drug driving behaviour.

5.3 Complexity in administrative processes

Some processes in applying the combined offence were noted to be cumbersome by some stakeholders. For example, they felt it was inefficient to lay two charges at the outset – a drink driving charge and a combined offence charge. Some stakeholders suggested amending legislation (section 224 of the *Road Transport Act 2013*) so that a driver's licence can be suspended under the combined offence charge. This would remove the need for the initial drink driving charge. Currently, the combined offence charge does not give legal grounds for immediate licence suspension.

However, policy stakeholders who had been involved during the design stage noted that process decisions were also influenced by other considerations. In the case of immediate licence suspension, for example, stakeholders involved in early consultations determined that the combined offence charge should not enable immediate licence suspension for reasons of procedural fairness – since the combined offence is not proven until drug test results are confirmed by the laboratory.

For these reasons, recommendations did not include considering an amendment to section 224 or a change in the charging process.

6 Conclusions and areas for program improvement

Overall, the combined offence has been implemented efficiently and effectively. Most of the elements of implementation are working smoothly. To improve implementation of the combined drink and drug driving offence, the review recommended that:

- Transport renews stakeholder engagement to foster further information sharing about the combined offence within and between partner agencies. This might include:
 - sharing the results of the review and acknowledging implementation success
 - better communicating the policy rationale for not including lower range drink driving and illicit drug presence first offences in the combined offence, and for charging with two offences at the outset
 - establishing a process for ongoing monitoring and data sharing between agencies.
- NSW Police reviews the combined offence training for operational police with the aim to clarify the application of the combined offence to lower range drink driving and reinforce police understanding of processes.
- NSW Police investigates the distribution of drug tests consumables ensuring adequate supplies are available across NSW for operational police. This will improve detection of combined drink and drug driving offences and balance other road safety priorities.
- Transport investigates the prevalence of combined drink and drug driving in NSW in the next phase of evaluation, in order to provide a benchmark for estimating the rate of detection and changes over time. Potential ways to estimate prevalence include:
 - working with NSW Police to ensure consistent drug testing of 100% of mid range and high range drink drivers, and lower range drink drivers with a previous combined offence. Detected drink drivers may not be representative of all drink drivers, but would provide a reasonable proxy of prevalence.
 - collecting anonymous self-reported survey data from a representative community based sample of drivers. This sample would be subject to selection bias and social desirability bias, and would therefore likely underestimate prevalence, but may be a useful supplement to detection rates.