

## Not ‘towards zero’?

**POLITICS** | 11 JUNE 2019 By: **John Sutton**

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The NSW government has made amendments to road transport legislation which it says is to support its road safety policy “Towards Zero”. The legislative changes came into effect on 20 May and are designed to drive [no pun intended] the road trauma toll towards zero. But is this legislation the right vehicle to use, and will it succeed? asks John Sutton.

I hope it genuinely does, and yet I fear it won’t.

Victoria has had similar legislation since 1994 which, according to VicRoads findings in a 2016 report, showed recidivism rates (for low-range PCA) hovering around 29 per cent, while similar calculations by BOCSAR for NSW demonstrated a recidivism rate of only approximately 21 per cent.

The Victorians even have mandatory traffic re-education as part of their regime, NSW does not, and still their recidivism rate is higher.

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So,  
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legislation work? There are a number of key features to be aware of:

**1.** The introduction of Penalty Infringement Notices for offences of Novice Range, Special Range and Low Range PCA — section 195 Road Transport Act says police officers may now issue an infringement notice rather than a court attendance notice

This, for me, is a whole can of worms on its own, removing judicial discretion, mandatory sentencing etc. Such a discussion is beyond the scope of this article. Trap for young players: an offence finalised by infringement notice will be dealt with as a first conviction for the purposes of second and subsequent conviction definitions. In other words, second and subsequent conviction does not actually require a first conviction.

**2.** Immediate suspension — section *224 Road Transport Act*

A police officer may, having detected any of the offences mentioned above, immediately suspend the driving licence of the person. If the officer does not adopt this course, the RMS will write to the person and advise it will occur on a certain date.

Why is this a problem? Imagine you wish to take the matter to court. First, you need to be able to get into the SDRO system to seek the issue of a court attendance notice, then you need to elect to take the matter to court. You could easily have chewed up two months of your three-month disqualification at this point. You then have to get before a magistrate to have the appeal heard and determined.

How long will it take to get a hearing date for the appeal? A month or more. Imagine you are in a regional or rural area with a busy list or a court that sits only once per month.

**3.** Interlock for mid-range PCA first offence — section 211 *Road Transport Act*

Anyone convicted of committing a mid-range PCA offence will now be required to have an interlock device fitted to their vehicle.

No longer does the legislation recognise this instrument as a tool for dealing with recidivism, it is now, in effect, a further mandatory penalty provision affecting not only the ability drive vehicles but also is a substantial financial penalty (installation, maintenance and removal fees) in addition to any fine or other punishment meted out by the court.

**4.** There are other sundry amendments to the section to allow the schemes to work, all of which need to be read and understood.

There are also other legislative amendments dealing with taxi legislation, other *Road Transport Act* amendments and — rather randomly, and reminiscent of the US way of bundling legislation — an amendment under the *Roads Act* dealing with trespassing on the Harbour Bridge and Tunnel.

To begin with, I recognise and applaud the premise behind the policy: to reduce the road toll by being tougher on alcohol and drug-related offending. I am a daily user of the road. I ride a motorcycle in and out of the city, and like all law-abiding road users, I don't want to come across a person affected by alcohol or drugs.

Secondly, I can understand the courts will make a saving in not dealing with such matters. The actuarial calculation would suggest the time saving is absolutely minimal, but given the burden on the Local Court of NSW, it is something. A cynical person may question whether or not this is an effort to free resources for the work being pushed down from the District Court to the Local Court?

Thirdly, I am firmly and absolutely against the diminution of rights. This legislation effectively removes the courtroom process by disincentivising people from attending — it achieves this outcome by placing the allure of a non-judicial outcome before the accused and making the prospect of recovery of their driving privileges before the conclusion of the immediate suspension period, almost impossible.

Fourthly, by removing the courtroom process, the shame, humiliation and embarrassment of having to appear before a magistrate to be condemned for such conduct, dealing with the fear of the unknown outcome and being put through the inconvenience and hassle of going to court, a person gets to hide behind an infringement notice. The statistics show it is the court appearance that changes thought processes and behaviours; thus, making people less likely to be a repeat offender and in turn making the roads safer.

I sincerely hope I am wrong, and this legislation achieves its aims; however, the objective evidence of the Victorian scheme suggests we will not be heading "Towards Zero", but we will have lost yet more rights in the legal system.

*John Sutton is the managing partner of Armstrong Legal's criminal law division.*

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