



Plan to keep drunk motorists from facing court

Dan Proudman

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Some motorists who are caught driving over the blood alcohol limit will avoid losing their licences, while others will receive on-the-spot fines and disqualifications in proposals being considered by the NSW Government.

In a plan to declutter the court system and align NSW laws with those in Victoria, drink drivers without previous convictions and those who register blood alcohol levels under 0.10 will never have to face a magistrate.



John Sutton is solicitor and managing partner at Armstrong Partners Law Firm. John is critical of a proposal for on the spot fines for low-range drink driving to keep cases out of the court system. Photo: Dominic Lorrimer

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However the proposals, seen as a "priority area" within the state's draft Road Safety Plan 2021, have been criticised by some in the legal profession as being too lenient and lacking a deterrence factor for others thinking of getting behind the wheel while drunk.

Under current Victorian law, drivers aged over 26 who register a blood alcohol limit of between 0.05 and 0.07 only receive an on-the-spot fine and lose 10 demerit points.

Learners and probationary drivers are still disqualified from driving for six months and need to install an alcohol interlock for a minimum of six months.

Drivers who blow between 0.07 and 0.10 are disqualified on the spot for six months and also have to fit an alcohol interlock device.

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But they do not have to face court.

Those who register over 0.10 are still dealt with by a magistrate.



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As part of the draft Road Safety Plan 2021, the proposal identified the "priority area" options "to manage lower range and first time offences through penalty notices to deliver swift, certain and targeted penalties and ensure court resources are directed to the most serious offenders".

Also identified were initiatives to "increase the offenders required to install interlock devices and attend proven behaviour change programs, in coordination with other penalties such as vehicle sanctions".

"Currently, half of all low range drink driving first offenders in NSW do not receive a conviction or licence disqualification for their first offence," Centre for Road Safety executive director Bernard Carlon said.

"We have come a long way in shifting attitudes over the last 40 years – it's no longer OK to make excuses and drive after drinking."

But a former police officer and managing partner of Armstrong Partners Law Firm, John Sutton, said drink drivers should not be allowed to avoid the "shame" of dealing with their matters publicly in court.

"The Crimes (Sentencing Procedure) Act at s.3A sets out the purposes of sentencing [and] denouncing the crime and deterring others from committing similar offences are two of those purposes," Mr Sutton said.

"How can that work if a person doesn't even have to go to court to be reprimanded by a magistrate, or so others see them there and see

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represented by a magistrate, or so others see them there and see what happens, or if they do not have to speak to family and friends, work colleagues and relatives, to ask for character references to put before the court," he said.

"An infringement notice denounces nothing," said Mr Sutton.

Mr Sutton conceded legal firms make a lot of income from representing drink drivers at court, but he said the proposals also lacked the chance for magistrates to make common sense decisions.

"Infringement notices remove the judicial discretion involved in the sentencing process such that a person with 40 years of driving without offending will receive the same penalty a person with only, for example, four years' experience and multiple offences on their record," he said.

"Because the penalty needs to be homogenous it will be excessive for the person with the clean record and wholly insufficient for the person with multiple offences.

"I have acted for many [people] with appalling traffic records littered with multiple infringement notice offences.

"The only time they are forced to truly examine their driving is when they are compelled to appeal the suspension of their licence at court because of exceeding the demerit points allowance.

"Court is what focuses them on their behaviour. Outsourcing justice by paying a tax, does not.

"If the courts are not dealing with low-range drink drive offences, it is possible, over time, that the sentencing range for mid-range drink driving offences will slowly diminish in severity as well, as this will be the new baseline seen by magistrates."

It is unclear what would happen to successful initiatives such as the education programs where drivers threatened with disqualification attend a series of tutorials to teach them the dangers of drink driving.

In 1980, more than 380 people were killed in alcohol-related crashes compared to 59 deaths last year.

"Development of any detailed policy would include review of the evidence on penalties and the offences and licence holders that they may apply. We would also consider the role of driver education and community attitudes," Mr Carlon said.

"Any potential future reform would need to be appropriate for NSW and designed to strengthen, not detract from, our current approach."



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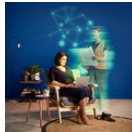
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