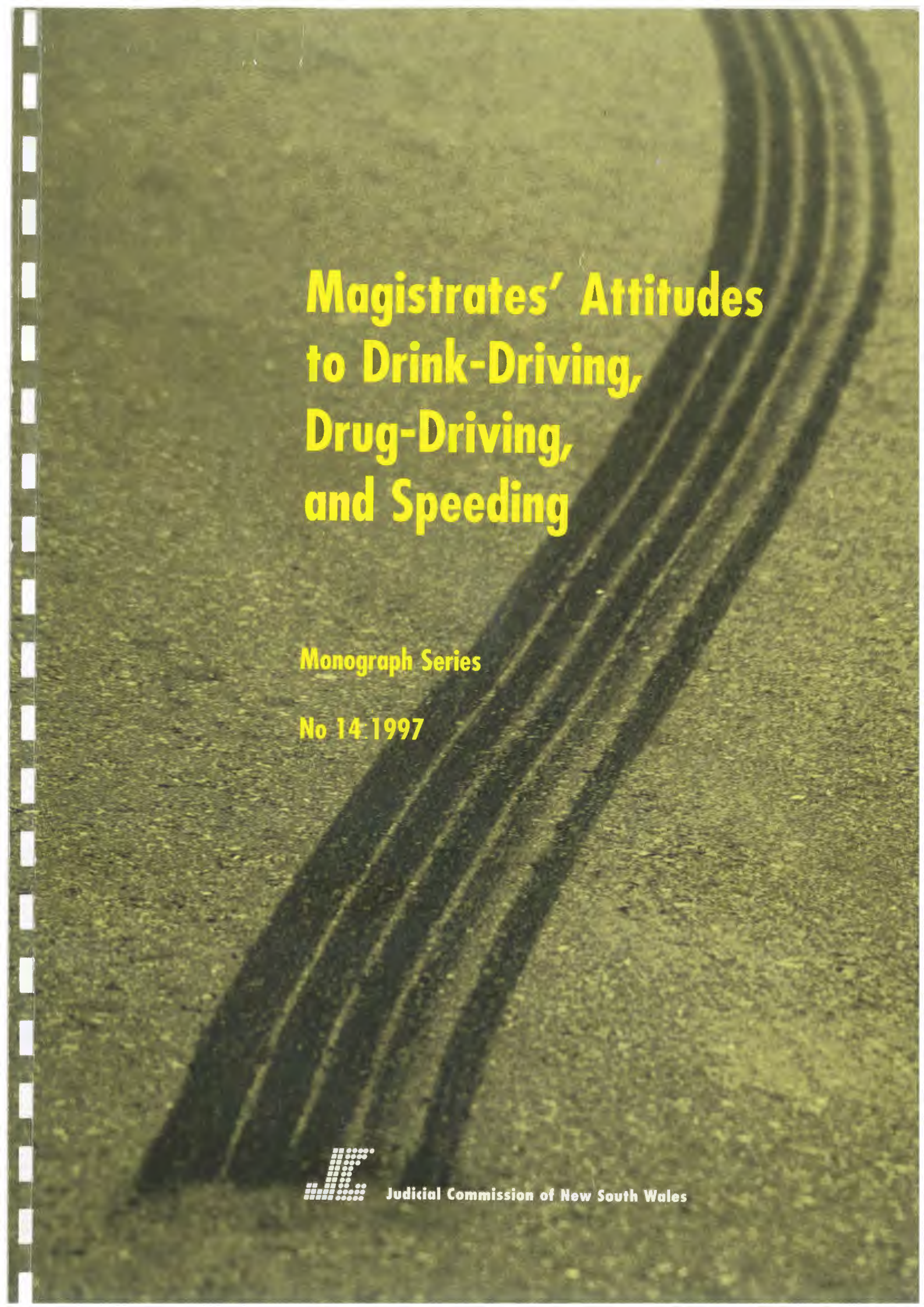

Magistrates' Attitudes to Drink-Driving, Drug-Driving, and Speeding

Monograph Series

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Judicial Commission of New South Wales

MAGISTRATES' ATTITUDES TO DRINK-DRIVING, DRUG-DRIVING AND SPEEDING

Magistrates' Attitudes to Drink-Driving, Drug-Driving and Speeding

A joint project of the Judicial Commission of New South Wales
and the Roads and Traffic Authority

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Disclaimer

The views expressed in this monograph are the views of the individual authors and do not represent any official views of the Judical Commission of New South Wales or the Roads and Traffic Authority, nor are they necessarily shared by the members of the staff of the Commission or Authority. Whilst all reasonable care has been taken in the preparation of this publication, no liability is assumed for any errors or omissions.

Preface

> "The nation's traffic legislation has become enshrined in long and detailed statutory provisions. The law imposes penalties for motorists who fail to adhere to the standard of driving required to keep the roads safe. Many motorists transgress these laws. Of the scores of possible offences which the citizen may commit today the traffic offence is by far the most common kind of offence. Few motorists achieve a life-time record of unblemished driving..."[1]

Middle and high range prescribed concentration of alcohol (PCA) offences are the two most common offences dealt with in the Local Courts. Low range PCA offences also fall among the "top twenty" offences in that jurisdiction. In association with other traffic offences, such as speeding, these matters comprise a significant component of the daily work of magistrates.

In January 1996, the Road Safety and Traffic Management Branch of the Roads and Traffic Authority of New South Wales (the Authority) approached the Judicial Commission of New South Wales (the Commission) with a view to conducting interviews with a number of magistrates in order to gain an insight into their attitudes to road safety issues such as drink-driving, drug-driving and speeding. Particular issues such as the effectiveness of formal sanctions and the increased likelihood of punishment for drink-drivers through random breath testing were also to be canvassed.

The Authority is responsible for providing the public with information about road safety issues. It has a specific objective of reducing the number of road crashes in which alcohol is a factor. Crash data, community survey data and drink-driving detection rates are collected for evaluation. As part of its strategic approach to road safety, the Authority is interested in supporting the work of magistrates and understanding the way in which penalties are imposed.

The main objectives of this project were to:

- improve the Authority's understanding of the factors influencing the sentencing process;
- identify a possible educational need for material to enhance magistrates' knowledge and understanding of traffic issues;
- develop and promote appropriate educational material to meet that need; and
- disseminate to all magistrates and other judicial officers an analysis of the views of a representative sample of their colleagues on these issues.

---

1 Douglas Brown, *Traffic Offences*, 2nd ed, 1988, Butterworths, Sydney, Preface, p xii.

The Commission has a statutory mandate to monitor sentences imposed by courts and disseminate information about those sentencing patterns. Given the significance of traffic offences in the daily work of magistrates across the State, the Commission was keen to participate in this project, particularly in light of the potential benefits to judicial officers. An additional impetus for this project comes from concerns raised in the media about the consistency and appropriateness of penalties for drink-driving offenders.

It was decided that the most effective way to gain an appreciation of the issues involved in sentencing traffic offenders was to conduct a series of semi-structured face-to-face interviews with a wide cross-section of magistrates. The interviews were designed to elicit information about:

- the way in which magistrates deal with such offenders;
- the type of information regarding random breath testing that may be of assistance to magistrates; and
- magistrates' views about some of the more controversial diversionary options such as the traffic offender programme and the use of s 556A dismissals and recognizances.

The study focused on drink-driving, being the main road safety issue dealt with by magistrates, and also addressed some issues in drug-driving and speeding. Due to the Authority's interest in understanding more about the use of the provisions of s 556A of the *Crimes Act* 1900 (NSW) in the context of drink-driving, a number of quite detailed questions were asked in the survey about this aspect of sentencing.

This monograph examines some of the more general issues involved in the sentencing of traffic offenders, analyses the results of interviews with a number of magistrates concerning their views both on sentencing traffic offenders and road safety issues generally, and presents some detailed factual material about drink-driving, drug-driving and speeding. The report also suggests some possible directions for future research.

Donna Spears
Research Director

Sentencing Options for Dealing with Traffic Offenders

Before embarking upon a description of the design of the survey instrument, it is useful to briefly outline the sentencing options currently available to magistrates when dealing with traffic offenders. For the purposes of this study, "traffic offences" includes those offences contained in the *Traffic Act* 1909 (NSW) of having a low, mid or high range PCA whilst driving (s 4E); driving under the influence of a drug (DUI) (s 5(2)); and driving above the speed limit (s 4A). This definition is confined to offences committed whilst driving.

The Array of Sentencing Options

It is a common law sentencing principle that a sentence of imprisonment should be a sentence of last resort — it should only be imposed where there is no other appropriate sentence and where the relevant alternatives have been exhausted. Such a sentence is apt, as it is often said, where no other course is appropriate and where the most serious penalty now known to the law, loss of liberty, is required. Section 80AB of the *Justices Act* 1902 (NSW) states:

> **"80AB. Restriction on imposing sentences of imprisonment**
>
> (1) A Justice or Justices shall not sentence a person to full-time imprisonment unless satisfied, having considered all possible alternatives, that no other course is appropriate.
>
> (2) A Justice or Justices shall:
>
> (a) when sentencing a person to imprisonment — state that, before imposing the sentence, all possible alternatives were considered; and
>
> (b) if the regulations so provide — record the statement as prescribed by the regulations.
>
> (3) A sentence is not invalidated by a failure to comply with this section."

Although s 80AB is expressed in terms of what a justice shall do, it simply restates the common law that a full-time custodial sentence is only a last resort.[2] The following formal sentencing options are available to magistrates.

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2 See *R v James* (1985) 15 A Crim R 364; *Weetra v Beshara* (1987) 46 SASR 484 at 492f.

Non-custodial penalties:
- Griffiths type remand
- Discharge or dismissal
- Rising of the court
- Deferred sentence or bond
- Fines
- Community Service Orders (CSOs)

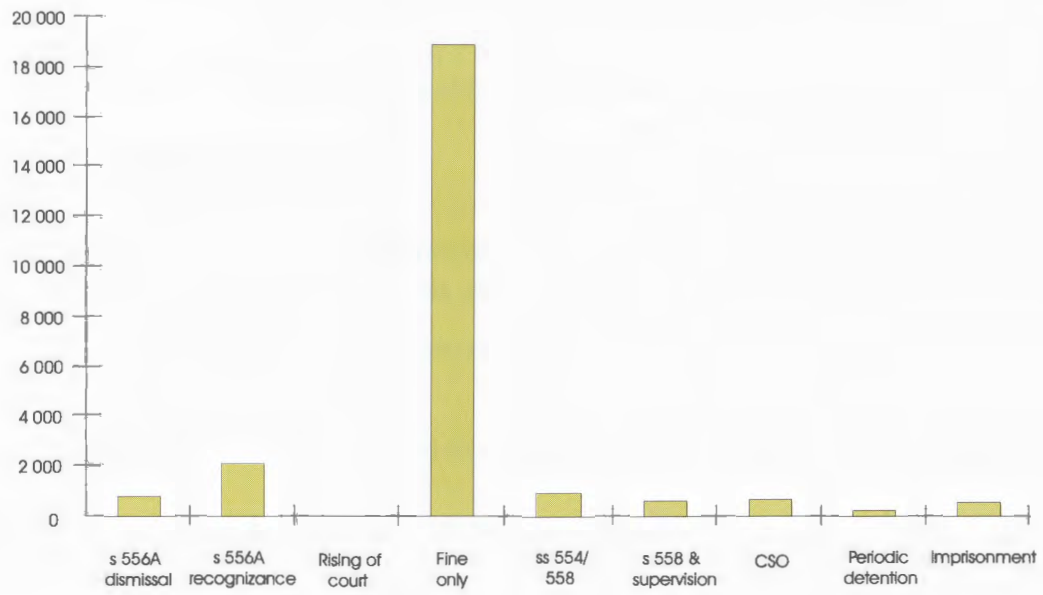
Custodial penalties:
- Periodic detention
- Imprisonment

The court selects the most appropriate sentence from the available options and if a particular option considered the most appropriate is not available, the next most lenient option is then chosen.[3]

Patterns of Sentences Imposed for Traffic Offences

During the 1995 calendar year, there were 24 238 PCA, DUI and speeding offences dealt with in the Local Courts. A fine was the most prevalent penalty (18 874 offences or 77.8% of all sentences), followed by s 556A dismissals or recognizances (2 742 or 11.3% of all sentences). Only a small number (430 or 1.8%) of all sentences were of full-time custody.

Figure 1: Distribution of penalty types amongst traffic offenders (not including licence cancellation orders)



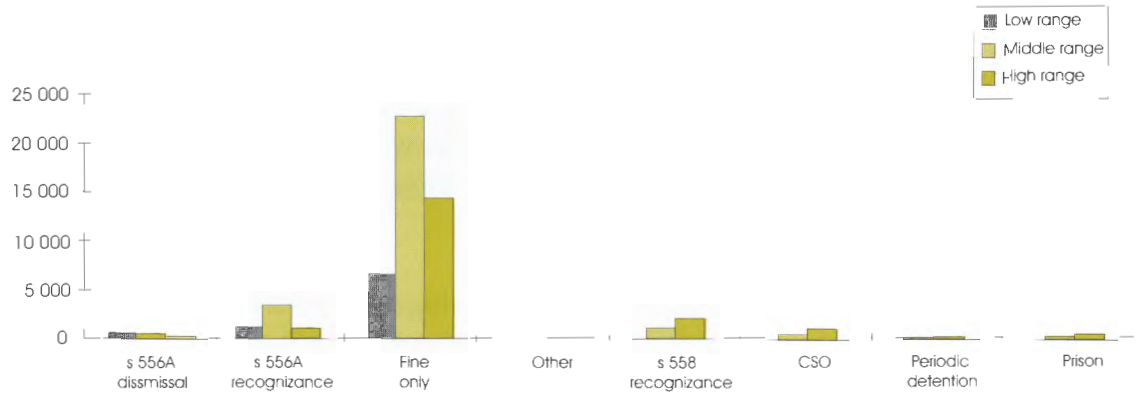
3 *R v T* (unreported, 19 June 1995, NSW CCA).

The incidence of each type of sentencing disposition will be discussed when outlining the nature of the penalty.

Pattern of Sentences Imposed for Drink-driving Offences

In the Commission's short paper on the sentencing of drink-driving offenders,[4] it was found that during a three-year period from January 1992 to December 1994, the most common penalty imposed for PCA offences was a fine, regardless of whether the offence was in the low, middle or high range.

Figure 2: Distribution of penalty types amongst drink-driving offenders



- For low range PCA offences, 78% of offenders received a fine, 14% received a s 556A recognizance, and 6% received a s 556A dismissal. Community Service Orders, prison and periodic detention are not available for this offence.
- For middle range PCA offences, 79% of offenders received a fine, 12% received a s 556A recognizance, and 4% received a s 558 recognizance.
- For high range PCA offences, 74% of offenders received a fine, 11% received a s 558 recognizance, 6% received a CSO, and 5% a s 556A recognizance.

Although custodial penalties are available for high and middle range PCA offences, they are used in only about 1% of middle range PCA offences and in about 3% of high range offences.[5]

Griffiths Type Remands

There is an inherent jurisdiction in a court to bind over an offender to be of good behaviour.[6] A defendant who comes up for sentence may be remanded for a lengthy period to enable the sentencer to assess the behaviour of the defendant during the adjournment. This

4 I MacKinnell, "Sentencing drink-driving offenders", *Sentencing Trends*, No 10, June 1995, Judicial Commission of New South Wales, Sydney.

5 Note that the exclusion of cumulative sentences from the data used in this paper will affect these proportions to some extent, although not markedly.

6 *Griffiths v The Queen* (1977) 137 CLR 293.

procedure was said to be a valid one by the High Court in *Griffiths v The Queen*. At the expiration of the Griffiths type remand the defendant is required to reappear before the sentencer. The defendant's progress during the adjournment will be assessed and the sentencer can further adjourn the matter or sentence the offender. A Griffiths type remand should only be granted in circumstances where there is a real expectation founded on solid grounds, rather than mere sentimentality, that rehabilitation and reform are likely to be achieved. Such a remand should only be granted where, in the event that rehabilitation and reform are achieved, it would be appropriate to impose a non-custodial sentence.[7] It is not the practice of the Local Courts to impose Griffiths type remands on traffic offenders.

Discharge or Dismissal

Section 556A of the *Crimes Act* 1900 enables a sentencer to find an offence proved but, having regard to the "character, antecedents, age, health or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, or to any other matter which the court thinks it proper to consider", the sentencer need not proceed to conviction. A sentencer may either:

(1) dismiss the charge (s 556A(1)(a)); or

(2) discharge the offender conditionally on his/her entering a recognizance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called upon at any time during such period: s 556A(1)(b).

A recognizance imposed pursuant to s 556A(1)(b) cannot be for longer than three years. If the offender does breach the recognizance then he or she can be brought back to court and convicted and sentenced. Conditions can attach to the recognizance: s 566(1A). Section 556A is available pursuant to either a plea of guilty or where a magistrate has found a person guilty of an offence to which the offender has pleaded not guilty.

The section applies to all offences apart from those specified under s 10(5) of the *Traffic Act* 1909 where its use is restricted in circumstances where the offence is proved in regard to furious or reckless driving, driving at a speed or in a manner dangerous, driving under the influence, failing to stop after death or injury, driving with excessive alcohol in the blood, or refusing to take a breath analysis test. The restriction applies where a person has received the benefit of s 556A for a like offence within five years of being charged with the present offence.

It is not proper to dismiss a matter without a conviction merely to avoid some other legislative provision which is otherwise applicable.[8] Where a magistrate deals with a matter under s 556A there is no conviction which attracts an automatic period of disqualification.[9]

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7 *R v Tindall and Green* (1994) 74 A Crim R 275.

8 *R v Fing* (unreported, 4 October 1994, NSW CCA).

9 *Re Stubbs* (1947) 47 SR (NSW) 329 at 335-336, 339-340.

During 1995, 2 742 traffic offences (11.3% of all such offences) were dealt with pursuant to the provisions of s 556A of the *Crimes Act* 1900. The majority of those dispositions were s 556A recognizances (1 991 or 73%); with s 556A dismissals accounting for only 27% or 751 of other s 556A sentences. Of all 2 742 offenders receiving a s 556A recognizance or dismissal, 1 834 (or 67%) had no prior record.

Rising of the Court

In its effect upon the offender, being sentenced to the rising of the court resembles a dismissal under s 556A of the *Crimes Act* 1900, except that a conviction is recorded and the offender may be liable to further penalties (for example, mandatory licence disqualification upon conviction for major traffic offences). As a term of imprisonment, the rising of the court can also be combined with other penalties — that is, a s 554 recognizance or fine — which further distinguishes it from a s 556A dismissal.

However, for most offenders the only practical difference between the rising of the court and a s 556A dismissal will be the recording of the conviction. In spite of its formal status as a term of custody, the rising of the court is generally regarded as one of the most lenient penalties available to the sentencer as it lacks the stigma or personal trauma of detention in a cell that would occur in a longer custodial sentence.

During 1995, the rising of the court was not a significant outcome. There were only 22 such sentences imposed (0.1% of all sentences).

Deferred Sentence or Bond

Section 558 of the *Crimes Act* 1900 enables a sentencer to defer passing sentence for an offence upon the person entering into a recognizance — with or without sureties in such amount as the sentencer may direct — to be of good behaviour for such period as the court thinks proper and to appear before the court for sentence if called upon. It can be used for any offence. Pursuant to the statute, the recognizance can be for any length of time. There is no statutory limitation.

Section 554(2) of the *Crimes Act* 1900 enables a sentencer in a court of summary jurisdiction to impose on a defendant a recognizance, with or without a surety or sureties, to be of good behaviour in addition to or in substitution for a fine or gaol term not in excess of 12 months. If the offender fails to enter the recognizance then the period of imprisonment in default must not exceed three months. The total period of imprisonment that can be imposed cannot exceed 12 months. The recognizance must be for a period of not less than 12 months but not more than three years.

Section 432(2) of the *Crimes Act* 1900 enables a sentencer when imposing a sentence of imprisonment in respect of a misdemeanour to require the offender to also enter into a recognizance, with or without sureties, for keeping the peace and being of good behaviour.

If the offender cannot obtain sureties then he or she shall not be imprisoned for more than one year. This recognizance can only be imposed when a gaol term is also imposed and if the offence committed is a misdemeanour. The recognizance cannot exceed three years in length.

In 1995, deferred sentences or bonds accounted for 5.5% (or 1 344 instances) of all sentences imposed. The majority of recognizances were made pursuant to s 558 without supervision (801 cases) and only six were made pursuant to s 554. There were 537 s 558 recognizances with supervision imposed.

Fines

A fine is a monetary penalty. Fines are noted in Acts as numbers of penalty units. Section 56 of the *Interpretation Act* 1987 (NSW) states:

> "A reference in any Act or statutory rule to a number (whether fractional or whole) of penalty units shall be read as a reference to an amount of money equal to the amount obtained by multiplying $100 by that number of penalty units."

A fine can be imposed if a fine is specified as a penalty for the offence. The maximum amount of a fine that can be imposed is the maximum fine specified for the particular offence. A sentencer has the power to impose a fine less than the maximum for the particular offence: *Crimes Act* 1900, s 553. A magistrate has no power to impose a fine as a condition of a recognizance.

When imposing more than one fine or a fine with another sentence the court should consider the totality of the conduct and the total sentence imposed.[10] It is not inappropriate to order the payment of a fine simply because it is to be paid by another person in a situation where the offender will become obligated to the other person.[11] No fine can be imposed where the provisions of s 556A of the *Crimes Act* are invoked because no conviction is entered.

As mentioned above, fine only was the most prevalent penalty imposed accounting for almost 78% of all sentences imposed.

Community Service Orders

A CSO is imposed pursuant to the *Community Service Orders Act* 1979 (NSW). Pursuant to the imposition of a CSO the offender can be ordered to:

(1) carry out community service work; and/or

(2) attend an attendance centre and participate in a development programme.

---

10 *R v Sgroi* (1989) 40 A Crim R 197.

11 *R v Repacholi* (1990) 52 A Crim R 49.

A "development programme" is defined in the Act as a personal development, educational or other programme. It should be noted that pursuant to s 3(2) a reference in the Act (except in s 6) to the performance of community work by a person in respect of whom a CSO has been made includes a reference to the attendance by the person at an attendance centre and the participation by that person in such development programmes as the assigned officer directs. Pursuant to s 4(1A) an order may recommend that the community service work to be performed by the person in respect of whom the order is made should include the removal of graffiti from buildings, vehicles, vessels and places, and the restoration of the appearance of the same consequent upon the removal of graffiti from them.

A CSO can only be imposed if the offender is convicted of an offence punishable by imprisonment, whether or not it is also punishable by fine: s 4(1)(a). A CSO can be given to a person who is at least 18 years of age at the time of the commission of the offence or who, although not 18 at the time of the commission, was 21 at the date he or she was charged with the offence: s 4(1)(b)(i) and (ii).

It should be noted that a CSO is imposed instead of imprisonment. Section 4(1) states that "the court may, instead of imposing a penalty of imprisonment" impose a CSO. A CSO should only be imposed where it would otherwise be appropriate to impose a gaol term.

The maximum number of hours that a court can impose for any one offence is 500 hours: s 7(1). Section 4(1) states that an order can be made requiring the offender to perform community service work for a number of hours not exceeding the number of hours prescribed in respect of the class of offences to which the offence belongs. Clause 4 of the *Community Service Orders Regulation* 1995 (NSW) states:

> **"Maximum hours for orders made by court: sec 4**
>
> For the purposes of section 4(1) of the Act, the prescribed number of hours is:
>
> (a) 100, for offences for which the maximum term of imprisonment provided by law does not exceed 6 months; or
>
> (b) 200, for offences for which the maximum term of imprisonment provided by law exceeds 6 months but does not exceed 1 year; or
>
> (c) 500, for offences for which the maximum term of imprisonment exceeds 1 year."

There are specific provisions regarding the attendance of offenders at an attendance centre. The court cannot:

(1) order an offender to attend more than three times in any one week (s 7(3)(a));

(2) require the person to attend for a total period of more than 15 hours in any one week (s 7(3)(b)); or

(3) specify a total period of less than 20 hours for attendance: s 7(3)(c).

In 1995, there were 651 CSOs made, accounting for 2.7% of all sentences.

Periodic Detention

The power to impose periodic detention derives from the *Periodic Detention of Prisoners Act* 1981 (NSW). Periodic detention is available if the offender is convicted of an offence and a sentence of imprisonment is imposed of not less than three months and not more than three years. Periodic detention cannot be imposed if the offender is under the age of 18 years at the time of sentence: s 5(2)(a).

Periodic detention is usually weekend imprisonment from 7 pm Friday evening until 4.30 pm Sunday afternoon, although a detention order can commence on any day of the week. Mid week detention is available at certain periodic detention centres. Pursuant to s 4 of the Act, the "detention period" commences at 7 pm on the same day of the week as the date specified in the order of the court imposing the sentence as the date on which the sentence commences and ends at 4.30 pm on the second day after the day on which the period commences. However, the Commissioner of Corrective Services can upon application alter the actual days of the week that comprise a detention period, pursuant to s 11A. The Commissioner can also approve a variation in the time a detainee is required to report.

Section 10(1)(b) of the Act enables the Commissioner to order a periodic detainee to perform work during specified hours, in a prison or at a place outside a prison. Section 11 provides that the Commissioner may, by order, exempt a periodic detainee from serving any detention period in prison if the periodic detainee is, by an order under s 10(1)(b), directed to perform work outside a prison during that period. The prisoners are not housed in the main prison but in separate accommodation in Periodic Detention Centres. They usually participate in community work during the detention period rather than remain idle. Periodic detention is not a common penalty for traffic offenders. In 1995, only 165 (or 0.7% of all sentences) involved this form of custody.

Imprisonment

The rules relating to the structuring of custodial sentences are set out in the *Sentencing Act* 1989 (NSW).

A sentence that does not exceed six months must be for a fixed term: s 7(1). Thus unless the total sentence is for six months and one day or more then such a sentence cannot comprise minimum and additional terms.

When sentencing an offender to imprisonment in excess of six months a court is required to set a minimum term of imprisonment and then set an additional term during which the person may be released on parole: s 5(1). A court may, when sentencing an offender to a term of imprisonment in excess of six months, decline to set a minimum and additional term and impose instead a fixed term: s 6(1).

A court can decline to set a minimum and an additional term pursuant to s 6(2) of the Act, if it appears to the court that it is appropriate to set a fixed term:

"(a) because of the nature of the offence or the antecedent character of the person; or

(b) because of other sentences already imposed on the person; or

(c) for any other reason the court considers sufficient."

If a court decides to set a fixed term rather than a minimum and an additional term, the court is required to state reasons for its decision: s 6(3). A sentencer should when giving the reasons pursuant to s 6(3) for setting the fixed term, expressly state that the fixed term is intended to be the equivalent of such a minimum term.[12]

In 1995, 430 sentences of full-time custody (1.8% of all sentences) were imposed.

Disqualification Periods

Under the provision of s 10 of the *Traffic Act* 1909, the court is empowered to disqualify an offender from holding a driver's licence. There are certain offences under the Act (for example, drive in a manner dangerous and various PCA offences) which have statutory periods of disqualification. An offender convicted of such an offence must be disqualified. In respect of all matters in which a statutory period of disqualification applies, there is a minimum period specified and any period of disqualification cannot be reduced below that period.

If a court fails to mention a period of disqualification in cases where a statutory period is applicable, then the Commissioner for Motor Transport will automatically deem the period of disqualification to be the maximum statutory period.

If in error a court imposes a period of disqualification which is less than the permitted minimum period, then the court can rectify the matter on its own motion under s 24 of the *Criminal Procedure Act* 1986 (NSW).

Diversionary Programmes

In addition to these formal mechanisms for dealing with traffic offenders, there are a number of informal or less formal diversionary programmes or arrangements. These include traffic offender programmes (TOP) and alcohol rehabilitation programmes.

Traffic offender programmes

In Australia, these programmes are run for drink-driving (and other) offenders. Such courses are conducted either by government agencies or individuals. The use of such programmes is at the discretion of the individual magistrate having responsibility for a particular circuit or court.

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12 See *R v Small* (1994) 33 NSWLR 575 at 604; 72 A Crim R 462 at 490. As to the refusal to fix a minimum term because the offender has a bad record: see *R v Donovan* (unreported, 9 September 1992, NSW CCA).

Such programmes are said to be an option available to magistrates after a person has been found guilty of an offence. The stated aim of the programme is to increase participants' understanding of their obligations to society in general and traffic laws in particular. When sentencing an offender at a later date, a magistrate may take into account any changes of attitude exhibited by the offender while participating in the programme.

Central Coast Traffic Offenders Programme

The traffic offenders programme operating at Mount Penang on the Central Coast of New South Wales is a typical example of these programmes. Participation in the programme is restricted to persons charged with a drink-driving offence or other traffic offence. The vast majority of participants are drink-drivers. Following an appearance before the court and a plea of guilty, the offender can be referred, at the discretion of the magistrate, for involvement in the programme. There must be a demonstrated willingness on the part of the offender to participate. Where there is an acceptance by the magistrate of suitability, the proceedings are adjourned so that the offender can attend the seven week course.

Offenders are required to attend at local premises for six sessions of lectures. These sessions are conducted by representatives of:

- Police Service
- Ambulance Service
- NRMA
- Spine Safe
- Local Area Health Service
- Roads and Traffic Authority.

The course consists of lectures, films and observational visits. Participants are provided with handouts, pamphlets and information about vehicles, driving skills, effects of alcohol and drugs on driving, the consequences of bad driving and accidents, and traffic law. They are also taught about first aid and the need for regular mechanical servicing of vehicles.

Each participant is required to complete a written project document which is submitted to the programme co-ordinator and the court. Offenders are encouraged to undertake additional research to demonstrate initiative. The programme co-ordinator also provides the court, the offender and his or her legal representatives with an assessment of the offender's level of co-operation and standard of participation.

In a number of cases offenders who successfully completed the programme received the benefit of a non-recording of conviction and consequently retained their entitlement to drive. Others have had the statutory periods of disqualification greatly reduced, often to the minimum.

Remedial programmes

Remedial programmes specifically designed to address drinking problems as well as drink-driving issues are also available. These programmes are typically conducted by drug and alcohol clinics. Other interventions focusing on drinking problems are also available, ranging from Alcoholics Anonymous to psychotherapy.

Powers of the Local Courts with Respect to Juvenile Traffic Offenders

The powers of the Local Courts with respect to traffic offences "committed by children" are set out in s 84A of the *Justices Act* 1902. The effect of s 84A is that juvenile traffic offenders within the jurisdiction of the court will be dealt with according to law (but excluding imprisonment) unless a discretion is exercised to use the powers of the Children's Court. Some anomalies with regard to penalties will become apparent from the existence of the discretion referred to.

For instance a juvenile offender charged with a second offence of high range PCA would be liable to a maximum penalty of $2 000 if dealt with according to law. If the offender is charged with an associated non-traffic offence, for example car theft, and dealt with, as mandated, by the Children's Court, a maximum penalty of $1 000 is available for the second PCA offence.

A sentencer dealing with a traffic offender according to law may impose supervision as a condition of a recognizance under ss 556A or 558 of the *Crimes Act* 1900. An assessment report from Juvenile Justice Community Services (or from the Community Corrections Service if the offender is aged 17 ½ years or above) should be obtained before supervision is imposed.

A sentencer wishing to impose a CSO in respect of an offence for which imprisonment is provided, on a traffic offender who is still under 18 years of age, must first exercise the discretion to deal with the offender in accordance with Pt 3, Div 4 of the *Children (Criminal Proceedings) Act* 1987 (NSW), and obtain an assessment for suitability for a Children's CSO under the *Children (Community Service Orders) Act* 1987 (NSW) from the Department of Juvenile Justice. Such an order is limited to a maximum of 250 hours: s 13. A CSO in respect of a traffic offender who (at the date of sentence) has attained 18 years may be made under the *Community Service Orders Act* 1979.

Periodic detention is not available in respect of a traffic offender due to the exclusion in s 84A of the *Justices Act* 1902 of the use of imprisonment, and due to there being no present scheme of periodic detention for juvenile offenders subject to control orders.

The provision of s 84A excluding the use of imprisonment does not exclude the making of a control order.[13] A sentencer wishing to impose a custodial order in respect of an offence for which imprisonment is provided, must first decide to exercise the discretion to deal with the offender in accordance with the *Children (Criminal Proceedings) Act* 1987, Pt 3, Div 4.

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13 See *Appeal of Jason Peter Daw* (unreported, 29 September 1989, Parramatta District Court, Kirkham DCJ), cited in (1990) No 24 *Children's Court Information Bulletin* 8.

Section 14 of the *Children (Criminal Proceedings) Act* 1987 applies to all courts (including Local Courts) that exercise criminal jurisdiction: s 4. Accordingly a Local Court has a discretion to record or not record a conviction in relation to a traffic offence whether or not the court exercises the discretion to deal with the traffic offender according to law or in accordance with Pt 3, Div 4. In the event that a Local Court deals with a traffic offender according to law without recording a conviction, any mandatory consideration of disqualification provided for the offence does not apply.

In the event that a Local Court exercises a discretion to deal with a traffic offender in accordance with Pt 3, Div 4 of the *Children (Criminal Proceedings) Act* 1987, s 33(5) provides that the court's power to impose disqualification is not limited by the exercise (whether or not the separate discretion under s 14 to not record a conviction is exercised).

Project Planning and Survey Design

In early January 1996, the Road Safety and Traffic Management Branch of the Authority contacted the Commission with a view to undertaking a joint project to investigate the views of magistrates in relation to road safety issues such as drink-driving, drug-driving and speeding. After a number of informal telephone discussions, a meeting was held between staff from each agency in order to develop a research proposal.

On 12 February 1996, the Commission formally approved the project. In subsequent meetings during February the subject matter of the project was finalised, an appropriate research method was identified, and achievable time frames to enable the project to be completed within the 1996 calendar year were set.

Given that one of the goals of the project is to gain some insight into the factors that influence the way in which traffic offenders are sentenced, it seemed clear that the best way to obtain this information was to speak directly to magistrates and ask each magistrate a number of standard relevant questions. Although this method is fairly time consuming, it allows the collection of valuable qualitative material in a standardised fashion and some statistical reporting of trends and patterns, while also providing scope for obtaining personal observations and anecdotes.

Due to the fact that there are now 129 magistrates on the Local Court bench, it was decided that the best way of proceeding was to interview a reasonably large representative sample. A sample size of 40 (approximately one-third of all magistrates) was selected, with similar numbers of city and country respondents.

At this stage it was decided that it was necessary to limit the offences discussed to Local Court driving offences in order to prevent the interviews from becoming oppressively long and too wide-ranging.

During March 1996, staff members from the Authority prepared an initial draft of the questionnaire to be used as an interviewer guide for the semi-structured interviews. The draft was reviewed and revised by Commission staff and the revised draft was then agreed to by the Authority.

A copy of the draft questionnaire was sent to Chief Magistrate Pike in order to obtain his views and suggestions. Commission staff then met with the Chief Magistrate and Deputy Magistrates Henson and Gilmore. A number of changes suggested by the Local Court were incorporated and the questionnaire was finalised. The Chief Magistrate also provided details of the sitting arrangements of magistrates in order to facilitate the selection of magistrates to be interviewed. The names of 40 magistrates were selected on the basis of geographical location and other statistical factors. The selection was not random but the sample size was considered adequate to provide good coverage of issues.

On 22 May 1996, the finalised questionnaire was piloted with the Chief Magistrate and Deputy Magistrate Henson. Those interviews were considered to have been successful and a decision was made to commence the formal interview process. During May, arrangements were put in place for the remainder of the interviews to be conducted during May and June.

Between 22 May 1996 and 18 June 1996, 35 face-to-face interviews, two phone interviews and one postal interview were conducted. Twenty-two of those interviews were held in the city and 16 interviews were conducted outside Sydney in regions including Gosford, Woy Woy and Katoomba. Two of the magistrates approached to be interviewed were unable to participate in the project due to lack of availability.

During June, a coding sheet was developed to facilitate data entry. This proved to be more complex than first anticipated due to the complexity and length of several of the questions. The data analysis was conducted using SPSS, a specialist statistical computing programme. The data was analysed during July and August. Regular meetings were held with the Authority to discuss preliminary impressions and observations. A short results document was prepared to facilitate the development of further questions for analysis. The final report was completed in November 1996.

Survey Results

A Note on the Interpretation of the Results

Some of the questions in the survey were "close-ended" — that is, they had specific answers (for example, "yes" or "no") or an implicit set of answers. An example of a close-ended question is: "Do you think that the countermeasures against drink-driving have been successful?"

Most of the questions were "open-ended" — that is, there was no specific set of answers and magistrates were asked to give a verbal response. An example of an open-ended question is: "What factors do you take into account when handing down a penalty for a drink-driving offence?" In answering this type of question, it is possible for a magistrate to mention only the issues which are most important or to overlook certain responses.

It is important to realise that not every magistrate considered particular issues. If a list of issues was presented (as a close-ended question), the number of magistrates reporting a particular issue would most likely be different. In this regard, it is important to look at the range of issues being presented, rather than the proportion of magistrates mentioning each issue.

Furthermore, the sample size in the study is comparatively small, and the sample is not a truly random selection of magistrates. These factors emphasise the importance of focusing on the range of responses.

Characteristics of Respondents

Of the 129 magistrates located throughout New South Wales, 38 (or 29.5%) participated in the survey.

Location

Over half the magistrates presided over courts located in the Sydney metropolitan area (22 respondents or 57.9%) and 16 magistrates presided over country courts (42.1%).[14]

14 For the purposes of this study, Katoomba, Woy Woy and Gosford Local Courts were counted as being outside Sydney and therefore country courts.

Sex

Males outnumbered females by more than four to one (31 respondents or 81.6% to seven respondents or 18.4%).

Age

Almost half were aged 51–60 years (18 respondents or 47.4%). A similar proportion were aged 50 years or less (17 respondents or 44.7%), and a small number were aged over 60 years (three respondents or 7.9%).

Seniority

The experience of magistrates in this survey varied from one year to 27 years. The mean number of years on the bench was 10.6 years and the median was 9.5 years.

Time spent on driving matters

The majority of the magistrates interviewed spent up to a third of their time on driving matters (34 respondents or 89.5%). The remaining four magistrates spent between one-third and two-thirds of their time on these types of cases (10.5%). Respondents also pointed out that the amount of time varied greatly between lists days and other days, and that while a greater proportion of their cases overall are driving related, proportionately less time was required for these cases because most defendants plead guilty to the offence or offences.

City/country differences

Overall, city magistrates differed from country magistrates in that they were more likely to be older with almost twice as many magistrates aged over 50 years (68.2% compared with 37.5% of country magistrates). City magistrates were also more likely to have been on the bench for longer (a mean of 13 years compared with 7.2 years for country magistrates).

The following sections provide an analysis of the responses to the survey, firstly for all respondents and then, where it is useful to discern differences, by the location of respondents. The information is presented to reflect the structure of the questionnaire (see Appendix 1).

Drink-driving Issues

Problems and countermeasures (Q1)

Success of countermeasures against drink-driving (Q1.1)

Over three-quarters of the magistrates interviewed thought that the countermeasures against drink-driving have been "successful" (76.3%). A further eight magistrates (or 21.1%) believed they have been "highly successful", while one magistrate (2.6%) believed that the countermeasures have been "unsuccessful".

The majority of respondents (70.6%) regarded random breath testing (RBT) as the most successful countermeasure. Most magistrates commented that since the introduction of RBT, people are more aware of the risks associated with drink-driving and as a result there has been a significant change in driving attitudes and a significant reduction in the road toll. However, some magistrates also considered that the effectiveness of RBT very much depends on the level of police activity and on the support of the public (20.6%).

Some magistrates considered that public education/awareness campaigns, such as "It's a crime" billboards and television safety campaigns have brought about a change in community attitudes and perceptions (26.5%). Two magistrates considered that, as with RBT, the effectiveness of these campaigns depends on maintaining a high profile (5.9%). Others thought campaigns should also focus on the consequences of offending — such as loss of licence, loss of employment and the prospect of a criminal record (11.8%).

Bringing people to court and imposing sanctions was also mentioned as a successful countermeasure against drink-driving (17.6%). Others mentioned that the success is evident in statistics which show a reduction in fatalities and injuries associated with drink-driving (14.7%).

Perception of drink-driving as a road safety problem (Q1.2)

Every magistrate interviewed perceived drink-driving to be a serious road safety problem. A quarter of the respondents added that the problem increases in direct proportion to the blood alcohol concentration (BAC) (28.9%), while over a third commented that alcohol (along with speed) is a contributing factor in accidents and is one of the main causes of deaths and injuries on the road (39.5%).

Almost half also stated that alcohol affects your ability to drive (42.1%) by "giving you a false sense of security and over confidence" (21.1%), by impairing your judgment and perception (10.5%), and by delaying your reaction/response time (7.9%). Five magistrates cited research which suggests that drink-driving is a major road safety problem (13.2%).

Relationship between BAC and impairment of ability to drive (Q1.3)

The majority of respondents saw a direct relationship between BAC and impairment of ability to drive (84.2%). About a quarter cited research and expert evidence which suggests that it is a close relationship (23.7%). However, many (50%) thought that impairment depends on a variety of factors, such as a person's tolerance level for alcohol (31.6%), age and driving experience (15.8%), and their physiology (size, weight and metabolic rates) (13.2%). A small number of magistrates stated that impairment increased markedly beyond a BAC of 0.08 (5.3%), 0.10 (5.3%) or 0.12 (2.6%).

Relationship between number of standard drinks and PCA/BAC (Q1.4)

Magistrates were asked how many standard drinks would be required for an average man to reach a BAC of 0.05, 0.10 and 0.15. Table 1 summarises their responses.

Table 1: Standard drinks related to BAC nominated by magistrates

BAC	n	Mean	Median	Range	Don't know
0.05	35	2.74	3.0	2–5	3
0.10	23	5.57	6.0	3–8	15
0.15	21	8.38	8.0	6–12	17

On average, magistrates believed that it would take 2.74 standard drinks within an hour to reach a BAC of 0.05. The average number increased to 5.57 standard drinks to reach a BAC of 0.10 and 8.38 standard drinks to reach a BAC of 0.15. Notably though, while most of the respondents were able to specify the number of standard drinks required to reach a BAC of 0.05 (92.1%), fewer were able to say how many standard drinks were required to reach a BAC of 0.10 (60.5%) or a BAC of 0.15 (55.3%).

Although the reported median number of standard drinks required to reach a BAC of 0.05 closely reflects the number in the drinking guidelines promoted by the Authority, some magistrates said that you "can't always believe RTA advertisements" (18.8%) and most magistrates remarked that the number of drinks required to reach any BAC "depends on a lot of factors" (84.2%).

Factors which were thought to influence BAC were:
- the person's physiology (71.9%), such as their size/build (43.8%), metabolic rate (34.4%), sex (31.5%) and whether they smoke (3.1%);
- the type or class of alcohol (28.1%);
- the difference between people's tolerance level for alcohol (15.6%); and
- variation in alcoholic content of drinks within the same class (9.4%).

Deterrence and protection of the community (Q1.5)

Deterrence and protection of the community were considered extremely important issues in dealing with drink-driving offenders (94.7%). One magistrate put it concisely: "Community protection is the goal. Deterrence is a tactic to achieve it."

Some respondents added that these issues were more important when dealing with offenders with higher range PCAs (18.4%).

Respondents also remarked that the whole purpose of the legislation was to deter drink-drivers and to protect the community (18.4%), with comments like:

> "To me, the legislation and creation as an offence is a deterrence and I don't think on the whole that there is much value in judicial officers imposing public deterrence — that is the legislation."

Although not specifically asked, a number of magistrates volunteered the view that the best deterrence against drink-driving was disqualification from driving or loss of licence (18.4% or seven respondents).

Others made general statements such as:
- there is more value in general deterrence (7.9%);
- specific deterrence works for repeat offenders (7.9%);
- individual deterrence is effective (5.3%); and
- deterrence is more important for younger offenders (2.6%).

Educational material (Q1.6)

Thirty-one respondents (or 81.6%) were interested in receiving a package of information regarding drink-driving issues specifically prepared for magistrates. While some of these were happy to take anything available (16.1%), over a third were concerned with obtaining the most up-to-date and accurate information or research available (35.5%).

Almost three-quarters of those interested in receiving educational material were even more specific about the type of information to be provided (74.2%). In particular:
- research into levels of effect of various types of alcohol (31%);
- statistics/information about the dangers of drink-driving to "preach" to offenders in court (20.7%); and
- research into the impact/effectiveness of penalties for drink-driving offenders (17.2%).

For a more complete analysis of responses, refer to Table 2 below.

Again, although not asked, a few respondents mentioned that any information/material should be provided in a simple format, such as notes for bench books (13.8%) or that educational material would be of benefit to newly appointed/less experienced magistrates (6.9%).

Table 2: Useful educational material nominated by magistrates

Specific information/material	n	%
Behavioural research		
Level of impairment	9	31.0
For various types of alcohol	2	6.9
Medical research		
Dissipation/absorption rates	2	6.9
Pharmacological studies (summary of)	2	6.9
Technical Information		
Correlation between number of drinks and BAC reading	3	10.3
Updates in breathalyser technology	2	6.9
Information about dangers to use in court	6	20.7
Effectiveness of penalties	5	17.2
Effectiveness of diversionary programmes (eg TOP)	4	13.8
Effectiveness of RBT	2	6.9
Effectiveness of public awareness campaigns	1	3.4
What colleagues are doing (their views)	2	6.9

Note: Percentages are based on 29 respondents, since two magistrates did not specify the type of information they were interested in receiving. Also note that percentages do not total 100% because some respondents requested more than one type of information.

Legislation (Q2)

Interpretation and application (Q2.1)

Twenty-three magistrates (or 60.5%) generally thought that the drink-driving legislation was *not* difficult to interpret or apply. However, a number of magistrates did observe that although the legislation can be confusing and complicated, they have with experience been able to apply it properly (15.8%). The same proportion also pointed out that a number of Supreme Court decisions have clarified certain areas (15.8%), and two magistrates commented that some cases were difficult but that this was because of the factual circumstances and complex arguments of the case and not because of any difficulty with the legislation (5.3%).

Respondents also made general statements about the design of the legislation. In particular, seven magistrates commented that the structure of the Act is "nonsensical/ badly drafted" with disqualification periods and provisions contained in a different section to offences and penalties (18.4%). A small number of respondents also expressed their preference for the "old style" legislation which did not group drink-driving offences into ranges (7.9%), and two magistrates would like legislators to write in "plain English" (5.3%).

Of the 15 magistrates (or 39.5%) who found areas of the drink-driving legislation difficult to interpret or apply, 11 were more specific about the areas of confusion or difficulty. These included in order:

- failure to comply with breath test (3);
- refusals of blood/urine samples (2);
- common/home base — should abolish provision (2);
- special category driver (1);
- interstate drivers (1);
- s 4F(7) — words: "by his behaviour prevents" (1);
- repeat offenders — with offences in different ranges (1); and
- five year period — should be offence to offence as opposed to conviction to conviction (1).

Licence disqualification (Q2.2)

The legislation dealing with licence disqualification, which includes options such as mandatory and automatic disqualifications, seemed clear and unambiguous to just over half the respondents (52.6%). Once again, some magistrates qualified their response by saying that "it takes a bit of learning" (10.5%) or that "it is clear to us, but not to the public" (13.2%).

Of the 18 magistrates (or 47.4%) who felt that the legislation dealing with licence disqualification was unclear and ambiguous, 15 indicated that the application of minimum disqualification periods created a difficulty (39.5% of all respondents). These respondents felt that minimum disqualification periods were "too high" or that they "are neither necessary or appropriate in the sentencing process" particularly in relation to the exercise of s 556A discretion.

A few magistrates also commented that notice of automatic suspension of licence in high range PCA is invalid (2); that sentencing for drink-driving offences along with other offences is confusing (1); and that legislation is not very clear or could be clearer because magistrates do "impose disqualification periods contrary to law" (1).

Statutory maximum penalties (Q2.3)

The majority of magistrates reported that the statutory maximum penalties provided an adequate array of sentencing options (low range = 89.5%; mid range = 89.5%; high range = 84.2%; and repeat offenders = 84.2%). Three respondents added that they have "plenty of power to recommend no re-issue of licences" (7.9%) and two magistrates remarked that at present penalties were adequate but that they should continue to be reviewed/revised (5.3%).

Those respondents who believed that the maximum penalties were inadequate, were more concerned about monetary penalties than with disqualification periods or with other dispositions. In particular, seven magistrates (or 18.4%) pointed out a disparity with the legislation where the maximum fine for high range PCA offenders is $1 500 while some parking infringements can bring fines of $2 000. Another two magistrates considered that

the array of penalties available were restrictive because they were "not tied in closely enough with Community Services legislation" (5.3%).

The Authority dealing with PCA offences (Q 2.4) (through traffic infringement notices issued by police)

Overwhelmingly, respondents would *not* support a proposal to amend the legislation regarding first offenders (73.7%), low range (71.1%) and special range (73.7%) PCA offences so that they could be dealt with administratively by the Authority instead of the courts (Table 3). Even more magistrates believed such a scheme should *not* be extended to mid range PCA offences (86.8%).

Almost half of the respondents (47.4%) were concerned that such a proposal would "trivialise the offence" and therefore, it would not be a deterrent to drink-drivers. These magistrates believed that coming before the courts (public admonishment) has a great impact.

Twelve respondents (31.6%) were concerned that the management of PCA offences by the Authority would deprive people of their rights in that:

- there would be no room for the exercise of discretion (13.2%);
- it would not take into account the circumstances of the offence (13.2%);
- subjective features (including capacity to pay) would not be taken into account (5.3%); and
- there would be too many appeals (7.9%).

Concerns about the Authority's ability to deal administratively with these offences was another reason for not supporting the proposal (10.5%).

Table 3: Attitudes to the RTA dealing with PCA offences

Offences	No support %	Full support %	Limited support %
First offenders	73.7	13.2	13.2
Special range	73.7	21.1	5.3
Low range	71.1	21.1	7.9
Mid range	86.8	10.5	2.6

Alternatively, support for the proposal was qualified with statements like:

- they would still have an appeal to the courts (2);
- puts the onus on the defendant to explain if before the court (1);
- provided the message is published widely enough (1); and
- if there were no aggravating circumstances, for example, if the offender was caught by RBT (1).

A few magistrates spoke of a compromise where offenders could be issued with more court attendance notices rather than going through the charge process (2) or where offenders could appear before a registrar of the court (1).

Some magistrates questioned how the proposal would work (13.2%), particularly what the penalties would be (2) and the method of record keeping in relation to an offender's prior record should they appear before the court at a later date (1).

Appeals against licence disqualification (Q2.5)

Over three-quarters of the respondents thought that the appeal mechanism has been used to negate the effect of a licence disqualification (30 or 78.9%). On the other hand, six magistrates did not believe this to be the case (15.8%) and two magistrates were unsure of whether this was happening or not (5.3%).

Explanations put forward why appeals are successful included:

- "What happens in the District Court and the Local Court may be entirely different" (26.7%) — respondents pointed out that because appeals to the District Court involve de novo hearings, they sometimes hear evidence not presented at the Local Court (13.3%), or there may be a different level of representation (3.3%), or because of the time between conviction and appeal, the "effect may have diminished or circumstances may have changed" (3.3%);
- "District Court judges are out of touch" (20%);
- "District Court judges don't have the volume we see" (10%);
- "District Court judges usually deal with more serious offences. They see Local Court stuff as less serious" (10%); and
- "Judgments are not challenged by the DPP or by solicitors" (6.7%).

A few magistrates also remarked that District Court judges should give more support to magistrates by increasing penalties (6.7%).

Right of appeal

When respondents were asked whether they would support a proposal to abolish the right of appeal against a licence disqualification which was less than the automatic period, most said they would *not* (30 or 78.9%).

Half of these respondents believed that "everybody has a fundamental right of appeal" or they saw problems arising with civil liberties (50%), and over a quarter acknowledged that "magistrates are not perfect and that they can get it wrong" (26.7%). Ten magistrates also expressed the view that it is the nature of appeal de novo and not the right of appeal that allows the appeal mechanism to negate the effect of a licence disqualification and they believed that appellants should have to show that the magistrate erred or was manifestly excessive or lenient (33.3%).

In addition, a number of respondents indicated that they would not support such a proposal because "the subjective features of the offender might change" (10%) or because there is always the danger that penalties could be increased (6.7%). Rather than abolishing the right of appeal, a few respondents made suggestions to amend the *Bail Act* 1987 (NSW) so as to give magistrates discretion to suspend licences (6.7%), to give power to judges to order costs (3.3%), or to "make appellants pay up front to appeal" (3.3%).

Alternatively, support for the proposal was qualified with statements like:
- "discretion has already been given and they got some leniency" (1);
- "most District Court judges reduce penalties and some are more prone to not recording convictions" (1);
- "there are too many levels of court" (1); and
- "if it is the legislation" (1).

Penalties and conditions (Q3)

Main factors taken into account in setting a penalty (Q3.1)

Respondents spoke of many factors which they take into account in setting a penalty for a drink-driving offence. The factors most often mentioned were:
- the objective features of the offence such as the PCA range and the BAC reading within the range (81.6%);
- the mitigating and aggravating features of the offence, particularly prior driving record (97.4%) and the manner by which the offender was apprehended or driving at the time (84.2%). The reason for driving was also taken into consideration (42.1%); and
- the personal or subjective features of the offender, especially with regard to any hardship effects which may arise as a consequence of losing their licence (78.9%).

Table 4 lists all the factors reported by the magistrates in this survey. It also compares the responses from city magistrates with those from country magistrates. However, caution should be exercised when drawing any firm conclusions from this analysis, especially since the number of respondents in each group is relatively small.

City/country differences

Regardless of their location, both city and country magistrates took similar factors into account when sentencing drink-driving offenders. Proportionately more city magistrates took hardship factors into account, particularly the offender's need for a licence (90.9% compared with 62.5% of country magistrates) and their financial circumstances (36.4% compared with 6.3% of country magistrates).

Imposition of minimum disqualification periods (Q3.2)

Offenders were more likely to receive the minimum disqualification period if they had a lengthy good driving record (78.9%) and if the manner of detection was by RBT rather than by driving in a manner dangerously or erratically (63.2%).

Other circumstances which may entitle offenders to be disqualified from driving for the minimum period included whether they were first offenders (44.7%), whether the BAC reading was at the low end of the PCA range (39.5%) and their need for a licence (36.8%).

Once again, similar circumstances were reported by city and country magistrates (Table 5).

Table 4: Sentencing factors reported by magistrates

Factor	City % n=22	Country % n=16	All % n=38
Objective features			
BAC reading	86.4	75.0	81.6
Mitigating/aggravating features			
Prior driving record/antecedents	100.0	93.8	97.4
Prior criminal record/antecedents	13.6	6.3	10.5
Offender's age	22.7	25.0	23.7
Reason for driving (extenuating)	40.9	43.8	42.1
Manner of driving	95.5	68.8	84.2
• RBT versus collision	40.9	50.0	44.7
• erratic/dangerous/speeding	27.3	6.3	18.4
• potential danger to public	13.6	18.8	15.8
• damage to property	9.1	0.0	5.3
• committing another offence at the time	4.5	0.0	2.6
Personal features	100.0	81.3	92.1
Plea	27.3	6.3	18.4
Contrition/genuine remorse	9.1	6.3	7.9
Hardship factors	95.5	62.5	81.6
• need for a licence	90.9	62.5	78.9
• availability of public transport	18.2	25.0	21.1
• impact on work commitments/livelihood	36.4	18.8	28.9
• impact on others such as the family	13.6	18.8	15.8
• financial circumstances	36.4	6.3	23.7
References and general reputation	22.7	6.3	15.8
Behaviour towards police	4.5	0.0	2.6
Degree of affectation reported by police	4.5	0.0	2.6
Performance at a traffic offenders programme	4.5	6.3	5.3
Undertaking alcohol rehabilitation	13.6	0.0	7.9
Level of representation (appearance)	4.5	0.0	2.6

Note: Percentages do not total 100% because respondents reported several factors which are taken into account in setting a penalty.

Table 5: Minimum disqualification periods — factors nominated by magistrates

Circumstance	City % n=22	Country % n=16	All % n=38
Lengthy good driving record	77.3	81.3	78.9
First offenders	45.5	43.8	44.7
No aggravating features — caught by RBT	77.3	43.8	63.2
BAC reading not excessive within range	45.5	31.3	39.5
Reason for driving — emergency	9.1	31.3	18.4
Hardship effects	40.9	37.5	39.5
• need for a licence	36.4	37.5	36.8
• availability of public transport	9.1	18.8	13.2
• impact on work commitments/livelihood	4.5	12.5	7.9
• impact on others such as the family	0.0	18.8	7.9
Performance at a traffic offenders programme	4.5	18.8	10.5
Age	18.2	12.5	15.8
Plea	4.5	6.3	5.3
Strong subjective features	9.1	6.3	7.9

Note: Percentages do not total 100% because respondents reported several factors taken into account when deciding to impose the minimum disqualification period.

Imposition of automatic disqualification periods (Q3.3)

Most respondents always/usually set a disqualification period rather than letting the automatic period prevail (58.9%). They also stressed that when they make a specific order, they always let the offender know the start and end dates so that there is no ambiguity about the disqualification period (52.6%).

Generally, the more serious cases warranted the automatic period of disqualification (Table 6). Over half of the respondents (52.6%) stated that if there were sufficient aggravating features, particularly a poor driving record (47.4%), then they may impose the automatic disqualification period.

Although not directly asked, some respondents (14 or 36.8%) said that they determined the disqualification period by starting with the automatic period and then increasing or reducing that period according to circumstances ("maximum penalties are designed for the worst possible scenario"). Three magistrates (7.9%) indicated that they used the maximum disqualification period as the starting point. Two magistrates (5.3%) also mentioned that on any particular day, drink-driving cases are scaled according to their seriousness or particular circumstances relative to other such offenders before the court on that day.

Table 6: Automatic disqualification periods — factors nominated by magistrates

Circumstance	City % n=22	Country % n=16	All % n=38
Sufficient aggravating features	45.5	62.5	52.6
Poor driving record	40.9	56.3	47.4
Manner of driving	4.5	18.8	10.5
Compounded offences	9.1	6.3	7.9
Children in car	0.0	6.3	2.6
Serious objective circumstances			
High BAC reading within range	22.7	12.5	18.4
No subjective features	22.7	0.0	13.2
Show no contrition	4.5	0.0	2.6
No need for a licence	9.1	0.0	5.3
If dealt with ex parte	9.1	6.3	7.9
Where it's not sought	0.0	6.3	2.6

Note: Percentages do not total 100% because respondents reported several factors taken into account when deciding to impose the automatic disqualification period.

Other requirements or conditions imposed for drink-driving offences (Q3.4)

The majority of respondents have imposed other requirements or conditions on drink-driving offenders (Table 7), the most common being the standard conditions attached to s 558 recognizances (76.3%), part of which includes drug and alcohol rehabilitation. Alcohol treatment was also a condition of other dispositions.

While most respondents adhered to standard sentencing practices, almost a third have recommended to the Commissioner of Motor Transport that no licence be issued until the licensing authority (the Roads and Traffic Authority) is satisfied that the offender is "fit and proper" to drive again (31.6%).

Table 7: Other conditions imposed for drink-driving offences nominated by magistrates

Requirement/condition	n	%
Recommend no licence be issued	12	31.6
Standard conditions of a s 558 recognizance	29	76.3
• supervision of probation and parole	20	51.3
• alcohol/drug treatment/rehabilitation	19	50.0
• counselling/guidance	12	31.6
CSO conditions	7	18.4
• attendance centre component	5	13.2
• alcohol treatment/rehabilitation	2	5.3
Attend traffic offenders programme or similar	7	18.4
Conditional/restricted licences for work	3	7.9
Griffith's remand — alcohol treatment	1	2.6
Bail condition — alcohol treatment	1	2.6

Note: Percentages do not total 100% because respondents reported several requirements/conditions imposed on drink-drivers.

Traffic offender programmes (Q3.5)

Twenty-two respondents (or 57.9%) have incorporated the use of traffic offender programmes into their sentencing practice.

Of those who have sent offenders to attend the traffic offenders programme, 20 (or 90.9%) thought it was a "great idea" and "very useful". The other two magistrates (or 9.1%) expressed comments which were both for and against its use.

Of the 16 magistrates who have *not* sentenced offenders to attend these programmes, six were in favour of their use (37.5%), six were not in favour (37.5%), one was both for and against their use (6.3%), and three did not say anything about them (18.8%).

Comments made by all respondents regarding the usefulness and benefits of the traffic offender programmes are presented in Table 8.

Table 8: Benefits of traffic offender programmes nominated by magistrates

Comments in favour	n	Comments not in favour	n
Educational benefit	14		
• Informative content	6		
• Also reaches others (family/ spouses/friends)	3		
• Should be introduced in schools	2		
• Should be compulsory before you get a licence	2		
Taken into account in final sentencing — still have to come back to court	13	**Should have no bearing on sentence**	10
		• Should be post sentence (make it a condition) or pre reissue of licence	6
• Don't necessarily give a s 556A	9		
• If giving a s 556A, it is usually a bond	1	• Shouldn't be abused or used as a means to avoid the appropriate penalty (expect a s 556A)	4
		• Might be useful if guidelines were given to magistrates on what is expected of the court if someone does the programme	1
Availability		**Availability**	
• As available as other penalties (eg periodic detention and CSO attendance centres) or other diversionary programmes (eg sexual offenders programme)	2	Only available in some areas — unjust/discriminatory	5
Effectiveness		**Effectiveness**	
• Use is unproved because traffic records don't record participation	1	• Marginal in their effectiveness	2
• Attempts at analysis show low recidivism (about 3% re-offending rate)	3		

Twenty magistrates also discussed which offenders would be most suited to the traffic offender programmes. These included:

- young offenders (30%);
- older offenders (5%);
- first PCA offenders (50%), particularly in:
  - — special range PCA (10%);
  - — low range PCA (25%);
  - — mid range PCA (15%);
- anyone in any PCA range (20%);
- any type of traffic offence, especially speeding (20%);
- repeat offenders (10%).

Several magistrates also observed that such programmes were "too late in the day" for repeat offenders because of their more serious underlying alcohol related problems (5%).

Alcohol rehabilitation programmes (Q3.6)

Most respondents (33 or 86.8%) have included alcohol rehabilitation programmes in their sentencing practice. Of these, almost three-quarters believed that these programmes are very useful (63.6%), particularly if they are not just court imposed; that is, if the offender is willing and committed to being rehabilitated (51.5%) or if the offender is assessed as suitable and recommended by the Probation and Parole Service (12.1%).

Six magistrates thought that in a lot of cases, alcohol rehabilitation programmes do not work or that they are sometimes "open to abuse" and used just as an excuse to avoid or ease sanctions (18.2%). Around 12% of respondents remarked that some programmes were better than others and that their success depends on "who's running them" and on the "skills of the counsellors" (12.1%). And five magistrates commented that because there is no monitoring of programmes, they do not often see their effectiveness (15.2%).

Approximately half of the respondents (51.5%) added that alcohol rehabilitation programmes are usually imposed as a condition (with the supervision of the Probation Service) of recognizances (39.4%), Griffiths type remands (9.1%), CSOs (6.1%), or in one case as a condition of bail (3%).

Some respondents also reported that such programmes are mainly used for repeat offenders and high range PCA offenders because they are "more likely to be alcoholic or older" (18.2%) and one magistrate also believed that alcohol rehabilitation programmes are useful when sentencing for other offences such as domestic violence (3%).

Alternative penalties or conditions (Q3.7)

Twenty-three respondents (or 60.5%) would like to have alternative penalties or conditions available for drink-driving offences. Ten of these would like to see the traffic offenders programme made uniformly available and given statutory support (43.5%), and eight magistrates would like to have the option to impose CSOs without it having to be an alternative sentence to imprisonment (34.8%). Respondents would also like more powers in respect of what they can do in certain circumstances, including powers to vary existing penalties and conditions (Table 9).

Table 9: Alternative penalties for drink-driving offences nominated by magistrates

Penalty/condition	n	%
Periodic detention		
Periodic detention as a separate option	2	8.7
CSO		
CSO as a separate option	8	34.8
Attendance centres more widely available	4	17.4
Community work attached to bonds	1	4.3
Community aid panels	2	8.7
Diversionary programmes		
Traffic offender programmes uniformly available with statutory support	10	43.8
Other driver education courses/programmes	3	13.0
Constraints on licensing		
Suspension rather than disqualification	2	8.7
Disqualification for life	1	4.3
Probationary licences	1	4.3
Work licences	1	4.3
Vehicle confiscation/disabling for recidivists		
Forfeiture/confiscation of vehicle	2	8.7
Disabling mechanisms on cars	1	4.3
Fines		
Should be able to impose a fine without disqualification	2	8.7
Should be able to disqualify without imposing a fine	1	4.3

Note: Percentages are based on the 23 respondents who would like to have alternative penalties or conditions made available. Also note that percentages do not total 100% because some respondents identified more than one alternative penalty/condition.

Section 556A recognizance/dismissal (Q4)

Factors taken into account (Q4.1)

Offenders were more likely to receive a s 556A recognizance or dismissal if they had a good lengthy driving record (94.7%); strong personal features (57.9%); no aggravating features (44.7%); and a BAC reading which was not excessive within the PCA range (44.7%). Once again, similar factors were reported by city and country magistrates (Table 10).

Table 10: Section 556A recognizance or dismissal — relevant factors nominated by magistrates

Factor	City % n=22	Country % n=16	All % n=38
Objective features			
BAC reading not excessive within range	40.9	50.0	44.7
Mitigating features			
Lengthy good driving record	90.9	100.0	94.7
Offender's age	22.7	25.0	23.7
Reason for driving (extenuating)	9.1	18.8	13.2
No aggravating features	59.1	25.0	44.7
Manner of detection was by RBT	27.3	18.8	23.7
Degree of affectation slight	0.0	6.3	2.6
Strong personal features	59.1	56.3	57.9
Slim chance/likelihood of re-offending	22.7	12.5	18.4
Performance at traffic offender programme	9.1	31.3	18.4
Hardship effects	27.3	0.0	15.8
• need for a licence	18.2	0.0	10.5
• capacity to pay	4.5	0.0	2.6
Good character references	13.6	6.3	10.5
Plea/genuine contrition	4.5	0.0	2.6

Note: Percentages do not total 100% because respondents reported several factors which are taken into account in deciding to impose a s 556A recognizance or dismissal.

Many respondents also pointed out that they were more likely to impose s 556A recognizances rather than s 556A dismissals. Eighteen magistrates (or 47.4%) also indicated that s 556As are mainly imposed for low range PCA offences (16 or 88.9%); sometimes for mid range PCA offences (10 or 55.6%); and rarely or in exceptional circumstances for high range PCA offences (10 or 55.6%).

Restricted driving conditions (Q4.2)

The majority of respondents (30 or 78.9%) have not imposed restricted driving conditions in relation to s 556A recognizances or dismissals. Sixteen magistrates said that they do not have any power or legal sanction to impose restrictive licences (42.1%) and 20 magistrates indicated that they would not impose driving conditions because they "will not impose what you can't enforce" (52.6%). A number of respondents indicated that they have heard of or seen District Court judges impose restricted driving conditions (21.1%).

On the other hand, eight magistrates (or 21.1%) have imposed restricted driving conditions but added that these were rare and only imposed in exceptional circumstances.

Drug-driving Issues

Perception of drug-driving as a road safety problem (Q1.2)

With the exception of one respondent, every magistrate interviewed perceived drug-driving to be a serious road safety problem. Over half acknowledged that they have not heard many drug-driving matters, but they suspect that it is a major problem (56.8%).

Eleven percent of respondents cited expert opinion indicating that drug-driving is a serious road safety problem (10.8%).

Almost a quarter of the respondents also remarked that driving under the influence of drugs was just as serious as driving under the influence of alcohol (24.3%), while one magistrate thought it was not as serious as drink-driving (2.7%).

Over a third of the respondents were more concerned about particular types of drugs (37.8%), namely: cannabis use especially by young drivers and truck drivers (21.6%); prescription drugs both licit and illicit (16.2%); amphetamine use by truck drivers (10.8%); heroin use (5.4%); and polydrug use including alcohol (5.4%).

Interpretation and application of the legislation (Q5.2)

Thirty-six magistrates (or 94.7%) generally thought that the drug-driving legislation was *not* difficult to interpret or apply. Rather, many respondents believed that problems occurred with assessing the evidence presented in court and, from the prosecution's viewpoint, with proving that the drug affected driving performance (39.5%).

Of those who found areas of the drug-driving legislation difficult to interpret or apply, one magistrate had concerns with "refusal of blood testing and when they can't be carried out" and another magistrate would like the legislation written in "plain English".

Educational material (Q5.3)

Thirty respondents (or 78.9%) would like to receive information regarding drug-driving issues. These magistrates were specifically interested in obtaining authoritative material which examines:

- the degree of impairment on psycho-motor capacity such as reaction time, perception of distance, individual differences and how long affects last (60%);
- the number of fatalities and injuries associated with drug-driving (6.7%); and
- methods of detection (6.7%) for different types of drugs (60%) but especially for cannabis (16.7%).

Four magistrates were also interested in receiving information about the effects of drugs when consumed with alcohol (13.3%).

Speeding Issues

Speeding infringement penalties (Q6.1)

Respondents were asked whether the current penalty for a person who exceeded the speed limit by 16–30 km/h is "too harsh", "adequate" or "too lenient". Most magistrates distinguished the fine component of the penalty, currently $165, from the demerit points component, which is the loss of three demerit points (see Table 11).

Table 11: Attitudes to penalty levels for speeding

	Fine amount		Demerit points	
	n	%	n	%
Too harsh	2	5.3	4	10.5
Adequate	23	60.5	29	76.3
Too lenient	6	15.8	0	0.0
Depends	7	18.4	5	13.2

The majority of respondents regarded the fine amount of $165 as "adequate" (60.5%) and even more respondents thought that the loss of three demerit points was also "adequate" (76.3%).

Respondents who believed that the infringement penalty for exceeding the speed limit by 16–30 km/h was inadequate, were concerned that infringement notices have no regard to the objective or subjective circumstances of the offence, particularly with regard to the offender's capacity to pay fines — "not a deterrent except if you're poor".

Imposition of nominal penalties for speeding (Q6.2)

Offenders were more likely to receive a nominal penalty for a speeding offence if they had a good lengthy driving record (67.6%), no aggravating features especially with regard to the safety aspects of when and where they were speeding (45.9%), the actual speed was just over the limit (35.1%), they had a good reason for speeding (32.4%) or strong personal features (29.7%). Similar circumstances were reported by city and country magistrates (Table 12).

Five magistrates revealed that they would probably still impose a fine but may recommend to the Commissioner of Motor Transport that no points be deducted (13.5%).

Table 12: Factors influencing the imposition of nominal penalties for speeding nominated by magistrates

Factor	City % n=21	Country % n=16	All % n=37
Objective features			
Actual speed just over the limit /minor range	28.6	43.8	35.1
Mitigating features	85.7	81.3	83.8
Lengthy good driving record	61.9	75.0	67.6
Offender's age — juvenile	9.5	6.3	8.1
Reason for speeding (emergency)	28.6	37.5	32.4
No aggravating features	42.9	56.3	48.6
Detection was by radar/camera	9.5	0.0	5.4
Safety aspects (where and when)	38.1	56.3	45.9
• no danger to public	9.5	12.5	10.8
• flow of traffic	23.8	6.3	16.2
• unrealistic/inappropriate speed limits	9.5	25.0	16.2
• knowledge of road	0.0	6.3	2.7
Strong personal features	38.1	18.8	29.7
Need for a licence	9.5	6.3	8.1
Capacity to pay	19.0	6.3	13.5
Plea/genuine contrition	4.8	6.3	5.4

Note: Percentages do not total 100% because respondents reported several factors which are taken into account in deciding to impose a nominal penalty for speeding.

Features that play a role in the determination of sentence (Q6.3)

For speeding offences, the most important features that played a role in the determination of sentence were the actual speed (78.4%), the road traffic conditions at the time (78.4%) including whether the speeding occurred in a built-up area or on the open road (51.4%), and any potential or actual danger (54.1%). The offender's prior driving record was also taken into consideration (59.5%). Similar features were reported by city and country magistrates (Table 13).

Educational material (Q6.4)

Although not as popular as drink-driving (81.6%) or drug-driving information (78.9%), almost half of the respondents would like to receive material on speeding issues (17 or 44.7%). While five of these were happy to take anything available (29.4%), over a third were particularly interested in obtaining information on safe braking distances for various speeds (35.3%). Almost a quarter thought it would be useful to have statistical data on what speeds

are involved in road deaths and accidents, by location and by age groups (23.5%), and three magistrates would like conversion tables from kilometres per hour to miles per hour (17.6%).

Other information requested on speeding issues included:

- what other magistrates are doing (1);
- technical information with regard to accuracy of radar/speed cameras (1);
- harness protection in higher speed collisions (1); and
- what evidence police should be looking for at an accident scene, for example, skid marks (1).

Table 13: Factors influencing sentencing of speed offences nominated by magistrates

Feature	City % n=21	Country % n=16	All % n=37
Objective features			
Actual speed	100.0	50.0	78.4
Environmental factors			
Road traffic conditions	76.2	81.3	78.4
• locality (built-up area v open road)	38.1	68.8	51.4
• time of offence	23.8	31.3	27.0
• weather (visibility)	4.8	18.8	10.8
Mitigating/aggravating features			
Prior driving record/antecedents	57.1	62.5	59.5
Offender's age	9.5	6.3	8.1
Reason for speeding (emergency)	9.5	6.3	8.1
Manner of detection (camera v accident)	19.0	18.8	18.9
Potential and actual danger	52.4	56.3	54.1
• other people/vehicles around	9.5	18.8	13.5
• other occupants/passengers (especially children)	14.3	6.3	10.8
Personal features	9.5	6.3	8.1
Need for a licence	9.5	0.0	5.4
Type/condition of vehicle	4.8	12.5	8.1

Note: Percentages do not total 100% because respondents reported several features which play a role in the determination of sentence.

Observations and Recommendations

Success of the Drink-driving Countermeasure Programme

There was a high level of awareness amongst magistrates of the road safety dimension of traffic offences, particularly drink-driving. It is clear from the survey results that most magistrates considered that the Authority's advertising campaigns and other countermeasures have been successful in conveying to the general public an awareness of the dangers of drink-driving. The majority of respondents (70.6%) regarded RBT as the most successful countermeasure against drink-driving. Most magistrates commented that since the introduction of RBT, people are more aware of the risks associated with drink-driving and as a result there has been a significant change in driving attitudes and a significant reduction in the road toll.

As shown in the crash statistics reported in Appendix 2, the drink-driving countermeasure programme has been very successful in reducing the involvement of alcohol in crashes, particularly serious crashes, of the order of 25%. While there has been this success, alcohol continues to be a major factor in serious crashes, particularly outside Sydney.

The Deterrence Model

A major objective of the survey was to identify the information needs of magistrates on drink-driving issues which could be addressed through the development and distribution of an information package. Magistrates were keen to receive additional information about road safety issues, particularly the correlations between forms of prohibited driving and the incidence of road accidents, more specifically road injuries and fatalities. In the context of drink-driving, there was also interest in obtaining scientific data explaining the effect of alcohol on driver competency. As well as providing issues for such a package, the survey results will assist in any future clarifications of or additions to the relevant legislation.

The judicial system has a major role to play in the drink-driving countermeasure system. Work by Professor Ross Homel in Australia,[15] as well as by overseas researchers,[16] demonstrates the importance of legal sanctions in the deterrence model. The three

15 R Homel, *Policing and punishing the drinking driver*, 1988, Springer-Verlag, NY.

16 JL Nichols and HL Ross, "The effectiveness of legal sanctions in dealing with drinking drivers" (1990) 6(2) *Alcohol, Drugs and Driving* 33–59.

essential elements of the model are the threat of detection, the threat of punishment and the swiftness with which the punishment follows the behaviour. The RBT programme has established a significant likelihood of detection, which is supported by the penalty structures in the *Traffic Act*.

Penalties need to be perceived as significant by offenders (or potential offenders), although increasing penalties to extreme levels does not necessarily confer additional benefit. The drink-driving literature has demonstrated the particular role of licence cancellation both in the general deterrence of drink-driving behaviour (that is, discouraging drink-driving through the threat of punishment)[17] and in specific deterrence (that is, in discouraging offenders from further offending).[18]

Professor Homel has described the deterrence process as a "leaky bucket", with drivers moving in and out of the bucket on the basis of their contact with the elements of the deterrence model. Such contact can be direct exposure to police breath testing activity (or even being charged with a drink-driving offence), or knowledge of those who have been tested or charged. The certainty of a penalty is an important element in the deterrence process and concern about loss of licence features significantly in survey research on drivers.

Sentencing Drink-driving

Regardless of their location, both city and country magistrates took similar factors into account when sentencing drink-driving offenders. Magistrates indicated that the exercise of sentencing discretion involved a search for options that were appropriate to the needs of the offenders while reflecting the level of seriousness of the offence. They stressed the need for flexibility in order to tailor sentences to the circumstances of both the offence and the offender, taking due account of local conditions.

In the context of drink-driving, magistrates indicated that they confined the use of provisions of s 556A to cases where the offender had a good lengthy driving record (94.7%); strong personal features (57.9%); no aggravating features (44.7%); and a BAC reading which was not excessive within the PCA range (44.7%). Many respondents also pointed out that they were more likely to impose s 556A recognizances rather than s 556A dismissals.

17 Homel, op cit.

18 RE Mann, ER Vingilis, EA Gavin and A Lise, "Sentence severity and the drinking driver: relationships with traffic safety outcome" (1991) 23(6) *Accident Analysis and Prevention* 483–491; HL Ross and P Gonzales, "Effects of license revocation on drunk-driving offenders" (1988) 20(5) *Accident Analysis and Prevention* 379–391.

Remedial Intervention

Much research has been conducted into remedial programmes for drink-driving. The results, both in Australia and the United States of America (USA), have often questioned the road safety benefits.[19] (Licence cancellation has been found to have consistently stronger road safety benefits.) There is some evidence from the USA that an extensive rehabilitation programme can have some additional benefit when combined with licence cancellation.[20]

A more recent "meta-analysis" of remedial programmes suggests that some reduction in recidivism (8–9%) can be achieved.[21] The analysis suggested that combinations of modalities — in particular those including education, psychotherapy/counselling and follow-up contact/probation — were the more effective for reducing recidivism. That is, the intervention with the most potential is not of a simple type. Given the status of the research, it is likely that the potential effectiveness of remedies will depend on identifying which type of intervention is suitable for a particular offender.

The traffic offender programmes operating in New South Wales represent a much less intense type of intervention compared with many other types described in the literature. The focus is on "education" on a number of issues related to road safety. While the content of traffic offender programmes would not be expected to have a negative road safety benefit, the ultimate tangible benefits over and above the penalty process are unclear.

Several magistrates expressed a need for more information on the effectiveness of diversionary programmes, particularly traffic offender programmes; both in general terms and also as to the effectiveness of particular programmes operating within different local communities in New South Wales. Notwithstanding the results of overseas research on remedial programmes, the Authority and the Commission are interested in evaluating traffic offender programmes in New South Wales.

Drugs and Driving

The popular view of the magnitude of the drug-driving problem is often based on reports about the incidence of drugs in crash-involved drivers. The term "drug" in this context typically evokes the image of the driver being impaired and of the drug as the cause of the crash.

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19 Eg, R Homel, D Carseldine and I Kearns, "Drink-driving countermeasures in Australia" (1988) 4(2) *Alcohol, Drugs and Driving* 113–144.

20 RC Peck, "The general and specific deterrent effects of DUI sanctions: A review of California's experience" (1991) 7(1) *Alcohol, Drugs and Driving* 13–42.

21 E Wells-Parker, R Bangert-Downs, R McMillen and M Williams, "Final results from a meta-analysis of remedial interventions with drink-drive offenders" (1990) 90 *Addiction* 907–926.

Drugs can be detected in the body for hours (and even days) after any psychoactive effect has dissipated. Conclusions about impairment cannot therefore be made simply on the basis of the detection of a drug in the body. As a result of this type of misunderstanding, the public perception of the role of drugs in crashes is often exaggerated. For a drug to be a contributing factor in crashes, the following criteria need to be satisfied:

(1) The drug can impair driving ability in a way which can result in a crash.

(2) The drug is taken in doses which cause this level of impairment.

(3) Drivers drive with this level of impairment.

Alcohol is a drug which satisfies all of the above criteria and hence it is a major road safety problem, being a factor currently in around 25% of fatal crashes in New South Wales. While a number of drugs satisfy criterion (1), it is much less clear whether the other criteria are satisfied.

The most revealing study of the magnitude of the drug-driving problem was conducted by Professor Olaf Drummer of the Victorian Institute of Forensic Medicine on drivers killed in road crashes in New South Wales, Victoria and Western Australia.[22] The study measured the degree to which the drivers killed were responsible for the crash, based on scores for a number of variables in the crash; and whether different groups of drugs increased blame. The study therefore provided a measure of the contribution of drugs to driver fatalities. The primary drug groups in the study were alcohol, cannabis, benzodiazepines, opiates, stimulants and barbiturates.

The Drummer study also showed that alcohol was by far the most problematic drug in contributing to driver responsibility for crashes. Cannabis was not associated with an increase in driver responsibility. The benzodiazepine, opiate and stimulant drug groups were associated with some increase in blame, but this increase was much less than that for alcohol, and the incidence of drugs from these groups was much lower than for alcohol. Subsequent analysis of the data by the Authority indicated that these groups, when considered together, were associated with a doubling of the odds of responsibility (alcohol increased the odds by six times). This pattern of the contribution of drugs was similar to that found in a similar study in the USA.

The results indicate that alcohol is potentially a contributing factor in around 30% of driver fatalities; while drugs other than alcohol are a potential contributing factor in up to 6% of driver fatalities. This figure is potentially higher for truck drivers — in the order of 10%–20%. The total number of truck drivers in the Drummer study was small, so it is difficult to calculate more exact figures. It is, however, very difficult to isolate the contribution of fatigue to these fatalities — that is, as the drugs are taken to offset the effects of fatigue, removing the drug might not prevent the crash.

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22 OH Drummer, *Drugs in drivers killed in road traffic accidents: the use of responsibility analysis to investigate the contribution of drugs to fatal accidents*, 1993, VIFP Report 0493, Victorian Institute of Forensic Pathology, Monash University, Melbourne.

Specific Recommendations

1. That the Commission consider conducting an evaluation of the effect of traffic offender programmes on recidivism rates amongst traffic offenders. Such a study should examine both the curriculum effect (the effectiveness of such programmes in reducing subsequent recidivism, particularly accidents, for participants when compared to a no-treatment control group), and also the programme effect (the effectiveness of the programme in reducing subsequent accidents for its participants compared to drivers who are eligible to attend the programme but who decline to do so).

2. That the findings of this study be provided to the New South Wales Law Reform Commission for consideration in relation to their current general reference on Sentencing. Aspects of this reports are relevant to the reference in the following areas:
   - review of existing sentencing options; and
   - adequacy of statutory maximum penalties particularly drink-driving and speeding penalties.

3. That the findings of this study be provided to the Penalty Notice Working Party chaired by the Criminal Law Review Division of the Attorney General's Department.

4. In response to requests from magistrates, the Authority will prepare an information package on drink-driving issues for magistrates for distribution in the first half of 1997.

Appendix I
Questionnaire

Drink-driving Issues

(1) Problems/countermeasures

(1.1) From your perspective, to what extent have the countermeasures against drink-driving been successful?

❑ highly successful ❑ successful ❑ unsuccessful

Comment

_____

_____

_____

_____

(1.2) What is your perception of drink-driving as a road safety problem?

Comment

Low Range _____

_____

Medium Range _____

_____

High Range _____

_____

Repeat Offenders _____

_____

(1.6) Would you be interested in receiving a package of information regarding drink-driving issues specifically prepared for magistrates?

Comment

_____

_____

_____

_____

(2) Legislation

(2.1) Are there areas of the drink-driving legislation which are difficult to interpret or apply?

Comment

_____

_____

_____

_____

(2.2) In your view is the legislation dealing with licence disqualification, which includes options such as mandatory and automatic disqualifications, clear and unambiguous?

Comment

_____

_____

_____

_____

(2.3) Do the statutory maximum penalties provide an adequate array of sentencing options?

Comment

Low Range _____

_____

Medium Range _____

_____

High Range _____

_____

Repeat Offenders _____

_____

(1.3) What relationship do you see between blood alcohol concentration and impairment of ability to drive?

Comment

Low Range _____

_____

Medium Range _____

_____

High Range _____

_____

(1.4) On average, how many standard drinks (eg middy of beer, small glass of wine, nip of spirits) would be required for an average man to reach a PCA of 0.05, 0.10 and 0.15?

❑ drinks to reach 0.05 ❑ drinks to reach 0.10 ❑ drinks to reach 0.15

Comment

_____

_____

_____

_____

(1.5) How important are issues such as deterrence and protection of the community in dealing with drink-driving offenders?

Comment

Low Range _____

_____

Medium Range _____

_____

High Range _____

_____

Repeat Offenders _____

_____

(2.4) There has been a proposal to amend the legislation regarding first offenders and low and special range PCA offences so that they are dealt with administratively by the RTA instead of the courts. Would you support such a proposal? Should it be extended to the medium range PCA offences?

Comment

(2.5) In your experience has the appeal mechanism been used to negate the effect of a licence disqualification. Would you support a proposal to abolish the right of appeal against a licence disqualification which was less than the automatic period?

Comment

(3) Penalties/conditions

(3.1) What are the main factors you take into account in setting a penalty for a drink-drive offence?

Comment

Low Range

Medium Range

High Range

Repeat Offenders

(3.2) Under what circumstances would you impose a minimum disqualification period?

Comment

Medium Range

High Range

Repeat Offenders

(3.3) Under what circumstances would you not set a disqualification period and let the automatic period prevail?

Comment

Low Range _____

_____

Medium Range _____

_____

High Range _____

_____

Repeat Offenders _____

_____

(3.4) What other requirements or conditions have you imposed for drink-driving offences?

Comment

Low Range _____

_____

Medium Range _____

_____

High Range _____

_____

Repeat Offenders _____

_____

(3.5) In your opinion how useful are the traffic offender programmes? Have you incorporated such programmes into your sentencing practice?

Comment

Low Range _____

_____

Medium Range _____

_____

High Range _____

_____

Repeat Offenders _____

_____

(3.6) In your opinion how useful are the alcohol rehabilitation programmes? Have you incorporated such programmes into your sentencing practice?

Comment

Low Range _____

_____

Medium Range _____

_____

High Range _____

_____

Repeat Offenders _____

_____

(3.7) Are there any alternative penalties or conditions that you would like to have available for drink-driving offences?

Comment

_____

_____

_____

_____

(4) Section 556A recognizance/dismissal

(4.1) What factors do you take into account in deciding to impose a section 556A recognizance/dismissal?

Comment

Low Range _____

_____

Medium Range _____

_____

High Range _____

_____

(4.2) In relation to section 556A recognizances/dismissals, have you imposed or under what circumstances would you impose restricted driving conditions (eg for work purposes only)?

Comment

Low Range _____

_____

Medium Range _____

_____

High Range _____

_____

Drug-driving Issues

(5.1) From your experience do you perceive drug-driving as a serious road safety problem?

Comment

_____

_____

_____

_____

(5.2) Are there areas of the drug-driving legislation which are difficult to interpret or apply?

Comment

_____

_____

_____

_____

(5.3) Is there any information you would like to receive regarding drug-driving issues?

Comment

_____

_____

_____

_____

Speeding Issues

(6.1) The current penalty for a person who exceeded the speed limit by 16–30 km/h is a fine of $165 and the loss of three demerit points. Do you think this penalty is too harsh, adequate or too lenient?

Comment

(6.2) Under what circumstances would you impose a nominal penalty for a speeding offence?

Comment

(6.3) For speeding offences, what features play a role in the determination of sentence?

Comment

(6.4) What information would you like to receive regarding speeding issues?

Comment

Demographic Information

(7.1) Approximately what proportion of your time is spent on driving matters?

- ❑ Less than one-third of the time
- ❑ Between one-third and two-thirds of the time
- ❑ Over two-thirds of the time

(7.2) Approximately what proportion of your time is spent in metropolitan courts?

- ❑ Less than one-third of the time
- ❑ Between one-third and two-thirds of the time
- ❑ Over two-thirds of the time

(7.3) How long have you been on the bench? (Please provide nearest whole number in years)

(_____ years)

(7.4) Which age category do you belong to?

- ❑ Less than 50 years
- ❑ 51-60 years
- ❑ Over 60 years

Appendix 2
Traffic Offence Information

The following information has been provided by the Authority in response to comments and requests made by magistrates in the course of the survey.

Drink-driving

Physical characteristics

The drug

Alcohol is a central nervous system depressant which slows down the processes occurring in the brain. Alcohol causes loss of balance and co-ordination and reduces ability to judge speed and distance. It impairs ability to process and respond to situations, make decisions and take actions. Alcohol also increases confidence and aggression. The so-called stimulant effects of alcohol experienced in the early stages of drinking are a result of decreased inhibitions on behaviour and feelings. The amount of alcohol in the body is reported as a blood alcohol concentration (BAC) measured in grams of alcohol per 100 ml of blood.

Driving

Laboratory studies indicate impairment of driving-related tasks at low BACs (less than 0.05). The adverse effects on driving of moderate BACs (around 0.08) have been clearly observed in several studies, regardless of whether the subjects were average drivers or racing drivers, or whether the subjects were light or heavy drinkers.

Crash risk

Studies of crashes have been used to assess the crash risk associated with alcohol. On average, the chance of having a crash at a BAC of 0.05 is double that at a BAC of zero; at a BAC of 0.10, the risk is increased around seven times; and at 0.15, the risk is around 25 times. Crash risk associated with alcohol is affected by a number of factors: see *Crash and offence data* below.

Offences

It is an offence for a motorist in New South Wales to operate a motor vehicle with a BAC at or above a certain level. The level is 0.02 for the following drivers and riders:

- unlicensed;
- learner and provisional licence holders;

- drivers aged under 25 years in their first three years of holding a provisional or full licence;
- drivers of vehicles of gross vehicle mass greater than 13.9 tonnes; and
- drivers of public passenger vehicles and of vehicles carrying dangerous loads.

The level is 0.05 for other motorists.

Penalties

A schedule of penalties exists for drink-driving offences in the *Traffic Act*. Penalties include fines, immediate suspension of licence, disqualification from driving, CSOs and imprisonment. The penalty in a given case depends on the level of offence (special range: 0.02<0.05; low range: 0.05<0.08; medium range: 0.08<0.15; high range: 0.15+); whether the offence is the first or later offence; and the magistrate's discretionary power to vary penalties within ranges set in the Act.

Testing

Police breath test drivers and motorcycle riders for alcohol in many situations. Random breath testing is conducted in one of two modes. Stationary RBT involves police setting up by the roadside and randomly stopping passing motorists to conduct breath tests. Mobile RBT involves police patrolling in cars and stopping motorists to conduct breath tests.

Police also breath test motorists involved in crashes and when they commit other offences. Motorists who are taken to hospital after a crash or who are killed have a blood sample taken to test for alcohol.

Crash and offence data

Involvement

Currently, about a quarter of fatal crashes involve at least one driver with an illegal level of alcohol. Of all drivers and riders killed, around one in five have a BAC of 0.15 or more.

Age/sex

Alcohol as a factor in crashes is greatest in the 21–29 years age group, and broadly high in the 17–20 and 30–39 groups. Drink-driving offence and crash data largely involve male motorists: around 85% of drink-drivers in serious crashes are men. Furthermore, alcohol is twice as likely to be a factor for seriously injured male drivers than for female drivers.

Economic

"Blue collar" workers and the unemployed tend to be over-represented amongst offenders.

Time

The highest rate of drink-driving crashes occurs during 9 pm to 3 am on Thursday, Friday and Saturday nights. During the periods 9 pm to 3 am each day and 3 am to 9 am on Saturday and Sunday, over 50% of fatal crashes involve a driver with an illegal BAC.

Month

Drink-driving crashes occur throughout the year. The rate of involvement of alcohol in serious crashes tends to be above average in the period September to December. The number of serious crashes involving alcohol tends to increase in the second half of the year, peaking in November and December.

RBT

The proportion of drivers killed with an illegal BAC decreased from around 40% in 1981–1982 to 33% in 1984–1985 following the introduction of intensive RBT at the end of 1982. This proportion was relatively stable over the period 1984–1991.

The number of killed drivers with an illegal BAC has followed the general downturn in driver fatalities starting in the late 1980s, but decreased disproportionately in the 1990s to average 27% in 1992–1995. There has also been a decrease in alcohol as a factor for drivers at other injury levels.

There has been a major reduction in the involvement of high BACs in fatal crashes. By 1995, there were around 30% fewer drivers killed with a nil BAC. The corresponding reduction for the 0.08–0.15 BAC group is 70% and for the 0.15+ BAC group around 60%. The reduction in the involvement of drink-driving in driver fatalities in the past few years appears to have levelled out recently.

The number of stationary and mobile random breath tests is tending to increase, with over two million tests in total reported for 1994. On the basis of the reported tests, the "hit rate" for stationary RBT is around 0.3% (that is, around one driver in 300 tested is charged) while the "hit rate" for mobile RBT is much higher at around 3% (that is, around one driver in 30 tested is charged). The "hit rate" has been falling since 1990 for all BAC ranges.

Location

Drink-driving crashes occur throughout New South Wales. However, there is a higher rate of involvement of alcohol in serious crashes occurring outside Sydney. In 1995, around two-thirds of serious crashes involving alcohol occurred outside Sydney. The reduction in the involvement of alcohol in crashes in the 1990s has occurred Statewide, but has been greatest in Sydney.

Community surveys

Surveys are conducted by the Authority to assess community attitudes, knowledge and reported behaviour. Respondents are motorists who drink alcohol. The last major survey was conducted in May 1996. The survey results highlight the strong community unacceptability of drink-driving and that persistent illegal drink-driving behaviour tends to be confined to a small percentage of drivers.

Attitudes

Twenty-six percent of men and 13% of women reported having driven "over the limit" within the last 12 months. Twenty percent of males and 11% of females agreed that "I can be a bit over 0.05 and drive OK as long as I am careful". This result has been improving over the last few years.

RBT

In an earlier survey, 70% of respondents considered that the amount of RBT was more or the same than in the previous few years. Those who thought the amount had decreased were over twice as likely to base this perception on how much they had seen RBT than those perceiving that the amount of RBT had increased. The latter group was much more likely to base their perception on the amount of advertising of RBT or how much RBT is talked about. There is therefore a clear role for mass media advertising to communicate to the community that RBT and other countermeasure activities are going on.

Exposure

Support for RBT is very high with almost universal agreement that it should continue. Only a small proportion of respondents considered that police should be giving less attention to RBT.

Ongoing exposure to RBT has remained high with 46% of men and 26% of women reporting being tested in about the last six months, and over 60% reporting seeing RBT in the last two to three months. A higher rate of testing occurs outside Sydney.

Drink-driving issues

Social

There is substantial community opposition to drink-driving. Drink-driving has become much more socially unacceptable and acceptance of the 0.05 limit has increased. In a community survey conducted in 1991, 31% agreed that 0.02 was a reasonable limit to apply to all drivers.

Concern about injury to others is a very important factor in drink-driving decisions. However, amongst those who continue to risk drink-driving, there continues to be a perception that it is "bad luck" to be caught at low BACs, where driving ability is not perceived to be affected.

Crash risk

There continue to be some problems with the acceptance of crash risk associated with alcohol. Drinkers will often judge their ability to drive on how they feel, which influences willingness to drink-drive. This can be misleading because high BACs (for example, around 0.10) — at which point driving ability can be clearly impaired — can be reached by drinkers before feelings of intoxication and behavioural impairment become obvious.

RBT

Police enforcement activity is clearly an element taken into account in motorists' decisions regarding drink-driving. Amongst the target group, RBT is perceived as a more realistic threat than fear of crashing, especially when driving ability is not judged to be impaired. The perception is also influenced by exposure to RBT — by seeing RBT, being tested or talking to those who have been tested.

The chance of being breath tested on a particular driving occasion, however, is not high and "successful" drink-driving occasions can reinforce the behaviour.

Penalties

There are a number of consequences of drink-driving, associated with being caught and with crashing. Penalties, especially disqualification from driving, have been identified as important factors in deterrence, but experience of people being "let off" undermines the perceived certainty of penalties. Social consequences (for example, embarrassment and guilt at being caught) can also be important for some drivers.

BAC

Knowledge that there are differences between people in both the relative effects of alcohol and the amount of alcohol to reach a particular BAC, and that many factors influence BAC, leads to problems with the credibility of the 0.05 limit and the drinking guidelines. There continues to be demand for an accurate, direct measure of BAC which can be addressed through electronic breath testing devices.

Strategies

Many strategies have been adopted by drivers to avoid or minimise the chances of drink-driving. These include planning transport ahead of a heavy drinking occasion; use of a designated driver in a group; limiting drinks, drinking low alcohol beer or avoiding drinking alcohol; use of breath testing devices; and staying overnight if feeling unfit to drive. There have also been changes in drinking locations (for example, drinking at or closer to home).

Taking risks

Decisions regarding drink-driving are also influenced by: peer pressure in the drinking situation; "successful" drink-driving episodes; and alcohol-induced confidence. Alcohol exacerbates risk-taking behaviour of young drivers.

Countermeasure Summary

Achievements

The limit

The reduction in the PCA from 0.08 to 0.05 in 1980 brought about an estimated reduction in driver involvement in drink-driving crashes of the order of 10%. The size of the reduction

was not as great as that achieved through RBT (see below). But the impact of 0.05 demonstrates how setting laws can regulate behaviour amongst certain elements of the community.

RBT

The introduction of RBT at the end of 1982 brought about an estimated reduction in driver involvement in drink-driving crashes of the order of 25%. The RBT strategy is the primary drink-driving countermeasure in New South Wales. This strategy is primarily one of general deterrence involving ongoing, high visibility enforcement and moderate penalties for drink-driving, supported by substantial publicity. Deterrence is a function of the perceived likelihood of detection and the perceived severity of the consequences; establishing these perceptions helped lead to a significant change in drink-driving behaviour.

Maintaining the impact of the RBT programme over 13 years is a unique achievement for New South Wales. It demonstrates how initiating a change in behaviour can lead to a change in attitudes which facilitates longer-term behavioural change. This is an example of achieving attitude change through counter-attitudinal behaviour.

Maintenance

The deterrence effect can be an unstable one. Drivers can "leak" from the pool of deterred drivers and there continues to be a need for visible police enforcement, supported by publicity, to maintain the full success of the strategy. This maintenance also applies to young people coming into the driving population.

There is, however, no evidence that the drink-driving problem is worsening or that the impact of RBT on drink-driving crashes is lessening. The crash statistics actually show a further reduction in the proportional involvement of alcohol in 1992–1995.

Social change

There has been a significant change in the incidence of drink-driving and in community attitudes and understanding of the issues. Survey research and crash data show that changes in attitudes and behaviour are being maintained amongst a substantial proportion of drivers and that there has been a significant shift towards general prevention of drink-driving, that is, people do not drink-drive because it is not the right thing to do.

The shift in community attitudes has helped create a permanent change in drink-driving behaviour amongst a large proportion of drivers and helps form appropriate drink-driving attitudes in young drivers.

Further gains

The reduction in drink-driving in the early 1990s was influenced by the economic recession, which caused changes to both drinking and driving behaviours. A further reduction in the involvement of alcohol in crashes in this period has been maintained through ongoing enforcement, campaigns and other activities.

Campaigns

Strategy

The drink-driving campaign strategy emphasises a co-ordinated, multi-level campaign encompassing mass media, public relations and community-based programmes. A wide range of messages are covered including RBT and the consequences of being caught; the risk and consequences of crashing; community attitudes against drink-driving; and alternatives to drink-driving.

Advertising

Mass media advertising alone is not a powerful tool to achieve change. Advertising can, however, be very effective in setting an issue on the public agenda; creating interest in an issue; communicating information; reinforcing attitudes and behaviour; and supporting other campaign activities. Advertising therefore has an important maintenance role to play in the drink-driving countermeasure programme, especially to reinforce community attitudes against drink-driving; to maintain awareness of RBT and the consequences of being caught; and to reinforce appropriate attitudes and behaviour amongst drivers.

Addressing the broader problem

The future

The persistence of a substantial drink-driving problem, however, means that major law enforcement and educational activity — and the resultant changes in community attitudes, knowledge and behaviour — are only a partial solution.

The context

An underlying factor of the drink-driving problem is that the role of alcohol, and the behaviour patterns and social values associated with alcohol, are strongly set in Australian society. Prevention cannot be seen solely as an issue of individual responsibility. Behaviours are interactions between the individual and the environment. Drink-driving must be viewed in the broader community context, for example, alcohol availability, transportation and mass communication systems. A co-ordinated effort is needed by legislators, judiciary, police, educators, public health authorities, transport/road safety authorities and those responsible for liquor policies to address relevant cultural, social and environmental issues.

High risk

A significant part of the continuing drink-driving problem are those drivers who have been much less influenced by education and enforcement programmes, and by changes in community attitudes. These drivers are less socially responsible and more willing to disobey laws, and therefore require more direct intervention to regulate their drinking and driving behaviour.

Media

Messages about drinking and driving presented by the entertainment and advertising media often conflict with road safety.

Enforcement

Visibility

Visible police enforcement needs to continue at a reasonable level to maximise general deterrence, but there is also a need to catch reasonable numbers of drink-drivers, through more targeted testing.

Mode

Stationary RBT is excellent for maintaining visibility but is not a good tool for detecting drink-drivers. Mobile RBT is a more effective means to detect drink-drivers, but it is an inherently much less visible one. The role of mobile RBT should be well publicised to maximise its effectiveness. A balance between stationary and mobile RBT is necessary.

Potential

There is likely to be a limit to the gains which can be made through the use of the current system of RBT. The number of tests being conducted is now double that in the early years of RBT, although there is no evidence of further gains attributable to this increase. There is certainly some potential in expanding implementation of RBT to freeways and motorways; and making good use of car signs and buses to improve visibility of RBT activity, but there is likely to be greater potential in developing more targeted operations and practices which are perceived as a more direct threat by drink-drivers.

The individual

Young drivers

Programmes for pre-drivers and novice drivers have been developed for use in high school curriculums to help establish good knowledge, attitudes and behaviour amongst young people. Responsible drinking and driving behaviour by young drivers (and their families) is also addressed through the Home Safely programme. The 0.02 limit for new and young drivers encourages them to separate drinking and driving.

A long-term benefit is expected as young drivers, who have grown up with RBT and changing community values, and who are better educated about drink-driving, make up an increasing proportion of the licensed drivers.

Planning

Strategies for drivers to avoid drink-driving need to be well marketed. Drivers should be encouraged to plan their transport arrangements ahead of a drinking situation.

Drinking

Motorists need information about how much they can drink and remain under the limit. This can involve promoting general drinking guidelines, the proper use of accurate breath testing devices, and the consumption of low alcohol beer and wine. Alcohol containers are now required to carry information about the number of standard drinks contained. There is no State liquor fee on low alcohol beer and wine. This should make these products cheaper for drinkers. The Department of Health is developing an adult alcohol strategy. An important aspect of the strategy will be to promote safe drinking levels — that is, no more than four standard drinks a day for men and two for women. This guideline, if followed, would have a major impact on the number of drink-driving crashes.

Crash risk

Demonstrations of how reaction time and processing of information can be impaired by alcohol may be of benefit in dealing with drivers who continue to underestimate the effects of alcohol on their ability to drive.

Social

Marketing of drink-driving as socially unacceptable behaviour, congratulating the community on improving the drink-driving problem, and role-modelling of appropriate behaviour are elements that can be used in campaigns.

Treatment

There is evidence emerging that certain types of remedial intervention with drink-driving offenders can contribute some road safety benefit. The most important overall intervention continues to be licensing sanctions and any remedial intervention should not be a substitute for such sanctions. The Authority is currently developing a general practitioner-based programme to assess serious offenders and, if necessary, to refer them for suitable treatment or other intervention. The assessment would be a prerequisite of relicensing.

The drinking environment

Influences

Drink-driving is a product of societies in which use of alcohol is accepted and people depend largely on use of private cars for travel, especially for social activity. Influencing alcohol use and modes of transport can affect the incidence of drink-driving.

Servers

The servers of alcohol, both commercial and social, have responsibilities. Commercial servers have requirements to take steps to prevent intoxication. Responsible serving practices create a safer drinking environment, reduce the risk of intoxication, and hence reduce the risk that intoxicated persons will harm themselves or others. The police have become more active in enforcing legal requirements on service of alcohol, and a number of licensees have been charged with serving intoxicated patrons. Such action should help

motivate licensees to make a serious commitment to responsible service practices. The Department of Gaming and Racing is encouraging licensees to have their staff trained in responsible service of alcohol through courses approved by the Department. Eventually, all servers will be required by law to be trained.

Practices

Local council and Authority road safety officers have been active in promoting responsible serving practices on licensed premises, related to reducing drink-driving behaviour. These practices include: provision of alternative transport; implementation of designated driver programmes; availability and promotion of use of breath testing devices; and promotion of drinking guidelines and low or non-alcoholic drinks.

Breath testers

The use of accurate, reliable breath testing devices to measure breath-alcohol is an important strategy for motorists to avoid drink-driving. They can play an educative role for motorists in terms of how much alcohol they can drink to reach a particular blood alcohol level.

The Authority supports devices which comply with the Australian Standard. The Authority has promoted devices through distribution of a brochure to all licensed premises and registered clubs. A brochure has also been developed to inform drivers about devices and how to operate them correctly. Legislation has recently been passed to remove any possibility of liability of licensees for results from breath testing devices installed on premises.

The driving environment

Interlocks

Breath alcohol-ignition interlock devices provide a means to regulate drink-driving behaviour more directly. These devices prevent operation of the vehicle when the driver's BAC is at a preset level.

Results of studies in the USA have shown some benefits from programmes during the period in which devices are fitted to vehicles of relicensed drink-driving offenders, but there have typically been major problems in the administration of programmes.

Road design

In around two-thirds of serious crashes involving alcohol, the vehicle leaves the roadway, often hitting an object off the road. There is scope to reduce the risk of a crash by impaired drivers through road design. This includes improved lane delineation; rumble strips to alert drivers before a special hazard; and profile line markings to alert drivers to lane drift. The severity of crashes involving alcohol can be reduced by provision of frangible barriers and roadside plantings, especially on curves.

Drug-driving

In 1992 as a result of a recommendation of the New South Wales Joint Parliamentary Standing Committee (Staysafe), a Drug-driving Task Force was established to identify the potential road safety problems posed by drivers who:

- drive while affected by prescription drugs or over-the-counter medications;
- have combined alcohol and drugs;
- use psychostimulants in an attempt to offset fatigue; and
- use prohibited drugs or illegally use drugs available through prescription.

The Task Force conducted a comprehensive literature review of the effect of drugs on driving. It found that "... the problem of alcohol use and driving is substantially more severe than any problem associated with drug use and driving".[23] Research carried out to date does not indicate that drug-driving is a major road safety problem.

Recent research has used a method which aims to measure the degree to which different groups of drugs increase the level of responsibility in a crash. This research appears to provide the best information so far available for quantifying the contribution of drugs to crashes. Additional analysis of the results by the Authority's Road Safety Bureau indicates that, whereas alcohol is a potential factor in about 30% of driver fatalities in New South Wales, other psychoactive drugs are a potential factor in about 5% of driver fatalities.

Speeding

Speeding is not just exceeding the posted speed limit. It can also involve travelling too fast for the prevailing conditions, yet under the posted speed limit.

Physical characteristics

Risk

Speeding increases the risk of being involved in a crash because it results in:

- less time to react;
- an exponential increase in stopping distance; and
- less ability to hold the road when cornering.

Severity

Speeding increases the severity of a crash so that the force involved increases with the square of the impact speed.

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23 Staysafe 19, *Alcohol and other drugs on New South Wales' roads: 1. The problem and countermeasures*, 1992, Nineteenth report of the Joint Standing Committee on Road Safety, Parliament of New South Wales, Sydney.

Crash involvement in 1995

Definition

In terms of the crash data presented, a "speeding-related crash" is identified as a crash involving at least one vehicle which (1) was identified by the police as travelling at an excessive speed, or (2) had performed a manoeuvre characteristic of excessive speed. A serious casualty is a person who is either killed or seriously injured (that is, admitted to hospital) as a result of a road crash.

Crashes

One-third (34%) of fatal crashes in 1995 were speeding-related, representing the death of 220 people of whom seven were children ten years of age or under, mostly as passengers.

Age/sex

Of speeding drivers involved in serious casualty crashes:

- 40% were males aged <25 years;
- 21% were males aged 26–39 years; and
- 11% were females aged <25 years.

Days

Speeding-related serious casualty crashes occur consistently throughout the year. In general, weekends have more speeding-related serious casualty crashes per day than weekdays. Although the number of speeding-related serious casualty crashes per day on public holidays and school holidays is slightly higher than on weekdays, they are not greater than on weekends. Although holidays and weekends have a high concentration of speeding-related serious casualty crashes, non-holiday weekdays account for about 47% of speeding-related serious casualty crashes.

Time

Afternoon and late night periods appear to have more crashes than the morning.

Vehicle

Approximately 73% of speeding vehicles involved in serious casualty crashes were cars, 15% were motorcycles, 5% were light trucks and 4% were heavy rigid or articulated trucks. These vehicles accounted for the following percentages of total distance travelled in New South Wales for 1993: 72% for cars, 1% for motorcycles, approximately 19% for light trucks and approximately 7% for heavy rigid or articulated trucks.

Location

Of the speeding-related serious casualty crashes in New South Wales:

- Sydney, Newcastle, and Wollongong Metropolitan roads account for about 37% (four out of five were on 60 km/h roads);
- country non-urban roads (>80 km/h) account for about 37%; and
- country urban roads (<80 km/h) account for about 24%.

Only one in 7.5 serious casualty accidents in the Sydney, Newcastle, and Wollongong Metropolitan areas were speeding-related whilst in country non-urban areas one in three were speeding-related.

Country

On country roads, about 65% of speeding drivers involved in serious casualty crashes were from the country.

Limit

Just over 40% of all speeding-related serious casualty crashes occur on roads with a speed limit of 60 km/h, not surprising given the extent of travel on this road type. Roads with a speed limit of 100 km/h account for just under 40% of all speeding-related serious casualty crashes. Roads with a higher speed limit typically have a higher percentage of their crashes being speeding-related.

Driving speeds

Speed surveys throughout New South Wales indicate that a large proportion of drivers continue to travel at speeds in excess of the speed limit.

Heavy vehicles

A study of heavy vehicles in 1991 found that roughly one in five speed-limited heavy vehicles and three in four non-speed-limited heavy vehicles exceed their speed limit by 5 km/h. (The maximum speed limit is 100 km/h for speed-limited heavy vehicles and 90 km/h for non-speed-limited heavy vehicles.)

Drivers

Awareness

When drivers are not looking at their speedometers they are unlikely to estimate the speed of their vehicle accurately. The Authority incorporates the line "How fast are you going now?" into many of its anti-speeding messages to remind drivers to check their speedometers so that they are aware of their speed. This can assist some drivers not to exceed the speed limit unintentionally.

Risk

The increased crash risk associated with speeding is less apparent to individual drivers than it is when viewed at a community level. This is because the increased crash risk associated with speeding is unlikely to result in a specific individual experiencing a crash. An individual driver's crash risk, in general, is quite low (the equivalent of one serious casualty crash less than once every 500 years).

Target

Because a driver's speed can be influenced by the speed of other vehicles, it is important that all speeding drivers reduce their speed.

Countermeasure Summary

Potential gains

Research in the 1960s introduced the idea that drivers who travel at much higher or lower speeds than the mean traffic speed are more likely to be involved in a crash than those travelling near the mean traffic speed. However, while further examination of this and other research supports a high crash risk for higher speeds, it fails to support a high crash risk for lower speeds. It is important to remember, however, that regardless of the risk of having a crash, the severity of a crash is substantially higher for higher speeds than it is for lower speeds.

Speed limits

Experience with changes to the posted speed limits in Australia and overseas suggests that a minor increase or decrease to the posted speed limit, if properly enforced, can result in a substantial increase or decrease in the number of serious injury crashes respectively (for example, the percentage change in the number of fatalities is equal to the fourth power of the percentage change in speed).

Pedestrians

A recent study of pedestrian fatalities in South Australia suggests that were those drivers who exceed the speed limit to drive at the speed limit, a 12% reduction in fatal pedestrian collisions could be expected. The study also suggests that if the general urban speed limit were reduced from 60km/h to 50km/h a reduction of 27% of fatal pedestrian collisions could be expected, with even greater benefits if those drivers who exceed the speed limit were to drive at the speed limit.

Road environment

Speed limits

Speed limits are the maximum safe speeds at which it is safe for vehicles to travel under good road and traffic conditions. When road or traffic conditions are not good, vehicles may be considered to be speeding, even though they are travelling at or below the posted speed limit.

Definitions

Speed limits in New South Wales are imposed by regulation or by signposting. The three main types of speed limit are the general speed limit, speed zoning and special limits.

- The general speed limits are set by the *Traffic Act*. There are two general speed limits in New South Wales: (1) the local street speed limit which is 60 km/h and applies to all non-zoned public streets where there is provision for street lighting; and (2) the general State limit which is 100 km/h and applies to all non-zoned public streets where there is no provision for street lighting.

- In New South Wales speed zones ranging from 10 km/h to 110 km/h are imposed by signposting. In situations where the general speed limit is not appropriate for a specific section of road, speed zoning can be used to change the speed limit so that it is more appropriate for that specific section of road. Speed zoning guidelines and an expert system called "NLIMITS" have been developed by the Authority to assist in the appropriate and consistent zoning of roads. The appropriateness of a speed limit for a specific section of road is determined by factors such as the road's crash history, the purpose of the road, the roadside environment and traffic characteristics.

- Special limits are applied by regulation to particular circumstances, such as the 90 km/h limit for heavy vehicles and coaches without speed limiters; 80 km/h for learner drivers; or 40 km/h at school zones.

Local street speed limit

A reduction of the local street speed limit from 60 km/h is being considered at both a State and national level. In a recent study by Austroads the notion of a 50 km/h local street speed limit was supported because of the significant road safety and amenity benefits that would be achieved in urban areas. With the application of speed zones on urban roads in New South Wales, urban arterial roads would not generally be reduced to 50 km/h.

Compliance

Drivers' compliance with the speed limit on a specific section of road is influenced by their perception of the appropriate speed limit for that section of road. Experience with reductions in the speed limit to 40 km/h or lower for the benefit of pedestrian safety suggest that for these reduced zones to be effective they should be accompanied by road environment treatments (for example, local area traffic management schemes within residential or shopping areas or Wombat crossings outside schools). These treatments lower the apparent speed limit for the road environment so that it is closer to the posted speed limit.

Special line marking can be used to assist drivers to reduce their speed in some circumstances. For example, transverse lines can be used on the road where the speed appropriate for the conditions is lower than the speed limit (for example, on the approach to a roundabout).

Awareness

Fundamental to the issue of compliance is the issue of drivers' awareness of the speed limit on a section of road. If drivers are not aware of the speed limit on a section of road they cannot be expected to comply with that speed limit.

With the growing number of different speed zones throughout the State, speed limit reminder signs (about half the size of ordinary speed limit signs) are being trialed as a way of making drivers aware of the speed limit of the section of road on which they are travelling.

Forgiving

A road environment that is more forgiving to vehicles involved in a crash can reduce the severity of both speeding and non-speeding related crashes. An example of a more forgiving road environment is one in which the roadside is clear of hazards (such as telegraph poles and deep culverts) or is protected with suitable barriers.

Vehicle design

Handling

Improvements in a vehicle's handling abilities might improve road safety if drivers do not compensate by increasing their travel speed.

Occupant protection

Improvements in occupant protection are capable of reducing the severity of crashes.

Limiters

Speed limiters are designed to physically limit the speed of vehicles to a preset maximum. They are currently in use on many heavy vehicles. The effectiveness of speed limiters on heavy vehicles and their potential application on new cars is under investigation.

Monitoring

A vehicle monitoring device records the speed of a vehicle over a period of time. These are currently required on some heavy vehicles. Vehicle monitors have potential for use in future speed management initiatives as superior technology becomes available.

Road user

Training

Driver training is considered by many as the logical solution to the speeding problem. Unfortunately, as yet evaluations of driver training programmes have not been able to demonstrate benefits to road safety. This area is currently experiencing a focus change from a skills-based approach to one of driver knowledge and understanding, which is referred to as driver education. This is seen as more appropriate to road safety.

Enforcement

Enforcement and its publicity are capable of slowing speeding drivers when they make speeding drivers think that if they continue speeding they will be caught. That is, the primary emphasis is not so much on slowing drivers based on their past experience of being caught but on slowing drivers based on what they think the chances are of being caught in the future.

Enforcement's ability to slow speeding drivers is also dependent on how unpleasant the consequences of enforcement are considered to be by speeding drivers. This is influenced by factors such as the financial cost, the number of licence demerit points involved, whether the enforcement is considered reasonable, and the attitude of others to the offence.

Communication

To reduce the number and severity of speeding-related crashes, the three objectives of Authority communications are:

(1) slowing drivers who exceed the speed limit by:

- explaining the nature and importance of speed limits in New South Wales;
- reminding all drivers, whilst driving, to check their speedometers frequently;
- raising all drivers' awareness, whilst driving, of the unpredictable threat of speed enforcement;
- promoting the negative consequences of speed enforcement, in particular by promoting the credibility of speed enforcement;

(2) slowing drivers who travel at inappropriate speeds by:

- encouraging drivers to travel at least 10 km/h below the speed limit when pedestrians are about;
- encouraging drivers to travel below the speed limit during adverse weather conditions or times of low visibility; and

(3) providing an opportunity for community support of effective countermeasures in New South Wales by:

- establishing speeding and its consequence as important issues for community consideration;
- informing the community about the benefits of speed enforcement; and
- responding to publicity that promotes speeding (for example, car advertising).

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