

Driving and Mobile Phones - Your obligations, rights and the law

So, what's the law with driving a motor vehicle and using a mobile phone in Qld?

Under section 300 of the *Transport Operations (Road Use Management - Road Rules) Regulation 2009* it is an offence for a driver of a vehicle, other than an emergency vehicle or police vehicle, to use a mobile phone that the driver is holding in the driver's hand while the vehicle is moving or is stationary but not parked.

This is known as a summary offence and the maximum penalty for the offence is twenty (20) penalty units. At the time of writing this fact sheet, one penalty unit equals \$143.75.

This means were you to receive a fine for committing the offence or be found guilty of the offence by a Queensland Court, you may have to pay a maximum of \$2875.00.



Under section 228 of the *Transport Operations (Road Use Management - Drive Licencing) Regulation 2021* it is an offence for a driver of a vehicle, under the age of 25 who holds a learner licence, provisional licence, probationary licence, or heavy vehicle probationary licence, to use a mobile phone while the motor vehicle is moving or stationary but not parked.

This is also known as a summary offence and the maximum penalty for the offence is thirty (30) penalty units.

This means were you to receive a fine for committing the offence or be found guilty of the offence by a Queensland Court, you may have to pay a maximum of \$4,312.50.

Under section 114 of the *Transport Operations (Road Use Management) Act 1995*, if a mobile phone offence is detected by a photographic detection device, such as a mobile traffic camera, you are taken to have committed the offence if you are the person in charge of the vehicle that was involved in the offence, even though the actual offender may have been someone else.

Are there any defences?

It is a defence to a camera-detected mobile phone offence, for you to prove that you were not the driver of the vehicle at the time of the offence and you have notified the issuer of the fine of the name and address of the person in charge of the vehicle at the time the offence occurred.

What's the law with being a passenger in a motor vehicle and using a mobile phone?

Under section 229 of the *Transport Operations (Road Use Management – Drive Licencing) Regulation 2021*, a passenger in a motor vehicle being driven on a road by a driver mentioned under section 228, must not use a mobile phone in loudspeaker mode while the motor vehicle is moving or stationary but not parked.

This is also known as a summary offence and the maximum penalty for the offence is thirty (30) penalty units. This means were you to receive a fine for committing the offence or be found guilty of the offence by a Queensland Court, you may have to pay a maximum of \$4,312.50.

Do I have demerit points allocated to my Driver licence?

You can have 4 demerit points recorded against your traffic history for using a mobile phone illegally while driving. This includes when you're stopped at traffic lights or stopped in traffic.

Double demerit points apply for second or subsequent mobile phone offences committed within 1 year after an earlier offence.

Does committing the offence affect my Traffic History?

Yes. Demerit points will be allocated to your traffic history were you to receive a fine for committing the offence or be found guilty of the offence by a Queensland Court.

Is there a legal defence for committing the offence?

Under section 300 of the *Transport Operations (Road Use Management – Road Rules) Regulation 2009* the word “use” in relation to a mobile phone means holding the phone to, or near, the ear, whether or not engaging in a phone call; writing, sending or reading a text message on the phone; turning the phone on or off; operating any other function of the phone.

This offence is one of strict liability, which means there are no valid defences or excuses which can be used to have the fine for the offence cancelled or removed.

Under section 228 of the *Transport Operations (Road Use Management – Drive Licencing) Regulation 2021 QLD*, the word “use” in relation to a mobile phone means operating the phone or a function of the phone in any way, or hold the phone in the person’s hand, or rest the phone on any part of the person’s body – whether or not the phone is on or operating; and whether or not for the purpose of operating the phone or a function of the phone; and whether or not the phone is partially or wholly supported by another part of the person’s body or another thing.

Again, this offence is one of strict liability, which means there are no valid defences or excuses which can be used to have the fine for the offence cancelled or removed.

While there are no valid legal defences to the offence, there are some circumstances when using a mobile phone is exempt and are outlined in section 228 (3)-(4) of the *Transport Operations (Road Use Management – Drive Licencing) Regulation 2021 QLD*.

These include where the mobile phone is in a pocket or pouch worn by the person and kept in a way that does not allow the person to operate the phone or a function of the phone in any way; to obtain or produce for inspection your driver licence or other document as required by a police officer or other legislative act; to pay for goods or services at a place such as a drive through where the vehicle is stationary; or to obtain and use a card or other thing to enter a road related area, such as a security gate on a driveway.

How do I pay the fine?

If you are unable to pay the fine at the time you receive it, you may seek to have the fine referred to the State Penalties Enforcement Registry (SPER). You will then need to provide information to SPER to support an application for financial hardship and enter a payment arrangement with SPER

Are there any other restrictions?

Yes. If you are a learner or P1 driver under 25 you must not use hands-free, wireless headsets or a mobile phone's loudspeaker function. You are not allowed to touch, look or operate your phone with your voice. You are banned from using a mobile phone's loudspeaker function.

How to use your mobile phone safely

The Qld government website has information about when you can hold a phone safely stopped.

If you're an open or P2 licence holder, you are also allowed to touch your mobile phone for hands-free use if, for example, the phone is in a cradle attached to the vehicle. The position of your mobile phone must not obscure the driver's view of the road.

Where do I find more information about my rights and obligations?

You can speak with one of our solicitors who can provide you with free initial legal advice about an offence you have committed or charges you are facing in a Queensland Court. Our contact details are below.

You can also access Queensland Government information online about these offences.

Contact Bayside Community Legal Service

Website: www.bcls.org.au

email: info@bcls.org.au

Phone: (07) 3162 3282

Office Hours: 8:30am-4:30pm Monday to Thursday

Address: Wynnum Community Centre, 105 Florence Street, Wynnum QLD 4178
PO Box 103, Wynnum QLD 4178