

# Mobile phones, visual display units and driving



This information is to help you understand the law regarding the use of mobile phones and visual display units while driving motor vehicles in Western Australia.

## What laws apply to mobile phones?

In Western Australia, regulation 265(2) of the *Road Traffic Code 2000 (WA)* (RTC) makes it an offence for a driver to use a mobile phone while the vehicle they are driving is moving, or is stationary but not parked, unless an exception applies.

The *Road Traffic Act 1974 (WA)* (RTA) also contains offences that may apply to the use of mobile phones while driving. These are noted later in this information sheet.

## What is “stationary but not parked”?

For the purposes of the offence under regulation 265 of the RTC, “stationary but not parked” means the vehicle is not moving, but the engine is on and the vehicle is not in park and the handbrake is not on.

## What is “using” a mobile phone?

The following actions by a driver are likely to be considered “using” a mobile phone for the purposes of regulation 265 of the RTC:

- Holding the mobile phone or resting it on any part of the driver’s body, unless it is held in a pocket or pouch of the driver.
- Touching, pressing or otherwise operating functions of the mobile phone, which includes using functions such as:
  - Turning the phone on or off;
  - Using voice-to-text/email mechanisms;

- Using video communication on the mobile phone even while mounted;
- Using voice recognition functions of the phone for any purpose other than audio calls;
- Using bank cards/pay pass functions on a mobile phone (for example to pay in a drive through);
- Looking at a text message, video or email that pops up on your phone automatically and is accessed without touching the phone;
- Changing the end location or route on a navigation or maps application by physically touching the phone, even if mounted;
- Using a smart watch to operate the functions of a mobile phone.

## When can a mobile phone be used while driving?

There are a few exceptions to the rule that you can’t ‘use’ a mobile phone while driving or while stationary but not parked.

You **can** ‘use’ a mobile phone even if the vehicle is moving, or is stationary but not parked, in the following circumstances:

- Making and receiving audio calls while the mobile phone is in a mounting fixed to the vehicle.
- Making and receiving audio calls without touching or manipulating any part of the mobile phone.

- Using the phone as a visual display of a driver's aid (such as to navigate), **while it is in a mounting fixed to the vehicle**, without touching or manipulating any part of the mobile phone.

There are special circumstances in which the driver of an 'on-demand vehicle' is allowed to use a mobile phone while driving, as specified in regulation s265(2)(c). If the use is not within these circumstances, the driver is committing an offence under regulation 265.

### What are the penalties for an offence against regulation 265 of the RTC?

The penalties for unlawfully using a mobile phone depend on how you were using it while driving.

If you are convicted of using a mobile phone to text, email, use social media, watch videos or access the internet while your vehicle is moving, it is an **aggravated offence** and the penalty is a **\$1000 fine and 4 demerit points (or 8 demerit points during a holiday period)**.

If you are convicted of using your mobile phone in any other circumstance that is prohibited under regulation 265, the penalty is a **\$500 fine and 3 demerit points (or 6 demerit points during a holiday period)**.

### What are Visual Display Units and how can they be used while driving?

Visual Display Units (VDUs) are any devices which display images on a screen. Portable televisions, screens inbuilt in motor vehicles and iPads are examples of VDUs. Smart watches may also be considered to be VDUs.

Regulation 264 of the RTC states a driver must not drive a motor vehicle that has a television receiver or VDU operating, if any part of the image on the screen is visible to the driver from the normal driving position or is likely to distract another driver. This applies while the vehicles is moving, or when it is stationary but not parked.

There are a number of exceptions to this offence, the main exception being if the VDU is part of a driver's aid (such as for navigation or displaying vehicle information in a bus or taxi) and is either

integrated into the vehicle design or secured in a mount fixed to the vehicle.

There are many ways a driver could breach regulation 264 of the RTC regarding the use of VDUs. For example, a passenger in a vehicle showing the driver a video on an electronic device or displaying a video that is likely to distract other drivers.

The penalty for an offence of unlawfully using a VDU while driving is a **\$300 fine and 3 demerit points**.

### What other criminal offences could apply to using an electronic device while driving?

The RTA contains offences relating to driving motor vehicles, which could be relevant to people who use mobile phones and other electronic devices while driving. If a person uses an electronic device while driving and this use causes them to drive recklessly, carelessly or dangerously, it is possible they could be charged with an offence under the RTA.

Section 62 of the RTA states that "*every person who drives a motor vehicle without due care and attention*" commits the offence of **Careless Driving**. The maximum penalty if convicted of Careless Driving is a **\$1500 fine**.

Section 61 of the RTA states that any person who drives a motor vehicle in a manner that is "*dangerous to the public or to any person*" commits the offence of **Dangerous Driving**. The penalty for a first offence of Dangerous Driving is up to a **\$3000 fine**. Subsequent convictions attract higher penalties, including driver's licence disqualification.

Section 60 of the RTA states that any person who "*wilfully drives a motor vehicle in a reckless manner*" commits the offence of **Reckless Driving**. The penalty for a first offence of Reckless Driving is up to a **\$6000 fine or imprisonment for 9 months, and 6 months driver's licence disqualification**. Penalties for this offence get more severe for subsequent convictions.

If the commission of these offences results in injury to a person the penalties are more serious and imprisonment is an option.

## Where can I get more information?

For more information about **traffic offences and driver's licences**, including extraordinary drivers licence applications, see:

- Legal Aid WA website – [www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au) under Find Legal Answers, Cars and driving, Driver's licences and Traffic offences.
- Legal Aid WA information sheet – Extraordinary driver's licence applications. Available from the Legal Aid WA website– [www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au) under Resources or any Legal Aid WA Office.
- Road Safety Commission website – [www.rsc.wa.gov.au](http://www.rsc.wa.gov.au) under Rules & Penalties – Mobile Phones

For more information about dealing with **infringements**, see:

- Legal Aid WA website – [www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au) under Find Legal Answers, Crime, Fines and Infringements, Infringement notices.
- Legal Aid WA information sheet – Infringement notices. Available from the Legal Aid WA website [www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au) under Resources or any Legal Aid WA Office.

For Legal Aid WA office locations and contact details, see the back page of this information sheet.

## Legal Aid WA Offices

**TELEPHONE INFOLINE: 1300 650 579 (General Enquiries)**  
InfoLine open Monday to Friday 8.30 am to 4.30 pm  
(Australian Western Standard Time) except public holidays

**Translating and Interpreting Service 131 450**  
**National Relay Service (for hearing and speech impaired) 133 677**

[www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au)

### **Perth Office**

32 St Georges Terrace, Perth, WA 6000  
1300 650 579  
(08) 9261 6222

### **Southwest Regional Office**

7<sup>th</sup> Floor, Bunbury Tower, 61 Victoria Street, Bunbury, WA 6230  
(08) 9721 2277

### **Great Southern Regional Office**

Unit 3, 43-47 Duke Street, Albany, WA 6330  
(08) 9892 9700

### **Goldfields Regional Office**

Suite 3, 120 Egan Street, Kalgoorlie, WA 6430  
(08) 9025 1300

### **Midwest & Gascoyne Regional Office**

Unit 7, The Boardwalk, 273 Foreshore Drive, Geraldton, WA 6530  
(08) 9921 0200

### **Pilbara Regional Office**

28 Throssell Road, South Hedland, WA 6722  
(08) 9172 3733

### **West Kimberley Regional Office**

Upper Level, Woody's Arcade, 15-17 Dampier Terrace, Broome, WA 6725  
(08) 9195 5888

### **East Kimberley Regional Office**

98 Konkerberry Drive, Kununurra, WA 6743  
(08) 9166 5800

### **Indian Ocean Office**

Administration Building, 20 Jalan Pantai  
Christmas Island, Indian Ocean, WA 6798  
(08) 9164 7529

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