GILSHENAN & LUTON
LEGAL PRACTICE



Increased penalties for using a mobile phone while driving (Queensland)

Date: Monday April 27, 2020

As of 1 February 2020, Queensland motorists now face significantly harsher penalties for using a mobile phone whilst driving. Those penalties can result in costly fines, double demerit points and in some cases, the loss of your licence.

So what are the new penalties?

Section 300 of the *Transport Operations (Road Use Management-Road Rules) Regulation 2009 (Qld)* ("**the Road Rules Regulations**") already prohibited people from using a mobile phone whilst driving.

However, amendments to s300 as well as to s68 of the *Transport Operations (Road Use Management-Driver Licensing) Regulation 2010 (Qld)* ("**the Driver Licensing Regulations**") in the *State Penalties Enforcement Regulation 2014 (Qld)* has resulted in the following penalties:

1. Increased infringement notice fines from $400.00 to $1,000.00;
2. The increase in the pre-existing penalty of three demerit points to four demerit points;
3. If caught twice in 12 months, another $1,000.00 fine and double demerit points (eight demerit points); and
4. The maximum penalty of $2,669.00 will be retained.

These penalties apply to all license holders (including open, provisional and learner licences).

Increased risk to learner and provisional licence holders to loss of licence

The increased demerit points mean that learner and provisional license holders risk losing their license after just one offence because of their limited accumulation of demerit points.

According to the Queensland Government website, if a learner licence holder receives four or more demerit points within a continuous one year period, their licence will be suspended for three months. Additionally, if a provisional licence holder accumulates four or more demerit points within a continuous one year period, they will be sent an 'accumulation of demerit points-notice to choose.'

This means that they are required to choose either a one-year good driving behaviour period or have their license suspended for three months. If a driver elects the good behaviour option and commits further offences during their good behaviour period, further penalties apply.

Important further restrictions for learner and provisional licence holders

If you hold a learner's licence or provisional licence, or you are a passenger of such a driver, you should also be aware of the following:

Learner and provisional licence restrictions

Section 68 of the Driver Licensing Regulations sets out that learner and P1 (red plate) licence holders under the age of 25 are not permitted to use a mobile phone even with a hands-free kit, wireless handsets or loudspeaker functions.

Passengers of learner and provisional licence holders

Interestingly, pursuant to Section 69 of the Driver Licensing Regulations passengers of learner and P1 (red plate) licence holders (under age 25) are not permitted to use loudspeaker functions. This applies when the vehicle is moving or is stationary, but not when parked.

What penalties apply to passengers of learner and provisional licence holders?

Under s69 of the Driver Licensing Regulations in the *State Penalties Enforcement Regulation 2014 (Qld*), passengers who are caught using the loudspeaker function in these circumstances presently face a $400.00 fine. Importantly though, the maximum penalty for this offence is a $2,669.00 fine.

What defines 'use of a mobile phone'?

The use of a mobile phone is defined under Section 300 of the Road Rules Regulations. This is applied when the vehicle is moving or stationary, such as being stationary in traffic. This is not applied when the vehicle is parked.

‘Use’ of a mobile phone includes:

1. holding the phone to, or near, the ear, whether or not engaged in a phone call;
2. writing, sending or reading a text message on the phone;
3. turning the phone on or off;
4. operating any other functions of the phone.

The new penalties apply to bicycle riders too but the penalties are different

Bicycle riders are classified as legitimate road users. However, there is a difference in penalties for cyclists caught using their phone whilst riding.

Pursuant to Section 300 of the Road Rules Regulations in the *State Penalties Enforcement Regulation 2014 (Qld),* a fine of $1,000.00 is applied to bicycle riders who are caught using their mobile phone while riding on a road or road-related areas.

According to the *Transport Operations (Road Use Management) (Road Safety) and Other Legislation Amendment Regulation 2019 (Qld)* explanatory memorandum:

“the demerit point increases will not apply to bicycle riders as demerit points apply in relation to a person’s driver licence and bicycle riders are not required to hold a driver licence.”

What has caused these increased penalties?

Illegal mobile phone use while driving is considered to be a driver distraction. This particular distraction is apparently one of the fatal five driving behaviours which contributes to injuries and fatalities on our roads.

Despite increased penalties over the years and ongoing education campaigns, drivers are said to have continued to use mobile phones while driving.

In 2018, the Queensland Government proposed to increase the penalties with an objective “to reduce the incidence and the associated road safety risks of drivers and riders illegally using their mobile phones on the road network, by increasing the penalties that apply.”

Get help from a traffic lawyer

Given the impacts that fines and a loss of licence can have on a person’s livelihood, it is worth considering obtaining legal advice about traffic matters. We have extensive experience in traffic law. We can advise and assist you in relation to contesting fines and traffic charges and applying for special hardship/work licences.

If you have been charged with any driving offences, we recommend that you contact us urgently to ensure the impact of any penalty upon you is properly considered.

This article was researched by Law Clerk, Kimberley Barker and settled by criminal law Associate, Sarah Ford.

Contacting Gilshenan &Luton

07 3361 0222 (24/7)

gnl@gnl.com.au

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.