GILSHENAN & LUTON
LEGAL PRACTICE



Higher penalties: mobile phone use and seatbelt laws in Queensland

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As of 26 July 2021, even stricter laws apply to Queensland drivers relating to the use of mobile phones and seatbelts. The changes to the law include increased penalties and more enforcement of the rules.

What are the new laws?

On 26 July, the *Transport Legislation (Distracted Driver and Other Matters) Amendment Regulation 2021* came into force, widening the type of conduct drivers can be penalised for in relation to mobile phones and seatbelts.

The amendments were introduced at the same time as new “digital camera driver behaviour camera systems” were implemented. These cameras take high definition images of drivers inside their cars, increasing the prospects of offending drivers being caught.

Mobile phones and driving

The amendments now mean that holding a mobile phone or having it resting on any part of the body (e.g. on a driver’s lap) is prohibited. It does not matter whether the phone is “operating” for the offence to be proven. In other words, turning your phone off or using it for any other function such as changing a song, is now prohibited.

Exceptions to this offence include when:

- the mobile phone is placed in a cradle;
- the mobile phone is located in a pocket or other place which does not allow the driver to use any of its functions other than by using the driver’s voice;

- the driver is producing their phone to pay for goods and services (e.g. in a drive through) or to show a person under a relevant authority such as a police officer; or
- the driver is using their phone to enter a “road-related area” (e.g. entering a carpark with a keycard).

The above exceptions are not applicable to learner and P1 provisional license holders. Even passengers of learner drivers or P1 provisional license holders are prohibited from using the loudspeaker function on a phone while a car is not parked.

Seatbelt rules in Queensland

Drivers now have a positive obligation to ensure that **all** of their passengers are wearing seatbelts.

Nevertheless, there are certain exceptions to this obligation for bus drivers, taxi drivers or rideshare drivers and for persons who have a health condition or disability. These exceptions do not extend to the driver themselves; that is, bus drivers, rideshare drivers, taxi drivers must wear a seatbelt.

Increased penalties apply

As well as expanding the laws around the use of mobile phones and the wearing of seatbelts, the amendments have also increased the penalties for the associated infringements.

The following automatic fines will now be imposed:

- Using a mobile phone = $1,033.88 for individuals or $5,169.38 for businesses;
- Not wearing a seatbelt = $413.55 for individuals or $2,067.75 for businesses;
- Not ensuring passengers are wearing a seatbelt = $413.55 or $2,067.75 for businesses.

The following demerit points will be applied:

- Using your mobile phone while driving will result in the loss of four demerit points.
- Failing to wear a seatbelt will result in three demerit points.
- If the same offence is committed within one year, an additional four demerit points will be imposed for the use of mobile phones and an additional three will be imposed for failing to wear a seatbelt.

As the maximum demerit points a driver can accumulate is twelve, it is now possible for a driver’s license to be suspended after being caught twice for using their mobile phone.

Defending charges for mobile phone and seatbelt related offences

Given the strict liability of these offences, the onus is on the person who receives an infringement notice to raise a defence - essentially whether they can prove that they were not driving the vehicle at the time the offence was detected.

To do this, the driver must notify the Department of Transport and Main Roads within 28 days of receiving an infringement notice.

We expect the new camera systems discussed above will make it increasingly difficult to challenge penalties for mobile phone use or seatbelt infringements. The level of detail visible in the images they take, allow the Department of Transport to very easily identify individuals.

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.

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