

Driving with mobile phones and visual display units

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

When is it an offence to use a mobile phone while driving?

In Western Australia, **regulation 265 Road Traffic Code 2000 (WA)** makes it an offence for you to use a mobile phone while driving, unless you use it in one of the limited ways allowed under regulation 265.

There are also offences of careless, dangerous or reckless driving under the *Road Traffic Act 1974 (WA)* that may apply to you if you use a mobile phone or other device while driving. These are referred to later in this information sheet.

Regulation 265 Road Traffic Code

Generally, regulation 265 *Road Traffic Code* says you must not use a mobile phone if the vehicle you are driving is moving, or is 'stationary but not parked'.

'Stationary but not parked' means that although the vehicle is not moving, its engine is on, it is not in park and the handbrake is not on.

What use of a phone is allowed under regulation 265?

Although the vehicle you are driving is moving, or is stationary but not parked, regulation 265 says you can use a mobile phone to:

- make, receive or end a voice call without touching the phone,
- make, receive or end a voice call by touching the phone, as long as it is secured in a mounting fixed to the vehicle,

- use the phone display for navigation without touching the phone, as long as it is secured in a mounting fixed to the vehicle.

If you are driving an 'on-demand vehicle', although the vehicle is moving, or is stationary but not parked, you can use a mobile phone if all of the following apply:

- you are not in a 'restricted area',
- the phone is secured in a mounting fixed to the vehicle, and
- you are using it to accept, confirm the start of, or cancel a booking for that on-demand vehicle when it is safe to do this.

'On-demand vehicle' means a vehicle used to transport passengers within WA for hire or reward where the passenger decides the time of travel, starting point and destination eg a taxi or uber.

'Restricted area' means a school zone during school time, a freeway, a zone with a speed limit of 80km/h or more, or when the driver is approaching or passing a stationary incident response vehicle unless the response vehicle is on the opposite side of a two-way carriageway.

Even if you use your phone in one of the ways that is allowed under regulation 265, it does not mean it will always be safe to do so. If you do anything unsafe while driving, you could still be charged with an offence such as careless, dangerous or reckless driving under the *Road Traffic Act 1974 (WA)*, even if it is not an offence under regulation 265 *Road Traffic Code*.

What use of a phone is not allowed under regulation 265?

Any use not listed under the previous heading is not allowed under regulation 265 *Road Traffic Code*.

For example, if you do any of the following things while driving a vehicle that is moving, or is stationary but not parked, it could be considered using a mobile phone in a way that is not allowed under regulation 265 *Road Traffic Code*:

- Holding the mobile phone or resting it on any part of your body, unless it is away in a pocket or pouch.
- Touching, pressing or otherwise operating functions of the mobile phone, such as:
 - Turning the phone on or off;
 - Using voice-to-text or email;
 - Using video communication;
 - Using voice recognition functions 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 without touching the phone;
 - Changing the end location or route on a navigation or maps application by touching the phone, even if mounted;
 - Using a smart watch to operate the functions of a mobile phone.

What is the penalty for an offence against regulation 265?

An offence under regulation 265 *Road Traffic Code* is dealt with by infringement. The infringement penalty depends on how you used the phone.

If you used the phone to text, email, use social media, watch videos or access the internet while the vehicle was moving, the infringement amount is **\$1000 and 4 demerit points** (or 8 demerit points if it was during a holiday period).

If you used the phone in any other way that is not allowed by regulation 265, the infringement amount is **\$500 and 3 demerit points** (or 6 demerit points if it was during a holiday period).

What are Visual Display Units and can you use them while driving?

Visual Display Units (VDUs) are any devices which display images on a screen. Portable televisions, screens inbuilt in vehicles and iPads are examples of VDUs. A smart watch could be a VDU.

Regulation 264 *Road Traffic Code*

Regulation 264 *Road Traffic Code* 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.

As with mobile phone use under regulation 265, regulation 264 applies to a driver while the vehicle is moving, or when it is stationary but not parked.

As a driver, there are many ways you could breach regulation 264 *Road Traffic Code*. For example, if you look at an image or video on an iPad while driving.

There are some limited exceptions to the offence, under regulation 264, including if you use the VDU as part of a driver's aid (such as for navigation or displaying vehicle information in a bus or taxi) when it is either integrated into the vehicle design or secured in a mounting fixed to the vehicle.

This means the driver is allowed to look at the VDU screen in these circumstances, however, it must still be safe to do so.

If you do anything unsafe while driving, you could still be charged with an offence such as careless, dangerous or reckless driving under the *Road Traffic Act 1974 (WA)*, even if it is not an offence under regulation 264 *Road Traffic Code*.

An offence under regulation 264 is dealt with by infringement. The infringement penalty is **\$300 and 3 demerit points**.

Other possible offences

The *Road Traffic Act 1974* (WA) contains offences that could apply to you if you use a mobile phone, visual display unit or other device while driving and it affects how safely you drive.

If you drive a vehicle without proper care and attention, it is an offence of **careless driving** under s62 *Road Traffic Act*. This offence may be dealt with by infringement or prosecuted in court. The infringement penalty is \$300 and 3 demerit points. The penalty in court is a fine of up to \$1,500. There is no disqualification, but you will get 3 demerit points.

If you drive a vehicle in a way that is dangerous to any person, it is an offence of **dangerous driving** under s61 *Road Traffic Act*. The penalty for a first offence is up to a \$3000 fine. For a further offence there is a higher fine and driver's licence disqualification.

If you deliberately drive a vehicle in a manner that is dangerous to any person it is an offence of **reckless driving** under s60 *Road Traffic Act*. The penalty for a first offence is up to a \$6000 fine or up to 9 months prison, and at least 6 months driver's licence disqualification. The penalty is higher for further offences.

If these offences result in injury to a person the penalties are much higher.

Thus, there can be serious consequences from using a mobile phone, VDU or other device while driving.

Where can I get more information?

Road Safety Commission of WA

The WA government's Road Safety Commission website has information about [Mobile phones and distractions](#).

Legal Aid WA

Legal Aid WA has this information related to traffic offences on its website www.legalaid.wa.gov.au under Find Legal Answers:


- [Traffic offences](#)
- [Driver's licences](#)
- [Going to court for a criminal charge](#)
- [Fines and infringements](#)


There are also Legal Aid WA information sheets relevant to traffic offences available from the Legal Aid WA website www.legalaid.wa.gov.au under Education and Resources/[Infosheets/Crime](#):

- Traffic – Part 1: How to deal with your traffic offence
- Traffic – Part 2: Common offences and penalties
- Infringement Notices

For information and referral, you can call Legal Aid WA's **Infoline** on **1300 650 579**, or **Legal Yarn** on **1800 319 803** for Aboriginal and Torres Strait Islander callers.

LEGAL AID WA CONTACTS

 **Infoline:** 1300 650 579

 **Legal Yarn:** 1800 319 803 (for First Nations callers)

 **Website/InfoChat:** www.legalaid.wa.gov.au

Interpreting and relay services to help you contact us:



Translating & Interpreting Service: 131 450



National Relay Service: 133 677

Perth office

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

Goldfields Office

Suite 3, 120 Egan Street,
KALGOORLIE WA 6530
(08) 9025 1300

Midwest & Gascoyne Office

Unit 8, The Boardwalk,
273 Foreshore Drive,
GERALDTON WA 6530
(08) 9921 0200

East Kimberley Office

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

West Kimberley Office

Upper Lvl, Woody's Arcade,
15 – 17 Dampier Terrace,
BROOME WA 6725
(08) 9195 5888

Southwest Office

7th Floor, Bunbury Tower,
61 Victoria Street,
BUNBURY WA 6230
(08) 9721 2277

Great Southern Office

Unit 3, 43 – 47 Duke Street,
ALBANY WA 6330
(08) 9892 9700

Pilbara Office

28 Throssell Road
SOUTH HEDLAND WA 6722
(08) 9172 3733

Indian Ocean Office

Administration Building,
20 Jalan Pantai,
Christmas Island,
INDIAN OCEAN WA 6798
(08) 9164 7529

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