

Minor traffic offence

Use of a mobile phone while driving

December 2013

What do these words mean?

Words that are highlighted in **bold** are explained in our *What do these words mean?* fact sheet.

What is 'use of a mobile phone while driving'?

Your **charge sheet** says that the police **charged** you with an **offence** of 'use of a mobile phone while driving'.

This includes:

- holding the body of the phone in your hand even if the phone is turned off. However, you can hold the phone in order to give it to someone else in the vehicle
- entering or placing anything into the phone. For example, plugging in a charger
- sending or looking at anything that is in the phone
- turning the phone on or off
- operating any other function of the phone. For example, using the camera or the web browser.

Holding the phone means having it in your hand or resting it on any part of your body. You can have the phone in your pocket.

The only time you can use a mobile phone while driving is if:

- you are on your full licence, and
- you are making a phone call and not texting, or you are using the navigation system, and
- the phone is properly mounted in the car, and
- you do not need to hold or touch the phone.

The phone must be mounted on a device that was made and sold for the purpose of using the phone hands-free. For example, putting your phone on the dashboard is not the same thing as the phone being properly mounted.

A learner or P-plater must not use a phone at all.

Whether you are guilty depends on the exact facts and circumstances of your case. Look at the 'Details of the charge' in your charge sheet to see what the police officer wrote about your offence. The magistrate refers to this in the courtroom.

What does the prosecution have to prove?

The **prosecution** has to prove that:

- you were in the drivers seat of your vehicle, and
- you were driving or not parked (this includes being stopped in traffic), and
- you were 'using' a mobile phone in the prohibited ways described above.

What can I do today?

Plead guilty

If you agree that you did break the law, tell the court staff that you are **pleading** guilty. Go into the courtroom. The police prosecutor reads out the **statement of alleged facts**. The magistrate finds you guilty and gives you a **penalty**.

If you plead guilty the magistrate treats your **plea** as a sign that you are co-operating and may give you a less severe penalty.

See our *Pleading guilty* fact sheet to help you work out what to say to the magistrate.

Plead not guilty

If you believe that you did not break the law or you disagree with what the **informant** says you did, you must tell the police prosecutor that you plan to plead not guilty. They will hold a **summary case conference** with you before your case is heard in court. After the conference, if you still wish to plead not guilty tell the magistrate. The magistrate **adjourns** your case for another day.

You will come back to court for a **contested hearing**. At this **hearing** the magistrate listens to **evidence** from you and the police before making a decision. You should have a **defence**. Saying that you did not know you were breaking the law will not be a good enough defence.

If you are pleading not guilty, get legal advice before the contested hearing. Also see our *Pleading not guilty* fact sheet.

Possible defences

You will have a defence if:

- you did not use the phone in the way the police say
- you did use it but you were using it in a legal way. For example, by properly using a hands-free device or whilst being legally parked.

Can I adjourn today's hearing?

You can ask the magistrate for an adjournment if you want to get a private lawyer. Adjournments are hard to get for any other reason. The magistrate may say no.

What are the penalties if I am found guilty?

Demerit points

VicRoads adds four demerit points to your licence from the date the offence happened, not the date you went to court. The magistrate cannot change this.

See our *Demerit points* fact sheet.

Losing your licence

The magistrate may **cancel** or **suspend** your licence for a period of time. If this happens you should not drive at all during this time. There are no exceptions. For example, you cannot drive to work or to pick up your children. There are no special licences that allow you to drive some of the time. There are serious penalties for driving when you are not supposed to.

Fines

The magistrate may give you a fine. You can get up to 10 penalty units for an offence of use of a mobile phone while driving.

One penalty unit is about \$145.

Other penalties

The magistrate may also place you on an **undertaking** to behave well for a certain amount of time.

How does the magistrate decide what penalties to give?

The magistrate looks at:

- how serious your offence is
- if you have been found guilty of similar offences before
- what else is happening in your life.

What else might happen if I am found guilty?

Criminal record

What happens in court goes on your **criminal record**.

This includes:

- the finding of guilt
- a **conviction**, if there is one
- penalties.

The court and the police can see your criminal record. Sometimes they can let other people know what is in your criminal record. For example, a criminal record, especially with convictions, may make it harder for you to get some jobs or get visas to some countries.

See our *Criminal records* fact sheet.

Can I appeal the magistrate's decision?

Yes. If you do not agree with the decision you can **appeal** to the County Court. You have 28 days to do this. Get legal advice before you decide. You could get a higher penalty.

See our *Appealing a Magistrates' Court decision* fact sheet.

How do I pay a fine?

You can pay the fine at any Magistrates' Court. Go to the court counter and ask the staff for help.

Let the magistrate know if you might have trouble paying the fine. There are options. You can ask the magistrate to:

- make a plan for you to pay bit by bit
- give you community work instead of the fine.

If you do not pay, the court can issue a **warrant** for your arrest.

Where can I get help?

Law Institute of Victoria

Referral to a private lawyer

Tel: 9607 9550

Victoria Legal Aid

Legal Help

Free legal help by telephone and information about Victoria Legal Aid services

Tel: 9269 0120 or 1800 677 402 (country callers)

Website

www.legalaid.vic.gov.au