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Title: Who’s on the line?: Policing and enforcing laws relating to mobile phone use while driving

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A shortened title. Mobile phone use and driving: Applying laws

Abstract: This article investigates how laws relating to mobile phone use in cars are written, interpreted and applied in real life. It explores how regulations are imposed, the difficulties that are encountered in terms of enforcement, and how laws have been policed and tested in court. By focusing on the socio-legal context in Victoria and drawing upon international comparisons, we see that stories of enforcement highlight the unique and particular questions asked of existing legal systems by motorists using a mobile phone. Moreover, in describing the problematic process of developing and implementing legal regulations, we see that road rules are struggling to adapt to a transitional technology and that there are significant obstacles to enforcing the laws.

Keywords: mobile communication, policy, driving, regulation, legislation, road safety
Who’s on the line?: Policing and enforcing laws relating to mobile phone use while driving

1.1 Introduction

This article investigates how laws relating to mobile phone use in cars are interpreted and applied in real life. Penalties adopted in relation to this practice rely on a pre-existing legal structure for managing the traffic system. There is a mix of options available within this structure, and the ways in which prohibitions and regulations interpreted and implemented varies. This paper explores how regulations are imposed, the difficulties that are encountered in terms of enforcement, and how laws have been policed and tested in court. The pedantic (and at times arbitrary) enforcement and detection of regulatory breaches is illustrated in a number of ways, from challenges in court for ‘using’ a phone, to people riding bikes being charged for using their mobile phone. By focusing on the local socio-legal context in Victoria and drawing upon international comparisons, we see that stories of enforcement highlight the unique and particular questions asked of existing legal systems by motorists using a mobile phone.

In describing the problematic process of developing and implementing legal regulations, we see that road rules are struggling to adapt to a transitional technology and that there are significant obstacles to enforcing the laws. Court cases involving fatalities attributable to drivers using their mobile phone further illustrate the ways in which legal infrastructures have been stretched.

Throughout we see that a range of creative solutions have been used in addressing the limitations of current legal regulations and traditional policing practices. Some of the suggested responses, such as blocking phone signals in moving vehicles and confiscating phones, raise issues about the role of government intervention, as well as the degree to which people’s choice is, or could be, restricted. These proposals also highlight the diverse range of groups and alliances that have constructed, criticised and contested various regulatory options. As a starting point, I examine the

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1 This article is adapted from the author’s thesis, completed in 2007 at Swinburne University, titled *Motor Telephony: The practices and problems of regulating mobile telephony and driving* (Jessop, 2007)
complexities involved in the wording of the regulations, and how this affects
everyday policing practices.

2.1 Complexity and legislation

Drafting appropriate laws addressing mobile telephony is not an easy task. Wording is
often too general and as a result there is often unresolved complexity in definitions
and interpretations. For a long time this did not attract much attention, presumably
because up until the 1990s there were only a small number of motorists who were
able to phone while driving. This meant that the offence was rarely encountered, let
alone enforced. But from the mid-1990s, as personal mobile phone use increased and
more people began to use the device in their cars, the regulations were put under the
spotlight. Signs of this began to emerge during the drafting of the Australian Road
Rules.

The initial proposal for the clause relating to mobile phones in the draft Australian
Road Rules (16.13) stated ‘If you are driving or riding a vehicle, you must not use any
telephone, two way radio or similar electronic communication device unless it is safe
to do so’ (Austroads, 1994, p. 126). A complementary note in the document attempted
to shed some light on what unsafe meant: ‘research suggests it is unsafe to use a
communication device while driving when the driving task is more complex than
usual, such as...in heavy traffic’. This wording lacked clarity, and each state was
quick to pick up on the vague phrasing in the draft. Victoria Police Superintendent
David Newton drew attention to several ‘priority concerns’ that required ‘special
consideration’, one of which was the ‘major deficiency in the wording of the offence
for using a hand held mobile phone while driving’ (Road Safety Committee, 1995, pp.
10, 12, 14). Arguing that establishing phone use while driving as unsafe was basically
unprovable, and that this, in turn, would mean the infringement could not be enforced,
he recommended following the existing Victorian legislation (where using a mobile
communication device whilst the vehicle is in motion is prohibited). These concerns
were subsequently taken on board, with Rule 300 of the Australian Road Rules stating:

The driver of a vehicle (except an emergency vehicle or police vehicle) must
not use a hand-held mobile phone while the vehicle is moving, or is stationary
but not parked, unless the driver is exempt from this rule under another law of this jurisdiction (2003, p. 10).

While this rule may seem simple enough, it has faced numerous challenges when applied in everyday life. The next part explores these challenges, looking at the grey areas of the law. In particular, I detail three contested issues: What does it mean to ‘use’ a hand-held device? What are some of the issues around exemptions? How does the convergence of communication devices affect the application and interpretation of regulations? In answering these questions we find that writing regulations for specific technologies is a troublesome endeavour.

2.1.1 ‘Using’ a handheld device

The law in its contemporary form (that is, the Australian Road Rules) refers to ‘use’. To ‘use’ is a nebulous term and, importantly, is not defined in the Road Rules’ dictionary. The word’s ambiguity has been exposed in practice in Australia. In New South Wales a driver successfully appealed a charge at a local magistrate’s court of driving while using a mobile phone. This decision was in turn appealed by the Department of Prosecutions, and the term ‘to use’ was brought under examination in the state Supreme Court. The defendant argued that she had been holding the phone ‘merely to switch it off’ and did not use it to talk. The judge sought to ascertain whether turning a phone off could be deemed a ‘use’. Drawing on several dictionary definitions, he found the word was very broad and ‘notoriously wide in its ambit and on occasions varying in its application’ (DPP v. Chresta, par. 9, 17). Although he concluded that ‘until and unless’ the regulations were made ‘more specific’ he could not be confident that the defendant was guilty of using the phone under current laws (par. 9), the Supreme Court upheld the initial ruling which deemed that turning the phone off did constitute ‘use’. According to the Victoria Police Prosecution Department, similar arguments are regularly made by people when they contest their hand-held offence in court (Victoria Police, 2005c).

There are a range of practices and proposals that have emerged internationally in addressing this issue. The New York State Vehicle and Traffic Law (Title 7 Article 33 – 1225C) stipulates that “‘Using’ shall mean holding a mobile telephone to, or in the
immediate proximity of, the user’s ear’ (eHam.net, 2005, n.p.). United Kingdom laws define use as performing ‘an interactive communication function by transmitting and receiving data’ (RoSPA, 2005, p. 2). This includes sending or receiving oral or written messages, facsimile documents and still or moving images, or accessing the internet. Australia has moved towards this approach. In mid-2005 the National Transport Commission drafted a number of amendments to the Australian Road Rules, including two relating to Rule 300. The draft proposed that ‘use’, in relation to mobile phones, would include the following:

(a) holding the phone to, or near, the ear (whether or not engaged in a phone call);
(b) writing, sending or reading a text message on the phone;
(c) turning the phone on or off;
(d) operating any other function of the phone. (National Transport Commission, 2005, p. 56)

As the Adelaide Advertiser pointed out, it is hoped that these changes will ‘clear up rules that confuse both police and motorists’ (Williams, 2006b, n.p.). The amendments have since been accepted and now constitute part of the Australian Road Rules.

It is not only motorists who are subject to unusual interpretations of the regulations. In Queensland a cyclist was fined for using a mobile while riding his bike. The cyclist was ‘shocked’ at being booked by police from the State Traffic Taskforce, with a criminal lawyer and Opposition transport spokeswoman Fiona Simpson labelling it as ‘over the top’ (Australian, 2004, n.p.; Heffernan, 2004, p. 9). The Queensland Police Service defended the officer who issued the fine, saying that uniform national laws prevented people from talking on a mobile phone while driving any vehicle, including a bicycle. Premier Peter Beattie defended the laws which also allow motorists, tram drivers, anyone riding an animal or a motorised wheelchair travelling at more than 10km/h to be fined: ‘While some people may feel that’s a little harsh, bike riders are very vulnerable when riding along at the best of times…I think it’s reasonable that we say to people “please don’t ride a bike and use a mobile phone”’ (Heffernan, 2004, p. 9). In 2003 a city coachman in Melbourne was fined for talking on his mobile while
driving a horsedrawn carriage. He described the fine as ‘ridiculous’, with the Victorian Horsedrawn Association claiming it was the first time a member had been fined for the offence (Leung, 2003, n.p.). According to Victoria Police, a horsedrawn carriage is classified as a vehicle and drivers must abide by Victorian Road Rules. Unlike in Queensland, the police appeared to soften their stance, with a sergeant later stating that the fine would likely be withdrawn.

2.1.2 The problem of exemptions

Another complication includes exemptions in the legislation that allow emergency calls to be made while driving. What constitutes an emergency is often not clearly defined and remains subjective. As Lissy et al. point out in a United States context, ‘guidance to motorists is required’ in determining a ‘compelling emergency’ (2000, p. 53), a guidance which is for the most part absent. There is at least one state which does provide constructive clarification. The prohibitions in the New York State Vehicle and Traffic Law (Title 7 Article 33 – 1225C) describe the exemption as using:

a mobile telephone for the sole purpose of communicating with any of the following regarding an emergency situation: an emergency response operator; a hospital, physician’s office or health clinic; an ambulance company or corps; a fire department, district or company; or a police department (eHam.net, 2005, n.p.).

Yet such precision is the exception rather than the rule. In banning the use of hand-held phones in the United Kingdom, the Department for Transport ‘decided that there should be an exemption…for a genuine emergency call, if it would be unsafe for a driver to stop’ (2003, p. 4), but failed to define ‘genuine emergency’ or ‘unsafe’. Nor is ‘emergency’ defined in the Australian Road Rules. The variance in drivers’ perception and use of emergency numbers creates further ambiguity. In the United States, at least, there has been a high incidence of illegitimate calls made to such numbers, where the ‘ease of calling [a] toll-free number on a mobile phone has resulted in people dialing 911’ for trivial purposes, such as ‘to ask for directions or test the operation of the phone’ (Cain & Burris, 1999, n.p.).
In a related manner, police and emergency vehicles are exempt from restrictions, raising further questions and tensions. The Victorian Road Rules stipulate that drivers of police and emergency vehicles are exempt if, in the circumstances:

i) the driver is taking reasonable care; and
ii) it is reasonable that the provision [or rule] should not apply (Victorian Government, 1999).

Monash University Accident Research Centre researchers have been critical of this exemption, arguing that CB and two-way radios should be banned for emergency vehicles because they may be used in dangerous conditions where there is an elevated level of risk:

We think that [the exemption for emergency vehicle drivers] is questionable given that the driving demands for these people are extremely high, especially ambos who are driving at high speeds through intersections. We would have thought they would have been the last ones who should be using these particular hand-held devices while they are driving. (Road Safety Committee, 2005c, p. 12)

The Sydney Daily Telegraph ran an article highlighting the fact that police are free to drive while talking on the phone ‘without penalty’ and that ‘public servants working for the police department are also taking advantage of the legal loophole’ (Clifton, 2004, n.p.; emphasis added). In 2006 the paper published a photo of a policewoman talking on her mobile phone while driving, pointing out that she was not breaking any laws: ‘while other motorists face a $220 fine and three demerit points for using a hand-held mobile while driving, police are exempt – as long as they were making work-related calls, a police spokesman said’ (Masters, 2006).

It should be noted that while the concerns raised above are valid, police officers are not above the law, so to speak. There has been at least one case of a police officer being fined. The Sydney Morning Herald reported that Detective Senior Constable Paul Quigg was spotted by a passing highway patrol officer after answering a call from a colleague on behalf of his boss, Assistant Commissioner Graeme Morgan. In
spite of detailing the significance of the call and how he had pulled over soon after receiving it, he was issued with a Traffic Infringement Notice. Colleagues were mixed in their response. ‘You’ve really got to wonder, in the circumstances, what the point of the exercise [in fining him] is…it’s a case of this zero tolerance crap gone mad. The public are getting fed up with it – and now we’re forcing it on our own’, said one. Another officer said: ‘I don’t think police should be exempt from the ban on mobiles while driving – it’s just as dangerous for them to do it as it is for anyone’ (Kidman, 2006, n.p.).

Although there do not appear to have been any occurrences like this in Victoria, the state does have guidelines for its police officers, as Assistant Commissioner Hastings stated:

>I try to promote corporate responsibility for our people, even though the legislation says we can do these things without being subject to any breach of the law. I think in terms of practice, it is good practice to show the community that you do the right thing. We do not always get it right either. There are people out there who will use the processes and say, ‘I do not need to, because the law says I am exempt’, but that does not stop you reinforcing a message. (Road Safety Committee, 2005a, p. 8)

Superintendent Peter Keogh from the Victoria Police Traffic Operations and Support Department outlined the force’s official policy:

>While we have an exemption to allow us to use mobile phones, our policy says that they will only be used in exceptional circumstances of operational necessity, albeit you hear people talking about the issue on radio inferring that the police use them contrary to advice. (Road Safety Committee, 2005a, p. 8)

Although this part of the law has gained some attention, it only affects a small minority of drivers. A more significant and increasingly complex situation involves the impact of the convergence of mobile communication devices on developing and implementing regulations.
The convergence of communications technologies

In many ways, current laws set up arbitrary divisions between communication devices. On one level, there is no scientific basis for legally discriminating between hand-held and other phone units in terms of safety outcomes. One of the reasons New Zealand has refrained from legal regulation is due to:

the lack of consistency if the use of hand-held cell phones while driving is banned, while the use of hand-held radio-telephones remains legal. Modern hand-held radio-telephones have the same operating characteristics as hand-held cell phones and could also compromise safety if used unwisely when driving (Land Transport Safety Authority, 2002, p. 47).

In many countries, including Australia, there is a legal distinction between talking on a mobile phone and on a CB or two-way radio (Australian Road Rules, 2003; Road Safety Committee, 1994). The original proposal for the Australian Road Rules suggested restricting ‘two-way radio or similar electronic communication devices’ but in the end narrowed this down to hand-held mobile phones, clarifying that mobile phones do ‘not include a CB radio or any other two-way radio’ (Australian Road Rules, 2003, p. 10). The reasons for this distinction, at least in Australia, appear unclear. In Victoria, the Road Safety Committee (1994, n.p.) noted ‘that there are some differences in the likely effect on road safety of using a 2-way radio compared to mobile telephones’ and that hand-held use was likely to be ‘more distracting’, although it did not offer any evidence or explanation to verify these statements.

This legal disparity was again raised in 2005 at the Victorian inquiry into driver distraction, with a number of witnesses questioning the exemption for CB radios. The executive director of Intelligent Transport Systems (Australia) said that:

It is unusual that we permit the use of a CB radio but not a mobile phone. It is an anomaly in the legislation. To send the right signals to the broader user group or the community, we need to make quite a profound statement for the use of these devices, irrespective of whether CBs or mobile phones should be banned. In particular, we again get a blurring of the level where a taxi dispatch
terminal, whilst it might have a driver assistance function, can be used not for a
driver assistance function but to secure jobs for the taxi driver – the same way
someone might send an SMS to perform a work task. (Road Safety Committee,
2006a, p. 8)

Asked why two-way radios were exempt, representatives from the Monash University
Accident Research Centre were unable to explain the distinction. As the following
exchange suggests, one possible reason may have been due to the use of CBs in the
trucking industry:

Mr Langdon\(^2\) – Why is a two-way radio allowed and not a mobile?
Dr Regan – I have no idea…
Prof. Johnston – I think it has something to do with the politics of the
introduction – because of the existing use of them by the industry, probably.
Mr Langdon – But the distraction would be just the same.
Prof. Johnston – We believe so. (Road Safety Committee, 2005c, p. 11)

In the United Kingdom, the Department for Transport’s summary of responses to
public consultations on the possibility of banning phone use provides some clues
about the reasons underpinning the exemption. It found that several groups supported
exemptions for two-way radio microphones on the basis that amateur radio operators,
commercial drivers and emergency services had been using these systems ‘to
communicate with a base station…over many years without giving rise to road safety
concerns’ (Department for Transport, 2003, p. 3). The Radio Society of Great Britain
pointed out that there had been no recorded accident since 1955 that could be
attributed to amateur radios being operated from vehicles. They also said that the
nature of ‘press to talk’ devices was likely to keep conversations short and, therefore,
entailed a lower degree of risk. In addition, the operational features (that such devices
were less convenient, required a dedicated frequency and only allowed for one-way
conversation while holding a button) were regarded as factors that would mitigate
against the exploitation of a legal loophole ‘because the vast majority of drivers [were]
unlikely to use them as substitutes for mobile phones’ (2003, p. 3). Ironically, some

\(^2\) Mr Langdon was a member of the Road Safety Committee, and Dr Regan and Professor Johnston
were representing the Monash University Accident Research Centre.
mobiles now have ‘press to talk’ features that bear a striking resemblance to the functions of CB radios (Glassbrenner, 2005). This illustrates how different communication devices, with similar functions, are classified and treated differently, often without any consistency.

Another relevant example of this, and the difficulties it presents, is evident in the overlap of functions of hand-held and hands-free phones. Although earpiece or voice-activated software enables communication without physically holding the device, the driver may still need to access the phone, dial or search for a number, type the number in while the phone sits in a cradle, or hang up. As the Australian Federal Police (2005) point out in their ‘Frequently asked questions’:

Can I use my hands-free phone?  
If you can work your phone without holding it, then yes.  
What about if it’s in a cradle?  
Again, if you don’t hold the phone, you’re fine. Pushing buttons on a phone that’s in a cradle or on a steering wheel or handlebars is not prohibited.

Similarly, the United Kingdom’s Department for Transport stated that:

Within the context of holding a phone, pushing buttons on a phone while it is in a cradle or if it is being operated via buttons on the steering wheel…would not, in our view, breach the new regulation. (2003, p. 3)

Herein lies a discrepancy: while holding a phone during a conversation (or compiling a text message) is illegal, it is acceptable to punch numbers into a phone that is housed in a cradle. In 2005 Brisbane’s Sunday Mail warned readers that the ‘regulation isn’t clear and there doesn’t appear to be a definition of hand-held or mobile phone’, in turn raising the prospect of being issued with a Traffic Infringement Notice whether or not the phone was hands-free (Bowering, 2005, p. 36).

This word of warning became a reality for one Adelaide man who was charged for touching a phone earpiece while driving. The police officer who stopped him reported that she had seen him holding a mobile telephone to his ear as he drove along. The
driver denied this, countering that ‘what he had been holding to his ear was an earpiece which, together with a microphone, was attached by a flexible cord to the mobile telephone’ (Kyriakopoulos v. Police, 2006, par. 4). His appeal to the South Australian Supreme Court was dismissed by the judge who said that:

In the circumstances of this case, the cord and earpiece formed part of the mobile telephone at the time of its use by the appellant. The appellant was holding the earpiece in place by hand. In those circumstances the appellant was, in my opinion, using a hand-held mobile telephone within the meaning of Australian Road Rule 300. (Kyriakopoulos v. Police, 2006, par. 22)

Incensed with the decision, Mr Kyriakopoulos considered a High Court challenge. ‘I believed I went through the correct processes and protocols of safe driving, yet I have been punished for it’, he said. ‘I think the judges need to be pragmatic and sensible about these things…and in this case they have not been…this decision is clinically pedantic that borders on stupidity’ (Williams, 2006a, n.p.).

Mr Kyriakopoulos’ story is an example of the role that individual actors play in the network of negotiation, and how specific and localised driving incidents contribute to a non-linear decision-making process. It also shows how the convergence of various communication technologies presents unique challenges for police and the courts, which are called upon to deal with particular circumstances which sometimes do not easily fall within existing responsibilities or structures. How, for example, does the law capture a constantly evolving set of communication devices? As Vanlaar (2005, pp. 4-5) says:

Only recently, in parallel with fast developing technologies like cell phones, legislation exists that describes aspects of distracted driving more concretely. However, due to the fast pace of developing technologies, legislation in Europe can no longer keep up with the constantly changing reality; a phenomenon which is not unique to Europe but rather common all over the modern world.
In this ‘changing reality’, mobile phones can be used as televisions, radios and cameras, and it is not always clear which devices (and functions, too) fall within the bounds of the law. Personal digital assistants, for example, do not appear to be covered in the regulations but nonetheless allow similar operations (such as SMS), and by extension present a similar distraction. One magistrate highlighted this limitation in dismissing a contested charge for hand-held mobile use while driving (*DPP v. Chresta*, par. 9, 17). During the hearing a range of situations were described in order to test how wide the term ‘to use’ might be. It was accepted that uses beyond oral communication may not be covered in the regulations but, as the magistrate pointed out, mobile capabilities now include photography, playing music and text messages, as well as applications such as calendars and calculators.

Certain functions of a mobile device may actually overlap with other laws, such as Australian Road Rule 299:

> A driver must not drive a motor vehicle that has a television receiver or visual display unit in or on the vehicle operating while the vehicle is moving, or is stationary but not parked, if any part of the image on the screen:
> (a) is visible to the driver from the normal driving position; or
> (b) is likely to distract another driver.

Now that third generation mobile phones are able to act as mini-televisions, it is conceivable that their use for this purpose may fall under this regulation. Matt Sundeen put it well when he said we ‘have all these different technologies where legislators can’t possibly write legislation for specific technologies…it’s impossible to keep pace’ (Hafner & George, 2005). One approach has been to write laws which focus not so much on the device itself as the actual applications of communication devices. In Washington, for example, regulations prohibit ‘reading, writing and using personal communication technologies’ (Hafner & George, 2005).

These initiatives show that as mobile technologies continue to converge and take different forms, the ability of laws to accommodate these changes is compromised. They also highlight the pedantic enforcement of a general prohibition. While highlighting these shortcomings, it is important to remember that complexities and
intricacies are common to many laws. Although mobile phone use is not easily captured via legislative means, the main point is that regulations have been introduced because the practice is regarded as (potentially) dangerous and poses a threat to public safety. Given this, a number of questions become relevant: How have the laws been enforced? How effective have they been in deterring the practice? The remainder of this article addresses the first question by describing police enforcement of the laws.

3.1 Policing and enforcement

In general terms, speed, alcohol and fatigue are viewed as the more serious threats to road safety because they are the major causes of crashes and fatalities, both internationally and in Australia. Speed, drink-driving, seatbelts and fatigue dominate the Victoria Police road safety priorities activity calendars (2005a, 2006). Although phone use crops up less frequently on this tasking calendar, it is still a concern for the police, being Victoria’s third most frequently issued on-the-spot fine after speeding and non-wearing of seatbelts (Transport Accident Commission, 2004). As Figure 1 indicates, up to 30 000 Victorians are caught using a hand-held phone while driving each year.

Figure 1: Traffic infringement notices issued to Victorian drivers for mobile phone use in cars, 1997-2005

[see end of manuscript]


Despite the relatively high numbers caught, there are significant barriers to effective enforcement. In simple terms, a driver must be observed holding a phone while driving in order to be charged, and police officers need to be in the right place at the right time. If offenders are driving in the opposite direction it is often impractical and unreasonable to stop, turn around and pursue them. Heavy and fast-moving traffic make it difficult and potentially unsafe to intercept motorists, and the offence is harder to detect at night, when the phone is small, and in cars with tinted windows. Drivers do not make the job easy, either: according to police, many attempt to disguise what they are doing by dropping their phones or putting their hands up to their faces (Weston, 2006). The use of SMS, which is particularly common amongst
younger drivers, also presents additional constraints because messages can be typed, sent and read in drivers’ laps (below the police officer’s line of sight). In terms of initial sighting, it may be hard for police to prove what they saw if the driver denies using a hand-held device. While most people do not dispute the offence, a significant number of Traffic Infringement Notices are appealed in court (Victoria Police, 2005b).

Some people also choose to defend their offence. Drivers from New South Wales and South Australia, for example, have appealed their Traffic Infringement Notices in the Supreme Court by arguing they were not, according to the regulations, using their phone. In Queensland, a driver’s fine was dismissed after he presented a telephone bill as evidence that he had not been talking at the time he was ticketed. The magistrate could not be convinced that the phone was being used when sighted by police, overturning the fine because of an element of reasonable doubt (ninemsn.com.au, 2006).

Altogether, this is a difficult offence to enforce, and in some cases it can be hard for police to confirm prosecution. Although they have the power to check phone records and to access in- and out-bound calls, this is a rarely done (Victoria Police, 2005d). To do so, the police officer must fill out a report outlining the reasons for accessing phone records and this must be signed by the inspector. Even when possible, limited resources (of time and money) and other priorities dictate that tracking down phone records in order to confirm sightings is unrealistic.

As a result of these limitations, other (more controversial) strategies have been suggested by a range of individuals and organisations. Below I briefly describe three of these: voluntary reporting, use of technology (for example, cameras, cell blocking equipment) and confiscating phones. As we will see, these options are not always feasible, but the mere fact that they have gained attention indicates the degree of frustration that the obstacles to effective enforcement generate for some groups, and the lengths people are willing to go to address them. This discussion highlights the tension between individuals’ privacy and choice to self-regulate their behaviour in the car and the states’ preparedness to act to protect security, the rule of law, road safety and the public good.
3.1.1 Voluntary reporting

Voluntary reporting has been advocated by the Motorcycle Riders’ Association, Bicycle Victoria and the TAC. Mr Bolitho, the TAC’s manager of legal policy, drew attention to a New Zealand community road-watch program:

members of the public are invited to report undesirable driving behaviour of many kinds. There is a form and the police then issue an advisory note to the driver concerned. It is used more as an advisory and educative approach. (Road Safety Committee, 2005d, p. 28)

In the Age, Shmith (2003, n.p.) echoed this suggestion:

In Victoria, we are currently encouraged to report people who drive smoky vehicles or those who throw litter from their cars. To make a report you have to give your name and address and sign that you are prepared to appear in court. The same system should be set up for hand held mobile phone use. Then we can all help to break this habit that threatens our hard won road safety gains.

This proposal has not been officially backed by either the Victorian government or police, with the Transport Minister suggesting that community reporting would be plagued by evidentiary problems and is likely to be abused (Heinrichs, 2003).

3.1.2 Use of technology in policing practices

In terms of using technology to assist police in detecting the practice, the TAC and Victoria Police have trialled a new video system whereby vehicles are fitted with cameras with a forward view which, when a button is pushed, capture the previous 30 seconds of a driver’s activity. Some offences (including hand-held use) could be recorded and then replayed to the driver. Referring to this in-car video system, the TAC’s general manager of road safety stated that the police have found this very useful ‘in terms of gaining offender acceptance of the infringement notice’:
it could be used remotely, a bit like a speed camera where you subsequently issue a ticket and say, ‘We have the video. Do you wish to see it?’ The notion of mobile vehicles using that technology may well be a very significant deterrent for the future. We only flag that because we believe technology has a role in the future to enforce some of those technologies, and that may be one example of how, with appropriate development, there could be significant benefits particularly by way of deterrents. (Road Safety Committee, 2005d, p. 30)

The use of speed cameras has also gained some attention. In the United Kingdom, drivers have been fined for using hand-held phones based on the evidence of cameras (Balls, 2006; Bhat & Foster, 2006). John Fairey, manager of the Norfolk Casualty Reduction Partnership, said that offences other than speeding had been recorded on cameras, including the use of hand-held mobile phones. While police in some areas were reluctant to use this information, road safety experts backed the system. Norfolk police, who initially declined the use of filmed evidence of mobile phone usage, reversed their decision: ‘we have reviewed it and we will now look to maximise our evidence from safety cameras’ (Deal, 2006, n.p.). The strategy was later examined by a parliamentary committee.

While the application of this equipment is more distant in Victoria, the topic is on the agenda. The Motorcycle Riders’ Association (2005, p. 6) recommended to the driver distraction inquiry that the committee ‘investigate technology to provide camera-based roadside detection when phones are in use by the driver’. Mr Healy, of the TAC, also raised the possibility of utilising speed camera technology:

it is conceivable that in the future the resolution of those cameras will improve so that it would be possible for cameras to at least identify those who are using hand-held mobile phones. Once again, our reasons for stating this are not to increase the level of apprehension but to tell the community there is the potential for these technologies to do just that. Our whole intention is to build in people an awareness of the risk of apprehension by using these distracting and highly risky devices. (Road Safety Committee, 2005d, p. 30)
While this may seem a reasonable and practical approach, it does touch upon the issue of state intervention and personal rights. In the United Kingdom, Transport Secretary Alistair Darling initially ruled out the proposal to use speed cameras on the grounds that it was an invasion of privacy (Balls, 2006; O’Cain, 2006).

Suggestions that technology could be used to block calls in moving vehicles raises further questions about the degree to which governments should intervene in people’s driving, bringing the relationship between individual choice and institutional regulation into focus. Citing the example of alcohol interlock systems, Bob Hastings of Victoria Police said that ‘we are using more and more technology to start to intervene in…[drivers’] behaviours’ (Road Safety Committee, 2005a, p. 6). This intervention takes different forms. In passive systems, such as seatbelt alerts, the driver can either choose to comply or ignore the warning. Active systems, on the other hand, are more restrictive (such as alcohol interlocks, which block a driver’s entry into their car if they are over the legal blood alcohol limit). The application of both passive and active systems has been suggested in relation to mobile phone use.

An OECD (2003, p. 49) report into the impact of new technologies floated the idea of developing roadside equipment which could create ‘phone-free roads where cell phone communication would be impossible’, and the general manager of the RACV said recently that he hoped ‘there might be some technological solutions that basically make it difficult, if not impossible, to send and receive text messages and perhaps even verbal messages by a driver behind the wheel’ (Road Safety Committee, 2006b). As a dialogue at the driver distraction inquiry reveals, such active systems have some support:

The Chair – Is there technology around which would assist police in enforcing mobile phone bans?
Dr Regan – It is an interesting one. We know that if you take your mobile phone into a cinema, its reception can be blocked. Presumably there are means by which, let us say above a certain speed, the reception could be blocked through technology. No-one has actually explored the options, or if they have
been explored they have not been publicly revealed by the telcos [telecommunication companies].

Prof. Johnston – To me the fix is technological enforcement, not police enforcement, which is what we are talking about now. I think that is quite feasible.

The Chair – So we do not know whether that technology exists at the present time.

Dr Regan – We do not, but I suspect it does. I do a lot of work in intelligent transport systems and I would probably say with 90 per cent confidence that I think it could be done.

The Chair – We have machinery roaming around on Mars so I guess it is viable.

Prof. Johnston – I think the motivation to do it has not existed, but I think as soon as it did –

Dr Regan – Exactly.

Prof. Johnston – It would appear very quickly. (Road Safety Committee, 2005c, p. 19)

On a practical level there are several barriers to implementing this technology. The RACV (2005, p. 22) points out that ‘further research would be needed to determine whether it is suitable for in-car use’, citing potential problems such as an inability to distinguish between hand-held and hands-free, as well as the restriction of emergency calls. Superintendent Keogh thought that this ‘technology would be an easy answer to it’, but that preventing other passengers from making or receiving calls would make the introduction of such measures difficult (Road Safety Committee, 2005a, p. 6).

More significantly, this type of measure is not likely to receive much support from telecommunication companies and car manufacturers. As Dr Regan points out, even if this technology is available, the phone and vehicle industries may not be willing to reveal the details. A contributor to the journal of the Institution of Electrical Engineers tells a story which supports this view:

I wholeheartedly agree with the views expressed by Kevin Ellis (IEE Review, Feedback, July 2005), about the extent to which roads are becoming dangerous
because of drivers using hand-held phones. For a solution, we could look to Prof Y. P. Singh, former professor of electrical engineering at IIT Kharagpur in India. Prof Singh was challenged by his daughter to do something socially useful with his knowledge of electrical engineering. The resulting patent he took out a few years ago describes a system that ensures that, when a driver sits in his car, his or her phone is deactivated. The trouble was that Prof Singh needed car manufacturers to incorporate the decoupling device, and phone makers to cooperate. The response from both groups was ‘no thanks!’ (Vfenkateswaran, 2005, p. 6)

And, finally, motorists themselves may not be receptive to the idea. The Victorian Automobile Chamber of Commerce (2005, p. 21) has stated that car makers are concerned about exploring technology which disables in-vehicle functions, but that this may frustrate drivers: ‘further investigation of the effectiveness of interface technology to disable in-car mobile kits whilst a vehicle is in motion is advised as conflicting research [which] suggests driver resistance to these technologies’.

Systems which are passive (or, put another way, less intrusive) are more palatable and appear more likely to find their way into vehicles. As an example, Motorola’s ‘polite phone’ can detect phone use in the car. Depending on the driving conditions, calls may be diverted to voicemail or automatically diverted to a hands-free system. A consortium funded by the European Commission has been developing a similar system which monitors driver activity (such as throttle application, braking and steering), and at certain points diverts phone calls if a threshold is breached (Economist, 2004). Volvo, who are part of the group working on this program, say that the mobile phone can be programmed to bypass the system because ‘we don’t want to frustrate customers who want to answer the phone in any situation’ (Hagon, 2004, n.p.). Here we see a more tentative approach, exemplified in the term ‘polite phone’, as well as Volvo’s reluctance to completely restrict calls in the interest of preserving motorists’ capacity to choose whether or not to use the device.
### 3.1.2 Confiscation of mobile phones

Another controversial proposal has been the confiscation of phones. The debate has been fuelled by the case of a Gold Coast driver whose Traffic Infringement Notice was overturned in court. Spotted by an undercover traffic officer, he presented a telephone bill as evidence that he had not been talking at the time he was ticketed. Traffic police countered that he may have been using another of the phone’s functions which may not have been itemised on the bill, such as receiving a text message (Dullroy, 2006). Police reacted strongly to the ruling, calling for more power to seize handsets in order to ensure successful prosecutions. Confiscating a handset and checking its records may be necessary to prove the phone was being used, they argued.

The Police Minister Judy Spence expressed her support for this idea. Asking the Police Commissioner to provide a report on the overall number of motorists charged with hand-held offences and how many were acquitted, she said, ‘I am willing to consider any legislative changes that ensure police can prosecute people who continue to flout the law by using hand-held mobile phones while driving’ (Dullroy, 2006, n.p.; ABC News Online, 2006). The concept was also raised briefly at the Victorian driver distraction inquiry. The committee chair asked VicRoads whether there had ‘been any thought given to, or is there any experience overseas of confiscating mobile phones?’ (Road Safety Committee, 2005b, p. 12), with chief executive officer David Anderson responding by highlighting the practical problems involved, in particular, the ease with which someone would have access to another phone.

This measure emphasises a widespread frustration about drivers’ lack of compliance with the law. Western Australian police District Superintendent David Parkinson conceded that ‘we haven’t made the slightest impact. We haven’t made a dint’:

> We need tougher measures because the fact is the message isn’t getting through…Take the phone off the person. In most cases they probably care more about losing their phone than losing their licence…we should charge them $20 a day for safekeeping (Paddenburg, 2006, n.p.).
The Queensland Police Union’s Phil Hocken took a similar view in suggesting that police should have the power to confiscate mobiles for 24 hours: ‘People are paying exorbitant prices for mobile phones. But in saying that, we’re trying to get the road tolls down…24 hours is just a good shake-up for the people’ (ABC Local Radio, 2006, n.p.). Melanie Christiansen questioned him on this point, arguing that ‘some people are pretty attached to their mobile phones, though. They might find it hard to live without one’, to which he responded, ‘Well, all they’ve got to do is pull over really…that’s the bottom line. And the idea is to make sure that people’s full attentions are on the road’.

Not surprisingly, this proposal has received a mixed reaction. Queensland Premier Peter Beattie was sympathetic to the idea:

People driving on a phone is just plain, bloody stupid. And at the end of it all, you’ve got to say to people: ‘Wake up to yourself’…You can kill somebody. I just don’t think there’s any excuse for it. We don’t want to have to do any of this [confiscate phones]. But if people keep getting killed and we get this irresponsible behaviour the police are right, and we will have to look at it. (ABC Local Radio, 2006, n.p.)

Mark King, from the Centre for Accident Research at the Queensland University of Technology, was also supportive:

I’m in favour of police being able to enforce the laws properly. And if they can only do that by confiscating the mobile phone to download the records then I think that that’s the sort of power that they’re going to need. (ABC Local Radio, 2006, n.p.)

Similarly, Western Australian Road Safety Council chairman Grant Dorrington agreed tougher penalties were needed: ‘we…need to take the phones from people…unfortunately, some people don’t change their ways unless you penalise them and then they scream’ (Paddenburg, 2006, n.p.).
Others are more sceptical. Western Australia’s Royal Automobile Club member advocacy manager, David Moir, pointed out ‘there are other avenues we need to explore before simply seizing phones’, suggesting that more advertising and education was required before it was considered (Paddenburg, 2006). Royal Automobile Club of Queensland spokesman Gary Fites also replied with caution. Describing the measure as ‘over-reactive’, he claims that other methods of gathering evidence are more appropriate: ‘It would be a big imposition to take someone’s phone away…I don’t see why police would need to take that step when there are other avenues of gaining phone records’ (Dullroy, 2006, n.p.). Altogether, it is hard to see this approach becoming a feature of police enforcement, but the debate shows how far authorities are prepared to go in restricting phone use.

4.1 Conclusion

As argued in this paper, finding appropriate and practical ways to implement current regulations concerning mobile phone use by motorists is not easy, and there is disagreement about which new measures should be introduced. In pursuing the objectives of ensuring safe roads and adherence to the law, how much do governments act via institutional regulation, and how much do they rely on social responsibility? On the one hand, drivers are encouraged to abide by the laws by maintaining a level of social, ethical and/or moral responsibility. But as shown here, there is a lack of trust in this approach from some groups, who in turn advocate more active measures, such as confiscating mobile phones or blocking signal reception. These socio-legal negotiations serve to illustrate the difficulties for governments in reconciling the rights and responsibilities of drivers.
5.1 References


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Vitae
In 2007 Glenn Jessop completed his PhD thesis at Swinburne University of Technology, titled *Motor Telephony: The practices and problems of regulating mobile telephony and driving*. Since then he has taught eSociety (a sociology subject examining the intersections of technology and society) and worked as coordinator for a research project looking at vulnerability and resilience to problem gambling.

Figure 1: Traffic infringement notices issued to Victorian drivers for mobile phone use in cars, 1997-2005

![Graph showing fines for mobile phone use in cars from 1997 to 2005.](image)