

## “Fines” from private car parks

### Use this factsheet if:

- You have received a 'fine' after parking in a private car park.
- You want to know whether or not to challenge the lawfulness of that 'fine'.

### PRIVATE CAR PARKING FINES

A number of car parks operated by private companies have begun operation in Victoria, usually attached to shopping centres. Generally the company allows consumers to park for free for up to a certain time period, for example two hours, if they display a ticket on the car. The company then levies a charge on the extra time in the car park, at around \$3 per hour.

The companies have been issuing “fines” to consumers who fail to display a ticket on their car. The amount of the fine is usually around \$66. This amount increases \$88 if the consumer fails to pay within 14 days. Should the consumer continue to ignore the requests for payment, the companies instruct solicitors and/or debt collectors and further sums are demanded. Eventually court action is threatened for a sum in the region of \$300.

### No statutory authority to issue fines

The actions of private car park operators in 'fining' consumers are based on alleged breach of contract. That is, the consumer enters into a contract to park their car in a company's car park, where it is a term of the contract to display a ticket. The company alleges that the consumer has breached the contract by not displaying a ticket and the fine represents the damage suffered by the company. Whilst the legal position is complicated, we take the view that if there is a binding contract - which may or may not be the case, the terms of that contract are unfair and the amount demanded is a penalty rather than a genuine assessment of the company's loss.

### What to do?

Consumers who are being pursued for payment of 'liquidated damages' [as a result of](#) allegedly breaching the terms of operation of a private car park have a number of options:

1. **Do nothing.** If you do nothing and do not write and provide your personal contact details to the company, it will need to apply to the Magistrates Court to obtain your details from Vic Roads. It may be that this extra step will deter the private car park operator from taking action against you. However, we are aware that some companies have taken such steps and obtained details of drivers in this manner.

While we are aware that some companies have issued proceedings against individuals, there is a chance that the operators are merely threatening to sue once they have a consumer's details, and may not actually take legal action to recover the alleged debts. If you were to be sued, it would most likely be in the Magistrates' Court, and in that event we would be well disposed towards providing assistance in defending the matter. However, if proceedings are issued in the Magistrates' Court, you will be liable for legal costs in the event that judgment is entered against you. Additionally, if a judgment is obtained it will be entered on your credit report held with Veda Advantage or Dun & Bradstreet, which will affect your creditworthiness.

## “Fines” from private car parks

2. **Write to the company.** If you were not the driver when the fine was allegedly incurred, you can write to the company claiming the 'fine' and disclose this fact and identify the driver of the vehicle at the time. The company will then pursue that person for payment. Denying liability on this ground is of course not likely to be successful unless you identify the other driver.
3. **Issue legal proceedings in VCAT.** If you want to get on the front foot, you can issue proceedings in the Victorian Civil and Administrative Tribunal (VCAT). By taking your dispute to VCAT, you allow the matter to be litigated in a cost-free jurisdiction, but this also has the disadvantage of bringing the dispute to a determination when you may never be sued.

Consumer Action has taken one test case to VCAT, which settled before hearing by the car park operator refunding the entire amount of the 'fine' paid.

A VCAT template pleading is set out below. Whilst we believe the arguments contained in this template are founded on strong legal argument, they have not been considered by a judge or member of VCAT and we cannot be certain that you would succeed if a hearing were to eventuate. Care must be taken in completing this template, which will need to be amended to suit particular circumstances.

For more information about VCAT, and how to issue a claim please refer to [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au) where you will find a Civil List application form and guideline. VCAT's free telephone number is: 1800 133 055.

4. **Pay the debt.** The safest way to ensure that you are not facing any risk of legal proceedings or a bad credit report is to pay the amount demanded in full.

Alternatively, you could offer a partial payment by way of full and final settlement – e.g. a cheque for an amount you are happy with. If you wish to pursue this course of action you must state clearly in a letter (note that you will be volunteering your personal contact details) to the company that acceptance of the sum proffered constitutes full and final settlement of the dispute. If you neglect to write this, you may still be chased for the remainder of the debt. If the operator refuses to accept the compromised settlement, you always have the option of finalising the matter by paying the remaining balance of the full amount owing, or proceeding in VCAT.

In addition, you are encouraged to write a letter of complaint to:

Director of Consumer Affairs  
Consumer Affairs Victoria  
GPO Box 123  
Melbourne 3001

You are also encouraged to write to your local Council, and to the shopping centre management (if any).

### How will your credit rating be affected?

A debt owed due to breach of contract is not a debt which can appear on a consumer's credit report. Please note however, that if judgment is obtained in the Magistrates' Court, then your credit rating will be affected.

**Warning:** This fact sheet is for information only and should not be relied upon as legal advice. This information applies only in Victoria and was updated on 31 July 2009.

## “Fines” from private car parks

### What should you do if proceedings are filed in the Magistrates Court against you?

It is of course the right of any consumer to defend such proceedings by filing a Defence within 21 days. However there are some costs consequences of having the matter heard in the Magistrates Court. If you are sued in the Magistrates' Court, you can either contact us for further assistance, or you can take advantage of a transfer procedure available under s 112 of the *Fair Trading Act 1999* (Vic), whereby the proceedings in the Magistrates Court can be transferred to VCAT, provided the sum claimed is paid to VCAT in trust.

If the proceedings in VCAT are resolved in favour of the consumer the money will be refunded.

### FURTHER ADVICE & ASSISTANCE

#### Consumer Affairs Victoria

Walk-in service centre: Victorian Consumer & Business Centre  
113 Exhibition Street Melbourne 3000  
Ph: 1300 55 81 81

Mon – Fri, 9.00am – 5.00pm

Consumer Affairs can help you resolve a dispute with a trader by informing you of your rights or by conciliating with the trader. They can also help you find your local financial counsellor who can give free advice and assistance with credit and debt problems, negotiating with creditors and budgeting. [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au)

#### Victoria Legal Aid:

Ph: (03) 9269 0234, or 1800 677 402 for country callers.  
Mon – Fri 8.45am – 5.15pm.

VLA publishes a useful series of pamphlets on credit & debt issues that it will send to consumers free of charge. [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

#### Federation of Community Legal Centres:

Ph: 9654 2204

To find your local community legal centre. [www.communitylaw.org.au](http://www.communitylaw.org.au)

### ACKNOWLEDGMENTS

This fact sheet is part of a series produced by Consumer Action Law Centre. Other fact sheets in this series are available at the Consumer Action Law Centre website or by phoning us on (03) 9629 6300 or 1300 881 020.

## “Fines” from private car parks

### SAMPLE PLEADINGS

IN THE VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL  
AT MELBOURNE

**CIVIL CLAIMS LIST**

**/2008**

B E T W E E N:

[YOU]

Applicant

and

[PRIVATE CAR PARK OPERATOR]

(ABN .....)

Respondent

### APPLICATION

1. On [date] at approximately [time] the Applicant entered the [name of car park] at [address] in [suburb] in the State of Victoria (***the Car Park***) in a motor vehicle, and parked that vehicle in the Car Park.
2. To the extent that the Applicant thereby entered into a contract, which is not admitted, there were terms of that contract (***the Contract***) that the Applicant must pay liquidated damages to the Respondent in the event that the Applicant breached the Contract.
3. Upon returning to the vehicle at approximately [time], the Applicant found a ‘[describe the ticket, eg ‘Payment notice and tax invoice for claim of liquidated damages’]’ [ticket number] (the “Payment Notice”) placed under the windscreen of the vehicle. A copy of the Payment Notice is attached to this application.
4. The Payment Notice alleges that the Applicant [insert relevant details relating to your actions that led to a breach of the Contract; for example:] failed to obtain and display a parking ticket on the dashboard of the vehicle while the vehicle was parked in the Car Park **OR** obtained but failed to display a parking ticket on the dashboard of the vehicle while the vehicle was parked in the Car Park.
5. The Payment Notice further constitutes a demand by the Respondent that the Applicant pay the sum of \$[x] by way of liquidated damages for breach of the Contract (***the Amount Claimed***).
6. The Applicant removed the vehicle from its parking space and drove it out of the Car Park at [time].
7. The Applicant denies liability for the Amount Claimed. **OR** On [date] the Applicant paid the Amount Claimed to the Respondent under protest.

## “Fines” from private car parks

8. The Amount Claimed is a penalty and is therefore void.

### PARTICULARS

The Applicant refers to and relies upon the general law and says further that the Respondent seeks to recover damages in excess of a reasonable pre-estimate of loss suffered as a result of breach.

9. Further or in the alternative, the Contract is a “consumer contract” within the meaning of that term in the *Fair Trading Act 1999* (Vic) (**the Act**).
10. Any term of any contract which holds the Applicant liable to pay the Amount Claimed is an unfair term within the meaning of section 32W of the Act.

### PARTICULARS

- a) The Applicant refers to and relies upon sections 32W and 32X(c) of the Act.
- b) Further, or in the alternative, as a result of the Conditions being inadequately displayed, it was not reasonably practicable for the Applicant to read the Conditions prior to entering the Car Park.
- c) Further, or in the alternative, the Respondent knew or ought to have known that it was not reasonably practicable for persons using the facilities of the car park to read the Conditions prior to entering the Car Park.
11. Thus, any term of any contract which holds the Applicant liable to pay the Amount Claimed is void pursuant to section 32Y(1) of the Act.
12. Therefore, the Respondent has received and retained the Amount Claimed from the Applicant as money had and received, and is indebted to the Applicant for that amount. **OR** Therefore, the Applicant is not liable to the Respondent for the Amount Claimed or any other amount.

### AND THE APPLICANT SEEKS:

- A. A declaration under section 124 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) that any term of any contract which holds the Applicant liable to pay the Amount Claimed is void.
- B. An order that the Applicant is not liable to the Respondent for the Amount Claimed or any other sum. **OR** An order that the Respondent repay the Applicant the Amount Claimed.
- C. Such other orders as the Tribunal deems fit.

Dated:

Signed:.....

**THE APPLICANT**