

PRIVATE CAR PARK 'FINES'

How can a car park company 'fine' me?

Private car park companies claim that by entering and parking in their car park, you enter into a binding contract with them and they can fine you if you don't follow the terms/rules of that contract.

Please note if there really is a contract, then it is between the private car park company and the driver of the car, not the owner of the car.

The rules of the contract are usually displayed at or near the entrance to the car park. Often they are on a board and called Conditions of Entry. These conditions can include rules that say:

1. You must:
 - obtain and display a ticket at all times (even within a free parking period)
 - park between the lines
 - not park in a loading zone
 - not display a ticket that has expired
2. You agree to compensate the car park company if you break one of their rules – usually around \$88 per breach (\$66 if paid within 14 days).

Private car park 'fines' claim you have broken one or more of the car park's rules ('breached the contract') and you must now compensate the company for its loss. Lawyers call this *liquidated damages*.

Can a car park company demand money?

The law on this question is complicated and cannot be fully explained in this fact sheet.

In summary, if there really is a binding contract between you and the car park company and you did break the car park's rules, then the car park company can ask you for compensation – **but** only for the business loss it suffered when you broke the rules.

In our view, an \$88 or \$66 fine is excessive and *not* a genuine assessment of the car park company's loss.

When the money demanded is excessive the law calls this a *penalty*. It is against the law for companies to demand penalties. In our view, private car park contracts that contain this rule are unfair because they include penalties.

I got a 'fine' / Payment Notice on the window of my car – what should I do?

You have a number of options:

1. Do nothing

In November 2012 the NSW Government changed the law. The change means the Roads & Maritime Services (RMS, previously the RTA) is not required to identify the registered owner of a car to private car park companies. Before the change, private car park companies were able to get this information from the RMS/RTA.

So, if you have received a Ticket/Payment Notice from a private car park on the window of your car and it does not name you, it will be very difficult for the car park company to identify whom to sue. Of course if you got these tickets before November 2012, the company might already have your details.

2. You also have the options outlined in the next section

However, you should keep in mind that you will be identifying yourself when you communicate with the car park company. They can use that information to sue you.

I have received a 'fine' / Payment Notice addressed to me – what should I do?

You have a number of options:

1. Do nothing

This is not recommended. The car park company might start writing you letters demanding money and might even take you to court. This can expose you to further fees and legal costs.

2. Write to the company

a. If you were not the driver: You can write to the company disputing the fine on this basis. You can give them the name of the driver if you want to. If you don't, the company will probably keep chasing you for payment of the 'fine'. If you do give the name of the driver, the company will most likely chase that person.

Please note, the law requires the private car park company to prove who the driver was. Only a court can force you to give the driver's name.

b. If you were the driver: You can write to the company disputing the fine if you have a valid reason, for example if you can prove your car was not at the car park at the time printed on the 'fine'.

3. Pay the 'fine'

You can of course choose to pay the 'fine' in full. Alternatively, you can offer to make a partial payment. An offer of partial payment should be in writing and headed 'without prejudice'. It should clearly state the amount you offer is in *full and final settlement* of the debt claimed by the car park company.

4. Lodge a complaint in the NSW Civil and Administrative Tribunal (NCAT)

The NCAT is a low-cost, informal and consumer-friendly tribunal. There are no costs awarded against you even if you lose.

If the NCAT agrees that the car park company contract contains unfair terms, it can order that you do not have to pay the amount demanded.

When confronted with a NCAT application, the car park company might choose to withdraw the 'fine' rather than going to a hearing.

NCAT claims must be lodged within 3 years of each particular payment notice date. This means if you do lodge a NCAT claim you can include payment notices only up to 3 years prior to lodgment.

I got a Statement of Claim – what should I do?

A Statement of Claim is an official court document. Contact us immediately if you get one.

1. Do nothing

This is definitely not recommended. The court might make an order that you owe the car park company the money demanded, plus court fees and legal costs.

Warning: This fact sheet is for information purposes only and should not be relied upon as legal advice.

This information applies only in New South Wales.

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2. Fill out a Defence and file it with the Court

To get your say in court, you must fill out and then file a Defence with the court within 28 days of receiving the Statement of Claim. Contact a lawyer immediately for advice on how to do this.

South West Sydney Legal Centre www.swslc.org.au
phone: (02) 9601 7777 fax: (02) 9600 6244

Marrickville Legal Centre www.mlc.org.au
phone: (02) 9559 2899 fax: (02) 9558 5213

Acknowledgments This fact sheet was prepared with the benefit of access to the following fact sheets:

- FS31 “Fines” from Private Car Parks – Consumer Action Law Centre
- Private car park ‘fines’/payment notices – Legal Aid New South Wales

South West Sydney Legal Centre can assist you with any questions or concerns.

Free Phone Advice 9601 7777

Tuesdays: 12.30pm to 2.00pm

Tuesdays: 4.00pm to 6.00pm

Thursdays: 12.30pm to 2.00pm

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