

PRIVATE CAR PARK FINES & ENFORCEMENT: *Information*

Sheet

What is the issue?

From time-to-time Tasmanian residents receive letters from private car park operators demanding payment of what they often describe as a “penalty” for either overstaying their parking or for failing to pay any parking fee. These letters often include threats of legal action if payment is not made.

While the requirement to pay for parking is generally not contentious, several concerns arise from these situations, including:

1. **How do private car park operators obtain your personal information** (such as your name and address), and
2. **Is it lawful for them to demand payment of a fixed sum or “penalty”?**

How do private car park operators get your name and address?

Private car park operators typically have access to cameras and more frequently, Automatic Number Plate Recognition (ANPR) systems that log vehicle registration numbers when you enter and exit their car parks. However, the critical question is how they link these vehicles registration numbers to a specific individual’s name and address (typically the registered owner of the vehicle).

In Tasmania, this information is held by the *Department of State Growth*, but it is generally not disclosed to private companies or individuals without specific legal authority. Such disclosure can come from:

- **Right to Information (RTI)** requests, or
- **Court orders** obtained after legal proceedings.

For now, the mechanism behind how these details are released remains unclear.

In some states outside Tasmania, private car park operators have gained access to vehicle ownership details through court proceedings seeking preliminary discovery. Whilst we are not yet aware of any published court decisions in Tasmania permitting such a release of data, such decisions may well have occurred in Tasmania as well.

Can you legally be charged a “penalty”?

The short answer is **no**—a private car park operator cannot charge a penalty.

Under Australian law, **penalties** can typically only be imposed by government bodies or the courts, where such penalties are explicitly legislated. For example, penalties imposed for parking violations on public roads and traffic infringements.

In the case of private car parks, the operator may seek **damages** instead of penalties. The legal term for this is **“liquidated damages”**—a predetermined amount of money set out in the terms of the contract (often displayed on signs at the entrance to the car park or at pay stations within the car park).

This sum of money called “liquidated damages”, typically represents the operator’s estimated losses if you breach the parking conditions. These losses may include:

- The cost of monitoring the car park.
- Administrative costs (e.g., sending letters or processing payments).
- Time spent reviewing video footage or records.

The critical factor is that “liquidated damages” must be reasonable in its reflection of the actual cost to the operator. If the amount demanded is excessive or bears no reasonable connection to actual losses, the demand could be unenforceable on the grounds of it being in effect, a penalty.

Note: Although the parties to a contract may initially appear to mean exactly what they say when using terms like “penalty” or “liquidated damages,” the terminology used is not definitive. Ultimately it is for a court to determine whether a monetary amount is a “penalty” or “liquidated damages”.

What happens if I don’t pay the amount demanded?

If you fail to pay the demand, the matter becomes a **civil case**, not a criminal one.

The car park operator will have to:

1. **File a claim** in the *Magistrates Court of Tasmania* (minor civil division);
2. **Serve you** with a filed Claim; and
3. **Prove** their case in court should you choose to defend it.

You will have **21 days** from the date you are served with the Claim to file a defence. Importantly, the car park operator must be able to show that:

- **You were the driver** of the vehicle at the time of the alleged breach (e.g., you were in control of the vehicle when you entered the carpark, parked and overstayed or failed to pay for parking).

- They are entitled to the **amount claimed** (i.e., the liquidated damages) based on the terms of the contract you entered into by parking your car.

While the amounts involved may be relatively small, it's important not to ignore these notices. You may be able to resolve the situation before it potentially escalates to court by seeking legal advice.

Are these Notices/Demands misleading?

There is growing concern that some private car park operators are issuing notices that could **mislead** the recipient. Such misleading practices could violate the **Australian Consumer Law** (*Competition and Consumer Act 2010* – Schedule 2) which amongst other things, protects consumers against unfair or deceptive practices.

Matters to be aware of:

1. **Misleading references to a “penalty” or “offence”:** These notices often describe the breach as an “offence” or refer to a “penalty”. This is misleading as it is not a criminal matter—it’s an alleged civil breach of contract. Therefore, an offence has not been committed, and a penalty cannot be sought.
2. **Misleading appearance:** Some notices have formats or PO Box addresses that mimic the style (or location) of official government or court documents, potentially leading recipients to believe they are dealing with a legal or government entity when they are not.
3. **Request to “nominate the driver”:** Unlike speeding fines or traffic offences where you may be obligated to identify the driver if it was not you, in a civil matter such as this, there is no obligation on you to nominate who was driving. The private car park operator must prove that you were the driver.

Some of these tactics appear designed to pressure individuals into paying the amount demanded, which raises concerns around consumer rights and fairness.

If I receive a notice/demand, should I just pay it?

There is no simple answer. Whether or not you should pay the demand depends on a number of factors, including:

1. **Contract terms:** The car park operator can only charge you for breaching the terms of the contract you entered into when entering the car park and parking. You need to understand those terms and whether the amount they are claiming is reflected in the contract.
2. **Proof of liability:** The car park operator must be able to prove that you were the driver of the vehicle at the time of the alleged breach. If someone else was driving your car you may not be liable.

3. **Time limits:** Breach of contract claims have a time limit (usually **6 years** from the date of the breach). If the claim is made outside this period, it could be unenforceable.
4. **Is the amount of money demanded fair?** The amount being claimed should be reasonable and reflective of actual losses suffered by the operator. If it seems excessive, you may be able to challenge it, or at a minimum, negotiate a reduced payment if you otherwise accept liability.

In summary: **Don't ignore the notice.** If in doubt, seek legal advice to determine whether the demand is legitimate and if you need to pay it. A lawyer can help you assess whether the demand is enforceable based on the individual circumstances of the matter.

Where can I get help?

If you receive a demand or notice from a private car park operator and you have concerns, you can contact us on (03) 6424 8720 to arrange a free appointment to obtain advice.

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