

Do I Have to Pay Fines to Private Car Parks?

Finding a place to park in some parts of Sydney can be a nightmare.

Imagine you're driving around trying to find a spot in an unfamiliar area, when you suddenly come across a car park that offers two hours free parking.

You can't believe it – it's too good to be true!

You happily take the spot, only to return an hour later to find a hefty fine on your windscreen for not displaying a ticket.

But the sign clearly said '2 hours free parking'.

You look again and, upon close inspection, notice the small print: 'driver must display ticket'.

Now the parking company wants you to pay \$66!.

You want to tell them to shove it.

Do I really have to pay the 'fine'?

Firstly, only statutory bodies have the power to issue fines.

This includes the police, state transit officers, parking rangers and the RSPCA.

Private car parking companies do not have statutory authority to issue fines.

Some of these so-called 'fines' may actually look very similar to the legitimate infringement officers issued by government agencies.

The car park companies are clearly attempting to disguise the fact that they are not actually 'fines', but are really a demand for what are known as 'liquidated damages.'

In most cases, it is unlikely that such demands would be legally enforceable because for a company to claim liquidated damages, it must prove that:

- (a) it suffered loss or damage because of your actions, and
- (b) the amount of loss is the same or more than the amount claimed.

This can be difficult to show in a court of law.

And the State Debt Recovery Office will not come chasing after you if you don't pay.

However, you may receive nasty letters in the mail from the carpark company itself, and they may even send the case to a debt collector or threaten to take legal action.

Do they have any basis for claiming the 'fine'?

Car park companies will normally claim that by leaving your car, you entered into a contract with them.

They will say that one of the terms of that contract was to display a ticket.

The fact that you failed to display the ticket, they would argue, meant that you breached the contract and are therefore liable to pay damages.

According to basic contract law, however, the car park company might have a tough time recovering damages (ie money) from you.

This is because it would be difficult to prove that:

- (a) You were the driver at the time, and

(b) They incurred a loss due to your actions.

Can car park companies get my identity?

In the past, car park companies could obtain your details from the RMS, in order to send letters and even commence legal action against you.

In fact, the RMS has been forced disclose the details of more than 150,000 NSW drivers.

But changes to the law put a stop to this in 2012.

Under [section 279 of the Road Transport Act NSW 2013](#), the RMS cannot be required to disclose information about the owner of a motor vehicle for the purpose of allowing an applicant to recover private car park fees.

This means that your private details are protected, and it would be costly for the private car company to find out your identity if the RMS won't help them out.

However, this doesn't mean that unscrupulous companies won't uncover your identity through other slick ways.

Many of the so-called 'fines' have a section where you can write to the company and contest them.

Some people fall into the trap and send the completed ticket back, thereby giving the company their name and address.

Companies can then use this information as both an admission that you were the driver at the time and to send further notices, or even in some cases to take the case to the [local court](#) and hope that you settle before the case gets to a hearing.

It is very rare for car park companies to actually take someone all the way to a defended hearing in court. This is probably because they know that they are unlikely to succeed,

and that they may even be forced to pay the person's legal costs if they lose.

They will usually just rely on threats and harassment to get people to pay.

The 'Australian National Car Parks' case

One of the worst offenders was 'Australian National Car Parks', who manage hundreds of car parks for Woolworths, Aldi and MacDonalds.

The company has been the subject of years of complaints for issuing unfair and inflated 'fines', and for intimidating and harassing those who refuse to pay the amounts demanded.

But things took a turn for the worse for the company when, in 2013, it faced prosecution for "undue harassment."

The company had tried to [charge a woman \\$173 for failing to put a ticket on her car while parking in a free spot](#), and it continually harassed her in an attempt to make her pay up.

She had offered to pay the daily rate for the car park, but the company refused to accept.

After receiving over 4000 similar complaints, the Department of Fair Trading finally took action against two of the company directors, taking them to Parramatta court and causing them to change their business practices.

If you have been given a private parking 'fine', it's best to remain calm and remember that there is a good chance to avoid paying it.

If you are harassed or intimidated, you should consider lodging a complaint to the NSW Fair Trading which has the power to take action against companies that engage in bully tactics.