**SAMPLE PLEADING (Post 1 January 2011) "B"**

IN THE VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

AT MELBOURNE

**CIVIL CLAIMS LIST /2011**

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 on 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.

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 Australian Consumer Law (The ACL)

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 24 of The ACL.

PARTICULARS

a) The Applicant refers to and relies upon sections 24 and 25(c) of the ACL.

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 23(1) in The ACL.

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.

13. [List any other reasons you think you should not have to pay. For example, you might believe that the liquidated damages clause was onerous, was not sufficiently brought to your attention and therefore did not form part of the contract.]

**AND THE APPLICANT SEEKS:**

A. 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.

B. Such other orders as the Tribunal deems fit.

Dated:

Signed:…………………………………………….**THE APPLICANT**