**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**