

OWNED BY PARKING INDUSTRY BODY



THE ACCREDITED OPERATOR SCHEME 2016

CODE OF PRACTICE

FOR ENFORCEMENT ON PRIVATE LAND

The Accredited Operator Scheme (AOS) is owned and operated by Parking Australia Ltd.

The AOS is a non-profit making, fee-based scheme and the management and operation of the scheme is directly funded by the fee revenue.

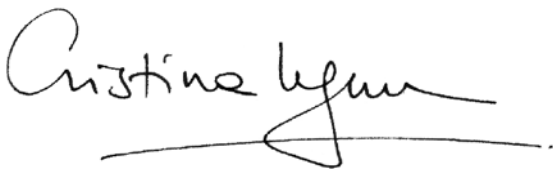
FORWARD

The Board of Parking Australia is pleased to support a significant initiative for the parking industry, the Accredited Operator Scheme - which is underpinned by this Code of Practice for those members providing parking enforcement services on private land.

The Code was developed over an 18 month period through consultation with a broad range of stakeholders to ensure that it works for all parties. It sets out clear expectations and processes for the delivery of standards that members are required to meet when providing services including being open, fair and honest.

The Code is a living document, and Parking Australia will continue to make improvements as and when required. The Parking Australia Board believes that the Code of Practice for enforcement on private land sets the benchmark for industry standards for this sector.

Cristina Lynn

A handwritten signature in black ink that reads "Cristina Lynn". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

President - Parking Australia
01 May 2016

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GLOSSARY

AOS means Accredited Operator Scheme.

CITEC means the Centre for Information Technology & Communication.

Complaint means any form of written criticism received by an operator of itself, its policies or practices, other than an appeal lodged by Owner or Driver.

Creditor means a person who is for the time being entitled to recover unpaid Parking Charges from the Driver of the vehicle and also to be taken so as to include a solicitor acting on the Creditor's behalf.

Current Address for Service means:

- in the case of the Owner, an address which is either - an address at which documents relating to civil proceedings could properly be served on the person concerned under Civil Procedure Rules; or
- the Owner's Registered Address (if there is one); or
- in the case of the Driver, an address at which the Driver for the time being resides or can conveniently be contacted.

Driver includes, where more than one person is engaged in the driving of the vehicle, any person so engaged.

IAS means the PA's Independent Appeals Service. **To be launched in 2017.**

LPR means Licence Plate Recognition (an automated system that uses camera technology to automatically read the registration plate of a vehicle).

Notice to Driver means a notice given to a Driver of a vehicle identifying a Parking Charge Liability.

Notice to Owner means a notice given to the Owner of a vehicle when identifying a Parking Charge Liability.

Notification Letter means a letter sent to the Registered Owner when they have not identified the Driver of a vehicle when requested to do so.

Owner means the person by whom the vehicle is kept at the time the vehicle was parked, which in the case of a Registered Vehicle is to be presumed, unless the contrary is proved, to be the Registered Owner.

PA means Parking Australia Ltd.

Parking Charge means a notice issued for failure to comply with contractual Terms and Conditions for outstanding Parking Charges as detailed further in Schedule 6.

Parking Charge Liability means the liability to pay a Parking Charge.

Parking Charge Notice means a Notice to Driver or Notice to Owner.

Parking Ticket means a Ticket obtained at the car park entry, exit or from the car park attendant.

Private Land means land that is either leasehold or freehold privately rather than by the Crown.

Registered Address means, in relation to the Owner of a Registered Vehicle, the address as provided by the Secretary of State in response to the application for the Owner's details.

Registered Owner in relation to a Registered Vehicle, means the person in whose name the vehicle is registered.

Registered Vehicle means a vehicle which is for the time being registered by the respective State or Territory 'vehicle registration authority' (VRA) as referenced in Schedule 8.

the Code means this Code of Practice.

the Committee means the committee that presides over the PA's Sanctions Scheme.

Unregulated Land means land which is not controlled or supervised by regulations or laws.

VRA means the vehicle registration authority in the respective State or Territory which registers private vehicles.

we, us or **our** means PA.

you or **your** means you as the member or subscriber to AOS and PA's Code of Practice.

1 INTRODUCTION

Parking Australia (PA) is an independent body that encourages transparency and standards within the parking sector throughout Australia to the benefit of the motorist and parking operators. PA created the Accredited Operator Scheme (AOS) and Code of Practice in order to maintain a fair balance between the rights of the motorist and those involved in the management and enforcement of parking on private and unregulated land within Australia.

Members of PA who operate within the private parking sector are required to subscribe to the AOS and adhere to this Code of Practice which defines the core standards necessary to ensure transparency and fairness. This Code of Practice was created not only with reference to the applicable legal provisions but also with proper regard to the concerns of the motorist. The AOS actively seeks constructive feedback from consumer groups and organisations so as to enable us to continue to find the right balance and ensure fairness within the sector. The PA's contact details can be found below or on our website. Please note that the AOS cannot enter into communications regarding specific tariffs and Parking Charge Liabilities – this is the remit of the operator and the Independent Appeals Service. However, should a motorist feel that an operator has materially breached the terms of the Code, they can raise their concerns directly with the AOS who will investigate the matter.

This Code of Practice complements the existing laws concerning parking enforcement on private land. It is designed to enhance the conduct and culpability of AOS members in order to increase consumer confidence and raise standards within the industry. It remains the duty of the operator to appraise themselves with any legal provisions that concern their operations and to adhere to them. In particular, operators should have a sound working knowledge of the following areas:

- Contract
- Tort
- Occupiers Liability (both in statute and tort)
- Privacy and Data Protection
- Consumer Protection
- Disability Discrimination.

The Code is enforceable against its subscribers and includes a scheme of sanctions which can be invoked in instances of non-compliance. Whilst the disciplinary procedures for non-compliance can ultimately result in the termination of membership, the PA's preference is for all members to achieve full compliance with the Code. The AOS offers additional services to its members to encourage compliance and ensure that their operations are lawful and that charges that they impose are fair and enforceable.

Of significant importance within the Code is the requirement to obtain, process and dispose of Owner data lawfully and responsibly. The AOS is required to disclose to the VRA instances of non-compliance or complaints against members.

As an additional safeguard to the motorist, the AOS administers the Independent Appeals Service. Whilst the administration of this service is performed by PA, the independence of the scheme is ensured by the appointment of lawyers who have complete independence in the appeals decisions. They are not accountable in their decisions to either the AOS or the operator and they have no vested interest in the outcome. The appeals process is provided free of charge to the applicant and is intended to complement the Operator's individual, internal appeals procedures when dealing with contested Parking Charges and is designed to ensure that charges that are not lawfully imposed are cancelled and that those that remain are legally enforceable. The outcome of any appeal is binding upon the operator but not upon the appellant who always has the right to contest such charges further. A robust and fair appeals process is important in promoting consumer confidence.

In order to ensure accountability and so as not to compromise the ability of the AOS to represent and support its members, the AOS has an independent Committee which presides over serious complaints and serious instances of non-compliance where suspension or termination of membership is a real possibility. The Committee is comprised of 3 appointed individuals who are independent of the normal functions of the AOS and their decision is binding upon both the AOS and the Operator.

This Code does not cover parking which is controlled or administered by local authorities.

Contact details

Parking Australia

PO Box 47
Douglas Park NSW 2569
AUSTRALIA

Phone: 1300 787 233
Email: paa@parking.asn.au

ABN: 99 365 753 043
ACN: 602 623 567

2 GENERAL TERMS

2.1 Administration of the Code

Parking Australia, will monitor developments within the sector and make such changes to this Code as appear necessary in response to any changes in legislation or otherwise. The AOS values the views of consumer groups, operators, landowners and all those affected by its terms. The Code is a living document and feedback provided by interested parties will be considered whenever it is reviewed.

2.2 Conditions

- 2.2.1 It is a condition of AOS membership that you agree to abide by this Code of Practice and comply with the Independent Appeals Service. It is your duty to be fully apprised with the Code. Unawareness of the terms of the Code or any applicable legal provisions will not be regarded as an excuse for non-compliance.
- 2.2.2 Failure to abide by the Code may result in the AOS taking disciplinary action against you in accordance with Schedule 3, although it is PA's preference to encourage compliance and the sanctions scheme will only be used where it is both necessary and proportionate in the circumstances of each case.
- 2.2.3 You agree to pay all relevant fees to the AOS including subscription rates where applicable and fees relating to the administration of the Independent Appeals Services.
- 2.2.4 If you obtain and process vehicle Owner's data you are obliged to:
 - 2.2.4.1 Be compliant with all necessary legislation
 - 2.2.4.2 Adhere to any court directions
 - 2.2.4.3 Adhere to any CITEC requirements (Queensland only)
 - 2.2.4.4 Adhere to VRA requirements relating to the data.

2.3 Warranties and Disclaimers

- 2.3.1 This Code is designed to complement the laws which apply to the parking industry. It is your responsibility to ensure that your business adheres to all relevant legal provisions and the AOS assumes no responsibility for unlawful or illegal acts of its members and you agree to indemnify us as to the same.
- 2.3.2 By being an AOS member, you agree to indemnify us against all claims that might arise from your obtaining data falsely or illegally or by mistake and against any misuse of any such data.

2.4 Monitoring Compliance with the Code

- 2.4.1 Initial compliance upon application for (AOS) membership is assessed by way of an Initial Audit which, will be followed by a period of 'probationary membership' for up to 6 months. This is detailed further in Schedule 5.
- 2.4.2 Compliance with the Code will be constantly monitored and you agree to the AOS auditing your company annually to ensure compliance. Audits may occur more than once per year where the AOS has reason to suspect non-compliance.

- 2.4.3 The AOS will use data collected during the appeals process in order to monitor compliance.
- 2.4.4 The AOS will investigate and record any complaints against members in order to ensure compliance.
- 2.4.5 Breach of the conditions of the Code and any applicable laws will render you liable to our disciplinary procedures as set out in Schedule 3. Where non-compliance is sufficiently serious the AOS may suspend or terminate your membership with immediate effect.
- 2.4.6 If your membership is suspended or terminated, then we will notify the State VRA of the same. This will prevent you from obtaining vehicle Owner details from the VRA as a member of the AOS under any agreement with the VRA.
- 2.4.7 Where there is evidence of non-compliance, in addition to any disciplinary action that we might take, we will write to you and require you to make any changes to your business practices that are necessary to ensure future compliance.
- 2.4.8 Further details on compliance can be found in Schedule 3.

3 OPERATIONAL REQUIREMENTS APPLICABLE TO ALL OPERATORS

The following outlines the specific operational requirements of the AOS that are applicable to all Operators and should be read in conjunction with the standards relating to the issuance of notices to Owners, Drivers and Hirers as outlined in Schedule 1.

3.1 Establishing Yourself as the 'Creditor'

3.1.1 If you operate parking management activities on land which is not owned by you then you must supply us with written authority from the land Owner sufficient to establish you as 'the Creditor' and in any event to establish you as a person who is able to recover Parking Charges. There is no prescribed form for such an agreement and it need not necessarily be as part of a contract but it must include the express ability for an operator to recover Parking Charges on the landowner's behalf or provide sufficient right to occupy the land in question so that charges can be recovered by the operator directly. This applies whether or not you intend to use Owner liability provisions.

3.2 Signs

3.2.1 Where the basis of your Parking Charges is based in the law of contract that will usually be by way of the Driver of a vehicle agreeing to contractual terms which are identified by signage in and around a controlled zone. It is therefore of fundamental importance that the signage meets the minimum standards under this Code as this underpins the validity of any such charge. Similarly, where charges are founded in the law of trespass and form liquidated damages, these too must be communicated to Drivers in the same way.

3.2.2 Signs must conform to the requirements as set out in Schedule 2 to this Code.

3.3 Licence Plate Recognition

3.3.1 You may use licence plate recognition (LPR) technology to identify a vehicle for the purpose of issuing a Notice to Owner.

3.3.2 Where LPR technology is used, this must be clearly stated using appropriate signage. You must tell Drivers what information will be captured and what this information will be used for.

3.3.3 LPR equipment must be maintained and calibrated appropriately to ensure accuracy so as to ensure that Owner data is not applied for without proper grounds for doing so. Where there are manufacturer's guidelines for the maintenance of equipment then this should be followed.

3.3.4 You must ensure that there are appropriate manual checks in place in order to ensure that correct registration details are used in order to obtain Owner details from VRA.

3.3.5 If you use LPR technology you must ensure that the data that you obtain and process is used, stored and disposed of appropriately.

3.4 Third Parties

- 3.4.1 You may use sub-contractors in order to carry out duties on your behalf. Sub-contractors are your responsibility and any issue of non-compliance by them will be treated as an issue of non-compliance by you.
- 3.4.2 If you use sub-contractors or self-ticketing operators then you must ensure that they are familiar with this Code and obtain signed confirmation by them to this effect. You must ensure that such confirmation is made available to the AOS during any audit or upon request.

3.5 Data Processing

- 3.5.1 You are required to keep, for a minimum of 5 years, records of all your operations where they are relevant to any aspect of this Code.
- 3.5.2 Subject to clause 2.4, where required to do so you must provide the AOS with any such records in order that we may monitor compliance with the Code and any applicable laws.
- 3.5.3 Failure to provide any such document(s) within 14 days will be treated as an issue of non-compliance under the Sanctions scheme.

3.6 Operators' Internal Appeals Process

- 3.6.1 You are required to have your own internal appeals procedures. As a minimum, these procedures must:
 - (a) Identify the appeals procedure including the manner in which appeals can be made, to whom they should be made and the time frame for lodging an appeal.
 - (b) Allow a minimum of 21 days for the motorist to lodge an appeal
 - (c) Allow for appeals to be made outside of the period which is usually allowed where there are exceptional circumstances for not lodging the appeal within the normal time allowed
 - (d) Allow recipients of a Parking Charge Notice the ability to make representations to you regarding the incurrence of the Parking Charge Liability
 - (e) Require you to consider such representations and respond appropriately within 28 days
 - (f) Notify the Driver of your internal appeals procedures at the time of providing them with a Notice to Driver
 - (g) Provide the Owner with confirmation of your internal appeals procedures at the same time that you send a Notice to Owner.
- 3.6.2 If an appeal is unsuccessful then you must notify the appellant, at the same time as you reject their appeal, that they have the right to further appeal to the AOS through the IAS.
- 3.6.3 You must not require payment of a charge whilst an appeal is being considered.
- 3.6.4 You must not require the motorist or Owner to submit a stamped-addressed envelope as a pre-requisite for an appeal.

3.7 Motorists with a Disability

- 3.7.1 It is your duty to make 'reasonable adjustments' to assist vulnerable or people with a disability to use any services that you provide. It is incumbent on operators to determine what is necessary on their individual sites. Adjustments could include lowered pay and display meters, lowered signage and wider parking bays marked specifically for drivers with a disability.

3.8 Charges and Terms and Conditions

- 3.8.1 All Parking Charges issued by you must be reasonable and enforceable under any applicable legal provisions. If your Parking Charges amount to Damages you should be able to demonstrate how such charges are calculated for each site as a 'genuine pre-estimate of loss' in order to be able to justify the amounts. More information on Charges can be found in Schedule 6.

3.9 Changes in Operator's Terms and Conditions

- 3.9.1 Where there is any change in the terms and conditions that materially affects the motorist then you should make these clear on your signage. Where such changes impose liability where none previously existed then you should consider a grace period to allow regular visitors to the site to adjust and familiarise themselves with the changes. It is suggested that a grace period of at least two weeks is appropriate and that during this period you should identify vehicles that would have incurred charges under the new system where they wouldn't have previously and inform the Driver by notice affixed to the vehicle that in future they will incur a charge. More guidance on signage is found in Schedule 2.

3.10 Complaints

- 3.10.1 You must have an internal complaints procedure.
- 3.10.2 You should provide the Driver with confirmation of your internal complaints procedures at the time of providing them with the Notice to Driver or Parking Charge Notice.
- 3.10.3 You should provide the Owner with information of your internal complaints procedures at the same time that you send the Notice to Owner.
- 3.10.4 You must record all complaints in a Complaints Register. You must record the following:
- (a) Date of complaint
 - (b) The complainant
 - (c) Copy of complaint
 - (d) Copy of all correspondence
 - (e) Outcome
 - (f) Details of corrective action required and undertaken to ensure situation does not occur again (where complaint has merit).
- 3.10.5 You must provide the register to us within 14 days if it is requested.

3.11 Holding yourself out as the Authorities

- 3.11.1 You must not state or imply that you have any government or regulatory powers if this is not the case.
- 3.11.2 You must ensure that your company stationery and all other forms of correspondence or communication do not describe any charge that may be issued to a Driver in terms that imply that you have any authority as defined above by use of such words as 'fine' or 'penalty' or 'liable for prosecution'.

3.12 Insurance

- 3.12.1 You must ensure that you will maintain at all times the required level of public liability insurance. The minimum level of cover is \$20 million of Public Liability Insurance.
- 3.12.2 If you have employees then you are required to have appropriate workers compensation insurance in place.
- 3.12.3 You must provide the AOS with evidence of any such insurance if requested to do so and in any event upon audit.

3.13 Professionalism

- 3.13.1 You agree that you will ensure all your operators, or agents will maintain a professional standard of behaviour when carrying out their duties and will comply with the rule of law.

3.14 Predatory Tactics

- 3.14.1 You must not use predatory or misleading tactics to lure Drivers into incurring Parking Charges. Such instances will be viewed as a serious instance of non-compliance and will be dealt with under the sanctions system as defined in Schedule 3 to the Code.

3.15 Final Warning Letters

- 3.15.1 Where the charge remains unpaid and no appeal is lodged you may send a final warning letter.
- 3.15.2 You must make it clear in the final warning what you will do next if payment is not received and how payment can be made.
- 3.15.3 A final warning letter should not be sent until 14 days have passed since the Notification Letter.

3.16 Court Action or Charge Recovery

- 3.16.1 When a final warning has been sent you must wait a further 14 days before you take further action such as debt recovery or court action.

3.17 Grace Periods

- 3.17.1 Drivers should be allowed a sufficient amount of time in order to park and read any signs in order that they may make an informed decision as to whether or not to remain on the site before any enforcement action is taken by you or your agents.
- 3.17.2 Drivers should be allowed a sufficient amount of time to leave a site after a pre-paid or permitted period of parking has expired.

SCHEDULES

- Schedule 1** Operations
- Schedule 2** Signage
- Schedule 3** Compliance Monitoring
- Schedule 4** Guidance on Application of Sanctions for Non-compliance
- Schedule 5** Auditing
- Schedule 6** Parking Charges
- Schedule 7** Independent Appeals Service
- Schedule 8** Vehicle Registration Authorities

SCHEDULE 1

OPERATIONS

1.1 Applying for Owner Details where Owner Liability is sought

- 1.1.1 If you intend to be able to recover unpaid Parking Charges from the Owner of a vehicle then you must request Owner details.
- 1.1.2 The authority by which Owner details are obtained will differ depending on the State/Territory jurisdiction – refer Schedule 8.
- 1.1.3 You must not imply that the Registered Owner can be held responsible for the Parking Charge.
- 1.1.4 When you apply to the VRA for Owner details you must inform them of your membership with the AOS and provide your membership details in addition to any other information that they may require in order to process the application, including any court orders.
- 1.1.5 You must apply for Owner details only where you have ‘reasonable cause’ to do so.
- 1.1.6 Where Owner details are provided to you by the VRA, they must only be used for the purposes for which they were disclosed to you and in accordance with any other requirements per clause 2.2.4.
- 1.1.7 Any data supplied to you must be handled and processed strictly in accordance with all applicable legal provisions.
- 1.1.8 Failure to abide by any applicable laws relating to data handling is viewed seriously by the AOS, and will be considered to be a serious issue of non-compliance.

1.2 Notice to Driver

- 1.2.1 The Notice to the Driver must, as a minimum:
 - (a) Be in writing
 - (b) Identify how you have obtained their details
 - (c) Identify that the Operator is a member of (AOS) and adheres to its Code (with the AOS logo)
 - (d) Either be affixed to the vehicle or given to a person who appears to the Operator to have control of that vehicle
 - (e) Specify the vehicle and the land on which it was parked
 - (f) Identify the period of parking to which the Parking Charge Liability relates and the circumstances by which the Parking Charge became payable by the Driver
 - (g) Describe the means by which the contract was brought to the attention of the Driver
 - (h) Explain that if the full amount of the Parking Charge is not paid within 28 days then an application will be made to seek the Owner’s details so that the Parking Charge can be enforced
 - (i) Identify the Creditor and explain how and to whom the payment can be made
 - (j) Inform the Driver of any discount offered for prompt payment of the Parking Charge
 - (k) Inform the Driver that they have 21 days within which to contact the operator under their own internal appeals process, identify that process.

1.3 Notice to Owner

1.3.1 The Notice to the Owner must, as a minimum:

- (a) Have regard to any court orders and/or requirements of the VRA
- (b) Be in writing
- (c) Identify how you have their details
- (d) Identify that the Operator is a member of the (AOS) and adheres to its Code (with the AOS logo)
- (e) Specify the vehicle and the land on which it was parked and the period of parking to which the notice relates
- (f) Inform the Owner that the Driver is required to pay the Parking Charge in respect of the specified period of parking and that the Parking Charge has not been paid in full
- (g) State that a Notice to the Driver relating to the specified Parking Charge Liability has been given
- (h) Describe the requirement to pay the Parking Charge in respect of the specified period and describe the Parking Charge
- (i) Describe the circumstances in which the Parking Charge Liability arose (including the means by which it was brought to the attention of the Driver and other facts that made the Parking Charge payable)
- (j) Specify the period of parking and the time of the issue of the Notice to Driver
- (k) State that the Creditor does not know the name of the Driver and a current address for Service for the Driver.
- (l) Invite the Owner to pay the Parking Charge, or, if the Owner was not the Driver of the vehicle to notify the Creditor of the name and current address of the Driver and pass the notice on to the Driver
- (m) Inform the Owner of the arrangements for resolution of disputes or complaints that are available to the Owner including; any procedures offered by the Creditor for dealing informally with representations by the Owner about the notice or any matter contained in it
- (n) Identify the Creditor and explain how and to whom the payment can be made or notification of the Driver can be given
- (o) Relate only to a single period of parking (this does not prevent the giving of separate notices which each specify different parts of a single period of parking)
- (p) Be given by:
 - 1) Handing it to the Owner, or
 - 2) Leaving it at his current address, or
 - 3) Sending it by post to his current address.

- (q) Be given to the Owner within 30 days of the Owner details being made available to the Operator.
 - (r) Explain the reason for requesting their details and provide details of the Complaints Procedure by which the Owner can notify the AOS if they feel their data has been used improperly.
- 1.3.2 All communication to the Owner must be in writing (where writing including email, web or mail).

1.4 Independent Appeals Service

- 1.4.1 Where the recipient of a charge has appealed against it through your internal appeals procedure and where that appeal has been rejected by you, only then may the recipient appeal further to the Independent Appeals Service.
- 1.4.2 The appeals procedure and more details are located within Schedule 7 to this Code.
- 1.4.3 You agree to accept the decision of the IAS and for it to be binding upon you
- 1.4.4 You agree to pay the relevant fee to the IAS for any appeal as detailed in Schedule 7
- 1.4.5 You must not require payment of the disputed Parking Charge whilst an appeal is being considered by the IAS
- 1.4.6 It is for you to decide whether a discounted rate of payment should be allowed after an unsuccessful appeal against a notice.

SCHEDULE 2

SIGNAGE

This Schedule prescribes the signage characteristics that you must try to adhere to. It is accepted that there will be instances where the nature of the land that is controlled does not make strict compliance feasible. In such cases you are required to keep to the spirit of the guidance.

Where a site does not invite parking of any kind, the 'P' sign may be omitted.

During the Audit process, the AOS will pay particular attention to these signs so as to ensure that they are compliant with the Code and to ensure that charges that rely on the signage are enforceable. For existing sites that have signage deemed to be compliant with the Code apart from adhering to the design requirements below the operator will have a period of 12 months to convert across to the below design requirements.



The sign that you will place at each vehicle entry point to your site should keep to the following design requirements: Signage must include the universally recognised Blue Parking "P".

Signs must be placed at all vehicle entrances to a site and must be such that it is obvious to the motorist. The example above provides for a sign that is befitting of a 'Pay and Display' operation. The precise wording on a sign is a matter for the Operator but such wording must make it clear to the motorist that there are parking conditions and describe the type of parking operation. It must also show the Operator's Trading Name and Company Logo.

You should endeavour to use the following standard wording on your entrance signs. You should include a minimum of one phrase from Group A (but no more than 3). Group A text should be before and more prominent than the Group B text. The signs must direct motorists to the more detailed signs which display the full terms and conditions. This is important as it is these terms and conditions that will provide the legal foundation to any charge.

Note: If the area is a precinct with numerous parking zones and various restrictions, the GROUP B may apply. GROUP A is still required at each of the individual parking zones.

2.1 Group A

Pay and display
[x minutes/hours] free parking [for customers only] Pay on exit
Pay [on foot/at machine] when leaving
Parking for [business name] customers only Permit Holders Only.

2.2 Group B

Charges apply [after this] Private land
Terms and Conditions Apply
See the notice[s] [in car park] for conditions.

2.3 Text size

The height of the capital letters in the text from Group A will be dependent on the anticipated approach speed of traffic. You should have reference to the table below in calculating the text size. Group B text should be at least 50% of the size of Group A text. All other text should be smaller than 50% of the text from Group A. The name of the site and a welcome message can also be displayed on the sign but should not detract from the prevalence of the Group A and Group B text.

| Situation (examples only) | Anticipated Approach Speed (km/h) | Minimum Height of Capital Letters for Group A Text (mm) |
|--|--|--|
| Barrier controlled car park | under 15 | 40 |
| Parking area entered immediately after leaving a 50 km/h road or from an access road | 25-40 | 50 |

The sign must be readable from far enough away so that Drivers can read all of the Group A and Group B text. Any text on the sign which is not intended to be read from a moving vehicle can be of a much smaller size.

Where terms and conditions are provided on signs which are adjacent to Pay and Display machines, the signs must be at a suitable height – it is suggested that no part of the sign which contains relevant text should be over 1.9m, or under 120mm, from ground level. Such text must be of a size which is easily legible having regard to the location.

2.4 Contrast and illumination

The colours used on signage should be such that the contrast between the background and the text makes the wording on the sign clearly legible. Black text on a white background or white text on a black background will provide a suitable contrast.

If parking enforcement takes place outside of daylight hours, the sign itself is not illuminated or there is not sufficient ambient lighting, it should be made of reflective material. Dark-coloured areas need not be reflective. You need to ensure that all signs are readable during the hours of enforcement as they form the legal basis of any charge. If signs cannot be read then resulting charges that depend upon their content will not be enforceable.

2.5 Repeater Signs

You are required to provide a sufficient number of signs on each site commensurate with its size and other characteristics to ensure that motorists are aware parking Terms and Conditions apply.

2.6 Signage Materials

Signs should be constructed from material that is sufficiently robust to withstand normal external conditions. Signs must be professionally made and not hand-written so that it is immediately apparent to the motorist that they convey important information regarding the site upon which they are placed. If damage to a sign renders the sign illegible then it must be replaced within seven days of notification.

You must adequately display any signs that are intended to form the basis of contract between the Creditor and the Driver.

Such signs must:

1. Identify yourself as the 'Creditor' being a person who is entitled to recover Parking Charges under the contract and provide a telephone number for the same
2. Identify the amount of the Parking Charge and explain when it becomes payable.
3. Advise Drivers that if a Parking Charge remains unpaid for a period of 28 days after issue then additional fees may be incurred and;
4. Be clearly legible and placed in such a position (or positions) such that a Driver of a vehicle must be able to see them clearly upon entering the site or parking a vehicle within the site.
5. Have clear and unambiguous wording and be designed such as to leave the Driver aware that they are entering into a contract with the Creditor or committing a trespass as the case may be.
6. Contain text that is appropriate to the position of the sign and the relative position of the person who it is aimed at. So, if a sign is at an entrance of a site and the vehicle is likely to be

moving, it must be sufficiently large so as to be clear from within the vehicle having regard to the likely speed that the vehicle will be travelling at that point.

7. Be of a colour scheme that provides good contrast between the background of the sign and the text upon it.

2.7 Changes in Operator's Terms and Conditions

Where there is any change in the terms and conditions that materially affect the Driver then you should place additional (temporary) signage at the entrance making it clear that new terms and conditions/ charges apply. The signage should be in addition to the signage ordinarily required.

SCHEDULE 3

COMPLIANCE MONITORING

3.1 Complaints

Complaints against Operators will be dealt with by the AOS and the Sanctions Committee. Complaints will be logged and preserved for a period of at least 3 years.

The following minimum details will be recorded:

1. Date
2. Complainant
3. Operator
4. Site (if applicable)
5. Nature of complaint
6. Response from Operator
7. Action taken

PA's Sanctions Scheme is to be used primarily as a mechanism for encouraging compliance. Minor matters may be dealt with by the AOS by way of sanction points that will be recorded against an Operator's compliance record. These points are designed to draw an Operator's attention to the fact that their operations are not to the required standard and to prompt remedial action by them.

Where there is a serious matter of non-compliance or a serious complaint or where an Operator accumulates 12 sanction points within any 12 month period then the matter will be considered by PA's Sanctions Committee. This is a body which presides over PA's normal Sanctions System only where an Operator's membership is in jeopardy. The decisions of the Committee are binding on the AOS and the Operator. The Sanctions Committee comprises a representative from PA Board, a State Consumer Representative (i.e. the state automobile association) and a member of the state law society. Operators may avoid initial suspension where they accept fault and provide strong evidence to show the issues have been resolved.

The AOS is required to notify the VRA immediately if a member is suspended or expelled. The AOS may investigate any matter, of its own volition, or as a result of a complaint.

Where issues of non-compliance are identified sanction points will be imposed in accordance with the following table (as clarified in Schedule 4):

| Area of Non-Compliance | Sanction Points Available |
|---|----------------------------------|
| Barrier controlled car park | 1 - 3 |
| Word 'Penalty' or 'Fine' or similar on stationery / signage / website | 1 - 3 |
| Minor failure to comply with Code of Practice | 1 - 3 |
| Serious failure to comply with Code of Practice | 4 - 12 |
| Misuse of Owner Data | 6 - 12 |
| Using Predatory Tactics | 8 - 12 |

A 'serious' breach of the Code occurs when a member's actions are such that there is a material and wilful failure to adhere to the relevant statutory or legal requirements, or if an operator acts illegally.

A 'minor' breach of the Code occurs where there is an administrative or unintentional failure to adhere to the relevant statutory or legal requirements, or, if there is some other unintentional breach of the Code of Practice.

SCHEDULE 4

GUIDANCE ON APPLICATION OF SANCTIONS FOR NON-COMPLIANCE

AOS Guidance on Sanction points for non-compliance

Seriousness of the non-compliance (culpability and harm caused)

A. Identify the appropriate starting point

| | Starting Point | Range |
|--|----------------|--------|
| Failing to comply with an AOS request | 2 | 1 - 3 |
| Word penalty, fine or similar on website/stationary etc. | 2 | 1 - 3 |
| Minor failure to comply with the code of practice | 2 | 1 - 3 |
| Serious failure to comply with the code of practice | 8 | 4 - 12 |
| Misuse of keeper data | 10 | 6 - 12 |
| Deploying predatory /unfair tactics | 10 | 6 - 12 |

B. Consider the effect of any aggravating or mitigating factors

Common aggravating and mitigating factors are identified below.

The list is not exhaustive and each case must be looked at on its own merits

Factors indicating higher culpability

1. Intentional action
2. Predatory or misleading tactics used
3. Breach over a long period of time or continued breach after notification of the same

Factors indicating lower culpability

1. Unintentional action
2. Brief indiscretion
3. Trivial or technical breach
4. Breach remedied promptly upon discovery

Factors indicating higher degree of harm

1. Owners' personal data compromised or used or obtained inappropriately
2. Breach affects several people

Factors indicating lesser degree of harm

1. Personal data not compromised or used or obtained improperly
2. Little or no loss to consumer or gain to operator

Form a preliminary view of the appropriate number of sanction points

Consider a reduction of sanction points where Operator has accepted culpability and/or shown that the issue has been rectified so as to prevent future issues of non-compliance

Consider Operators history of compliance/non-compliance. Consider the need to increase the sanction points when previous non-compliance issues are similar to current issue

Form final decision on sanction points for current issue of non-compliance

Where current points are 12 or points imposed in the last 12 months for non-compliance issues the Operator must be suspended from operating for a period unless they can prove that all issues of non-compliance have been corrected. Even where the issues have been corrected consideration must be given to a period of suspension taking into account the Operator's previous non-compliance and willingness to comply in the future. It will only be in exceptional circumstances that an Operator avoids suspension when they have accumulated 12 points on more than one occasion within 12 months.

SCHEDULE 5

AUDITING

Audits will be undertaken by an approved auditor. The focus will be on the legality of members' operations and the security of Driver/Owner data. Audits will be conducted on standards applied against the Code of Practice on both the Operator and the individual sites. The AOS membership/logo will be awarded to each site if/when it has passed its audit.

Audits will take place prior to initial membership of the Accredited Operator Scheme and annually once membership has been granted. Prior to an Operator becoming a member of the AOS they will be vetted by being subject to an initial audit and they will be required to subscribe to the AOS's terms and conditions. All new members, who pass the initial audit, are required to complete a 6 month probationary period after which the AOS will either confirm full membership or reject the membership application after the organisation has been audited to ensure compliance with the Code.

Audits will also be undertaken on an ad hoc basis where persistent and significant issues of non-compliance arise and the AOS feel the need to undertake an audit to prevent future non-compliance. In deciding whether ad hoc audits are required the AOS will consider data from the IAS along with data recorded during the issuing of sanction points for non-compliance.

Members will need to satisfy the auditor of the following core criteria:

1. Compliance with the Code of Practice
2. Data security
3. The contractual or tortious foundation of charges issued
4. Compliance with the terms of applicable legislation.

With reference to the core criteria, operators will be expected to produce satisfactory evidence of the following major key areas: (note audits will cover each of the standards within the Code).

| | Key Areas | Applicable Core Criteria |
|---|--|---------------------------------|
| A | Proof of business operation, ABN/ACN ASIC search, financial standing | 1 |
| B | Adequate safeguards to protect the details of data subjects including the secure methods of disposing of such data when it is no longer required | 1, 2, 4 |
| C | Confirmation of appropriate Public Liability Insurance | 1, 3 |
| D | A list of all sites that are controlled by the operator – noting the type of operation/agreement in place. Documents are not required to be sent with application only if requested during the desktop audit process | 1 |
| E | Verification of Security of Data Protection | 2 |
| F | A plan of each site with details of signage locations noting the type of agreement in place. | 1, 3, 4 |
| G | An image of each sign type that purports to form the basis of a charge in contract or trespass | 1, 3, 4 |
| H | Samples of the 'Notice to Driver' that is used by the operator | 1, 3, 4 |
| I | Samples of any other notices that are issued to Drivers or Owners in pursuance of any charge | 1, 2, 3, 4 |
| J | Samples of any standard form letters which are sent to Drivers or Owners in pursuance of unpaid charges | 1, 2, 3, 4 |
| K | Details of internal appeals process | 1, 2, 3, 4 |

In addition to the above points, the AOS operates a database to record and demonstrate the following:

- Complaints which are upheld against its members
- Instances where non-compliance of the Code of Practice has been identified through the Independent Appeals Service process
- The percentage amount of successful/unsuccessful appeals within a rolling 3 month period.
- Details of any sanction points awarded against a member
- Details of actions taken in response to non-compliance

Where an Operator has more than 60% of their Parking Charge Notices dismissed by the Independent Appeals Service within a rolling 3 month period, the AOS will investigate the Operator and their practices to identify any areas of non-compliance and will report to the parking operator on their findings. This may include unannounced site/audit visits. The AOS will usually endeavour to work with the Operator in resolving any compliance issues. The AOS may, whether or not it assists in resolving issues with the operator, invoke compliance measures where appropriate.

Each year the AOS will conduct an unannounced site visit and randomly select 20-50 Parking Charge Notices issued by an Operator to check compliance with the relevant legislation and the Code of Practice.

Members are required to keep details of all complaints received and action taken as a result. This must be available upon request by the AOS for examination.

SCHEDULE 6

PARKING CHARGES

When a motorist parks on private land the Operator will have put in place terms and conditions which motorists must abide by if they wish to park on the land. If the motorist abides by the conditions, then they enjoy the normal tariff for parking (if any). The Operator must put up sufficient signage to make it clear what the terms and conditions for parking on the land are (see Schedule 2). The signs must also provide motorists with information about what happens when a motorist chooses not to comply in accordance with the normal conditions including details about Parking Charges; Parking Charges are not the same as the tariffs for parking on private land and may arise in any of the following circumstances:

- The Operator may provide that if motorists wish to park other than in accordance with your normal conditions then they agree to pay a larger sum of money than the normal tariff (the Parking Charge). The signs should then make it clear that motorists are entering into an agreement to either pay the normal tariff and park in accordance with reasonable conditions or park otherwise than in accordance with your conditions and pay a higher sum. In this case then the motorist has entered into a contract to pay the higher tariff, the Parking Charge which must be reasonable in the circumstances.
- The Operator may make it a requirement that the motorist only use the land in accordance with your terms and conditions. You may make it clear on the signage that if the terms and conditions of the parking are complied with then they are free to pay the normal tariff for parking (if one applies). However, if the motorist uses the land other than in accordance with the terms and conditions then they agree to pay a fixed fee (the Parking Charge) by way of damages to the operator. This Parking Charge should not exceed a sum which is a genuine and reasonable pre-estimate of loss that flows from the breach of contract by acting otherwise than in accordance with the terms of the agreement the motorist entered into when deciding to park; or
- Where the Operator's signs grant motorists a licence to enter and remain on your land in only accordance with your terms and conditions (with or without the requirement to pay a parking tariff) you may make it clear that if they enter the facility otherwise than in accordance with the terms of the licence, the entry is a trespass to which you will accept the Parking Charge in settlement of the trespass claim.

All Parking Charges must be reasonable. You should offer a financial incentive for prompt payment. Where a reduction is offered, this must be made clear within the Notice to Driver document.

Where there is a prospect of additional charges, reference should be made to this where appropriate on signage, notices and correspondence.

SCHEDULE 7

INDEPENDENT APPEALS SERVICE

The Independent Appeals Service (IAS) is a service administered by PA as a safeguard to the motorist which allows a person aggrieved by the issue of a Parking Charge Notice to have the matter adjudicated upon by an Independent Appeals Assessor (IAA).

Whilst the IAS is administered by PA, the adjudicator is entirely independent and impartial. The adjudicators have legal backgrounds in external dispute resolution and an understanding of the relevant legal provisions. It is a condition of their appointment that they consider only the legal merits of an appeal. They are expressly prohibited from exercising any favour or bias and are not accountable to PA, the operator or the motorist in any way in their adjudication of an appeal. Their decision is final and binding upon the operator but not binding in any way upon the motorist who is always free to contest a charge.

The independence of the adjudicators is paramount in ensuring that motorists see that their appeals are considered fairly. Members of this Code agree to indemnify PA against the decisions of the IAS.

7.1 Operation of the IAS

- 7.1.1 Appeals will be considered by the Independent Appeals Service.
- 7.1.2 Subscribers to the AOS Code of Practice agree to accept the decision of the IAS.
- 7.1.3 The IAS will consider the lawfulness of any Parking Charge having regard to the all applicable legislation and case law.
- 7.1.4 The IAS will not consider the merits of any mitigating circumstances which do not compromise the lawfulness of the charge but the IAS, in their reasons for disallowing an appeal, may advise the Operator to review an otherwise lawful charge where there are exceptional circumstances for doing so.
- 7.1.5 Appeals will only be considered by the IAS after the person appealing has exhausted the Operator's own internal appeals or complaints procedure; this does not preclude the person raising their concerns with Office of Fair Trading or any other similar authority.
- 7.1.6 Where the appeal is in respect of a Notice to Driver the following provisions apply:
 - a. Appeals will only be accepted if they are received by the IAS within 21 days from the date of rejection of the Operator's internal appeal unless the appellant shows there are exceptional circumstances for making the appeal out of time.
 - b. Appeals will only be accepted where the following are identified:
 - i.) the vehicle registration mark;
 - ii.) the name and a current serviceable address of the Driver;
 - iii.) the Creditor or operator's name;
 - iv.) the land that the vehicle was parked on; and
 - v.) the date of issue of the Parking Charge.

- c. Appeals must clearly identify the grounds upon which the Driver states that he is not liable for the Parking Charge and be accompanied by any such evidence that the Driver would like to be considered during the appeal.
2. Where the appeal is in respect of a Notice to Owner the following provisions apply.
- a. Appeals will only be accepted if they are received by the IAS within 21 days from the date of rejection of the appeal to the Operator unless the appellant shows there are exceptional circumstances for making the appeal out of time.
 - b. Appeals will only be accepted where the following are identified:
 - i.) the vehicle registration mark;
 - ii.) the name and a current serviceable address of the Driver;
 - iii.) the Creditor or operators name;
 - iv.) the land that the vehicle was parked on;
 - v.) the date of issue of the Parking Charge Notice; and
 - vi.) the date of the rejection of the internal appeal.
 - c. Appeals must clearly identify the grounds upon which the Owner states that he is not liable for the Parking Charge and be accompanied by any such evidence that the Driver would like to be considered during the appeal.
- 7.1.7 Upon receipt of a valid appeal, the IAS will notify the Operator of the grounds put forward by the applicant within 7 days of receipt of the same. The Operator then has 5 working days to provide a response to the appeal or to withdraw the charge should they not wish to contest it. If no such response is received, the IAS will consider the case having regard to the information that is available at the time.
- 7.1.8 Appeals will only be allowed if it appears to the adjudicator that the Parking Charge is unenforceable due to any applicable rule of law or contract.
- 7.1.9 The IAS endeavours to notify both parties of the outcome of any appeal within 28 days from the date of receipt the same. Whilst an appeal is being determined, any enforcement action shall be suspended. However, where the appeal does not properly identify the Driver and an address for service, the operator or his agents may still apply for the Owners details from VRA where they consider it necessary to do so.
- 7.1.10 It will only be deemed necessary to request the Owner details from VRA when the Driver is unknown or not sufficiently clear, and delaying such an application would prevent the Creditor from providing the Notice to Owner.
- 7.1.11 You agree to abide by the decision of the IAS in any appeal.
- 7.1.12 You agree to pay the relevant fee for any appeal.
- 7.1.13 It is a matter for the Operator whether to allow payment at a discounted rate where an appeal is refused.

The IAS will be released in 2017

SCHEDULE 8

VEHICLE REGISTRATION AUTHORITIES

| | | |
|------------------------------|---|--|
| Australian Capital Territory | Road Transport Authority | www.rego.act.gov.au |
| New South Wales | Roads & Maritime | www.rms.nsw.gov.au |
| Northern Territory | Department of Transport | www.transport.nt.gov.au |
| Queensland | Department of Transport & Main Roads | www.tmr.qld.gov.au |
| Tasmania | Department of Transport | www.transport.tas.gov.au |
| Victoria | Vic Roads | www.vicroads.vic.gov.au |
| Western Australia | Department of Transport | www.transport.wa.gov.au |
| South Australia | SA Gov | www.sa.gov.au/topics/transport-travel-and-motoring/motoring/vehicles-and-registration/vehicle-registration |



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