

# PUBLIC DEFENDER



with  
Nathan Mawby  
[publicdefender@heraldsun.com.au](mailto:publicdefender@heraldsun.com.au)

## Council stance panned

Nathan Mawby

MANY people try to beat a parking fine.

But Public Defender thought Robert and Margaret Clarke might have a case to dispute a \$119 fine for parking in a loading zone near the Queen Victoria Market in March.

Mr Clarke, 73, suffers primary pulmonary hypertension, a compromised immune system and bladder cancer.

Tumours in his bladder mean he suffers excruciating pain when he cannot empty it at short notice and clots in his pulmonary artery impede blood flow to his lungs, leaving him exhausted and dizzy walking short distances.

The Mount Waverly couple were returning from a chemist in Melbourne when Mr Clarke needed a toilet. After circling the block looking for a space, they were forced to stop in the Victoria St loading zone so Mrs Clarke could help her husband to a toilet.

The 200m walk left Mr



**Fine mess:** Robert and Margaret Clarke. Picture: BRUCE MAGILTON

Clarke breathless and it took them about 15 minutes to make it back to the car.

On returning, a parking officer told them the fine would be lifted if they wrote an explanatory letter.

But Melbourne City Council responded to their letters only by extending

the deadline by which they had to pay.

After speaking to the Clarkes, who spend up to \$600 a month on medical bills, Public Defender asked the council to reconsider.

Yesterday, after senior members of the Parking and Traffic branch re-

viewed the letters and information provided by Public Defender, the fine was withdrawn.

Mr Clarke said it was a moral victory and a matter of principle, having witnessed countless cars parked in disabled spots without permits get away without a fine.

"I went through excruciating pain to just get across the road," he said.

Ms Clarke said she felt the letters had not been reviewed with much feeling in the first instance.

"They haven't taken an intelligent look at the circumstances surrounding the situation," she said.

## Ensuring a duty of care

ANDREW DIMSEY



Maurice Blackburn  
principal lawyer

WHEN children go to school we expect that there will be rules that promote safety and will prevent, as much as possible, life-long injuries.

At law this is called a duty of care, and it's something all schools must meet while children are in their care.

A similar duty exists for workers in their employment.

This week a client of mine has won \$120,000 compensation in a case against the state of Victoria after she suffered an eye injury at Braybrook Secondary College four years ago.

Tanjil Duan was only 14 when another student flicked a 20c piece, which hit her in the eye, leaving her with a significant eye injury. She required surgery and will require further surgery in the future. The jury accepted the school failed to meet its duty of care towards Tanjil.

Tanjil's education has been disrupted and she will be affected for the rest of her life.

Maurice Blackburn has represented other children who have suffered serious injuries while in school and TAFE woodworking classes.

Do you have a child who has been badly hurt at school or TAFE?

If you have any questions or would like to find out more, join me on the blog live at noon today.

Legal information is general in nature and is not to be regarded as legal advice from Maurice Blackburn.

**NEED LEGAL ADVICE?  
BLOG NOON-1PM**  
[heraldsun.com.au/opinion](http://heraldsun.com.au/opinion)

**Q** I BOUGHT a water tank in 2008 and discovered it leaked only last year when it filled for the first time. The installer is now in liquidation and the Chinese manufacturer has refused to honour the warranty. Can I claim reimbursement through my credit card company on the grounds the tank has been proven not to be of merchantable quality? Are there any other options?

Anne Whitworth,  
Wantirna South

**A** IN certain situations, consumers can contact their credit card company to ask for a

**qa YOUR QUESTIONS ANSWERED**

**CREDIT CARD REIMBURSEMENT**

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A CITIZEN

charge-back, but time limits are involved, and it applies only to purchases made with sellers. Because the manufacturer did not sell the goods to the consumer, a charge-back does not apply. If the manufacturer has a presence in Australia, the consumer could take the matter to VCAT.

When a business is in

liquidation, consumers owed money or goods or who have a legal claim against the company (faulty products or workmanship), stand in line with other unsecured creditors.

Register as an unsecured creditor to make a claim and the insolvency process will determine if anything can be done.

## COMPLAINT OF THE WEEK

**Q** A MEMBER of my family lives in a rental property and received a small "zap" from the shower and called an electrician. An electrical fault was found.

During the inspection the electrician "fried" the computer and a small appliance but won't accept responsibility.

The electricity provider was called to correct the power board outside and the switchboard inside.

Who is responsible?

Robyn Smith,  
Bentleigh

**A** LIABILITY for the loss is unclear, Maurice Blackburn lawyer Andrew Dimsey advises. The landlord had a duty to ensure a safe power supply.

The electrician had a duty to render services with due care and skill.

Who is liable depends on whether it was the electrician's fault or the owner's maintenance failure. The answer requires an expert report from another electrician.

You could then make a claim at VCAT.

**If you have to fight the system,  
don't fight it on your own.**

**Maurice  
Blackburn  
Lawyers**

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