

Social Justice Practice Newsletter

Edition 2 - 2010

**Maurice
Blackburn**
Lawyers

Since 1919

Since our last edition the Social Justice Practice has received many referrals and enquiries for assistance, both from organisations associated with Maurice Blackburn and the general public. We continue to invite applications that fit within our focus. For more information, please visit the Social Justice Practice page on www.mauriceblackburn.com.au.

The rights of international students

Our campaign for the rights of international students has been gaining particular momentum of late. A number of community legal centres told us of the systemic poor treatment of international students at work. We have taken instructions from a number of students who were grossly underpaid or not paid at all for work performed. International students face particular difficulties as they are usually limited by their visa conditions to working only 20 hours per week during the semester. This rule puts them in a very difficult position: they either survive on extremely low incomes or work longer hours to make ends meet and risk being sent home.

Some of our clients are facing severe poverty. One was sending money home to support his wife and infant twins. He had not seen his twins in nearly two years because he was unable to afford to fly home or to bring his family to Australia. He survived on instant noodles. He was too ashamed to admit this to his family. Other international students have suffered workplace injuries but have not been aware of compensation entitlements.

The courts have been quite tough on employers that breach award conditions and fail to pay award rates, particularly when it concerns employees who are particularly vulnerable. Under the *Fair Work Act 2009*, employers can be liable for a maximum penalty of \$33,000 for a company and \$6,600 for an individual, for breaches of the relevant award. In 2009, a Magistrate ordered an employer who was described as a 'want-to-be slave merchant' by the Fair Work Ombudsman to pay fines of more than \$200,000.

Our clients tend to struggle with English, are nervous about demanding payment from their employers and are generally unaware of the protections offered to them in Australia. Our aim has been to litigate some individual test cases in a high profile manner. We hope that this will act both as a warning to employers that they will not get away with exploitative practices and to encourage students to demand respect for their rights.

We invite applications for assistance in these matters.

Historic win for Aid/Watch

On 1 December 2010, Maurice Blackburn was involved in a historic victory in the High Court. A majority decision confirmed the charitable status of Aid/Watch, which is a significant win for Australian charities who engage in advocacy and ends a four year gag on free speech for many NGOs.

This case has enormous implications, not just for Aid/Watch, but for all charities seeking to influence government policy in the public interest. The four-year legal battle started when Aid/Watch had its charitable status revoked in 2006 by the ATO after criticising Federal Government overseas aid policy. The decision by the ATO sent shockwaves through the charitable sector and had a chilling effect on the willingness of the charitable sector to speak out. Maurice Blackburn has represented Aid/Watch since the beginning of this dispute.

In their judgment, the High Court agreed with many of our arguments – that engaging in political debate is an essential part of advocacy work and very much in the public interest. This gives



legal and financial certainty to charities and had broadened the definition of what charities could do 'in the public interest'. The judgment makes it clear that charities can speak out fearlessly, can generate public debate and can push the government for change on issues that are relevant to the work they do.

This decision overturns over 90 years of Australian law defining the role of charities. It brings the law up to date with how charities work in the 21st century. The High Court has agreed that engaging in public debate confirms implied rights in the Constitution. This puts Australia ahead of other western nations in the way charities will be able to engage in public debate on matters of public benefit.

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Dr Mohamed Haneef is returning to Australia

Maurice Blackburn is continuing to assist wrongfully arrested and detained Dr Mohamed Haneef through our Social Justice Practice. Dr Haneef is returning to Brisbane in December for mediation talks involving Maurice Blackburn and lawyers on behalf of the Australian government. The mediation will discuss compensation for Dr Haneef following his wrongful and illegal detention by the Australian Federal Police (AFP) for 25 days in July 2007.

An independent inquiry (the Clarke Inquiry) proved Dr Haneef's innocence and found no evidence of wrong doing on the part of Dr Haneef. This reflected views expressed at the time to the government by ASIO. It also reflected views expressed in the investigation of senior members of the Queensland Police Service and the AFP officer in charge of the investigation who ultimately charged Dr Haneef with a terrorism offence.

Case updates

Maurice Blackburn's challenge to gene patenting continues. This is a cutting edge piece of litigation run by a team headed by Rebecca Gilson in our Sydney office. The issue of gene patenting was the subject of a 4 Corners episode earlier this year. There is currently similar litigation underway in the US, run by the American Civil Liberties Union (<http://www.aclu.org/free-speech-womens-rights/aclu-challenges-patents-breast-cancer-genes-0>). In response to our application, Myriad gifted the patent to the Australian public. However, we are continuing to challenge the status of the law that allows companies to patent genetic material. The result of our application will have significant effects in this field of law and in social policy more generally, as 20% of human genes have already been patented.

Maurice Blackburn Partner, Rod Hodgson, is hopeful that under the facilitation of Mr Fitzgerald, the mediation will produce a sensible outcome for Dr. Haneef and the Australian people. We hope that it will draw a line under what has been a very regrettable incident for Australia's long held reputation as a great place for skilled people from overseas to live and work.

At least \$8 million of taxpayer money has been spent by the Howard government and the AFP in pursuing Dr Haneef. The mediation was agreed to, in order to minimise the prospects of more wasted money on lengthy court battles. Dr Haneef will travel to Australia for the December 20 and 21 mediation accompanied by his wife and daughter and we look forward to assisting him through this process.

The court recently set a timetable which will see the parties agree on a common set of scientific facts, and then take remaining disputed issues to the court for hearing. A trial has been provisionally listed for mid-September next year.

We continue to advocate on behalf of traditional owners of Muckaty Station in their opposition to the nomination of the site for Australia's first nuclear waste dump. The issue is set to have a great political focus after the Greens tabled in the Senate an open letter from Muckaty Traditional Owners to all new members of parliament urging them to stop plans to build a waste dump on the site on 29 September 2010.

Terry Irving - malicious prosecution in Queensland



Maurice Blackburn has taken up the case of Terry Irving. Terry is an Aboriginal man from Townsville who was wrongfully imprisoned for four and a half years, in 1993, for a bank robbery in Cairns that he did not commit. Local lawyer Michael O'Keeffe, worked for ten years to help him clear his name, taking the matter to the High Court of Australia, which quashed the conviction. The prosecutor did not pursue a retrial.

Maurice Blackburn have taken over the case as part of our commitment to social justice, and our lawyers in Queensland are working towards a just outcome for Mr Irving who wants an inquiry, an apology and compensation for his wrongful arrest and imprisonment.