‘Horizontal Censorship’:

Employers’ Private Law Power to Restrain Free Speech

IRSQ PATRON’S LUNCH ADDRESS, HILTON HOTEL, FRIDAY 19 JULY 2019

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GOOD AFTERNOON EVERYONE.

YOU’LL BE GLAD TO KNOW I HAVE NO POWERPOINT SLIDES. IT WOULD HAVE COST SEVERAL THOUSAND DOLLARS TO SCREEN THEM. AND, TO BE HONEST, I DON’T HAVE *THAT MANY* POWERFUL POINTS TO MAKE.

I DARESAY YOU ARE EXPECTING ME TO TALK ABOUT A CERTAIN ISRAEL FOLAU. BUT I AM SO OVER THAT SAGA, I PLEDGE IT IS THE LAST TIME I’LL NAME CHECK HIM. IN ANY CASE, HIS IS JUST A HIGH PROFILE INSTANCE OF A MUCH BROADER PARADIGM THAT I HAVE DUBBED ‘HORIZONTAL CENSORSHIP’.

‘HORIZONTAL CENSORSHIP’ IS NOT CENSORSHIP IN THE TRADITIONAL SENSE. IT IS NOT INESCAPABLE, TOP-DOWN LAW – LIKE THE COMMON LAW OF DEFAMATION, OR ADMINISTRATIVE OR CRIMINAL LAW AROUND MOVIE CLASSIFICATIONS OR PUBLIC OBSCENITY. IN TRUTH, BETWEEN THE 1960S AND 1990S, THOSE AREAS OF LAW

LIBERALISED SIGNIFICANTLY. WHEREAS TODAY, SOCIAL POWER IS LESS FOCUSED ON TOP DOWN LAW AND GOVERNMENT, AND MORE DIFFUSED, ESPECIALLY ACROSS CORPORATE ORGANISATIONS AND PLATFORMS.

HORIZONTAL RESTRAINTS ON SPEECH, OF COURSE, ARISE WELL BEYOND EMPLOYMENT. THEY CAN OCCUR WHENEVER THERE IS AN INTERSECTION OF PRIVATE LAW POWER WITH THE ABILITY TO RESTRAIN COMMUNICATIONS. THIS PRIVATE LAW POWER USUALLY ARISES FROM CONTRACT LAW OR PROPERTY LAW, AND SOMETIMES BOTH. FOR EXAMPLE, IF THE HILTON HOTEL HAD OBJECTED TO MY TOPIC FOR TODAY AND REFUSED THE BOOKING. BUT THE LAW ISN'T ONE WAY ON THIS, SO THERE ARE SOME LIMITATIONS ON THAT PRIVATE POWER. SOME LIMITS ARISE UNDER LABOUR LAW, FOR EXAMPLE UNFAIR DISMISSAL RULES. SOME ARISE UNDER THE BURGEONING REALM OF ANTI-DISCRIMINATION LAW. AND IT IS POSSIBLE SOME WILL ARISE UNDER JUDGE-MADE COMMON LAW (THINK HOW JUDGES HAVE LONG READ DOWN UNREASONABLY WIDE POST-EMPLOYMENT RESTRAINT CLAUSES), AND THIS MAY INCLUDE JUDGE-MADE LIMITS YET TO BE DEVELOPED.

AT THE RISK OF REINFORCING THE OLD STEREOTYPE OF INDUSTRIAL RELATIONS AS BLOKEY TERRITORY, LET'S MOVE SIDEWAYS, FROM OUR UNMENTIONABLE RUGBY UNION PLAYER TO ANOTHER FOOTBALL CODE. YOU MAY HAVE HEARD OF ROBBIE FOWLER WHO NOW COACHES THE BRISBANE ROAR. 20 YEARS AGO HE WAS A STAR STRIKER FOR LIVERPOOL FOOTBALL CLUB. EVEN WITHOUT THE IMAGES ON POWERPOINT, I WANT YOU TO PICTURE THIS. DURING A EUROPEAN FIXTURE, AFTER SCORING, FOWLER RAISED HIS FAMOUS RED SHIRT, TO DISPLAY A T-SHIRT EMBLAZONED WITH SUPPORT FOR STRIKING LIVERPUDLICAN

DOCK WORKERS. FOR THAT SIN, HE WAS DISCIPLINED AND FINED SEVERAL THOUSAND EUROS.

FAST FORWARD NOW, TO THIS MAY. AS *HIS* SIDE WON THE EUROPEAN CHAMPIONS FINAL, LIVERPOOL'S BRAZILIAN GOALKEEPER ALISON BECKER SHED HIS JERSEY IN TRIUMPH, IN FRONT OF THE BIGGEST WORLDWIDE AUDIENCE IN FOOTBALL THIS YEAR. BENEATH WAS A T-SHIRT EMBLAZONED WITH THE SYMBOLS: CROSS, EQUALS, HEART. TRANSLATED FROM EMOJI, I BELIEVE THIS MEANS 'JESUS = LOVE'. (AT FIRST I THOUGHT THIS MIGHT'VE BEEN A PECULIARLY BRAZILIAN PENTECOSTAL MOTIF: BUT LAST WEEK I SAW IT SKETCHED ONTO A PAVEMENT AT SOUTH BANK). AFTER HIS DISPLAY OF EXPRESSION, NO ONE COMPLAINED.

THERE YOU HAVE TWO LIVERPOOL PLAYERS, TREATED QUITE DIFFERENTLY BY THEIR EMPLOYER CLUBS AND LEAGUES. IN A MICROCOSM, WE SEE SOME OF THE ISSUES STARKLY: WHAT SPEECH IS POLICEABLE AND WHEN? AND IF POLITICS – EVEN COMMUNITY POLITICS – TAINTS SPORT, THEN WHAT ABOUT RELIGION, WHOSE POWER TO DIVIDE IS NO LESS?

YET THESE WERE ALSO EASY EXAMPLES. CASES OF MEN, PAID HANDSOMELY TO REPRESENT THEIR EMPLOYERS' BRANDS, TRYING TO LEVERAGE THEIR NOTORIETY TO MAKE STATEMENTS NOT JUST IN WORK TIME BUT ON A WORK STAGE… WELL, AS LONG AS THE LEAGUES AND CLUBS SPELL THE RULES OUT CLEARLY IN ADVANCE AND ENFORCE THEM, FEW WILL WEEP FOR THE EMPLOYEES OR CELEBRITIES CONCERNED.

IN CONTRAST, CONSIDER LESS CLEAR CUT CASES OF BRAND PROTECTION. REMEMBER THE SBS SPORTS JOURNALIST, WHO TWEETED SHARP CRITIQUES OF ANZAC DAY CULTURE?

UNDER PRESSURE FROM POLITICALLY CORRECT CONSERVATIVES, INCLUDING FROM THE THEN MINISTER OF COMMUNICATIONS MR TURNBULL, SBS DISMISSED HIM. THE JOURNALIST, SCOTT MCINTYRE, WAS TWEETING ON ISSUES UNRELATED TO HIS REPORTING ROLE. HIS EMPLOYER *EXPECTED* HIM TO USE SOCIAL MEDIA TO CREATE A HUMAN FACE. WAS HE ALSO EXPECTED TO BE A POLITICAL EUNUCH? ON THE OTHER HAND, JOURNALISTS ARE THE FACE OF THEIR MEDIA EMPLOYERS. IN THIS CASE, SBS FACED NOT JUST OFFENDING ANY NATIONALISTIC PARTS OF ITS AUDIENCE, BUT ITS GOVERNMENT FUNDERS. AS IT WAS, AN UNLAWFUL DISMISSAL CLAIM BASED ON PROTECTION OF POLITICAL OPINION WAS SETTLED CONFIDENTIALLY.

OR CONSIDER THE RECENTLY FILED CASE OF CAMERON AND GOLDWIND AUSTRALIA. THE EMPLOYER, GOLDWIND, IS A FOREIGN OWNED, RENEWABLE ENERGY BUSINESS. THE EMPLOYEE, MS CAMERON, WAS ITS OH&S AND QUALITY OFFICER. SHE ALSO BECAME A ONE NATION PARTY CANDIDATE, AND THAT INVOLVED HER REPUBLISHING PARTY MATERIAL THAT WAS CRITICAL OF PRO-RENEWABLE ENERGY POLICY, AND WHICH ALSO SUGGESTED HIGHER TAXES FOR FOREIGN OWNED COMPANIES. HER ADVERSE ACTION CLAIM, FOR DISMISSAL RELATING TO POLITICAL OPINION, IS ON FOOT.

WE COULD BE HERE ALL DAY MULTIPLYING EXAMPLES. SOMETIMES THE SPEECH IS POLITICAL, SOMETIMES RELIGIOUS, SOMETIMES INDUSTRIAL, SOMETIMES A MIX. REMEMBER THE HIGH PROFILE HIGH COURT JUDGEMENT ON THE USE OF THE WORD 'SCAB'. WHERE BHP FOUGHT OFF A VICTIMISATION CASE, AFTER IT HAD SACKED A QUEENSLAND COAL MINER FOR USING THE TERM 'SCAB' ON A PICKET LINE, IN BREACH OF BHP'S 'BE RESPECTFUL OF COLLEAGUES' POLICY. 'NOW SCAB' IS A TERM WITH A WELL

ESTABLISHED MEANING DATING TO 18TH CENTURY ENGLISH… I OFTEN WONDER IF AN UNFAIR DISMISSAL CLAIM WOULD HAVE GONE THE OTHER WAY.

AT THE HEART OF ALL THESE KINDS OF CASE, ACCORDING TO LIBERAL PHILOSOPHY, ARE TWO CLASHING RIGHTS: FREE EXPRESSION AND FREE ASSOCIATION. THERE'S NO SUCH THING AS ABSOLUTE FREE SPEECH OF COURSE, UNLESS YOU'RE SCREAMING ALONE IN THE WILDERNESS. WE NEVER SPEAK OUTSIDE A CONTEXT OF SOCIAL AND LEGAL OBLIGATIONS TO OTHERS.

TO LABOUR LAWYERS, 'FREEDOM OF ASSOCIATION' TYPICALLY MEANS THE ABILITY TO JOIN AND ACT IN A COLLECTIVE LIKE A TRADE UNION. BUT THERE IS ALSO A WIDER IDEA, IN POLITICAL PHILOSOPHY, OF THE FREEDOM OF DIS-ASSSOCIATION. SUCH AS WHERE AN EMPLOYER WANTS TO DIS-ASSOCIATE ITSELF FROM THE SPEECH OF ONE OF ITS WORKERS, EITHER OUT OF CONCERN FOR ITS 'BRAND', OR FOR INTERNAL HARMONY AT THE WORKPLACE, OR A BIT OF BOTH.

AS IS OFTEN THE CASE, THINKING OF THE WORLD IN TERMS OF CLASHING LIBERAL RIGHTS CAN LEAD US INTO AN APPARENT STALEMATE OR IMPASSE.

INSTEAD, SOME BRITISH LABOUR LAWYERS HAVE ARGUED FOR REGULATING THIS AREA UNDER THE PARADIGM OF PRIVACY LAW. THEY ARGUE THAT THE WORKER, AS A HUMAN BEING, DESERVES A PROTECTED SPACE, FREE OF STRICTURES IMPOSED BY A SURVEILLING EMPLOYER. BUT THE WHOLE POINT OF EXPRESSION, SOCIO-POLITICAL EXPRESSION IN

PARTICULAR, IS THAT IT IS PART OF *PUBLIC* DISCOURSE. SO NOTIONS OF PRIVACY DON'T FIT EASILY HERE.

WHAT ABOUT THE PARADIGM OF ANTI-DISCRIMINATION? WE DO HAVE A PATCHWORK OF STATE ANTI-DISCRIMINATION LAWS THAT AFFECT THE WORKPLACE, INCLUDING HIRING OF CONTRACTORS; AND WE HAVE SOME SIMILAR PROVISIONS IN THE NATIONAL FAIR WORK ACT FOR EMPLOYEES. BUT IS RELIGIOUS OPINION, LET ALONE SOCIO-POLITICAL OPINION, SUCH A FIXED PART OF THE SELF THAT EITHER NEATLY FITS THE DISCRIMINATION LAW PARADIGM? OPINIONS AND THEIR EXPRESSION ARE NOT INNATE OR SOLID, LIKE GENDER OR RACE. AND AGAIN, CLASHING RIGHTS CLAIMS ARISE.

TAKE LAST OCTOBER'S CASE IN THE UK SUPREME COURT, OF LEE AGAINST ASHERS BAKING COMPANY. IT WAS DUBBED THE 'GAY CAKE CASE'. A HUSBAND AND WIFE BAKERY IN BELFAST REFUSED TO SUPPLY A CAKE DECORATED WITH THE SLOGAN 'SUPPORT GAY MARRIAGE' AND AN IMAGE OF A DOMESTIC LOOKING BERT AND ERNIE. THEY KNEW THE CAKE WAS FOR A PRO-GAY-MARRIAGE EVENT FOR A GROUP CALLED 'QUEER SUPPORT', THOUGH THEY DIDN'T KNOW THE CUSTOMER WAS A GAY MAN. THE CUSTOMER MADE A CLAIM, ALLEGING BREACHES OF NORTHERN IRISH LAW PROHIBITING DISCRIMINATION ON GROUNDS OF POLITICS, SEXUAL ORIENTATION *AND* RELIGIOUS BELIEF OR RATHER LACK OF RELIGIOUS BELIEF HE LOST. THE COURT HELD THE BAKERS' OBJECTION WAS 'TO THE MESSAGE, NOT THE MAN'. IN EFFECT, THE BAKERS HAD A RELIGIOUS FREEDOM TO DISSOCIATE FROM THE MESSAGE.

AT THE RECENT AUSTRALIAN ELECTION, A LOCAL OFFICEWORKS STORE REFUSED TO PRINT THE REACTIONARY POLITICAL MATERIAL OF A FRASER ANNING PARTY CANDIDATE. HOW

DO YOU THINK QCAT'S DISCRIMINATION DIVISION WOULD HAVE RULED ON THAT MATTER?

A LIBERTARIAN MIGHT SAY TO ALL THIS: JUST LET CONTRACT REIGN. GO ELSEWHERE IF YOU DON'T LIKE A SUPPLIER'S OR EMPLOYER'S TERMS. BUT THAT'S UNREALISTIC IN THE CASE OF EMPLOYMENT: EMPLOYMENT GOES TO A PERSON'S ECONOMIC SURVIVAL AND DIGNITY. IN THE UK CAKE CASE, BECAUSE THE BAKERY WASN'T A MONOPOLY ABUSING MARKET POWER, THE OUTCOME SEEMS REASONABLE. BUT THE UK COURT FLAGGED THAT THE RESULT MAY WELL HAVE BEEN DIFFERENT HAD IT INVOLVED PEOPLE 'BEING REFUSED *JOBS*, ACCOMMODATION OR BUSINESS' BECAUSE OF THEIR SOCIO-POLITICAL OPINIONS OR ACTIVITY.

CLEARLY, NON-INDUSTRIAL SPEECH THAT PROVABLY AND SIGNIFICANTLY DISRUPTS WORKPLACE HARMONY CAN BE POLICED BY EMPLOYERS. ALSO, EMPLOYERS CAN POLICE SPEECH THAT IS INDEPENDENTLY UNLAWFUL – LIKE HATE SPEECH - ESPECIALLY IF THE EMPLOYER FACES VICARIOUS OR INDIRECT LIABILITY FOR THAT SPEECH, AND *AT LEAST PROVIDED* THERE IS A CONNECTION TO WORK. I SAY 'PROVIDED THERE IS A CONNECTION TO WORK' BECAUSE THE USUAL TEST FOR A RATIONAL EMPLOYER DIRECTIVE OR ACTION IS THAT THE UNDERLYING EMPLOYEE BEHAVIOUR CONNECTS TO THE COURSE OF THE JOB AT HAND.

MY NAMESAKE, PROFESSOR SYDNEY SPARKES ORR, LOST HIS JOB IN A FAMOUS HIGH COURT CASE AFTER SLEEPING WITH A STUDENT. EVEN IN THE 1950S THAT WASN'T MERE

‘OUT OF HOURS’ CONDUCT. A MORE MODERN PROFESSOR’S VICE MIGHT BE TO LIKE A BIT OF MARIJUANA AT HOME. WHAT IF THAT BEHAVIOUR IS CAUGHT BY THE POLICE AND PLAYED UP BY THE MEDIA? IT *MIGHT* REFLECT ON A SCHOOL TEACHER. BUT SURELY NOT A UNIVERSITY LECTURER, EVEN IN A STODGY FIELD LIKE LAW.

IF WE GO TOO FAR DOWN THE ROUTE OF EMPLOYER RESTRAINTS ON SPEECH, WE AS A SOCIETY *AND* EMPLOYERS AS A CLASS ARE CREATING RODS FOR OUR BACK. DO WE REALLY THINK THAT NEATLY WORDED POLICIES ABOUT NOT BRINGING A COMPANY INTO DISREPUTE SHOULD BE THE NORM? UNDERSTANDABLY, CORPORATIONS WORRY ABOUT RISKING THEIR BRAND IF THEY DON’T REACT TO SOCIAL MEDIA PILE-ONS. BUT EMPLOYERS COULD STAND FIRM, AND STATE PUBLICLY THAT THEY HAVE A POLICY OF RESPECTING RATHER THAN CHILLING SOCIAL DISCOURSE, THAT THEY LACK THE POWER TO DISCIPLINE EMPLOYEES SIMPLY BECAUSE OF A PASSING BACKLASH, HOWEVER INTENSE. IF NOTHING ELSE, FAILURE TO DO THAT THAT JUST *INVITES* AN ENDLESS CYCLE OF SOCIAL MEDIA PILE-ONS AND POLITICAL PRESSURE.

ONE OF THE STRENGTHS OF AUSTRALIAN LABOUR LAW HAS BEEN THAT WE DON’T BELIEVE IN A NAÏVE, ONE SIZE FITS ALL, IDEA OF THE RULE OF LAW. FOR EXAMPLE, IN ACCESSING UNFAIR DISMISSAL LAW, WE TREAT DIFFERENT PAY GRADES DIFFERENTLY.

ONE SIMPLE REFORM WOULD BE TO ACCEPT CLEAR EMPLOYER POLICIES THAT RESTRAIN EXPRESSION MADE IN A PERSONAL CAPACITY, BUT *ONLY* FOR MANAGERIAL AND OTHER EMPLOYEES OVER A CERTAIN PAY GRADE. PAY HERE WOULD ACT AS A PROXY FOR PEOPLE

COMPENSATED FOR THE RISK THEIR EXPRESSION MAY POSE TO THEIR EMPLOYING ORGANISATION. BUT THEN LEAVE IT TO PARTICULAR INDUSTRIES TO DEVELOP AWARD OR EBA RULES TO NEGOTIATE EXCEPTIONAL CASES. ONE EXAMPLE WOULD BE TO PERMIT A MEDIA ORGANISATION TO REQUIRE THAT JOURNALISTS REFRAIN FROM PONTIFICATING, BUT ONLY ON AREAS THEY ARE EMPLOYED TO REPORT ON. (BY JOURNALISTS HERE I MEAN REAL REPORTERS, NOT THE COMMENTARIAT). ANOTHER WOULD BE FOR THE EDUCATION SECTORS TO DEVELOP EBA RULES THAT ARE TAILORED TO THEIR NEEDS.

A SECOND REFORM WE NEED IS MORE CONSISTENCY IN CATEGORIES OF PROTECTION AROUND AUSTRALIA. WHEN YOU COMPARE STATE DISCRIMINATION AND EVEN LABOUR LAW, THERE IS A COMPLEX PATCHWORK. SO, UNDER QLD'S ANTI-DISCRMINATION ACT, BOTH 'RELIGIOUS BELIEF OR ACTIVITY', OR 'POLITICAL BELIEF OR ACTIVITY' IS COVERED, AS INDEED IS CONNECTIONS WITH PEOPLE HAVING THOSE ATTRIBUTES. BUT POP OVER THE TWEED RIVER, AND THE NSW DISCRIMINATION ACT CONTAINS NO SUCH PROTECTIONS.

SIMILARLY, IN MOST JURISDICTIONS 'POLITICAL' OPINION HAS BEEN RELATIVELY NARROWLY INTERPRETED, TO MEAN COMMENT ON ISSUES IN THE DOMAIN OF GOVERNMENT OR CURRENT POLICY DEBATES. YET IN SOME CASES, NOTABLY FROM WESTERN AUSTRALIA, 'POLITICAL' EXPANDS TO THE BROAD SENSE TO ALSO INCLUDE DISCUSSING POWER RELATIONS BETWEEN GROUPS IN SOCIETY.

THESE PATCHWORK DIFFERENCES OBVIOUSLY POSE PARTICULAR PROBLEMS FOR EMPLOYEES AND MANAGERS IN NATIONAL FIRMS

BEYOND THE BIG PICTURE NORMATIVE QUESTIONS OF HOW TO SCOPE AND REGULATE THIS AREA, THERE ARE A HOST OF LEGALISTIC CONUNDRUMS WITH THE CURRENT LAW. I'LL POINT OUT JUST THREE.

FIRST, YOU MIGHT THINK THE FAIR WORK ACT PROVIDES A CODE FOR PRIVATE SECTOR EMPLOYMENT ACROSS AUSTRALIA. BUT THE FAIR WORK ACT'S ADVERSE ACTION PROTECTIONS DO *NOT* APPLY IF THE EMPLOYER'S RESPONSE WAS *NOT* UNLAWFUL UNDER STATE DISCRIMINATION LAW. IN A PRELIMINARY DECISION IN THE SBS/ANZAC DAY CASE, A JUDGE SAID THIS MEANT THAT NSW'S LACK OF PROTECTIONS FOR POLITICAL DISCRIMINATION COULD HELP SBS. BUT MORE RECENTLY, IN THE ONE NATION CANDIDATE CASE, A CIRCUIT JUDGE THOUGHT THAT THIS BOOST FOR EMPLOYERS ONLY APPLIED IF THERE WAS A *SPECIAL DEFENCE* UNDER STATE LAW WHICH THE EMPLOYER HAD MET.

SECOND, WE HAVE THE QUESTION OF MIXED EMPLOYER MOTIVES. ALTHOUGH THE FAIR WORK ACT REQUIRES THE EMPLOYER TO PROVE THEY WEREN'T TAINTED BY PROHIBITED REASONS, SINCE THE BENDIGO TAFE CASE EMPLOYERS HAVE LEEWAY TO SWEAR THEY WERE MOTIVATED ONLY BY POSITIVE REASONS – LIKE PROTECTING THEIR BRAND OR WORKPLACE HARMONY. LEAVING EMPLOYEES TO FIND A SMOKING GUN OR EMAIL TO PROVE THE EMPLOYER WAS REACTING TO THE *SUBSTANCE* OF THEIR EXPRESSION. IN REALITY, OF COURSE, IT IS USUALLY TWO SIDES OF THE ONE COIN, OR RATHER ONE SPEECH ACT.

THIS, ACCORDING TO PROFESSOR FORSYTH, MAY BE WHY OUR UNMENTIONABLE RUGBY UNION STAR IS SUING FOR UNLAWFUL TERMINATION, RATHER THAN ADVERSE ACTION. IF SO IT'S A BIT OF LITIGATIONAL ARBITRAGE RATHER THAN A SIGN OF RATIONALITY IN THE LAW.

THIRD AND FINAL, IS THE QUESTION OF EMPLOYER POLICIES. IN THEORY, YOU CAN RESTRICT A LOT THROUGH A TIGHTLY WRITTEN, WELL PUBLICISED POLICY THAT IS INCORPORATED INTO THE EMPLOYMENT CONTRACT. SUCH POLICIES GIVE EMPLOYERS WIDER SCOPE OVER 'OUT OF HOURS' CONDUCT THAN IF THEY JUST SOUGHT TO RELY ON THE IMPLIED RIGHT OF LOYAL OBEDIENCE OR CONTROL. UNDER THE RIGHT TO CONTROL, THE COURTS REQUIRE UNILATERAL EMPLOYER DIRECTIVES TO BE 'REASONABLE' AS WELL AS LAWFUL.

I'LL EXPLAIN THE DIFFERENCE VIA AN 'OUT OF HOURS CONDUCT' CASE THAT ALWAYS IRKS ME. A BLUE COLLAR, LION NATHAN BREWERY WORKER, WITH A CLEAN EMPLOYMENT HISTORY WAS DISMISSED. FOR ONE INSTANCE OF LOW LEVEL DRINK DRIVING, IN HIS OWN TIME AND IN HIS OWN CAR. THAT WAS HELD TO BE A FAIR DISMISSAL. NOW A UNILATERAL DIRECTION TO A FACTORY WORKER TO AVOID DRINK DRIVING ON WEEKENDS IS *NOT* REASONABLY CONNECTED TO WHAT THEY ARE EMPLOYED TO DO. BUT THE COMMISSION HAPPILY UPHELD A CONTRACTUALISED POLICY TO THAT EFFECT. THE POLICY WAS DRAFTED IN THE INTEREST OF PROMOTING THE BREWERY'S SOCIAL COMMITMENT TO (AHEM) RESPONSIBLE DRINKING.

NOW ANY DRAFTERS OF EMPLOYMENT MANUALS IN THE AUDIENCE ARE IN WHAT NICE PEOPLE CALL A 'DIALOGUE WITH THE COURTS', BUT WHICH IS REALLY A BIT OF A CAT AND MOUSE GAME. THE COURTS WILL, IN SUITABLE CASES, READ POLICIES DOWN IF THEY AREN'T CLEAR, TO HELP ACHIEVE JUSTICE FOR EMPLOYEES. WHICH LEADS TO THE CAT AND MOUSE GAME WHERE YOUR POLICIES BECOME LESS COMPREHENSIBLE AND PRACTICAL, AS THEY BECOME MORE LONG-WINDED AND EXPLICIT.

IN FINISHING, THANKS FOR YOUR ATTENTION. I ALSO WANT TO ACKNOWLEDGE ALLY WELLS, WHO SOME OF YOU MAY KNOW AS A FORMER QIRC ASSOCIATE, OTHERS MAY KNOW ALLY FROM CROWN LAW'S WORKPLACE LAW UNIT. SHE AND I HAVE A LONG ARTICLE ON THIS TOPIC, UNDER REVIEW WITH THE AUSTRALIAN JOURNAL OF LABOUR LAW.

ADDRESSING A CROWD OF ENGAGED PRACTITIONERS LIKE YOU IS A BIT DAUNTING, GIVEN YOUR COLLECTIVE WISDOM, AS WELL AS HOW THE WINE MAY HAVE LOOSENED YOUR INHIBITIONS. I'M ALSO AWARE THAT IN THIS TOPIC YOU MAY HAVE MORE EXPERIENCE THAN ME.

IN A RECENT CASE FROM JAMES COOK UNIVERSITY, A DISSIDENT PROFESSOR RIDD WAS DISMISSED OVER REPEATED INTEMPERATE AND PUBLIC CRITIQUE OF THE WORK OF COLLEAGUES IN THE CLIMATE CHANGE FIELD. HE SUED AND WON. THE FEDERAL CIRCUIT JUDGE CAME DOWN STRONGLY ON THE SIDE OF ROBUST DISCOURSE, THANKS TO AN EBA WHICH TRUMPED THE EMPLOYER'S POLICY ON CIVILITY. SO, WHILST CRACKS ARE APPEARING IN HIGHER EDUCATION, AS UNIVERSITIES ARE REINVENTED AS COMPETITIVE CORPORATE BRANDS AS MUCH AS PLACES OF SCHOLARLY INTERACTION… WE DO STILL CLING TO AN IDEAL OF INTELLECTUAL FREEDOM.

IN THAT SPIRIT … OVER TO QUESTIONS.