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In Vino Veritas: An Overview of the Legal Issues Relating to the Use of Alcohol in the Workplace

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Introduction

According to the Health and Wellbeing Institute of Australia, referring to a 2004/2005 study on the costs of tobacco, alcohol and illicit drug abuse to Australian society, 'annual costs of harmful consumption of alcohol are huge with productivity loss in the workplace estimated at $3.5 billion.'[1] Whilst no industry is exempt from problems related to alcohol consumption amongst its workforce, some industries may be considered to be more at risk than others. The beverage alcohol industry, including the wine industry, is an industry in which certain workers do come into close contact with alcohol: whether at the production or the retail stage. Workers in the wine industry, particularly those involved with harvesting, production and distribution, are often required to operate machinery, vehicles and heavy equipment, work at heights and handle hazardous substances. All of these operations necessitate a workforce whose abilities are not impaired and whose health and safety is not compromised by their consumption of alcohol. One interpretation of data from the National Hospital Morbidity Database estimated that 7.5% of work-related injury cases were alcohol-related[2] and other studies have found that there is 'sufficient evidence to suggest an association between alcohol use and occupational and machine injuries.'[3] This is relevant to the wine industry given that a recent infrastructure audit conducted by Wine Australia listed as one of the top

five production-related issues for the industry the need to contain occupational health and safety costs and workers' compensation costs.[4]

Aside from the risk of work-related injury, alcohol consumption on the part of workers may lead to increased absenteeism and may also have a short or long-term impact on the health of workers. Given that studies have shown that 43% of the workforce have been found to drink at levels which place them at risk or high risk of short-term harm, and 11.5% at levels that put them at risk or high risk of long-term harm,[5] this is of particular significance for those employers who wish to put into place strategies for succession planning and the development of their workforce. For the Australian wine industry, in particular, there is widespread concern about the lack of skilled and experienced labour.[6] Thus, the ability to retain an experienced and healthy workforce is fundamental, not only to the success of individual businesses but to the longevity of the industry as a whole.

Whilst there are no laws which specifically prohibit the consumption of alcohol in the workplace there are a range of laws and common law duties which impose liabilities on employers and employees where their employees are adversely affected by the consumption of alcohol. Where a worker's alcohol consumption in some way places themselves or their co-workers at risk of injury, the employer's responsibility for such injury is not always clear cut. This is particularly the case where consumption of alcohol is in some way encouraged, allowed or sanctioned by an employer, such as in situations where alcohol is provided in work time, in or after meetings, after work but still on the premises, or at work-functions (such as Christmas parties). The friction between the ideals of occupational health and safety and the association of alcohol with workplace morale often create a range of legal issues and this paper seeks to explore some of them. It commences with a consideration of the issues of drug and alcohol testing of employees both prior to and during the course of their employment, and overviews a range of circumstances where consumption of alcohol in the employment context is problematic.

Pre-employment – alcohol and drug testing

Increasing numbers of employers use a variety of tests to assist in the selection and promotion of employees. These may include intelligence tests, personality inventories, an investigation into past criminal records, medical

tests and examinations.[7] Often when a job requires certain physical attributes, employment may be offered subject to the prospective employee passing a pre-employment medical examination. In some instances, such as in some mining industries,[8] pre-employment medical testing may even be a statutory requirement. The reason for such examinations, screenings and tests is not only to 'get the best person for the job' but also in many instances to ensure a level of safety for employees by selecting the person who is not going to endanger their own safety or the safety of others.[9] There is a general perception that such examinations may assist in reducing injuries, absenteeism and sick leave.[10]

Often a medical examination or some other test is a pre-condition to employment. That is, the employee is offered employment on condition that they satisfactorily pass a particular test or examination. In the context of this paper, this generally means passing a medical examination which shows that the applicant is free from drug or alcohol addiction. The right to impose conditions upon an offer of employment is based on the general principles of contract law, which allow for a conditional offer of employment to be made, so that the employment contract is complete only when those conditions have been met. Because it is the employer who imposes those conditions, it may be thought that such conditions are a matter of employer prerogative.[11] The current industrial approach, however, is the that imposition of pre-employment screening or testing is an industrial issue and is a matter for negotiation between industrial parties and can be the subject of an industrial agreement[12] in the same way as drug and alcohol testing carried out during the course of employment. The issue seems to be one of achieving a balance between privacy of the employee, on the one hand, and health and safety at the workplace on the other.

There is nevertheless a question as to the extent to which a medical practitioner can determine whether a person's abilities will be impaired by reason of their habitual consumption of alcohol and, further, to what extent alcoholism can be determined on examination, where an employee denies excessive consumption. It follows that drug and alcohol testing in the course of the employment is of some significance, as will be discussed below.

Drug and alcohol testing at work

Industrial instruments more and more frequently provide that an employer has the right to require the employee to submit to a range of drug and alcohol tests. Failure to satisfactorily pass such a test, accompanied by some indication that the test results show an impairment for work, may result in the employee being stood down at work or dismissed. On the other hand claims for unfair dismissal may arise where an employee is dismissed following an unsatisfactory result of a workplace medical examination such as a urine test, which discloses the presence of a non-prescribed drug or alcohol, but where there is no evidence that the worker was unable to perform work safely.13 Various cases establish that in order to be effective, in the sense of preventing unnecessary litigation, the employers' policies and practices must not only be clear14 and consistently applied15 but should also be adequately disseminated to staff.16 More recently a line of cases establish that employers need to demonstrate that the employee was not only aware of the existence of a policy but also aware of the consequences of failing a drug or alcohol test. For example, in Perkins v Golden Plains Fodder Australia/Macpri Pty Ltd17 the employer included a zero tolerance alcohol and drug policy in the employment agreements under which its employees were engaged. It was found at the hearing that employees were aware of the policy. In this particular instance the employee in question was asked to submit a urine test following a random breath test. The employee refused and was dismissed. It was held that the immediate dismissal was unfair and that the employee should have been counselled and warned that he would be dismissed if he did not co-operate in the future. [18]

Given that drug and alcohol testing can be invasive and involve the provision of sensitive personal information, such as details of drug and alcohol usage, the need to strike a balance between an individual's privacy, on the one hand, and health and safety in the workplace on the other, is a central theme. In *BHP Iron Ore Pty Ltd v Construction, Mining, Energy, Timberyards Sawmills and Woodworkers Union of Australian, Western Australian Branch*[19] the Western Australian Industrial Commission noted, in relation to BHP's policy on drug testing that:

> '…the Programme involves an intrusion into the privacy of individual employees. However, the current standards and expectations of the community concerning

> health and safety in the workplace as evidenced by legislative prescriptions and judgments of courts and industrial tribunals are such that there will, of necessity, be some constraint on the civil liberties at times and, in particular, an intrusion into the privacy of employees.'[20]

The Commission's approach in the BHP case referred to above is illustrative of the more general approach taken by the courts which, in relation to debates around drug and alcohol testing and workplace policy on drug and alcohol use, seems to favour safety over privacy and advocate a generally proactive approach towards safety.[21] Interestingly as drug and alcohol testing becomes more and more sophisticated, some issues of privacy may resolve themselves. For example, many traditional forms of drug and alcohol testing were carried out by urine sampling – a method which may cause the subject to feel embarrassed or even 'invaded'. However a range of tests now available show that oral fluid/saliva sampling is as effective as, and in some cases even preferable to, urine sampling, although there are some ongoing doubts about the reliability of saliva drug testing.[22] Given the overriding concerns as to fairness in industrial legislation, employees are entitled to access information held by the employer in order to ensure that the employer has not misused that information.[23] Such misuse might be in the form of work allocations, shift rosters or overtime allocations being based on a perceived propensity of a particular employee to consume drugs of alcohol at given hours. If any tests performed at the request of the employer and used as a basis for making decisions of this kind are inaccurate, an employer may have acted improperly which could, in turn, give rise to litigation.

In cases where an employer's policy clearly prohibits its workers being under the influence of alcohol in the workplace, evidence that an employee is under the influence of alcohol, particularly if the performance of their duties is inhibited or where the health and safety of the workplace is compromised, would provide a solid ground for dismissal of the employee. It does not, however, follow automatically that an employee who is drunk in the course of their employment necessarily loses all rights and entitlements, such as the right to compensation in the event of injury. The question of when an employee's consumption of alcohol takes them completely out of the course of their employment and excludes them from all protections is considered further below.

Alcohol consumption in the course of the employment

There is a line of authorities showing that where a worker is invited or expected to attend at some celebration, event or occasion which has been sponsored or provided by the employer, injuries sustained in the course of that activity will generally be compensable. The most recent authority for this appears to be *Wolmar v Travelodge Aust Ltd*[24] where a worker was injured when she fell whilst attending a Christmas celebration held in her workplace. There was no evidence that she was drunk. The key issue was whether her attendance at the function was 'in the course of her employment'. The court held that as the employer has encouraged staff to attend and had provided the facilities for the party, the event should be regarded as being in the course of the employment. As the injury occurred as part of the employment relationship she was entitled to workers' compensation.

Kortegast v Williamson[25] concerned a building worker who remained onsite after working hours, with his employer and other colleagues. They consumed a quantity of alcohol before the worker was injured when he climbed and then fell from one of the buildings under construction. Mathews AJ found that the worker's injury occurred in the course of his employment. The decision contains a useful survey of authorities, with Justice Mathews relying heavily on the decision of the Australian High Court in *Hatzimanolis v ANI Corporation.*[26] In that case the High Court found that the expression 'arising out of or in the course of the employment' included intervals or interludes which the employer had induced or encouraged the employee to spend at a particular place or in a particular way. The High Court observed that an interval or interlude in an overall period or episode of work will ordinarily be seen as part of the course of the employment. By contrast with *Kortegast*, in *White v Institute of Surveyors Australia Inc*[27] the ACT Supreme Court held that a worker's injuries did not occur in the course of her employment when she continued to socialise and drink alcohol to excess with work colleagues following a work-related function. In *White* it was noted that the employer's offer to take the worker home gave her a clear signal that the formal work-related function had ended. Thus, when the worker later slipped and fell at the bar it was held that the employment connection was no longer evident. Thus in *White*, the court was able to sever the employment connection with reference to time and place.

Other cases illustrate that a worker whose actions were never part of their employment and which were not endorsed or encouraged by the employer, may be acting outside of the scope of their employment when engaged in such activities. In *McMahon v Lagana*[28], for example, the NSW Supreme Court held that a worker was not in the course of his employment when he became engaged in a fight on a wharf adjacent to a boat occupied by him as part of his employment as a deckhand. The facts of the case disclosed that the worker had engaged in an altercation early one evening, after having consumed a modest amount of alcohol at a local hotel, then returned to the boat where the altercation resumed. Even though the altercation occurred in close proximity to the employee's workplace (the boat), the altercation was wholly unrelated to his employment duties and had not been endorsed by the employer. As such the employee was acting outside of the scope of his employment. In *Gibson v ASP Ship Management Pty Ltd*[29]a similar result was reached in the case of a seaman who, whilst in an intoxicated state, was ordered to go ashore and who suffered injuries when he dived into shallow water. The Tribunal held the injuries were not sustained in the course of the employment. By contrast in the case of *Taylor v ASP Ship Management Pty Ltd*[30] a seaman was found to be in the course of his employment when he went ashore to do some shopping and later consumed a quantity of alcohol at a bar, where he was subsequently injured. The Tribunal noted that the shopping excursion and the attendance at the bar where the injury had occurred had taken place in the company of a number of seamen and that this activity had been encouraged by the employer. The excursion (including attendance at the bar) thereby fell within the parameters of the *Hatzimanolis* decision and was considered to be within the course of the worker's employment. Nevertheless, the Tribunal ultimately ruled that the worker's excessive consumption of alcohol had amounted to wilful misconduct, which disentitled him to compensation. It follows that in some circumstances the excessive consumption of alcohol in the workplace may result in the finding that the worker was engaging in misconduct, and those circumstances are discussed further below.

Wilful misconduct and Occupational Health and Safety

All Australian compensation systems have provisions which disentitle workers to compensation if the injuries are self-inflicted or the result of serious and wilful misconduct. The leading case in relation to wilful

misconduct is the British case of *Johnson v Marshall Sons & Co Ltd*[31]. In that case the House of Lords made it clear that the words 'serious and wilful misconduct' denoted more than simple negligence. The House of Lords indicated that because workers' compensation legislation was remedial in nature, something far beyond negligence would need to be proved in order to show serious and wilful misconduct. The word "wilful" imports that the misconduct was deliberate and not merely inadvertent or thoughtless in nature. The word "serious" relates to the nature of the misconduct rather than the actual consequences of the misconduct itself. Although, as noted above, all Australian workers' compensation statutes provide that a worker may lose their entitlement to compensation if it is proved that their injury or disease is attributable to the serious and wilful misconduct of the worker, there are some exceptions. If an injury or disease arising out of or in the course of a worker's employment results in the death of the worker, then dependant spouses, children or parents will still receive the deceased worker's entitlements even if there is a finding of serious or wilful misconduct on the part of the worker. In the case of serious and permanent injury, any serious and wilful misconduct on the part of that worker will also not result in loss of entitlement.

In the context of alcohol consumption, the case of *Murray v Morphett*[32] is relevant. Morphett was a cattle drover who was required as part of his employment to camp near the cattle and care for them at night. One evening he consumed a large amount of rum and fell asleep too close to the fire he had lit. In the morning he was found with severely burnt feet, one of which later had to be amputated. It was held that there had been wilful misconduct through the consumption of the liquor, which consequently lead to him sleeping too close to the fire, but due to the severity of the injuries the worker was nevertheless entitled to compensation. Therefore, where a worker sustains serious or permanent injury or dies, wilful misconduct will not negate entitlements to compensation and compensation will only be withheld on the basis that the worker was outside the course of their employment when the injury (or death) occurred. That is to say, if the activities do not fall within the employment relationship in the first place, as in *Gibson v ASP Ship Management Pty Ltd* noted above, it matters not whether the injuries are serious and permanent because the worker has not satisfied the threshold criteria.

Quite apart from the question of whether an intoxicated worker is entitled to workers' compensation in respect of any injury they may sustain, sanctions may be taken against employees who fail to take care of their own safety and the safety of other employees. All jurisdictions allow prosecutions to be commenced against employees who, in breach of directions or guidelines, behave in a manner which endangers others. It follows, however, that an employer who has been found to have approved of or encouraged alcohol consumption in the workplace is themselves at peril of prosecution if a worker injures themselves, or another, because such approval by an employer could amount to a breach of the employer's duty of care to maintain a safe workplace.

Conclusion

Ensuring a healthy workforce and maintaining a safe workplace will require employers in the wine industry to adopt and disseminate clear drug and alcohol policies. In particular, as advised in the code of practice issued by Workcover New South Wales: 'Workplace Health and Safety in the Wine Industry'[33], a drug and alcohol policy should:

> ' …..be a written document developed by management in consultation with workers and the relevant union. It should spell out the code of behaviour required of staff at all levels and should cover the following points:
>
> - when it is appropriate to consume alcohol
> - acceptable standards of work performance
> - appropriate use of prescribed drugs
> - prohibition on being under the influence of illegal drugs at work.'

In particular, in order to be legally effective and protect an employer from claims of unfair dismissal, employers should ensure not only that the rules on drug/alcohol use are clear, but that the consequences of breaching the policy are also very clear. In addition, the policy should be implemented and applied consistently. As well as having in place clear drug and alcohol polices, some employers may implement drug and alcohol testing of workers, particularly if those workers are required to operate machinery. However, a policy of drug and alcohol testing, whether pre-employment or during employment, should be aimed primarily at achieving a safe

workplace and should not be 'excessive'. It may, for example, only be necessary to test for drugs and alcohol in the event of a reasonable suspicion that a worker's ability is impaired, or even only as part of an investigation into a workplace accident. Testing policies should also address concerns as to employee privacy, ensuring for example that unauthorised access to such information is restricted and that the preservation of confidentiality is given the highest priority. Employers should also be aware that employees will have the right to access information held about them by their employees.

This paper has considered the circumstances in which workers who are intoxicated may be held to be within the course of their employment. This is significant on two counts: firstly because workers who are in the course of their employment may be entitled to compensation, if injured, and, secondly, because others who are exposed to harm by an intoxicated worker may then have a claim against the employer on the basis that the workplace was unsafe. Employers should, therefore, be aware of situations in which the provision or approbation of alcohol consumption in the workplace, or associated with work (for example at a work-related social function), may involve a corresponding finding that workers in those situations are still in the course of their employment. Workers whose alcohol consumption amounts to wilful and serious misconduct will not, however, be entitled to compensation as a result of intoxication (albeit that the intoxication may have occurred in the course of their employment) unless the injuries sustained were serious or permanent. This further highlights the need for all employers to adopt and enforce effective drug and alcohol policies.

References

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[1] Health and Wellbeing Institute of Australia accessed at http://www.hwia.com.au/scientific-foundation/the-government-focus-for-the-workplace.php referring to Collins D and Lapsley H. The costs of tobacco, alcohol and illicit drug abuse to Australian society in 2004/05, p3 2625. Canberra: Department of Health and Ageing, 2008.

[2] Australian Compensation Safety and Compensation Council '*Work-Related Alcohol and Drug Use – a Fair work Issue*', March 2007 at page 10, para 38 (referring a study by Pidd K & Roche A 'Responding to Alcohol and Other Drug Issues in the Workplace.' Workplace Drug & Alcohol Use Information and Data Sheet 3. NCETA, Adelaide).

[3] Australian Compensation Safety and Compensation Council '*Work-Related Alcohol and Drug Use – a Fair work Issue*', March 2007 at page 10 (referring to a study by English and Holman in 2005).

[4] Australian Government, Australian Wine and Brandy Corporation '*Wine Australia: Directions to 2025, Audit of Infrastructure Constraints*' at page 3.

[5] Australian Compensation Safety and Compensation Council '*Work-Related Alcohol and Drug Use – a Fair work Issue*', March 2007 at page 8 paragraph 54 (referring to a study by Pidd K & Roche A 'Responding to Alcohol and Other Drug Issues in the Workplace.' Workplace Drug & Alcohol Use Information and Data Sheet 3. NCETA, Adelaide).

[6] See, for example, Australian Government, Australian Wine and Brandy Corporation '*Wine Australia: Directions to 2025, Audit of Infrastructure Constraints*', at page 3.

[7] Medical practitioners have to take care that the reports supplied and the examinations carried out do not breach anti-discrimination legislation. See for example the discussion of the American experience which is largely applicable in Australia, S Hoffman and G Pansky 'Pre-employment Examination and the Americans with Disabilities Act: How Best to Avoid Liabilities under the Federal Law'(1998) *Journal of Occupational Rehabilitation* 8(4) 255.

[8] R. Johnstone, 'Pre-employment Health Screening: the Legal Framework', (1988) 1(2) *Australian Journal of Labour Law* 115.

[9] Some American research shows that pre-employment medical checks are of limited value if not properly carried out. What is required is "pre-screening" to examine the specific attributes needed for a task and to match the screening appropriately. The same research suggests that pre-screening does not prevent injury, but may reduce the severity of and lost time due to disability. D W Nassau, 'The Effects of Pre-work Functional Screening on Lowering an Employer's Injury Rate, Medical Costs, and Lost Work Days', (1999) 24(3) *Spine* 269-274.

[10]American research supports this view. See J M Melhorn, 'The Impact of Workplace Screening on the Occurrence of Cumulative Trauma Disorders and Workers Compensation', (1999) (41)2 *Journal of Occupational Health* 84.

[11]R Johnstone, 'Pre-employment Health Screening: The Legal Framework', (1988) 1(2) *Australian Journal of Labour Law* 115 at 117-119.

[12]*Metals and Engineering Workers Unions Western Australian Branch v East Perth Electrical Services and Others* [1995] WAIRComm 8 (16 February 1995).

[13]A number of cases touch on this point. In *Robins v Sir Charles Gairdner Hospital* AIRC 032/99 Print R0725 (14th January 1999) the applicant was held to be fairly terminated by giving reasonable notice to him when he was found in possession of marijuana in his workplace and admitted his intention to smoke it. In *Benck v Hamersley Iron Pty Ltd*, [1995] WAIRC 157 an employee was dismissed when his supervisor detected the smell of cannabis in the employee's work vehicle. The employer had a policy which provided that *"Participating (sic) of drugs and alcohol on the worksite…will be grounds for dismissal".* Even though there was no scientific testing to detect the presence of the drug, it was held that the evidence of the supervisor was not contradicted and that the dismissal in the circumstances was not unfair.

[14]In *Kidd v Linfox Australia Pty Ltd* [2008] AIRC 398, it was held that the employee had been unfairly dismissed when he failed to submit to drug testing, firstly because the evidence of whether the employee was aware of the policy and trained in it was unclear, secondly, because on interpreting the policy it was determined that the employee need only submit for drug testing once a year. At the time of his dismissal he had already been tested previously that year. *TWU v Linfox* [2004] NSWIRComm 1116, noted as an example of clear policies applied fairly. In *De Bono v TransAdelaide* AIRC Print R 8699 7th September 1999, the employee tested positive to a urine sample showing cannabis consumption. The employee's conditions of employment prohibited impairment by drugs. The dismissal of the employee was held to be unfair, because the employer could not establish that the level of drug detected resulted in impairment.

[15] *Kay v Cargill Foods Australia* AIRC Print 960432 6 September 1996 an employee was held not to be unfairly dismissed when it was established that an employee who had signed an acknowledgement of company policy prohibiting employees *"being under the influence of drugs…when*

reporting for work, while working or while on company premises" was subsequently detected as having a positive cannabis test. By contrast in *Worden v Diamond Offshore General Company* AIRC Print S0242 18th October 1999 the applicant employee was a long-term cannabis user. He was dismissed when an alcohol and drug test revealed traces of cannabis and methamphetamines. He had been employed for approximately 10 years, over which time there was evidence that a policy of prohibiting drug use on the employer's oilrig was in place but, apparently, never enforced. The Australian Industrial Relations Commission held that the employer had by neglect of its own policy condoned the activities of the applicant.

[16] *De Bono v TransAdelaide* AIRC Print R 8699 7th September 1999, *Kidd v Linfox Australia Pty Ltd* [2008] AIRC 398.

[17] *Perkins v Golden Plains Fodder Australia/Macpri Pty Ltd* [2004] SAIRComm 5.

[18] See also *Larkin v Boral Resources (WA) Ltd* [2002] WAIRComm 6779.

[19] *BHP Iron Ore Pty Ltd v Construction, Mining, Energy, Timberyards Sawmills and Woodworkers Union of Australian, Western Australian Branch* [[1998] WAIR Comm 130.

[20] *BHP Iron Ore Pty Ltd v Construction, Mining, Energy, Timberyards Sawmills and Woodworkers Union of Australian, Western Australian Branch* [1998] WAIR Comm 130.at page 6.

[21] Authority for the proactive approach can be found in a host of cases including, *O'Sullivan v Department of Education and Training* (2003) 125 IR 361 at 398; *Maddaford v Coleman* (2004) 138 IR 21 at [86], *WorkCover v Fletcher Constructions Australia Ltd* (2002) 123 IR 121 at [43]; *WorkCover v Kirk Group Holdings Pty Ltd* (2004) 135 IR 166 at [58]. *Cicciarelli v Coles Myer Logistics Pty Ltd* AIRC Print 973404 (15th August 2006) which held that Coles could use CCTV footage introduced to monitor its warehouses for safety reasons as well and could use this in evidence over disciplinary matters where worker safety was in issue. *Pioneer Construction Materials Pty Ltd v Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch* [2003] WAIRComm 10049. Although note *Australian Workers Union, New South Wales v BHP Steel (AIS) Pty Ltd Limited* [2003] NSWIRComm 461 where the NSW IR Commission refused to allow BHP to include a term in it policy to require disclosure of prescription medications.

[22] *Shell Refining (Australia) Pty Ltd Clyde Refinery v Construction Forestry Mining and Energy Union* [2008] AIRC 510. Rio Tinto have also agreed to use saliva based testing – but there has been some delay in its introduction. See 'AIRC to hear Rio Tinto and CFMEU drug testing dispute test case' available at http://www.ohsalert.com.au/news_selected.php?selkey=36672 OHS Alert last viewed 1st September 2008 and *Construction, Forestry, Mining and Energy Union v Coal & Allied Mining Services Pty Limited (Mount Thorley Operations/Warkworth Mining)* [2008] AIRCFB 1159.

[23]For example as noted in *Australian Workers Union, New South Wales v BHP Steel (AIS) Pty Ltd Limited* [2003] NSWIRComm 461 B Belling, 'Employment Disclosure and Other Privacy Issues', (1999) 5(2) *Employment Law Bulletin* 11 at 13.

[24] *Wolmar v Travelodge Aust Ltd* (1975) 26 FLR 249.

[25] *Kortegast v Williamson* [2002] NSWSC 1134.

[26] *Hatzimanolis v ANI Corporation* (1992) 173 CLR 473.

[27] *White v Institute of Surveyors Australia Inc* [2004] ACTSC 61.

[28] *McMahon v Lagana* [2004] NSWCA 164.

[29] *Gibson v ASP Ship Management Pty Ltd* [2004]AATA 947.

[30] *Taylor v ASP Ship Management Pty Ltd* [2000]AATA 254.

[31] *Johnson v Marshall Sons & Co Ltd* [1906] AC 409.

[32] *Murray v Morphett* (1958) SR (NSW) 59.

[33] Workcover New South Wales, in conjunction with the Hunter Valley Vineyard Association *WineCare* Committee and the Wine Industry Association of NSW, '*Workplace Health and Safety in the Wine Industry*,' although note that the code of practice is currently under review.