



Riverwood: Time to review employment contracts

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- 🌀 **Company's policies and procedures**
- 🌀 **Obligations for employers and employees**
- 🌀 **Incorporation into contract of unregistered redundancy agreement**

It is not unusual for employment contracts to provide that the terms and conditions of work include the company's policies and procedures as they may be varied from time to time by the company. However, given a recent decision handed down by the Full Bench of the Federal Court, employers should bear in mind some interesting issues when formulating their contracts of employment in such ways.

The Federal Court concluded that policies and procedures which formed part of a contract of employment imposed obligations not only on the employee but also on the employer. Moreover, the Court found that the employer could not unilaterally vary its policies and procedures and that changes to the policies and procedures could only be made through the express variation of the contract of employment or entry into a new contract of employment.

Specifically, the Court upheld an earlier decision that an unregistered redundancy agreement was incorporated into an employee's contract and as a result, the employee was entitled to a significant redundancy package.

Background in Riverwood

The employer, Riverwood International (Riverwood) retrenched the employee, Mr McCormick, upon the sale of its business. During the 37 years of Mr McCormick's employment with Riverwood the business had changed hands on several occasions.

In October 1993, Riverwood sent Mr

McCormick a letter of offer which stated:

You agree to abide by all Company Policies and Practices currently in place, any alterations made to them, and any new ones introduced.

While the letter of offer did not itself refer to an entitlement to redundancy payments or to any specific redundancy agreements or policies, Riverwood's Human Resources Policies and Procedures Manual ('the manual') stated:

where terminations of employment are as a result of redundancy the terms and conditions of the company redundancy policy shall apply... For calculation see copy of Redundancy Agreement attached.

This Redundancy Agreement was an unregistered agreement entered into with the Printing and Kindred Industries Union.

After he was retrenched, Mr McCormick brought proceedings for redundancy entitlements based upon the formula set out in this agreement. Riverwood maintained that the unregistered agreement was not legally enforceable and that the severance payments which it made to employees in the past were of an ex gratia nature.

What did the Federal Court decide in the first instance?

At first instance, the Federal Court concluded that Mr McCormick was entitled to the redundancy benefits set out in the Redundancy Agreement. Riverwood appealed this decision.

What happened on appeal?

On appeal, Riverwood argued that the 1993 letter of offer imposed an obligation only upon Mr McCormick to comply with the provisions of the manual, and that Riverwood was at liberty to apply the terms of the manual or not at its discretion.

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The Full Court agreed that the Redundancy Agreement was incorporated by reference into Mr McCormick's contract of employment. In considering the contractual term in the letter of offer that referred to the manual, the Court concluded that the term was intended to impose **mutual** obligations on both Riverwood and its employees.

The majority of the Full Court found it ultimately unnecessary to determine whether or not the redundancy arrangement was implied into the contract of employment.

Justice North commented that although the letter of offer purported to allow Riverwood to vary its policies and practices, the inclusion of this term in the letter of offer did not create a legally binding obligation upon Mr McCormick to accept any unilateral alteration or addition. It was noted by Justice North that:

A purported agreement which leaves the content of the agreement entirely to the discretion of one party is not contractual in nature. Any alteration or addition to the company policies and practices could

only achieve binding contractual effect if there was a separate agreement to such alterations or additions either by way of variation of the existing agreement or by way of entering into a new agreement.

Justice Mansfield went further in his consideration of the circumstances in which the terms of the contract could be varied. His Honour stated that:

An employer's ability to change its policies or to introduce new policies from time to time would be constrained by an implied term that it would act with due regard for the purposes of the contract of employment . . . so it could not act capriciously and arguably could not act unfairly towards . . . [an employee]. It might also be a power which by implication, must be exercised reasonably having regard to the nature of the contract and the entitlements which exist under it.

Implications for employers

The Riverwood decision confirms that a written contract of employment or letter of offer is not the only source of entitlements for employees and obligations for employers.

While the facts of the case are specific to the circumstances considered by the Court, this decision has significant implications for employers:

- letters of offer and other contracts of employment of existing and future employees should be reviewed to determine whether policies and practices are incorporated by reference into the contract

A purported agreement which leaves the content of the agreement entirely to the discretion of one party is not contractual in nature.

- contracts of employment should clearly specify which documents or policies (if any) are intended to be incorporated into the contract. This is particularly important, for example, where an employee accepts employment with a new employer following the purchase of a business, as it may be unclear exactly which policies and practices are intended to be part of the employee's terms of employment. The new employer should particularise which (if any) policies and practices from the acquired business will continue to form part of the employees terms and conditions of employment
- the effect of any reference in the contract of employment to an employer's policies and procedures should be considered in view of the Court's finding that policies and procedures place obligations on employers to comply with their terms and
- employers should obtain agreement from employees for variations to existing policies and for the introduction of new policies, where the policies form part of the employee's contract of employment.

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