



## Organisational policies and the contract of employment

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Organisational policies are commonplace. The question is whether employees are bound by their terms and whether organisations would like them to be bound. Whist every case needs to be decided on its own facts, the case of *Peter Willis v Health Communications Network Ltd (No 2)* [2008] NSWCA 2 (8 February 2008) provides guidance on this issue.

### The facts

Peter Wills (**Wills**) was Health Communications Network Ltd's (**HCNL**) Chief Financial Officer (CFO). He was summarily dismissed and his employment terminated by HCNL on 13 April 2005 and pursuant to his employment contract was paid six months salary in lieu of notice.

Wills employment contract (**Contract**) contained a clause titled '*Other Terms and Conditions*' that provided for additional terms to be incorporated into his contract, adding that these terms and conditions were 'supplied to you'. Further the Contract contained an inconsistency clause that provided as follows:

*"your contract of employment dated 6th December 1999 provided that where there is any inconsistency between the two, the contents of this letter will prevail."*

Wills contract was later varied by a letter in which the period of notice of termination of employment was varied from that contained in the 1999 letter to provide for 6 months notice. HCNL later produced a revised set of Terms and Conditions of Employment that included a clause headed 'Policies' that read as follows:

*"Employees are expected to abide by all policies published by the Company's Board from time to time, including without limitation the Company's policies concerning trading in shares and inside information."*

On 9 August 2000 HCNL drafted a document entitled "Redundancy Policy" (**Policy**) that outlined its policy on the management of redundancies. The Policy provided a schedule for the calculation of redundancy payments and a definition outlining the meaning of this term. This policy was applied to 33 employees who were made redundant between October 2000 and February 2005, although it was not widely circulated or published.

### The issue

The question was whether the terms of the Policy including the meaning of redundancy and the making of a payment, were expressly or impliedly incorporated into the terms and conditions of Wills Contract. The Court observed that because the Policy was not expressly incorporated as a term into the Contract (despite Will's argument) then HCNL could not be compelled to make a payment under the Policy.

### The arguments rejected by the Court of Appeal

Wills made four primary arguments for incorporating the Policy into his Contract. The New South Wales Court of Appeal reached the following conclusions in regard to these arguments:

- that the Policy was not incorporated into Wills' Contract as it was not specifically mentioned or referred to in his Contract;
- that there was no general right to redundancy payment at law;
- that as a matter of fact and at law, there was no basis for the making compliance with the Policy an implied term of Wills Contract; and
- that the Policy was not incorporated into Contract by way of custom or usage (the Policy was not widely circulated or published by HCNL).

## Implications for organisational policy makers

HCNL is authority for on how companies can avoid having policies incorporated as terms and conditions of employment contracts. However, taking the opposite position where it is desirable to incorporate policies as terms of employment it can be seen that:

- where a term in an employment contract references an external organisational policy, that policy must be brought to the attention of the employee in a plain and unambiguous way in their contract of employment;
- the employer must ensure that the employee has read and understood the policy or ideally agreed to its terms;
- widely distributing or disseminating a policy and making it readily accessible for employees in places such as an employee intranet (or notice board) is likely to incorporate the policy into the contract of employment by way of custom or usage;
- employees must be contemporaneously alerted to changes in policies;

Considerable care needs to be taken in the case where an employer wishes to apply policies at their discretion or based on indeterminate criteria such as 'economic circumstances.

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*Care needs to be taken in disseminating policies to employees if these policies are not intended to be binding on the company...*

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