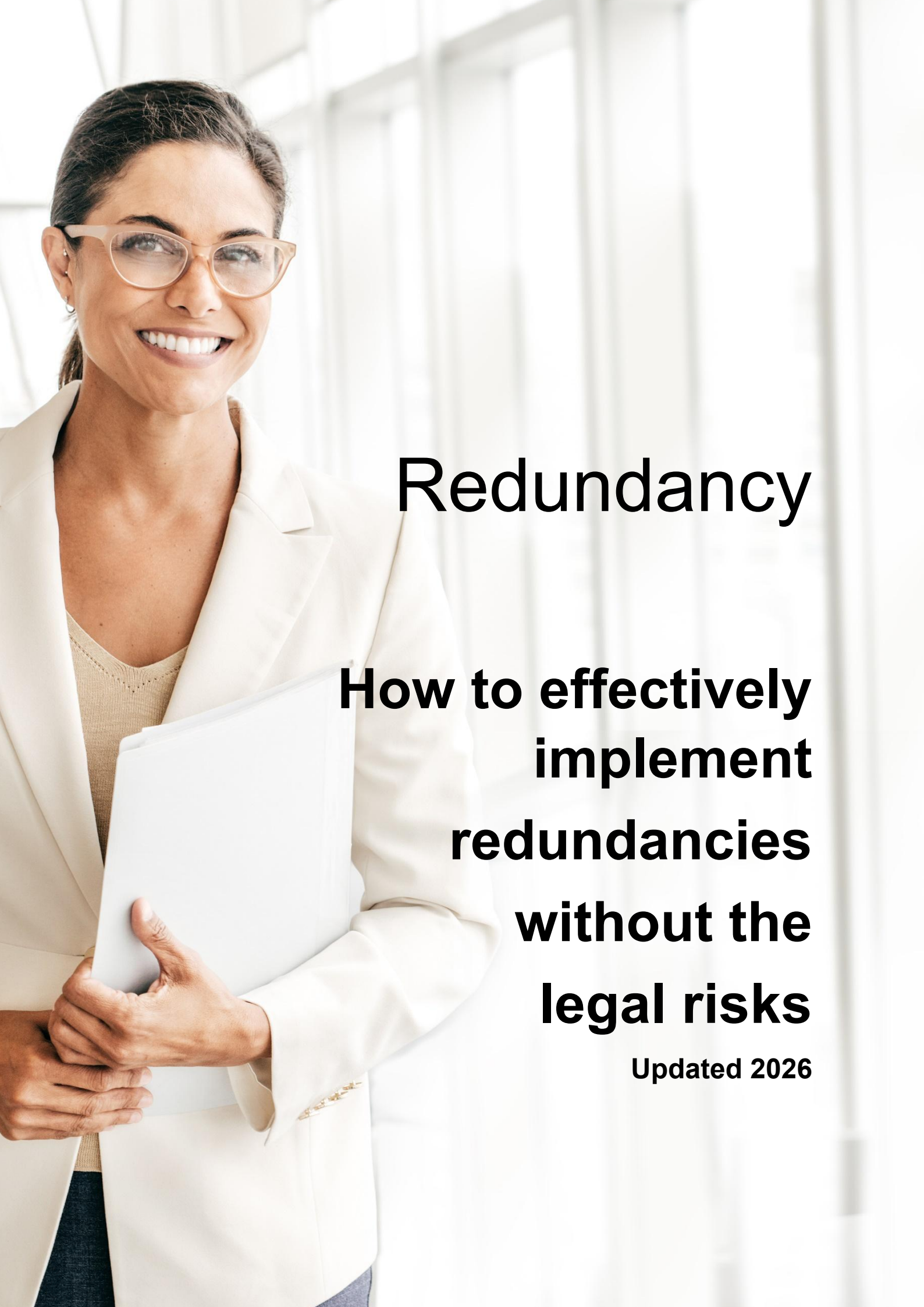

Redundancy

How to effectively implement redundancies without the legal risks

Updated 2026

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Introduction

Nobody likes having to make another person redundant. The decision can be emotionally challenging for business owners and managers, making the conversations even harder. To avoid claims of unfair dismissal and redundancies deemed not genuine, you need to ensure that it is approached strategically and logically with a stepped-out structure.

In short – to ensure redundancy is genuine and to have a well-managed process, you should;

- Genuinely seek the input of the affected employees about the proposed redundancies
- Ensure that you meet your consultation obligations.
- When considering redundancies, try to link with other more positive organisational changes to avoid redundancy survivor syndrome.
- Provide support to those under threat of redundancies and those within the wider business

Definitions

- **Redundancy** occurs when an employer no longer requires someone to perform a particular job due to changes in the business's operational requirements.
- **Retrenchment** occurs when an employee's employment is terminated because their role has become redundant
- **Redeployment** refers to offering an employee whose role is redundant continued employment in another role as an alternative to retrenchment
- **Structural redundancy** is a redundancy in which your business ceases to carry out a function or activity, resulting in you no longer requiring any employee to perform the work associated with the function or activity
- **Insolvency** is when an individual or organisation is unable to meet its financial obligations
- **Downsizing** is when you must reduce your workforce's headcount across some or all of the business.
- **Organisational Redundancy** is redundancy in which you decide to restructure or reorganise the performance of work across the business or in a particular part of it
- **Agreed Separation** is when an employee resigns in return for a statement of service and an ex gratis termination payment and usually agrees to release the employer of all claims and liability relating to the cessation of employment.
- **General Protections—**The Fair Work Act provides for a range of general protections. These protections safeguard the workplace rights and freedom of association rights of employees, employers, and other workforce members.
- **Reverse Onus of Proof** occurs when the subject of a complaint has the burden of proving that the complaint is not justified

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Redundancy steps to follow.

STEP ONE: Employee Job is no longer required.

- You no longer require anyone to perform the employees' jobs because of operational or structural changes in the business.
- You have completed a matrix of the duties of the role, where the work will go or if it no longer needs to be done by anyone, the reasons why.
- You may have a business plan that shows the change in the operations or the structure

Note: If is important at this stage to have done the background work on the reasons why there is a need for a role to be made redundant. ***If you fail to prepare, then prepare to fail***

STEP TWO – Consultation

This step is crucial, as every modern award contains a standard consultation clause requiring employers to consult with employees and their representatives when they intend to implement significant changes at the workplace.

Failure to follow a consultation process places you at significant risk of breaching a Modern Award and potentially having a redundancy deemed not to be genuine.

The clause requires consultation where an employer has decided to introduce major changes in production, program, organisation, structure, or technology that are likely to significantly affect employees or where an employer proposes to change an employee's regular roster or ordinary hours of work.

In these cases:

- employers must notify employees and their representatives who may be affected by the proposed changes
- employers must discuss the changes with the affected employees and their representatives and provide information in writing to them as soon as practicable after a definite decision has been made about:
- the nature of the changes
- effects the changes are likely to have on employees
- measures to prevent or reduce the adverse effects of such changes on employees
- employers must then promptly consider matters raised by the employees and their representatives in relation to the changes.

While an employer must consider the matters raised by employees, it does not have to obtain the consent of employees or their representatives to implement changes to the business. However, best-practice employers understand that achieving real and sustainable workplace change is best achieved through cooperative and open change management processes.

Employers with employees regulated by modern awards, enterprise agreements or other industrial instruments should be aware of and familiarise themselves with the dispute resolution procedure set out in their relevant award, enterprise agreement or industrial instrument.

What you need to do

- notify the employees of the change giving rise to potential redundancy as early as practical after a definite decision has been made to make these changes,
- discuss with the employee, and their representatives, if any, the change and measures to avert or mitigate the adverse effects of such changes on the employee; and
- give prompt consideration to matters/ concerns raised by the employee.

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STEP THREE – Consider any redeployment options.

Ensure you have considered all possible options regarding redeployment within the business or an associated entity.

A person's dismissal will not be a case of genuine redundancy if it would have been reasonable in all of the circumstances for the person to be redeployed within:

- the employer's enterprise, or
- the enterprise of an associated entity of the employer.

Evidence in relation to whether there was a job, a position or other work would usually include canvassing the steps taken by the employer to identify other work which could be performed by the dismissed employee.

Consultation Process

As previously mentioned all Modern Awards require and employer covered by the award to consult employees where a definite decision has been made to introduce any major workplace changes including redundancy.

What this means for employers is that as soon as a definite decision has been made to make changes, they –

1. Provide written information about the changes – provide all relevant information about eh changes **in writing** including the expected effects of the changes on the employee
2. Discuss with the employee and their representative (if any)

    a. How the changes will be introduced
    b. Effects the changes are likely to have
    c. Measures to advert or mitigate the adverse effects of the changes on the employees

NOTE: A consultation is not lip service or advice or a tick of a box in a process—it is an opportunity to provide the impacted employees with a real opportunity to influence the decision-maker. It is not enough to merely discuss the implementation of the decision and its consequences. You **MUST** allow the employee to change your mind and consider matters raised, including ways to avoid redundancy.

It will not be a case of genuine redundancy if an employer does not comply with any relevant obligation in a modern award or enterprise agreement to consult about the redundancy. This does not impose an absolute obligation on an employer to consult about the redundancy but requires the employer to fulfil obligations under an award or agreement if the dismissal is considered a genuine redundancy.

If an employer is obliged to consult and fails to do so, there cannot be a genuine redundancy.

As per the Modern Awards, the consultation clause generally;

- require consultation where an employer has decided to introduce major changes in production, programming, organisation, structure or technology that are likely to affect employees significantly.

- They also require the employer to:

    - notify any employees who might be affected by the proposed changes, and their representatives;
    - discuss the proposed changes with the affected employees and any representatives as soon as possible after a decision is made;

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- provide them with written information about the changes, how they might affect employees, and any measures the employer will put in place to prevent or reduce any adverse effects; and
- give prompt consideration to any matters raised by the employees and their representatives.

While an employer must consider the matters raised by the employees, they don't have to obtain the consent of employees or their representatives to make the proposed changes.

Consultation requirements met

Patti v Vincent Chrisp & Partners P/L t/a Vincent Chrisp Architects [2012] FWA 8677 (Hamilton DP, 11 October 2012).

The employer experienced a reduction in business and consequently made a number of positions redundant. The employer met with the affected employees to discuss the need for redundancies and sent letters explaining the need for redundancies. The employee sought further information regarding the redundancy and requested recognition of an additional year of service. The employer provided all of the additional information sought by the employee and granted the additional year.

It was found that the employer met the consultation obligations.

Consultation requirements NOT met

Monks v John Holland Group Pty Ltd [2012] FWA 6453 (Gooley C, 1 August 2012).

The employer did not consult with the employee regarding the decision to make her position redundant until after a definite decision had been made about the redundancy, and about the creation of a new position and who would fill it. The employee had no opportunity to convince her employer she could fill the new position.

Note: Although it was found that the dismissal was not a case of genuine redundancy, it found that the employee declining the employer's offer to remain employed while looking at redeployment options was a valid reason to terminate the employee's employment. Therefore, the dismissal was not harsh, unjust or unreasonable, and the employee's application was dismissed.

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Consultation meeting checklist

The purpose of this meeting is to notify the employee affected by redundancy and discuss the proposed changes that are leading to the redundancy of their role.

Provide the employee with written notification of a meeting to discuss the potential redundancy of the role. This letter will include; ☐ Date ☐ Time ☐ Location ☐ Ability to bring a support person	☐
Conduct the meeting with the employee to explain the changes that are leading to the potential redundancy. ☐ Explain why this means the role may no longer be required ☐ Discuss any opportunities for redeployment ☐ Ask for and give an opportunity for feedback in light of the information that you have given them **See what to discuss in a meeting**	☐
Take a break from the meeting to consider the comments of the employee and the feedback. If they have brought additional idea, then go away and do an assessment if they will or will not be viable. Keep this all documented. Decide if you will be able to offer redeployment (see notes below) or whether you need to continue to redundancy (retrenchment)	☐
Schedule another meeting to give the outcome of the consultations. Inform the employee of the outcome (redeployment or retrenchment) **Retrenchment** – discuss possible measure to mitigate the impact. This might include outplacement, waiver of restraints, transfer of company property, access to EAP programs, serving some or al of the notice period and redundancy benefits etc **Redeployment** – Discuss the available role, give a position description, salary range, benefits, reporting lines, etc so that the employee can decide for themselves if this is an option they wish to take.	☐
You may wish to offer an ex-gratia payment in return for a release, ask the employee whether they are willing to have a 'without prejudice' discussion about that. **DO NOT** force this or coerce the employee – it needs to be their choice. If they agree you can provide them with an 'without prejudice letter' setting out the terms and deed of release. Offer the employee time to consider and suggest they seek their own independent legal advice. Ensure you give a time frame at which point the offer will expire.	☐
ALWAYS keep accurate records of all meetings and the minutes of the meetings. What was said, what was considered and what was agreed. This is best either done by another person in the room or you can advise that the meeting will be recorded to ensure accuracy and then transcribe the meeting.	☐

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What to discuss in a redundancy consultation meeting?

Make sure that you say that this is a consultation meeting and that you want to provide a genuine opportunity for them to influence any final decision.

Advise that if they have any thoughts or ideas to avoid redundancy, then you are open and willing to consider them as at this stage, no definite decision has been made however from what analysis has been done, at this stage, unless they have ideas or options that you have not thought of, the roles are likely to cease as no longer required.

Things to go over

- ☐ Reason why the business is considering the position be made redundant
- ☐ Explain why this means the role will may no longer exist, and the duties may no longer be required within the business
- ☐ What attempt have been made to mitigate this possible requirement
- ☐ What measure you have considered to mitigate the adverse effects of any changes for the employee
- ☐ How the changes will be introduced if the redundancy goes ahead
- ☐ Discuss redeployment options you have considered including roles that are currently being advertised.
- ☐ Allow an opportunity for the employee to bring forward any options or alternatives other than redundancy
- ☐ Allow them to provide feedback in light of the information that you have given them
- ☐ If they ask what they will be paid then let them know that no final decision has been made so those figures are yet to be calculated but you will ask if these can be done, at their request, and sent to them. Stress again that no final decision has been made so the figures are only informational and not showing in any way that a final decision has been made.
- ☐ At the end of the meeting let them know that you want to take some time to consider what they have brought forward and the feedback they have given you.
- ☐ Thank them for meeting with you and express how hard you know this will be on them right now.
- ☐ If you are going to use the outplacement service advise that if the position is made redundant following these meetings, then the business is seeking to engage the provider at no charge to the employee.
- ☐ If they want to see the roles available and consider them then give or send them the position descriptions.
- ☐ Let them know you will get back to them within 24-48hours with the outcome of the consultation process and again thank them for their feedback at what you know is a difficult time.
- ☐ You may wish to offer them paid time off if they are upset or you feel that this would be a good option. Do not make any moves to close accounts, emails or the like prior to notifying them of the final decision as this may indicate a pre-determined outcome and therefore you will have failed in the consultation process and risk of unfair dismissal.

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Redeployment

Redeployment refers to offering an employee whose role is redundant continued employment in another role as an alternative to retrenchment**.**

When you are within a consultation process for redundancy, you also need to consider if there are any other roles within your business or an associated business that the employee can be offered.

> Fair Work Act 2009 s.389(2) A person's dismissal will not be a case of genuine redundancy if it would have been reasonable in all of the circumstances for the person to be redeployed within:
>
> - the employer's enterprise, or
> - the enterprise of an associated entity of the employer.

Whether an employee's redeployment is considered reasonable will depend on the circumstances at the time of the dismissal. In determining whether redeployment was reasonable, a number of matters may be relevant, including:

- whether there exists a job or a position or other work to which the employee can be redeployed
- the nature of any available position
- the qualifications required to perform the job
- the employee's skills, qualifications and experience, and
- the location of the job in relation to the employee's residence and the remuneration (pay and entitlements) which is offered.

An employer must consider whether it is reasonable to redeploy an employee to an associated entity. The degree of managerial integration between the different entities is likely to be a relevant consideration.

If you have other positions available, even at a lower level, that the redundant employee has the skills to perform, you should not presume that the employee will refuse the position – always advise what is available and give the employee the option to consider it or not.

An employee may well be prepared to consider a role with less responsibility and have no objection to the location of the role being different to the current one and accept less remuneration.

A finding, based on the evidence of the employee, may be open to the Commission that it would have been reasonable in all the circumstances for an employee to have been redeployed into a vacancy with lower income and less responsibility.

Suitability

Note however the job that you have for redeployment must be suitable, in the sense that the employee should have the skills and competence required to perform it to the required standard either immediately or within a reasonable period of retraining.

Other considerations may be relevant such as:

- the location of the job, and
- the level of remuneration.

Best practice and the safest guide would be to let employees under threat of redundancy know of all possible retrenchment options – let them decide if it is suitable and you can start the discussion from there.

When you won't need to offer redeployment

You will not need to offer redeployment if it is not reasonable, such as if;

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- it would take 6 to 12 months to retrain or upskill the employee to be able to fill the redeployment roles; or
- you are a small business employer where there is no opportunity for redeployment or there may be no positions available for which the employee has suitable qualifications or experience; or
- you make a genuine decision to have roles currently performed by your direct employees filled by labour hire employees or employee supplied by third-party contractors

NOTE: The Fair Work Commission accepts that it is the employers prerogative to structure their workforce on the optimum, operational, and flexible basis for their business.

Redeployment obligation met

Patti v Vincent Chrisp & Partners P/L t/a Vincent Chrisp Architects [2012] FWA 8677 (Hamilton DP, 11 October 2012).

The employer made the employee's position redundant due to a downturn in business. The employer argued that the employee had been employed as a drafter. The employee argued that she performed the duties of a contract administrator and that she should have been redeployed in an available contract administrator position.

It was found that the employee's job was as a drafter and that her job was no longer required. The employee did not have the skills to work as a contract administrator and therefore redeployment was not reasonable.

Redeployment obligation NOT met

Aldred v Hutchinson Pty Ltd [2012] FWA 8289 (Lewin C, 26 October 2012).

In considering redeployment, the employer limited its enquiries to the Victorian division of its enterprise. It was found that the words 'in the employer's enterprise or an associated entity' should be given the full and beneficial meaning. This means that the employer should not confine its consideration to a particular geographic zone or division of an employer's enterprise.

It was held that had broader enquiries been made, it was probable that redeployment opportunities would have been identified. It was therefore held that the employee's dismissal was not a case of genuine redundancy.

Obligation to provide notice in writing

The Fair Work Act provides that a national system employer can only terminate an employee's employment by serving notice in writing on the employee that specifies the employee last day of employment.

NOTE: The last day of employment **MUST NOT** be earlier than the day the retrenchment notice is served.

To issue a legally effective notice of retrenchment, you must issue a notice

- in writing
- stating the date that the employee's employment will end
- recognise the required notice period; and
- that the employee receives the notification (send a receipt when sending an email)

It is important to note that the employee does not have to accept the notice unless it is done in the ways outlined. Save any issues and do as suggested. Also note that if a notice of retrenchment does not recognise the required notice period will be legally defective and the employee can refuse to accept it and insist you recognise the proper notice.

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Notice periods as per the Fair Work Act

Employees period of continuous service with the employer	Notice Period
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks*
More than 3 years but not more than 5 years	3 weeks*
More than 5 years	4 4 weeks*
**An extra week is added if the employee is over 45 years old and has completed at least 2 years of continuous service with the employer*	

Unfair dismissal – when a redundancy is not a 'genuine redundancy'

An unfair dismissal application cannot be made if the dismissal was a case of genuine redundancy.

A dismissal is a case of genuine redundancy when:

- the employer no longer requires the person's job to be performed by anyone because of changes in the operational requirements of the employer's enterprise, AND
- the employer has complied with any obligation imposed by an applicable modern award or enterprise agreement to consult about the redundancy.

A dismissal is **NOT** a case of genuine redundancy if it would have been reasonable in all of the circumstances to redeploy the person within:

- the employer's enterprise, or
- the enterprise of an associated entity of the employer.

If an employer believes that an employee's dismissal was a genuine redundancy and the employee has applied for an unfair dismissal remedy, the employer may make a jurisdictional objection to that application.

If an employer can prove that the requirements of s.389 of the Fair Work Act have been met, the Fair Work Commission will have no jurisdiction to hear the unfair dismissal claim.

However, if the requirements of s.389 of the Fair Work Act have not been met, the Commission must determine if the dismissal was unfair.

What are Operational requirement changes

The Fair Work Act does not define the term **'operational requirements'**. It is a broad term that permits consideration of many matters including:

- the past and present performance of the business
- the state of the market in which the business operates
- steps that may be taken to improve efficiency by installing new processes, equipment or skills, or by arranging labour to be used more productively, and
- the application of good management to the business.

Some examples of changes in operational requirements are:

- a machine is now available to do the job performed by the employee
- a downturn in trade has reduced the number of employees required
- the employer restructures their business to improve efficiency and redistributes the tasks done by a particular person between several other employees, therefore the person's job no longer exists
- a site or business closure
- the completion of a project, or
- outsourcing.

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NOTE: The onus is on you as the employer to prove that, on the balance of probabilities, the redundancy was due to changes in operational requirements. This is why we strongly recommend that you follow our STEP ONE CAREFULLY

STEP ONE: Employees Job is no-longer required

- You no-longer require the employees' job to be performed by anyone because of operational or structural changes in the business.
- You have completed a matrix of the duties of the role and where the work will go or if it is no-longer needed to be done by anyone the reasons why
- You may have a business plan that shows the change in the operations or the structure

Note: If is important at this stage to have done the background work on the reasons why there is a need for a role to be made redundant. ***If you fail to prepare then prepare to fail***

Redundancy Pay Obligations

A retrenched worker is dismissed for no fault of their own so it is important to get the final pay obligations right, so they suffer no further upset or stress. The National Employment Standards provide for a minimum statutory entitlement to redundancy pay for all employees of employers with 15 or more employees

Year of Service*	Weeks of Pay
At least 1 year but less than 2 years	4
At least 2 years but less than 3 years	6
At least 3 years but less than 4 years	7
At least 4 years but less than 5 years	8
At least 5 years but less than 6 years	10
At least 6 years but less than 7 years	11
At least 7 years but less than 8 years	13
At least 8 years but less than 9 years	14
At least 9 years but less than 10 years	16
At least 10 years	12
*If immediately before 1 January 2010, the employee could have claimed a legal entitlement to redundancy pay against their current employer, the employee's service is taken to have commenced on 1 January 2010	

Note: Check your relevant award and agreements for more generous redundancy pay provisions

Redundancy pay is calculated on the employees base rate of pay for ordinary hours worked and excludes incentives, bonuses, allowances, overtime and penalty rates, and any other separately identifiable amounts

Employees who are exempt from redundancy laws

There are a limited number of situations where an employee is exempt from redundancy laws

Casuals – casual employees are not usually entitled to redundancy pay. If you decide not to roster a casual because you do not require the work they have been performing to be carried out for the time being, this will not necessarily mean the position is redundant.

We suggest that you seek specific advice on casuals due to the changes in 2024 on what is casual.

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Consider how your casual relationship works. This will include deciding whether there is a firm advance commitment to continuing and indefinite work. This can be assessed on the following:

- the real substance, practical reality and true nature of the employment relationship

The other factors that must be considered include whether:

- the employer can offer or not offer work to the employee (and whether this is happening)
- the employee can accept or reject work.
- it's reasonably likely there will be future work available to the employer's business, based on the nature of the business.
- there are full-time or part-time employees performing the same kind of work in the employer's business as the work the employee usually performs.
- the employee has a regular pattern of work.

If you determine that the casual may fall within that of a permanent employee, we suggest that you;

a) seek additional advice from our team or
b) treat them as permanent employees and ensure you follow the redundancy process.

Specific-purpose employees – if you employ a person for a particular project, the completion of the work required to be performed, but the employee for the purposes of the project will not ordinarily be a redundancy.

Fixed-Term Contracts – A fixed-term contract differs from ongoing employment in that you agree with a fixed-term employee that the employment will end on a specific date.

Note: On 6 December 2023, new rules came into force regarding the engagement of employees on fixed-term contracts. A fixed-term contract cannot now be extended by more than 2 years, including extensions or renewals.

Renewal limitations
A fixed-term contract can't have an option to:

- extend or renew the contract so the period of employment lasts for longer than 2 years or
- extend or renew the contract more than once.

Apprentices and Trainees are exempt where;

- A training arrangement applies; and
- The employment is for a specific period of time or is, for any reason limited to the duration of the training arrangement

Notifying Authorities

The Fair Work Act 2009 (the FW Act) defines genuine redundancy as where the employer no longer requires the person's job to be performed by anyone because of changes in operational requirements.

Additionally, to prove a genuine redundancy, the employer must comply with its consultation obligations under the Act, an award, or an enterprise agreement.

Notifying a union under a modern award
All modern awards contain a standard consultation clause requiring employers to consult with employees and their representatives (such as a union) regarding major workplace change (e.g. a redundancy process), whereas s 531 of the FW Act provides that an employer must notify the union where the employer decides to make 15 or more employees redundant.

As the business is covered by a modern award then any relevant union must be notified of a redundancy process regardless of the number of employees being made redundant.

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The employer must notify any relevant trade union as soon as practicable after making the decision and prior to dismissing any employees.

In addition, the employer must have discussions with the trade union about measures to avert or minimise the proposed dismissals and measures to mitigate the adverse effects of the proposed dismissals (such as finding alternative employment).

Where an employer fails to notify and/or consult with relevant trade unions about the proposed redundancies, s 531(1) of the FW Act enables the Fair Work Commission ('**FWC'**) to make an order to require the employer to consult with the union. The result of this could be that the redundancy process may be delayed. However, the FWC does not have the power to reinstate an employee or to pay compensation.

Notifying Centrelink

Section 530 of the FW Act provides that an employer must notify Services Australia (formerly Centrelink) where the employer decides to make 15 or more employees redundant.

The notification must be in writing and in the prescribed form, and set out the reasons for the terminations, the number and categories of employees likely to be affected and the period over which the employer intends to carry out the terminations.

The notification to Services Australia must be made as soon as practicable after the decision is made and before the employees are dismissed.

Although it is not a requirement under the FW Act to advise Services Australia when there are less than 15 employees being retrenched, it may still be beneficial to do so.

On some occasions, Services Australia can send an officer to meet with employees to explain the assistance available to them. Support from Services Australia may include assisting employees in commencing their search for new employment and understanding their social security entitlements.

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2025 High Court Ruling: Redeployment Obligations Expanded

IMPORTANT UPDATE: Helensburgh Coal Pty Ltd v Bartley [2025] HCA 29

In a landmark 2025 ruling, the High Court of Australia unanimously held that the Fair Work Commission (FWC) is permitted to engage in a **broad inquiry** when determining whether a redundancy is genuine, specifically around redeployment options. This decision significantly expands employer obligations beyond what was previously understood.

What Changed?

Previously, employers were only required to consider whether there were **vacant positions** available for redeployment. Following this decision, employers must now consider whether it would be reasonable to **reorganise or change how their workforce is structured** — including whether roles currently performed by contractors or labour hire workers could reasonably be "insourced" to redeploy the redundant employee.

What This Means for Employers

Before finalising any redundancy decision, employers must now undertake a broader assessment of redeployment that includes:

- ☐ All vacant roles across the business and associated entities (as before)
- ☐ Whether roles currently performed by contractors or labour hire workers could reasonably be converted to direct employment for the redundant employee
- ☐ Whether restructuring the workforce could reasonably create a position for the employee being made redundant
- ☐ Redeployment options across all divisions or geographic zones of the business — not just the employee's immediate area

NOTE: This ruling has significant ramifications for any business that uses a mix of directly employed staff and contractors. Where no clear business practices exist, the failure to consider freeing up contractor work for a redundant employee may be found to be unreasonable — meaning the redundancy may not be genuine.

The FWC's inquiry is now an objective assessment of whether redeployment "would have been reasonable in all of the circumstances," which is a broad and fact-specific test. Document your redeployment consideration process thoroughly.

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Small Business Owner's Redundancy Checklist

Use this checklist to reduce the risk of a redundancy being found not genuine or giving rise to an unfair dismissal or general protections claim.

PHASE 1: BUSINESS CASE — Before Making Any Decision

- ☐ Identify the genuine operational reason for the redundancy (e.g. downturn, restructure, technology, closure). Document this in writing with supporting evidence such as financial records, a business plan, or a duties matrix.
- ☐ Confirm no one will be hired to perform the same or substantially the same duties in the near future (or document why if they will be).
- ☐ Complete a duties matrix showing where the work will go or why it is no longer required.
- ☐ Check: Is the real reason dismissal for performance, conduct, or a personal grievance? If so, stop — that is NOT redundancy and must be managed through a different process.

PHASE 2: AWARD/AGREEMENT — Know Your Obligations

- ☐ Identify the applicable Modern Award or Enterprise Agreement. Every Modern Award contains a consultation clause — failure to follow it means the redundancy cannot be genuine.
- ☐ Determine whether the employee has access to unfair dismissal. For small businesses (fewer than 15 employees), the minimum employment period is 12 months. For larger businesses, it is 6 months.
- ☐ Check if the Award or Agreement provides more generous redundancy pay than the NES minimum. If so, you must pay the higher amount.
- ☐ Small business (fewer than 15 employees): you are generally exempt from paying NES redundancy pay — but **check your Award** as it may still require redundancy pay. Also note: if your business is downsizing from 15+ employees due to insolvency, you may still owe redundancy pay under changes effective 15 December 2023.

PHASE 3: CONSULTATION — A Genuine Opportunity to Influence

- ☐ Issue a written notice to the employee inviting them to a consultation meeting. Include the date, time, location and the right to bring a support person. Do NOT issue this as the final termination notice.
- ☐ At the meeting, explain the business reasons, the impact on the role, and that no final decision has been made. Make clear this is a genuine consultation — not a notification of a done deal.
- ☐ Provide written information about the changes and their expected effects.
- ☐ Invite the employee to put forward any ideas or alternatives. Genuinely consider them and document your consideration in writing before making a final decision.
- ☐ Take detailed minutes or record the meeting. Document everything discussed, considered and decided. Do NOT close accounts or restrict system access before the final decision is communicated.

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PHASE 4: REDEPLOYMENT — Consider All Options (Including Post-2025 Requirements)

- ☐ Document all vacant roles across your business AND associated entities. Provide position descriptions to the affected employee — do not assume they will refuse.
- ☐ If you use contractors or labour hire workers, consider (and document) whether it would be reasonable to convert any of that work to direct employment for the redundant employee (post-Helensburgh 2025 obligation).
- ☐ Do not advertise roles externally while in a redundancy process without first considering whether the affected employee could fill the role. If you do advertise, document why the affected employee could not be redeployed to it.
- ☐ Consider lower-level roles and roles in different locations — let the employee decide if those are suitable, do not decide for them.

PHASE 5: FINAL DECISION & NOTICE — Getting the Admin Right

- ☐ Issue the written termination/retrenchment notice. It must: be in writing; state the employee's last day of employment; respect the correct notice period; and be actually received by the employee.
- ☐ Calculate the correct notice period using the NES table (and add 1 extra week if the employee is over 45 and has 2+ years of service).
- ☐ Calculate redundancy pay using the NES table (for businesses with 15+ employees). Redundancy pay is based on the base rate of pay for ordinary hours only — no bonuses, penalties or allowances.
- ☐ Pay all outstanding entitlements including accrued annual leave, long service leave, and any applicable redundancy pay on the last day of employment.
- ☐ If making 15 or more employees redundant: notify Services Australia (formerly Centrelink) in writing before the dismissals take effect, using the prescribed form.

THE RISKS OF GETTING IT WRONG

Getting redundancy wrong can be costly. Here is what is at stake:

- ☐ **Unfair Dismissal Claim:** If the redundancy is not genuine (e.g. you failed to consult, failed to consider redeployment, or the job still exists), the employee may lodge an unfair dismissal application. Compensation can be awarded up to 26 weeks' pay (capped at the high income threshold). Reinstatement is also a possible remedy.
- ☐ **General Protections Claim:** If an employee was selected for redundancy for a prohibited reason (e.g. because they exercised a workplace right, made a complaint, or are a union member), this is a general protections claim. There is no cap on compensation for general protections claims, and the onus of proof (reverse onus) is on the employer to prove the reason was not the prohibited reason. Small businesses are NOT exempt from general protections claims.
- ☐ **Award/Agreement Breach:** Failure to follow the consultation clause in a Modern Award or Enterprise Agreement can result in court orders, penalties and a finding that the redundancy was not genuine. A simple email notification is NOT sufficient consultation —

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a recent 2025 FWC decision confirmed this when an employer's single notification email was found to breach their Award's consultation obligations.

- **Wage Theft Exposure:** From 1 January 2025, intentional underpayment of wages and entitlements (including redundancy pay) is a criminal offence. Getting the final pay wrong can now carry criminal liability for employers.

- **Reputational and Operational Harm:** A poorly managed redundancy affects the morale of remaining employees, risks key talent departing, and can cause significant reputational damage to the business. This is sometimes called "redundancy survivor syndrome."

If you are unsure at any stage of a redundancy process, seek HR or legal advice before proceeding. The cost of getting it wrong far exceeds the cost of getting it right.

Our Contact Details

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