FRESH HR INSIGHTS *Looking at HR in a different light.*

The Redundancy You're Scared to Make

Fact sheet for small business owners | Backed into a Corner No. 5

The scenario: you have lost work and one role can no longer be carried. You have fewer than 15 staff, the person has been with you for years, and you are scared of the claim.

The Fair Work Act is not against a redundancy. It is against a rushed one, a silent one, and one that is really about something else.

5 things the Act actually requires of you

1. **A real reason.** The job is no longer needed by anyone because the business has changed (s 389(1)(a)).
2. **Consultation** as your award or agreement requires, before the decision is final (s 389(1)(b)).
3. **Redeployment** where it is reasonable, in your business or an associated entity (s 389(2)).
4. **Written notice** or pay in lieu, and all accrued leave (s 117). Redundancy pay unless you are exempt (ss 119, 121).
5. **A clean reason.** Not because of a complaint, a pay query, leave or another protected reason (ss 340, 351, 352).

Traps that catch owners out

- "Under 15 staff, so no rules." The exemption is from redundancy pay only.
- The one-meeting exit. Telling is not consulting.
- Deciding for them that they would not take fewer hours or other work.
- Using redundancy to solve a performance problem.
- Refilling the job under a new title a few months later.

The 6-step path

1. Put the business case on one page. The job, not the person. Date it.
2. Answer any open pay query, complaint or request first, separately.
3. Check the award, the contract, your headcount, notice and leave.
4. Look for alternatives: fewer hours, other duties, contractor work.
5. Consult: a letter, a meeting, time to respond, a written reply.
6. Confirm in writing, pay correctly, and do not refill the job.

When to stop and get help

- You are not sure whether it is the job or the person.
- The employee has raised a complaint or pay query, or is on leave, injured or pregnant.
- More than one person does the job and you have to choose.
- Contractors, casuals or labour hire do similar work for you.
- You do not know which award applies, or what it says.

The cases

- **Orientile Pty Ltd v Zhang [2026] FWCFB 162 (2026):** nine staff, a real downturn, one meeting and no consultation. $31,652.93. Small businesses are not exempt.
- **Helensburgh Coal Pty Ltd v Bartley [2025] HCA 29 (2025):** redeployment is not only about vacancies. Work done by contractors can count.
- **Kay v Fulton Hogan Construction Pty Ltd [2025] FWC 330 (2025):** written notice, real reasons and a selection it could explain. The employer won despite imperfect consultation.

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