

Table of Contents

Abbreviations	1
Introduction	1
Chapter One: An Overview of Redundancy	1
What is redundancy?.....	1
Sources of redundancy obligations	6
Common law and the employment contract	6
Legislation - <i>Fair Work Act 2009</i>	6
Modern awards	8
Enterprise agreements	8
Redundancy and termination	9
Unfair dismissal jurisdiction.....	9
Unfair dismissal – exemptions	10
Western Australian unfair dismissal legislation.....	10
Consideration of suitable alternatives to redundancy.....	11
General protections under the <i>Fair Work Act</i>	11
What is a prohibited reason?	12
How are general protections claims dealt with?	13
Discrimination laws	16
Competition and Consumer Act 2010	17
Chapter Two: Managing the Redundancy Process	1
Overview of the redundancy process	1
What is a genuine redundancy for the purposes of unfair dismissal.....	1
What are the other legal risks when making an employee’s position redundant?..	1
Does an employer need to consider redeployment?	2
How long does the redundancy process take?.....	2
What is the cost of conducting redundancies?	2
Does an employer need to provide notice of termination?.....	2
The Redundancy Process Flowchart.....	3
Planning and preparation	4
Consider alternatives to redundancy	4
Initial planning for redundancy	5
Does an employer need to develop a business case?.....	5

What is a key event timetable?.....	6
Define the redundancy package.....	6
Management’s role and responsibilities	6
Types of redundancy programs	7
Voluntary redundancy	7
Involuntary redundancy	8
Last-on-first-off	8
Spill and fill	9
Time frames	9
Consultation	9
Consultation under awards.....	10
Consultation under enterprise agreements	11
Consultation under the <i>Fair Work Act</i>	11
Consultation with unions under the <i>Fair Work Act</i>	12
Case law relating to consultation.....	12
The requirement to provide information in writing	14
Steps for consultation.....	15
Communication and employee morale.....	16
Group or individual meetings.....	16
Day and time	16
Who will be involved?	17
Location.....	17
Employee assistance	17
Chapter Three: Implementation of the Redundancy Process	1
Selection criteria.....	1
Selection matrix.....	1
How should an employer rank employees?	1
What if an employee has unsatisfactory performance?	2
Should an employer involve employees in the selection process?.....	2
Issues to avoid in preparing a selection matrix	3
Potentially discriminatory criteria	3
Subjective selection criteria	3
Overly narrow results	4
Discrimination risks in the implementation process	5
Redeployment and obtaining acceptable employment	5
Redeployment	5
Obtaining acceptable employment.....	9

Transfer to lower paid duties	16
Time off for job search.....	17
Additional assistance.....	17
Notice of termination.....	18
Minimum notice under the <i>Fair Work Act 2009</i>	18
Employee leaving during the notice period.....	19
Common law and ‘reasonable notice’.....	19
Chapter Four: Redundancy Payments and Obligations	1
What is the purpose of redundancy pay?	1
Redundancy pay under the <i>Fair Work Act 2009</i>	2
When is an employee entitled to redundancy pay under the NES?.....	2
Can a reduction in hours entitle an employee to redundancy pay?.....	2
What if termination is due to the ‘ordinary and customary turnover of labour?’ ...	3
Amount of redundancy pay under the NES	6
Exclusions from obligation to pay redundancy pay under the NES	6
Applications for exemption from obligation to pay redundancy pay under the NES.....	11
Acceptable employment and entitlement to redundancy pay	11
Cannot pay the amount of redundancy pay.....	12
Application for exemption by labour hire company	14
Modern awards and redundancy entitlements.....	14
Enterprise agreements and redundancy pay.....	15
Entitlements to redundancy pay at common law	16
Common law and the employment contract	16
Importing policies into contracts of employment.....	18
Calculation of redundancy pay under the NES.....	19
Incorrect calculation of redundancy pay entitlements	20
Mistaken redundancy payment.....	21
Taxation ruling on redundancy	21
Chapter Five: Transfer of Business and Redundancy.....	1
Redundancy pay under the National Employment Standards in transfer of employment situations.....	2
Recognition of prior service under the NES	2
Rejection of alternative employment under the NES.....	2
Impact of case law.....	3
Outsourcing functions of a business.....	4
Unanticipated transfer of business redundancy problems in outsourcing.....	4

Chapter Six: Enterprise Agreement and Redundancy Provisions	1
Definition of redundancy	1
Employees excluded from the benefits of the redundancy clauses	2
Transfer of business	3
Obtaining other acceptable employment.....	5
Employee entitlements protection clauses	6
Definition of rate of pay	6
Limits on those approaching retirement age	7
Appendix A: Unfair Dismissal Exemptions under the Fair Work Act 2009	1
Employees who are dismissed for genuine redundancy.....	1
Employees who are dismissed by an employer with fewer than 15 employees consistent with the small business fair dismissal code	1
Employees employed for a bona fide fixed or specified period.....	1
Employees engaged for a specified task	2
Employees engaged for the duration of a specified season	2
Employed under a formal training arrangement.....	2
Casual employees.....	2
Employees employed for less than six months (or less than 12 months for an employer with fewer than 15 employees).....	3
Not employed under an award or enterprise agreement and earning above the high-income threshold.....	3
Appendix B: Small Business Fair Dismissal Code	1
Summary dismissal	1
Other dismissal	1
Procedural matters.....	1
Small Business Fair Dismissal Code Checklist.....	2
Appendix C: Defining the Redundancy Package – Checklist	1
Appendix D: Sample Redundancy Selection Criteria Matrix.....	1
Appendix E: Sample Letter to Employee Providing Notice of Termination Due to Redundancy	1