

Redundancy Fact Sheet

This document has been created to provide Clubs with a summary of the process and rules for redundancy.

Please note that this is not an exhaustive list of everything that may apply to redundancy and further advice should be sought before making anyone redundant.

What is Redundancy?

Redundancy is where a business no longer requires an employee's job to be done by anyone or can occur where a business becomes insolvent or bankrupt.

There are a number of instances in which an employee's job may no longer be required and this can occur due to such things as a genuine restructure, financial difficulties or a business closing down.

What Makes a Redundancy Genuine?

In order for a redundancy to be genuine, the role being made redundant must genuinely not be required. With a redundancy, it is the role not the person that is made redundant. This means that an employer cannot make someone redundant due to dissatisfaction with an individual employee or use it in lieu of performance management.

A Club must also ensure appropriate consultation requirements are followed as a failure to do so will result in the redundancy not being genuine.

A Club must also explore reasonable alternate roles that the employee being considered for redundancy can be offered, referred to as redeployment (with the key here being offered and not simply invited to apply for as case law has stated this will not satisfy redeployment).

Should a Club fail in following the correct procedure and/or the redundancy is not genuine, then a Club risks a claim being made for unfair dismissal.

Alternate Roles - Redeployment

As mentioned above, where an employee is being considered for redundancy, a Club will also have to assess whether they have a reasonable alternate role available to offer as redeployment and if one does exist, this needs to be offered where an employee is to be made redundant. Again they can't just be invited to apply for the role and compete against other candidates.

In terms of what is reasonable, it would be a role that the employee is suited and/or qualified for and could also be their current role but in a lesser capacity e.g. a casual role or a lesser position e.g. from a supervisory role to a more general role.

It is also important to note that employees should still be offered an alternate role if it exists even if they hold qualifications and experience that exceeds this role's requirements. Case law has stated that an alternate role can't be disregarded based on a belief someone is "over qualified" for the role.

Consultation

When a Club is considering making a role redundant, they need to properly consult with those who will / may be affected and failure to do this can lead to claims later being made that the redundancy was not genuine.

Under the Clubs Award, clause 32 requires consultation to occur where there is a major workplace change which redundancy will be considered as being. A Club with an employee covered by the Clubs Award should take the following steps and a similar process is very likely to also satisfy consultation obligations for Clubs with employees under other awards or agreements or those that are award free:

- Give notice of the possible redundancy to all employees who may be affected by this and also to their representatives (if they have any); and
- Discuss the possible redundancy with the affected employees and their representatives (if they have any) and
- consider all options and alternatives to redundancies and whether they can be redeployed.

In terms of discussing the possible redundancy a Club needs to invite the affected employee/s (in writing) to a meeting advising them of the potential redundancy and provide them with appropriate notice to prepare e.g. ideally at least 48 hours but it should be no less than 24 hours. It is very important that they are given sufficient details in the invite to know what the meeting is about so they can prepare. Any other relevant information should also be provided to them.

The employee needs to also be notified that they can bring a support person and if they have a representative e.g. a Union representative, then their representative also has to be notified and they can attend the meeting as their representative.

During the meeting, the Club needs to outline why the redundancy is being considered and ensure that the employee has all necessary information about this. They and/or their representative (if any) also need to be given the opportunity to respond and discuss the possible redundancy including providing any suggestions on alternatives to redundancy.

During this time, if a reasonable alternate role can be offered then the Club needs to raise this with the employee.

Again as a reminder, as part of the redundancy process a Club will be required to consider if there are any reasonable options for redeployment within the Club e.g. an alternate role they can undertake instead. This could include a different role or the role they were doing in a reduced capacity e.g. in a casual capacity rather than as a permanent employee.

An offer of redeployment only has to be offered where it is reasonable and suitable e.g. you don't have to offer them a role if they don't have the skills and competency to do it. Things that will be taken into account as to whether redeployment is reasonable include but is not limited to the nature of any alternate role, qualifications needed, employees skills etc.

It is important to note that should the employee just be invited to apply for an alternate role rather than be offered it then this risks the redundancy not being viewed as genuine. As such if there is an option for redeployment a Club needs to actively offer it to them.

Once the meeting has concluded and any further consultation has occurred e.g. any new information provided etc. the Club needs to wait an appropriate period of time before making any decision, so as to properly take the time to consider the options available and what the employee/s had to say on the issue.

If an offer of redeployment was made then an employee should also be given a reasonable amount of time to consider this.

Once the redundancy meeting and necessary consultation has occurred the Club should take some time to consider their response and any alternatives before deciding on whether the role is to be made redundant or not.

Multiple People in the same Role

Where a Club has multiple people in the same or similar roles and does not require all of these roles to be made redundant, a Club will have to implement a selection process to determine which employee/s will have their role(s) made redundant.

This assessment should be based on a series of objective criteria e.g. experience, skills assessment, whether they can carry out more roles than other employees in a similar position etc.

A failure to follow a correct selection process could result in an unfair dismissal claim or risk a general protection claim being made should an employee be able to show they were discriminated against.

Confirmation of Redundancy - Redundancy Pay & Notice

Should the decision be made to make an employee's role redundant after the appropriate consultation has occurred, then the employee should be advised of this and have this confirmed in writing. If there was an alternate role offered an employee should be given a reasonable amount of time to consider accepting or rejecting the offer of any alternate role.

Where there isn't any alternate role, or this is not accepted by the employee, then their employment with the employer will cease and the employee will be entitled to a notice period provided they are a permanent employee (Clubs should note casuals can't be made "redundant" as such and more information on this is on page 5). If the employee does accept an alternate role then please refer to the section titled "Acceptance of Alternate Role & Transfer to a Lower Paid Role" on page 6.

The length of notice a redundant employee is entitled to will depend on the length of service and their age*:

Length of Continuous Service	Notice Period
1 year or less	1 week
More than 1 year but less than 3 years	2 weeks
More than 3 years but less than 5 years	3 weeks
More than 5 years	4 weeks

*where an employee has worked for more than 2 years and are over 45 years old they will be entitled to an additional week's notice e.g. a 50 year old who has been employed for over 5 years will receive 5 weeks' notice.

It is important to note that under the NES and Fair Work Act 2009 periods of casual service will not count towards continuous service for notice. For example if an employee was employed for 4 years with 2 years being as a casual and 2 as a full-time employee then notice is worked out based on her 2 years as a full-time employee only.

A Club can elect to pay the notice period in lieu rather than have them work it out but this needs to be decided on and communicated to the employee at the same time redundancy is confirmed. Should a Club initially tell the employee to work out the notice period but then change their mind and seek to pay the remainder out, in the absence of an agreement from the employee they will be entitled to a payout of the whole notice period, not counting the time they already worked.

Where notice is paid out, an employee will need to receive what they would have been paid if they had worked until the end of the notice period. This includes such things as penalty rates, overtime, loadings etc.

In addition to notice, an employee who is made redundant will also have to be paid out any outstanding entitlements such as annual leave. An employee's final pay has to be made within 7 days of their last day.

As well as notice, permanent employees will be entitled to redundancy pay where they have been employed for 12 months or more, are not a class of employee who doesn't receive redundancy pay (refer to "who else won't get redundancy pay?" on page 5) and the Club is not deemed as a "small business".

As with notice the amount of redundancy pay someone is entitled to depends on their length of continuous service and casual periods of engagement don't count towards continuous service:

Length of Continuous Service	Redundancy Pay
At least 1 year but less than 2 years	4 weeks
At least 2 years but less than 3 years	6 weeks
At least 3 years but less than 4 years	7 weeks
At least 4 years but less than 5 years	8 weeks
At least 5 years but less than 6 years	10 weeks
At least 6 years but less than 7 years	11 weeks
At least 7 years but less than 8 years	13 weeks
At least 8 years but less than 9 years	14 weeks
At least 9 years but less than 10 years	16 weeks
10 years or more	12 weeks

Redundancy pay is paid at the employee's base pay rate for their ordinary hours of work and does not include:

- Any incentive based payments and bonuses;
- loadings;
- monetary allowances;
- overtime or penalty rates; or
- any other separately identifiable amounts.

Small Business

If a Club is considered as a small business, then they will be exempt from having to pay any redundancy pay to a redundant employee (although notice will still apply).

A small business is any business that employs less than 15 employees. A Club would need to count its employees and include the following in this count:

- Any casuals that are regular and systematic (but not all casuals);
- any employees of associated entities; and
- the employee/s that are being made redundant at the time.

An exemption to the above is in the case of an employee who at the time of termination did not have redundancy pay apply because the employer was a small business employer; and

- the employer went bankrupt or into liquidation (other than only because of a members' voluntary winding up); and
- the employer is a small business employer because the employment of one or more employees was terminated; and
- the terminations occur on or after the day that is 6 months prior to when the employer became bankrupt or went into liquidation (or before an insolvency practitioner was appointed) or due to the insolvency of the employer.

Casuals

If the employee whose role is no longer required is a casual then they are not entitled to any redundancy pay or notice and it will not technically be deemed or should be referred to as a "redundancy".

Consultation should still be held with a casual employee where their role is no longer required and a valid reason for ending employment is needed e.g. due to loss of profits, restructure etc. Should a valid reason and/or consultation not occur then this will pose risks for a Club as regular and systematic casuals can make unfair dismissal claims and all casuals are entitled to make general protections claims e.g. if they claim they were terminated due to a discriminatory reason.

A Club should still hold a meeting with a casual employee (giving sufficient notice) and should inform them that the Club can no longer continue offering shifts in the future and the reasoning behind this. Once

discussions have been held over this then the employer can later look to end employment due to not being able to provide any further shifts if needed.

Who else won't get Redundancy Pay?

As well as those employees who have not been employed with the Club for 12 months or more, permanent employees at a small business and casuals, the following will also not be entitled to redundancy pay:

- employees employed for:
 - a stated period of time; or
 - an identified task or project; or
 - a particular season.
- employees terminated because of serious misconduct;
- trainees engaged only for the length of the training agreement; and
- apprentices.

Please note however, that whilst not entitled to redundancy pay, they may still be entitled to such things as notice or other payments.

Acceptance of Alternate Role & Transfer to a Lower Paid Role

If an employee agrees to the offer of an alternate role but that role will result in a reduction in pay, the employee is entitled to a notice period in which they either have to remain in the higher paid role or continue being paid the higher amount from their previous role for the notice period. This comes from clause 36.1 of the Clubs Award.

The transfer to a new role should be communicated in writing outlining what the new role is and a new contract of employment should be provided and signed.

It is important to note that where an employee is redeployed into a position that has lower pay and/or the duties are noticeably inferior, case law has indicated this stills constitutes a “dismissal” for redundancy purposes. As such it is likely redundancy pay will still be applicable should they be eligible for this (e.g. are a permanent employee, not at a small business etc) unless a successful application is made to the FWC to not pay redundancy pay which will be discussed in the next section.

Applying to Not Pay or Reduce Redundancy Pay

In some instances a Club can consider making an application to the Fair Work Commission (**FWC**) requesting that redundancy pay (if it is applicable) is lessened or removed entirely for an employee/s.

In terms of when and why this may be done, section 120 of the *Fair Work Act* states that an employee's entitlement to redundancy pay can be varied where the employer:

- Obtains other acceptable employment for the employee; or,

- Cannot pay the amount of the employee's entitlement.

The first instance can occur where a redundant employee is redeployed in another "acceptable" role or an employee rejects redeployment to an "acceptable role". In terms of what is meant by "acceptable" this doesn't require the alternate role to be identical or very similar to the one that is being made redundant, however, the more differences, especially where they are less favorable, the more this will weigh against the alternate role being "acceptable". When assessing whether an alternate role is "acceptable" the FWC will look at things such as:

- rate of pay;
- location;
- hours of work;
- workload;
- seniority/job status;
- fringe benefits; and,
- other 'relevant matters'.

If the basis for seeking a reduction in redundancy pay or no pay being given at all is due to financial issues, the employer will have the onus of showing that they would struggle to afford the payout. The FWC can use its discretion to look at such things as:

- financial standing e.g. looking at the assets of the business;
- financial competence;
- other reasonable sources of funds;
- whether the business is eligible for any grants etc.; and,
- the effect on the employee concerned and other employees of the business if an order was or was not made.

Mass Redundancies – Centrelink Notification

If the employment of 15 or more employees is terminated due to economic, technological, structural (or similar) reasons then Centrelink has to be provided with written notification of this and such things as numbers, the roles etc.

Further information can be found here: [Centrelink - Redundancy](#)