

**PEOPLE, CULTURE & EMPLOYMENT GOVERNANCE**

Redundancy Governance: A Good Reason Is Not Enough on Its Own

The small business exemption only covers redundancy pay. Consultation still applies, even for a single role

A well-justified operational reason to make a role redundant is necessary. It is not sufficient. In a Full Bench decision of the Fair Work Commission, [2026] FWCFB 162, a small business that skipped the consultation its award required could not rely on the genuine redundancy defence, and the dismissal was found unfair, regardless of the business reason for cutting the role.

Which rules apply to your association?

The law depends on how your association is set up. A **company limited by guarantee** follows the Corporations Act 2001 (Cth) and its constitution. An **incorporated association** follows its state or territory associations Act and its rules. A **registered charity** also follows the ACNC Act and the ACNC Governance Standards, and some Corporations Act rules are replaced for charities that are companies. Check your own governing documents, and get advice before decisions with legal consequences.

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The Three Conditions, All Required Simultaneously

For national system employers, section 389 of the Fair Work Act 2009 (Cth) provides that a dismissal only qualifies as a genuine redundancy, and therefore falls outside the unfair dismissal jurisdiction, if three conditions are all satisfied at once: the role is no longer required due to changes in operational requirements, the employer has complied with any consultation obligations in the applicable award or enterprise agreement, and redeployment within the organisation or an associated entity would not have been reasonable in the circumstances. Missing any one of these three, even while satisfying the other two, is enough to lose the genuine redundancy defence. The Commission then considers whether the dismissal was harsh, unjust or unreasonable. Associations in Western Australia that are not trading or financial corporations may be in the WA state system instead and should check which rules apply.

The Misconception That Costs Small Associations The Most

Associations with fewer than fifteen employees frequently assume the small business exemption protects them broadly from redundancy risk. It does not. The exemption applies specifically and only to redundancy pay under the National Employment Standards. When counting to fifteen, include all employees, including regular and systematic casuals and the affected employee, and employees of any associated entity. Where an employee is covered by a modern award or enterprise agreement, its consultation term still applies in full, regardless of employer size; if none applies, consult anyway as sound practice. Small business employees remain able to bring unfair dismissal claims after twelve months of employment. The Full Bench decision above confirmed this for a single role in a small business: without the required consultation, the employer lost the genuine redundancy defence and the dismissal was found unfair. An association employing fewer than fifteen people that skips consultation

because the position count feels too small to warrant the formality has not avoided a legal obligation. It has simply not yet discovered it still applies.

The Redeployment Duty Is Broader Than Most Employers Assume

Consideration of redeployment requires the employer to actively identify any role that exists, or could reasonably be made available, rather than passively waiting to see whether the affected employee applies for an advertised vacancy. An association cannot rely on the absence of a formal application as evidence that redeployment was properly considered. This connects directly to the delegation of authority discipline discussed earlier in this series: whoever is managing a redundancy process needs authority and a proactive obligation to assess redeployment options across the organisation, not simply the authority to announce a decision already made.

- Confirm all three genuine redundancy conditions are satisfied before any redundancy communication happens, since a legitimate operational reason alone does not protect the organisation if consultation or redeployment consideration is missing.
- Never assume the small business exemption removes consultation or unfair dismissal exposure, since it applies specifically and only to redundancy pay under the National Employment Standards.
- Apply the consultation term of any applicable award or enterprise agreement in full even where only a single position is being made redundant, since the Fair Work Commission has confirmed this applies regardless of how small the reduction is.
- Actively identify and assess potential redeployment opportunities across the organisation, rather than treating the absence of an employee application for an existing vacancy as sufficient evidence redeployment was considered.
- Seek legal advice before communicating any redundancy decision, even where the operational reasoning feels entirely clear-cut, given how procedurally exposed this specific area of employment law is.

Redundancy governed well protects both the affected employee's entitlements and the organisation from a costly, avoidable unfair dismissal claim. The cost of getting the process right is consistently smaller than the cost of an association discovering, after the decision has already been communicated, that one of the three required conditions was quietly missed.

This is one of the practical governance topics built into our Board Director course, alongside the papers, tools and frameworks that turn the principle into your board's actual practice. [Explore the course](#)

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BOARDROOM ACTION WORKSHEET

Redundancy Governance: A Good Reason Is Not Enough on Its Own

Turn the resource into evidence, a decision and an accountable next step. Keep the completed record in your association's approved board records system.

1 What is the issue or decision?

State the governance question in one clear sentence.

2 What evidence do we already have?

Record the facts, source documents and stakeholder evidence available now.

3 What evidence is still needed?

Identify the legal, regulatory, financial, member or operational information still required.

4 What is the agreed next action?

Capture the owner, timeframe and how the matter will return to the board.

Action owner	Review date	Board decision or resolution

General education, not legal, financial, tax, clinical or governance advice. Confirm specifics at the relevant primary source or with your own qualified adviser. Nexus Leadership is operated by Lipstick Consulting Pty Ltd · ABN 15 619 120 482.

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