

Getting Restructures Right in Australia and New Zealand



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Today's session:



Legal Fundamentals of Restructuring

Understand essential legal principles for workforce restructuring in Australia and New Zealand, ensuring compliance with local regulations.

Recent Developments

Explore recent updates in legislation and court decisions impacting workforce changes across both countries.

Technology and Restructuring

Compare how Australia and New Zealand respond to technological advancements affecting workforce structure and roles.

Practical Employer Guidance

Gain actionable tips for employers to navigate restructuring processes smoothly and compliantly in both jurisdictions.

New Zealand



Genuine business reason



Consultation obligations – good faith duty, no “*predetermination*”



Provide relevant information



Consultation process



Selection criteria and redeployment



Failure to comply

Restructuring in Australia: The Basics

Redundancy

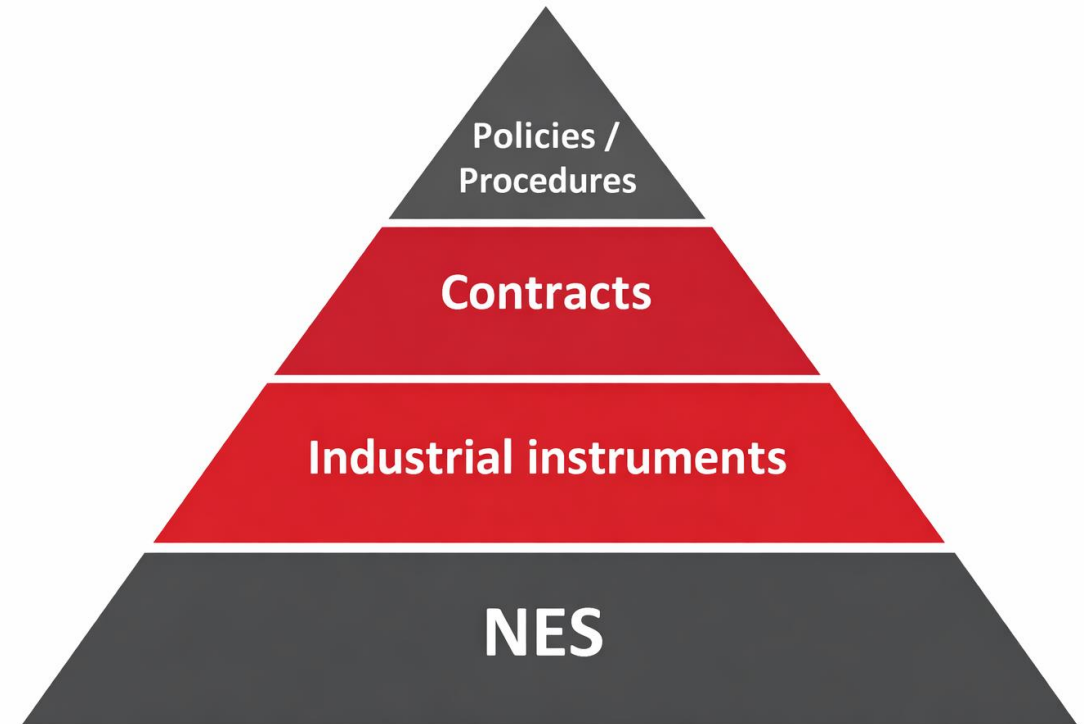
Consultation/ notification
Selection order and employee protections
Redundancy pay

Transfer of Business

Interaction with redundancy laws

Major workplace changes

Consultation



Redundancy: Consultation/ Notification

Employers will typically be required to consult if:

The proposed redundancies impact 15 or more employees for reasons of ‘an economic, technological, structural or similar nature’ (statutory duty under the *Fair Work Act*).

Redundancy triggers the “major workplace change” provisions under a Modern Award or Enterprise Agreement.

Employees are on parental leave or certain employees receiving workers’ compensation payments.

Employees are eligible to file an unfair dismissal application in the Fair Work Commission.



Redundancy: Consultation (cont.)

- For most industrial instruments, employees and their representatives should be consulted as soon as practicable after a definite decision had been made to implement redundancies. An applicable consultation term may trigger this obligation at an earlier point.
- Consultation does not need to occur about the decision to make redundancies generally, however it must extend to other relevant factors impacting employees, such as:
 - the jobs or pool of jobs affected;
 - the process for selecting which jobs will be made redundant;
 - the timing for the redundancy process and retrenchments;
 - any job referral and outplacement services;
 - redeployment opportunities; and
 - any re-training assistance that may be provided.
- Employees and unions should be given adequate information and time to provide their views prior to any decision being made. What will constitute a genuine opportunity will vary according to the nature and circumstances.
- The right to consult is not a right of veto and does not amount to joint decision making.
- The obligation extends to employees who are on leave.
- Notes and records should be kept of any meetings or discussions held and the final decision should be clearly communicated.

Selecting a job for redundancy

No statutory selection order that must be applied, however employers must keep in mind:

1. Protections under discrimination law (such as age, gender, disability etc.
2. Protections against 'adverse action' being taken by the employer because of the employee's 'workplace right' under the Fair Work Act.
3. Special protections for employees on parental leave or certain employees receiving workers' compensation payments.



Redundancy payments

- The Fair Work Act provides employees with a minimum entitlement to severance pay in cases of redundancy (unless the employer employs less than 15 employees).
- The statutory entitlements may be enhanced (but not reduced) by the terms of an enterprise agreement or a contract of employment (there are some industry specific entitlements, including, for example, building and construction, manufacturing).
- Redundancy pay is made to eligible employees in addition to notice of termination and pay-out of accrued entitlements such as unused annual leave or long service leave.
- Redundancy pay may be reduced or eliminated if the employer has found a suitable alternative role for the employee (whether within the business or with another entity under a transfer of business) or is unable to afford the full redundancy amount and has applied to the Fair Work Commission for an order.

Recent Developments in Australia



Broader redeployment test – *Helensburgh Coal Pty Ltd v Bartley & Ors*
[2025] HCA 29



Workplace safety regulators scrutinising restructuring exercises through the lens of psychosocial safety



Redundancy risks in highly unionised workforces – *Qantas Airways Limited v Transport Workers Union of Australia*



AI, technological change and restructuring

Restructuring in Australia and New Zealand: Practical Tips

Consult Legal Experts

Seek guidance from legal professionals to ensure compliance with Australian and New Zealand regulations during restructuring processes.

Forward Planning

A strategy should be developed for managing redundancies which addresses issues such as the reason behind the restructure and selection criteria.

Objective Selection Criteria

When determining which employees are to be made redundant an employer should use objective criteria related to an employee's skills, experience and training and having regard to the needs of the organisation. This information should be provided to the workforce during consultation and easily accessible. Have regard to anti-discrimination and other jurisdiction specific protections.

Consultation/ Notification Requirements

Have regard to jurisdiction specific consultation and notification requirements. Ensure consultation is well documented .

Transparent Communication

Communicate clearly and honestly with employees throughout the restructuring to maintain trust and manage expectations.

Consider Reputation

Factor in any possible reputational fall-out from a decision to restructure.

Thank you for joining



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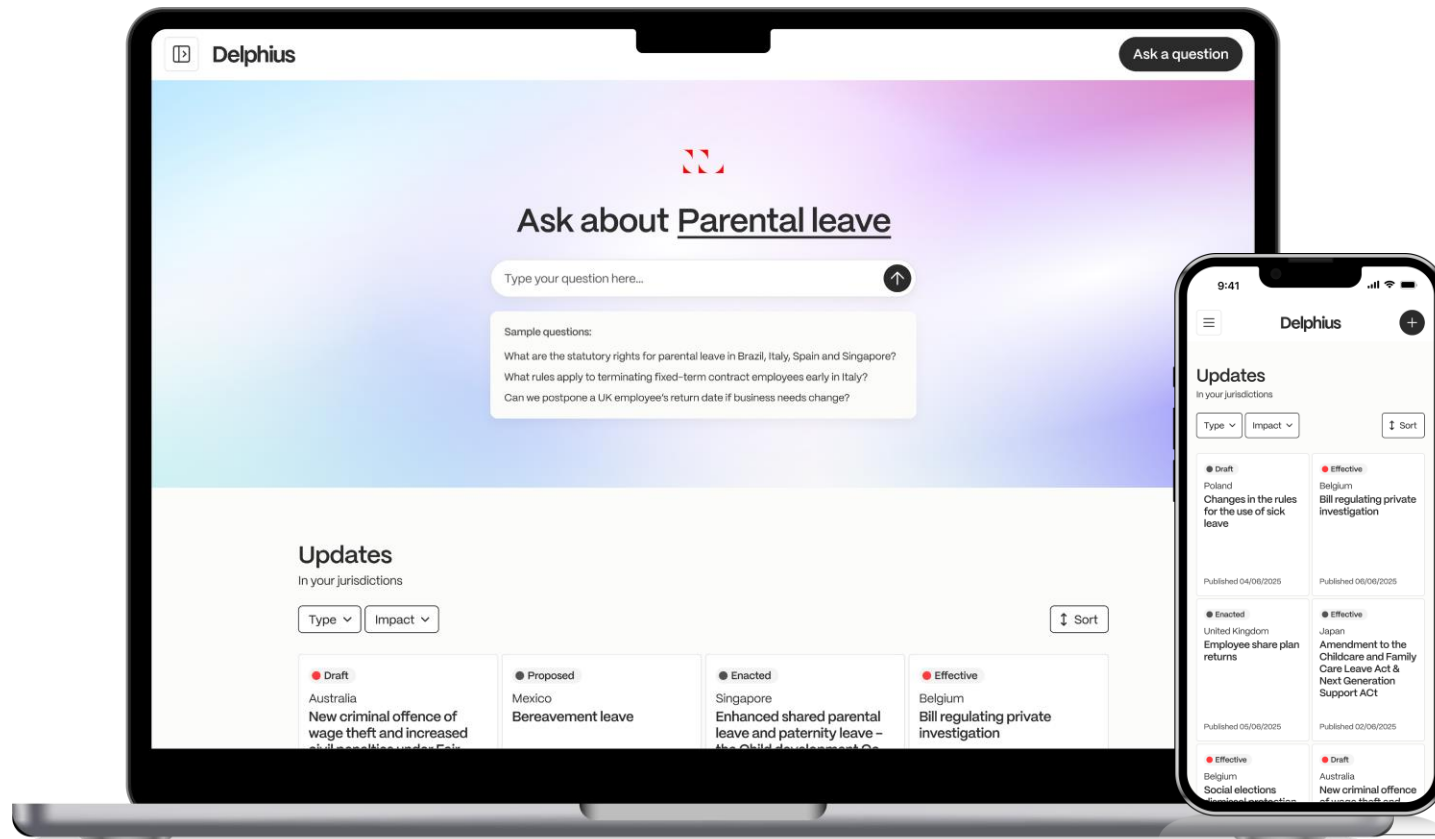
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