

# MODULE 3

## REDEPLOYMENT OF STAFF

PART OF A MODULAR TRAINING RESOURCE

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## REDEPLOYMENT OF STAFF

### INTRODUCTION

Due to potential business change there may be difficult decisions to make regarding staffing levels within your organisation. You may be faced with the difficult situation of having to reduce staff or having to wind up your business.

This Module seeks to explore how you might redeploy staff within the sector in a strategic, ethical and legally responsible manner.

Each organisation's situation is different and organisations operate under different awards and contractual arrangements. Advice in this Module is of a general nature, and cannot be relied upon solely for decision-making. It is important that you seek appropriate industrial relations and business advice to inform your decisions.

This Module will assist you to:

- explore opportunities for staff to be redeployed to other organisations
- manage a redundancy process and reduce risk to the organisation.

Other Modules that support this include:

- Understanding financial impact (Module 1)
- Risk management (Module 5)
- Change Management (Module 10).

### KEY DEFINITIONS

Term	Definition
Employee Assistance Provider	Employee Assistance Providers are specialist organisations engaged by employers to assist employees with work related or personal problems such as health, family financial or emotional concerns.
Fair Entitlements Guarantee	Fair Entitlements Guarantee is a Commonwealth scheme that helps employees when a business becomes insolvent and cannot pay workers their redundancy payments.
National Employment	The National Employment Standards are a legislated set of national minimum standards, entitlements and conditions for

Term	Definition
Standards (NES)	employees.
Redundancy	An employer makes a position redundant when the duties of the position are no longer required by the organisation.
Retrenchment	Retrenchment occurs when an employee's position is made redundant and the employee's employment is terminated.

## REDEPLOYMENT OF STAFF

As discussed in other Modules, understanding your financial status and current contractual arrangements will assist in determining the optimum staffing levels required for your business.

### WHAT IS THE DIFFERENCE BETWEEN REDUNDANCY AND RETRENCHMENT?

These two words are easily confused as the two events can happen at the same time. In simple terms, the employer makes a position **redundant** when its duties are no longer needed to be completed by anyone.

Once the position is redundant, the **person** performing the duties may either be:

- redeployed (i.e. given another job) or
- retrenched (i.e. lose their job and not be offered another).

In summary, a position can be made redundant, resulting in a person being retrenched. Retrenchment should never be seen as an employee's fault.

### DETERMINE YOUR DESIRED STAFFING STRUCTURE

Given the fact that there are many issues in relation to your future business that are unknown, the first step is to manage the transition period and determine an optimal staffing structure with the best knowledge you have at your disposal.

Determine your new organisational structure by job roles, levels and geographies. Think outside the square and decide if there are efficiencies in how you can deliver the remainder of your contract, without compromising services. As you could be exposed to a claim for unfair dismissal, you will need to focus on what job roles and functions are required to manage your current services contract within your financial requirements.

Your decision-making in relation to staffing levels will depend on the impact of your business adjustment. A significant change may mean an increased focus on the level of management and resource required for staff transition. Information regarding the size of the business adjustment, the other elements of your business, new opportunities and the portability of staff skills will contribute to your decision-making.

When considering which positions to keep and which to reduce or change, you should think about what skills are least needed now and what you will need if you win other potential funding for services or have other revenue sources. This means reducing or eliminating positions that make the least contribution to service delivery, compliance or income. Other options are reducing positions which require skills that are easiest to replace, considering which duties you can move to other positions, or reducing those positions which entail duties you can do yourself.

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### WHICH POSITIONS SHOULD I CONSIDER MAKING REDUNDANT?

The first step is to consider other options for your staff. The employment services industry has a high level of portability amongst staff and there may be opportunities for you to work with other organisations to assist with the redeployment of your staff. Where possible this type of arrangement may save your organisation time, money and the difficult situation of making staff redundant.



The Australian Government JobSearch website features a dedicated section to assist people to find employment in the employment services industry and enables providers to search for potential staff. For further information, see:

#### [Employment Services Industry Jobs Board](#)

If you spend time 'finding' work and minor jobs for employees to help them make up their hours, then consider ways to make better use of their time such as merging two positions, training staff to do other jobs or giving staff added responsibilities.

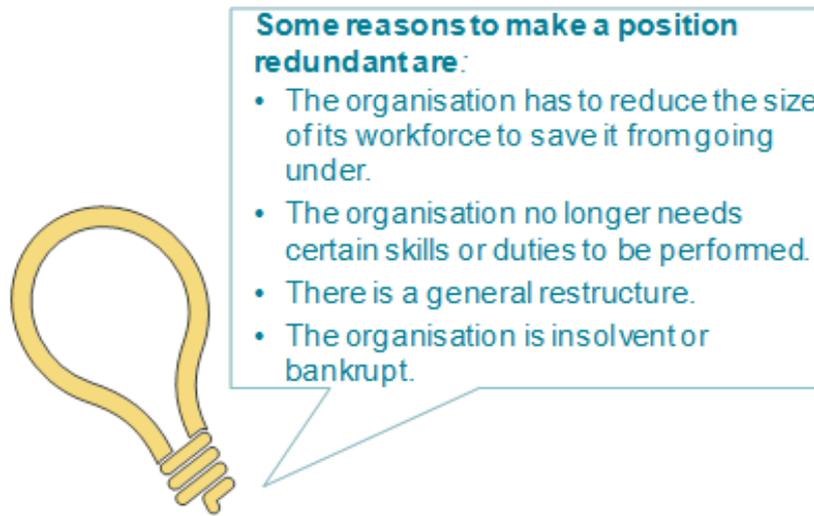
Another option is to share all the duties from a redundant position among all employees. If so, this might be a good time to reassess every employee's position

description, employment conditions and how all work is organised. Consider whether you might seek voluntary redundancies initially before having to make forced decisions.

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## WHAT ARE POTENTIALLY ACCEPTABLE REASONS FOR REDUNDANCY?

It is strongly advised that you seek independent industrial relations advice before you proceed with retrenchments or redundancies. The information presented here is a guide only and does not take into account specific detail in relation to awards or individual contractual arrangements.



You should be aware that under the *Fair Work Act 2009*, a person's dismissal is not a case of genuine redundancy if it would have been reasonable in the circumstances for the person to be redeployed within your enterprise, or that of an associated entity of the employer. Your reasons must be genuine and you must be able to prove they are. In addition, you must also be able to demonstrate that you have complied with any obligations in any applicable modern award or enterprise agreement to consult about the redundancy.

If you do genuinely need to make some positions redundant, proof might be a new organisational chart, financial records showing losses, or financial records showing how much money a redundancy will save. You should also show that you considered other options, such as another position, shorter hours (or if merging positions, longer hours), changing work arrangements, re-training or offering early retirement.

Refer to the **Guide to Redundancy** on page 8 of this Module for more detail.

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## MANAGING THE PROCESS

The hardest component is managing and communicating the process to staff who will be impacted, and indeed to the whole organisation. A good business practice is to develop a Human Resource (HR) Transition Plan that can be shared with staff. This type of plan clarifies 'thinking' among senior staff and communicates clearly the

rationale and process for managing a restructure or redundancy process. The less staff affected, the less impact the process has on the whole organisation. The key elements of this are expressed in the following table.

#### HUMAN RESOURCE TRANSITION PLAN – A GOOD BUSINESS PRACTICE

<b>HR Transition Plan elements</b>	<b>Content</b>
<b>Communication processes</b>	Document how you will communicate to staff throughout the process. Consider meetings, intranet site or regular email updates. Nominate a key staff contact for any concerns or queries relating to the process.
<b>Impacted staff/structure</b>	<p>Explain who the impacted staff and sites are within your organisation. If you are a smaller organisation this may be your whole organisation.</p> <p>If you are considering winding up your business, your insolvency advisor will assist with the process. However, the HR Transition Plan is still relevant to communicating how things will occur.</p>
<b>New structure</b>	<p>Explain the new structure, new job roles and levels. If this structure is for the transition period then explain this. If you have job descriptions then include them with the document. An organisational structure diagram could be included.</p> <p>Job roles may remain, however, there may be fewer staff performing these roles. You may use this as an opportunity to refresh your business model and change job roles</p>
<b>Purpose and rationale</b>	Discuss the impact of the change in services and the financial impact on the organisation.
<b>Redundancy process</b>	Once the restructure process has been resolved, staff who are not redeployed may be offered a redundancy package.
<b>Resolution process</b>	Provide the name of a staff member who staff can contact if they have any concerns with the process or require support. If you have an Employee Assistance Provider, then include contact information in the document.
<b>Transition process</b>	<p>Explain clearly, and in detail, the process of applying for new job roles.</p> <p>You may adopt an Expression of Interest process for staff who are</p>

HR Transition Plan elements	Content
	<p>well known to you, or a more comprehensive, formal application process if you are a larger organisation.</p> <p>Be clear whether staff can apply for more than one job role. It might be a simple one-page form that can be emailed. You may choose to coordinate senior roles first, then other roles.</p> <p>You may guarantee all staff an interview. Consider using an independent interviewer. This may minimise concerns from staff and provide a better result.</p> <p>Communicate the timeframes for the processes and adhere to them. Tell staff when they will be informed of the outcomes of the interviews. Inform your staff that you are committed to retaining as many staff as possible.</p>

## A GUIDE TO REDUNDANCY

The following steps have been adapted from the Fair Work Ombudsman and Business Victoria web sites (web addresses provided on pages 12 and 13 of this Module) and serve as an initial guide to making a redundancy. Please note that this information is a guide only and is current at the time of writing this document.

### THE KEY STEPS INVOLVED IN A REDUNDANCY

The key steps involved in a redundancy are:

- Undertake a preliminary investigation. Make sure the redundancy is genuine. Take a close look at other options in the context of how the business operates.
- Check your awards and agreements (and any workplace policies and employment contracts) for consultation requirements, notice periods, payments and the correct procedures. Errors here could mean claims for unlawful or unfair dismissal later. Call the **Fair Work Info line** on **13 13 94** if you are unsure.
- Hold consultations with staff and unions (compulsory under awards and agreements and the *Fair Work Act 2009*).
- Decide between voluntary or compulsory redundancies (i.e. the workers volunteer or the employer chooses who to retrench).
- If not undergoing a voluntary redundancy process, use fair selection criteria and transparent processes. Keep people up-to-date to maintain trust and respect.
- Prepare redundancy materials, payments and support, and farewell employees with respect.

Notify Centrelink if there are to be more than 15 people being retrenched. A Redundancy Checklist is provided at the end of this Module on page 14 to assist with this process.

You may also wish to contact the National Business Gateway (administered by the Australian Department of Human Services), which may be able to help you meet your obligations if your business is retrenching employees, and answer any queries you may have. The National Business Gateway can also help organise sessions with Financial Information Service officers, who can help affected workers make decisions through this process such as:

- taking control of their finances so they can actively plan for their retirement
- prepare for lifestyle choices in retirement, even while they are still in the workforce.

For further information, please see:

[National Business Gateway](#)

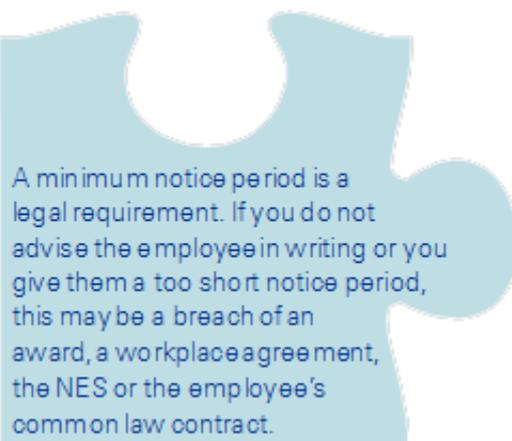
[Financial Information Service](#)

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## HOW MUCH NOTICE OF TERMINATION DO I NEED TO GIVE BY LAW?

This depends on how long the employee has worked for your organisation. For the exact notice period, check the *Fair Work Act 2009* and the relevant award or agreement, or call the **Fair Work Info line** on **13 13 94**.

If you fail to provide the correct notice of termination, the employee will be entitled to payment in lieu of notice or could claim 'unreasonable notice' under a common law contract of employment. (*Tip: an employment contract can be oral or in writing. Every employee will have a common law contract.*)



**Payment in lieu of notice** (payment equal to the wages for the notice period) is usually an alternative to giving an employee notice. You pay this to the employee if you decide to retrench them immediately or before the end of the notice period.

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## DO I HAVE TO PAY REDUNDANCY (SEVERANCE) PAY?

The exact amount of redundancy pay depends on how long the employee has worked for you. The award, agreement, contract or *Fair Work Act 2009* will list the amount payable.

Under the *Fair Work Act 2009*, where an employer has 15 or more employees, those employees will be entitled to redundancy (severance) pay. An employee's current entitlement to redundancy pay can be dependent on whether the employee had an entitlement to redundancy pay prior to the introduction of the NES. If an employee did not have an entitlement to redundancy pay prior to 1 January 2010, an employee's period of continuous service with the employer will only accrue from 1 January 2010. If entitlements under an award, agreement or contract are more generous than the NES, then your employee will be entitled to that amount upon being retrenched.

Businesses with less than 15 employees are not required to pay redundancy pay (unless they are subject to an award, agreement or common law contract that states otherwise). If you make a position redundant but give the worker an equivalent job, you do not have to pay redundancy pay.

If the employee's period of continuous service with you is less than 12 months, you will not be required to pay redundancy.

There are some very limited circumstances when an employer can apply to the Fair Work Commission to be exempted from the requirement to pay redundancy pay, or the amount to pay can be reduced. If you are unsure, call the **Fair Work Info line** on **13 13 94**.

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## FINAL PAYMENTS: HOW TO WORK OUT WHAT TO PAY

*There is no one-size-fits-all solution to working out employees' final payments. Remember to make sure you understand the tax obligations for each payment.*

Final 'termination' payments for redundancy are made up of some or all of these:

- unpaid wages
- unused annual leave
- redundancy pay
- unused rostered days off or time off in lieu (if any)
- 'payment in lieu' if the employee is not going to work through the normal notice period to their official last day (and remember to calculate and pay the employee's superannuation to the end of the notice period)
- pro-rata long service leave (usually only after seven years' service depending on the applicable instrument or state and territory laws)

Check your award or workplace agreement for details. If you are not sure where to start, call the **Fair Work Info line** on **13 13 94**.

Special tax rules apply to some termination payments, such as unused annual leave, so check with the **Australian Tax Office** or your tax adviser about 'eligible termination payments' (see [Online Tools](#)). Note that unused sick leave is not paid out unless an agreement or award provides for cashing out of unused leave (this is uncommon).

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## WHAT ELSE SHOULD A GOOD REDUNDANCY 'PACKAGE' INCLUDE?

Consider the following to be minimum standards for a well-handled redundancy.

Provide each employee being retrenched with a written notice that the end of employment is approaching (notice period), and a redundancy kit that contains:

- details of entitlements calculated to the last day, clearly explained, listing which agreement or award you based the calculations on, when and how you will make final payments
- an Employment Separation Certificate stating that employment has ended and for what reason (if needed for Centrelink)
- a written, accurate statement of service (if requested)
- the offer of counselling and job search services, some community organisations, industry associations and unions offer assistance
- the offer of paid time off to look for work, obtain financial planning advice and/or retraining
- the offer to end employment immediately by taking pay in lieu of notice (if mutually convenient).

A farewell event, if the employee being retrenched would like one, is also part of a good redundancy package.

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## GOOD COMMUNICATION IS ESSENTIAL TO MAINTAIN TRUST

Effective communication reduces uncertainty and mistrust. Uncertainty causes fear, and therefore stress. The solution is to keep people (employees, unions and other managers) up-to-date with what is planned.

A few tips on communication:

- Start consulting with staff and unions (if applicable) as soon as is practicable. Awards or agreements may also require you to consult about proposed redundancies. Failure to do so may mean that a dismissal will be found to not be a genuine redundancy under the *Fair Work Act 2009*.
- Use face-to-face contact where possible. This is a better way to handle sensitive communications than email.
- If you have meetings (staff or individual), keep a written record of what was discussed (include date and who was present).
- Help employees understand what your selection process for redeployment within the organisation will be, when selection has taken place, and why individuals were selected.
- If individuals on long-term leave (such as parental or long service leave) are being retrenched, ensure the process for selection is documented, transparent, and not based on discriminatory grounds.

## UNFAIR AND UNLAWFUL DISMISSAL AND DISCRIMINATION

### AVOID UNFAIR DISMISSAL

An employee may be able to claim unfair dismissal after retrenchment if you used the wrong procedure or if the redundancy was not genuine (for example, if you employ a new person in the same job shortly after you make it redundant). If an employee believes they have been dismissed unfairly, they can apply to the Fair Work Commission within 14 days of the dismissal.

Under the *Fair Work Act 2009*, where a small business employer (with fewer than 15 employees) complies with the Small Business Fair Dismissal Code when dismissing an employee, the dismissal will not be an unfair dismissal.

Visit **Fair Work** ([website](#)) for a copy of the Code.

### AVOID UNLAWFUL DISMISSAL AND DISCRIMINATION

An employee can claim unlawful termination during a redundancy if you discriminate against them when you select them for retrenchment. This is why it is important to ensure processes are fair, transparent and documented.

### BREACH OF THE NATIONAL EMPLOYMENT STANDARDS

You will be in breach of the NES if you:

- fail to give the correct amount of notice to an employee OR
- fail to pay the correct final payments, e.g. payment in lieu of notice or redundancy pay.

An employee or the Fair Work Ombudsman can take you to the Fair Work Commission to recover money and possibly seek the imposition of monetary penalties on you or your organisation if you breach the *Fair Work Act 2009*.

If an employee believes they have been unlawfully dismissed, they may seek assistance from the Fair Work Ombudsman, take action through the courts or both. Call the **Fair Work Info line** on **13 13 94** for more details.

### CLOSING A BUSINESS WITH EMPLOYEES – EMPLOYER RESPONSIBILITIES

If you are insolvent, after your business has wound up you may still have obligations in relation to your employees. Pay As You Go Withholding, FBT, superannuation and eligible termination payment final payments often need to be made even after the doors

have closed. If you are in this situation, your liquidator should assist you with this process.

#### A SCHEME FOR WORKERS WHO MISS OUT ON REDUNDANCY PAY: FAIR ENTITLEMENTS GUARANTEE

The **Fair Entitlements Guarantee** is a Commonwealth scheme that helps employees when a business becomes insolvent and cannot pay workers their redundancy payments.

Employees can contact the FEG hotline direct on **1300 135 040** and should do so as soon as possible as time limits for making claims apply. For further information see: [Fair Entitlements Guarantee](#).

#### USEFUL WEBSITES

[Australian Tax Office](#)

[Fair Work Ombudsman](#)

[Business Victoria](#) – A useful and comprehensive guide for employers in any state or territory.

[National Business Gateway](#)

## REDUNDANCY CHECKLIST

This checklist has been adapted from the Victorian Government Small Business Checklist and is intended as a general guide only. Please call the **Fair Work Info line** on **13 13 94** or speak to a lawyer for advice on employment law if you require any additional information.

Checklist questions	Things to consider	✓/x
What is an acceptable reason for making a position redundant?	<ul style="list-style-type: none"> <li>• The organisation no longer needs certain skills or duties to be done.</li> <li>• Your organisation has to reduce its workforce to save it from going bankrupt/becoming insolvent.</li> <li>• Significant change of location.</li> <li>• Sale/general restructure of the organisation.</li> </ul>	
Have you explored other options for redundancy?	Common options to consider are retraining, rewriting job descriptions, changing full-time to part-time or casual work, reducing hours or overtime, job redesign, transfers, getting people to take built-up leave, temporary shutdowns, cutting costs in other areas. The law requires you to explore other options.	
Have you considered what will happen when the skills, knowledge and duties of the position are gone?	If you make positions redundant, keep in mind the skills and knowledge you might need again (e.g. when business bounces back) and what it will take to replace them. Some positions and duties will be essential to cash flow, safety or compliance. Which are they?	
Can you prove to a third party that redundancy was the only option?	You need to be able to show that redundancy was the last resort. Make sure you have financial and other records you can use, such as cash flow projections for after a redundancy or other financial statements, to support your decision.	
Can the position be turned into a part-time or casual position?	This will technically be a redundancy. You should consult a professional adviser to determine what, if any, entitlements must be paid at the time the change takes place. You should also be sure to consult within your workplace and possibly the union if replacing full-time positions with part-time or casual positions.	

Checklist questions	Things to consider	✓/x
<p>Are you clear about what redundancy (severance) pay and other entitlements you will need to pay?</p>	<p>The <i>Fair Work Act 2009</i> determines statutory minimum requirements for redundancy. There may be additional requirements in each state or territory, so it is best to check with an employment law adviser to determine redundancy pay. An employee's award, agreement or common law contract may also set out additional entitlements. In very limited circumstances, a specific employer may apply to the Fair Work Commission for a reduction in the redundancy amount to be paid.</p> <p>An employee's current entitlement to redundancy pay can be dependent on whether the employee had an entitlement to redundancy pay prior to the introduction of the <i>Fair Work Act 2009</i>. If an employee did not have an entitlement to redundancy pay prior to 1 January 2010, an employee's period of continuous service with the employer will only accrue from 1 January 2010.</p> <p>Employees who have worked with the organisation for less than 12 months are not generally entitled to redundancy pay, but must still be paid other entitlements where eligible, and treated fairly to avoid unfair and unlawful dismissal claims. Refer to the Guide to Redundancy on page 8 of this Module for details. Remember to check the tax implications of any payments made.</p>	
<p>Have you consulted with employees and unions on the planned changes?</p>	<p>The sooner you consult the better. Early consultation with employees (and unions), even in confidence, will encourage smoother change, and may give you some invaluable ideas on how to reduce the impact of retrenchment on your employees. Most modern awards contain provisions obliging employers to consult with their employees about major workplace changes.</p>	

Checklist questions	Things to consider	✓/x
Have you made certain you know the legally required notice of termination period?	The <i>Fair Work Act 2009</i> specifies the legally required minimum notice of termination period depending on how long an employee has been employed and their age. The minimum notice period may be greater if specified in an employee's letter of offer or contract, or the applicable award or agreement.	
What is payment in lieu of notice? Should you offer it?	Payment in lieu of notice is payment equal to the wages for the notice period, and is an alternative to having an employee work to the end of the notice period. You pay this to the employee if you decide to retrench them immediately or before the end of the notice period. This is best done if mutually convenient for employer and employee. This payment is in addition to any redundancy payments to which the employee is entitled.	
Does the redundancy process need to be compulsory?	Employers can offer employees the option to resign without a compulsory selection process. This is known as voluntary redundancy.	
What selection process should you use?	These vary, but some, such as selection based on age or illness, may expose you to a discrimination claim. The process will depend on the type of restructure being undertaken. Selection based on performance and skills is a good approach where the number of workers performing the same job is being reduced.	
Have you kept records for your selection process?	You will need to be able to show how you made the selection and explored other options in case there is a claim later for unfair or unlawful dismissal or discrimination.	

Checklist questions	Things to consider	✓/x
Have you prepared a kit for employees setting out all their payments and how these were calculated?	The kit should include an Employment Separation Certificate and statement of service for Centrelink, as well as the name of the award or agreement you based your calculations and notice period on.	
What can you do to reduce the stress of an employee's job loss?	Keeping people up-to-date reduces the sense of uncertainty and fear (and therefore stress). Can you offer paid time off to look for work, investigate retraining opportunities, financial planning or specialist support ('outplacement consultants')? It is not essential, but if you have the resources it is considered good HR practice to offer these.	
Have you followed correct procedures for an employee leaving?	Have retrenched staff returned property, such as uniforms, tools and keys? Have you changed their computer password and building security access? Remember to pay any outstanding entitlements including pay, superannuation, unused annual and long service leave and send payment summaries at the end of the tax year.	
Have you checked to see if counselling and other assistance (for both retrenched employees and remaining employees) are mentioned in awards, agreements or contracts?	While providing counselling might be beyond smaller organisations there are still free services you can refer employees to such as <a href="#">Money Help</a> . You should also be able to offer the employee useful feedback on the employee's strengths to help them plan for their next job. If you have an apprentice, talk to your contact at <a href="#">Australian Apprenticeships</a> or your <a href="#">Group Training Organisation</a> to transfer the apprentice to another organisation.	
Have you prepared an appropriate farewell?	A send-off for those leaving is a respectful way to mark an important day for all.	

Checklist questions	Things to consider	✓/x
<p>What can you do if you are bankrupt or insolvent, and cannot pay your employees their entitlements?</p>	<p>Advise your employees to contact the <b>Fair Entitlements Guarantee</b> hotline direct on <b>1300 135 040</b>. The Fair Entitlements Guarantee is a Commonwealth scheme that helps employees when a business becomes insolvent and cannot pay workers their redundancy payments. Employees should contact the hotline as soon as possible, as time limits for making claims apply.</p> <p>For further information see: <u>Fair Entitlements Guarantee</u>.</p>	
<p>Have you done your best to avoid unfair dismissal or unlawful dismissal?</p>	<p>Make sure you explore other options, document your research and discussions with employees, use a fair and consistent selection process, and err on the side of generosity if you can. Maintain open communications from the start and treat people with respect during what can be a stressful time.</p>	