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HR Highlights Series.

**Redundancy update: Key take aways from
Helensburgh Coal Pty Ltd v Bartley [2025]
HCA 29 and other recent issues for consideration**

**Wednesday 17 September 2025
Adam Foster**



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Case Background

Chronology of events leading to the appeal

Background and Parties Involved

Employees and contractors worked at the Metropolitan Coal Mine operated by Helensburgh Coal Pty Ltd.

Impact of COVID-19 on Operations

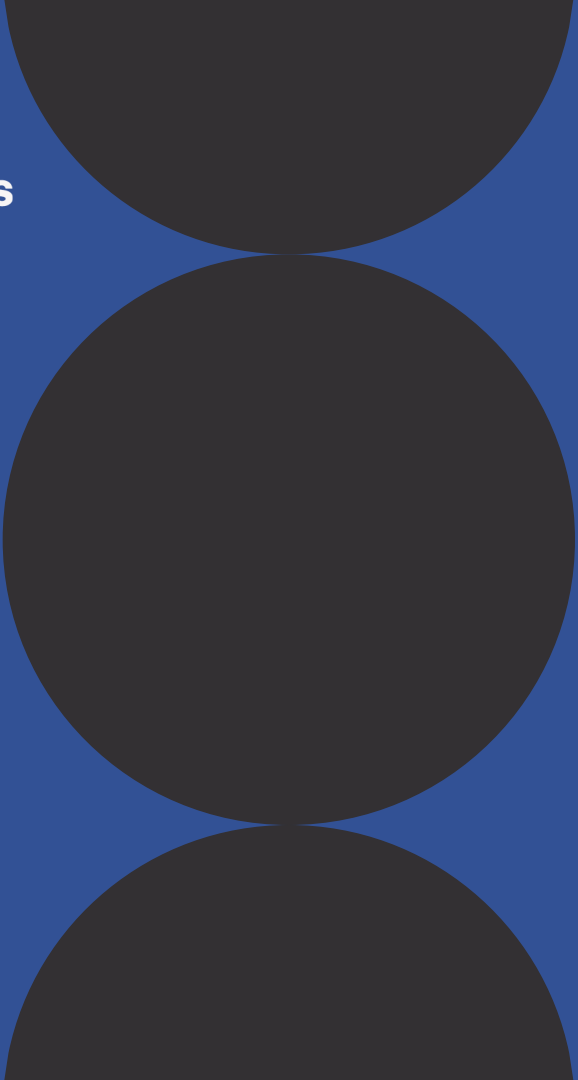
Pandemic reduced coal demand leading Helensburgh to restructure by reducing crews and workdays.

Dispute over Redundancy and Redeployment

Employees claimed unfair dismissal while Helensburgh argued genuine redundancy under the Fair Work Act.

Legal Decisions and Appeal Outcome

Fair Work Commission ruled dismissals not genuine redundancy; Full Federal Court dismissed Helensburgh's appeal.



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Legislative Framework and Relevant Provisions

Overview of the Fair Work Act provisions on unfair dismissal and genuine redundancy

What is a genuine redundancy?

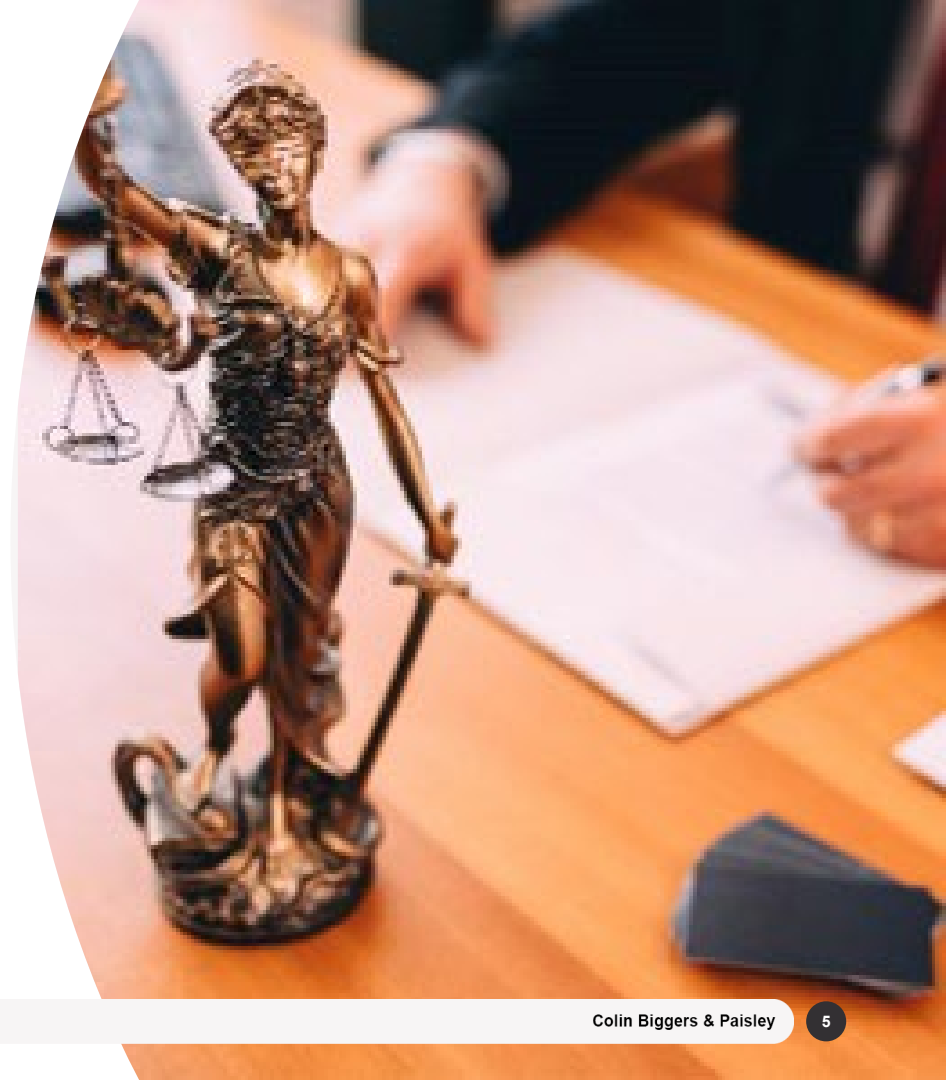
A dismissal is genuine redundancy if the job is no longer required due to operational changes and consultation occurred and there is no redeployment available across the entity or its related entities.

Consequences of getting the process wrong

Unfair dismissal claim with reinstatement as the primary remedy unless inappropriate, with compensation ordered only when reinstatement is unsuitable.

Procedural Provisions and Appeals

Dismissed persons can apply for remedies while the FWC assesses if dismissal was genuine redundancy before merits.



Definitions and statutory context of "enterprise" and "redeployment"

Genuine Redundancy Definition

Genuine redundancy occurs when a job is no longer required due to operational changes and consultation obligations are met.

Redeployment Clause

Dismissal is not genuine redundancy if reasonable redeployment within the employer's enterprise is possible.

Enterprise Definition

Enterprise is legally defined as a business, activity, project, or undertaking under the FW Act.



Remedies for unfair dismissal and the role of the Fair Work Commission

Fair Work Commission Remedies

FWC can order reinstatement or compensation for unfair dismissal under section 390 of the FW Act.

Reinstatement Provisions

Section 391 mandates reinstatement to original or equivalent position unless inappropriate.

Application and Redundancy Inquiry

Sections 394 and 396 allow dismissal applications and require checking for genuine redundancy first.

Appeals to Full Bench

A dismissed person may appeal FWC decisions to the Full Bench with permission based on public interest.

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Factual Context and Employment Arrangements

The operational structure of Helensburgh Coal and use of contractors

Workforce Composition

Helensburgh Coal operated with a blended workforce of permanent employees and contractors providing essential mine services.

Impact of COVID-19

The pandemic reduced coal demand, leading to operational restructuring and workforce reductions at the mine.

Consultation and Insourcing

Helensburgh consulted employees and agreed to insource some contractor work yet maintained key contracts with Nexus and Mentser.

Contractor Agreements

Nexus and Mentser provided services under multi-year contracts, even during workforce downsizing and redundancies.



Details of redundancies, redeployment possibilities, and contractor arrangements

Workforce Restructure Impact

Helensburgh reduced contractor reliance by 40% and reduced employees by 90, including 47 forced redundancies.

Redeployment Challenges

No vacant roles existed for redeployment without displacing Nexus or Mentser contractors, risking further layoffs.

Unfair Dismissal Claims

Employees applied to Fair Work Commission claiming unfair dismissal, disputing genuine redundancy status.



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Decisions of the Fair Work Commission and Appeals

First instance and initial appeal decisions

Initial Unfair Dismissal Application

Employees applied for unfair dismissal remedies citing redundancy under FW Act section 389. Employer argued terminations were genuine redundancies.

Commissioner Riordan's Decision

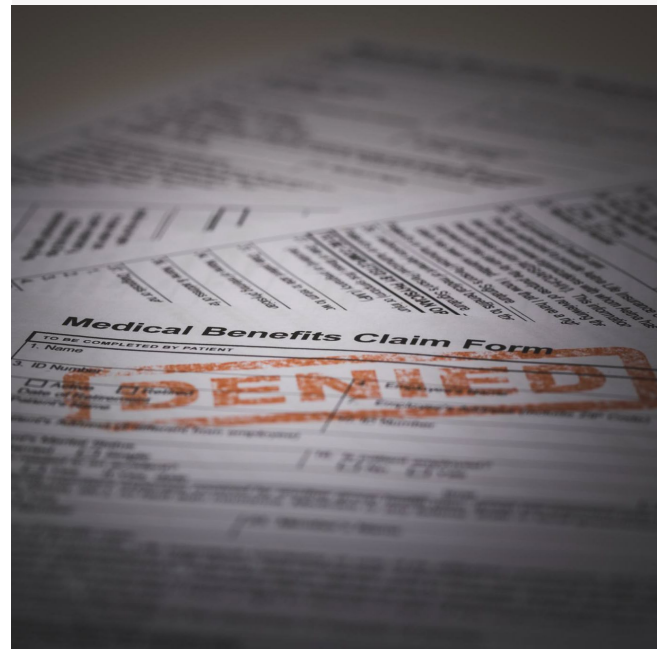
Commissioner found contractor work not specialist and deemed redeployment of employees reasonable, dismissing employer's jurisdiction objection.

Full Bench Appeal Outcome

Full Bench emphasized broader assessment of redeployment feasibility including employer's perspective and nature of contractor work.

Concept of Redeployment

Redeployment means reorganization or reassignment within enterprise, not requiring vacant position, focusing on reasonable alternatives at dismissal time.



Remittal, second Commissioner decision, and subsequent appeal

Feasibility of Redeployment

Commissioner Riordan held that insourcing contractor work and redeploying employees was feasible and not operationally impracticable.

Full Bench Appeal Outcome

The Full Bench affirmed the reasonableness inquiry and dismissed the appeal, supporting the Commissioner's decision.

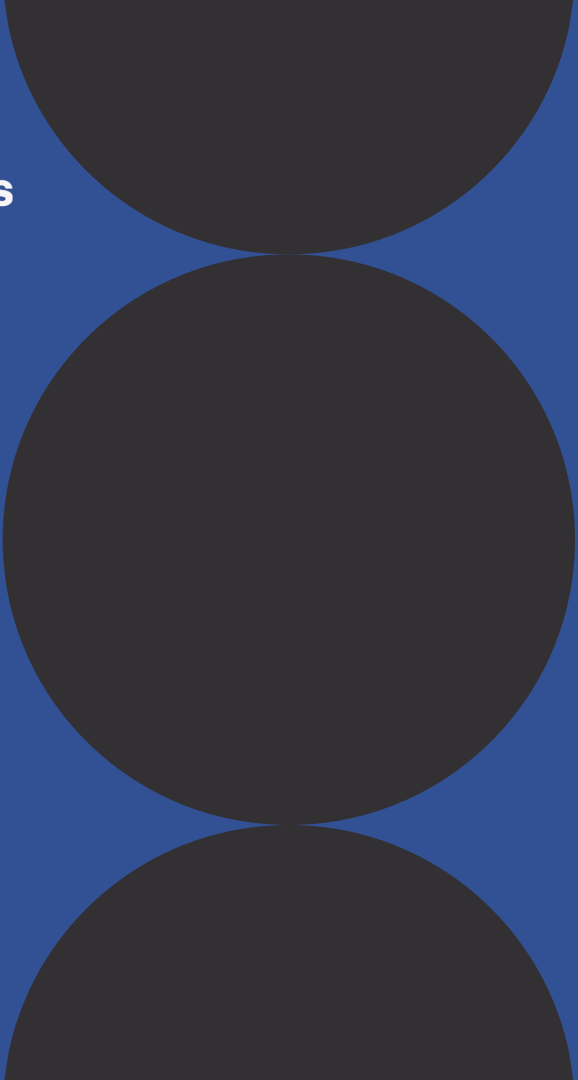
Reasonableness Inquiry Scope

The inquiry assesses redeployment reasonableness considering all circumstances within the employer's enterprise context.

All Circumstances Considered

The scope includes employee skills, employer policies, workforce nature, and operational changes affecting redeployment.





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Judicial Review and Federal Court Proceedings

Application for Judicial Review and Grounds Raised

Grounds for Judicial Review

Helensburgh sought to quash FWC decisions based on alleged jurisdictional errors in unfair dismissal cases.

Reasonableness of Redeployment

Courts held redeployment must be reasonable considering all circumstances including possible business changes.

Creation of New Positions

Redeployment can include creating new roles, impacting business models and third-party contracts.

Appellate Review Standards

Dispute over whether standard of review should be correctness or traditional appellate standards.



Federal Court's Analysis of Redeployment and Standard of Review

Interpretation of Section 389(2)

The court held that redeployment must be 'reasonable in all circumstances,' allowing flexibility beyond vacant roles.

Reasonableness and Employer Measures

Analysis includes what steps an employer could take, including reducing reliance on external contractors for redeployment.

Role of Fair Work Commission

FWC determines reasonableness of redeployment within wide legal bounds considering all circumstances.

Potential Impact on Business Model

Redeployment may require new positions and changes to business models, but such cases are rare and exceptional.

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High Court's Analysis: Construction of s 389(2)

Interpretation of "genuine redundancy" and the scope of redeployment inquiry

Definition of Genuine Redundancy

Section 389(1) requires an employer's decision that the job is no longer needed due to operational changes, focusing on the nature of work, not job title.

Reasonableness of Redeployment

Section 389(2) requires assessing if it was reasonable to redeploy the employee within the employer's enterprise considering all circumstances at dismissal.

Scope of Employer's Enterprise

Redeployment inquiry is limited to the employer's actual enterprise at dismissal, including policies, workforce composition, and economic conditions.

Hypothetical Inquiry Context

The inquiry considers a hypothetical scenario at dismissal time, objectively evaluating work availability and reasonableness of redeployment.



Consideration of employer's enterprise and relevant circumstances

Definition of Employer's Enterprise

The employer's enterprise is defined as its business, activity, project, or undertaking, setting the scope for inquiry.

Meaning of Redeployment

Redeployment means rearranging or reorganising work within the enterprise, not necessarily requiring a vacant position.

Reasonableness Inquiry

The inquiry assesses if redeployment would have been reasonable in all circumstances at the time of dismissal.

All Relevant Circumstances

Considerations include employee skills, employer policies, workforce composition, and future business plans.

Reasonableness and limits of Commission's inquiry

Scope of Inquiry under s 389(2)

The inquiry considers if employers could modify workforce use to create positions avoiding redundancy.

Genuine Redundancy Requirements

A genuine redundancy requires no job need due to operational changes and unreasonable redeployment possibility.

Limits on Redeployment

Redeployment is unreasonable if it requires creating new jobs or displacing other employees' positions.

Context of COVID-19 and Enterprise Impact

COVID-19 led to reduced demand and workforce downsizing, impacting enterprise operational requirements.

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Takeaways

Authority of the Fair Work Commission in redeployment and enterprise restructuring

Use of Contract Workers

Contractors supplied workers on an as-needed basis without obligation to prioritize former employees for redeployment.

Reasonableness of Redeployment

Redeployment assessments consider the enterprise state at dismissal and do not mandate creating new positions arbitrarily.

Limits on Displacing Employees

Redeployment should not displace existing employees or contractors, as this is considered unreasonable and inappropriate.



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UTS and WorkSafe

Consultation process?

UTS launched its 'Operational Sustainability Initiative' late last year. The aim of the initiative is to boost its surplus to \$94 million by 2029, through various cost-cutting measures, including job cuts.

On 2 September, approximately 800 staff were invited to attend meetings to discuss the possible loss of 150 academic jobs.

The meetings were scheduled to take place on 3 September, and the change proposal was set to be released on 4 September.



Outcome

On 2 September, SafeWork NSW issued a prohibition notice to halt the redundancy process.

The reason: 'workers are, and will be, exposed to a serious and imminent risk of psychological harm from actions taken, and planned'.¹

Notice: Ordered UTS to consult with staff in accordance with applicable laws and instruments, and to ensure that any eventual release of the change proposal included management of psychosocial risks.

UTS, after discussions with SafeWork resumed its restructure process.

Presenter.



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Thank you.

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