Q. Is a job redundant if its duties are maintained but distributed to one or more (existing or new) other position(s)?

A. A job involves “a collection of functions, duties and responsibilities entrusted, as part of the scheme of the employer’s organisation, to a particular employee”. At common law and under the Fair Work Act 2009, if an employee’s job is no longer required to be performed (as opposed to the duties of the job) due to a reorganisation or redistribution of duties, then the job may be redundant1. The key question is whether the previous job has survived the restructure or downsizing, rather than whether the duties have survived in some form2.

This is reinforced by the Explanatory Memorandum to the Fair Work Bill 2009 at Item 1548, that cites as an example of a change in the operational requirements of an enterprise the situation where “the employer is restructuring their business to improve efficiency and the tasks done by a particular employee are distributed between several other employees and therefore the person’s job no longer exists”.

Q. Is a job redundant if the essential duties remain much the same but the requirements of the job are recast as requiring higher skills/qualifications?

A. The Fair Work Act 2009 at s.389(1)(a) provides that there is a genuine redundancy if the employer no longer requires an employee’s job be performed by anyone because of changes in their operational requirements.

Although the Act does not define the term ‘operational requirements’, it has been held to be a broad term that permits consideration of many matters including the need for new processes, equipment or skills to be utilised in the business3.

Where dictated by operational requirements an employer may decide to replace a position held by an employee with a position for which the holding of a higher (eg doctorial or professional) qualification is mandatory. The employee’s position would thus be redundant notwithstanding that some or all of the duties of the redundant position would continue to be performed by other (possibly new) employees4.

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2 Kekeris v A. Hartrodt Australia Pty Ltd T/A a.hartrodt [2010] FWA 674 (Hamberger SDP, 19 February 2010) [27]
3 Nettlefold v Kym Smoker Pty Ltd (1996) 69 IR 370, 373
Q. Does a university need to establish that there are/were no jobs to which the employee could reasonably be redeployed if the employee has not pointed to a particular job for this purpose?

A. The Fair Work Act 2009 at s.389(2) provides that a person’s dismissal is not a case of genuine redundancy if it would have been reasonable in all the circumstances for the person to be redeployed within the employer’s enterprise (or an associated entity).

No particular existing position or job needs to be identified for potential redeployment, simply that there was other work available at the time of dismissal which could reasonably have been performed by the dismissed employee. If an employer wishes to rely on the “genuine redundancy” exclusion, the employer would ordinarily be expected to adduce evidence as to why there was no work available or why it would not have been reasonable to redeploy the dismissed employee to perform available work.5

5 Technical and Further Education Commission (t/as TAFE NSW) v Pykett (2014) 240 IR 130