

**Who's afraid of  
the big, bad wolf?**  
*- restructuring and redundancy*



*The ‘R words’ - restructuring and redundancy - are the dirty words of business. Managers agonise over decisions forced on them, and staff and unions theorise conspiracies. While no business wants to contemplate failure, an efficient economy creates both winners and losers. When changing markets or new technology result in the ‘R words’, the processes and systems need to be in place to avoid staff challenging the outcomes and further extending the pain. iStart set out to help readers be prepared for the worst – but we found it an uncomfortable topic for many, more so, it seems, for Australian businesses. **Erin Boyle** found three experts who were not afraid to talk about the ‘big, bad wolf’...*

**THE ASSOCIATION**

*Gilbert Peterson, communications manager, Employers & Manufacturers Association*



Economists agree that increasing production/output and sufficiently achieving high levels of it is the only way that we can increase our level of real income. And technology of course has a big part to play in all of that, making it possible for a business’s employees to do more in less time using fewer resources.

While new IT systems do not automatically mean fewer staff, many businesses will find they need to reorganise how employees undertake their work to take full advantage of the system and this may eventually lead to redeployment or redundancy.

What happens next - when the ‘reorganising’ occurs - is what has businesses running scared and can be where they succeed or fail.

“Ensuring that restructuring an organisation is appropriate, beneficial and fair is an age old challenge,” says Peterson. “And it’s the same

challenge businesses have always faced, although with IT the pace of change and the frequency of the need to make changes is increasing.

The consequences, if a restructuring is done well, can deliver huge gains; if done poorly it can be dire. Books have been written on it.”

Peterson notes there are real pitfalls to watch out for, but with goodwill and a clear vision of what the business is setting out to achieve, they can be avoided.

The first principle to keep in mind is that employers are entitled to manage and organise their businesses and determine which positions will be selected for redundancy should the need for this arise. In Australia the law allows a business to make the decision to restructure then inform their employees of the outcome. In New Zealand there is more focus on procedural fairness and you must start with by consulting your employees about a proposed restructure prior to making any decisions.

Legalities aside, Peterson says redundancy should be a last option and before it is considered, retraining and redeployment options should be thoroughly assessed.



“An employee whose employment is terminated on the grounds of redundancy may have a personal grievance based on unjustifiable dismissal if either the employment was terminated under a process that was unfair or if the redundancy was not genuine.”

So, with almost all of business functions having some sort of IT process, how does a company's technology fit into the scheme of restructuring and redundancies? Can IT really dot the 'i's and cross the 't's to make sure management avoids the common pitfalls of restructuring? Peterson isn't so sure.

“Of course technology is great for ensuring repetitive processes are done with consistent accuracy and precision. But first, to do this they need to be set up to deliver what is expected from them - the old GIGO (garbage in garbage out) is always true.”

When it comes to dealing with redundancies and restructuring, it needs to be remembered that you are dealing with real life people who will respond with a variety of emotions that no kind of technology can ever predict. In most cases a personal approach, especially at the initial stages of the process, needs to be the focus. So is this perhaps one area where technology shouldn't, now or ever in the future, be solely relied upon?

### THE HR EXPERT & IT SYSTEMS TRAINER

*Angela Atkins, general manager and trainer at Elephant*



As someone who trains organisations on how to use their technology systems, Atkins has seen first hand what can happen in a company when a new IT system is implemented into daily functions, and the result may not be what you would expect.

“My experience in new IT systems has been from an HR or training point of view and I've found that introducing new IT programs initially can slow down productivity while people learn how to use them.”

But she also notes that in the long run, the right IT systems should mean that people can spend more time on the right activities that bring the company revenue, rather than administration. For example Atkins has worked with many companies who have introduced an online performance review system rather than a paper-based one, which makes it quicker for employees and management to keep track of achievements and

rate it at the end of the year. And an HR system where employees can apply for leave online and HR can pull out reports on this can save a lot of administration time, which means more time for managing the important things.

So, although restructuring and redundancies are a reality for some organisations when implementing new IT systems, Atkins does have a warning for others.

“Management shouldn't immediately think that introducing any IT system will mean less people. For a start processes will need to be documented and mapped so that everyone understands how what's being done now is done in the new system. People will also need training on the new system and there will be some issues to start with. So it can be better to introduce the system first, see the impact and then consider if you need to restructure.”

Sometimes the new IT system is more about enabling people to spend time on the responsibilities and activities that create revenue for the company, rather than administration. “For example,” says Atkins, “when we put a new POS system into a retail company I worked in, it meant that sales were quicker to process so our sales teams could be out on the shop floor selling rather than stuck behind a till.”



Where redundancies and restructuring are a reality of new IT system implementation, Atkins says that it is important to think like a person and communicate like one too. Atkins says that the biggest issue she sees from many of the personal grievance cases that go the Employment Relations Authority are from businesses who don't get the appropriate advice, decide to restructure and then advise employees they are redundant without going through the required consultation process.

Using technology in a correct and innovative way can help organisations stay transparent and to meet employee's expectations of communication and feedback. While using email to initially make the announcement might be too impersonal, Atkin's has seen some positive ways of using it to aid communication.

"In some larger restructures I've been involved in we've set up an email address for all questions to come to and then posted questions on the intranet with answers so all employees can see what's being asked and what the answer is. You could also run this as a 'hackathon' type session where employees can ask questions in real time but via technology."

It's also interesting to note that training management how to deal with a restructure can effectively be done using technology to develop e-learning modules, run webinars or create online guides for managers to use. By using the correct IT systems and material, everyone involved with the process can ensure they are following the well-worn path on the right way to restructuring and working through redundancies.

### THE IT EXPERT

*Philippa Youngman,  
managing director,  
Pivot Software Ltd*



Processes which are mechanical and logical in nature are managed very effectively through technology but Youngman, who heads up performance management software vendor Pivot Software, says it is important to understand where the critical human element needs to remain in any process.

## Australia: Redundancy, remuneration and remediation

Under the National Employment Standards (NES), which replaced the non-pay rate provisions of the Australian Fair Pay and Conditions Standard (the Standard) from 1 January 2010, the rules relating to redundancy and redundancy pay were modified.

Redundancy under the NES happens when an employer either:

- decides they no longer want an employee's job to be done by anyone and terminates their employment (except in cases of ordinary and customary turnover of labour), or
- becomes insolvent or bankrupt.

Redundancy may happen when the job someone has been doing is replaced due to the employer introducing new technology, business has slowed down due to lower sales or production, the business is relocating, merging or being taken over, or the business restructures or reorganises.

Once the decision has been made to restructure the company, Australian businesses enter redundancy or redeployment consultation with the affected employee/s - essentially informing the employee in a meeting of the change in circumstances. Unlike New Zealand, Australian businesses are not required to consult with the employees on the nature of the restructure itself, however it may be considered best practice to gather input from people who may be affected, as they may be able to provide some valuable input about a new structure.

When needing to reduce the number

of people in a specific role, for example going from 10 field service engineers to five, Australian businesses need to demonstrate objective and transparent selection criteria and show that they are aware of and adhering to any specific requirements in the relevant modern award, enterprise bargaining agreement or employment contract.

Under Commonwealth workplace relations law, a termination is not a genuine redundancy if:

- the operational requirements of the business have not changed and the employer still needs the employee's job to be done by someone; and
- the employer has not followed relevant requirements they may have in an applicable modern award, enterprise agreement or other industrial instrument to consult with the employees, and/or their representatives, about the redundancy.

It may also not be a genuine redundancy if it's reasonable for the employee to be redeployed in either the employer's business or the business of an entity associated with the employer.

An employee may be entitled to redundancy pay by an employer if their employment is terminated because of the liquidation or bankruptcy of the employer. In some circumstances, the business may not have enough funds to pay employees' outstanding termination entitlements, including redundancy pay. Help is available through either the Fair Entitlements Guarantee (FEG) or the General Employee Entitlements and Redundancy Scheme (GEERS). »

“Regardless whether it is to ensure redundancy processes are managed effectively, or the resulting end process after technology implementations, don’t discard the key thing that gave your company a competitive advantage – people-related or otherwise,” she says.

Like Atkins, Youngman says that not all technology implementations result in redundancies as many are about improving productivity, but when restructuring does occur, her best advice is to take the approach to any redundancies slowly, or you may find yourself having to backtrack.

“Many restructures aren’t given time to ‘bed down’ and a reflective ROI is not often undertaken. The process often ends with the new structure in place, when in fact there needs to be more agility in the process to allow for reflection and ‘tweaking’.

“Sometimes a ‘big bang’ restructure, whilst getting it out of the way quickly, can go too far and organisations find that they have to extend contracts, or bring in contractors to pick up key tasks that are not being completed due to a misunderstanding of the functions of each role that was disestablished.”

### Dotting the ‘i’s and crossing the ‘t’s - with technology

A recent decision by the New Zealand Employment Court in the case of Gilbert v Transfield Services (New Zealand) serves to highlight the numerous ways that technology can be used in restructuring and redundancy. The Court found Mr Gilbert’s redundancy unjustified and criticised the redundancy selection process that was used during the Transfield restructuring when the company elected to ignore the information that it held about Gilbert’s performance of his role (which it had on record in its IT systems).

To justify its decision to ignore completely what it knew about Gilbert’s performance of his job, Transfield Services was driven to say that its long established and indeed still current employee performance assessment mechanisms are of limited, if any, value! The Court found Transfield

### New Zealand: the consultative approach

In New Zealand a much heavier emphasis is put on procedural fairness than in Australia. There is a specific consultative approach that employers are required to follow and those that do not will leave themselves open to unfair dismissal claims.

If you are considering restructuring your business, there are three suggested stages of introducing a restructuring plan with affected staff: consultation, implementation and resolution. The law requires employers to provide information to employees when they are considering changes that will affect their jobs and to give them an opportunity to contribute to any decisions.

What the employer must do:

- Businesses must have a genuine business reason for the redundancy. It is the position itself that is redundant and should have nothing to do with the employee who is filling that position.
- Consult with the affected employees. Give them access to relevant information about why the position is redundant and an opportunity to comment before a final decision is made.
- Follow the redundancy process outlined in your employment agreement. Compensation is generally not a legal requirement unless you have included it in the

employment agreement.

- Follow a genuine and fair process. This includes giving as much advance warning of a redundancy proposal as possible, keeping an open mind about alternatives to redundancy, and offering counselling and career advice services.

Employers cannot make someone redundant and then offer a new or existing employee essentially the same position or responsibility.

If an employee believes that they were made redundant for reasons that were not genuine or that the redundancy process was unfair, they can challenge it by raising a personal grievance.

Gilbert Peterson, communications manager at the Employers & Manufacturers Association says the EMA’s best practice guidelines are that:

- tell your employee as much as possible as soon as possible about the situation;
- do not predetermine the outcome – at first only the possibility of redundancy should be raised;
- consider in good faith all alternatives put up for discussion;
- provide the opportunity to discuss the impact of the decision;
- ensure any outstanding matters are resolved; and
- keep comprehensive diary notes of all meetings and events related to the process.

should have considered the technical skills and past performance of the field technicians which it had in its possession when undertaking the selection process, saying it “beggars belief” they did not.

Overall, the importance of having a good software system in place can never be overstated.

It could provide all the necessary information for a transparent restructuring process to occur or come back to haunt you, but if you follow the rules, dot your ‘i’s and cross your ‘t’s (and remember that these are people you are dealing with), things likely won’t come back to bite you in the... 