

Responses to Senate Education, Employment and Workplace Relations Committee
Inquiry into Fair Work Bill 2008
Questions on Notice
Australian Business Industrial and NSW Business Chamber

".....in relation to unfair dismissal and, in particular, the definition of 'genuine redundancy'. You say you have concern in respect of what the practical application of the proposed phrase is.

Could you elaborate on those concerns if the change is made?

Clause 389(1)(a) of the Fair Work Bill 2008 defines genuine redundancy as "the person's employer no longer required the person's job to be performed by anyone because of changes in the operational requirements of the employer's enterprise".

ABI has concerns with respect to the practical application of the phrase "because of changes in the operational requirements of the employer's enterprise".

The draft legislation does not delineate the meaning of "operational requirements"; it is not clear how such a phrase would be interpreted by Fair Work Australia. The word "requirement" seems to denote that a genuine redundancy may not arise from a voluntary decision on behalf of the employer, for example; to close down the business to retire, travel or take up caring responsibilities, as such a decision may be completely unrelated to any circumstance within the enterprise.

What will be the cost, if any, to business?

ABI considers that the phrase "because of changes in the operational requirements of the employer's enterprise" will cause uncertainty and confusion for employers and employees, and may lead to unnecessary litigation in the event of a redundancy.

Why do you say the wording 'the person's employer no longer requires the person's job to be performed by anyone' should be the preferred wording?

ABI has recommended that the Government redraft cl. 389(1)(a) of the FW Bill to read "the person's employer no longer required the person's job to be performed by anyone", as such wording is unambiguous in its meaning and application, and is the settled, accepted definition of redundancy as settled in the 2004 Redundancy Test case [PR032004 *Redundancy occurs when an employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone* and this is not due to the ordinary and customary turnover of labour].