

**IN THE FEDERAL CIRCUIT COURT
OF AUSTRALIA
REGISTRY: MELBOURNE**

File number:

ISILELI “ISRAEL” FOLAU
Applicant

RUGBY AUSTRALIA LIMITED
First Respondent

WARATAHS RUGBY PTY LTD
Second Respondent

**Form 3 Claim under the Fair Work Act 2009 alleging
unlawful termination of employment**
Fair Work Division
Rule 45.07(b)

Part A – Details of employee	
1. Name	Mr <input checked="" type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other <input type="checkbox"/> (give details): Family name: FOLAU Given names: ISILELI “ISRAEL”
2. Address	C/- Level 7, 600 Bourke Street Melbourne, Victoria Postcode: 3000
3. Phone	Business hours: (03) 8615 9900 After hours: (03) 8615 9900 Mobile: N/A
4. Date of birth	3 April 1989

5. First language	<input checked="" type="checkbox"/> English <input type="checkbox"/> Other (specify):
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Part B – Details of employment	
6. Employer's name	Waratahs Rugby Pty Ltd and Rugby Australia Limited
7. Employer's trading address or registered office	<p>The David Phillips Sports Complex Gate, 1 Banks Avenue Daceyville, New South Wales Postcode: 2032</p> <p>Phone: (02) 9323 3300 Fax: (--) ---- ----</p> <p>Rugby Australia Building, Cnr Moore Park Road and Driver Avenue Moore Park, New South Wales Postcode: 2021</p> <p>Phone: (02) 8005 5522 Fax: (--) ---- ----</p>
8. Work performed for employer (occupation)	Rugby player
9. Place of work	Various
10. Period of employment	Date started work: 2013 Last date worked: 21 May 2019
11. Was the employee given a written notice of termination?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes – Copies attached

Part C – If the applicant is an individual – details of representation	
12. Is a union acting on your behalf?	<input checked="" type="checkbox"/> No - go to 19 <input type="checkbox"/> Yes - go to 13
13. Name of union	N/A

14. Address	N/A
15. Contact person	N/A

Part D – If the applicant is an industrial association – details of representation

16. Is a member, officer or employee of the applicant representing the applicant?	N/A
17. Name of the member, officer or employee	N/A
18. Address	N/A

Part E – Details of lawyer

19. Is a lawyer representing you?	<input type="checkbox"/> No - go to 23 <input checked="" type="checkbox"/> Yes - go to 20
20. Lawyer's name	George Haros
21. Name of lawyer's firm	Macpherson Kelley
22. Address	Level 7, 600 Bourke Street Melbourne, Victoria Postcode: 3000 DX: N/A Phone: (03) 8615 9900 Fax: (03) 8615 9999

Part F – Notices from the Court

23. Where do you want notices from the Court	<input type="checkbox"/> address in 2 <input type="checkbox"/> union in 13-15
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sent?	<input type="checkbox"/> address in 17-18 <input type="checkbox"/> lawyer in 20-22 <input checked="" type="checkbox"/> other (give details): Email: george.haros@mk.com.au
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Part G – Grounds of the claim of unlawful termination	
<p>24. What are the grounds for the claim that the employee’s employment was unlawfully terminated?</p>	<p>Termination of the employee’s employment for one or more of the following reasons, or for reasons including one or more of the following reasons:</p> <ul style="list-style-type: none"> <input type="checkbox"/> temporary absence from work because of illness or injury of a kind prescribed by the regulations <input type="checkbox"/> trade union membership or participation in trade union activities outside working hours or, with the employer’s consent, during working hours <input type="checkbox"/> non-membership of a trade union <input type="checkbox"/> seeking office as, or acting or having acted in the capacity of, a representative of employees <input type="checkbox"/> the filing of a complaint, or the participation in proceedings, against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities <input checked="" type="checkbox"/> race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer’s responsibilities, pregnancy, religion, political opinion, national extraction or social origin <input type="checkbox"/> absence from work during maternity leave or other parental leave <input type="checkbox"/> temporary absence from work for the purpose of engaging in a voluntary emergency management activity, where the absence is reasonable having regard to all the circumstances <input type="checkbox"/> Other

<p>25 Details of the claim of unlawful termination of employment</p> <p>(Set out in numbered paragraphs the facts relied on and the provisions of the Fair Work Act relevant to the claim)</p> <p>Attach an extra sheet if required</p>	<ol style="list-style-type: none"> 1. The Applicant (Mr Folau) is an elite sportsman and record try-scorer who should be playing for the NSW Waratahs and the Wallabies, including in the upcoming Rugby World Cup. He had an employment contract with the First Respondent and the Second Respondent for the period 1 January 2019 to 30 November 2022 (Player Contract). His form and natural talent suggest he would continue to be a star player for both teams. 2. Mr Folau is a devout Christian, which the parties well-knew at the time they entered into the Player Contract. He maintained social media accounts, not for any purpose connected to his employment as a rugby player, but primarily for the purpose of lawfully communicating religious content. He did this because of his religious faith, which goes to the very essence of his personhood. 3. On about 10 April 2019, and in his own time, Mr Folau uploaded some religious content on his social media accounts, as was his usual practice. There was nothing unlawful about his conduct, which was a manifestation of his religion and consistent with his freedom of religious expression. This benign conduct, which the community accepts is a recognised fundamental human right and freedom, did not justify any punitive action being taken against him by his employer under the Player Contract or otherwise. It certainly did not justify Mr Folau losing his career and livelihood. 4. Instead, the Respondents did precisely that, and terminated the Player Contract. As a result, Mr Folau is no longer able to play elite rugby in or for Australia again. 5. By reason of their conduct, the Respondents have contravened s 772 of the <i>Fair Work Act 2009</i> (Cth) (FW Act), acted in breach of contract, relied on terms that were unjust, and unreasonably restrained his playing career. 6. Accordingly, Mr Folau seeks compensation, interest, damages, injunctive and declaratory relief, penalties, and an apology.
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Part H – Remedy sought

<p>26. What are you asking the Court for?</p>	<p><input checked="" type="checkbox"/> Injunction</p> <p><i>Please specify on an attached sheet the terms of the injunction or injunctions sought.</i></p> <p><input checked="" type="checkbox"/> Compensation</p> <p><i>Please give details on an attached sheet of how much compensation the employee is claiming and how the amount has been calculated (eg loss of income).</i></p> <p><input checked="" type="checkbox"/> Reinstatement</p> <p><input checked="" type="checkbox"/> Pecuniary penalty</p> <p><input checked="" type="checkbox"/> Other</p> <p><i>Please give details on an attached sheet</i></p> <p>See Attachment.</p>
<p>27. To whom should any compensation, pecuniary penalty or other amount ordered be paid?</p>	<p><input checked="" type="checkbox"/> Compensation: Applicant</p> <p><input checked="" type="checkbox"/> Pecuniary penalty: Applicant</p> <p><input checked="" type="checkbox"/> Other: Applicant</p>

Part I – Required documents

<p>28. A certificate issued by the Fair Work Commission under s 777 of the Fair Work Act must accompany your application and claim, unless you are seeking an injunction as to all or part of your claim</p>	<p><input checked="" type="checkbox"/> Copies of certificates attached</p> <p><input type="checkbox"/> Copy of certificate not attached</p>
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Signature of applicant, lawyer or authorised representative



Signed by (print name) **George Haros**

- the applicant
- lawyer for the applicant**
- authorised representative of the applicant

Date: 31 July 2019

Form approved by the Chief Judge pursuant to Subrule 2.04(1A) for the purpose of Subrule 45.04(2)(a)

Attachment – Remedy sought (Part H, item 26)

In addition to the relief specified in Part H, the Applicant will seek declarations and injunctions under s 545 of the FW Act; damages; injunctive and declarative relief (such as to prevent the Respondents from terminating the Player Contract, or as required to otherwise invalidate that decision); and interest.