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## Folau case to go to trial next year

Tuesday, August 13, 2019, 2:04pm

The Federal Circuit Court has today ordered representative rugby union player [Israel Folau](#) to enter into mediation with [Rugby Australia](#) and the [NSW Waratahs](#) before his unlawful dismissal claim goes to trial on February 4 next year.

Chief Judge Will Alstergren, sitting in Melbourne, set down a timetable for the case, which is based on a claim that his sacking breached religious protections in the Fair Work Act.

Folau will argue that his social media accounts were unconnected to his employment as a professional rugby player, and primarily used to lawfully communicate religious content in accordance with his faith.

## Rugby Australia wants home game in superior court

The court heard that Rugby Australia has applied for the case to be shifted to the Federal Court in Sydney.

Justice Alstergren said he would not foreshadow his ruling on the application, which would be heard on December 19.

However, he said the Federal Circuit Court had jurisdiction in employment law and heard most if not all such matters at first instance.

Folau's barrister, Stuart Wood QC, said the Federal Circuit Court had a mandate to keep costs down and "in effect get to the heart of the matter".

Wood said that a shift to the Federal Court would only lead to increased costs and would delay a trial until July or August next year.

"This court is well able to deal with the subject matter of this dispute," he said.

## RA not seeking to sideline case

Rugby Australia's barrister, Adam Hochrath, denied that his client was seeking to delay the proceedings.

He argued that the Circuit Court had discretion to transfer the case, which concerned matters of significant public interest that involved sections of the Fair Work Act not previously considered by the courts.

The chief judge said he wanted to allay Folau's fears that the proceedings would be delayed and he wanted to set a trial date if it did not settle at mediation.

"I'm not going to anything to delay these proceedings."

The judge added that the case could be shifted to Sydney if required.

"This is a national court and if you won't come to us, we will come to you."

Justice Alstergren said that undertaking mediation was "incredibly important" and he expected the respective legal teams to deal with any problems in their pleadings in a proper manner before the trial and to "not write passionate letters to each other".

## RA pushes umpire to keep evidence secret

The parties also clashed over whether confidential evidence heard by Rugby Australia's tribunal hearings would be made public.

Hochrath said Rugby Australia had obligations to the Rugby Union Players Association that tribunal proceedings would remain confidential but the pleadings would include references to it.

He said the court should order that evidence dealing with the tribunal hearings should not be immediately made public, allowing time to argue for redactions.

Wood said that Folau intended to rely on evidence given in the "full glare" of an open court, and suspected that Rugby Australia would try to prevent disclosing "what happened secretly in the tribunal."

"They can try and hide it in the pleadings but it's going to come out at some point," Wood said.

The judge said there would be some confidential material in the proceedings and he would have to balance the significant public interest with the rights and obligations of the parties.

## Mediation in December, ahead of three-day trial

Justice Alstergren said mediation would proceed on December 13, followed by another hearing on December 19, ahead of a trial starting on February 4 that would run for three to five days.

Outside court, Folau's solicitor, George Horos, told journalists that his client's legal team is pleased with the court's orders and is looking forward to an expedited hearing.

Asked about the chances of the case being settled at mediation, Horos said that "discussions have been on foot."

"It's obviously a very tense matter and no doubt those discussions will continue.

"But Israel's very forthright in his views and extremely strong at this stage of the proceedings.

"It's been publicly acknowledge by Israel and his team that he still seeks that apology.

"That's very important to him.

"That would go a long way to resolving the dispute."

Horos said Folau had instructed his lawyers to file the case in Melbourne but he did not want to disclose his client's whereabouts.

"He's going very well.

"His conviction is amazing, he's a strong man."

[Iseleli "Israel" Folau v Rugby Australia Limited & Anor, MLG2486/2019](#)

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