

# Interaction of Employment Law and Personal Freedoms

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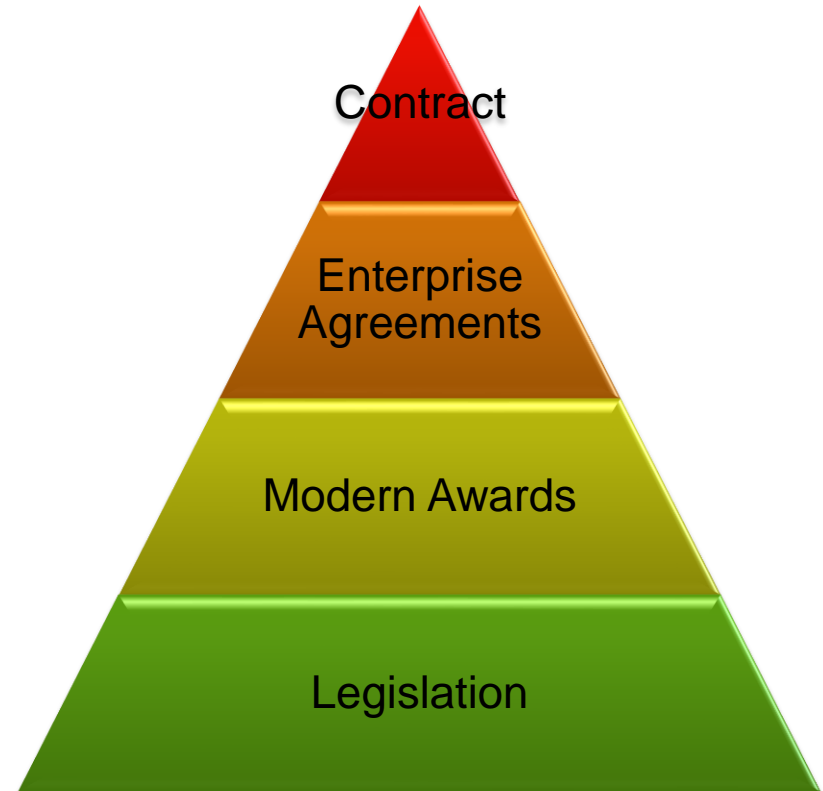
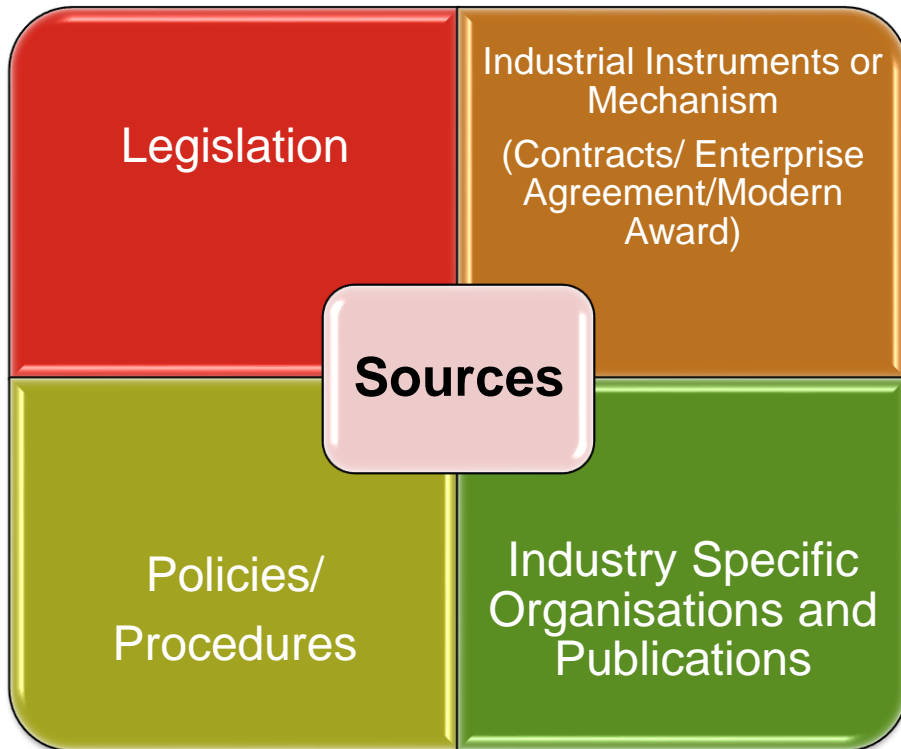
*ACC Australia In-House Counsel Day*

*4 July 2019*

# Agenda



# Sources of Obligations



# Risks & Claims



# Common Claims



## Discrimination Anti-Discrimination Legislation

Protected  
Attribute

Less Favourable  
Treatment

Vicarious Liability

## General Protections *Part 3-1 Fair Work Act 2009 (Cth)*

Workplace Right /  
Industrial Activity  
/ Protected  
Attribute

Adverse  
Treatment

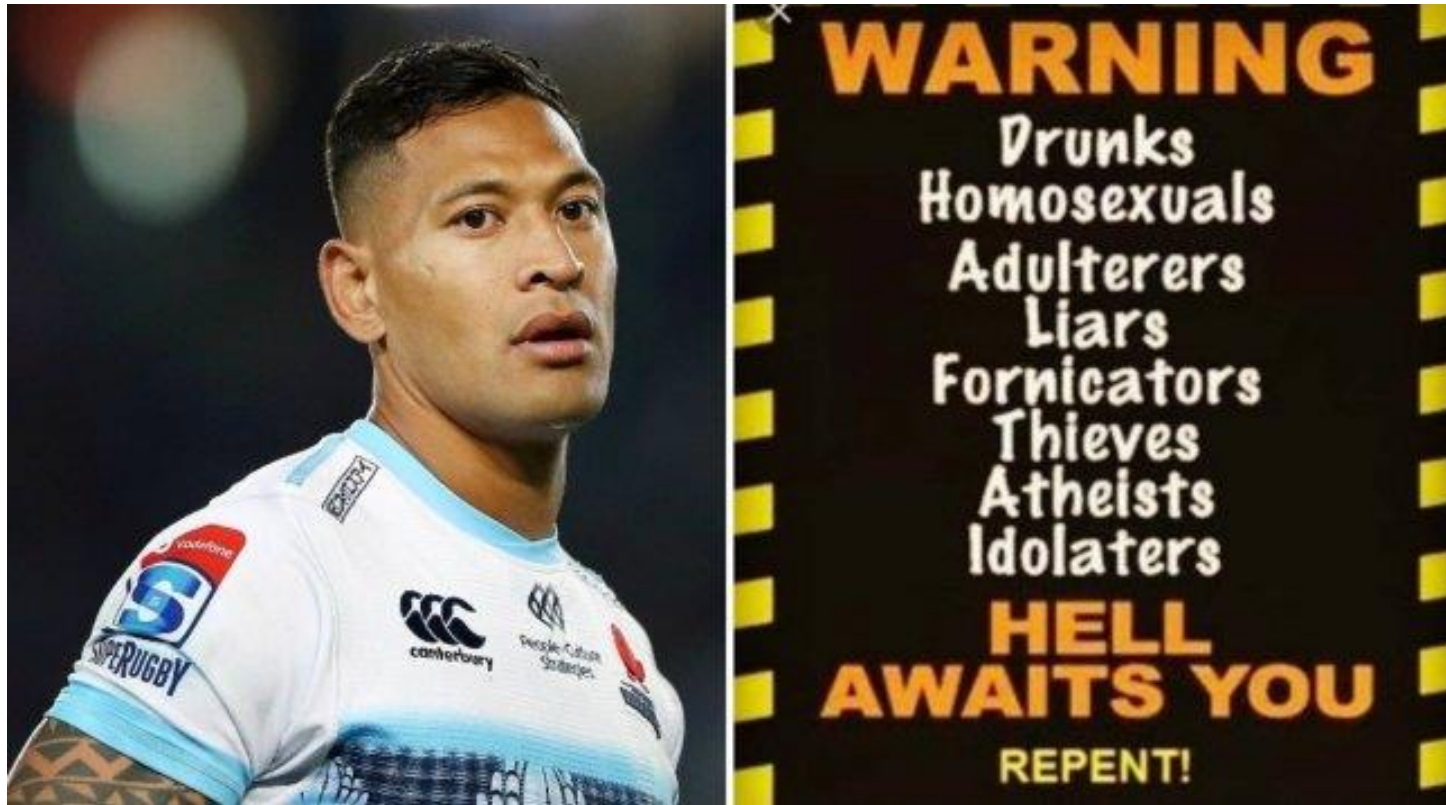
Involvement of  
others  
(section 550)

# Personal Freedoms (in Australia)





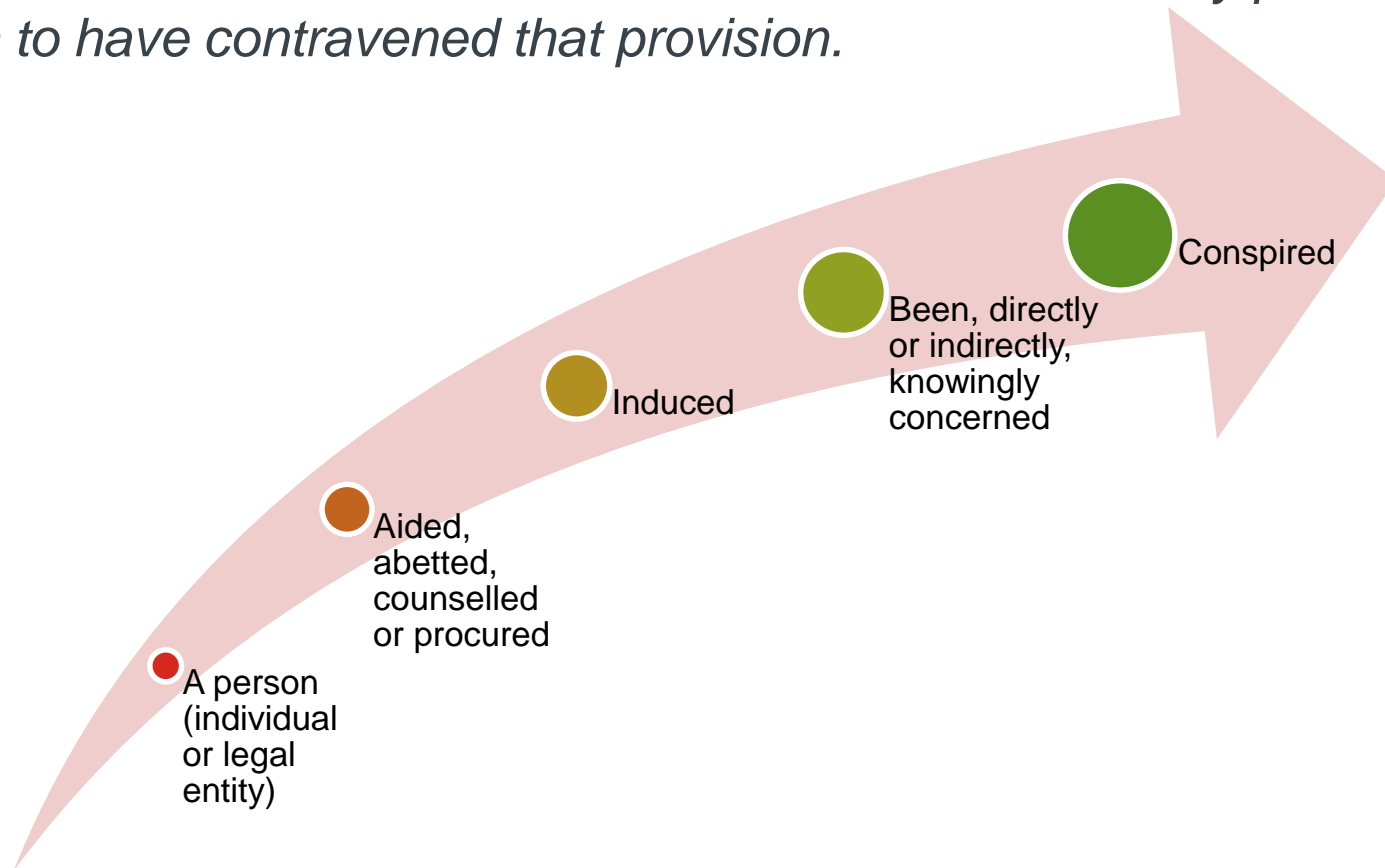
# The Israel Folau Case



# 'Sponsors may pay if Folau wins'

## Section 550 of the *Fair Work Act 2009* (Cth)

*A person who is involved in a contravention of a civil remedy provision is taken to have contravened that provision.*





## Other (ongoing) cases

### *National Tertiary Education Union & Anor v the University of Sydney & Anor*

- Employment of University Lecturer terminated.
- Superimposing swastika on an Israeli flag and social media activity.
- Political Opinion & Academic Freedom?

### *Cameron v Goldwind Australia Pty Ltd*

- Former One Nation Candidate had employment with renewable energy company (Chinese-owned) terminated.
- Political Opinion & Association?

# Other (significant) cases

## ***Chief of the Defence Force v Gaynor [2017] FCAFC 41***

- Army reservist.
- Homophobic and anti-Islamic comments associated with the Defence Force's policies (on social media).
- Directed to cease conduct.
- Engagement terminated.
- Political Communication?

## ***Rose v Telstra Corporation [1998] AIRC 1592***

- Out-of-hours conduct and the necessary connection to the employer.
- Fight with colleague while off-duty on a work trip.

## ***Construction, Forestry, Mining and Energy Union v BHP Coal Pty Ltd [2014] HCA 41***

- Participation in union activity and brandishing a sign with potentially derogatory wording.
- Employment terminated.
- Focus of the subsequent legal challenges was the 'connection' with the alleged protected action and the motivating factors.

# Proactive Management



# Take-Home Messages

Personal  
Freedoms are  
important (but  
are not  
unfettered)

Employers  
are entitled to  
set  
(reasonable)  
standards of  
conduct

Legal claims  
can not  
always be  
avoided (but  
the risks can  
be minimised)

What is 'out-  
of-work' is not  
always clear

# Questions & Contacts



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