



Form 59
Rule 29.02(1)

Affidavit

No. 1503 of 2024

Federal Court of Australia
District Registry: New South Wales
Division: General

Peter Wertheim AM and another
Applicants

Wissam Haddad and another
Respondents

Affidavit of: Robert Kaye SC
Address: Level 22, 52 Martin Place, Sydney NSW 2000
Occupation: Non-practising barrister
Date: 25 March 2025

Contents

Document number	Details	Paragraph	Page
1	Affidavit of Robert Kaye SC in support of the Applicants' Claim sworn on 25 March 2025	1 - 28	1- 8

I, Robert Kaye SC of Level 22, 52 Martin Place, Sydney NSW 2000, non-practising barrister say on oath:

Background

1. I am 69 years of age, and I am a Modern-Orthodox Jew.

Filed on behalf of (name & role of party)

The First and Second Applicants

Prepared by (name of person/lawyer)

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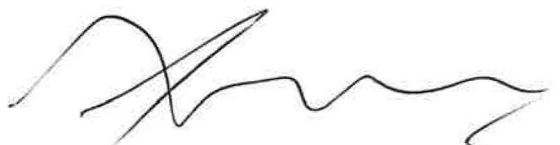
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2. I am currently a non-practising barrister and took silk in 2003. In the last 5 years, I stopped practising, other than being a mediator.
3. I was brought up in the Jewish faith from birth and I have a close connection with the Jewish community. I have been involved in a number of communal Jewish organisations over the years, including:
 - (a) holding offices as a Board member of Moriah College, a Modern-Orthodox Jewish day school in Sydney;
 - (b) served for 5 years on the Executive of the Central Synagogue;
 - (c) I have also been on the Board of the Hebrew University of Jerusalem; and
 - (d) as a student I was on the Executive of Sydney University Jewish Students Association.
4. My parents are Jewish, and they are both Holocaust survivors. My father is now deceased, and my mother is 97 years of age. My parents both had obvious European accents. Despite that they always proudly regarded themselves as Australian. I was brought up that way, and although we had a different culture, we were nonetheless very much integrated into Australia society. My parents loved Australia as it offered them peace and freedom which they never previously experienced, and my parents' influence has been significant over my religious practice and values throughout my life. As a result of belonging to a background of first-generation Holocaust survivors, it has influenced me strongly in the views I take when I watch material that I find offensive to Jews and the Jewish community.
5. My Jewish identity is important to me as it is the foundation of my culture and values. Jewish religion is something that pervaded my life as a child and I have values that I have sought, with my wife, to pass onto my children and indeed my grandchildren as well. My grandchildren go to Jewish day schools and they and my children have various levels of involvement in communal affairs, not limited to the synagogue but also relating to Israel and the support of Israel as a state.
6. The Jewish community is important for me including because of my upbringing in my family's Holocaust surviving background. My parents had no surviving relatives at all, I never knew my grandparents, aunts, uncles, cousins, and I was an only child. I also know from my involvement in the community that it was not uncommon that Holocaust survivors had fertility problems from what they experienced and survived in the concentration camps. I understand this has served as a bond between the Jewish community and was something that has been very well ingrained in me.



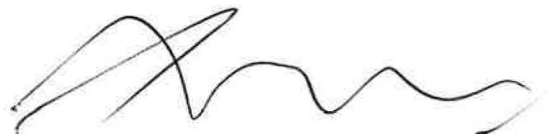
7. My first primary school was Moriah College, which is a Jewish School, and that was very much at that time known as an "immigrant" school, and the majority of those children had similar backgrounds to me, with parents that survived the Holocaust and had come to Australia for a better life. At the time, I had no sense of awareness of antisemitism, but I was aware that Moriah College was different from other schools. This became more obvious when I went to Sydney Grammar School and had non-Jewish classmates, however, I did not encounter any antisemitism at Sydney Grammar School.
8. When I later attended the University of Sydney, there was an outbreak of leftist anti-Israel propaganda and lobbying by the Student Representative Council. During my time at the University of Sydney, I first heard the expression "bloody Jews". I heard this in the lecture theatre at University of Sydney and I remember the late Jeremy Jones going from lecture theatre to lecture theatre in Phillip Street campaigning for people to vote for candidates that did not have an anti-Israel stance, which was a big deal at the time. I also heard at university for the first time the expression "Jew go home" and I remember that very vividly as I was 18 or 19 years of age.
9. After I graduated from Sydney University, I took up my first job at Allen Allen and Hemsley (as it then was). On one occasion, I overheard one of the senior partners make a derogatory remark about me. He did not direct it to me and did not know I was within ear shot. The remark was "yes he's not one of us". I later asked to move to another team shortly after overhearing this, and in my new team I did not encounter any issue, but it did give me a feel of the culture of the firm at the time.
10. Instances of the kind I have described above have informed my belief living and working in Australia that despite how good things have been in Australia for Jews, there have been reminders here and there of people who do not like Jews and treat them differently.
11. While I am aware that people harbour antisemitic views and whether it is overt or not, it still comes as a shock when it reveals itself. At the end of the day, I was born here, I went to school here, and I have a lot of friends from different backgrounds. Australia is pretty diverse, and I never thought of it in religious terms, that is, I never thought someone who was Catholic, Buddhist or Muslim does not fit in or does not belong here or warrants criticism. When the incident happened at Allen Allen and Hemsley it was very impactful, disappointing and hurtful as I regarded myself as much as a person on the 'in' as the next person. I was also brought up as a proud Jew, so it did not change my attitude towards being Jewish, it just lessened my view of people who harbour those views.



12. Growing up as a descendent of Holocaust survivors in Australia I did have a consciousness and awareness at all times of the things that have happened to our people and that Jews are vulnerable to harm. This awareness has been a "sleeper" in my mind every day. When you grow up without uncles, aunt and cousins, and you engage with other families where so many of their descendants were exterminated in the Holocaust, you understand and live with the impact of the Holocaust. Every year there are Auschwitz and other Holocaust-related commemorations, such as for Kristallnacht, that are constant reminders of the tragedy inflicted on our people and what can happen when antisemitism is unchecked. I do not think any Jew with a Holocaust surviving background, or indeed any Jew in the community, can live their lives pretending that nothing can change for Jews in Australia. I think history tells us that every society has the ability to turn on Jews and it would be naive to think that Australia is any different. I am conscious about this and that there are antisemitic people in Australia, but I do not let it stop me from getting on with my life, however, it does sit in my consciousness all the time. It is disappointing and hurtful from time to time but to me personally it did not really make a difference. Following 7 October 2023, it was a different beast, and it made me think of what my parents had to endure and went through.
13. I recall that happening in the months following October 2023, particularly in the area around the Eastern Suburbs. For example, my local coffee shop had a Nazi Swastika daubed on it. I found it very disturbing to see that, and it has felt like an antisemitism outbreak in Sydney and Australia was just gathering strength as time has gone on from 7 October 2023. I have since then for the first time in my life been very conscious of the physical threat, personally to me as a Jew, and whilst I am concerned about it, I do not alter my way of life. However, I know people in the community who have taken a different approach to try and minimise the risk of harm and attack, for example by removing their mezuzot (the case with the sacred scrolls that many Jews place on their front doors) as they are visible from the outside and identify the home as that of a Jewish family.

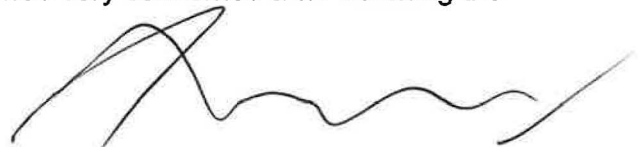
Speeches

14. Around the time the speeches that are the subject of these proceedings were delivered by Mr Haddad during November 2023, I saw some of them reported on in the media. Mr Haddad was at the time being reported in various places in the media. I cannot be certain precisely where I saw these reports, but it was likely on Sky News Australia in November 2023. I regularly watch the journalist and Sky News Host, James Morrow, and from what I can recall Mr Morrow appeared on Sky News around the time of November 2023 and referred to this particular individual, Mr Haddad.

15. I also read Alex Demetriadi's newspaper reports regularly, and I recall he wrote articles on the topic of Mr Haddad's speeches. I also generally read articles in "The Australian" every day. I would have read the following articles published by Alexi Demetriadi on or around the time they were published:
- (a) On 6 November 2023, an article called *"Al Madina Dawah Centre in new hate outburst after Brother Ismail sermon"*;
 - (b) On 7 November 2023, an article called *"'Kill Jews' hate preacher Wissam Haddad (Abu Ousayd) unmasked as Islamic State backer"*; and
 - (c) On 13 November 2023, an article called *"Wissam Haddad doubles down on sermons and spruiks Holocaust comparison"*.
16. At the time, the words that stayed with me from reading the above articles and media segments was in effect that Hamas terrorists were freedom fighters, references to jihad, reference to trees speaking, something to the effect of "O Muslim there is a Yahhud behind me come and kill him". Those words are quite vivid in my mind, and I found them impactful, and they stuck in my mind.
17. When I saw the above articles and watched Sky News, I felt angry at the fact that people were expressing and harbouring antisemitic views, and I found this offensive and horrific particularly because of my Holocaust surviving background. I also felt disappointed that the authorities were seemingly doing little to suppress these sorts of antisemitic utterances and demonstrations, despite it being so blatant. In relation to the incident at the Opera House steps in October 2023, it was so horrific to me that there was a whole investigation around what precise threatening words were used by the mob, rather than a condemnation of and action to stop this antisemitic conduct. This was absolutely unbelievable to me. Whatever words were used, the sentiment was clear of an unmitigated expression of antisemitism in the public arena. Incidents like this also made me deeply concerned for the safety of Jews in Australia in the face of immediate and escalating antisemitism post 7 October 2023, and dredged up all the fears and vulnerabilities that you grow up and live with as a Jew with a Holocaust surviving background.
18. When I first heard about Mr Haddad's comments, as offensive and disturbing as they are, I cannot say that I was entirely shocked, as for a while there have been reports in the press of certain Islamic preachers espousing antisemitic utterances and tropes. However, the specific quote by Mr Haddad of let us kill the Jew behind him is something I found quite shocking and intimidating. In my view, it was an overt invitation to violence or incitement to violence.

19. I also recall at the time noticing references in one of the above articles by Mr Demetriadi to money lending and the like. I remember a particular reference by Mr Haddad in either one of the articles mentioned in paragraph 15, (the Sky News segment), of Jews giving out loans that were impossible to repay. There was another article that Jews were vile. These examples for me evoked exactly the antisemitic tropes that were reminiscent of the 1930s, such as the notion of money lending, and Jews taking advantage of the weak. I felt angry, disappointed, offended and insulted by the Speeches and the generalisations that Mr Haddad was making like Jews giving loans that borrowers cannot repay. These kinds of generalisations about Jews have been around for years and are humiliating. This was beyond hurtful to me. I was shocked and furious that in this day and age an individual would make those sorts of utterances.
20. For the purposes of preparing this affidavit, I was asked by the Applicants' solicitors, Deutsch Miller, to watch a montage of speeches (the **Speeches**). I was also asked to read some articles that were published by various news outlets on or around the time the Speeches were delivered. On or around 5 or 6 February 2025, I watched the Speeches, and I recognised that I had seen bits of the Speeches, but I had not seen them all. I also read some of the articles that the Applicants' solicitors provided to me, set out as follows:
- (a) an article by James Morrow published by the Daily Telegraph on 6 November 2023, titled *"Sermon at controversial Islamic centre attacks Jews, makes chilling end of times prediction."*
 - (b) an article which contained a news segment by Sky News hosted by Peta Credlin on 8 November 2023, titled *"Anti-Semitic Islamic preacher 'drumming up hate' in Western Sydney"*. I do watch Sky News every day or two, and this article was reasonably familiar to me so I may well have read it on or around November 2023, but I cannot recall.
21. After watching the Speeches, I felt mounting fury. The Speeches and comments invoked traditional antisemitic tropes of Jews being untrustworthy, Jews engaging in money lending, controlling banks, cannot be trusted, Jews being usurious, Jews being dishonest, the reference to Isaiah being split in two, the fact that Jews dominated businesses, Jews are a rebellious people, that they were causing trouble even before Muslims were on the scene and trying to draw on supposed Jewish texts which are complete and utter fabrications. In my view, they are traditional tropes because they have historical usage that were used by the Nazis, and I recognise them being a Jew in Australia. Mr Haddad's references to the 'trees will speak' and references to Jihad, made me think this is how harm to Jews happens, and while it may not be the Nazis of Germany, it is just another version of that. I was very concerned after watching the

Speeches that your average Australian, who does not have an adequate background or understanding of history and antisemitism should not be exposed to the Speeches as they may be influenced by them to do harm to Jews or regard them in a lesser light, or not appreciate the seriousness and regard it as just a passing unfortunate phase. Such complacency contributed to the tragedy of the Holocaust.

22. After watching the Speeches and even when I first became aware of Mr Haddad's comments in November 2023, I immediately drew the link with my parent's position in Europe and thought this is how the Holocaust happened, this is how it started, and I know how it ends. What I mean by "it" is physical harm, as Jewish people have been sidelined historically in society and regarded as second-class citizens because of their religion. I became very acutely aware of that.
23. I found the Speeches and comments made by Mr Haddad incredibly offensive. It just reincarnated the whole Nazi tropes of the 1930s which fit into the tragedies of the 1930s, and the Holocaust itself. They are exactly the same tropes and there was not even an attempt to smooth it over or sugar coat it, it was unmitigated antisemitism, virulently racist and a complete reproduction of the exact tropes that led to the Holocaust. I felt intimidated watching the Speeches, as it cannot be interpreted in a way other than Mr Haddad is speaking hateful and harmful words towards Jews. Mr Haddad cannot be any more explicit in that regard with the words he uses like "vile" Jews. It is completely undisguised antisemitism. In my view, it only takes a few bad apples for antisemitism and harm to Jews to escalate, but that is exactly what happened in Europe, it all starts with small beginnings but leads to huge consequences.
24. Following the Speeches and everything that has happened in Australia following 7 October 2023, when I now go to synagogue, I feel far more conscious about wearing a yarmulke than I ever did before. On my walk to the synagogue, I now look out for cars as I am concerned someone will yell or throw something at me because I am Jewish, and I am wearing a yarmulke. I also am more and more sensitive about the safety of my grandchildren if I am walking with them. They are too young, but I am very aware of it, but I never felt that before. I feel fear for my family, and I now think that my children and grandchildren will potentially grow up in an environment where they may have to endure similar threats and intimidation that my forebears had to endure, which is a horrifying thought and a shock given the peaceful life I had grown up in. Mr Haddad's Speeches have contributed to this environment of fear and harm that is new in Australia.
25. When Mr Haddad makes reference to Jews being money lenders, jihad, Jews deserved to be killed and slaughtered, to me this is a very real threat which has not been addressed in Australia and it needs to be addressed, or we will be in the same situation

as the Holocaust. An Australian today is no better or worse than the average German or Polish civilian who was living in Germany in the 1930s, and when Mr Haddad and other Islamic clerics spread false narratives and antisemitic slurs about Jews, just as discourse of this kind took hold and "stuck" in Nazi Germany, I do not see why it would not stick now. That thought alone creates fear and is intimidating as a Jew.

26. When viewing the Speeches, I was concerned and intimidated because people without any other proper education or information, particularly younger people or those who are more easily influenced might believe this rubbish and be encouraged to not only regard Jews in a negative light, but also incite people to violence against Jews. I think it is black and white, no one could walk away from a sermon like that and not be left with an impression that he was encouraging hatred and most probably violence against Jews.
27. As a result of watching the Speeches and the events following it has rocked my sense of safety in Australia. I never felt unsafe as a Jew in Australia as we were aware of antisemitism in the theoretical sense, but it was never an issue, other than an awareness of my background, I was aware of it, alert to it.
28. The impression I have from the Speeches in aggregate is a picture of someone who is intent on agitating antisemitism in the most horrific of ways and is quite extreme in any view. In my view, Mr Haddad's Speeches, including the specific tropes I have referred to above and the similar generalisations about Jewish people as a whole being conveyed as vile and hatred, incites and fuels antisemitism.

Sworn by the deponent
at Sydney
in New South Wales
on 25 March 2025
Before me:

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Signature of deponent

Poppy Carlie Isabella Kambas
Solicitor / Australian legal practitioner
Level 9, 53 Martin Place
Sydney NSW 2000


Signature of witness

NOTICE OF FILING

Details of Filing

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A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

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