

NOTICE OF FILING

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 20/02/2026 3:35:16 PM AEDT
Date Accepted for Filing: 20/02/2026 3:44:45 PM AEDT
File Number: NSD951/2025
File Title: JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 59
Rule 29.02(1)

Affidavit

No. NSD951 of 2025

Federal Court of Australia
District Registry: NSW
Division: Human Rights

Joseph Toltz and others
Applicants

John Keane and another
Respondents

Affidavit of: **Daniel Patrick McCoach**
Address: Suite 409, 488 Bourke Street, Melbourne VIC 3000
Occupation: Solicitor
Date: 20 February 2026

Contents

Document number	Details	Paragraph	Page
1	Affidavit of Daniel Patrick McCoach in support of the Applicants' interlocutory application dated 20 February 2026 for NSD951/2025 Joseph Toltz & Ors v John Keane & Anor.		
2	Exhibit "DPM-13", being the Applicants' proposed amended Originating Application and the Statement of Claim in this proceeding.	5	7
3	Exhibit "DPM-14", being an email from Rotstein Commercial Lawyers to Marque Lawyers and Ashurst Lawyers dated 13 February 2026.	6	37
4	Exhibit "DPM-15", being an email from Ashurst Lawyers to Rotstein Commercial Lawyers dated 18 February 2026.	7	45

Filed on behalf of (name & role of party) The Applicants
 Prepared by (name of person/lawyer) Daniel Patrick McCoasch
 Law firm (if applicable) Rotstein Commercial Lawyers
 Tel (03) 9404 7888 Fax _____
 Email daniel.mccoach@rotsteins.com.au
Address for service Suite 409, 488 Bourke Street, Melbourne VIC 3000
 (include state and postcode) _____

Document number	Details	Paragraph	Page
5	Exhibit "DPM-16", being an email from Marque Lawyers to Rotstein Commercial Lawyers dated 18 February 2026.	8	56

I, Daniel Patrick McCoach of Suite 409, 488 Bourke Street, Melbourne VIC 3000, solicitor at Rotstein Commercial lawyers, affirm:

1. I am a solicitor of the firm Rotstein Commercial Lawyers, the solicitors for the Applicants.
2. The facts deposed to in this affidavit are within my own knowledge except where otherwise stated. Where stated to be based on information or belief, I believe them to be true.

Affidavit in support of interlocutory application

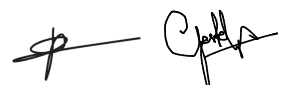
3. I make this affidavit in support of the Applicants' interlocutory application dated 20 February 2026 for orders as follows:

(a) leave for the First and Second Applicants to continue the proceeding on their own behalf and on behalf of the following people:

- i. Lionel Babicz
- ii. Yulia Berlin-Firer
- iii. David Celermajer AO
- iv. Ilan Dar-Nimrod
- v. Jennifer Dowling
- vi. Yona Gilead
- vii. Judy Kay
- viii. Gustav Lehrer FAA AM
- ix. Guy Mayraz
- x. Peter Morgan
- xi. Loren Mowszowski
- xii. Lynne Swarts

("Represented Persons");

(b) leave to amend the title of the proceeding accordingly; and



(c) leave to amend the Originating Application and the Statement of Claim in the proceeding in the form attached to this affidavit as exhibit **DPM-13**.

4. I refer to the affidavit of Joseph Toltz in these proceedings affirmed 1 August 2025 in support of the First and Second Applicants seeking to continue the proceeding on behalf of themselves and on behalf of the Represented Persons.
5. On 20 February 2026 I sent the documents set out in exhibit **DPM-13** to the Applicants, being the amended Originating Application and amended Statement of Claim for purposes of filing and serving consistent with the above, and which are in the form as provided to the solicitors for the First and Second Respondent in the correspondence set out in exhibit **DPM-14**. The Applicants have authorised the amended Originating Application and amended Statement of Claim for filing and service. Annexed to this affidavit and marked "**DPM-13**" is a copy of the amended Originating Application and Statement of Claim in the proceeding referred to in this affidavit.

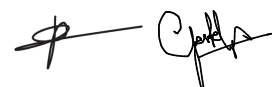
Amended Originating Application and Amended Statement of Claim

6. On 13 February 2026, Rotstein Commercial Lawyers emailed the solicitors for the First and Second Respondents providing them with copies of the Applicants' proposed amended Originating Application and Statement of Claim in the proceeding as set out in exhibit **DPM-13** and a proposed form of interlocutory application, and sought confirmation of the Respondents' consent to filing of same. Annexed to this affidavit and marked "**DPM-14**" is a copy of that email.
7. On 18 February 2026 at or around 4:43pm, I received an email from Ashurst (solicitors for the Second Respondent) stating that they had been "*instructed not to object to the proposed amendments to the pleadings and the originating application in each set of proceedings*". Annexed to this affidavit and marked "**DPM-15**" is a copy of that email.
8. Later on 18 February 2026 at or around 4:53pm, I received an email from Marque Lawyers (solicitors for the First Respondent) stating that:

“• Professor Keane does not consent to your clients filing the Further Amended Statement of Claim dated 13 February 2026 and the Amended Originating Application dated 13 February 2026 in the form proposed. Accordingly, Professor Keane will be opposing order 3 of your clients' interlocutory application dated 13 February 2026 seeking leave to file those documents in their current form.

• Professor Keane will not oppose orders 1 and 2 of your clients' interlocutory application dated 13 February 2026 with respect to the representative element of the proceedings and the leave being sought to amend the title of the Keane proceeding.”

Annexed to this affidavit and marked "**DPM-16**" is a copy of that email.



Amendments

9. The relief sought and consequential amendments in the amended Originating Application and amended Statement of Claim in the form attached to this affidavit as exhibit **DPM-13** mostly implement the Court’s orders 3 made 14 November 2025 in the proceeding and arise in consequence of those orders, with some further necessary or additional amendments arising on reflection of the matters in preparing the documentation.

AFFIRMED at
Melbourne in the State
of Victoria on this 20th
day of February 2026



DANIEL PATRICK MCCOACH

Who states that their signature was made to this affidavit by electronic means in accordance with Part 3 of the Oaths and Affirmations Act 2018 (Vic).

Before me:



UPEKHA WEDAGE

of Suite 409, 488 Bourke Street, Melbourne VIC 3000
Australian Legal Practitioner within the meaning of the
Legal Profession Uniform Law (Victoria)

A person authorised under section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

Who states that their signature was made to this affidavit by electronic means, the witnessing of the execution of this document was done by audio-visual link and all the requirements of Part 3 of the Oaths and Affirmations Act 2018 (Vic).

I also observe the following:

DANIEL PATRICK MCCOACH signed and initialed this affidavit by electronic means and not by hand/handwriting.

DANIEL PATRICK MCCOACH has affirmed this affidavit in my presence by audio-visual link.

This affidavit that I am signing in my capacity as an authorised affidavit taker is an electronic copy, not an original.

Schedule of Parties

Applicants


Second Applicant: Suzanne Rutland OAM

Third Applicant: Ariel Eisner

Fourth Applicant: Yaniv Levy

Respondents

Second Respondent: The University of Sydney

A handwritten signature in black ink, appearing to be 'C. J. ...', located at the bottom right of the page.

Federal Court of Australia
District Registry: NSW
Division: Human Rights

Joseph Toltz and others
Applicants

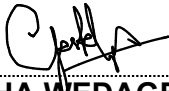
John Keane and another
Respondents

Affidavit of: **Daniel Patrick McCoach**
Address: 409/488 Bourke Street, Melbourne in the State of Victoria 3000
Occupation: Solicitor
Date: 20 February 2026

Certificate identifying Exhibit

This is the Certificate identifying Exhibit "DPM-13" annexed to the Affidavit of Daniel Patrick McCoach dated 20 February 2026

Before me:



UPEKHA WEDAGE

of Suite 409, 488 Bourke Street, Melbourne VIC 3000
Australian Legal Practitioner within the meaning of the
Legal Profession Uniform Law (Victoria)

A person authorised under section 19(1) of the Oaths
and Affirmations Act 2018 to take an affidavit.

*Who states that their signature was made to this
affidavit by electronic means, the witnessing of the
execution of this document was done by audio-visual
link and all the requirements of Part 3 of the Oaths
and Affirmations Act 2018 (Vic).*

Date: 20 February 2026

Filed on behalf of (name & role of party) The Applicants
Prepared by (name of person/lawyer) Daniel McCoach
Law firm (if applicable) Rotstein Commercial Lawyers
Tel (03) 9604 7888 Fax _____
Email daniel.mccoach@rotsteins.com.au
Address for service Suite 409, 488 Bourke Street, Melbourne VIC 3000
(include state and postcode) _____

Form 116
Rule 34.163(1)

Amended Originating application under the Australian Human Rights Commission Act 1986

No. _____ of 2025

Federal Court of Australia
District Registry: NSW
Division: Human Rights

Joseph Toltz ~~and others named in the schedule~~ suing on behalf of himself and on behalf of the persons named in Schedule A

Applicants

John Keane and another named in the schedule

Respondents

To the Respondents

The Applicants apply for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: 184 Phillip Street, Sydney NSW 2000

Date:

.....
Signed by an officer acting with the authority
of the District Registrar

.....
Filed on behalf of (name & role of party) The Applicants
Prepared by (name of person/lawyer) Hamish Rotstein
Law firm (if applicable) Rotstein Commercial Lawyers
Tel 61 3 9098 8785 Fax _____
Email hamish@rotsteins.com.au
Address for service Level 4, 488 Bourke Street, Melbourne VIC 3000
(include state and postcode) _____

Details of claim under the Australian Human Rights Commission Act 1986

The Applicants claims that, on the grounds set out in the accompanying Amended Statement of Claim:

1. Pursuant to s18C of the *Racial Discrimination Act 1975* (Cth) (**RDA**), the first respondent engaged in unlawful discrimination based on racial hatred by posting and not removing two X posts, each of which was reasonably likely to offend, insult, humiliate or intimidate:
 - a. the Applicants,
 - b. the persons they First and Second Applicants represent, and
 - c. ~~Jewish or Israeli persons in Australia any other Jewish or Israeli persons in Australia when the posts, reposts or publications the subject of the complaint were made or published and/or maintained as posts or reposts and who were, or were reasonably likely to be, offended, insulted, humiliated or intimidated, by the unlawful discrimination alleged in this claim,~~

and were acts done because of the Jewish race, ~~descent~~ or ethnic origin or the Israeli ethnic or national origin of the persons set out above.
2. Pursuant to s18E of the RDA, the second respondent, by virtue of Keane's Staff Members Post and its non-removal until about 21 May 2024 being acts done in connection with Keane's duties as an employee or agent of Sydney University, is vicariously liable for his conduct such that the RDA applies to the second respondent as if it had engaged in the first respondent's conduct and the second respondent is taken to have contravened s18C of the RDA.

The First and Second Applicants also bring this application on behalf of themselves and on behalf of the persons named in Schedule A.

1. Legislation

The Applicants claims that the discrimination complained of is unlawful under sections 18C and 18E of the *Racial Discrimination Act 1975*.

Remedy sought

The Applicants asks the Court for:

1. A declaration that Professor John Keane's posting of the Hamas Flag Post and his Staff Members Post, as well as their non-removal, contravened s 18C of the RDA and therefore constituted unlawful discrimination.

2. A declaration that Sydney University, by reason of its vicarious liability for Professor Keane's unlawful discrimination of the RDA, has contravened s 18C and engaged in unlawful discrimination in respect of Keane's Staff Members Post and its non-removal.
3. Injunctions requiring Professor Keane to remove or to cause the removal of:
 - a. the Hamas Flag Post from the Keane X Page or any other internet platform page or website;
 - b. Keane's Staff Members Post from any other internet platform page or website.
4. Injunctions requiring Professor Keane not to repeat or continue the unlawful discrimination the subject of the relief set out above and, in particular, not to publish or republish the Hamas Flag Post or the Keane Staff Members Post or the imputations described in the Statement of Claim filed in this proceeding.
5. Injunctions requiring Professor Keane and Sydney University to perform any reasonable act or course of conduct necessary to redress the harm to the Applicants~~including to pay and/or redress any distress, loss or damage (including harm to repute) and psychological injury suffered by any of the complainants or the persons they represent, in a form to be determined, and to pay aggravated and punitive damages~~ by reason of Professor Keane's and Sydney University's unlawful discrimination.
6. An order:
 - a. for payment of damages by way of compensation for loss and damage (including harm to repute and aggravated and punitive damages) and for distress and psychological injury suffered by any of the First and Second Applicants~~or persons they represent, being suffered by the seventeen~~ staff members named in Keane's Staff Members Post, because of the unlawful discrimination arising from or by reason of the Post;
 - b. alternatively, at their option, an order for the payment of an amount equal to the compensation to which they would be entitled paid to a charity or charities nominated by them.
7. Interest
8. An order for public apologies by Professor Keane and the Vice Chancellor and/or other appropriate officer of Sydney University, in a form to be determined.
9. Costs.
10. Such further or other order as the Court considers fit.

Accompanying documents

This application must be accompanied by:

1. A copy of the original complaint to the Australian Human Rights Commission; and
2. The notice of termination of complaint given by the President of the Australian Human Rights Commission.

Applicants' details

The Applicants' and represented persons' relationship to the Respondent is fellow staff members at or students of Sydney University.

The Applicants are over 18 years.

Applicants' address

The Applicants' address for service is:

Place: Rotstein Commercial Lawyers, Level 4, 488 Bourke Street, Melbourne VIC 3000

Email: hamish@rotsteins.com.au

The Applicants' address is Level 4, 488 Bourke Street, Melbourne VIC 3000

Service on the Respondent

It is intended to serve this application on the Respondent.

Date: 13 February 2026 ~~13 June 2025~~

.....
Signed by Hamish Rotstein
Lawyer for the Applicants

Schedule

No. of 2025

Federal Court of Australia
District Registry: NSW
Division: Human Rights

Applicants

Second Applicant: Suzanne Rutland OAM
Third Applicant: Ariel Eisner
Fourth Applicant: Yaniv Levy

Respondents

Second Respondent: The University of Sydney

Date: 13 February 2026 ~~13 June 2025~~

Schedule A – Represented Persons Under Rule 9.21

No. _____ of 2025

Federal Court of AustraliaDistrict Registry: NSWDivision: Human Rights

<u>No.</u>	<u>Name</u>	<u>Consent filed</u>
<u>1</u>	<u>Lionel Babicz</u>	<u>Yes</u>
<u>2</u>	<u>Yulia Berlin-Firer</u>	<u>Yes</u>
<u>3</u>	<u>David Celermaier AO</u>	<u>Yes</u>
<u>4</u>	<u>Ilan Dar-Nimrod</u>	<u>Yes</u>
<u>5</u>	<u>Jennifer Dowling</u>	<u>Yes</u>
<u>6</u>	<u>Yona Gilead</u>	<u>Yes</u>
<u>7</u>	<u>Judy Kay</u>	<u>Yes</u>
<u>8</u>	<u>Gustav Lehrer FAA AM</u>	<u>Yes</u>
<u>9</u>	<u>Guy Mayraz</u>	<u>Yes</u>
<u>10</u>	<u>Peter Morgan</u>	<u>Yes</u>
<u>11</u>	<u>Loren Mowszowski</u>	<u>Yes</u>
<u>12</u>	<u>Lynne Swarts</u>	<u>Yes</u>

Date: 13 February 2026

Amended Statement of claim

No. _____ of 2025

Federal Court of Australia
District Registry: NSW
Division: Human Rights

Joseph Toltz ~~and others~~ on behalf of himself and the represented persons listed in Schedule A
Applicants

John Keane and another
Respondents

Jurisdiction

1. This proceeding is within the jurisdiction of the Federal Court of Australia conferred by sections 46PO and 46POA of the *Australian Human Rights Commission Act 1986* (Cth) (**AHRC Act**) and section 39B(1A)(c) of the *Judiciary Act 1903* (Cth).

Parties

2. The Applicants and the persons named in Schedule A are all natural persons capable of suing and ordinarily resident in Australia.
3. The First Applicant (**Dr Joseph Toltz**) is and at all relevant times was:
 - a. a researcher at The University of Sydney (**Sydney University**), specialising in Jewish music and its migrations, and Manager of Research Support in the Faculty of Arts and Social Sciences; and
 - b. a Jewish person.
4. The Second Applicant (**Professor Emeritus Suzanne Rutland** **OAM**) is and at all relevant times was:
 - a. a Professor Emeritus of The Sydney University of Sydney, Department of Hebrew, Biblical & Jewish Studies; and
 - b. a Jewish person; and

Filed on behalf of (name & role of party) The Applicants
Prepared by (name of person/lawyer) Hamish Rotstein
Law firm (if applicable) Rotstein Commercial Lawyers
Tel 61 3 9098 8785 Fax _____
Email hamish@rotsteins.com.au
Address for service Level 4, 488 Bourke Street, Melbourne VIC 3000
(include state and postcode) _____

c. an Israeli person (being an Israeli citizen and identifying as an Israeli).

5. The Third Applicant (**Mr Ariel Eisner**):

a. is and at all relevant times was an elected officer of the Australasian Union of Jewish Students (**AUJS**);

Particulars

i. AUJS is the peak representative body for Jewish university students across Australia and New Zealand.

ii. From 7 October 2023, the Third Applicant was the head of politics for AUJS NSW.

iii. From January 2025 to the present, the Third Applicant has been the national head of campaigns for AUJS; and

b. was until he graduated in November 2024 a student enrolled at Sydney University studying a Bachelor of Architecture; and

c. is and at all relevant times was a Jewish person.

6. The Fourth Applicant (**Mr Yaniv Levy**):

a. is and at all relevant times was a Research Education Lead in the Faculty of Medicine and Health at Sydney University; ~~and~~

b. was a student at Sydney University enrolled in a Graduate Diploma of Crosscultural and Applied Linguistics from Semester 1 2024 until he withdrew on about 6 August 2024;

c. is and at all relevant times was a Jewish person; and

d. is and at all relevant times was an Israeli person (being an Israeli citizen and a son to two Israeli parents who were born in and continue to reside in Israel and identifies as an Israeli).

7. Each Applicant:

a. is a **Jewish person** or an Israeli person. ~~a person who is, or is eligible to be, an Israeli citizen (Israeli person.)~~

8. The First and Second Applicants also bring this proceeding under Rule 9.21 of the *Federal Court Rules 2011* on behalf of persons listed in Schedule A, as to whom:

a. Dr Lionel Babicz is a Jewish person and an Israeli person who is and at all relevant times was an academic at Sydney University teaching Japanese Studies and Asian Studies in the School of Languages and Culture.

- b. Ms Yulia Berlin-Firer is a Jewish person and an Israeli person who is and at all relevant times was a casual academic staff member at Sydney University teaching in the Department of Hebrew, Biblical and Jewish Studies and involved in administration for that Department.
- c. Professor David Celermajer AO is a Jewish person who is and at all relevant times was the Scandrett Professor of Cardiology at Sydney University, Faculty of Medicine and Health.
- d. Associate Professor Dr Ilan Dar-Nimrod is a Jewish person and an Israeli person who is and at all relevant times was an Associate Professor at Sydney University in the School of Psychology, Faculty of Science.
- e. Dr Yona Gilead is a Jewish person and an Israeli person who was at all relevant times was the Malka Einhorn Modern Hebrew Senior Lecturer and Program Coordinator at the Faculty of Arts and Social Sciences at Sydney University, until retiring at about the end of July 2025.
- f. Professor Judy Kay is a Jewish person who is and at all relevant times was a Professor of Computer Science in the Faculty of Engineering at Sydney University.
- g. Emeritus Professor Gustav Lehrer FAA AM is a Jewish person who is and at all relevant times was a Professor Emeritus of Sydney University, School of Mathematics and Statistics, recognised internationally for his mathematical research.
- h. Dr Guy Mayraz is a Jewish person and an Israeli person who was at all relevant times until early July 2024, a behavioural economist teaching at Sydney University, School of Economics, thereafter has had an adjunct status with Sydney University.
- i. Dr Jennifer Dowling is a Jewish person who is and at all relevant times was the Manager, Education Innovation and Design in the Faculty of Arts and Social Sciences at Sydney University.
- j. Dr Lynne Swarts is a Jewish person who, at Sydney University: (a) is and at all relevant times was a Sessional Academic and Guest Lecturer in the Hebrew, Biblical and Jewish studies Department; (b) was until 2023 a Research Affiliate in the History Department; and (c) in first semester 2024 became a Senior Academic Tutor at St Andrews College (which is part of Sydney University).
- k. Dr Loren Mowszowski is a Jewish person and a dual Australian-Israeli citizen (and identifies as and is an Israeli person) who was, until about mid-July 2024, a Senior Research Fellow, Clinical Neuropsychologist and Leader of the Cognitive

Intervention Research Stream for the Healthy Brain Ageing Program at the Brain and Mind Centre and Faculty of Science, at Sydney University.

- i. Professor Peter Morgan, who is addressed more fully in [9] below, is and at all relevant times was Director of the European Studies Program at the School of Languages and Cultures at Sydney University.
9. Whereas Professor Morgan does not identify as Jewish or Israeli, he is nevertheless an affected or aggrieved person protected by the operation of the *Racial Discrimination Act 1975* (Cth) (**RDA**) and the AHRC Act for Professor Keane's unlawful discrimination set out below, by reason of the following facts, matters and circumstances:
- a. He has more than an intellectual or emotional concern in the subject matter of Professor Keane's Staff Member's Post;
 - b. He has a grievance beyond a general member of the public by being expressly named and vilified in Keane's Staff Member's Post, or directly impugned in the unlawful vilification of his (senior) academic associates of Sydney University;
 - c. The target or imputations of the Staff Members Post as set out below were to offend, insult, humiliate or intimidate named Jewish and Israeli staff members, because of their race, ethnicity or nationality, to paint them as racist, or as devoid of morals, scruples or conscience when it comes to Palestinians, or as akin to Nazis in considering Palestinians as less than human;
 - d. He was either painted as, and could be seen to be by viewers of the Post as, a Jew or Israeli with those negative features, or as a person associated with and supporting Jews or Israelis with those negative features. Either outcome is a substantial grievance and the sort of mischief that the RDA seeks to redress.
 - e. Further or alternatively, he is aggrieved as an associate of, or a person with a close connection with, the named Jewish/Israeli staff members, as a person who was supporting them in the email written by Associate Professor Avril Alba (see [42.a] below), and then vilified in Professor Keane's escalation on his X Page.
 - f. Further or alternatively, Professor Morgan, in a representative role with the Applicant and represented person staff members, was aggrieved by virtue of his special responsibility to safeguard the interests of Jewish or Israeli staff/academics at least at Sydney University, in joining and supporting Jewish/Israeli representative staff/academics attempting to do the same, and was vilified for so doing.
10. Each of the persons named in [8] above:

- a. Have the same interest in the proceeding in that they were exposed to the same unlawful conduct, namely to Professor Keane's Staff Members' Post and his Hamas Flag Post the details of which are set out below.
 - b. By reason of that exposure are entitled to the same relief and remedies as the First and Second Applicants by virtue of the operation of s18C of the RDA and s46PO(4) of the AHRC Act; and
 - c. Each has consented in writing to be represented in this proceeding.
11. For the purposes of the RDA ~~Racial Discrimination Act 1975~~ (Cth):
- a. Jewish ~~people~~ persons constitute a group of people with a shared race, ~~descent~~ and/or ethnic origin.
 - b. Israeli ~~citizens and Israeli people~~ persons constitute a group of persons with a shared ethnic origin and/or nationality origin.
- 12.
- a. Israel is a nation state and the national home of and for the Jewish people;
 - b. Its citizens are mostly Jewish persons;
 - c. Most Jewish persons in Australia:
 - i. feel a personal connectedness with Israel and Israeli people;
 - ii. have relatives living in Israel; and
 - iii. have a concern for the safety of Israelis.
13. The First Respondent (**Professor John Keane**):
- a. is a natural person capable of being sued; and
 - b. is and at all relevant times was a Professor of Politics at Sydney University;
 - c. is a senior supporter/member of the Sydney Staff for Boycott, Divestment and Sanctions (BDS) movement at Sydney University.
14. The Second Respondent (**Sydney University**) is a body corporate incorporated under s 5 of the *University of Sydney Act 1989* and capable of being sued.

Professor John Keane X (Twitter) Page

15. Professor John Keane operates and at all material times operated, as a professor of the Sydney University, from Sydney, New South Wales or elsewhere in Australia an X page (**Keane X Page**) at the web address: https://x.com/jkeaneSDN?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor

Particulars

- a. Professor Keane's title is stated to be '@jkeaneSDN'
 - b. Professor Keane cites his title as 'professor.'
 - c. Professor Keane commenced that site on March 2013.
16. In or around October 2024 the Keane X Page had approximately 7,934 Followers, and at the time of this Amended Statement of Claim had about ~~7,835~~ 8,297 Followers.
 17. The Keane X Page is and was at all relevant times accessible by members of the public whether or not they "follow" Professor Keane.
 18. The Keane X Page is regularly updated by Professor Keane posting various publications including text, photos and audio-visual recordings of remarks and speeches.
 19. A number of the publications which appear on the Keane X Page include links to various written or oral material published by Professor Keane or to material that he endorses or on which he comments.

Hammas

20. Since 4 March 2022 Hamas has been listed by the Attorney General of the Commonwealth as a terrorist organisation under the *Criminal Code Act 1995* (Cth): s 102.1.
21. The Statement of Reasons for listing Hamas as a terrorist organisation include that it is guided by Islamic principles of "*destroying Israel*".
22. The Hamas Covenants express intention is to dismantle Israel as '*the Zionist entity*' and to create an Islamic State in its place.

Particulars

- a. Particulars served at time of filing this Amended Statement of Claim in accordance with Court's order 2 of 3 February 2026.
23. The Hamas Covenants identify Hamas' raison d'être as "*obliterating*" Israel and "*killing the Jews*".
 - 24A It has been widely reported and/or Jews and Israelis have read or believe on the basis of that information and/or the Hamas Covenants referred to above, that Hamas is committed to:
 - a. Destroying Israel; and
 - b. Killing Jewish persons or Israeli persons.

~~24. Under s 80.2E 'Prohibited symbols', which is part of 'Subdivision CA Publicly displaying, and trading in, prohibited symbols and giving Nazi salute', a prohibited terrorist organisation symbol is defined as:~~

- ~~a. a symbol that a terrorist organisation (within the meaning of Division 102) uses, or members of a terrorist organisation use, to identify the organisation;~~
- ~~b. something that so nearly resembles a symbol to which paragraph a. applies that it is likely to be confused with, or mistaken for, that symbol.~~

7 October 2023

25. On 7 October 2023:

- a. Hamas members illegally invaded the State of Israel and killed, raped, maimed, sexually abused and tortured more than 1,200 Jewish persons or Israeli persons;
and
- b. this amounted to the greatest loss of Jewish life on any single day since the Holocaust.

26. During the 7 October 2023 invasion, Hamas members also kidnapped, abducted and took as hostages more than 250 persons who were overwhelmingly Jewish or Israeli persons including women, children and the elderly.

27A Since 7 October 2023, there have been circumstances manifesting a sustained increase in antisemitism or discrimination towards Jews and Israelis in Australia including harm and damage to Jewish or Israeli people and/or their property which inform the reasonably likely reaction of Jewish or Israelis persons to the impugned conduct set out below.

Particulars

- i. 9 October 2023 – Protests outside Sydney Opera House on 9 October 2023 celebrating the 7 October attack and making of antisemitic chants.
- ii. February 2024 – Almost 600 Jewish Australians doxed (including First and Second Applicants and Dr Lionel Babicz) when personal details of people in a Whatsapp group formed by Jewish writers, artists, musicians and academics were disseminated by anti-Zionist activists.
- iii. 10 October 2024 – Spate of graffiti using 'Hamas' in Eastern Suburbs of Sydney.
- iv. 13 October 2024 - Avner's Bakery in inner-city Sydney branded with Nazi, Hamas graffiti.

- v. 21 November 2024 - Graffiti of 9 cars with anti-Israeli graffiti and 1 car torched in Woollahra, NSW. Homes also damaged in Woollahra.
- vi. 5 December 2024 - Anti-Israel placard outside Great Synagogue, Sydney.
- vii. 6 December 2024 - Burning of Adass Israel Synagogue of Melbourne to the ground with persons injured in fire.
- viii. 11 December 2024 - Cars set alight and anti-Israeli graffiti at Magney Street, Woollahra, NSW.
- ix. 17 January 2024 - Graffiti and car burning attack on ECAJ Co-CEO's former home in Sydney.
- x. 10 January 2025 - Graffiti attack of Southern Sydney Synagogue.
- xi. 11 January 2025 - Graffiti (Swastikas) and attempted arson of Newtown Synagogue.
- xii. 21 January 2025 - Sydney Childcare Centre in Maroubra, firebombed with antisemitic graffiti on its walls.
- xiii. 29 January 2025 - Caravan loaded with explosives intended to be used on Jewish persons (listed Great Synagogue and Sydney Jewish museum) in incident classified as 'terrorist' event.
- xiv. 30 January 2025 - Graffiti of Mount Sinai College (Jewish Primary School in Kingsford Maroubra, attached to Maroubra Synagogue and near Child Care centre) vandalised with antisemitic graffiti.
- xv. 1 February 2025 - Six Jewish women in their 20s had eggs thrown at them at Bondi Beach, NSW, in what was treated as an antisemitic attack. Further antisemitic graffiti the same day sprayed at Kingsford.
- xvi. 2 February 2025 – Perth Western Suburbs home the target of antisemitic graffiti amid a wave of attacks in Australia.
- xvii. 3 February 2025 - antisemitic graffiti sprayed on a well-known Jewish family's Middle Park home.
- xviii. February 2025 - 2 nurses in Sydney threatened to kill Israeli patients and boasted about refusing to treat Israelis.
- xix. July 2025- During a Melbourne museum field trip, Jewish children targetted by older students hurling slurs like 'dirty Jews' and other antisemitic chants.

- xx. December 2025 – Bondi Beach Hanukkah Massacre resulting in 15 people murdered by two Muslim gunmen and about 47 people injured in a terror attack targeting Jewish people.
- xxi. December 2025 – Jewish Sydney bakery Avner’s closes after prolonged antisemitic harassment which culminated in safety fears after Bondi terror attack.
- xxii. February 2026 – Major protest in Sydney opposing official visit of Israel’s President Isaac Herzog involving chants of “globalise the intifada!”
- xxiii. Since 7 October 2023 Sydney University (and other Australian universities) has been an environment in which considerable and frequent antisemitic/antizionist chants, posters, posts and other conduct has occurred causing considerable distress, fear and various forms of harm to Jewish or Israeli staff, students and others.

~~27. Hamas’s terrorist acts described above were taken because Hamas’s leadership, commanders, members and operatives in the field believed the men, women and children intended by them to be subjected, and in fact subjected, to those acts:~~

- ~~a. were overwhelmingly Jewish persons or Israeli persons; and~~
- ~~b. were subjected to those acts because they were or were believed to be in almost all cases Jewish persons or Israeli persons.~~

28A It has been widely reported, and/or Jewish and Israeli persons have read and believe on the basis of that information, that Hamas’s terrorist acts described above (see [25]-[26]) were taken because Hamas’s leadership, commanders, members and operatives in the field believed that the men, women and children intended by them to be subjected, and in fact subjected, to those acts:

- a. were Jewish persons or Israeli persons; and
- b. were subjected to those acts because they were or were believed to be in almost all cases Jewish persons or Israeli persons.

Impugned publication made on 8 October 2023 – the Hamas Flag Post

28. On or about 8 October 2023, the first day after the 7 October 2023 Hamas terrorist attacks described in [25]-[27] above, Professor Keane published the following picture on his Keane X Page, which shows 5 green Hamas flags with Arabic writing visible on them (**the Hamas Flag Post**):



29. The Hamas Flag Post:
- a. continued to be and has remained posted and visible on the Keane X Page as from 8 October 2023;
 - b. as at 23 October 2024, had 6,125 views; and
 - c. as at the time of the Amended Statement of Claim, had about ~~6,204~~ 6,288 views and remains accessible.
30. Each flag was, and was known and intended by Professor Keane to be, a Hamas flag used by the Hamas military wing.
31. Each flag was, or is, known by the Applicants, and the persons on whose behalf the Amended Statement of Claim is filed, to be the Hamas flag.
32. The Applicants and the persons on whose behalf the Amended Statement of Claim is filed also knew, or now know, that the Hamas flag is the flag used by the Hamas military wing.
33. At all material times the Hamas Flag was thus recognisable as the Hamas flag.
- ~~34. Professor Keane's Hamas Flag Post was and continued to be a post of a "prohibited terrorist organisation symbol."~~

Imputations

35. The Hamas Flag Post conveyed the following imputations:
- a. The activities described in [25]-[26] above (and reinforced by the matters in [24A] and [28A]) of Hamas on October 7, which involved the killing, rape, maiming, sexual abuse, kidnapping and torture of Jewish and Israeli ~~people~~ persons, because they were believed to be Jewish or Israeli, was an event that was to be celebrated, endorsed, supported and approved of.

- b. Professor Keane celebrated, endorsed, supported and approved those activities.
- c. Hamas and its objectives (including those outlined in [21], [22], and [23] and ~~[27] above~~, and reinforced by [24A] and [28A]) were to be celebrated, endorsed, supported and approved.
- d. Professor Keane celebrated, endorsed, supported and approved of Hamas and its objectives (including those outlined in [21], [22], and [23] and reinforced by [24A] and [28A] and ~~[27] above~~).

Contravention of s 18C of the *Racial Discrimination Act 1975 (Cth)* (RDA)

- 36. Professor Keane's posting of the Hamas Flag Post was an act which caused images to be communicated to the public. They were:
 - a. done in a public place; and were
 - b. done in the sight and hearing of people who were in a public place; and
 - c. not acts done in private.
- 37. Professor Keane's posting of the Hamas Flag Post and its non-removal, by conveying any, all or some of the imputations alleged in [35] was reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate the Applicants, the persons in Schedule A, as well as other Jewish people persons and Israeli people persons in Australia.
- 38. The posting and its non-removal was made or done because of the race, national or ethnic origin of the people reasonably likely to be offended, insulted, humiliated or intimidated by the posting including because:
 - a. The subject matter of the post, considering its timing, was directly related to events that were themselves directly related to the race, ethnic origin or national origin (Jewish and/or Israeli) of the victims of the events of October 7;
 - b. The posting was plainly calculated to convey a message about or concerned with the race, ethnic origin or national origin (Jewish and/or Israeli) of the victims of the events of October 7;
 - c. The posting was actuated or motivated by considerations of race, ethnic origin or national origin or, in the alternative, race, or ethnic or national origin was otherwise a factor in Professor Keane's act.
- 39. In the premises set out in [15]-[38] above, Professor Keane contravened s 18C of the RDA and engaged in unlawful discrimination within the meaning of ss 3(1) and 46P of the AHRC Act. ~~Australian Human Rights Commission Act 1986 (Cth)~~.

Impugned publication made on 8 November 2023 – Keane’s Staff Members Post

40. On about 8 November 2023, Professor Keane posted to the Keane X Page, a post which contains the under-mentioned text displayed above a letter, which was stated to have been sent by the complainants Applicants and the represented persons to him on 7 November 2023 (**Keane’s Staff Members Post**). Professor Keane stated in the post that the letter was:

“an ad hominem response to my Open Letter by a small group of pro-Israel staff members: defamatory insults (‘repulsive’ etc) mixed with self-righteous indignation of people convinced they are victims of non-humans (Palestinians) who imperil their Promised Land...”

41. A screenshot of the post as it was seen on the Keane X Page is set out below.



John Keane
@jkeaneSDN

⋮

an *ad hominem* response to my Open Letter by a small group of pro-Israel staff members: defamatory insults (‘repulsive’ etc) mixed with self-righteous indignation of people convinced they are victims of non-humans (Palestinians) who imperil their Promised Land...

Tue 07/11/2023 11:12 AM [view more](#)

Dear John,

The University’s Charter of Freedom of Speech and Academic Freedom allows you to express your views. However, those reading your letter should be aware of its inaccuracies. You accuse Israel of promoting indiscriminate warfare and genocide and the murder of innocents without compunction, and your letter culminates in a repulsive reversal of victims and perpetrators in which you liken the actions of Israel to those of the Nazis. There is also not one mention of the atrocities of October 7, which is not only deeply disappointing, but also a shockingly inhumane omission. We believe that in the context of war, any loss of civilian life is tragic: Palestinian, Israeli, and any other nationality. To draw an equivalence, however, between the acts of terror witnessed and documented via bodycams from Hamas themselves, and the awful civilian deaths of Gazans (many of whom are deliberately placed in the line of fire as human shields) by Israeli army fire, is unconscionable.

Dr Michael Abrahams-Sprod
A/Prof Avril Alba
Dr Lionel Babicz
Yulia Berlin-Firer
Professor David Celermajer
A/Prof Ilan Dar-Nimrod
Dr Jennifer Dowling
Dr Yona Gilead
Professor Judy Kay
Professor Gustav Lehrer
Dr Guy Mayraz

Prof David Keane
which students are fee-paying customers, nor ivory towers sheltered from the harsh realities of the world. Universities, you say using other words, are public spaces supportive of competing perceptions of ‘knowledge’ and ‘reality’, laboratories of life in which the university community breathes the air of curiosity, learns to accept that human lives can legitimately be lived in different ways, in opposition to arrogance and ignorance, lies and nonsense.

Less welcome are your strictures on tolerance. You say our University supports ‘the rights of students and staff to engage in political discourse’ but that anybody who utters ‘pro-terrorist statements or commentary, including support for Hamas’s recent terrorist attacks’ will be the target of tough disciplinary proceedings, including termination of employment. Many staff and students have noted an eerie bias within your definition of the tolerable. It is founded on silence about such ugly matters as non-stop aerial bombardment, the illegal use of white phosphorus bombs on civilians, settler violence, bulldozers wrecking the homes of fearful innocents, death by suffocation under rubble, devilish propaganda dropped from the skies, the wilful destruction of mosques, churches, schools and universities, and crazed plans for the forcible removal of millions of people from their ancient homelands.

If toleration depends upon silence about these grim matters then it’s an objectionable principle that has no place in the life of our University. Toleration purports to be a pleasing and heart-warming ethic. The word itself is from the Latin *tolerare*, to endure, or countenance, or to bear or put up with some person or situation otherwise deemed



Gideon Levy and 9 others

3:38 PM · Nov 8, 2023 · **9,981** Views

25 Reposts
5 Quotes
63 Likes
10 Bookmarks

42. The post had the following accessible attachments which are annexed to this Amended Statement of Claim and are relied on as though set out in full in this paragraph and [40] above:
- a. An email authored by Associate Professor Avril Alba of Sydney University (with certain modifications compared to the actual email) on 7 November 2023 to Professor Keane and Vice Chancellor Mark Scott, copying a large number of Sydney University groups, and being an email in a chain of emails among Sydney University academics. The attachment Keane put up contained a photograph of Professor Alba.
 - b. A picture with the names of 17 academics from Sydney University in larger font (all of whom were Jewish and/or Israeli academics except for Peter Morgan), namely:
 1. Dr Michael Abrahams-Sprod
 2. A/Prof Avril Alba
 3. Dr Lionel Babicz
 4. Yulia Berlin-Firer
 5. Professor David Celermajer
 6. A/Prof Ilan Dar-Nimrod
 7. Dr Jennifer Dowling
 8. Dr Yona Gilead
 9. Professor Judy Kay
 10. Professor Gustav Lehrer
 11. Dr Guy Mayraz
 12. Professor Peter Morgan
 13. Dr Loren Mowszowski
 14. Professor Suzanne Rutland (Second Applicant)
 15. Dr Andy Smidt
 16. Dr Lynne Swarts
 17. Dr Joseph Toltz (First Applicant)
 - c. A letter which purports to be Professor Keane's response of 6 November 2023 to a communication of Vice Chancellor Mark Scott to all Sydney University staff and students of 26 October 2023 (in the post it appeared on a letterhead instead of being in email form).
43. The Vice Chancellor's original communication dated 26 October 2023, to which Professor Keane's 6 November email responded, was not attached to the post. In that email the Vice Chancellor and President had said that Sydney University would not tolerate support for Hamas' recent terrorist attacks.

44. No permission or authorisation was sought by Professor Keane, or was obtained by him, from any of the 17 named academics to publish their names or the content of their email.
45. Professor Keane's Staff Members Post remained on his Keane X Page from 8 November 2023 until it was removed as a result of a Sydney University disciplinary process on or about 21 May 2024.

Particulars of the disciplinary process

- (a) Complaints were made by Jewish/Israeli staff of Sydney University from 8 November 2023 onwards. This included but was not limited to complaints made directly by or on behalf of persons including: Professor Emerita Suzanne Rutland (Second Applicant), Dr Sarah Aamidor, Dr Michael Abrahams-Sprod, Associate Professor Avril Alba, Dr Lionel Babicz, Dr Larisa Barnes, Professor David Celermajer AO, Associate Professor Ronald Clarke, Dr Jennifer Dowling, Dr Yona Gilead, Talia Gonda, Emmilly Graf, Dr Eve Guerry, Associate Professor Sabina Kleitman, Professor Emerita Ines Krass, Professor Emeritus Gustav Lehrer AO, Mr Yaniv Levy (Fourth Applicant), Associate Professor Tania Markovic, Sarah Marks, Dr Guy Mayraz, Professor Peter Morgan, Dr Loren Mowszowski, Adam Muscio, Isabella Nahon, Emeritus Professor Leo Radom, Tracie Sillers, Dr Andy Smidt, Rachel Sullivan, Dr Lynne Swarts, Dr Joseph Toltz (First Applicant), Vanina Vaisman-Levy, Yulia Berlin-Firer.
- (b) Examples include:
 - i. On 8 November 2023, Avril Alba, Yulia Berlin-Firer, Suzanne Rutland and Michael Abrahams-Sprod complained to Mark Scott (Vice Chancellor) and Annamarie Jagose (Provost and Deputy Vice Chancellor) about Professor Keane (and Jake Lynch).
 - ii. On 9 November Dr Loren Mowszowski wrote to Mark Scott and Annamarie Jagose endorsing her colleague's complaints. Lionel Babicz wrote to Professor Jagose reinforcing Ms Berlin-Firer's complaint.
 - iii. On 30 November 2023 Dr Mowszowski followed up Professors Jagose and Scott, concerned that she had had no response or acknowledgment to her email sent 3 weeks earlier.
 - iv. On 1 December 2023, Peter Wertheim of the Executive Council of Australian Jewry and Mark Scott discussed concerns of Jewish staff and students including their unanswered complaints regarding Professor Keane's email.

- v. On 22 December 2023, Dr Mowszowski wrote to Naomi Connolly, Senior Manager in Workplace Relations, concerned at the slowness of the process which was compounding her distress and causing her to largely avoid attending main campus.
- vi. On 17 January 2024, Professor Rutland wrote to the Vice Chancellor, provost, Chancellor, and the Senate, supported by some 30 predominantly Jewish/Israeli staff, who comprised a newly formed Sydney University branch of the Australian Academic Alliance Against Antisemitism (**5A Group**). The letter appended 'Key Issues' concerning 'ongoing the pro-Palestinian campaign' at Sydney University since Hamas' 7 October invasion. The Issues included "*Intimidation and defamation of academic staff over University email and on social media*", noting Professor Keane's inflammatory letter and subsequent events and the slow response of the Workplace Department.
- vii. On 22 January 2024 Dr Mowszowski sought a further update.
- viii. On 13 February 2024, Mark Scott responded to Professor Rutland's 17 January complaint on behalf of the 5A Group. Nothing expressly or adequately addressed the Keane concern.
- ix. On 19 March 2024 the 5A Group were informed that Workplace Relations completed a preliminary assessment and advised next steps to Lisa Adkins, Dean of Faculty of Art and Sciences.
- x. On 3 April 2024, Lisa Adkins sent an outcome letter regarding the Keane complaint. Professor Keane's conduct was found to contravene University policies and codes and to be Misconduct under Sydney University's Enterprise Agreement. The University would discipline Professor Keane and direct him to delete the Staff Members Post.
- xi. On 8 April 2024, Dr Mowszowski wrote to Professor Adkins and Ms Connolly, communicating 'extreme concern' that Professor Keane's Post was still on X, causing '*further insult and offense*' and questioning what consequences Keane received and how complainants could be assured disciplinary actions will be effective.
- xii. On 10 April 2024, Dr Mowszowski was advised that the University would not provide additional details regarding Professor Keane's disciplinary action. The same day she sought that Professor Keane be contacted directly to ensure the Post's removal was not significantly delayed.
- xiii. On 26 April 2024, Dr Mowszowski wrote to Professor Adkins and Ms Connolly noting the Staff Post was still online, which was perpetuating

“*distress, intimidation and offence*,” undermining the complaint process and asking why he was not being held to account.

- xiv. During 28 April to 10 May 2024, Dr Babicz wrote several emails to/from Lisa Adkins and Naomi Connolly, expressing major concern about the University’s lack of effective action regarding Keane’s Staff Post, stating: “*considering the ongoing events on campus, including the involvement of jihadist elements external to the University, the potential threat to the safety of the people doxed by that post is increasing day by day.*” (10 May)
 - xv. On 3 and 7 May 2024, Ms Connolly wrote to Dr Mowszowski, failing to address her concerns.
 - xvi. On 21 May 2024, Jodi Dickson, Director of Workplace Relations, wrote to the 5A Group complainants informing them that Professor Keane had removed their names from the posts he made on X.
46. Until the date of the removal of the post from Professor Keane’s X page on 21 May 2024, Professor Keane’s Staff Member’s Post had about 30,000-31,000 views.
47. Professor Keane’s Staff Members Post conveyed the following imputations:
- a. The named Jewish and Israeli staff members regarded, treated, considered and were convinced that Palestinians are “non-humans” (meaning something less than or other than human beings).
 - b. The named Jewish and Israeli staff members were racists who regarded, treated, considered and were convinced that Palestinians challenging Israel as a Jewish homeland, or as their “Promised land”, are “non-humans”.
 - c. The named Jewish and Israeli persons, in seeking to defend the existence of Israel should be condemned and publically exposed as self-righteous racists without any morals, scruples or conscience.
 - d. Jewish persons and Israeli persons believe that Palestinians or Palestinians challenging Israel as a Jewish homeland or as their “Promised land” are “non humans”.
 - e. Jews and Israelis, or the named Jews and Israelis, were acting like the Nazis in considering Palestinians as “non-humans” or as something less than, or other than, human beings.
48. Contrary to the imputations set out immediately above:
- a. None of the staff members identified in the post were racists nor were they persons who regarded, treated, considered or were convinced that Palestinians or

Palestinians challenging Israel as a Jewish homeland or as “*their Promised land*” were “*non-humans*”.

- b. Jewish persons and Israeli persons as a group or otherwise did not regard, treat, consider and were not convinced that Palestinians or Palestinians challenging Israel as a Jewish homeland or as their “*Promised Land*” were “*non-humans*”.

49. The reference to “non-humans” has particular resonance for Jewish and Israeli ~~people~~ persons given its historical use to describe Jewish persons ~~people~~ in that way.
50. The First and Second Applicants, who were both persons named in Keane’s Staff Members Post, suffered distress, loss and damage, including harm to their reputation, and/or psychological injury by reason of the publication and non-removal of the Keane’s Staff Members Post.

Contravention of s 18C of the RDA

51. Professor Keane’s posting of, and failure to remove prior to 21 May 2024, Keane’s Staff Members Post were acts which caused words and images to be communicated to the public. They were:
 - a. done in a public place; and were
 - b. done in the sight and hearing of people who were in a public place; and
 - c. not acts done in private.
52. Professor Keane’s posting of, and his failure to remove prior to 21 May 2024, Keane’s Staff Members Post, by conveying any or all of the imputations alleged above and by attributing the false characteristics alleged to those named Jewish and Israeli Staff Members and to Jewish persons and Israeli persons on the basis of their group membership or otherwise, was reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate the Jewish and Israeli Staff Members named in Keane’s Staff Members Post and other Jewish persons and Israeli persons in Australia.
53. The posting and its non-removal prior to 21 May 2024 was made or done because of the race, national or ethnic origin of the people reasonably likely to be offended, insulted, humiliated or intimidated by the posting including because:
 - a. The post referred to and criticised only Jewish and Israeli people;
 - b. It did so by reference to their position as being “pro-Israel”;
 - c. The subject matter of the post was related by context to events that were themselves directly related to the race, ethnic origin or national origin (Jewish and/or Israeli) of the victims of the events of October 7;

- d. The posting was plainly calculated to convey a message about or concerned with the race, ethnic origin or national origin (Jewish and/or Israeli) of the people named;
- e. Professor Keane had earlier posted the Hamas Flag Post which provides context for ~~the~~ a ~~real~~-reason why the Staff Members Post was actuated by race and/or ethnic origin and/or national origin or, in the alternative, race, or ethnic or national origin was otherwise a factor in Professor Keane's conduct; and
- f. Professor Keane has a tendency to engage in conduct which does and is intended to offend and/or insult and/or humiliate and/or intimidate Jewish people and Israeli people.

Particulars

- i. Particulars served at time of filing this Amended Statement of Claim in accordance with Court's order 2 of 3 February 2026.

54. In the premises set out in [40]-[53] above, Professor Keane contravened s 18C of the RDA and engaged in unlawful discrimination within the meaning of ss 3(1) and 46P of the AHRC Act. Australian Human Rights Commission Act 1986 (Cth).

Professor Keane's Staff Members Post – Vicarious liability of Sydney University

55. Professor Keane is an employee of Sydney University.
56. The posting, and the non-removal until on or about 21 May 2024, of Professor Keane's Staff Members Post was made in connection with his duties as an employee of Sydney University:
 - a. the communications that precipitated the Staff Members Post were internal staff University email exchanges about University matters;
 - b. the Staff Members Post had the potential to (and actually did) adversely affect the working relationship of the named employees of Sydney University, and for other Jewish/Israeli employees;
 - c. The following documents make it clear that communications of this kind are directly connected to employment by Sydney University:
 - i. Sydney University Complaint Procedures;
 - ii. the *University of Sydney Enterprise Agreement 2023-2026* (eg. cll 354, 360, 361, 362, 366 and 368);
 - iii. Sydney University Staff and Affiliates Code of Conduct 2021 (eg. cll 3, 5, 7, 8, 11, 15, 19, 20, 21, 23, 24);
 - iv. Public Comment Policy of Sydney University (eg. Guidelines and Pt 2);

- v. *University of Sydney Act 1989* (NSW) (eg. s 2);
- vi. *Charter of Freedom of Speech and Academic Freedom 2019*.

57. The Staff Members Post and its non-removal are acts that would have been unlawful had they been done by Sydney University for the reasons set out at paragraphs [40]-[54] above.
58. Sydney University failed to take all reasonable steps to prevent Professor Keane from publishing the Staff Members Post considering:
- a. the correspondence referred to or described in [40]-[44] above;
 - b. the disciplinary process and the complaints described in [45] and the failure of Sydney University to act on those complaints appropriately, with due diligence or due expedition.
59. In the premises above, Professor Keane Staff Members Post and its non-removal were acts of Professor Keane done in connection with his duties as an employee or agent of Sydney University for the purposes of imposing vicarious liability on Sydney University for the unlawful discrimination by Professor Keane pursuant to s 18E of the RDA.

Complaint to the Australian Human Rights Commission

60. On about 31 October 2024, the Applicants lodged with the Australian Human Rights Commission under sections 46P and 46PB of the AHRC Act ~~*Australian Human Rights Commission Act 1986 (Cth)*~~ a complaint against the Respondents alleging unlawful discrimination (**AHRC Complaint**).
61. The unlawful discrimination alleged above is the same or the same in substance as the unlawful discrimination alleged in the AHRC Complaint.
62. On 14 April 2025, a delegate of the President of the Australian Human Rights Commission terminated the AHRC Complaint under section 46PH(1B)(b) of the AHRC Act ~~*Australian Human Rights Commission Act 1986 (Cth)*~~, on the ground that there was no reasonable prospect of the matter being settled by conciliation.

Particulars

- a. AHRC Notice of Termination in File No. 2024-15489 dated 14 April 2025 including Attachment A (Reasons for decision), Attachment B (A copy of the complaint) and Attachment C (A copy of the amendment to the complaint).

Relief

63. In the premises, the Applicants and each of the persons in Schedule A are entitled to the relief claimed in the Amended Originating Application.

Date: ~~13 June~~ 13 February 2026

.....
Signed by Hamish Rotstein
Lawyer for the Applicants

This pleading was prepared by Adam Butt and settled by Saul Holt KC.

Certificate of lawyer

I Hamish Rotstein certify to the Court that, in relation to the Amended Statement of Claim filed on behalf of the Applicants, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~13 June~~ 13 February 2026

.....
Signed by Hamish Rotstein
Lawyer for the Applicants

Certificate of First and Second Applicants

I, Joseph Toltz, and Suzanne Rutland, certify to the Court that each person on whose behalf the application is made has consented in writing to the making of the application on the person's behalf.

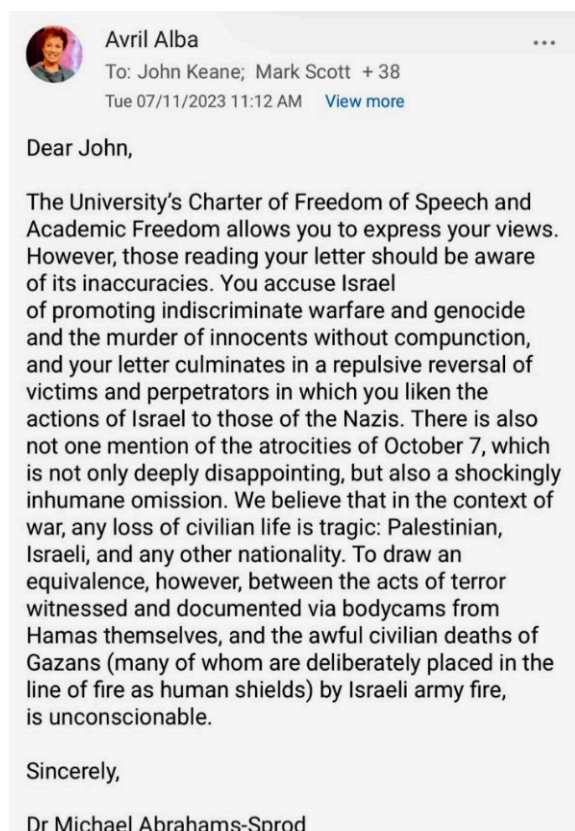
Date: 13 February 2026

.....
Signed by Joseph Toltz
First Applicant

Date: 13 February 2026

.....
Signed by Suzanne Rutland
Second Applicant

Accessible Attachments to Keane's Staff Members Post (Paras [40]-[41] above)



Sincerely,

Dr Michael Abrahams-Sprod
 A/Prof Avril Alba
 Dr Lionel Babicz
 Yulia Berlin-Firer
 Professor David Celermajer
 A/Prof Ilan Dar-Nimrod
 Dr Jennifer Dowling
 Dr Yona Gilead
 Professor Judy Kay
 Professor Gustav Lehrer
 Dr Guy Mayraz
 Prof Peter Morgan
 Dr Loren Mowszowski
 Professor Suzanne Rutland
 Dr Andy Smidt
 Dr Lynne Swarts
 Dr Joseph Toltz



Professor of Politics

Faculty of Arts and Social Sciences
 Social Sciences Building (A02)
 The University of Sydney
 NSW 2006 Australia

6 November, 2023

Dear Vice-Chancellor,

Your message to staff and students in support of the principles of free speech, academic freedom and engaged political discourse is most welcome. You remind us that vibrant and well-functioning universities are neither government agencies, nor business enterprises in which students are fee-paying customers, nor ivory towers sheltered from the harsh realities of the world. Universities, you say using other words, are public spaces supportive of competing perceptions of 'knowledge' and 'reality', laboratories of life in which the university community breathes the air of curiosity, learns to accept that human lives can legitimately be lived in different ways, in opposition to arrogance and ignorance, lies and nonsense.

Less welcome are your strictures on tolerance. You say our University supports 'the rights of students and staff to engage in political discourse' but that anybody who utters 'pro-terrorist statements or commentary, including support for Hamas's recent terrorist attacks' will be the target of tough disciplinary proceedings, including termination of employment. Many staff and students have noted an eery bias within your definition of the tolerable. It is founded on silence about such ugly matters as non-stop aerial bombardment, the illegal use of white phosphorus bombs on civilians, settler violence, bulldozers wrecking the homes of fearful innocents, death by suffocation under rubble, devilish propaganda dropped from the skies, the wilful destruction of mosques, churches, schools and universities, and crazed plans for the forcible removal of millions of people from their ancient homelands.

If toleration depends upon silence about these grim matters then it's an objectionable principle that has no place in the life of our University. Toleration purports to be a pleasing and heart-warming ethic. The word itself is from the Latin *tolerāre*, to endure, or countenance, or to bear or put up with some person or situation otherwise deemed undesirable. We speak of parents tolerating the behaviour of their naughty children and engineers tolerating size variations in machine parts. Note how toleration necessarily establishes an unequal power relationship between the subject and object of tolerance. Toleration is the twin of intolerance. To tolerate is to condescend, degrade, insult and humiliate. Toleration is a form of colonisation. That's why the silent double standard within your call for toleration is unwelcome and unwanted; and why, in these circumstances of war, our university community must be free to say the unsayable, to speak more honestly about how it came to pass that a state born of the ashes of genocide is now hellbent on the 'physical destruction in whole or in part' (Genocide Convention Article II c) of a people known as Palestinians.

Best wishes,

John Keane

www.johnkeane.net | @jkeaneSDN
 email: john.keane@sydney.edu.au | telephone: +61 (0)400 556744

Federal Court of Australia
District Registry: NSW
Division: Human Rights

Joseph Toltz and others
Applicants

John Keane and another
Respondents

Affidavit of: **Daniel Patrick McCoach**
Address: 409/488 Bourke Street, Melbourne in the State of Victoria 3000
Occupation: Solicitor
Date: 20 February 2026

Certificate identifying Exhibit

This is the Certificate identifying Exhibit "DPM-14" annexed to the Affidavit of Daniel Patrick McCoach dated 20 February 2026

Before me:



UPEKHA WEDAGE

of Suite 409, 488 Bourke Street, Melbourne VIC 3000
Australian Legal Practitioner within the meaning of the
Legal Profession Uniform Law (Victoria)
A person authorised under section 19(1) of the Oaths
and Affirmations Act 2018 to take an affidavit.
*Who states that their signature was made to this
affidavit by electronic means, the witnessing of the
execution of this document was done by audio-visual
link and all the requirements of Part 3 of the Oaths
and Affirmations Act 2018 (Vic).*

Date: 20 February 2026

Filed on behalf of (name & role of party) The Applicants
Prepared by (name of person/lawyer) Daniel McCoach
Law firm (if applicable) Rotstein Commercial Lawyers
Tel (03) 9604 7888 Fax _____
Email daniel.mccoach@rotsteins.com.au
Address for service Suite 409, 488 Bourke Street, Melbourne VIC 3000
(include state and postcode) _____

Daniel McCoach

From: Upekha Wedage
Sent: Friday, 13 February 2026 3:44 PM
To: Michael Bradley; Lauren Gasparini; Hamish Rotstein; Elijah Rasic; Stephen.Woodbury@ashurst.com; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Daniel McCoach; Julie.Mills@ashurst.com
Subject: RE: NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR
Attachments: Keane Originating Application 13 Feb 2026.pdf; Keane Statement of Claim 5 Sep 2025 edited 12 Feb_.pdf; [Compare Report] Keane Originating Application 13 Feb 2026.pdf; [Compare Report] Keane Statement of Claim 5 Sep 2025 edited 12 Feb_.pdf; FCA_form035_20110801 (2) (003) interlocutory application Keane 13 Feb 26.pdf
Categories: Smokeball

Dear Colleagues,

We refer to the above proceedings and the orders dated 3 February 2026.

Please see **attached** for your consideration the following:

1. The Amended Originating Application of today's date;
2. The Amended Statement of Claim of today's date;
3. A comparison version of the Amended Originating Application against the 5 September 2025 version;
4. A comparison version of the Amended Statement of Claim against the 5 September 2025 version; and
5. The Interlocutory Application seeking leave to proceed in a representative capacity and to amend the pleadings.

For ease of reference, in the comparison documents, replacements are shown in yellow, new insertions are shown in blue and the deletions are shown in red. As you will see from the comparison documents, the amendments largely give effect to the Court's orders of 3 February 2026. There are a small number of additional amendments which we consider are responsive to those orders or otherwise appropriate.

The Amended Statement of Claim also reflects that the further and better particulars previously provided were served earlier today, in accordance with the Court's orders.

Please confirm your respective clients' confirmation by **5:00 pm today** as to whether they consent to the filing of the amended Originating Application and Statement of Claim in their present form, and to the representative complaint proceeding in accordance with the interlocutory application.

We look forward to hearing from you.

Kind regards,

Upekha Wedage

Associate

LPN 5515129



Member of Consulegis, an international network of law firms

A Suite 409, 488 Bourke Street, Melbourne, VIC 3000
T (61 3) 9604 7888

Disclaimer: This email and any attachments are confidential and may be legally privileged (and neither is waived by mistaken delivery). It is intended for the addressee only. Please notify us if you received it in error, and remove both emails. Our liability in connection with transmitting this message and its attachments, is limited to re-supply. Liability limited by a scheme approved under Professional Standards Legislation

From: Upekha Wedage

Sent: Friday, 13 February 2026 2:25 PM

To: Michael Bradley <michaelb@marquelawyers.com.au>; Lauren Gasparini <laureng@marquelawyers.com.au>; Hamish Rotstein <hamish@rotsteins.com.au>; Elijah Rasic <Elijah.Rasic@rotsteins.com.au>; Stephen.Woodbury@ashurst.com; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Daniel McCoach <daniel.mccoach@rotsteins.com.au>; Julie.Mills@ashurst.com

Subject: RE: NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR - Applicants' Further & Better Particulars

Dear Colleagues,

We refer to the above proceeding and the orders dated 3 February 2026.

Please see **attached** by way of service, the letter of today's date providing the Applicant's further and better particulars in this matter.

Kind regards,

Upekha Wedage
Associate

LPN 5515129



Member of Consulegis, an international network of law firms

A Suite 409, 488 Bourke Street, Melbourne, VIC 3000
T (61 3) 9604 7888

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From: Upekha Wedage

Sent: Friday, 30 January 2026 5:15 PM

To: Associate Kennett J <Associate.KennettJ@fedcourt.gov.au>; Michael Bradley <michaelb@marquelawyers.com.au>; Lauren Gasparini <laureng@marquelawyers.com.au>; Hamish Rotstein <hamish@rotsteins.com.au>; Elijah Rasic <Elijah.Rasic@rotsteins.com.au>; Stephen.Woodbury@ashurst.com; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Daniel McCoach <daniel.mccoach@rotsteins.com.au>; Julie.Mills@ashurst.com

Cc: nsd9502025@fedcourt.gov.au; nsd9512025@fedcourt.gov.au

Subject: RE: NSD950/2025 JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR and NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR - Applicants' Interlocutory Application [Marque-DOCUMENTS.FID124631] [SEC=OFFICIAL]

Dear Associates,

Thank you for your email.

Please find **attached** the reformulated orders for the Court's consideration.

We note that the First Respondent has consented to the proposed form of orders. We are presently awaiting confirmation from the Second Respondent.

The solicitors for the Respondents have been copied to this correspondence.

Kind regards,

Upekha Wedage

Associate

LPN 5515129



Member of Consulegis, an international network of law firms

A Suite 409, 488 Bourke Street, Melbourne, VIC 3000

T (61 3) 9604 7888

Disclaimer: This email and any attachments are confidential and may be legally privileged (and neither is waived by mistaken delivery). It is intended for the addressee only. Please notify us if you received it in error, and remove both emails. Our liability in connection with transmitting this message and its attachments, is limited to re-supply. Liability limited by a scheme approved under Professional Standards Legislation

From: Associate Kennett J <Associate.KennettJ@fedcourt.gov.au>

Sent: Thursday, 29 January 2026 9:14 AM

To: Michael Bradley <michaelb@marquelawyers.com.au>; Upekha Wedage <upekha.wedage@rotsteins.com.au>; Lauren Gasparini <laureng@marquelawyers.com.au>; Hamish Rotstein <hamish@rotsteins.com.au>; Elijah Rasic <Elijah.Rasic@rotsteins.com.au>; Stephen.Woodbury@ashurst.com; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Daniel McCoach <daniel.mccoach@rotsteins.com.au>; Julie.Mills@ashurst.com

Cc: nsd9502025@fedcourt.gov.au; nsd9512025@fedcourt.gov.au

Subject: RE: NSD950/2025 JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR and NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR - Applicants' Interlocutory Application [Marque-DOCUMENTS.FID124631] [SEC=OFFICIAL]

OFFICIAL

Dear practitioners

We refer to the below email. Please provide Chambers with reformulated orders as requested as soon as practicable.

Kind regards

Jack Dowling (he/him) (sender)

Associate to the Hon. Justice Kennett
Federal Court of Australia | NSW

P 02 8099 8380

E associate.kennettj@fedcourt.gov.au

Simran Goklaney

Associate to the Hon. Justice Kennett
Federal Court of Australia | NSW

P 02 8099 8548

E associate.kennettj@fedcourt.gov.au

From: Associate Kennett J <Associate.KennettJ@fedcourt.gov.au>

Sent: Monday, 19 January 2026 10:52 AM

To: Michael Bradley <michaelb@marquelawyers.com.au>; Upekha Wedage <upekha.wedage@rotsteins.com.au>; Lauren Gasparini <laureng@marquelawyers.com.au>; Hamish Rotstein <hamish@rotsteins.com.au>; Elijah Rasic <Elijah.Rasic@rotsteins.com.au>; Stephen.Woodbury@ashurst.com; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Daniel McCoach <daniel.mccoach@rotsteins.com.au>; Julie.Mills@ashurst.com

Cc: nsd9502025@fedcourt.gov.au; nsd9512025@fedcourt.gov.au

Subject: RE: NSD950/2025 JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR and NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR - Applicants' Interlocutory Application [Marque-DOCUMENTS.FID124631] [SEC=OFFICIAL]

OFFICIAL

Dear practitioners

Justice Kennett is content to make the following orders as contained in Schedule A to the Applicants' interlocutory applications:

- orders 1-6 and 10 in the *Riemer* proceeding; and
- orders 1-7 and 11 in the *Keane* proceeding.

Additionally, his Honour is content to grant the extensions sought in relation to the filing of submissions on costs in relation to the interlocutory applications. However, his Honour notes that proposed order 7 in the *Riemer* proceeding and proposed order 8 in the *Keane* proceeding are unnecessary in the light of the submissions filed by the First Respondents in each proceeding on 24 December 2025. Accordingly, his Honour asks that the following orders be reformulated:

- orders 8 and 9 in the *Riemer* proceeding; and
- orders 9 and 10 in the *Keane* proceeding.

Chambers would be grateful to receive reformulated orders at the earliest convenience.

Kind regards

Simran Goklaney (she/her) (sender)
Associate to the Hon. Justice Kennett
Federal Court of Australia | NSW
P 02 8099 8548
E associate.kennettj@fedcourt.gov.au

Jack Dowling
Associate to the Hon. Justice Kennett
Federal Court of Australia | NSW
P 02 8099 8330
E associate.kennettj@fedcourt.gov.au

From: Michael Bradley <michaelb@marquelawyers.com.au>

Sent: Thursday, 8 January 2026 3:42 PM

To: Associate Kennett J <Associate.KennettJ@fedcourt.gov.au>; Upekha Wedage <upekha.wedage@rotsteins.com.au>; Lauren Gasparini <laureng@marquelawyers.com.au>; Hamish Rotstein <hamish@rotsteins.com.au>; Elijah Rasic <Elijah.Rasic@rotsteins.com.au>; Stephen.Woodbury@ashurst.com; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Daniel McCoach <daniel.mccoach@rotsteins.com.au>; Julie.Mills@ashurst.com

Cc: nsd9502025@fedcourt.gov.au; nsd9512025@fedcourt.gov.au

Subject: RE: NSD950/2025 JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR and NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR - Applicants' Interlocutory Application [SEC=OFFICIAL] [Marque-DOCUMENTS.FID124631]

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

Dear Associates,

Thank you for your email.

The First Respondents do not need to be heard on the applications, and are content for the matters to be dealt with on the papers.

The First Respondents' primary concern with the Applicants' applications is that the progress of the matters, which have already been on foot for 7 months, will be further delayed, and prolong the burden of the proceedings on them. They are anxious to have the matters timetabled for trial.

The First Respondents are concerned that the length of the extension sought by the Applicants is far longer than they should reasonably require to revise their pleadings within the scope of the leave given by the orders of His Honour on 14 November 2025.

Yours sincerely

Michael Bradley
Managing Partner
MARQUE Lawyers Pty Ltd



P: +612 8216 3006 M: +61 419 610 016
Gadigal Country, Level 4, 343 George Street Sydney 2000
marquelawyers.com.au / [LinkedIn](#) / [Bluesky](#) / [Instagram](#)
We do not disclaim anything about this email. We're quite proud of it, really.

From: Associate Kennett J <Associate.KennettJ@fedcourt.gov.au>

Sent: Wednesday, 7 January 2026 4:57 PM

To: Upekha Wedage <upekha.wedage@rotsteins.com.au>; Lauren Gasparini <laureng@marquelawyers.com.au>; Hamish Rotstein <hamish@rotsteins.com.au>; Elijah Rasic <Elijah.Rasic@rotsteins.com.au>; Stephen.Woodbury@ashurst.com; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Daniel McCoach <daniel.mccoach@rotsteins.com.au>; Julie.Mills@ashurst.com; Michael Bradley <michaelb@marquelawyers.com.au>

Cc: nsd9502025@fedcourt.gov.au; nsd9512025@fedcourt.gov.au

Subject: RE: NSD950/2025 JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR and NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR - Applicants' Interlocutory Application [SEC=OFFICIAL]

OFFICIAL

Dear parties

Justice Kennett has asked that the respondents confirm whether:

- they wish to be heard against the extensions sought in the interlocutory applications filed by the applicants in each proceeding; and
- if so, whether the respondents are content for the applications to be dealt with on the papers.

Please provide Chambers with a response by **12:00pm AEDT** on **Friday, 9 January 2026**.

Kind regards

Simran Goklaney (she/her) (sender)
Associate to the Hon. Justice Kennett
Federal Court of Australia | NSW
P 02 8099 8548
E associate.kennettj@fedcourt.gov.au

Jack Dowling
Associate to the Hon. Justice Kennett
Federal Court of Australia | NSW
P 02 8099 8330
E associate.kennettj@fedcourt.gov.au

From: Upekha Wedage <upekha.wedage@rotsteins.com.au>
Sent: Tuesday, 23 December 2025 8:10 PM
To: Associate Kennett J <Associate.KennettJ@fedcourt.gov.au>
Cc: Lauren Gasparini <laureng@marquellawyers.com.au>; Hamish Rotstein <hamish@rotsteins.com.au>; Elijah Rasic <Elijah.Rasic@rotsteins.com.au>; Stephen.Woodbury@ashurst.com; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Daniel McCoach <daniel.mccoach@rotsteins.com.au>; Julie.Mills@ashurst.com; Michael Bradley <michaelb@marquellawyers.com.au>; nsd9502025@fedcourt.gov.au
Subject: NSD950/2025 JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR and NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR - Applicants' Interlocutory Application

You don't often get email from upekha.wedage@rotsteins.com.au. [Learn why this is important](#)

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

Dear Associate,

NSD950/2025 JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR
NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR

We refer to the above proceedings.

We write to inform His Honour that the Applicants have today filed interlocutory applications and supporting affidavit material, as previously foreshadowed to the Respondents.

Per the interlocutory applications, the Applicants seek an extension of the respective timetabling orders made in these proceedings on 2 December 2025.

The Second Respondent in each proceeding consents to the Applicants' proposed orders. The First Respondent does not consent.

The solicitors for the Respondents have been copied into this correspondence.

Please contact the writer should the Court require anything further.

Kind regards,

Upekha Wedage
Associate
LPN 5515129



Member of Consulegis, an international network of law firms

A Suite 409, 488 Bourke Street, Melbourne, VIC 3000
T (61 3) 9604 7888
E upekha.wedage@rotsteins.com.au

W www.rotsteins.com.au

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Rotstein Commercial Lawyers wish you a happy, safe and prosperous Holiday Season and New Year!

HOLIDAY OPENING HOURS:

Our offices will be closed from 5.00pm on Friday, 19 December 2025 and will re-open at 9.00am on Monday, 12 January 2026.

If your matter is urgent during this time, please leave a detailed message and one of our lawyers will get back to you.

Season's Greetings!

Federal Court of Australia
District Registry: NSW
Division: Human Rights

Joseph Toltz and others
Applicants

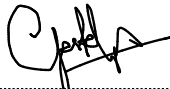
John Keane and another
Respondents

Affidavit of: **Daniel Patrick McCoach**
Address: 409/488 Bourke Street, Melbourne in the State of Victoria 3000
Occupation: Solicitor
Date: 20 February 2026

Certificate identifying Exhibit

This is the Certificate identifying Exhibit "DPM-15" annexed to the Affidavit of Daniel Patrick McCoach dated 20 February 2026

Before me:



UPEKHA WEDAGE

of Suite 409, 488 Bourke Street, Melbourne VIC 3000
Australian Legal Practitioner within the meaning of the
Legal Profession Uniform Law (Victoria)
A person authorised under section 19(1) of the Oaths
and Affirmations Act 2018 to take an affidavit.
*Who states that their signature was made to this
affidavit by electronic means, the witnessing of the
execution of this document was done by audio-visual
link and all the requirements of Part 3 of the Oaths
and Affirmations Act 2018 (Vic).*

Date: 20 February 2026

Filed on behalf of (name & role of party) The Applicants
Prepared by (name of person/lawyer) Daniel McCoach
Law firm (if applicable) Rotstein Commercial Lawyers
Tel (03) 9604 7888 Fax _____
Email daniel.mccoach@rotsteins.com.au
Address for service Suite 409, 488 Bourke Street, Melbourne VIC 3000
(include state and postcode) _____

Daniel McCoach

From: erina.higgins@ashurst.com
Sent: Wednesday, 18 February 2026 4:43 PM
To: Daniel McCoach
Cc: michaelb@marquelawyers.com.au; lucap@marquelawyers.com.au; Upekha Wedage; Hamish Rotstein; Julie.Mills@ashurst.com; laureng@marquelawyers.com.au; Stephen.Woodbury@ashurst.com
Subject: RE: NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR and NSD950/2025 JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR [Marque-DOCUMENTS.FID124631] [ASH-AUS.FID31571233]

Dear colleagues

We are instructed not to object to the proposed amendments to the pleadings and the originating application in each set of proceedings.

Our non-objection should not be taken by you as confirmation that the proposed amendments have been clearly and properly articulated. Many of the amendments are confusing and contrary to the proper rules of pleading in that they contain e.g. conclusions, rolled up propositions of fact and law, and are prolix (see paragraphs 12, 24A, 27A and 28A in Keane ASOC; and paragraphs 9, 10, 23A, 29A, 31A and 32A in Riemer FASOC).

Further, in the event that the First Respondents successfully object to any of the proposed amendments our client will of course be in the same position with respect to that successful opposition, namely, the allegations will not be able to be advanced against our client.

We will separately write to you requesting further and better particulars of the proposed amended paragraphs if and when leave is obtained for you to include them.

Lastly, we request that you supply the particulars to paragraph 88(c) in accordance with Order 2 of Kennett J's Orders dated 3 February 2026.

Kind regards

Erina Higgins

Lawyer

Ashurst Australia, 5 Martin Place, Sydney, NSW 2000, Australia
D: +61 2 9258 6322
www.ashurst.com

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From: Daniel McCoach <daniel.mccoach@rotsteins.com.au>
Sent: Tuesday, 17 February 2026 7:58 PM
To: Julie.Mills@ashurst.com; Lauren Gasparini <laureng@marquelawyers.com.au>
Cc: Michael Bradley <michaelb@marquelawyers.com.au>; Luca Pearce <lucap@marquelawyers.com.au>; Stephen.Woodbury@ashurst.com; Upekha Wedage <upekha.wedage@rotsteins.com.au>; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Hamish Rotstein <hamish@rotsteins.com.au>
Subject: RE: NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR and NSD950/2025 JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR

Good evening Ms Mills and Ms Gasparini,

We note that our clients' intended materials to be relied upon, being amended pleadings and particulars in both matters, had been provided substantially on Friday with only remaining pleadings in the Riemer matter served yesterday. We had sought confirmation of your respective clients' consent to the filing of the amended Statements of Claim (and in the case of the Keane matter, also the amended Originating Application) but have received no response.

Please confirm your clients' positions by 10am tomorrow, 18 February 2026 – we otherwise anticipate receiving instructions to make applications to the Court for, inter alia, these documents (with dates updated as necessary) to stand as the Applicants' amended pleadings in each matter.

Kind regards,

Daniel McCoach
Director



Member of Consulegis, an international network of law firms

A Suite 409, 488 Bourke Street, Melbourne VIC 3000 Australia
T (61 3) 9604 7888
E daniel.mccoach@rotsteins.com.au

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From: Julie.Mills@ashurst.com <Julie.Mills@ashurst.com>
Sent: Friday, 13 February 2026 5:27 PM
To: laureng@marquelawyers.com.au; Upekha Wedage <upekha.wedage@rotsteins.com.au>
Cc: michaelb@marquelawyers.com.au; lucap@marquelawyers.com.au; [Elijah Rasic <Elijah.Rasic@rotsteins.com.au>](mailto:Elijah.Rasic@rotsteins.com.au); Stephen.Woodbury@ashurst.com; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Daniel McCoach <daniel.mccoach@rotsteins.com.au>
Subject: RE: NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR [Marque-DOCUMENTS.FID124631] [ASH-AUS.FID31571233]

Dear Upekha

The issues raised by the First Respondents below also apply for the Second Respondent.

We will respond to your emails of today when we have obtained instructions.

Regards

Julie

Julie Mills

Global Practice Management Counsel - Employment

Ashurst Australia, Level 8, 39 Martin Place, Sydney, NSW 2000, Australia

D: +61 2 9258 6761 | M: +61 439 472 903

www.ashurst.com

Ashurst and Perkins Coie announce intention to combine to form Ashurst Perkins Coie. [Find out more.](#)

From: Lauren Gasparini <laureng@marquelawyers.com.au>

Sent: Friday, 13 February 2026 4:12 PM

To: Upekha Wedage <upekha.wedage@rotsteins.com.au>

Cc: Michael Bradley <michaelb@marquelawyers.com.au>; Luca Pearce <lucap@marquelawyers.com.au>; Hamish McMichael <hamish@goget.com.au>; Elijah Rasic <elijah.rasic@rotsteins.com.au>; Woodbury, Stephen 66444 <Stephen.Woodbury@ashurst.com>; Higgins, Erina 66322 <erina.higgins@ashurst.com>; Chen, Jennifer 63781 <Jennifer.Chen@ashurst.com>; Daniel McCoach <daniel.mccoach@rotsteins.com.au>; Mills, Julie 66761 <Julie.Mills@ashurst.com>

Subject: RE: NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR [Marque-DOCUMENTS.FID124631]

Caution: External email.

Dear Upekha

We confirm receipt of your email and the **attached** unsealed documents.

You have provided us with amended pleadings (which it appears from your below email do not strictly comply with order 3 of his Honour's orders made on 3 February 2026 but instead go beyond the permitted amendments), compare documents (which you have highlighted) and a second interlocutory application with respect to the representative proceeding issue.

In circumstances where we will need to (in conjunction with counsel) provide advice to our client, including a detailed review of his Honour's reasons as against your clients' proposed amendments and application, it is not reasonable to request our client's position by 10:00am on Monday (as requested in your email sent at 3:51pm).

We will obtain instructions in respect of our client's position on the interlocutory application and revert. In relation to your clients' unfiled proposed amended pleadings, we note that your clients are currently in breach of order 3.

Kind regards

Lauren

Lauren Gasparini

Senior Associate

MARQUE Lawyers Pty Ltd



P: +612 8216 3087

Gadigal Country, Level 4, 343 George Street Sydney 2000

marquelawyers.com.au / [LinkedIn](#) / [Bluesky](#) / [Instagram](#)

We do not disclaim anything about this email. We're quite proud of it, really.

From: Upekha Wedage <upekha.wedage@rotsteins.com.au>

Sent: Friday, 13 February 2026 3:44 PM

To: Michael Bradley <michaelb@marquelawyers.com.au>; Lauren Gasparini <laureng@marquelawyers.com.au>;

Hamish Rotstein <hamish@rotsteins.com.au>; Elijah Rasic <Elijah.Rasic@rotsteins.com.au>;

Stephen.Woodbury@ashurst.com; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Daniel McCoach <daniel.mccoach@rotsteins.com.au>; Julie.Mills@ashurst.com

Subject: RE: NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR

Dear Colleagues,

We refer to the above proceedings and the orders dated 3 February 2026.

Please see **attached** for your consideration the following:

1. The Amended Originating Application of today's date;
2. The Amended Statement of Claim of today's date;
3. A comparison version of the Amended Originating Application against the 5 September 2025 version;
4. A comparison version of the Amended Statement of Claim against the 5 September 2025 version; and
5. The Interlocutory Application seeking leave to proceed in a representative capacity and to amend the pleadings.

For ease of reference, in the comparison documents, replacements are shown in yellow, new insertions are shown in blue and the deletions are shown in red. As you will see from the comparison documents, the amendments largely give effect to the Court's orders of 3 February 2026. There are a small number of additional amendments which we consider are responsive to those orders or otherwise appropriate.

The Amended Statement of Claim also reflects that the further and better particulars previously provided were served earlier today, in accordance with the Court's orders.

Please confirm your respective clients' confirmation by **5:00 pm today** as to whether they consent to the filing of the amended Originating Application and Statement of Claim in their present form, and to the representative complaint proceeding in accordance with the interlocutory application.

We look forward to hearing from you.

Kind regards,

Upekha Wedage
Associate

LPN 5515129



Member of Consulegis, an international network of law firms

A Suite 409, 488 Bourke Street, Melbourne, VIC 3000
T (61 3) 9604 7888

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From: Upekha Wedage

Sent: Friday, 13 February 2026 2:25 PM

To: Michael Bradley <michaelb@marquellawyers.com.au>; Lauren Gasparini <laureng@marquellawyers.com.au>; Hamish Rotstein <hamish@rotsteins.com.au>; Elijah Rasic <Elijah.Rasic@rotsteins.com.au>; Stephen.Woodbury@ashurst.com; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Daniel McCoach

<daniel.mccoach@rotsteins.com.au>; Julie.Mills@ashurst.com

Subject: RE: NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR - Applicants' Further & Better Particulars

Dear Colleagues,

We refer to the above proceeding and the orders dated 3 February 2026.

Please see **attached** by way of service, the letter of today's date providing the Applicant's further and better particulars in this matter.

Kind regards,

Upekha Wedage
Associate

LPN 5515129



Member of Consulegis, an international network of law firms

A Suite 409, 488 Bourke Street, Melbourne, VIC 3000
T (61 3) 9604 7888

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From: Upekha Wedage

Sent: Friday, 30 January 2026 5:15 PM

To: Associate Kennett J <Associate.KennettJ@fedcourt.gov.au>; Michael Bradley <michaelb@marquelawyers.com.au>; Lauren Gasparini <laureng@marquelawyers.com.au>; Hamish Rotstein <hamish@rotsteins.com.au>; Elijah Rasic <Elijah.Rasic@rotsteins.com.au>; Stephen.Woodbury@ashurst.com; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Daniel McCoach <daniel.mccoach@rotsteins.com.au>; Julie.Mills@ashurst.com

Cc: nsd9502025@fedcourt.gov.au; nsd9512025@fedcourt.gov.au

Subject: RE: NSD950/2025 JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR and NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR - Applicants' Interlocutory Application [Marque-DOCUMENTS.FID124631] [SEC=OFFICIAL]

Dear Associates,

Thank you for your email.

Please find **attached** the reformulated orders for the Court's consideration.

We note that the First Respondent has consented to the proposed form of orders. We are presently awaiting confirmation from the Second Respondent.

The solicitors for the Respondents have been copied to this correspondence.

Kind regards,

Upekha Wedage

Associate

LPN 5515129



Member of Consulegis, an international network of law firms

A Suite 409, 488 Bourke Street, Melbourne, VIC 3000
T (61 3) 9604 7888

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From: Associate Kennett J <Associate.KennettJ@fedcourt.gov.au>

Sent: Thursday, 29 January 2026 9:14 AM

To: Michael Bradley <michaelb@marquelawyers.com.au>; Upekha Wedage <upekha.wedage@rotsteins.com.au>; Lauren Gasparini <laureng@marquelawyers.com.au>; Hamish Rotstein <hamish@rotsteins.com.au>; Elijah Rasic <Elijah.Rasic@rotsteins.com.au>; Stephen.Woodbury@ashurst.com; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Daniel McCoach <daniel.mccoach@rotsteins.com.au>; Julie.Mills@ashurst.com

Cc: nsd9502025@fedcourt.gov.au; nsd9512025@fedcourt.gov.au

Subject: RE: NSD950/2025 JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR and NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR - Applicants' Interlocutory Application [Marque-DOCUMENTS.FID124631] [SEC=OFFICIAL]

OFFICIAL

Dear practitioners

We refer to the below email. Please provide Chambers with reformulated orders as requested as soon as practicable.

Kind regards

Jack Dowling (he/him) (sender)

Associate to the Hon. Justice Kennett

Federal Court of Australia | NSW

P 02 8099 8380

E associate.kennettj@fedcourt.gov.au

Simran Goklaney

Associate to the Hon. Justice Kennett

Federal Court of Australia | NSW

P 02 8099 8548

E associate.kennettj@fedcourt.gov.au

From: Associate Kennett J <Associate.KennettJ@fedcourt.gov.au>

Sent: Monday, 19 January 2026 10:52 AM

To: Michael Bradley <michaelb@marquelawyers.com.au>; Upekha Wedage <upekha.wedage@rotsteins.com.au>; Lauren Gasparini <laureng@marquelawyers.com.au>; Hamish Rotstein <hamish@rotsteins.com.au>; Elijah Rasic <Elijah.Rasic@rotsteins.com.au>; Stephen.Woodbury@ashurst.com; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Daniel McCoach <daniel.mccoach@rotsteins.com.au>; Julie.Mills@ashurst.com

Cc: nsd9502025@fedcourt.gov.au; nsd9512025@fedcourt.gov.au

Subject: RE: NSD950/2025 JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR and NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR - Applicants' Interlocutory Application [Marque-DOCUMENTS.FID124631] [SEC=OFFICIAL]

OFFICIAL

Dear practitioners

Justice Kennett is content to make the following orders as contained in Schedule A to the Applicants' interlocutory applications:

- orders 1-6 and 10 in the *Riemer* proceeding; and
- orders 1-7 and 11 in the *Keane* proceeding.

Additionally, his Honour is content to grant the extensions sought in relation to the filing of submissions on costs in relation to the interlocutory applications. However, his Honour notes that proposed order 7 in the *Riemer* proceeding and proposed order 8 in the *Keane* proceeding are unnecessary in the light of the submissions filed by the First Respondents in each proceeding on 24 December 2025. Accordingly, his Honour asks that the following orders be reformulated:

- orders 8 and 9 in the *Riemer* proceeding; and
- orders 9 and 10 in the *Keane* proceeding.

Chambers would be grateful to receive reformulated orders at the earliest convenience.

Kind regards

Simran Goklaney (she/her) (sender)
Associate to the Hon. Justice Kennett
Federal Court of Australia | NSW
P 02 8099 8548
E associate.kennettj@fedcourt.gov.au

Jack Dowling
Associate to the Hon. Justice Kennett
Federal Court of Australia | NSW
P 02 8099 8330
E associate.kennettj@fedcourt.gov.au

From: Michael Bradley <michaelb@marquellawyers.com.au>

Sent: Thursday, 8 January 2026 3:42 PM

To: Associate Kennett J <Associate.KennettJ@fedcourt.gov.au>; Upekha Wedage <upekha.wedage@rotsteins.com.au>; Lauren Gasparini <laureng@marquellawyers.com.au>; Hamish Rotstein <hamish@rotsteins.com.au>; Elijah Rasic <Elijah.Rasic@rotsteins.com.au>; Stephen.Woodbury@ashurst.com; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Daniel McCoach <daniel.mccoach@rotsteins.com.au>; Julie.Mills@ashurst.com

Cc: nsd9502025@fedcourt.gov.au; nsd9512025@fedcourt.gov.au

Subject: RE: NSD950/2025 JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR and NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR - Applicants' Interlocutory Application [SEC=OFFICIAL] [Marque-DOCUMENTS.FID124631]

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

Dear Associates,

Thank you for your email.


The First Respondents do not need to be heard on the applications, and are content for the matters to be dealt with on the papers.

The First Respondents' primary concern with the Applicants' applications is that the progress of the matters, which have already been on foot for 7 months, will be further delayed, and prolong the burden of the proceedings on them. They are anxious to have the matters timetabled for trial.

The First Respondents are concerned that the length of the extension sought by the Applicants is far longer than they should reasonably require to revise their pleadings within the scope of the leave given by the orders of His Honour on 14 November 2025.

Yours sincerely

Michael Bradley
Managing Partner
MARQUE Lawyers Pty Ltd

 P: +612 8216 3006 M: +61 419 610 016
Gadigal Country, Level 4, 343 George Street Sydney 2000
marquelawyers.com.au / [LinkedIn](#) / [Bluesky](#) / [Instagram](#)
We do not disclaim anything about this email. We're quite proud of it, really.

From: Associate Kennett J <Associate.KennettJ@fedcourt.gov.au>
Sent: Wednesday, 7 January 2026 4:57 PM
To: Upekha Wedage <upekha.wedage@rotsteins.com.au>; Lauren Gasparini <laureng@marquelawyers.com.au>; Hamish Rotstein <hamish@rotsteins.com.au>; Elijah Rasic <Elijah.Rasic@rotsteins.com.au>; Stephen.Woodbury@ashurst.com; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Daniel McCoach <daniel.mccoach@rotsteins.com.au>; Julie.Mills@ashurst.com; Michael Bradley <michaelb@marquelawyers.com.au>
Cc: nsd9502025@fedcourt.gov.au; nsd9512025@fedcourt.gov.au
Subject: RE: NSD950/2025 JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR and NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR - Applicants' Interlocutory Application [SEC=OFFICIAL]

OFFICIAL

Dear parties

Justice Kennett has asked that the respondents confirm whether:

- they wish to be heard against the extensions sought in the interlocutory applications filed by the applicants in each proceeding; and
- if so, whether the respondents are content for the applications to be dealt with on the papers.

Please provide Chambers with a response by **12:00pm AEDT on Friday, 9 January 2026**.

Kind regards

Simran Goklaney (she/her) (sender)
Associate to the Hon. Justice Kennett
Federal Court of Australia | NSW
P 02 8099 8548
E associate.kennettj@fedcourt.gov.au

Jack Dowling
Associate to the Hon. Justice Kennett
Federal Court of Australia | NSW
P 02 8099 8330
E associate.kennettj@fedcourt.gov.au

From: Upekha Wedage <upekha.wedage@rotsteins.com.au>
Sent: Tuesday, 23 December 2025 8:10 PM
To: Associate Kennett J <Associate.KennettJ@fedcourt.gov.au>
Cc: Lauren Gasparini <laureng@marquelawyers.com.au>; Hamish Rotstein <hamish@rotsteins.com.au>; Elijah Rasic <Elijah.Rasic@rotsteins.com.au>; Stephen.Woodbury@ashurst.com; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Daniel McCoach <daniel.mccoach@rotsteins.com.au>; Julie.Mills@ashurst.com; Michael Bradley <michaelb@marquelawyers.com.au>; nsd9502025@fedcourt.gov.au
Subject: NSD950/2025 JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR and NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR - Applicants' Interlocutory Application

You don't often get email from upekha.wedage@rotsteins.com.au. [Learn why this is important](#)

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

Dear Associate,

NSD950/2025 JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR
NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR

We refer to the above proceedings.

We write to inform His Honour that the Applicants have today filed interlocutory applications and supporting affidavit material, as previously foreshadowed to the Respondents.

Per the interlocutory applications, the Applicants seek an extension of the respective timetabling orders made in these proceedings on 2 December 2025.

The Second Respondent in each proceeding consents to the Applicants' proposed orders. The First Respondent does not consent.

The solicitors for the Respondents have been copied into this correspondence.

Please contact the writer should the Court require anything further.

Kind regards,

Upekha Wedage
Associate
LPN 5515129



Member of Consulegis, an international network of law firms

A Suite 409, 488 Bourke Street, Melbourne, VIC 3000

T (61 3) 9604 7888

E upekha.wedage@rotsteins.com.au

W www.rotsteins.com.au

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Federal Court of Australia
District Registry: NSW
Division: Human Rights

Joseph Toltz and others
Applicants

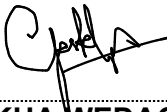
John Keane and another
Respondents

Affidavit of: **Daniel Patrick McCoach**
Address: 409/488 Bourke Street, Melbourne in the State of Victoria 3000
Occupation: Solicitor
Date: 20 February 2026

Certificate identifying Exhibit

This is the Certificate identifying Exhibit "DPM-16" annexed to the Affidavit of Daniel Patrick McCoach dated 20 February 2026

Before me:



UPEKHA WEDAGE
of Suite 409, 488 Bourke Street, Melbourne VIC 3000
Australian Legal Practitioner within the meaning of the
Legal Profession Uniform Law (Victoria)
A person authorised under section 19(1) of the Oaths
and Affirmations Act 2018 to take an affidavit.
*Who states that their signature was made to this
affidavit by electronic means, the witnessing of the
execution of this document was done by audio-visual
link and all the requirements of Part 3 of the Oaths
and Affirmations Act 2018 (Vic).*

Date: 20 February 2026

Filed on behalf of (name & role of party) The Applicants
Prepared by (name of person/lawyer) Daniel McCoach
Law firm (if applicable) Rotstein Commercial Lawyers
Tel (03) 9604 7888 Fax _____
Email daniel.mccoach@rotsteins.com.au
Address for service Suite 409, 488 Bourke Street, Melbourne VIC 3000
(include state and postcode) _____

Daniel McCoach

From: Lauren Gasparini <laureng@marquelawyers.com.au>
Sent: Wednesday, 18 February 2026 4:53 PM
To: Daniel McCoach
Cc: Michael Bradley; Luca Pearce; Stephen.Woodbury@ashurst.com; Upekha Wedage; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Hamish Rotstein; Julie.Mills@ashurst.com
Subject: RE: NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR and NSD950/2025 JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR [Marque-DOCUMENTS.FID124631]

Dear Daniel

We have now obtained instructions in relation to the filing of your clients' documents served on 13 February 2026 in both matters.

We confirm the First Respondent's position with respect to NSD950/2025 (the Riemer proceedings) is as follows:

- Dr Riemer does not consent to your clients filing the Further Amended Statement of Claim dated 13 February 2026 in the form proposed.

We confirm the First Respondent's position with respect to NSD951/2025 (the Keane proceedings) is as follows:

- Professor Keane does not consent to your clients filing the Further Amended Statement of Claim dated 13 February 2026 and the Amended Originating Application dated 13 February 2026 in the form proposed. Accordingly, Professor Keane will be opposing order 3 of your clients' interlocutory application dated 13 February 2026 seeking leave to file those documents in their current form.
- Professor Keane will not oppose orders 1 and 2 of your clients' interlocutory application dated 13 February 2026 with respect to the representative element of the proceedings and the leave being sought to amend the title of the Keane proceeding.

His Honour's orders made in both proceedings on 14 November 2025 provided your clients with leave to amend their pleadings in a specific form. It is clear from a review of your clients' proposed pleadings that the Applicants in both proceedings are seeking amendments which go beyond the amendments permitted by his Honour's orders.


In terms of next steps, our clients invite your clients to file:

1. an interlocutory application seeking leave to file the Further Amended Statement of Claim in the Riemer proceeding in the form proposed on 13 February 2026; and
2. the interlocutory application served on 13 February 2026 in the Keane proceeding.

The First Respondents' objections to the filing of your clients' proposed amendments in each proceeding will be explained further in correspondence in due course.

Kind regards
Lauren

Lauren Gasparini
Senior Associate
MARQUE Lawyers Pty Ltd

 P: +612 8216 3087
Gadigal Country, Level 4, 343 George Street Sydney 2000
marquelawyers.com.au / [LinkedIn](#) / [Bluesky](#) / [Instagram](#)
We do not disclaim anything about this email. We're quite proud of it, really.

From: Stephen.Woodbury@ashurst.com <Stephen.Woodbury@ashurst.com>
Sent: Wednesday, 18 February 2026 8:53 AM
To: daniel.mccoach@rotsteins.com.au
Cc: Michael Bradley <michaelb@marquelawyers.com.au>; Luca Pearce <lucap@marquelawyers.com.au>;

upekha.wedage@rotsteins.com.au; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com;
hamish@rotsteins.com.au; Julie.Mills@ashurst.com; Lauren Gasparini <laureng@marquelawyers.com.au>
Subject: RE: NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR and NSD950/2025 JOSEPH TOLTZ & ORS v NICK
RIEMER & ANOR [Marque-DOCUMENTS.FID124631]

Dear Daniel

The second respondent is similarly still considering the documents. We will provide a response by 5pm today as to our instructions.

Regards

Stephen Woodbury

Partner

Ashurst Australia, Level 8, 39 Martin Place, Sydney, NSW 2000, Australia
D: +61 2 9258 6444 | M: +61 417 700 371
www.ashurst.com

Ashurst

From: Lauren Gasparini <laureng@marquelawyers.com.au>
Sent: Tuesday, 17 February 2026 8:06 PM
To: Daniel McCoach <daniel.mccoach@rotsteins.com.au>
Cc: Michael Bradley <michaelb@marquelawyers.com.au>; Luca Pearce <lucap@marquelawyers.com.au>; Woodbury, Stephen 66444 <Stephen.Woodbury@ashurst.com>; Upekha Wedage <upekha.wedage@rotsteins.com.au>; Higgins, Erina 66322 <erina.higgins@ashurst.com>; Chen, Jennifer 63781 <Jennifer.Chen@ashurst.com>; Hamish Rotstein <hamish@rotsteins.com.au>; Mills, Julie 66761 <Julie.Mills@ashurst.com>
Subject: RE: NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR and NSD950/2025 JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR [Marque-DOCUMENTS.FID124631]

Caution: External email.

Dear Daniel

We confirm we are still in the process of obtaining instructions.

We anticipate being in a position to communicate our clients' positions with respect to your clients' proposed pleadings in both matters and interlocutory application in the Keane matter by 2:00pm tomorrow.

Kind regards
Lauren

From: Daniel McCoach <daniel.mccoach@rotsteins.com.au>
Sent: Tuesday, 17 February 2026 7:58 PM
To: Julie.Mills@ashurst.com; Lauren Gasparini <laureng@marquelawyers.com.au>
Cc: Michael Bradley <michaelb@marquelawyers.com.au>; Luca Pearce <lucap@marquelawyers.com.au>; Stephen.Woodbury@ashurst.com; Upekha Wedage <upekha.wedage@rotsteins.com.au>; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Hamish Rotstein <hamish@rotsteins.com.au>

Subject: RE: NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR and NSD950/2025 JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR

Good evening Ms Mills and Ms Gasparini,

We note that our clients' intended materials to be relied upon, being amended pleadings and particulars in both matters, had been provided substantially on Friday with only remaining pleadings in the Riemer matter served yesterday. We had sought confirmation of your respective clients' consent to the filing of the amended Statements of Claim (and in the case of the Keane matter, also the amended Originating Application) but have received no response.

Please confirm your clients' positions by 10am tomorrow, 18 February 2026 – we otherwise anticipate receiving instructions to make applications to the Court for, inter alia, these documents (with dates updated as necessary) to stand as the Applicants' amended pleadings in each matter.

Kind regards,

Daniel McCoach
Director



Member of Consulegis, an international network of law firms

A Suite 409, 488 Bourke Street, Melbourne VIC 3000 Australia
T (61 3) 9604 7888
E daniel.mccoach@rotsteins.com.au

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From: Julie.Mills@ashurst.com <Julie.Mills@ashurst.com>
Sent: Friday, 13 February 2026 5:27 PM
To: laureng@marquelawyers.com.au; Upekha Wedage <upekha.wedage@rotsteins.com.au>
Cc: michaelb@marquelawyers.com.au; lucap@marquelawyers.com.au; Elijah Rasic <Elijah.Rasic@rotsteins.com.au>; Stephen.Woodbury@ashurst.com; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Daniel McCoach <daniel.mccoach@rotsteins.com.au>
Subject: RE: NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR [Marque-DOCUMENTS.FID124631] [ASH-AUS.FID31571233]

Dear Upekha

The issues raised by the First Respondents below also apply for the Second Respondent.

We will respond to your emails of today when we have obtained instructions.

Regards

Julie

Julie Mills

Global Practice Management Counsel - Employment

Ashurst Australia, Level 8, 39 Martin Place, Sydney, NSW 2000, Australia

D: +61 2 9258 6761 | M: +61 439 472 903

www.ashurst.com

Ashurst and Perkins Coie announce intention to combine to form Ashurst Perkins Coie. [Find out more.](#)

From: Lauren Gasparini <laureng@marquelawyers.com.au>

Sent: Friday, 13 February 2026 4:12 PM

To: Upekha Wedage <upekha.wedage@rotsteins.com.au>

Cc: Michael Bradley <michaelb@marquelawyers.com.au>; Luca Pearce <lucap@marquelawyers.com.au>; Hamish McMichael <hamish@goget.com.au>; Elijah Rasic <elijah.rasic@rotsteins.com.au>; Woodbury, Stephen 66444 <Stephen.Woodbury@ashurst.com>; Higgins, Erina 66322 <erina.higgins@ashurst.com>; Chen, Jennifer 63781 <Jennifer.Chen@ashurst.com>; Daniel McCoach <daniel.mccoach@rotsteins.com.au>; Mills, Julie 66761 <Julie.Mills@ashurst.com>

Subject: RE: NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR [Marque-DOCUMENTS.FID124631]

Caution: External email.

Dear Upekha

We confirm receipt of your email and the **attached** unsealed documents.

You have provided us with amended pleadings (which it appears from your below email do not strictly comply with order 3 of his Honour's orders made on 3 February 2026 but instead go beyond the permitted amendments), compare documents (which you have highlighted) and a second interlocutory application with respect to the representative proceeding issue.

In circumstances where we will need to (in conjunction with counsel) provide advice to our client, including a detailed review of his Honour's reasons as against your clients' proposed amendments and application, it is not reasonable to request our client's position by 10:00am on Monday (as requested in your email sent at 3:51pm).

We will obtain instructions in respect of our client's position on the interlocutory application and revert. In relation to your clients' unfiled proposed amended pleadings, we note that your clients are currently in breach of order 3.

Kind regards

Lauren

Lauren Gasparini

Senior Associate

MARQUE Lawyers Pty Ltd



P: +612 8216 3087

Gadigal Country, Level 4, 343 George Street Sydney 2000

marquelawyers.com.au / [LinkedIn](#) / [Bluesky](#) / [Instagram](#)

We do not disclaim anything about this email. We're quite proud of it, really.

From: Upekha Wedage <upekha.wedage@rotsteins.com.au>

Sent: Friday, 13 February 2026 3:44 PM

To: Michael Bradley <michaelb@marquelawyers.com.au>; Lauren Gasparini <laureng@marquelawyers.com.au>; Hamish Rotstein <hamish@rotsteins.com.au>; Elijah Rasic <Elijah.Rasic@rotsteins.com.au>; Stephen.Woodbury@ashurst.com; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Daniel McCoach <daniel.mccoach@rotsteins.com.au>; Julie.Mills@ashurst.com
Subject: RE: NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR

Dear Colleagues,

We refer to the above proceedings and the orders dated 3 February 2026.

Please see **attached** for your consideration the following:

1. The Amended Originating Application of today's date;
2. The Amended Statement of Claim of today's date;
3. A comparison version of the Amended Originating Application against the 5 September 2025 version;
4. A comparison version of the Amended Statement of Claim against the 5 September 2025 version; and
5. The Interlocutory Application seeking leave to proceed in a representative capacity and to amend the pleadings.

For ease of reference, in the comparison documents, replacements are shown in yellow, new insertions are shown in blue and the deletions are shown in red. As you will see from the comparison documents, the amendments largely give effect to the Court's orders of 3 February 2026. There are a small number of additional amendments which we consider are responsive to those orders or otherwise appropriate.

The Amended Statement of Claim also reflects that the further and better particulars previously provided were served earlier today, in accordance with the Court's orders.

Please confirm your respective clients' confirmation by **5:00 pm today** as to whether they consent to the filing of the amended Originating Application and Statement of Claim in their present form, and to the representative complaint proceeding in accordance with the interlocutory application.

We look forward to hearing from you.

Kind regards,

Upekha Wedage

Associate

LPN 5515129



Member of Consulegis, an international network of law firms

A Suite 409, 488 Bourke Street, Melbourne, VIC 3000
T (61 3) 9604 7888

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From: Upekha Wedage

Sent: Friday, 13 February 2026 2:25 PM

To: Michael Bradley <michaelb@marquelawyers.com.au>; Lauren Gasparini <laureng@marquelawyers.com.au>;

Hamish Rotstein <hamish@rotsteins.com.au>; Elijah Rasic <Elijah.Rasic@rotsteins.com.au>;
Stephen.Woodbury@ashurst.com; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Daniel McCoach
<daniel.mccoach@rotsteins.com.au>; Julie.Mills@ashurst.com
Subject: RE: NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR - Applicants' Further & Better Particulars

Dear Colleagues,

We refer to the above proceeding and the orders dated 3 February 2026.

Please see **attached** by way of service, the letter of today's date providing the Applicant's further and better particulars in this matter.

Kind regards,

Upekha Wedage
Associate
LPN 5515129



Member of Consulegis, an international network of law firms

A Suite 409, 488 Bourke Street, Melbourne, VIC 3000
T (61 3) 9604 7888

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From: Upekha Wedage
Sent: Friday, 30 January 2026 5:15 PM
To: Associate Kennett J <Associate.KennettJ@fedcourt.gov.au>; Michael Bradley <michaelb@marquelawyers.com.au>; Lauren Gasparini <laureng@marquelawyers.com.au>; Hamish Rotstein <hamish@rotsteins.com.au>; Elijah Rasic <Elijah.Rasic@rotsteins.com.au>; Stephen.Woodbury@ashurst.com; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Daniel McCoach <daniel.mccoach@rotsteins.com.au>; Julie.Mills@ashurst.com
Cc: nsd9502025@fedcourt.gov.au; nsd9512025@fedcourt.gov.au
Subject: RE: NSD950/2025 JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR and NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR - Applicants' Interlocutory Application [Marque-DOCUMENTS.FID124631] [SEC=OFFICIAL]

Dear Associates,

Thank you for your email.

Please find **attached** the reformulated orders for the Court's consideration.

We note that the First Respondent has consented to the proposed form of orders. We are presently awaiting confirmation from the Second Respondent.

The solicitors for the Respondents have been copied to this correspondence.

Kind regards,

**Upekha Wedage
Associate**

LPN 5515129



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From: Associate Kennett J <Associate.KennettJ@fedcourt.gov.au>
Sent: Thursday, 29 January 2026 9:14 AM
To: Michael Bradley <michaelb@marquelawyers.com.au>; Upekha Wedage <upekha.wedage@rotsteins.com.au>; Lauren Gasparini <laureng@marquelawyers.com.au>; Hamish Rotstein <hamish@rotsteins.com.au>; Elijah Rasic <Elijah.Rasic@rotsteins.com.au>; Stephen.Woodbury@ashurst.com; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Daniel McCoach <daniel.mccoach@rotsteins.com.au>; Julie.Mills@ashurst.com
Cc: nsd9502025@fedcourt.gov.au; nsd9512025@fedcourt.gov.au
Subject: RE: NSD950/2025 JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR and NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR - Applicants' Interlocutory Application [Marque-DOCUMENTS.FID124631] [SEC=OFFICIAL]

OFFICIAL

Dear practitioners

We refer to the below email. Please provide Chambers with reformulated orders as requested as soon as practicable.

Kind regards

Jack Dowling (he/him) (sender)
Associate to the Hon. Justice Kennett
Federal Court of Australia | NSW
P 02 8099 8380
E associate.kennettj@fedcourt.gov.au

Simran Goklaney
Associate to the Hon. Justice Kennett
Federal Court of Australia | NSW
P 02 8099 8548
E associate.kennettj@fedcourt.gov.au

From: Associate Kennett J <Associate.KennettJ@fedcourt.gov.au>
Sent: Monday, 19 January 2026 10:52 AM
To: Michael Bradley <michaelb@marquelawyers.com.au>; Upekha Wedage <upekha.wedage@rotsteins.com.au>; Lauren Gasparini <laureng@marquelawyers.com.au>; Hamish Rotstein <hamish@rotsteins.com.au>; Elijah Rasic <Elijah.Rasic@rotsteins.com.au>; Stephen.Woodbury@ashurst.com; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Daniel McCoach <daniel.mccoach@rotsteins.com.au>; Julie.Mills@ashurst.com
Cc: nsd9502025@fedcourt.gov.au; nsd9512025@fedcourt.gov.au
Subject: RE: NSD950/2025 JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR and NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR - Applicants' Interlocutory Application [Marque-DOCUMENTS.FID124631] [SEC=OFFICIAL]

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Dear practitioners

Justice Kennett is content to make the following orders as contained in Schedule A to the Applicants' interlocutory applications:

- orders 1-6 and 10 in the *Riemer* proceeding; and
- orders 1-7 and 11 in the *Keane* proceeding.

Additionally, his Honour is content to grant the extensions sought in relation to the filing of submissions on costs in relation to the interlocutory applications. However, his Honour notes that proposed order 7 in the *Riemer* proceeding and proposed order 8 in the *Keane* proceeding are unnecessary in the light of the submissions filed by the First Respondents in each proceeding on 24 December 2025. Accordingly, his Honour asks that the following orders be reformulated:

- orders 8 and 9 in the *Riemer* proceeding; and
- orders 9 and 10 in the *Keane* proceeding.

Chambers would be grateful to receive reformulated orders at the earliest convenience.

Kind regards

Simran Goklaney (she/her) (sender)
Associate to the Hon. Justice Kennett
Federal Court of Australia | NSW
P 02 8099 8548
E associate.kennettj@fedcourt.gov.au

Jack Dowling
Associate to the Hon. Justice Kennett
Federal Court of Australia | NSW
P 02 8099 8330
E associate.kennettj@fedcourt.gov.au

From: Michael Bradley <michaelb@marquelawyers.com.au>

Sent: Thursday, 8 January 2026 3:42 PM

To: Associate Kennett J <Associate.KennettJ@fedcourt.gov.au>; Upekha Wedage <upekha.wedage@rotsteins.com.au>; Lauren Gasparini <laureng@marquelawyers.com.au>; Hamish Rotstein <hamish@rotsteins.com.au>; Elijah Rasic <Elijah.Rasic@rotsteins.com.au>; Stephen.Woodbury@ashurst.com; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Daniel McCoach <daniel.mccoach@rotsteins.com.au>; Julie.Mills@ashurst.com

Cc: nsd9502025@fedcourt.gov.au; nsd9512025@fedcourt.gov.au

Subject: RE: NSD950/2025 JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR and NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR - Applicants' Interlocutory Application [SEC=OFFICIAL] [Marque-DOCUMENTS.FID124631]

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Dear Associates,

Thank you for your email.


The First Respondents do not need to be heard on the applications, and are content for the matters to be dealt with on the papers.

The First Respondents' primary concern with the Applicants' applications is that the progress of the matters, which have already been on foot for 7 months, will be further delayed, and prolong the burden of the proceedings on them. They are anxious to have the matters timetabled for trial.

The First Respondents are concerned that the length of the extension sought by the Applicants is far longer than they should reasonably require to revise their pleadings within the scope of the leave given by the orders of His Honour on 14 November 2025.

Yours sincerely

Michael Bradley
Managing Partner
MARQUE Lawyers Pty Ltd

 P: +612 8216 3006 M: +61 419 610 016
Gadigal Country, Level 4, 343 George Street Sydney 2000
marquelawyers.com.au / [LinkedIn](#) / [Bluesky](#) / [Instagram](#)
We do not disclaim anything about this email. We're quite proud of it, really.

From: Associate Kennett J <Associate.KennettJ@fedcourt.gov.au>
Sent: Wednesday, 7 January 2026 4:57 PM
To: Upekha Wedage <upekha.wedage@rotsteins.com.au>; Lauren Gasparini <laureng@marquelawyers.com.au>; Hamish Rotstein <hamish@rotsteins.com.au>; Elijah Rasic <Elijah.Rasic@rotsteins.com.au>; Stephen.Woodbury@ashurst.com; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Daniel McCoach <daniel.mccoach@rotsteins.com.au>; Julie.Mills@ashurst.com; Michael Bradley <michaelb@marquelawyers.com.au>
Cc: nsd9502025@fedcourt.gov.au; nsd9512025@fedcourt.gov.au
Subject: RE: NSD950/2025 JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR and NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR - Applicants' Interlocutory Application [SEC=OFFICIAL]

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Dear parties

Justice Kennett has asked that the respondents confirm whether:

- they wish to be heard against the extensions sought in the interlocutory applications filed by the applicants in each proceeding; and
- if so, whether the respondents are content for the applications to be dealt with on the papers.

Please provide Chambers with a response by **12:00pm AEDT on Friday, 9 January 2026**.

Kind regards

Simran Goklaney (she/her) (sender)
Associate to the Hon. Justice Kennett
Federal Court of Australia | NSW
P 02 8099 8548
E associate.kennettj@fedcourt.gov.au

Jack Dowling
Associate to the Hon. Justice Kennett
Federal Court of Australia | NSW
P 02 8099 8330
E associate.kennettj@fedcourt.gov.au

From: Upekha Wedage <upekha.wedage@rotsteins.com.au>
Sent: Tuesday, 23 December 2025 8:10 PM
To: Associate Kennett J <Associate.KennettJ@fedcourt.gov.au>
Cc: Lauren Gasparini <laureng@marquelawyers.com.au>; Hamish Rotstein <hamish@rotsteins.com.au>; Elijah Rasic <Elijah.Rasic@rotsteins.com.au>; Stephen.Woodbury@ashurst.com; erina.higgins@ashurst.com; Jennifer.Chen@ashurst.com; Daniel McCoach <daniel.mccoach@rotsteins.com.au>; Julie.Mills@ashurst.com; Michael Bradley <michaelb@marquelawyers.com.au>; nsd9502025@fedcourt.gov.au
Subject: NSD950/2025 JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR and NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR - Applicants' Interlocutory Application

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Dear Associate,

NSD950/2025 JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR
NSD951/2025 JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR

We refer to the above proceedings.

We write to inform His Honour that the Applicants have today filed interlocutory applications and supporting affidavit material, as previously foreshadowed to the Respondents.

Per the interlocutory applications, the Applicants seek an extension of the respective timetabling orders made in these proceedings on 2 December 2025.

The Second Respondent in each proceeding consents to the Applicants' proposed orders. The First Respondent does not consent.

The solicitors for the Respondents have been copied into this correspondence.

Please contact the writer should the Court require anything further.

Kind regards,

Upekha Wedage
Associate
LPN 5515129



Member of Consulegis, an international network of law firms

A Suite 409, 488 Bourke Street, Melbourne, VIC 3000

T (61 3) 9604 7888

E upekha.wedage@rotsteins.com.au

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