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Document Lodged:	Submissions
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	18/09/2025 9:18:44 PM AEST
Date Accepted for Filing:	18/09/2025 9:18:42 PM AEST
File Number:	NSD950/2025
File Title:	JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

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No. NSD950 of 2025

Federal Court of Australia

District Registry: NSW

Division: Human Rights

Joseph Toltz and others

Applicants

Nick Riemer and another

Respondents

Applicants' Submissions

Filed on behalf of (name & role of party) The Applicants

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INTRODUCTION

1. Before the Court are applications by both Respondents to strike out part of the Riemer Amended Statement of Claim (**ASOC**) (**1RA** / **2RA**) with no leave to replead, and an application by the Second Respondent to summarily dismiss the claims against it (**2RA**). For the reasons which follow, each application should fail.

THE APPLICANTS' CASE

2. The Applicants are Jewish or Israeli staff and students from Sydney **University**. They sue Dr Riemer on their own behalf and on behalf of other Jews or Israelis in Australia, in respect of 17 acts comprised of 'X' Posts, Reposts, an academic publication, and 2 speeches, in breach of s18C of the *Racial Discrimination Act 1975* (**RDA**). The University is claimed to be vicariously liable under s18E for several acts done in connection with Dr Riemer's duties as an employee, being his publication in *Overland* (part of his academic duties) and where he purported to speak and restrain permissible membership ('no Zionists') to the University's National Teachers Education Union (**NTEU**).[1]

3. Dr Riemer is a Senior Lecturer in English and Writing (linguistics) at the University. He is the former President (now vice President) of the University's NTEU. Dr Riemer has at all material times been the Head of the Sydney Staff for BDS (boycott, divestment and sanctions). He espouses the BDS goal to demonise Israelis and Jews in support of Israel (people he strategically delineates as 'Zionists'), to try to 'de-normalise' Israel and seek to achieve its end as a Jewish state. Israel, Israelis and Jews who support of Israel, are said by Dr Riemer to all be guilty of the 'crime of the foundation of the state of Israel'.[2]

4. Notwithstanding this, *most Jews* in Australia identify as 'Zionists,' support Israel's right to exist, and view Israel's existence as essential for the future of the Jewish people.[3]

RELEVANT PRINCIPLES

5. To assist the Court, we set out relevant principles related to the applications.

6. ***Pleadings:*** Pursuant to r 16.02 of the *Federal Court Rules* (**FCR**), pleadings must be as brief as the nature of the case permits, identify the issues the party wants the Court to resolve, and state the material facts which are necessary to give an opponent fair notice of the case to be made at trial against them.[4]

7. ***Summary judgment*:** The University brings a summary judgment application under s31A of the Federal Court of Australia Act (**FCAA**) and r 26.01(a) and (c) of the FCR. Summary judgment will only be given if the evidence satisfies the rule, and there is no issue of fact involved and the points of law raised are clear and unarguable.[5] The

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[1] 'Dr Riemer's Overland Article' and his 'No Room for Zionism in our Unions Speech and Post'.
[2] BDS – a global intifada for justice and peace in Palestine': Transcript of Riemer's speech at Israeli Apartheid Week protest, March 18 2018 https://actualtasks.net/2018/03/18/bds-a-global-intifada-for-justice-and-peace-in-palestine/
[3] See e.g. **DPM-1**, Gen08 Survey, **DPM-2**, Gen17 Survey; **DPM-3**, Crossroads 23 Survey; **DPM-4**, Jewish University Experience, **DPM-5**, Shadow of War Survey 2024.
[4] See also *KTC v David* [2022] FCAFC 60, [114].
[5] *Silverton Ltd v Harvey* [1975] 1 NSWLR 659 at 665.

relevant power should be exercised with exceptional caution.[6] A summary order which prevents a party from pursuing a claim according to the ordinary course of procedure should be made only in a very clear case.[7]

8. If the respondent to the application shows that there is a real issue of fact to be investigated or determined at trial, or shows facts which, if true, would constitute a defence to the applicant's claim, the applicant should not be given summary judgment.[8]

9. Cases involving complex issues of law and fact or mixed issues of law and fact are unlikely to be appropriate for resolution by summary judgment.[9] Further:

    a. summary processes must not be used to stultify the development of the law;[10]

    b. human rights proceedings necessarily involve significant claims where it is in the public interest for those claims to be the subject of a hearing in open court.[11]

10. The question is not whether the applicant would probably succeed, but whether the material before the Court is such that the action should not be permitted to go to trial in the ordinary way because it is apparent it must fail.[12] In assessing relevant materials, a Court should consider the stage at which the proceedings have reached.[13]

11. ***Strike out of pleadings:*** The 2RA seeks to strike out certain parts of the ASOC on the basis of r 16.21(1)(d) and or (e). The 1RA itself invokes rr 16.21(1)(b), (c), (d) and (e).

12. The power to strike out pleadings or portions of pleadings is discretionary, and should be employed sparingly and only in a clear case.[14] Caution is exercised lest a party be deprived of a case which it ought to be able to bring.[15] The discretion is guided by the overarching purpose in s37M of the FCAA.[16]

13. If the issues raised in the pleading or the portion of the pleading are fairly arguable or serious and disputable, the pleading should not be struck out.[17]

14. ***16.21(1)(b):*** The vexatiousness ground pertains to material put forward intending to annoy or embarrass the person against whom it is brought or for any collateral purpose, or where the material is so obviously untenable or manifestly groundless as to be utterly hopeless.[18] This ground overlaps with other grounds.[19]

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[6] *Foodco Group Pty Ltd v Northgan Pty Ltd* (1998) 83 FCR 356.
[7] *Dey v Victorian Railways Cmrs* (1949) 78 CLR 62 at 91.
[8] *Australian Securities and Investment Commission v Cassimatis* [2013] FCA 641, [47]; *Evans v Bartlam* [1937] 2 All ER 646 at 656; *Spencer v Commonwealth* (2010) 241 CLR 118, 132 [22] [25]
[9] See in discrimination context (SDA), *Bishnoi v Star Track Express Pty Ltd* [2024] FCA 808, [31], [41]; *Spencer v Commonwealth* (2010) 241 CLR 118, 132 [25-26]; *Cassimatis* [2013] FCA 641, [47]-[48]
[10] *Spencer v Commonwealth* (2010) 241 CLR 118, 132 [25] (French CJ and Gummow J).
[11] See e.g. *Cate v International Flavours & Fragrances (Aust) Pty Ltd*, [74].
[12] *Hancock v Visy Board Pty Ltd,* FCA, Nicholson J, WAG 150/96, 13 February 1997, unreported.
[13] *Australian Securities and Investment Commission v Cassimatis* [2013] FCA 641, [46].
[14] *Radisch v McDonald* [2010] FCA 762.
[15] *Trade Practices Commission v Pioneer Concrete (Qld) Pty Ltd* (1994) 52 FCR 164.
[16] *KTC v David* [2022] FCAFC 60 [118].
[17] *John Holland Pty Ltd v Maritime Union of Australia* [2009] FCA 437, [60]–[62].
[18] *Attorney-General v Wentworth* (1988) 14 NSWLR 481, 490.
[19] *KTC v David* [2022] FCAFC 60, [119].

15. ***(1)(c):*** An evasive or ambiguous pleading fails to 'identify the material factual allegations to the extent that the other party is not given notice of the real substance of the case'.[20]

16. ***(1)(d)***: Prejudice, embarrassment or delay means 'susceptible to various meanings, contains inconsistent allegations, includes various alternatives which are confusingly intermixed, contains irrelevant allegations or includes defects which result in it being unintelligible, ambiguous, vague or too general'.[21] 'Embarrassment' means the opposing party does not know the true case against them and cannot draft a precise defence.[22] This occurs where pleadings are overly narrative or prolix,[23] or where the party cannot call evidence to substantiate the pleading.[24] 'Delay' occurs where pleadings raise irrelevant allegations.[25]

17. ***1(e)***: This ground will be exercised only in plain and obvious cases, where no reasonable amendment can cure the alleged defect and there is no reasonable question to be tried.[26] An applicant must show the case is 'so clearly untenable that it cannot possibly succeed'.[27] The mere fact a case appears to be weak is not sufficient.[28] A pleading may be struck out if, assuming all material facts pleaded as true, it would not be open to the party to prove facts at trial that would constitute a cause of action.[29]

18. ***Leave to replead*:** Unless futile to do so, a court will ordinarily grant leave to a party to replead those parts of its pleading that have been struck out.[30]

19. ***Historical facts:*** Section 18C RDA requires that the '*social, cultural, historical and other circumstances attending the person or the people in the group be considered when assessing whether offence was reasonably likely*'.[31] Historical events pleaded in the ASOC are clearly relevant '*circumstances'* under s18C(1)(a), elucidating 'reasons why a particular person or group might feel offended, insulted, intimidated etc by an act'.[32]

20. "*The tendency is now towards narrative pleadings,*" particularly in complex matters.[33] Technical objections are received with less enthusiasm by Courts, so long as pleadings disclose the case to be met at trial and the issues for trial are identified.[34] Courts tend to address substance over form.[35] The fundamental principle is that pleadings are to state

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[20] *Tameeka Group Pty Ltd v Landan Pty Ltd* [2015] FCA 1218, [33].
[21] *KTC v David* [2022] FCAFC 60, [120].
[22] *Fair Work Ombudsman v Eastern Colour Pty Ltd* [2011] FCA 803, [18]–[19].
[23] *Fuller v Toms* (2012) 247 FCR 440, 456.
[24] *KTC v David* [2022] FCAFC 60, [122].
[25] *Adachi v Qantas Airways Ltd* [2019] FCCA 1107, [23].
[26] *Polar Aviation Pty Ltd v Civil Aviation Safety Authority [2012] FCAFC 97,* [43].
[27] *General Steel Industries Inc v Commissioner for Railways* (1964) 112 CLR 125, 130.
[28] *KTC v David* [2022] FCAFC 60, [123]
[29] *Pancontinental Mining Ltd v Posgold Investments Pty Ltd* (1994) 121 ALR 405, 414; *Mutual Life & Citizens' Assurance Co Ltd v Evatt* (1970) 122 CLR 628, 631. It also goes without saying that if a substantial case is involved in the claim, the power to strike out cannot be exercised. *Winters v Fogarty* [2017] FCA 51 [11].
[30] *Matheson Engineers Pty Ltd v El Raghy* (1992) 37 FCR 6; *Nulyarimma v Thompson* (1999) 96 FCR 153, [208]. *Coshott v Kam Tou Mak* [1998] FCA 147 *Thorpe v Commonwealth (No 3)* (1997) 71 AJLR 767, 774.
[31] *Eatock v Bolt* (2011) 197 FCR 261, [257].
[32] *Clarke v Nationwide News Pty Ltd* (2012) 201 FCR 389, [49].
[33] *Beach Petroleum NL v Johnson* (1991) 105 ALR 456, 466; *Wang v Odyssey Trading Pty Ltd (No 3)* [2020] FCCA 3505.
[34] *Beach Petroleum*, 466; *BWK Elders Australia Pty Ltd v Westgate Wool Company (No.2)* [2002] FCA 87 [20].
[35] *BWK Elders Australia Pty Ltd v Westgate Wool Company Pty Ltd & Ors (No.2)* [2002] FCA 87 [20]; *Hanson-Young v Leyonhjelm* [2018] FCA 1688, [17].

with sufficient clarity the case that must be met.[36] This approach is strengthened by s37M FCAA considerations, as modern courts look less kindly on strikeout applications which tend to result in cost and time blowouts.[37] Where background or narrative material informs the other party of the case to bet met, it is proper to plead it.

SECOND RESPONENTS' SUMMARY DISMISSAL APPLICATION

21. The 2R's summary dismissal application centres on paragraphs [10] and [88(a)] ASOC, which *inter alia* plead that references to Zionists are a reference to at least a majority of Jewish people and Israeli people in Australia. The stated basis for the 2RA is Stewart J's finding in *Wertheim v Haddad* [2025] FCA 720 at [44][107] (2RA, [12][33][37]).

22. The Applicants submit that the application is misconceived and should fail. Several matters in the 2RA require correction at the outset.

23. *First*, there are 17 impugned acts of Dr Riemer not 14. Several of his acts involve multiple acts in a course of conduct.[38] The University is alleged to be liable for 3 acts.

24. *Second,* the 2RA misstate the essential elements of a s18C claim at [11]. There are three elements to a s18C claim, but the correct ones are that an act:[39] (1) is done otherwise than in private; (2) is reasonably likely in all the circumstances to offend, insult, humiliate or intimidate another person or group of people; (3) is done because of the race, colour or national or ethnic origin of the other person or some or all of the people in the group.

25. The University is in error in referring to 'imputations' instead of 'act,' and its purported [11(a)] requirement is wrong. There are no such statutory elements.

26. 'Imputations' are a tool often used by parties to try to assist the Court, but they are not, as Hely J clarified in *Jones v Scully*, a substitute for the statutory test.[40] Whereas defamation law focuses on the lowering of a person in the estimation of their fellows, the RDA focuses on the likely effect of the conduct on members of the protected group.[41]

27. The purported element in 2RA at [11(a)] is a misapplication of *Wertheim* or in any event is a clearly incorrect statement of the law. To highlight the point, the *Faruqi* case was a successful case under s18C RDA without any use of imputations. So too was the s18C(1)(a) part of the test in *Kaplan.*[42] Imputations need not be made out to breach 18C.

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[36] *Banque Commerciale SA (En Liqn) v Akhil Holdings Ltd* (1990) 169 CLR 279, 286.
[37] *O'Brien v Michel's Patisserie Western Australia Pty Ltd* [2010] FMCA 7, [9].
[38] 'The call for a Global Intifada' is a post and speech/chant [33]-[40]; the 'No room for Zionism in our Unions' Speech and Posts is as the title indicates a speech and posts [58]-[60]; the Zionists are racists post is posted in two different postings: [64]-[66]; the Genocide Post and Speech is a post and speech [82]-[84].
[39] See e.g. *Bropho v HREOC* [2004] FCAFC 16; at [63].
[40] *Jones v Scully* [2002] FCA 1080, at [124]; [133]. See also *Clarke v Nationwide News* [2012] FCA 307 [34]-[36].
[41] *Jones v Scully,* at [133]; See also e.g. *Eatock v Bolt* (2011) 197 FCR 261, [253]. The RDA has a 'victim-focused model' - see eg, **DPM-6**, *Review of the Anti-Discrimination Act 1977* (NSW) 8.82-8.83; 8.75. Infringing acts may occur nonetheless in the absence of a victims' knowledge: *Jones v Scully* at [99]; *Wertheim* [168]; *Clarke* [46].
[42] *Kaplan v State of Victoria (No 8)* [2023] FCA 1092 [515]- [521]. See also e.g. *Bropho* at [64].

28. The 2RA is also incorrect to rely on *Wertheim* [44]; [107], to seek to extract some sort of binding precedent that any impugned act concerning Zionists or Zionism will (leaving aside that every act needs to be considered according to its own '*circumstances*'):

> *'convey the same meanings to the ordinary, reasonable listener who is a Jew in Australia as they do to the ordinary, reasonable listener who is conceived of as a member of the broader Australian community'.* (emphasis added)

29. The University says that this type of finding in *Wertheim* creates a case for summary dismissal because *Wertheim* at [44];[107] applies to relevant imputations here and there is '*no apparent distinguishing feature that might suggest a different result*.' This submission is plainly incorrect for a number of reasons including the following.

30. ***Wertheim v Haddad*:** *First,* the applicants in *Wertheim* never claimed offence etc under s18C on the basis of *Israeli national origin* as occurs in *the present case*. The applicants there limited their case to Jewish ethnicity. That is a fundamental difference.[43] Zionism, while tied to Jewish ethnicity, is critically tied to Israeli national origin. There cannot be 'Israelis' without the 'State of Israel'. The Court in *Wertheim* was not asked to address that point.

31. *Second,* relatedly, there was limited evidence in *Wertheim* on how the impugned conduct of Mr Haddad was offensive etc to Israelis, and how most Jews in Australia identify as Zionists, support Israel's right to exist, are offended by antizionism as Jews or Israelis, and have a close personal connection to Israel/is as Jews or Israelis. The *Wertheim* case by and large concerned expressly 'Jewish' offensive acts. In this case, this Court *will* have ample evidence on those issues, both lay and expert, and needs to adjudicate on a very different set of facts which are designed by Dr Riemer with a targeted BDS purpose.

32. The Court in *Wertheim* was also not adequately briefed with statistical information that will be the subject of this case. For example, the recent authoritative *Crossroads 23* survey (**DPM-3**) summarised Jewish Australians' connection to Zionism as follows:[44]

> *77% of respondents indicate that they identify as a Zionist, 90% agree that it is important that the Australian Jewish community maintains close ties with Israel, 88% feel a high level of personal connectedness with Israel, 86% agree that the existence of Israel is essential for the future of the Jewish people, 80% indicate a high level of concern for Israel's safety when it is endangered by international events, and 83% keep up with current events involving Israel'. Additionally, 64 per cent identified Israel as a potential refuge should anti-Semitism increase in Australia.*

33. Numerous other Australian surveys and reports reinforce such findings.[45] Also significant is the major increase in recent times of antisemitism in Australia linked to antizionism,[46]

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[43] Likewise, the South African case cited at 2RS [17] suffers from the same issue, not pertaining to Israeli national origin. Both cases, in any event, are findings on facts and evidence in those cases, and not binding.
[44] **DPM-3**, Markus, A. (2023) Crossroads 23: Surveying Australian Jews on Israel, Plus61J Media, 10.
[45] See e.g. **DPM-1**, Gen08 Survey, pp15-17; **DPM-2**, Gen17 Survey pp60-64; **DPM-3** Crossroads 23 Study, 8, 10, 11, 24, 26; **DPM-5**, Shadow of War Survey 2024; pp8, 24-26. See further below e.g. fn [52]-[54].
[46] See eg **DPM-7**, 2023 CSG Report, showing an 88% increase in reported antisemitic incidents since 2022, which is said to be the highest number recorded in a calendar year, attributed to a surge in antisemitic incidents related to the Israel-Hamas War, and included serious and unprovoked assaults; **DPM-23**, 2023 ECAJ

which includes linkage to BDS activity. While antizionism is not always antisemitism,[47] it often does cross that line, as Professor Rutland has opined in case law on point,[48] particularly when it leads to discrimination against Jews or Israelis.[49]

34. Offensive conduct to Jews or Israelis framed as 'Zionism' or 'Zionists' is not to be dismissed under s18C as mere 'political ideology' (cf 2RA [31][32]) devoid of ethnic/national origin protection in this case. Zionism is central to most Jews' or Israelis' identity as such. The lay and expert evidence will show this. Love of 'Zion' (a Jerusalem Mountain) has been central to Jewish belief, prayer, practices and identity for millennia. Israel is the promised land in the Torah and since that time, Jews have continually lived in Israel and sought to return there, even if only to be buried there. All major Jewish Australian schools link their missions to Modern Jewish Orthodox/Reform Zionism. Jewish Youth movements do similarly.[50] The uses of 'Zionists/Zionism', linked to Jews and Israelis as a pejorative synonym in this case, are protected under the broad definitions of race, ethnic and national origin.[51]

35. Contrary to the University's attempt to prove that how a 'reasonable Jewish or Israeli person in Australia' would think or feel, is reflected by its selective, outlier, hearsay information adduced at SW1 to SW6, such documentation is misleading of the ordinary or predominant Jewish or Israeli views. This contention is buttressed by authoritative surveys and reports, and will be made good by lay and expert evidence at trial. To the extent Jewish submissions in recent antisemitism inquiries are relied as 'evidence' in the 2RA, the full information in those inquiries also simply buttresses the Applicants' case, showing that: (a) most Jewish Australians identify as Zionist;[52] Australian Jews and Israelis often experience antizionism as antisemitism;[53] (c) Israel has special significance to Jewish Australians.[54]

36. Mr Woodbury's own evidence contains matters which support the Applicants' case:

    a. "About 70% of Jewish Australians identify as Zionist." (p23)

Antisemitism Report (much higher antisemitism incidents than across 2013-2022); **DPM-24**, ECAJ Sub 97, 2 (738% increase in Oct-Nov 2023 in reported antisemitic incidents); **DPM-5**; **DPM-30** 5A Sub 6-7, 9.

[47] See the important distinctions in the IHRA Working definition on antisemitism, referred to in the Complaint in the Originating Application (full IHRA at **DPM-8**). The Applicants note Prof Rutland is a member of the expert delegation representing Australia for the IHRA and sits on the IHRA Committee on Antisemitism and Holocaust Denial representing Australia which joined in mid-2015 and gained full membership in 2019. She has been on the expert delegation since mid-2015.

[48] See *Philippsohn v Attorney General for New South Wales* [2025] NSWSC 267 at [16]-[18].

[49] **DPM-9**, Fox and Topor Chapter 4, *Why do people discriminate against Jews*, Oxford University Press, 2021.

[50] **DPM-10**.

[51] *King-Ansell v Police* [1979] 2 NZLR 531; *Mandla v Dowell Lee* [1983] 2 AC 548; *Commonwealth v Tasmania* (1983) 158 CLR 1 at 244, 573–574. *Jones v Scully* [110]-[113]; *Faruqi v Hanson* [267] [268];[272], [274]; [277].

[52] **DPM-3**, pp 8, 10, 11, 24, 26; **DPM-22** (Gen 17) 10, 90-91; **DPM-28** (5A Senate), 13, 24; **DPM-24,** Sub 134 (AUJS), 7; Sub 97 (ECAJ), 3-4, 30-1; Sub 136 (AIJAC), 3; Sub 137 (Moriah), 1; Sub 178, 1; Sub 195, 9-10, Sub 319, 1.

[53] **DPM-20** (5A Survey) 50-52; 54, 60, 61; **DPM-27** (5A Parliamentary Inquiry), 6-7, 9 **DPM-21** (MIRRA), 42-6; **DPM-28** (5A Senate), 3-5, 13, 21-22; **DPM-9** (Fox and Topor), 91, 94, 96, 98, 101-105; **DPM-23** (2023 ECAJ) p 18; 231ff; **DPM-29** (5A Hate Crimes) 4, 8; **DPM-30** (5A Judicial Sub), 4-5, 8-11, 15-6, 20, 26-30; **DPM-24** Sub 134 (AUJS), 6-7, 8-10; Sub 97 (ECAJ), 4-12, 16; Sub 114 (ZFA) 2, 4-5, 12-14; Sub 61 (StandWithUs),1-2. Sub 103 (ACT Jewish Community), 1; Sub 136 (AIJAC), 5-6; Sub 138 (Never Again is Now), 2; Sub 158 (Holocaust Survivors), 1-2. Sub 178, 2-3; Sub 179, 1, Sub 422, app 3, 5, 10, 12, 13.

[54] **DPM-22** (Gen 17 Education) 10; **DPM-2** (Gen17 Survey) p60. **DPM-5**, Shadow of War Survey; **DPM-28 (**5A Senate), 24; **DPM-24** Sub 134 (AUJS), 7; Sub 97 (ECAJ), 3-4; Sub 136 (AIJAC), 3.

b. “Substituting ‘Zionist’ for ‘Jew’ when adjacent speech dehumanises or vilifies Jews is antisemitic…” (p23)

c. “We recognise that many Jewish Australians identify strongly with Zionism and have a deeply felt attachment to the State of Israel.” (p36)

37. Further, SW1 and SW6 seek to show support for Dr Riemer’s case by reference to 57 Jews and the ‘Jewish Council of Australia’ (**JCA**). While the JCA claims to have a Committee of 20 Jewish people (p 46), in mid-2024, a petition was set up by J-United in Melbourne, entitled “*The Jewish Council of Australia Does Not Represent Me!*” and garnered 7000 signatures in a very short time, dwarfing the pro Riemer numbers.[55]

38. Ultimately, the finding in *Wertheim* is limited to that case. Moreover, to the extent there was evidence on point, the evidence, which was not explored, in fact tended against the conclusion reached at [44], [107], including evidence of Mr Haddad himself.[56]

39. *Third,* there was no tendency argument run in *Wertheim,* which contrasts with the successful s18C case of *Faruqi,*[57] and the Applicants’ ASOC here: see [88(c)]. This factor is especially pronounced for Dr Riemer. To give a sense of the evidence, from 7 October to 23 December 2023, about 98% of Dr Riemer’s many X posts were focused only on Israel/Palestine and Zionism issues (negatively for Zionists).[58] A very large focus on the same issues, in a pejorative way for Zionists, has continued thereafter and was occurring beforehand. In 2023, Dir Riemer published a book on BDS which provides relevant information as to what motivates and informs his conduct. Contrary to the 2RS at [42], they overlook *Faruqi* on the issue of ‘tendency’. The ASOC on this matter is properly pleaded.[59]

40. *Fourth*, it is important to note that in *Faruqi,* for example, the s18C argument against Senator Hanson was successful based on an *implied* message of an X post against Muslim people – *‘piss off back to Pakistan’*. There was no express reference to Muslims or people of colour. See also *Eatock* [19] (3rd bullet) as to implied messages and *Bropho* [64].[60] Putting aside the fact that *Jones v Scully* is a case that clearly buttresses the linkage between Zionism and Jewish or Israeli ethnic or national origin,[61] the argument in the 2RA to the effect that there needs to be an express references to Jews, Judaism or Israelis for ‘Zionism’ to carry the necessary offensive s18C RDA sting (at [23] [27] [32]), is incorrect according to both the text of s18C and well-established authority.

41. *Fifth,* the starting point in *Wertheim* at [44][107], which equated the Jewish reaction to an ‘*ordinary reasonable listener’* test, which is sought to be relied on now by the University as some form of binding precedent, was wrong either in principle or factual reality.

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[55] **DPM-11**, J-United Petition.
[56] Peleg [7]; Teacher [10]-[11]; Data Scientist [16(b)]; Reynolds [39]; Oboler [141], [168]; see *Wertheim* at [45].
[57] See e.g. *Faruqi v Hanson*, at *[199], [288], [289].*
[58] See **DPM-12**, Riemer X Posts.
[59] See also *Toben v Jones* [151]*,* motive is not necessary, but may be centrally relevant. Also *Kaplan* [526].
[60] See also *Clarke v Nationwide News* at [308]-[311]; cf *Gama v Qantas (No 2)* [2006] FMCA 1767, [75]-[77]; *Qantas v Gama* (2008) 167 FCR 537, 539.
[61] See e.g. *Jones v Scully* at [20][77][138][162][173] to [177] [216] [217] [224].

42. The correct starting point is, as noted in *Clarke* [55] and *McGlade* [46], to identify the person/group who might reasonably be affected in the s18C sense. The next step is to consider the reasonably likely reaction of that *victim group*, based on evidence, not to surmise that reaction merged with general community reactions (cf [44] in *Wertheim*). Such an erroneous approach disregards the critical sensitivity to cultural differences between groups in the community. The perils of such an approach have been noted.[62]

43. A useful case illustrating the importance of separating out the likely reaction of a victim group versus the general community reaction, is *Kaplan* at [515], wherein Mortimer CJ made separate findings regarding Jewish students and non-Jewish students. The act there, a principal's speech, sufficiently offended the Jewish students, but not the non-Jewish students, to meet the test under s18C(1)(a): at [521].[63]

44. In considering the reasonably likely reaction of the victim group, it is important to note that s18C will be met where *'enough or most'* of the group is offended: *Faruqi* at [236]. That important consideration was, incorrectly, not applied in *Wertheim* at [44]; [106][107]. The 2RA now seeks to capitalise on that at [28], [32] and [35], and they rely for evidence on what the Applicants will submit at trial is clearly 'outlier' evidence of Jews / Israelis. This is a matter for trial, not a matter for summary dismissal.

45. ***Riemer's Overland Article:*** There is clearly an issue of fact to be determined at trial in relation to this act concerning the offensive use of 'Zionists' as a euphemism for most Jews/Israelis, mixed with legal dispute based on the 2RA's reliance on *Wertheim*. Here, a plethora of factors support a successful case on s18C(1)(a), including: Riemer's status,[64] the timing of the conduct proximate to 7 October, Jews and Israelis being a historically oppressed minority,[65] the number of his actionable posts and conduct,[66] and the Article being offensive etc to Jews and Israelis in ways illustrative of classic antisemitic tropes.[67] Riemer's references to Zionists *'letting their masks slip'* and opposing *'democracy in their own countries'*, invoke classic antisemitism examples. The type of offensive etc references Riemer makes have breached s18C in earlier cases (*Scully, Toben* etc).

46. The Article attributes negative characteristics to Jews or Israelis which is the essence of racial discrimination.[68] It is another example of his regular express or implied support of Hamas and its 7 October conduct (e.g. '8 October Post' and 'Case for Global Intifada'), as seen in Posts in the ASOC.[69] This is support of a terrorist group which seeks to *'destroy Israel'* and *'kill the Jews'* (ASOC [26-29]). Jewish staff and students also complained to the University about this type of conduct by Dr Riemer, which will be in evidence.

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[62] See on this *Clarke* [51] (Barker J) and *Eatock* [253] (Bromberg J), illuminating the risks that to import general standards into the test of reasonable likelihood of offence, risks reinforcing prevailing or dominant levels of prejudice, which is antithetical to the purposes of Pt IIA of the RDA. Cf *Wertheim* [185].
[63] See also *Creek v Cairns Post Pty Ltd* [2001] FCA 1007 at [13][16]; *McGlade v Lightfoot* [2002] FCA 1457 [46].
[64] Cf e.g. *Faruqi v Hanson* [134] [243] [252], cf [72]; [87]; [102] [112]; *Kaplan* [544]; *Eatock v Bolt,* e.g [294] [421].
[65] E.g. *Eatock v Bolt* [167]
[66] And for Jews and Israelis at the University, the hostile anti-Israeli environment there: see e.g. below [62]-[63].
[67] See the IHRA examples set out in the Riemer Complaint at [15].
[68] *Eatock v Bolt* [215]
[69] See further fn [81] below.

47. To the extent the 2RA at [25] focuses on *'conduct or beliefs of Zionists'* – the negative attribution of characteristics of Zionist (Jewish) conduct/beliefs is sufficient under s18C.[70]

48. Read singularly or in combination with the rest of Dr Riemer's speech-acts, clearly at least one reason which actuated this act was race, ethnic or national origin of Jews or Israelis in that: (a) at least one reason (cf s18B RDA) is to demonise Zionists to ensure the end of the Jewish State, which he sees as illegitimate. The evidence will show Dr Riemer is content to achieve this end, whether his conduct is legal or not, supportive of violence or not; (b) as a linguistics academic, Dr Riemer designs his conduct to have his intended effect of de-legitimising Jewish-Israeli identity. He is aware of and intends the act's impact; (c) Dr Riemer specifically seeks to make 'Zionist' and related associations of Jews or Israelis 'pejorative terms.' This supports the causal connection (*cf Scully* [116]); (d) His offensive etc conduct is done on topics of high importance to Jews/Israelis.[71] (e) Dr Riemer embraces the use of *'scandalous'* speech-acts.[72] He seeks to win an '*interpellative battle'* to portray Zionists as evil. Offence and intimidation of a protected group is his intended design; (f) Dr Riemer's tendency to be offensive to most Jews or Israelis is relevant to s18C(1)(b).

49. ***No Room for Zionism in our Unions*:** These related acts are clearly in breach of s18C. There are 2 evils occurring in Dr Riemer's acts: (a) He is seeking to exclude Zionists (most Jews and Israelis) from the Unions including the NTEU he Presided over at the University; (b) He was and is attributing repugnant and false characteristics and beliefs (racist, colonialists, apartheid) to Jews and Israelis by virtue of their group membership.

50. Both imputations meet the 18C(1)(a) threshold. Exclusionary statements are a strong form of racism,[73] especially institutional racism.[74] This is exacerbated by status.[75] Attributing negative characteristics to (most) Jews and Israelis by Riemer is offensive to the protected groups. A smorgasbord of undisciplined insults has similarly been sufficient for 18C(1)(a) (e.g. *Toben; Scully; Kaplan)*. The fact he is openly, intentionally, branding 'all Zionists' as *'*racist*'*, 'pro-apartheid' etc, without foundation is plainly offensive.[76]

51. While the 2RA tries to isolate the meanings of the insults and exclusionary messages to detach the references from Zionists (most Jews/Israelis), in context and the circumstances, 'settler-colonialism', 'racism', 'apartheid' have meaning here for Dr Riemer's acts (and the rest in the ASOC) when linked to his sustained and unapologetic tendency to exclude and demonise 'Zionists' - Jews and Israelis in support of Israel's right to exist. Further, as noted, imputations may be implied: *Eatock* [19]; *Faruqi.*

52. The 18C(1)(a) test will be met for these acts at trial, supported by evidence including: (a) contemporaneous comments linked to the Post; (b) complaints to the University about Dr Riemer and his exclusionary conduct towards 'Zionists', and substantially similar

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[70] See e.g. *Jones v Scully* [111] [113][132][197]; *Faruqi* [268] [274] [277]. See also fn [51] above.
[71] Cf *Toben v Jones* [58]; *Jones v Toben* [90]-[100]
[72] Riemer N, *Boycott theory and the struggle for Palestine Universities, intellectualism and liberation* 2023 eg 100
[73] See e.g. *Faruqi* at [131] [134] cf [221].
[74] *Faruqi* at [141]-[142].
[75] Cf *Faruqi* at [134].
[76] See e.g. *Clarke v Nationwide News* [2012] FCA 307, [205], cf [236].

exclusionary behaviour at the University;[77] (c) Jewish / Israeli people left the NTEU, avoided joining or had their NTEU rights impaired due to Riemer. Furthermore, the 18C(1)(b) test will be met for reasons including: (a) Dr Riemer did the acts to comment specifically on his negative belief as to Jewish or Israeli practises and beliefs (cf e.g. *Scully* [197]). He specifically chose to insert this antizionist content into a NTEU context. Jewish ethnicity or Israeli nationality was a factor in his decision to act; (b) This is another situation reflecting Dr Riemer's tendency: cf *Faruqi* [289-9]; (c) The gravity of the attempt to exclude and silence Jews and Israelis from all Unions – which is offensive, insulting, humiliating or intimidating - was actually meant to be taken literally. The act is severe, as is disparaging the group without foundation, such that the Court should infer that the acts were done because of race or ethnic or national origin.[78]

53. ***Additional Arguments*:** As to 'additional arguments' in the 2RA, there is no need to plead Zionism as a race (2RA [34]). No indirect discrimination issue arises (2RA [36]).

54. The 2RA alternative submission at [38] that ASOC [10] and [88(a)] are 'irrelevant' is misconceived. Those paragraphs are centrally relevant based on evidence and supported by precedent. It is a matter for evidence not outlier material.

55. ***Israeli Origin***: The 2RA at fn 25 curiously reserve a right as to whether 'Israelis' can be protected under the RDA. Israel is a nation state. National origin in s18C is protected. There is also precedent showing successful invocation of the protection.[79]

56. ***Cumulative:*** The 2RA seek to dismiss ASOC paras 86, 87 and 88(c). There is no basis to do so. The 2RA arguments on the 'cumulative point' (cf 2RA [39]-[41]) are flawed. *First,* numerous cases show that acts can be and have been considered cumulatively. This was the case in *Eatock v Bolt,* where 2 acts (articles) separated well in time were assessed 'individually and together', given the connectedness of the 'trend' and the articles' "*cumulative effect"*.[80] The articles had overlapping imputations about fair-skinned Aboriginal people, concerned the same subject matter, and had inter-related content.

57. Substantially similar considerations apply now. As noted at fn [38] above, a number of the impugned acts in the ASOC are already presented as combined 'acts'. The acts in the ASOC in any event have overlapping imputations and purpose for Dr Riemer, including:

    a. express or implied support of Hamas,[81]

    b. attributing to Jews, Israelis and Zionists the label of being racists,[82]

[77] Eg in June 2024, a Jewish staff member complained to the University about a week of concerns with inter alia chants of "*Zionists are not welcome here"* and *'globalise the intifada.*' **DPM-26**, cf ASOC [33-40] [58-60].
[78] Cf e.g. *Clark v Nationwide News* e.g. [208]-[309]-[312].
[79] E.g. *Kaplan,* as to Guy Cohen [261]; [1035]; [1716].
[80] *Eatock v Bolt,* e.g. [16], [21-22] [28] [285-288].
[81] Call for a Global Intifada [33-40]; 8 October Post [41-43]; 7 October Repost [44-47]; Overland Article [48-53]
[82] Zionists are Racists Posts [64-66]; Overland Article [48-53]; No Room for Zionism in the Unions [58]-[60]

c. attributing to Jews, Israelis and Zionists genocidal characteristics;[83]

d. imputing that Jews, Israelis or Zionists should be excluded, thereby discriminating against them;[84]

e. dehumanising Jews, Israelis or Zionists;[85]

f. attributing to Jews, Israelis or Zionists the common antisemitic trope of being deceptive.[86]

58. A cumulative approach to infringing acts has been taken in other cases.[87]

59. *Second,* the 2RA at [29] try to argue their point again by citing *Wertheim* [106-7]. That is unavailing, because *Wertheim* does not, fairly read, support the point. In the same judgment, Stewart J, with respect, correctly found that Jewish people need not have perceived a public act which offends s18C for liability under s18C liability to attach.[88] That finding supports factoring in offending harm done by collective/cumulative acts.

60. *Third*, Stewart J went on at [172] to consider the facts of that case (status of Mr Haddad, significant social media), which when applied in this case will similarly lead to liability. Much evidence, including contemporaneous evidence, will show Jewish students and staff (of Applicants and various others) complaining to the University and expressing concern publicly and among themselves, about Dr Riemer's recurring offensive etc conduct towards Jews and Israelis.

61. *Fourth*, the use in the 2RA at [40] of 'true reason' appears to be incorrect. The Applicants need not show one reason for an impugned act. 'At least one reason' is enough (cf s18B RDA). That a true reason for Dr Riemer's conduct is to demonise Zionists to ensure the end of the Jewish state which he sees as illegitimate, such that ethnic/national origin is an actuating factor for his conduct, is informed but not limited by his 17 acts. All circumstances are relevant. The reasoning is appropriate for purposes of s18C RDA.[89]

62. *Fifth,* to the extent the University at [41] tries to say it should not be liable because the pleading operates 'prejudicially', that is incorrect. Either liability attaches for an act or it does not. The Court must consider *'all the circumstances'* in s18C.[90] Here, there is also ample evidence that relevant *'circumstances'* include a heightened and extreme volume of antizionist / antisemitic conduct and hostile environment at the University for Jews and Israelis. This is significant. Vice Chancellor Scott publicly admitted *'failing'* Jewish

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[83] Saturday Paper owned by Zionists [54-56]; Zionists support genocide Repost [74-76]; Genocide enablers Post [77-78]; Genocide Post and Speech [82-84].
[84] No Room for Zionism in the Unions Speech and Posts [58]-[60]; Genocide Enablers Post [77-78].
[85] 7 October Repost [44-47]; Akin to Nazis Repost [79-[82]
[86] Overland Article [48-53]; Saturday Paper owned by Zionists [54-56]; Zionists Smartwash Repost [67-69]; Zionists Licence to Lie and Slander Post [70-73]; Genocide Post and Speech [82-84].
[87] Eg *Clarke v Nationwide News Pty Ltd* (2012) 201 FCR 389 (comments to be read 'singularly or together') [30-31]; *McGlade v Lightfoot* [2002] FCA 1457 [64-65]; cf *Prior v Wood* [2017] FCA 193 [123-4][141]; *Wotton v Queensland* [2016] FCA 1457 [64] [88]; *Kaplan v State of Victoria (No 8)* [2023] FCA 1092, e.g. [1671].
[88] At [168-171]. See also [124] (statements made in same series of lectures (albeit separated in time), could inform listener's understanding of comments).
[89] Given that over 60% of Australian Jews have relatives living in Israel, Dr Riemer's advocating for the end of the Jewish state is or would be likely to be extremely distressing and insulting to many Australian Jews: **DPM-2,** p60.
[90] See e.g. *Kaplan, v State of Victoria (No 8)* [2023] FCA 1092 at [516]-[519].

students.[91] That Jewish or Israeli students and staff made many written complaints to the University regarding antisemitism from 7 October onwards is incontrovertible.[92] The 'Hodgkinson Report' also acknowledges the problem of antisemitism at the University[93] and makes many recommendations which are indicative of University failures (eg p55).

63. Further, a recent SafeWork Investigation into the University found:[94](1) For 11 months after 7 October, it failed to take reasonable actions to reduce and eliminate active antisemitic conduct on campus; (2) The University's failures placed at risk the psychosocial health and safety of Jewish workers and students; (3) Jewish workers and students experienced antisemitism daily, creating a workplace of fear, anxiousness and a fear of retribution towards them because they were Jewish; (4) the University prioritised free speech over psychosocial health and safety of its workers and students.

64. These failures reinforce the University's liability in this matter. Section 18E is designed to ensure "accountability" of employers.[95] Like the RDA generally, it is to be interpreted broadly and beneficially[96] with the purpose that the preamble emphasises, namely: the necessity of eliminating racial discrimination in all its forms and manifestations.[97]

65. ***Tendency***: See e.g. [39] above.

66. ***Conclusion - summary dismissal*:** Given there are real (and complex) issues of fact and law to be determined, this matter should proceed to trial. That is reinforced by the case being a significant public interest claim, the notion that that there should be no stultification of the law's development, and the merit of the matter.

STRIKE OUT APPLICATIONS

67. The applicants will address the relevant targeted ASOC paragraphs chronologically.

68. ***Para 7;*** There is objection to a few words - "*or is eligible to be*" - in the 1RA, but no objection is taken in the 2RA. This factual allegation is clear and unambiguous. The 1R understands the notion of 'eligibility' linked to Jewishness, consistent with ASOC [9]. The Applicants here are clearly identifying the issues requiring the Court's attention and the material facts relied on to give the respondents fair notice of the case against them (r 16.02). It can be conclusively decided whether a person is eligible to be an Israeli citizen or not. Any contestability of this definition does not render the 1R unable to understand the real substance of the case against him (the 2R taking no objection), nor does it render the case clearly untenable. This objection is unfounded.

69. ***Para 8(a)(b);*** The word 'descent' has relevant work to do in ASOC [8(a)], being relevant to the protected characteristics of race and ethnic origin as set out in seminal

[91] **DPM-13,** Inquiry Into Antisemitism Hearing, 20 September 2024, p4, pp37-44.
[92] **DPM-14** Legislative Council, Wednesday 4 September 2024, Skills, Tafe and Tertiary Education, p47.
[93] **DPM-15** Hodgkinson Report, November 2024, e.g. p19.
[94] **DPM-16** SafeWork Investigation Findings.
[95] Explanatory Memorandum, *Racial Hatred Bill 1994 (Cth)* 12.
[96] *Macedonian Teachers' Association of Victoria v HREOC* (1998) 91 FCR 29. Cf *Waters v Public Transport* (1991) 173 CLR 349*,* 359 (special responsibility in discrimination area)
[97] *Baird v Queensland* (2006) 156 FCR 451 [60].

authorities.[98] As to 'nationality' in [8(b)], given that 'national origin' is pleaded in those terms in the operative parts of ASOC [88] [88(b)], and in the Originating Application at [1], this term appears to be an oversight. It can be treated as 'national origin' or amended.

70. ***Para 10*:** As to the objection, the definition of Zionism and its relationship to Jewish and Israeli identity is manifestly relevant to the cause of action, since Dr Riemer's impugned acts are directed to or are about or concern Zionists, Jews and Israelis. The factual allegations regarding Zionism and Zionists, and the proportion of Jews and Israelis who identify themselves as Zionists, are expressed clearly and are fairly arguable. To the extent that the allegations are contestable, this is not a basis for striking out.

71. Further, in relation to the University, it is difficult to see how it can maintain its objection to ASOC [10] (and to [88(a)]), in circumstances where it has also endorsed the Universities Australia Definition on Combatting Antisemitism, which *inter alia* reads:[99]

> *"All peoples, including Jews, have the right to self-determination. For most, but not all Jewish Australians, Zionism is a core part of their Jewish identity. Substituting the word "Zionist" for ''Jew" does not eliminate the possibility of speech being antisemitic."*

72. Given the University's endorsement, and the matters above for example at [32]-[37] (including in Mr Woodbury's affidavit), it is hard to see how this objection can be maintained.

73. ***Paras 21-24:*** These paragraphs (and a few others) are dealt with in passing in the 2RA at [43] with no reference to principle. The stated basis is relevance and embarrassment. The 1RA at [17] throws the kitchen sink at the issue, referring to no authority.

74. The Applicants repeat the matters in [19]-[20] above. These historical events are pleaded, as required by r 16.02, briefly, and in accordance with the modern trend towards narrative pleadings in complex cases. The pleaded allegations fairly inform the opponents of the case to meet at trial. The events of the intifadas are material facts, comprising *'circumstances'* pursuant to s18C(1)(a). They are especially relevant to the "Call for a Global Intifada" (ASOC [33]-[40])[100] and to Jewish or Israeli reactions in relation to same, and all relevant circumstances concerning Dr Riemer's endorsement of that conduct and his directly related subsequent posts (e.g. ongoing express or implied support of Hamas) and the University's liability and failures in relation to same.

75. The factual allegations regarding the intifadas are expressed clearly and are fairly arguable. Accepting the 1RA's proposed amendment would result in a pleading that reads: '*The first intifada began in December 1987 and ended in September 1993. The second intifada began in December 2000 and had run its course by late 2005. The two uprisings resulted in the death of Palestinians and Jews or Israelis.*' This pleading would not be adequate to state the material facts relied upon to support the case at trial, as required by the FCR.[101]

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[98] See e.g. *Eatock v Bolt* (2011) 197 FCR 261, [309]–[311]; *Mandla v Dowell Lee* [1983] 2 AC 548 (HL) (562).
[99] **DPM-17**, Universities Australia Definition on Combatting Antisemitism; **DPM-18**, USYD Endorsement of UA.
[100] *Eatock v Bolt* (2011) 197 FCR 261, [257].
[101] *Federal Court Rules 2011* (Cth) r 16.02(1)(d).

76. ***Para 25*:** In relation to the objection to ASOC [25], this issue is relevant to the proceeding in the same manner as ASOC [21]–[24]. It is clearly capable of being evidenced.

77. ***Para 28:*** The objection is unfounded. Several of the stated one word grounds of objection in the 1RA are not proper grounds. The question of who Hamas is and what it stands for as articulated in its Covenants, is material to the facts and issues before the Court. The Applicants are giving the respondents fair notice of the case to be met at trial. It is incongruent that no objection is taken to ASOC [29], yet objection is taken to [28]. No objection is good in either case. The content of Hamas' (a listed terrorist group, ASOC [26]) Covenants is material and relevant. That hostile content is well known to Jews and Israelis, as the evidence will show.[102] The objection here is a matter of straight forward evidence. There is no issue of delay or ambiguity. What is being pleaded is a material *'circumstance'* under s18C(1)(a),[103] which is relevant to the significant offensiveness in Dr Riemer expressly or impliedly supporting Hamas across his impugned acts (see fn [81] above).

78. Nothing is ambiguous about Hamas's aims or the two relevant documents. This is a matter for evidence. The relevance and materiality is further apparent when considering that acts to be actionable under s18C(1)(a) must meet a requisite gravity or severity to be beyond a 'mere slight',[104] and a severe gravity also informs s18C(1)(b) RDA.[105] Dr Riemer's support of Hamas, a listed terrorist group, is relevant to both limbs.

79. ***Para 32*:** The objection is rejected. There is no ambiguity. One would have thought that the notion that Hamas' intention in carrying out the 7 October terrorist attacks – deliberately attacking civilian communities including at a music festival and kibbutzim, slaughtering unarmed men, women, children and the elderly - was intentionally directed to Jews or Israelis, was incontrovertible and, in any event, able to be a matter of proof or judicial notice (s144 *Evidence Act*). The matter was an open and notorious international event, celebrated by Hamas and widely reported. The pleading is clearly relevant to the proceeding in the context of the respondents' impugned conduct relating to Hamas (fn [81]). The pleading is clearly expressed, fairly arguable and can be evidenced.

80. ***Para 34*:** The 1RA (but not the 2RA) objects to the particulars to ASOC [34]. These particulars which were provided to the 1R at the time of filing and serving the ASOC to give fair notice of the nature of the case to be met and avoid surprise at trial (r 16.41). There is nothing objectionable at all as to this.

81. The Particulars Letter (**DPM-19**]) contains 73 examples of Solidarity following and mimicking Dr Riemer in just over 6 months. There is nothing ambiguous or irrelevant. The 'Call for a Global Intifada' Post and Chant or Speech were acts done by Dr Riemer (like other of his acts) in association with student groups, here Solidarity, or incited the doing of acts also in violation of the RDA by student groups at the University. Dr Riemer's 'status' is clearly relevant to the s18C claim, since he holds a position of influence over many students, academics and others to emulate, model, imitate, or feel authorised to

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[102] A number of documented complaints to the University by Jewish and Israeli staff/students raised this concern.
[103] *Eatock v Bolt* (2011) 197 FCR 261, [257]; *Clarke v Nationwide News Pty Ltd* (2012) 201 FCR 389, [49].
[104] *Clarke v Nationwide News* [2012] FCA 307 [67]-[68]; *Kaplan v Victoria (No 8)* [30], [506].
[105] *Toben v Jones* [67-68] [154]; cf *Eatock* [325].

engage in racially discriminatory conduct.[106] Dr Riemer's status is relevant too because it relatedly exacerbates offence to the victim group, as the evidence will establish at the trial.

82. The assertion in the 1RA that the particulars are vexatious is presented in the table of objections without any reference in the body of the submissions. The assertion should be regarded as groundless. In addition, the objection as to the form of the letter should also be regarded as groundless: r 16.41(1).

83. ***Para 35*:** The pictures are particulars that go with the particulars sub-joined to [34].

84. ***Para 87*:** The Applicants repeat [56]–[60] above on the issue of 'cumulative' or 'collective'. Further, as to the 1RA, it is submitted that it is incongruent to object to ASOC [87], but not to the equivalent phrasing in [86]. In any event, for the reasons set out above, neither is a good objection. ASOC [87] extends the cumulative notion to s18C(1)(b) of the RDA and is giving the respondents fair notice of the case to be met.

85. ***Leave to replead*:** If any of these objections are upheld, it is submitted that leave to replead should be granted. No respondent has offered any reason, let alone any good reason, why the Court should not do so. Nor could they. There would be clear utility in doing so at this early juncture, and this is clearly not a case where there is no arguable cause of action to justify such an extreme course of action.[107]

86. ***Conclusion*:** The Applicants submit that the applications should substantially fail, and, in the premises, they should be awarded their costs.

18 September 2025

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[106] Eg *Faruqi v Hanson* [134] [243] [252], cf [72]; [87]; [102] [112]; *Kaplan* [544]; *Eatock v Bolt*, eg [294][421] [225].
[107] *Thorpe v Commonwealth (No 3)* (1997) 71 AJLR 767 774; *Kowalski v Mitsubishi* [2010] FCAFC 73, [37].