

Federal Court of Australia  
District Registry: New South Wales  
Division: Human Rights

NSD950 of 2025

NSD951 of 2025

**Joseph Toltz** and others

Applicants

**Nick Riemer** and another

Respondents

**John Keane** and another

Respondents

## FIRST RESPONDENTS' OUTLINE OF OBJECTIONS TO EVIDENCE

### Table of Contents

<b>General objections</b> .....	<b>2</b>
<i>Volume</i> .....	2
<i>Relevance</i> .....	3
<i>Parliamentary privilege</i> .....	3
<i>Hearsay</i> .....	3
<i>Survey evidence</i> .....	5
<i>Applicants' Condensed Evidence Documents</i> .....	6
<i>Subsequent reliance on survey evidence</i> .....	9
<i>Opinion / Expert evidence</i> .....	10
<b>Conclusion</b> .....	<b>12</b>
<b>Attachment 1: Particularised objections</b> .....	<b>13</b>
<i>Toltz &amp; Ors v Riemer &amp; Anor NSD950/2025: Joint Schedule of Objections to Evidence</i> .....	13
Affidavit of Daniel Patrick McCoach, affirmed 18 September 2025 .....	13
<i>Toltz &amp; Ors v Keane &amp; Anor NSD951/2025: Joint Schedule of Objections to Evidence</i> .....	23
Affidavit of Daniel Patrick McCoach, affirmed 1 October 2025.....	23

1. The First Respondents make this outline of submissions on their objections in their respective proceedings to evidence filed in the form of voluminous affidavits sought to be read and relied upon by the Applicants for the purposes of the Interlocutory Hearings on 13 and 14 October 2025:
  - a. In respect of the Riemer proceedings: the Affidavit of Mr McCoach, 18 September 2025.
  - b. In respect of the Keane proceedings: the Affidavit of Mr McCoach, 1 October 2025, **(Affidavits)**.
2. Each of Dr Riemer and Professor Keane object to the above affidavit material filed in his respective case.
3. These submissions will raise general objections applicable to the Affidavits and will then make particular objections with specific reference to the exhibits, as set out in the Joint Tables of Objection provided to the Court on Friday, 10 October 2025. Those tables are reproduced without alteration at 'Attachment 1: Particularised Objections' below.
4. Dr Riemer notes that in his proceeding, the Court and counsel for the Respondents were each provided with a folder entitled 'Applicants' Condensed Evidence Documents' on 13 October 2025. There is much to be said about the 'condensing' of that material. This is set out below.
5. For the following reasons, the Affidavits should not be admitted, and the Applicants in each proceeding should be liable for each of the First Respondents' costs associated with the review of those Affidavits and providing responses to the Affidavits, payable immediately.

## **General objections**

### *Volume*

6. There is no provision in the timetabling orders of the Court for the filing of anything like the volume of material contained in the Affidavits. Instead, orders were made providing for the filing and service by the Applicants of:
  - a. in the Riemer proceeding<sup>1</sup>:
    - i. any submissions on which they seek to rely *limited to 15 pages*;
  - b. in the Keane proceeding<sup>2</sup>:
    - i. a draft amended originating application, together with a draft amended statement of claim, which will indicate which additional persons will be

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<sup>1</sup> Orders of Justice Kennett in *Toltz & Ors v Riemer & Anor* (NSD950/2025) dated 21 August 2025.

<sup>2</sup> Orders of Justice Kennett in *Toltz & Ors v Keane & Anor* (NSD951/2025) dated 21 August 2025.

sought to be added as Applicants and which persons will be sought to be represented by one or other of the Applicants by 4pm on 5 September 2025;

ii. any response to the material filed under Order 2, *limited to 5 pages per response* by 12pm on 26 September 2025.

7. On no account can the orders of this Honourable Court sensibly be construed as an invitation to file approximately 2,350 pages of affidavit material in the Riemer proceeding, and approximately 270 pages of affidavit material in the Keane proceeding.
8. Counsel for the First Respondents has engaged closely with the material in the Affidavits to ensure the First Respondents are able to assist the Court as to the relevance, probative value and admissibility of the material filed. On no view – least of all having regard to s37M of the *Federal Court of Australia Act 1976 (FCA Act)* – should the First Respondents have been charged with such a task on the unilateral motion of the Applicants.

#### *Relevance*

9. The touchstone of admissibility is relevance. Section 55 of the *Evidence Act 1995 (Cth) (Evidence Act)* tells us that relevant evidence is *evidence that, if it were accepted, could rationally affect the assessment of the probability of the existence of a fact in issue in the proceeding.*
10. There is very little in the Affidavit material that is capable of meeting that definition, either presently, or at all. Some of the evidence in the Affidavits may become relevant later in the proceedings, however with the pleadings (in both cases) and the parties (in *Keane*) still unsettled, it is of limited or no use to the Court at present, and should not be admitted.

#### *Parliamentary privilege*

11. A significant number of exhibits to the McCoach affidavit affirmed 18 September 2025 in the Riemer proceeding offend s16(2) and (3) of the *Parliamentary Privileges Act 1987 (Cth) (PP Act)*.
12. These include submissions to Senate and other Parliamentary Inquiries, Hansard of Evidence given by the vice-chancellor of University of Sydney, and other similarly protected documents.
13. The purported introduction of those documents – and the way in which they are sought to be deployed by the Applicants – clearly offends parliamentary privilege.
14. The documents (DPM-13, DPM-14, DPM-24, DPM-27 – DPM-30) are clearly inadmissible.

#### *Hearsay*

15. The Affidavits in each proceeding are replete with hearsay evidence, apparently adduced to prove the existence of facts that it can reasonably be supposed was intended to be asserted by the representation.

16. For example, during the interlocutory hearing on 13 October 2025, the Court was taken to paragraph 63 of the Applicants' submissions in the Riemer matter, which reads:

63. Further, a recent SafeWork Investigation into the University found:<sup>94</sup>(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.

17. The SafeWork Investigation Report is found at Exhibit DPM-16 of Mr McCoach's 18 September 2025 affidavit (CB1506). In the context of paragraph [63] of the Applicants' submission, it is clearly adduced to prove the truth of the asserted facts. (Notably, though perhaps beside the hearsay objection, it is also cited in the submission as having the character of a reliable, independent assessment of the culture confronting Jewish workers and students at Sydney University. Far from that being the case, the 'Requestor' or complainant in the SafeWork investigation is Dr Andy Smidt (CB1509), who is the proposed fifth Applicant in the Keane proceedings. The SafeWork Investigation Report contains numerous references to Dr Smidt briefing the investigator, including with links to media articles in which she makes statements about the environment at Sydney University (CB1519). Once again, any probative value of the evidence sought to be adduced is destroyed by its partisan, circular and self-validating character).

18. While the Applicants rely on the exception at s75 of the Evidence Act applicable in interlocutory proceedings, it cannot be taken for granted that these are interlocutory proceedings for the purposes of s75. Justice Lindgren in the FCA in *Allstate Life Insurance Co v ANZ Banking Group Ltd (No 3)* (1996) 64 FCR 55 at 58:

*The nature of the proceedings is to be determined not by the form of them, for example by the fact they are brought by notice of motion in existing proceedings, but by reference to the kind of relief sought.*

19. Drawing a distinction between proceedings that are interlocutory and those which are not, Lindgren J cited Windeyer J in *Hall v Nominal Defendant* (1966) 117 CLR 423 at 444:

*A final order is one which finally disposes (subject to appeal) of an action or an existing dispute between the parties.*

20. In the Riemer proceeding, this is a hearing going to the final determination of the rights and liabilities of parties, in that it is an application for summary dismissal by the Second Respondent. If the Court were to accede to the application by the Second Respondent, that would constitute a final determination of the matter in respect of the Applicants in relation to their claims against the Second Respondent in the Riemer proceeding. As such,

this hearing in respect of the Riemer proceeding cannot *prima facie* and without further consideration be held out as interlocutory in nature.

21. Similarly, in respect of the Keane proceeding, this hearing and the application by the Applicants in respect of rule 9.21 of the Federal Court Rules goes to the determination of rights of the proposed Fifth Applicant, and the proposed represented persons. Should the Court find against the Applicants in respect of their application, that finding would constitute a final determination of the matter in respect of the proposed Fifth Applicant and the proposed represented persons. This hearing in respect of the Keane proceeding also cannot *prima facie* and without further consideration be held out as interlocutory in nature.
22. It therefore cannot be taken for granted that the exception to the hearsay rule in section 75 of the Evidence Act is available.
23. In any event, and even if the Court is satisfied that the present hearing is of an interlocutory character, the requirements in section 75 (including the requirement to adduce evidence of the origin of the hearsay evidence) are directed to establishing the *reliability* of evidence that would otherwise and for good reason be inadmissible.
24. In these matters, there are several matters which militate against the admission of the affidavit evidence on the basis of unreliability. Should the Court find that the section 75 exemption is available to the Applicants, it should nevertheless exclude the evidence pursuant to section 135 of the Evidence Act, on the basis that its probative value is substantially outweighed by the danger that the evidence may be misleading (s135(b)) or would cause or result in undue waste of time (s135(c)).
25. The grounds for this submission follow, both in their own right and with reference to the Court's prospective exercise of its discretion pursuant to s135 of the Evidence Act.

#### *Survey evidence*

26. Much of the material filed contravenes the Court's rules about survey evidence. The methodologies are fatally flawed, by admission of the designers of the surveys themselves (see, for example, the examples at paragraph 33 below). They were conducted in order to get a swift snapshot of the reactions of the Jewish community (or, more accurately those parts of the Jewish community that were accessible to the creators of the surveys over a very short period of time). This is referred to by the researchers as a "convenience sample", as distinct from the more reliable "random sample".
27. The surveys cited by the Applicants were not designed to ensure reliability. Instead, they have been selectively distributed by email lists to those with particular organisation affiliations, with the inevitable effect of creating a "convenience sample".
28. The questions in the surveys themselves are generally deeply subjective, leaving the interpretation of crucial terms (such as antisemitism) in the eye of the beholder.

29. The survey evidence, which the Applicants hold out as being gold standard and the best evidence available to the Court on the so-called ‘numerosity’ argument, is plainly and fundamentally flawed. It is non-compliant with the Survey Evidence Practice Note (GPN-SURV) and cannot be cured or otherwise made compliant in retrospect.

*Applicants’ Condensed Evidence Documents*

30. On the afternoon of 13 October 2025, in the course of argument on the Riemer proceeding, the Applicants relied in Court on a folder of material labelled the ‘Applicants’ Condensed Evidence Documents’ (**Condensed Bundle**).

31. The selective curation of the documents in the Condensed Bundle merits some examination.

32. Omitted from the Condensed Bundle are several pages which are crucial to the Court’s assessment of the weight to be given to the balance of the evidence. Several of the reports and studies that depend on surveys had critical methodological shortcomings which were disclosed or acknowledged in the reports themselves, but omitted from the Condensed Bundle. Additionally, the organisational affiliation, control or dissemination of the survey links has been omitted from the Condensed Bundle. This is relevant because (as in several instances below) the organisations are the Zionist Federation of Australia, the Executive Council of Australian Jewry, or the Australasian Union of Jewish Students, all of whom identify as Zionist organisations. The influence of those affiliations on the validity of the survey responses is obvious.

33. By way of (non-exhaustive) example:

<b>DPM-2</b>	
CB328	<b>Appendix 3 – Methodology</b> (at <b>CB331</b> ): <i>However the key question, as far as the quality of the data are concerned, is less about the absolute size of the sample and more about its representativeness. Given Gen17 is a non-probability sample, even a very large sample size may be skewed towards certain demographics and particular sections of the community who are more predisposed to such a survey than others.</i>
<b>DPM-3</b>	

CB344	<p style="text-align: center;"><b>SURVEY ADMINISTRATION</b></p> <hr/> <p>As noted, the survey was promoted by <i>Plus61J Media</i> and the Zionist Federation of Australia. The survey was only available for completion online, using one of five entry points provided – separate links were provided to enable tracking of respondents. The five points of access were:</p> <ol style="list-style-type: none"> <li>1. Crossroad23, the link promoted for <i>Plus61J Media</i> respondents, which was also shared by the ZFA to its affiliates</li> <li>2. ZFA organisational link</li> <li>3. <i>Plus61J Media</i> social media link</li> <li>4. ZFA social media link</li> <li>5. <i>Australian Jewish News</i>, link provided in a front-page advertisement</li> </ol> <p>The survey was open for eight days, between May 30 and June 6. The survey was accessed on 1511 occasions. Nearly all of the access (1357 cases) was through the Crossroads23 link, with small numbers accessing the link provided in the <i>Australian Jewish News</i> (17), <i>Plus61J Media</i> social media (31), ZFA organisational (79) and ZFA social media (27).</p> <p><b>6</b>      <b>CROSSROADS23: SURVEYING AUSTRALIAN JEWS ON ISRAEL</b>      <b>344</b>      <b>162</b></p>
CB345	<p>In addition, 13 devices were used three times to complete the survey and 75 devices to complete the survey twice. The large majority of surveys, 1080, were completed on individual devices. The analysis of IP addresses is provided in Table 2.</p>
CB346	<p>As to be expected, <u>in a survey available only for a brief period of eight days and promoted most effectively using organisational email and social media, those with organisational connections will be over-represented.</u> A key</p>
CB347	<p>A third and most important way of locating a non-probability survey, such as Crossroads23, in its community is by analysis focused on population sub-groups. While the achieved sample may be skewed at the community level, <u>for some sub-groups with significant number of respondents (in this survey notably those affiliated with Zionist organisations and <i>Plus61J Media</i>), the skew is less, providing a reliable insight into the pattern of opinion within these segments.</u> The third part of this report presents the survey findings for sub-groups.</p>
<b>DPM-4</b>	
CB386	<p><b>2.1. Methodological overview</b></p> <p>The Zionist Federation of Australia (ZFA), with support of the Australasian Union of Jewish Students (AUJS), the Scanlon Foundation, the Besen Family Foundation and the World Zionist Organization (WZO), commissioned the Social Research Centre (SRC) to undertake the Jewish University Experience Survey. The aim of the survey was to understand Jewish students' experiences of antisemitism in Australian universities. This is the first survey of its kind in Australia.</p> <p>An online survey was conducted between March and April 2023 with current and former (within the last five years) Jewish university students. Given the challenges in reaching this specific student population, there were two pathways to survey entry provided to maximise responses:</p> <ul style="list-style-type: none"> <li>• Survey invitations were sent by the SRC to contacts on the AUJS database</li> <li>• The SRC provided an opt-in link to the ZFA, who then promoted the survey through their own communication channels.</li> </ul> <p>A total of n=563 surveys were completed over a three-week period, this comprised of n=396 from the AUJS database and n=167 from the opt-in link. Please see Appendix 2 for the detailed methodology.</p>

CB398	<p>The types of antisemitism experienced at university included both targeted comments and conversational antisemitism:</p> <p><i>[At my university], it is of a very popular position to take by both staff and student to make antisemitic remarks, especially in regards to Israel. Comments such as 'from the river to the sea' and Jewish colonist occupiers are very common and makes me very wary of being open about my Jewish identity.</i></p>
CB399	<p><i>I feel very unsafe with the presence of anti-Jewish student clubs on campus, such as Students for Palestine.</i></p>
CB403	<h2 style="color: #0070C0;">Appendix 2 Methodology</h2> <p>The Zionist Federation of Australia (ZFA), with support of the Australasian Union of Jewish Students (AUJS), the Scanlon Foundation, the Besen Family Foundation and the World Zionist Organization (WZO), commissioned the Social Research Centre (SRC) to undertake the Jewish University Experience Survey. This is the first survey of its kind in Australia.</p> <p>The questionnaire was provided by the ZFA after consultation with the Scanlon Foundation and refined by the SRC, please see Appendix 4 for a copy of the questionnaire.</p> <p>An online survey was conducted between March and April 2023 with current and former (within the last five years) Jewish university students. Due to the challenges in reaching this specific student population, there were two pathways to survey entry provided to maximise responses:</p> <ul style="list-style-type: none"> <li>• Survey invitations were sent by the SRC to contacts on the AUJS database</li> <li>• The SRC provided an opt-in link to the ZFA, who then promoted the survey through their own communication channels.</li> </ul> <p>Approximately 70% of all completed surveys were from the AUJS database, with the remaining 30% accessing the survey through the opt-in link (Table 4).</p> <h3 style="color: #0070C0;">Recruitment and sample</h3> <p>Jewish university students were recruited via two pathways for survey completion, through the AUJS database and an opt-in link that was promoted by the ZFA.</p> <p>The AUJS database was securely transferred to the SRC using the SRC's secure file exchange system. This database contained names, email addresses and mobile numbers of students who have provided their contact details to the AUJS. Several steps were taken by the SRC prepare the database for field. This included removing duplicate records, testing email quality and deliverability using <i>Everest</i>, and assigning each record a unique set of survey links.</p> <p>Respondents from the AUJS database were sent an initial email invitation, followed by 3 email reminders and an SMS reminder. The bulk email and SMS marketing software <i>Vision6</i> was used to facilitate the email and SMS sends. See Figure 10 for the proportion of database survey completes over the fieldwork period.</p>
CB404	<p>The second pathway into the survey was through an opt-in link that was provided to the ZFA by the SRC. By following this link, potential respondents were prompted to enter their email address and after submission would receive an email with their own unique survey link. The ZFA promoted the survey and opt-in link through their own communication channels to encourage participation. See Figure 11 for the proportion of opt-in survey completes over the fieldwork period.</p>

CB407	<p>The second pathway into the survey was through an opt-in link that was provided to the ZFA by the SRC. By following this link, potential respondents were prompted to enter their email address and after submission would receive an email with their own unique survey link. The ZFA promoted the survey and opt-in link through their own communication channels to encourage participation. See Figure 11 for the proportion of opt-in survey completes over the fieldwork period.</p>
DPM-5	
CB462	<h2 style="color: #0056b3;">Appendix A. Methodological Appendix</h2> <h3 style="color: #0056b3;">Methodology overview</h3> <p>This study is based on an analysis of data collected between the 10th and 17th of November 2023. The final sample size was 7,611. The survey was open to anyone who was at that time living in Australia, aged 18 or above, and who considered themselves to be Jewish in any way at all. Fieldwork commenced during the fifth week of the Israel-Hamas war. The survey was carried out online and a link was circulated by Jewish communal organisations across Australia to their membership lists, which was further circulated by participants to other Australian Jews via private messaging. The survey was anonymous and promotion of the survey on public platforms and social media was strongly discouraged to minimise the potential risk of sabotage.</p> <p><u>While the size of sample is extremely large by any comparable measure, and to have obtained it in one week is unprecedented,<sup>9</sup> it is also a convenience sample (that is, non-random).</u> The most important criterion for any sample is for it to accurately represent the total Jewish population in Australia as closely as possible. Fortunately, there are excellent sources of baseline data about Australian Jews that can be utilised in this regard. The national census is carried out every five years by the Australian Bureau of Statistics and contains data on religion<sup>10</sup>, age, sex, and geographical location. This provides a highly reliable baseline to weight (that is, to statistically align) the survey data and make it more representative of the Jewish population. However, another biasing factor in any Jewish survey is Jewish identity, since participating in such surveys is more likely to be attractive to more engaged Jewish people than less engaged Jewish people. To address this, a national synagogue membership survey was carried out in November 2023 and these data were used to weight data collected in the survey for this purpose.<sup>11</sup> Synagogue membership data are the only whole population baseline source available that provides data on Jewish identity.</p> <p><u>There are, however, limits to what can be achieved with survey weighting. Systematic sampling bias can occur when a survey is more likely to be of interest to one group than another. In the present case, a survey about Israel is likely to be of less interest to those who feel <i>less</i> strongly about the country than those who feel <i>more</i> strongly about it. If the two groups differ systematically then weighting is less likely to overcome this.</u></p>

34. While the convenience of the Condensed Bundle is alluring, Dr Riemer raises his significant concern with the selection (and omission) of materials contained within it.
35. At best, it is incomplete and inaccurate, and would not put the Court in a position to make a genuine assessment of the reliability of the evidence before it. At worst, the selective inclusion of the material may lead to the Court being misled as to the nature, reliability and appropriate application of the evidence.

#### *Subsequent reliance on survey evidence*

36. The problems with the survey evidence (including the material omitted from the Condensed Bundle) are amplified by subsequent and self-confirming reliance of researchers on the impugned survey evidence. For example, the Submission authored by the Executive Counsel of Australian Jewry at CB2043-2044 of Mr McCoach's 18

September 2025 affidavit in the Riemer proceeding cites the outcome of its own survey at DPM-23, and then at fn4 on CP2044 relies on it as evidence of its own contention. This is but one example of the circular, self-confirming and unreliable character of the evidence sought to be adduced by the Applicants.

*Opinion / Expert evidence*

37. Much of the evidence in the Affidavits appears to be held out as going to the truth of the opinions contained within it, contrary to s76 of the Evidence Act. While it has not been articulated by the Applicants, it appears that they seek to rely on some of the material as expert evidence. The documents that appear to be adduced as opinion and/or expert evidence include research and material written by the Second Applicant in each proceeding (Professor Suzanne Rutland). Much of the material is written under the banner of the Australian Academic Alliance Against Antisemitism (**5A**) and its affiliates, including named Applicants and represented persons.
38. On the afternoon of 13 October 2025, counsel for the Applicants took the Court to CB2799, being Annexure MDB-12 to the Affidavit of Michael David Bradley affirmed on 22 September 2025, filed in the Keane proceeding. That document is a letter written by Second Applicant, Professor Rutland on 17 January 2024, notifying the University of the creation of the University of Sydney Branch of 5A. 5A is a registered Charity and a Company Limited by Guarantee – its full title is the Australian Academic Alliance against Antisemitism Ltd. Professor Rutland is on the Board of 5A.
39. The signatories to the letter at Annexure MDB-12 include the Applicants and the proposed represented persons in the Keane proceedings. It is clear that the Applicants have a close affiliation with 5A, and are effectively the founding members of the 5A branch at Sydney University.
40. This will place the Applicants in a very difficult position in the future conduct of both proceedings.
41. This Court has in place strict rules around the use of Expert Evidence in proceedings. The basis for the use of expert evidence is not only expertise and specialised knowledge; it is also crucial that expert evidence be objective and impartial. In the words of former Chief Justice Allsop, describing the Federal Court's then-new Expert Evidence Practice Note:

*The purpose of the use of expert evidence in proceedings, often in relation to complex subject matter, is for the Court to receive the benefit of the objective and impartial assessment of an issue from a witness with specialised knowledge (based on training, study or experience - see generally s 79 of the Evidence Act)...*

*The role of the expert witness is to provide relevant and impartial evidence in his or her area of expertise. An expert should never mislead the Court or become an advocate for the cause of the party that has retained the expert.*

42. The Harmonised Expert Witness Code of Conduct (**HEWCOC**) and Practice Note cannot permit the filing of evidence authored by parties, or by organisations with which parties are closely affiliated. The HEWCOC provides:

*General Duties to the Court*

*2. An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the Court impartially on matters relevant to the area of expertise of the witness.*

43. It further provides that parties' communication with Expert Witnesses is to be carefully managed:

*3. Interaction with Expert Witnesses*

*3.1 Parties and their legal representatives should never view an expert witness retained (or partly retained) by them as that party's advocate or "hired gun". Equally, they should never attempt to pressure or influence an expert into conforming his or her views with the party's interests.*

*3.2 A party or legal representative should be cautious not to have inappropriate communications when retaining or instructing an independent expert, or assisting an independent expert in the preparation of his or her evidence.*

44. The HEWCOC does not – and could not – entertain a situation where a party seeks to adduce expert evidence that is created *by that party* or an organisation of which the party is a Board Member or other close affiliate.

45. It is difficult to imagine any limit to the manifold ways in which such an arrangement may go awry.

46. The following is a sample of issues foreseen by the First Respondents in these proceedings:

- a. Professor Suzanne Rutland is, properly and unsurprisingly, a lead author of several of the 5A reports. Even where she is not a named author, the affiliation of Professor Rutland and the other Applicants and proposed represented persons with 5A is sufficient to dissolve any possible impartiality or independence.
- b. Where materials are produced by 5A but are not co-authored by Professor Rutland, or where materials are written by co-authors of Professor Rutland under the banner of a different organisation (such as Professor Andrew Markus).
- c. Similar issues arise with the International Holocaust Remembrance Association (**IHRA**) Material. As has now been disclosed in a footnote to the Applicants' submissions in the Riemer proceeding, Professor Rutland is on

the IHRA Committee that designed the much maligned and contested definition of anti-Semitism found at DPM-8 in the Riemer proceeding. To the extent that anything is filed as Expert Evidence going to the authority of and consensus in respect of the IHRA definition, the involvement of the Professor Rutland in the drafting and promotion of that definition must be borne in mind in assessment of the independence and impartiality of such evidence.

- d. The same issue presents itself in respect of the research conducted by the Executive Council of Australian Jewry. The Third Applicant, Ariel Eisner, has been an elected official of the Australasian Union of Jewish Students since pre-Oct 2023 (and this is pleaded as a basis on which he is an applicant). The AUJS is a formal affiliate of the ECAJ, and is listed on its website as such.

47. To the extent that the evidence sought to be relied upon by the Applicants has been produced by the Applicants or by people or organisations affiliated with them, the First Respondents' submission is (and will remain throughout the proceedings) that it is not admissible.

### **Conclusion**

48. For the reasons set out herein, each of the First Respondents submit that the McCoach Affidavit in his proceeding should not be admitted, and the Applicants in each proceeding should be liable for each of the First Respondents' costs associated with the filing and perusal of, and the responses to, the Affidavits, payable immediately.

J Taylor

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14 October 2025

## Attachment 1: Particularised objections

*Toltz & Ors v Riemer & Anor NSD950/2025: Joint Schedule of Objections to Evidence*

Affidavit of Daniel Patrick McCoach, affirmed 18 September 2025

1. Description of Exhibit	2. Basis for 1R objection	3. Applicants' response	4. 1R Reply
<p><b>Exhibit "DPM-1"</b>, being a document entitled 'Report Series on the Gen08 Survey – Preliminary Findings: Melbourne &amp; Sydney' (August 2009 Report 1) by Andrew Markus, Nicky Jacobs and Tanya Aronov first published 2009 and reprinted in 2011.</p>	<ul style="list-style-type: none"> <li>• Purpose unclear – appears the exhibit is being adduced for a hearsay purpose (<b>Hearsay</b>).</li> <li>• Not relevant within the meaning of s55 <i>Evidence Act 1995</i> (Cth) – cannot rationally affect the assessment of the probability of the existence of a fact in issue in the proceeding (<b>Relevance</b>).</li> <li>• Plainly non-compliant with Court's practice note on Survey evidence (GPN-SURV), and cannot be made compliant in retrospect (<b>Non-compliant Survey Evidence</b>).</li> <li>• Report is co-authored by well-respected Professor Andrew Markus from the Australian Centre for Jewish Civilisation at Monash University.               <ul style="list-style-type: none"> <li>○ Prof Markus is a co-author in many of the 5A publications, often alongside Suzanne Rutland (e.g. Exhibit "DPM-20" below).</li> <li>○ This raises issues regarding the requisite impartiality / independence if sought to be relied on as expert evidence.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• In general, the 1R does not appear to be aware of hearsay exception to interlocutory proceedings: s75 Evidence Act.</li> <li>• Nor the s77 opinion exception.</li> <li>• Evidence is clearly relevant and is in contest in the 2R submissions and the 1R materials in Keane, Bradley affidavit [12]pp73-76.</li> <li>• Evidence is relevant for fact of findings and or underlying facts stated.</li> <li>• The practice note is inapplicable at this interlocutory phase and or unavailing in any event.</li> <li>• Clearly statistical information has been adduced in case law and several of the <i>identical</i> surveys have been admitted or used in proceedings uncontroversially as lay or in expert evidence: Jones v Toben [2002] FCA 1150 [93]; <i>Philippsohn v Attorney General for NSW</i> [2025] NSWSC 267 [19]-[22] [27] [29] [32] [81]</li> <li>• Expert evidence is a separate matter.</li> <li>• First and last bullets not proper or incorrect grounds of objection.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants press reliance on Exhibit DPM-1.</li> <li>• First Respondent repeats objections in column 2, including the initial hurdle as to relevance pursuant to s55.</li> <li>• Opinion evidence: the Applicants have not articulated what the intended purpose of the evidence is. The 1R therefore maintains his objection in respect of the opinion rule.</li> <li>• Hearsay evidence: where there is a question in respect of the determination of the rights of a party, this character of this proceeding as interlocutory cannot be presumed. In any event, s75 is intended to ensure that the weight to be given to the evidence can be adequately assessed. In that respect, the 1R says that his concerns in respect of the expert / opinion matters would render the evidence inadmissible in any event.</li> <li>• The 1R does not agree that the Survey Evidence practice note</li> </ul>

			<p>(SEPN) is not applicable to these proceedings.</p> <ul style="list-style-type: none"> <li>• There is no useful equivalence in the Applicants' reference to <i>Philippsohn</i> and <i>Jones v Tobin</i>. In any event, <i>Philippsohn</i> relates to a jurisdiction inapposite to the SEPN, and <i>Jones</i> predates the introduction of the SEPN.</li> </ul>
<p><b>Exhibit "DPM-2"</b>, being a document entitled 'Gen17 Australian Jewish Community Survey – Preliminary Findings' by David Graham and Andrew Markus first published March 2018.</p>	<ul style="list-style-type: none"> <li>• Hearsay.</li> <li>• Relevance.</li> <li>• Non-compliant Survey Evidence.</li> </ul>	<ul style="list-style-type: none"> <li>• As above. Relevant and admissible.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants press reliance on Exhibit DPM-2.</li> <li>• First Respondent repeats objections in column 2.</li> </ul>
<p><b>Exhibit "DPM-3"</b>, being a document entitled 'Crossroads 23: Surveying Australian Jews on Israel' dated 14 June 2023.</p>	<ul style="list-style-type: none"> <li>• Hearsay.</li> <li>• Non-compliant Survey Evidence.</li> <li>• Relevance.</li> </ul>	<ul style="list-style-type: none"> <li>• As above. Relevant and admissible.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants press reliance on Exhibit DPM-3.</li> <li>• First Respondent repeats objections in column 2.</li> </ul>
<p><b>Exhibit "DPM-4"</b>, being a document entitled 'The Jewish University Experience Survey – July 2023' (Version: 1) prepared by The Social Research Centre.</p>	<ul style="list-style-type: none"> <li>• Hearsay.</li> <li>• Relevance.</li> <li>• Non-compliant Survey Evidence.</li> <li>• Report has been prepared for the Australasian Union of Jewish Students, of which the Third Applicant is an elected officer. <ul style="list-style-type: none"> <li>○ This raises issues regarding the requisite impartiality / independence if sought to be relied on as expert evidence.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• As above. Relevant and admissible.</li> <li>• Final bullet misunderstands what expert evidence is.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants press reliance on Exhibit DPM-4.</li> <li>• First Respondent repeats objections in column 2.</li> <li>• The 1R does not misunderstand expert evidence. He would however be assisted by an indication as to the Applicants' purpose in seeking to adduce this evidence.</li> </ul>

<p><b>Exhibit “DPM-5”</b>, being a document entitled ‘Australian Jews in the Shadow of War: Main Survey Findings’ by Dr Adina Bankier-Karp and Dr David Graham dated May 2024.</p>	<ul style="list-style-type: none"> <li>• Relevance.</li> <li>• Non-compliant Survey Evidence.</li> <li>• Hearsay.</li> <li>• Opinion.</li> </ul>	<ul style="list-style-type: none"> <li>• As above. Relevant and admissible.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants press reliance on Exhibit DPM-5.</li> <li>• First Respondent repeats objections in column 2.</li> </ul>
<p><b>Exhibit “DPM-6”</b>, being the NSW Law Reform Commission’s consultation paper in its review of the <i>Anti-Discrimination Act 1977</i> (NSW) dated May 2025.</p>	<ul style="list-style-type: none"> <li>• Relevance.</li> <li>• Hearsay.</li> </ul>	<ul style="list-style-type: none"> <li>• Relevant to discussing nature of s18C: see [26].</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants press reliance on Exhibit DPM-6.</li> <li>• First Respondent repeats objections in column 2.</li> </ul>
<p><b>Exhibit “DPM-7”</b>, being a document entitled ‘CSG Analysis of Reported Antisemitic Incidents in Australia in 2023’ by Community Security Group dated 2024.</p>	<ul style="list-style-type: none"> <li>• Hearsay.</li> <li>• Relevance.</li> <li>• Non-compliant Survey Evidence.</li> </ul>	<ul style="list-style-type: none"> <li>• Same as earlier survey objections. Relevant and admissible.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants press reliance on Exhibit DPM-7.</li> <li>• First Respondent repeats objections in column 2.</li> </ul>
<p><b>Exhibit “DPM-8”</b>, being a document entitled ‘IHRA non-legally binding working definition of antisemitism – Adopted by the IHRA Plenary in Bucharest’ published by the International Holocaust Remembrance</p>	<ul style="list-style-type: none"> <li>• Relevance.</li> <li>• Unable to assist the Court.</li> <li>• Hearsay.</li> <li>• The Second Applicant sat / sits on the Committee of IHRA responsible for developing the definition. <ul style="list-style-type: none"> <li>○ This raises issues regarding the requisite impartiality / independence if sought to be relied on as expert evidence.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Relevant context to understanding how different forms of antisemitism are manifested, including how criticism of Israel or antizionism can cross the line to antisemitism or relevantly breach s18C. Document is cited and applied in AHRC Complaints.</li> <li>• ‘Unable to assist’ court not a proper ground of objection.</li> <li>• Hearsay rule is misunderstood</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants press reliance on Exhibit DPM-8.</li> <li>• First Respondent repeats objections in column 2.</li> <li>• ‘Antisemitism’ is not a concept arising under s18C and this evidence ought not be relied upon to modify the scope or complexion of the statute.</li> </ul>

Alliance dated 26 May 2016.		<ul style="list-style-type: none"> <li>Final point is misguided.</li> </ul>	
<b>Exhibit “DPM-9”</b> , being an extract of chapter 4 of the book ‘Why Do People Discriminate Against Jews?’ (Oxford University Press) by Jonathan Fox and Lev Topor published 2021.	<ul style="list-style-type: none"> <li>Purpose unclear.</li> <li>Relevance.</li> <li>Hearsay.</li> <li>Opinion.</li> </ul>	<ul style="list-style-type: none"> <li>Relevant and admissible.</li> </ul>	<ul style="list-style-type: none"> <li>Applicants press reliance on Exhibit DPM-9.</li> <li>First Respondent repeats objections in column 2.</li> </ul>
<b>Exhibit “DPM-10”</b> , being materials extracted and redacted on 18 September 2025 from sections of websites associated with Jewish Australian schools and/or youth movements as set out in paragraph 13.	<ul style="list-style-type: none"> <li>Purpose unclear.</li> <li>Hearsay.</li> <li>Relevance.</li> <li>Exhibit will not assist the Court as it appears to be a random collection of webpages of Jewish and/or Zionist schools, organisations etc.</li> </ul>	<ul style="list-style-type: none"> <li>Relevant to showing goals of the major Australian Jewish schools and Youth movements, linking their missions to Jewish Orthodox or Reform Zionism, because Zionism is part of most Jewish Australians’ identity as Jews (or Israelis).</li> <li>Issue is also in contest as noted above, by both Respondents.</li> </ul>	<ul style="list-style-type: none"> <li>Applicants press reliance on Exhibit DPM-10.</li> <li>First Respondent repeats objections in column 2.</li> </ul>
<b>Exhibit “DPM-11”</b> , being a petition on Change.org entitled ‘Petition: The Jewish Council of Australia Does Not Represent Me!’ retrieved on 17 September 2025.	<ul style="list-style-type: none"> <li>Purpose unclear.</li> <li>Hearsay.</li> <li>Relevance.</li> <li>Exhibit will not assist the Court.</li> <li>Appears to be evidence in attempted disavowal of the views of a significant portion of the Jewish community.</li> </ul>	<ul style="list-style-type: none"> <li>Relevant to negating the material adduced by the 2R, part of which is also adduced by the 1R. The contest shows the relevance and the fact that the applications should be dismissed.</li> <li>All of this is relevant to the threshold of the summary judgment/strike out applications not being met, and ensuring the Court is not misled as to predominant Australian Jewish or Israeli positions and identity.</li> </ul>	<ul style="list-style-type: none"> <li>Applicants press reliance on Exhibit DPM-11.</li> <li>First Respondent repeats objections in column 2.</li> <li>First Respondent considers that it is neither necessary nor desirable for the Court to attempt to make findings on the “predominant identity” of Australian Jewish and/or Israeli persons.</li> </ul>
<b>Exhibit “DPM-12”</b> , being a compilation of the first	<ul style="list-style-type: none"> <li>Purpose unclear.</li> <li>Relevance.</li> <li>Exhibit will not assist the Court.</li> </ul>	<ul style="list-style-type: none"> <li>Clearly relevant to s18C as set out at [39].</li> </ul>	<ul style="list-style-type: none"> <li>Applicants press reliance on Exhibit DPM-12.</li> </ul>

<p>respondent's X (Twitter) account posts from 7 October 2023 to 23 December 2023 and taken on 23 December 2023.</p>	<ul style="list-style-type: none"> <li>• If the applicants are seeking to complain about further Twitter posts of Dr Riemer, this material goes beyond the scope of the initial complaint in contravention of s46PO of the <i>Australian Human Rights Commission Act 1986</i> (Cth) (<b>AHRC Act</b>).</li> </ul>	<ul style="list-style-type: none"> <li>• 1<sup>st</sup>, and 3<sup>rd</sup> objections not proper grounds of objection.</li> <li>• 4<sup>th</sup> objection is misguided.</li> </ul>	<ul style="list-style-type: none"> <li>• First Respondent repeats objections in column 2.</li> </ul>
<p><b>Exhibit "DPM-13"</b>, being a copy of the Senate Hansard for the 'Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No. 2)' dated 20 September 2024.</p>	<ul style="list-style-type: none"> <li>• Offends s16 of the <i>Parliamentary Privileges Act 1987</i> (Cth) and therefore cannot be adduced into evidence.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants don't press for present purposes.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants do not press reliance on Exhibit DPM-13.</li> </ul>
<p><b>Exhibit "DPM-14"</b>, being a transcript of Portfolio Committee No. 3 – Education (NSW) <i>Examination of proposed expenditure for the portfolio area – SKILLS, TAFE AND TERTIARY EDUCATION</i> (Corrected) dated 4 September 2024.</p>	<ul style="list-style-type: none"> <li>• Offends s16 of the <i>Parliamentary Privileges Act 1987</i> (Cth) and therefore cannot be adduced into evidence.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants don't press for present purposes.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants do not press reliance on Exhibit DPM-14.</li> </ul>
<p><b>Exhibit "DPM-15"</b>, being a document entitled 'University of Sydney External Review Report' (November 2024) by Bruce Hodgkinson AM SC.</p>	<ul style="list-style-type: none"> <li>• Purpose unclear.</li> <li>• Opinion.</li> <li>• Hearsay.</li> <li>• Relevance.</li> </ul>	<ul style="list-style-type: none"> <li>• Relevant to s18C requirements and the circumstances of infringing material.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants press reliance on Exhibit DPM-15.</li> <li>• First Respondent repeats objections in column 2.</li> <li>• Applicants' response does not elucidate the purpose.</li> </ul>

<p><b>Exhibit “DPM-16”</b>, being a document entitled ‘WSMS RFS Report - 1-488253’ dated 3 September 2024.</p>	<ul style="list-style-type: none"> <li>• Purpose unclear.</li> <li>• Relevance.</li> <li>• Dr Andy Smidt (the “requestor” in this material) is the proposed Fifth Applicant in the Keane proceeding.</li> </ul>	<ul style="list-style-type: none"> <li>• Ditto.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants press reliance on Exhibit DPM-16.</li> <li>• First Respondent repeats objections in column 2.</li> </ul>
<p><b>Exhibit “DPM-17”</b>, being a media release ‘Statement on Racism’ by Universities Australia dated 27 February 2025.</p>	<ul style="list-style-type: none"> <li>• Relevance.</li> <li>• Purpose unclear.</li> <li>• Material will not assist the Court at this stage.</li> </ul>	<ul style="list-style-type: none"> <li>• Relevant and admissible.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants press reliance on Exhibit DPM-17.</li> <li>• First Respondent repeats objections in column 2.</li> </ul>
<p><b>Exhibit “DPM-18”</b>, being a document entitled ‘Our commitment to anti-racism - Supplementary resources’ published by the University of Sydney retrieved on 17 September 2025.</p>	<ul style="list-style-type: none"> <li>• Purpose unclear.</li> <li>• Relevance.</li> </ul>	<ul style="list-style-type: none"> <li>• Relevant and admissible to 18C requirements. Also, is admission to the 2R position being taken here. Manifestly inconsistent with challenging that Zionism is a core part of most Jewish Australians’ Jewish identity and challenging the proposition that substituting the word ‘Zionist’ for ‘Jew’ does not eliminate the possibility of speech being antisemitic or in breach of s18C RDA.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants press reliance on Exhibit DPM-18.</li> <li>• First Respondent repeats objections in column 2.</li> </ul>
<p><b>Exhibit “DPM-19”</b>, being a letter sent by me by way of email to the representatives (respectively) of the first respondent and second respondent on 30 July 2025.</p>	<ul style="list-style-type: none"> <li>• A letter from the Applicants’ solicitors sent to the First and Second Respondents’ solicitors on 30 July 2025 purporting to provide further and better particulars of paragraph 34 of the Applicants’ Amended Statement of Claim (<b>ASOC</b>) has been exhibited as Exhibit “DPM-19”.</li> <li>• This is not an appropriate particularisation of pleadings.</li> <li>• The attempt to exhibit these particulars is completely misconceived – not admissible as evidence.</li> </ul>	<ul style="list-style-type: none"> <li>• The 1R is objecting to the particulars. The Applicants are entitled to show the Court what is being challenged.</li> <li>• The arguments to the left are flawed, as set out at [80-82]</li> <li>• The 1R does not appreciate the text of r 16.41(1).</li> <li>• In any event, parties are not required to plead to particulars (16.41 (note 3); r 16.07. If 1R withdraws the objections, there is no need for the evidence to be adduced at this time.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants press reliance on Exhibit DPM-19.</li> <li>• First Respondent repeats objections in column 2.</li> <li>• r 16.41(1) is inapposite. The letter was not filed and served with the pleading. The First Respondent notes Note 4: which reads that “particulars should, if they are necessary, be contained in the pleading but they may be separately stated if</li> </ul>

	<ul style="list-style-type: none"> <li>This letter was sent to the Respondents on the same day (in the same email) as the ASOC. If these particulars were sought to be pleaded, they should have been pleaded in the ASOC.</li> </ul>		<p>sought by the opposite party or ordered by the Court”.</p> <ul style="list-style-type: none"> <li>The First Respondent does not consider the contents of DPM-19 to be pleaded particulars.</li> </ul>
<p><b>Exhibit “DPM-20”</b>, being a document entitled ‘Antisemitism in Australian Universities Post 7 October – Survey by Australian Academic Alliance Against Antisemitism’ by Emeritus Professor Andrew Markus, Associate Professor Efrat Eilam and Emerita Professor Suzanne Rutland dated May 2025.</p>	<ul style="list-style-type: none"> <li>Purpose unclear.</li> <li>Non-compliant Survey Evidence.</li> <li>Opinion.</li> <li>Hearsay.</li> <li>This is a 5A Report in which the Second Applicant is a lead author. <ul style="list-style-type: none"> <li>If it is exhibited in order to be relied on as expert opinion, significant issues regarding requirement of impartiality and independence.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Document relevant and admissible to negate the material adduced by the 2R and 1R. Relevant to requirements of 18C, to prove the strike out / summary judgment applications do not meet their threshold (such that they should be dismissed) and to ensure the Court is not misled as to predominant Jewish or Israeli views and identities in Australia.</li> <li>Several improper or incorrect grounds of objection.</li> </ul>	<ul style="list-style-type: none"> <li>Applicants press reliance on Exhibit DPM-20.</li> <li>First Respondent repeats objections in column 2.</li> <li>First Respondent considers that it is neither necessary nor desirable for the Court to attempt to make findings on the “predominant identity” of Australian Jewish and/or Israeli persons.</li> </ul>
<p><b>Exhibit “DPM-21”</b>, being a document entitled ‘ANTISEMITISM IN THE CULTURAL AND CREATIVE INDUSTRIES – MONASH INITIATIVE FOR RAPID RESEARCH INTO ANTISEMITISM (MIRRA)’ by Associate Professor David Slucki, Dr Lauren Chalk, Professor Paul Long</p>	<ul style="list-style-type: none"> <li>Relevance.</li> <li>Opinion.</li> <li>Hearsay.</li> <li>Non-compliant Survey Evidence.</li> </ul>	<ul style="list-style-type: none"> <li>As above.</li> </ul>	<ul style="list-style-type: none"> <li>Applicants press reliance on Exhibit DPM-21.</li> <li>First Respondent repeats objections in column 2.</li> <li>‘Antisemitism’ is not a concept arising under s18C and this evidence ought not be relied upon to modify the scope or complexion of the statute.</li> </ul>

and Noè Harsel dated 2025.			
<b>Exhibit “DPM-22”</b> , being a document entitled ‘Gen17 Australian Jewish Community Survey – Jewish Education in Melbourne’ by Andrew Markus, Miriam Munz and Tanya Munz first published 2020.	<ul style="list-style-type: none"> <li>• Relevance.</li> <li>• Non-compliant Survey Evidence.</li> <li>• Expert evidence issue re impartiality / independence.</li> </ul>	<ul style="list-style-type: none"> <li>• Relevant and admissible as above.</li> <li>• Misunderstands expert evidence.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants press reliance on Exhibit DPM-22.</li> <li>• First Respondent repeats objections in column 2.</li> </ul>
<b>Exhibit “DPM-23”</b> , being a document entitled ‘Report on Antisemitism in Australia 2023 – 1 October 2022 – 30 September 2023’ by Julie Nathan published by the Executive Council of Australian Jewry dated 31 December 2023.	<ul style="list-style-type: none"> <li>• Purpose unclear.</li> <li>• Hearsay.</li> <li>• Opinion.</li> <li>• Non-compliant Survey Evidence.</li> <li>• Third Applicant was and remains an elected official of Australasian Union of Jewish Students – formally affiliated with Executive Council of Australian Jewry (ECAJ). <ul style="list-style-type: none"> <li>○ The same issue regarding reliance on ECAJ material as expert evidence - re independence / impartiality.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Relevant and admissible as above.</li> <li>• Misunderstand the nature of the evidence.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants press reliance on Exhibit DPM-23.</li> <li>• First Respondent repeats objections in column 2.</li> <li>• ‘Antisemitism’ is not a concept arising under s18C and this evidence ought not be relied upon to modify the scope or complexion of the statute.</li> <li>• First Respondent does not ‘misunderstand’ the nature of the evidence but declines to infer its intended relevance and purpose.</li> </ul>
<b>Exhibit “DPM-24”</b> , being various submissions received by the committee of the <i>Inquiry into a Commission of Inquiry into Antisemitism at Australian</i>	<ul style="list-style-type: none"> <li>• Offends s16 of the <i>Parliamentary Privileges Act 1987</i> (Cth) and therefore cannot be adduced into evidence.</li> </ul>	<ul style="list-style-type: none"> <li>• All published online, relevant and admissible as above (being relevant to 18C, relevant to dismiss the applications which are contesting the issue (and to ensure the court is properly informed as to predominant Jewish / Israeli views in Australia).</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants press reliance on Exhibit DPM-24.</li> <li>• First Respondent repeats objections in column 2.</li> <li>• It is irrelevant in this context that a document subject to parliamentary privilege is published online.</li> <li>• First Respondent considers that it is neither necessary nor</li> </ul>

<p><i>Universities Bill 2024 (No. 2)</i> as set out in paragraph 27.</p>			<p>desirable for the Court to attempt to make findings on the “predominant identity” of Australian Jewish and/or Israeli persons.</p> <ul style="list-style-type: none"> <li>• ‘Antisemitism’ is not a concept arising under s18C and this evidence ought not be relied upon to modify the scope or complexion of the statute.</li> </ul>
<p><b>Exhibit “DPM-26”</b>, being a redacted copy of ‘Incident Hazard Report – [113]’ printed 26 June 2024.</p>	<ul style="list-style-type: none"> <li>• Relevance.</li> <li>• Purpose unclear.</li> <li>• Material will not assist the Court.</li> </ul>	<ul style="list-style-type: none"> <li>• Relevant to s18C as set out at [52].</li> <li>• Not proper grounds of objection.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants press reliance on Exhibit DPM-26.</li> <li>• First Respondent repeats objections in column 2.</li> </ul>
<p><b>Exhibit “DPM-27”</b>, being a document entitled ‘Submission of the Australian Academic Alliance Against Antisemitism to the NSW Legislative Council Parliamentary Inquiry into Antisemitism’ submitted by Suzanne Rutland OAM and Gregory Rose and dated 5 April 2025.</p>	<ul style="list-style-type: none"> <li>• Offends s16 of the <i>Parliamentary Privileges Act 1987</i> (Cth) and therefore cannot be adduced into evidence.</li> </ul>	<ul style="list-style-type: none"> <li>• Same as DPM-24.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants press reliance on Exhibit DPM-27.</li> <li>• First Respondent repeats objections in column 2 and above in respect of DPM-24.</li> </ul>
<p><b>Exhibit “DPM-28”</b>, being a document entitled ‘Quality of governance at Australian higher education providers - 5A Submission to the</p>	<ul style="list-style-type: none"> <li>• Offends s16 of the <i>Parliamentary Privileges Act 1987</i> (Cth) and therefore cannot be adduced into evidence.</li> </ul>	<ul style="list-style-type: none"> <li>• Ditto.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants press reliance on Exhibit DPM-28.</li> <li>• First Respondent repeats objections in column 2 and above in respect of DPM-24.</li> </ul>

<p>Senate Education and Employment Legislation Committee' by the Australian Academic Alliance Against Antisemitism submitted on or around 2 September 2025.</p>			
<p><b>Exhibit "DPM-29"</b>, being a document entitled '5A Submission to the Senate and Constitutional Affairs Legislation Committee Inquiry into the Criminal Code Amendment (Hate Crimes) Bill 2024' submitted by Gregory Rose and Melinda Jones and Gregory Rose.</p>	<ul style="list-style-type: none"> <li>• Offends s16 of the <i>Parliamentary Privileges Act 1987</i> (Cth) and therefore cannot be adduced into evidence.</li> </ul>	<ul style="list-style-type: none"> <li>• Ditto.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants press reliance on Exhibit DPM-29.</li> <li>• First Respondent repeats objections in column 2 and above in respect of DPM-24.</li> </ul>
<p><b>Exhibit "DPM-30"</b>, being a document entitled 'Submission 603- Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No. 2)' by the Australian Academic Alliance Against Antisemitism and extracted on 18 September 2025</p>	<ul style="list-style-type: none"> <li>• Offends s16 of the <i>Parliamentary Privileges Act 1987</i> (Cth) and therefore cannot be adduced into evidence.</li> </ul>	<ul style="list-style-type: none"> <li>• Ditto.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants press reliance on Exhibit DPM-30.</li> <li>• First Respondent repeats objections in column 2 and above in respect of DPM-24.</li> </ul>

*Toltz & Ors v Keane & Anor NSD951/2025: Joint Schedule of Objections to Evidence*

Affidavit of Daniel Patrick McCoach, affirmed 1 October 2025

1. Description of exhibit	2. Basis for 1R objection	3. Applicants' response	4. 1R Reply
<b>Exhibit "DPM-1"- DPM-4"</b>	<ul style="list-style-type: none"> <li>Unnecessary and superfluous material, which is already before the Court.</li> </ul>	<ul style="list-style-type: none"> <li>Applicants don't press DPM-1 or para 4 (the filed application)</li> <li>Applicants don't press DPM-4 or para 7(Peter Morgan).</li> <li>Applicants press rest. The objection is wrong.</li> </ul>	<ul style="list-style-type: none"> <li>Applicants press reliance on Exhibits DPM-2 and DPM-3.</li> <li>First Respondent repeats objection in column 2.</li> </ul>
<b>Exhibit "DPM-5"</b> , being copies of documents entitled "Academic BDS Pledge", "Open letter, March 2021: Professor Alison Bashford – Please reconsider the Dan David Prize" and "Australian Academics Open Letter in Solidarity with Palestine and Call for Action".	<ul style="list-style-type: none"> <li>Not relevant within the meaning of s55 <i>Evidence Act 1995</i> (Cth) – cannot rationally affect the assessment of the probability of the existence of a fact in issue in the proceeding (<b>Relevance</b>).</li> <li>Purpose unclear.</li> <li>Not going to assist the Court.</li> </ul>	<ul style="list-style-type: none"> <li>Relevant to s18C claim.</li> <li>Non proper grounds of objection thereafter.</li> </ul>	<ul style="list-style-type: none"> <li>Applicants press reliance on Exhibit DPM-5.</li> <li>First Respondent repeats objections in column 2.</li> </ul>
<b>Exhibit "DPM-6"</b> , being a copy of email correspondence between Dr Loren Mowszowski and Sharon Naismith between 13 June 2024 and 21 June 2024.	<ul style="list-style-type: none"> <li>Relevance.</li> <li>Purpose unclear – appears the exhibit is being adduced for a hearsay purpose (<b>Hearsay</b>).</li> <li>Opinion.</li> <li>Ms Mowszowski is a proposed represented person. She also identifies as conducting advocacy for Jewish staff and students as a member of 5A.</li> </ul>	<ul style="list-style-type: none"> <li>Relevant to s18C claim.</li> <li>Document is admissible business record.</li> <li>In general, the 1R does not appear to be aware of the exception to hearsay rule for interlocutory proceedings. S75 Evidence Act.</li> <li>Bottom point improper ground of objection.</li> </ul>	<ul style="list-style-type: none"> <li>Applicants press reliance on Exhibit DPM-6.</li> <li>The First Respondent repeats objections in column 2 and says further: <ul style="list-style-type: none"> <li>the Applicants have not articulated what the intended purpose of the evidence is. The 1R therefore maintains objection in respect of the opinion rule.</li> <li>Hearsay evidence: where there is a question in respect of the determination of the rights of a party (including in this case, Ms Mowszowski and the other proposed represented persons), the character of this proceeding as interlocutory</li> </ul> </li> </ul>

			cannot be presumed. In any event, s75 is intended to ensure that the weight to be given to the evidence can be adequately assessed. In that respect, the 1R says that his concerns in respect of the other matters would render the evidence inadmissible in any event.
<b>Exhibit “DPM-7”</b> , being a copy of the exit survey of Associate Professor Andy Smidt.	<ul style="list-style-type: none"> <li>• Purpose unclear.</li> <li>• Relevance at this stage of proceedings unclear.</li> <li>• 1R has no objection to addition of Andy Smidt as the Fifth Applicant.</li> </ul>	<ul style="list-style-type: none"> <li>• Relevant and admissible.</li> <li>• Third point noted but not to point.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants press reliance on Exhibit DPM-7.</li> <li>• First Respondent repeats objections in column 2.</li> </ul>
<b>Exhibit “DPM-8”</b> , being copies of email correspondence between a Jewish student studying at the University of Sydney in 2024 and Kelsey Rimmer dated between 28 February 2024 and 7 March 2024, and to the Vice Chancellor of the University of Sydney entitled dated 10 May 2024; and a copy of another student (non-Jewish) complaining to Sophie Carruthers dated 29 May 2024.	<ul style="list-style-type: none"> <li>• Purpose unclear.</li> <li>• Hearsay.</li> <li>• Opinion.</li> <li>• Relevance.</li> </ul>	<ul style="list-style-type: none"> <li>• Relevant as set out in Keane Subs [47], Riemer Subs [77]-[78].</li> <li>• Incorrect or improper objections.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants press reliance on Exhibit DPM-8.</li> <li>• First Respondent repeats objections in column 2.</li> </ul>
<b>Exhibit “DPM-9”</b> , being copy of an email from Jutta Allmendinger to the First Respondent dated 21 November 2023.	<ul style="list-style-type: none"> <li>• Relevance.</li> <li>• Hearsay.</li> <li>• Opinion.</li> </ul>	<ul style="list-style-type: none"> <li>• Relevant to s18C claim: see [49].</li> <li>• Incorrect objections.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants press reliance on Exhibit DPM-9.</li> <li>• First Respondent repeats objections in column 2.</li> </ul>
<b>Exhibit “DPM-10”</b> , being a table setting out eight (8) website links accessed on 30 September and 1 October 2025.	<ul style="list-style-type: none"> <li>• Relevance.</li> <li>• Hearsay.</li> <li>• Opinion.</li> </ul>	<ul style="list-style-type: none"> <li>• Relevant to s18C claim: see [52]</li> <li>• Incorrect objections.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants press reliance on Exhibit DPM-10.</li> <li>• First Respondent repeats objections in column 2.</li> </ul>
<b>Exhibit “DPM-11”</b> , being a copy of a table setting out a collection of X (Twitter) posts by the First	<ul style="list-style-type: none"> <li>• Relevance.</li> <li>• Purpose unclear.</li> </ul>	<ul style="list-style-type: none"> <li>• Relevant to s18C claim, there tendency point: see [55].</li> <li>• Incorrect or improper objections.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants press reliance on Exhibit DPM-11.</li> </ul>

<p>Respondent between 8 October 2023 and 16 September 2025 and viewed on 28 September 2025.</p>	<ul style="list-style-type: none"> <li>• Seeks to go beyond the case permissibly pleaded under the <i>Australian Human Rights Commission Act 1986</i> (Cth).</li> </ul>		<ul style="list-style-type: none"> <li>• First Respondent repeats objections in column 2.</li> </ul>
<p><b>Exhibit “DPM-12”</b>, being a copy of a letter from the First Respondent to the Vice Chancellor of the University of Sydney dated 6 November 2023.</p>	<ul style="list-style-type: none"> <li>• Purpose unclear.</li> <li>• Unnecessary and superfluous material, which is already before the Court.</li> </ul>	<ul style="list-style-type: none"> <li>• The document is one of the pictures partially visible at ASOC [42] but was fully visible when clicked on. It appears too in DPM-11, p267. This version is legible. The objection does not advance s37M FCAA.</li> </ul>	<ul style="list-style-type: none"> <li>• The First Respondent does not press this objection.</li> </ul>