

NOTICE OF FILING

Details of Filing

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Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

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

File No. NSD 951/2025

Joseph Toltz and others

Applicants

John Keane and another

Respondents

FIRST RESPONDENT'S OUTLINE OF SUBMISSIONS

APPLICANTS' INTERLOCUTORY APPLICATION FILED 20 FEBRUARY 2026

1. These submissions are filed in response to the Applicants' application for leave to file the Proposed Amended Statement of Claim (**Applicants' application**) in the form provided to the Respondents on 20 March 2026 (**PASOC**).¹
2. The PASOC exceeds the scope of the confined leave to amend granted by the Court following determination of the Applicants' interlocutory application filed on 1 August 2025 and the respondents' objections to leave being granted for the Applicants' pleadings to be filed in their proposed forms in *Toltz v Keane* [2025] FCA 1386 (**leave orders**).
3. There are four categories² of amendments in the PASOC:
 - a. those permitted by the leave orders (category a);
 - b. those not permitted by the leave orders, but to which the First Respondent does not object due to their inconsequential and unprejudicial nature (category b);
(categories a & b together, the **amendments by consent**);
 - c. those not permitted by the leave orders which seek to reintroduce material struck out by the leave orders (category c); and
 - d. those not permitted by the leave orders which introduce entirely new material (category d),
(categories c & d together, the **resisted amendments**).
4. Some of the resisted amendments do nothing but introduce evidence, contrary to long-settled practice and authority about the appropriate contents of a pleading.³ Others introduce new allegations, assertions and case theories inconsistent with either or both of the leave orders

¹ This version of the PASOC is the same as the document exhibited as Exhibit "DPM-13" to the affidavit of Mr McCoach affirmed on 20 February 2026, except this document includes all of the applicants' particulars in the one document.

² These are the categories referred to in the last column in the table at Annexure 1 to this document.

³ For example, r16.02; r16.41 *Federal Court Rules 2011* (Cth).

and the complaint lodged with the AHRC. To the extent that it exceeds the bounds of the leave orders, the resisted amendments in the PASOC are an affront to the objectives of efficiency, timeliness, proportionality and the just resolution of disputes in section 37M of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**).

5. The First Respondent seeks orders that leave to file the PASOC be refused in respect of the resisted amendments (categories c & d in the Annexure). The First Respondent does not resist the amendments by consent (categories a & b in the Annexure).

The law on amendment of pleadings

6. The discretion to permit amendment is conditioned by the principles in *Aon Risk Services Australia Ltd v Australian National University* [2009] HCA 27 (**Aon**), which require the Court to give primacy to the just, quick and inexpensive resolution of proceedings, including the efficient use of court resources and the effect on other litigants. As the plurality in *Aon* made clear, case management considerations are not subordinate to the interests of a party in having its case determined on the merits; rather, “[t]he resolution of disputes serves the public as a whole, not merely the parties to the proceedings”⁴ and undue delay and inefficiency are inimical to that purpose.⁵
7. Amendments which cause substantial disruption to the conduct of the litigation may properly be refused notwithstanding that they raise an arguable case.⁶
8. Their Honours further emphasised that the “just resolution of proceedings” includes “the minimisation of delay and expense” and that “it cannot therefore be said that a just resolution requires that a party be permitted to raise any arguable case at any point in the proceedings, on payment of costs.”⁷ This point looms large in the context of section 46PSA of the *Australian Human Rights Commission Act 1986* (Cth) (**AHRC Act**), which may operate to prevent the First Respondent recovering his costs in any event.
9. Despite a defence not yet having been filed, this cannot properly be described as an early stage of the proceeding. Proceedings were commenced on 13 June 2025. There have been substantial interlocutory steps, there are orders expressly confining the permissible scope of the Applicants’ repleading, and the hearing of the Applicants’ application will take place some eleven months after the filing of their Originating Application and initial Statement of Claim. As was observed by the Full Federal Court in *Tamaya Resources Limited (in liq) v Deloitte Touche Tohmatsu (A Firm)* [2016] FCAFC 2 (at [100] per Gilmour, Perram & Beach JJ), “it is demonstrably inefficient for a party who has had a reasonable opportunity to formulate a case to wait until one year after the proceeding has been commenced to do so.”

⁴ *Aon Risk Services Australia Ltd v Australian National University* [2009] HCA 27 at [113].

⁵ See for example *Aon* at [5], [23] and [30].

⁶ *Aon* at [97]–[103].

⁷ *Aon* at [98].

10. The ongoing prejudice to the First Respondent is real: he has defended this litigation, including contested interlocutory disputes, on grounds which the Applicants have continuously sought to evolve and expand.
11. To accede to the whole of the Applicants' application would undermine the Court's earlier leave orders, reward the Applicants' non-compliance with them, and occasion further delay and prejudice (including as to costs), contrary to sections 37M and 37N of the FCA Act. In those circumstances, and consistently with *Aon*⁸ and section 37M(3), the appropriate use of the Court's discretion on the Applicants' application is to refuse leave in respect of the resisted amendments.

Objection to unsolicited provision of further particulars

12. There are around 20 paragraphs in the PASOC containing new and unsolicited changes to the Applicants' case, without leave of the Court.
13. As in the case of *Toltz v Riemer* (NSD950/2025), the repeated and unilateral amendment of pleadings without leave is strenuously resisted by the First Respondent.

Shift to 'non-removal' or 'omission' case

14. The 'Staff Members Post' has been framed as a 'non-removal' case since the Applicants' complaint was before the AHRC.⁹ The ' Hamas Flag Post' was *not* framed as a non-removal case before the AHRC¹⁰ but has since been pleaded as a non-removal case.
15. It appears from paragraphs [37] and [38] and the proposed amendment to [29] that the Applicants now seek to press the ' Hamas Flag Post' aspect of the proceeding as a 'non-removal' case. That is; the impugned conduct is framed not only as the First Respondent's publication of the ' Hamas Flag Post', but also his omission or failure to remove it. This a material shift in the conduct alleged to be in breach of the *Racial Discrimination Act 1975* (Cth) (**RDA Act**) when compared to the AHRC complaint.
16. The First Respondent had not understood the ' Hamas Flag Post' to be put as a non-removal case until the most recent iteration of the Applicants' pleading and the proposed amendments to paragraph [29] of the PASOC. It was not the conduct (or substantially similar to the conduct) alleged before the AHRC and is therefore not a case permitted to be brought before this Court.¹¹ The Applicants are not entitled to access the jurisdiction of the Court on the basis that the non-removal of the ' Hamas Flag Post' is a part of the impugned conduct. It is on that basis that the proposed amendments to [29] are resisted.

⁸ See in particular *Aon* at [5]-[6] and [98]-[103].

⁹ See AHRC Complaint, as amended on 25 November 2024 (**Amended Complaint**) paragraphs 43, 47-50, 52.

¹⁰ See Amended Complaint paragraphs 26, 33-34, 36.

¹¹ Section 46PO(3) AHRC Act.

17. The First Respondent also seeks the strikeout of the phrase 'and its non-removal' in [37] and [38]. It is not an accurate statement of the case against him as identified in the AHRC complaint, is confusing and embarrassing, and should be struck out. This is consistent with the other objections taken to amendments of the PASOC that seek now to frame the ' Hamas Flag Post' as a non-removal case.
18. The attempted reformulation of the ' Hamas Flag Post' as a non-removal case introduces a new and distinct case theory, requiring findings of fact by the Court as to (at least):
 - a. when any obligation to remove the post is said to have arisen;
 - b. the First Respondent's knowledge of alleged harm and capacity to effect removal;
 - c. the existence of any continuing "act" for the purposes of s 18C of the RDA;
 - d. the ongoing and evolving 'reasonableness and good faith' of the non-removal for the purposes of section 18D of the RDA (which would necessitate evidence of years, if not decades, of contested history and geopolitics); and
 - e. causation of any incremental loss or damage arising from ongoing visibility and availability of the post.
19. The assertion of omission-based liability for the ' Hamas Flag Post' before this court would materially expand the scope of factual inquiry.
20. Such a shift would subvert the strict legislative processes established in Part IIB of the AHRC Act.
21. The First Respondent further contends that the Applicants ought not be permitted to plead and/or adduce evidence of 'circumstances' arising after the dates of each of the impugned acts (see paragraphs 39 to 45 below).

Submissions on the resisted amendments

Paragraph [12c]

22. This proposed amendment is not permitted or contemplated by the leave orders.
23. It is resisted because it is of no or marginal relevance to the cause of action against the First Respondent, and it is incapable of being proven or disproven in any manner consistent with section 37M of the FCA Act.
24. The Applicants persist in invoking the notion of the "Jewish experience" or "the Jewish response". That framing is inherently problematic. Jewish communities are not monolithic or homogeneous; there is diversity (and indeed polarity) of views among Jewish people in Australia, Israel, and elsewhere, including on the issues raised in this proceeding.
25. The Applicants cannot make good the matters asserted in [12c], particularly not in accordance with section 37N of the FCA Act, and without resort to the sort of survey evidence adduced on the earlier interlocutory hearing and described by this Court in *Toltz v Riemer* [2025] FCA 1385

as “based on unsatisfactory methodologies” and apparently without “any regard to the Court’s Survey Evidence Practice Note”.¹²

26. Further, neither the proof nor disproof of the asserted fact would have a material impact on the outcome of the proceeding. It should be disallowed.

Paragraph [13c]

27. This amendment was not contemplated or permitted by the leave orders. It is an addition to the Applicants’ case some eight months after it was initiated.

28. While there is nothing inherently particularly objectionable in this proposed amendment, the First Respondent refers to and repeats his submissions at paragraphs 12 and 13 above.

Paragraph [24A]

29. This proposed amendment is not permitted or contemplated by the leave orders.

30. Paragraphs [21]-[23] plead the asserted facts. Proposed [24A] frames those asserted facts as matters of subjective opinion, framing them broadly enough to be arguable, even if the underlying subjective belief is irrational, erroneous or ill-informed. Patently, the ‘wide reporting’ of a particular matter has no correlation with its accuracy, rationality or reasonableness. This amendment invites the court to determine that the group members have in part formed their vulnerability to offence on the basis of information that was ‘widely reported’, without regard to whether it is true, or even credible.

31. The words used are these:

It has been widely reported and/or Jews and Israelis have read or believe on the basis of that information and/or the Hamas Covenants referred to above...

32. This framing is embarrassing and impossible to plead to. The “and/or” makes no sense. If it is “or”, the sentence is incoherent as it does not define what “that information” is. If it is “and”, then it is a reference to “the Hamas Covenants”.

33. The Applicants have already been shut out from pleading the intent and motivation of Hamas as facts.¹³ They have also been permitted to provide *particulars* to their pleading regarding the meaning of the Hamas Covenants.¹⁴

34. The First Respondent respectfully requests that the Court restrain the Applicants from asserting some meaning of the Hamas Covenants as a matter going to the First Respondent’s liability, on the basis that it has been “widely reported” or because Jews or Israelis might “have read or believe” it, regardless of its truth, reasonableness or accuracy. This is embarrassing, and the First Respondent should not be required to plead to it.

¹² *Toltz v Riemer* [2025] FCA 1385 at [79].

¹³ *Toltz v Riemer* [2025] FCA 1385 at [32].

¹⁴ *Toltz v Keane* [2025] FCA 1386 at [65].

35. The Applicants may seek to adduce evidence of their own subjective beliefs to establish section 18C(1)(a) of the RDA. That is a matter for them. The global 'belief' of 'Jews and Israelis', or what 'Jews and Israelis' 'have read' on this (or any other) matter is not capable of proof. Nor is it a material fact going to the cause of action against the First Respondent. The proposed pleading continues to advance unanswerably vague assertions about the motives and objectives of foreign actors rather than legally relevant facts concerning the First Respondent's conduct or the reasonably likely reaction to it.
36. This proposed amendment should be disallowed.

Paragraph [25b]

37. This proposed amendment was not permitted or contemplated by the leave orders.
38. It opens an unnecessary evidentiary inquiry, and is unlikely to be of assistance to the Court in adjudicating the dispute. It should not be permitted, not because it is untrue (which the First Respondent does not know or assert) or insignificant to the Applicants, but because it represents an unnecessary expansion of the evidentiary landscape without forensic utility.

Paragraph [27A]

39. This proposed amendment was not permitted or contemplated by the leave orders.
40. It appears to be an attempt to introduce evidence of the "circumstances" referred to in section 18C(1)(a) of the RDA.
41. The so-called ' Hamas Flag post ' was not before the AHRC as a ' non-removal ' case; the conduct the subject of the complaint was the single act of posting alone.
42. The ' Staff Members Post ' was posted on 8 November 2023 and removed on 21 May 2024. The impugned acts in respect of the ' Staff Members Post ' were its publication (on 8 November 2023) and its non-removal (until 21 May 2024).
43. The ' Hamas Flag Post ' was made on 8 October 2023.
44. Paragraph 27A is objectionable for several reasons, including:
- a. the particulars consist of evidence rather than and/or in addition to material facts, contrary to r16.02(1)(d) of the FCR;
 - b. if to any extent proposed [27A] pleads material facts, it invites a vast and unnecessary evidentiary stoush about what occurred, when, why, who knew about it, and what impact that knowledge had, contrary to r16.02(2);
 - c. *none* of the particulars to this paragraph were ' circumstances ' that existed at the time of the ' Hamas Flag Post '¹⁵ (in addition to which they were not part of the circumstances alleged before the AHRC);

¹⁵ 8 October 2023.

d. *only* item ii of the particulars consists of ‘circumstances’ that existed during the time of the conduct pleaded in respect of the ‘Staff Members Post’.¹⁶

45. Should the Court decide to permit any part of this proposed paragraph, the Applicants ought not be permitted to plead as material facts and/or adduce evidence of ‘circumstances’ arising out of the date periods of the impugned conduct.

Paragraph [28A]

46. The Applicants were ordered by the leave orders to strike out [28].¹⁷ This amendment is a clear attempt to reinsert the substance of [28] by framing it as opinion.

47. The wording used is:

It has been widely reported and/or Jews and Israelis have read or believe on the basis of that information...

48. The First Respondent reiterates his submission at paragraph 30 above. The reframing in proposed [28A] of the struck-out paragraph as a matter of ‘wide reporting’, opinion or subjective belief does not cure the defect identified by the Court, and should not be permitted. Further, application for leave to re-agitate matters previously determined should be refused so as not to frustrate the progress of the litigation.

49. The First Respondent reiterates his submissions at paragraphs 29 to 36 above.

Paragraph [35]

50. This amendment was not permitted or contemplated by the leave orders.

51. The proposed amendment to this paragraph consists of a cross reference to proposed paragraphs [24A] and [28A]. It should be disallowed, along with those paragraphs.

Paragraph [39]

52. This amendment was not permitted or contemplated by the leave orders.

53. The proposed amendment incorporates cross references to paragraphs containing resisted amendments. This paragraph should not be permitted to remain without removal of those cross references.

Paragraph [53](f)

54. These proposed amendments to (f) were not contemplated or permitted by the leave orders.

They assert ‘particulars’ (at page 26 of the PASOC), being some 62 items in a table purporting

¹⁶ 8 November 2023 to 21 May 2024.

¹⁷ *Toltz v Keane* [2025] FCA 1386 at [71]; *Toltz v Riemer* [2025] FCA 1385 at [130]. (NB the [28] ordered to be struck out appears in the 20 March 2026 draft as [27]).

to establish the asserted tendency. This is an entirely improper inclusion in a pleading and should not be permitted.

55. The document is not a set of particulars in the sense required by r 16.41 of the FCR. It is an emotive and editorialised narrative compendium of material, replete with submissions and evaluative commentary, and does not particularise any coherent, pleaded tendency.
56. The alleged “tendency” is impermissibly framed at a level of abstraction that collapses into the expression of political views concerning Israel, Zionism, and Palestine. The particulars do not plead, in relation to any item, the material facts necessary to establish that the conduct was engaged in “because of” the race or ethnic origin of Jewish or Israeli persons.
57. The particulars impermissibly conflate distinct categories of people (Jewish or Israeli persons), and adherents to a political ideology (Zionism) and thereby attempt to equate political speech with racialised conduct by assertion rather than by pleaded fact. Even taken at their highest, the particulars disclose the First Respondent’s criticism of a nation-state and a political ideology. They do not plead facts capable of establishing conduct engaged in “because of” the race or ethnic origin of Jewish or Israeli persons.
58. The proposed amendments to this paragraph should be disallowed.

Orders sought

59. The First Respondent seeks orders that:
 - a. the PASOC be accepted for filing only after the removal of the resisted amendments;
and
 - b. the Applicants pay some or all of the First Respondent’s costs of responding to their application, pursuant to section 46PSA(6)(b) of the AHRC Act.

JESSIE TAYLOR

Counsel for the First Respondent

MARQUE LAWYERS

Solicitors for the First Respondent

8 April 2026

Toltz & Ors v Keane & Anor (NSD951/2025)

Annexure 1 to First Respondent's Outline of Submissions on order 3 of Applicants' interlocutory application dated 20 February 2026

Sep 2025	Mar 2026	Wording in 5 Sept 2025 ASOC	Wording in 20 March 2026 PASOC	Cat *
[1]	[1]	This proceeding is within the jurisdiction of the Federal Court of Australia conferred by sections 46PO and 46POA of the Australian Human Rights Commission Act 1986 (Cth) (AHRC Act) and section 39B(1A)(c) of the Judiciary Act 1903 (Cth).		N/A
[2]	[2]	The Applicants and the persons named in Schedule A are all natural persons capable of suing and ordinarily resident in Australia.		N/A
[3]	[3]	The First Applicant (Dr Joseph Toltz) is and at all relevant times was: a. a researcher at The University of Sydney (Sydney University), specialising in Jewish music and its migrations, and Manager of Research Support in the Faculty of Arts and Social Sciences; and a Jewish person.		N/A
[4]	[4]	The Second Applicant (Professor Emeritus Suzanne Rutland OAM) is and at all relevant times was: a. b. a Jewish person and an Israeli citizen.	The Second Applicant (Professor Emeritus Suzanne Rutland OAM) is and at all relevant times was: a. b. a Jewish person; and c. <u>an Israeli person (being an Israeli citizen and identifying as an Israeli).</u>	b
[5]	[5]	The Third Applicant (Mr Ariel Eisner): a. is and at all relevant times was an elected officer of the Australasian Union of Jewish Students (AUJS); Particulars i. AUJS is the peak representative body for Jewish university students across Australia and New Zealand. ii. From 7 October 2023, the Third Applicant was the head of politics for AUJS NSW. iii. From January 2025 to the present, the Third Applicant has been the national head of campaigns for AUJS; and b. was until he graduated in November 2024 a student enrolled at Sydney University studying a Bachelor of Architecture; and is and at all relevant times was a Jewish person.		N/A
[6]	[6]	The Fourth Applicant (Mr Yaniv Levy): a. is and at all relevant times was a Research Education Lead in the Faculty of Medicine and Health at Sydney University; and b. was a student at Sydney University enrolled in a Graduate Diploma of Crosscultural and Applied Linguistics from Semester 1 2024 until he withdrew on about 6 August 2024; and c. is and at all relevant times was a Jewish person and an Israeli citizen.	The Fourth Applicant (Mr Yaniv Levy): a. ... b. ... c. is and at all relevant times was a Jewish person d. <u>is and at all relevant times was an Israeli person (being an Israeli citizen and a son to two Israeli parents who were born in and continue to reside in Israel and identifies as an Israeli).</u>	b
[7]	N/A	The Fifth Applicant (Associate Professor Andy Smidt):	Removed – no longer an Applicant.	N/A

*Categories: (a or b = amendment by consent, c or d = resisted amendment)

Sep 2025	Mar 2026	Wording in 5 Sept 2025 ASOC	Wording in 20 March 2026 PASOC	Cat *
		<ul style="list-style-type: none"> a. was at all relevant times until about February 2024, a Senior Lecturer and Faculty Disability Liaison Officer at Sydney University, Sydney School of Health Sciences, Faculty of Medicine and Health; and b. is and at all relevant times was a Jewish person 		
[8]	[7]	<p>Each Applicant:</p> <ul style="list-style-type: none"> a. is a Jewish person or a person who is, or is eligible to be, an Israeli citizen (Israeli person) and identifies as Zionist. <p>Particulars</p> <ul style="list-style-type: none"> i. Zionists are predominantly Jewish people and/or Israeli people who believe in Israel being a nation state and the national home of and for the Jewish people. A substantial proportion of Jewish and/or Israeli people identify themselves as Zionists. 	<u>Each Applicant is a Jewish person or an Israeli person.</u>	a / b
[9]	[8]	<p>The First and Second Applicants also bring this proceeding under Rule 9.21 of the Federal Court Rules 2011 on behalf of persons listed in Schedule A, as to whom:</p> <ul style="list-style-type: none"> a. Dr Lionel Babicz is a Jewish person and an Israeli citizen who is and at all relevant times was an academic at Sydney University teaching Japanese Studies and Asian Studies in the School of Languages and Culture. He also identifies as Zionist. b. Ms Yulia Berlin-Firer is a Jewish person and an Israeli citizen who is and at all relevant times was a casual academic staff member at Sydney University teaching in the Department of Hebrew, Biblical and Jewish Studies and involved in administration for that Department. She also identifies as Zionist. c. Professor David Celermajer AO is a Jewish person who is and at all relevant times was the Scandrett Professor of Cardiology at Sydney University, Faculty of Medicine and Health. He also identifies as Zionist. 	<p>The First and Second Applicants also bring this proceeding under Rule 9.21 of the Federal Court Rules 2011 on behalf of persons listed in Schedule A, as to whom:</p> <ul style="list-style-type: none"> a. Dr Lionel Babicz is a Jewish person and an Israeli citizen <u>person</u> who is and at all relevant times was an academic at Sydney University teaching Japanese Studies and Asian Studies in the School of Languages and Culture. He also identifies as Zionist. b. Ms Yulia Berlin-Firer is a Jewish person and an Israeli citizen <u>person</u> who is and at all relevant times was a casual academic staff member at Sydney University teaching in the Department of Hebrew, Biblical and Jewish Studies and involved in administration for that Department. She also identifies as Zionist. c. Professor David Celermajer AO is a Jewish person who is and at all relevant times was the Scandrett Professor of Cardiology at Sydney University, Faculty of Medicine and Health. He also identifies as Zionist. d. Associate Professor Dr Ilan Dar-Nimrod is a Jewish person and an Israeli citizen <u>person</u> who is and at all relevant times was an 	b

Sep 2025	Mar 2026	Wording in 5 Sept 2025 ASOC	Wording in 20 March 2026 PASOC	Cat *
		<p>d. Associate Professor Dr Ilan Dar-Nimrod is a Jewish person and an Israeli citizen who is and at all relevant times was an Associate Professor at Sydney University in the School of Psychology, Faculty of Science. He believes in Israel being a nation state and the national home of and for the Jewish people.</p> <p>e. Dr Yona Gilead is a Jewish person and an Israeli citizen who is and at all relevant times was the Malka Einhorn Modern Hebrew Senior Lecturer and Program Coordinator at the Faculty of Arts and Social Sciences at Sydney University (retiring at the end of July this year). She believes in Israel being a nation state and the national home of and for the Jewish people.</p> <p>f. Professor Judy Kay is a Jewish person who is and at all relevant times was a Professor of Computer Science in the Faculty of Engineering at Sydney University. She also identifies as Zionist.</p> <p>g. Emeritus Professor Gustav Lehrer FAA AM is a Jewish person who is and at all relevant times was a Professor Emeritus of Sydney University, School of Mathematics and Statistics, recognised internationally for his mathematical research. He also identifies as Zionist.</p> <p>h. Dr Guy Mayraz is a Jewish person and an Israeli citizen who was at all relevant times until early July 2024, a behavioural economist teaching at Sydney University, School of Economics, thereafter has had an adjunct status with Sydney University. He also identifies as Zionist.</p> <p>i. Dr Jennifer Dowling is a Jewish person who is and at all relevant times was the Manager, Education Innovation and Design in the Faculty of Arts and Social Sciences at Sydney</p>	<p>Associate Professor at Sydney University in the School of Psychology, Faculty of Science. He believes in Israel being a nation state and the national home of and for the Jewish people.</p> <p>e. Dr Yona Gilead is a Jewish person and an Israeli citizen who is and at all relevant times was the Malka Einhorn Modern Hebrew Senior Lecturer and Program Coordinator at the Faculty of Arts and Social Sciences at Sydney University (retiring at the end of July this year). She believes in Israel being a nation state and the national home of and for the Jewish people until retiring at about the end of July 2025.</p> <p>f. Professor Judy Kay is a Jewish person who is and at all relevant times was a Professor of Computer Science in the Faculty of Engineering at Sydney University. She also identifies as Zionist.</p> <p>g. Emeritus Professor Gustav Lehrer FAA AM is a Jewish person who is and at all relevant times was a Professor Emeritus of Sydney University, School of Mathematics and Statistics, recognised internationally for his mathematical research. He also identifies as Zionist.</p> <p>h. Dr Guy Mayraz is a Jewish person and an Israeli citizen <u>person</u> who was at all relevant times until early July 2024, a behavioural economist teaching at Sydney University, School of Economics, thereafter has had an adjunct status with Sydney University. He also identifies as Zionist.</p> <p>i. Dr Jennifer Dowling is a Jewish person who is and at all relevant times was the Manager, Education Innovation and Design in the Faculty of Arts and Social Sciences at Sydney University. She believes in Israel being a nation state and the national home of and for Jewish people.</p> <p>j. Dr Lynne Swarts is a Jewish person who, at Sydney University: (a) is and at all relevant times was a Sessional Academic and Guest Lecturer in the Hebrew, Biblical and Jewish studies Department; (b) was until 2023 a Research Affiliate in the History Department; and (c)</p>	

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		<p>University. She believes in Israel being a nation state and the national home of and for Jewish people.</p> <p>j. Dr Lynne Swarts is a Jewish person who, at Sydney University: (a) is and at all relevant times was a Sessional Academic and Guest Lecturer in the Hebrew, Biblical and Jewish studies Department; (b) was until 2023 a Research Affiliate in the History Department; and (c) in first semester 2024 became a Senior Academic Tutor at St Andrews College (which is part of Sydney University). She also identifies as Zionist.</p> <p>k. Dr Loren Mowszowski is a Jewish person and a dual Australian-Israeli citizen who was, until about mid-July 2024, a Senior Research Fellow, Clinical Neuropsychologist and Leader of the Cognitive Intervention Research Stream for the Healthy Brain Ageing Program at the Brain and Mind Centre and Faculty of Science, at Sydney University. She also identifies as Zionist.</p> <p>l. Professor Peter Morgan, who is addressed more fully in [10] below, is and at all relevant times was Director of the European Studies Program at the School of Languages and Cultures at Sydney University.</p>	<p>in first semester 2024 became a Senior Academic Tutor at St Andrews College (which is part of Sydney University). She also identifies as Zionist.</p> <p>k. Dr Loren Mowszowski is a Jewish person and a dual Australian-Israeli citizen (and identifies as and is an Israeli person) who was, until about mid-July 2024, a Senior Research Fellow, Clinical Neuropsychologist and Leader of the Cognitive Intervention Research Stream for the Healthy Brain Ageing Program at the Brain and Mind Centre and Faculty of Science, at Sydney University. She also identifies as Zionist.</p> <p>l. Professor Peter Morgan, who is addressed more fully in [409] below, is and at all relevant times was Director of the European Studies Program at the School of Languages and Cultures at Sydney University.</p>	
[10]	[9]	<p>Whereas Professor Morgan does not identify as Jewish or Israeli, he is nevertheless an affected or aggrieved person protected by the operation of the <i>Racial Discrimination Act 1975</i> (Cth) (RDA) and the AHRC Act for Professor Keane's unlawful discrimination set out below, by reason of the following facts, matters and circumstances:</p> <p>a. He has more than an intellectual or emotional concern in the subject matter of Professor Keane's Staff Member's Post;</p> <p>b. He has a grievance beyond a general member of the public by being expressly named and vilified in Keane's Staff Member's Post, or directly impugned in the unlawful vilification of his (senior) academic associates of Sydney University;</p>	<p>Removed g. The reliance in the Amended Statement of Claim concerning Professor Keane in respect of the Hamas Flag Post and the Staff Members Post is cumulative, with the consequence that both can be relied upon together for the purposes of establishing the causation and racial elements in s18C of the RDA.</p>	a

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		<p>c. The target or imputations of the Staff Members Post as set out below were to offend, insult, humiliate or intimidate named Jewish and Israeli staff members, because of their race, ethnicity or nationality, to paint them as racist, or as devoid of morals, scruples or conscience when it comes to Palestinians, or as akin to Nazis in considering Palestinians as less than human;</p> <p>d. He was either painted as, and could be seen to be by viewers of the Post as, a Jew or Israeli with those negative features, or as a person associated with and supporting Jews or Israelis with those negative features. Either outcome is a substantial grievance and the sort of mischief that the RDA seeks to redress.</p> <p>e. Further or alternatively, he is aggrieved as an associate of, or a person with a close connection with, the named Jewish/Israeli staff members, as a person who was supporting them in the email written by Associate Professor Avril Alba (see [43.a] below), and then vilified in Professor Keane’s escalation on his X Page.</p> <p>f. Further or alternatively, Professor Morgan, in a representative role with the Applicant and represented person staff members, was aggrieved by virtue of his special responsibility to safeguard the interests of Jewish or Israeli staff/academics at least at Sydney University, in joining and supporting Jewish/Israeli representative staff/academics attempting to do the same, and was vilified for so doing.</p> <p>g. The reliance in the Amended Statement of Claim concerning Professor Keane in respect of the Hamas Flag Post and the Staff Members Post is cumulative, with the consequence that both can be relied upon together for the purposes of establishing the causation and racial elements in s18C of the RDA.</p>		
[11]	[10]	<p>Each of the persons named in [9] above:</p> <p>a. Have the same interest in the proceeding in that they were exposed to the same unlawful conduct, namely to Professor Keane’s Staff Members’ Post and his Hamas Flag Post the details of which are set out below.</p> <p>b. By reason of that exposure are entitled to the same relief and remedies as the First and Second Applicants by virtue of the</p>	<p>Each of the persons named in [8] above:</p> <p>a. ...</p> <p>b. By reason of that exposure are <u>equally affected by the declaratory relief which the First and Second Applicants seek</u> (by virtue of the operation of s18C of the RDA and s46PO(4) of the AHRC Act); and</p> <p>c. ...</p>	b


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		operation of s18C of the RDA and s46PO(4) of the AHRC Act; and c. Each has consented in writing to be represented in this proceeding.		
[12]	[11]	For the purposes of the RDA Racial Discrimination Act 1975 (Cth): a. Jewish persons constitute a group of people with a shared race, descent and/or ethnic origin. b. Israeli citizens and Israeli persons constitute a group of persons with a shared ethnic origin and/or nationality.	For the purposes of the RDA Racial Discrimination Act 1975 (Cth): a. Jewish persons constitute a group of people with a shared race, descent and/or ethnic origin. b. Israeli citizens and Israeli persons constitute a group of persons with a shared ethnic origin and/or nationality origin .	a
[13]	[12]	Israel is a nation state and the national home of and for the Jewish people. Its citizens are mostly Jewish persons.	a. Israel is a nation state and the national home of and for the Jewish people; b. Its citizens are mostly Jewish persons; c. <u>Most Jewish persons in Australia:</u> (i) <u>feel a personal connectedness with Israel and Israeli people;</u> (ii) <u>have relatives living in Israel; and</u> (iii) <u>have a concern for the safety of Israelis.</u>	d
[14]	[13]	The First Respondent (Professor John Keane): a. is a natural person capable of being sued; and b. is and at all relevant times was a Professor of Politics at Sydney University.	The First Respondent (Professor John Keane): a. is a natural person capable of being sued; and b. is and at all relevant times was a Professor of Politics at Sydney University; c. <u>is a senior supporter/member of the Sydney Staff for Boycott, Divestment and Sanctions (BDS) movement at Sydney University.</u>	d
[15]	[14]	The Second Respondent (Sydney University) is a body corporate incorporated under s 5 of the University of Sydney Act 1989 and capable of being sued.		N/A
[16]	[15]	Professor John Keane operates and at all material times operated, as a professor of the Sydney University, from Sydney, New South Wales or elsewhere in Australia an X page (Keane X Page) at the web address: https://x.com/jkeaneSDN?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor Particulars a. Professor Keane's title is stated to be '@jkeaneSDN' b. Professor Keane cites his title as 'professor.' Professor Keane commenced that site on March 2013.		N/A

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[17]	[16]	In or around October 2024 the Keane X Page had approximately 7,934 Followers, and at the time of this Statement of Claim had about 7,835 Followers.	In or around October 2024 the Keane X Page had approximately 7,934 Followers, and at the time of this Amended Statement of Claim had about 7,835 8,297 Followers.	b
[18]	[17]	The Keane X Page is and was at all relevant times accessible by members of the public whether or not they “follow” Professor Keane.		N/A
[19]	[18]	The Keane X Page is regularly updated by Professor Keane posting various publications including text, photos and audio-visual recordings of remarks and speeches.		N/A
[20]	[19]	A number of the publications which appear on the Keane X Page include links to various written or oral material published by Professor Keane or to material that he endorses or on which he comments.		N/A
[21]	[20]	Since 4 March 2022 Hamas has been listed by the Attorney General of the Commonwealth as a terrorist organisation under the Criminal Code Act 1995 (Cth): s 102.1.		N/A
[22]	[21]	The Statement of Reasons for listing Hamas as a terrorist organisation include that it is guided by Islamic principles of “destroying Israel		N/A
[23]	[22]	The Hamas Covenants express intention is to dismantle Israel as ‘the Zionist entity’ and to create an Islamic State in its place.	Particulars a. Particulars are annexed to this Amended Statement of Claim.	a
[24]	[23]	The Hamas Covenants identify Hamas’ raison d’etre as “obliterating” Israel and “killing the Jews”.		N/A
N/A	[24A]	N/A	<u>It has been widely reported and/or Jews and Israelis have read or believe on the basis of that information and/or the Hamas Covenants referred to above, that Hamas is committed to:</u> <u>a. Destroying Israel; and</u> <u>b. Killing Jewish persons or Israeli persons.</u>	d
[25]	N/A	Under s 80.2E ‘Prohibited symbols’, which is part of ‘Subdivision CA—Publicly displaying, and trading in, prohibited symbols and giving Nazi salute’, a prohibited terrorist organisation symbol is defined as: a. a symbol that a terrorist organisation (within the meaning of Division 102) uses, or members of a terrorist organisation use, to identify the organisation; b. something that so nearly resembles a symbol to which paragraph a. applies that it is likely to be confused with, or mistaken for, that symbol.	Removed in accordance with leave orders.	a
[26]	[25]	On 7 October 2023, Hamas members illegally invaded the State of Israel and killed, raped, maimed, sexually abused and tortured more than 1,200 Jewish persons or Israeli persons.	On 7 October 2023: a. Hamas members illegally invaded the State of Israel and killed, raped, maimed, sexually abused and tortured more than 1,200 Jewish persons or Israeli persons; and	d

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			b. <u>this amounted to the greatest loss of Jewish life on any single day since the Holocaust.</u>	
[27]	[26]	During the 7 October 2023 invasion, Hamas members also kidnapped, abducted and took as hostages more than 250 persons who were overwhelmingly Jewish or Israeli persons including women, children and the elderly.		N/A
N/A	[27A]	N/A	<p><u>Since 7 October 2023, there have been circumstances manifesting a sustained increase in antisemitism or discrimination towards Jews and Israelis in Australia including harm and damage to Jewish or Israeli people and/or their property which inform the reasonably likely reaction of Jewish or Israelis persons to the impugned conduct set out below.</u></p> <p><u>Particulars</u></p> <ul style="list-style-type: none"> i. <u>9 October 2023 – Protests outside Sydney Opera House on 9 October 2023 celebrating the 7 October attack and making of antisemitic chants.</u> ii. <u>February 2024 – Almost 600 Jewish Australians doxed (including First and Second Applicants and Dr Lionel Babicz) when personal details of people in a Whatsapp group formed by Jewish writers, artists, musicians and academics were disseminated by anti-Zionist activists.</u> iii. <u>10 October 2024 – Spate of graffiti using ‘Hamas’ in Eastern Suburbs of Sydney.</u> iv. <u>13 October 2024 - Avner’s Bakery in inner-city Sydney branded with Nazi, Hamas graffiti.</u> v. <u>21 November 2024 - Graffiti of 9 cars with anti-Israeli graffiti and 1 car torched in Woollahra, NSW. Homes also damaged in Woollahra.</u> vi. <u>5 December 2024 - Anti-Israel placard outside Great Synagogue, Sydney.</u> vii. <u>6 December 2024 - Burning of Adass Israel Synagogue of Melbourne to the ground with persons injured in fire.</u> viii. <u>11 December 2024 - Cars set alight and anti-Israeli graffiti at Magney Street, Woollahra, NSW.</u> ix. <u>17 January 2024 - Graffiti and car burning attack on ECAJ Co-CEO’s former home in Sydney.</u> x. <u>10 January 2025 - Graffiti attack of Southern Sydney Synagogue.</u> xi. <u>11 January 2025 - Graffiti (Swastikas) and attempted arson of Newtown Synagogue.</u> xii. <u>21 January 2025 - Sydney Childcare Centre in Maroubra, firebombed with antisemitic graffiti on its walls.</u> xiii. <u>29 January 2025 - Caravan loaded with explosives intended to be used on Jewish persons (listed Great Synagogue and Sydney Jewish museum) in incident classified as ‘terrorist’ event.</u> xiv. <u>30 January 2025 - Graffiti of Mount Sinai College (Jewish Primary School in Kingsford Maroubra, attached to Maroubra Synagogue and near Child Care centre) vandalised with antisemitic graffiti.</u> xv. <u>1 February 2025 - Six Jewish women in their 20s had eggs thrown at them at Bondi Beach, NSW, in what was treated as an antisemitic attack. Further antisemitic graffiti the same day sprayed at Kingsford.</u> xvi. <u>2 February 2025 – Perth Western Suburbs home the target of antisemitic graffiti amid a wave of attacks in Australia.</u> xvii. <u>3 February 2025 - antisemitic graffiti sprayed on a well-known Jewish family’s Middle Park home.</u> xviii. <u>February 2025 - 2 nurses in Sydney threatened to kill Israeli patients and boasted about refusing to treat Israelis.</u> 	d

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			<p>xix. <u>July 2025- During a Melbourne museum field trip, Jewish children targetted by older students hurling slurs like 'dirty Jews' and other antisemitic chants.</u></p> <p>xx. <u>December 2025 – Bondi Beach Hanukkah Massacre resulting in 15 people murdered by two Muslim gunmen and about 47 people injured in a terror attack targetting Jewish people.</u></p> <p>xxi. <u>December 2025 – Jewish Sydney bakery Avner's closes after prolonged antisemitic harassment which culminated in safety fears after Bondi terror attack.</u></p> <p>xxii. <u>February 2026 – Major protest in Sydney opposing official visit of Israel's President Isaac Herzog involving chants of "globalise the intifada!"</u></p> <p>xxiii. <u>Since 7 October 2023 Sydney University (and other Australian universities) has been an environment in which considerable and frequent antisemitic/antizionist chants, posters, posts and other conduct has occurred causing considerable distress, fear and various forms of harm to Jewish or Israeli staff, students and others.</u></p>	
[28]	[27]	<p>Hamas's terrorist acts described above were taken because Hamas's leadership, commanders, members and operatives in the field believed the men, women and children intended by them to be subjected, and in fact subjected, to those acts:</p> <ul style="list-style-type: none"> a. were overwhelmingly Jewish persons or Israeli persons; and b. were subjected to those acts because they were or were believed to be in almost all cases Jewish persons or Israeli persons. 	Removed in accordance with leave orders.	a
N/A	[28A]	N/A	<p><u>It has been widely reported, and/or Jewish and Israeli persons have read and believe on the basis of that information, that Hamas's terrorist acts described above (see [25]-[26]) were taken because Hamas's leadership, commanders, members and operatives in the field believed that the men, women and children intended by them to be subjected, and in fact subjected, to those acts:</u></p> <ul style="list-style-type: none"> <u>a. were Jewish persons or Israeli persons; and</u> <u>b. were subjected to those acts because they were or were believed to be in almost all cases Jewish persons or Israeli persons.</u> 	d
[29]	[28]	On or about 8 October 2023, the first day after the 7 October 2023 Hamas terrorist attacks described in [26]-[28] above, Professor Keane published the following picture on his Keane X Page, which shows 5 green Hamas flags with Arabic writing visible on them (the Hamas Flag Post)	"Described in [26]-[28] above" has been amended to "described in [25]-[27] above".	d (refers to other paragraphs (25 and 27A) which are objected to)

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[30]	[29]	The Hamas Flag Post: a. continued to be and remained posted and visible on the Keane X Page as from 8 October 2023; b. as at 23 October 2024, had 6,125 views; and c. as at the time of the Amended Statement of Claim, had about 6,232 views..	The Hamas Flag Post: a. continued to be and has remained posted and visible on the Keane X Page as from 8 October 2023; b. as at 23 October 2024, had 6,125 views; and c. as at the time of the Amended Statement of Claim, had about 6,204 <u>6,288</u> views <u>and remains accessible</u> .	d
[31]	[30]	Each flag was, and was known and intended by Professor Keane to be, a Hamas flag used by the Hamas military wing.		N/A
[32]	[31]	Each flag was, or is, known by the Applicants, and the persons on whose behalf the Amended Statement of Claim is filed, to be the Hamas flag.		N/A
[33]	[32]	The Applicants and the persons on whose behalf the Amended Statement of Claim is filed also knew, or now know, that the Hamas flag is the flag used by the Hamas military wing		N/A
[34]	[33]	At all material times the Hamas Flag was thus recognisable as the Hamas flag.		N/A
[35]	[34]	Professor Keane's Hamas Flag Post was and continued to be a post of a prohibited terrorist organisation symbol.	Removed in accordance with leave orders.	a
[36]	[35]	The Hamas Flag Post conveyed the following imputations: a. The activities described in [26]-[28] above of Hamas on October 7, which involved the killing, rape, maiming, sexual abuse, kidnapping and torture of Jewish and Israeli people persons, because they were believed to be Jewish or Israeli, was an event that was to be celebrated, endorsed, supported and approved of. c. Professor Keane celebrated, endorsed, supported and approved those activities. d. Hamas and its objectives (including those outlined in [22], [23], [24] and [28] above) were to be celebrated, endorsed, supported and approved. e. Professor Keane celebrated, endorsed, supported and approved of Hamas and its objectives (including those outlined in [22], [23], [24] and [28] above).	Changes to cross referencing and insertion of "and reinforced by the matters in [24A] and [28A]" at subparagraphs 35(a), (c) and (d).	d
[37]	[36]	Professor Keane's posting of the Hamas Flag Post was an act which caused images to be communicated to the public. They were: a. done in a public place; and were b. done in the sight and hearing of people who were in a public place; and not acts done in private.		N/A
[38]	[37]	Professor Keane's posting of the Hamas Flag Post and its non-removal, by conveying any, all or some of the imputations alleged in [36] was reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate the Applicants, the persons in Schedule A, as well as other Jewish persons and Israeli persons in Australia.		New.
[39]	[38]	The posting and its non-removal was made or done because of the race, national or ethnic origin of the people reasonably likely to be offended, insulted, humiliated or intimidate by the posting including because:		New.

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		<p>a. The subject matter of the post, considering its timing, was directly related to events that were themselves directly related to the race, ethnic origin or national origin (Jewish and/or Israeli) of the victims of the events of October 7;</p> <p>b. The posting was plainly calculated to convey a message about or concerned with the race, ethnic origin or national origin (Jewish and/or Israeli) of the victims of the events of October 7;</p> <p>c. The posting was actuated or motivated by considerations of race, ethnic origin or national origin or, in the alternative, race, or ethnic or national origin was otherwise a factor in Professor Keane's act.</p>		
[40]	[39]	In the premises set out in [16]-[39] above, Professor Keane contravened s 18C of the RDA and engaged in unlawful discrimination within the meaning of ss 3(1) and 46P of the AHRC Act. Australian Human Rights Commission Act 1986 (Cth)	Changes to cross-references [15]-[38].	d (incorporates objectionable paragraphs)
[41]	[40]	In about 8 November 2023, Professor Keane posted to the Keane X Page, a post which contains the under-mentioned text displayed above a letter, which was stated to have been sent by the complainants and the represented persons to him on 7 November 2023 (Keane's Staff Members Post). Professor Keane stated in the post that the letter was: <i>"an ad hominem response to my Open Letter by a small group of pro-Israel staff members: defamatory insults ('repulsive' etc) mixed with self-righteous indignation of people convinced they are victims of non-humans (Palestinians) who imperil their Promised Land..."</i>	Complainants changed to Applicants	b
[42]	[41]	<p>A screenshot of the post as it was seen on the Keane X Page is set out below.</p> 		N/A
[43]	[42]	The post had the following accessible attachments: <p>a. An email authored by Associate Professor Avril Alba of Sydney University (with certain modifications compared to the actual email) on 7 November 2023 to</p>	The post had the following accessible attachments which are annexed to this Amended Statement of Claim and are relied on as though set out in full in this paragraph and [40] above:	b

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		<p>Professor Keane and Vice Chancellor Mark Scott, copying a large number of Sydney University groups, and being an email in a chain of emails among Sydney University academics. The attachment Keane put up contained a photograph of Professor Alba.</p> <p>b. A picture with the names of 17 academics from Sydney University in larger font (all of whom were Jewish and/or Israeli academics except for Peter Morgan), namely:</p> <ol style="list-style-type: none"> 1. Dr Michael Abrahams-Sprod 2. A/Prof Avril Alba 3. Dr Lionel Babicz 4. Yulia Berlin-Firer 5. Professor David Celermajer 6. A/Prof Ilan Dar-Nimrod 7. Dr Jennifer Dowling 8. Dr Yona Gilead 9. Professor Judy Kay 10. Professor Gustav Lehrer 11. Dr Guy Mayraz 12. Professor Peter Morgan 13. Dr Loren Mowszowski 14. Professor Suzanne Rutland (Second Applicant) 15. Dr Andy Smidt (Fifth Applicant) 16. Dr Lynne Swarts 17. Dr Joseph Toltz (First Applicant) <p>c. A letter which purports to be Professor Keane's response of 6 November 2023 to a communication of Vice Chancellor Mark Scott to all Sydney University staff and students of 26 October 2023 (in the post it appeared on a letterhead instead of being in email form).</p>	<p>... (Reference to Smidt being fifth applicant also removed).</p>	
[44]	[43]	The Vice Chancellor's original communication dated 26 October 2023, to which Professor Keane's 6 November email responded, was not attached to the post. In that email the Vice Chancellor and President had said that Sydney University would not tolerate support for Hamas' recent terrorist attacks.		N/A
[45]	[44]	No permission or authorisation was sought by Professor Keane, or was obtained by him, from any of the 17 named academics to publish their names or the content of their email.		N/A

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[46]	[45]	<p>Professor Keane's Staff Members Post remained on his Keane X Page from 8 November 2023 until it was removed as a result of a Sydney University disciplinary process on or about 21 May 2024.</p> <p>Particulars of the disciplinary process</p> <p>(a) Complaints were made by Jewish/Israeli staff of Sydney University from 8 November 2023 onwards. This included but was not limited to complaints made directly by or on behalf of persons including: Professor Emerita Suzanne Rutland (Second Applicant), Dr Sarah Aamidor, Dr Michael Abrahams-Sprod, Associate Professor Avril Alba, Dr Lionel Babicz, Dr Larisa Barnes, Professor David Celermajer AO, Associate Professor Ronald Clarke, Dr Jennifer Dowling, Dr Yona Gilead, Talia Gonda, Emmilly Graf, Dr Eve Guerry, Associate Professor Sabina Kleitman, Professor Emerita Ines Krass, Professor Emeritus Gustav Lehrer AO, Mr Yaniv Levy (Fourth Applicant), Associate Professor Tania Markovic, Sarah Marks, Dr Guy Mayraz, Professor Peter Morgan, Dr Loren Mowszowski, Adam Muscio, Isabella Nahon, Emeritus Professor Leo Radom, Tracie Sillers, Dr Andy Smidt (Fifth Applicant), Rachel Sullivan, Dr Lynne Swarts, Dr Joseph Toltz (First Applicant), Vanina Vaisman-Levy, Yulia Berlin-Firer.</p> <p>(b) Examples include:</p> <ol style="list-style-type: none"> i. On 8 November 2023, Avril Alba, Yulia Berlin-Firer, Suzanne Rutland and Michael Abrahams-Sprod complained to Mark Scott (Vice Chancellor) and Annamarie Jagose (Provost and Deputy ViceChancellor) about Professor Keane (and Jake Lynch). ii. On 9 November Dr Loren Mowszowski wrote to Mark Scott and Annamarie Jagose endorsing her colleague's complaints. Lionel Babicz wrote to Professor Jagose reinforcing Ms Berlin-Firer's complaint. iii. On 30 November 2023 Dr Mowszowski followed up Professors Jagose and Scott, concerned that she had had no response or acknowledgment to her email sent 3 weeks earlier. iv. On 1 December 2023, Peter Wertheim of the Executive Council of Australian Jewry and Mark Scott discussed concerns of Jewish staff and students including their unanswered complaints regarding Professor Keane's email. v. On 22 December 2023, Dr Mowszowski wrote to Naomi Connolly, Senior Manager in Workplace Relations, concerned at the slowness of the process which was compounding her distress and causing her to largely avoid attending main campus. vi. On 17 January 2024, Professor Rutland wrote to the Vice Chancellor, provost, Chancellor, and the Senate, supported by some 30 predominantly Jewish/Israeli staff, who comprised a newly formed Sydney University branch of the Australian Academic Alliance Against Antisemitism (5A Group). The letter appended 'Key Issues' concerning 'ongoing the pro-Palestinian campaign' at Sydney University since Hamas' 7 October invasion. The Issues included "Intimidation and defamation of academic staff over University email and on social media", noting Professor Keane's inflammatory letter and subsequent events and the slow response of the Workplace Department. vii. On 22 January 2024 Dr Mowszowski sought a further update. viii. On 13 February 2024, Mark Scott responded to Professor Rutland's 17 January complaint on behalf of the 5A Group. Nothing expressly or adequately addressed the Keane concern. 		N/A

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		<ul style="list-style-type: none"> ix. On 19 March 2024 the 5A Group were informed that Workplace Relations completed a preliminary assessment and advised next steps to Lisa Adkins, Dean of Faculty of Art and Sciences. x. On 3 April 2024, Lisa Adkins sent an outcome letter regarding the Keane complaint. Professor Keane's conduct was found to contravene University policies and codes and to be Misconduct under Sydney University's Enterprise Agreement. The University would discipline Professor Keane and direct him to delete the Staff Members Post. xi. On 8 April 2024, Dr Mowszowski wrote to Professor Adkins and Ms Connolly, communicating 'extreme concern' that Professor Keane's Post was still on X, causing 'further insult and offense' and questioning what consequences Keane received and how complainants could be assured disciplinary actions will be effective. xii. On 10 April 2024, Dr Mowszowski was advised that the University would not provide additional details regarding Professor Keane's disciplinary action. The same day she sought that Professor Keane be contacted directly to ensure the Post's removal was not significantly delayed. xiii. On 26 April 2024, Dr Mowszowski wrote to Professor Adkins and Ms Connolly noting the Staff Post was still online, which was perpetuating "distress, intimidation and offence," undermining the complaint process and asking why he was not being held to account. xiv. During 28 April to 10 May 2024, Dr Babicz wrote several emails to/from Lisa Adkins and Naomi Connolly, expressing major concern about the University's lack of effective action regarding Keane's Staff Post, stating: "considering the ongoing events on campus, including the involvement of jihadist elements external to the University, the potential threat to the safety of the people doxed by that post is increasing day by day." (10 May) xv. On 3 and 7 May 2024, Ms Connolly wrote to Dr Mowszowski, failing to address her concerns. <p>On 21 May 2024, Jodi Dickson, Director of Workplace Relations, wrote to the 5A Group complainants informing them that Professor Keane had removed their names from the posts he made on X.</p>		
[47]	[46]	Until the date of the removal of the post from Professor Keane's X page on 21 May 2024, Professor Keane's Staff Member's Post had about 30,000-31,000 views.		N/A
[48]	[47]	<p>Professor Keane's Staff Members Post conveyed the following imputations:</p> <ul style="list-style-type: none"> a. The named Jewish and Israeli staff members regarded, treated, considered and were convinced that Palestinians are "non-humans" (meaning something less than or other than human beings). b. The named Jewish and Israeli staff members were racists who regarded, treated, considered and were convinced that Palestinians challenging Israel as a Jewish homeland, or as their "Promised land", are "non-humans". c. The named Jewish and Israeli persons, in seeking to defend the existence of Israel should be condemned and publically exposed as self-righteous racists without any morals, scruples or conscience. d. Jewish persons and Israeli persons believe that Palestinians or Palestinians challenging Israel as a Jewish homeland or as their "Promised land" are "non humans". 		N/A

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		Jews and Israelis, or the named Jews and Israelis, were acting like the Nazis in considering Palestinians as “non-humans” or as something less than, or other than, human beings.		
[49]	[48]	Contrary to the imputations set out immediately above: a. None of the staff members identified in the post were racists nor were they persons who regarded, treated, considered or were convinced that Palestinians or Palestinians challenging Israel as a Jewish homeland or as “their Promised land” were “non-humans”. b. Jewish persons and Israeli persons as a group or otherwise did not regard, treat, consider and were not convinced that Palestinians or Palestinians challenging Israel as a Jewish homeland or as their “Promised Land” were “non-humans”.		N/A
[50]	[49]	The reference to “non-humans” has particular resonance for Jewish and Israeli persons given its historical use to describe Jewish persons in that way.	Israeli persons	b
[51]	[50]	The First and Second Applicants and each of the persons in Schedule A, who were all named in Keane’s Staff Members Post, suffered distress, loss and damage, including harm to their reputation, and/or psychological injury by reason of the publication and nonremoval of the Keane’s Staff Member’s Post.	Removed and each of the persons in Schedule A	b
[52]	[51]	Professor Keane’s posting of, and failure to remove prior to 21 May 2024, Keane’s Staff Members Post were acts which caused words and images to be communicated to the public. They were: a. done in a public place; and were b. done in the sight and hearing of people who were in a public place; and not acts done in private.		N/A
[53]	[52]	Professor Keane’s posting of, and his failure to remove prior to 21 May 2024, Keane’s Staff Members Post, by conveying any or all of the imputations alleged above and by attributing the false characteristics alleged to those named Jewish and Israeli Staff Members and to Jewish persons and Israeli persons on the basis of their group membership or otherwise, was reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate the Jewish and Israeli Staff Members named in Keane’s Staff Members Post and other Jewish persons and Israeli persons.	Israeli persons in Australia	b
[54]	[53]	The posting and its non-removal prior to 21 May 2024 was made or done because of the race, national or ethnic origin of the people	53(e): “... which provides context for a real reason...” Added to 53(f): Particulars	d

Sep 2025	Mar 2026	Wording in 5 Sept 2025 ASOC	Wording in 20 March 2026 PASOC	Cat *
		<p>reasonably likely to be offended, insulted, humiliated or intimidate by the posting including because:</p> <ol style="list-style-type: none"> a. The post referred to and criticised only Jewish and Israeli people; b. It did so by reference to their position as being “pro-Israel”; c. The subject matter of the post was related by context to events that were themselves directly related to the race, ethnic origin or national origin (Jewish and/or Israeli) of the victims of the events of October 7; d. The posting was plainly calculated to convey a message about or concerned with the race, ethnic origin or national origin (Jewish and/or Israeli) of the people named; e. Professor Keane had earlier posted the Hamas Flag Post which provides context for the real reason why the Staff Members Post was actuated by race and/or ethnic origin and/or national origin or, in the alternative, race, or ethnic or national origin was otherwise a factor in Professor Keane’s conduct; and f. Professor Keane has a tendency to engage in conduct which does and is intended to offend and/or insult and/or humiliate and/or intimidate Jewish people and Israeli people. 	<p>(i) Particulars of conduct are annexed to this Amended Statement of Claim</p>	
[55]	[54]	<p>In the premises set out in [41]-[54] above, Professor Keane contravened s 18C of the RDA and engaged in unlawful discrimination within the meaning of ss 3(1) and 46P of the AHRC Act.</p>	<p>Change to cross-reference [40]-[53].</p>	N/A
[56]	[55]	<p>Professor Keane is an employee of Sydney University.</p>		N/A
[57]	[56]	<p>The posting, and the non-removal until on or about 21 May 2024, of Professor Keane’s Staff Members Post was made in connection with his duties as an employee of Sydney University:</p> <ol style="list-style-type: none"> a. the communications that precipitated the Staff Members Post were internal staff University email exchanges about University matters; 		N/A

Sep 2025	Mar 2026	Wording in 5 Sept 2025 ASOC	Wording in 20 March 2026 PASOC	Cat *
		<ul style="list-style-type: none"> b. the Staff Members Post had the potential to (and actually did) adversely affect the working relationship of the named employees of Sydney University, and for other Jewish/Israeli employees; c. The following documents make it clear that communications of this kind are directly connected to employment by Sydney University: <ul style="list-style-type: none"> i. Sydney University Complaint Procedures; ii. the <i>University of Sydney Enterprise Agreement 2023-2026</i> (eg. cl 354, 360, 361, 362, 366 and 368); iii. Sydney University Staff and Affiliates Code of Conduct 2021 (eg. cl 3, 5, 7, 8, 11, 15, 19, 20, 21, 23, 24); iv. Public Comment Policy of Sydney University (eg. Guidelines and Pt 2); v. <i>University of Sydney Act 1989</i> (NSW) (eg. s 2); <p><i>Charter of Freedom of Speech and Academic Freedom 2019.</i></p>		
[58]	[57]	The Staff Members Post and its non-removal are acts that would have been unlawful had they been done by Sydney University for the reasons set out at paragraphs [41]-[55] above.	Change to cross-reference [40]-[54].	N/A
[59]	[58]	Sydney University failed to take all reasonable steps to prevent Professor Keane from publishing the Staff Members Post considering: <ul style="list-style-type: none"> a. the correspondence referred to or described in [41]-[45] above; b. the disciplinary process and the complaints described in [46] and the failure of Sydney University to act on those complaints appropriately, with due diligence or due expedition. 	Change to cross-reference [40]-[44] in subparagraph (a) and [45] in subparagraph (b).	N/A
[60]	[59]	In the premises above, Professor Keane Staff Members Post and its non-removal were acts of Professor Keane done in connection with his duties as an employee or agent of Sydney University for the purposes of imposing vicarious liability on Sydney University for the unlawful discrimination by Professor Keane pursuant to s 18E of the RDA.		N/A
[61]	[60]	On about 31 October 2024, the Applicants lodged with the Australian Human Rights Commission under sections 46P and 46PB of the AHRC Act Australian Human Rights Commission Act 1986 (Cth) a complaint against the Respondents alleging unlawful discrimination (AHRC Complaint)		N/A
[62]	[61]	The unlawful discrimination alleged above is the same or the same in substance as the unlawful discrimination alleged in the AHRC Complaint.		N/A
[63]	[62]	On 14 April 2025, a delegate of the President of the Australian Human Rights Commission terminated the AHRC Complaint under section 46PH(1B)(b) of the AHRC Act Australian Human Rights Commission Act 1986 (Cth), on the ground that there was no reasonable prospect of the matter being settled by conciliation.		N/A

Sep 2025	Mar 2026	Wording in 5 Sept 2025 ASOC	Wording in 20 March 2026 PASOC	Cat *
		Particulars AHRC Notice of Termination in File No. 2024-15489 dated 14 April 2025 including Attachment A (Reasons for decision), Attachment B (A copy of the complaint) and Attachment C (A copy of the amendment to the complaint)		
[64]	[63]	In the premises, the Applicants and each of the persons in Schedule A are entitled to the relief claimed in the Amended Originating Application.	No change	N/A