

NOTICE OF FILING

Details of Filing

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File Title:	JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



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

Registrar

Important Information

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

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



Amended Statement of claim

No. NSD951of 2025

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

Joseph Toltz and others and Suzanne Rutland on behalf of themselves and the represented persons listed in Schedule A

Applicants

John Keane and another
Respondents

Jurisdiction

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

Parties

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

Filed on behalf of (name & role of party)	The Applicants		
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- c. an Israeli person (being an Israeli citizen and identifying as an Israeli).

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

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

Particulars

- i. AUJS is the peak representative body for Jewish university students across Australia and New Zealand.
- ii. From 7 October 2023, the Third Applicant was the head of politics for AUJS NSW.
- iii. From January 2025 to the present, the Third Applicant has been the national head of campaigns for AUJS; and
- b. was until he graduated in November 2024 a student enrolled at Sydney University studying a Bachelor of Architecture; and
- c. is and at all relevant times was a Jewish person.

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

- a. is and at all relevant times was a Research Education Lead in the Faculty of Medicine and Health at Sydney University; ~~and~~
- b. was a student at Sydney University enrolled in a Graduate Diploma of Crosscultural and Applied Linguistics from Semester 1 2024 until he withdrew on about 6 August 2024;
- c. is and at all relevant times was a Jewish person; and
- d. is and at all relevant times was an Israeli person (being an Israeli citizen and a son to two Israeli parents who were born in and continue to reside in Israel and identifies as an Israeli).

7. Each Applicant:

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

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

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

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

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

- I. Professor Peter Morgan, who is addressed more fully in [9] below, is and at all relevant times was Director of the European Studies Program at the School of Languages and Cultures at Sydney University.

9. Whereas Professor Morgan does not identify as Jewish or Israeli, he is nevertheless an affected or aggrieved person protected by the operation of the *Racial Discrimination Act 1975* (Cth) (**RDA**) and the AHRC Act for Professor Keane's unlawful discrimination set out below, by reason of the following facts, matters and circumstances:

- a. He has more than an intellectual or emotional concern in the subject matter of Professor Keane's Staff Member's Post;
- b. He has a grievance beyond a general member of the public by being expressly named and vilified in Keane's Staff Member's Post, or directly impugned in the unlawful vilification of his (senior) academic associates of Sydney University;
- c. The target or imputations of the Staff Members Post as set out below were to offend, insult, humiliate or intimidate named Jewish and Israeli staff members, because of their race, ethnicity or nationality, to paint them as racist, or as devoid of morals, scruples or conscience when it comes to Palestinians, or as akin to Nazis in considering Palestinians as less than human;
- d. He was either painted as, and could be seen to be by viewers of the Post as, a Jew or Israeli with those negative features, or as a person associated with and supporting Jews or Israelis with those negative features. Either outcome is a substantial grievance and the sort of mischief that the RDA seeks to redress.
- e. Further or alternatively, he is aggrieved as an associate of, or a person with a close connection with, the named Jewish/Israeli staff members, as a person who was supporting them in the email written by Associate Professor Avril Alba (see [42.a] below), and then vilified in Professor Keane's escalation on his X Page.
- f. Further or alternatively, Professor Morgan, in a representative role with the Applicant and represented person staff members, was aggrieved by virtue of his special responsibility to safeguard the interests of Jewish or Israeli staff/academics at least at Sydney University, in joining and supporting Jewish/Israeli representative staff/academics attempting to do the same, and was vilified for so doing.

10. Each of the persons named in [8] above:

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

Professor John Keane X (Twitter) Page

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

Particulars

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

Hammas

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

Particulars

- a. Particulars are annexed to this Amended Statement of Claim.
23. The Hamas Covenants identify Hamas' raison d'être as "*obliterating*" Israel and "*killing the Jews*".
- 24A A sufficiently significant proportion of Jewish and Israeli persons in Australia for purposes of the s18C RDA legislative prohibition (not taking into account those who are over-sensitive or especially sanguine) believe that Hamas is committed to:
- a. Destroying Israel; and
 - b. Killing Jewish persons or Israeli persons.

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

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

7 October 2023

- 25. On 7 October 2023, 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.
- 26. During the 7 October 2023 invasion, Hamas members also kidnapped, abducted and took as hostages more than 250 persons who were overwhelmingly Jewish or Israeli persons including women, children and the elderly.
- 27A Between 7 October 2023 and the removal of the Staff Members Post on 21 May 2024, there have been circumstances manifesting a sustained increase in antisemitism or discrimination towards Jews and Israelis in Australia including harm and damage to Jewish or Israeli people and/or their property which inform the reasonably likely reaction of Jewish or Israelis persons to the impugned conduct set out below.

Particulars

The Applicants rely on the Reports by the Executive Council of Australian Jewry concerning Antisemitism in Australia in 2023 (**2023 Report**) and 2024.

The 2023 Report reported a 738% increase in antisemitic incidents in October and November 2023 compared to the months of October and November in 2022.

Some of the incidents of antisemitism since 7 October 2023 that precede the impugned conduct include:

- i. 9 October 2023 – Protests outside Sydney Opera House on 9 October 2023 celebrating the 7 October attack and making of antisemitic chants.
- ii. 28 October 2023 – a 44-year-old Jewish man was severely beaten by pro-Palestinians in Arncliffe, Sydney, resulting in him being hospitalised for four days.
- iii. 10 November 2023 – a riot broke out in Caulfield, Melbourne, forcing the evacuation of a synagogue and resulting in a Jewish man being injured by being hit with a large rock thrown by an anti-Israel protester.

- iv. 18 November 2023 – 72 year old Jewish man in Bentleigh, Melbourne assaulted while entering a synagogue by an assailant after seeing Jewish calendars in his car.
- v. 4 December 2023 – a group of 13-year-old Jewish girls wearing the uniform of their Jewish school had food and a box with swastikas etched and drawn onto it thrown at them in Bondi Junction, Sydney.
- vi. 6 January 2024 – a group of 10-15 males in St Kilda shouted “Fuck the Jews” at several Jewish people before throwing shoes at and spitting on them.
- vii. 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.
- viii. 5 February 2024 – a Year 10 Jewish student in a Sydney school was told to “Go back to the gas chambers”, subjected to Nazi salutes/Hitler references and shoved.
- ix. From late April 2024 – Australian pro-Palestinian encampments emerged at universities, including ANU and Sydney University. From 7 October 2023 until the last impugned act below, Jewish and Israeli university students frequently reported being the subject of intimidating actions including chants, banners, Nazi salutes.

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

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

28A A sufficiently significant proportion of Jewish and Israeli persons in Australia for purposes of the s18C RDA legislative prohibition (not taking into account those who are over-sensitive or especially sanguine) believe that Hamas’s terrorist acts described above (see [25]-[26]) were taken because Hamas’s leadership, commanders, members and operatives in the field believed that the men, women and children intended by them to be subjected, and in fact subjected, to those acts:

- a. were Jewish persons or Israeli persons; and

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

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

28. On or about 8 October 2023, the first day after the 7 October 2023 Hamas terrorist attacks described in [25]-[26] above, Professor Keane published the following picture on his Keane X Page, which shows 5 green Hamas flags with Arabic writing visible on them (**the Hamas Flag Post**):



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

Imputations

35. The Hamas Flag Post conveyed the following imputations:

- a. The activities described in [25]-[26] above of Hamas on October 7, which involved the killing, rape, maiming, sexual abuse, kidnapping and torture of Jewish and Israeli ~~people~~ persons, because they were believed to be Jewish or Israeli, was an event that was to be celebrated, endorsed, supported and approved of.
- b. Professor Keane celebrated, endorsed, supported and approved those activities.
- c. Hamas and its objectives (including those outlined in [21], [22], and [23] and ~~[26.]~~ above, and reinforced by [24A] and [28A]) were to be celebrated, endorsed, supported and approved.
- d. Professor Keane celebrated, endorsed, supported and approved of Hamas and its objectives (including those outlined in [21], [22], and [23] and reinforced by [24A] and [28A] and ~~[27]~~ above).

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

36. Professor Keane's posting of the Hamas Flag Post was an act which caused images to be communicated to the public. They were:

- a. done in a public place; and were
- b. done in the sight and hearing of people who were in a public place; and
- c. not acts done in private.

37. Professor Keane's posting of the Hamas Flag Post ~~and its non-removal~~, by conveying any, all or some of the imputations alleged in [35] was reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate the Applicants, the persons in Schedule A, as well as other Jewish ~~people~~ persons and Israeli ~~people~~ persons in Australia.

38. The posting ~~and its non-removal~~ was made or done because of the race, national or ethnic origin of the people reasonably likely to be offended, insulted, humiliated or intimidated by the posting including because:

- a. The subject matter of the post, considering its timing, was directly related to events that were themselves directly related to the race, ethnic origin or national origin (Jewish and/or Israeli) of the victims of the events of October 7;
- b. The posting was plainly calculated to convey a message about or concerned with the race, ethnic origin or national origin (Jewish and/or Israeli) of the victims of the events of October 7;

- c. The posting was actuated or motivated by considerations of race, ethnic origin or national origin or, in the alternative, race, or ethnic or national origin was otherwise a factor in Professor Keane's act.

39. In the premises set out in [15]-[38] above, Professor Keane contravened s 18C of the RDA and engaged in unlawful discrimination within the meaning of ss 3(1) and 46P of the AHRC Act. ~~Australian Human Rights Commission Act 1986 (Cth).~~

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

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

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

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



John Keane
@jkeaneSDN



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

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

Dear John,

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

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

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

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

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

Gideon Levy and 9 others

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

25 Reposts **5** Quotes **63** Likes **10** Bookmarks

42. The post had the following accessible attachments which are annexed to this Amended Statement of Claim and are relied on as though set out in full in this paragraph and [40] above:

- a. An email authored by Associate Professor Avril Alba of Sydney University (with certain modifications compared to the actual email) on 7 November 2023 to Professor Keane and Vice Chancellor Mark Scott, copying a large number of Sydney University groups, and being an email in a chain of emails among Sydney University academics. The attachment Keane put up contained a photograph of Professor Alba.
- b. A picture with the names of 17 academics from Sydney University in larger font (all of whom were Jewish and/or Israeli academics except for Peter Morgan), namely:

1. Dr Michael Abrahams-Sprod

2. A/Prof Avril Alba
3. Dr Lionel Babicz
4. Yulia Berlin-Firer
5. Professor David Celermajer
6. A/Prof Ilan Dar-Nimrod
7. Dr Jennifer Dowling
8. Dr Yona Gilead
9. Professor Judy Kay
10. Professor Gustav Lehrer
11. Dr Guy Mayraz
12. Professor Peter Morgan
13. Dr Loren Mowszowski
14. Professor Suzanne Rutland (Second Applicant)
15. Dr Andy Smidt
16. Dr Lynne Swarts
17. Dr Joseph Toltz (First Applicant)

- c. A letter which purports to be Professor Keane's response of 6 November 2023 to a communication of Vice Chancellor Mark Scott to all Sydney University staff and students of 26 October 2023 (in the post it appeared on a letterhead instead of being in email form).
43. The Vice Chancellor's original communication dated 26 October 2023, to which Professor Keane's 6 November email responded, was not attached to the post. In that email the Vice Chancellor and President had said that Sydney University would not tolerate support for Hamas' recent terrorist attacks.
44. No permission or authorisation was sought by Professor Keane, or was obtained by him, from any of the 17 named academics to publish their names or the content of their email.
45. Professor Keane's Staff Members Post remained on his Keane X Page from 8 November 2023 until it was removed as a result of a Sydney University disciplinary process on or about 21 May 2024.

Particulars of the disciplinary process

- (a) Complaints were made by Jewish/Israeli staff of Sydney University from 8 November 2023 onwards. This included but was not limited to complaints made directly by or on behalf of persons including: Professor Emerita Suzanne Rutland (Second Applicant), Dr Sarah Aamidor, Dr Michael Abrahams-Sprod, Associate Professor Avril Alba, Dr Lionel Babicz, Dr Larisa Barnes, Professor

David Celermajer AO, Associate Professor Ronald Clarke, Dr Jennifer Dowling, Dr Yona Gilead, Talia Gonda, Emmilly Graf, Dr Eve Guerry, Associate Professor Sabina Kleitman, Professor Emerita Ines Krass, Professor Emeritus Gustav Lehrer AO, Mr Yaniv Levy (Fourth Applicant), Associate Professor Tania Markovic, Sarah Marks, Dr Guy Mayraz, Professor Peter Morgan, Dr Loren Mowszowski, Adam Muscio, Isabella Nahon, Emeritus Professor Leo Radom, Tracie Sillers, Dr Andy Smidt, Rachel Sullivan, Dr Lynne Swarts, Dr Joseph Toltz (First Applicant), Vanina Vaisman-Levy, Yulia Berlin-Firer.

(b) Examples include:

- i. On 8 November 2023, Avril Alba, Yulia Berlin-Firer, Suzanne Rutland and Michael Abrahams-Sprod complained to Mark Scott (Vice Chancellor) and Annamarie Jagose (Provost and Deputy Vice Chancellor) about Professor Keane (and Jake Lynch).
- ii. On 9 November Dr Loren Mowszowski wrote to Mark Scott and Annamarie Jagose endorsing her colleague's complaints. Lionel Babicz wrote to Professor Jagose reinforcing Ms Berlin-Firer's complaint.
- iii. On 30 November 2023 Dr Mowszowski followed up Professors Jagose and Scott, concerned that she had had no response or acknowledgment to her email sent 3 weeks earlier.
- iv. On 1 December 2023, Peter Wertheim of the Executive Council of Australian Jewry and Mark Scott discussed concerns of Jewish staff and students including their unanswered complaints regarding Professor Keane's email.
- v. On 22 December 2023, Dr Mowszowski wrote to Naomi Connolly, Senior Manager in Workplace Relations, concerned at the slowness of the process which was compounding her distress and causing her to largely avoid attending main campus.
- vi. On 17 January 2024, Professor Rutland wrote to the Vice Chancellor, provost, Chancellor, and the Senate, supported by some 30 predominantly Jewish/Israeli staff, who comprised a newly formed Sydney University branch of the Australian Academic Alliance Against Antisemitism (**5A Group**). The letter appended 'Key Issues' concerning 'ongoing the pro-Palestinian campaign' at Sydney University since Hamas' 7 October invasion. The Issues included "*Intimidation and defamation of academic staff over University email and on social media*", noting Professor Keane's inflammatory letter and subsequent events and the slow response of the Workplace Department.

- vii. On 22 January 2024 Dr Mowszowski sought a further update.
- viii. On 13 February 2024, Mark Scott responded to Professor Rutland's 17 January complaint on behalf of the 5A Group. Nothing expressly or adequately addressed the Keane concern.
- ix. On 19 March 2024 the 5A Group were informed that Workplace Relations completed a preliminary assessment and advised next steps to Lisa Adkins, Dean of Faculty of Art and Sciences.
- x. On 3 April 2024, Lisa Adkins sent an outcome letter regarding the Keane complaint. Professor Keane's conduct was found to contravene University policies and codes and to be Misconduct under Sydney University's Enterprise Agreement. The University would discipline Professor Keane and direct him to delete the Staff Members Post.
- xi. On 8 April 2024, Dr Mowszowski wrote to Professor Adkins and Ms Connolly, communicating 'extreme concern' that Professor Keane's Post was still on X, causing '*further insult and offense*' and questioning what consequences Keane received and how complainants could be assured disciplinary actions will be effective.
- xii. On 10 April 2024, Dr Mowszowski was advised that the University would not provide additional details regarding Professor Keane's disciplinary action. The same day she sought that Professor Keane be contacted directly to ensure the Post's removal was not significantly delayed.
- xiii. On 26 April 2024, Dr Mowszowski wrote to Professor Adkins and Ms Connolly noting the Staff Post was still online, which was perpetuating "*distress, intimidation and offence*," undermining the complaint process and asking why he was not being held to account.
- xiv. During 28 April to 10 May 2024, Dr Babicz wrote several emails to/from Lisa Adkins and Naomi Connolly, expressing major concern about the University's lack of effective action regarding Keane's Staff Post, stating: "*considering the ongoing events on campus, including the involvement of jihadist elements external to the University, the potential threat to the safety of the people doxed by that post is increasing day by day.*" (10 May)
- xv. On 3 and 7 May 2024, Ms Connolly wrote to Dr Mowszowski, failing to address her concerns.
- xvi. On 21 May 2024, Jodi Dickson, Director of Workplace Relations, wrote to the 5A Group complainants informing them that Professor Keane had removed their names from the posts he made on X.

46. Until the date of the removal of the post from Professor Keane's X page on 21 May 2024, Professor Keane's Staff Member's Post had about 30,000-31,000 views.
47. Professor Keane's Staff Members Post conveyed the following imputations:
 - a. The named Jewish and Israeli staff members regarded, treated, considered and were convinced that Palestinians are "non-humans" (meaning something less than or other than human beings).
 - b. The named Jewish and Israeli staff members were racists who regarded, treated, considered and were convinced that Palestinians challenging Israel as a Jewish homeland, or as their "Promised land", are "non-humans".
 - c. The named Jewish and Israeli persons, in seeking to defend the existence of Israel should be condemned and publically exposed as self-righteous racists without any morals, scruples or conscience.
 - d. Jewish persons and Israeli persons believe that Palestinians or Palestinians challenging Israel as a Jewish homeland or as their "Promised land" are "non humans".
 - e. Jews and Israelis, or the named Jews and Israelis, were acting like the Nazis in considering Palestinians as "non-humans" or as something less than, or other than, human beings.
48. Contrary to the imputations set out immediately above:
 - a. None of the staff members identified in the post were racists nor were they persons who regarded, treated, considered or were convinced that Palestinians or Palestinians challenging Israel as a Jewish homeland or as "*their Promised land*" were "*non-humans*".
 - b. Jewish persons and Israeli persons as a group or otherwise did not regard, treat, consider and were not convinced that Palestinians or Palestinians challenging Israel as a Jewish homeland or as their "*Promised Land*" were "*non-humans*".
49. The reference to "non-humans" has particular resonance for Jewish and Israeli ~~people~~ persons given its historical use to describe Jewish persons ~~people~~ in that way.
50. The First and Second Applicants, who were both persons named in Keane's Staff Members Post, suffered distress, loss and damage, including harm to their reputation, and/or psychological injury by reason of the publication and non-removal of the Keane's Staff Members Post.

Contravention of s 18C of the RDA

51. Professor Keane's posting of, and failure to remove prior to 21 May 2024, Keane's Staff Members Post were acts which caused words and images to be communicated to the public. They were:
 - a. done in a public place; and were
 - b. done in the sight and hearing of people who were in a public place; and
 - c. not acts done in private.
52. Professor Keane's posting of, and his failure to remove prior to 21 May 2024, Keane's Staff Members Post, by conveying any or all of the imputations alleged above and by attributing the false characteristics alleged to those named Jewish and Israeli Staff Members and to Jewish persons and Israeli persons on the basis of their group membership or otherwise, was reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate the Jewish and Israeli Staff Members named in Keane's Staff Members Post and other Jewish persons and Israeli persons in Australia.
53. The posting and its non-removal prior to 21 May 2024 was made or done because of the race, national or ethnic origin of the people reasonably likely to be offended, insulted, humiliated or intimidated by the posting including because:
 - a. The post referred to and criticised only Jewish and Israeli people;
 - b. It did so by reference to their position as being "pro-Israel";
 - c. The subject matter of the post was related by context to events that were themselves directly related to the race, ethnic origin or national origin (Jewish and/or Israeli) of the victims of the events of October 7;
 - d. The posting was plainly calculated to convey a message about or concerned with the race, ethnic origin or national origin (Jewish and/or Israeli) of the people named;
 - e. Professor Keane had earlier posted the Hamas Flag Post which provides context for ~~the a real~~ reason why the Staff Members Post was actuated by race and/or ethnic origin and/or national origin or, in the alternative, race, or ethnic or national origin was otherwise a factor in Professor Keane's conduct; and
 - f. Professor Keane has a tendency to engage in conduct which does and is intended to offend and/or insult and/or humiliate and/or intimidate Jewish people and Israeli people.
54. In the premises set out in [40]-[53] above, Professor Keane contravened s 18C of the RDA and engaged in unlawful discrimination within the meaning of ss 3(1) and 46P of the AHRC Act. ~~Australian Human Rights Commission Act 1986 (Cth)~~.

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

55. Professor Keane is an employee of Sydney University.
56. The posting, and the non-removal until on or about 21 May 2024, of Professor Keane's Staff Members Post was made in connection with his duties as an employee of Sydney University:
 - a. the communications that precipitated the Staff Members Post were internal staff University email exchanges about University matters;
 - b. the Staff Members Post had the potential to (and actually did) adversely affect the working relationship of the named employees of Sydney University, and for other Jewish/Israeli employees;
 - c. The following documents make it clear that communications of this kind are directly connected to employment by Sydney University:
 - i. Sydney University Complaint Procedures;
 - ii. the *University of Sydney Enterprise Agreement 2023-2026* (eg. cll 354, 360, 361, 362, 366 and 368);
 - iii. Sydney University Staff and Affiliates Code of Conduct 2021 (eg. cll 3, 5, 7, 8, 11, 15, 19, 20, 21, 23, 24);
 - iv. Public Comment Policy of Sydney University (eg. Guidelines and Pt 2);
 - v. *University of Sydney Act 1989* (NSW) (eg. s 2);
 - vi. *Charter of Freedom of Speech and Academic Freedom 2019*.
57. The Staff Members Post and its non-removal are acts that would have been unlawful had they been done by Sydney University for the reasons set out at paragraphs [40]-[54] above.
58. Sydney University failed to take all reasonable steps to prevent Professor Keane from publishing the Staff Members Post considering:
 - a. the correspondence referred to or described in [40]-[44] above;
 - b. the disciplinary process and the complaints described in [45] and the failure of Sydney University to act on those complaints appropriately, with due diligence or due expedition.
59. In the premises above, Professor Keane Staff Members Post and its non-removal were acts of Professor Keane done in connection with his duties as an employee or agent of Sydney University for the purposes of imposing vicarious liability on Sydney University for the unlawful discrimination by Professor Keane pursuant to s 18E of the RDA.

Complaint to the Australian Human Rights Commission

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

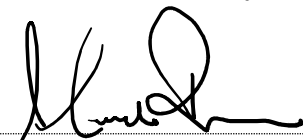
Particulars

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

Relief

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

Date: ~~13 June~~ 28 July 2026₅



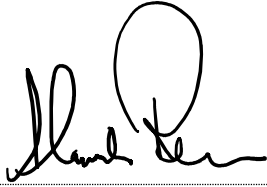
Signed by Hamish Rotstein
Lawyer for the Applicants

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

Certificate of lawyer

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

Date: ~~13 June~~ 28 July 2026₅

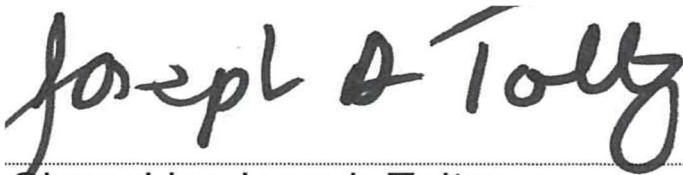


Signed by Hamish Rotstein
Lawyer for the Applicants

Certificate of First and Second Applicants

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

Date: 28 July 2026



Signed by Joseph Toltz
First Applicant

Date: 28 July 2026



Signed by Suzanne Rutland
Second Applicant

Schedule

No: NSD951/2025

Federal Court of Australia

District Registry: New South Wales Registry
Division: General

Second Applicant SUZANNE RUTLAND

Third Applicant ARIEL EISNER

Fourth Applicant YANIV LEVY

Second Respondent THE UNIVERSITY OF SYDNEY

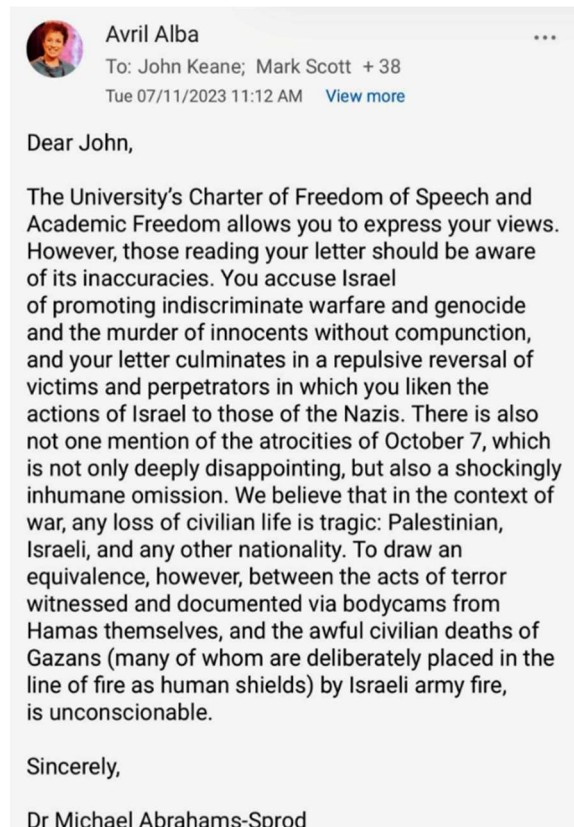
ANNEXURE

Particulars to Paragraph [22]

- a. The Hamas Covenants pleaded are two documents, namely:
 - i. the Hamas Covenant 1988, *The Covenant of the Islamic Resistance Movement*, 18 August 1988; and
 - ii. the May 2017 Charter document entitled *The Islamic Resistance Movement "Hamas", A Document of General Principles and Policies*.
- b. As to the Hamas Covenant 1988:
 - i. Preamble: *"Israel will exist and will continue to exist until Islam will obliterate it."*
 - ii. *"Our struggle against the Jews is very great and very serious. It needs all sincere efforts. It is a step that inevitably should be followed by other steps....until the enemy is vanquished and Allah's victory is realised."*
 - iii. Article 7: *"The Islamic Resistance Movement is one of the links in the chain of the struggle against the Zionist invaders....The Day of Judgement will not come about until Moslems fight the Jews (killing the Jews), when the Jew will hide behind stones and trees. The stones and trees will say O Moslems, O Abdulla, there is a Jew behind me, come and kill him."*
 - iv. Article 13: *"There is no solution for the Palestinian question except through Jihad."*
 - v. Article 14: *"the liberation of Palestine is bound to three circles..(including) the Islamic circle. Each circle[] has its role in the struggle against Zionism...Palestine is an Islamic land...liberation of Palestine is..an individual duty for [e]very Moslem."*
 - vi. Article 28: *"Israel, Judaism and Jews challenge Islam and the Moslem people. 'May the cowards never sleep.'"*
 - vii. Article 32: *"Leaving the circle of struggle with Zionism is high treason, and cursed be he who does that... The Islamic Resistance Movement consider itself to be the spearhead of the circle of struggle with world Zionism."*
 - viii. Article 35: *"Moslems...should be able to confront the Zionist invasion and defeat it."*
- c. As to the May 2017 Charter:

- i. Article 1: *"The Islamic Resistance Movement "Hamas[]"... goal is to liberate Palestine and confront the Zionist project. Its frame of reference is Islam, which determines its principles, objectives and means."*
- ii. Article 14: *"The Israeli entity is the plaything of the Zionist project and its base of aggression... The Zionist project does not target the Palestinian people alone; it is the enemy of the Arab and Islamic Ummah"*
- iii. Article 16: *"Hamas... wages a struggle against the Zionists... the Zionists who constantly identify Judaism and the Jews with their... illegal entity"*
- iv. Article 17: *"The Zionist movement...must disappear from Palestine"*
- v. Article 18: *"The establishment of 'Israel' is entirely illegal."*
- vi. Article 19: *"There shall be no recognition of the legitimacy of the Zionist entity."*
- vii. Article 20: *"Hamas believes that no part of the land of Palestine shall be compromised or conceded, irrespective of the...circumstances...Hamas rejects any alternative to the full and complete liberation of Palestine from the river to the sea...(and) reject[s] the Zionist entity"*
- viii. Article 41: *"Hamas...denounces the support granted by any party to the Zionist entity."*

Accessible Attachments to Keane's Staff Members Post (Paras [40]-[42] above)



Sincerely,

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



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

6 November, 2023

Dear Vice-Chancellor,

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

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

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

Best wishes,

John Keane

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