NOTICE OF FILING

Details of Filing

Document Lodged:	Submissions
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	22/04/2026 4:48:08 PM AEST
Date Accepted for Filing:	22/04/2026 4:48:11 PM AEST
File Number:	NSD951/2025
File Title:	JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

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.

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

File No. NSD951/2025

Joseph Toltz and others
Applicants

John Keane and another
Respondents

APPLICANTS' OUTLINE OF SUBMISSIONS

1. These submissions are filed in support of the Applicants' interlocutory application dated 20 February 2026 (**Application**) in the above proceeding (**Proceeding**), and in response to the First Respondent's Submissions dated 8 April 2026 objecting to various amendments to the Proposed Amended Statement of Claim provided to the Respondents on 20 March 2026 (**PASOC**).

2. The First Respondent's objections can be broadly categorised as follows:

   (a) the PASOC seeks to introduce new material impermissibly;

   (b) the Application has not been brought at a sufficiently early stage, and its timing has caused the First Respondent undue prejudice;

   (c) paragraph 29 of the PASOC impermissibly introduces an allegedly new 'non-removal case' with respect to the Hamas Flag Post, with related objections to paragraph 27A;

   (d) paragraphs 24A, 28A and 35 impermissibly plead reportage of matters relating to Hamas;

   (e) miscellaneous objections to 12(c), 13(c), 25(b), 28, 39 and 53(f) of the PASOC.

3. None of the above objections are of any force, such that the Court ought to grant the Application and allow the PASOC to be filed.

4. These submissions will deal with each of the categories of objections above in turn.

A. The PASOC Does Not Introduce New Material Impermissibly

5. The Applicants do not consider that the First Respondent's 'categories' of objections (at paragraph 3 of his Submission) fairly characterise matters for purposes of deciding the Application. Nor has the First Respondent drawn the Court's attention to all the relevant principles to be considered for purposes of an application for leave to amend.

6. As was argued by the Applicants at the last directions hearing, there is in substance not a great deal of genuine distance between the parties on this Application and it should be granted.

7. For its part, the Second Respondent has not objected to anything in the Application.

8. The First Respondent, while it makes its objections, consents to roughly 70% of the proposed amendments. Contrary to Prof Keane's Submissions, however, there is no attempt by the Applicants to *'reintroduce material struck out'*. That really pertains to 3 proposed consequential amendments (24A, 28A and 35) which are doing something else as set out below. Further, references to alleged *'entirely new'* material in the PASOC are distracting, as not a single new cause of action or 'act' is pleaded. There were 5, now 8 (against the Court's oral directions to expand objections) trivial or minor proposed amendments, or amendments which merely tidy up the SOC before the Defence is filed (12(c), 13(c), 25(b), 27A, 28, 29, 39 and 53(f)). This type of minor amendment is legitimate at this early juncture.[1] Much of the proposed amendments are also the same in the Riemer case.

9. Although the First Respondent claims that there are 20 paragraphs in the PASOC containing new and unsolicited changes, this is factually incorrect, as there about 10 or so properly contested paragraphs, each of which serves the core function of pleadings to give the Respondents notice of the case to be met, and each assisting in defining the issues in dispute, ensuring procedural fairness.[2] All the amendments should be permitted.

10. The following principles are outlined at the outset to assist the Court:

    (a) Where an application is made for leave to amend a pleading under FCR r 16.53 of the *Federal Court Rules 2011* (Cth) (**FCR**), the Court's powers to grant leave to amend are broad, subject to the overarching purpose set out in s 37M of the *Federal Court of Australia Act 1976* (Cth).[3]

    (b) The starting point is that all amendments should be made and allowed that are necessary to enable the real questions in controversy to be decided.[4] The rule's purpose is to do justice between the parties and the Court's object is not to punish parties for mistakes in presenting their case, unless fraudulent or intended to overreach, but to ensure a decision can be made on the real matters of controversy.[5]

    (c) Unless futile to do so, a Court will ordinarily grant leave to a party to replead those parts of its pleading that have been struck out.[6]

---

1 *Oswal v Apache Corporation (No 3)* [2014] FCA 835 at [6]; *Pascoe v Boensch* [2009] FCA 1240 at [79].
2 R 16.02 of the FCR; *Banque Commerciale SA (En Liqn) v Akhil Holdings Ltd* (1990) 169 CLR 279 at 286.
3 *University of Sydney v Resmed Ltd (No 5)* [2012] FCA 232 at [14].
4 *SPI Spirits (Cyprus) Ltd v Diageo Australia Ltd (No 4)* [2007] FCA 1035 at [14], [17].
5 *AMI Australia Holdings Pty Ltd v Bade Medical Institute (Aust) Pty Ltd (No 2)* (2009) 262 ALR 458 at [50].
6 *Matheson Engineers Pty Ltd v El Raghy* (1992) 37 FCR 6; *Nulyarimma v Thompson* (1999) 96 FCR 153 at [208]; *Coshott v Kam Tou Mak* [1998] FCA 147; *Thorpe v Commonwealth (No 3)* (1997) 71 AJLR 767 at 774.

(d) The test is not whether any material is 'new', except indirectly as that relates to the s 37M considerations. *Aon*[7] and *Tamaya*[8] are overwhelmingly different to this case.

(e) There is a stronger case to allow an amendment where its purpose is to tidy up the pleading at an early stage to ensure the issues are clearly defined and well understood.[9]

(f) While the hearing on this application will generate costs, the hearing was requested by the First Respondent. All applications for leave to amend result in some level of cost and delay – but that does not mean that all applications should be refused.[10]

B. The Application has been brought at a sufficiently early stage of the Proceeding

11. The First Respondent invokes *Aon* and *Tamaya* in seeking to dismiss the contested aspects of the Application. Yet, it is contended, those cases are readily distinguishable. In *Aon*:

(a) Amendments were sought on day 3 of a 4-week trial and sought to adjourn the trial.[11]

(b) The amendments sought to introduce a new and substantially different case/claims.[12]

(c) The defendant effectively had to require the defendant to defend fresh litigation.

12. That all stands in stark contrast to this case where the Application is brought at an early stage, no Defence has been filed, no trial is scheduled,[13] and no new claims are introduced. Further, there no prejudice to the First Respondent in allowing the amendments.[14] This is not a case where an issue is raised that is unlikely to succeed, or where the amendments are likely to be struck out.[15] The purpose of the amendments is to tidy up the case and clarify issues already in contention, and should be permitted.[16] *Tamaya* is also readily distinguishable. There:

(a) The amendments sought included 4 new sets of allegations including a new claim for damages,[17] and a new set of factual allegations relating to the company's Chilean mining operations which arrived at the first type of damages by an additional path.[18]

---

7 *Aon Risk Services Australia Ltd v Australian National University* (2009) 239 CLR 175 (***Aon***).
8 *Tamaya Resources Ltd (in liq) v Deloitte Touche Tohmatsu (A Firm)* [2016] FCAFC 2 (***Tamaya***).
9 *Pascoe v Boensch* [2009] FCA 1240 at [79].
10 *Aon* at [102].
11 Ibid at [39].
12 Ibid at [39], [104].
13 The significance of this is noted in *Aon* at [102]; *SPI Spirits (Cyprus) Ltd v Diageo Australia Ltd (No 4)* [2007] FCA 1035 at [18].
14 The respondents do not point to any 'details of the practical difficulty that it would encounter' if the amendments were granted: *University of Sydney v Resmed Ltd (No 5)* [2012] FCA 232 at [16].
15 *QS Holdings SARL v Paul's Retail Pty Ltd* (2011) 92 IPR 460 at [107].
16 *Pascoe v Boensch* [2009] FCA 1240 at [79].
17 *Tamaya* at [20].
18 Ibid at [17].

(b) The company had for 3 months maintained the untenable position that pressing the new Chilean factual allegations would not require amending the pleadings.[19]

(c) The amendments concerned events 7 years prior and went well beyond the pleading.[20]

(d) There was no good reason why the allegations had not been initially included.[21]

(e) The company had had 6 years to formulate a claim.[22]

(f) The delay in the application was 16 months,[23] and was inadequately explained.[24]

(g) 2 trial dates had already been lost, the cases had been commenced at the edge of the limitation period, and accepting the amendments would have lost a third trial date.[25]

13. Such facts are readily distinguishable from this case, and the time involved in making the Application on 20 February 2026 is readily explained. Before the Application was made:

(a) on 1 August 2025, the Applicants sought leave to continue the Proceeding as a representative proceeding and to file an amended statement of claim, which was itself revised on 8 September 2025;

(b) on 5 August 2025, the First Respondent in *Riemer* made a strikeout application;

(c) on 28 August 2025, the Second Respondent in *Riemer* made a strikeout and summary dismissal application;

(d) there was a longer wait for a hearing to occur due to Senior Counsel for the Second Respondents in each Proceeding being unavailable earlier;

(e) on 13–14 October 2025, the applications were heard. Most of the time at the hearing was dedicated to the University's application (which the Applicants succeeded on);

(f) on 14 November 2025, determinations of the applications were made;

(g) on 14 December 2025, the Bondi Beach terror attack occurred which interfered;

(h) in late December 2025 and January 2026, the court closure period occurred;

(i) on 3 February 2026, the Court ordered the Applicants file an amended statement of claim by 13 February 2026; and

---

19 Ibid at [47]–[51], [64].*Cf* [110].
20 Ibid at [92]–[93].
21 Ibid at [100].
22 Ibid at [102].
23 Ibid at [137].
24 Ibid at [114].
25 Ibid at [110]–[112].

(j) having not received full consent to the FASOC, the Applicants made the Application.

14. As submitted at paragraph 29 below, some paragraphs of the PASOC are consequential to the determination of the applications on 14 November 2025, such that the Application was made three months after the need to amend arose, not 11 months submitted by the First Respondent.

15. Since the Application was made, the First Respondents have not acted with any expedition or urgency, such that any delay in hearing and determining this Application after it was made was caused by the First Respondent. The Applicants sought the matter to be determined on the papers with both sides having one week to file 3-page submissions. The First Respondent sought 3 weeks, 10-page submissions, new tables, and an oral hearing.

C. Paragraphs 29, 37 and 38 of the PASOC: Non-removal of Hamas Flag Post

16. The non-removal of the Hamas Flag Post is plainly relevant to the issues in dispute. Failure to remove known offensive material has been found to be caught by s 18C(1)(a) of the *Racial Discrimination Act 1975* (Cth).[26]

17. Contrary to the First Respondent's submissions, there is nothing new in substance that is proposed to be amended with respect to the Hamas Flag Post. There are no new allegations and, as is readily apparent, there is no new cause of action.

18. The Applicants at all times have pleaded in the Statement of Claim in the Proceeding at 37 and 38, the words "*posting and its non-removal*" (also at 56-59). That is also how the Applicants' case has been advanced in submissions at all times.[27] Professor Keane's Submission at 17 now for the first time in this Proceeding objects to the words "*and its non-removal*", but they have always been there reflecting the case advanced.

19. The Applicants' proposed amendment is merely to add the words "*and remains accessible"* in paragraph 29, for a tidying up change. The proposed amendment is for abundant clarification and caution, given objections have previously been taken to matters which were clear but invited possible debate. The same meaning has always been conveyed in 29(a) and 29(c), by updating 'views' at each SOC iteration, let alone adding *"and remains accessible*."

20. The words "*and remains accessible"* thus clarify what was, in the Applicants' view, already adequately pleaded through the existing words in paragraph 29(a) and (c), 37 and 38, and if it need be said, 31 and 32. Those 2 paragraphs contain present tense language ("*is, known*"; "*or*

---

26 *Silberberg v Builders Collective of Australia Inc* (2007) 164 FCR 475 at [34]; *Clarke v Nationwide News Pty Ltd* (2012) 201 FCR 389 at [108]–[110].

27 Applicants' Submissions in Response (Keane) at [41]; Applicants' Submissions in Reply (Riemer) at [14].

now know") showing the relevance of post-publishing conduct. The words are thus proposed to merely tidy up the PASOC to ensure the issues are clearly defined and well understood.[28]

21. Further, contrary to the Submission at 17, even if the Applicants did not include an allegation of 'non-removal' of the Hamas Flag Post among their allegations in the AHRC, this does not present any jurisdictional hurdle. Section 46PO(3) of the *Australian Human Rights Commission Act 1986* (Cth) (**AHRC Act**) has two available limbs, each of which are met, yet the First Respondent's objection only cites the first limb. The second limb, however, is easier to meet and it is contended is clearly met here.

22. The first limb (s46PO(3)(a)) proceeds on the basis that the allegations of fact made in the proceeding are the same (or the same in substance)[29] as in the complaint, and allows the applicant to claim in the proceeding that those facts bear a different legal character from what was claimed in the complaint, provided that this character is not different in substance from the legal character claimed in the complaint.[30] The second limb (s46PO(3)(b)) allows the applicant to allege different facts to the complaint, provided that those facts are not different in substance, and permits the applicant to claim that these new facts bear a different legal character provided it arises out of the facts now alleged.[31]

23. Even if the first limb is not applicable, the second limb is clearly met. It should be recalled that the terms of s 46PO(3) '*suggest a degree of flexibility*'[32] and enable proceedings to be brought in respect of some conduct other than that described in the AHRC complaint.[33] Complete symmetry between the AHRC and Court claims is not required.[34] The section contemplates some ambit for additional conduct, acts, omissions or practices to constitute unlawful discrimination.[35] It does not preclude reliance on more specific allegations than those made in general terms in a terminated complaint, and allows a new allegation or allegations about the same incident to be advanced before the Court.[36] It is not appropriate for a Court considering an application for leave to amend to preclude an amendment that raises an arguable claim for relief, especially where the terms of s 46PO(3)(b) (in particular) permit of some flexibility.[37] The amendment in paragraph 29 ought to be granted.

---

28 *Oswal v Apache Corporation (No 3)* [2014] FCA 835 at [6]; *Pascoe v Boensch* [2009] FCA 1240 at [79].
29 *Cumaiyi v Northern Territory* [2020] FCA 1299 at [18].
30 *Charles v Fuji Xerox Australia Pty Ltd* (2000) 105 FCR 573 at [38].
31 Ibid at [39].
32 *Travers v State of New South Wales* [2000] FCA 1565 at [8].
33 *Dye v Commonwealth Securities Limited (No 2)* [2010] FCAFC 118 at [44].
34 *Haile-Michael v Konstantinidis (No 2)* [2012] FCA 167 at [17].
35 *Dye v Commonwealth Securities Limited (No 2)* [2010] FCAFC 118 at [46].
36 *Leach v Burston* [2022] FCA 87 at [58].
37 *Dye v Commonwealth Securities Limited (No 2)* [2010] FCAFC 118 at [48].

C.1 Paragraph 27A of the PASOC

24. Many of the First Respondent's objections to paragraph 27A of the PASOC are parasitic to its objections relating to paragraphs 29, 37 and 38. If those objections are overruled for the reasons outlined above, many of the objections to paragraph 27A fall away. The First Respondent's impugned conduct is continuing in nature (publication and failure to remove), meaning all the particulars are relevant.

25. In any case, the First Respondent's objections miss the point. This is an appropriate pleading, as a relevant fact in issue are the 'circumstances' relevant to the s 18C requirements; that is, the likely reaction of offence, intimidation, insult or humiliation for the groups concerned.[38] It tidies up and clarifies the issues in contention.[39]

26. There is also no jurisdictional impediment to the amendment: see [21]-[23] and our Table.

27. The First Respondent directs almost all his attention to objecting to the 'particulars.' Yet, parties do not plead to particulars (r 16.41, note 3); the objection is unfounded. The Applicants are properly apprising the First Respondent of the case against him and guarding against surprise.[40] The First Respondent also wrongly conflates 'particulars' and 'material facts.'

28. The First Respondent submits the particulars of 27A constitute evidence. The particulars are not evidence, but rather a list of well-known events or circumstances since 7 October 2023 that the Applicants intend to rely on to make good the material fact alleged in paragraph 27A. In any case, in an appropriate case the provision of particulars may involve the revealing of evidence.[41] In order to meet the aim of enabling the opposing party to know the case it has to meet, it will be almost inevitable to disclose some of the evidence.[42] There is often a fine line between giving particulars of the case which a party proposes to make and disclosing the evidence by which that case is to be proved. It all depends upon what is necessary to guard the other party against surprise.[43] The particulars are not and need not be exhaustive, but they guard against surprise by ensuring the Respondents know the events the Applicants intend to rely on to make good the allegation at paragraph 27A.

---

38 C.f. e.g. *Kaplan v State of Victoria (No 8)* [2023] FCA 1092 at [517]; *Cassuto v Kostakidis* [2025] FCA 1226 at [74].

39 *Oswal v Apache Corporation (No 3)* [2014] FCA 835 at [6]; *Pascoe v Boensch* [2009] FCA 1240 at [79].

40 *R v Associated Northern Collieries* (1910) 11 CLR 738 at 740–1; *People with Disabilities Australia Inc v Minister for Disability Services* [2014] NSWSC 1669, [72] citing *Sims v Wran* [1984] 1 NSWLR 317 at 321–2.

41 *Helmhout v Apostoloff* [2011] ACTSC 2 at [107].

42 *Power Infrastructure Pty Ltd v Downer EDI Engineering Power Pty Ltd (No 3)* [2011] FCA 539 at [10].

43 *Sims v Wran* [1984] 1 NSWLR 317 at 321–2, quoted in *People with Disabilities Australia Inc v Minister for Disability Services* [2014] NSWSC 1669 at [72].

D. Paragraphs 24A, 28A and 35 of the PASOC: Reportage of Matters Relating to Hamas

29. These paragraphs are inserted as appropriate and consequential on strike out of other associated material concerning Hamas. They are relevant to showing the reasonably likely reaction of Jewish and/or Israeli people in Australia with respect to impugned conduct involving the express or implied endorsement, celebration etc of Hamas and/or its conduct.

30. The content in this form (about understandings of events for relevant group members by reportage) is acceptable. In *Wertheim v Haddad*, in outlining the context of the impugned speeches concerning Jewish people, Stewart J drew a distinction between any events that have occurred in Israel and Palestine, in relation to which it was not necessary to make findings, and '*the understandings of those events that have been engendered in people in Australia by reportage of them*', which was '*part of the relevant context to the immediate issues in the case*' and in relation to which findings were made '*in order to identify what would likely be known to or believed by people in Australia*'.[44]

31. Similarly, Hely J said in *Jones v Scully*, '*In assessing whether the respondent's actions offend s18C(1)(a), it is necessary to consider the perspective from which these actions are to be viewed*', and the relevant perspective is '*that of a "Jew in Australia"*'.[45] Professor Keane's arguments about 'subjective opinion' or 'Jewish/Israeli' 'belief' at 30 and 35 of his Submission are misplaced: the Applicants' approach entirely accords with the statutory test. Regard was also had for the beliefs of the Australian Jewish community in *Jones v Toben*.[46]

32. Indeed, a stronger form of 'Hamas commitment' pleading (and for Hezbollah) has been accepted in *Cassuto v Kostakidis*.[47] The Second Respondent also endorsed this approach in its submission dated 13 October 2025 in the *Riemer* Proceeding at 38.

33. The First Respondent's submissions to the effect that the wide reporting of a particular matter does not make it reasonable etc are submissions on the merits and a matter for trial. Unless the allegation is '*obviously futile*', which these are not, the amendments ought to be allowed.[48]

E. Miscellaneous Objections

E.1 <u>Paragraph 12(c) of the PASOC</u>

34. Paragraph 12(c) pleads matters that are relevant to the issues in dispute, namely the reasonably likely reaction of Jewish people and Israeli people in Australia to the impugned conduct. The Applicants refer to and repeat their submissions at paragraphs 30 and 31 above, which apply

---

44 *Wertheim v Haddad* (2025) 311 FCR 263 at [15]. See also *Toltz v Riemer* [2025] FCA 1385, e.g. [127] and [130]
45 *Jones v Scully* (2002) 120 FCR 243 at [108].
46 *Jones v Toben* [2002] FCA 1150 at [93].
47 *Cassuto v Kostakidis* [2025] FCA 1226: ASOC [10] (and [7]).
48 *Ron Medlich Properties Pty Ltd v Bentley-Smythe Pty Ltd* [2010] FCA 494 at [8].

with the same force to the characteristics of Jewish and Israeli people in Australia pleaded at paragraph 12(c). The pleaded matters are material to the s18C(1)(a) objective test. The First Respondent's submission at 24 misapplies that test or fails to recognise that applicants need to prove the likely objective reaction or effect in "*most or enough*" (but not all) of a group.[49]

35. This is a straightforward, relevant and legitimate addition, properly pleaded. Overlapping identical material was pleaded in *Cassuto v Kostakidis*, objected to by Ms Kostakidis, and properly rejected from strikeout.[50]

36. As for the First Respondent's concerns about survey evidence, *Practice Note (GPN-SURV)* applies to evidence being adduced at trial. It is also focused on surveys conducted by a party, not already-existing surveys. That is how the cases treat the practice note.[51] The Applicants may look to rely on evidence of the nature the First Respondent suggests, but they may not. They cannot be criticised for evidence not yet filed. Further, the First Respondent is, as submitted in our recent Cost Submissions (at [25]) again treating arguments on admissibility as established fact, when they are disputed, remain undecided and, in the Applicants' submission, wrong.

37. The addition to paragraph 12(c) is merely tidying up the pleading to ensure the issues are clearly defined and well understood and should be permitted.[52]

E.2 Paragraph 13(c) of the PASOC

38. This is a straightforward and relevant factual assertion. Identical material has been pleaded in the Riemer Proceeding and is not objected to. The First Respondent rightly submits at 28 that there is nothing objectionable in this proposed amendment, although why he continues to object despite this is mystifying. The amendment ought to be granted.

E.3 Paragraph 25(b) of the PASOC

39. This is also a straightforward and relevant factual assertion that informs the s 18C requirements. The same content has been accepted as appropriate in *Cassuto v Kostakidis*.[53] It does not open an unnecessary evidentiary enquiry, in that it cannot seriously be disputed.

---

49 *Faruqi v Hanson* [2024] FCA 1264 at [236], citing *Kaplan* at [513].
50 *Cassuto v Kostakidis* [2025] FCA 1226 at [88]–[89].
51 GPN-SURV [3.1]–[3.4], [2,2]–[2.3]; *Australian Competition and Consumer Commission v Australian Institute of Professional Education Pty Ltd (in liq) (No 2*) [2018] FCA 1459 at [32]; *Transport Workers Union of Australia v Qantas Airways Ltd (No 4)* (2021) 312 IR 133 at [36]
52 *Oswal v Apache Corporation (No 3)* [2014] FCA 835 at [6]; *Pascoe v Boensch* [2009] FCA 1240 at [79].
53 *Cassuto v Kostakidis* [2025] FCA 1226: ASOC [12].

40. This is another example of the Applicants merely tidying up the pleading to ensure the issues are clearly defined and well understood,[54] and giving fair notice of the case to be met.

E.4 Paragraphs 28 and 39 of the PASOC

41. Assuming the Applicants' amendments are granted, these objections should be rejected.

E.5 Paragraph 53(f) of the PASOC

42. The First Respondent takes issue with the form and substance of the particulars to paragraph 53(f). The form was precisely what the First Respondent sought: inclusion in the pleading.

43. As to substance, issue has been taken with alleged submissions and evaluative commentary. Putting aside whether there is any submission or commentary, a purpose of particulars is to put the other party on notice of the 'upshot' or 'import' of the matters the moving party seeks to rely on. The moving party, here the Applicants, is to draw on the relevant evidence '*and provide as particulars, what conclusions or propositions the moving party says arise out of the [evidence] for the purpose of making good the case advanced*'.[55] This is what the Applicants have done, assisting the Respondents to know the alleged case. The First Respondent's submissions as to the level of abstraction of the alleged tendency and whether the particulars impermissibly conflate categories of people are submissions as to merits, which is a matter for trial. His submission also confuses 'particulars' and 'material facts.'

F. Costs

44. There is no basis for the First Respondent to seek costs, as the Applicants should be found to be successful on this Application. The Applicants' recent Cost Submissions on s46PSA of the AHRC Act asserted that on the First Respondent's interpretation, it is the Applicants who would herein be entitled to costs. On our interpretation, costs should ordinarily be reserved, but, if similar, disproportionate, unsuccessful applications persist, it will be the Applicants who are the parties invoking the Court's discretion to award costs to be paid.

G. Conclusion

45. For the reasons stated above, none of the First Respondent's objections have merit, such that the Application ought to be granted and the Applicants allowed to file the PASOC in the form proposed.

Dated: 22 April 2026

Adam Butt
Dylan Dexter
Counsel for the Applicants

---

54 *Oswal v Apache Corporation (No 3)* [2014] FCA 835 at [6]; *Pascoe v Boensch* [2009] FCA 1240 at [79].
55 *People with Disabilities Australia Inc v Minister for Disability Services* [2014] NSWSC 1669 at [72].

1	4	Not objected
2	6	Not objected
3	7	Not objected
~~4~~	~~8-10~~	~~Not objected except for 10(b) – Applicants are content to change the text to …"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)"~~
~~45~~	8 Israeli citizen to person and Zionist	No objections now to 12 sub paragraphs ~~Not objected~~.
~~6~~	~~8 Zionist~~	~~Not objected (it was contemplated)~~
~~7~~	~~8 Israel nation state~~	~~Note objected (it was contemplated)~~
~~8~~	~~8 Yona Gilead~~	~~Not objected (it was contemplated)~~
~~9~~	~~8 Loren Mowszoski~~	~~Not objected~~
~~510~~	9 Cumulative	Not objected (it was contemplated)
6	10 same interest	Not objected (Applicant's amendment is accepted).
7	11 word descent and national origin	Not objected (it was contemplated).
~~118~~	12(c) Jewish connectedness to Israel	The insertion is clearly relevant to the issues in dispute with respect to the reasonably likely reaction of Jewish people and Israeli people in Australia to the impugned conduct (i.e. s18C requirements). This is a straightforward relevant and legitimate addition, properly pleaded. Overlapping identical material was likewise pleaded in the *Cassuto* case, objected to by Ms Kostakidis, and properly rejected from strikeout by McDonald J at [88]-[89]: *Cassuto v Kostakidis* [2025] FCA 1226. This is merely tidying up the pleading to ensure the issues are clearly defined and well understood: see e.g. *Servcorp v Nuclei Ltd* [2011] FCA 1229. *Pascoe v Boensch* [2009] FCA 1240. There is no basis to object to this, certainly not at this early juncture prior to any defence being put on.
~~912~~	13(c) Keane and BDS	This is a straightforward relevant factual assertion to s18C requirements. Identical material is pleaded in the Riemer pleading and not objected to (nor is there any proper basis to do so). ~~There is no basis for objection. The fact can be admitted or denied.~~The First Respondent now rightly submits that ~~there~~ is nothing objectionable in this proposed amendment, although why he continues to object is mystifying. It should be granted.
1~~03~~	16	Not objected, necessary amendment.
1~~14~~	22	Not objected~~, although they have not reproduced all the particulars.~~

Formatted: Strikethrough

Formatted: Strikethrough

Formatted: Strikethrough

Formatted: Strikethrough

125	24A	This is inserted as appropriate and consequential on strike out of other associated material concerning Hamas. The content in this form (about understandings of events for relevant group members by reportage) is acceptable and consistent with findings from *Wertheim v Haddad* [2025] FCA 720, at [15]. See also other iterations of the necessary objective test for Jewish (or Israeli) people in Australia under s 18C(1)(a) e.g. *Jones v Scully* (2002) 120 FCR 243 at [108]. The University also endorsed this approach in its Riemer Submission dated 13 October 2025 at [38]. Indeed a stronger form of 'Hamas commitment' pleading (and for Hezbollah) has been accepted in *Cassuto v Kostakidis*: ASOC [10] (and [7]). The pleading is relevant to showing the reasonably likely reaction of Jewish/Israeli people in Australia with respect to impugned conduct involving the express or implied endorsement, celebration etc of Hamas and or its conduct.
136	25	This is a relevant fact that informs the s18C requirements. It could not be seriously disputed. It is not a new issue pleaded but (like a few amendments) is tidying up the pleading to ensure the issues are clearly defined and well understood (see e.g. *Oswal v Apache Corporation (No 3)* [2014] FCA 835 at [6]~~*Servcorp v Nuclei Ltd* [2011] FCA 1229~~. *Pascoe v Boensch* [2009] FCA 1240) and giving fair notice of the case to be met. It is appropriate this is pleaded at this early juncture and forms part of the Applicants' case. There is no adequate basis for objection consistent with the overarching purpose. The same content, further, has been accepted as appropriate in *Cassuto:* ASOC [12]
147	27A – rise in antisemitism or discrimination towards Jews and Israelis in Australia.	This is an appropriate pleading, as a relevant fact in issue being 'circumstances' relevant to the s 18C requirements, that is the likely reaction of offence, intimidation, insult or humiliation for the groups concerned: *c.f.* e.g. *Kaplan v State of Victoria (No 8)* [2023] FCA 1092 at [517]; *Cassuto v Kostakidis* [2025] FCA 1226 at [74]. The amendment, like all the few amendments outside the scope of leave granted, comes at an early stage of the proceeding, prior to a defence put on, with no prejudice to the Respondents. There is no basis to strike out the amendment which merely tidies up and clarifies the issues already in contention and should be permitted. *Pascoe v Boensch* [2009] FCA 1240, [79]. There is also no jurisdictional impediment factoring in s46PO of the AHRC Act. That section has two available limbs, each of which, and clearly the second limb, are ~~clearly~~ met ~~– the objection cites just the~~

		~~second limb, ignoring the first, and the second limb is clearly met too~~. The pleading of the 'circumstances' of a rise in antisemitism does not change the fact that the unlawful discrimination alleged is the *identical* impugned conduct alleged from the AHRC complaint. Cf e.g. *King v Jetstar Airways Pty Ltd (No 2) (2012)* 286 ALR 149, [25]; *Cumaiyi v Northern Territory of Australia* [2020] FCA 1299 [18]; *Grigor-Scott v Jones* (2008) 168 FCR 450, [19]. Further, there is meant to be flexibility in the language of s46PO(3) which is clearly not offended by the proposed amendment; cf e.g *Travers v State of New South Wales* [2000] FCA 1565, [8]. *Dye v Commonwealth Securities Ltd (No 2)* [2010] FCAFC 118, [48]. See further our submissions in the main text on s46PO(3) of the AHRC Act. ~~The objection is also confusing as it purports to apply to 25(b), not 27A (presumably a typo), and T~~the objection to 27A is only or is substantially to the *particulars*, which are not to be pleaded to, as opposed to material facts alleged. As the particulars themselves are not to be pleaded to (FCR r 16.41 note 3), the objection is unfounded. Further, since Prof Keane's impugned conduct is continuing in nature (i.e. publication and failure to remove), all the particulars are relevant in any event. Further, factual assertions as to timing in the Keane Submissions are manifestly incorrect (cf [44~~]~~(d)], when considering items (i), (ii) and (xxiii) and the converse is true for [44~~]~~(c)] – as the Hamas Flag Post is a continuing act, all the particulars are relevant).~~.~~ Further detail is contained in our Submissions on this objection.
1~~5~~8	28A – Hamas	Same essential rationale as set out for 24A, consequential on the deletion of 27 (and 24).
16	28	This is a new, technical, objection (from the original table). The proposed amendment should be granted.
1~~9~~7	29	The words being objected to now are "*6,288 views and remains accessible"*. However, the Table supplied by Prof Keane misrepresents the prior 5 September pleading which stated at there [30(c)] "~~6,201~~ 6,232 views." It fails to show the updating of the views in strikeout. Put simply, there is nothing new in substance being proposed to be amended, rather, there is simply some extra words added for abundant clarification and caution ("and remains accessible") as objections have been taken to matters in the past which were otherwise clear but invite possible debate. This simply clarifies what was already in our view adequately pleaded to avoid debate. The fact that 6,232 views was stated at 5 September was linked to a then 'accessible' picture with said number of views. The Hamas Flag Post remains accessible and visible today in fact with 6,294 views.

		Further, the pleading at all times ([30(a)] or now [29(a)]) pleads the Hamas Flag post's continuing and remaining posting and visibility, and the impugned conduct is the post and non-removal: [37] [38]. Accordingly, the addition of the words "and remains accessible" simply spells this out in extra words so there is no conceivable ambiguity or debate. This is relevant to Professor Keane's liability under s18C and gives notice to the Respondents of the case to be met. This again, is not introducing anything new, but merely tidies up and clarifies the issues already in contention and should be permitted. *Pascoe v Boensch* [2009] FCA 1240, [79]. The submissions now seek to add a jurisdictional objection based on s46PO of the AHRC Act. That section has two available limbs, each of which are clearly met – the Keane Submissions just cite the first limb, ignoring the second (which is clearly met). See the main text of the Applicants' submissions for elaboration of our position.
1820	35	This should be permitted and is consequential on the amendments relating to [24A] and [28A].
19	39	This is a new, technical, objection (from the original table) which should be rejected.
201	40 applicants	No objection.
221	42 attachments	No objection.
223	42b Smidt	No objection.
234	49 Israeli people/person	No objection.
245	50 First and Second Applicants	No objection.
256	52 Israeli persons	No objection.
27	53(e) 53(f)	Appears to be no objection to 53(e). No good reason for any objection of this nature, certainly not at this early juncture. ~~Objection framed inappropriately.~~ As to 53(f) there is no basis for objection to the particulars annexed in the manner specifically requested by the First Respondent. The substance of the Applicants' submissions is set out in the main text.