

NOTICE OF FILING

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Document Lodged:	Defence - Form 33 - Rule 16.32
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	4/09/2026 5:23:57 PM AEST
Date Accepted for Filing:	4/09/2026 5:23:57 PM AEST
File Number:	NSD951/2025
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.

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Form 33
Rule 16.32

Defence

No. 951 of 2025

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

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

Applicants

John Keane and another

Respondents

To the **Amended Statement of Claim** filed 30 July 2026, the Second Respondent says as follows (adopting the definitions used in the ASOC unless otherwise indicated).

Jurisdiction

1. It admits paragraph 1.

Parties

2. It does not know and cannot admit if the Applicants and the persons named in Schedule A are all ordinarily resident in Australia but otherwise admits paragraph 2.
3. It admits paragraph 3 and says further that Dr Joseph Toltz has been employed in the professional position of Manager of Research Support in the Faculty of Arts and Social Sciences since 1 January 2021.
4. As to paragraph 4:
 - a. it admits subparagraph (a);
 - b. it admits subparagraph (b); and
 - c. save that it admits that Professor Emeritus Suzanne Rutland OAM is an Israeli citizen, it does not know and cannot admit subparagraph (c).
5. As to paragraph 5:
 - a. it does not know and cannot admit subparagraph (a);
 - b. save that it admits that Mr Ariel Eisner was its student, studying a Bachelor of Architecture from February 2022 until November 2024, it does not know and cannot admit subparagraph (b); and

- c. save that it admits that Mr Ariel Eisner is a Jewish person, it does not know and cannot admit subparagraph (c).
- 6. As to paragraph 6, it:
 - a. admits subparagraph (a);
 - b. admits subparagraph (b);
 - c. admits subparagraph (c); and
 - d. save that it admits that Mr Yanis Levy is an Israeli citizen, it does not know and cannot admit subparagraph (d).
- 7. As to paragraph 7 it repeats and relies upon paragraphs 3-6 above.
- 8. As to paragraph 8, It:
 - a. admits subparagraph (a) – (j);
 - b. as to subparagraph (k), save that it admits that Dr Loren Mowszowski is a Jewish person and a dual Australian-Israeli citizen who from 08 August 2022 until about mid-July 2024, was 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, it does not know and cannot admit subparagraph (k);
 - c. admits subparagraph (l).
- 9. As to paragraph 9, it denies that Professor Peter Morgan is an affected or aggrieved person protected by the operation of the RDA and the AHRC Act, and says further:
 - a. it denies subparagraph (a);
 - b. save that it admits that Professor Morgan was expressly named in Keane's Staff Member's Post, it otherwise denies subparagraph (b);
 - c. it denies subparagraph (c);
 - d. save that it admits that that RDA seeks to redress racial discrimination and vilification, it otherwise denies subparagraph (d);
 - e. save that it admits that Associate Professor Avril Alba wrote the email referred to in paragraph 42(a) of the ASOC, it otherwise denies subparagraph (e); and
 - f. it denies subparagraph (f) and disputes Professor Morgan's standing to make a claim under s 46PO(2A) of the *Australian Human Rights Commission Act 1986* (Cth).
- 10. As to paragraph 10:

- a. save that it admits that each of the persons named in subparagraph 8 of the ASOC were named in Professor Keane's Staff Member's Post, it does not know and cannot admit subparagraph (a);
 - b. it denies subparagraph (b); and
 - c. it admits subparagraph (c).
- 11. As to paragraph 11:
 - a. it admits subparagraph (a); and
 - b. as to subparagraph (b) it admits that persons born in Israel constitute a group of persons with a shared national origin and otherwise denies subparagraph (b).
- 12. As to paragraph 12;
 - a. it admits subparagraph (a);
 - b. it admits subparagraph (b);
 - c. says that subparagraph (c) lacks the proper particulars and is liable to be struck out and under cover of that objection does not know and cannot admit subparagraph (c).
- 13. As to paragraph 13
 - a. it admits subparagraph (a);
 - b. save that it admits Professor Keane has been a Professor of Politics since 1 July 2010, it does not know and cannot admit subparagraph (b); and
 - c. does not know and cannot admit subparagraph (c).
- 14. It admits paragraph 14.

Professor John Keane X (Twitter) Page

- 15. As to paragraph 15, it admits that Professor Keane operates an X Page but says that Professor Keane has always operated the Keane X Page in his personal capacity, independent of his employment with it.
- 16. It does not know and cannot admit paragraph 16.
- 17. It does not know and cannot admit paragraph 17.
- 18. It does not know and cannot admit paragraph 18.
- 19. It does not know and cannot admit paragraph 19.

Hamas

- 20. It admits paragraph 20.

- 21. It denies paragraph 21 and says that the Statement of Reasons for listing Hamas as a terrorist organisation reads "their essential aim is the unification of Israel and the Palestinian Territories under Islamic rule – a goal which entails the destruction of Israel as a political entity."
- 22. In relation to paragraph 22, it repeats paragraph 21 of this Defence.
- 23. In relation to paragraph 23, it repeats paragraph 21 of this Defence.
- 24. There is no paragraph 24 of the ASOC.
- 24A. It says that paragraph 24A lacks the proper particulars and is liable to be struck out and under cover of this objection, it does not know and cannot admit the sub-paragraph.

7 October 2023

- 25. In relation to paragraph 25, it admits that Hamas members engaged in acts of violence, including killings of substantial numbers of Jewish or Israeli people, in Israel on 7 October 2023 and otherwise does not know and cannot admit the paragraph.
- 26. It admits paragraph 26.
- 27. There is no paragraph 27 of the ASOC.
- 27A. In relation to paragraph 27A, it says:
 - a. there is a lack of proper particulars and the paragraph is liable to be struck out;
 - b. under cover of this objection admits there has been reported concerns about antisemitism in Australia since 7 October 2023; and
 - c. otherwise does not know and cannot admit paragraph 27A.
- 28A. It says that paragraph 28A lacks the proper particulars and is liable to be struck out and under cover of this objection, does not know and cannot admit the sub-paragraph.

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

- 28. It does not plead to paragraph 28 as it does not contain any allegations against it.
- 29. It does not plead to paragraph 29 as it does not contain any allegations against it.
- 30. It does not plead to paragraph 30 as it does not contain any allegations against it.
- 31. It does not plead to paragraph 31 as it does not contain any allegations against it.
- 32. It does not plead to paragraph 32 as it does not contain any allegations against it.
- 33. It does not plead to paragraph 33 as it does not contain any allegations against it.
- 34. There is no paragraph 34 of the ASOC.

Imputations

35. It does not plead to paragraph 35 as it does not contain any allegations against it.

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

36. It does not plead to paragraph 36 as it does not contain any allegations against it.

37. It does not plead to paragraph 37 as it does not contain any allegations against it.

38. It does not plead to paragraph 38 as it does not contain any allegations against it.

39. It does not plead to paragraph 39 as it does not contain any allegations against it.

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

40. It admits paragraph 40 and repeats and relies upon paragraph 15 above.

41. It admits paragraph 41 and repeats and relies upon paragraph 15 above.

42. It admits paragraph 42 but says that Professor Keane's response of 6 November 2023 was to a communication by the Vice-Chancellor of 9 October 2023 not 26 October 2023.

43. It admits paragraph 43 and says that the sentence used by the Vice-Chancellor was:

"This means that during the current conflict and at all other times, we support the rights of students and staff to engage in political discourse, including by making pro-Israel and pro-Palestine statements or commentary, but we will not tolerate any pro-terrorist statements or commentary, including support for Hamas's recent terrorist attacks. "

44. It admits paragraph 44.

45. It admits paragraph 45.

46. It does not know and cannot admit paragraph 46.

47. In relation to paragraph 47, it says:

- a. regarding sub-paragraph (a), it admits that Professor Keane's Staff Members Post was capable of conveying the imputation that the staff members regarded Palestinians as 'non-humans' but says there is no reference to the staff members being Jewish or Israeli or other Jewish and Israeli people and that Peter Morgan is neither Jewish nor Israeli and otherwise denies sub-paragraph (a); and
- b. denies sub-paragraph (b)-(e).

48. It does not know and cannot admit paragraph 48.

49. It does not know and cannot admit paragraph 49.

50. Save that it admits that the First and Second Applicants were named in Keane's Staff Members Post, it does not know and cannot admit paragraph 50.

Contravention of section 18C of the RDA

51. It admits paragraph 51.
52. In relation to paragraph 52, it:
- a. admits that Professor Keane posted the Keane's Staff Members Post, and removed that post on 21 May 2024;
 - b. admits that it was reasonably likely, in all the circumstances, that the Staff Members named in Keane's Staff Members Post would be offended by the admitted imputation in paragraph 47(a) of this Defence;
 - c. refers to and repeats paragraph 47(a) of the Defence; and
 - d. otherwise denies paragraph 52.
53. It denies paragraph 53, and says further:
- a. it denies subparagraph (a);
 - b. it admits that the post refers to being "pro-Israel" which is not to be conflated with being Jewish or Israeli but otherwise denies subparagraph (b);
 - c. it denies subparagraph (c);
 - d. it denies subparagraph (d);
 - e. save that it admits that Professor Keane had earlier posted the Hamas Flag Post, it otherwise denies subparagraph (e);
 - f. it does not know and cannot admit subparagraph (f).
54. It denies paragraph 54.

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

55. It admits paragraph 55.
56. It admits paragraph 56 and further says:
- a. it admits that some internal staff email exchanges were communicated through its email service, but otherwise denies subparagraph (a);
 - b. it admits subparagraph (b) and says further that it responded to the complaints received in respect of the Staff Members Post in accordance with its complaint management procedures which culminated in an investigation and disciplinary action being taken against Professor Keane;

Particulars

1. Student Complaints Procedures 2015 for complaints initiated by students;
 2. Bullying, Harassment and Discrimination Resolution Procedures 2015 for complaints of harassment and discrimination initiated by or against staff; and
 3. Resolution of Complaints Policy 2015 which governs how it assesses complaints.
- c. in relation to subparagraph (c) it admits that Keane's Staff Members Post was found to be in breach of the named policies and instruments referenced in subparagraph (c)(iii, cl 8(1)(b),(e),(g)),(iv) and (vi) as evidenced by the University's disciplinary process.
57. It denies paragraph 57.
58. It denies paragraph 58 and says further that
- a. as to subparagraph (a) it undertook an investigation and subsequently disciplined Professor Keane as a result of complaints it received in respect of the correspondence.
 - b. it denies subparagraph (b) and says that it acted appropriately in accordance with its complaints management procedures, and with due diligence.

Particulars

- i. The University's delegate, Professor Lisa Adkins, the Dean of Faculty of Arts and Social Sciences (the **Delegate**) managed the investigation of the complaints received in November 2023. During this process consideration was given to the concerns raised by each complainant and the impact of the alleged conduct. Professor Keane was provided with details of the concerns, including relevant background information and applicable University policies, charters and codes, and invited to provide a response.
- ii. In November 2023 and December 2023, the volume of complaints received over this period (separate to those about Professor Keane) was materially higher than standard. To ensure the University responded appropriately and consistently, the University engaged in a careful consideration and assessment of the interaction of the University's policies (particularly those relating to intellectual freedom

and safety); and matters where steps under the University's disciplinary processes was warranted.

- iii. On 18 December 2023, the University put allegations to Professor Keane in respect of the Staff Members Post for his comment and response.
 - iv. On 12 February 2024, the University met with Professor Keane to obtain his responses to the allegations.
 - v. On 2 April 2024, the delegate notified Professor Keane that the University considered he had engaged in misconduct and was issued a warning pursuant to clause 464(b) of the Enterprise Agreement. Professor Keane was directed to delete the X post of 9 November 2023. The complainants were also notified of the outcome of the Misconduct process and the direction to delete the X post. The deadline for the deletion was 5 April 2024.
 - vi. On 3 April 2024, the delegate received an email from Dr Nick Riemer, in his capacity as Branch President for the NTEU, notifying the delegate that Professor Keane had taken a period of annual leave from 18 March 2024 with a return to work date of 20 May 2024, unknown to the delegate. Dr Nick Riemer's email stated that Professor Keane was not able to 'consider the letter or its response' until he returned from leave.
 - vii. The University made further attempts to direct Professor Keane via email to delete the X post, notwithstanding his period of leave. The NTEU asserted that the University's communications were contrary to clause 225 of the Enterprise Agreement which provides employees the right to disconnect during leave. During this period, the University advised certain complainants that the deletion of the X post was delayed due to Professor Keane's leave.
 - viii. On 8 April 2024, Professor Adkins emailed the NTEU and Professor Keane confirming a substantive response was not required and repeating the direction to delete the X post.
 - ix. Professor Keane returned from leave on 20 May 2024 and deleted the X post on 21 May 2024. The complainants were advised of this deletion.
- c. it has numerous policies, charters and codes that set out its expectations regarding the conduct of members of its community (being staff member,

affiliates and students), and that provide mechanisms for complaints and concerns to be raised with it.

Particulars

These policies, charters and codes include:

1. The Bullying, Harassment and Discrimination Prevention Policy 2015;
 2. The Charter of Freedom of Speech and Academic Freedom;
 3. The Code of Conduct – Staff and Affiliates;
 4. The Public Comment Policy;
 5. The University of Sydney Enterprise Agreement 2023-2026 (**Enterprise Agreement**); and
 6. The Anti-Racism Statement.
- d. It requires employees to undertake mandatory training to prevent discrimination. Professor Keane has completed various training courses.

Particulars

- i. The 'Work Health & Safety Induction' course in 2019;
- ii. The 'Cyber Security' course in 2019; and
- iii. The 'Code of Conduct' course in 2022.

59. It denies paragraph 59 and repeats and relies on paragraphs 56 and 58 above.

Complaint to the Australian Human Rights Commission

60. It admits paragraph 60.

61. It admits paragraph 61

62. It admits paragraph 62.

Relief

63. As to paragraph 63, it denies that the Applicants are entitled to the relief sought, or any relief from it.

Date: 4 September 2026



Signed by Stephen Woodbury
Lawyer for the Second Respondent

This pleading was prepared by Bronwyn Byrnes of counsel and settled by Robert Dick SC.

Certificate of lawyer

I Stephen Woodbury, certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 4 September 2026



Signed by Stephen Woodbury
Lawyer for the Second Respondent

Schedule A

No. 951 of 2025

Applicants

First Applicant: JOSEPH TOLTZ
Second Applicant: SUZANNE RUTLAND
Third Applicant: ARIEL EISNER
Fourth Applicant: YANIV LEVY

Represented Persons

- a. LIONEL BABICZ
- b. YULIA BERLIN-FIRER
- c. DAVID CELERMAJER AO
- d. ILAN DAR-NIMROD
- e. JENNIFER DOWLING
- f. YONA GILEAD
- g. JUDY KAY
- h. GUSTAV LEHRER FAA AM
- i. GUY MAYRAZ
- j. PETER MORGAN
- k. LOREN MOWSZOWSKI
- l. LYNNE SWARTS

First Respondent: JOHN KEANE

Second Respondent: THE UNIVERSITY OF SYDNEY