

## NOTICE OF FILING

### Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32  
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)  
Date of Lodgment: 28/11/2025 3:03:43 PM AEDT  
Date Accepted for Filing: 28/11/2025 3:03:49 PM AEDT  
File Number: VID404/2025  
File Title: ALON CASSUTO v MARY KOSTAKIDIS  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



*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.



## Defence

No. VID404 of 2025

Federal Court of Australia  
District Registry: Victoria  
Division: General

### ALON CASSUTO

Applicant

### MARY KOSTAKIDIS

Respondent

To the Applicant's Further Amended Statement of Claim (**FASOC**) and Annexure A thereto (**Annexure A**), the Respondent says as follows:

#### A THE PARTIES

1. In response to paragraph 1, the Respondent:
  - a. does not know and therefore cannot admit subparagraph (a);
  - b. admits subparagraph (b);
  - c. does not know and therefore cannot admit subparagraph (c); and
  - d. says that the Applicant has instituted the present proceeding vexatiously and without reasonable cause and in bad faith, as pleaded further at paragraph 29 below.
2. The Respondent admits paragraph 2, and says that she:
  - a. is a journalist and commentator;
  - b. was part of the management team that developed SBS Television;
  - c. presented the flagship SBS World News for almost 20 years; and
  - d. is an advocate for press freedom and human rights.

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Filed on behalf of (name & role of party) Mary Kostakidis, the Respondent  
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**B JEWISH COMMUNITY IN AUSTRALIA**

3. The Respondent does not know and therefore cannot admit paragraph 3.

4. In response to paragraph 4, the Respondent:

- a. does not know and therefore cannot admit subparagraph (a), noting that:
  - i. the term “Zionist” in subparagraph (a) is not defined and may bear a range of meanings;
  - ii. Zionism is a political philosophy or ideology and not a race or an ethnic group;

**Particulars**

*Toltz v Keane* [2025] FCA 1386 at [61].

- iii. one definition of Zionism is the “aim to establish a Jewish state by taking over as much of historical Palestine as possible and leaving in it as few Palestinians as possible”;

**Particulars**

Ilan Pappé in “On Palestine”, Noam Chomsky and Ilan Pappé, Penguin Books, 2015, p 27 (underlining added).

- iv. disparagement of Zionists or Zionism is not *ipso facto* disparagement of a race or ethnic group;

**Particulars**

*Toltz v Keane* [2025] FCA 1386 at [61].

- b. does not know and therefore cannot admit subparagraph (b);
- c. does not know and therefore cannot admit subparagraph (c); and
- d. puts the Applicant to strict proof of subparagraphs (a) – (c) in so far as they are relevant to the Applicant’s claim. The Respondent does not admit such relevance.

4A. The Respondent does not know and therefore cannot admit paragraph 4A.

4B. In response to paragraph 4B, the Respondent:

- a. repeats subparagraph 4.a above;
- b. does not know and therefore cannot admit subparagraph (b);
- c. does not know and therefore cannot admit subparagraph (c); and

- d. puts the Applicant to strict proof of subparagraphs (a) – (c) in so far as they are relevant to the Applicant’s claim. The Respondent does not admit such relevance.

**C HEZBOLLAH AND HAMAS**

5. In response to paragraph 5, the Respondent:

- a. admits that Hezbollah:
  - i. was listed as a terrorist organisation under the *Criminal Code Act 1995* (Cth) on 10 December 2021;
  - ii. is based in Lebanon; and
- b. otherwise denies the paragraph.

6. In response to paragraph 6:

- a. the Respondent admits that at the time of both the 4 January Post and the 13 January Post, Hassan Nasrallah was the Secretary-General and leader of Hezbollah; and
- b. otherwise does not know and therefore cannot admit the paragraph.

7. The Respondent does not know and therefore cannot admit paragraph 7, and, to the extent that the Applicant has sought under the heading “Particulars” to plead material facts as to the alleged conduct of actors for and on behalf of Hezbollah, the Respondent says that:

- a. material facts are to be contained in the pleading and not in the particulars;
- b. the Respondent is not required to respond to particulars;
- c. paragraph 7:
  - i. is liable to be struck out pursuant to FCR 16.21(d) and (f) as likely to cause delay in the proceeding and as an abuse of the process of the Court;
  - ii. makes allegations as to the conduct of a foreign organisation that cannot and should not be the subject of any factual or legal determination by this Court in the absence of full evidence;
  - iii. invites an evidentiary battle on issues that are not relevant to any claim for relief; and

**Particulars**

- iv. ought to be withdrawn;
- d. notes that, by way of *preventing* the establishment of a Palestinian State (which, on 21 September 2025, was recognised by the Commonwealth of Australia):
  - i. the 1977 Original Party Platform of the Likud Party, the political party of which Benjamin Netanyahu, the current Prime Minister of the State of Israel is a member, stated “between the Sea and the Jordan there will only be Israeli sovereignty”;

**Particulars**

“Likud Party: Original Party Platform (1977)”, website of the Jewish Virtual Library, accessed 22 November 2025.

- ii. the 1999 platform of the Likud Party rejected “the establishment of a Palestinian Arab state west of the Jordan river”;

**Particulars**

Noam Chomsky, “On Palestine” (*supra*), p 159.

- iii. the *2018 Basic Law: Israel- the Nation State of the Jewish People (Basic Law Nation State)* states, “The realization of the right to national self-determination in the State of Israel is exclusive to the Jewish People”, and “The State views the development of Jewish settlement as a national value”;

**Particulars**

English translation of Basic Law Nation State, available on website of the Knesset of the State of Israel, accessed 27 November 2025.

- iv. on or about 17 November 2025, in his weekly Cabinet meeting, Mr Netanyahu stated, “Our opposition to a Palestinian State and any territory West of the Jordan River, this opposition exists, is valid, and has not changed one bit. I have been rebuffing these attempts for decades”;

**Particulars**

SBS World News, first aired 17 November 2025, 19 minutes 50 seconds to 20 minutes 10 seconds.

- e. notwithstanding subparagraphs a. to c. above, says further:

- i. in response to the Respondent's request for the same, the Applicant has refused to produce to the Respondent his sources for the assertions of historical matters in the particulars to paragraph 7; and
  - ii. the Applicant is put to strict proof in so far as any of the particulars to paragraph 7 are relevant to the pleaded cause of action, which is denied.
- 8. The Respondent does not know and therefore cannot admit paragraph 8, and, to the extent that the Applicant has sought under the heading "Particulars" to plead material facts as to statements allegedly made by Mr Nasrallah, says that:
  - a. subparagraphs 7.a, 7.b and 7.d above are repeated;
  - b. in response to the Respondent's request for the same, the Applicant has refused to produce to the Respondent the sources for the alleged statements in the particulars to paragraph 8;
  - c. she puts the Applicant to strict proof of particulars (a) to (e) in so far as they are relevant to the Applicant's claim, the Respondent not admitting such relevance; and
  - d. on 17 November 2025, the National Security Minister of the State of Israel, Itamar Ben-Gvir stated that if the United Nations Security Council approved the proposed Gaza international stabilisation force in its current form, "targeted assassinations of senior Palestinian Authority officials, who are terrorists for all intents and purposes, should be ordered".

#### **Particulars**

"Ben-Gvir calls to assassinate PA officials, arrest Abbas if UNSC approves Gaza resolution", The Jerusalem Post, 17 November 2025.

- 9. In response to paragraph 9, the Respondent:
  - a. admits that Hamas was listed as a terrorist organisation under the *Criminal Code Act 1995* (Cth) on 4 March 2022 (**Hamas Listing**);
  - b. says that the Hamas Listing repealed the listing of Hamas' Izz al-Din al-Qassam Brigades as a terrorist organisation under the *Criminal Code Act 1995* (Cth);

#### **Particulars**

*Criminal Code (Terrorist Organisation- Hamas) Regulations 2022* (Cth), repealing *Criminal Code (Terrorist Organisation- Hamas' Izz al-Din al-Qassam Brigades) Regulations 2021* (Cth).

- c. notes that proceedings have been brought in this Court challenging the refusal of an application for the delisting of Hamas as a terrorist organisation under the *Criminal Code Act 1995* (Cth); and

**Particulars**

*Uncle Robbie Thorpe & Anor v Attorney General of the Commonwealth & Ors*, File no. VID 499/2025.

- d. otherwise does not know and therefore cannot admit the paragraph.
10. The Respondent does not know and therefore cannot admit paragraph 10, and, to the extent that the Applicant has sought under the heading “Particulars” to plead material facts, says that:
- a. subparagraphs 7.a and 7.b above are repeated; and
  - b. notwithstanding subparagraph a above, says further that:
    - i. Noam Chomsky, Jewish scholar, public intellectual and recipient of the 2011 Sydney Peace Prize, has stated that “Hamas leaders have repeatedly made it clear that Hamas would accept a two-state settlement in accord with the international consensus that has been blocked by the United States and Israel for forty years”;

**Particulars**

Noam Chomsky in “On Palestine”, p 159 (*supra*).

- ii. the first and third (unnumbered) particulars do not support the averment in paragraph 10;
- iii. as to the quoted words in the second (unnumbered) particular:
  - 1. in Article 7 of the version of Hamas’ 1988 Charter produced by the Applicant to the Respondent, similar words are expressly attributed to “the Prophet”; and
  - 2. versions of the story of the stones and trees are found in the major Hadith collections; and

**Particulars**

*Wertheim v Haddad* (2025) 311 FCR 263 at [59].

- iv. as to the third (unnumbered) particular:
  - 1. the version of Hamas’ 2017 Charter produced by the Applicant to the Respondent, states “Hamas considers the establishment of a

fully sovereign and independent Palestinian state, with Jerusalem as its capital along the lines of the 4th of June 1967, with the return of the refugees and the displaced to their homes from which they were expelled, to be a formula of national consensus”;

- v. in response to the Respondent’s request for the same, the Applicant has refused to produce to the Respondent the sources for the alleged statements in the fourth and fifth (unnumbered) particulars.

## **D THE EVENTS OF 7 OCTOBER 2023**

11. As to paragraph 11, the Respondent:

- a. admits that on 7 October 2023 members of Hamas entered Israel (**Events of 7 October 2023**) and that Israelis were killed, taken hostage, injured, subjected to acts of sexual violence, and that property was destroyed;
- b. does not know and therefore cannot admit the number of Israelis killed, taken hostage or injured during the Events of 7 October 2023; and
- c. otherwise denies the paragraph.

12. The Respondent does not know and therefore cannot admit paragraph 12, and puts the Applicant to strict proof that the Events of 7 October 2023 are properly comparable to the Holocaust (in so far as the same is relevant to the Applicant’s claim which relevance is denied) and says further that:

- a. military operations by the State of Israel in the Gaza Strip between 27 December 2008 and 18 January 2009 killed 1,166 Palestinians according to the Government of Israel;

### **Particulars**

“Human Rights in Palestine and other Occupied Arab Territories”, report of the United Nations Fact-Finding Mission on the Gaza Conflict (“Goldstone Report”), 25 September 2009 (A/HRC/12/48), at [30].

- b. during the 2014 conflict in the Gaza Strip between 8 July and 26 August 2014, 2,251 Palestinians were killed;

### **Particulars**

“2014 Gaza Conflict”, page on United Nations Relief and Works Agency for Palestine Refugees in the Near East website, accessed 27 November 2025.

- c. on 8 October 2023, the State of Israel announced the commencement of a major military operation on the Gaza Strip;

**Particulars**

“Detailed findings on the military operations and attacks carried out in the Occupied Palestinian Territory from 7 October to 31 December 2023”, Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel (**Commission of Inquiry**), 10 June 2024 (A/HRC/56/CRP.4).

- d. on 9 October 2023, the State of Israel imposed a complete siege on the Gaza Strip;

**Particulars**

The particular to subparagraph c. above is repeated.

- e. on 9 October 2023, Yoav Gallant, Defence Minister of the State of Israel, announced: “We are imposing a complete siege on Gaza. There will be no electricity, no food, no water, no fuel, everything will be closed. We are fighting against human animals, and we are acting accordingly.”

**Particulars**

“Israeli defence minister orders ‘complete siege’ on Gaza”, YouTube, posted on 9 October 2023 by @aljazeeraenglish.

- f. on around 8 January 2024, around the time of the 4 January Post and the 13 January Post, the Ministry of Health in the Gaza Strip was reporting that in the Gaza Strip between 7 October 2023 and 7 January 2024:

- i. Israel had killed approximately 23,000 Palestinians; and
- ii. Israel had injured approximately 59,000 Palestinians;

**Particulars**

“Hostilities in the Gaza Strip and Israel”, Flash Update #87, United Nations Office for the Coordination of Humanitarian Affairs, 8 January 2024.

- g. on or around 6 September 2025, the Government Media Office in the Gaza Strip was reporting that Israel had killed at least 20,000 Palestinian children in the Gaza Strip since October 2023;

**Particulars**

“Gaza: 20,000 children killed in 23 months of war- more than one child killed every hour”, article published on the website of Save the Children, dated 6 September 2025.

- h. on or around 20 November 2025, the Ministry of Health in the Gaza Strip was reporting that Israel had killed at least 69,546 Palestinians in the Gaza Strip since 7 October 2023; and

**Particulars**

“Israel-Gaza war death toll: Live tracker”, Al Jazeera website, accessed 22 November 2025.

- i. it has been reported that:

- i. as of 26 August 2025, Israel had killed 247 Palestinian journalists in the Gaza Strip since 7 October 2023; and

**Particulars**

“Killing of journalists in Gaza hospital attack ‘should shock the world’: UN rights office”, article dated 26 August 2025 on United Nations News website.

- ii. the State of Israel has, since 7 October 2023, killed more journalists than were killed during the United States Civil War, World Wars I and II, the Korean War, the Vietnam War (including the conflicts in Cambodia and Laos), the wars in Yugoslavia in the 1990s and 2000s, and the post-9/11 war in Afghanistan, combined.

**Particulars**

“News Graveyards: How Dangers to War Reporters Endanger the World”, Nick Turse, 1 April 2025, published on Brown University’s Costs of War project website.

13. The Respondent does not know and therefore cannot admit paragraph 13, and says that, to the extent that the Applicant has sought under the heading “Particulars” to plead material facts, subparagraphs 7.a and 7.b above are repeated. The Respondent puts the Applicant to strict proof of paragraph 13, including its particulars, in so far as it is relevant to the Applicant’s claim. The Respondent does not admit such relevance.
14. The Respondent does not know and therefore cannot admit paragraph 14, and says that:
- a. the term “antisemitism” is not defined in paragraph 14,

- b. the term “antisemitism” may bear a range of meanings and does not reflect the language of s 18C of the *Racial Discrimination Act 1975* (Cth) (**RDA**);

**Particulars**

*Cassuto v Kostakidis* [2025] FCA 1226 at [42].

- c. to the extent that the Applicant has sought under the heading “Particulars” to plead material facts as to the characterisation of alleged incidents since the Events of 7 October 2023:
- i. subparagraphs 7.a and 7.b above are repeated;
  - ii. the Applicant is put to strict proof in respect of the characterisation of alleged incidents (a) to (g), but the Respondent notes that:
    1. alleged incidents (a) to (g) are described as “incidents of antisemitism” and subparagraphs a and b above are repeated;
    2. the dates of alleged incidents (b) and (e) have not been included in the particulars;
    3. alleged incidents (c), (d), (f) and (g) post-date the 4 January Post and the 13 January Post;
    4. as to alleged incident (a):
      - a. the word “celebrated” is not defined or explained;
      - b. at a press conference on 2 February 2024, Mal Lanyon, then Deputy Commissioner of the NSW Police Force, stated that an expert had concluded “with overwhelming certainty” that protestors outside the Sydney Opera House on 9 October 2023 had not stated “gas the Jews”;

**Particulars**

“Video analysis finds no evidence of ‘gas the Jews’ being chanted at Sydney Opera House protest, despite witness statements”, article on ABC News website dated 2 February 2024.

5. as to alleged incident (d), Mike Burgess, the Director-General of the Australian Security Intelligence Organisation, stated on 26 August 2025 that the attack on the Adass Israel synagogue in December 2024 was ordered by Iran;

**Particulars**

“ASIO says Iran behind Australian antisemitic attacks, diplomatic ties cut”, article on ABC News website dated 26 August 2025.

6. as to alleged incident (e), on around 21 November 2024, multiple cars were graffitied with the acronym “PKK” (referring to the Kurdistan Workers’ Party) and left in proximity to the Turkish Consulate General Sydney, situated at 66 Ocean St, Woollahra, Sydney; and

#### **Particulars**

“Masked men flee scene of ‘political’ vandalism attack on cars, eastern suburbs restaurant”, article on Sydney Morning Herald website, dated 21 November 2024.

7. at a press conference held on or around 11 March 2025, David Hudson, Deputy Commissioner of the NSW Police Force, stated that:
  - a. “none of the individuals we have arrested during [Operation] Pearl have displayed any form of antisemitic ideology”; and
  - b. “in relation to what happened in the Eastern Suburbs, the 14 incidents that escalated in relation to the attacks on the Newtown synagogue, the Allawah synagogue, the firebombings of cars, the abhorrent graffiti that was spraypainted on cars and houses, that is a very small group and potentially one individual behind all these matters”.

#### **Particulars**

“14 people arrested and charged, Strike Force Pear [sic] Press Conference”, YouTube, posted on 11 March 2025 by Sydney Times, from 4 minutes 5 seconds to 4 minutes 15 seconds, and 24 minutes 40 seconds to 25 minutes 10 seconds.

### **E. THE RESPONDENT’S ALLEGED CONDUCT**

15. Subject to describing X in the way she uses it as “civic media” rather than “social media”, the Respondent admits paragraph 15, and says that her aims in posting on X include:
  - a. reporting on aspects of world events or matters that she considers are being under-reported or not reported in the mainstream media;

- b. asking questions in relation to those events or matters; and
  - c. contributing to a fuller discussion and understanding of those events or matters.
16. In response to paragraph 16, the Respondent:
- a. admits that after the Events of 7 October 2023, she has posted on X about the conduct of the State of Israel, which causes her great concern;
  - b. says that prior to the Events of 7 October 2023, she posted:
    - i. frequently about aspects of world events or matters that she considered were being under-reported or not reported in the mainstream media, including in relation to:
      - 1. the conduct of the Central Intelligence Agency of the United States of America;
      - 2. Australia's foreign policy towards China;
      - 3. Russia's invasion of Ukraine;
      - 4. press freedom; and
      - 5. the plight of whistleblowers; and
    - ii. infrequently about the conduct of the State of Israel;
  - c. notes in respect of the posts in Annexure A:
    - i. that the "sample" is neither random nor representative;
    - ii. that posts 10 to 61 post-date both the 4 January Post and the 13 January Post; and
  - d. otherwise denies the paragraph.
17. In response to paragraph 17, the Respondent denies the premise in the chapeau that she has been posting on X "about Jews", repeats subparagraph 16.a above, and says:
- a. subparagraph (a) is denied:
    - i. noting that the term "endorsed" in the subparagraph is not defined nor particularised;
    - ii. noting that the term "antisemitic" in the subparagraph is not defined;
    - iii. noting that the term "conspiracy theories" in the subparagraph is not defined; and
    - iv. repeating subparagraph 14.b above;

- v. noting that posts in the Annexure numbered 7, 21-24, 26-28, 30, 32-25, 37, 42, 46, 47, 50-51, 55-56, 58 and 61, referred to in the Particulars to subparagraph (a), all post-date the 4 January Post and posts numbered 21-24, 26-28, 30, 32-25, 37, 42, 46, 47, 50-51, 55-56, 58 and 61 post-date the 13 January Post;
- b. subparagraph (b) is denied, noting that:
    - i. the term “Zionism” in the subparagraph is not defined and may bear a range of meanings;
    - ii. paragraph 4.a.iii above is repeated;
    - iii. the phrase “is equivalent to” in the subparagraph is not defined or explained;
    - iv. no material facts are pleaded in support;
    - v. a high-profile Israeli commentator, Gideon Levy, has stated that, “It is no longer possible to be a Zionist and not a fascist”; and

#### **Particulars**

“We Israelis Are All Itamar Ben-Gvir”, article on Haaretz website, dated 29 October 2025.

- vi. all of the posts in the Annexure referred to in the particulars to subparagraph (b) post-date the 4 January Post and the 13 January Post.
- c. subparagraph (c) is denied, saying further that:
    - i. in 19 July 2024, the International Court of Justice determined and advised the General Assembly of the United Nations that Israel’s legislation and measures, that imposed and served to maintain a near-complete separation in the West Bank and East Jerusalem between the settler and Palestinian communities, constitute a breach of Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination (**CERD**) of 21 December 1965;

#### **Particulars**

Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of the International Court of Justice, 19 July 2024.

Article 3 of CERD states:

“States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.”

ii. high-profile commentators and organisations have described the State of Israel as an apartheid and/or supremacist state:

1. the late Jimmy Carter, former President of the United States of America, has stated, “A system of apartheid, with two peoples occupying the same land but completely separated from each other, with Israelis totally dominant and suppressing violence by depriving Palestinians of their basic human rights. This is the policy now being followed, although many citizens of Israel deride the racist connotation of prescribing permanent second-class status for the Palestinians”;

**Particulars**

“Palestine: Peace Not Apartheid”, Jimmy Carter, Simon & Schuster, 2006, p 215.

2. Ilan Pappé has stated, “We need to start by correctly characterising the problem: expose Zionism as a colonialist movement and characterize Israel as an apartheid racist state”;

**Particulars**

Ilan Pappé in “On Palestine” (*supra*), p 178.

3. Noam Chomsky has stated, “The Jewish settlement in Israel was certainly a settler-colonial movement. ... The settler-colonial societies have a different kind of mentality. We did exterminate or expel the indigenous population so there has to be something justified about it- superior civilization or other ideas”;

**Particulars**

Noam Chomsky in “On Palestine” (*supra*), p 56.

4. Human Rights Watch concluded that “the Israeli government has demonstrated an intent to maintain the domination of Jewish Israelis over Palestinians across Israel and the OPT [Occupied Palestinian Territories]. In the OPT, including East Jerusalem, that intent has been coupled with systematic oppression of Palestinians and inhumane acts committed against them. When

these three elements occur together, they amount to the crime of apartheid”;

**Particulars**

“A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution”, Human Rights Watch report published 2021.

5. Amnesty International has “assessed that almost all of Israel’s civilian administration and military authorities, as well as governmental and quasi-governmental institutions, are involved in the enforcement of the system of apartheid against Palestinians across Israel and the OPT ”;

**Particulars**

“Israel’s Apartheid Against Palestinians: Cruel System of Domination and Crime Against Humanity”, Amnesty International report published 2022.

- iii. the posts in the Annexure referred to in the particulars to subparagraph (c) post-date the 4 January Post and the 13 January Post.
- d. subparagraph (d) is denied, noting the pejorative and emotive terms “complicit” and “slaughtering” deployed by the Applicant and which do not feature in posts 10 and 43 of Annexure A and moreover that those posts post-date the 4 January Post and the 13 January Post;
- e. subparagraph (e) is denied, saying further that:
  - i. in the posts to which the particulars to subparagraph (e) refer, the Respondent invited her followers and readers on X to question or more fully understand news reports in the mainstream media about the Events of 7 October 2023 and the subsequent events in the Gaza Strip; and
  - ii. explanations for the actions of Hamas have been expressed by former senior figures in the State of Israel:
    1. Ami Ayalon, former Director, Shin Bet, the State of Israel’s internal security agency, has stated that if he were a Palestinian living in the West Bank or the Gaza Strip, “I would fight against Israel, in order to achieve my liberty”, and “I would do everything in order to achieve my liberty, and that’s it”;

**Particulars**

“The Forever War”, Four Corners program, ABC, first aired on 11 March 2024 (**The Forever War**), from 10 minutes 30 seconds to 11 minutes.

2. Ehud Barak, former Commander-in-Chief of the Defence Forces, and former Prime Minister, of the State of Israel, has stated, “I once was asked some thirty years ago, what I have been doing if I were a Palestinian, and thirty years ago I was new enough in politics to tell the truth, that if I were born Palestinian I probably would have joined one of the terror organisations”.

#### **Particulars**

The Forever War, from 14 minutes 45 seconds to 15 minutes 5 seconds

- iii. the posts numbered 8, 11, 12, 13, 25, 31, 40 and 41 in the Annexure, referred to in the particulars to subparagraph (e), all post-date the 4 January Post. The posts numbered 11, 12, 13, 25, 31, 40 and 41 post-date the 13 January Post.
- f. as to subparagraph (f):
- i. subparagraph (f)(i) is admitted, saying further that the same or a similar characterisation has been attributed to Israel’s conduct in the Gaza Strip after 7 October 2023 by high-profile international individuals and organisations:
    1. Luis Moreno Ocampo, former Chief Prosecutor of the International Criminal Court;

#### **Particulars**

Interview on Al Jazeera’s UpFront program, first aired 1 December 2023.

2. Amnesty International;

#### **Particulars**

“Israel/Occupied Palestinian Territory: ‘You Feel Like You Are Subhuman’: Israel’s Genocide Against Palestinians in Gaza”, Amnesty International report of 5 December 2024.

3. Human Rights Watch;

#### **Particulars**

“Israel’s Crime of Extermination, Acts of Genocide in Gaza”,  
Human Rights Watch News Release of 19 December 2024.

4. International Association of Genocide Scholars;

**Particulars**

“IAGS Resolution on the Situation in Gaza”, passed 31 August  
2025.

5. the Commission of Inquiry;

**Particulars**

“Legal analysis of the conduct of Israel in Gaza pursuant to the  
Convention on the Prevention and Punishment of the Crimes of  
Genocide”, Conference Room Paper of the Commission of  
Inquiry, 16 September 2025 (A/HRC/60/CRP.3).

- ii. subparagraph (f)(ii) is denied, noting that:

1. the term “akin” in subparagraph (f)(ii) is not defined or explained,  
and such a term is conclusory and potentially misleading;

**Particulars**

*Toltz v Riemer* [2025] FCA 1385 at [52].

2. no material facts are pleaded in support;
3. the victims of the Holocaust were predominantly Jewish;
4. a high-profile commentator, Gideon Levy, has stated, “There is no  
Auschwitz or Treblinka in Gaza, but there are concentration  
camps. There is also starvation, thirst, the transfer of people from  
place to place like cattle, and a blockade on medications”;

**Particulars**

“My Thoughts During the Siren”, Gideon Levy, article published on  
the Haaretz website, dated 23 April 2025.

5. the FASOC is to be treated as the definitive statement of the case,  
and any application for leave to provide further particulars should  
be refused; and

**Particulars**

*Toltz v Riemer* [2025] FCA 1385 at [86].

- g. the posts numbered 8, 14, 16, 28, 29, 30, 36, 39, 44, 45, 49, 52, 54, 57 and 60 in the Annexure, referred to in the particulars to subparagraph (f)(ii) post-date the 4 January Post, while posts numbered 14, 16, 28, 29, 30, 36, 39, 44, 45, 49, 52, 54, 57 and 60 post-date the 13 January Post.

*4 January Post*

18. The Respondent admits paragraph 18, and says:

- a. as to subparagraph (a), the Respondent was commenting that:
- i. the government of the State of Israel, having in the Gaza Strip since 7 October 2023 destroyed many homes and much infrastructure, displaced many Palestinians, and made many Palestinians feel unsafe, was “getting some of its own medicine” because Mr Nasrallah was:
    1. saying that Israeli military vehicles and tanks were being destroyed every day; and
    2. was telling Israelis living in Israel to feel unsafe; and
    3. was telling Israelis living in Israel that if they had American or British passports, to go back to the United States of America or the United Kingdom;
  - ii. the State of Israel was perpetrating a genocide against Palestinians in the Gaza Strip; and
  - iii. the State of Israel had “started something it can’t finish” because:
    1. its genocide against Palestinians in the Gaza Strip was further escalating tensions in the Middle East, particularly between Hezbollah and the State of Israel; and
    2. the State of Israel would not, by itself, be able to stop this escalation.
- b. as to subparagraph (b)(i):
- i. the following words that the First Nasrallah Post also attributed to Mr Nasrallah are omitted from subparagraph (b)(i):
 

“You want to stay here?  
That’s very difficult.”

“If you want to be secure, you want to feel secure, you have an American passport go back to the United States,

You have a British passport go back to the UK.”

- ii. the words that the First Nasrallah Post attributed to Mr Nasrallah were spoken by him in Arabic in a speech that was broadcast live and translated into English on Al Jazeera (**Al Jazeera Broadcast**);
  - c. as to subparagraph (b)(ii):
    - i. the Nasrallah Video is an extract of the Al Jazeera Broadcast;
    - ii. the Nasrallah Video shows:
      - 1. Mr Nasrallah delivering a speech; and
      - 2. a crowd of people cheering and waving flags, apparently in agreement with Mr Nasrallah’s speech.
19. The Respondent does not know and therefore cannot admit paragraph 19, and puts the Applicant to strict proof of its content.

*13 January Post*

20. The Respondent admits paragraph 20, and says:
- a. the words that the Second Nasrallah Post attributed to Mr Nasrallah were spoken by him in Arabic in the Al Jazeera Broadcast;
  - b. the Nasrallah Video is an extract of the Al Jazeera Broadcast; and
  - c. the Nasrallah Video shows:
    - i. Mr Nasrallah delivering a speech; and
    - ii. a crowd of people cheering and waving flags, apparently in agreement with Mr Nasrallah’s speech.
21. The Respondent does not know and therefore cannot admit paragraph 21, and puts the Applicant to strict proof of its content.

**F ALLEGED BREACHES OF s 18C**

*4 January Post*

22. The Respondent denies paragraph 22, and says that:
- a. paragraph 22 is an embarrassing pleading, being a conclusory statement with no material facts alleged;
  - b. subparagraphs 7.a and 7.b above are repeated;
  - c. as to particular (a), subparagraphs 4.b, 4.c, 4B.b and 4B.c above are repeated;
  - d. as to particular (b), paragraph 11 above is repeated;

- e. as to particular (c), paragraph 14 above is repeated;
- f. as to particular (d), paragraphs 7 and 8 above are repeated;
- g. as to particular (e), paragraph 13 above is repeated;
- h. as to particulars (f) and (g), the Respondent denies that the 4 January Post was reasonably likely to convey to Jewish Australians and/or Israeli Australians the imputations alleged in these particulars (even if, which is denied, the words attributed to or spoken by Mr Nasrallah as set out at paragraph 18(b) of the FASOC were reasonably likely to convey to Jewish Australians and/or Israeli Australians these imputations);
- i. as to particular (h), the Respondent:
  - i. says that s 18C(1)(a) RDA is concerned with the likely effect of the relevant act upon a hypothetical person as a member of the relevant group;
  - ii. notes that the particular does not contend that the Applicant felt humiliated or intimidated by the post, despite the pleading in the chapeau to the paragraph;
  - iii. denies that the Applicant felt offended or insulted by the post, and refers to paragraph 29 below; and
  - iv. says that if, contrary to subparagraph iii above, the Applicant felt offended and insulted by the post, that reaction was extreme or atypical and should be disregarded;

### **Particulars**

*Wertheim v Haddad* (2025) 311 FCR 263 at [43].

- j. the Respondent denies particular (i) and:
  - i. notes her understanding that the phrase refers to the rights to freedom and self-determination of Palestinians in the land of Palestine;
  - ii. denies that any State, including Israel, has a “right to exist”; and
  - iii. notes that high-profile commentators have stated that States may be formally recognised by other States but do not have a “right to exist”;

### **Particulars**

Noam Chomsky in “On Palestine” (*supra*), p 52: “States do not have a right to exist. Mexico does not accept the right of the USA

to exist sitting on half of Mexico. States recognize each other but not their right to exist. There is no such thing”;

“No state has an inherent ‘right to exist’, not even Israel”, article by Moncef Khane dated 5 November 2024, published on the Al Jazeera website.

- k. as to particular (j):
  - i. the Applicant has not pleaded how any of the Respondent’s posts in Annexure A establish that the impugned post was reasonably likely to offend, insult, humiliate and/or intimidate Jewish Australians and/or Israeli Australians; and
  - ii. paragraph 17 above is repeated;
- l. the FASOC is to be treated as the definitive statement of the case, and any application for leave to provide further particulars should be refused.

#### **Particulars**

*Toltz v Riemer* [2025] FCA 1385 at [86].

- 23. The Respondent denies paragraph 23, and says that:
  - a. paragraph 23 is an embarrassing pleading, being a conclusory statement with no material facts alleged;
  - b. subparagraphs 7.a and 7.b above are repeated;
  - c. in particular, she denies that it can be inferred from particular (a), (b), (c) or (d) that at least one of the reasons the Respondent made the 4 January 2024 Post was the Jewish race or ethnic origin of Jewish Australians and/or the Israeli national origin of Israeli Australians; and
  - d. as to particular (d):
    - i. the Applicant has not pleaded how any of the Respondent’s posts in Annexure A establish that the Respondent made the 4 January Post because of the race or national or ethnic origin of Jewish Australians and/or Israeli Australians; and
    - ii. paragraph 17 above is repeated;
  - e. the FASOC is to be treated as the definitive statement of the case, and any application for leave to provide further particulars should be refused.

#### **Particulars**

*Toltz v Riemer* [2025] FCA 1385 at [86].

24. The Respondent denies paragraph 24.
- 24A. Further or in the alternative to the foregoing, the Respondent relies on s 18D(c)(ii) RDA and says that in making the 4 January Post:
- a. the Respondent made a fair comment, and repeats subparagraph 18.a above;
  - b. on an event or matter of public interest:
    - i. the conduct of the State of Israel in the Gaza Strip after 7 October 2023; and
    - ii. a speech by Mr Nasrallah, the Secretary-General and leader of Hezbollah, an organisation based in neighbouring Lebanon and concerned in the conflict between the State of Israel and the Palestinians, about the Events of 7 October 2023 and its implications for Palestinians and Palestine, and for the State of Israel and Israelis living in the State of Israel; and
  - c. the comment was an expression of a genuine belief held by the Respondent;
  - d. the making of the post was objectively reasonable:
    - i. subparagraphs 12.c to 12.i above are repeated; and
    - ii. subparagraph 17.f.i above is repeated;
    - iii. the post reposted the First Nasrallah Post that:
      1. summarised the content of the Nasrallah Video as Mr Nasrallah telling Israelis his view that they would never be welcome in the region;
      2. accurately attributed words to Mr Nasrallah that he had spoken in the Nasrallah Video; and
      3. included a link to the Nasrallah Video; and
    - iv. the Nasrallah Video was an extract from the Al Jazeera Broadcast; and
  - e. the making of the post was in good faith:
    - i. the Respondent's comment used the words "Israeli govt" and "Israel";
    - ii. subparagraph d above is repeated; and
    - iii. paragraph 15 above is repeated.

25. The Respondent denies paragraph 25, and says that:
- a. paragraph 25 is an embarrassing pleading, being a conclusory statement with no material facts alleged;
  - b. subparagraphs 7.a and 7.b above are repeated; and
  - c. subparagraphs 22.c to 22.l above are repeated, noting that the particulars to paragraph 25 repeat the particulars to paragraph 22, which, at particular (j), only rely on the posts in Annexure A prior to the 4 January Post.
26. The Respondent denies paragraph 26, and says that:
- a. paragraph 26 is an embarrassing pleading, being a conclusory statement with no material facts alleged;
  - b. subparagraphs 7.a and 7.b above are repeated;
  - c. in particular, she denies that it can be inferred from particulars (a), (b), (c), (d) or (e) that at least one of the reasons the Respondent made the 13 January Post was the Jewish race or ethnic origin of Jewish Australians and/or the Israeli national origin of Israeli Australians; and
  - d. as to particular (e):
    - i. the Applicant has not pleaded how any of the Respondent's posts in Annexure A establish that the Respondent made the 13 January Post because of the race or national or ethnic origin of Jewish Australians and/or Israeli Australians; and
    - ii. paragraph 17 above is repeated;
  - e. the FASOC is to be treated as the definitive statement of the case, and any application for leave to provide further particulars should be refused.

### **Particulars**

*Toltz v Riemer* [2025] FCA 1385 at [86].

- 26A. Further or in the alternative, the Respondent relies on s 18D(c)(i) RDA and says that in making the 13 January Post:
- a. she was publishing a fair and accurate report:
    - i. of the Second Nasrallah Post;
    - ii. which was itself fairly and accurately reporting the Nasrallah Video;
  - b. subparagraph 24A.b24.b above is repeated;
  - c. the making of the post was objectively reasonable:

- i. the post reposted the Second Nasrallah Post that:
  - 1. accurately attributed words to Mr Nasrallah that he had spoken in the Nasrallah Video; and
  - 2. included a link to the Nasrallah Video; and
- ii. the Nasrallah Video was an extract from the Al Jazeera Broadcast; and
- d. the making of the post was in good faith:
  - i. the post reposted the Second Nasrallah Post which included a statement which used the word “Israelis”;
  - ii. subparagraph c above is repeated; and
  - iii. paragraph 15 above is repeated.

27. The Respondent denies paragraph 27.

## **G IMPLIED FREEDOM OF POLITICAL COMMUNICATION**

27A. The Respondent says that:

- a. ss 18C and 18D RDA are to be construed so as not to infringe the implied freedom of political communication under the Constitution; and

### **Particulars**

Explanatory Memorandum to the *Racial Hatred Bill 1994* (Cth), House of Representatives, The Parliament of the Commonwealth of Australia, 1994.

Second Reading Speech by the Attorney-General of the Commonwealth of Australia for the *Racial Hatred Bill 1994* (Cth), House of Representatives, 15 November 1994.

- b. a construction of ss 18C and 18D that would render unlawful criticism of the conduct of a foreign State would infringe the implied freedom of political communication under the Constitution.

## **H RELIEF**

28. As to paragraph 28, the Respondent denies that the Applicant is entitled to any relief.

## **I APPLICANT’S INSTITUTION OF THE PROCEEDING**

29. The Respondent says further that the Applicant has instituted the proceeding vexatiously, without reasonable cause and in bad faith as demonstrated by the following:

- a. at no point prior to 14 July 2024 did the Applicant contact the Respondent to complain about either the 4 January Post or the 13 January Post, or to ask that either of these posts be removed;
- b. the Applicant did not file his complaint with the Australian Human Rights Commission (**AHRC Complaint**) until 14 July 2024, six months after the 13 January Post;
- c. on 14 July 2024, the Zionist Federation of Australia (**ZFA**) held a press conference prior to filing the AHRC Complaint (**ZFA Press Conference**);

**Particulars**

“Press conference with ZFA CEO Alon Cassuto and President Jeremy Leibler, 14 July 2024”, video posted by the Zionist Federation of Australia on YouTube, with the caption “In this press conference, ZFA CEO Alon Cassuto announces his intention to file an 18C complaint against Mary Kostakidis”.

- d. on 14 July 2024, the ZFA published an official statement that:
  - i. itself quotes from Nasrallah’s speech in the Al Jazeera Broadcast;
  - ii. itself contains a link to the 4 January Post, and thus to the Nasrallah Video; and

**Particulars**

“18C Action on Call for Ethnic Cleansing From the ‘River to the Sea”, 14 July 2024.

- iii. remains on the ZFA website, as at the date of filing this Defence;
- e. at the time of filing the AHRC Complaint, the Applicant knew that:
  - i. the Respondent was a journalist and commentator on events and matters of public interest;
  - ii. in making the 4 January Post and the 13 January Post, the Respondent was reporting and commenting on events and matters of public interest;
  - iii. in respect of the 4 January Post:
    - 1. the Respondent’s own words referred to the “Israeli govt” and “Israel”;
    - 2. the Respondent reposted the First Nasrallah Post;
    - 3. the maker of the First Nasrallah Post referred to “the Israelis”;

4. the maker of the First Nasrallah Post summarised the content of the Nasrallah Video;
  5. the maker of the First Nasrallah Post accurately attributed to Mr Nasrallah words spoken by him during the Nasrallah Video;
  6. the First Nasrallah Post included a link to the Nasrallah Video; and
  7. the Nasrallah Video is an extract of the Al Jazeera Broadcast;
- iv. in respect of the 13 January Post:
1. the Respondent reposted the Second Nasrallah Post;
  2. the maker of the Second Nasrallah Post referred to “Israelis”;
  3. the maker of the Second Nasrallah post accurately attributed to Mr Nasrallah words spoken by him during the Nasrallah Video;
  4. the Second Nasrallah Post included a link to the Nasrallah Video; and
  5. the Nasrallah Video is an extract of the Al Jazeera Broadcast; and
- v. attached to the Statement of Complaint was a compilation of 43 posts by the Respondent on X, 34 of which post-dated the 4 January Post and the 13 January Post;
- f. at the time of filing the originating application and statement of claim on 31 March 2025, the Applicant knew:
- i. of the matters in subparagraph e above; and
  - ii. that 52 of the posts in Annexure A post-dated the 4 January Post and the 13 January Post; and
- g. the proceeding has been instituted as part of a deliberate campaign to undermine and discredit the Respondent, a prominent Australian who, since 7 October 2023, has questioned and been critical of the conduct of the State of Israel in order to cause a chilling effect on her and others in relation to the same:
- i. on 6 December 2023, after the Respondent made a post on X on the same date, a member of a private WhatsApp group formed by Jewish creatives (**Creative WhatsApp Group**), wrote in the group chat, “what can we do!?”, to which another member replied, “Perhaps this is suitable for lawyers group, [mobile telephone number]?”; and

### Particulars

Creative WhatsApp Group chat, messages sent on 6 December 2023 at 17:46:57 and 17:50:06.

Further particulars to be provided following discovery.

- ii. on 14 January 2024, after the 13 January Post the previous day and after the Respondent's post numbered 10 in Annexure A on 14 January 2024, a member of the Creative WhatsApp Group wrote in the group chat, "Is there no legal avenue against her".

**Particulars**

Creative WhatsApp Group chat, message sent on 14 January 2024 at 16:31:21.

Further particulars to be provided following discovery.

Date: 28 November 2025



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Signed by Mark Davis  
Lawyer for the Respondent

This pleading was prepared by Richard Reynolds and settled by Sheryn Omeri KC.

### **Certificate of lawyer**

I Mark Davis 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: 28 November 2025



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Signed by Mark Davis  
Lawyer for the Respondent