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

File No. NSD950/2025

Joseph Toltz and others
Applicants

Nick Riemer and another
Respondents

APPLICANTS' OUTLINE OF SUBMISSIONS

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

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

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

   (b) the Application was not brought at a sufficiently early stage;

   (c) paragraphs 35, 36, 42, 45, 55, 59, 62, 65, 68, 71, 75, 80, 83, 86, 88, 94 of the PFASOC impermissibly introduce an allegedly new 'non-removal case';

   (d) paragraphs 23A, 29A, 32A impermissibly plead reportage of Hamas/intifada matters;

   (e) miscellaneous objections to paragraphs 9, 30(b), 34A, 35, 39 and 88 of the PFASOC.

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

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

A. The PFASOC 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 he makes his objections, consents to roughly half the proposed amendments and several other objections just object to 'particulars'. Contrary to Dr Riemer's Submissions, however, there is no attempt by the Applicants to *'reintroduce material struck*

out'. That really pertains to 4 proposed consequential amendments (23A, 29A, 32A and 34A) which are doing something else as set out below. Further, references to alleged *'entirely new'* material in the PFASOC are distracting, as not a single new cause of action or 'act' is pleaded. There are about 15 trivial/minor proposed amendments, or amendments which merely tidy up the SOC before the Defence is filed (9, 28, 30, 31A, 45, 55, 62, 65, 75, 80, 83, 58A, 82A, 86, 88), about half of which concern one issue (non-removal). This type of minor amendment is legitimate at this early juncture.[1] Much of the proposed amendments are the same in *Keane*.

9. Although the First Respondent claims there are 34 paragraphs in the PFASOC containing new and unsolicited changes, this is incorrect, as there are about 15 contested paragraphs (of trivial, minor changes and tidying up), each serving 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 First Respondent oddly attempts at paragraphs 14–16 of his Submission to ascribe an 'intention' on the Applicants to stray beyond their pleadings, which is false and a distraction, and does not properly advance any issue now before the Court. The assertion is inconsistent with the Applicants' actual position and fails to appreciate the High Court and Federal Court authority the subject of the Applicants' Submissions in Reply.[3] The Submission also fails to distinguish between particulars and material facts.

11. 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 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).[4]

    (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.[5] 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.[6]

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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 Applicants Submissions in Reply, 21/10/25, [1] and [4] and authorities therein (*Eatock* and *Chakravarti*).
4 *University of Sydney v Resmed Ltd (No 5)* [2012] FCA 232 at [14].
5 *SPI Spirits (Cyprus) Ltd v Diageo Australia Ltd (No 4)* [2007] FCA 1035 at [14], [17].
6 *AMI Australia Holdings Pty Ltd v Bade Medical Institute (Aust) Pty Ltd (No 2)* (2009) 262 ALR 458 at [50].

(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.[7]

(d) The test is not whether any material is 'new', except indirectly as that relates to the s 37M considerations. *Aon*[8] and *Tamaya*[9] are overwhelmingly different to this case.

(e) There is a stronger case to allow an amendment at an early stage where its purpose is to tidy up the pleading to ensure the issues are clearly defined and well understood.[10]

(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.[11]

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

12. 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.[12]

(b) The amendments sought to introduce a new and substantially different case/claims.[13]

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

13. 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,[14] and no new claims are introduced. Further, there no prejudice to the First Respondent in allowing the amendments.[15] 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.[16] The purpose of the amendments is to tidy up the case and clarify issues already in contention, and should be permitted.[17] *Tamaya* is also readily distinguishable. There:

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7 *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

8 *Aon Risk Services Australia Ltd v Australian National University* (2009) 239 CLR 175 (***Aon***).

9 *Tamaya Resources Ltd (in liq) v Deloitte Touche Tohmatsu (A Firm)* [2016] FCAFC 2 (***Tamaya***).

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

11 *Aon* at [102].

12 Ibid at [39].

13 Ibid at [39], [104].

14 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].

15 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].

16 *QS Holdings SARL v Paul's Retail Pty Ltd* (2011) 92 IPR 460 at [107].

17 *Pascoe v Boensch* [2009] FCA 1240 at [79].

(a) The amendments sought included 4 new sets of allegations including a new claim for damages,[18] 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.[19]

(b) The company had for 3 months maintained the untenable position that pressing the new Chilean factual allegations would not require amending the pleadings.[20]

(c) The amendments concerned events 7 years prior and went well beyond the pleading.[21]

(d) There was no good reason why the allegations had not been initially included.[22]

(e) The company had had 6 years to formulate a claim.[23]

(f) The delay in the application was 16 months,[24] and was inadequately explained.[25]

(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.[26]

14. 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 30 July 2025, the Applicants amended the Statement of Claim in the Proceeding;

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

(c) on 28 August 2025, the Second Respondent in the Proceeding 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;

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18 *Tamaya* at [20].
19 Ibid at [17].
20 Ibid at [47]–[51], [64].*Cf* [110].
21 Ibid at [92]–[93].
22 Ibid at [100].
23 Ibid at [102].
24 Ibid at [137].
25 Ibid at [114].
26 Ibid at [110]–[112].

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

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

15. As submitted at [27] below, some paragraphs of the PFASOC are consequential to the determination of the applications on 14 November 2025, such that the Application was made 3 months after the need to amend arose, not 11 months submitted by the First Respondent.

16. 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. Non-removal of Posts, Reposts and Article: Objections to 45, 55, 62, 75, 80, 83, 86

17. The non-removal of Dr Riemer's applicable Posts, Reposts and Article (cf PFASOC at 35, 36, 42, 45, 55, 59, 62, 65, 68, 71, 75, 80, 83, 86, 94) 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).[27]

18. There is no basis for the objection. It concerns the proposed addition of a number of references to "*and remains accessible*" in the PFASOC, in circumstances where the same or substantially same phrase was already used in all prior pleading iterations at 42, 48, 71, 77, 36 and the non-removal part was at 94. The amendment is proposed to make clear and consistent, and avoid any possible debate, that the impugned acts (updated for views several times) remain continuing acts including both the making of the acts and where applicable their non-removal.

19. Contrary to the First Respondent's submissions, there is nothing new in substance that is proposed to be amended with respect to the Dr Riemer's applicable impugned conduct. There are no new allegations and, as is readily apparent, there is no new cause of action.

20. The Applicants at all times have pleaded in their Statement of Claim at 94 (vicarious liability) the words "*and their non-removal*". There was no express reference to this in the earlier part of the pleading which is the clarification. Because this has always been the case advanced in substance, the views for posts, reposts and article were updated throughout the pleading iterations to reflect the then present number of views on the basis of the continuing nature of

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[27] *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].

the impugned conduct up to that point in time: at 36, 42, 45, 55, 59, 62, 65, 68, 71, 75, 80, 83. Similarly the Applicants' case has always been advanced in submissions on the basis of continuing acts.[28] Dr Riemer's Submission at [20] now objects to "*and its non-removal*" in relation to vicarious liability, but those words have always been there. It is appropriate to tidy up the pleading at this juncture prior to the defence in order to ensure beyond any doubt the issues are clearly defined and well understood.[29]

21. Even where the Applicants did not include an allegation of 'non-removal' of the applicable impugned acts in the AHRC complaint, there is no jurisdictional hurdle. AHRC Act s 46PO(3) has two available limbs, each of which, particularly the second limb (b), are met. Focusing just on s46PO(3)(b), it allows an applicant to allege different facts to the complaint, provided those facts are not different in substance, and also permits the applicant to claim that these new facts bear a different legal character provided it arises out of the facts now alleged.[30]

22. Section 46PO(3) is clearly met. It should be recalled that the terms of 46PO(3) '*suggest a degree of flexibility*'[31] and enable proceedings to be brought in respect of some conduct other than that described in the complaint.[32] Complete symmetry between the AHRC and Court is not required.[33] The section contemplates some ambit for additional conduct, acts, omissions etc to constitute unlawful discrimination.[34] It does not preclude reliance on more specific allegations than those generally made in a complaint, and allows new allegations about the same incident to be advanced before the Court.[35] 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.[36]

C.1 <u>Paragraph 31A of the PFASOC</u>

23. Many of the First Respondent's objections to paragraph 31A are parasitic to his objections relating to the non-removal aspect of the case. If those objections are overruled for the reasons noted above, many objections to 31A fall away. Dr Riemer's impugned conduct is continuing in nature (publication and failure to remove), meaning all the particulars are relevant.

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28 Applicants' Submissions in Response (Keane) at [41]; Applicants' Submissions in Reply (Riemer) at [14].
29 See e.g. *Oswal v Apache Corporation (No 3)* [2014] FCA 835 at [6]; *Pascoe v Boensch* [2009] FCA 1240, [79].
30 *Charles v Fuji Xerox Australia Pty Ltd* (2000) 105 FCR 573 at [39].
31 *Travers v State of New South Wales* [2000] FCA 1565 at [8].
32 *Dye v Commonwealth Securities Limited (No 2)* [2010] FCAFC 118 at [44].
33 *Haile-Michael v Konstantinidis (No 2)* [2012] FCA 167 at [17].
34 *Dye v Commonwealth Securities Limited (No 2)* [2010] FCAFC 118 at [46].
35 *Leach v Burston* [2022] FCA 87 at [58].
36 *Dye v Commonwealth Securities Limited (No 2)* [2010] FCAFC 118 at [48].

24. 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.[37] It tidies up and clarifies the issues in contention.[38]

25. 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.[39] The First Respondent also wrongly conflates 'particulars' and 'material facts.'

26. It is alleged that the particulars of 31A 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 31A. In any case, in an appropriate case the provision of particulars may involve the revealing of evidence.[40] To meet the aim of enabling the opponent to know the case it has to meet, it will be almost inevitable to disclose some of the evidence.[41] There is often a fine line between giving particulars of the case a party proposes to make and disclosing the evidence by which that case is to be proved. It depends on what is necessary to guard the other party against surprise.[42] 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 31A.

D. Paragraphs 23A, 29A, 32A of the PFASOC: Reportage of Hamas/Intifada Matters

27. These paragraphs are inserted as appropriate and consequential on strike out of other associated material concerning Intifada (23-25, 21 (partial)) or Hamas (32) and so facilitated for in Order 2(d) of 14 November 2025. The paragraphs are relevant to showing the reasonably likely reaction of Jewish and/or Israeli people in Australia with respect to impugned conduct involving calling for, endorsing, etc past and present intifadas, 7 October conduct, and violence against Israelis and Jews involving Hamas or otherwise globally.

28. 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

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

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

39 *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.

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

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

42 *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].

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*'.[43]

29. Similarly, Hely J said in *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"*'.[44] Dr Riemer's Submissions about 'subjective opinion' or 'Jewish/Israeli' 'belief' at 32 and 37 (repeated as to 29A and 32A) are misplaced: the Applicants' approach entirely accords with the statutory test. Regard was also had for the beliefs of the Australian Jewish community in *Toben*.[45]

30. Indeed, a stronger form of 'Hamas commitment' pleading (and for Hezbollah) has been accepted in *Cassuto v Kostakidis*.[46] The Second Respondent also endorsed this approach in its Submission dated 13 October 2025 in the *Riemer* Proceeding at 38.

31. 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.[47]

E. Miscellaneous Objections

E.1 Paragraph 9 of the PFASOC

32. Paragraph 9 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 28 and 29 above, which apply with the same force to the characteristics of Jewish and Israeli people in Australia pleaded at paragraph 9. The pleaded matters are material to the s18C(1)(a) objective test. The First Respondent's submission at 28 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.[48]

33. This is a straightforward and relevant addition, properly pleaded. Identical material was pleaded in *Cassuto v Kostakidis*, objected to by Ms Kostakidis, and rejected from strikeout.[49]

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43 *Wertheim v Haddad* (2025) 311 FCR 263 at [15]. See also *Toltz v Riemer* [2025] FCA 1385, e.g. [127] and [130].
44 *Jones v Scully* (2002) 120 FCR 243 at [108].
45 *Jones v Toben* [2002] FCA 1150 at [93].
46 *Cassuto v Kostakidis* [2025] FCA 1226: ASOC [10] (and [7]).
47 *Ron Medlich Properties Pty Ltd v Bentley-Smythe Pty Ltd* [2010] FCA 494 at [8].
48 *Faruqi v Hanson* [2024] FCA 1264 at [236], citing *Kaplan* at [513].
49 *Cassuto v Kostakidis* [2025] FCA 1226 at [88]–[89].

34. As for the alleged concerns about survey evidence, *Practice Note (GPN-SURV)* applies to evidence being adduced at trial. It is focused on surveys conducted by a party, not already-existing surveys. That is how the cases treat the practice note.[50] 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 [26]) again treating arguments on admissibility as established fact, when they are disputed, remain undecided and, in the Applicants' submission, wrong.

35. The addition to paragraph 9 is merely tidying up the pleading to ensure the issues are clearly defined and well understood and should be permitted.[51]

E.2 Paragraph 30(b) of the PFASOC

36. 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*.[52] It does not open an unnecessary evidentiary enquiry, in that it cannot seriously be disputed.

37. This is another example of the Applicants merely tidying up the pleading to ensure the issues are clearly defined and well understood,[53] and giving fair notice of the case to be met.

E.3 Paragraph 34A of the PFASOC

38. This amendment is consequential on the striking out of former 34 and the pictures in 35, as per the Court's order 2(d) of 14 November 2025. The First Respondent's Submissions do not engage with the real content and detail of the amendment. The proposed amendment is relevant to the s18C requirements (here both limbs) as is well established by case law, given Dr Riemer's status and influence on students, academics (including work colleagues and students at the University who are Applicants) and others as pleaded and particularised in much detail (note the annexed particulars).[54] The relevant impugned conduct here, the Call for Global Intifada, was done being endorsed and in connection with students in particular the Solidarity student group. Further, most particulars links remain accessible and all are available by screenshot. Moreover, no jurisdictional objection or related objection to 31A has any merit.

E.4 Paragraphs 35 and 39 of the PFASOC

39. There is no basis for the objection to 35, which simply objects to particulars, not to material facts alleged (cf r 16.41 note 3 FCR). It is unfounded. The proposed amendment to particulars

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50 GPN-SURV [3.1]–[3.4], [2,2]–[2.3]; *ACC v Australian Institute of Professional Education Pty Ltd (in liq) (No 2*) [2018] FCA 1459 at [32]; *Transport Workers Union of Australia v Qantas (No 4)* (2021) 312 IR 133, [36]

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

52 *Cassuto v Kostakidis* [2025] FCA 1226: ASOC [12].

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

54 See e.g. *Faruqi v Hanson* [134] [243] [252]; *Eatock v Bolt,* e.g [294] [321] [421]

is done in consequence of the Court striking out former 34 and the pictures in former 35. The particulars fill the gaps of the material facts in proposed 34A and 35. This is a straightforward, permissible amendment. In addition, there is no basis to object to the particulars in 39. The Applicants are giving fair notice of the case to be met. The amendments should be granted.

E.5 Paragraph 88 of the PFASOC

40. The First Respondent takes issue first, in a two-line sentence, with proposed 88(c) and (d). The Applicants refer the Court to our Table on this issue.

41. The First Respondent also takes issue with the form and substance of the particulars to paragraph 88(e). The form was precisely what the First Respondent sought: inclusion in the pleading. As to substance, issue is taken with alleged submissions and evaluative commentary in the particulars. Putting aside whether there is any such 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, are 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 Submission 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. The Submission also confuses 'particulars' and 'material facts.'

F. Costs

42. 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

43. For the abovementioned reasons, none of the objections have merit, such that the Application ought to be granted and the Applicants allowed to file the PFASOC in the form proposed.

Dated: 22 April 2026

Adam Butt
Dylan Dexter
Counsel for the Applicants

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55 *People with Disabilities Australia Inc v Minister for Disability Services* [2014] NSWSC 1669 at [72].

1	4 Israeli person	Not objected.
2	6 ditto	Not objected.
3	7	Not objected. The First Respondent's table does not reflect precisely our current proposed FASOC (it does not recognise what has been struck out.) This has occurred in a number of places. ~~however it is clear the substance is not objected to~~.
4	9	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. *Oswal v Apache Corporation (No 3)* [2014] FCA 835 at [6]~~*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.
5	10	Not objected.
~~65~~	13	Not objected.
~~76~~	14 views	Not objected.
~~87~~	23A	This is inserted as appropriate and consequential on strike out of other associated material concerning intifada (i.e. [23]-[25]) and facilitated for in Order 2(d) of 14 November 2025. 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]. The pleading is relevant to showing the reasonably likely reaction of Jewish/Israeli people in Australia with respect to impugned conduct involving calling for, endorsing, etc past and present intifadas, 7 October conduct, and violence against Israelis and Jews involving Hamas or otherwise globally.
~~98~~	28	Not objected now. ~~The Court's order 2 of 3 February 2026 states "The Applicants serve particulars of the matters pleaded in paragraph 28 and 88(c) of the Amended Statement of Claim, as requested by the Second Respondent..."~~

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		~~The material has already been served in accordance with the express language of the Courts Order above. That Order specifies to 'serve', where all other applicable orders of 3 February specify to "file and serve."~~ ~~Further, the Applicants in Keane "served" the same particulars by letter, to the same lawyers representing the First Respondent, with no objection taken to the identical conduct. This objection does not serve the overarching purpose as all material has been received long ago now and should be withdrawn as serving no useful purpose. The Applicants trust the letter serving the particulars was received when sent.~~
~~10~~9	29A	Same essential rationale as 23A, consequential on deletion of [32] (and thus facilitated by Order 2(d) of 14 November 2025). In addition, a stronger form of 'Hamas commitment' pleading (and for Hezbollah) has been accepted in *Cassuto v Kostakidis*: ASOC [10] (and [7]), reinforcing the appropriateness of the amendment.
~~11~~10	30(b)	This is a relevant fact that informs the s18C requirements. It could not be seriously disputed, and the asserted bases for objection are inapplicable or otherwise unavailing. 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. *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]
12~~1~~	31A	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, ~~clearly~~ 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 30(b), not 31A (presumably a typo), and t~~The objection to 31A is only or is substantially to the *particulars*, which are not 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 Dr Riemer's impugned conduct is continuing in nature (i.e. publication and failure to remove), all the particulars are relevant in any event.
1~~32~~	32A	Same essential rationale as 23A and 29A, consequential on deletion of [32] (and thus facilitated by Order 2(d) of 14 November 2025).
14	34	Not objected.
1~~53~~	34A	This amendment is consequential on the striking out of former [34] and the pictures in [35], as per the Court's order 2(d) of 14 November 2025. None of the jurisdictional objections have any merit, as the impugned unlawful discrimination is identical and clearly meets the requirements for s46PO(3) – see the essential rational above for 31A. The pleading is relevant to the s18C requirements (here both limbs) as is well established by case law, given Dr Riemer's status and influence on students, academics (including work colleagues and students at the University who are Applicants) and others as pleaded and particularised in considerable detail (note also annexed material), and see e.g. *Faruqi v Hanson* [134] [243] [252]; *Eatock v Bolt,* e.g [294] [321] [421]. The relevant impugned conduct here, the Call for Global Intifada was done being endorsed and in connection with students in particular the Solidarity student group.
1~~64~~	35	The objection is simply to particulars, not to material facts alleged (cf FCR r 16.41 note 3). Further, the proposed amendment to particulars, is done in consequence of the striking out of former [34] and the pictures in [35], as per the Court's order 2(d) of 14 November 2025. It is filling the gaps of the new 34A and 35 (and prior pleaded material) and explaining matters (in part) previously sought to be done by pictures struck out.

		Accordingly, given the Court's order and the fact this is simply relevant particulars, not new pleaded material, there is no basis for the objection.
175	36 views	No objection.
186	37	The objection is simply to particulars that 'may be provided prior to trial', not to material facts alleged. There is no basis for the objection, alternatively, it does not advance the overarching purpose as this is very trivial.
197	39	The objection is simply to particulars, not to material facts alleged. The Applicants are giving fair notice of the case to be met. There is no basis for the objection.
2018	42 views	No objection.
2119	45	There is no basis for this objection. The addition of a number of references to "remains accessible" in the PFASOC is simply to make extremely clear and consistent, and avoid any possible debate, over the arguably clear pleading up until now (but clarified now to the maximum possible extent) that the impugned acts (updated for views several times) remain continuing acts including both the making of the acts and where applicable their non-removal. The same phrase or substantially the same phrase "remains accessible" has been used throughout the pleading interactions at [42], [48], [71], [77] and the non-removal part of the impugned conduct [94]. Because this has always been the case advanced, the views have been updated throughout the pleading interactions for posts to reflect the then present number of views on the basis of the continuing nature of the conduct up until that point in time: [36], [42], [45], [55], [59], [62], [65], [68], [71], [75], [80] [83]. It is appropriate to tidy this up the pleading at this juncture prior to the defence in order to ensure beyond any doubt 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 at [79]. The jurisdictional objection fails for the same essential reasons as set out above for 31A, as either or both limbs of s46PO(3), and clearly the second limb of s46PO(3)(b), are met, as the impugned unlawful discrimination is the same or the same in substance as that which was the subject of the terminated complaint, or arises out of the same or substantially the same acts, omissions or practices the subject of the terminated complaint.
220	55	Same essential response as for 45.
231	58	Not objected.
~~2422~~	~~58~~	~~Not objected.~~
253	58A	This is simply tidying up the pleading at this juncture prior to the defence in order to ensure beyond any doubt 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. The unlawful discrimination is identical to that which has been pleaded at all times, and is being pleaded in abundantly clear manner to avoid any potential debates of the kind now occurring. The jurisdictional objection should fail for the same reasons as set out above for 31A.
2~~64~~	59	No objection.
27	60	No objection.
28	61	No objection.
2~~95~~	62	Same essential response as for 45.
3~~026~~	65	Views no objection. Otherwise, same essential response as for 45.
3~~127~~	~~[~~68~~]~~	Not objected. The non-objection here is incongruent with the objection when the accessibility is stated expressly, which has always been implicit in the pleading (hence nothing new being introduced) in updating the views.
3~~228~~	71 views	Not objected.
3~~329~~	75	Views no objection. Otherwise, same essential response as for 45.
3~~40~~	80	Views no objection. Otherwise, same essential response as for 45.
3~~51~~	82A	Now not objected. ~~This is substantially the same as 58A. The pleading has always pleaded an impugned Post and Speech, hence the name "Genocide Post and Speech", and apparent in [82], [83], [84], [85] (speeches).~~ ~~The pleading here has been done to clarify and remove any possible debate. The same substantive and jurisdictional objections should fail for the reasons set out above e.g. for 58A and related~~.
3~~62~~	83	Views no objection. Otherwise, same essential response as for 45.
3~~73~~	86	The amendment is clearly to tidy up the pleading at this juncture prior to the defence in order to ensure beyond any doubt 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. It is appropriate to do so at this early juncture, such that there is no prejudice to the Respondents given their defences are not filed. The amendments are proper and consistent with the case advanced at all times – hence e.g. the views and references to accessibility and [94] (and equivalent approach in Keane). There is no proper jurisdictional objection under s46PO(3) for the reasons noted above including at 31A.
3~~84~~	88	This amendment (to 88(c) and (d)) is again clearly to tidy up the pleading at this juncture prior to the defence in order to ensure beyond any doubt 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. The amendment to 88(c) and (d) ~~It~~ is appropriate

		~~to do so~~ at this early juncture, such that there is no prejudice to the Respondents given their defences are not filed. The amendments are proper and consistent with the case advanced at all times (and equivalent approach in Keane) and seminal caselaw (see e.g. AHRC Complaint at [89]). ~~There is no proper jurisdictional objection under s46PO(3) for the reasons noted above including at 31A.~~ As to the particulars objection to 88(e), the Applicants refer to and rely on their Submissions in the main text. ~~repeat what is said above for 28.~~