

NOTICE OF FILING

Details of Filing

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File Title:	JOSEPH TOLTZ & ORS v NICK RIEMER & ANOR
Registry:	NEW SOUTH WALES 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.

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No. NSD950 of 2025

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

Joseph Toltz and others
Applicants

Nick Riemer and another
Respondents

**FIRST RESPONDENT'S OUTLINE OF SUBMISSIONS
INTERLOCUTORY APPLICATION DATED 5 AUGUST 2025**

1. The First Respondent makes the following submissions in respect of his interlocutory application, and relies on the Affidavit of Michael David Bradley (**Bradley Affidavit**), both filed on 5 August 2025.
2. The First Respondent seeks orders:
 - a. pursuant to rule 16.21 of the *Federal Court Rules 2011* (Cth) (**FC Rules**) that certain parts of the Applicants' Amended Statement of Claim filed on 30 July 2025 (**ASOC**) be struck out with no leave to plead; and
 - b. that the Applicants pay the First Respondent's costs of this application.
3. On 19 June 2025, solicitors for the First Respondent took service by email of a Statement of Claim filed on behalf of the Applicants on 13 June 2025 (**SOC**).
4. On 11 July 2025, the First Respondent notified the Applicants of his view that several parts of the SOC were liable to be struck out and invited them to amend the SOC in the form identified in an enclosure to that letter.¹
5. On 30 July 2025, following a course of relevant correspondence set out in the Bradley Affidavit, the First Respondent's solicitors received an email attaching the ASOC. The amendments reflected in the ASOC do nothing to rectify the defects raised by the First Respondent in the 11 July 2025 correspondence. To the contrary; the amendments create further ambiguity and complexity.
6. The First Respondent makes the following submissions in support of his interlocutory application. Objections are addressed in turn, with reference to the numbering in the Table of Objections at Attachment 1 herein.

¹ Annexure MDB-1 to the Bradley Affidavit, pp. 4-30.

Objection 1: Paragraph 7

7. Defining the term 'Israeli person' as 'a person who is *or is eligible to be* an Israeli citizen' creates an unworkably broad class of people. Under Israeli law, the group of persons who are '*eligible to be*' Israeli citizens includes every person who has a Jewish mother or has converted to Judaism (collectively, a "Jew"), as well as any person who is a spouse, child, grandchild, spouse of a child or spouse of a grandchild, of a Jew.²
8. Aside from its ambiguity and unwieldiness, the pleaded definition of 'Israeli person' encompasses a group of people who share no common connection or characteristic that could properly cause them to constitute a protected group for the purposes of the *Racial Discrimination Act 1975* (Cth) (**the Act**).

Objection 2: Paragraph 8(a)

9. The word 'descent' has no work to do in this pleading. It does not appear in Part IIA of the Act, and is not one of the attributes or 'reasons' referred to in paragraphs 18B or 18C.
10. Its exclusion from Part IIA stands in contrast with its inclusion in Part II of the Act, and must be read as the expression of Parliament's intention to exclude the concept of 'descent' from Part IIA.

Objection 3: Paragraph 8(b)

11. The words 'and/or nationality' at paragraph 8(b) should be struck out as they are entirely irrelevant to the proceeding. Where Part IIA refers to 'national origin', the concept of nationality does not appear in the text of the Act and is "a purely legal status (and a transient one at that)".³

Objection 4: Paragraph 10

12. The terms 'Zionist' and 'Zionism' are fiercely contested, highly complex, subjective, and cannot properly be defined by reference to Judaism, Jewishness or even Israeli personhood.
13. While the subjective understanding of these terms by the First Respondent and each of the Applicants may be relevant to the proceeding, the definition and description currently pleaded are ambiguous, unhelpful, inaccurate, probably non-justiciable, and will give rise to significant delay with no forensic purpose.
14. If to any extent paragraph 10 of the ASOC is an invitation to the Court to construe Zionism as interchangeable with or proxy for Jewishness, it is vexatious, embarrassing and an abuse of process.

² Israel: Nationality Law, 5712-1952, 14 July 1953.

³ *Macabenta v Minister for Immigration & Multicultural Affairs* (1998) 90 FCR 202, 209-211.

Objections 5-8: Paragraphs 21-24

15. There is no forensic utility in the Applicants' attempts to distil more than a century of complex geopolitical conflict into a few short, emotive paragraphs.
16. The First Respondent brings these objections on the basis that these paragraphs are ambiguous, unhelpful, inaccurate, probably non-justiciable, and will give rise to significant delay with no forensic purpose. They also fail to disclose a cause of action.
17. Should Objections 5-8 be upheld, the residual pleading will be a short, factual allegation capable of being responded to by the First Respondent and adjudicated by the Court.

Objection 9: Paragraph 25

18. Paragraph 25 should be struck out in its entirety. Not only does it disclose no cause of action against the Respondents; it invites the Court to make findings as to the subjective intent of every individual Palestinian person who engaged in a particular type of alleged conduct during the First and Second Intifadas. This is clearly ambiguous and embarrassing, and even if it were somehow justiciable, would be irrelevant and causative of delay.

Objection 10: Paragraph 28

19. Paragraph 28 in its entirety is ambiguous, unhelpful, inaccurate, probably non-justiciable, and will give rise to delay with no forensic purpose.
20. There has been more than one document in existence that could (accurately or otherwise) be described as a ' Hamas Covenant'. The status and survival of each of those documents as they have been superseded or replaced by the next is disputed. It ought not fall to this Court to adjudicate a pleading of such controversy and ambiguity, particularly when it is irrelevant and fails to disclose a cause of action against the Respondents.

Objection 11: Paragraph 32

21. Paragraph 32 should be struck out in its entirety. Not only does it disclose no cause of action against the Respondents; it invites the Court to make findings as to the subjective knowledge, understanding and intent of every member of " Hamas's leadership, commanders, members and operatives in the field" on 7 October 2023. That is clearly impossible and is not a matter with which the Court should be imposed upon to concern itself.
22. Further, paragraph 32 seeks to impute to each pleaded individual a single motive: the Jewishness or Israeli personhood of victims subjected to atrocities on 7 October 2023. In that regard, it is reductive and simplistic to the point of embarrassing. It is ambiguous, and even if it were somehow justiciable, would be causative of delay.

Objection 12: Paragraph 34 (Particulars subparagraph (a))

23. Subparagraph (a) to the particulars of paragraph 34 is objectionable in that it asserts that ‘Solidarity’ “closely follows and mimics Dr Riemer”. This assertion is ambiguous, unhelpful, and will give rise to significant delay with no forensic utility. It is irrelevant to the proceeding, and fails to disclose a cause of action.
24. Further, to the extent that further particulars are purported to be contained in a letter which is not annexed to or filed with the ASOC, despite bearing the same date as the ASOC, the subparagraph should be struck out. Should the Applicants wish to rely on particulars of a pleading which are drafted contemporaneously with the filing of that pleading, those particulars ought to have been set out within the pleading itself.⁴ It is no answer to say that a party knows from documents and other sources what the case against it is.⁵

Objection 13: Paragraph 35

25. The images at paragraph 35 serve no forensic purpose and disclose no cause of action.
26. The images cannot be said to constitute material facts, and if their inclusion is intended to stand as evidence, such inclusion is improper and an affront to rule 16.02(1)(d).

Objection 14: Paragraph 87

27. Paragraph 87 should be struck out *in toto*. There is no provision in the Act for ‘cumulative’ or ‘collective’ reliance on a series of impugned acts to establish breach of section 18C.
28. The words of section 18C are clear, and plainly refer to the assessment of each element of (1)(a) and (b) as against a single act. Each of the pleaded impugned acts must be individually assessed against section 18C.
29. Paragraph 87 constitutes an invitation to the Court to fall into error by lowering the threshold of impact and/or motivation behind each impugned act, in an attempt to make out a whole which is greater than the sum of its parts.⁶

Conclusion

30. The First Respondent respectfully submits that his limited strike-out application should be allowed, with costs, and that the Applicants should not be permitted to replead their case.

J TAYLOR

MARQUE LAWYERS

Counsel for the First Respondent

Solicitors for the First Respondent

⁴ FC Rules, r 16.41(1)

⁵ *Y Primavera v T Bakos & Anor* [2019] NSWSC 825 at [35]-[36] (Black J).

ATTACHMENT 1: TABLE OF OBJECTIONS

#	Para	Objectionable part	Basis (Rule 16.21(1)(a)-(f))
1	7	The words: "or is eligible to be"	(c) is ambiguous; (d) is likely to cause delay in the proceeding; (e) fails to disclose a reasonable cause of action.
2	8a	The words: "descent"	[as above]
3	8b	The words: "and/or nationality"	(c) is evasive or ambiguous; (d) is likely to cause prejudice or delay in the proceeding; (e) fails to disclose a reasonable cause of action.
4	10	The words: "predominantly Jewish people and/or Israeli" and "A substantial proportion of Jewish and/or Israeli people identify themselves as Zionists"	(c) is ambiguous; (d) is likely to cause delay in the proceeding; (e) fails to disclose a reasonable cause of action.
5	21	<i>in toto</i>	[as above]
6	22	The words: "more than 5,000" and "some 1,400"	(d) is likely to cause delay in the proceeding; (e) fails to disclose a reasonable cause of action.
7	23	<i>in toto</i>	(c) is evasive or ambiguous; (d) is likely to cause delay in the proceeding; (e) fails to disclose a reasonable cause of action.
8	24	<i>in toto</i>	[as above]
9	25	<i>in toto</i>	[as above]
10	28	<i>in toto</i>	[as above]
11	32	<i>in toto</i>	[as above]
12	34	The words in subparagraph (a) to Particulars: "that closely follows and mimics Dr Riemer. Further particulars are provided by letter of the Applicants' solicitors of 30 July 2025"	(b) contains vexatious material; (c) is evasive or ambiguous; (d) is likely to cause embarrassment and delay in the proceeding; (e) fails to disclose a reasonable cause of action.
13	35	The images contained in paragraph 35	[as above]
14	87	<i>in toto</i>	(c) is evasive or ambiguous; (d) is likely to cause embarrassment and delay in the proceeding; (e) fails to disclose a reasonable cause of action.