

## NOTICE OF FILING

### Details of Filing

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| File Number:              | NSD951/2025                                           |
| File Title:               | JOSEPH TOLTZ & ORS v JOHN KEANE & ANOR                |
| Registry:                 | NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA |



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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 of the First Respondent

No. NSD951 of 2025

Federal Court of Australia

District Registry: New South Wales

Division: Human Rights

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

Applicants

**John Keane and another**

Respondents

In response to the Amended Statement of Claim filed by the Applicants on 30 July 2026 (**ASOC**), the First Respondent (adopting the terms defined in the ASOC) pleads as follows.

In accordance with general principles and usual practice, the First Respondent does not plead to particulars in the ASOC, and nothing in this Defence should be taken to be an admission of any fact or matter alleged in those particulars unless stated otherwise.

### Jurisdiction

1. The First Respondent admits paragraph 1.

### Parties

2. The First Respondent admits paragraph 2.
3. Save that the First Respondent denies that the First Applicant is employed as a researcher at Sydney University, and subject to the pleading in paragraph 11 below, he admits paragraph 3.
4. The First Respondent admits paragraph 4, subject to the pleading in paragraph 11 below.
5. The First Respondent admits paragraph 5, subject to the pleading in paragraph 11 below.

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Filed on behalf of (name & role of party) John Keane, First Respondent

Prepared by (name of person/lawyer) Michael Bradley

Law firm (if applicable) Marque Lawyers

Tel (02) 8216 3000 Fax N/A

Email [michaelb@marquelawyers.com.au](mailto:michaelb@marquelawyers.com.au); [laureng@marquelawyers.com.au](mailto:laureng@marquelawyers.com.au);

[lucap@marquelawyers.com.au](mailto:lucap@marquelawyers.com.au)

**Address for service** Level 4, 343 George St, Sydney NSW 2000

(include state and postcode)

6. The First Respondent admits paragraph 6, subject to the pleading in paragraph 11 below.
7. The First Respondent admits paragraph 7, subject to the pleading in paragraph 11 below.
8. Save that the First Respondent admits that the First and Second Applicants bring the proceeding under rule 9.21, he does not know and cannot admit the allegations in paragraph 8.
9. In response to paragraph 9, the First Respondent:
  - (a) does not admit paragraph 9(a);
  - (b) denies paragraph 9(b);
  - (c) denies paragraph 9(c);
  - (d) denies paragraph 9(d);
  - (e) admits the existence of the associations and close connections and support of the Alba email pleaded at paragraph 9(e) but otherwise denies paragraph 9(e);
  - (f) admits that Professor Morgan holds a representative role with the Applicants and represented persons in that he is a member of the 5A Group but otherwise denies paragraph 9(f); and
  - (g) otherwise denies paragraph 9.
10. In answer to paragraph 10, the First Respondent:
  - (a) denies paragraph 10(a);
  - (b) denies paragraph 10(b); and
  - (c) does not know and cannot admit paragraph 10(c).
11. In response to paragraph 11, the First Respondent:
  - (a) admits that for the purposes of the *Racial Discrimination Act* 1975 (Cth), Jewish persons constitute a group of people with a shared ethnic origin; and
  - (b) otherwise denies paragraph 11.
12. Save that the First Respondent:
  - (a) admits that Israel is a nation state and that it proclaims itself to be the national home of and for Jewish people; and
  - (b) admits that citizens of Israel are mostly Jewish people,he otherwise does not know and cannot admit the allegations in paragraph 12.

13. In response to paragraph 13, the First Respondent:

- (a) admits paragraphs 13(a);
- (b) admits paragraph 13(b); and
- (c) denies paragraph 13(c).

14. The First Respondent admits paragraph 14.

**Professor John Keane X (Twitter) Page**

15. The First Respondent admits paragraph 15.

16. The First Respondent admits paragraph 16.

17. The First Respondent admits paragraph 17.

18. The First Respondent admits paragraph 18.

19. Save that the term “endorses” is vague, embarrassing and not defined, and that he denies the allegation that he “endorses” every aspect of every item of the material contained in links which are included in publications on his X page, the First Respondent admits paragraph 19.

**Hamas**

20. The First Respondent objects to paragraph 20 on the basis that:

- (a) it is vague and incomplete; and
- (b) “Hamas” is not a term defined in the ASOC.

Under the cover of that objection the First Respondent:

- a. admits that the entity known as Hamas, Harakat al-Muqawama al-Islamiya, Islamic Resistance Movement, Al-Tiar al-Islami or Al-Athja al-Islami (**Hamas**) was listed as a terrorist organisation for the purposes of division 102 of the Criminal Code on 4 March 2022;
- b. says further that while Hamas had not been listed under the Criminal Code prior to 4 March 2022, the paramilitary wing of Hamas, the Izz al-Din al-Qassam Brigades was first listed as a terrorist organisation under Australian law on 5 November 2003 and then re-listed on 4 August 2021. Since 2001, Australia has listed Hamas in its entirety as a terrorist entity for financial sanctions under part 4 of the Charter of the United Nations Act 1945, as part of implementing United Nations Security Council Resolution 1373.

21. The First Respondent denies paragraph 21 and says further that:

- (a) it is a misrepresentation of the Statement of Reasons, the relevant paragraph of which reads:

*“ Hamas’ overarching goal is to ‘liberate Palestine’ by establishing an independent Palestinian state — comprising Gaza, the West Bank and Israel — guided by Islamic principles, and destroying Israel as a political entity in the process”; and*

(b) it is improper, vexatious and embarrassing to plead that “destroying Israel” is an “Islamic principle”.

22. The First Respondent objects to paragraph 22 on the basis that it is vague, embarrassing and incomplete, including because it quotes inaccurately, selectively and misleadingly from the purported source material. Under cover of that objection, the First Respondent denies paragraph 22.
23. The First Respondent objects to paragraph 23 on the basis that it is vague, embarrassing and incomplete, including because it quotes inaccurately, selectively and misleadingly from the purported source material. Under cover of that objection, the First Respondent:
  - (a) denies paragraph 23; and
  - (b) says further that:
    - i. on 1 May 2017, Hamas issued its “Document of General Principles and Policies” (its **Founding Charter**) articulating its political positioning;
    - ii. Article 16 of the English version of the Founding Charter states that: “Hamas affirms that its conflict is with the Zionist project not with the Jews because of their religion. Hamas does not wage a struggle against the Jews because they are Jewish but wages a struggle against the Zionists who occupy Palestine. Yet, it is the Zionists who constantly identify Judaism and the Jews with their own colonial project and illegal entity”;
    - iii. Article 17 of the English version of the Founding Charter states that: “Hamas rejects the persecution of any human being or the undermining of his or her rights on nationalist, religious or sectarian grounds. Hamas is of the view that the Jewish problem, anti-Semitism and the persecution of the Jews are phenomena fundamentally linked to European history and not to the history of the Arabs and the Muslims or to their heritage. The Zionist movement, which was able with the help of Western powers to occupy Palestine, is the most dangerous form of settlement occupation which has already disappeared from much of the world and must disappear from Palestine”;
    - iv. Article 20 of the English version of the Founding Charter states that: “Hamas believes that no part of the land of Palestine shall be compromised or conceded, irrespective of the causes, the circumstances

and the pressures and no matter how long the occupation lasts. Hamas rejects any alternative to the full and complete liberation of Palestine, from the river to the sea. However, without compromising its rejection of the Zionist entity and without relinquishing any Palestinian rights, 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”.

24. [Removed.]

24A. The First Respondent objects to paragraph 24A on the grounds that it is vague and embarrassing. Under cover of that objection, the First Respondent denies the allegations in this paragraph, but if it is proved he refers to and repeats paragraph 23 says further that:

- (a) the factual assertions and beliefs alleged in paragraph 24A are products of political propaganda which are endorsed and propagated by the State of Israel through its Hasbara operations and by pro-Israel groups;
- (b) one purpose of these propagation efforts referred to in subparagraph (a) is to cause Jewish and Israeli people to believe these assertions whether or not they are true, uncertain and/or contested;
- (c) the beliefs alleged in paragraph 24A are not:
  - i. reasonable; or
  - ii. reasonably held.

### **Particulars**

The First Respondent refers to the following matters of historical record, which are not reflected in paragraph 24A:

- i. Hamas was founded in 1987, shortly after the outbreak of the first intifada with the goal of liberating Palestine through armed struggle;
- ii. Hamas has operated as a resistance movement as well as a social movement and a governing political party;
- iii. in 2006, Hamas won a majority of seats in the legislative elections for the Palestinian Legislative Council;
- iv. in 2007, following Hamas' takeover of the Gaza Strip, Israel imposed a land, sea and air blockade on Gaza, limiting the number and categories of

people and goods allowed in and out through the Israeli-controlled crossings;

- v. as Human Rights Watch has reported, Israel continued to control the Palestinian population registry for the Gaza Strip and the West Bank (including family reunification applications), thereby determining who is registered, who is a resident, who has access to a passport and identification cards (and therefore who is able to move internally and internationally);
- vi. as OCHA and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNWRA) have reported, as a result of the blockade, prior to 2023:
  - 1. around 2.1 million Palestinians were imprisoned within the Gaza Strip, an area of around 360 square kilometres;
  - 2. 81% of Gazans (71% of whom are Palestine refugees expelled from the lands surrounding the Gaza Strip in 1948), lived below the national poverty line;
  - 3. 80% of the population depended on humanitarian assistance;
  - 4. 1.3 million out of 2.1 million Palestinians in Gaza (62%) required food assistance;
  - 5. 78% of piped water in Gaza was unfit for human consumption;
  - 6. 31% of households in Gaza had difficulties meeting essential education needs such as tuition fees and books, due to lack of financial resources;
  - 7. Gaza's unemployment rate was around 46.6% (among the highest in the world);
- vii. as OCHA has reported, between 2008 and 7 October 2023, Israel conducted five military operations against the Gaza Strip, killing over 5,300 Palestinians;
- viii. on 30 March 2018 the weekly, non-violent, Great March of Return protests began, when Palestinian men, women and children demonstrated near the perimeter fence separating Gaza from Israel to demand the end of the Israeli blockade and the right of return for refugees;
- ix. the Great March of Return lasted for 86 weeks until 27 December 2019 and as the UN has reported, Israeli forces killed 214 Palestinians, including 46 children, and injured 36,100 others, including around 8,800

children. One in five of those injured (over 8,000) were hit by live ammunition;

- x. 2023 marked the deadliest year on record for Palestinian children in the occupied West Bank; as of September 2023, 38 children had been killed;
- xi. Between January 2008 and September 2023, around 6,332 Palestinians had been killed.

Further particulars may be provided prior to trial.

### 7 October 2023

25. In response to paragraph 25, save that he objects and does not plead to the term “illegally” as it pleads a conclusion of law, the First Respondent:

- (a) admits that Hamas members engaged in acts of violence, including killings of substantial numbers of Jewish or Israeli people, in Israel on 7 October 2023;
- (b) admits that approximately 1,200 people were killed in Israel on 7 October 2023, most of whom were Jewish or Israeli persons;
- (c) does not know and cannot admit the number of those approximately 1,200 people who were killed by Hamas members;
- (d) does not know and cannot admit whether or how many people were raped, maimed, sexually abused or tortured on 7 October 2023; and
- (e) otherwise denies the allegations.

26. The First Respondent admits paragraph 26.

27A. The First Respondent objects to paragraph 27A on the grounds that it is vague and embarrassing. Under cover of that objection, the First Respondent admits that there has been an increase in hatred of Jews qua Jews (**antisemitism**) in Australia since 7 October 2023 and otherwise denies the allegations in paragraph 27A.

27. [Removed.]

28A. The First Respondent objects to paragraph 28A on the grounds that it is vague and embarrassing. Under cover of that objection, the First Respondent:

- (a) does not know and cannot admit the allegations in paragraph 28A; and
- (b) otherwise refers to and repeats paragraph 24A and the particulars subjoined thereto.

### **Impugned publication made on 8 October 2023**

28. In response to paragraph 28, the First Respondent:
  - (a) admits that he posted a photograph of 5 green flags on 8 October 2023, as depicted at paragraph 28;
  - (b) otherwise denies the allegations at paragraph 28; and
  - (c) further says that the flags depicted at paragraph 28 are not “ Hamas flags ”.
29. In response to paragraph 29, the First Respondent:
  - (a) denies that the flags depicted are “ Hamas flags ”; and
  - (b) otherwise admits the allegations.
30. The First Respondent denies paragraph 30.
31. The First Respondent denies paragraph 31.
32. The First Respondent denies paragraph 32.
33. The First Respondent objects to paragraph 33 on the basis that it is vague and embarrassing. Under cover of that objection, he denies paragraph 33.
34. [Removed.]

### **Imputations**

35. In response to paragraph 35, the First Respondent:
  - (a) denies paragraph 35;
  - (b) denies that the flags depicted are “ Hamas flags ”; and
  - (c) says further that nowhere in the post at paragraph 28 are Jewish people or Israeli people mentioned or referred to.

### **Contravention of s 18C of the *Racial Discrimination Act 1975* (Cth) (RDA)**

36. In response to paragraph 36, the First Respondent:
  - (a) denies that the flags depicted are “ Hamas flags ”;
  - (b) otherwise admits paragraph 36.
37. The First Respondent denies paragraph 37.
38. The First Respondent denies paragraph 38.
39. The First Respondent denies paragraph 39.

### **Impugned publication made on 8 November 2023 – Keane’s Staff Members Post**

40. In response to paragraph 40, the First Respondent:
  - (a) admits that on about 8 November 2023 he posted to the Keane X Page the post which is set out in paragraph 41 of the ASOC;
  - (b) says that the post included an email which had been sent to him, the Vice Chancellor of Sydney University and 38 other email addresses accessed by hundreds of staff members of Sydney University, on 7 November 2023 by Associate Professor Avril Alba purportedly on behalf of herself, the First Applicant, the Second Applicant, the Represented Persons listed in Schedule A of the ASOC and two other individuals; and
  - (c) otherwise denies the allegations in paragraph 40.
41. The First Respondent admits paragraph 41.
42. In response to paragraph 42, the First Respondent:
  - (a) denies that the email referred to in paragraph 42(a) contained any modifications made by him;
  - (b) save what he admits at paragraphs 3 to 8 above, does not know and cannot admit that all of the individuals named in paragraph 42(b) “were Jewish and/or Israeli academics except for Peter Morgan”; and
  - (c) otherwise admits paragraph 42.
43. In response to paragraph 43, the First Respondent:
  - (a) admits the first sentence of paragraph 43; and
  - (b) objects to the second sentence of paragraph 43 on the basis that it is embarrassing and says that the document referred to speaks for itself.
44. In response to paragraph 44, the First Respondent admits the allegations and says further that, in the circumstances of the publication of the email referred to, he did not need permission or authorisation to publish the email or the names of the individuals listed in it.
45. Save that he admits that:
  - (a) the persons named as complainants in this paragraph are or were active members of the Australian Alliance Against Antisemitism (**5A**); and
  - (b) the Applicants and some or all of the Represented Persons are members of the 5A Group;

the First Respondent does not admit paragraph 45.

46. The First Respondent does not know and cannot admit paragraph 46.
47. The First Respondent denies paragraph 47 and says further that:
  - (a) there is no reference to Jewish people or Israeli people in the Staff Members Post;
  - (b) he expressly rejects the Applicants' conflation of "pro-Israel" people with Jewish people; and
  - (c) Peter Morgan is not a Jewish or Israeli person.
48. In the premise that the First Respondent denies the imputations pleaded in paragraph 47, he does not know and cannot admit paragraph 48.
49. The First Respondent does not admit paragraph 49.
50. The First Respondent denies paragraph 50.

#### **Contravention of s 18C of the RDA**

51. The First Respondent admits paragraph 51.
52. The First Respondent denies paragraph 52.
53. The First Respondent denies paragraph 53.
54. The First Respondent denies paragraph 54.

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

55. The First Respondent admits paragraph 55.
56. The First Respondent does not plead to paragraph 56 as it makes no allegation against him.
57. The First Respondent denies paragraph 57.
58. The First Respondent does not plead to paragraph 58 as it makes no allegation against him.
59. The First Respondent denies that the Keane Staff Members Post and its non-removal constituted unlawful discrimination. He otherwise does not plead to paragraph 59 as it makes no allegation against him.

#### **Complaint to the Australian Human Rights Commission**

60. The First Respondent admits paragraph 60.
61. Save that he does not plead to the particulars of any allegation in the ASOC, for the purpose of establishing the jurisdiction of this Court pursuant to section 46PO(3) of the *Australian Human Rights Commission Act 1986* (Cth), the First Respondent admits that the material facts pleaded are the same or the same in substance as the unlawful

discrimination alleged in the AHRC Complaint. He otherwise does not admit paragraph 61.

62. The First Respondent admits paragraph 62.

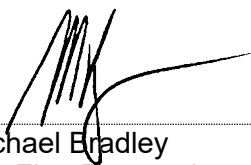
**Relief**

63. The First Respondent denies paragraph 63.

**Defence**

64. Should any of the First Respondent's conduct be found to contravene section 18C(1) of the *Racial Discrimination Act 1975* (Cth), he relies on sections 18D(b) and (c) as a complete defence.

Date: 21 August 2026

  
\_\_\_\_\_  
Signed by Michael Bradley  
Lawyer for the First Respondent

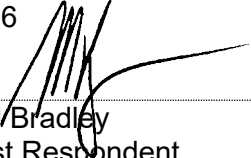
This pleading was prepared by Jessie Taylor and Laila Hamzi of counsel

**Certificate of lawyer**

I Michael Bradley certify to the Court that, in relation to the defence filed on behalf of the First 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: 21 August 2026

  
Signed by Michael Bradley  
Lawyer for the First Respondent