



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 16 Oct 2026 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number: S163/2025
File Title: The Digital Freedom Project Incorporated (ABN 27 500 105 08)
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Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. 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 and whenever the document is reproduced for use by the Court.

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN:

**THE DIGITAL FREEDOM PROJECT
INCORPORATED (ABN 27 500 105 086)**

Plaintiff

and

COMMONWEALTH OF AUSTRALIA

First Defendant

ESAFETY COMMISSIONER

Second Defendant

MINISTER FOR COMMUNICATIONS

Third Defendant

**SUBMISSIONS OF THE ATTORNEY GENERAL FOR NEW SOUTH WALES,
INTERVENING**

Part I: Certification

1. These submissions are in a form suitable for publication on the internet.

Parts II and III: Basis of Intervention

2. The Attorney General for New South Wales (**the Attorney**) intervenes in the proceedings pursuant to s 78A of the *Judiciary Act 1903* (Cth) in support of the First and Third Defendants.

Part IV: Submissions

3. These submissions address the second question of law stated in the Special Case, namely, is Pt 4A of the *Online Safety Act 2021* (Cth) invalid because it

impermissibly burdens the implied freedom of political communication, contrary to the Commonwealth Constitution. The Attorney submits that the answer to that question is ‘no’.

4. The Plaintiff adopts the arguments of Reddit, Inc in the related proceeding S166/2025 (see Plaintiff’s Submissions (PS) [32]). The Attorney relies on his submissions filed in those proceedings.
5. In response to the Plaintiff’s submissions that seek to support a characterisation of the burden on the implied freedom as direct and substantial (see PS [17], [21]), the Attorney repeats [4]-[13] of his submissions in S166/2025. The loss of account-dependent participation by age-restricted users in connection with a particular forum for and/or means of communication (PS [18], [25], [26]) burdens the implied freedom only indirectly and not substantially.
6. In response to the Plaintiff’s submission that the burden on the implied freedom is unable to be justified (PS [55]), the Attorney repeats [14]-[24] of his submissions in S166/2025. In particular, the Attorney submits that the existence of a credible risk that social media usage causes particular harms to children provides a sufficient constitutional basis for legislative action (cf PS [44]) and it is the role of the legislature to determine which policies and social benefits ought to be pursued (cf PS [46]).

Part V: Estimate

7. The Attorney estimates that 15 minutes will be required for the presentation of his oral argument in respect of this proceeding and S166/2025 together.

Dated 16 October 2026



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ANNEXURE TO INTERVENER'S SUBMISSIONS

No	Description	Version	Provision(s)	Reason for providing this version	Applicable date or dates (to what event(s), if any, does this version apply)
		<i>eg:</i> <i>Version 26</i> <i>(1 July 2020 to 24 March 2024)</i>		<i>eg:</i> <i>Act in force on the date of the offence;</i> <i>date of judgment in Court of Appeal;</i> <i>for illustrative purposes only</i>	<i>eg:</i> <i>21 April 2018:</i> <i>date of Minister's decision</i>
1.	<i>Online Safety Act 2021 (Cth)</i>	Current	Part 4A	Currently in force	All relevant times