



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

S163/2025

BETWEEN:

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

Plaintiff

and

THE COMMONWEALTH OF AUSTRALIA

First Defendant

THE ESAFETY COMMISSIONER

Second Defendant

THE MINISTER FOR COMMUNICATIONS

Third Defendant

PLAINTIFF'S REPLY

Part I: Form of submissions

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

Part II: Reply

2. **DFP's standing:** The First and Third **Defendants** in their submissions (**DFPDS [8]-[9]**) contend that the agreed and admitted facts do not “establish a sufficient interest of DFP itself”: **DFPDS [9]**.
3. “The test for a sufficient interest is broad and flexible, varying according to the nature and subject matter of the litigation”: *Unions NSW v NSW [No 3]* (2023) 277 CLR 627 at [22].
4. The “sufficiency of a plaintiff’s interest is a question of degree, not a question of discretion”: *Unions [No 3]* at [22].

5. The courts have on occasion given weight to the interest of the members of an association when recognising its standing: *People of the Small Town of Hawkesdale Inc v Minister for Planning* (2022) 71 VR 550 at [70], citing *Ex parte Helena Valley/Boya Association (Inc) v State Planning Commission* (1990) 2 WAR 422, where Ipp J emphasised “the representative character of the [a]ssociation, its history, the purpose for which it was formed and the special interests of its members”.
6. **DFPDS [9]** acknowledges that DFP’s membership includes age-restricted users aged 13 to 15, and that this litigation is advocacy for its members (including age-restricted users, aged 13 to 15, concerned in the outcome of this litigation), but without recognising that those ends are material to the question of DFP’s standing. It ought to be more than tolerably clear that, absent DFP’s advocacy on their behalf, its age-restricted users aged 13 to 15 would have been unable to participate in this litigation other than through the intervention of tutors. That is a consideration weighing heavily in favour of the recognition of DFP’s standing.
7. DFP’s own constitutional objects expressly include advocating for young people’s rights to communicate through digital and social media and defending the implied constitutional freedom of political communication (**SC [8.1]–[8.2]**). Read together with its membership of persons aged 13 to 15 who are directly affected by Part 4A, those objects give DFP, as an incorporated association, a particular representative interest in the subject matter of these proceedings, beyond a “mere intellectual or emotional concern” (*Australian Conservation Foundation v The Commonwealth* at 530), sufficient to confer standing upon DFP itself.
8. “The plaintiff must show that ‘success in the action would confer on [them]...a benefit or advantage greater than [that] conferred upon the ordinary member of the community; or...relieve them of a detriment or disadvantage to which they would otherwise have been subject...to an extent greater than the ordinary member of the community’”: *Unions [No 3]* at [22].
9. Moreover, a plaintiff may have a sufficient interest where their freedom of action is particularly affected by the impugned law: *Unions [No 3]* at [22].
10. Here, relief from the burden imposed by Part 4A would be “relief from a detriment or disadvantage to which [DFP’s members aged 13 to 15] would otherwise have been

subject...to an extent greater than the ordinary member of the community” (*Unions [No 3]* at [22]), sufficient to confer standing on DFP.

11. **Effective burden:** DFP adopts the matters stated in [3]-[5] of the reply submissions filed for Reddit in proceedings S166/2025.
12. **Legitimate purpose:** DFP adopts the matters stated in [8]-[9] of the reply submissions filed for Reddit in proceedings S166/2025. In particular, the purpose ascribed in RDS [41] to s 63D (“to influence social norms in relation to access to social media by children”) is not, for the reasons outlined by Reddit in its reply at [9], a legitimate purpose.
13. **Justification:** The burden is unjustified. DFP adopts the matters stated in [3]-[5] of the reply submissions filed for Reddit in proceedings S166/2025.
14. **Suitability:** The Cambridge report does not equate “the need to act to safeguard young people” with the implementation of a social media ban in circumstances where the available evidence base for such a ban is poor, and there is, moreover, “no scientifically published and well-powered experimental study testing how a complete social media restriction impacts the mental health or well-being of healthy under-18s” (SCB 1718).
15. Otherwise, DFP adopts the matters stated in [10]-[11] of the reply submissions filed for Reddit in proceedings S166/2025.
16. **Necessity:** DFP adopts the matters stated in [18]-[19] of the reply submissions filed for Reddit in proceedings S166/2025.
17. **Adequacy of balance:** The matters outlined in DFPDS [21]-[22] do not establish that s 63D is adequate in its balance. To say that “children retain access to public material” (DFPDS [22]; see also SA [29] and ACT [15]) substitutes active political communication to passive, even aleatory, receipt of information and devalues the importance of active political communication, which the Defendants elsewhere accept should be given “full weight”: RDS [52]. DFP emphasises the matters set out in DFP [21], and adopts, also, the matters set out in Reddit’s reply submissions at [3]-[4].

Dated: 21 October 2026

A handwritten signature in black ink, appearing to read 'Adrian Maroya'.

Adrian Maroya

Ninth Floor Selborne Chambers

(02) 9233 5188

amaroya@selbornechambers.com.au