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 OUTLINE OF ORAL SUBMISSIONS

Part I: Form of outline

1. This outline is in a form suitable for publication on the Internet.

Part II: Outline of oral propositions

2. ***DFP's standing*** (DFP [6]−[8]; [34]−[38]; DFP Reply [2]−[10]): The Defendants cite *Real Estate Institute of NSW v Blair* (1946) 73 CLR 213 (DFPDS [9]) for the proposition that "the possible standing of members of an [incorporated] association may be distinguished from the absence of pleaded facts supporting relief for the corporate association."

3. In that case, Latham CJ observed (224) that while "[he] could see no cause of action in [the Real Estate Institute]…no argument was heard upon this subject". Rich J (224-225) did not address the topic. Starke J (226) concluded that the pleadings disclosed no right of the Real Estate Institute that was infringed or even affected by the regulations there in question. Dixon J (as noted in DFPDS [9]) observed (228) that "no facts are pleaded that would support a claim on the part of the corporate association to relief against their purported operation". McTiernan J agreed with the Chief Justice (233). William J did not address the topic (233-236).

4. The Defendants (DFPDS [9]) trammel DFP's description of these proceedings "as advocacy for its members", thereby producing a narrow characterisation of the "further practical interest required".

5. The Defendants have admitted that DFP's membership includes age-restricted users, aged 13 to 15; that this litigation is advocacy for its members (DFPDS [9]), which include age-restricted users concerned in the outcome of these proceedings. Those characteristics are material to DFP's standing, and go to establishing DFP's "real" or "sufficient" interest in the relief sought: *Unions NSW v New South Wales* (2023) 277 CLR 627 at [16] (***Unions [No 3]***).

6. DFP's 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]**). Coupled with its membership of persons aged 13 to 15 who are directly affected by Part 4A, those objects give DFP a particular representative interest in the subject matter of these proceedings beyond a mere intellectual or emotional concern: cf. *Australian Conservation Foundation v Commonwealth* (1980) 146 CLR 493 at 530 (Gibbs CJ).

7. Absent DFP's advocacy on its age-restricted user members' behalf, many of them (without the means to embark on litigation of this character, it may also be inferred) would have been unable to participate, or otherwise be heard in these proceedings, other than through the appointment of tutors (who themselves might be without the means to conduct litigation of this character).

8. Weight may be accorded to the interests of the members of an association in evaluating its standing: *People of the Small Town of Hawkesdale Inc v Minister for Planning* (2022) 71 VR 550 at [70]; *Ex parte* ***Helena Valley****/Boya Association (Inc) v State Planning Commission* (1990) 2 WAR 422.

9. *Helena Valley* assists DFP's argument on standing. One must look (as a cumulative consideration) to the representative character of the association, its history, the purpose for which it was formed, and the special interests of its members: Ipp J at 437.

10. Notwithstanding that the implied freedom does not confer personal rights, DFP agrees with Reddit (Reddit [26]) that the implied freedom protects each member of the Australian community, irrespective of their status as electors. See *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106, 139 and *Unions NSW v New South Wales* (2013) 252 CLR 530 (***Unions No 1***).

11. Political communications are "not simply a two-way affair between electors and government or candidates"; "[t]here are many in the community who are not electors but who are governed and are affected by decisions of government", and those persons "may seek to influence the ultimate choice of the people as to who should govern": *Unions No 1* (at [30]).

12. The protection of the dignity of the people of the Commonwealth, whose political sovereignty is the basis of the implied freedom (***Lange*** *v ABC* (1997) 189 CLR 520 at 560; *Clubb v Edwards* (2019) 267 CLR 171 at 196 [51]) is an aim that ought to be considered as indivisible from the interest "of each member of the Australian community…in disseminating and receiving information, opinions and arguments concerning government and political matters that affect the people of Australia": *Lange* at 560; *Unions No 1* at [17].

13. The foregoing is materially significant to the situation of age-restricted users; affords a basis for accepting DFP's standing; and, if necessary, palliates the effect of cases like

Australian Conservation Foundation v Commonwealth (which involved considerations different from those in these proceedings).

Other issues (DFP [32]−[55]; DFP Reply [11]−[17]).

14. ***Effective burden***: DFP adopts the matters stated in [3]− [5] of Reddit's reply submissions in S166/2025.

15. ***Legitimate purpose***: DFP adopts the matters stated in [8]-[9] of Reddit's reply submissions. The purpose ascribed to s 63D in RDS [41] is not a legitimate purpose.

16. ***Justification***: the burden is unjustified. DFP adopts the matters stated in [3]− [5] of Reddit's reply submissions.

17. ***Suitability***: the Cambridge report does not equate the need to act to safeguard young people with the implementation of the social media ban of the extent under consideration. Otherwise, DFP adopts the matters in [10]−[11] of Reddit's reply submissions.

18. ***Necessity***: DFP adopts the matters stated in [18] − [19] of Reddit's reply submissions.

19. ***Adequacy of balance***: the matters outlined in DFPDS [21] − [22] do not establish the adequacy of balance of s 63D. The statement that children retain access to public material (DFPDS [22]) substitutes active political communication with passive/aleatory receipt of information, and devalues the importance of active political communication (elsewhere accepted by the Defendants as a matter for "full weight" (RDS [52]). Otherwise, DFP emphasises the matters set out in DFP [21], and adopts the matters set out in Reddit's reply submissions at [3]–[4].

Dated: 2 November 2026

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