SHORT PARTICULARS OF CASES
APPEALS

NOVEMBER 2026

No.	Name of Matter	Page No
	Tuesday, 3 November 2026 and Wednesday, 4 November 2026	
1.	The Digital Freedom Project Incorporated (ABN 27 500 105 086) v Commonwealth of Australia & Ors; Reddit, Inc. v Commonwealth of Australia & Anor	**1**
	Thursday, 5 November 2026	
2.	Issak v The King & Ors; Bekele v The King & Ors; Haile v The King & Ors	**3**
	Tuesday, 10 November 2026	
3.	Yanunijarra Aboriginal Corporation RNTBC & Ors v State of Western Australia	**4**
	Wednesday, 11 November 2026 and Thursday, 12 November 2026	
4.	Oil Basins Ltd v Esso Australia Resources Pty Ltd (ACN 091 829 819) & Ors	**6**

****

This document is intended as a brief summary of the matter heard before the Full Court and is not a substitute for the submissions or ultimate reasons of the Court.

THE DIGITAL FREEDOM PROJECT INCORPORATED v THE COMMONWEALTH OF AUSTRALIA & ORS (S163/2025); REDDIT, INC. v COMMONWEALTH OF AUSTRALIA & ANOR (S166/2025)

Date writ of summons filed (S163/2025): 27 November 2025

Date application for a constitutional or other writ filed (S166/2025): 12 December 2025

Date joint special case referred to Full Court: 29 July 2026

Factual and procedural background

In separate proceedings, each of the plaintiffs challenges the validity of statutory provisions by which providers of certain kinds of social media platforms are required to take reasonable steps to prevent users under 16 years of age from having an account to use the platform. This is on the basis that the provisions impermissibly burden the implied freedom of political communication. The core provisions under challenge are contained in Pt 4A of the *Online Safety Act 2021* (Cth) ('the Act').

The Digital Freedom Project Incorporated is an association, established in New South Wales, whose members include children under 16 years of age. Its objects include advocating for the rights of young people to use and communicate through social media technologies and defending freedom of expression in digital contexts.

Reddit, Inc. is an American corporation that provides an online news and discussion platform called 'Reddit'. Reddit account holders can post information on a wide range of topics, including Australian political matters, and can post comments in response to comments made by other account holders. Users who do not hold a Reddit account can read the posts made by Reddit account holders. Reddit, Inc. however does not accept that its Reddit platform is an 'age-restricted social media platform' within the meaning of Pt 4A of the Act.

The Attorneys-General of all six States, the Northern Territory and the Australian Capital Territory are intervening in both proceedings. In proceeding S166/2025, the Court has granted the Free Speech Union and, jointly, NetChoice and the Electronic Frontier Foundation leave to be heard as amici curiae, limited to written submissions filed.

Joint special case

A joint special case filed by the parties to both proceedings states the following questions of law, which Chief Justice Gageler referred for the opinion of the Full Court:

1. Does the plaintiff in proceeding S163/2025 have standing to seek the relief sought?

2. Is Pt 4A of the Act invalid (in whole or in part and, if in part, to what extent) because it impermissibly burdens the implied freedom of political communication, contrary to the Commonwealth Constitution?

3. What, if any, relief should be granted?

4. Who should pay the costs of the special case?

ISSAK v THE KING & ORS (A21/2026)
BEKELE v THE KING & ORS (A22/2026)
HAILE v THE KING & ORS (A23/2026)

Court appealed from: Supreme Court of South Australia Court of Appeal [2026] SASCA 9

Date of judgment: 13 February 2026

Special leave granted: 11 June 2026

Factual background

The appellants were charged with various counts of sexual offences and were tried jointly in respect of events that occurred in the early hours of 18 June 2023. The trial judge (Judge Fuller) determined that there was no evidence capable of establishing a joint criminal enterprise and directed acquittals for those counts. This direction exhausted the counts against Mr Issak, and the trial continued with respect to the remaining counts against Mr Bekele and Mr Haile, with Mr Bekele and Mr Haile being found guilty of certain charges by the jury.

Following the trial, the Director of Public Prosecutions ('the DPP') appealed against the orders directing the acquittals and Mr Bekele and Mr Haile appealed against their convictions.

Procedural background

The Court of Appeal (Kourakis CJ, Bleby and David JJA) accepted that the DPP established a case to answer on all the counts, including joint criminal enterprise, having found that the totality of the evidence is capable of establishing, beyond reasonable doubt, the existence of an agreement between the appellants. In respect of the risk of double jeopardy for a retrial for the appellants, their Honours found that the directed acquittals are capable of undermining public confidence in the administration of justice, and therefore those considerations outweigh the risk of double jeopardy that would attend on the appellants being tried again.

In this appeal, the appellants submit that the Court of Appeal erred in analysing the elements of joint criminal enterprise. The appellants further submit that it is not in the interests of justice for the appellants to face a retrial and that the Court of Appeal failed to consider the oppression that would be caused.

This appeal

The ground of appeal is:

1. The Court of Appeal erred in granting the first respondent permission to appeal by failing to have regard to the relevant double jeopardy considerations that attended the exercise of the discretion.

YANUNIJARRA ABORIGINAL CORPORATION RNTBC & ORS v STATE OF WESTERN AUSTRALIA (P23/2026)

Court appealed from: Full Court of the Federal Court of Australia [2026] FCAFC 7

Date of judgment: 12 February 2026

Special leave granted: 11 June 2026

The issue in this appeal is whether the decision to include an expedited procedure statement in a s 29 notice under the *Native Title Act 1993* (Cth) ('the NTA') is a judicially reviewable decision.

Factual background

The first to third appellants are registered native title bodies corporate, while the fourth appellant is a representative Aboriginal and Torres Strait Islander body, under the NTA. In 2023, the respondent as the 'Government party' gave notices under s 29 of the NTA that it intended to grant an exploration licence under the *Mining Act 1978* (WA) in relation to an area covered by the determinations of native title.

If a government agency considers that a future act will have minimal impact on native title, the NTA allows for a fast-tracking process whereby a Government party can make a statement to that effect, indicating on its notice that it considers the act attracts the expedited procedure (in accordance with the criteria set out in s 237 of the NTA) and the right to negotiate will not apply.

In this case, each notice issued included a statement under s 29(7) of the NTA that the respondent considered the act, that is, the grant of the proposed exploration licence, was '*an act attracting the expedited procedure'* as defined in s 237 of the NTA.

When a s 29 notice includes an expedited procedure statement, the expedited procedure in s 32 applies, and if a native title party does not lodge an objection with the Native Title Tribunal ('the Tribunal'), the Government party may do the act and the act will be valid. If a native title party does lodge an objection against the inclusion of the statement, the Tribunal must determine whether the act attracts the expedited procedure and if it determines that it does not, the normal negotiation procedure will apply.

Procedural Background

The appellants did not lodge an objection with the Tribunal but sought judicial review of the respondent's inclusion of s 29(7) expedited procedure statements in the future act notices for exploration licences, challenging the respondent's adoption of a 2022 policy about when to include such statements, arguing the State failed to properly consider the criteria in s 237 of the NTA.

Both the Federal Court and the Full Court of the Federal Court held that the respondent's inclusion of the expedited procedure statement was not a judicially reviewable decision. The Full Court rejected the construction that s 29(7) requires a Government party to consider whether the act attracts the expedited procedure and would be amenable to review on the basis that this would cause fragmentation, because there '*would be two avenues of review*' and that this would '*give rise to uncertainty*' about when the Tribunal's jurisdiction is engaged and when an act is valid.

This appeal

The appellants submit that the decision made by a Government party to include a s 29(7) statement is not immune from judicial review as the action has profound consequences in that it has the capacity to extinguish or impair the native title rights and interests, and the consideration required by ss 29(7) and 237 of the NTA must be done in accordance with law.

The ground of appeal is:

1. The Full Court erred in holding that the inclusion of a statement in a notice under s 29 of the NTA that the Government party considers the act is an act attracting the expedited procedure is not a reviewable decision under the *Administrative Decision (Judicial Review) Act 1977* (Cth) or otherwise amenable to judicial review by the Federal Court pursuant to s 39B(1A)(c) of the *Judiciary Act 1903* (Cth) and ss 21 and 23 of the *Federal Court of Australia Act 1976* (Cth).

OIL BASINS LTD v ESSO AUSTRALIA RESOURCES PTY LTD (ACN 091 829 819) & ORS (M64/2026)

Court appealed from: Supreme Court of Victoria Court of Appeal [2026] VSCA 6

Date of judgment: 16 February 2026

Special leave granted: 11 June 2026

These proceedings arise out of disputes regarding royalties payable to the appellant (OBL) pursuant to long standing agreements for hydrocarbons produced and recovered in a designated area of Bass Strait.

The primary judge made orders under s 7 of the *International Arbitration Act 1974* (Cth) (IAA) staying a proceeding commenced by OBL. OBL unsuccessfully sought to appeal that decision in the Victorian Court of Appeal. The proposed grounds of appeal required the Court of Appeal to consider whether a dispute concerning the scope of the arbitration agreement is itself capable of being resolved by arbitration, so as to come within the application of s 7 of the IAA.

The fourth respondent, BHP Group Ltd, has filed a submitting appearance.

The First to Third Respondents have filed a Notice of Cross-Appeal and a Notice of Contention.

The Australian Centre for International Commercial Arbitration (ACICA) has been granted leave to appear as *amicus curiae.*

The grounds of appeal are:

1. The Court of Appeal erred in holding that it was open to the primary judge to grant a stay under s 7(2) of the International Arbitration Act 1974 (Cth) (IAA) without embarking on any construction of the parties' arbitration agreement, under its applicable law.

2. The Court of Appeal erred in failing to find that the proper law of the parties' arbitration agreement is the law of New York.

3. The Court of Appeal erred in holding that, where parties to an arbitration agreement have agreed that disputes about the scope of the agreement will be decided by a court and not arbitrators, Art 16 of the UNCITRAL Model Law on International Commercial Arbitration (IAA Schedule 2) prevents any legal force or effect being given to such an agreement, with the result that such disputes are nonetheless capable of settlement by arbitration 'in pursuance of the [arbitration] agreement' within the meaning of s 7(2)(b).