



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 27 Nov 2025 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)
Registry: Sydney
Document filed: Form 20 - Writ of summons
Filing party: Plaintiffs
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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.



Form 20 – Writ of summons

Note: see rule 27.01.

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. of 2025

BETWEEN:

THE DIGITAL FREEDOM PROJECT INCORPORATED

(ABN 27 500 105 086)

First Plaintiff

NOAH JONES (by his litigation guardian, RENEE JONES)

Second Plaintiff

MACY NEYLAND (by her litigation guardian, CARLY NEYLAND)

Third Plaintiff

and

THE COMMONWEALTH OF AUSTRALIA

First Defendant

THE ESAFETY COMMISSIONER

Second Defendant

THE MINISTER FOR COMMUNICATIONS AND SPORT

Third Defendant

WRIT OF SUMMONS

KING CHARLES THE THIRD, by the Grace of God, King of Australia and his other Realms and Territories, Head of the Commonwealth:

TO THE DEFENDANTS

The Commonwealth of Australia

The eSafety Commissioner

The Minister for Communications and Sport

TAKE NOTICE that this proceeding has been brought against you by the plaintiff for the claim set out in this Writ.

IF YOU INTEND TO DEFEND the proceeding you must file a notice of appearance.

IF YOU ARE WILLING TO SUBMIT to any order that the Court may make, save as to costs, you may file a submitting appearance.

THE TIME FOR FILING AN APPEARANCE is as follows:

- (a) where you are served with the application within Australia – 14 days from the date of service;
- (b) in any other case – 42 days from the date of service.

STATEMENT OF CLAIM

The parties

1. The First Plaintiff, The Digital Freedom Project Incorporated, (DFP) is an incorporated association (INC 2501276) established in New South Wales under the *Associations Incorporation Act 2009* (NSW), whose objects include promoting and protecting the participation of young Australians in public affairs and political communication, particularly online.
2. DFP operates a programme through its website promoting freedom of speech and communication, including on political and governmental matters. DFP has members who are under 16 years of age and who (prior to commencement of the measures pleaded below) used account-based features of major social media platforms to receive, impart and organise communications on governmental and political matters including with DFP's own programmes.
3. The Second Plaintiff is Noah Jones, a minor aged fifteen years who sues by his litigation guardian, Renee Jones, his mother.
4. Noah is a secondary school student residing in metropolitan New South Wales. He is engaged in learning about current affairs, politics, and public issues, and participates in civic discussion primarily through online media and social platforms, and in-person events. These proceedings are brought on his behalf to challenge the lawfulness and constitutional validity of restrictions which prevent or substantially burden his ability to access, receive, and participate in political communication online.
5. The Third Plaintiff is Macy Neyland, a minor aged fifteen years who sues by her litigation guardian, Carly Neyland, her mother.
6. Macy is a secondary school student residing in regional New South Wales. Macy will turn 16 years of age just before the *Online Safety Amendment (Social Media Minimum Age) Act 2024* (Cth) (the Amendment Act) comes into effect,

but is affected by the Act forcing her to surrender her privacy and anonymity by submitting personal identification to continue using social media. Macy is engaged in political and civic matters, uses online platforms to follow journalists, discuss policy, and participate in campaigns. Macy says that anonymity is essential for young people, especially girls in small communities, to express opinions safely and participate freely in public discourse. Macy believes the law unjustly treats all young users as risks rather than responsible participants and that less intrusive measures, such as parental oversight, education, and privacy-protective tools, could achieve safety without undermining privacy or political communication rights.

7. The First Defendant is the Commonwealth of Australia.
8. The Second Defendant is the eSafety Commissioner, an officer of the Commonwealth responsible for administering and enforcing the *Online Safety Act 2021 (Cth)* as amended.
9. The Third Defendant is the Minister for Communications and Sport, the Minister administering the relevant legislation and empowered to make or approve subordinate instruments and directions.

The impugned scheme

10. There is a significant community of Australian citizens aged between 13 and 15 years of age who exercise their freedom to engage in communication on political and governmental matters by registering accounts on social media services that have the purpose of, or have a purpose of, facilitating such communication between those citizens and between them and members of the Commonwealth and State Parliaments, public officials, political parties, media organisations and Australian citizens entitled to vote in federal and state elections.
11. The use of social media accounts by these citizens enables them to share (by posting and messaging in an interactive manner) information about, and to

discuss, political issues and governmental policies, inform themselves about political matters and what their political representatives are doing, to criticize, comment on and advocate for or against government policies and their political representatives, formulate and advocate for governmental policies to members of parliament, political parties, citizens entitled to vote and to each other, and to mobilise young people to engage in political discussion and activity.

12. The exercise of this freedom of political communication by these citizens is necessary for their education in political and governmental matters and in preparation for their exercise of voting rights in choosing political representatives upon them becoming entitled to vote.
13. The exercise of this freedom of political communication by these citizens is necessary for the education of their political representatives about the opinions, concerns and preferences in relation to political and governmental matters of young Australians and to enable those representatives to properly and effectively formulate government policies for the benefit of young people, presently and in the long term.
14. The exercise of this freedom of political communication by these citizens is necessary for the integrity and efficacy of the system of representative and responsible government mandated by the Constitution.
15. Some of those citizens are members of DFP, members of LGBTIQ+ community, children in rural and regional communities, disabled children, neuro-divergent children, migrant children, and users of anonymous online mental health services for children and adolescents.
16. The Amendment Act was passed by the Commonwealth Parliament on 29 November 2024. The Amendment Act amended the *Online Safety Act 2021* (Cth) (the principal Act) by inserting a new Part 4A into the principal Act to establish a legal minimum age of 16 for all account-based access to social media services, referred to as “age-restricted social media platforms” (the

Minimum-Age Provisions).

17. The Minimum-Age Provisions are due to commence on 10 December 2025.

18. Under the scheme of the Minimum-Age Provisions:

- a) an “age-restricted social media platform” is defined by section 63C of the principal Act as any electronic service the sole or significant purpose of which is to enable online social interaction between end-users, including by allowing users to link with or interact with other users and to post material;
- b) by reason of section 63D, providers of such services must take reasonable steps to prevent persons under 16 years of age from creating or holding accounts;
- c) substantial civil penalties may be imposed on service providers for non-compliance with section 63D;
- d) the *Online Safety (Age-Restricted Social Media Platforms) Rules 2025* promulgated by the Third Defendant in July 2025 (the Rules) define and exclude specified classes of services but do not exclude social media platforms used for communicating on political and governmental matters; and,
- e) when the scheme commences on 10 December 2025 it will apply to then existing and new social media accounts operated by persons under 16 years of age who wish to exercise their freedom of communication on political and governmental matters by use of social media platforms falling within the meaning of “age-restricted social media platforms”.

19. On their proper construction and intended operation, the Minimum-Age Provisions will prevent persons under 16 years of age from using account-based social interaction to engage in communication by, to and between them of political and governmental matters on all social media services and platforms that are principal fora for such communication by 13 to 15 years-olds in Australia.

20. Logged-out viewing does not provide a meaningful substitute for the interactive functions which are integral to and necessary for contemporary modes of free political communication by persons aged between 13 and 15 years of age and for the maintenance of the integrity and efficacy of the system of representative and responsible government mandated by the Constitution.

21. The Second Plaintiff:

- a) regularly accesses and uses online media and social networking platforms, including TikTok, X (formerly Twitter), YouTube, and Instagram, for the purpose of receiving information, news, and commentary on matters of public and political interest;
- b) uses those platforms to engage in communication and discussion concerning political, governmental, and social issues with family members, peers, teachers, adult relatives, Members of Parliament, and local councillors;
- c) engages with public and political issues through social media forming a substantial part of the Plaintiff's civic education, personal development, and participation in democratic life;
- d) will be adversely affected by the proposed or enacted measure described herein (the under-16 social media ban) which prohibits or substantially restricts persons under the age of 16 from creating or maintaining accounts on, or otherwise accessing, social media platforms; and
- e) will be prevented from accessing and participating in online political communication and discussion due to the ban, and thereby his freedom to receive and impart political communication protected by the implied freedom of political communication under the Constitution of the Commonwealth of Australia.

22. The Third Plaintiff:

- a) will be required to verify her age and identity to continue using her social media accounts, even though she will soon turn 16 years of age;
- b) will have her privacy compromised if she is required to upload personal identification (like a passport or driver's licence);

- c) will lose her online anonymity, making her identifiable to social media companies and potentially others;
- d) will feel less able to share opinions or engage in political and social discussions online;
- e) has concerns about the risk that her personal data could be stored, shared or misused;
- f) will be susceptible to greater exposure to local judgment or harassment in her small regional community if her identity becomes known;
- g) will be susceptible to unfair treatment, despite using social media responsibly for education and civic engagement;
- h) will find it harder to participate safely and freely in public debate; and
- i) will be forced to choose between keeping her privacy and maintaining access to online platforms.

23. DFP will be adversely affected in that its own members under 16 years of age, and other members of the community under 16 years of age, will be prevented from using DFP's programmes to engage in communication on political and governmental issues.

The burden on political communication

24. In their terms, operation and effect, the Minimum-Age Provisions will interfere with and adversely affect the exercise of freedom of communication on governmental and political matters in Australia by all interested persons aged between 13 and 15 years old.

25. For these reasons the Minimum-Age Provisions burden the freedom of communication on political and governmental matters embedded in the Constitution.

Purpose and justification

26. The asserted purpose of the Minimum-Age Provisions is the protection of children from online harms, which purpose the Plaintiffs accept is compatible with the system of representative and responsible government.
27. The on-line harms identified as the harms to which the Minimum-Age Provisions are targeted are harmful content available to account holders on social media platforms with a significant purpose of social media interaction with end users, and the application by the service providers to those social media platforms of design features and functions which have the effect on vulnerable young people of encouraging them to expend increasing time online and making them addicted to social media platform use.
28. The Minimum-Age Provisions are not reasonably appropriate and adapted to achieve that purpose because:
- a) Suitability: While there is a superficial rational connection in that the Minimum-Age Provisions operate on the accessibility for 13 to 15 year-olds of social media platforms, they are not rationally targeted at the specific features of social media platforms which generate the harms from which they are intended to protect children, and they will have the effect of sacrificing a considerable sphere of freedom of expression and engagement for 13 to 15 year olds in social media interactions (including communications on personal and governmental matters, and the benefits to those young people of such social interaction) without any discrimination and not rationally connected to the identified harms.
 - b) Necessity: There are obvious and compelling, reasonably practicable, less-restrictive alternatives to a blanket ban on social media platform accounts, including but not limited to: parental-consent requirements (particularly for 14–15-year-olds); legislating an enforceable duty-of-care/design-safety obligations on providers; limiting the definition of “age-restricted social media platforms” to include that the relevant social media platforms

operate one or more of the harmful design features which actually cause the harm; strengthened reporting/takedown standards; and digital literacy programs in schools.

- c) Adequacy in balance: The breadth and severity of the burden, categorically excluding an entire age cohort from access to their primary fora for online social interaction, including political communication, is an oppressive, overreaching and inappropriate means to achieve the object of child protection, and fails to impose any incentive for social media platform providers to ameliorate the actual harmful features of their services delivered to young Australians.

- d) Further, the Minimum-Age Provisions are incompatible with, and a clog on, the enjoyment by young Australians of right to freedom of opinion and expression in Article 19 of the *International Covenant on Civil and Political Rights* and Articles 12 and 13 of the *Convention on the Rights of the Child* (CRC) (including the right to have their opinions included in decision-making processes that relate to their lives), the right of a child to engage and participate in cultural and artistic life in Article 31 of the CRC and the right to access information and material from a diversity of sources in Article 17 of the CRC. The Minimum-Age Provisions are not reasonable and proportionate to achieving a legitimate objective in a way that justifies the blanket restriction on these rights.

29. Accordingly, the Minimum-Age Provisions infringe the implied freedom of communication on governmental and political matters and are invalid to the extent of that infringement.

Alternative: reading down/severance

30. Alternatively, if and to the extent that any part of the scheme might otherwise be valid, the Minimum-Age Provisions should be read down or severed pursuant to s 15A *Acts Interpretation Act* 1901 (Cth) so that they do not apply to prevent or hinder communications reasonably characterised as political communication by persons under 16 years of age, or to require providers to take steps that would have that effect.

31. The Rules are invalid to the same extent if, properly construed, they extend the operation of the Minimum-Age Provisions to communications reasonably characterised as political communication, or they are otherwise beyond power by reason of the implied freedom.

Jurisdiction

32. This is a matter arising under the Constitution and involving its interpretation: Constitution s 76(i) (as conferred by the *Judiciary Act* 1903 (Cth)) and s 75(v) (as against the Second and Third Defendants as officers of the Commonwealth).

Relief

The Plaintiffs claim:

- A. A declaration that the Minimum-Age Provisions are invalid as they burden the implied freedom of communication on governmental and political matters.
- B. Injunctions restraining the Second and Third Defendants, whether by themselves, their officers, or agents, from taking steps to enforce the Minimum-Age Provisions (including issuing notices or taking compliance action against providers) to the extent that such steps would prevent or hinder political communication by or to persons under 16 years of age.

C. Alternatively, orders that the Minimum-Age Provisions be read down or severed so as not to apply to political communication as pleaded above.

D. Costs.

E. Such further or other orders as the Court considers appropriate.

Dated 25 November 2025



M S White SC



A E Maroya

Counsel for the Plaintiffs

PRYOR TZANNES & WALLIS SOLICITORS & NOTARIES

Solicitors for the Plaintiffs