



HIGH COURT OF AUSTRALIA

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN:

REDDIT, INC.
Plaintiff

and

COMMONWEALTH OF AUSTRALIA
First Defendant

MINISTER FOR COMMUNICATIONS
Second Defendant

SUBMISSIONS OF THE DEFENDANTS

PART I — CERTIFICATION

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

PART II — ISSUES

2 Section 63D requires “provider(s)” of “age-restricted social media platform(s)” (**ARSMPs**) to take reasonable steps to prevent “age-restricted users”, being children under the age of 16 ordinarily resident in Australia, from having accounts with those platforms: *Online Safety Act 2021* (Cth) (**OS Act**), ss 5 and 63D. The Defendants submit that the burden that s 63D imposes on political communication is justified by its protection of Australian children under 16 from credible risks of serious harm associated with engagement-promoting features of social media platforms.

PART III — SECTION 78B NOTICE

3 Notice pursuant to s 78B of the *Judiciary Act 1903* (Cth) has been given: SCB 62-65.

PART IV — MATERIAL FACTS

A THE RISKS OF HARM FROM SOCIAL MEDIA PLATFORMS

4 Providers of social media platforms charge no fees to ordinary users (SC [282] (SCB 168))¹ but make enormous sums from advertising.² Advertisers are attracted to platforms that hold users’ attention, because the longer users stay on a platform, the more advertisements that can be shown to them; and the more users do on a platform, the more the platform learns about them, allowing for more targeted advertisements: SC [291]-[293] (SCB 169-170). The providers of social media platforms therefore have a financial incentive to attract and retain users and to sustain engagement. Statements of Reddit (SC [296.2(a)] (SCB 170)), Meta (SC [297.1] (SCB 171)), Snap (SC [298.1] (SCB 171)), Alphabet (SC [299] (SCB 172)) and X (SC [300] (SCB 172)) expressly connect user retention, engagement and/or advertising with financial performance. Statements concerning Kick likewise identify engagement and retention as being product priorities: SC [248]-[249] (SCB 158-159).

5 Given those commercial imperatives, it is no surprise that, when a user logs into an account with each platform identified by the eSafety Commissioner as an ARSMP (**Identified**

¹ Some platforms charge a fee for access to additional features, goods or services.

² For example, Reddit, Inc derived between 91% and 94% of its total revenue from advertising in FY2024 and FY2025 (SC [284] (SCB 168)). The proportions are similar for **Snap**, Inc (87-96% of total revenue for FY2023, FY2024 and FY2025) and **Meta** Platforms, Inc (USD\$196.175 billion in advertising revenue out of a total USD\$200.966 billion in revenue in FY2025: SC [285], [287] (SCB 168)). Similarly, **Alphabet** Inc, which owns a wider variety of businesses, generated USD\$40.367 billion from YouTube advertising alone: SC [286] (SCB 168).

ARSMPs), they are exposed to features that “are designed to, and do in fact, maximise users’ engagement”: SC [42], [335.1] (SCB 97-98, 189). These design features include:

- (a) ***Endless feed***: logged-in users of each Identified ARSMP encounter feeds with no apparent end point or which refresh to add material when the end is reached: SC [336.2] (SCB 189). These feeds eliminate natural stopping points and encourage continued scrolling: SC [341] (SCB 192).³
- (b) ***Autoplay***: in the endless feeds of each Identified ARSMP except Kick, videos play automatically,⁴ subject to the user settings and age-related defaults described in the Special Case. Autoplay further eliminates natural stopping points (SC [341] (SCB 192)) and engages the brain’s reward centre (SC [340.3(b)-(c)] (SCB 191-192)), with the result that “over time, users may find themselves compelled to engage with social media platforms, not out of genuine interest, but due to the dopamine-driven reinforcement embedded in the platform design” (SC [340.3(c)(iii)] (SCB 192)).
- (c) ***Recommender systems reliant on user data***: for each Identified ARSMP, the videos and other content that automatically display in a logged-in user’s endless feeds are selected to appeal to that specific user by automated systems.⁵ These systems — “algorithms, automated processes, recommendation or recommender systems” — predict the material that logged-in users will find engaging by reference to a vast amount of information collected from those users: SC [102], [129], [152], [188], [204], [238], [253], [277], [336.6] (SCB 110-111, 119-120, 128-129, 142-143, 146-147, 156-157, 159-161, 166-167, 190). They “are designed to, and do, provide to individual users content ... which those users find engaging” (SC [340.3(a)] (SCB 191)), thus potentially further engaging the brain’s reward centre: SC [340.3(c)] (SCB 192).
- (d) ***Time-limited content***: each Identified ARSMP (except Reddit) allows users to post audio-visual or other content for limited periods of time or to post “live” audio-visual

³ Reddit’s description of individual “subreddits” as effectively finite (PS [22]) does not answer whether its service has an endless-feed feature. Reddit’s “Home” feed, which is the default starting point for logged-in users, is a continuous feed of material with no apparent end-point or which refreshes to add new material, as are the “Popular” and “News” feeds: SC [76]-[78] (SCB 105).

⁴ SC [78] (SCB 105) (Reddit), [108] (SCB 114) (TikTok), [137] (SCB 123) (Instagram), [157] (SCB 132) (Facebook), [174] (SCB 138) (Snapchat), [191] (SCB 144) (X), [209] (SCB 149) (Threads), [225] (SCB 153) (Twitch), [261] (SCB 162) (YouTube).

⁵ SC [83] (SCB 106) (Reddit), [109] (SCB 114) (TikTok), [138], [154], [210]-[211] (SCB 123, 130, 149) (Instagram, Facebook and Threads), [175] (SCB 138) (Snapchat), [190.11], [193], [206] (SCB 144, 148) (X), [240] (SCB 157) (Twitch), [244] (SCB 158) (Kick), [278] (SCB 167) (YouTube).

content.⁶ The knowledge that other users may be posting such content may engage users' fear of missing out (**FOMO**), being feelings of anxiety that arise from the realisation that the individual may be missing out on rewarding experiences that others are having. This may have the effect that users are encouraged to, and do, engage in the use of social media platforms more frequently so as to avoid FOMO: SC [342.3] (SCB 192-193).

- (e) **Popularity features:** each Identified ARSMP has design features that show users how popular their posts are, how popular others' posts are, and whether others have viewed or interacted with their posts:⁷ SC [336.5] (SCB 190). These design features operate upon "users' tendency to engage in social comparisons" (SC [356.2] (SCB 199)) and may lead to FOMO if the user does "not immediately see ... comments, likes and other reactions to posts which the person has made online" (SC [352.7] (SCB 197)).
- (f) **Push notifications:** when a user sets up an account, each Identified ARSMP by default enables push notifications,⁸ which are subject to operating-system permissions and certain platform and age-specific settings. Receipt of a notification may encourage a return to the platform through the mechanism in SC [342.1] (SCB 192).

6 The same features that further the platform providers' commercial objectives carry serious risks of harm to children:

- (a) **Addictive or problematic use:** there is a credible risk that these features cause addictive or problematic use of social media (SC [333]-[335] (SCB 188-189)), and that children are more vulnerable to this because of their developmental stage: SC [343]-[344] (SCB 193-194). Possible explanations include developing capacities for emotional regulation, planning and impulse control, and differences in adolescent responses to social rewards: SC [344.2(b)], [344.4] (SCB 193-194).

⁶ SC [107.2]-[107.3] (SCB 113) (TikTok), [136.6]-[136.8] (SCB 122) (Instagram), [156.6]-[156.7] (SCB 131) (Facebook), [173.5]-[173.6] (SCB 137) (Snapchat), [190.5], [190.9] (SCB 143) (X), [208.5] (SCB 149) (Threads), [223.1], [223.3], [224.1] (SCB 152-153) (Twitch), [242.1], [242.3] (SCB 157) (Kick), [260.2], [267.8] (SCB 162, 164) (YouTube).

⁷ SC [56.4]-[56.5], [56.7]-[56.8] (SCB 100-101) (Reddit), [107.5]-[107.6] (SCB 113) (TikTok), [136.2]-[136.3] (SCB 121-122) (Instagram), [156.8]-[156.9] (SCB 131) (Facebook), [173.7]-[173.9] (SCB 137) (Snapchat), [190.3]-[190.4] (SCB 143) (X), [214.1]-[214.3] (SCB 150) (Threads), [223.2]-[223.7] (SCB 152-153) (Twitch), [242.5]-[242.6], [251] (SCB 157, 159) (Kick), [265.7]-[265.9] (SCB 163) (YouTube).

⁸ SC [89] (SCB 107) (Reddit), [113] (SCB 114-115) (TikTok), [142] (SCB 124) (Instagram), [163] (SCB 133-134) (Facebook), [180] (SCB 139-140) (Snapchat), [197] (SCB 145) (X), [214] (SCB 150) (Threads), [231] (SCB 154-155) (Twitch), [247] (SCB 158) (Kick), [265] (SCB 163) (YouTube).

- (b) ***Changes to brain development:*** there are credible risks that the frequent use of social media platforms causes alterations in adolescent brain development (SC [345]-[346] (SCB 194-195)). Studies hypothesise that the changes may relate to personalised recommendations designed for immediate gratification and emotional engagement, and to repeated exposure to social rewards such as notifications and “likes”: SC [347] (SCB 196).
- (c) ***Sleep impacts:*** there is a credible risk that the features of social media platforms cause disruption to children’s sleep: SC [349], [352] (SCB 196, 197-198). Insufficient sleep is associated with disruptions to neurological development, disruptions to emotional functioning and the onset of depression and suicide risk: SC [351] (SCB 197).
- (d) ***Depression, anxiety and suicide:*** there is a credible risk that the features of social media platforms increase the likelihood of children under 16 developing depression, anxiety, suicidal behaviours and suicidal ideation, or of children who have existing mental health conditions becoming clinically worse: SC [354], [356] (SCB 198-199). The causal pathways for this may include the operation of recommender systems and popularity features: SC [356] (SCB 198-199).
- (e) ***Attentional control:*** there is a credible risk that the features of social media platforms cause children to develop lower attention spans during adolescence, an important developmental window for the cultivation of attentional control: SC [361]-[362] (SCB 200).
- (f) ***Intensification of ADHD:*** there is a credible risk that the features of social media platforms intensify the symptoms of children with ADHD: SC [366]-[367], [370] (SCB 201-202).
- (g) ***Disordered eating:*** there is a credible risk that endless feeds, autoplay and systems that select and recommend content to engage the user exacerbate the symptoms of children with disordered eating: SC [372] (SCB 203).

7 The Special Case records scientific uncertainty about causal links between social media use and mental-health outcomes, as well as their extent and likelihood (SC [329]-[331] (SCB 187-188); Annexure SC-7 at 11 (SCB 1090)⁹). It nevertheless identifies credible risks and credible causal pathways by which those risks arise. The Cambridge report supports urgent

⁹ The US Surgeon-General noted that “lack of access to data and lack of transparency from technology companies have been barriers to understanding the full scope and scale of the impact of social media on mental health and wellbeing”.

attention to individual harms while recognising limitations in the evidence for population-wide restrictions: Annexure SC-47 at 3-7 (SCB 1718-1722). Uncertainty about causation should not delay action to protect young people: Annexure SC-46 at 230 (SCB 1712). The existence of credible risks of harm and credible causal pathways between account-related design features and those risks justifies Parliament's decision to enact a precautionary protective measure before scientific consensus establishes that it will be effective.

B THE INTRODUCTION OF PART 4A

8 Part 4A was enacted against this background. The **Explanatory Memorandum**, Online Safety Amendment (Social Media Minimum Age) Bill 2024 observed that “[u]ntil now, the incentive for social media companies has been to optimise user engagement and time spent on platforms”: at 1. Part 4A is focused on account-holding “to mitigate the risks arising from harmful features that are largely associated with user accounts, or the ‘logged-in’ state, such as persistent notifications and alerts which have been found to have a negative impact on sleep, stress levels, and attention”: Explanatory Memorandum at 4, 21 [29].

9 On 29 July 2025, before the obligation in s 63D came into force, the Minister made the *Online Safety (Age-Restricted Social Media Platforms) Rules 2025* (Cth) to exclude specified classes of services from the definition of ARSMPs. Those classes include services whose sole or primary purpose is enabling end-users to communicate by messaging, email or calling, enabling end-users to play online games, or supporting end-users’ education or health: r 5(1); SC [35]-[38] (SCB 96-97). The Commissioner’s advice on drafts of those Rules included an option to target platforms with particular design features to “more closely align[]” the Rules with “risks and harms per the intention of the SMMA obligation”, but recognised “challenges which are likely to necessitate an alternative approach in the short term”: Annexure SC-13 at 13 (SCB 1183). The Rules did not initially include an additional condition directed to those features, and the obligation in s 63D began operating without such a condition on 10 December 2025. Rule 4A subsequently introduced an additional feature-based condition, commencing on 26 March 2026: *Online Safety (Age-Restricted Social Media Platforms) Amendment Rules 2026* (Cth). The related Explanatory Statement records at 3 that the amendment was informed by feedback and advice received during the development of the 2025 Rules, including the Commissioner’s advice: cf PS [40]-[41].

PART V — ARGUMENT

C THE OPERATION OF PART 4A

10 Section 63D requires providers of ARSMPs to take reasonable steps to prevent age-restricted users having accounts. Subject to s 63C(6), an “electronic service” (see *OS Act*, s 5) is an ARSMP if it satisfies the conditions in s 63C(1)(a), or is specified in the rules under s 63C(1)(b). The conditions in s 63C(1)(a) are that: (i) the sole purpose, or a significant purpose, of the service is to enable online social interaction¹⁰ between two or more end-users; (ii) the service allows end-users to link to, or interact with, some or all of the other end-users; (iii) the service allows end-users to post material on the service; and (iv) the service satisfies any additional conditions set out in the rules. Those additional conditions may narrow the general definition and, consequently, the scope of the obligation under s 63D. Section 63C(6) also excludes a service if none of its material is accessible to, or delivered to, end-users in Australia, or if the service is excluded by the rules.

11 These provisions allow the definition to be “responsive to changes and evolutions in the social media ecosystem”, reflecting the advice of the Hon Robert French AC: Explanatory Memorandum at 3-4; Annexure SC-6 at 78, 86 (SCB 879, 887). The Act expressly permits rules to specify services, impose additional conditions and exclude services: ss 63C(1)(b), (1)(a)(iv) and (6)(b). The present operation of s 63D must therefore be assessed with those rules: *Master Education Services Pty Ltd v Ketchell* (2008) 236 CLR 101 at [19]. That follows from the scheme’s text, which permits exceptions to be made to it by rules: *Hanlon v The Law Society* [1981] AC 124 at 186; *O’Connell v Nixon* (2007) 16 VR 440 at [28].

12 Rule 4A specifies an additional condition for the purposes of s 63C(1)(a)(iv) for an electronic service to be an ARSMP under s 63C(1)(a): the service must have a “recommender feature” or a “logged-in feature”. A service has a recommender feature if it can select material by reference to any information that the service has associated with an end-user’s account and display that material to the end-user while the end-user is using the service: r 4A(2). A service has a logged-in feature if it has one or more of an endless-feed feature, a feedback feature or a time-limited feature, and does not enable an end-user to access or be exposed to at least one such feature unless the end-user is using the service with an account: r 4A(3)-(6). Rule 5 specifies that various classes of electronic services are excluded under s 63C(6)(b) from the definition of ARSMPs: see [9] above.

¹⁰ “Online social interaction” is defined to include online interaction that enables end-users to share material for social purposes: s 63C(2).

D THE SCOPE OF REDDIT'S CHALLENGE TO PART 4A

13 Although Reddit seeks to invalidate the whole of Pt 4A, the way in which it seeks to do so is by invalidating s 63D. It is s 63D that imposes an obligation on providers of ARSMPs to prevent children under 16 having accounts and, consequently, imposes a burden on the flow of political communication. The extent of the obligation (and therefore of the burden) depends on the definition of ARSMP in s 63C, which may expand and contract from time to time depending on whether rules are made for one or more of s 63C(1)(a)(iv), (1)(b) and (6)(b). That the extent of the burden may wax and wane depending on the scope of any such rules is accepted by Reddit — in support of its case it positively relies on the exclusionary rule in r 5, which was made for the purpose of s 63C(6)(b): **PS [25], [48]**.

14 The Defendants' position is that Reddit meets the definition in s 63C and, therefore, the obligation in s 63D applies to the provider of Reddit. Thus, the Defendants have not contested Reddit's standing to challenge s 63D (and by extension Part 4A). But this does not mean that Reddit is "entitled" to challenge s 63D (or Part 4A) in all of its operations. Rather, the scope of Reddit's challenge to s 63D ought to be confined by reference to how that provision may¹¹ in fact operate upon Reddit at the time at which relief is granted or refused: *Farm Transparency International Ltd v NSW* (2022) 277 CLR 537 at [19]-[21], [117]-[120], [211]; *Mineralogy Pty Ltd v WA* (2021) 274 CLR 219 at [58]-[59]; *Unions NSW v NSW [No 3]* (2023) 277 CLR 627 at [16].

15 The way in which s 63D may operate in relation to Reddit turns on the pathway by which it may meet the definition of an ARSMP in s 63C. At all times since 26 March 2026: the Rules (r 4A) have set out conditions for the purpose of s 63C(1)(a)(iv); no electronic service has been specified in the rules for the purpose of s 63C(1)(b); and rules (r 5) have been specified for the purpose of s 63C(6)(b). Because none of the exclusions in r 5 are relevant to Reddit, since 26 March 2026, the only way in which s 63D could apply in relation to Reddit is if it satisfies all of the conditions in s 63C(1)(a)(i)-(iv), which incorporate the conditions set out in r 4A.

16 To the extent that s 63D may in the past have operated on Reddit by reason of s 63C(1)(a)(i)-(iii) alone (that is, without s 63C(1)(a)(iv) and r 4A), Reddit has no real interest in the validity of that operation of s 63D: it cannot and does not assert that any of its rights, duties or legal interests have been infringed by the past application of s 63D; it is not the

¹¹ Whether s 63D does or does not operate upon Reddit is not raised by the questions in the Special Case. If those questions are answered adversely to Reddit, Reddit does seek a declaration that it is not an "age-restricted social media platform" under s 63C(1)(a): SCB 70 [29] and prayer C.

subject of enforcement action for any past breach of s 63D; it does not claim to have contravened s 63D in the past (indeed, it denies s 63D applies to it at all); and the operation of s 63D without r 4A places no continuing restriction on Reddit's freedom of action nor interferes with its activities: see *Unions [No 3]* at [25]-[26]. Further, rules having now been made for the purpose of s 63C(1)(a)(iv), this is not a case that warrants the Court contemplating a hypothetical future scenario where those rules are revoked without being replaced (and there is no agreed fact that such a scenario might occur): *Unions [No 3]* at [27]; *Farm Transparency* at [112], [211]; *Cherry v Qld* (2025) 283 CLR 622 at [54]. That being so, there does not exist a "state of facts" which makes it necessary to decide any question about any other operation of s 63D: *Mineralogy* at [56].

17 In short, for Reddit, the only relevant operation of s 63D is its operation with s 63C(1)(a)(i)-(iv) and r 4A. Consistent with the prudential principle that a party "will not be permitted to 'roam at large' but will be confined to advancing those grounds of challenge which bear on the validity of the provision in its application to that party", Reddit's challenge should therefore be confined to challenging the validity of that operation of s 63D: *Mineralogy* at [59]. That operation of s 63D can be severed (partially disapplied) from any other operation of s 63D: see *OS Act*, s 233; *Acts Interpretation Act 1901* (Cth), s 15A. It is therefore neither necessary nor appropriate to decide the validity of any broader operation of s 63D to do justice in the case and to determine the rights of the parties: *Mineralogy* at [59].

E THE IMPLIED FREEDOM OF POLITICAL COMMUNICATION

18 The implied freedom of political communication protects the constitutionally prescribed system of representative and responsible government and the people's ability to "exercise a free and informed choice as electors": *Lange v ABC* (1997) 189 CLR 520 at 560. The questions are whether the impugned law effectively burdens political communication; whether its purpose is legitimate, in the sense of being compatible with the maintenance of that system of government; and whether the law is reasonably appropriate and adapted to advance that purpose in a manner compatible with the maintenance of that system: *Hopper v Victoria* (2026) 100 ALJR 582 at [27].

E.1 Effective burden

19 The nature and extent of the burden should be assessed at the outset, by reference to the law's legal and practical operation, so as to focus and calibrate the justification inquiry: *Hopper* at [28]. The effective burden imposed by s 63D is indirect and, for reasons developed

below, modest in extent: cf **PS [38]**. Those characteristics inform the degree of justification required: *Hogan v Hinch* (2011) 243 CLR 506 at [95]-[96].

20 **First**, s 63D imposes an obligation, backed by a civil penalty, on providers of ARSMPs to take reasonable steps to prevent age-restricted users from having accounts. It imposes no prohibition or penalty on those users for having an account or making or receiving a communication: Explanatory Memorandum at 2. Providers’ compliance nevertheless restricts those users’ participation in political communication on ARSMPs where that participation depends upon having an account: Defence at [28.5]-[28.8] (SCB 79-80). Children under 16 retain access to public material available without an account and to other avenues of political communication, including on platforms that are not ARSMPs.

21 **Secondly**, the obligation applies irrespective of the political views expressed or received through an account. Neither the content of a political communication nor the viewpoint of its author is a criterion of the restriction. The relevant criterion is age, which serves the protective object in s 63B, having regard to the developmental vulnerability at [6] above.

22 **Thirdly**, the relevant burden is the incremental effect of s 63D on the “real-world ability of a person or persons to make or to receive communications which are capable of bearing on electoral choice”: *Brown v Tas* (2017) 261 CLR 328 at [188]; *Farm Transparency* at [37], [88], [158], [223]-[224]. Before December 2025, the terms of use of the Identified ARSMPs required users to be at least 13 years old to create an account.¹² Parental restrictions also form part of the relevant setting to the extent that they operated in practice to limit children’s access.¹³ The comparison is therefore with the participation in political communication children under 16 could otherwise have engaged in under those arrangements.

23 Reddit contends that Part 4A also burdens political communication by adults who are unable or unwilling to complete age assurance: **PS [37]**; see also **FSU [18]-[23]**; **NetChoice [28]**. Section 63D does not impose any burden in respect of persons aged 16 years or over in its legal operation. As to its practical operation, Reddit does not identify the factual foundation for the nature and extent of the alleged additional burden: *Ruddick v Cth* (2022) 275 CLR 333 at [111]. The Special Case does not establish how many eligible adults have been, or are likely to be, prevented or deterred from maintaining accounts for that reason, the

¹² **SC [45]** (SCB 98). As to YouTube’s provision for parent-managed supervised accounts for children under 13, see **SC [269]-[271]** (SCB 164-165).

¹³ See generally **SC [435]-[436]** (SCB 217); see also **SC [120]-[126]** (SCB 116-117) (TikTok), **[149]** (SCB 127) (Instagram), **[169]** (SCB 135-136) (Facebook), **[186]** (SCB 140-141) (Snapchat), **[235]** (SCB 156) (Twitch), **[252]** (SCB 159) (Kick), **[270]** (SCB 165) (YouTube), **[404]-[410]** (SCB 212-213) (Apple devices), **[411]-[414]** (SCB 214) (Android devices).

duration of any resulting exclusion, or its practical consequences for political participation. The deficiency is not merely an absence of precise numerical quantification. The agreed facts provide no sufficient basis for assessing whether the suggested effect is largely hypothetical, an occasional difficulty, or a restriction of significant practical extent.

24 That assessment must also reflect the available age-assurance methods and statutory safeguards. As the FSU accepts, not every user must produce identification, age may be inferred from existing account information, and ss 63DB and 63F impose significant restrictions on the collection, use and retention of information: **FSU [21]**; *OS Act*, ss 63DB, 63F; see also **SC [380.1], [383]-[387]** (SCB 205-206). Even if regard is had to the additional material cited in **FSU [18]-[20]**, reports of objections by adults and difficulties encountered during a technology trial do not establish the incidence or persistence of exclusion from political participation under Part 4A.

E.2 Legitimate purpose

25 The purpose of a law is what the law “is designed to achieve in fact”: *Farmer v Minister for Home Affairs* (2025) 99 ALJR 1408 at [54]. It is discerned through a process of construction: *Hopper* at [45]. Where legislation includes a statement of its objects, that statement provides the starting point but is not necessarily exhaustive or exclusive of the purpose of the law: *Unions NSW v NSW [No 2]* (2019) 264 CLR 595 at [79], [172].

26 Section 63B states the object of Part 4A as reducing the risk of harm to age-restricted users from certain kinds of social media platforms. Reddit accepts that this is a legitimate purpose: **PS [39]**. Section 63D’s focus on account use responds to the risks arising from harmful features largely associated with accounts or the logged-in state, including algorithms tailoring content, infinite scroll, persistent notifications and alerts, and “likes”: Explanatory Memorandum at 21 [29]. The account-focused operation of s 63D therefore informs the identification of the particular mischief to which the provision is directed. The purpose of s 63D can therefore be described as reducing the risk of harm to age-restricted users from the use of accounts on platforms with the kinds of design features identified in the extrinsic materials. Identifying the purpose by reference to account use and those features specifies the risks the law is designed to reduce; it does not merely restate the obligation to prevent account-holding: *McCloy v NSW* (2015) 257 CLR 178 at [132]; cf **PS [41]**. The classes of services excluded by r 5 of the Rules, and the additional condition specified in r 4A, are entirely consistent with Parliament’s intention when enacting Part 4A: cf **PS [40]**.

27 Part 4A is directed to protecting children's health and wellbeing against credible risks of serious harm. The significance of a risk depends both on the likelihood of harm occurring and on the gravity of its consequences: *Garlett v WA* (2022) 277 CLR 1 at [48], [73], [227], [282]. Here, the agreed facts identify significant credible risks of children developing or experiencing addictive behaviours, disrupted sleep and worsening depression, anxiety, suicidal behaviours and suicidal ideation; of changes in children's developing brains and attention spans; and of particular platform features exacerbating ADHD and disordered eating: see [6] above. Those risks concern children at a developmental stage in which children's capacities for emotional regulation and self-control are still developing and they are particularly vulnerable to features that encourage continued engagement: SC [343]-[344] (SCB 193-194). The gravity of the potential consequences for children, coupled with that vulnerability, makes the protective purpose of Part 4A legitimate and compelling.

E.3 Justification

28 The final question is whether Part 4A is reasonably appropriate and adapted to advance its legitimate purpose in a manner compatible with the maintenance of the constitutionally prescribed system of government: *Hopper* at [27], [49]. The Defendants submit that they discharge the persuasive onus of establishing that the burden is justified.

E.3.1 The law has a compelling purpose

29 The compelling importance of protecting children's health and wellbeing weighs strongly in favour of justification: *McCloy* at [84]; *LibertyWorks Inc v Cth* (2021) 274 CLR 1 at [85]. As explained below, Part 4A targets the design features giving rise to the identified risks, provides protection that the plaintiff's proposed alternatives would not achieve to a materially equivalent extent, and imposes a limited and indirect burden on political communication that is justified by that protection.

30 Reddit's contention that the state of the research prevents justification of Part 4A should be rejected: PS [57]-[63]. The agreed facts provide a substantial evidentiary foundation for preventive action. They identify credible risks of harm to children's mental health, brain development, sleep and attention, together with credible causal pathways linking those risks to particular design features of social media platforms, the operation of which children may be particularly vulnerable to: see [6] above. Those agreed propositions permit a reasoned assessment of the risks and the protective response. The absence of a precise numerical estimate of the probability of each harm does not render that assessment impossible or the justification of preventive measures dependent upon further research: cf PS [58], *NetChoice*

[15]-[16], [29]. Parliament may act prophylactically upon reasonable inferences supported by an adequate factual foundation: *Spence v Qld* (2019) 268 CLR 355 at [95]-[96].

31 The limitation recorded in SC [337] (SCB 190) concerns research comparing the propensity of different features, implementations or combinations of features to produce addictive, disordered or problematic use. It does not displace the affirmative evidence identifying credible risks and causal pathways. To the extent that it is relevant whether Reddit itself has the potential to cause harm, Reddit's endless feeds, autoplay, personalised recommendations and popularity features are concrete instances of features implicated in the identified pathways.¹⁴ Those shared features provide a factual basis to infer that use of Reddit carries the associated risks, notwithstanding the absence of studies examining Reddit specifically: SC [353], [357], [364] (SCB 198, 200-201); cf PS [59]-[62]. The inference rests on the operation of identified features, rather than the mere classification of Reddit as a social media platform. The extent to which account exclusion changes exposure to those features, including features also available while logged out, is addressed below.

E.3.2 The law is well-tailored to address the risks of harm

32 Part 4A is well tailored to its purpose. The connection between the account restriction and the identified risks appears both in the criteria defining the services covered and in the practical consequences of preventing children from using accounts on those services.

33 The additional condition imposed by s 63C(1)(a)(iv) and r 4A connects the restriction to account-related features. A service satisfies that condition if it can select material by reference to information associated with an end-user's account and display that material to the end-user. Alternatively, it must have at least one of the defined endless-feed, feedback or time-limited features which an end-user cannot access or encounter without using an account. The defined feedback feature concerns engagement with the user's own material or other users' election to receive notifications about that user's account or material: r 4A(1)-(6), particularly (2), (3)(b) and (5). These conditions identify services by reference to account-informed recommendations or functions dependent upon account access.

34 The Identified ARSMPs share the relevant design features. Each provides endless feeds and popularity features; the services other than Kick also provide autoplay (subject to platform and age-specific settings); and the Special Case describes recommender capabilities and account-related notifications for each service. Nine of the ten services provide time-

¹⁴ For Reddit's features: SC [56.5], [56.7]-[56.8], [58]-[60], [78], [80], [83] (SCB 100-102, 105-106). For the features and relevant mechanisms: SC [335]-[336], [340]-[341], [347], [352], [356] (SCB 189-192, 196-200).

limited content.¹⁵ The occurrence of these features across the services provides a rational basis for addressing the corresponding engagement mechanisms through a common restriction.

35 Account exclusion produces concrete changes in the functions available to a user. Instagram, Facebook and X are substantially restricted without an account, including because their mobile apps cannot be used for logged-out browsing.¹⁶ Logged-out users likewise cannot use the Snapchat, Threads and Twitch mobile apps.¹⁷ Where logged-out users still have access, lack of an account affects personalisation. The information collected from logged-out users excludes information relating to activities requiring an account. For example, on YouTube, logged-out recommendations are less tailored and limited to the particular browsing session.¹⁸ Those differences supply a factual basis for the inference that account exclusion reduces exposure to the identified mechanisms of sustained engagement.

36 Reddit's reliance on the continuing availability of content (PS [44]-[45]) does not answer that protective rationale. The identified risks include risks arising from the manner and duration of engagement with material, including material that is not inherently harmful. Account exclusion can interrupt those risk pathways (see above at [30] and [35]) by removing account-dependent interactions and changing the basis of personalisation. Preserving substantial viewing access on services such as Reddit and YouTube without an account also lessens the restriction on communication while addressing the additional risks associated with account use.

37 Reddit's arguments about particular features (PS [46]-[47]) do not break the connection:

- (a) ***Endless feeds and autoplay***: The continuing availability of these features without an account does not preserve the whole experience available to account holders. That is so for the feeds available on Reddit.¹⁹ The protective consequences of account exclusion include changes to account-informed personalisation described above. Continued access to a feed does not restore those functions.
- (b) ***Time-limited content***: For Instagram, SC [146] (SCB 126) expressly states that logged-out users cannot access Stories, contrary to the proposition advanced at PS [46]. For TikTok, SC [116.7] (SCB 116), cited by Reddit, only concerns live videos; it does not

¹⁵ See above at [5] and accompanying footnotes.

¹⁶ SC [144]-[146] (SCB 126) (Instagram); [166]-[168] (SCB 135) (Facebook); [201]-[202] (SCB 146) (X).

¹⁷ SC [181]-[182] (SCB 140) (Snapchat); SC [217] (SCB 151) (Threads); [234] (SCB 155) (Twitch).

¹⁸ SC [278], [281] (SCB 167) (YouTube).

¹⁹ SC [66], [76]-[78] (SCB 102, 105) (Reddit).

establish the operation of the distinct, 24-hour Stories feature described in SC [107.3] (SCB 113). The Instagram facts provide a concrete example of account exclusion preventing access to a time-limited feature associated with an incentive to return to the service.

- (c) **Popularity features:** The ability to view the popularity of other users' material does not replicate the account-related feedback mechanism. Posting and commenting create the prospect of further replies, likes and other reactions to the user's own contributions, which can encourage repeated returns to the service²⁰ and give rise to a credible risk of mental health-related harms through social comparison: SC [356.2] (SCB 199). Account exclusion prevents continued participation in that cycle through new posts, comments and other account activity. The possibility of social comparison while viewing other users' material does not negate the removal of these risks.

38 These mechanisms may also operate together. A child may return in response to feedback on a new contribution²¹ and then encounter a personalised feed whose features encourage continued engagement: SC [340]-[344] (SCB 191-194). The agreed features and pathways support that inference.²² Preventing further account activity interrupts account-dependent steps in that sequence, even where an endless feed remains available without an account.

39 The exclusions in r 5 also reflect a reasoned limitation of the scheme's reach: cf PS [48]-[49]. They preserve access to services performing specified functions, including messaging and calling, online gameplay, education and health support, by applying the purpose tests specified in the rule: r 5(1), particularly (a), (b), (e)-(h). Those exclusions preserve important opportunities for communication, recreation and support. The gaming exclusion also takes account of the existing classification framework and the information it provides about age suitability.²³ These are affirmative reasons for distinguishing the excluded classes when determining the reach of an account restriction. The implied freedom does not

²⁰ SC [352.7] (SCB 197-198), [356.2] (SCB 199), [370.3] (SCB 202). The account-specific functions supporting the application of these mechanisms are cited at footnote 7.

²¹ SC [89.4]-[89.7] (SCB 107-108) (Reddit); [113.1]-[113.4], [113.7] (SCB 114-115) (TikTok); [142.1]-[142.5], [142.8], [142.10] (SCB 124-125) (Instagram); [163.1], [163.3], [163.5] (SCB 133-134) (Facebook); [197.1]-[197.5] (SCB 145) (X); [214.1]-[214.4], [214.7] (SCB 150) (Threads); [231.14], [231.16]-[231.18], [232.1] (SCB 155) (Twitch); [247.2] (SCB 158) (Kick); [265.6]-[265.9] (SCB 163) (YouTube).

²² SC [340]-[342] (SCB 191-193); for notifications about the user's contributions, SC [89.3]-[89.7], [89.9], [89.12] (SCB 107-108) (Reddit), [265.6]-[265.9], [265.13] (SCB 163) (YouTube).

²³ Explanatory Statement, Online Safety (Age-Restricted Social Media Platforms) Rules 2025, at 9-10 (gaming and classification), 15 (preserving beneficial activities and connections).

require legislation addressing a mischief to resolve the whole of that mischief: *Brown* at [222]. The overlapping risks identified by Reddit do not require services with different principal functions and regulatory contexts to be subjected to the same restriction, or negate the protection afforded on the services that Part 4A covers.

40 Reddit’s contention that account exclusion increases harm because account holders have access to safety settings and parental controls should also be rejected: **PS [50]**. The comparison must include the account-dependent activities and engagement mechanisms removed. The Special Case records, in relation to several services, both the loss of account controls and the unavailability of relevant functions without an account.²⁴ Further, logged-out viewing retains protections against particular content. Reddit excludes logged-out users from content marked “Not Safe For Work”; TikTok excludes them from age-restricted content; and YouTube excludes them from videos marked as age-restricted.²⁵ The availability of tools for managing account use does not establish that continued account access would provide greater protection. The interruption of account-dependent engagement, together with the continuing restrictions on logged-out access to particular content, supplies a factual basis for the protective judgment underlying Part 4A.

E.3.3 Part 4A is effective

41 The account restriction has already produced substantial practical action. In December 2025, certain Identified ARSMPs reported removing or restricting access to around 4.7 million accounts identified as belonging to children under 16. Reddit itself suspended 43,962 Australian accounts so identified between 10 December 2025 and 1 March 2026: **SC [46]-[47]** (SCB 98). Those facts support the capacity of the obligation to reduce the account-based exposure identified above. Continuing under-age account holding does not negate that operation: cf **PS [51], [56]**. Section 63B identifies an object of reducing risk, pursued through the obligation in s 63D. That protective object can be advanced without preventing every instance of circumvention. In addition to preventing account-holding, s 63D is intended to draw a clear age-based limit and thereby influence social norms in relation to access to social media by children: Explanatory Memorandum at 2, 3.

42 The limitations of individual age-assurance techniques identified at **PS [52]-[53]** must be considered in light of the methods available in combination. The Regulatory Guidance

²⁴ **SC [126]** (SCB 118) (TikTok); **[149]** (SCB 127) (Instagram); **[169.2]** (SCB 135) (Facebook); **[273]** (SCB 165) (YouTube).

²⁵ **SC [93]-[94]** (SCB 108-109) (Reddit); **[127]** (SCB 118) (TikTok); **[267.1]** (SCB 164) (YouTube).

encourages successive validation: the sequential use of multiple independent methods to establish an age-assurance result, beginning with less intrusive measures and progressing where further assurance is required: **SC [380.3]** (SCB 205); Annexure SC-49 at 15, 31 (SCB 2393, 2409). Drawing on provider practice statements, interviews and technical reviews, the Age Assurance Technology Trial assessed successive validation as technically viable and operationally effective. Its summary describes escalation where uncertainty remains or a user appears close to a critical age threshold: Annexure SC-48 at [A.37.1]-[A.37.2] (SCB 1855). That approach provides a means of responding to uncertainty near the age of 16 and to limitations affecting particular users or methods. The error margin of a facial estimate does not determine the outcome of a process that can seek further assurance through a different method.

43 The materials invoked at **PS [54]** do not establish that those available approaches are unworkable. The empirical component of the 2024 Stardust article examined a particular facial-age-estimation model using a public image dataset, with age groupings selected by reference to access to pornography at 18. It did not evaluate the successive-validation approach described above.²⁶ Its findings about that model do not establish that a process combining estimation with other sources of age assurance cannot restrict under-age account access. The general objections recorded in the March 2026 statement must likewise be assessed against the available combination of methods, the statutory privacy safeguards addressed above, and the evidence of practical implementation.²⁷ Together, those matters provide a concrete answer to Reddit's categorical contention that age assurance cannot give effect to the statutory obligation.

44 The means of circumvention identified at **PS [55]** are also addressed by the compliance framework. The Guidance identifies measures including liveness checks, monitoring changes suggesting account transfers, detecting VPN use and checking consistency between location signals. It treats the prevention, detection and response to circumvention as relevant to compliance with the reasonable steps obligation: Annexure SC-49 at 40-41 (SCB 2418-2419). The Special Case expressly qualifies the possibility of VPN circumvention by reference to anti-circumvention measures: **SC [388.1]** (SCB 206). It also records that Reddit uses facial age estimation, claims to use identification documents for age verification, and may, from

²⁶ Annexure SC-50 at 5-7, 11-13 (SCB 2438-2440, 2444-2446). See **PS [54]**, citing the article's introductory conclusions at 2 (SCB 2435).

²⁷ **SC [389]** (SCB 206-207); *OS Act*, ss 63DB, 63F; Annexure SC-48 at [A.37.1], [A.37.4] (SCB 1855-1856).

1 July 2026, verify Australian app users' ages through information supplied by the relevant app store: SC [383], [386]-[388.1] (SCB 205-206). The availability of ways to evade a particular check does not displace the evidence of implemented account restrictions or the availability of measures directed to detecting and responding to evasion. The research relied upon at PS [56] does not establish the contrary. In eSafety's survey of 898 parents and carers of children aged 8-15, the proportion reporting that their child had an account on at least one platform fell from 49.7% before implementation to 31.3% afterwards: Annexure SC-14 at 13 (SCB 1194). Those reported changes support the practical operation of the restriction. The Chicago study's figure of 63.8%, concerning its surveyed 14-15 year-olds, measures reported use of platforms including Reddit and YouTube during the preceding week. The question did not distinguish use with an account from logged-out use.²⁸ That figure cannot be treated as a direct measure of continuing under-age account holding. As explained above, the preservation of viewing access without an account is consistent with the targeted operation of Part 4A. Poor compliance is a significant factor in children still having accounts, a fact expected to change as platforms adapt and enforcement action is taken: Annexure SC-14 at 24-25 (SCB 1200).

E.3.4 No obvious and compelling alternatives

45 The legislature selects the means of achieving a legitimate statutory purpose, subject to the constitutional requirement that its choice be justified: *Unions [No 2]* at [45]-[47]. An alternative will ordinarily establish a lack of necessity only if it is obvious and compelling, equally practicable and available, and would impose a significantly lesser burden on the implied freedom: *Comcare v Banerji* (2019) 267 CLR 373 at [35]. Equal practicability requires equal effectiveness in achieving the legislative purpose, "quantitatively, qualitatively, and probability-wise": *Tajjour v NSW* (2014) 254 CLR 508 at [114]. The comparison therefore concerns the degree and likelihood of protection achievable in practice, together with the burden imposed by each measure in its operation as a whole. The availability of another measure capable of contributing to the protective purpose does not, without more, establish an equally practicable alternative: *Tajjour* at [115].

46 Reddit's first alternative would confine s 63D to services that can only, or substantially only, be used with an account: PS [67]. That criterion would exclude services by reference to the availability of their content without an account, rather than the risks associated with the

²⁸ Annexure SC-51 at 3 (SCB 2456), Appendix A4.1 at 11-12 (SCB 2478-2479). The main Australian survey comprised 507 respondents aged 14-18; the 63.8% figure concerns its 14-15 year-old subgroup.

functions that an account enables. On Reddit and YouTube, accounts permit participation and engagement that remain unavailable to logged-out users; they also enable the use of account-associated information in recommending content. As explained above, restricting those functions interrupts identified pathways to harm, including repeated engagement prompted by responses to a user's own contributions and account-based personalisation. Children may be particularly vulnerable to the operation of those causal pathways and any resulting harms. Excluding those services would restore account-dependent political participation, but would also relinquish the protection achieved by restricting the identified mechanisms during a period of particular developmental vulnerability. The continued availability of much of their content without an account supplies no reason to conclude that the protective purpose of s 63D, which is concerned with risks of harm that do not arise directly from content, would nevertheless be achieved to the same extent.²⁹

47 Reddit next relies on existing and proposed online-safety regulation: **PS [68]-[71]**. Content restrictions address pathways involving harmful material, including material concerning self-harm and disordered eating. They do not, however, address the full range of risks identified in the Special Case and do not advance the same object as Part 4A. Prolonged engagement, repeated checking and disrupted sleep can arise from the manner in which a service is used even where the material encountered is not itself harmful. Preventing access to specified classes of material therefore leaves a distinct field of protection to which Part 4A is directed. The Basic Online Safety Expectations also address service design and recommender systems. Those broader measures, and the design-based aspects of the other regimes invoked by Reddit, fall to be considered with the proposed design controls below.³⁰

48 The proposal to mandate protective settings or prohibit particular design features must be considered in its strongest form: enforceable obligations applying to children's accounts, rather than merely an option for users to disable features. Such a course is already permitted under s 63D in its operation with s 63C(1)(a) and r 4A. The modified form of a platform consisting of children's accounts with *none* of the features in r 4A — that is, no personalisation of displayed content by reference to information associated with the account, and no endless-feed feature, feedback feature or time-limited feature — would be an “electronic service” for the purposes of s 63C(1)(a): see *OS Act* s 5 (“electronic service”;

²⁹ **SC [64]-[71], [102]-[104]** (SCB 102-103, 110-112) (Reddit); **[267.2]-[267.8], [278], [281]** (SCB 164, 167) (YouTube); **[340]-[342], [352.7]** (SCB 191-193, 197-198) (pathways to harm).

³⁰ **SC [340]-[342], [352], [356.1], [359], [374], [377]** (SCB 191-193, 197-198, 199-200, 203, 204); Online Safety (Basic Online Safety Expectations) Determination 2022, ss 6(2A), 8B.

“service”). A provider would not be subject to the obligation in s 63D in respect of *that* particular “electronic service” because it would not satisfy the condition in s 63C(1)(a)(iv).

49 The exposure draft of the Online Safety Amendment (Digital Duty of Care) Bill 2026 provides a concrete formulation of broader design obligations. Proposed s 25B(1)(c), read with ss 25F-25G and 26, would require providers, so far as reasonably practicable, to ensure that specified features do not operate for under-16s on social media services. The proposal therefore extends beyond content moderation or optional controls. Those broader obligations do not impose a significantly lesser burden on the implied freedom. Insofar as they apply to design features of the kind described in r 4A, their proper application would require the same action as Part 4A: namely, preventing children having accounts or providing children with accounts that do not have any of the r 4A features.

50 The overseas examples likewise require attention to the protection their provisions supply. Colorado’s provision requires information or recurring notifications; it leaves the decision to disengage with the young user: § 6-1-1601(1)-(3) (SCB 3306). Utah’s provisions require protective privacy settings and disable autoplay, continuous scrolling and push notifications: SC [403.4(d)]; § 13-71-202(1), (5) (SCB 3278-3279). Those requirements do not address every mechanism associated with the identified risks, including personalised recommendations, popularity features and time-limited content. Utah’s supervisory tools also depend on activation by the minor account holder: § 13-71-203(1) (SCB 3279). Arkansas combines protective defaults and parental supervision with a broader obligation concerning practices that evoke addiction or compulsive behaviour: § 4-88-1402(a), (d)(1)-(4) (SCB 3286-3287). That broader obligation raises the questions of implementation and assessment discussed above. These examples illustrate available regulatory techniques; their individual provisions do not establish that those techniques supply protection equivalent to Part 4A.

51 Parental controls, whether made available voluntarily or required to be offered, depend for practicability on their effective use. The agreed limitations extend beyond awareness of their existence. They include inaccurate or inconsistent configuration across devices and services, parents’ lack of knowledge of their children’s use, and the need for continuing monitoring: SC [435]-[436] (SCB 217-218). Education and simpler tools can assist parents, but the protective outcome remains dependent on action within each household. Part 4A places the obligation on providers and extends its protection to children whose parents lack the information, capacity or opportunity to maintain effective controls. That is a substantive advantage in the reach and operation of the protection, supported by the agreed evidence.

F CONCLUSION

52 Section 63D, operating with s 63C(1)(a)(i)-(iv) and r 4A, is reasonably appropriate and adapted to its legitimate protective purpose in a manner compatible with the maintenance of the constitutionally prescribed system of representative and responsible government. The agreed facts identify credible risks of serious harm to children and explain how engagement-promoting features contribute to those risks. The restriction addresses that danger by interrupting account-dependent mechanisms through which sustained and repeated engagement is encouraged. Its effect on political communication is confined by its application to particular services and to a limited period of childhood. Children retain access to public material available without an account and to other avenues of political communication. Giving full weight to the account-dependent participation forgone, including its particular importance to some children, the protection achievable against the identified risks warrants that restriction. The proposed alternatives would not provide an equally practicable means of securing equivalent protection with a significantly lesser burden.

53 The questions in the Special Case should accordingly be answered in proceeding S166/2025 as follows: (1) Unnecessary to answer; (2) No; (3) None; (4) The plaintiff.

54 If the Court identifies an invalid operation of Part 4A, the consequences should be confined to that operation so far as the statutory text and scheme permit (either by reference to s 63C(1)(a) in its operation without any legislative rules specified for the purpose of s 63C(1)(a)(iv); alternatively, by reference to s 63D in its operation with s 63C(1)(a)). Any affirmative answer to question 2 should identify the particular provision or operation held invalid, and any consequential relief should preserve the remaining valid operation of Part 4A.

PART VI — ESTIMATE OF TIME

55 The Defendants will require 3 hours for oral submissions in respect of both S163/2025 and S166/2025.

Dated: 25 September 2026



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ANNEXURE TO SUBMISSIONS OF THE DEFENDANTS

No	Description	Version	Provision(s)	Reason for providing this version	Applicable date or dates
1.	<i>Acts Interpretation Act 1901 (Cth)</i>	Current	s 15A	Currently in force	All relevant times
2.	<i>Online Safety Act 2021 (Cth)</i>	Current	s 5, Part 4A, s 233	Currently in force	All relevant times
3.	<i>Online Safety (Age-Restricted Social Media Platforms) Rules 2025 (Cth)</i>	Current	rr 4A, 5	Currently in force	Since 26 March 2026 (r 4A); all relevant times (r 5)
4.	<i>Online Safety (Age-Restricted Social Media Platforms) Amendment Rules 2026 (Cth)</i>	As made	Sch 1 cl 1	Amended the 2025 Rules	26 March 2026