



HIGH COURT OF AUSTRALIA

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Details of Filing

File Number: S166/2025
File Title: Reddit, Inc. v. Commonwealth of Australia & Anor
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Filing party: Intervener
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Important Information

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Form 27C—Intervener’s submissions

Note: See rule 44.04.4.

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN:

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REDDIT, INC.

Plaintiff

and

COMMONWEALTH OF AUSTRALIA

First Defendant

MINISTER FOR COMMUNICATIONS

Second Defendant

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SUBMISSIONS FOR LEAVE TO BE HEARD
AS AMICUS CURIAE

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Part I: CERTIFICATION

1. These submissions are suitable for publication on the internet.

Part II: BASIS FOR APPLICATION FOR LEAVE TO BE HEARD

2. The Free Speech Union (FSU) seeks leave to be heard as amicus curiae in respect of the implied freedom questions raised by the Special Case (SC), and supports the Plaintiff. Its proposed submissions are confined to the first question in the implied freedom analysis: whether Part 4A, in its terms, operation or effect, effectively burdens political communication. Within that question, the FSU addresses:
 - 10 a. the constitutional significance of anonymous and pseudonymous political communication; and
 - b. the additional burden upon otherwise eligible users who are deterred or prevented from participating where continued account access depends upon an age-assurance process which they are unwilling or unable to complete.
3. The submission is that civil identification is not a condition of a communication's political character, and anonymity may be the condition upon which a contribution is made at all. The burden is therefore not exhausted by the exclusion of persons under 16 as seems to be contended by the Plaintiff. It also includes political
 - 20 communications lost when eligible users decline identity-linked or sensitive-data processes introduced to comply with s 63D.
4. The FSU seeks to assist the Court by reference to Australian authority, comparative authority where it illuminates the relevant mechanism, historical practice at Federation and public materials concerning the operation of age assurance. It makes no separate submission as to whether the burden is justified but instead supports the Plaintiff's analysis.

Part III: WHY LEAVE SHOULD BE GRANTED

5. The FSU respectfully submits that leave should be granted because its submissions
 - 30 will significantly assist the Court, without occasioning costs or delay disproportionate to that assistance.¹ The FSU recognises the need to identify with

¹ *Roadshow Films Pty Ltd v iiNet Ltd* (2011) 248 CLR 37 at [4].

particularity the contribution it proposes to make beyond the arguments advanced by the parties.²

6. **First**, the FSU is a non-partisan community organisation dedicated to promoting, protecting and defending freedom of speech in Australia. Freedom of speech is its sole area of legal and policy focus. Its work includes submissions to parliamentary inquiries concerning restrictions upon expression,³ including the social media minimum age framework.⁴ That work puts the FSU in a position to assist the Court in considering the implications of the statutory scheme for political participation beyond the circumstances of the plaintiff. The FSU was also recently granted leave to appear as *amicus curiae* in *White Australia Party Inc & Anor v Commonwealth of Australia & Anor* (M50/2026), which remains before the Court. Its submissions in that proceeding concern the characterisation of burdens upon political communication and the constitutional justification required for those burdens.⁵ That participation forms part of the FSU's work concerning the implied freedom.
7. **Second**, the proposed submissions develop a distinct aspect of the burden. The Plaintiff's submissions address (PS at [25]–[29]), the exclusion of persons under 16 and the loss of their contributions to political discussion. The FSU addresses otherwise eligible users whose willingness to participate depends upon preserving anonymity, including anonymity from a platform or an intermediary involved in verifying age.
8. That distinction matters at the first step of the analysis. Public pseudonymity does not answer the deterrent effect of non-public disclosure. If an eligible user must provide identity-linked or sensitive information to a platform or verification provider and therefore declines to maintain an account, the political

² *Roadshow Films* at [6].

³ See for example, Free Speech Union of Australia, *Submission to the Queensland Parliament, Inquiry into the Fighting Antisemitism and Keeping Guns out of the Hands of Terrorists and Criminals Amendment Bill 2026* (Submission No 33); Free Speech Union of Australia Limited, *Submission to the Legislative Assembly Committee on Community Services, Inquiry into Measures to Prohibit Slogans that Incite Hatred* (Submission No 69);

⁴ Free Speech Union of Australia Limited, *Submission to the Senate Environment and Communications Legislation Committee, Inquiry into the Online Safety Amendment (Strengthening Enforcement for the Social Media Minimum Age) Bill 2026* (Submission No 27).

⁵ *White Australia Party Inc v Commonwealth of Australia*, M50/2026, Transcript of Proceedings (High Court of Australia, 8 September 2026) (leave granted to the FSU to appear as *amicus curiae*).

communication is lost. Where that condition is adopted to discharge s 63D, the loss forms part of Part 4A's practical effect.

9. *Third*, the proposed participation can be confined so as to avoid unnecessary duplication, cost or delay. The FSU seeks to address the implied freedom questions already arising in the SC and does not seek to enlarge those questions or reopen the agreed facts.
10. If leave is granted, the FSU will make the submissions set out in Part IV below.

Part IV: ARGUMENT

- 10 11. The FSU advances one confined submission concerning the first question in the implied freedom analysis. The effective burden imposed by Part 4A is not exhausted by the exclusion of persons under 16. It includes the prevention or deterrence of political communication by otherwise eligible users where, as a practical consequence of the obligation imposed by s 63D, access to the participatory functions of a social media platform depends upon completing an age-assurance process which the user is unwilling (or in some cases, unable) to complete.
12. The first question asks whether the law effectively burdens communication about governmental or political matters in its terms, operation or effect. A law need not
20 expressly prohibit political communication. Nor need its burden be direct.⁶
13. Anonymous and pseudonymous communications form part of the political communication whose freedom is required by ss 7 and 24 of the Constitution. Those provisions require a free flow of information, opinion and argument sufficient to permit the people to make a free and informed electoral choice.⁷ The constitutional function of a communication depends upon its capacity to inform popular judgment, rather than disclosure of its author's civil identity.
14. *Banerji* provides direct support for this proposition. The impugned provisions extended to political communications made through an anonymous Twitter

⁶ *Hopper v Victoria* [2026] HCA 11 at [27]–[30]; *Comcare v Banerji* (2019) 267 CLR 373 at [20], [29]; *Brown v Tasmania* (2017) 261 CLR 328 at [79], [84]–[87]; *Unions NSW v New South Wales* (2013) 252 CLR 530 at [38], [40].

⁷ *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 at 560–561; *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106 at 138–139, 160; *Unions NSW* at [27]–[30]; *LibertyWorks Inc v Commonwealth* (2021) 274 CLR 1 at [44].

account, and the joint reasons accepted that the resulting restriction imposed an effective burden.⁸ The observation in *Banerji* at [37] that anonymous communications are not necessarily “more deserving” of protection does not place them outside the freedom.

15. The FSU does not claim preferential constitutional status for anonymous speech. Its submission is that civil identification is not a condition of a communication’s political character, and that anonymity may be a condition upon which the communication occurs at all.
16. That proposition accords with the communicative practices inherited at Federation. “Junius” addressed parliamentary accountability and electoral representation while withholding his identity.⁹ John West advocated colonial union under the name “John Adams”.¹⁰ Alfred Deakin anonymously supplied sustained commentary on Commonwealth politics to the *Morning Post*.¹¹ Those writings were capable of informing public judgment notwithstanding the concealment of their authorship. In some circumstances concealment also enabled the contribution by reducing the risk of official, economic, professional or social retaliation. The history establishes a familiar mode of political participation, rather than an absolute immunity from attribution requirements.¹²
17. Comparative authority identifies the same function. In *Talley*,¹³ the U.S. Supreme Court recognised the historical importance of anonymous political literature and the circumstances in which criticism could occur anonymously or not at all. In *McIntyre* and subsequent cases, the U.S. Supreme Court identified fear of economic or official retaliation, social ostracism and the preservation of privacy as

⁸ *Banerji* at [22]–[29].

⁹ Junius, *The Letters of Junius* (H S Woodfall, 1772) vol 1, ‘Dedication to the English Nation’ and Letter XXV (25 September 1769).

¹⁰ John Reynolds, ‘West, John (1809–1873)’, *Australian Dictionary of Biography*, vol 2 (1967); Patricia Fitzgerald Ratcliff, ‘The Australias Are One: John West Guiding Colonial Australia to Nationhood’, *Papers on Parliament*, No 44 (January 2006).

¹¹ Sir Gerard Brennan, ‘Courts for the People—Not People’s Courts’ (1995) 2(1) *Deakin Law Review* 1 at 1; Dianne Heriot (ed), *From Our Special Correspondent: Alfred Deakin’s Letters to the London Morning Post*, vol 1: 1900–1901 (Australian Parliamentary Library, 2019).

¹² *Smith v Oldham* (1912) 15 CLR 355 at 358–359, 362–363; see also John Stuart Mill, *On Liberty* (John W Parker and Son, 1859) ch II at 57–60.

¹³ *Talley v California*, 362 US 60 at 64–65 (1960).

reasons for anonymous political advocacy.¹⁴ Those authorities are relevant for the mechanism they identify, namely that compelled identification may diminish political discussion by preventing a contribution from being made.¹⁵

18. Part 4A engages that mechanism. Section 63D requires a provider to take reasonable steps to prevent persons under 16 from holding accounts. Giving effect to that obligation requires providers to distinguish eligible from ineligible users. Reddit's published guidance states that an Australian account detected as potentially belonging to a person under 16 will be suspended unless age is verified. Its available methods can include the provision of a government identification image or facial selfie to Persona and verification through an Australian bank using ConnectID.¹⁶ Other platforms describe comparable uses of facial estimation, government identification and bank based verification.¹⁷ The Privacy Commissioner has reported enquiries from adults objecting to age assurance on their own accounts and concerns about the collection of sensitive information.¹⁸ This concern was repeated in the user data of the Age Assurance Technology Trial, where many adults also reported usability difficulties that repeatedly prevented them from completing age assurance and accessing the age gate (or which forced them to present government ID).¹⁹ Where an account is necessary to post, comment

¹⁴ *McIntyre v Ohio Elections Commission*, 514 US 334 at 341–343, 347, 351, 357 (1995); *NAACP v Alabama*, 357 US 449 at 462–463 (1958); *Bates v City of Little Rock*, 361 US 516 at 523–524 (1960); *Buckley v American Constitutional Law Foundation Inc*, 525 US 182 at 197–200 (1999); *Watchtower Bible and Tract Society of New York Inc v Village of Stratton*, 536 US 150 at 164–167 (2002).

¹⁵ Alfred Moore, 'Anonymity, Pseudonymity, and Deliberation: Why Not Everything Should Be Connected' (2018) 26(2) *Journal of Political Philosophy* 169; see also Lyrissa Barnett Lidsky and Thomas F Cotter, 'Authorship, Audiences, and Anonymous Speech' (2007) 82(4) *Notre Dame Law Review* 1537 at 1547–1566.

¹⁶ Reddit, 'Australia: Social Media Minimum Age' (updated 31 July 2026) <<https://support.reddithelp.com/hc/en-us/articles/47163443918228-Australia-Social-Media-Minimum-Age>>; 'Why is Reddit asking for my age?' (updated 24 June 2026) <<https://support.reddithelp.com/hc/en-us/articles/36429514849428-Why-is-Reddit-asking-for-my-age>>.

¹⁷ Snap, 'Implementing Australia's Social Media Minimum Age Law' (22 November 2025) <<https://newsroom.snap.com/australia-social-media-minimum-age-law>>.

¹⁸ 'Safer Internet Day: Assuring age while ensuring privacy' (10 February 2026) <<https://www.oaic.gov.au/news/blog/safer-internet-day-assuring-age-while-ensuring-privacy>>.

¹⁹ https://ageassurance.com.au/wp-content/uploads/2025/08/AATT_mystery_shopper_result_dataset.xlsx. 67 of the 162 participants (or 41.4%) of participants aged 18 and over were unable to complete the first step of the study. In addition to many comments expressing concern about privacy and their opposition to providing this information, this includes concerns such as a digital driver's licence not working, a user's camera not being recognised, being blocked by a computers firewall, their web browser not being supported, and

or otherwise participate, the consequence for an eligible user who declines the required process is not merely inconvenience. The political communication does not occur. Continued ability to read the communications of others does not preserve either that user's contribution or the interest of others in receiving and responding to it.

19. It is no answer at the burden stage that the user may retain a pseudonym visible to the public, or that identifying material is supplied to an intermediary rather than published. The relevant burden is the loss or deterrence of communication caused by making disclosure a condition of participation. In *LibertyWorks*, members of the Court treated requirements to register and supply information, including information maintained on a non-public register, as capable of deterring political communication before it occurred.²⁰ Disclosure to an intermediary may impose a lesser burden than compulsory public attribution, but it may still deter a person for whom confidentiality from the platform or verification provider is a condition of speaking.
20. The same applies to an adult who is unable to operate the age assurance tools in question. This is likely to particularly apply to some adults with disabilities and some members of the older generation, thus distorting who can participate in public debates, by reducing the proportion of these groups who are able to participate (or requiring them to undertake a more intrusive and burdensome exercise, such as supplying physical ID). In this case, the discriminatory effect of the provisions in question shapes the burden.²¹ A legislative regime that *de-facto* reduces the voices of the most vulnerable presents a special risk. Reducing access to the online public square for people who might have disabilities, care needs or other vulnerabilities is a matter of serious concern, given these groups already are marginalized and excluded to begin with.²²
21. The FSU accepts that not every user is required to produce identification, that some ages are inferred from existing account signals, and that ss 63DB and 63F impose

even being forced to provide ID (even though s 63DB of the *Online Safety Act 2021* (Cth) apparently prohibits this in most cases).

²⁰ *Libertyworks* at [109], [118]–[120] (Gageler J), [124]–[125], [175]–[180] (Gordon J), [225]–[226] (Edelman J); cf *Americans for Prosperity Foundation v Bonta*, 594 US 595 at 606–617 (2021).

²¹ *Brown v Tasmania* (2017) 261 CLR 328 at [92]–[95].

²² See generally, *Royal Commission into 'Violence, Abuse, Neglect and Exploitation of People with Disability: Final Report'*, Volume 3.

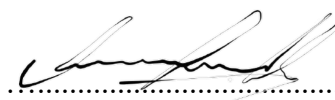
significant restrictions upon the collection, use and retention of information. Those matters bear upon the breadth and depth of the burden. They do not deny its existence where an otherwise eligible user is required to undergo an identity linked or sensitive-data process and, because the user either declines or is unable to do so, loses the capacity to participate.

22. Nor does the interposition of a private provider break the causal connection. The constitutional inquiry examines the law's practical operation. Where a provider introduces an age-assurance condition in order to discharge the obligation imposed by s 63D, the resulting restriction is an effect of Part 4A. *Brown* demonstrates that a law's effective and deterrent operation may burden lawful political activity extending beyond the conduct which the law expressly targets. A measure adopted independently of Part 4A would stand differently; the presently relevant measures are those occasioned by compliance with the statutory obligation.²³
23. Part 4A therefore burdens two related classes of political communication: communications lost through the exclusion of persons under 16, and anonymous or pseudonymous communications lost because otherwise eligible users are deterred or prevented from maintaining accounts by age-assurance conditions. The latter is part of the effective burden which the Court must identify.
24. The FSU makes no separate submission concerning whether that burden is justified, but otherwise agrees with the analysis and orders proposed by the Plaintiff.

Part V: ESTIMATE OF TIME

25. If the Court grants leave for the FSU to appear in the proceedings as *amicus*, and will be assisted by oral submissions, counsel anticipates that oral argument will take no more than 10 minutes.

Date: 11 September 2026



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²³ *Farm Transparency International Ltd v New South Wales* (2022) 277 CLR 537 at [158], [165]–[168] (Gordon J); *Hopper* at [27]–[30].

ANNEXURE TO INTERVENER'S SUBMISSIONS

No	Description	Version	Provision(s)	Reason for providing this version	Applicable date or dates (to what event(s), if any, does this version apply)
1.	The Constitution	Current.	ss 7, 24	Currently in force	All relevant times
2.	<i>Online Safety Act 2021</i> (Cth)	Current	s 5, Pt 4A	Currently in force	All relevant times
3.	<i>Online Safety (AgeRestricted Social Media Platforms) Rules 2025</i> (Cth)	Current	ss 4A, 5	Currently in force	Since 25 Mar 2026 (s 4A); at all relevant times (s 5)
4.	<i>Online Safety Amendment (Social Media Minimum Age) Act 2024</i> (Cth)	Current	Whole	For illustrative purposes	N/A
5.	<i>Online Safety (Basic Online Safety Expectations) Determination 2022</i> (Cth)	Current	Whole	For illustrative purposes	N/A