



HIGH COURT OF AUSTRALIA

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Details of Filing

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

S166/2025

BETWEEN:

REDDIT, INC.

Plaintiff

and

COMMONWEALTH OF AUSTRALIA

First Defendant

MINISTER FOR COMMUNICATIONS

Second Defendant

PLAINTIFF'S REPLY

PART I FORM OF SUBMISSIONS

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

PART II REPLY

2. **Scope of the challenge:** Reddit has an interest in the validity of the whole of Pt 4A, for three reasons. *First*, Reddit was a clear target of Pt 4A before rule 4A was enacted. In the Second Reading Speech, the Minister said that “the government expects that this broader definition will ... at a minimum, include ... Reddit”. Further, the Commissioner has considered Reddit to be captured since before rule 4A commenced (SC [40]-[42]). If Pt 4A were held invalid only in its operation with rule 4A, it is clear that the Commissioner would treat Reddit as **still subject** to Pt 4A. There is no need to envisage a “hypothetical future scenario”; the necessary state of facts exists (cf DS [16]). *Secondly*, there is a real likelihood that Reddit would be specified under s 63C(1)(b), given the Minister’s and Commissioner’s positions and the submissions in this case that Reddit poses risks (eg DS [31]). *Thirdly*, the Defendants do not explain how Pt 4A can legitimately be read down (partially disapplied) by reference to a rule made under it (cf DS [17]).
3. **Burden:** The burden is neither indirect nor modest (contra DS [19]). That children “retain access to public material” (DS [20]; SA [29]; ACT [15]) reduces any political communication which can take place on platforms to passive receipt, and ignores the significance of **active** political communication (which the Defendants accept should be given “full weight”: DS [52]). Young people have lost the ability to speak, interact, organise and reach domestic and global audiences quickly and inexpensively (PS [27]-[34]).¹ The burden includes speech amongst children, most obviously because the recipient may pass the communication to electors (cf Qld [15]). Private messaging on WhatsApp or a game, conversations at the dinner table and reading news media cannot replace active communication on social media, because they cannot “generate the type of attention most likely to sway public opinion”.² Being left with other less effective and less popular avenues of political communication only “underscore[s] the magnitude of the deprivation inflicted” by Pt 4A (cf DS [52]; Tas [32]; NSW [9]; Vic [9]; SA [29]; WA [26]; NT [13]; ACT [8]), which is blanket in nature.³ The deprivation is profound where it is inflicted on a group that does not have the avenue of the ballot box. It is also not a “potential future burden”; it is a burden **today**, the effects of which will persist into the future when young people become electors having been exposed to the burden imposed by Pt 4A (cf Qld [13]).

¹ See also *Packingham v North Carolina*, 582 US 98 at 104, 107 (2017) (Kennedy J for the Court).

² *Brown* (2017) 261 CLR 328 at [258] (Nettle J). See also *Laming v Electoral Commissioner of the Australian Electoral Commission* (2025) 99 ALJR 1260 at [23] (Gageler CJ, Gleeson and Jagot JJ), [67] (Gordon J).

³ *ACTV* (1992) 177 CLR 106 at 145-146 (Mason CJ), 173-175 (Deane and Toohey JJ), 238-239 (McHugh J).

4. **A “limited period”:** Attempts to downplay the burden as operating during only a “limited period” of adolescence should be rejected (DS [22], [52]). Part 4A affects more than 600,000 Australians at a time crucial to forming a social and civic sense of self (PS [28], [33], [38]; SC [344.1]). The submission also undermines the reliance at DS [6] on the importance of that “limited period” to a person’s development. In any event, a prohibition on a mode of political communication is no less a prohibition just because it is for a limited period (measured in years).
5. That age-based and parental supervision arrangements applied to young people’s use of social media before Pt 4A commenced does not support validity (cf DS [22]; ACT [11]; SA [28]). The private choice by platforms to limit accounts to users 13 years and above or to provide supervision tools does not engage the implied freedom: it is not the “baseline” from which the burden is to be measured. The Defendants also do not explain how parental restrictions meaningfully affected political communication in the way that Pt 4A plainly does, presumably because there is no evidence to that effect. Parental decisions to impose restrictions are radically different from restrictions imposed by government irrespective of parental choice.
6. **Form of the prohibition:** Given the significant impact of Pt 4A on young people (PS [27]-[34]), it is cold comfort that Parliament could have made it worse by making it a crime for young people to have an account (DS [20]). That the law is viewpoint neutral (DS [21]; SA [34]; WA [16]; NT [12]) only increases the extent of the burden: *all* political communication is prohibited.
7. **Burden on certain adults:** The mean error of age estimation technology – including more than 3 years for 15 year olds – is plainly evidence that people over 16 will be affected (PS [53]-[54]; cf DS [23]). Further, the Court can draw on “its knowledge of the society of which it is a part” that people may be unwilling or unable to disclose personal information necessary to verify their age, particularly in a world where data breaches and identity theft regularly occur.⁴
8. **Purpose:** The Defendants eschew the purpose in the Defence (SCB 80 [28.9]), relying instead on extrinsic materials to supply the link between the duty in s 63D and what they say is a narrower purpose of targeting particular design features (DS [26]). The Defendants implicitly accept that rule 4A cannot inform Pt 4A’s purpose (PS [40]), but continue wrongly to rely on rule 4A both in construing the Act (DS [11]) and in justification (DS [32]-[33]). In assessing validity, rules 4A and 5 are relevant only as illustrations of the possible operation of rule-making powers in the Act to add a condition to be an age-restricted social media platform or exclude services that would otherwise be captured. Rule 4A cannot transform Pt 4A so that it has the

⁴ See, eg, *Maloney v The Queen* (2013) 252 CLR 168 at [351] (Gageler J); *Thomas v Mowbray* (2007) 233 CLR 307 at [621]-[639] (Heydon J). The US Supreme Court has reached similar conclusions: *NetChoice* [28].

narrower purpose addressed at **PS [39]-[42]** or to assist on justification (addressed at [13] below).

9. The Defendants elsewhere submit that 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” (**DS [41]**, emphasis added) (see also “generational behavioural change” (**WA [6], [23], [40], [42]**)). That purpose is not legitimate: there is no evidence that access to social media (irrespective of functionality) is *per se* harmful, and social media has real benefits (**PS [27]-[34]**). Indeed, the Defendants rely on the fact that young people *can* access some social media (**DS [48]**).

10. **Precautionary approach:** The purpose is not “compelling” where the Defendants cannot quantify any risk upon which they rely and they accept the scientific uncertainty (contra **DS [27], [29]; Vic [42]; SA [41]; WA [32]**). Uncertainty also does not excuse an absence of tailoring (**PS [63]; cf DS [7]**). Reddit does not submit that Parliament must wait for, or commission, expert evidence before enacting legislation (**ACT [44]; NSW [22]; SA [46]; Qld [30]**). The question is not whether the science justifies *some* action being taken; it is whether the science justifies *this* action (**Vic [52]; Tas [47]; NSW [15]-[16], [19]; WA [36]; Qld [28]**).⁵ The passages from *Spence, McCloy* and *LibertyWorks* at **DS [29]-[30]** presuppose an adequate factual foundation for the perceived harm, and evidence that the law employs means capable of addressing it. Both integers are missing here, given not only the scientific uncertainty (**PS [57]**) but also the rushed process criticised even by the regulator tasked with its enforcement (which the Defendants do not disavow) (**PS [9]-[10], [63]**). *Garlett* does not assist the Defendants, because the “likelihood of harm occurring” and “the gravity of its consequences” are simply unknown (**PS [58]; cf DS [27]**). In any event, the “nature and importance of the purpose” does not affect the degree of scrutiny required (cf **Vic [40]**, which cites no authority for that proposition).

11. The Cambridge report does more than “recognis[e] limitations in the evidence for population-wide restrictions” (cf **DS [7]**). It said the evidence base for a ban is “poor” and there is “no scientifically published and well-powered experimental study testing how a complete social media restriction impacts the mental health or well-being of healthy under-18s” (**SCB 1718**).

12. There is no basis to infer that Reddit “carries the [same] associated risks” as other platforms (cf **DS [31]**). The Defendants ask the Court to extrapolate from sources that do not consider Reddit – in circumstances where there is no evidence about which features, combinations of features, or formulations of features give rise to particular risks (**PS [59]**), and clear evidence of the significant qualitative differences between Reddit and other platforms (eg **PS [60]**) – that the use of Reddit

⁵ Queensland should not be permitted to rely on material not in the Special Case: see **Qld fns 17, 38** (see similarly *White Australia Party Inc v Commonwealth* [2026] HCATrans 47 at 8298-8300, 8327-8329).

nevertheless gives rise to the same risks as any other platform. That is not an “inference”; that is *speculation*. Further, the summary of the platforms at **DS [5]** and **[34]** seeks to create a false sense that they are materially equivalent, in support of a submission that the identical treatment of all of them is justified, when in truth they are not (a point acknowledged, in an incomplete way, at **DS [5(d)], [34]**). The failure to identify the particular risk addressed by the law was fatal to analogous laws in the United States and France (**PS [64]-[65]**) in cases the Defendants do not distinguish.

13. **Tailoring:** The “tailoring” argument at **DS [33]-[34]** is, in essence, that the Commissioner’s view of which platforms are covered by Pt 4A aligns with those which have design features said to give rise to certain risks. That rests exclusively upon an “association” between a “logged-in state” and certain design features (**DS [26]**), which does not supply a link capable of justifying the burden. *First*, that “association” is factually wrong (**PS [46]**); less still is it accurate to describe the features as “account-*dependent*” given certain features operate when logged-out (**DS [38], [40], [52]**). Platforms can also make design features more widely available to logged-out users. *Secondly*, there is nothing in the Act to ensure that any criteria in or specified under s 63C be limited to “account-related” features; as the Defendants seem to accept, it is **rule 4A** that seeks to bridge the gap (cf **DS [33]**). *Thirdly*, there is **no** evidence that there is any specific harm associated with design features as they apply to logged-in users, as opposed to logged-out users.

14. The Defendants submit that the law is not directed to content, contradicting the extrinsic material upon which they otherwise rely (**DS [46]; SCB 1112, 1124, 1140-1141**). Rather, they submit that the law “can interrupt” the “risks arising from the manner and duration of engagement with material” (**DS [36]**) or the “whole experience” of a platform (**DS [37]**), even if content is still available in a “logged-out state”. However, the protection thereby afforded is not supported by evidence concerning the risk of any particular design feature or the likelihood of it materialising (**PS [59]**). Continued availability of content on Reddit and YouTube also does little to “lessen[] the restriction on communication”, as young people cannot use them *to speak* (contra **DS [36]**).

15. **Exclusion of harmful services:** In *Brown* at [222], relied upon at **DS [39]**, Gageler J said that “[u]nderinclusiveness which results in a legislative burden falling unevenly on political communication is nevertheless a factor which weighs against the conclusion that a law is reasonably necessary to achieve its postulated purpose” (**PS [48]-[49]; also [65]**). That is the case here. The “affirmative reasons” for distinguishing services like gaming are unconvincing when the affected platforms offer equivalent “important opportunities for communication, recreation and support” (**PS [31]**) and were subject to content regulation before Pt 4A (**PS [69]; cf DS [39]**).

16. **Protective tools:** The submission that the “availability of tools for managing account use does not establish that continued account access would provide greater protection” (**DS [40]**)

reverses the onus the Defendants accept they bear (**DS [28]**). In any event, the comparison is not between a world before Pt 4A (with those tools) and a world after Pt 4A involving no children having any account at all (cf **DS [40]**). The comparison must take account of the fact that hundreds of thousands of children are still using platforms *with accounts* (**PS [56]**), because the only change for *those* children under Pt 4A is the removal of safety tools which facilitate parental oversight, minimise harm, and prevent access to inappropriate content.

17. **Ineffectiveness**: The law need not prevent “every instance of circumvention”, but it must be generally effective for the very substantial burden to be justified (cf **DS [41]**; **Tas [48]**; **ACT [38]**; **WA [39]-[40]**). Defending particular age assurance tools (**DS [42]**), or criticising individual articles (**DS [43]**), fails to engage with the reality, evident from widespread continued use, that *no* combination of techniques is dependably effective (**PS [52]-[55]**). The Defendants also do not dispute the limitations of the technology in respect of non-majority groups (**PS [52]**). The significant ineffectiveness of the law seriously undermines the justification for the significant burden imposed to the extent that it is effective (cf **Qld [20]**, **[22]-[23]**). An “expectation” that effectiveness will improve should not be given weight in those circumstances (**DS [44]**).

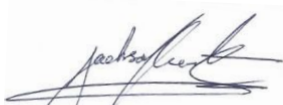
18. **Alternatives**: **DS [46]** is addressed at [13]-[14] above. As to **DS [49]**, the proposed digital duty of care illustrates that design features can be regulated directly, just as they have been overseas: see Online Safety Amendment (Digital Duty of Care) Bill 2026 (Cth), ss 25C(1), 25G, 26(1). The Bill makes it clear that there is no imperative to take a blanket approach; a law could be drafted that achieves the purpose to the same *or similar extent* (**PS [66]**; **NT [36]**) while imposing a lesser burden on the freedom. For example, a duty to disable or remove the harm associated with particular features or to mandate parental supervision while retaining accounts would preserve the ability to communicate (cf **DS [48]**).

19. The purpose could also be achieved with a lesser burden by a combination of the kinds of measures adopted overseas directed to the *regulation* of design features (**PS [72]**), not necessarily the prohibition of each (**SA [57]**). The line-by-line response on individual laws at **DS [50]** is beside the point; those laws simply provide real examples of measures that could be adopted. Finally, issues with the practicability of *voluntary* parental controls (**DS [51]**; **WA [44(b)]**) are no answer to a scheme which *requires* them, as proposed at **PS [73]** (see also **NetChoice [42]-[43]**).

Dated: 16 October 2026



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