



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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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

INTERVENER'S SUBMISSIONS
ATTORNEY-GENERAL FOR THE AUSTRALIAN CAPITAL TERRITORY

Part I: CERTIFICATION

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

Parts II & III: INTERVENTION

2. The Attorney-General for the Australian Capital Territory (ACT) intervenes pursuant to s 78A of the *Judiciary Act 1903* (Cth), in support of the position of the Defendants.

Part IV: ARGUMENT

Facts

3. The facts are stated in the Special Case. The ACT reiterates those facts emphasised in the Defendants' Submissions at **DS [4]-[7]** as to:

- (a) the features to which logged-in account users of the social media platforms identified by the eSafety Commissioner as “age-restricted social media platform(s)” (**ARSMPs**) are exposed;
- (b) the way in which those features are designed to, and do in fact, maximise users’ engagement with the platform; and
- (c) the serious risks of harm to children that those features carry.

Issues

- 4. The issue is whether s 63D of the *Online Safety Act 2021* (Cth) (**Act**) is invalid because it impermissibly burdens the implied freedom of political communication.
- 5. The ACT submits that although s 63D burdens the implied freedom of political communication, it is not invalid because it is reasonably appropriate and adapted to advance a legitimate purpose that is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government.

Effective burden

- 6. It is uncontroversial that the implied freedom extends beyond communication between political parties or candidates on the one hand and the electorate on the other. It protects political communications “*from* all and *to* all” (*Ravbar v Commonwealth* (2025) 99 ALJR 1000 at [424] (Beech-Jones J)).
- 7. There is also no dispute, as the Plaintiff submits (**PS [26]**), that Part 4A of the Act burdens the implied freedom to the extent it restricts communication by, to and between young people, insofar as such communication requires an account with an ARSMP.
- 8. The operative provision, s 63D, is not directed to the restriction of political communications, is content neutral, affects only a particular mode of political communication and leaves entirely unaffected all other modes of political communication. The burden is thus properly characterised as indirect and modest: The ACT adopts the Defendants’ Submissions at **DS [19]-[24]** supporting this characterisation.

9. The ACT makes two points of emphasis.
10. First, in **Brown v Tasmania** (2017) 261 CLR 328 at 365 [109], Kiefel CJ, Bell, and Keane JJ held that it is logical to measure the burden by reference to what persons could do were it not for the statute. Put another way, the nature and extent of the burden should be assessed by reference to the law's legal *and practical* operation: *Hopper v Victoria* [2026] HCA 11 at [28] (Gageler CJ, Gordon, Jagot and Beech-Jones JJ).
11. It is significant that the ability to hold an account was not offered to children under 13 years of age by any of the identified ARSMPs, including the Plaintiff, prior to s 63D commencing operation (SC [45], SCB 98). To the extent children under the age of 13 years "seek to influence the ultimate choice of the people as to whom they elect as their representatives" (PS [26]), they have hitherto done so without the benefit of ARSMP accounts and Part 4A did not affect that. Thus, the practical effect of the law is properly seen as the *incremental* restriction imposed on 13-to-15-year-olds who could previously maintain accounts under private platform rules, rather than all Australian children under the age of 16 years.
12. Further, while the perspectives of 13-to-15-year-olds may inform current electors (such as parents and teachers), a statutory measure that temporarily postpones their access to ARSMP accounts until their sixteenth birthday does not strike directly at the heart of electoral choices protected by sections 7 and 24 of the Constitution. Again, it affects only an incremental mode of communication for a temporary developmental period.
13. Secondly, unlike statutes that ban a mode or content of communication outright, Part 4A imposes a modest burden by banning only *account* ownership on platforms with specified features. The Plaintiff submits that a user requires an account to "communicate" on Reddit (PS [17]), and thus the ban on children under 16 years holding accounts prevents them from "communicating" through the platform. This is because users need an account to "follow" other users, to "post" subreddits or comment on other posts, to interact with posts and comments by "upvoting" and "downvoting", to give and receive awards or "karma", and to act as moderator of subreddits.

14. Certainly it is true that the implied freedom protects the interest of members of the Australian community in both *disseminating* and *receiving* information concerning government and political matters: *Farm Transparency International Ltd & Anor v New South Wales* (2022) 277 CLR 537 at 564 [74] (Gageler J). However, this does not mean that for there to be *communication* both sides of the equation must be facilitated through a given platform.
15. As the Plaintiff is at pains to point out (**PS [16], [44]**), almost all of the content on Reddit is accessible without an account. The same is true of YouTube (**SC [259], SCB 162**) and other ARSMPs to varying degrees (**PS [45]**). In receiving those vast repositories of content, children under 16 years of age are still “communicating” via the platforms; the fact that they may not both receive *and* disseminate information on the same platform does not deprive their engagement of its character as communication. Indeed, it is not uncommon for communication platforms to be asymmetrical in facilitating *receipt* of information by many but *dissemination* by few (for example television and newspapers).
16. Thus, to the extent that s 63D burdens communication that requires an *account*, the burden, even as it affects the platform, is limited and not outright. Far from demonstrating under-inclusiveness or irrationality (cf **PS [49]**), the preservation of logged-out browsing demonstrates the careful tailoring of the law that in turn contributes to its justification, because there is a cogent reason why it targets accounts specifically, as discussed below.

Legitimate purpose

17. The true purpose of a statute is arrived at by the ordinary processes of statutory construction: *Brown* at 362 [96] (Kiefel CJ, Bell and Keane JJ).
18. The purpose of Part 4A is stated expressly in s 63B as being “to reduce the risk of harm to age-restricted users from certain kinds of social media platforms.”
19. The “risk of harm” that Part 4A seeks to minimise is not further identified in s 63B, or otherwise expressly articulated in Part 4A. However, it may be gleaned from the surrounding provisions. In particular:

- (a) the definition of “age-restricted user” in s 5, namely an Australian child who has not reached 16 years;
 - (b) the definition of “age-restricted social media platform” in s 63C(1), namely:
 - i. an electronic service that meets all the conditions in s 63C(1)(a); or
 - ii. an electronic service specified in legislative rules under s 63C(1)(b) (which happens only where the Minister is satisfied that it is reasonably necessary to do so in order to minimise harm to age-restricted users, after seeking advice from the eSafety Commissioner and having regard to that advice: ss 63C(4)-(5)); and
 - (c) the central obligation imposed in s 63D, which requires such platforms to take reasonable steps to prevent age-restricted users from having accounts.
20. It may be inferred from the above provisions that the mischief which Part 4A is intended to remedy is to reduce a risk of harm that arises:
- (a) for Australian children under 16 years of age;
 - (b) by reason of holding an account;
 - (c) with a social media platform that:
 - (i) enables, as its sole purpose or a significant purpose, online social interaction between 2 or more end-users (including online interaction that enables end-users to share material for social purposes), allows end-users to link to, or interact with, some or all of the other end-users, allows end-users to post material on the service, **and** satisfies any other conditions set out in the legislative rules; **or**
 - (ii) the Minister is otherwise satisfied presents a risk of harm which should be minimised.

21. In this way, the purpose of Part 4A is specifically concerned with reducing a risk of harm to children arising from being *account holders* of social media platforms that give users the ability to *share* material, *interact* with other users, and *post* material, along with other features that may be (and have been) specified in legislative rules.
22. This is confirmed by extrinsic material which explains that “regulating the act of having an account will prevent age-restricted users from accessing the content and features that are available to signed-in account holders”. This in turn is described as minimising “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 (**SCB 1112**).
23. The purpose is plainly a legitimate purpose, in the sense relevant to the implied freedom, in that it does not impede the functioning of representative government and what that entails: *Farm Transparency* at [33] (Kiefel CJ and Keane J).
24. The Plaintiff accepts that Part 4A pursues a legitimate purpose (**PS [39]**), but objects to the Defendant’s formulation of it (“to reduce the risk of harm to age-restricted users from the use of accounts on social media platforms that have the design features that are described in section 4A of the Rules”). The basis of the objection is that it impermissibly resorts to regulations made under an Act to construe an Act (**PS [40]**) or purports to merge ‘purpose’ with ‘means’ and thereby collapses the third part of the *Lange* test (**PS [41]**).
25. The ACT provides two answers to this objection.
26. *First*, it is true, as French CJ stated in *Plaintiff M47/2012 v Director General of Security* (2012) 251 CLR 1 at [56], that “generally speaking an Act, which does not provide for its own modification by operation of regulations made under it, is not to be construed by reference to those regulations.”
27. However, this *is* an Act which provides for its own modification by operation of regulations. Section 63C(1)(a)(iv) provides for legislative rules to stipulate *additional* necessary conditions for the imposition of the central obligation in s 63D on a social media platform. It is not the familiar form of general

regulation making power to make regulations ‘not inconsistent with the Act’ that are ‘necessary or convenient to be prescribed for carrying out or giving effect to this Act’ of the kind considered, for example, in *Plaintiff M47/2012* or *Alphapharm Pty Limited v H Lundbeck A/S & Ors* (2014) 254 CLR 247 at [39] (Crennan, Bell and Gageler JJ). Nor it a power merely to prescribe manner and form mechanics for the implementation of an obligation in the Act, of the kind considered in *Hunter Resources Ltd v Melville* (1988) 164 CLR 234 at 244 (Mason CJ and Gaudron J).

28. Rather, s 63C(1)(a)(iv) reflects a broader power “calculated to enable regulations that add means of carrying out the purposes of the Act; and so to some extent to inform the legislative plan for achieving that objective”: *O’Connell v Nixon* (2007) 16 VR 440 at 448 [34] (Nettle JA, with whom Chernov and Redlich JJA agreed). Thus, it is permissible to construe the purpose of Part 4A by reference to section 4A of the Rules, as they “add to the means” and “inform the legislative plan”.
29. *Secondly*, in any event, having regard to section 4A of the Rules in the construction of the statutory purpose does not, in truth, narrow the purpose. That purpose remains to reduce the risk of harm to children arising from being account holders of social media platforms that give users the ability to share material, interact with other users, and post material. Rather, reference to rule 4A refines the nature or extent of the harm sought to be reduced *pursuant to* that purpose. It does so by specifying particular features of the platforms in which the account activity occurs that are associated with particular harmful effects (namely, the ‘recommender feature’ or one or more of the ‘endless-feed feature’, ‘feedback feature’ or ‘time-limited feature’).
30. Thus, while the purpose of Part 4A remains constant, the nature of the harm sought to be reduced may be enlarged or refined over time by use of legislative rules, for example as technology develops or new data becomes available about its impact. In this way, the legislation is “responsive to changes and evolutions in the social media ecosystem” (Explanatory Memorandum at 3-4, **SCB 1111-1112**).

Reasonably appropriate and adapted

31. The ACT endorses the Defendants' Submissions at **DS [28]-[51]** supporting its discharge of the persuasive onus of establishing that 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.
32. The ACT responds to three arguments put by the Plaintiff that may be taken to contradict those submissions.

Addressing risk of harm

33. The Plaintiff submits (**PS [43]-[50]**) that Part 4A does not achieve its purpose of reducing the risk of harm to children for four reasons: *first*, as already noted, content on the ARSMPs is still widely available to users without accounts; *secondly*, the design features specified by s 63C(1)(a) and r 4A can be experienced to varying degrees by users without accounts; *thirdly*, Part 4A does not attempt to address harm from other use of services (eg late night gaming or video calls); and *fourthly*, prohibiting an account removes the protective controls over the design features of the kind specified by s 63C(1)(a) and r 4A available to account holders.
34. None of these complaints is persuasive.
35. The first three complaints go to the nature and extent of harm sought to be reduced pursuant to the statutory purpose. This is a matter of legislative choice: Parliament is not obliged to address all types of harm, or their full extent, simultaneously. Accepting that use of social media exposes children to risks of harm, Parliament may sensibly pursue reduction of those risks in an incremental way, particularly in an "ecosystem" where technology and its impacts are developing. In this way, as the Defendants submit (**DS [13]**), the obligation may thereby expand or contract through the use of rules made under one or other of ss 63C(1)(a)(iv), (1)(b) or (6)(b).
36. As to the fourth complaint (**PS [50]**), the short point is that an account holder having the means to control certain of the design features of the platform does not diminish the effectiveness of the measure in s 63D that prevents the use of

an account at all. While users without an account may experience some of these design features on certain ARSMPs, they operate to a far lesser degree: **PS [46]; DS [37]-[38]**. In this sense, having no account provides greater protection than having an account with optional controls.

Effectiveness in practice

37. The Plaintiff mounts a vigorous attack on the effectiveness of Part 4A by critiquing the age-assurance technology as having serious limitations (**PS [51]-[56]**). There are two points in response.

38. *First*, the argument overlooks the statutory purpose, and the means designed to achieve it. The purpose of Part 4A is to *reduce* the risk of harm to children under 16, not eliminate it. Further, the statutory standard in s 63D is a test of “reasonable steps”, not a requirement to “ensure” preclusion from accounts or guarantee no evasion. The legislation was not passed on the premise that age-assurance technology had reached its zenith. As the Explanatory Memorandum confirms at 3 (**SCB 1111**):

Technology and the digital space continue to undergo significant change at a rapid pace. An obligation to undertake reasonable steps that includes age assurance methodology and technology, allows for platforms and the age assurance industry to evolve over time and continue to comply with the obligation ...

39. *Secondly*, the argument runs contrary to the agreed empirical data in the Special Case. In December 2025, ARSMPs reported to the eSafety Commissioner that they had removed or restricted access to approximately 4.7 million accounts identified as belonging to children under 16 (**SC [46], SCB 98**). Meta deactivated 544,052 accounts of users under 16 in Australia between 4 and 11 December 2025 (comprising 330,639 Instagram accounts, 173,497 Facebook accounts, and 39,916 Threads accounts (**SC [48], SCB 98**). Snap Inc locked or disabled over 415,000 Australian accounts belonging to users who declared an age under 16 or were detected as under 16 by its age-detection technology (**SC [49], SCB 99**).

40. Indeed, the Plaintiff itself suspended 43,962 Australian accounts identified as belonging to children under 16 (**SC [47], SCB 98**). It confirms that it deploys facial age estimation, ID verification, enforces date-of-birth blocks and is

implementing app store verification (SC [72.2], [383], [386], [387], SCB 104, 205-206).

41. These facts do not support the conclusion that the age-assurance technology has rendered the obligation in s 63D ineffective. On the contrary, they support the conclusion that there has been a meaningful reduction in the risk of harm involved with children under 16 holding accounts with ARSMPs, consistent with the statutory purpose.

Risk of harm justifying the burden

42. The Plaintiff submits that the lack of any established causal link between social media use and particular harms, together with the “unquantified” nature of the risk of such harms, render it “impossible” for the Court to determine whether the burden is calibrated to its legitimate end (PS [57]-[65]).
43. However, Parliament is not required to have scientific certainty regarding causal mechanisms and quantified risks before it can regulate. As stated in *McCloy v New South Wales* (2015) 257 CLR 178 at 262 [233] (Nettle J):

[I]t is not illogical or unprecedented for the Parliament to enact legislation in response to inferred legislative imperatives. More often than not, that is the only way in which the Parliament can deal prophylactically with matters of public concern.

44. Parliament may validly legislate based on reasonable inferences drawn from common experience, institutional knowledge, and available expert warnings. Parliament is not required to conduct longitudinal, laboratory-grade trials before regulating.
45. The agreed facts in the Special Case provide an extensive factual substratum for the existence of a credible risk, based on peer-reviewed research, that:
 - (a) the causal pathway that leads to persons engaging in addictive, disordered or problematic use of social media arises by reason of interactions between certain design features of social media platforms which are designed to, and do in fact, maximise users’ engagement with those platforms; and neurological systems in the human brain (SC [335], SCB 189);

- (b) because of the nature of their developing brains, children and adolescents are more vulnerable than adults to engaging in addictive, disordered or problematic use of social media by reason of the causal pathway explained above (**SC [343], SCB 193**); and
 - (c) the risks of harm from frequent use of social media by adolescents include alteration of brain development (including impairment of developing frontoparietal and prefrontal brain circuitry), negative effects on sleep (which are in turn associated with disruptions to neurological development, disruptions to emotional functioning, and the onset of depression and suicide risk in adolescents), depression, anxiety and suicidal ideation, reduced attention span, intensification of ADHD symptoms and disordered eating (**SC [345]-[377] SCB 194-204**).
46. While the agreed risk is not, at this juncture, known to have either a “high” or “low” chance of materialising, it may nonetheless be compelling (cf **PS [58]**). This is because, as the Defendants point out (**DS [27]**), the significance of a risk is a compound evaluation of both likelihood of occurrence *and* the gravity of the consequences. A risk may be compelling even with an unknown likelihood, because of the seriousness of its consequences. That is so in the present case, given the grave nature of the harms to children described above.

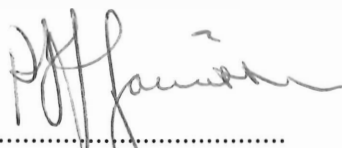
Conclusion

47. Ultimately, the burden imposed by the law is viewpoint-neutral, indirect and modest. It is reasonably appropriate and adapted to the legitimate purpose which the law pursues, which is a compelling one having regard to the serious risk of harm to children it is designed to reduce.

Part V: ESTIMATE OF TIME

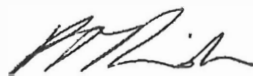
48. The ACT will require 15 minutes for oral submissions in respect of both S163/2025 and S166/2025.

Dated 8 October 2026



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Peter Garrison

Solicitor-General for the
Australian Capital Territory
Telephone: 02 6207 0654
Email: peter.garrison@act.gov.au



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Prue Bindon

Counsel for the Attorney-General of the
Australian Capital Territory, Intervening
Telephone: 02 6185 1414
Email: bindon@keychambers.com.au

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	<i>Online Safety Act 2021 (Cth)</i>	Current	Sections 63B, 63C, and 63D in Part 4A	Act in force	N/A
2	<i>Online Safety (Age-Restricted Social Media Platforms) Rules 2025 (Cth)</i>	Current	Section 4A	Rules in force	N/A