



HIGH COURT OF AUSTRALIA

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Details of Filing

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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 ATTORNEY GENERAL FOR NEW SOUTH WALES,
INTERVENING**

Part I: Certification

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

Parts II and III: Basis of Intervention

2. The Attorney General for New South Wales (**the Attorney**) intervenes in the proceedings pursuant to s 78A of the *Judiciary Act 1903* (Cth) in support of the Defendants (**the Commonwealth**).

Part IV: Submissions

3. These submissions address the second question of law stated in the Special Case, namely, is Pt 4A of the *Online Safety Act 2021* (Cth) invalid because it impermissibly burdens the implied freedom of political communication, contrary to the Commonwealth Constitution. The Attorney submits that the answer to that question is ‘no’.

Nature and extent of burden

4. An affirmative answer to the threshold question of whether an impugned law effectively burdens the implied freedom involves “nothing more complicated than that the effect of the law is to prohibit, or put some limitation on, the making or the content of political communications”.¹ The test is “qualitative not quantitative”.² This reflects that the focus of the enquiry is “the effect of an impugned law upon the freedom, as distinct from whether the law limits a person in the way that they can express themselves, although the latter may inform the operation of a law upon the freedom more generally”.³
5. In the present case, there is no dispute between the plaintiff (**Reddit**) and the Commonwealth that Pt 4A of the *Online Safety Act* has an effect “on the real-world ability of a person or persons to make or to receive communications which are capable of bearing on electoral choice” which amounts to an effective burden upon the implied freedom.⁴ Thus, there is an effective burden that requires justification.
6. Notwithstanding the binary nature of the first question (whether the law burdens the implied freedom),⁵ it is useful to consider, at this point, the nature and extent of the burden imposed by the impugned law by reference to its legal effect and practical operation. That analysis “serves to focus and to calibrate the inquiry” associated with the second and third questions.⁶ Reddit submits that the relevant burden is “direct and very substantial” and requires a compelling justification.⁷ That submission should not be accepted. The burden imposed on the implied

¹ *Monis v The Queen* (2013) 249 CLR 92 at [108] (Hayne J); *Unions NSW v New South Wales* (2013) 252 CLR 530 (**Unions NSW**) at [119] (Keane J); *Ravbar v Commonwealth* (2025) 95 ALJR 1000 at [32] (Gageler CJ) (**Ravbar**); *Farmer v Minister for Home Affairs* (2025) 99 ALJR 1408 (**Farmer**) at [40] (Gageler CJ, Gordon and Beech-Jones JJ); *Hopper v Victoria* (2026) 100 ALJR 582 (**Hopper**) at [154] (Gleeson J).

² *Tajjour v New South Wales* (2014) 254 CLR 508 (**Tajjour**) at [145] (Gageler J); *Ravbar* (2025) 99 ALJR 1000 at [31] (Gageler CJ).

³ *Hopper* (2026) 100 ALJR 582 at [154] (Gleeson J), citing *Unions NSW* (2013) 252 CLR 530 at [36] (French CJ, Hayne, Crennan, Kiefel and Bell JJ).

⁴ *Brown* (2017) 261 CLR 327 at [188] (Gageler J); *Ravbar* (2025) 95 ALJR 1000 at [32] (Gageler CJ).

⁵ *Ravbar* (2025) 99 ALJR 1000 at [213] (Edelman J).

⁶ *Farm Transparency International Ltd v New South Wales* (2022) 277 CLR 537 (**Farm Transparency**) at [156], [175] (Gordon J), quoting *Tajjour* (2014) 254 CLR 508 at [147] (Gageler J); *Brown* (2017) 261 CLR 328 at [128] (Kiefel CJ, Bell and Keane JJ), [164] (Gageler J), [411] (Gordon J). See also *LibertyWorks Inc v Commonwealth* (2021) 274 CLR 1 at [63] (Kiefel CJ, Keane and Gleeson JJ).

⁷ Plaintiff’s Submissions filed 28 August 2026 (**PS**) at [38], [58].

freedom by Pt 4A of the *Online Safety Act* is indirect and not substantial. In support of and in addition to the matters raised by the Commonwealth,⁸ the Attorney makes the following points.

7. *First*, s 63D of the *Online Safety Act* requires the provider of an age-restricted social media platform to take reasonable steps to prevent age-restricted users from having an account. The provision does not operate upon age-restricted users by virtue of their status as possible contributors to the free flow of political communication. Nor is the maintenance of an account necessarily communicative — a person may hold an account without posting any content at all. Section 63D does not impose a direct burden or a deep burden, in terms of the “intensity or focus of the effect of [the] law in constraining free political communication”.⁹
8. *Secondly*, Reddit itself refers to account-enabled communication on age-restricted social media platforms as a “tool” or “mode” of political communication (PS [27], [34], [38]). Other tools and modes remain unburdened. Indeed, Reddit seeks to highlight this for the purpose of questioning the justification for the impugned law (see, for example, PS [25], [44]).
9. A restriction on a particular form of political communication may still require justification and the existence of “other, less effective means” of communication may not be “an answer” to a challenge to such a restriction.¹⁰ But it is not enough simply that a restriction prevents pursuit of a person’s “preferred mode of communication”.¹¹ The implied freedom recognises no right to contribute to a particular forum or to speak to a particular audience.¹²
10. It is significant that, prior to December 2025, age-restricted users did not have a general right or permission to maintain accounts on age-restricted social media platforms in any event. The terms of use of the age-restricted social media platforms identified as meeting the definition in s 63C of the *Online Safety Act*

⁸ Defendant’s Submissions filed 25 September 2026 (DS) at [19]-[24].

⁹ *Ravbar* (2025) 95 ALJR 1000 at [230] (Edelman J).

¹⁰ *Brown* (2017) 261 CLR 328 at [258] (Nettle J); *Ravbar* (2025) 99 ALJR 1000 at [36] (Gageler CJ).

¹¹ *Brown* (2017) 261 CLR 328 at [258] (Nettle J).

¹² *Brown* (2017) 261 CLR 328 at [275] (Nettle J); *Clubb v Edwards* (2019) 267 CLR 171 (*Clubb*) at [97]-[98] (Kiefel CJ, Bell and Keane JJ).

required users to be at least 13 years old to create an account.¹³ To further restrict account-enabled communication as a tool or mode of political communication does not result, incrementally, in a substantial burden.

11. *Thirdly*, it is clear that the implied freedom protects political communications *from* all interested persons *to* all interested persons,¹⁴ and that persons other than electors may be interested persons.¹⁵ Yet it remains relevant that, consistently with its protective purpose, the *Online Safety Act* targets persons under the age of 16 years who are not electors.¹⁶ The restriction on the free flow of political communication, and thus the burden on the implied freedom, arises from the facts that:
 - a. age-restricted users may be seeking to influence electors on political and governmental matters via the dissemination of information;¹⁷
 - b. electors may be recipients of information from age-restricted users on political and governmental matters;¹⁸ and
 - c. some age-restricted users may become electors by the time of the next relevant election.
12. But it cannot be forgotten that the implied freedom is concerned with the receipt and dissemination of information “which might ultimately bear on electoral choice”.¹⁹ It is the “discussion of the political choices to be made by the people of the Commonwealth as the sovereign political authority” which engages the protection of the Constitution: it is not any discussion of matters or choices that might be politically controversial.²⁰ Although the Special Case provides some

¹³ Special Case at [42], [45].

¹⁴ *Ravbar* (2025) 99 ALJR 1000 at [424] (Beech-Jones J), citing *Unions NSW* (2013) 252 CLR 530 at [27] (French CJ, Hayne, Crennan, Kiefel and Bell JJ).

¹⁵ *Unions NSW* (2013) 252 CLR 530 at [30] (French CJ, Hayne, Crennan, Kiefel and Bell JJ); *McCloy v New South Wales* (2015) 257 CLR 178 (*McCloy*) at [26] (French CJ, Kiefel, Bell and Keane JJ); *Farmer* (2025) 99 ALJR 1408 at [40] (Gageler CJ, Gordon and Beech-Jones JJ), [137] (Steward J), [177] (Gleeson J).

¹⁶ As to that differential operation, see generally *Hopper* (2026) 100 ALJR 582 at [40] (Gageler CJ, Gordon, Jagot and Beech-Jones JJ), quoting *Brown* (2017) 261 CLR 328 at [92], [94], [95] (Kiefel CJ, Bell and Keane JJ).

¹⁷ *Unions NSW* (2013) 252 CLR 530 at [30] (French CJ, Hayne, Crennan, Kiefel and Bell JJ).

¹⁸ *Ravbar* (2025) 99 ALJR 1000 at [39] (Gageler CJ); *Farmer* (2025) 99 ALJR 1408 at [40], [43], [45] (Gageler CJ, Gordon and Beech-Jones JJ), [179] (Gleeson J).

¹⁹ *Ravbar* (2025) 99 ALJR 1000 at [39] (Gageler CJ).

²⁰ *Clubb* (2019) 267 CLR 171 at [29] (Kiefel CJ, Bell and Keane JJ), citing *Cunliffe v Commonwealth* (1994) 182 CLR 272 at 329 (Brennan J).

indication of the level of political engagement that occurs via social media, the ubiquity of social media use amongst children under the age of 16 cannot be equated with the width of the burden.²¹ Plainly, not all posts by all children would constitute communication on political and governmental matters in the sense required by the Constitution.

13. *Fourthly*, it should not be accepted that the burden upon the implied freedom is increased in the present case because some adults may be unwilling to complete the age assurance process. Reddit and the Free Speech Union seek to advance this point (PS [37]).²² This is not a case in which an outsized impact of the impugned provisions forms part of the relevant practical effect of those provisions.²³ Their practical effect should not be determined “by reference to whether persons may choose through caution or ignorance to give the provisions an effect or operation wider than they permit”.²⁴ As explained by Gordon J in *Brown*, in distinguishing between a “personal freedom” in the United States context and the implied freedom of political communication in Australia:²⁵

“Individual or personal reactions to a restriction may be relevant to the ambit of a personal freedom. Individual or personal reactions to a restriction are not relevant to determining the ambit of legislative or executive power.”

Justification of burden

14. Reddit accepts that it is a legitimate purpose of the *Online Safety Act* “to reduce the risk of harm to age-restricted users from certain kinds of social media platforms” (PS [39]). It is significant that this purpose is cast in terms of the mitigation of risk. Elsewhere, Reddit seeks to argue that the impugned provisions cannot be justified by the Commonwealth because there is no scientific consensus about the causal link between social media use and particular harms to children (PS [57]). Reddit even goes so far as to submit that because the risk is “unquantified”— it cannot be

²¹ *Ravbar* (2025) 95 ALJR 1000 at [230] (Edelman J).

²² Submissions for leave to be heard as amicus curiae on behalf of the Free Speech Union filed 11 September 2026 at [2](b).

²³ Cf *Brown* (2017) 261 CLR 328 at [73], [77]–[78] (Kiefel CJ, Bell and Keane JJ).

²⁴ *Brown* (2017) 261 CLR 328 at [307], [408] (Gordon J).

²⁵ (2017) 261 CLR 328 at [465] (Gordon J); see also at [262] (Nettle J).

labelled a “low” or “high” risk — the Commonwealth is incapable of discharging its onus of justifying the burden (PS [58]).

15. Separately from the question of what should be derived from the material in the Special Case (as to which see DS [32]-[40]), Reddit’s submission should be rejected because it is not correct to say that a law is incapable of justification on the basis of a “credible risk” that is otherwise unquantified and/or requires further research to show causality as opposed to correlation.
16. The Attorney’s submission in this respect involves no derogation from the proposition that the Court must be satisfied of the facts providing a constitutional basis for the impugned provisions.²⁶ Rather, the point is that the existence of risk may provide a sufficient constitutional basis for legislative action, and a polity may discharge its persuasive onus of establishing a justification for a burden on the implied freedom by reference to risk alone. As expressed by Gageler J in *McCloy*, it is open to a polity to “respond to felt necessities”.²⁷
17. In *Spence v Queensland*,²⁸ the plaintiffs sought to distinguish this Court’s decision in *McCloy* on the basis that Queensland did not have the same recent history of corruption associated with land development applications as New South Wales.²⁹ That factual contention (which was disputed) was not resolved because the Court accepted that a State could “be justified in taking legislative action to address a risk of harm to its system of government highlighted by occurrences in another State”.³⁰ In so reasoning, Kiefel CJ, Bell, Gageler and Keane JJ quoted a passage from Nettle J in *McCloy*, in which his Honour said:³¹

“[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”.

²⁶ *Unions NSW v New South Wales* (2019) 264 CLR 595 at [45] (Kiefel CJ, Bell and Keane JJ), [67] (Gageler J), [151] (Gordon J); *Unions NSW v New South Wales* (2023) 277 CLR 627 at [31] (Kiefel CJ, Gageler, Gordon, Gleeson and Jagot JJ).

²⁷ (2015) 257 CLR 178 at [197]; *Brown* (2017) 261 CLR 328 at [422] (Gordon J); *EGH19 v Commonwealth* (2026) 100 ALJR 400 (*EGH19*) at [134] (Gordon J).

²⁸ (2019) 268 CLR 355 (*Spence*).

²⁹ *Spence* (2019) 268 CLR 355 at [94] (Kiefel CJ, Bell, Gageler and Keane JJ).

³⁰ *Spence* (2019) 268 CLR 355 at [96] (Kiefel CJ, Bell, Gageler and Keane JJ).

³¹ (2015) 257 CLR 178 at [233].

18. Justice Edelman in *Spence* also cited the above passage from Nettle J in *McCloy*, observing that: “[a] reason why parliaments make laws is to shape behaviour. They can act prophylactically, by reference to possibilities and probabilities, as well as reactively”.³²
19. In the present case, there is no dispute that the Commonwealth is able to show a credible risk of harm to children through social media use and, at least, an association between social media use and particular harms (PS [57]-[58]). It is not necessary that the risk be quantified further or to any particular standard. That is not an appropriate test to apply to a prophylactic response to risk. As the jurisprudence of this Court has made clear in the consideration of “unacceptable risk” in other contexts, the likely occurrence of a risk must be evaluated alongside the gravity of the risk.³³ In certain cases where potential harm is particularly grave — such as a threat of serious or irreversible environmental damage — it may be entirely appropriate for a polity to act with “preventative anticipation” despite an absence of proof or scientific certainty.³⁴ It cannot be doubted that the potential harm identified in the Special Case is grave, having regard to the nature of the harm (including impacts on mental health and brain development which are significant and enduring), but also its widespread effect on a very large proportion of Australian children. In the same way that “the degree of legislative time, consultation and effort cannot act as a justificatory shield” for an impugned provision, the fact that a polity acts swiftly and on a precautionary basis should not, itself, be a reason for rejecting the resulting legislative choice (cf PS [9]).³⁵
20. In circumstances where a polity determines to act prophylactically or on a precautionary basis, it is the “role of the legislature to determine which policies and social benefits ought to be pursued”.³⁶ The balancing of the freedom to communicate on matters of government and politics against the protection of other

³² *Spence* (2019) 268 CLR 355 at [323].

³³ See, for example, *Garlett v Western Australia* (2022) 277 CLR 1 at [48], [73], [86] (Kiefel CJ, Keane and Steward JJ), [154]-[155] (Gageler J), [227], [280] (Edelman J).

³⁴ See the discussion of the “precautionary principle” in *Friends of Nyah Vinifera Park Inc v Minister for Environment and Water* [2026] FCA 584 at [142]-[146] (Horan J).

³⁵ *Farm Transparency* (2023) 277 CLR 537 at [78] (Gageler J), quoting *Quebec (Attorney-General) v A* [2013] 1 SCR 61 at [363] (Abella J).

³⁶ *McCloy* (2015) 257 CLR 178 at [90]; see also at [82] (French CJ, Kiefel, Bell and Keane JJ).

legitimate societal interests is a matter for legislatures to “determine”, but for courts to “supervise”.³⁷

21. It is important to bear in mind the actual questions asked for the purposes of the implied freedom analysis. It is well established that, for the purposes of the second question, the “legitimate object” of the law can be ascertained objectively by reference to the terms of the legislation itself with appropriate recourse to extrinsic materials.³⁸ At that level of the analysis, there is no requirement that the Court interrogate underlying facts in order to be satisfied of the relevant risk; let alone that it quantify the degree of the risk.³⁹ The third question then asks whether the law is reasonably appropriate and adapted to advancing *that object*, so ascertained. In this way, the test itself points against a mathematical exercise of weighing impacts against a demonstrated quantified risk. The analysis is undertaken at a higher level, weighing the impacts to the implied freedom against the object the legislature determines to pursue when passing the law.
22. The consequences of Reddit’s argument would significantly impede the law-making process. In circumstances where the legislature wishes to address the risk of a complex social harm, Reddit’s approach effectively would require a scientific consensus both that the risk exists and as to its “quantification”. How specific that quantification must be is not specified; it is unclear whether it would be sufficient for the risk to be categorised as “high” or “low” or whether more granularity is necessary or even possible (PS [58]). If such a scientific consensus does not already exist, presumably expert opinion would need to be obtained on those matters before law-makers (and lawyers tasked with advising on the law’s validity) could have any confidence that the law is valid.
23. One of the ways in which Reddit seeks to call into question the Commonwealth’s justification for the impugned provisions is by emphasising that Pt 4A of the *Online Safety Act* does not prevent children from accessing messaging services, gaming

³⁷ *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1 at 50 (Brennan J); *Farm Transparency* (2023) 277 CLR 537 at [78] (Gageler J); *Brown* (2017) 261 CLR 328 at [436] (Gordon J); *McCloy* (2015) 257 CLR 178 at [123] (Gageler J).

³⁸ *Ravbar* (2025) 99 ALJR 1000 at [43] (Gageler CJ), [117]-[121] (Gordon J), [172]-[174] (Edelman J), [370] (Jagot J), [459] (Beech-Jones J).

³⁹ If the relevant risk is plainly doubtful, that may call into question whether the purpose of the law is as expressed or claimed. But that is not suggested here: Reddit accepts the existence of a legitimate purpose.

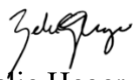
services or content that is not account-dependent (PS [25], [44], [45], [48]). Reddit does not suggest that this under-inclusiveness raises doubts about whether the provisions, in fact, pursue the identified legitimate purpose (cf PS [65]). As Reddit accepts, under-inclusiveness is not necessarily fatal to the justification for the provisions (PS [49]). But, further, the under-inclusiveness identified in the present case does not reduce the persuasiveness of the justification in the manner suggested by Reddit. “[T]he implied freedom does not operate to produce the result that a legislature addressing a mischief needs always to find a solution to the whole of that mischief”.⁴⁰ Put another way, “[t]he Parliament is not relegated by the implied freedom to resolving all problems” within the general topic it seeks to address.⁴¹

24. These observations were relevant in *McCloy*, where the impugned provisions were aimed at preventing corruption and undue influence in the State government, but applied only to property developers and not to all forms of business which routinely rely on favourable exercises of statutory discretion.⁴² As explained by Gordon J, “[t]hat the Parliament might have gone further does not establish that the law is not reasonably appropriate and adapted to serve the identified legitimate objects or ends”.⁴³ The same conclusion should be reached here. The fact that Pt 4A of the *Online Safety Act* reduces the risk of only some harms arising from only some social media platforms and usages thereof does not falsify the justification for seeking to address at least that part of the relevant mischief.

Part V: Estimate

25. The Attorney estimates that 15 minutes will be required for the presentation of his oral argument.

Dated 9 October 2026


Zelie Heger
Eleven Wentworth
02 9101 2307
heger@elevenwentworth.com


Eleanor Jones
Sixth Floor Selborne Wentworth
02 8915 2686
ejones@sixthfloor.com.au

⁴⁰ *Brown* (2017) 261 CLR 328 at [222] (Gageler J).

⁴¹ *McCloy* (2015) 257 CLR 178 at [197] (Gageler J); *Brown* (2017) 261 CLR 328 at [422] (Gordon J); *EGH19* (2026) 100 ALJR 400 at [134] (Gordon J).

⁴² *McCloy* (2015) 257 CLR 178 at [197] (Gageler J).

⁴³ *McCloy* (2015) 257 CLR 178 at [332] (Gordon J).

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)
		<i>eg:</i> <i>Version 26</i> <i>(1 July 2020 to 24 March 2024)</i>		<i>eg:</i> <i>Act in force on the date of the offence;</i> <i>date of judgment in Court of Appeal;</i> <i>for illustrative purposes only</i>	<i>eg:</i> <i>21 April 2018:</i> <i>date of Minister's decision</i>
1.	<i>Online Safety Act 2021 (Cth)</i>	Current	Part 4A	Currently in force	All relevant times