



HIGH COURT OF AUSTRALIA

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Details of Filing

File Number: S166/2025
File Title: Reddit, Inc. v. Commonwealth of Australia & Anor
Registry: Sydney
Document filed: Form 27C (A-G of SA) Intervener's Submissions
Filing party: Interveners
Date filed: 09 Oct 2026

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S166/2025

BETWEEN:

REDDIT, INC.
Plaintiff

and

COMMONWEALTH OF AUSTRALIA
First Defendant

and

MINISTER FOR COMMUNICATIONS
Second Defendant

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S163/2025

BETWEEN:

THE DIGITAL FREEDOM PROJECT INCORPORATED
(ABN 27 500 105 086)
Plaintiff

and

THE COMMONWEALTH OF AUSTRALIA
First Defendant

and

THE ESAFETY COMMISSIONER
Second Defendant

and

MINISTER FOR COMMUNICATIONS
Third Defendant

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**SUBMISSIONS OF THE ATTORNEY-GENERAL FOR THE
STATE OF SOUTH AUSTRALIA (INTERVENING)**

Part I: PUBLICATION OF SUBMISSIONS

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

Part II: INTERVENTION

2. The Attorney-General for the State of South Australia (**South Australia**) intervenes in proceedings S163/2025 and S166/2025 (**the proceedings**) pursuant to s 78A of the *Judiciary Act 1903* (Cth) to advance submissions that are generally in support of the submissions filed by the defendants.¹

Part III: LEAVE TO INTERVENE

3. Not applicable.

10 Part IV: SUBMISSIONS

4. The plaintiffs² in each proceeding challenge the validity of Pt 4A of the *Online Safety Act 2021* (Cth) (**Act**) on the ground that it infringes the implied freedom of political communication.
5. For the reasons advanced by the defendants, South Australia contends that Pt 4A does not impermissibly burden the implied freedom of political communication. The following submissions are intended to supplement those of the defendants.

The test to be applied in determining whether an impugned law impermissibly burdens the implied freedom of political communication

6. In *Lange*,³ this Court held that determining whether a law impermissibly burdens the implied freedom of political communication involves the asking of three questions:⁴

- 6.1. First, does the law effectively *burden* the freedom of political communication?

¹ Throughout these submissions, South Australia refers to the Commonwealth, the eSafety Commissioner and the Minister for Communications collectively as the “defendants”, noting the eSafety Commissioner has filed a submitting appearance.

² The Digital Freedom Project agrees with and adopts the arguments set out in [27]-[73] of Reddit’s submissions: DFP, [32]. Accordingly, the Digital Freedom Project and Reddit are referred to collectively as the “plaintiffs”.

³ *Lange v Australian Broadcasting Corp* (1997) 189 CLR 520 (**Lange**).

⁴ *Lange* (1997) 189 CLR 520, 567 (Brennan CJ, Dawson, Toohey, Gaudron, McHugh, Gummow and Kirby JJ), as modified in *Coleman v Power* (2004) 220 CLR 1, 51 [95]-[96] (McHugh J), 77-78 [196] (Gummow and Hayne JJ), 82 [211] (Kirby J).

6.2. Second, is the *purpose* of the law and the means adopted to achieve that purpose legitimate, in the sense they are compatible with the system of representative and responsible government?

6.3. Third, is the law *reasonably appropriate and adapted* to advance that legitimate purpose?

7. In *McCloy*,⁵ a majority of this Court held that, in determining whether an impugned law is reasonably appropriate and adapted, a test of structured proportionality, assessing whether the law is suitable, necessary and adequate in its balance, could be applied.⁶

10 8. South Australia seeks leave, to the extent that it is necessary to do so,⁷ to reopen *McCloy* in so far as it authoritatively endorsed the availability of structured proportionality testing in this context. South Australia submits that *McCloy* should be overruled to that extent, and that a test of reasonable necessity should instead be adopted to determine whether a law is reasonably appropriate and adapted.

The reasoning in *McCloy* should be reopened

9. Applying the *John* factors,⁸ South Australia submits that *McCloy* should be reopened and overruled to the extent that it endorsed the test of structured proportionality. First, whilst it must be accepted that the application of structured proportionality was “carefully worked out in a significant succession of cases”,⁹ the weight attributable to this factor is greatly diminished when it is seen that structured proportionality is not “embedded”¹⁰ in the

⁵ *McCloy v New South Wales* (2015) 257 CLR 178 (**McCloy**).

⁶ *McCloy* (2015) 257 CLR 178, 194-195 [2] (French CJ, Kiefel, Bell and Keane JJ).

⁷ Justices Edelman and Steward have expressed the view that the structured proportionality test endorsed by a majority of this Court in *McCloy* has become a doctrinal test such that it should not be departed from unless and until it is formally overruled: *Babet v Commonwealth* (2025) 423 ALR 83, 134 [183]-[184] (Edelman J), 141 [211] (Steward J) (**Babet**); *Ravbar v Commonwealth* (2025) 423 ALR 241, 308 [225] (Edelman J) (**Ravbar**). On the other hand, it may be unnecessary to formally overrule *McCloy* if the Court merely reconsiders the reasoning therein: *Esso Australia Resources Ltd v Commissioner of Taxation* (1999) 201 CLR 49, 71 [55] (Gleeson CJ, Gaudron and Gummow JJ).

⁸ *John v Federal Commissioner of Taxation* (1989) 166 CLR 417, 438-439 (Mason CJ, Wilson, Dawson, Toohey and Gaudron JJ) (**John**).

⁹ *John* (1989) 166 CLR 417, 438 (Mason CJ, Wilson, Dawson, Toohey and Gaudron JJ). On the development of structured proportionality prior to *McCloy*, see *Babet* (2025) 423 ALR 83, 131 [175] (Edelman J), citing *Rowe v Electoral Commissioner* (2010) 243 CLR 1, 140 [458]-[460] (Kiefel J); *Wotton v Queensland* (2012) 246 CLR 1, 32 [83] (Kiefel J) (**Wotton**); *Monis v The Queen* (2013) 249 CLR 92, 213-214 [344]-[347] (Crennan, Kiefel and Bell JJ); *Tajjour v New South Wales* (2014) 254 CLR 508, 571 [113] (Crennan, Kiefel and Bell JJ) (**Tajjour**); Kiefel, ‘Proportionality: A Rule of Reason’ (2012) 23 *Public Law Review* 85, 93.

¹⁰ See *Babet* (2025) 423 ALR 83, 133 [179] (Edelman J), 145 [228] (Gleeson J). For the reasons that are developed below, South Australia submits that the test of structured proportionality should be replaced with a reasonable necessity test. The key difference between those tests is that reasonable necessity testing would not engage the adequacy in the balance step of the structured proportionality

implied freedom jurisprudence, and accordingly its abandonment would be unlikely to have any consequences for previously decided cases.

10. Second, it is accepted that the joint judgment of Chief Justice French and Justices Kiefel, Bell and Keane represented a unified majority endorsement of structured proportionality in *McCloy*.¹¹ However, that methodology was not accepted by all six members who upheld the impugned laws as valid.¹² Justices Gageler and Gordon instead expressed serious reservations regarding the adoption of structured proportionality testing in the Australian constitutional context.¹³ These reservations have persisted, explicitly and implicitly, in the implied freedom jurisprudence of this Court since *McCloy*¹⁴ (including by members of the Court who have felt obliged to apply structured proportionality unless and until it is formally overruled).¹⁵
11. Third, *McCloy* has yielded no useful result and has in fact led to considerable inconvenience. This is so because despite pursuing the laudable aims of promoting judicial transparency and legal certainty,¹⁶ it has proven in its application to be productive of opacity and ambiguity.¹⁷ This problem is in itself exacerbated by doubts about the status of

test. Given that no case has turned on the application of the adequacy in the balance step, it is difficult to understand how abandonment of structured proportionality would call into question earlier decisions.

¹¹ *McCloy* (2015) 257 CLR 178, 194-195 [2] (French CJ, Kiefel, Bell and Keane JJ).

¹² The majority upholding the impugned laws comprised French CJ, Kiefel, Bell, Keane, Gageler and Gordon JJ: *McCloy* (2015) 257 CLR 178, 196 [5], 200 [22], 221 [94] (French CJ, Kiefel, Bell and Keane JJ), 240-241 [161], 249 [189], 252 [199]-[200] (Gageler J), 290 [345], 295-297 [370]-[382] (Gordon J).

¹³ *McCloy* (2015) 257 CLR 178, 234-237 [141]-[148] (Gageler J), 257-258 [221]-[222], 280-281 [309]-[311], 288-289 [338]-[339] (Gordon J). While noting that differences had emerged as to whether “the *Lange* test necessitates the consideration of ‘strict proportionality’”, Nettle J did not consider it necessary to “attempt to resolve such differences” in *McCloy*: 267-268 [254]-[255].

¹⁴ *Murphy v Electoral Commissioner* (2016) 261 CLR 28, 71 [101] (Gageler J) (***Murphy***); *Brown v Tasmania* (2017) 261 CLR 328, 376-379 [157]-[166] (Gageler J), 464-468 [429]-[438] (Gordon J) (***Brown***); *Clubb v Edwards*; *Preston v Avery* (2019) 267 CLR 171, 308-311 [400]-[404] (Gordon J) (***Clubb***); *Comcare v Banerji* (2019) 267 CLR 373, 440 [161] (Gordon J) (***Comcare***); *LibertyWorks Inc v Commonwealth* (2021) 274 CLR 1, 78-79 [202] (Edelman J) (***LibertyWorks***); *Ruddick v Commonwealth* (2022) 275 CLR 333, 369-370 [83] (Gageler J); *Unions NSW v New South Wales [No 3]* (2023) 277 CLR 627, 655-656 [71]-[72] (Edelman J); *Babet* (2025) 423 ALR 83, 134 [182]-[184] (Edelman J); *Ravbar* (2025) 423 ALR 241, 305-306 [215]-[219] (Edelman J); *Farmer v Minister for Home Affairs* (2025) 425 ALR 116, 146 [109] (Edelman J) (***Farmer***); *Hopper v Victoria* (2026) 100 ALJR 582, 602 [86]-[87] (Edelman J) (***Hopper***).

¹⁵ *Babet* (2025) 423 ALR 83, 134 [183]-[184] (Edelman J), 141 [211]-[212] (Steward J); *Ravbar* (2025) 423 ALR 241, 308 [225] (Edelman J).

¹⁶ *McCloy* (2015) 257 CLR 178, 200-201 [23], 216 [74] (French CJ, Kiefel, Bell and Keane JJ); *Palmer v Western Australia* (2021) 272 CLR 505, 552 [141] (Gageler J) (***Palmer***); *Hopper* (2026) 100 ALJR 582, 602 [86] (Edelman J).

¹⁷ *Clubb* (2019) 267 CLR 171, 224 [159] (Gageler J); *Ravbar* (2025) 423 ALR 241, 306 [218] (Edelman J) 327 [291] (Steward J).

structured proportionality as either a “tool of analysis” or a “doctrinal test”.¹⁸ Not only does this present complexity for lower courts and litigants,¹⁹ but also for those advising government about the lawfulness of legislative proposals.²⁰ In proceeding S163/2025, the Digital Freedom Project advances its case, and the defendants propound its defence, by reference to the structured proportionality analysis adopted in *McCloy*.²¹ In proceeding S166/2025, Reddit contends that structured proportionality is a “tool of analysis” that has “flexible application”, and then makes no reference to structured proportionality testing in its Written Submissions.²² The defendants respond without referring to structured proportionality.²³ In neither proceeding have the parties explained why they have, or have not, applied structured proportionality.

12. Fourth, *McCloy* has not been acted on independently in a manner that militates against reconsideration. Given that application of the structured proportionality test is unlikely to have altered the outcome of litigation concerning the implied freedom,²⁴ it is difficult to understand how its reconsideration would be likely to materially disturb the rights or interests of citizens or polities.

13. For these reasons, South Australia submits that taken together the *John* factors weigh heavily in favour of reopening *McCloy*. However, in weighing the relevant factors, of which the *John* factors are not exhaustive,²⁵ matters of principle should be afforded the greatest weight.²⁶ For the reasons that follows, South Australia submits that *McCloy* is plainly wrong.

20 The decision in *McCloy* should be overruled

14. In *McCloy* a majority of this Court held that determination of whether a law that burdens the implied freedom of political communication in pursuit of a legitimate purpose is

¹⁸ *Ravbar* (2025) 423 ALR 241, 306 [217]-[218] (Edelman J), 327 [291] (Steward J). Cf *Babet* (2025) 423 ALR 83, 97 [49] (Gageler CJ and Jagot J), 102-103 [72] (Gordon J), 141 [213] (Gleeson J), 148 [242] (Beech-Jones J).

¹⁹ *Ravbar* (2025) 423 ALR 241, 306 [219] (Edelman J); Jemimah Roberts, ‘Uncertain and Unstructured: The Implied Freedom of Political Communication after *Babet*, *Ravbar* and *Farmer*’ (2026) 0(0) *Alternative Law Journal* 1, 4.

²⁰ What was initially extolled as a virtue (*McCloy* (2015) 257 CLR 178, 216 [74] (French CJ, Kiefel, Bell and Keane JJ)), can now be seen to be a weakness of structured proportionality (*Ravbar* (2025) 423 ALR 241, 327 [293] (Steward J)).

²¹ Writ of Summons (DFP), [28]; DFP, [39]-[55]; DS (DFP), [14]-[22].

²² Constitutional Writ (Reddit), [24] quoting *Babet* (2025) 423 ALR 83, 97 [49] (Gageler CJ and Jagot J); Reddit, [43]-[73].

²³ DS (Reddit), [28]-[51].

²⁴ *Babet* (2025) 423 ALR 83, 133 [179] (Edelman J), 145 [228]-[229] (Gleeson J).

²⁵ Justice James Edelman, ‘Overturning *Al-Kateb v Godwin*: Unanswered Questions About the Rules of Precedent’ (Speech, Sir Harry Gibbs Memorial Oration, 25 May 2024) 5.

²⁶ *Vunilagi v The Queen* (2023) 279 CLR 259, 311 [162] (Edelman J).

reasonably appropriate and adapted to that legitimate purpose involves structured proportionality comprising three stages:²⁷

14.1. First, is the law *suitable*, “as having a rational connection to the purpose of the provision.”

14.2. Second, is the law *necessary*, “in the sense that there is no obvious and compelling alternative, reasonably practical means of achieving the same purpose which has a less restrictive effect on the freedom”.

14.3. Third, is the law *adequate in its balance*, “a criterion requiring value judgment, consistently with the limits of the judicial function, describing the balance between the importance of the purpose served by the restrictive measure and the extent of the restriction it imposes on the freedom.”

15. South Australia submits that structured proportionality is flawed for, at least, the following three reasons. First, the test of *suitability* is perfunctory and superfluous; a law that fails at this stage would also fail at the necessity stage.²⁸

16. Second, the *adequate in the balance* stage provides insufficient guidance as to the weighing process that it proposes.²⁹ As such, the “value judgment”³⁰ that it calls for goes further than judicial evaluation and scrutiny, which have long been accepted as necessary in constitutional adjudication, and thereby invites incursion into the realm of policy preferences.³¹ The objection has been framed as the problem of “incommensurability”.³²

20 The basic rule of balancing has even been criticised by Professor Barak as “too abstract.”³³

²⁷ *McCloy* (2015) 257 CLR 178, 194-195 [2] (French CJ, Kiefel, Bell and Keane JJ).

²⁸ *Clubb* (2019) 267 CLR 171, 308 [400] (Gordon J); *Babet* (2025) 423 ALR 83, 133 [180]-[181] (Edelman J); *Ravbar* (2025) 423 ALR 241, 305 [215], 307 [221] (Edelman J); *Hopper* (2026) 100 ALJR 582, 602 [86]-[87] (Edelman J).

²⁹ *Brown* (2017) 261 CLR 328, 465 [432], 467 [435] (Gordon J).

³⁰ *McCloy* (2015) 257 CLR 178, 219-220 [89] (French CJ, Kiefel, Bell and Keane JJ).

³¹ *McCloy* (2015) 257 CLR 178, 236 [145] (Gageler J); *Brown* (2017) 261 CLR 328, 375-376 [160] (Gageler J), 467 [436] (Gordon J); Adrienne Stone, ‘The Limits of Constitutional Text and Structure: Standards of Review and the Freedom of Political Communication’ (1999) 23(3) *Melbourne University Law Review* 668, 689-691; Leslie Zines, ‘Federalism and Administrative Discretion in Australia, with European Comparisons’ (2000) 28(2) *Federal Law Review* 291, 302; Patrick Elias, ‘Reflections on Judicial Power and Human Rights’ in Alan Bogg, Jacob Rowbottom and Alison L Young (eds), *The Constitution of Social Democracy: Essays in Honour of Keith Ewing* (Bloomsbury, 2020) 3, 10.

³² Stavros Tsakyrakis, ‘Proportionality: An Assault on Human Rights?’ (2009) 7(3) *International Journal of Constitutional Law* 468, 471-475. For opposing views, see Aharon Barak, ‘Proportionality and Principled Balancing’ (2010) 4(1) *Law & Ethics of Human Rights* 1, 15-16.

³³ Aharon Barak, *Proportionality: Constitutional Rights and their Limitations* (Cambridge University Press, 2012), 542, quoted in *McCloy* (2015) 257 CLR 178, 236-237 [146] (Gageler J); *Brown* (2017)

17. Third, structured proportionality is too rigid.³⁴ Its prescriptive terms finds no adequate foothold in the text and structure of the *Constitution*.³⁵ Further, its structured nature frustrates principled considerations from “permeat[ing] the entirety of the analysis.”³⁶ As Chief Justice Gageler has observed: “Constitutional analysis ... cannot be reduced to the application of some pre-determined all-encompassing algorithm”.³⁷
18. For these reasons, South Australia submits that *McCloy* should be overruled in so far as it endorsed the test of structured proportionality.

A test of reasonable necessity should be endorsed

19. South Australia submits that instead, this Court should embrace a test of reasonable necessity, for the purpose of determining whether a law that burdens the implied freedom of political communication is reasonably appropriate and adapted to a legitimate purpose. That form of appropriate and adapted testing has been endorsed by numerous judges of this Court.³⁸
20. Necessity testing jettisons the structured stages of *suitability* and *adequate in the balance*. As noted above, it asks whether “there is no obvious and compelling alternative, reasonably practical means of achieving the same purpose which has a less restrictive effect on the freedom”. Importantly, however, that inquiry must be calibrated.³⁹

261 CLR 328, 464-465 [430] (Gordon J), quoting Sir Anthony Mason, ‘The Use of Proportionality in Australian Constitutional Law’ (2016) 27 *Public Law Review* 109, 121.

³⁴ *McCloy* (2015) 257 CLR 178, 234-235 [142], 238 [152] (Gageler J); *Murphy* (2016) 261 CLR 28, 71 [101] (Gageler J); *Brown* (2017) 261 CLR 328, 465-466 [433] (Gordon J), citing Anne Twomey, ‘Proportionality and the Constitution’ (Speech, ALRC Freedoms Symposium, 8 October 2015); *Murphy* (2016) 261 CLR 28, 71 [101] (Gageler J); *Clubb* (2019) 267 CLR 171, 305 [391], 308-309 [401], 309-310 [404] (Gordon J); *Palmer* (2021) 272 CLR 505, 553-555 [144]-[147] (Gageler J).

³⁵ *Clubb* (2019) 267 CLR 171, 306 [393] (Gordon J); *Babet* (2025) 423 ALR 83, 132-133 [178] (Edelman J), 141 [212] (Steward J).

³⁶ *McCloy* (2015) 257 CLR 178, 237 [149] (Gageler J).

³⁷ *Brown* (2017) 261 CLR 328, 376 [161] (Gageler J).

³⁸ *Mulholland v Australian Electoral Commission* (2004) 220 CLR 181, 200 [40] (Gleeson CJ) (*Mulholland*); *McCloy* (2015) 257 CLR 178, 234-235 [142], 236 [145], 239 [155] (Gageler J); *LibertyWorks* (2021) 274 CLR 1, 78-79 [202] (Edelman J); *Babet* (2025) 423 ALR 83, 134-135 [183]-[185] (Edelman J); *Ravbar* (2025) 423 ALR 241, 308 [224]-[225] (Edelman J); *Farmer* (2025) 425 ALR 116, 184-185 [258] (Jagot J). The test has also been endorsed in the context of s 92 jurisprudence: *Betfair Pty Ltd v Western Australia (No 1)* (2008) 234 CLR 418, 477 [102]-[103] (Gleeson CJ, Gummow, Kirby, Hayne, Crennan and Kiefel JJ) (*Betfair (No 1)*); *Palmer* (2021) 272 CLR 505, 549-550 [131] (Gageler J).

³⁹ *McCloy* (2015) 257 CLR 178, 239 [156] (Gageler J). As to the critical role of calibration see: *Mulholland* (2004) 220 CLR 181, 200-201 [40]-[41] (Gleeson CJ); *McCloy* (2015) 257 CLR 178, 237 [150] (Gageler J); *Brown* (2017) 261 CLR 328, 377 [164]-[165] (Gageler J); *Clubb* (2019) 267 CLR 171, 229-230 [175]-[178] (Gageler J), 305 [391] (Gordon J); *Unions NSW v New South Wales* (2019) 264 CLR 595, 621-622 [65] (Gageler J) (*Unions (No 2)*); *Babet* (2025) 423 ALR 83, 135 [186] (Edelman J); *Ravbar* (2025) 423 ALR 241, 341 [344] (Jagot J); *Hopper* (2026) 100 ALJR 582, 592 [28] (Gageler CJ, Gordon, Jagot and Beech-Jones JJ). In contrast to the United States jurisprudence, tiered calibration finds no support in the Australian authorities: see, eg, *Tajjour* (2014) 254 CLR 508, 551 [37] (French CJ), 575-576 [131]-[132] (Crennan, Kiefel and Bell JJ).

In the application of that standard, much turns on identification of the precise nature and degree of the restriction which each of the impugned provisions imposes on political communication. Much also turns on the identification and characterisation of the end each is designed to achieve.

21. Application of a reasonable necessity test has the consequence that:⁴⁰

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The implied constitutional freedom is a constraint on legislative design. It limits legislative options. The consequence of the implied constitutional freedom is that there are some legitimate ends which cannot be pursued by some means, the result of which in some circumstances is that some ends will not be able to be pursued to the same extent as they might have been pursued absent the implied constitutional freedom. Means which come at too great a cost to the system of representative and responsible government established by the *Constitution* must be abandoned or refined. Means which are overbroad may need to be narrowed.

22. Reasonable necessity testing is an evaluative task.⁴¹ However, by contrast to structured proportionality, it does not arrogate to the judicial branch the assessment of whether a legitimate end is outweighed by the implied freedom. Rather, both the function of the political branches to select the legitimate ends to be pursued, and the function of the judiciary to scrutinise the means by those ends are pursued, are preserved.⁴²

Application of reasonable necessity testing to the present proceedings

20 Pt 4A imposes a moderate but incidental burden

23. The first step in the inquiry is to ask the “threshold”⁴³ question of whether the impugned law effectively burdens the implied freedom of political communication.⁴⁴ A law imposes an “effective burden” on the implied freedom where its effect is to “prohibit, or put some limitation on, the making or the content of political communications”.⁴⁵

24. If a burden is identified, its nature and extent informs the justification analysis,⁴⁶ and “serves to focus and calibrate the inquiry” as to whether the law is reasonably appropriate

⁴⁰ *Tajjour* (2014) 254 CLR 508, 585 [163] (Gageler J).

⁴¹ *McCloy* (2015) 257 CLR 178, 280-281 [309] (Gordon J); *Clubb* (2019) 267 CLR 171, 308-309 [400]-[401] (Gordon J); *Palmer* (2021) 272 CLR 505, 551 [136], 554-55 [147]; (Gageler J); *Betfair (No 1)* (2008) 234 CLR 418, 477 [102] (Gleeson CJ).

⁴² *Clubb* (2019) 267 CLR 171, 337 [478] (Edelman J); *Palmer* (2021) 272 CLR 505, 598 [267] (Edelman J).

⁴³ *Babet* (2025) 423 ALR 83, 900 [72], 907 [104] (Gordon J); *LibertyWorks* (2021) 274 CLR 1, 28 [63] (Kiefel CJ, Keane and Gleeson JJ).

⁴⁴ *Brown* (2017) 261 CLR 328, 360 [90] (Kiefel CJ, Bell and Keane JJ).

⁴⁵ *Ravbar* (2025) 423 ALR 241, 256 [32] (Gageler CJ); *Comcare* (2019) 267 CLR 373, 54 [29] (Kiefel CJ, Bell, Keane and Nettle JJ).

⁴⁶ *Hopper* (2026) 100 ALJR 582, 592 [28] (Gageler CJ, Gordon, Jagot and Beech-Jones JJ); *Ruddick* (2022) 275 CLR 333, 369 [82] (Gageler J); *LibertyWorks* (2021) 274 CLR 1, 28 [63] (Kiefel CJ, Keane and Gleeson JJ), 53 [136] (Gordon J); *Farm Transparency International Ltd v New South Wales* (2022) 277 CLR 537, 551 [26], 554 [36] (Kiefel CJ and Keane J), 594 [175] (Gordon J) (*Farm Transparency*).

and adapted to pursue a legitimate purpose.⁴⁷ A slight and incidental burden will be more readily justified than a substantial and targeted one.⁴⁸

Extent of the burden

25. When assessing the extent of the burden, the inquiry requires consideration of whether the law affects the free flow of communication on government or political matters generally. That concept extends beyond communications between electors and governments or candidates and includes communications between electors and other persons who may seek to influence electoral outcomes.⁴⁹
- 10 26. It is only the incremental burden imposed by the impugned law that requires justification: the relevant burden “lies in the incremental effect of [a] law on the real-world ability of a person or persons to make or to receive communications which are capable of bearing on electoral choice”.⁵⁰
27. In the present case, the following factors should be considered in assessing the extent of the burden imposed.
28. First, all of the age-restricted social media platforms (**ARSMPs**) identified by the eSafety Commissioner (**Commissioner**) require users to be at least 13 years old to create an account.⁵¹ Therefore, the incremental burden is limited to political communication engaged in by children between the ages of 13 to 15 years of age.
- 20 29. Second, Pt 4A of the Act does not prevent children aged 13 to 15 from accessing political information generally. Most obviously, Pt 4A does not prevent children aged 13 to 15 from informing themselves about political matters from sources other than ARSMPs, including their friends, families, teachers, traditional media (including television and newspapers)

⁴⁷ *Hopper* (2026) 100 ALJR 582, 592 [28] (Gageler CJ, Gordon, Jagot and Beech-Jones JJ); *Farm Transparency* (2022) 277 CLR 537, 588 [156] (Gordon J). See also *Tajjour* (2014) 254 CLR 508, 580-581 [151] (Gageler J); *Brown* (2017) 261 CLR 328, 378 [164] (Gageler J).

⁴⁸ *Brown* (2017) 261 CLR 328, 368 [128] (Kiefel CJ, Bell and Keane JJ). See also *Farmer* (2025) 425 ALR 116, [57] (Gageler CJ, Gordon and Beech-Jones JJ). See more generally *Brown* (2017) 261 CLR 328, [199] (Gageler J), [291] (Nettle J); *Clubb* (2019) 267 CLR 171, [102], [127] (Kiefel CJ, Bell and Keane JJ), [174], [183] (Gageler J), [372] (Gordon J).

⁴⁹ *Farmer* (2025) 425 ALR 116, 129 [40] (Gageler CJ, Gordon and Beech-Jones JJ), 162 [176]-[177] (Gleeson J).

⁵⁰ *Brown* (2017) 261 CLR 328, 386 [188] (Gageler J); *Farm Transparency* (2022) 277 CLR 537, 554 [37] (Kiefel CJ and Keane J), 568 [88] (Gageler J), 588 [158] (Gordon J).

⁵¹ SC, [45].

and the internet generally. Further, as the plaintiffs are at pains to emphasise,⁵² Pt 4A does not in effect restrict access to content on ARSMPs, including Reddit and YouTube.

10 30. Third, Pt 4A does not prevent children aged 13 to 15 from engaging in political communication generally. Most obviously, Pt 4A does not prevent children under 16 years of age from communicating about political matters generally other than on ARSMPs, including with their families, friends, teachers, and the broader community by attending protests and rallies. By virtue of r 5 of the *Online Safety (Age-Restricted Social Media Platforms) Rules 2025 (Rules)*, certain electronic services are deemed not to be ARSMPs, thus enabling political communication by electronic messaging and mail, and voice and video calling.⁵³

31. Fourth, there are other unchallenged provisions aimed towards addressing online harms and regulating the use of social media platforms by children, including those aged 13 to 15. For instance, the existing statutory framework also provides for the regulation of a range of online harms, including cyberbullying of children, image-based abuse and access to particular categories of harmful material.⁵⁴ Further, to the extent that the provision of services to children aged 13 to 15 by ARSMPs gives rise to actionable tortious harm, its prohibition by Pt 4A cannot be understood to have any incremental weight.

20 32. Whilst it may be accepted that ARSMPs provide a considerable means by which children aged between 13 to 15 communicate on political matters, for the above reasons, the incremental burden should be regarded as moderate.

Nature of the burden

33. A law which imposes an indirect or incidental burden on political communication will generally attract a lower level of scrutiny than a law which prohibits or regulates communication which is inherently political.⁵⁵ A law which falls into the former category is more readily justified than that which falls into the latter.

34. Pt 4A does not directly target political speech or social media platforms specific to communication about governmental and political matters. The identification of ARSMPs

⁵² Reddit, [44]-[45]; DFP, [26].

⁵³ SC, [38].

⁵⁴ See Pts 5, 6, 8 and 9 of the Act. See also SCB 839.

⁵⁵ *Hogan v Hinch* (2011) 243 CLR 506, 556 [95] (Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ); *Clubb* (2019) 267 CLR 171, 229-230 [176]-[177] (Gageler J); *Tajjour* (2014) 254 CLR 508, 581 [151] (Gageler J); *Wotton* (2012) 246 CLR 1, 16 [30] (French CJ, Gummow, Hayne, Crennan and Bell JJ); *Mulholland* (2004) 220 CLR 181, 200 [40] (Gleeson CJ).

is predicated instead on whether the platform has the requisite design features set out under s 63C of the Act. The burden on political communication “is the indirect consequence” of the operation of Pt 4A.⁵⁶ The obligation imposed on providers of ARSMPs under s 63D of the Act applies irrespective of users’ political views or the nature of the political content posted on the platform. The relevant criterion is the user’s age.⁵⁷ Pt 4A is therefore content and viewpoint neutral.⁵⁸

35. Contrary to the plaintiffs’ submissions,⁵⁹ the burden imposed by Pt 4A is neither very substantial, nor direct. Whilst the extent of the burden imposed is moderate, the nature of the burden is incidental.

10 Pt 4A pursues a compelling purpose

36. A law that burdens the freedom of political communication must pursue a legitimate purpose, in the sense that the purpose is compatible with the system of representative and responsible government and does not “impede” that system.⁶⁰ For instance, a law directed to suppressing political protest would not serve a legitimate purpose.⁶¹

37. The legislative purpose is identified through the application of the ordinary principles of statutory construction.⁶² The common law permits recourse to extrinsic material as part of the consideration of legislative context, to aid in the identification of the mischief or mischiefs which the law was intended to remedy.⁶³ The constitutional criterion of purpose as part of the justification inquiry is akin to the identification of mischief.⁶⁴

20 38. If a legitimate purpose is identified, then the nature of that purpose informs the justification analysis and serves to focus and calibrate the inquiry as to whether the impugned law is

⁵⁶ *Farmer* (2025) 425 ALR 116, 133 [57] (Gageler CJ, Gordon and Beech-Jones JJ), see also 182 [248] (Jagot J).

⁵⁷ DS (Reddit), [21].

⁵⁸ *McCloy* (2015) 257 CLR 178, 238 [152] (Gageler J); *Clubb* (2019) 267 CLR 171, 231 [181] (Gageler J).

⁵⁹ Reddit, [38].

⁶⁰ *McCloy* (2015) 257 CLR 178, 203 [31] (French CJ, Kiefel, Bell and Keane JJ). See also *Clubb* (2019) 267 CLR 171, 194 [44] (Kiefel CJ, Bell and Keane JJ).

⁶¹ *Brown* (2017) 261 CLR 328; *Farm Transparency* (2022) 277 CLR 537.

⁶² *Brown* (2017) 261 CLR 328, [96] (Kiefel CJ, Bell and Keane JJ); *Unions NSW v New South Wales* (2013) 252 CLR 530, [50] (French CJ, Hayne, Crennan, Kiefel and Bell JJ).

⁶³ *Unions (No 2)* (2019) 264 CLR 595, 627 [79] (Gageler J); *Hopper* (2026) 100 ALJR 582, 595 [45] (Gageler CJ, Gordon, Jagot and Beech-Jones JJ); *CIC Insurance Ltd v Bankstown Football Club Ltd* (1997) 187 CLR 384, 408 (Brennan CJ, Dawson, Toohey and Gummow JJ).

⁶⁴ *Brown* (2017) 261 CLR 328, 361-362 [101] (Kiefel CJ, Bell and Keane JJ); *McCloy* (2015) 257 CLR 178, 231-232 [132] (Gageler J); *APLA Ltd v Legal Services Commissioner (NSW)* (2005) 224 CLR 322, 394 [178] (Gummow J).

reasonably appropriate and adapted to serve a legitimate purpose.⁶⁵ Where a compelling purpose is identified, the law will be more readily justified than a law that pursues a legitimate but inconsequential purpose.⁶⁶

39. The express purpose of Pt 4A is “to reduce the risk of harm to age-restricted users from certain kinds of social media platforms.” That purpose is further informed by the operation of s 63D, the primary operative provision within the Part. Section 63D focusses the purpose of Pt 4A on the risk of harm arising from the holding of accounts with ARSMPs. Those risks were well understood by Parliament at the time that Part 4A was inserted. They had been documented in the French Report.⁶⁷ They were referenced in the Explanatory Materials.⁶⁸ They are agreed in the Special Case.⁶⁹ The purpose of Pt 4A should be understood to be 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. This purpose is legitimate.

40. It is agreed between the parties as recorded in the Special Case that there is a credible risk, based on peer-reviewed research, that: social media use can be addictive;⁷⁰ children and adolescents are particularly vulnerable to addictive, disordered or problematic social media use due to their developmental stage;⁷¹ frequent use of social media platforms causes alterations in adolescent brain development;⁷² extended social media use can adversely affect children’s sleep;⁷³ frequent social media use can increase the likelihood of children developing depression, anxiety, suicidal behaviours or suicidal ideation, and can worsen pre-existing mental health conditions;⁷⁴ frequent use of social media platforms causes children to develop lower attention spans, by reason of such platforms having certain design features;⁷⁵ frequent use of social media platforms intensifies the symptoms of children who have attention deficit / hyperactivity disorder, by reason of certain design features of such platforms;⁷⁶ and, certain design features of social media platforms, namely endless feed,

⁶⁵ *Ravbar* (2025) 423 ALR 241, 341 [344] (Jagot J); *Clubb* (2019) 267 CLR 171, 305 [391] (Gordon J).

⁶⁶ *Brown* (2017) 261 CLR 328, 389 [204]-[207] (Gageler J).

⁶⁷ SCB 837, 858. See also SC, [23.1(b)]; SCB 1116.

⁶⁸ SCB 1109-1110, 1129, 1142.

⁶⁹ SC, [333]-[377].

⁷⁰ SC, [334].

⁷¹ SC, [343].

⁷² SC, [345]-[346].

⁷³ SC, [349.1].

⁷⁴ SC, [354].

⁷⁵ SC, [361].

⁷⁶ SC, [367].

autoplay and the use of systems to select and recommend content that will engage the user, exacerbate the symptoms of children with disordered eating.⁷⁷

41. In light of the seriousness of the identified risks, the increased vulnerability of children to such risks, and the protective purpose of Pt 4A, it must be understood to not only pursue a legitimate purpose, but a compelling one.

Pt 4A is reasonably necessary to achieve its purpose

42. The third step in the analysis is to ask whether Pt 4A is reasonably appropriate and adapted to advance its legitimate purpose.⁷⁸ That inquiry requires a consideration of means and ends⁷⁹ and whether there is an obvious and compelling, reasonably practicable alternative that would achieve the same purpose with a less restrictive effect on the freedom.⁸⁰ If no such alternatives can be identified, the law will be reasonably necessary for its legitimate purpose.
43. As noted above, the intensity of the inquiry must be calibrated to the nature and extent of the burden and the nature of the purpose that it serves.⁸¹ The plaintiffs' submission that Pt 4A calls for "intense scrutiny"⁸² and "compelling justification"⁸³ should be rejected. As Pt 4A of the Act imposes only a moderate and incidental burden in pursuit of a compelling purpose, the degree of justification required is correspondingly modest.
44. The plaintiffs contend that Pt 4A is not reasonably appropriate and adapted on various grounds. First, it is said that the evidence of harm is insufficient.⁸⁴ Second, it is said that

⁷⁷ SC, [372].

⁷⁸ *Farmer* (2025) 425 ALR 116, 128-129 [39], 132 [56] (Gageler CJ, Gordon and Beech-Jones JJ); *Hopper* (2026) 100 ALJR 582, 595-596 [49] (Gageler CJ, Gordon, Jagot and Beech-Jones JJ), 618-619 [164] (Gleeson J); *Lange* (1997) 189 CLR 520, 561-562 (Brennan CJ, Dawson, Toohey, Gaudron, McHugh, Gummow and Kirby JJ).

⁷⁹ Discussed within the context of the *Lim* principle, see: *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* (2023) 280 CLR 137, 158 [44] (Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ).

⁸⁰ *Babet* (2025) 423 ALR 83, 135 [186] (Edelman J); *Clubb* (2019) 267 CLR 171, 186 [6] (Kiefel CJ, Bell and Keane JJ), 265-266 [267]-[268], 269-270 [277] (Nettle J), 337-338 [478]-[480] (Edelman J); *LibertyWorks* (2021) 274 CLR 1, 32 [78] (Kiefel CJ, Keane and Gleeson JJ); *McCloy* (2015) 257 CLR 178, 210 [57]-[58] (French CJ, Kiefel, Bell and Keane JJ); *Comcare* (2019) 267 CLR 373 at 401 [35] (Kiefel CJ, Bell, Keane and Nettle JJ).

⁸¹ *McCloy* (2015) 257 CLR 178, 238 [150] (Gageler J); *Brown* (2017) 261 CLR 328, 377 [164]-[165] (Gageler J); *Clubb* (2019) 267 CLR 171, 229-230 [175]-[178] (Gageler J), 305 [391] (Gordon J); *Ravbar* (2025) 423 ALR 241, 341 [344] (Jagot J); *Hopper* (2026) 100 ALJR 582, 592 [28] (Gageler CJ, Gordon, Jagot and Beech-Jones JJ).

⁸² Reddit, [38].

⁸³ Reddit, [58].

⁸⁴ Reddit, [57]; DFP, [44]-[45].

there is a disconnect between the means adopted, and the end pursued, by Pt 4A.⁸⁵ Third, it is said that the ban is ineffective.⁸⁶ Fourth, it is said that there are obvious and compelling alternatives.⁸⁷ For the reasons that follow, each of these grounds should be rejected.

The evidence of harm is more than sufficient

45. The plaintiffs submit that the risk of the harms identified in the Special Case provide an insufficient evidential foundation to justify Pt 4A of the Act.⁸⁸ They say that “compelling evidence”⁸⁹ is required and that “further research is required before any scientific consensus could be reached” as to the existence of a “causative link” between the services ARSMPs provide to children and the harms identified in the Special Case.⁹⁰

10 46. The plaintiffs’ submission, that Pt 4A cannot be justified because the identified harms have not been conclusively proven to have materialised, is astonishing. Parliament is not required to await scientific proof that a risk has occurred before acting.⁹¹ It may “respond to felt necessities” and “act prophylactically”.⁹² Parliament is not forbidden to close the stable door until after the horse has bolted. If the plaintiffs’ submission was correct, Parliament would need to wait for concrete evidence that a generation of children had suffered the serious harms identified in the Special Case before it could act. That submission is reminiscent of the much maligned approach that the tobacco industry historically adopted in relation to the harms caused by its products.⁹³

20 47. The evolving evidence of the harm caused by the fast-moving technology employed by ARSMPs, more than amply justify the Commonwealth Parliament taking a precautionary approach to the credible risks that ARSMPs present to children.

There is no disconnect between means and ends

48. The plaintiff submits that there is a “missing link between the purposes of the law (preventing harms) and the means chosen to address it (banning accounts).”⁹⁴ However,

⁸⁵ Reddit, [43]-[50]; DFP, [39]-[42].

⁸⁶ Reddit, [51]-[56]; DFP, [43].

⁸⁷ Reddit, [66]-[73]; DFP, [47]-[49].

⁸⁸ Reddit, [63]; DFP, [44]-[45].

⁸⁹ Reddit, [65].

⁹⁰ Reddit, [57].

⁹¹ *Spence v Queensland* (2019) 268 CLR 355, 417 [96] (Kiefel CJ, Bell, Gageler and Keane JJ).

⁹² *McCloy* (2015) 257 CLR 178, 251 [197] (Gageler J), 261-2 [233] (Nettle J); *Brown* (2017) 261 CLR 328, 421-2 [288] (Nettle J), 463 [422] (Gordon J).

⁹³ *United States v Philip Morris USA. Inc.* 449 F. Supp 2d 1 (DDC 2006), 218-288; *Tobacco Institute of Australia Ltd v Australian Federation of Consumer Organisations Inc* (1992) 38 FCR 1, 11-12 (Sheppard J).

⁹⁴ Reddit, [38].

there is no “disjunct”,⁹⁵ “missing link”⁹⁶ or “fundamental disconnect”.⁹⁷ There are numerous harmful features employed by ARSMPs which derive from, or are exacerbated by, the holding of an account. However, the central harmful feature of the services ARSMPs provide to children is the use of information derived from those children to drive personalised algorithms. It is this feature, supplemented by a series of other enticing techniques, that leads to problematic and harmful social media use in many children and addiction in others.

10 49. It is no answer to say that, in theory, an ARSMP could provide accounts to children, but then refrain from using the information gathered from those accounts to make recommendations. There is no evidence in the Special Case that such an ARSMP exists. To the contrary, the evidence in the Special Case is that Reddit itself adopts the recommendation practice described above,⁹⁸ and that in fact all of the ARSMPs identified by the Commissioner do so.⁹⁹ The plaintiffs’ submission that “there are no facts before the Court which suggest that any particular or different risks are associated with the use of online platforms with an account”¹⁰⁰ is simply incorrect.

The ban is effective

20 50. The plaintiffs’ submission that Pt 4A of the Act is ineffective¹⁰¹ is contradicted by the material in the Special Case. It is agreed that by December 2025, shortly following the commencement of the ban, around 4.7 million accounts had been removed or had their access restricted.¹⁰² The fact that there are means available by which some children have evaded the ban does not deny the broader efficacy of Pt 4A.¹⁰³ Further, it would be premature for the Court to give great weight to evasive techniques in circumstances where there is also evidence before the Court of the development of technology by which

⁹⁵ Reddit, [16].

⁹⁶ Reddit, [38].

⁹⁷ Reddit, [38].

⁹⁸ SCB, [80].

⁹⁹ See SC, [80]-[84] (Reddit); SC, [108]-[110] (TikTok); SC, [133], [138]-[139] (Instagram); SC, [159]-[160] (Facebook); SC, [175]-[176] (Snapchat); SC, [193]-[194] (X (formerly Twitter)); SC, [210]-[211] (Threads); SC, [227]-[228] (Twitch); SC, [278]-[281] (YouTube). Kick may use personalised algorithms, however, the evidence is ambiguous in this regard: SC, [244], [249].

¹⁰⁰ Reddit, [61].

¹⁰¹ Reddit, [51]; DFP, [43].

¹⁰² DS (Reddit), [41]; SC [46].

¹⁰³ DS (Reddit), [41]-[42], [44]; SCB 1194, 2418-2419.

ARSMPs may counteract these efforts¹⁰⁴ and where regulators are yet to have an opportunity to effectively intervene.¹⁰⁵

51. The plaintiffs’ submission that Pt 4A of the Act is ineffective because it does not ban content — “[t]he law denies young people a key, but to a door that is already open”¹⁰⁶ — is a distraction. The focus of Pt 4A is not upon the banning of content. As explained above, Pt 4A seeks to reduce the risks associated with children engaging in problematic social media use arising from the holding of accounts with ARSMPs.

52. The Commonwealth Parliament is not naïve as to the harm associated with children accessing problematic content online. In her Second Reading Speech, the Attorney-General emphasised that the introduction of a minimum age for social media accounts “is not the only approach that needs to be taken” and the “step is one among many that a government should take in the protection and not the isolation of young people”.¹⁰⁷ The Explanatory Memorandum similarly acknowledges the limitations for governments to comprehensively prohibit children from accessing harmful content online.¹⁰⁸

53. It is well established that it is open to Parliament pursue a legitimate purpose incrementally by addressing a particular aspect of a broader problem. It “is not relegated by the implied freedom to resolving all problems ... if it resolves any”.¹⁰⁹ A law will not be inconsistent with its purpose simply because it is not a complete panacea. As the Hon Robert French AC observed when considering policy options available to address harms by social media to young people in South Australia, “the perfect should not be the enemy of the good”.¹¹⁰

There are no obvious and compelling alternatives

54. There are also no obvious and compelling alternatives to Pt 4A. Indeed, the Digital Freedom Project appears to concede that the available research does not establish the “comparative effectiveness of every alternative” identified.¹¹¹ That concession, correctly made, is fatal to the plaintiffs’ challenge.

¹⁰⁴ DS (Reddit), [44]; SC, [378]-[380]; SCB 1845, 2344, 2359.

¹⁰⁵ DS (Reddit), [44]; SCB 1200.

¹⁰⁶ Reddit, [13].

¹⁰⁷ SCB 1140-1141.

¹⁰⁸ SCB 1111.

¹⁰⁹ *McCloy* (2015) 257 CLR 178, 251 [197] (Gageler J); *Brown* (2017) 261 CLR 328, [422] (Gordon J).

¹¹⁰ SCB 848.

¹¹¹ DFP, [49].

55. The first alternative proposed is to limit the ARSMPs identified for the purposes of Pt 4A to those that can only be accessed with an account, or where a substantial portion of the platform's functionality requires a user to hold an account. However, as noted at [49] above, all identified ARSMPs use algorithms to tailor content to account holders. That feature, together with other design features available to account holders, such as endless feeds and notifications, are directly linked to the harms targeted by Pt 4A. Excluding platforms that do not require an account to access content, but which use algorithms to tailor content, would fail to address the purpose of Pt 4A.
- 10 56. The second alternative proposed is to regulate the content, rather than access to that content.¹¹² However, as discussed above at [39], the purpose of Pt 4A is to mitigate harms associated with logged-in account use, including addictive algorithms, endless feeds, and persistent notifications and alerts. Accordingly, the regulation of the content itself would not achieve the purpose of Pt 4A.
57. The third alternative proposed is to regulate or prohibit design features. However, as the defendants submit, in order for such an alternative to be equally effective, it would be necessary to prohibit each of the design features effected by Pt 4A of the Act and the Rules. If that was done, then the proposed alternative would be indistinguishable from the scheme under challenge.
- 20 58. The fourth alternative proposed is the imposition of a legislative digital duty of care coupled with statutory remedies.¹¹³ As the defendants submit, such a scheme would require ongoing assessment of the measures adopted across a range of evolving social media platforms, creating significant enforcement difficulties and failing to address adequately the harms targeted by Pt 4A.¹¹⁴ Pursuit of statutory remedies would be reactive in nature,¹¹⁵ which fails to accord with the protective and prophylactic purpose of Pt 4A discussed above.
59. The final alternative proposed is that parents, or children themselves, supervise safe access to ARSMPs.¹¹⁶ Such an approach is self-evidently not equally efficacious.¹¹⁷ Would asking parents, and children themselves, to monitor the sale of alcohol to children be as effective as a ban on such sales?

¹¹² Reddit, [68]-[71]; DFP, [47(f)].

¹¹³ DFP, [47(b)-(c)].

¹¹⁴ DS (DFP), [19(b)].

¹¹⁵ DS (DFP), [19(c)].

¹¹⁶ Reddit, [73]; DFP, [47(a) and (g)].

¹¹⁷ SC, [436].

60. For these reasons, there are no appropriate alternatives available that meet the purposes of Pt 4A. In the absence of efficacious alternatives, even if the Court were to scrutinise the justification of Pt 4A intensely, the plaintiffs' challenge must fail.

Part V: TIME ESTIMATE

61. It is estimated that up to 20 minutes will be required for the presentation of South Australia's oral argument.

Dated: 9 October 2026

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S166/2025

BETWEEN:

REDDIT, INC.
Plaintiff

and

COMMONWEALTH OF AUSTRALIA
First Defendant

and

MINISTER FOR COMMUNICATIONS
Second Defendant

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20 IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S163/2025

BETWEEN:

THE DIGITAL FREEDOM PROJECT INCORPORATED
(ABN 27 500 105 086)
Plaintiff

and

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THE COMMONWEALTH OF AUSTRALIA
First Defendant

and

THE ESAFETY COMMISSIONER
Second Defendant

and

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MINISTER FOR COMMUNICATIONS
Third Defendant

ANNEXURE
PROVISIONS REFERRED TO IN THE SUBMISSIONS OF THE
ATTORNEY-GENERAL FOR THE STATE OF SOUTH AUSTRALIA
(INTERVENING)

No.	Description	Version	Provisions	Reason for providing this version	Applicable date or dates
1.	<i>Online Safety Act 2021 (Cth)</i>	Current	Pt 4A	Currently in force	All relevant times
2.	<i>Online Safety (Age-Restricted Social Media Platforms) Rules 2025 (Cth)</i>	Current	rr 4A, 5	Currently in force	Since 26 March 2025 (r 4A); all relevant times (r 5)