



HIGH COURT OF AUSTRALIA

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S166 of 2025

BETWEEN:

REDDIT, INC.
Plaintiff

and

COMMONWEALTH OF AUSTRALIA
First Defendant

and

MINISTER FOR COMMUNICATIONS
Second Defendant

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S163 of 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

THE MINISTER FOR COMMUNICATIONS
Third Defendant

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

Filed on behalf of the Attorney-General for the State of Queensland

9 October 2026

PART I: Internet publication

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

PART II: Basis of intervention

2. The Attorney-General for the State of Queensland intervenes in each of these proceedings under s 78A of the *Judiciary Act 1903* (Cth) in support of the defendants.

PART III: Reasons why leave to intervene should be granted

3. Not applicable.

PART IV: Submissions

SUMMARY OF ARGUMENT

4. The Attorney-General for Queensland adopts the submissions of the defendants in each proceeding, and makes the following additional submissions:
 - (a) In the Australian constitutional setting, social problems—such as what to do about the harms presented by social media—are first and foremost a matter for the people through Parliament to resolve. The implied freedom gives a modest role to the courts to prevent Parliament from undermining the free choice of the people, but the exceptional nature of that role informs the scope of the two limbs of the *Lange* analysis.
 - (b) The implied freedom protects only political communications capable of bearing on electoral choice by adult voters; that is, direct choice by ‘the people’ in ss 7 and 24 of the Constitution. To the extent s 63D of the *Online Safety Act 2021* (Cth) might prevent children from posting non-political posts, or from posting political posts to other children, it does not burden the implied freedom.
 - (c) If the plaintiffs are right that s 63D is ineffective because children can and do circumvent the age-restriction requirements, the result would be that s 63D does not burden the implied freedom of political communication at all.
 - (d) Justification of a burden on the implied freedom does not require scientific proof.

STATEMENT OF ARGUMENT

A. The problem and how problems are generally resolved in our constitutional system

5. The Special Case reveals that a society-wide experiment is being conducted on children. They are exposed to social media designed to capture their attention in the pursuit of profit (SC [290]-[300]). Evidence has emerged of credible risks of serious harm to children from that exposure, including addictive or problematic use of social media, changes to brain development, shorter attention spans, depression, anxiety and suicide (SC [333]-[377]). The plaintiffs say the experiment must be allowed to continue, at least until a scientific consensus has emerged (PS in Reddit [57], [63]; PS in DFP [44], [55]).
6. Whether or not that result is required in other constitutional systems,¹ it is not required by ours.² Rather than prize ‘individual liberty’ (‘consist[ing] in exemption from legal control’) the Australian Constitution seeks to nurture ‘political liberty’ (‘consist[ing] in participation in legal control’).³ The ‘great underlying principle’ of our Constitution is that social problems—such as what to do about the potential harms of social media—are best resolved by empowering the people through Parliament to resolve them.⁴
7. The paradox inherent in that system is that a present majority in Parliament can seek to entrench its power and thereby undermine the free choice of the people to select a future Parliament.⁵ The implied freedom of political communication resolves that paradox by giving the courts a limited role in striking down legislation that would ultimately

¹ Cf PS in Reddit [64]–[65]; NetChoice [14].

² On the very different weight given to the value of free speech in US jurisprudence, see: *McCloy v New South Wales* (2015) 257 CLR 178, 205–6 [41]–[42] (French CJ, Kiefel, Bell and Keane JJ), 248 [181]–[182] (Gageler J), 258 [219] (Nettle J); *Brown v Tasmania* (2017) 261 CLR 328, 473 [459] (Gordon J); *Clubb v Edwards* (2019) 267 CLR 171, 256 [248] (Nettle J), 346–7 [504] (Edelman J); *Comcare v Banerji* (2019) 267 CLR 373, 441–2 [164] (Edelman J); *LibertyWorks Inc v Commonwealth* (2021) 274 CLR 1, 90 [233] (Edelman J).

³ James Bryce, *Modern Democracies* (Macmillan, 1921) vol 1, 55. See also Stephen Gageler, ‘The New Constitutional Scholarship in Australia’ (2024) 48(1) *Melbourne University Law Review* 202, 215–18.

⁴ Harrison Moore, *The Constitution of the Commonwealth of Australia* (John Murray, 1st ed, 1902) 329, cited with approval in *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106, 136, 139–40 (Mason CJ); *McCloy v New South Wales* (2015) 257 CLR 178, 202 [27] (French CJ, Kiefel, Bell and Keane JJ), 226 [110]–[111] (Gageler J), 258 [219] (Nettle J); *Murphy v Electoral Commissioner* (2016) 261 CLR 28, 68 [87] (Gageler J); *Unions NSW v New South Wales* (2019) 264 CLR 595, 660 [178] (Edelman J); *LibertyWorks Inc v Commonwealth* (2021) 274 CLR 1, 22 [44] (Kiefel CJ, Keane and Gleeson JJ); *Babet v Commonwealth* (2025) 99 ALJR 883, 895 [42] (Gageler CJ and Jagot J).

⁵ *McCloy v New South Wales* (2015) 257 CLR 178, 227 [114] (Gageler J); *Farm Transparency International Ltd v New South Wales* (2022) 277 CLR 537, 565 [76] (Gageler J).

undermine the free choice of the people. But that role for the courts is a modest one: ‘unlike the United States, in Australia the boundaries of freedom of speech are generally the province of parliament; the judiciary can constrain the choices of a parliament only at the outer margins for reasons of systemic protection’.⁶

8. The primary role given to Parliament and the exceptional role given to the courts informs both limbs of the test⁷ for whether a law infringes the implied freedom of political communication. For the burden enquiry, not all speech is protected; only speech that is capable of bearing on electoral choice by adult voters. At the justification stage of the analysis, the court’s scrutiny cannot be so exacting as to require Parliament to furnish scientific proof.

B. Only communications bearing on electoral choice by adult voters count towards the burden

9. The parties agree that s 63D of the *Online Safety Act* burdens the implied freedom. However, it is necessary to identify precisely what s 63D does and how that impacts the free flow of political communications bearing on electoral choice. Doing so reveals that, while s 63D does impact on the ability to receive and generate communications, only a subset of those affected communications would have been capable of bearing on electoral choice in any event. That reinforces that the burden is properly characterised as ‘incidental’⁸ and ‘modest in extent’ (**DS in Reddit [19]**).
10. The practical effect of s 63D is that children under 16 will be prevented from receiving or generating communications using an account on certain social media platforms.
11. As to the ability of children to *receive* information, much of the information children consume on social media is not political in nature. For example, on any view, when children use social media accounts to access information from travel blogs, ‘foodie’

⁶ *Comcare v Banerji* (2019) 267 CLR 373, 442 [164] (Edelman J).

⁷ *Babet v Commonwealth* (2025) 99 ALJR 883, 896 [49] (Gageler CJ and Jagot J), 901 [72], 910 [118] (Gordon J), 932 [224], 933 [228] (Gleeson J), 936 [242] (Beech-Jones J); *Ravbar v Commonwealth* (2025) 99 ALJR 1000, 1017 [27] (Gageler CJ), 1031 [101] (Gordon J), 1072–3 [309] (Gleeson J), 1080–1 [343] (Jagot J), 1097 [425], [427] (Beech-Jones J); *Farmer v Minister for Home Affairs* (2025) 99 ALJR 1408, 1421 [39] (Gageler CJ, Gordon and Beech-Jones JJ), 1460 [243] (Jagot J); *Hopper v Victoria* (2026) 100 ALJR 582, 592 [27] (Gageler CJ, Gordon, Jagot and Beech-Jones JJ), 602–3 [84] (Edelman J), 618–9 [164] (Gleeson J).

⁸ *Coleman v Power* (2004) 220 CLR 1, 31 [30]–[31] (Gleeson CJ); *Hogan v Hinch* (2011) 243 CLR 506, 555–6 [95]–[99] (Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ); *Wotton v Queensland* (2012) 246 CLR 1, 16 [30] (French CJ, Gummow, Hayne, Crennan and Bell JJ); *Ravbar v Commonwealth* (2025) 99 ALJR 1000, 1079–80 [340]–[341], 1091 [396] (Jagot J).

accounts, and makeup or dance tutorials (**SCB vol 3, 853-4**),⁹ they are not consuming information that is political in nature.¹⁰ While some children do access political information and news, a 2023 Australian study found that 90% of 8 to 12-year-olds, and 76% of 13 to 14-year-olds, did not ‘often’ get news on social media (**SC [308.3]**).¹¹

12. Moreover, even insofar as s 63D does impact the ability of children to receive political communications, it must be recalled that children are not eligible to vote¹² and do not take part in the direct choice by ‘the people’ provided for in ss 7 and 24 of the Constitution.¹³ A law will only burden the implied freedom if it impedes the free flow of communication capable of bearing on electoral choice by ‘the people’ under ss 7 and 24 of the Constitution.¹⁴ Any information children receive on social media cannot have a bearing on their electoral choice.
13. True it is that today’s children will be tomorrow’s voters, but the implied freedom does not protect ‘their *prospective* participation as electors’ (cf **PS in DFP [21]; NetChoice [25]**). A potential burden in the future is not a burden now. In any event, by the time a

⁹ The Hon Robert French AC, *Report of the Independent Legal Examination into Banning Children’s Access to Social Media* (September 2024) 52–53.

¹⁰ Not all communication is political: see *Clubb v Edwards* (2019) 267 CLR 171, 191 [29]–[31], [43] (Kiefel CJ, Bell and Keane JJ), 256–7 [249], 279–80 [305] (Nettle J); *Farmer v Minister for Home Affairs* (2025) 99 ALJR 1408, 1447 [184] (Gleeson J).

¹¹ Tanya Notley et al, *News and Young Australians in 2023: How Children and Teens Access, Perceive and Are Affected by News Media* (Western Sydney University, University of Canberra and Queensland University of Technology, 2023) 16.

¹² *Commonwealth Electoral Act 1918* (Cth) s 93(1)(a). Between 1903 and 1973, the voting age was 21 years of age: *Commonwealth Franchise Act 1902* (Cth) s 3. During the Second World War, the voting age was lowered for soldiers who were serving or had served overseas: *Commonwealth Electoral (War-time) Act 1943* (Cth) s 4. In 1973, the voting age was permanently lowered to 18 years of age: *Commonwealth Electoral Act 1973* (Cth) s 3. See Stephen Gageler, ‘George Winterton Memorial Lecture 2025: The Evolution of the Australian Electoral System as a Constitutional Process’ (2025) 47 *Sydney Law Review* 21122: 1, 14–15.

¹³ Section 7 and 24 of the Constitution mandate a popular vote, but it has never been suggested they require the franchise to be extended to children; the opposite has been accepted as obvious: *Attorney-General (Cth); Ex rel McKinlay v Commonwealth* (1975) 135 CLR 1, 18 (Barwick CJ), 36–7 (McTiernan and Jacobs J), 44 (Gibbs J). Section 7 and 24 only require ‘universal *adult* franchise’: eg *Roach v Electoral Commissioner* (2007) 233 CLR 162, 174 [7] (Gleeson CJ), 199 [85] (Gummow, Kirby and Crennan JJ); *Babet v Commonwealth* (2025) 99 ALJR 883, 918 [160] (Edelman J). Any argument to the contrary is foreclosed by the express reference to ‘adult’ electors in ss 41 and 128 of the Constitution. In particular, the guarantee in s 41 was confined to ‘adults’ when Edmund Barton pointed out that a State might take the radical step of granting suffrage to children as young as 16. Guaranteeing a right to vote to children, he said, would have gone ‘too far’: *Official Record of the Debates of the Australasian Federal Convention*, Melbourne, 3 March 1898, 1841–2 (Edmund Barton), 1844 (Sir George Turner), 1849 (Henry Higgins, referring to ‘baby suffrage’), 1852–3 (Sir John Downer).

¹⁴ *Brown v Tasmania* (2017) 261 CLR 328, 386 [188] (Gageler J); *Comcare v Banerji* (2019) 267 CLR 373, 420 [89] (Gageler J); *Farm Transparency International Ltd v New South Wales* (2022) 277 CLR 537, 569 [88] (Gageler J).

child reaches 18 and becomes eligible to vote, they will have been able to receive information using an account with the affected social media platforms for two years.¹⁵ Any potential future burden will have long ceased to have been a burden at all by the time it could be said to crystallise.¹⁶

14. As to the impact on the ability of children to *generate* communications using a social media account, again, much of what children share on social media is not political in nature. For example, the same 2023 Australian study found that 73% of 12 to 16-year-olds had not engaged in social issues online and 77% had not posted news online related to social issues (SC [308.5]). The authors concluded ‘[a]lthough young Australians indicate a high level of respectful online engagement, their actions are more limited when it comes to digital civic activities’.¹⁷
15. Some information children share on social media will also be with other children.¹⁸ Again, insofar as s 63D impacts the ability of children to communicate about political matters with other children, it does not impact on the ability of the ‘people’ in ss 7 and 24 to receive the information they need to make an informed electoral choice at a federal election.
16. No doubt there are examples of children contributing information and ideas to debates in the community that are capable of bearing on the formation of electoral choice by people who *are* eligible to vote (SC [313]). The implied freedom clearly protects such communications. The free flow of political communication required by the implied freedom extends beyond a simple ‘two-way affair’ between electors and their

¹⁵ Not to mention the myriad of other ways that children become enlightened citizens. See eg *Fitzgerald (Next friend of) v Alberta*, 2002 ABQB 1086; (2002) 331 AR 111, [71] (Lefsrud J, explaining that a voting age restriction was justifiable because ‘it can be assumed that by age 18 most individuals will have completed high school social studies courses giving them some information about our political system and our history as a nation. The completion of these courses gives these individuals important background knowledge for rational and informed voting’).

¹⁶ No parallel can be drawn to US cases that apply First Amendment protections to children as ‘citizens in training’ (cf **NetChoice [25]**). The First Amendment applies to anyone in the jurisdiction, including children, without any need to link their communication to electoral choice: *Computer & Communications Industry Association v Uthmeier*, 826 F Supp 3d 1358, 1384 (ND Fla, 2025); *Brown v Entertainment Merchants Association*, 564 US 786, 794 (2011) (Scalia J for the Court).

¹⁷ Tanya Notley et al, *News and Young Australians in 2023: How Children and Teens Access, Perceive and Are Affected by News Media* (Western Sydney University, University of Canberra and Queensland University of Technology, 2023) 44.

¹⁸ Particularly some social media platforms, eg ‘Most [young people] used ... Snapchat and Instagram to chat with friends’: The Hon Robert French AC, *Report of the Independent Legal Examination into Banning Children’s Access to Social Media* (September 2024) 53 (SCB vol 3, 854).

representatives or candidates;¹⁹ ‘it extends to communication between electors and between electors and other persons who may seek to influence the ultimate choice of the people as to whom they elect as their representatives’.²⁰ That includes things a person or entity who is not eligible to vote—such as a foreigner, a trade union or a child—may wish to say to one of ‘the people’ which might bear on their choice at a federal election.²¹ However, ‘[a]ny benefit to [a child] from the implication must be indirect in the sense that it flows from’ the impact on the ability of electors to receive information from the child.²²

17. Contrary to Reddit’s submissions (**PS in Reddit [26]**), the implied freedom does not go further and protect political communications from all to all, irrespective of whether the communication is received by a member of ‘the people’ in ss 7 and 24 of the Constitution. The implied freedom ‘is limited to what is necessary for the effective operation of that system of representative and responsible government provided for by the Constitution’.²³ What is necessary for the effective operation of that system is freedom of communication ‘concerning political or government matters which enables the people to exercise a free and informed choice as electors’.²⁴ If there is no member of ‘the people’ in the audience, a communication cannot have any bearing on a choice at the ballot box.²⁵

¹⁹ *Unions NSW v New South Wales* (2013) 252 CLR 530, 551–2 [30] (French CJ, Hayne, Crennan, Kiefel and Bell JJ).

²⁰ *Farmer v Minister for Home Affairs* (2025) 99 ALJR 1408, 1422 [40] (Gageler CJ, Gordon and Beech-Jones JJ).

²¹ *Unions NSW v New South Wales* (2013) 252 CLR 530, 551–2 [30] (French CJ, Hayne, Crennan, Kiefel and Bell JJ), 580 [144] (Keane J); *Farmer v Minister for Home Affairs* (2025) 99 ALJR 1408, 1422–3 [43]–[45] (Gageler CJ, Gordon and Beech-Jones JJ), 1432–3 [100] (Edelman J), 1446 [179] (Gleeson J), 1460 [240] (Jagot J).

²² *Cunliffe v Commonwealth* (1994) 182 CLR 272, 336 (Deane J), quoted in *Farmer v Minister for Home Affairs* (2025) 99 ALJR 1408, 1446 [179] (Gleeson J). See also at 1439–40 [137] where Steward J treated a person’s status as an alien outside ‘the people’ in ss 7 and 24 of the Constitution as relevant to whether there was a burden on the implied freedom.

²³ *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 561 (the Court).

²⁴ *Ibid* 560 (the Court). See also at 571; *Farmer v Minister for Home Affairs* (2025) 99 ALJR 1408, 1445 [175] (Gleeson J).

²⁵ Statements about the need for a free flow of communication ‘between all interested persons’ in *Unions NSW v New South Wales* (2013) 252 CLR 530, 551 [27], [30] should not be read as suggesting otherwise, given their Honours’ repeated statements that communications are protected because they ‘might bear upon the choice that the people have to make in federal elections’, that such communications inform ‘[a]n elector’s judgment’, and that people and entities other than electors ‘may seek to influence the ultimate choice of the people as to who should govern’: at 550 [25], 551 [28], 552 [30] (French CJ, Hayne, Crennan, Kiefel and Bell JJ). Likewise, Keane J said that the reason why non-electors are a legitimate source of political

18. For these reasons, while s 63D does impact on the ability of children to receive and generate communications, many of those communications do not engage the implied freedom. Section 63D only burdens the implied freedom insofar as it prevents children under 16 from sharing political communications with adults entitled to vote.

C. If s 63D is ineffective, it does not burden the implied freedom

19. The plaintiffs submit that s 63D of the *Online Safety Act* lacks a rational connection to its purpose of preventing harm arising from holding an account with particular social media platforms because children can and do circumvent the age-verification requirements (**PS in Reddit [51]-[56]; PS in DFP [43]**).²⁶ The primary difficulty with that submission, as the defendants point out (**DS in Reddit [41]**), is that in order for a law to be rationally connected to its legitimate aim, it need only ‘further’ or ‘help to achieve’ the aim in some way.²⁷ The rational connection is not severed merely because the law does not achieve its aim completely.²⁸
20. However, even if the plaintiffs are right that the social media ban is ineffective, the result would not be that s 63D imposes an unjustified burden on the implied freedom. Instead, the result would be that, to whatever extent s 63D is ineffective to achieve its purpose, it is also ineffective to burden the implied freedom.
21. A law can be ineffective in two different ways. First, a law may be ineffective to achieve its aim but still burden the implied freedom. *Unions NSW v New South Wales [No 1]* provides an example.²⁹ In that case, the impugned law prohibited a political donation from being accepted unless the donor was an enrolled elector. Among others, that prevented corporations and trade unions from making political donations. By reducing the funds available to political parties and candidates to meet the costs of

communication is that the implied freedom dictates that ‘the people of the Commonwealth are to be denied no information which might bear on the political choices required of them’: at 580 [144].

²⁶ Although doubt has been expressed about the utility of the rational connection enquiry, it at least serves to show whether the purpose put forward by the defendants ‘misidentifie[s]’ the true purpose or ‘expresse[s] [it] at the wrong level of generality’: see *Babet v Commonwealth* (2025) 99 ALJR 883, 924–5 [181] (Edelman J).

²⁷ *Unions NSW v New South Wales* (2013) 252 CLR 530, 557 [50], 558 [54], 559 [56], 560 [60], 561 [64]–[65] (French CJ, Hayne, Crennan, Kiefel and Bell JJ).

²⁸ *McCloy v New South Wales* (2015) 257 CLR 178, 251 [197] (Gageler J) (‘The Parliament is not relegated by the implied freedom to resolving all problems of corruption and undue influence if it resolves any’); Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* (Cambridge University Press, 2012) 305 (‘There is no requirement that the means chosen fully realize the purpose. A partial realization of the purpose—provided that this realization is not marginal or negligible—satisfies the rational connection requirement.’).

²⁹ (2013) 252 CLR 530.

political communication, the law burdened the implied freedom.³⁰ The legitimate aim put forward was to prevent corruption.³¹ However, preventing anyone other than enrolled electors from donating did not help to achieve that anti-corruption purpose.³² That revealed that the polity could not rely upon the anti-corruption purpose as the reason why it imposed a burden on the implied freedom.³³

22. The second category of case is where the law is ineffective to achieve its aim *because* it is ineffective to impose a burden. In the event the plaintiffs are right that the social media ban is ineffective, that is this case. The asserted burden arises from the inability of children to communicate about political matters using an account on particular social media platforms. Section 63D imposes that burden in order to prevent harms to children associated with holding accounts on those platforms. However, if s 63D does not in fact prevent children from holding accounts, not only is it ineffective to prevent the harm associated with those accounts, it also does not prevent children from using their accounts to seek, receive and impart political communications.
23. A similar consequence follows if s 63D is partially ineffective, rather than wholly ineffective. That is because the effectiveness of s 63D to prevent harm arising from holding a social media account is in direct proportion to its effectiveness to burden the implied freedom by preventing communications using a social media account. An argument that s 63D is not effective to *some* extent is an argument that it does not burden the implied freedom to *that same extent*.
24. Rather than show an unjustified burden, the plaintiffs' argument rebounds to show the absence of a burden.

D. Scientific proof of harm is not required

25. The exceptional nature of the court's role in policing the implied freedom also has consequences for the justification analysis. Whatever test of justification one applies, 'it is necessary to keep in mind that it is principally for Parliament to decide whether a

³⁰ *Unions NSW v New South Wales* (2013) 252 CLR 530, 554 [38] (French CJ, Hayne, Crennan, Kiefel and Bell JJ).

³¹ *Ibid* 545 [8], 557 [50] (French CJ, Hayne, Crennan, Kiefel and Bell JJ).

³² *Ibid* 557 [51], 558–9 [54]–[56], 560 [60] (French CJ, Hayne, Crennan, Kiefel and Bell JJ).

³³ See also Robert Alexy, *A Theory of Constitutional Rights* (Oxford University Press, 2002) 68–9. According to Alexy, suitability testing reveals when there is an impact on a constitutional principle (P₂) by a means (M₁) that is not effective to achieve the end (E) required by the legitimate aim (P₁). Critically there must still be an impact on the constitutionally protected principle (P₂) for suitability testing to reveal anything.

legitimate purpose is of sufficient importance to warrant the extent of its impingement on the implied freedom'.³⁴ That is because '[t]he very representative and responsible government' that the implied freedom is designed to secure 'involves legislative implementation of policy decisions'.³⁵

26. That has consequences for the level of evidence required for the polity to justify a burden on the implied freedom.³⁶
27. The plaintiffs assert that justification is wanting in this case because there is no scientific consensus about the causal links between social media use and particular harms, or their pathways (**PS in Reddit [57]; PS in DFP [44]; SC [329]**).
28. However, 'the absence of unequivocal evidence of harm is not evidence of its absence'.³⁷ In the meantime, while waiting for a scientific consensus to emerge, the legislature is faced with 'credible risks' of serious harm to children (**SC [333]-[377]**). It is precisely those circumstances that call for action in accordance with the 'precautionary principle'. That principle 'compels society to act cautiously if there are certain—not necessarily absolute—scientific indications of a potential danger and not acting upon these indications could inflict harm'.³⁸ The precautionary principle is particularly appropriate when it comes to protecting children from the credible risks of harm presented by social media, taking into account their vulnerability and stage of development.³⁹
29. In *Taylor v Newfoundland and Labrador*, the Supreme Court of Canada recently

³⁴ *Clubb v Edwards* (2019) 267 CLR 171, 267 [270] (Nettle J).

³⁵ *Ibid* 343 [495], 344 [497] (Edelman J). See also *Comcare v Banerji* (2019) 267 CLR 373, 441–2 [164]–[165] (Edelman J).

³⁶ The persuasive onus for justifying a burden rests with the polity: *McCloy v New South Wales* (2015) 257 CLR 178, 201 [24] (French CJ, Kiefel, Bell and Keane JJ); *Brown v Tasmania* (2017) 261 CLR 328, 370 [131] (Kiefel CJ, Bell and Keane JJ); *Unions NSW v New South Wales* (2019) 264 CLR 595, 616 [45], 618 [53] (Kiefel CJ, Bell and Keane JJ), 631 [93] (Gageler J), 640 [117] (Nettle J), 650 [151] (Gordon J); *Unions NSW v New South Wales* (2023) 277 CLR 627, 644 [31] (Kiefel CJ, Gageler, Gordon, Gleeson and Jagot JJ); *Hopper v Victoria* (2026) 100 ALJR 582, 595–6 [49] (Gageler CJ, Gordon, Jagot and Beech-Jones JJ).

³⁷ Ivana Stankov et al, 'A precautionary approach to social media: protecting young minds in an evolving digital world' (2025) 223(5) *Medical Journal of Australia* 230, 230 (**SCB vol 5, p 1712**). See also Digital Mental Health Group, University of Cambridge, *Social Media Bans: Overview of Key Studies* (March 2026) 3 (**SCB vol 5, p 1718**) ('absence of evidence is not evidence of absence, and more evidence will likely emerge').

³⁸ Eva Lievens, 'Growing Up with Digital Technologies: How the Precautionary Principle Might Contribute to Addressing Potential Serious Harm to Children's Rights' (2021) 39(2) *Nordic Journal of Human Rights* 128, 134.

³⁹ *Ibid* 135–6.

considered the interaction between the precautionary principle and the test of proportionality under s 1 of the *Canadian Charter of Rights and Freedoms*. The Court explained that the concerns underlying the precautionary principle are already reflected in the proportionality analysis.⁴⁰ At the rational connection stage, it is sufficient to show ‘that it is reasonable to suppose that the limit may further the goal, not that it will do so’.⁴¹ At the necessity stage, ‘governments have latitude to respond to complex policy issues, especially where the evidence is inconclusive’.⁴² And at the final balancing stage, the salutary effects may be established by a reasoned apprehension, without requiring ‘legislatures to show that the law will produce the forecasted benefits’.⁴³ Otherwise, ‘[i]f legislation designed to further the public good were required to await proof positive that the benefits would in fact be realized, few laws would be passed and the public interest would suffer’.⁴⁴

30. The same latitude applies to the reasonably appropriate and adapted test in Australia. That test is to be applied attuned to the constitutional reality that Parliament is not required to wait for scientific proof before acting.⁴⁵ It is entitled to ‘respond to felt necessities’ and to ‘act prophylactically’.⁴⁶
31. The situation may be different in the United States. Reddit and one of the amici curiae rely upon *Brown v Entertainment Merchants Association*⁴⁷ (**PS in Reddit [65]; NetChoice [30]**). In that case, the US Supreme Court struck down a Californian law prohibiting the sale or rental of violent video games to minors for infringing the First Amendment. Because the law singled out particular kinds of speech, it attracted strict scrutiny. Where strict scrutiny applies, the premium placed on free speech by the US

⁴⁰ *Taylor v Newfoundland and Labrador* (2026) 510 DLR (4th) 195, 270 [208] (Karakatsanis and Martin JJ, Côté, O’Bonsawin and Moreau JJ concurring).

⁴¹ Ibid 271 [211] (Karakatsanis and Martin JJ, Côté, O’Bonsawin and Moreau JJ concurring), quoting *Alberta v Hutterian Brethren of Wilson Colony* [2009] 2 SCR 567, 594 [48] (McLachlin CJ, Binnie, Deschamps and Rothstein JJ agreeing).

⁴² *Taylor v Newfoundland and Labrador* (2026) 510 DLR (4th) 195, 271 [212] (Karakatsanis and Martin JJ, Côté, O’Bonsawin and Moreau JJ concurring).

⁴³ Ibid 272 [213] (Karakatsanis and Martin JJ, Côté, O’Bonsawin and Moreau JJ concurring).

⁴⁴ *Alberta v Hutterian Brethren of Wilson Colony* [2009] 2 SCR 567, 609 [85] (McLachlin CJ, Binnie, Deschamps and Rothstein JJ agreeing).

⁴⁵ *Spence v Queensland* (2019) 268 CLR 355, 417 [96] (Kiefel CJ, Bell, Gageler and Keane JJ).

⁴⁶ *McCloy v New South Wales* (2015) 257 CLR 178, 251 [197] (Gageler J), 261–2 [233] (Nettle J); *Brown v Tasmania* (2017) 261 CLR 328, 421–2 [288] (Nettle J), 463 [422] (Gordon J).

⁴⁷ 564 US 786 (2011).

Constitution is so great that the law is ‘presumptively unconstitutional’.⁴⁸ As the Court noted, that means ‘there are all sorts of “problems” ... that cannot be addressed by governmental restriction of free expression: for example the problem of encouraging anti-Semitism’.⁴⁹ But the ‘judgment [of] the American people’ reflected in the First Amendment is ‘that the benefits of its restrictions on the Government outweigh the costs’.⁵⁰

32. In that fundamentally different constitutional setting, the Supreme Court went on to reject California’s argument that it was entitled to make a ‘predictive judgment’ without evidence of a ‘direct causal link between violent video games and harm to minors’.⁵¹ However, it should be noted that the correlative evidence relied upon by California was relatively weak.
33. More recently, the Sixth Circuit Court of Appeals distinguished *Brown* in *NetChoice LLC v Yost*,⁵² a First Amendment challenge to an Ohio law restricting access to social media accounts for children under 16. The Court held the evidence of potential harm to children presented by social media was more compelling than the evidence of harm presented in *Brown*.⁵³ As Batchelder J said in her concurring judgment (cf **NetChoice fn 64**), ‘[e]ven accepting that this evidence of correlation does not amount to proof of causation, two factual issues undermine’ reliance on *Brown*.⁵⁴

First, a major hurdle to studying the relationship between social-media use and minors’ mental-health outcomes resides with the social-media companies themselves ... Second, one particular adverse effect of minors’ use of social media—addiction—is an intentional element of some social-media platforms’ designs.

⁴⁸ *Brown v Tasmania* (2017) 261 CLR 328, 368 [120] (Kiefel CJ, Bell and Keane JJ), quoting *Reed v Town of Gilbert, Arizona*, 576 US 155, 163 (2015) (Thomas J for the Court). Or as Scalia J put it in *Brown v Entertainment Merchants Association*, strict scrutiny is ‘a demanding standard’ and it is ‘rare’ that a law will satisfy it: 564 US 786, 799 (2011).

⁴⁹ *Brown v Entertainment Merchants Association*, 564 US 786, 801 fn 8 (2011) (Scalia J for the Court).

⁵⁰ *Ibid* 792 (2011) (Scalia J for the Court), quoting *United States v Stevens*, 559 US 460, 470 (2010).

⁵¹ *Brown v Entertainment Merchants Association*, 564 US 786, 799–800 (2011) (Scalia J for the Court). Compare at 806 (Alito J, concurring) and 855 (Breyer J, dissenting), both giving greater latitude to the ‘judgment of legislators, who may be in a better position than we are to assess the implications of new technology’.

⁵² 180 F 4th 268 (6th Cir, 2026).

⁵³ *Ibid* 289–90 (6th Cir, 2026) (Clay J, lead opinion).

⁵⁴ *Ibid* 300 (6th Cir, 2026) (Batchelder J, concurring).

34. Accordingly, the Ohio law passed strict scrutiny. Notably, the evidence presented in *Yost* was not dissimilar from the credible risks of harm disclosed by the Special Case in this case.⁵⁵
35. In any event, strict scrutiny in the United States demands a ‘degree of certitude’⁵⁶ that cannot be translated to the Australian context. The standard of evidence required in *Brown* comes from an entirely different constitutional universe.⁵⁷ For that reason, the other US District Court cases relied upon by NetChoice that have applied *Brown* provide no assistance in determining this case (cf **NetChoice [31]-[34]**),

E. Conclusion

36. The questions in the Special Case should be answered in the way proposed by the defendants (**DS in Reddit [53]-[54]**).

PART V: Time estimate

37. It is estimated that Attorney-General for Queensland will require 15 minutes for oral argument.

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⁵⁵ Ibid 276–7 (6th Cir, 2026) (Clay J, lead opinion).

⁵⁶ *Brown v Entertainment Merchants Association*, 564 US 786, 801 fn 8 (2011) (Scalia J for the Court).

⁵⁷ See authorities collected in fn 2 on the difference between the First Amendment and the implied freedom.

ANNEXURE TO SUBMISSIONS FOR THE ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND (INTERVENING)

Pursuant to *Practice Direction No. 1 of 2024*, this annexure sets out the constitutional provisions, statutes and statutory instruments referred to in these submissions.

No.	Description	Version	Provisions	Reason for providing version	Applicable date or dates
Australian legislation					
1.	<i>Commonwealth Constitution</i>	Current	ss 7, 24, 41, 128	In force at all relevant times	All relevant times
2.	<i>Commonwealth Electoral Act 1918</i> (Cth)	Current	s 93(1)(a)	Illustrative purposes	Current
3.	<i>Commonwealth Electoral Act 1973</i> (Cth)	As enacted	s 3	Illustrative purposes	As at 1973
4.	<i>Commonwealth Electoral (War-time) Act 1943</i> (Cth)	As enacted	s 4	Illustrative purposes	As at 1943
5.	<i>Commonwealth Franchise Act 1902</i> (Cth)	As enacted	s 3	Illustrative purposes	As at 1902
6.	<i>Online Safety Act 2021</i> (Cth)	Current	s 63D	Currently in force	All relevant times
International legislation					
7.	<i>Canada Act 1982</i> (UK) c 11, sch B, pt I (' <i>Canadian Charter of Rights and Freedoms</i> ')	Current	s 1	Illustrative purposes	Current
8.	<i>United States Constitution</i>	Current	First Amendment	Illustrative purposes	Current