



HIGH COURT OF AUSTRALIA

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

S166/2025

BETWEEN:

REDDIT, INC.
Plaintiff

and

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COMMONWEALTH OF AUSTRALIA
First Defendant

MINISTER FOR COMMUNICATIONS
Second Defendant

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

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PART I: CERTIFICATION

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

PARTS II & III: INTERVENTION

2. The Attorney-General for the State of Tasmania (**Tasmania**) intervenes pursuant to s 78A of the *Judiciary Act 1903* (Cth) in support of the Defendants.

PART IV: SUBMISSIONS

A. SUMMARY OF ARGUMENT

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3. Tasmania's submissions are limited to whether Part 4A of the *Online Safety Act 2021* (Cth) (**Act**) is invalid because it impermissibly burdens the implied freedom of political communication (Question 2 of the Special Case).
4. Tasmania adopts the submission of the Defendants as to the material facts (**DS [4]-[10]**) and as to the implied freedom (**DS [18]-[51]**) and makes additional submissions regarding:
 - (a) identifying the purpose of the impugned provisions;
 - (b) the legitimacy of that purpose; and

- (c) justification of the measures adopted by the law to achieve its purpose.

B. THE IMPLIED FREEDOM

5. The implied freedom is a limit on legislative and executive power that invalidates a law which impermissibly burdens the freedom of communication on political and governmental matters.¹ A law will be invalid if it “so burdens the freedom of communication on governmental or political matters that the impugned law may be taken to affect the system of government for which the *Constitution* provides”.² It is the impact upon and protection of that system which is of primary importance. In considering whether the restriction on legislative power has been infringed, ongoing attention should therefore be given to the underlying rationale for the implied freedom.
6. It is also to be recalled that the implied freedom “extends only so far as is necessary to preserve and protect the system of representative and responsible government mandated by the Constitution”.³ Therefore, when considering whether a law unjustifiably burdens the implied freedom, the question is directed at “the law’s effect on political communication *as a whole*”.⁴
7. When viewed with regard to those fundamental considerations, it is apparent that the burden on the freedom which is alleged by the Plaintiff (and accepted by the Defendants) to exist in this case, should be characterised as slight and indirect. It should also be assessed in light of the domain of legislative choice of elected representatives to enact laws which they consider appropriate, provided that they fall within the legislative power of Parliament.
8. The test to be used in assessing whether the implied freedom of political communication has been infringed was recently described in *Hopper v State of Victoria*:⁵

¹ *Farmer v Minister for Homes Affairs* (2025) 99 ALJR 1408 at 1421 [37] (Gageler CJ, Gordon and Beech-Jones JJ).

² *Farmer v Minister for Homes Affairs* (2025) 99 ALJR 1408 at 1421 [37] (Gageler CJ, Gordon and Beech-Jones JJ).

³ *Comcare v Banerji* (2019) 267 CLR 373 at 395-396 [20] (Kiefel CJ, Bell, Keane and Nettle JJ); *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 at 567 (Brennan CJ, Dawson, Toohey, Gaudron, McHugh, Gummow and Kirby JJ).

⁴ *Comcare v Banerji* (2019) 267 CLR 373 at 395-396 [20] (Kiefel CJ, Bell, Keane and Nettle JJ) (emphasis in original).

⁵ *Hopper v State of Victoria* (2026) 100 ALJR 582 at 592 [27] (Gageler CJ, Gordon, Jagot and Beech-Jones JJ).

Whether an impugned law is invalid for impermissibly burdening the implied freedom of political communication falls to be assessed by reference to three well-established questions: (1) Does the impugned law effectively burden freedom of communication about governmental or political matters in its terms, operation or effect? (2) Is the purpose of the law legitimate, in the sense that it is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government? (3) Is the impugned law reasonably appropriate and adapted to advance that purpose in a manner that is compatible with the maintenance of that constitutionally prescribed system of government?

9. Even if the law significantly restricts the ability of age-restricted users (Australian children who have not yet reached 16 years of age)⁶ to engage in political communication (which we say it does not), Part 4A of the Act will not infringe the implied freedom of political communication “unless it has a material unjustified effect on political communication as a whole”.⁷

C. IDENTIFICATION OF PURPOSE

10. It having been accepted by the Defendants that the law imposes a burden on the implied freedom (**DS [2]**; **SCB 80**), and assuming the Court agrees,⁸ before proceeding to the next steps in the justification analysis it is necessary to identify the law’s purpose. The purpose of a law is what the law is designed to achieve in fact or the mischief which the law is designed to address.⁹ It has also been described as “the public interest sought to be protected and enhanced” by the law.¹⁰
11. Identifying that purpose is a matter of statutory construction,¹¹ to be ascertained from the “whole text and context”.¹²

⁶ *Online Safety Act 2021* (Cth) s 5.

⁷ *Comcare v Banerji* (2019) 267 CLR 373 at 395-396 [20] (Kiefel CJ, Bell, Keane and Nettle JJ).

⁸ *Unions NSW v State of New South Wales* (2023) 277 CLR 627 at 645 [33] (Kiefel CJ, Gageler, Gordon, Gleeson and Jagot JJ).

⁹ *McCloy v State of New South Wales* (2015) 257 CLR 178 at 232 [132] (Gageler J); *Brown v State of Tasmania* (2017) 261 CLR 328 at 363 [101] (Gageler J); *Farmer v Minister for Homes Affairs* (2025) 99 ALJR 1408 at 1424 [54] (Gageler CJ, Gordon and Beech-Jones JJ).

¹⁰ *Brown v State of Tasmania* (2017) 261 CLR 328 at 392 [209] (Gageler J); *Cunliffe v The Commonwealth* (1994) 182 CLR 272 at 300 (Mason CJ); *Ravbar v The Commonwealth* (2025) 99 ALJR 1000 at 1019 [41] (Gageler CJ).

¹¹ *Unions NSW v State of New South Wales* (2013) 252 CLR 530 at 557 [50] (French CJ, Hayne, Crennan, Kiefel and Bell JJ); *Brown v State of Tasmania* (2017) 261 CLR 328 at 362 [96] (Kiefel CJ, Bell and Keane JJ), 391-392 [208] (Gageler J).

¹² *Ravbar v The Commonwealth* (2025) 99 ALJR 1000 at 1019-1020 [43] (Gageler CJ), 1043-1044 [173] (Edelman J); *Brown v State of Tasmania* (2017) 261 CLR 328 at 391-392 [208] (Gageler J); *Alexander v Minister for Home Affairs* (2022) 276 CLR 336 at 382 [114]-[117] (Gageler J).

12. As the plurality recently said in *Hopper*:¹³

The identification of the purpose of a law is a process of construction. The purpose should be identified at a higher level of generality than the meaning of the words of the provision, focusing instead on the “mischief” to which the provisions are directed.

13. Although the object of Part 4A of the Act, as expressed in s 63B, is “to reduce the risk of harm to age-restricted users from certain kinds of social media platforms”, Tasmania agrees with the Defendants’ more refined statement of purpose “as 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” (**DS [26]**).

14. In that regard, the extrinsic materials (**SCB 1107-1168**) related to the amendments which introduced Part 4A into the Act are part of the relevant context in which the Act is to be construed.¹⁴

15. Mitigation of the of risk harm was referred to in the Explanatory Memorandum at **SCB 1112** where it was said:

Regulating the act of having an account will prevent age-restricted users from accessing the content and features that are available to signed-in account holders on social media platforms. This will help to mitigate the risks arising from harmful features that are largely associated with user accounts, or the ‘logged-in’ state, such as persistent notifications and alerts which have been found to have a negative impact on sleep, stress levels, and attention.

16. Further, in the Statement of Compatibility with Human Rights (**SCB 1119**), the right to freedom of opinion and expression was specifically addressed:

10. The proliferation of harms to children and young people on certain social media platforms is of significant concern, both in Australia and internationally. To date, despite significant pressure from governments, parents, children and child-rights advocates, many social media platforms have not demonstrated a balanced approach to the promotion of the best interests of children who access their services over commercial interest.

11. The measures in this Bill have been designed with the best interests of the child in mind. By introducing a new definition of ‘age restricted social media services’ with proposed carve outs through legislative rules for services that support connection, learning and health, this Bill targets services that employ

¹³ *Hopper v State of Victoria* (2026) 100 ALJR 582 at 595 [45] (Gageler CJ, Gordon, Jagot and Beech-Jones JJ).

¹⁴ *Acts Interpretation Act 1901* (Cth) s 15AB.

the most harmful features for young users, while maintaining access to less harmful digital services to reduce the risk of isolating young people.

17. It is apparent that the legislature sought to balance the connectivity and creative outlet offered by social media, with its addictive nature and ease of access to extreme content (**SCB 1123**).
18. Contrary to the Plaintiff's suggestion that the Defendants have identified the purpose by reference to the *Online Safety (Age Restricted Social Media Platforms) Rules 2025* (Cth) (**the Rules**) (**PS [40]**), it is apparent that the Defendants plainly rely upon the design features independently of the fact that they are also described in the Rules. We consider that the Defendants have not sought to identify and define the purpose by reference to the Rules, but by reference to the design features noted in the extrinsic materials. The reference to the Rules in the Defence (**SCB 80 [28.9]**) is clarified in the Defendants' statement of purpose in **DS [26]**.
19. Further, as a matter of construction, there is nothing in the text or context of the Act to suggest that the purpose of Part 4A of the Act is to restrict children who have not yet reached 16 years of age from engaging in political communication.

D. LEGITIMACY OF PURPOSE

20. For the reasons provided by the Defendants (**DS [27]**) and as accepted by the Plaintiff (**PS [39]**) the purpose of the law in reducing the risk of harm to age-restricted users from the use of certain accounts is compatible with the system of representative and responsible government provided for by the Constitution.¹⁵
21. Although raised under the heading of "Legitimate Purpose", the Plaintiff's argument at **PS [40]-[41]** does not relate to the legitimacy of the purpose but arguably relates to either the identification of the purpose, the operation and effect of the law or the means employed to give effect to that purpose.

¹⁵ *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 at 561-2, 567; *Brown v State of Tasmania* (2017) 261 CLR 328 at 363-364 [102]-[104] (Kiefel CJ, Bell and Keane JJ); *Ravbar v The Commonwealth* (2025) 99 ALJR 1000 at 1073 [310] (Gleeson J). See also *McCloy v State of New South Wales* (2015) 257 CLR 178 at 203 [31]; *LibertyWorks Inc v The Commonwealth* (2021) 274 CLR 1 at 22 [45] (Kiefel CJ, Keane and Gleeson JJ); *Farm Transparency International Ltd v State of New South Wales* (2022) 227 CLR 537 at 552 [29] (Kiefel CJ and Keane J), 562 [66] (Gageler J).

22. The compatibility of the law's *purpose* with the maintenance of the constitutionally prescribed system of representative and responsible government is not to be confused with the law's *operation* and *effect*.¹⁶ The *purpose* of the law is also distinct from the *means* utilised to give effect to that purpose.¹⁷
23. The effect that the operation of Part 4A of the Act has upon the ability of age-restricted users to engage in political communication therefore cannot be equated with its statutory purpose. Nor should the analysis of whether a law is "reasonably appropriate and adapted" in the second stage be "disguised in conclusions about statutory purposes".¹⁸ Similarly, the *means* of achieving that purpose (here the imposition of the obligation on providers by s 63D of the Act) ought not be confused with the purpose itself: "it is important to separate the means adopted by a law from the end that it is designed to pursue".¹⁹
24. Therefore, whilst the Plaintiff accepts that the purpose of Part 4A of the Act is a legitimate purpose (**PS [39]**), the argument that the purpose is narrowed by the operation of the Rules (**PS [41]**) should be rejected. The Rules are made for the purposes of Part 4A of the Act. As a form of delegated legislation, they cannot have a different purpose to the enabling legislation (and, in that sense, it is agreed that the stream cannot rise above its source: **PS [41]**). However, the Rules do not operate to narrow the purpose of Part 4A, nor do they "depart from or vary the plan which the legislature has adopted to attain its ends".²⁰ Rather, they support and give effect to the implementation of the statutory purpose of Part 4A of the Act (**DS [26]**).
25. The Plaintiff does not seek to challenge the validity of the Rules as exceeding the rule-making power. If there is a point being made about the Rules being *ultra vires* the rule-making power, that point will not fall to be decided as part of the Plaintiff's constitutional challenge.

¹⁶ *Brown v State of Tasmania* (2017) 261 CLR 328 at 362 [100] (Kiefel CJ, Bell and Keane JJ), 416 [277] (Nettle J); *Farm Transparency International Ltd v State of New South Wales* (2022) 277 CLR 537 at 553-554 [34] (Kiefel CJ and Keane J); *McCloy v State of New South Wales* (2015) 257 CLR 178 at 205 [40] (French CJ, Kiefel, Bell and Keane JJ).

¹⁷ *Hopper v State of Victoria* (2026) 100 ALJR 582 at 595 [45] (Gageler CJ, Gordon, Jagot and Beech-Jones JJ).

¹⁸ *Brown v State of Tasmania* (2017) 261 CLR 328 at 432 [322] (Gordon J).

¹⁹ *Brown v State of Tasmania* (2017) 261 CLR 328 at 432 [322] (Gordon J).

²⁰ *Shanahan v Scott* (1957) 96 CLR 245 at 250 (Dixon CJ, Williams, Webb and Fullagar JJ).

E. JUSTIFICATION

26. Assuming the legitimacy of the purpose, the next question is whether Part 4A of the Act is reasonably appropriate and adapted to advance that legitimate purpose in a manner which is compatible with the maintenance of the constitutionally prescribed system of government which the implied freedom exists to protect.²¹ The nature and extent of the burden is relevant to the consideration of that issue.²²
27. Tasmania adopts the Defendants' submissions regarding justification (**DS [28]-[51]**) and says that they have discharged their onus²³ of establishing that the burden is justified. The following additional submissions are made.

10 ***Nature and extent of the burden***

28. A law which burdens the freedom of political communication in a direct manner or which regulates the content as distinct from the mode of communication will be harder to justify.²⁴
29. Contrary to the Plaintiff's submission that the burden is both "direct and very substantial" (**PS [38]**), the burden is not "direct" but incidental. It is not directed to and does not target political communication as such. In *Australian Capital Television Pty Ltd v The Commonwealth*,²⁵ the distinction was made between "restrictions on communication which target ideas or information and those which restrict an activity or mode of communication by which ideas or information are transmitted."²⁶ In this case, the burden is indirect because it restricts a mode of communication and not the political communication itself. A burden which restricts the mode of communication is more susceptible of justification.²⁷ Similarly, in *Wotton v State of Queensland*²⁸ the distinction was made between laws which "incidentally restrict political communication, and laws

²¹ *Hopper v State of Victoria* (2026) 100 ALJR 582 at 595-596 [49] (Gageler CJ, Gordon, Jagot and Beech-Jones JJ).

²² *Ravbar v The Commonwealth* (2025) 99 ALJR 1000 at 1053 [213] (Edelman J); *Brown v State of Tasmania* (2017) 261 CLR 328 at 367 [118] (Kiefel CJ, Bell and Keane JJ), 456 [397] (Gordon J); *Tajjour v State of New South Wales* (2014) 254 CLR 508 at 580-581 [151] (Gageler J).

²³ *Unions NSW v State of New South Wales* (2023) 277 CLR 627 at 644 [31], 645 [33] (Kiefel CJ, Gageler, Gordon, Gleeson and Jagot JJ).

²⁴ *Hogan v Hinch* (2011) 243 CLR 506 at 555-556 [95]-[96] (Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ).

²⁵ *Australian Capital Television Pty Ltd v The Commonwealth* (1992) 177 CLR 106.

²⁶ *Australian Capital Television Pty Ltd v The Commonwealth* (1992) 177 CLR 106 at 143 (Mason CJ).

²⁷ *Australian Capital Television Pty Ltd v The Commonwealth* (1992) 177 CLR 106 at 143 (Mason CJ).

²⁸ *Wotton v State of Queensland* (2012) 246 CLR 1.

which prohibit or regulate communications which are inherently political or a necessary ingredient of political communication.”²⁹ The burden upon communication was said to be more readily satisfied if the law falls into the former rather than the latter category.³⁰ In this case, the burden clearly falls into the former category as an incidental restriction on political communication.

30. Any effect on political communication arising from Part 4A of the Act is an incidental or indirect effect of the requirement in s 63D for providers of age-restricted social media platforms to take reasonable steps to prevent age-restricted users from having accounts. The burden arises indirectly as a result of the legitimate purpose of seeking to protect children from certain harms presented by the use of social media.³¹
31. Nor, as the Plaintiff claims, is the burden “very substantial”. It should be characterised, as the Defendants submit, as “modest in extent” (**DS [19]-[24]**). The burden therefore does not require the stronger level of justification that is required for a direct or substantial burden.³²
32. The requirement on providers of certain kinds of social media platforms to prevent age-restricted users from having accounts with those platforms involves “some restrictions on the flow and dissemination of ideas and information”³³ both to and from young people and other individuals including to and between young people (**PS [26]**). However, Part 4A of the Act does not prevent political communication by, to and from young people and is not targeted towards the content of political communications. It simply restricts a mode or activity (being the use of a social media platform) by which that political communication might take place.

²⁹ *Wotton v State of Queensland* (2012) 246 CLR 1 at 16 [30] (French CJ, Gummow, Hayne, Crennan and Bell JJ).

³⁰ *Wotton v State of Queensland* (2012) 246 CLR 1 at 16 [30] (French CJ, Gummow, Hayne, Crennan and Bell JJ). See also *Australian Capital Television Pty Ltd v The Commonwealth* (1992) 177 CLR 106 at 143 (Mason CJ), 169 (Deane and Toohey JJ); *McCloy v State of New South Wales* (2015) 257 CLR 178 at 268 [252] (Nettle J); *Ravbar v The Commonwealth* (2025) 99 ALJR 1000 at 1080 [341] (Jagot J).

³¹ *Farmer v Minister for Homes Affairs* (2025) 99 ALJR 1408 at 1424-1425 [57] (Gageler CJ, Gordon and Beech-Jones JJ); *Hopper v State of Victoria* (2026) 100 ALJR 582 at 595-6 [49] (Gageler CJ, Gordon, Jagot and Beech-Jones JJ).

³² *Brown v State of Tasmania* (2017) 261 CLR 328 at 369 [128] (Kiefel CJ, Bell and Keane JJ), 389 [200] (Gageler J).

³³ *Australian Capital Television Pty Ltd v The Commonwealth* (1992) 177 CLR 106 at 143 (Mason CJ).

Onus and existence of facts

33. There is no doubt that it is for the Defendants to satisfy the Court of the existence of facts on which the Defendants' justification for the burden depends.³⁴

34. In *Unions NSW v State of New South Wales*,³⁵ Kiefel CJ, Bell and Keane JJ said:

It must of course be accepted that Parliament does not generally need to provide evidence to prove the basis for legislation which it enacts. However, its position in respect of legislation which burdens the implied freedom is otherwise. ... [T]he Parliament may have choices but they have to be justifiable choices where the implied freedom is concerned.

10 35. The Plaintiff argues that there is an absence of facts justifying the law (**PS [63]**) and that as a result the Commonwealth cannot therefore discharge its onus to justify the burden. They assert that the only facts before the Court relate to online platforms with particular design features irrespective of whether a user has an account and 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*". The Plaintiff argues that there is a disjunct between the purpose of the law in reducing harm, the facts put forward to justify the law, and the means adopted to achieve that purpose by banning accounts (**PS [61]**). Tasmania supports the submissions of the Defendants in addressing that argument (**DS [32]-[37]**) which point to the identified risks associated with the design features of online platform services which meet the criteria and the practical consequences of preventing children
20 from holding an account on those services.

36. The Plaintiff also says that there is nothing in the Special Case that links identified risks to Reddit specifically (**PS [62]**). However, Reddit is not itself the direct subject of the law (as distinct from all providers of age-restricted social media platforms (**ARSMPs**). It is not a constitutional requirement to justify the burden by reference to facts which apply to all potential applications and subjects of the law.

37. Tasmania submits that the existence of facts on which the Commonwealth's justification for the burden depends are well articulated by the Defendants (**DS [4]-[7]**). The

³⁴ *Unions NSW v State of New South Wales* (2023) 277 CLR 627 at 644 [31], 645 [33] (Kiefel CJ, Gageler, Gordon, Gleeson and Jagot JJ); *Hopper v State of Victoria* (2026) 100 ALJR 582 at 595-6 [49] (Gageler CJ, Gordon, Jagot and Beech-Jones JJ).

³⁵ *Unions NSW v State of New South Wales* (2019) 264 CLR 595 at 616 [45] (Kiefel CJ, Bell and Keane JJ).

Defendants’ factual references at **DS [4]-[7]** provide “an adequate factual foundation for the justification”³⁶ advanced for the burden on the freedom.

38. Further, the Special Case identifies a number of specific risks of harm and refers to peer-reviewed research which considers the causes of those harms. (**SC [333]-[377]; SCB 188-204**). Described as credible risks, those identified harms include that:

- (a) the use of social media platforms causes people to become addicted to using social media, with particular vulnerabilities identified in children and adolescents (**SC [334], [343]-[344]**);
- (b) frequent use of screen media, including social media platforms, by adolescents causes alterations in adolescent brain development (**SC [346]**);
- (c) extended use of social media platforms can negatively impact the sleep of children under 16 years of age by reducing sleep duration and increasing sleep disruption (**SC [349]**);
- (d) frequent use of social media platforms by children under 16 increases the likelihood that children will develop mental health conditions, and children with existing mental health conditions will become clinically worse (**SC [354]-[355]**);
- (e) the use of social media is associated with reductions in attention span, and more pronounced procrastination, among children and adolescents (**SC [360]-[361]**);
- (f) the frequent use of social media is associated with intensification of attention deficit/hyperactivity disorder (ADHD) symptoms in children under 16 years of age (**SC [366]-[367]**); and
- (g) certain design features of social media, namely endless feed, autoplay and the use of systems to select and recommend content that will engage the use, exacerbate the symptoms of children with disordered eating (**SC [372]**).

39. The Plaintiff contends that the identified risks of harm do not justify the burden because “[t]here is no scientific consensus about whether there is a causal link between social

³⁶ *Spence v State of Queensland* (2019) 268 CLR 355 at 417 [95] (Kiefel CJ, Bell, Gageler and Keane JJ).

media use and particular harms which are said to be associated with social media use and, assuming that a causal link exists, what pathway any such causal link takes” (PS [57]). Additionally, the Plaintiff contends that “the risks that have been identified are wholly unquantified” and “[i]n the absence of that quantification, it is impossible for the Court to determine whether the direct and substantial burden is calibrated to the nature of the risk.” (PS [58]). A similar point is made by NetChoice: “A recurring feature of successful challenges to State laws curtailing minors’ access to social media is the lack of any sufficient evidentiary foundation justifying the burden” (NetChoice [29]).

- 10 40. Tasmania agrees with the Defendants’ contention that “[t]he absence of a precise numerical estimate of the probability of each harm does not render that assessment impossible or the justification of preventative measures dependent upon further research” and that “Parliament may act prophylactically upon reasonable inferences supported by an adequate factual foundation: *Spence v Qld* (2019) 268 CLR 355, at 417 [95]-[96]” (DS [30]). As the eSafety Commissioner pointed out in the submission to the Inquiry into Social Media and Online Safety (SC [15]; SCB 90, 226), “we will never create a safer online world if we wait for things to go wrong and then react” (SCB 235).
- 20 41. It is recognised that parliaments make laws to shape behaviour and “can act prophylactically, by reference to possibilities and probabilities, as well as reactively”.³⁷ It is also accepted that “[i]t is not illogical or unprecedented for the Parliament to enact legislation in response to inferred legislative imperatives” and that “[m]ore often than not, that is the only way in which the Parliament can deal prophylactically with matters of public concern”.³⁸
42. In the Explanatory Memorandum to the amendment Bill which inserted Part 4A into the Act, the Government acknowledges and appreciates its role in responding to the impacts of social media that may be particularly detrimental to children and young people. The Government recognised that “protections put in place by platforms have not kept pace with the harms” and the appropriate response was to establish “an obligation firmly on social media platforms to take reasonable steps to prevent users under the minimum age from holding an account.” It was also said that “[s]afeguarding the health and wellbeing

³⁷ *Spence v State of Queensland* (2019) 268 CLR 355 at 499 [323] (Edelman J).

³⁸ *McCloy v State of New South Wales* (2015) 257 CLR 178 at 262 [233] (Nettle J); *Spence v State of Queensland* (2019) 268 CLR 355 at 417 [96] (Kiefel CJ, Bell, Gageler and Keane JJ), 499 [323] (Edelman J).

of the youngest users of social media platforms requires a strong regulatory response from the Australian Government” (SCB 1109).

43. Part of the material taken into account during the Government’s consultation process³⁹ and the parliamentary inquiries (SC [14]-[21]) included the September 2024 *Report of the Independent Legal Examination into Banning Children’s Access to Social Media*, authored by Mr Robert French AC (**French Report**), referred to at SC [19]-[21], [23] and included at SCB 802-1078. The French Report refers⁴⁰ to the United States Surgeon General Advisory entitled “Social Media and Youth Mental Health” (**Advisory**) issued in 2023.⁴¹ The Surgeon General comprehended the potential risks of harm from excessive social media use, and said in the Advisory:⁴²

Excessive and problematic use of social media can harm children and adolescents by disrupting important healthy behaviors. Social media platforms are often designed to maximize user engagement, which has the potential to encourage excessive use and behavioral dysregulation.

44. The Surgeon General acknowledged that “[p]olicymakers play an important role in addressing the complex and multifaceted issues related to social media use and in protecting youth from harm” and recommended, *inter alia*, that policies be pursued “that further limit access—in ways that minimize the risk of harm—to social media for all children, including strengthening and enforcing age minimums” (SCB 1094).

45. Heeding that warning and drawing on further research, the Government acted proactively and protectively of young Australians by setting a minimum age for users to hold a social media account. In the Explanatory Memorandum, the Government referred to there being “currently no clear and agreed age at which children can safely use social media”, but that the exposure of social media to the brain development of children aged between 11 and 15 years of age “warrants additional scrutiny. A minimum age of 16 allows access to social media after young people are outside the most vulnerable adolescent stage” (SCB 1109-1110).

³⁹ Explanatory Memorandum, Online Safety Amendment (Social Media Minimum Age) Bill 2024 (Cth); SCB 1115-1116.

⁴⁰ SC [21]; SCB 846, 861-864.

⁴¹ SCB 1080-1104.

⁴² SCB 1087.

46. **Suitability**

47. Part 4A of the Act is rationally connected to the legitimate purpose which is sought to be achieved. The means which the legislature has chosen (the obligation on providers of certain social media platforms to take reasonable steps to prevent Australian children who have not yet reached 16 years of age from holding accounts) is capable of advancing that purpose. Parliament may act on credible risks by passing legislation to address those risks prophylactically. There is no constitutional principle which demands that Parliament must wait for harm to be proven through scientific evidence before it is able to respond to that risk. The legislative response to the particular risks posed by social media platforms as identified by the Defendants (**DS [6]**) is not an “inexplicable choice”⁴³ but one based on “credible” risks relied upon and agreed to by Parliament and supported by National Cabinet.⁴⁴
- 10
48. The Plaintiff points to a lack of efficacy of the law in support of its contention that the law is not rationally connected to its purpose (**PS [46], [51]-[56]**). However, the efficacy of the law is irrelevant to the question as to whether the law is connected to its legitimate purpose. Legislative measures will rarely, if ever, meet their purpose in a perfect manner. Likewise, the making of a law does not guarantee that its purpose will be fulfilled. But that does not mean that such laws are ineffective or disconnected from their purpose. The irrelevance of inefficiency was referred to by Nettle J in *McCloy*:⁴⁵
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- As Hayne J explained in *Tajjour*, once it is seen that an impugned law is rationally connected to a legitimate end, it logically follows that the impugned law is capable of realising that end, and it is neither possible nor appropriate to attempt assessment of the efficacy of the impugned law in realising the desired end.
49. In any event, the effectiveness of Part 4A of the Act is clear. According to the Statement of Claim, in “the first half of December 2025, access to 4.7 million accounts identified as belonging to children under 16 was removed by” age-restricted social media platforms (**SOC [24]; SCB 69**).⁴⁶ The law clearly pursues its purpose by restricting exposure of

⁴³ *Brown v State of Tasmania* (2017) 261 CLR 328 at 370 [130] (Kiefel CJ, Bell and Keane JJ).

⁴⁴ SC [22]-[32]; SCB 94-96.

⁴⁵ *McCloy v State of New South Wales* (2015) 257 CLR 178 at 262 [234] (Nettle J).

⁴⁶ According to paragraph 24 of the Defence, the Defendants admit that such access was “removed or restricted” (**SCB 77**).

children who have not yet reached 16 years of age to social media risks associated with holding accounts with the noted design features.

50. Otherwise, Tasmania adopts the Defendants' submissions [29]-[44] on the rational connection of the law to its purpose.

51. **Necessity**

52. Whilst there are no doubt many alternative approaches which might be put forward to address the law's purpose, there is no clear evidence that a different method which is significantly less burdensome on the implied freedom⁴⁷ would be "equally practicable"⁴⁸ in fulfilling that purpose and which is "obvious and compelling".⁴⁹ Even if another measure could achieve the same purpose, its "mere existence ... will not be sufficient for a conclusion of lack of justification".⁵⁰

53. In a system of representative democracy, there must be some latitude for parliamentary choice in determining how to implement the policy underpinning the statute in question, hence an alternative and equally effective measure must also be obvious and compelling.⁵¹ That is not to say that deference must be given to Parliament.⁵² Nevertheless, the legislature has a "domain of selections"⁵³ available to it in choosing the means by which to achieve a legitimate statutory purpose. That domain has been described as "comprising those provisions which fulfil the legislative purpose with the least harm to the implied freedom".⁵⁴

⁴⁷ *Comcare v Banerji* (2019) 267 CLR 373 at 401-402 [35] (Kiefel CJ, Bell, Keane and Nettle JJ).

⁴⁸ *Farm Transparency International Ltd v State of New South Wales* (2022) 277 CLR 537 at 557 [46] (Kiefel CJ and Keane J).

⁴⁹ *Farm Transparency International Ltd v State of New South Wales* (2022) 277 CLR 537 at 557 [46] (Kiefel CJ and Keane J).

⁵⁰ *Farm Transparency International Ltd v State of New South Wales* (2022) 277 CLR 537 at 557 [46] (Kiefel CJ and Keane J).

⁵¹ *LibertyWorks Inc v The Commonwealth* (2021) 274 CLR 1 at 78-79 [202] (Edelman J).

⁵² *Unions NSW v State of New South Wales* (2019) 264 CLR 595 at 616-617 [51] (Kiefel CJ, Bell and Keane JJ).

⁵³ *Unions NSW v State of New South Wales* (2019) 264 CLR 595 at 616-617 [47] (Kiefel CJ, Bell and Keane JJ).

⁵⁴ *Unions NSW v State of New South Wales* (2019) 264 CLR 595 at 616-617 [47] (Kiefel CJ, Bell and Keane JJ).

54. Tasmania otherwise adopts the Defendants’ analysis regarding the absence of an obvious or compelling alternative which is equally practicable and less burdensome than the means contained in Part 4A of the Act (**DS [45]-[51]**).

55. **Adequate in the balance**

56. If a law is suitable and necessary, it will be adequate in its balance unless the benefit sought to be achieved by the law is manifestly outweighed by its adverse effect on the implied freedom.⁵⁵

57. The benefits sought to be achieved in reducing harm to children posed by the noted design features are not manifestly outweighed by any adverse effect on the implied freedom.⁵⁶ When the impact of the law on the system of government is considered “as a whole”, it is clear that any adverse effect is minor compared to the benefits to be attained through the protection of children. The impugned law is adequate in its balance.

58. **An administrative law issue?**

59. The Plaintiff argues (in the alternative) that it is not an ARSMP within the meaning of s 63C(1)(a) because it is not a sole or significant purpose of Reddit to enable online social interaction between two or more end-users (**SOC [29]; SCB 70**). To the extent to which the Plaintiff seeks to distinguish itself from other platforms identified by the eSafety Commissioner as being subject to Part 4A of the Act (**PS [22]**), those arguments do not appear to relate to the questions of law reserved for the opinion of the Full Court (**SCB 218**) but to the Plaintiff’s alternative argument that it is not an ARSMP (**SOC [29]; SCB 70**). It is therefore not apparent how they are relevant to the matters presently before the Court.

⁵⁵ *Farm Transparency International Ltd v State of New South Wales* (2022) 277 CLR 537 at 560 [55] (Kiefel CJ and Keane J); *Comcare v Banerji* (2019) 267 CLR 373 at 402-403 [38] (Kiefel CJ, Bell, Keane and Nettle JJ); *LibertyWorks Inc v The Commonwealth* (2021) 274 CLR 1 at 34 [85] (Kiefel CJ, Keane and Gleeson JJ).

⁵⁶ *Comcare v Banerji* (2019) 267 CLR 373 at 402-403 [38] (Kiefel CJ, Bell, Keane and Nettle JJ).

Part V: ESTIMATE OF TIME

60. It is estimated that Tasmania will require no more than 10 minutes for the presentation of oral argument.

Dated 9 October 2026



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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

S166/2025

BETWEEN:

REDDIT, INC.
Plaintiff

and

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COMMONWEALTH OF AUSTRALIA
First Defendant

MINISTER FOR COMMUNICATIONS
Second Defendant

**ANNEXURE TO INERVENER'S SUBMISSIONS (ATTORNEY-GENERAL FOR
THE STATE OF TASMANIA)**

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No.	Description	Version	Provision(s)	Reasons for providing this version	Applicable date(s)
1.	<i>Acts Interpretation Act 1901</i> (Cth)	Current	s 15A	Currently in force	All relevant times
2.	<i>Online Safety Act 2021</i> (Cth)	Current	s 5, Part 4A, s 233	Currently in force	All relevant times
3.	<i>Online Safety (Age Restricted Social Media Platforms) Rules 2025</i> (Cth)	Current	rr 4A, 5	Currently in force	Since 26 March 2026 (r 4A); all relevant times (r 5)
4.	<i>Online Safety (Age Restricted Social Media Platforms) Amendment Rules 2026</i> (Cth)	As made	Sch 1 cl 1	Amended the 2025 Rules	26 March 2026