HIGH COURT OF AUSTRALIA

NOTICE OF FILING

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Details of Filing

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Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN: **REDDIT, INC.**
Plaintiff

and

COMMONWEALTH OF AUSTRALIA
First Defendant

MINISTER FOR COMMUNICATIONS
Second Defendant

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

and

COMMONWEALTH OF AUSTRALIA
First Defendant

ESAFETY COMMISSIONER
Second Defendant

MINISTER FOR COMMUNICATIONS
Third Defendant

OUTLINE OF ORAL SUBMISSIONS OF THE ATTORNEY GENERAL FOR NEW SOUTH WALES, INTERVENING

PART I: CERTIFICATION

1. This outline of oral submissions is in a form suitable for publication on the internet.

PART II: PROPOSITIONS TO BE ADVANCED

2. Reddit submits that where a risk of harm is unquantified, the Court could not be satisfied that a direct and substantial burden on the implied freedom is justified (Reddit Subs at [58]; Reddit Oral Outline at [16.a]) or at least that, in this case, the Court could not be satisfied that the identified risks are sufficiently serious to justify the burden occasioned by the impugned provisions (Transcript at 71.3121). Neither proposition should be accepted.

3. Where legislating to avoid or mitigate a risk of harm, a legislature may act prophylactically, including in response to "felt necessities" and "inferred legislative imperatives" (NSW Subs S166/2025 at [16]-[18]): *McCloy v New South Wales* (2015) 257 CLR 178 (JBA Tab 27) at [197] (Gageler J), [233] (Nettle J); *Spence v Queensland* (2019) 268 CLR 355 (JBA Tab 32) at [96] (Kiefel CJ, Bell, Gageler and Keane JJ), [323] (Edelman J).

4. Determination of whether a law is reasonably appropriate and adapted to advance its identified purpose does not necessitate a precise or fine balancing of the burden imposed by the law against the importance of the public interest sought to be advanced by the law, such that the likelihood of the risk of harm must be quantified (NSW Subs S166/2026 at [21]-[22]).

    a. The justification is assessed against the law's purpose, ascertained objectively by reference to the whole statutory text and context: *Ravbar v Commonwealth* (2025) 99 ALJR 1000 (JBA Tab 54) at [41], [43] (Gageler CJ), [117]-[121] (Gordon J), [172]-[174] (Edelman J), [370] (Jagot J), [459] (Beech-Jones J).

    b. The question is not the correct balance of the law or how a particular balance ought to be struck (NSW Subs S166/2026 at [20]): *Clubb v Edwards* (2019) 267 CLR 171 (JBA Tab 19) at [66] (Kiefel CJ, Bell and Keane JJ), [199] (Gageler J), [270] (Nettle J), [495]-[497] (Edelman J). The question is whether the burden is manifestly excessive by comparison to the demands of the identified legislative purpose.

5. The Commonwealth's burden can be discharged by pointing to the credible risk of what Reddit accepts is a "serious harm", even if the likelihood of that harm eventuating cannot be identified.

6. The harm here is significant, potentially enduring, and affects a large and vulnerable segment of the population (see Cth Subs S166/2026 at [6]). The burden here is not manifestly excessive compared to the importance of addressing that credible risk of serious harm.

Dated: 4 November 2026

Zelie Heger Eleanor Jones