HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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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

OUTLINE OF ORAL SUBMISSIONS OF THE ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND

Filed on behalf of the Attorney-General for the State of Queensland 4 November 2026

PART I: Internet publication

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

PART II: Propositions to be advanced in oral argument

Burden on implied freedom is modest and incidental

2. When determining the scope of the burden imposed by s 63D of the *Online Safety Act 2021* (Cth), it is relevant that much of its impact on the free flow of communication is not an impact on the free flow of communication capable of bearing on electoral choice.

3. **Impact on *posting* information:** Section 63D prevents children from posting using an account on certain social media platforms. But much of what they post is not political in nature: **SC [308.5]; Book of Docs referred to in Further Particulars of SC, vol 2, tab 34, 854**. Some posts by children are viewed by other children who are also not eligible to vote. Some posts by children may be viewed by adults and bear on their electoral choice, but the isolated examples in the Special Case suggest they are the exception: **SC [313]**. Moreover, children are still able to engage in political communication by other means, eg, by using messaging apps, attending protests, speaking to journalists and writing books: **SCB vol 4, 1344, 1358–9;** compare *Farmer* (2025) 99 ALJR 1408, 1461 [252] (Jagot J) (**JBA vol 9, tab 42, 3386**). In assessing the impact on the free flow of political communication generally, the counterfactual is not a world in which engaged children no longer communicate at all; it is a world in which they continue to do so by other means.

4. **Impact on *receipt* of information:** Section 63D impacts the ability of children to receive information using an account on certain social media platforms. It does not prevent children from receiving information other than through such an account. In any event, much of the information children receive on social media is not political in nature: **SC [308.3]; SCB vol 3, 853–4**. Moreover, children are not eligible to vote and do not take part in the direct choice by "the people" in ss 7 and 24 of the Constitution. Though children will become voters in the future, any burden will have ceased by the time they become eligible to vote: **QS [10]–[18],** cf **PS in Reddit [26]; Reply in Reddit [3]**.

To the extent s 63D is ineffective, it does not burden the implied freedom

5. 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, not that it imposes an unjustified burden. In

the circumstances of this case, 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*. **QS [19]–[24]**, cf **PS in Reddit [51]–[56]; PS in DFP [43]; Reply in Reddit [17]**.

6. Reddit says that a law that imposes a burden on its face must be justified even if it does not impose a burden in practice: **Transcript, 3/11/26, p 69, lines 3053–5**. But to the extent there is no effective burden, there is nothing to justify.

Scientific proof of harm is not required

7. The legislature is faced with "credible risks"—that is, "real possibilities"—of serious harm to children from exposure to social media: **SC [333]–[377]**. In precisely those circumstances, the legislature is entitled to act prophylactically in accordance with the precautionary principle, "which emphasises proactive harm mitigation in the face of scientific uncertainty".

   - 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, 1712**)

8. The reasonably appropriate and adapted test must be applied in a way that recognises the constitutional reality that Parliament is not required to wait for scientific proof before acting: **QS [25]–[35]**, cf **PS in Reddit [57]; PS in DFP [44]; Reply in Reddit [10]**.

   - *Spence v Queensland* (2019) 268 CLR 355, 417 [96] (Kiefel CJ, Bell, Gageler and Keane JJ), 499–500 [323] (Edelman J) (**JBA vol 7, tab 32, 2700, 2782–3**)
   - *Taylor v Newfoundland and Labrador* (2026) 510 DLR (4th) 195, 270–2 [208]–[214] (**JBA vol 11, tab 55, 4185–7**)
   - Compare *Brown v Entertainment Merchants Association*, 564 US 786, 799–802 (2011) (**JBA vol 9, tab 39, 3226–9**)
   - *NetChoice LLC v Yost*, 180 F 4th 268, 276–7, 289–90 (Judge Clay), 300 (Judge Batchelder, concurring) (6th Cir, 2026) (**JBA vol 10, tab 48, 3790–1, 3803–4, 3814**).

Dated: 4 November 2026.

G J D Del Villar **Kent Blore**