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:

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

COMMONWEALTH OF AUSTRALIA
First Defendant

ESAFETY COMMISSIONER
Second Defendant

MINISTER FOR COMMUNICATIONS
Third Defendant

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN:

REDDIT, INC.
Plaintiff

COMMONWEALTH OF AUSTRALIA
First Defendant

MINISTER FOR COMMUNICATIONS
Second Defendant

OUTLINE OF ORAL SUBMISSIONS OF THE ATTORNEY-GENERAL FOR THE STATE OF VICTORIA (INTERVENING)

PART I INTERNET PUBLICATION

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

PART II PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

Assessing the second step of the *Lange* analysis

1. The level of scrutiny to be applied by the Court in determining whether a law which effectively burdens the implied freedom of political communication is reasonably appropriate and adapted to a constitutionally legitimate purpose is informed by the nature and importance of that purpose.

    - **Vic [40]**; cf **Reddit Reply [10]**; *McCloy v New South Wales* (2015) 257 CLR 178 at [45], [47], [84], [93], [365] (**JBA 5 / 27**); *Babet v Commonwealth* (2025) 99 ALJR 883 at [48] (**JBA 9 / 38**); *Farmer v Minister for Home Affairs* (2025) 99 ALJR 1408 at [250] (**JBA 9 / 42**).

2. The nature and importance of the purpose of Pt 4A of the *Online Safety Act 2021* (Cth) is relevantly guided by: the vulnerability of the class of persons sought to be protected; the time-sensitivity of the harm; and the multifaceted and serious nature of the harm.

3. The level of scrutiny to be applied by the Court is also informed by the respective institutional roles of the legislature and the judiciary. It is the role of Parliament, drawing on its representative function, to identify and evaluate risks, community concerns and policy alternatives, and to engage in legislative design. The role of the Court is to determine the constitutional validity of the outcome of that process of legislative design.

    - **Vic [38]-[39]**; *McCloy v New South Wales* (2015) 257 CLR 178 at [233] (**JBA 5 / 27**); *Brown v Tasmania* (2017) 261 CLR 328 at [282] (**JBA 4 / 18**); *Irwin Toy Ltd v Quebec* [1989] 1 SCR 927 (**JBA 10 / 46**).

4. In a context such as the present, it is sufficient that there is a reliable basis, on the materials before it, for the Court to conclude that the law has a constitutionally legitimate purpose and is reasonably appropriate and adapted to that purpose.

    - **Vic [40]-[41], [43]**.

Relevance of First Amendment jurisprudence

5. The United States cases relied on by Reddit in its oral submissions are distinguishable, having regard, among other things, to the focus of the First Amendment on the protection

of personal speech rights compared to the focus of the implied freedom on maintaining the constitutionally prescribed system of representative government.

- *Brown v Entertainment Merchants Association*, 564 US 786 (2011) (**JBA 9 / 39**); *Packingham v North Carolina*, 582 US 98 (2017) (**JBA 10 / 50**); **Vic [10]-[37]**.

Dated: 4 November 2026



Alistair Pound SC **Priyanka Banerjee**