HIGH COURT OF AUSTRALIA

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Details of Filing

File Number:	S166/2025
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Important Information

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

S166/2025

BETWEEN: **REDDIT, INC.**
Plaintiff

and

COMMONWEALTH OF AUSTRALIA
First Defendant

MINISTER FOR COMMUNICATIONS
Second Defendant

PLAINTIFF'S OUTLINE OF ORAL ARGUMENT

PART I INTERNET PUBLICATION

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

PART II PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

The impugned legislation and its legislative history (PS [5]-[11])

2. Prior to the introduction of Pt 4A (**JBA Vol 1 Tab 4**), no Parliamentary inquiry recommended a social media minimum age, and the eSafety Commissioner advocated against it (**SC [14]-[18]**; **SCB Vol 1, pp 253, 256-259**; **SCB Vol 2, pp 339, 768-771**).

3. Part 4A was the product of an expedited legislative process of a kind apt to lead to ill thought out, overbroad legislation (**SC [22]-[34]**).

4. Reddit commenced this proceeding having been identified by the Commissioner as a service which would be captured once Pt 4A commenced (**SC [35]-[38], [41]-[43]**; **SCB Vol 3, p 1142**). It was not until three months after Reddit commenced this challenge that the Commissioner inserted rule 4A into the Rules (**JBA Vol 2 Tab 7**). The premise of the extrinsic materials is that Pt 4A, as enacted, is not clearly targeted at the features the Defendants say are associated with a risk of harm (**JBA Vol 12 Tab 58**).

5. Reddit is not confined to challenging Pt 4A in its operation with rule 4A (**Reply [2]**). *First*, the purpose of the Act cannot be limited by the content of rule 4A. *Secondly*, it is impossible to partially disapply the operation of Pt 4A *only* insofar as it reflects rule 4A. *Thirdly*, on the Defendants' view, Reddit would be subject to the Act without rule 4A.

6. It is open to the Commonwealth to try to enact a more targeted law, reflecting rule 4A, just as it is proposing to do by the Digital Duty of Care Bill (**JBA Vol 12 Tab 61**).

The nature and extent of the burden (PS [12]-[38]; Reply [3]-[7])

7. There are major differences between Reddit and the other platforms the Commissioner treats as subject to Pt 4A (**SC [52]-[104]**, cf **[105]-[255]**; **SCB Vol 3, pp 1205, 1220**).

8. Prior to the introduction of Pt 4A, young people engaged in political communication on the platforms in a qualitatively and quantitatively very significant manner (**SC [306]-[328]** (cf **[46]-[49]**); **SCB Vol 4, pp 1297, 1318, 1340**; **SCB Vol 5, pp 1407, 1420**).

9. The burden imposed by Pt 4A is intense, requiring commensurately intense scrutiny:

   a. The facial effect of the law is that young people cannot have accounts on social media platforms, and so cannot use them to communicate their views (**PS [26]**).

b. In a qualitative sense, the nature of the burden is very substantial, given the central importance of social media to political engagement in Australia, particularly for young people, and its role as a means of communicating with a mass audience.

c. In a quantitative sense, the extent of the burden is also very substantial.

d. The burden cannot be downplayed by submitting that Pt 4A "only" applies during a "limited period" of adolescence.

e. Private choices by platforms to impose age restrictions or parental supervision arrangements are radically different from a government prohibition, and do not provide a constitutional baseline upon which to test any incremental burden.

f. That the duty is imposed upon platforms, and not young people, is immaterial.

g. There is an additional practical burden insofar as it affects persons over 16 who are unable or unwilling to comply with age verification requirements.

The purpose is correctly stated in the Act (PS [39]-[32]; Reply [8]-[9])

10. The purpose of Pt 4A is accurately described in s 63B: to reduce the risk of harm to those aged under 16 from certain kinds of social media, being the platforms captured by s 63C.

11. The purpose cannot legitimately be to reduce the risk of harm to those aged under 16 from the features specified by rule 4A (**SCB Vol 3, p 1129**). Nor can it legitimately be to "influence social norms" in relation to access to social media (cf **DS [41]**).

The burden is not justified (PS [43]-[73]; Reply [10]-[19])

12. The Defendants' justification focusses on the identification of risks of harm associated with particular "design features" of social media platforms (**DS [5]-[6]**).

13. If the purpose of the law is as outlined at [10] above, there is a fundamental mismatch between the purpose of the law and the justification the Commonwealth advances. Even if the purpose of the law is as the Commonwealth submits, the Commonwealth cannot justify the burden on the freedom on the basis of pursuit of that purpose.

14. However the purpose is described, Pt 4A is incapable of addressing the identified risks.

a. Prohibiting young people from holding an account does not provide protection from risks to which they are in any event exposed without an account (**PS [46]**).

b. Part 4A is so underinclusive of the sources of the risks on which the Defendants rely as to suggest either that the law does not pursue its purpose at all, or that it does so in an ill-adapted way (**SC [350], [355], [368]**).

c. Part 4A removes access to measures which assist in protecting young people, because they are only available to account holders, and removes parents' ability to supervise their children's social media use (**SC [269]-[274]**).

15. Part 4A is also in practice ineffective to address the risks on which the Defendants rely.

a. Age verification technology has serious limitations (**SC [379]**; **SCB Vol 6, pp 1820, 1823, 1828-1829, 1838, 1846, 1926, 1998, 2083, 2100, 2103**).

b. Age verification can easily be bypassed (**SC [388]**; **SCB Vol 3, pp 1191, 1194**; **SCB Vol 7, pp 2454, 2457-2458**).

c. The serious, practical ineffectiveness of the law is not fairly excused as simply "some instances of non-compliance" (**SCB Vol 7, p 2435**).

16. The risks the Defendants have identified are incapable of justifying the burden.

a. The degree and magnitude of the "credible risks" or "associations" relied upon by the Defendants are unknown, and so cannot justify an extensive burden (**SC [329]**).

b. The blanket prohibition imposed by Pt 4A is unjustifiable in light of the significant differences between platforms, and particularly Reddit (**SC [337], [339], [348], [349.2], [353], [357], [361.2], [364], [365], [367.2], [371], [375]**).

c. A "precautionary approach" does not justify ignoring a gross mismatch between the risks about which one wants to be cautious and the measures taken to address them.

d. Overseas decisions have grappled with similar issues, leading to findings of invalidity: French Constitutional Council Decision No 2026-911 DC (**JBA Vol 9, Tab 40**); *Brown*, 564 US 786 (2011) (**JBA Vol 9, Tab 39**).

17. There are alternatives to Pt 4A which would achieve the purpose to the same or a similar extent (**PS [66]-[73]; Reply [18]-[19]; NetChoice [14]**). The Commonwealth could:

a. regulate the relevant design features directly;

b. mandate that a young person may only have an account if it is capable of being supervised or controlled by a parent or guardian (see **SC [404]-[418]**);

c. regulate the content that is available to users under 16; and/or

d. limit Pt 4A to platforms that can generally only be used with an account.

Date: 3 November 2026

Perry Herzfeld Jackson Wherrett Olivia Ronan