

HIGH COURT OF AUSTRALIA

BEECH-JONES J

DAWN KELLY

PLAINTIFF

AND

THE COMMONWEALTH OF AUSTRALIA & ANOR

DEFENDANTS

[2026] HCASJ 2

Date of Judgment: 11 February 2026

C1 of 2026

ORDERS

- 1. The matter be remitted to the Federal Court of Australia, pursuant to section 44(1) of the Judiciary Act 1903 (Cth).*
- 2. The matter continue in the Federal Court of Australia as if the steps in this Court were taken in the Federal Court of Australia.*
- 3. The Registrar of this Court provide to the proper officer of the Federal Court of Australia copies of all documents filed in this Court.*
- 4. The costs of the proceedings in this Court to date be costs in the Federal Court of Australia.*
- 5. The plaintiff's applications filed on 19 and 27 January 2026 and 6 February 2026 are refused.*
- 6. The costs in this Court, including the costs of any taking out of this order, be according to the scale applicable to proceedings in this Court and thereafter to the scale applicable in the Federal Court of Australia and in the discretion of that court.*

Representation

The plaintiff is unrepresented

The defendants are represented by Australian Government Solicitor

1 BEECH-JONES J. These proceedings seek to challenge aspects of Pt 4A of the
2 *Online Safety Act 2021* (Cth) ("the Safety Act"). For the reasons that follow the
3 proceedings will be remitted to the Federal Court of Australia.

Background

2 On 8 December 2025, pursuant to r 6.07.2 of the *High Court Rules 2004*
(Cth), Jagot J directed the Registrar to refuse to issue or file a proposed application
3 for constitutional or other writ prepared by the applicant, Ms Kelly, without the
leave of a Justice of this Court. That application appeared to seek various forms of
urgent relief against the "Minister for Communications and Sport" ("the Minister")
in relation to Pt 4A of the Safety Act as amended by the *Online Safety Amendment*
(*Social Media Minimum Age*) Act 2024 (Cth).

3 Pt 4A including ss 63C and 63D were inserted into the Safety Act by the
Online Safety Amendment (Social Media Minimum Age) Act 2024 (Cth). In general
terms, s 63D states that a "provider of an age-restricted social media platform must
take reasonable steps to prevent age-restricted users having accounts with the age-
restricted social media platform". The term "age-restricted user" is "an Australian
child who has not reached 16 years".¹ Section 63C defines the term "age-restricted
social media platform".

4 Subsequently Ms Kelly sought leave pursuant to r 6.07.03 of the *High Court*
Rules to file her application. On 17 December 2025 Edelman J refused leave to
issue or file the application.² His Honour noted that the legal arguments in support
of the application were not easy to follow but his Honour was able to ascertain that
Ms Kelly's application raised "constitutional issues including the implied freedom
of political communication".³ In refusing leave, His Honour noted that Ms Kelly's
application and her affidavit in support did not provide any basis to establish her
standing to bring the proposed application⁴ and that the application was otherwise
"confused, unclear and raise[d] questions of fact".⁵

1 *Online Safety Act 2021* (Cth), s 5 (definition of "aged-restricted user").

2 *In the matter of an application by Dawn Kelly for leave to issue or file* [2025]
HCASJ 48.

3 *In the matter of an application by Dawn Kelly for leave to issue or file* [2025]
HCASJ 48 at [4].

4 *In the matter of an application by Dawn Kelly for leave to issue or file* [2025]
HCASJ 48 at [5].

5 *In the matter of an application by Dawn Kelly for leave to issue or file* [2025]
HCASJ 48 at [6].

5 On or around 7 January 2026 Ms Kelly attempted to file another application in the form of a writ of summons in this Court. This writ named the Commonwealth of Australia and the Minister as defendants and sought declaratory relief in respect of ss 63C and 63D and injunctive relief against the Minister on the basis that those provisions "impermissibly contravene the implied freedom of political communication" or are otherwise in "in direct conflict" with the *Privacy Act 1988* (Cth) ("the Privacy Act claim"). The proposed writ also sought orders against (unidentified) "platform providers" from doing anything that undermines any relief granted (the "platform providers claim"). The proposed writ sought to address why Ms Kelly had standing to bring the proceedings notwithstanding that ss 63C and 63D preclude or restrict the ability of persons under 16 years of age to access social media platforms and Ms Kelly is an adult.

6 Before the writ was accepted for filing it was referred to me as practice judge by the Registrar pursuant to r 6.07.01 of the *High Court Rules*. However, I declined to make an order under r 6.07.02 that the writ not be filed without the leave of a Justice of this Court. Even though the proposed writ was and is deficient in numerous respects, I was not satisfied that on its face it appeared to be an abuse of the process of the Court, frivolous or vexatious or to fall outside the jurisdiction of the Court.⁶

7 As the writ was to be filed, I directed the parties to file submissions in relation to whether the proceedings should be remitted to the Federal Court of Australia. The defendants indicated that they did not oppose remittal, but did not file written submissions. Ms Kelly filed written submissions strenuously opposing remittal.

8 On or around 19 January 2026, Ms Kelly filed an additional application seeking injunctive relief against the Minister from giving effect to ss 63C and 63D, until the validity of those provisions is conclusively determined by a Court (and ancillary injunctive relief against the "platform providers"). On 27 January 2026, Ms Kelly filed a further application seeking an order that the Court "immediately proceed" to hear her claim for injunctive relief against the Minister and seeking a declaration that the power of remittal conferred by s 44 of the *Judiciary Act 1903* (Cth) was invalid in so far as it applied to claims for urgent injunctive relief. However the application for the declaration of the partial invalidity of s 44 of the *Judiciary Act* was ultimately not pressed.

The Plaintiff's Proceedings and Other Proceedings

9 That part of Ms Kelly's writ which addresses her standing asserts that she engages in "online political satire and critique of government policies", "public protesting and running for public office" and was a candidate for a seat in the

6 See, eg, *Re Young* (2020) 94 ALJR 448 at 451 [11]; 376 ALR 567 at 570.

3.

House of Representatives. Ms Kelly contends that she has a "special interest" in the subject matter of online political communication.⁷ These assertions and their connection to her having standing to challenge ss 63C and 63D of the Safety Act are otherwise not intelligibly elaborated upon, although it appears to be contended that since Ms Kelly's political advocacy is aimed at persons under the age of 16, she is affected by those provisions over and above that of other adult members of the population.

10 The balance of Ms Kelly's claim includes a contention that, "[a]lthough the provision under ss 63C and or 63D of the Online Safety Act are directed at the 16 and under age group, in truth the [Safety] Act in its practical operation or substance captures the adult population and has a greater and immediate effect upon" them. Sections 63C and 63D of the Safety Act are said to affect the adult population because adults are "required to digitally identify themselves in order to access internet platform providers or services", and because social media platforms will restrict "access to internet platforms for end-users who do not prove their age through digital identification such as a bank verified identification, a government document ... or facial recognition". No evidence has been adduced to support those claims. Ms Kelly further contends that ss 63C and 63D are disproportionate to any legitimate purpose those provisions seek to effectuate, and hence invalid.

11 With respect to the Privacy Act claim, Ms Kelly contends that the Safety Act requires that she "surrender [her] right to privacy", and thus is in conflict with certain provisions of the Privacy Act. Beyond that this claim is not particularised or explained. The platform providers claim is also not particularised.

12 Two other proceedings in this Court challenge the validity of Pt 4A of the Safety Act on the basis that Pt 4A is inconsistent with the implied freedom of political communication: *The Digital Freedom Project Incorporated (ABN 27 5000 105 086) & Ors v Commonwealth & Ors* (S163/2025) and *Reddit, Inc v Commonwealth & Anor* (S166/2025).

13 Matter S163/2025 was commenced by an incorporated association whose objects are pleaded to include promoting and protecting the participation of young Australians in public affairs and political communication, particularly online, as well by the litigation guardians of two persons under the age of 16. Matter S166/2025 was commenced by a company in circumstances where the Minister has indicated that she considers the company to be a platform provider bound by s 63D. None of the plaintiffs in matters S163/2025 and S166/2025 pursue the Privacy Act claim or seek relief against "platform providers".

7 See *Hobart International Airport Pty Ltd v Clarence City Council* (2022) 276 CLR 519 at 550 [65], 558-560 [86]-[91].

14 The Court has already made timetabling orders in matters S163/2025 and S166/2025 enabling the parties to attempt to agree a special case. Those orders record that, by 6 February 2026, the plaintiffs in those matters are to serve on the defendants a draft special case and any material proposed to be annexed to it.

The Power of Remittal

15 Section 44(1) of the *Judiciary Act* enables this Court of its own motion to remit "[a]ny matter other than a matter to which subsection (2) applies" which is pending before it to any Federal court, or court of a State or Territory, that has jurisdiction with respect to the subject-matter and the parties.

16 If particularised and established, the matters asserted by Ms Kelly in her writ might give her a sufficient interest to raise a justiciable controversy as to the validity of ss 63C and 63D.⁸ At this point that conclusion together with the balance of the claims in the writ are sufficient to give rise to a matter arising under the Constitution⁹ which is within the jurisdiction of the Federal Court.¹⁰ Thus the Federal Court is clearly a court with jurisdiction over the subject matter of these proceedings and the power of remittal is available to be exercised.

Should the power of remittal be exercised?

17 In *Ravenor Overseas Inc v Readhead* (1998) 152 ALR 416 at 417 [5]; 72 ALJR 671 at 672, Brennan CJ observed:

"The power of remitter contained in s 44 of the *Judiciary Act 1903* (Cth) is designed to ensure that this Court is not diverted from its principal functions by the need to hear and determine matters in the original jurisdiction which could properly be brought in an Australian trial court."

18 That approach involves both pragmatic and principled considerations. In *Lee v Commonwealth* (2012) 293 ALR 534 at 535 [6]; 87 ALJR 232 at 233 French CJ further observed that:

"Nor ... should this Court be diverted from its principal functions by the need to engage in intensive case management in order to ensure that a proceeding brought in this Court, and in respect of which it is sought to refer

8 See *Croome v Tasmania* (1996) 191 CLR 119 at 127; *Hobart International Airport Pty Ltd v Clarence City Council* (2022) 276 CLR 519 at 550 [65], 558-560 [86]-[91].

9 See *Croome v Tasmania* (1996) 191 CLR 119 at 125.

10 *Judiciary Act 1903* (Cth), s 39B(1A)(B), s 44(1).

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a case stated to the Full Court, is in an appropriate form and brought on an appropriate basis to support such a referral."

19 Both of these observations are directly applicable to these proceedings. Ms Kelly's writ is drafted in the form of submissions and not pleadings. The factual assertions made in the writ are discursive and it is unclear what facts are relied on to support the relief claimed. To the extent that relevant factual assertions can be identified, they are likely to be important in determining Ms Kelly's claim, including whether she can establish that she in fact has standing to seek the relief in question.¹¹ As noted other aspects of Ms Kelly's writ of summons, specifically the Privacy Act claim and the platform providers claim, are unparticularised. The failure to specify the identity of the platform providers against whom relief is sought and to join them as a party is a further defect.

20 It is clear that the proceedings require intensive case management before it can be determined whether there is a viable case suitable for determination by a court. Further, even if the proceedings or just the claim for injunctive relief was capable of proceeding to hearing, such claims might involve significant evidentiary disputes. For this Court to undertake both that case management, and then hear and determine those evidentiary disputes, would mean that the risks adverted to by Brennan CJ in *Ravenor*, namely of the Court being diverted from its principal functions and determining matters which could be heard in a trial court, would materialise.

21 Those case management considerations have stronger force in circumstances where the Court is managing, and in due course will hear, proceedings S163/2025 and S166/2025. Were this proceeding to remain in this Court, this proceeding would most likely have to be managed with those proceedings occasioning significant delay in S163/2025 and S166/2025 being heard and determined.

22 Ms Kelly's primary argument for opposing remittal is that a remitter "would create unnecessary delay and put in jeopardy the urgent remedy sought altogether in relation to the invalidity of the impugned scheme". However, the true cause of delay to date in the proceedings commenced by Ms Kelly is the form in which she has brought them. The history of the proceedings she has brought in this Court suggest that it is very unlikely that the deficient form of these proceedings will be corrected expeditiously.

11 *Australian Conservation Foundation v The Commonwealth* (1980) 146 CLR 493 at 530; *Bateman's Bay Local Aboriginal Land Council v Aboriginal Community Benefit Fund Pty Ltd* (1998) 194 CLR 247 at 282 [96]; *Hobart International Airport Pty Ltd v Clarence City Council* (2022) 276 CLR 519 at 550 [65], 558-560 [86]-[90].

23 Ms Kelly also contends that "the material facts" in issue "are uncontroversial". For the reasons just explained, it is difficult to identify those material facts and I am not satisfied that any such facts as applicable to her and her claims will be uncontested.

24 Otherwise, Ms Kelly contends that her writ raises arguments wider than the proceedings S163/2025 and S166/2025, in that her claim addresses "constitutional validity in relation to all age groups". The materials that Ms Kelly has filed do not satisfy me that this aspect of her case adds anything of substance to the contention that Pt 4A of the Safety Act or any provision within it is invalid. I am not satisfied that Ms Kelly has raised any issue warranting the retention of this case in this Court.

25 Accordingly, I will order the remittal of the matter to the Federal Court pursuant to section 44(1) of the *Judiciary Act*.

Application for Urgent Injunctive Relief

26 It follows from what I have stated that Ms Kelly's applications for urgent injunctive relief filed on 19 and 27 January 2026 are not in any proper state to be heard. I will refuse those applications, noting that Ms Kelly can renew that application in the Federal Court if she chooses.¹²

Further Application

27 On or about 4 February 2026 Ms Kelly filed a copy of a notice under s 78B of the *Judiciary Act* that she claims was provided to the Attorneys-General for the Commonwealth and the States, accompanied by an affidavit of service dated 6 February 2026. To the extent necessary I am satisfied that the Attorneys-General have had reasonable time to consider whether to intervene in these proceedings so far as the question of remittal is concerned.

28 On or about 6 February 2026 Ms Kelly filed an application seeking a hearing of another application for hearing of an urgent injunction referring to s 78B(5) of the *Judiciary Act*. That application will be dismissed for the same reason as Ms Kelly's applications dated 19 and 27 January 2026.

12 As to which, see, eg, *Castlemaine Tooheys Ltd v South Australia* (1986) 161 CLR 148; *Australian Capital Television Pty Ltd v Commonwealth* (1992) 66 ALJR 214; 104 ALR 389; *Government of the Russian Federation v Commonwealth* (2023) 97 ALJR 545; (2023) 410 ALR 223.

7.

Relief

29 I make the following orders:

1. The matter be remitted to the Federal Court of Australia, pursuant to section 44(1) of the *Judiciary Act 1903* (Cth).
2. The matter continue in the Federal Court of Australia as if the steps in this Court were taken in the Federal Court of Australia.
3. The Registrar of this Court provide to the proper officer of the Federal Court of Australia copies of all documents filed in this Court.
4. The costs of the proceedings in this Court to date be costs in the Federal Court of Australia.
5. The plaintiff's applications filed on 19 and 27 January 2026 and 6 February 2026 are refused.
6. The costs in this Court, including the costs of any taking out of this order, be according to the scale applicable to proceedings in this Court and thereafter to the scale applicable in the Federal Court of Australia and in the discretion of that court.