

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN:

REDDIT, INC.
Plaintiff

and

COMMONWEALTH OF AUSTRALIA
First Defendant

MINISTER FOR COMMUNICATIONS
Second Defendant

APPLICATION FOR A CONSTITUTIONAL OR OTHER WRIT

The plaintiff applies for the relief set out in Part I below on the grounds set out in Part II below.

PART I: ORDERS SOUGHT

1. A declaration that the *Online Safety Amendment (Social Media Minimum Age) Act 2024* (Cth) (**Amendment Act**) is invalid.
2. A writ of prohibition and/or an injunction restraining the second defendant (**the Minister**) from specifying the electronic service provided by the plaintiff (**Reddit**) as an “age-restricted social media platform” under s 63C(1)(b) of the *Online Safety Act 2021* (Cth) (**the Act**).
3. Alternatively, a declaration that Reddit is not an “age-restricted social media platform” under s 63C(1)(a).
4. Costs.

PART II: GROUNDS

5. As to prayers 1 and 2, the Amendment Act is invalid on the ground that it infringes the implied freedom of political communication.
6. As to prayer 3, it is not the sole purpose, or a significant purpose, of Reddit to enable online social interaction between two or more end-users, within the meaning of s 63C(1)(a)(i) of the Act.

PART III: REMITTAL

7. It is not appropriate that the matter be remitted for the following reasons.
8. *First*, the matter raises an important general question, namely whether the Amendment Act is invalid. That raises the question whether the Commonwealth Parliament can enact legislation — the first of its kind in the world — directed to banning persons under the age of 16 from using certain kinds of “social media”.
9. *Secondly*, the matter is unlikely to raise any contested questions of fact. The most significant factual matters will relate to (1) the nature of the electronic service Reddit provides and (2) the matters relied upon by the defendants to justify the enactment of the Amendment Act. It is likely that those matters can be appropriately dealt with through this Court’s special case procedure.
10. *Thirdly*, if the Amendment Act is valid, the remaining question whether Reddit is an “age-restricted social media platform” within the meaning of s 63C(1)(a) is a short point of characterisation that will be decided based on the agreed facts.

PART IV: FACTS

The Amendment Act

11. The Amendment Act inserted Part 4A into the Act. Under s 63D, “[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 defined to mean “an Australian child who has not reached 16 years” (s 5).
12. The term “age-restricted social media platform” is defined in s 63C. Sub-s (1) provides:

For the purposes of this Act, *age-restricted social media platform* means:

- (a) an electronic service that satisfies the following conditions:
 - (i) the sole purpose, or a significant purpose, of the service is to enable online social interaction between 2 or more end-users;
 - (ii) the service allows end-users to link to, or interact with, some or all of the other end-users;
 - (iii) the service allows end-users to post material on the service;
 - (iv) such other conditions (if any) as are set out in the legislative rules;
 - (b) an electronic service specified in the legislative rules;
- but does not include a service mentioned in subsection (6).

13. “Note 1” underneath this sub-section provides that “[o]nline social interaction does not include (for example) online business interaction”.
14. Thus, an “electronic service” can be an “age-restricted social media platform” either by satisfying the conditions set out in para (a) or by being “specified” in the legislative rules to which para (b) refers. Section 240 empowers the Minister to make such rules.
15. In relation to the first option, s 63C(2) provides that “[f]or the purposes of subparagraph (1)(a)(i), online social interaction includes online interaction that enables end-users to share material for social purposes”. A “note” underneath that sub-section provides that “[s]ocial purposes does not include (for example) business purposes”.
16. In relation to the second option, the Minister “may only make legislative rules specifying an electronic service for the purposes of paragraph (1)(b) if the Minister is satisfied that it is reasonably necessary to do so in order to minimise harm to age-restricted users” (s 63C(4)). Further, the Minister must seek advice from the eSafety Commissioner and have regard to that advice (and may seek advice from elsewhere) (s 63C(5)).

Reddit

17. Reddit is a website accessible at [reddit.com](https://www.reddit.com). It operates as a collection of public fora arranged by subject. Each forum, known as a “subreddit”, is focused on a particular topic (for example, “r/AustralianPolitics”). Subreddits are created and managed by “moderators”, who are volunteer users who have registered and created an account, and then taken the further step to create a subreddit, determine its topic, and establish subreddit-specific rules. In each subreddit, users with a registered Reddit account (“redditors”) can submit posts and respond to posts with comments. Logged-in redditors can also vote on posts and comments using an up arrow or a down arrow, known as “upvotes” and “downvotes”. Those votes affect the order in which the material is displayed within that subreddit. That is, the more upvotes the post has, the higher the post appears within the subreddit; conversely, the more downvotes the post has, the lower the post appears.
18. Reddit is a public website. Any person can access Reddit without creating or signing into a Reddit account. The posts displayed to a logged-out user are the most popular recent posts on Reddit. A logged-out user can click on any public post to open it. Clicking on the post will display the full post and the associated comment thread. The user can scroll through comments and follow links to other posts, subreddits or websites. However, a logged-out user

cannot post, comment, vote, join subreddits, use the chat function or act as a moderator of a subreddit.

19. Subreddits may be public, restricted, private or premium only. Most subreddits are public and can be viewed by anyone (whether or not the user is logged-in). Restricted subreddits are subreddits that are designated as such by their moderators. They can be viewed by anyone (whether or not the user is logged-in) but a user must be logged-in to post on a restricted subreddit and they must also be approved by the moderator of the subreddit. Private subreddits can be viewed only by members who are logged-in and who have been approved by the moderator of the subreddit. Premium only subreddits exist on older versions of the site and can be viewed only by Reddit Premium subscribers.
20. Reddit has a chat function that can be used only by logged-in users. The chat function allows users to direct message certain other users by sending a chat request, including to message moderators about the rules and governance of a subreddit.

PART V: ARGUMENT

Controversy

21. The Minister has made it clear that she thinks that Reddit is, and should be, subject to the obligations under Part 4A. In the Second Reading Speech for the Online Safety Amendment (Social Media Minimum Age) Bill 2024 (Cth), the Minister said that “the government expects that this broader definition will capture services that are commonly accepted to be social media”, which “will, at a minimum, include ... Reddit”. In addition, the eSafety Commissioner has taken the view that Reddit is an “age-restricted social media platform”. As noted above, the Minister is required by s 63C(5) to have regard to the eSafety Commissioner’s advice before exercising the power to specify a service as an age-restricted social media platform by legislative rules.
22. While Reddit has taken steps to satisfy the requirements of s 63D of the Act, its primary position is that the Amendment Act is invalid. If that is so, a declaration should be made to this effect and the Minister should be prohibited or restrained from specifying Reddit as an age-restricted social media platform by legislative rules as there would be no power to do so. Alternatively, if the Amendment Act is valid, the Court should declare that Reddit is not an age-restricted social media platform within the meaning of s 63C(1)(a).

The Amendment Act invalid on the basis of the implied freedom of political communication

The applicable test

23. The implied freedom of political communication is a qualified limitation on legislative power directed to ensuring that the people of the Commonwealth may “exercise a free and informed choice as electors”.¹ In summary, whether a law infringes the implied freedom is to be answered by: *first*, determining whether the law places an “effective burden” on political communication; and *secondly*, determining whether that burden is “justified”.² The question of “justification” involves both an identification of the purpose of the law — which must be “legitimate” in the sense that it must be compatible with the system of representative and responsible government — and an assessment of whether the law is “proportionate” (or “reasonably appropriate and adapted”) to achieve that purpose.³
24. For a time before the decision in *Babet v Commonwealth*,⁴ this Court routinely assessed whether the law is “reasonably appropriate and adapted” by determining whether the law is “suitable”, “necessary” and “adequate in its balance”.⁵ However, in *Babet*, a majority of the Court held that it is not always necessary to assess the second stage of the *Lange* test in this way: the determination of the second stage may be assisted by “[t]he flexible application of all or any of the steps of structured proportionality” as a “tool of analysis”.⁶ The persuasive burden to justify any restriction of the implied freedom falls on the defendant.⁷

Burden

25. A law will impose an effective burden upon political communication if “the effect of the law is to prohibit, or put some limitation on, the making or the content of political

¹ *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 at 567-568 (the Court).

² *Lange* (1997) 189 CLR 520 at 567-568 (the Court); *McCloy v New South Wales* (2015) 257 CLR 178 at [5], [69] (French CJ, Kiefel, Bell and Keane JJ), [130]-[131] (Gageler J).

³ *Lange* (1997) 189 CLR 520 at 562 (the Court); *LibertyWorks Inc v Commonwealth* (2021) 274 CLR 1 at [45]-[46] (Kiefel CJ, Keane and Gleeson JJ), [93] (Gageler J).

⁴ (2025) 99 ALJR 883.

⁵ See, eg, *Clubb v Edwards* (2019) 267 CLR 171 at [5]-[6] (Kiefel CJ, Bell and Keane JJ); *LibertyWorks* (2021) 274 CLR 1 at [46] (Kiefel CJ, Keane and Gleeson JJ), [93] (Gageler J), [134] (Gordon J), [200] (Edelman J), [247] (Steward J).

⁶ (2025) 99 ALJR 883 at [49] (Gageler CJ and Jagot J), [72] (Gordon J), [242] (Beech-Jones J).

⁷ *Ravbar v Commonwealth* (2025) 99 ALJR 1000 at [309] (Gleeson J) (and the cases cited there).

communications”.⁸ It is necessary to identify both the *nature* and *extent* of the burden, because while every burden must be justified, the extent of the burden informs the justification analysis (greater burdens requiring greater justification).⁹ In *Ravbar v Commonwealth*,¹⁰ Edelman J said that the burden “can be assessed by reference to dimensions of depth and width”, the former concerning “the intensity or focus of the effect of a law in constraining free political communication” and the latter concerning “the extent of the conduct which is constrained, including the number of people affected and the time and place where they are affected”.

26. The burden on the implied freedom in this case is both direct and substantial, or alternatively deep and wide. It is true that the Amendment Act does not impose requirements solely in respect of political communication. However, it prohibits *all* Australians under the age of 16 from engaging in *any* political communication on an “age-restricted social media platform” to the extent that such communication requires an account. The platforms affected by the Amendment Act are very large websites, with a very large number of users, on which political communication is very common. For those reasons, while it may be accepted that the Amendment Act only affects one “mode” of political communication,¹¹ the mode that is affected is an extremely important one in Australia in 2025. There are many subreddits dedicated to discussion of Australian political matters, as well as many other subreddits that promote or facilitate the discussion of Australian political matters. Further, it is a frequent occurrence for Australian politicians to come to Reddit specifically to engage in political dialogue with constituents.
27. It is well settled that the implied freedom can be burdened even where the relevant communication is not between electors: it protects “political communication *from* all and *to* all”.¹² In *Farmer v Minister for Home Affairs*,¹³ Gageler CJ, Gordon and Beech-Jones JJ said that “[t]he free flow of political communication is ‘not simply a two-way affair between

⁸ *Monis v The Queen* (2013) 249 CLR 92 at [108] (Hayne J); *Unions NSW v New South Wales* (2013) 252 CLR 530 at [119] (Keane J).

⁹ See *Ruddick v Commonwealth* (2022) 275 CLR 333 at [82] (Gageler J); *LibertyWorks* (2021) 274 CLR 1 at [63] (Kiefel CJ, Keane and Gleeson JJ); *Brown* (2017) 261 CLR 328 at [118], [128] (Kiefel CJ, Bell and Keane JJ), [200]-[202] (Gageler J), [291] (Nettle J), [411], [478] (Gordon J).

¹⁰ (2025) 99 ALJR 1000 at [230].

¹¹ Cf *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106 at 143.

¹² *Ravbar* (2025) 99 ALJR 1000 at [424] (Beech-Jones J).

¹³ (2025) 99 ALJR 1408 at [40] (emphasis added).

electors and government or candidates’; it extends to communication between electors and between electors *and other persons* who may seek to influence the ultimate choice of the people as to whom they elect as their representatives”. Steward J said that “the references in ss 7 and 24 of the Constitution to the ‘people’ are not limited to those entitled to vote in a federal election”.¹⁴ Gleeson J referred to the declaration in *Lange* that “each member of the Australian community has an interest in disseminating and receiving information, opinions and arguments concerning government and political matters that affect the people of Australia”.¹⁵

28. By reference to a hypothetical example raised by the facts of *Farmer*, both Edelman J and Jagot J held that an alien could, upon entry to Australia, challenge a condition on their visa restricting political communication on the basis of the implied freedom.¹⁶ If the freedom of political communication can be burdened by restrictions placed on an alien, it must be that it can be burdened by restrictions placed on Australian citizens who are not presently able to vote.
29. In the present case, the burden manifests in two different ways. *First*, it burdens political communication that may affect the choice to be made by any current elector. The political views of children inform the electoral choices of many current electors, including their parents and their teachers, as well as others interested in the views of those soon to reach the age of maturity. Preventing children from communicating their political views directly burdens political communication in Australia. *Secondly*, in the ordinary course, Australian citizens under the age of 16 will, within years if not months, become electors. The choices to be made by those citizens will be informed by political communication in which they engage prior to the age of 18.

Legitimate purpose

30. To be “legitimate” in the relevant sense, the purpose of a law that burdens political communication must be compatible with the constitutionally prescribed system of

¹⁴ (2025) 99 ALJR 1408 at [137], citing *Unions NSW v New South Wales* (2013) 252 CLR 530 at [144].

¹⁵ (2025) 99 ALJR 1408 at [175], see also [176]-[179].

¹⁶ (2025) 99 ALJR 1408 at [95], [237].

representative government.¹⁷ The object or purpose of a law “is what the law is designed to achieve in fact, which is akin to what mischief the law is designed to address”.¹⁸

31. The starting point is the object of Part 4A stated in s 63B of the Act.¹⁹ It states that the statutory object “is to reduce the risk of harm to age-restricted users from certain kinds of social media platforms”. That statement of statutory object is consistent with the purpose of the Amendment Act as articulated in the extrinsic material. The Explanatory Memorandum said that children and young people “are generally more vulnerable to the harms associated with platforms” and that the Amendment Act was to “[s]afeguard[] the health and wellbeing of the youngest users of social media platforms” (at 1). In the Second Reading Speech, the Minister referred to harmful content online “including drug abuse, suicide or self-harm, as well as violent material” and “content promoting unsafe eating habits”.²⁰ It is also consistent with s 63C(4), which provides that the Minister can only “specify” an electronic service under s 63C(1)(b) “if the Minister is satisfied that it is reasonably necessary to do so in order to minimise harm to age-restricted users”. Part 4A was also inserted into an Act whose title is the “Online Safety Act”. The plaintiff accepts that the purpose of the Act is accurately articulated in s 63B and is a legitimate purpose.²¹

Reasonably appropriate and adapted

32. However, the Amendment Act is not “reasonably appropriate and adapted” to achieve its legitimate purpose for the following reasons.
33. *First*, the only obligation imposed on providers of age-restricted social media platforms relating to the restriction of access to content on those platforms is to “take reasonable steps to prevent age-restricted users having accounts with” the platform (s 63D). The Amendment Act does not impose any obligation on providers to restrict access to content on the site that is accessible *without* an account. The Explanatory Memorandum made this clear in stating that “[t]he obligation would not affect user access to ‘logged-out’ versions of a social media platform” (at 4).

¹⁷ *Brown* (2017) 261 CLR 328 at [102]-[104] (Kiefel CJ, Bell and Keane JJ), [207] (Gageler J).

¹⁸ *Farmer* (2025) 99 ALJR 1408 at [54] (Gageler CJ, Gordon and Beech-Jones JJ).

¹⁹ See, eg, *Unions NSW v New South Wales* (2019) 264 CLR 595 at [79] (Gageler J); *Ruddick v Commonwealth* (2022) 275 CLR 333 at [133] (Gordon, Edelman and Gleeson JJ).

²⁰ Commonwealth of Australia, House of Representatives, *Hansard* (21 November 2024) 8270.

²¹ Cf *Monis v The Queen* (2013) 249 CLR 92 at [348]-[349] (Crennan, Kiefel and Bell JJ).

34. There are vast amounts of content on “age-restricted social media platforms” accessible without an account. Indeed, in Reddit’s case (assuming that it is an “age-restricted social media platform”), almost all of the content on the site is accessible without an account. At least some of that content is the kind the Amendment Act seeks to restrict persons under the age of 16 from accessing. The ability to access that content is not what was acknowledged in the Explanatory Memorandum as “the reality that some people will break the rules, or slip through the cracks” (at 3). It is the reality of how these sites work and how persons under the age of 16 will continue to be able to use them lawfully. In those circumstances, the Amendment Act will not provide significant protection from online harm for persons under the age of 16.
35. Indeed, a person under the age of 16 can be more easily protected from online harm if they have an account, being the very thing that is prohibited. That is because the account can be subject to settings that limit their access to particular kinds of content that may be harmful to them.
36. *Secondly*, as against the (at best) limited achievement of its purpose, the burden on the freedom is direct and substantial for the reasons set out above. In those circumstances, the obligation imposed by s 63D provides persons under the age of 16 (at best) limited protection from online harm at the cost of their ability to engage in political communication on the relevant platforms to the extent that such communication requires an account and the ability of others to engage with those political communications.
37. *Thirdly*, a law may not be proportionate if there is an obvious and compelling alternative which is equally practicable and would result in a lesser burden on political communication (referred to as “necessity” in the language of structured proportionality).²² An “obvious and compelling alternative” in the present case is a law that is limited to electronic services that can only be used with an account, or services where the substantial proportion of the functionality is accessible only with an account. That is, the law would exclude a service like Reddit where all of the content can be accessed irrespective of whether or not the user has an account. In the case of that alternative law, there would be a more rational connection between the law and its purpose, being to reduce the risk of harm to age-restricted users. In

²² *Comcare v Banerji* (2019) 267 CLR 373 at [35] (Kiefel CJ, Bell, Keane and Nettle JJ).

contrast, the reduction of risk of harm is minimal (at best) where the content is accessible to people without an account.

Reddit is not an “age-restricted social media platform” within the meaning of s 63C(1)(a)

38. If the Amendment Act is valid, Reddit is nonetheless not an “age-restricted social media platform” within the meaning of s 63C(1)(a) because it does not satisfy s 63C(1)(a)(i). That is because it is not the case that the sole purpose, or a significant purpose, of Reddit is to enable “online social interaction” between two or more end-users.
39. A court must strive to give effect to every word of a provision.²³ In the present case, the critical word in s 63C(1)(a)(i) that must be given effect is the word “social”. The condition is not satisfied merely because the sole purpose, or a significant purpose, of a service is to enable “online interaction” between 2 or more end-users. The condition requires the service to enable “online *social* interaction”.
40. The importance of the word “social” is confirmed by three matters of context. *First*, the separate condition in s 63C(1)(a)(ii) relevantly requires the service to allow end-users to “interact with” some or all of the other end-users. In other words, the provision itself draws a distinction between “social interaction” and “interaction”. *Secondly*, and relatedly, s 63C(1)(a)(i) refers to online social interaction “between” 2 or more end-users, while s 63C(1)(a)(ii) refers to end-users interacting “with” other end-users. The difference in preposition is deliberate. As a matter of ordinary language, the word “between” denotes a closer connection between the end-users than the word “with”. *Thirdly*, the inclusive definition of “online social interaction” in s 63C(2) does not refer merely to “online interaction that enables end-users to share material”. It refers to the sharing of material “for social purposes”. The “Note” refers non-exhaustively to “business purposes”, but the reference to “for social purposes” is clearly intended to exclude the sharing of material for any non-social purpose.
41. The Oxford English Dictionary (online) defines “social”, when used in the context of a “communication, interaction, an activity, etc”, as “[m]arked or characterized by friendliness, geniality, or companionship with others; enjoyed, taken, carried out, etc., in the company of others” (meaning 4.a.i). Consistent with that definition, the Dictionary defines “social”, when

²³ See *Commonwealth v Baume* (1905) 2 CLR 405 at 414 (Griffith CJ), 419 (O’Connor J); see recently *Palmanova Pty Ltd v Commonwealth* (2025) 99 ALJR 1362 at [65].

used in the context “[o]f a group of people, an organization, etc”, as “consisting or composed of people associated together for friendly interaction or companionship”, and when used in the context “[o]f a building or room”, as “used for communal and recreational activities; (also) characterized by friendly interaction” (meanings 3.b., 3.c.).

42. The Macquarie Dictionary (online) defines “social” to mean “relating to, devoted to, or characterized by friendly companionship or relations”, and “friendly or sociable, as persons or the disposition, spirit, etc.” (meanings 1 and 2).
43. Consistent with those dictionary definitions, the inclusion of the word “social” in the phrase “online social interaction” requires the service to enable persons to interact *in a social manner*, or in the language of s 63C(2), “for social purposes”. An “online social interaction” is an interaction between two users not simply as users but as people. The user engages in the interaction because of some relationship with or interest in the other user as a person.
44. It is not the sole or a significant purpose of Reddit to enable persons to interact “in a social manner”. Consistent with the discussion of the service provided by Reddit above, Reddit enables online interactions about the content that users post on the site. It facilitates knowledge sharing from one user to other users. It is not a significant purpose of the site to enable interactions engaged in because of a particular user’s relationship with or interest in another user as a person; indeed, in most cases the identity of a user on Reddit is not even known to other users. Reddit does not import contact lists or address books. The “upvote/downvote” functionality enables users to indicate how helpful they found *the information* that was posted by an end-user. It is not intended to be used as a way for users to express any view about the poster themselves. In this way, Reddit is significantly different from other sites that allow for users to become “friends” with one another, or to post photos about themselves, or to organise events.
45. It is true that there is a limited chat functionality for users of Reddit with an account. As noted above, the chat functionality is intended to enable communication between redditors, between redditors and moderators, between moderators themselves for the purpose of moderation, or for Reddit to be able to send messages to users. It is not intended to facilitate what would ordinarily be described as “social” messaging. In any event, that functionality cannot properly be characterised as a “significant” purpose of Reddit. A “significant” purpose means a purpose that is “‘significant in magnitude’, or ‘sufficiently large to be important’,

being a meaning not too distant from substantial””.²⁴ In this regard, the Explanatory Memorandum for the Online Safety Bill 2021 (Cth) stated in relation to s 13(1)(a)(i) — which is expressed similarly to s 63C(1)(a)(i) — that “[i]t is not intended that subparagraph (a)(i) would capture online games that have chat functionality (where the primary purpose of such a service would be to play the game)” (at 72). While “significant” (as used in s 63C(1)(a)(i)) is broader than “primary” (as used in s 13(1)(a)(i)), it still excludes incidental purposes. In the present case, even if Reddit enables communication between end-users, that is not a “significant purpose” of the service.

PART VI: COSTS

46. There is no reason an order for costs should not be made in favour of the defendants in the event that the application is refused.

PART VII: AUTHORITIES

47. None.

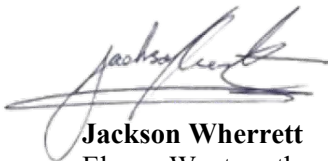
PART VIII: STATUTORY PROVISIONS

48. The Amendment Act is set out in Annexure A.

Dated: 12 December 2025



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TAKE NOTICE: Before taking any step in the proceedings you must, within **14 DAYS** after service of this application, enter an appearance and serve a copy on the applicant.

The plaintiff is represented by Thomson Geer.

²⁴ See, albeit in a different statutory context, *Australian Securities and Investments Commission v HCF Life Insurance Company Pty Ltd* [2024] FCA 1240 at [143] (Jackman J). See also *EMAAAS Pty Ltd v Mobil Oil Australia Ltd* [2000] QCA 513 at [25]-[27] (Thomas JA); *Jetstar Airways Pty Ltd v Free* [2008] VSC 539 at [104]-[105] (Cavanough J).