HIGH COURT OF AUSTRALIA

NOTICE OF FILING

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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. S166/2025

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. S163/2025

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 NORTHERN TERRITORY (INTERVENING)

Part I: Certification

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

Part II: Outline of Oral Submissions

Age verification and the alleged burden of the law on adult political communication

1. The law imposes no real burden on the political communication of persons aged 16 years or over (**adults**): **NT [18]**.

   (a) Reddit and the Free Speech Union's reliance on adults who will not verify their age rests on a factual premise that is not made out. The special case contains no facts about (i) whether any adults would be or have been discouraged from using the relevant services, (ii) if so, how many adults would be discouraged, (iii) what proportion of those adults would have engaged in political communication on those services, or (iv) whether, if so discouraged, those persons would not engage in that political communication by some other means.

   (b) The American authorities relied on by NetChoice and Electronic Fronter Foundation at [28] do not assist Reddit: *Free Speech Coalition Inc v Paxton* 606 US 461 (2025); 145 S Ct 2291 (2025) at 2309; *NetChoice v Reyes* 748 F Supp 3d 1105 (2024) at 1120-1121, 1124-1126 and fn 169.

   (c) In any event, it is not correct to assume that participation in political communication must not involve a cost to one's privacy or other individual interests: *LibertyWorks* (2021) 274 CLR 1, [75] (**JBA V5 T25 pg 1891**); *Banerji* (2019) 267 CLR 373, [37] (**JBA V4 T20 pg 1558**); *Smith v Oldham* (1912) 15 CLR 355, 358-359 and 362-363 (**JBA V7 T31 pp 2630-1, 2634-5**).

Alleged under-inclusiveness

2. Reddit says that under-inclusiveness may be relevant because it may show that a law is (a) not truly one for its expressed purpose or (b) ill adapted for that purpose.

3. Neither matter is made relevant here.

   (a) Reddit does not identify what other purpose is illuminated by the law's alleged under-inclusiveness: **NT [33]**.

   (b) The implied freedom does not produce the result that a parliament addressing a mischief must find a solution to the whole of that mischief: **NT [31]**; *Brown*

(2017) 261 CLR 328, [222] (**JBA V4 T18 pg 1236**); *McCloy* (2015) 257 CLR 178, [56] (**JBA V5 T27 pg 2026**). Over-inclusiveness may show that a law is not reasonably appropriate and adapted to achieving its purpose, because it may impose a greater burden on the implied freedom than is necessary to achieve that purpose. Under-inclusiveness is likely to have the opposite effect.

4. For under-inclusiveness to be significant, something more is required: **NT [32]**; *Brown* (2017) 261 CLR 328, [220]-[223] (**JBA V4 T18 pp 1235-6**); *McCloy* (2015) 257 CLR 178, [54]-[56], [231]-[232] (**JBA V5 T27 pp 2025-6 and 2077**). There must be some other feature of the law or the factual context which, together with under-inclusiveness, illuminates that the purpose of the law is to burden political communication.

5. There is nothing of that kind here and Reddit does not identify any such feature: **NT [33]-[34]**.

Alternatives

6. A relevant alternative must achieve the same purpose "to the same degree", impose a substantially lesser burden, and be "obvious and compelling": **NT [36]-[37]**; *Farm Transparency* (2022) 277 CLR 537, [46] (**JBA V5 T21 pg 1653**); *Babet* (2025) 99 ALJR 883, [186] (**JBA V9 T38 pg 3198**).

7. Reddit has elected not to identify any law which meets that test.

8. It is difficult in those circumstances to be satisfied that an alternative exists, let alone one that is "obvious and compelling". That is particularly so where Parliament is responding to complex, emerging and interconnected risks of serious and long-standing harm, requiring a greater latitude of legislative and policy choices: **NT [38]**.

Nikolai Christrup SC

4 November 2026