s22(1)(a)(ii)

From: Irwin, Andrew <Andrew.Irwin@INFRASTRUCTURE.gov.au>
Sent: Thursday, 7 November 2024 1:29 PM
To: s22(1)(a)(ii) @mo.communications.gov.au>; s22(1)(a)(ii) @mo.communications.gov.au>
Cc: VANDENBROEK, Sarah <Sarah.Vandenbroek@infrastructure.gov.au>; Age Assurance Trial Taskforce <AgeAssuranceTrial2@infrastructure.gov.au>
Subject: Age limits - SMMA Bill - Upcoming briefing and critical deadlines [SEC=~~PROTECTED~~]

~~PROTECTED~~

~~PROTECTED~~

s22(1)(a)(ii),
As a heads up for what's incoming, and with thanks to s22(1) below is a table showing what's on its way, when for the legislation.

Happy to discuss tomorrow.

Cheers,
Andrew

Upcoming briefs	Expected briefing date	Date decision required	Proposed recommendations	Products required
s22(1)(a)(ii)				
s22(1)(a)(ii)			s34(3)	s22(1)(a)(ii)
s22(1)(a)(ii)				

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s22(1)(a)(ii)

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s22(1)(a)(ii)

From: VANDENBROEK, Sarah
Sent: Thursday, 12 March 2026 4:40 PM
To: s22(1)(a)(ii) @mo.communications.gov.au>
Cc: MACKAY, David <David.Mackay@infrastructure.gov.au>
Subject: FW: SMMA High Court documents - first draft [SEC=OFFICIAL:Sensitive, ~~ACCESS=Legal-Privilege~~]

Take 2 – I hit send without meaning to, completed sentence below (sorry).

From: VANDENBROEK, Sarah
Sent: Thursday, 12 March 2026 4:39 PM
To: s22(1)(a)(ii) @mo.communications.gov.au>
Cc: MACKAY, David <David.Mackay@infrastructure.gov.au>
Subject: SMMA High Court documents - first draft [SEC=OFFICIAL:Sensitive, ~~ACCESS=Legal-Privilege~~]

Hi s22(1)(a)(ii)

Further to your discussion with David, attached is the first draft of the two defences. s42 Work is on track to have the final versions to you early next week, ready for the Minister's clearance.

I have also attached an email s22(1)(a)(ii) sent previously with the Special Cases and Statement of Claims attached.

s22(1)(a)(ii)

Regards,
Sarah

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MS26-000616

Australian Government

Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts

To: The Hon Anika Wells MP, Minister for Communications and Minister for Sport (for decision)

Subject: Social media minimum age – agreement to file Commonwealth's defences in High Court proceedings.

Critical Date: Please action by 2PM, Friday 27 March 2026 to allow for the defences to be filed with the High Court Registry by 4PM in accordance with Court directions.

Recommendation:

1. **Approve** the Commonwealth's defences (**Attachments A and** C) to two High Court challenges to the social media minimum age brought forward by the Digital Freedom Project (DFP) and Reddit respectively, on the basis the department will settle any minor and technical amendments with your office.

Approved / Not Approved

The Hon Anika Wells MP

Date: 23.3.26.

Comments:

Key Points:

1. There are currently two High Court challenges to the social media minimum age (SMMA) law, brought separately by the DFP (alongside two young people, currently aged 16 and 15 years) and Reddit. The challenges allege that the law impermissibly burdens the implied freedom of political communication under the Constitution.

    a. A third matter, commenced by a self-represented litigant, Dawn Kelly, is before the Federal Court (remitted from the High Court). Given the significant crossover in issues, that matter is likely to be deferred, pending the outcome in the High Court.

2. The High Court will determine the matters by examining:

    a. whether the law effectively burdens the implied freedom of political communication in its terms, operation or effect

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b. whether the purpose of the law is legitimate and compatible with Australia's system of representative and responsible government, and

c. whether the law is reasonably appropriate and adapted to achieving that purpose.

If the law is found to burden political communication and fails either of the latter two tests, it will be found invalid.

s42

[redacted]

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s42 [redacted]

Financial impacts: N/A.

Legal/Legislative impacts: As discussed above.

Stakeholder Implications: N/A.

Consultation: AGS.

Media Opportunities: N/A.

Attachments:
Attachment A: s42 [redacted]
Attachment B: Statement of claim – Digital Freedom Project
Attachment C: s42 [redacted]
Attachment D: Statement of claim – Reddit

Cleared By: Anthea Fell
Position: Assistant Secretary
Division: Online Safety Branch
Mob: s22(1)(a)(ii) [redacted]
Cleared Date: 24 March 2026

Contact Officer: s22(1)(a)(ii) [redacted]
Mob: s22(1)(a)(ii) [redacted]

Instructions for Ministerial Services: Nil.

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MS26-000616

Do you require a signed hardcopy to be returned: No

Responsible Adviser: s22(1)(a)(ii)

PDMS Distribution List: Jim Betts, David Mackay, Sarah Vandenbroek, Anthea Fell, s22(1)(a)(ii), s22(1)(a)(ii), s22(1)(a)(ii), s22(1)(a)(ii), s22(1)(a)(ii), s22(1)(a)(ii).

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ADDITIONAL INFORMATION

Status of existing cases

- There are two High Court challenges to the social media minimum age:
  - Digital Freedom Project (DFP), an advocacy group, together with two 15-year-old plaintiffs filed on 27 November 2025, and
  - Reddit Inc. filed on 12 December 2025.
- A third matter, filed by Ms Dawn Kelly on 7 January 2026, has been remitted to the Federal Court. This case is likely to be stayed, pending the outcome of the High Court matters.
- Following negotiations between the relevant parties, it was agreed and accepted by the High Court that the DFP and Reddit matters would run in tandem as a 'special case'. This would see the Court determine the legal issues based on agreed facts and evidence presented by the parties, due to be filed in late-May 2026 (a specific date is being negotiated with the parties). Subject to this, the High Court may be in a position to rule on the matters by the second half of the year.
- The Attorneys-General of New South Wales, South Australia, Queensland, Victoria, Tasmania, Western Australia and the Australian Capital Territory have formally intervened in both the DFP and Reddit matters in support of the Commonwealth.

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