

## NOTICE OF FILING

### Details of Filing

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Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Registrar

### Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



**Further Amended Concise Statement**

No. NSD 474 of 2024

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**ESAFETY COMMISSIONER**

Applicant

**X CORP.**

Respondent

**A. IMPORTANT FACTS GIVING RISE TO THE CLAIM**

1. X is a social media service, within the meaning of s 13(1) of the *Online Safety Act 2021* (Cth) (**Act**), which is provided by the respondent (**X Corp**).
2. On 16 April 2024, a delegate of the applicant gave X Corp a notice under s 109 of the Act requiring it to take all reasonable steps to ensure the removal of the material from the X service (formerly known as Twitter) identified in the notice within 24 hours (**Notice**).
3. The Notice identified the material to be removed by way of URL. At each URL was a video of a teenage male stabbing a bishop in the head, neck and upper body five times at Christ the Good Shepherd Church in Wakeley New South Wales. The attack occurred during a livestreamed church service and began at approximately 7:15pm on 15 April 2024.
4. In purported compliance with the Notice, X Corp geo-blocked the URLs in Australia. The effect of doing so is that an X user with an IP address in Australia cannot access the material at those URLs. X Corp did not, however, take all reasonable any other steps which would to stop a user in Australia from accessing the material at those URLs by using, for example, a virtual private network (**VPN**) to access the material as if they were in a location other than Australia. X Corp has denied that it needs to do more than it has done take any such additional step.
5. The applicant contends that the steps taken by X Corp are, and were, merely geo-blocking the URLs in Australia is not enough to comply with X Corp's obligations in circumstances

Filed on behalf of the Applicant, eSafety Commissioner  
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1903

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where it is, and was, technologically feasible for X Corp to do more-, most obviously by taking the kind of steps that it ordinarily takes to prevent end users from accessing various posts and material.

## **B. PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT**

6. Section 109(1) of the Act authorises the applicant (including by her delegate) to issue a removal notice. The Notice was given to X Corp under that section.
7. Section 111 of the Act provides that a person must comply with a requirement under a removal notice given under section 109 to the extent that the person is capable of doing so.
8. Section 12 of the Act states that material is “removed” from a social media service for the purposes of the Act if the material is neither accessible to, nor delivered to, any of the end-users in Australia using the service.
9. X is a social media service, within the meaning of s 13(1) of the Act, as it is an electronic service within the meaning of s 5 of the Act:
  - (a) the sole or primary purpose of which is to enable online social interaction between two or more end-users;
  - (b) which allows end-users to link to, or interact with, some of the other end-users;
  - (c) which allows end-users to post material on the service; and
  - (d) is not an exempt service.
10. X Corp is and was capable of ~~doing more than merely geo-blocking~~ taking other reasonable steps to ensure that the material identified in the Notice was neither accessible to, nor delivered to, any end users in Australia. X Corp can and could have done at least the following:
  - (a) remove the material entirely from the X service;
  - (b) restrict the material so it is visible only to the user who posted it;
  - (c) hide the material behind a notice (by taking the steps which X Corp takes when it “hides” material in the sense in which it uses that term) so that the notice, and not the material, is visible to an X user;
  - (d) restrict the discoverability of the material from appearing in any search results or on any X feed on the X service;
  - (e) taking further steps to restrict access to the material so it is not available to end users who appear, on the basis of information reasonably available to X Corp, to

be using a Virtual Private Network (VPN) (further details of which are to be provided following discovery);

- (f) restricting the material to prevent its being accessed by a user who is not logged into the X platform; and
- (g) restricting the material to prevent its being accessed by a user who, on the information available to X Corp, was under 18 years of age.

11. Such steps are reasonable steps which can be, and in respect of at least some steps have been, taken by X Corp in relation to other posts and material. Taking one or more of the above steps in 10(a) to (d) was necessary to comply with the Notice. In circumstances where X Corp refused to take one or more of those steps it could and should have taken the steps in 10(e) to (g). The steps taken by X Corp, which focused on Merely geo-blocking the material in Australia, is were not enough, because:

- (a) geo-blocking does not “remove” the material within the meaning of the Act;
- (b) X Corp could do more to prevent Australian end-users accessing the material; and
- (c) it is so easy to circumvent geo-blocking is not effective in removing material for Australian end-users using VPNs;
- (d) there are further steps X Corp could have taken to identify VPN services being used by end users in Australia, and to restrict access to users of VPN services who may be within Australia (because, for example, there is no basis on which to identify the user as being at a location outside of Australia);
- (e) at least in the period prior to 10 May 2024, X Corp did not take sufficient and effective steps to prevent users who were logged out of the X Corp platform from viewing the material; and
- (f) at least in the period prior to 10 May 2024, X Corp did not take sufficient and effective steps to prevent users who were under 18 years old from viewing the material.

12. It is particularly important for X Corp to have taken all reasonable steps to ensure the removal of the material one or more of the steps in paragraph 10(a) (d) done more than merely geo-block the material given the harmful nature of that the material.

### **C. RELIEF SOUGHT FROM THE COURT**

13. The applicant seeks the relief in the originating application. In short, it seeks declaratory relief, pecuniary penalties and final and interim injunctive relief.

**D. ALLEGED HARM**

14. The material depicts an act of violence that has been described as a terrorist attack by the New South Wales Police Commissioner. The material can cause serious distress and mental harm to a user in Australia viewing the material.
15. The X service is accessed by millions of users in Australia. The material may be accessed by a large number of users in Australia, including children and young people, by using a VPN to access the material.
16. The continued accessibility of the material is impacting the social cohesion of the broader Australian community as it has been used to influence harmful discourse, including normalising extreme violence and terrorist acts.

Date: ~~22 April 2024~~ ~~8 May 2024~~ 24 May 2024

This concise statement was prepared by C J Tran of counsel and amended by T M Begbie KC, C J Tran and N A Wootton of counsel.

## Certificate of lawyer

I Matthew Garey certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~22 April 2024~~ ~~8 May 2024~~ 24 May 2024



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Signed by Matthew Garey

AGS Lawyer  
For and on behalf of the Australian  
Government Solicitor  
Lawyer for the Applicant