

## **NOTICE OF FILING AND HEARING**

### **Filing and Hearing Details**

Document Lodged:	Notice of Cross-Appeal - Form 123 - Rule 36.21(1)
Court of Filing:	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	19/02/2025 6:39:31 AM AEDT
Date Accepted for Filing:	26/02/2025 11:50:52 AM AEDT
File Number:	NSD1386/2024
File Title:	GIGGLE FOR GIRLS PTY LTD (ACN 632 152 017) & ANOR v ROXANNE TICKLE
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	Interlocutory Hearing
Time and date for hearing:	07/04/2025, 10:15 AM
Place:	Court Room Not Assigned, Level 17, Law Courts Building 184 Phillip Street Queens Square, Sydney

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.

## Notice of cross-appeal

No. NSD 1386 of 2024

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

On appeal from the Federal Court of Australia

### **GIGGLE FOR GIRLS PTY LTD (ACN 632 152 017) AND ANOTHER NAMED IN THE SCHEDULE**

Appellants

**ROXANNE TICKLE**

Respondent

To the Appellants

The Respondent appeals from part of the judgment or the order as set out in this notice of cross-appeal.

The papers in the cross-appeal will be settled before a Registrar at the time and place to be advised.

Date: 13 February 2025

Signed by an officer acting with the authority  
of the District Registrar

Filed on behalf of (name & role of party)	Roxanne Tickle, the Respondent
Prepared by (name of person/lawyer)	Corrina Dowling, Tinashe Makamure and Kylie Stone of Barry Nilsson settled by Georgina Costello KC, Christopher McDermott, Briana Goding and Elodie Nadon of Counsel
Law firm (if applicable)	Barry Nilsson Lawyers
Tel	03 9909 6365
Fax	
Email	<a href="mailto:corrina.dowling@bnlaw.com.au">corrina.dowling@bnlaw.com.au</a> / <a href="mailto:Tinashe.makamure@bnlaw.com.au">Tinashe.makamure@bnlaw.com.au</a>
Address for service (include state and postcode)	Level 9, 1 O'Connell Street, Sydney, NSW 2000

### Details of cross-appeal

The Respondent appeals from paragraph 2 of the Orders of the Court in NSD 1148 of 2022 dated 23 August 2024 (“**the Damages Award**”) and seeks to set aside and substitute the declaration of “unlawful indirect discrimination” under s 22 of the *Sex Discrimination Act 1984* (Cth) (**SDA**) dated 5 September 2024 (“**the Declaration**”) for a declaration of “unlawful direct discrimination”.

The Respondent appeals from the parts of the Judgment (**J**) (delivered on 23 August 2024 at Sydney) in relation to the above Order and Declaration.

### Grounds of cross-appeal

1. The primary Judge (**PJ**) erred by not finding that the Respondent’s exclusion from the “Giggle App” by the Appellants (**J**[129]) constituted direct discrimination on the ground of her gender identity for the purposes of SDA s 22.

#### Particulars

- a. The PJ’s findings at **J**[18]-[24], [91]-[94], [98]-[105], [111]-[118], [125]-[128] and [132]-[136] incontrovertibly supported the conclusion that the Appellants had engaged in unlawful direct discrimination on the ground of the Respondent’s gender identity as the Appellants’ were actuated to exclude her from the “Giggle App” on the ground of the Respondent’s appearance, either with or without regard to the Respondent’s designated sex at birth (for the purposes of the definition of “gender identity” in SDA s 4(1)).
- b. In consequence of the matters in (a), the PJ ought to have found that the Respondent had been treated less favourably by the Appellants for the purposes of SDA s 5B(1), and had thereby engaged in unlawful direct discrimination for the purposes of SDA s 22.
- c. The matters in (a) and (b) are established by the PJ’s related error in construing SDA s 5B(1) (**J**[74]-[78]) as necessitating the Appellants to have actual, not just imputed, knowledge of the Respondent’s gender identity.
2. The PJ erred in finding that the Respondent had:
  - a. conflated her (necessarily alternative) claims of direct discrimination and indirect discrimination under SDA s 22; and
  - b. essentially abandoned any case of direct discrimination (in lieu of arguing a case of indirect discrimination only) –

with the erroneous consequence that the PJ failed to find that the totality of the evidence supported the conclusion that the Respondent's exclusion from the "Giggle App" by the Appellants (J[129]) constituted direct discrimination on the ground of her gender identity for the purposes of SDA ss 5B(1) and 22.

3. The PJ erred in failing to conclude on the available evidence and having regard to the factual conclusions at J[18]-[24], [91]-[94], [98]-[105], [111]-[118] and [125]-[128] that the Respondent not being "re-admitted" by the Appellants to the "Giggle App" (J[132]-[133]) constituted either direct or indirect discrimination on the ground of the Respondent's gender identity for the purposes of SDA ss 5B and 22.
4. The Damages Award is affected by error by reason of:
  - a. the PJ's error(s) as to the proper characterisation of the unlawful discrimination as indirect, not direct, discrimination for the purposes of SDA s 22; and/or
  - b. inadequate weighting of the available evidence in support of each of the specific heads of general and aggravated damages; and/or
  - c. it otherwise being manifestly inadequate in all the circumstances, including by reference to the general standards prevailing in the community.

#### **Orders sought**

1. The Declaration be set aside and in lieu thereof a declaration made in terms that the Appellants directly discriminated against the Respondent on the ground of her gender identity for the purposes of SDA s 22, such declaration being supported by the findings at J[18]-[24], [91]-[94], [98]-[105], [111]-[118], [125]-[128] and [132]-[136].
2. The Damages Award be set aside and in lieu thereof:
  - a. the Respondent be awarded at least \$30,000 in general damages; and
  - b. the Respondent be awarded at least \$10,000 in aggravated damages.
3. Costs of, and incidental to, this cross-appeal.

#### **Respondent's address**

The Respondent's address for service is:

Place: Level 9/1 O'Connell St, Sydney NSW 2000

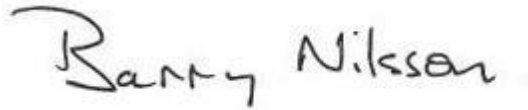
Email: [Corrina.Dowling@bnlaw.com.au](mailto:Corrina.Dowling@bnlaw.com.au) / [Tinashe.Makamure@bnlaw.com.au](mailto:Tinashe.Makamure@bnlaw.com.au)

The Respondent's address is c/- 9/1 O'Connell St, Sydney NSW 2000.

**Service on the Appellant**

It is intended to serve this notice of cross-appeal on all Appellants.

Date: 13 February 2025.

A handwritten signature in dark ink that reads "Barry Nilsson". The signature is written in a cursive, slightly slanted style.

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Signed by Barry Nilsson  
Lawyer for the Respondent

This notice of cross-appeal was prepared by Barry Nilsson and settled by Georgina Costello KC, Christopher McDermott, Briana Goding and Elodie Nadon of Counsel.

**Schedule**

No. NSD 1386 of 2024

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

**Appellants/Cross-respondents**

Second Appellant: SALLY GROVER

Date: 13 February 2025