

## **NOTICE OF FILING AND HEARING**

### **Filing and Hearing Details**

Document Lodged:	Notice of Appeal (Fee for Leave Not Already Paid) - Form 122 - Rule 36.01(1)(b)(c)
Court of Filing:	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	1/10/2024 5:14:49 PM AEST
Date Accepted for Filing:	2/10/2024 10:38:07 AM AEST
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:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised

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 appeal

No. \_\_\_\_\_ of 2024

Federal Court of Australia

District Registry: NSW

Division: ADMINISTRATIVE AND CONSTITUTIONAL AND HUMAN RIGHTS

On appeal from the Federal Court

**GIGGLE FOR GIRLS PTY LTD (ACN 632 152 017) AND ANOTHER**

Appellants

**ROXANNE TICKLE**

Respondent

To the Respondent

The Appellants appeal from orders 2 and 3 of the orders made on 23 August 2024 and the judgment entered on 5 September 2024 as set out in this notice of appeal.

1. The papers in the appeal will be settled and prepared in accordance with the Federal Court Rules Division 36.5.
2. The Court will make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence. You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:**

**Place: Level 17**

**Law Courts Building  
184 Phillip St  
Queens Square, Sydney  
NSW 2000**

Filed on behalf of (name & role of party)	Giggle for Girls Pty Ltd & Sally Grover, First & Second Appellants
Prepared by (name of person/lawyer)	Katherine Deves, Solicitor for the Appellants
Law firm (if applicable)	Alexander Rashidi Lawyers
Tel	07 2139 0100
Fax	
Email	admin@rashidi.com.au
Address for service (include state and postcode)	PO Box 12781 GEORGE ST QLD 4003

Date: 1 October 2024

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

The Appellants appeal Orders 2 and 3 of the Orders entered on 23 August 2024 and the whole of the judgment of the Federal Court entered on 5 September 2024 given at Sydney.

### Grounds of appeal

1. The primary Judge erred by entering a declaratory judgment to the effect that the Appellants had engaged in “unlawful indirect discrimination on the ground of gender identity for the purposes of s 5B(2) of *Sex Discrimination Act 1984* (Cth) (**SDA**)”, because:
  - a. the impugned conduct as declared did not as a matter of law constitute indirect discrimination on the ground of gender identity for the purposes of s 5B(2) of the SDA;
  - b. the declaratory judgment was not open on the pleadings; and in the alternative
  - c. the Imposed Condition on which the declaratory judgment was purportedly premised was not proved.
2. The primary Judge erred:
  - a. in finding that “sex” for the purposes of the SDA:
    - i. is not confined to being a biological concept referring to whether a person at birth had male or female physical traits nor confined to being a binary concept, limited to the male or female sex, but rather takes a broader ordinary meaning, informed by its use, including in State and Territory legislation;
    - ii. is “changeable”; and
    - iii. takes into account a range of factors, including biological and physical characteristics, legal recognition and how a person presents themselves and is recognised socially; and

- b. by impermissibly taking into account the operation of s 24 of the *Births, Deaths and Marriages Registration Act 2003* (Qld), and other cognate State and Territory legislation to like effect, which permit a person to change the record of their registered sex at birth, in construing the meaning of “sex” for the purposes of the SDA.
3. The primary Judge erred in failing to find that the Giggle App was:
  - a. a ‘special measure’ pursuant to s 7D of the SDA for the purpose of achieving substantive equality between men and women and thereby the Appellants did not discriminate against another person, including, but not limited to the Respondent, under, but not limited to, s 5B of the SDA;
  - b. or alternatively, that the Imposed Condition, whether being that the subject of the declaratory judgment entered by the primary Judge (it is said, erroneously) or of requiring the users to be of the female sex, was reasonable in the circumstances for the purposes of s 7B(2) of the SDA, because the evidence to which the primary Judge failed to have regard supported the propositions that:
    - i. the nature and extent of the disadvantage was limited to the Giggle App only, and not the internet’s vast array of social media Apps more broadly, which were open to the Respondent to join; and
    - ii. therefore, the disadvantage was easily mitigated; and
    - iii. the disadvantage was proportionate to the result of achieving substantive equality between men and women in the use and participation in online digital social media spaces; and
    - iv. thereby, the Appellants did not discriminate against another person, including, but not limited to the Respondent, under, but not limited to, s 5B of the SDA.
4. The primary Judge erred in failing to admit into evidence the affidavit of Dr Helen Joyce.
5. The primary judge erred in finding that the amendments to the SDA provided for by the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* (Cth) which promulgated the enactment of s 5B of the SDA were supported by s 51(xx) and (xxix) of the Constitution.

6. The primary Judge erred in finding that the First Appellant was a “trading corporation” for the purposes of s 51(xx) of the Constitution.

### **Orders sought**

1. The orders of the Court below be set aside, and in lieu thereof the Court orders that:
  - a. The Application be dismissed.
  - b. There be no order as to costs of the Application.
2. There be no order as to costs of the Appeal.

### **Appellant’s address**

The Appellants’ address for service is:

Place: Alexander Rashidi Lawyers

PO Box 12781

GEORGE ST QLD 4003

Email: admin@rashidi.com.au

### **Service on the Respondent**

It is intended to serve this application on the Respondent and, the Intervener below, the Australian Human Rights Commission.

Date: 1 October 2024

*KF Deves*

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Signed by Katherine Deves  
Lawyer for the Appellants

This Notice of Appeal was drawn by  
B K Nolan and A Costin and settled by  
S J Wood AM KC.

**Schedule**

No.      of 2024

Federal Court of Australia

District Registry: New South Wales

Division: ADMINISTRATIVE AND CONSTITUTIONAL AND HUMAN RIGHTS

**Appellants**

Second Appellant:                      Sally Grover

Date: 1 October 2024