

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged:	Interlocutory Application (Human Rights Div 2.4 Exemption) - Form 35 - Rule 17.01(1)(a)
Court of Filing:	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	18/07/2025 2:46:00 PM AEST
Date Accepted for Filing:	18/07/2025 2:52:29 PM 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



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.



Interlocutory application

No. 1386 of 2024

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

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 and another named in the schedule

Appellants

Roxanne Tickle

Respondent

To the Appellants and the Respondent

Equality Australia Ltd ACN 609 977 764 applies for the interlocutory orders set out in this application.

The Court will hear this application, or 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.

Time and date for hearing: [Registry will insert time and date]

Place: Federal Court of Australia, NSW Registry, Level 17, Law Courts Building, 184 Philip Street, Queens Square, Sydney, NSW, 2000

Date: 18 July 2025

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

Filed on behalf of (name & role of party)	Equality Australia Ltd ACN 609 977 764
Prepared by (name of person/lawyer)	Mark Smyth
Law firm (if applicable)	Herbert Smith Freehills Kramer
Tel	+61 2 9225 5440
Fax	
Email	mark.smyth@hsfkramer.com
Address for service (include state and postcode)	Level 34, 161 Castlereagh Street Sydney NSW 2000



Interlocutory orders sought

1. Pursuant to r 36.32 of the *Federal Court Rules 2011* (Cth), Equality Australia Ltd ACN 609 977 764 (**Equality Australia**) be granted leave to intervene in this proceeding or, alternatively, to appear as *amicus curiae*, on terms that no costs order be made in favour of or against Equality Australia.
2. Equality Australia be granted leave to file written submissions in the form annexed as Annexure "AB-7" to the Affidavit of Anna Shelley Brown affirmed on 18 July 2025.
3. Equality Australia be granted leave to make oral submissions, limited to 10 minutes, on the issues raised in or in response to its written submissions.
4. Such further or other order as the Court considers appropriate.

Service on the Appellants and Respondent

It is intended to serve this application on both Appellants and the Respondent.

Date: 18 July 2025

A handwritten signature in blue ink, appearing to read "Mark Smyth", is positioned above a horizontal dotted line.

Signed by Mark Smyth
Lawyer for Equality Australia

NOTICE OF FILING

Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	18/07/2025 2:46:00 PM AEST
Date Accepted for Filing:	18/07/2025 2:52:32 PM 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

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.

Form 59
Rule 29.02(1)

Affidavit

No. NSD1386 of 2024

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

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 and others named in the schedule

Appellants

ROXANNE TICKLE

Respondent

Affidavit of: **Anna Shelley Brown**
Address: [REDACTED]
Occupation: Chief Executive Officer
Date: 18 July 2025

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5.	Annexure "AB-4" being a copy of a joint submission by Equality Australia and others to the Australian Human Rights Commission on the Application by the Lesbian Action Group for an exemption under the Sex Discrimination Act 1984 (Cth)		39-43

Filed on behalf of (name & role of party) Equality Australia Ltd (Applicant)
Prepared by (name of person/lawyer) Mark Smyth
Law firm (if applicable) Herbert Smith Freehills Kramer
Tel 02 9225 5440 Fax 02 9322 4000
Email mark.smyth@hsfkramer.com
Address for service (include state and postcode) Herbert Smith Freehills Kramer, ANZ Tower, Level 34, 161 Castlereagh Street, Sydney NSW 2000

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6.	Annexure "AB-5" being a copy of an extract from the Australian Human Rights Commission Conciliation Register		44-46
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8.	Annexure "AB-7" being a copy of the submissions that Equality Australia would seek to rely on if granted leave to intervene or to appear as amicus curiae		49-56

I, Anna Shelley Brown, c/o Equality Australia, [REDACTED]

[REDACTED] Chief Executive Officer, affirm:

1. I am authorised to make this affidavit on behalf of Equality Australia Ltd ACN 609 977 764 (**Equality Australia**).
2. Except where otherwise stated, I make this affidavit from facts within my own knowledge, information or belief. Where I depose to matters from information and belief, I believe those matters to be true and correct.
3. Nothing contained in this affidavit is intended to waive any privilege that is attached to the work performed by Equality Australia's legal advisors.
4. I make this affidavit in support of Equality Australia's application to intervene pursuant to r 36.32 of the *Federal Court Rules 2011* (Cth) or to appear as amicus curiae in proceeding no. NSD 1386 of 2024.

Professional background

5. I am the Chief Executive Officer of Equality Australia, a role I have had since 9 January 2019.
6. I have worked in lesbian, gay, bisexual, trans, intersex and queer (**LGBTIQ+**) policy and law reform for over 10 years. A copy of my curriculum vitae is at **Annexure AB-1**.
7. In this affidavit, I use the acronym "LGBTIQ+" as an umbrella term to identify a group of people who belong to minority social groups based on the personal attributes of sexual orientation, gender identity and/or sex characteristics. It includes a diverse group of persons who:
 - (a) have a **sexual orientation** other than exclusively heterosexual (including lesbian, gay, bisexual, queer and asexual people);

- (b) have a **gender identity** which differs from the sex assigned to them at birth (including people who are trans or who are gender diverse, such as non-binary, genderqueer or agender people); and/or
 - (c) who are born with physical **sex characteristics** that vary from medical or social norms for female and male bodies (who are sometimes described as 'intersex').
8. The '+' is an inclusive way to denote the existence of additional identities, and ensure that gender non-binary, pansexual or other people who identify using terms that are less commonly used, are adequately captured by the acronym.
9. When I refer to "LGBTIQ+ people", I mean a person who belongs to one or more of the groups referred to in paragraphs 7(a)-(c) above. That is because not every LGBTIQ+ person belongs to all of these groups. For example, a person could:
- (a) be attracted to women (i.e. a lesbian), identify as a woman but have been assigned a male sex at birth (i.e. a trans woman), and be born with sex characteristics that are typical for a male body (i.e. not intersex); or
 - (b) have an intersex variation of sex characteristics but be straight and cisgender (that is, not trans) because she was assigned female at birth, identifies as a woman, and is attracted to men.

Equality Australia and our work

10. Equality Australia is a national organisation dedicated to achieving equality for LGBTIQ+ people and their families. Initially born out of the campaign for marriage equality, Equality Australia was relaunched with an expanded purpose in 2018 after the campaign was won. A copy of Equality Australia's Constitution (which sets out its company purpose in clause 3) is at **Annexure AB-2**. A copy of Equality Australia's current Strategic Plan 2023-2026 is at **Annexure AB-3**.
11. Equality Australia is managed by a board of seven directors and has 11 staff. Its patrons include prominent Australians, such as Her Excellency, Governor General, the Hon Sam Mostyn AC, and LGBTIQ+ leaders, the Hon Virginia Bell AC, the Hon Michael Kirby AC CMG, Deborah Cheetham AO, Tony Briffa, Kylie Kwong AM and Courtney Act.
12. Equality Australia works directly with LGBTIQ+ people and their families and allies, and organisations serving the LGBTIQ+ community, to understand the issues affecting LGBTIQ+ people, give a national voice to the LGBTIQ+ community, and empower LGBTIQ+ people to share their stories and take action to address the legal and social discrimination and disadvantage they face simply because of who they are or whom they love.

13. Since 2018, Equality Australia's work has included contributions to:
- (a) reforms to anti-discrimination laws across Australia to improve discrimination protections for LGBTIQ+ people and others, including women, people with disability and religious minorities;
 - (b) reforms to laws in New South Wales, Queensland, Victoria, the Australian Capital Territory and Western Australia to ensure trans and gender diverse people can update the gender markers on their legal documentation (such as birth certificates) to reflect their lived gender without barriers such as the need for 'gender reassignment' surgery or medical treatment; and
 - (c) reforms to ensure intersex children are protected from unnecessary medical interventions, which seek to 'normalise' their sex characteristics in accordance with typical norms for male and female bodies, before they are old enough to consent.
14. To do its work, Equality Australia coordinates and draws upon a national network of representatives from over 100 LGBTIQ+ community groups and other relevant sector organisations (the **LGBTIQ+ National Network**), and a large database and social media network of thousands of individual supporters. For example, as at 25 June 2025, Equality Australia had over 120,000 email subscribers and around 25,000 followers on Instagram.
15. Equality Australia's work with and for trans and gender diverse people is also overseen by its TransEquality Council (the **Council**), a national advisory body made up of trans and gender diverse leaders, representing diverse backgrounds and trans-led organisations. The Council, which I determined the terms of reference for, is also accompanied by a TransEquality Network, currently made up of approximately 160 trans people and allies. These bodies are part of a dedicated TransEquality initiative established by Equality Australia in 2023 to encourage and support leadership and participation by trans and gender diverse people in work undertaken to address the specific issues impacting them directly.
16. The dedicated TransEquality initiative was established in acknowledgement of the significant and unique forms of discrimination and challenges faced by trans and gender diverse people in Australia that we observed from our work, including the heightened degree of media and political attention directed specifically at trans and gender diverse people that we have observed, with recent examples including:
- (a) national debates on parliamentary motions seeking to limit access to gender affirming healthcare for trans and gender diverse young people;

- (b) a Bill in New South Wales that proposed to ban discussion of gender diversity in schools; and
 - (c) ongoing public and parliamentary debates, and media commentary regarding the participation of trans people in sport.
17. Equality Australia uses its in-house legal, policy and communications expertise to devise and advocate for legal, policy and other solutions that respond to the issues raised by affected LGBTIQ+ people. It makes submissions to inquiries addressing LGBTIQ+ issues, including coordinating LGBTIQ+ sector responses. An example of this is the joint submission Equality Australia made to the Australian Human Rights Commission, along with 14 other LGBTIQ+ organisations, opposing the Lesbian Action Group's (LAG) application for an exemption under the *Sex Discrimination Act 1984* (Cth) (**Act**). A copy of that joint submission is at **Annexure AB-4**.
18. Through direct engagement and the provision of support to individuals, Equality Australia also engages directly with LGBTIQ+ people to understand and address their needs and priorities, including the needs and priorities of specific groups within the broader LGBTIQ+ community (such as trans and gender diverse people and intersex people specifically). For example:
- (a) Equality Australia provides referrals and support to LGBTIQ+ individuals who have experienced discrimination based on their LGBTIQ+ status. On occasion, it takes legal action on behalf of LGBTIQ+ people or supports LGBTIQ+ individuals in their legal actions, or if they wish to share their stories of discrimination with media or decision-makers. For example, in September 2022, Equality Australia and non-binary parent and partner, April Long (they/them), lodged a complaint to the Australian Human Rights Commission, alleging that the Australian Bureau of Statistics (**ABS**) unlawfully discriminated against April and their family and other LGBTIQ+ people by failing to properly count LGBTIQ+ people in the 2021 Census. This action was brought under the Act. A copy of an extract of the Australian Human Rights Commission Conciliation Register identifying the complaint is at **Annexure AB-5**. That led to a private conciliation between the co-complainants and the ABS, with the ABS ultimately releasing a public statement of regret which "recognises the importance of these issues and regrets any distress experienced by members of the LGBTIQ+ community when responding to the 2021 Census and earlier Censuses". A copy of that public statement is at **Annexure AB-6**. Following a decision by the Australian Government, in 2026, the Australian Census will for the first time ask a question on sexual orientation and improve its collection of data on gender diversity.

- (b) Equality Australia conducts surveys with LGBTIQ+ people to understand their needs and priorities. For example, in 2025, Equality Australia's survey seeking to identify the issues important to LGBTIQ+ people in the upcoming federal election drew a response from 5,346 LGBTIQ+ people in Australia. Other surveys that Equality Australia has conducted include the impacts of COVID-19 on LGBTIQ+ people (drawing 2,600 responses from LGBTIQ+ people in Australia) and experiences of LGBTIQ+ discrimination in religious schools and institutions (drawing 3,900 responses from LGBTIQ+ people in Australia).
19. Finally, Equality Australia is regularly called upon by government bodies and decision-makers to inform laws and policies affecting LGBTIQ+ people. For example:
- (a) In early 2019, Equality Australia was commissioned by the Australian Capital Territory Government to complete a LGBTIQ+ human rights audit of ACT laws and regulations. The purpose of the independent legal audit was to identify areas for law reform to remove discrimination. As part of the legal audit, Equality Australia conducted research into ACT laws, consulted with LGBTIQ+ and government stakeholders, and developed recommendations with the expert assistance of the project's Expert Advisory Group.
- (b) In 2023, the Victorian Department of Health commissioned Equality Australia to provide legal policy advice on a proposal to protect intersex people from deferrable medical interventions modifying a person's sex characteristics without their personal consent.

Equality Australia's particular interest in the Act

20. The discrimination protections afforded to LGBTIQ+ people in the Act are critical to Equality Australia's work and to the LGBTIQ+ people that it seeks to serve and represent.
21. From the Notice of Appeal, Notice of Cross-Appeal and the submissions filed by the appellants and LAG, I understand that the issues in contention include the meaning of 'sex', 'man' and 'woman' for the purposes of the Act and the relevance of state and territory sex registration schemes, if at all, to that construction (Notice of Appeal Ground 2 and LAG submissions at [1]-[3]).
22. As described above, Equality Australia has relied on the Act to bring, and support LGBTIQ+ people in making, complaints, and it is the primary national law that protects LGBTIQ+ people from discrimination.
23. Its interpretation also directly affects the LGBTIQ+ people we represent and whose stories of discrimination are a daily part of our work. Its validity goes to the heart of

protections from discrimination that LGBTIQ+ people who come to us routinely rely on. Further, as described above, the LGBTIQ+ community is a diverse community with subpopulations. The interpretation of terms like 'sex', 'men' and 'women' in the Act, as well as the interaction between the attributes of 'sex', 'gender identity', 'intersex status' and 'sexual orientation' in the Act and the exemptions and exceptions that apply to them, have consequences for the people we represent who may have one or more of the protected attributes.

Reason for timing in bringing this application


24. On 19 June 2025, after hearing that the Lesbian Action Group (**LAG**) had been granted leave to intervene, Equality Australia applied for and was provided access to the Notice of Appeal and Notice of Cross-Appeal but was refused access to other documents.
25. On 26 June 2025, Equality Australia made an application for the Appellants' Submissions. Access was granted on 1 July 2025. From those submissions, it appeared that the Appellants were not substantively advancing Ground 2 of the Notice of Appeal, being the ground relating to the meaning of 'sex', 'woman' and 'man' under the Act and which had the most significant impact for the interpretation of the Act for LGBTIQ+ people as a whole.
26. On 9 July 2025, Equality Australia made an application for LAG's Submissions. Access was granted on 11 July 2025. From that application, it emerged that LAG was making submissions going to Ground 2 of the Notice of Appeal that were different to those made before the primary judge. Because the Appellants had not expressly abandoned Ground 2 in their submissions, and now with an understanding that submissions were being put on the meaning of 'sex', 'man' and 'woman' by LAG that were different to those before the primary judge, Equality Australia sought to work promptly to prepare its own proposed submissions and finalise its application for leave to intervene.
27. A copy of the submissions that Equality Australia would seek leave to make are at **Annexure AB-7**.


Equality Australia's intended role in the proceeding

28. Equality Australia is conscious of the need to minimise the extent of any imposition on the parties and risk of any delay, given the proximity of the final hearing. If leave to intervene or appear as amicus curiae is granted, Equality Australia would seek to rely on the written submissions annexed to this affidavit and, if it would assist the Court, to make oral submissions limited to 10 minutes.
29. If leave to intervene is granted, it should be on terms that no costs order will be made for or against Equality Australia.

Affirmed by the deponent
at Sydney
in New South Wales
on 18 July 2025
Before me:

)
)
)
)
)


Signature of deponent


Signature of witness

Major Quan Zhang, an Australian Legal Practitioner within the meaning of the *Legal Profession Uniform Law* (NSW) who has in force a current practising certificate

Schedule

No. NSD1386/2024

Federal Court of Australia

District Registry: New South Wales

Division: General

Second Appellant

Sally Grover

Intervener

Lesbian Action Group Inc

Amicus Curiae

Sex Discrimination Commissioner

CROSS APPEAL

Cross-Appellant

ROXANNE TICKLE

Cross Respondent

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017

Second Cross Respondent

SALLY GROVER

Certificate identifying annexure

No. NSD1386/2024

Federal Court of Australia

District Registry: New South Wales

Division: General

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 and others named in the schedule

Appellants

ROXANNE TICKLE

Respondent

This is the annexure marked "**AB-1**" now produced and shown to Anna Shelley Brown at the time of affirming her affidavit on 18 July 2025.

Before me:



Signature of witness

Annexure AB-1

Affidavit of Anna Shelley Brown dated 18 July 2025

Anna Brown OAM (She/Her)

Professional Experience

CEO Equality Australia	Jan. 2019 to Present
Director of Legal Advocacy / Senior Lawyer Human Rights Law Centre	Feb. 2011 to Jan. 2019
Senior Solicitor Victorian Government Solicitors Office	Dec. 2010 to Feb. 2011
Advisor Office of the Deputy Premier and Attorney-General, the Hon Rob Hulls, MP	Aug. 2009 to Dec. 2010
Senior Associate/Lawyer Allens Linklaters	Feb. 2007 to Aug. 2009
Associate to the Hon. Justice Rares Federal Court of Australia (Sydney)	Feb. 2006 to Feb. 2007
Lawyer/Articled Clerk Allens Linklaters	Feb. 2004 to Feb. 2006

Directorships / Offices Held

• President, ACT Restricted Medical Treatment Assessment Board	2024 to present
• Member, ACT Restricted Medical Treatment Assessment Board	2023 to present
• Member, NSW LGBTIQ+ Ministerial Advisory Council	2024 to present
• Member, Justice Working Group of the Victorian LGBTIQ Taskforce	2020 to 2021
• Co-Chair, Australians for Equality (now Equality Australia Ltd) the 'Equality Campaign'	2016 to 2019
• Co-Chair, Justice Working Group of the Victorian LGBTIQ Taskforce	2015 to 2019
• Member, Victorian Government LGBTIQ+ Taskforce	2015 to 2019
• Board Director, National LGBTI Health Alliance (now LGBTIQ+ Health Australia)	2013 to 2016
• Co-Convener, Victorian Gay & Lesbian Rights Lobby (now Victorian Pride Lobby)	2012 to 2015
• Chair, Law Institute of Victoria Human Rights & Charter of Rights Committees	2013 to 2015
• Treasurer & Board member, ILGA Oceania	2014 to 2015

Awards

• Australian Financial Review, Top 100 women of the year and winner of the NFP category	2019
• Medal of the Order of Australia for services to human rights and the LGBTIQ+ Community	2019
• Finalist for Victorian Australian of the Year	2015
• Finalist for the Australian Human Rights Awards Tony Fitzgerald Community Award	2014
• Victorian Community Legal Centre's 'Tim McCoy' Award	2014
• Victorian GLBTI Person of the Year 2014	

Education

- Company Directors Course – Australian Institute of Company Directors
- Strategic Perspectives in Non Profit Management – Program Certificate (Harvard Business School)
- Bachelor of Arts (Honours in Political Science) /Laws (Hons) - Monash University
- VCE - The MacRobertson Girls' High School

Memberships

- Australian Institute of Company Directors
- Chief Executive Women
- Transgender Victoria
- Victorian Pride Lobby
- JOY 94.9 LGBTIQ+ community radio station
- Sydney Gay & Lesbian Mardi Gras

ARTICLES/PUBLICATIONS

- Brown, Anna and Lee Carnie, 'Being LGBTQ in Australia' in Paula Gerber (ed) *Worldwide Perspectives on Lesbians, Gays, and Bisexuals* (Bloomsbury Publishing, 1st Edition, 2021) vol 1.
- Brown, Anna, 'Searching for the Aussie "Fair Go": A Survey of the Legal Landscape and Road to Reform of Australian Anti-Discrimination Law' (2012) 8 *The Equal Rights Review* 11.
- Howie, Anna et al, *Upholding Our Rights: Towards Best Practice in Police Use of Force* (Final Report, September 2011).
- Jones, Timothy et al, *Preventing Harm, Promoting Justice: Responding to LGBT Conversion Therapy in Australia* (Final Report, October 2018).

Certificate identifying annexure

No. NSD1386/2024

Federal Court of Australia

District Registry: New South Wales

Division: General

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 and others named in the schedule

Appellants

ROXANNE TICKLE

Respondent

This is the annexure marked "**AB-2**" now produced and shown to Anna Shelley Brown at the time of affirming her affidavit on 18 July 2025.

Before me:



Signature of witness

Annexure AB-2

Affidavit of Anna Shelley Brown dated 18 July 2025

Constitution

Equality Australia Ltd

(ACN 609 977 764)

(A public company limited by guarantee)

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Part A – preliminary matters

1 Defined terms and interpretation

- (a) The Dictionary in Schedule 1:
 - (i) defines some of the terms used in this constitution;
 - (ii) sets out the rules of interpretation which apply to this constitution; and
 - (iii) clarifies the effect of the *Corporations Act 2001* (Cth) on this constitution.
- (b) The interpretation clause in Schedule 1 (**Dictionary**) sets out rules of interpretation for this constitution.

2 Nature of company and liability

- (a) The company is a public company limited by guarantee.
- (b) The liability of each member is limited. Each member guarantees to contribute up to a maximum of one dollar to the assets of the company if it is wound up while the member is a member, or within one year afterwards, and at the time of winding up the debts and liabilities of the company exceed its assets. The liability of each member is limited to making such contribution and no more.

Part B – Purpose

3 Purpose of the company

The purpose of the company is to improve the wellbeing and circumstances of LGBTI People in Australia and their families and children by:

- (a) relieving their distress and disadvantage;
- (b) reducing the prevalence, and relieving the effects, of depression, suicide, anxiety, bullying and homelessness that they experience;
- (c) reducing the stigma, discrimination and homophobia they experience;
- (d) advancing and promoting equality and inclusion; and
- (e) enhancing their actual, and sense of, safety, security and acceptance.

Part C – Members and membership

4 Membership

4.1 Members of the company

- (a) The members of the company are:

- (i) those noted as such on the application for the incorporation of the company and who have not since ceased to be a member; and
 - (ii) any person who has been admitted as a member of the company by the directors in accordance with rule 4.2.
- (b) If a person is admitted as a member of the company, the secretary must ensure that:
 - (i) the person is given notice of admission as a member of the company; and
 - (ii) the name and details of the person are entered in the members' register in accordance with rule 4.5.
- (c) The secretary must ensure that each person not admitted as a member of the company is informed of this decision. The directors may, but are not required to, provide reasons for the decision not to admit a person into membership.

4.2 Becoming a member

To become a member of the company a person must:

- (a) have a commitment to the purpose of the company described at rule 3;
- (b) complete and lodge a membership application in such form as determined by the directors from time to time which, for the avoidance of doubt, may include applying using the Internet;
- (c) ensure that all information provided when applying for membership of the company is true and accurate and is not misleading or deceptive;
- (d) pay any joining and annual fee that may be required under rule 4.6;
- (e) be 18 years of age or older;
- (f) be admitted into membership by a Director Special Resolution; and
- (g) satisfy such other membership criteria as the directors may determine from time to time, acting reasonably.

4.3 Member's rights

Each member has the right to:

- (a) receive notices of and to attend and be heard at any general meeting of the company; and
- (b) exercise one vote when voting upon resolutions of the company (both in general meeting and as permitted under rule 6.10).

4.4 Membership not transferable

Membership of the company and the associated rights cannot be transferred or sold in any manner whatsoever.

4.5 Register of members

- (a) A register of members must be kept in accordance with the law.
- (b) Without limiting the requirement under rule 4.5(a), the following must be entered in the register in respect of each member:
 - (i) the name and address of the member;
 - (ii) the date of admission to and cessation of membership; and
 - (iii) any other information required by the directors or the law from time to time.

4.6 Membership fees

- (a) The joining fee for membership of the company is \$0 or such other amount as may be resolved by the directors from time to time. The joining fee, if any, is payable at the same time as the application for membership is made. The joining fee will be reimbursed to the applicant if the application for membership is declined.
- (b) The annual membership fee for membership of the company is \$0 or such other amount as may be resolved by the directors from time to time. The first year's membership fee, if any, is payable at the same time as the application for membership is made and is required in addition to any joining fee. The first year's membership fee will be reimbursed to the applicant if the application for membership is declined.
- (c) Other than any membership fee that may be payable at the same time as the joining fee under rule 4.6(b), annual membership fees are to be paid at such times and in such manner as the directors determine from time to time.
- (d) The directors may at their complete discretion waive all or some of the fees payable by one or more members at any time.
- (e) The joining fee and annual membership fee that may be required under this rule 4.6 are exclusive of any GST that may be payable.

4.7 Membership renewal

The directors may, at their discretion, send a notice to one or more members requiring that member to confirm or to renew membership of the company and/or to confirm or update that member's details (**Membership Renewal Notice**).

5 Ceasing to be a member

5.1 General overview

- (a) There are a number of reasons why a member's membership will stop. For instance, if a member:
 - (i) resigns from membership. See rule 5.2;
 - (ii) automatically stops being a member. See rule 5.3;
 - (iii) is expelled from membership. See rule 5.4; or
 - (iv) no longer complies with the membership eligibility criteria set out at rule 4.2.

- (b) The directors may adopt such other policies and procedures relating to the disciplining, suspension and expulsion of members as they so determine from time to time so long as they are consistent with the requirements set out in this rule 5.

5.2 Resignation from membership

A member may resign from membership of the company at any time by providing written notice to the company addressed to the chair or the secretary. Unless the notice provides otherwise, the resignation takes effect from the date the notice is received.

5.3 Automatic stopping of membership

A member's membership will automatically stop if the member:

- (a) dies;
- (b) ceases to be a director;
- (c) fails to pay any required membership fee in accordance with rule 4.6 within two months after the date on which that membership fee becomes due or such later time as the directors may determine; or
- (d) fails to return a Membership Renewal Notice within one month after the return due date specified in that notice or such later time as determined by the directors.

5.4 Disciplining, suspension and expulsion of member

- (a) This rule 5.4 describes what needs to happen when considering whether or not to discipline a member. In summary the process involves:
 - (i) putting the member in question on notice and giving the opportunity to provide information; and
 - (ii) passing a Director Special Resolution to warn, suspend, expel or otherwise discipline that member.
- (b) So long as the steps set out in this rule 5.4 are followed, the directors may resolve by a Director Special Resolution to warn, suspend, expel or otherwise discipline a member if that member:
 - (i) has refused or neglected to comply with the provisions of this constitution; or
 - (ii) has acted in a way that, in the opinion of the directors, is unbecoming of the member or prejudicial to the interests or reputation of the company.

(Member Disciplinary Resolution)

- (c) The directors must give the member in question at least 14 days' notice of the date that the directors will consider the Member Disciplinary Resolution. This notice must be in writing and let the member know:
 - (i) that the directors are to consider warning, suspending, expelling or otherwise disciplining the member;
 - (ii) the reasons why the directors are considering taking the determined action;

- (iii) of the right for the member to give the directors, either orally or in writing, any explanation or defence relevant to the proposed disciplinary action;
 - (iv) the date, place and time of the meeting at which the resolution is to be considered; and
 - (v) of the right for the member to attend the meeting at which the resolution is to be considered but not to be present during any director deliberations or the putting of or voting on the resolution unless the directors resolve otherwise.
- (d) A director that is also a member subject to a Member Disciplinary Resolution is not entitled to vote on that resolution.
 - (e) Directors must notify the relevant member in writing about the directors' decision within 7 days after the date a Member Disciplinary Resolution is passed. The directors decision is final.
-

6 General meetings

6.1 Introduction

- (a) For so long as the company is registered as a charity with the Australian Charities and Not-for-profits Commission or its successor, and for so long as the law permits or requires, the directors:
 - (i) may determine whether or not to hold meetings of members including annual general meetings unless the Corporations Act otherwise requires a meeting of members for a particular resolution to be passed;
 - (ii) must ensure that the Australian Charities and Not-for-profits Commission Governance Standards, in particular Governance Standard 2 relating to accountability to members, are complied with; and
 - (iii) must ensure that if the company does hold a meeting of members, it does so in accordance with this constitution and the Corporations Act despite the fact that the provisions of the Corporations Act dealing with members' meetings may not be binding upon the company.
- (b) If there is any inconsistency between the Corporations Act and this constitution with respect to the calling and holding of members' meetings then, to the extent permitted by law, the provisions of this constitution will prevail.

6.2 Calling of general meetings

- (a) A general meeting of members may be initiated by:
 - (i) a resolution of the directors;
 - (ii) the members in accordance with the Corporations Act; or
 - (iii) the court in accordance with the Corporations Act.
- (b) A meeting of members may be held in two or more places linked together by any technology so long as it:

- (i) gives the members as a whole in those places a reasonable opportunity to participate in proceedings;
- (ii) enables the chair of the meeting to be aware of proceedings in each place; and
- (iii) enables the members in each place to vote on a show of hands and on a poll.

6.3 Notice of general meetings

- (a) Subject to the provisions of the Corporations Act dealing with consent to short notice, at least 21 days' notice of a general meeting of members (including an annual general meeting) must be given to each person who is at the date of the notice:
 - (i) a member of the company eligible to receive notices of meetings;
 - (ii) a director of the company; or
 - (iii) an auditor of the company.
- (b) A notice of a general meeting must specify:
 - (i) the date, time and place of the meeting;
 - (ii) if the meeting is to be held in two or more places, the technology that will be used to facilitate this;
 - (iii) the general nature of the business to be transacted at the meeting; and
 - (iv) any other matters required under the law.
- (c) A person who is entitled to receive notice of a meeting or who is requested by the chair to attend a general meeting is entitled to be present whether or not the person is a member.

6.4 Quorum at general meetings

- (a) No business may be transacted at any general meeting, except the election of a chair and the adjournment of the meeting, unless a quorum is present when the meeting proceeds to business and remains present throughout the meeting.
- (b) The quorum for a general meeting of members is five members or 50% of current members (whichever number is the lowest). If 50% of members is not a whole number, then the number is to be rounded up.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - (i) the meeting stands adjourned to the following week at a time and venue communicated by the chair of the meeting;
 - (ii) at the adjourned meeting the quorum is five members present and entitled under these rules to vote at a general meeting if there is more than one member; and

- (iii) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

6.5 Chair of general meetings

- (a) The chair of directors must preside as chair at each general meeting.
- (b) If the chair of directors is not present within ten minutes after the time appointed for a general meeting or is unwilling to act and has not nominated another director to act as chair, then the members present at that meeting may elect a person present to chair the meeting.

6.6 Conduct of general meetings

- (a) The chair of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting and may require the adoption of any procedures which are in the opinion of the chair necessary or desirable for:
 - (i) proper and orderly debate or discussion; and
 - (ii) the proper and orderly casting or recording of votes.
- (b) The chair of a general meeting at which a quorum is present may adjourn the meeting from time to time and place to place. However, no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (c) Notice of an adjournment and the business to be transacted at an adjourned meeting must be given to all persons who were entitled to receive notice of the meeting the subject of the adjournment.

6.7 Decisions at general meetings

- (a) Except in the case of any members' resolution which under this constitution or as a matter of law requires a special resolution, questions arising at a general meeting are to be decided by a majority of votes cast by the members present at the meeting (including being present by technological means) and that decision is for all purposes a decision of the members.
- (b) In the case of an equality of votes upon any proposed resolution at a meeting of members, the chair has a second or casting vote.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands of members unless a poll is demanded.
- (d) A member may only exercise one vote on a show of hands regardless of whether that member also holds one or more proxies.
- (e) A poll may be demanded before a vote being decided by a show of hands is taken or before or immediately after the declaration of the result of the show of hands:
 - (i) by the chair of the meeting;
 - (ii) by at least five members present and entitled to vote on the relevant resolution; or

- (iii) by a member or members present at the meeting and representing at least 5% of the votes that may be cast on the resolution on a poll.
- (f) Unless a poll is demanded, a declaration by the chair of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (g) Except for a poll on the question of an adjournment which must be taken immediately, if a poll is demanded at a general meeting, it will be taken when and in the manner that the chair directs, and in all cases the result of the poll will be the resolution of the meeting at which the poll was demanded.
- (h) A poll cannot be demanded at a general meeting on the election of a chair of the meeting.
- (i) The demand for a poll may be withdrawn.

6.8 Voting rights

Each member has the right to exercise one vote:

- (a) on a show of hands and on a poll at a meeting of members; and
- (b) when voting upon a resolution to be determined without a meeting under rule 6.10.

6.9 Representation at general meetings

- (a) Subject to this constitution, each member entitled to vote at a meeting of members may vote:
 - (i) in person;
 - (ii) by proxy in a form as the directors may prescribe or accept; or
 - (iii) by attorney in a form as the directors may prescribe or accept.
- (b) A proxy or attorney may be a member of the company but does not need to be.
- (c) The chair of a meeting may require any person purporting to act as a proxy or attorney to establish to the satisfaction of the chair that the person has been validly appointed as a proxy or attorney and is the person named in the relevant instrument of appointment, failing which the person may be excluded from attending or voting at the meeting.
- (d) If the company receives a proxy form without the name of the proxy filled in, then the proxy is:
 - (i) the person specified by the company in the proxy form; or
 - (ii) if no person is specified in the proxy form, the chair of the meeting for which that proxy applies.
- (e) A proxy or attorney may not vote at a general meeting or adjourned meeting unless the instrument appointing the proxy or attorney is received:

- (i) at the registered office of the company or at another place or electronic address specified for that purpose in the notice convening the meeting; and
- (ii) before the time scheduled for the commencement of the meeting.
- (f) Unless otherwise permitted by the chair, the authority of a proxy or attorney to speak and vote for a member at a general meeting is suspended while that relevant member is present at the meeting.
- (g) The chair may hold as many proxies as are given to the chair. All other proxy holders may hold a maximum of three proxies.

6.10 Decisions without meetings

Members may pass resolutions and otherwise make decisions outside of a members' meeting in any manner (including through the use of technology) so long as such manner complies with:

- (a) the law; and
- (b) any policies and procedures relating to the passing of member resolutions as determined by the directors from time to time.

Part D – Not-for-profit

7 No profits for members

- (a) Subject to rule 7(b), the assets and income of the company must be applied solely in furtherance of the purpose of the company and no portion of the income or assets of the company may be paid or transferred, directly or indirectly, to any member.
- (b) The company may, with the approval of the directors, make payment in good faith to a member of the company:
 - (i) by way of reasonable and proper remuneration for any goods supplied or services rendered to the company (including payment as a consultant);
 - (ii) by way of interest on money lent to the company by that member at a reasonable and proper rate per annum not exceeding the rate for the time being charged by the company's bankers on overdrawn accounts;
 - (iii) by way of reasonable and proper rent for premises let by that member to the company; and
 - (iv) for authorised out-of-pocket expenses reasonably and properly incurred by that member in connection with the affairs of the company.
- (c) For the avoidance of doubt, nothing in this rule 7:
 - (i) prevents a member from receiving such services as may ordinarily be provided by the company in the course of undertaking its activities; or
 - (ii) prohibits a member from receiving a benefit that is directly related to its membership of the company.

Part E – Directors and secretary

8 Directors

8.1 Number of directors

- (a) The minimum number of directors is three. Subject to rule 8.1(b), the maximum number of directors is 12.
- (b) The directors may change the maximum number of permitted director positions in accordance with the Corporations Act.
- (c) If at any time the number of directors falls below three, the remaining director or directors may act but only:
 - (i) in an emergency;
 - (ii) for the purpose of convening a general meeting of the company; or
 - (iii) for the purpose of increasing the number of directors to three.

8.2 Becoming a director

To become a director, a person must be a member of the company and:

- (a) be elected as a director by a resolution of the members, in which case that persons term of office is for two years; or
- (b) if there is a vacancy in the number of directors (however arising), be appointed by a resolution of the directors, in which case that persons term of office is to be for a period of up to two years (as determined by the directors at the time of the appointment).

8.3 Director's time in office

- (a) Each director is to remain as a director until the term of her or his office expires or until he or she resigns or is otherwise removed as a director of the company in accordance with the law and this constitution.
- (b) A person who resigns from the position of director or whose term of office expires is, subject to the law, eligible to be appointed or elected again.
- (c) For the avoidance of doubt and subject to the law, there is no limit to the number of times a person can be elected or appointed as a director.

8.4 Vacation of office

- (a) In addition to the circumstances prescribed by law, the office of any director becomes vacant if the director dies or, unless the directors otherwise resolve to confirm the director's position, if the director:
 - (i) becomes bankrupt;
 - (ii) ceases to be a member;

- (iii) is convicted of an indictable offence; or
 - (iv) fails to attend four or more consecutive meetings without leave of absence approved by the directors.
- (b) Nothing in rule 8.4(a) prevents a director from vacating his or her office if the director resigns by notice in writing to the company.

8.5 Payments to directors

- (a) Subject to rule 8.5(c), directors are entitled to be paid all reasonable authorised travelling and other expenses properly incurred by them in connection with the affairs of the company, including attending and returning from general meetings of the company, meetings of the directors and meetings of committees but will not otherwise receive any payment for acting as a director.
- (b) Nothing in this rule 8.5 restricts the remuneration to which a director may be entitled as an officer or employee of the company in a capacity other than director.
- (c) Notwithstanding anything else in this constitution, no payment of any kind which is permitted to be paid to a director by this constitution can be made by the company to a director until that payment is approved by:
 - (i) the directors; or
 - (ii) such other person or persons to whom the directors may have delegated such authority in a way consistent with rule 8.16.

8.6 Interested directors

- (a) No contract or other arrangement made between a director and the company is voided merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (b) Where a director has a material personal interest in a matter to be considered at a meeting, that director must not be present while the matter is being considered at the meeting or vote on the matter, unless the directors who do not have a material personal interest pass a resolution in accordance with the Corporations Act which permits that director to do so.
- (c) Subject to rule 8.6(d), a director who is in any way interested in an arrangement (other than by having a material personal interest) may, despite that interest be counted in determining whether a quorum is present at any meeting of directors considering that arrangement.
- (d) Rule 8.6(c) does not apply to the extent that it would be contrary to law.

8.7 Powers and duties of directors

The directors are responsible for managing the business of the company and may exercise all the powers of the company which are not required by the law or this constitution to be exercised by the company in a general meeting.

8.8 Directors' meetings

The directors may hold meetings (including by technological means) for the conduct of business and regulate them as they think fit.

8.9 Convening of meetings of directors

A meeting of directors may be convened by the chair or any two of the directors.

8.10 Notice of directors' meetings

- (a) Notice of a directors' meeting must be given to each current director, other than a director on leave of absence approved by the directors.
- (b) A notice of a directors' meeting must:
 - (i) be given in a way permitted by rule 13;
 - (ii) specify the time and place of and, if relevant, the form of technology for, the meeting;
 - (iii) state the nature of the business to be transacted at the meeting which may be in the form of a standing agenda; and
 - (iv) be provided with sufficient time for the directors to properly consider the subject matter contained within the notice and any accompanying materials.
- (c) A resolution passed at a directors' meeting is not invalid just because a director did not receive notice of the meeting provided that:
 - (i) the notice was not received because of accident or error;
 - (ii) before or after the meeting, the director notifies the company of his or her agreement to the resolution; or
 - (iii) the director attended the meeting.

8.11 Quorum for directors' meetings

- (a) No business may be transacted at a directors' meeting unless there is a quorum of directors at the time the business is dealt with.
- (b) A quorum consists of 50% of current directors. If 50% of current directors is not a whole number then the number is to be rounded up.
- (c) For the avoidance of doubt, a director is present at a meeting if participating by technological means such as by telephone.
- (d) If, within 30 minutes after the time appointed for the meeting, a quorum is not present, then, without prejudice to the right of those present to discuss but not to vote on any matter, the meeting will be dissolved or stand adjourned to such time, date and place as those present at the meeting decide.

8.12 Chair and deputy chair

- (a) The directors must appoint a director to the office of chair.
- (b) The chair may nominate any director to act as chair.
- (c) A person may only fill the office of chair for so long as that person is a director of the company.

- (d) The chair must preside as chair at each directors' meeting unless he or she is unable to attend or unwilling to act.
- (e) If the chair is unable to attend a directors' meeting or unwilling to act, then another director as nominated by the chair, if one has been nominated, must preside as chair of that meeting.
- (f) If the chair is unable to attend a directors' meeting or is unwilling to act and has not nominated another director as chair, then the directors present at that meeting must elect a person from among their numbers to preside as the chair for that meeting.

8.13 Decisions of directors

- (a) A directors' meeting at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the directors under the law and this constitution.
- (b) Questions arising at a directors' meeting and any other matter to be determined by the directors under this constitution are to be decided by a majority of votes cast by the directors present and a decision of that kind is for all purposes a determination of the directors.
- (c) If there are an equal number of votes cast for and against a resolution at a directors' meeting, then the chair may cast a second or casting vote.

8.14 Decisions without meetings

Directors may pass resolutions and otherwise make decisions outside of a directors' meeting in any manner (including through the use of technology) so long as such manner complies with:

- (a) the law; and
- (b) any policies and procedures relating to the passing of director resolutions as determined by the directors from time to time.

8.15 Committees

- (a) The directors may resolve to:
 - (i) establish one or more committees consisting of such persons as they determine;
 - (ii) delegate to each committee such of their powers required for the effective and efficient running and administration of the committee;
 - (iii) revoke any or all of the powers delegated to each committee and vary the nature and scope of the powers delegated; and
 - (iv) change the makeup of a committee at any time or dissolve it all together.
- (b) A committee must be conducted, and exercise the powers delegated to it, in accordance with any directions of the directors which, for the avoidance of doubt, may be contained within policies, guidelines or protocols.

- (c) The directors may continue to exercise all of their powers despite any delegation made under this rule.

8.16 Delegation to individuals

- (a) The directors may resolve to delegate any of their powers:
 - (i) to one or more directors;
 - (ii) to one or more members; or
 - (iii) to one or more employees.
- (b) The directors may delegate their powers for such time as they determine and may revoke or vary any power so delegated.
- (c) A person to whom any powers have been delegated must exercise the powers delegated in accordance with any directions of the directors.
- (d) The directors may continue to exercise all of their powers despite any delegation.
- (e) A delegation under this rule need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of, a specified office or position.

8.17 Validity of acts

An act done by a director or by a meeting of the directors or a committee attended by a director is not invalidated just because:

- (a) of a defect in the appointment of the director;
- (b) the person is disqualified from being a director or has vacated office; or
- (c) the person is not entitled to vote,

if that circumstance was not known by the person or the directors or committee, as the case may be, when the act was done.

9 Secretaries

- (a) The directors must appoint at least one secretary who may be, but does not need to be, a director.
- (b) The appointment of a secretary may be for the period, on the conditions and, subject to rule 9(c), at the remuneration as the directors determine.
- (c) A director may not be remunerated in his or her capacity as secretary.
- (d) Subject to any contract between the company and the relevant secretary, a secretary of the company may be removed or dismissed by the directors at any time, with or without cause. If that person is a director, such removal or dismissal does not remove that person from office as a director.
- (e) The duties of the secretary include, but are not limited to:

- (i) ensuring that the necessary registers required by the law are established and properly maintained;
 - (ii) ensuring that any required annual returns and annual reports are lodged with the appropriate regulator on time; and
 - (iii) ensuring the organisation of, and attend, meetings of the members and the directors, including the sending out of notices, the preparation of agenda and the compilation of minutes.
- (f) An act done by a person acting as a secretary is not invalidated just because:
- (i) of a defect in the person's appointment as a secretary; or
 - (ii) the person is disqualified from being a secretary,
- if that circumstance was not known by the person when the act was done.

Part F – Winding up

10 Winding up and loss of endorsement

10.1 Winding up

- (a) If upon the winding up or dissolution of the company there remains after satisfaction of all of its debts and liabilities, any property or moneys whatsoever (**Surplus Assets**), such Surplus Assets must not be paid to, or distributed amongst members, but must be given or transferred to an organisation or organisations that:
 - (i) has objects or purposes similar to those of the company;
 - (ii) by its constituent rules, prohibits the distribution of its income and property amongst its members to an extent at least as great as is imposed upon the company; and
 - (iii) if the company is endorsed to receive tax deductible gifts in accordance with any commonwealth tax laws, is likewise endorsed as a deductible gift recipient.
- (b) The decision as to which organisation is, or which organisations are, to be the recipient of the Surplus Assets distributed in accordance with rule 10.1(a):
 - (i) is to be determined by the directors at or before the winding up or dissolution of the company; or
 - (ii) if required, by the Court.
- (c) Any part of the Surplus Assets consisting of property supplied by a government department or public authority, including any unexpended portion of a grant, must be returned to the department or authority that supplied it or to a body nominated by the department or authority.

10.2 Loss of DGR endorsement

If the endorsement of the company as a deductible gift recipient is revoked, the following assets remaining after the payment of the company's liabilities must be transferred to a charitable fund, authority or institution in Australia to which income tax deductible gifts can be made:

- (a) deductible gifts of money or property received for the principal purpose of the company;
- (b) deductible contributions made in relation to an eligible fundraising event held to raise funds for the principal purpose of the company; and
- (c) money received by the company because of such deductible gifts and contributions.

Part G – Administrative matters

11 Minutes and records

11.1 Minutes

The directors must ensure that the following minutes are recorded, approved and kept in accordance with the law:

- (a) meetings and resolutions of members;
- (b) meetings and resolutions of directors; and
- (c) meetings and resolutions of committees.

11.2 Inspection of records

- (a) Subject to the law and rule 11.2(b), the directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the company or any of them will be open to inspection.
- (b) A member may, upon reasonable notice to the directors, inspect any books, records or documents of the company, provided the information obtained is only used for a proper purpose in connection with membership of the company. In the case of directors' minutes and resolutions, the directors may, at their complete discretion, refuse to provide all or some of the directors' minutes or provide such records in a redacted form.
- (c) The company must establish and administer all registers required to be kept by law and each member must provide the company with such information as is required for the company to comply with this rule. If events occur which would cause the information contained in a register maintained by the company to be inaccurate the member must notify the company in writing of the change within 21 days of the date of such change occurring.
- (d) Unless proved incorrect, the register is sufficient evidence of the matters shown in the register.

- (e) The company must keep all financial and other records required by law.
-

12 Indemnity and insurance

- (a) To the extent permitted by law, the company indemnifies its officers (both current and past) for all losses or liabilities incurred by the person as an officer of the company including, but not limited to, a liability for negligence or for legal costs on a full indemnity basis.
 - (b) This indemnity:
 - (i) may only be for losses or liabilities incurred as an officer of the company (either before or after the adoption of this rule);
 - (ii) does not cover any loss or liability of an officer seeking to be indemnified under this rule if that loss or liability arises from that person's wilful misconduct or fraud; and
 - (iii) operates only to the extent that the loss or liability is not paid by insurance.
 - (c) To the extent permitted by law, the company may take out and pay for insurance for the benefit of its officers (both current and past) against any liability incurred by the person as an officer of the company including, but not limited to, a liability for negligence or for legal costs).
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13 Notices

Any notice, document or other communication required or permitted to be given under this constitution or law may be given in any manner (including through the use of technology) so long as such manner complies with:

- (a) the law; and
 - (b) any policies and procedures relating to the giving and receiving of notices, documents and other communications as determined by the directors from time to time.
-

14 General

- (a) **Common seal:** The company may, but is not required to, have and use a common seal. If the directors determine that the company have a common seal, then it must be kept and used in accordance with the law.
- (b) **Submission to jurisdiction:** Each member submits to the non-exclusive jurisdiction of the Supreme Court of the State of New South Wales, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

Schedule 1 Dictionary

1 Dictionary

In this constitution:

Corporations Act means *Corporations Act 2001* (Cth).

Director Special Resolution means a resolution passed by at least 75% of:

- (a) directors present at a directors meeting at which a quorum is present and for which proper notice has been provided in accordance with rule 8.10; or
- (b) all directors where the resolution is being passed without a meeting in accordance with rule 8.14.

LGBTI People means anyone who identifies as being gay, lesbian, bisexual, transgender or intersex, and includes people who are questioning their sexual identity or preference.

Member Disciplinary Resolution has the meaning at rule 5.4(b).

Membership Renewal Notice has the meaning given at rule 4.7.

Surplus Assets has the meaning given in rule 10.1(a).

2 Interpretation

2.1 General

- (a) A reference in a rule in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- (b) In this constitution, headings are for convenience only and do not affect the interpretation of this constitution and, unless the contrary intention appears:
 - (i) words importing the singular include the plural and vice versa;
 - (ii) words importing a gender include every other gender;
 - (iii) except in the context of membership of the company where reference to the individual is to an individual only, words used to denote persons generally include any company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
 - (iv) a reference to any statute, regulation, proclamation, ordinance or by-laws includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;

- (v) the words 'including', 'such as', 'for example' and the like are not, and should not be interpreted to be, words of limitation, unless explicitly stated otherwise; and
- (vi) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (c) A requirement in this constitution for something to be carried out in writing will be satisfied if the matter in question is carried out in some other lawful manner that is approved by the directors.

2.2 Replaceable rules not to apply

The replaceable rules contained in the *Corporations Act 2001* (Cth) from time to time do not apply to the company.

Certificate identifying annexure

No. NSD1386/2024

Federal Court of Australia

District Registry: New South Wales

Division: General

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 and others named in the schedule

Appellants

ROXANNE TICKLE

Respondent

This is the annexure marked "**AB-3**" now produced and shown to Anna Shelley Brown at the time of affirming her affidavit on 18 July 2025.

Before me:



Signature of witness

Annexure AB-3

Affidavit of Anna Shelley Brown dated 18 July 2025



STRATEGIC PLAN

EQUALITY AUSTRALIA STRATEGIC PLAN 2023-2026

PREAMBLE

Equality Australia's second strategic plan outlines our plans to build on and strengthen Australia's diverse LGBTIQ+ communities by addressing discrimination and injustice. It is designed to guide the organisation for the next three years and will be reviewed annually. To achieve the outcomes set out in this plan, we will continue to work with LGBTIQ+ communities, other LGBTIQ+ and community sector organisations, Members of Parliament, governments, philanthropists, media and the private sector to build a fair and inclusive Australia.

Equality Australia works on the unceded lands of First Nations peoples. We acknowledge the historic and continuous systemic injustice experienced by First Nations peoples as well as their enduring cultures, knowledge and contribution to Australian society. We particularly acknowledge the unique contribution brotherboys, sistergirls, and other LGBTIQ+ First Nations people, make to the LGBTIQ+ community.

Equality Australia honours the strength and resilience of LGBTIQ+ communities and generations of leaders and activists who have allowed us to take great leaps forward for equality together.

The LGBTIQ+ community is made up of people from different classes, races, faiths and cultural backgrounds, of differing ages and abilities, with varied gender identities, and from urban, rural and regional communities. This diversity enriches and strengthens our community. These differences can also shape the experience of discrimination and disadvantage faced by LGBTIQ+ people.

LGBTIQ+ people in the global community may also experience particularly severe discrimination and face additional barriers to addressing injustices. Australia has an important role to play in supporting LGBTIQ+ communities in other countries to address these through its role in international diplomacy.

One year on, this strategic plan has been reviewed and updated to reflect our key initiatives as at February 2024.

VISION, MISSION AND VALUES

VISION

A fair and inclusive Australia for all LGBTIQ+ people, their families and communities

MISSION

To create and protect positive legal and social change to ensure LGBTIQ+ people are treated equally and with dignity and respect

VALUES

We strive to meet these values and to work with others who share them.

Pride:	We are proud of the LGBTIQ+ movement in Australia, and we honour the leaders who have come before us. We celebrate and recognise the achievements, strength and resilience of LGBTIQ+ people, and their contributions to social, political, economic and cultural life.
Integrity:	We are strong in our conviction that everyone deserves to be treated with dignity and respect. We are open to learning better ways we can work together and we collaborate in accordance with our values.
Courage:	We lead by example. We speak out and speak up. We stand for justice and do what is right.
Care:	We act with care for each other, and the wider community. We treat people with the same dignity and respect that we expect of others. We listen, we empathise and we respect difference.
Strategic:	We carefully consider how to use our resources for the benefit of the LGBTIQ+ community, focussing our efforts where they are most needed and taking action together to ensure the maximum positive impact on the lives of LGBTIQ+ people.

OUTCOMES

Through our work we will contribute to LGBTIQ+ people and their families being supported by:

1. **Laws and policies** that enable us to live with **dignity and respect**
2. **Positive community attitudes** that affirm who we are
3. **A strong LGBTIQ+ movement** across Australia
4. **Allies working alongside us** to end discrimination against LGBTIQ+ people, and
5. Equality Australia as a **strong, respected, healthy** and **sustainable organisation**

TOOLKIT FOR CHANGE

We pursue enduring change through a range of actions which can include:

- Research and policy solutions
- Advocacy and education
- Strategic communication
- Strategic legal action
- Movement building and support

STRATEGIC PRIORITIES 2023–2026

Our priorities for the next three years include:

1. Providing a national voice and leadership on issues that matter to LGBTIQ+ people
2. Continuing to grow and strengthen the LGBTIQ+ movement across Australia
3. Combatting attacks on LGBTIQ+ people and respond to emerging opportunities

4. Transforming laws, policies, and practices to protect LGBTIQ+ people from discrimination and harm and enable LGBTIQ+ people to live with dignity and respect
5. Building support for LGBTIQ+ people across the wider Australian community

KEY INITIATIVES

Key initiatives in 2024-2025 flowing from our strategic priorities include:

1. Protecting and strengthening legal protections from discrimination including removing religious exemptions in federal and state discrimination laws
2. Protecting and strengthening law and policies to end conversion practices
3. Leading and supporting trans equality, including:
 - o Building leadership and capacity within trans and gender diverse communities
 - o Achieving legal and policy change to uphold the rights and dignity of trans people, particularly in the areas of legal gender recognition and non-discriminatory access to gender affirming healthcare
4. Protecting the bodily autonomy of intersex people by reforming medical treatment laws and policies
5. Ensuring LGBTIQ+ people are properly counted in the national Census
6. Enhancing Australia's role in foreign policy supporting LGBTIQ+ people in the region and beyond

ORGANISATIONAL DEVELOPMENT PRIORITIES

Achieving these outcomes will require a strong, responsive, efficient, skilled and engaged organisation. Our organisational learning and development priorities for 2023-26 will be focussed on continuing to:

1. Develop a thriving and diverse people and culture
2. Engage meaningfully with community and existing and potential supporters
3. Achieve financial sustainability
4. Develop supportive organisational infrastructure
5. Build a robust planning & evaluation framework
6. Enhance Equality Australia's legal advocacy function

Certificate identifying annexure

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Appellants

ROXANNE TICKLE

Respondent

This is the annexure marked "**AB-4**" now produced and shown to Anna Shelley Brown at the time of affirming her affidavit on 18 July 2025.

Before me:



Signature of witness

Annexure AB-4

Affidavit of Anna Shelley Brown dated 18 July 2025

29 August 2023

Australian Human Rights Commission
By email: legal@humanrights.gov.au

By email

Dear Commission

SUBMISSION REGARDING AN APPLICATION BY THE 'LESBIAN ACTION GROUP' FOR AN EXEMPTION UNDER THE SEX DISCRIMINATION ACT 1984 (CTH)

Thank you for the invitation to make a submission in response to the application from the Lesbian Action Group for a temporary exemption to the *Sex Discrimination Act 1984* (the **Act**) under s 44 of the Act (the **Application**). We make a joint submission on behalf of the organisations listed below.

The Application seeks an exemption for a proposed 'Lesbian Born Female Only' event to celebrate International Lesbian Day to be held at the Victorian Pride Centre in St Kilda on Sunday 15 October 2023 (**ILD Event**). The Application also appears to seek a general exemption for a period of five years to hold further events, although these events are not specified.

Temporary exemptions and special measures play an important role within the anti-discrimination law framework in providing historically marginalised groups with mechanisms by which to redress historical discrimination or disadvantage, or meet special needs unique to the group. This Application does neither, because in truth it is seeking to exclude lesbians who are transgender women, as well as women who experience discrimination and marginalisation based on their sexual orientation, such as bisexual and queer women (whether cis or trans).

In this submission, while we agree that is important and beneficial for lesbians to be able to gather as a community to celebrate their culture and discuss issues that affect their community, it is not appropriate or necessary to exclude same-sex attracted women who are transgender, bisexual and queer in order to do so. For lesbians who are transgender or intersex women, the exemption would also invite the policing of female bodies in ways which are antithetical to the dignity, privacy, safety, bodily integrity and physical autonomy of an individual. The Application should not be granted because it is inconsistent with and would undermine the objects of the Act, it is unnecessary, and the Applicants have not met the Commission's criteria for an exemption.

GRANTING AN EXEMPTION IS INCONSISTENT WITH THE OBJECTS OF THE ACT

We do not believe an exemption should be granted in the manner sought because to do so would be inconsistent with and would undermine the objects of the Act.

The objects of the Act relevantly include:

- to give effect to Australia's international obligations under the Convention on the Elimination of All Forms of Discrimination Against Women and relevant international instruments,¹
- to eliminate, so far as is possible, discrimination against persons on the ground of sex, sexual orientation, gender identity and intersex status in certain areas of public life,

¹ The Committee which oversees CEDAW has consistently reiterated that the Convention covers gender-based discrimination against women which includes lesbian, bisexual, transgender and intersex women: see e.g. Committee on the Elimination of Discrimination against Women (2010) [General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women](#), CEDAW/C/GC/28, 16 December, [5]; Committee on the Elimination of Discrimination against Women (2015) [General recommendation No. 33 on women's access to justice](#), CEDAW/C/GC/33, 3 August, [8]; see also 2022 concluding observations in the state reports on Namibia, Senegal and Dominican Republic: [CEDAW/C/NAM/CO/6](#), [42e)]; [CEDAW/C/SEN/CO/8](#), [13(a)] and [CEDAW/C/DOM/CO/8](#), [22(d)].

- to eliminate, so far as is possible, discrimination involving sexual harassment and discrimination involving harassment on the ground of sex in certain areas of public life, and
- to achieve, so far as is practicable, substantive equality as between men and women.²

The potential for sexual and sex-based harassment

First, none of these objects support the idea that distinctions ought to be made *between* women based on their cis or trans experience, or *among* same-sex attracted women based on the exclusivity of their same-sex attraction, insofar as a social event involving singing, dancing or the discussions of ideas is proposed. There is nothing in that proposed event that ought to allow the organiser of an event to interrogate the physical sex characteristics of an attendee or the exclusivity of a woman's sexual attraction to other women as a condition for participation in an event of this kind.

Even if it could be enforced, such an exemption would invite questions about or inquiries of a person that would invariably involve conduct which could amount to sexual or sex-based harassment, being:

- unwelcome conduct of a sexual nature (in asking people about the nature and extent of their same-sex attraction), and/or
- unwelcome conduct of a demeaning nature by reason of the actual or imputed sex-related characteristics of a person (in asking or making assumptions about people based on their sex-related characteristics),

in such circumstances where a person attending a social event celebrating lesbians at the Victorian Pride Centre would reasonably be offended, humiliated or intimidated by such conduct.

The Commission is not able to give an exemption from the prohibitions on sexual harassment or sex-based harassment under Division 3 of the Act, meaning that the exemption could not be enforced in practice without offending the dignity, privacy or safety of potential attendees.

The discriminatory impact on transgender women who are lesbians

Second, although the Application purports to seek an exemption excluding heterosexual, bisexual and queer men and women, as well as gay men, it singles out transgender women who are attracted to women for particular exclusion from among other lesbians. The exemption would further perpetuate discrimination against same-sex attracted transgender women in the one of the few spaces in Victoria which is intended to be safe and welcoming for all members of the LGBTIQ+ community. It does so for no good reason, given the event proposed is a social event for dancing, singing and the discussion of ideas. Why any woman's sex characteristics should be scrutinised or policed by the organisers of any social event, is both disturbing and unexplained by the Applicants.

In the largest study of its kind in Australia, *Private Lives 3* reveals that trans and gender diverse people experience high levels of violence and harassment because of their gender identity and as a result, large health disparities exist between transgender and gender diverse people, compared with cisgender men and women in Australia.³ For example, the study revealed that trans and gender diverse people reported higher levels of harassment than cisgender people, with 51.6% of trans women had experienced verbal abuse in the previous 12 months due to their gender identity.⁴ In addition, 52.4% of trans women reported being socially excluded, compared to 38.6% of cis women, due to their gender identity or sexuality.⁵ Unfortunately, experiences of harassment and social exclusion often lead to poorer health outcomes, with 67.4% of trans women reporting being diagnosed or treated for a mental health condition in the previous 12 months, and 86% of trans women reporting

² *Sex Discrimination Act 1984* (Cth), s 3.

³ Hill et al (2020) *Private Lives 3: The health and wellbeing of LGBTIQ people in Australia* at 41, 92.

⁴ *Ibid*, at 41.

⁵ *Ibid*.

ever having thoughts about suicide.⁶ It would be inconsistent with the objects of the Act, to grant an exemption that would lead to the further exclusion, stigmatisation and discrimination of same-sex attracted transgender women considering the nature of the event which is proposed.

Safety concerns

The Commission also cannot ignore the increasing attacks on and rising fear among LGBTIQ+ Victorians, especially transgender people and drag artists, in a state which has no laws against vilification based on sexual orientation or gender identity. Among the examples of this increasing hostility includes:

- the “Let Women Speak” event organised in March 2023 which attracted protestors, counter protestors and neo-Nazis outside the Victorian Parliament; and
- the cancellation of multiple drag story time events this year out of safety concerns.⁷

Given the publicity afforded to the Application⁸ and the fact that the Applicants appear to have no security plan in place, the Victorian Pride Centre does not have the security or means to protect the safety of people if the Applicants’ event attracts protestors and counter-protestors, as it could be reasonably expected to do.

THE APPLICATION DOES NOT ADDRESS THE COMMISSION’S EXEMPTION CRITERIA

The Application does not address the Commission’s guidelines for making an application. This makes it impossible for the Commission to properly assess the full impact of the Application and the harm it could cause to those it excludes.

First, the Application does not adequately explain who is seeking the exemption. Although it is specified that the exemption is sought by the Lesbian Action Group, the nature and size of the organisation is unclear. This makes it impossible for the Commission to assess the full impact of any exemption in practice, including on the people it excludes.

Second, except for the specified ILD Event, the Application also does not specify what circumstances and activities are to be covered by the general five-year exemption sought, beyond stating that the Lesbian Action Group wishes “*to hold our own events*” and “*we won’t want to stop at one*”. It is not appropriate for an exemption to be granted for a five-year period to cover circumstances that are not sufficiently known to the Commission, potentially allowing discrimination to occur at large.

Third, the Application does not address whether the Lesbian Action Group has sought an exemption under the *Equal Opportunity Act 2010* (Vic). According to the Application, the applicant’s last exemption, which was granted under the predecessor 1995 Victorian Act, was revoked while the 1995 Act was in place, and the Applicants have not sought any exemption under the new 2010 Victorian Act which now includes protections against discrimination based on gender identity and sexual orientation. The Commission cannot therefore be satisfied that granting an exemption would provide any benefit to the Applicants.

Finally, based on the scant information provided, an exemption may not even be required for the Lesbian Action Group, given they assert to be a “community based, not-for-profit activist group”. An exemption may not be necessary if they intend to meet as an organisation or to provide services to their members.⁹ An exemption would only be necessary if the group wished to engage in unlawful discrimination under the Act, such as by refusing a good or service to non-members or if it is a club

⁶ Ibid, at 90-91.

⁷ See Cait Kelly (2023) ‘[Councils call off drag storytime and LGBTIQ+ events in Victoria after far-right threats](#)’, *The Guardian*, 13 May.

⁸ See Chip Le Grand (2023) ‘[Lesbian group seeks human rights exemption to exclude trans women from Melbourne event](#)’, *The Age*, 21 August.

⁹ *Sex Discrimination Act 1984* (Cth), s 39.

which has more than 30 members.¹⁰ The legislature has already made dispensations for small, community-based organisations that seek to promote particular purposes, and it would be inappropriate for the Commission to seek to extend an exemption carefully prescribed by the legislature without a clear understanding of its impact.

THE EXEMPTION IS NOT NECESSARY

Finally, it is not necessary to discriminate against transgender, bisexual, queer or intersex women in order for the lesbian community to celebrate International Lesbian Day at the Victorian Pride Centre. By way of comparison, one of Sydney WorldPride's premiere events was *Ultra Violet*, an event billed for LGBTQIA+ women which attracted an audience of 2,646 people.¹¹ The event was a huge success, provided a much-needed space for women to celebrate with other women, but that did not need exemptions to exclude certain women in order to achieve its success.

Given the very few spaces in Victoria which are intended to be safe and welcoming of the LGBTIQ+ community as a whole, the Application appears intended to be deliberately provocative in selecting the Victorian Pride Centre as the base for hosting an event designed to exclude transgender lesbian women for no obvious purpose, given the Group asserts that it simply intends to celebrate lesbians through song, dance and the discussion of ideas.

Yours sincerely,

The following organisations (in alphabetical order):

Alexander Teh
President

**Australian GLBTIQ
Multicultural Council Inc.**



Karen Field
CEO

Drummond Street Services

Dykes on Bikes Melbourne



Anna Brown
CEO
Equality Australia



Caitlin Reiger
CEO
Human Rights Law Centre

Human
Rights
Law
Centre

Jo Sampford
Principal Solicitor & Director
LGBTI Legal Service Inc.



Penny McKay
Secretary
Melbourne Bisexual Network



Karen Bryant
CEO
Midsumma



Meagan Moss
Founder
Parents of Gender Diverse Children



¹⁰ *Sex Discrimination Act 1984* (Cth), s 25.

¹¹ See Sydney WorldPride (2023) *Festival Report*, June 2023, p 41. Available at: <https://www.mardigras.org.au/worldpride/>.

Rainbow Community Angels



Joe Ball
CEO
Switchboard



Jackie Turner
Director
Trans Justice Project



Son Vivienne
CEO
Transgender Victoria



Jeremy Wiggins
CEO
Transcend Australia



Zoe Belle Gender Collective



Certificate identifying annexure

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GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 and others named in the schedule

Appellants

ROXANNE TICKLE

Respondent

This is the annexure marked "**AB-5**" now produced and shown to Anna Shelley Brown at the time of affirming her affidavit on 18 July 2025.

Before me:



Signature of witness

Annexure AB-5

Affidavit of Anna Shelley Brown dated 18 July 2025

Conciliation Register

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Sex Discrimination Act

Gender identity

All Areas

Act

Sex Discrimination Act

Grounds

- Aids, permits or instructs
- Gender identity
- Intersex status
- Sex
- Sexual orientation

Areas

Administration of Commonwealth laws and programs

Outcome details

- Policy change/Change in practice;
- Statement of regret - public

Year

2023

The complainant (C) is a national LGBTIQ+ organisation whose purpose is to improve the wellbeing and circumstances of LGBTIQ+ people in Australia and their families and children. C alleged that the first respondent statutory officeholder decided not to recommend that topics relating to gender identity, innate variations of sex characteristics and sexual orientation be included in the 2021 Census. C also alleged that the second respondent Ministerial office advised the Governor-General in line with that recommendation and thus it took effect. C alleged that the first respondent prepared the 2021 Census form that: framed the question on sex narrowly with reference to male, female or 'non-binary sex' only; framed the question on ancestry in the gender-specific and heteronormative terms of 'father' and 'mother' or otherwise seeking the country of birth of only one parent; and excluded those people who had selected 'non-binary sex' or who are trans men from the option to answer whether they had ever given birth to a child. The C alleged sex, sexual orientation, gender identity and intersex discrimination and accessory liability.

The respondents (Rs) submitted that the C's concerns about the decision relating to what topics to be included in the 2021 Census related to the automatic operation of the relevant legislation and/or the legislative process and thus they do not come within the Commission's complaint handling jurisdiction. Rs also submitted that the framing of the questions in the 2021 Census dealing with sex and ancestry was lawful for the purpose of the SDA, and also reasonable in the circumstances.

Both parties indicated their willingness to participate in an in-person conciliation conference to try to resolve the complaint, and reached settlement, terms of which included:

- The federal government agency headed by the first respondent (the Agency) agreed to issue the C with a statement of regret, and to publish it on its website, acknowledging the C's complaint to the Commission; recognising the LGBTQ+ people's hurt, stress, anguish and other negative reactions to some 2021 Census questions; and noting its awareness that the framing of some 2021 Census questions and certain language used in those questions was seen or experienced by some as hurtful, confusing, demeaning and discriminatory.
- The public statement of regret issued by the Agency was also to note the review and update that it has carried out since the 2021 Census on the Agency's Standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables in partnership with LGBTQ+ community representatives; and to note the consultation process that the Agency expanded to maximise community participation.
- The Agency committed to establish an LGBTQ+ Expert Advisory Committee for the 2026 Census to provide guidance and input into the Census topic review and framing of Census questions, and the way that Census data is processed and disseminated.
- The relevant Minister agrees to meet with the Expert Advisory Committee in relation to his responsibilities with topics for the 2026 Census.

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Appellants

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Respondent

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Signature of witness

Annexure AB-6

Affidavit of Anna Shelley Brown dated 18 July 2025



[Home](#) > [Media centre](#) > [Media statements](#) > Statement of regret: 2021 Census

Statement of regret: 2021 Census

Media Statement

Released 14/08/2023

The Australian Census provides an important snapshot of Australian society, in which every person and household in Australia should be counted.

The ABS wishes to acknowledge complaints raised by Equality Australia and April Long with the Australian Human Rights Commission in relation to the 2021 Australian Census. Those complaints relate to the omission of certain topics in the 2021 Census, the framing of questions in the 2021 Census and experiences of exclusion members of the LGBTIQ+ community encountered in responding to the 2021 Census.

The ABS recognises the importance of these issues and regrets any distress experienced by members of the LGBTIQ+ community when responding to the 2021 Census and earlier Censuses. The ABS recognises that some members of the LGBTIQ+ community experienced hurt, stress, anguish and other negative reactions to some Census questions.

The ABS is aware that for some respondents, the absence of questions on their gender identity, variations of sex characteristics or sexual orientation meant that they felt invisible and excluded when completing the Census and in the Census results produced.

The ABS is also aware that the framing of some 2021 Census questions and certain language used in those questions, and across the history of Australian Censuses, was also seen or experienced by some as hurtful, confusing, demeaning and discriminatory.

The ABS would like to acknowledge that April Long and Equality Australia have shared their experiences and the experiences of those they represent with the 2021 Census, and worked constructively with the ABS in the spirit of improving the Census going forward.

The ABS has worked, and will continue to work, closely with the LGBTIQ+ community in the development of the Census, surveys and the design of statistical standards and classifications. The ABS is committed to processes and approaches for the 2026 Census to minimise the risk of further harm. This includes both steps already taken, and further steps planned.

Since the finalisation of the 2021 Census approach, the ABS has:

- Reviewed and updated the ABS Standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables in partnership with LGBTIQ+ community representatives.
- Introduced the collection of all elements of the Standard to a number of ABS household surveys.
- Expanded the Census consultation process to a two-phase process to maximise community participation and ensure the breadth and transparency of the process.
- Implemented processes to make sure that all feedback received by the ABS on Census topics and questions were fed directly into the 2026 review process, and not required organisations or members of the community to resubmit this information.

In addition to these actions, the ABS is committing to:

- Establishing a LGBTIQ+ Expert Advisory Committee for the 2026 Census to provide guidance and input into the Census topic review and framing of Census questions, and the way that Census data is processed and disseminated.
- Invest in the support of the LGBTIQ+ community and broader community to participate fully in the 2026 Census through the development of educational, promotional and support materials, with advice of the LGBTIQ+ Expert Advisory Committee.

The Assistant Minister for Competition, Charities and Treasury the Hon Dr Andrew Leigh MP has agreed to meet with the expert advisory committee in relation to his responsibilities with topics for the 2026 Census.

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Appellants

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Respondent

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Before me:



Signature of witness

Annexure AB-7

Affidavit of Anna Shelley Brown dated 18 July 2025

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Division: General

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 & Anor

Appellants

ROXANNE TICKLE

Respondent

EQUALITY AUSTRALIA'S SUBMISSIONS ON APPLICATION TO INTERVENE

A SUBMISSIONS IN SUPPORT OF LEAVE

- 1 **Equality Australia** Ltd applies for leave to appear as intervener, or alternatively as *amicus curiae*, in this appeal to make the written submissions commencing at paragraph 9; and if leave is granted, to present oral submissions limited to 10 minutes on that same subject matter. It seeks leave to intervene on the basis that no costs orders be made either for, or against, it.
- 2 Equality Australia relies on the affidavit of Anna Shelley Brown affirmed 18 July 2025 (**Brown Affidavit**) in support of its application.
- 3 The timing of the application calls for immediate explanation. Equality Australia seeks leave to respond to submissions filed by the Lesbian Action Group (**LAG**) on 7 July 2025. Equality Australia has acted expeditiously since receiving access to those submissions from the Court (on Equality Australia's application) on the afternoon of Friday 11 July 2025.¹
- 4 The contentions advanced by LAG have significant consequences for LGBTIQ+² people. This Court's evaluation of those contentions will be assisted by the distinctive perspective Equality Australia can bring.
- 5 Equality Australia is a national organisation representing LGBTIQ+ people.³ LGBTIQ+ people constitute a diverse population comprising persons who belong to one or more

¹ Affidavit of Anna Shelley Brown affirmed 18 July 2025 (**Brown Affidavit**), [25]-[28].

² LGBTIQ+ is a term used to identify lesbian, gay, bisexual, trans*, intersex, queer and other persons belonging to minority social groups based on the personal attributes of sexual orientation, gender identity and/or sex characteristics: **Brown Affidavit**, [6]-[7].

³ **Brown Affidavit**, [10]-[19].

minority social groups based on their sexual orientation, gender identity and/or sex characteristics.⁴ The LGBTIQ+ umbrella covers several subpopulations, including transgender and gender diverse people whose gender identity differs from their sex assigned at birth,⁵ and intersex people, who are born with physical sex characteristics that differ from medical or social norms for male and female bodies.⁶ Not all LGBTIQ+ people have the same sexual orientation, gender identity or hold an “intersex status”, but all LGBTIQ+ people share the common experience of belonging to a minority protected by one or more of these protected attributes.⁷

6 LGBTIQ+ people comprise a group that is a principal beneficiary of the protections afforded by the *Sex Discrimination Act 1984* (Cth) (**SDA**) as amended in 2013. They have a substantial interest in the interpretation of the SDA.⁸ In turn, Equality Australia is an organisation dedicated to addressing the discrimination and disadvantage faced by LGBTIQ+ people,⁹ and it has both relied on, and provided support to, individuals who have relied on the protections found in the SDA.¹⁰

7 LAG’s submissions agitate the issue of the meaning of “sex” within the SDA. “Sex” is a critical concept in the statute. Its meaning has implications for all of the protections — as well as exceptions and exemptions — the legislation confers.

8 Among the current parties and interveners, Equality Australia is uniquely placed to offer this Court a useful and different perspective on the construction of the SDA that is sensitive to the differences found within the LGBTIQ+ population as a whole. Its submissions focus upon issues of legal construction which have not (to its knowledge) been ventilated before the Court below or in submissions on the appeal and cross-appeal.

B PROPOSED SUBMISSIONS

(1) The meaning of “sex”, “men” and “women”: Notice of Appeal, Ground 2

9 Equality Australia submits that the primary judge was correct to find that “sex” for the purposes of the SDA is: (a) non-binary and changeable; (b) not confined to a biological concept, and (c) has a broader meaning, informed by use including in State and Territory legislation: at **PJ**[55]-[64]. His Honour was also correct not to determine the metes and

⁴ Brown Affidavit, [7]-[9].

⁵ Brown Affidavit, [7(b)].

⁶ Brown Affidavit, [7(c)].

⁷ Brown Affidavit, [9].

⁸ Brown Affidavit, [20]-[23].

⁹ Brown Affidavit, [10]-[19].

¹⁰ Brown Affidavit, [18(a)].

bounds of the meaning of sex in the particular circumstances of this case, which involves a transgender woman who has affirmed her female sex both medically and legally: **PJ**[3], [62]. Not all transgender people (particularly young people) will be in the same position as the respondent in this case in respect of their willingness or ability medically or legally to affirm their gender identity.¹¹

10 LAG’s position is that the terms “sex”, “men” and “women” are defined or limited by biological sex characteristics held (or assumed to be held) at a particular point in time by a person. Equality Australia joins issue with LAG’s submissions (**LS**). LAG’s construction would lead to anomalous consequences for the diverse LGBTIQ+ group that the SDA was specifically amended to recognise and protect as a whole.

11 In addition to the submissions made by the Sex Discrimination Commissioner at first instance, accepted by His Honour at **PJ**[55]-[62], Equality Australia makes the following submissions informed by its experience representing and supporting LGBTIQ+ people.

(2) **“Sex” is a unifying concept underpinning the SDA, not a defined class limited to biological characteristics**

12 The SDA prohibits sex-based discrimination across the whole life course, including in the areas of education (s 21), work (ss 14-20) and in the provision of goods and services (s 22). The SDA contains a series of exemptions to the prohibitions on discrimination, including some that apply only to specific attributes: e.g. ss 30-44.

13 A person’s sex¹² under the SDA defines the group to which a person belongs for the purposes of:

- a. applying the comparisons required by the tests for direct and indirect sex discrimination;¹³

¹¹ As to medical affirmation, see e.g. *Re Imogen (No 6)* [2020] FamCA 761, [63] (Watts J) on the need for parental consent or court authorisation, and *Re Ash (No 4)* [2024] FedCFamC1F 777, [72]-[90] (Tree J), discussing some of the clinical guidance relating to the age at which medical interventions such as puberty suppressants or hormone treatment may be appropriate or recommended. As to requirements for legal affirmation, see e.g. *Births, Deaths and Marriages Registration Act 1996* (Vic), s 30B and *Births, Deaths and Marriages Registration Act 1995* (NSW), ss 32C-32D.

¹² Contrary to **LS**[13], the attribute of “gender identity” relates to and does not eschew the concept of “sex”. The term “designated sex” is used, as a further qualifier on the concept of “sex”, to recognise that a person’s sex and its designation by others may be discordant. This again reinforces that an underlying and expansive concept of “sex” is relevant to all attributes (including the attribute of “gender identity”) rather than being a wholly distinct and biologically-delimited attribute.

¹³ SDA, s 5(1) (“the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person of a **different sex**”) and 5(b) (“the discriminator imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging persons of the **same sex** as the aggrieved person”).

- b. identifying the characteristics *generally* appertaining, or imputed, to the person's sex group (that is, by definition, the expected or stereotypical characteristics of the person's sex group, not necessarily characteristics uniformly held);¹⁴
- c. applying the exceptions that only apply to the attribute of sex (such as under ss 21(3), 30, 32, 34(2) and 35(1)); and
- d. identifying whether the person is same, or different, sex oriented for the purposes of the attribute of "sexual orientation".¹⁵

14 For the SDA to operate as intended, the sex of a person must be determined as at the time of the alleged discrimination. Otherwise, the sex-specific exemptions, and the discrimination protections extended to the diverse LGBTIQ+ population as a whole which invoke the concept of "sex", would not operate as intended. Three examples illustrate this.

15 A trans man (who may have undertaken medical intervention such that he appears to the world as a man¹⁶) could not be refused admission to female-only clubs (s 25(3)), educational facilities (s 21(3)), accommodation (s 23(c)), or employment that involved female-only fitting rooms (s 30(2)(c)), bathrooms (s 30(2)(e)) or bodily searches (s 30(2)(d)), simply because he was designated female at birth. These single-sex exemptions are intended to protect the dignity and privacy of others whose comfort will not be protected by admitting into female-only spaces or roles persons who are (and appear to be) male at the relevant time. Contrary to **LS**[18]-[19],[21]-[22],[24], the biological sex characteristics of a trans man as observed at birth have no bearing on achieving the statutory purpose of these exemptions. To the contrary, these exemptions require him to be treated as a man, at the relevant time, for these exemptions to operate as they are intended to preserve female-only spaces or roles.

16 Similarly, a trans woman denied a work travel allowance because her partner is female, would not be recognised as experiencing discrimination based on her same-sex sexual orientation as she would be (as contended by **LS**[12]) fixed in her sex status under the SDA as a man throughout her life. Her experience of the allowance being denied, based on her employer seeing her as a lesbian, would be erased.

17 Finally, an "intersex man who requires treatment for... ovarian cancer"¹⁷ because of his combination of biological sex characteristics could not rely on the characteristics extension in

¹⁴ SDA, s 5(1)(b)-(c).

¹⁵ SDA, s 4(1) (definition of "sexual orientation").

¹⁶ For example, the appellant in *AB v Western Australia* [2011] HCA 42; (2011) 244 CLR 390, [17] (French CJ, Gummow, Hayne, Kiefel and Bell JJ).

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- s 5(1)(c) to argue that a doctor's stereotypical assumptions about male bodies denied him, as a man, the chance for earlier detection of his ovarian cancer than a woman who would be offered earlier testing when presenting with similar symptoms.
- 18 These examples falsify the notion that “sex” should be limited within this statutory scheme to biological characteristics which are binary or fixed at a point in time.
- 19 The better view is that “sex” is an underlying concept (not dissimilar to the “somewhat elusive concept of race”¹⁸) that is not limited to biological characteristics but includes aspects of social recognition and personal identification.¹⁹ That construction is one that best serves the object of the SDA of addressing different kinds of sex-based discrimination: s 3(b).
- 20 The SDA has never been concerned only with biology. To the contrary, it has sought to address and remedy “the social and cultural patterns of conduct of men and women”²⁰ that might constitute forms of sex discrimination. For example, even independently of the specific attributes, discrimination based on pregnancy, breastfeeding and family responsibilities are recognised forms of sex discrimination *per se*, because women have been limited in their participation in public life by social and cultural assumptions and expectations based on characteristics *generally* appertaining or imputed to women.²¹ Contrary to **LS**[15], use of the term “woman” in ss 7 and 7AA does not mean that a “woman” is to be determined purely on the basis of biology throughout the SDA. Indeed, s 23(a) of the *Acts Interpretation Act 1901* (Cth) allows the term “woman” to be read as including non-binary persons or trans men in the same position as women who are pregnant or breastfeeding.²² The Act sought in part to remedy the mischief of discrimination based on “stereotyped roles for men and women.”²³ Such roles inexorably invoke social conceptions. The Act's lens ought not be narrowed to focus merely on biological characteristics.
- 21 It is significant that the attributes of sexual orientation, gender identity and intersex status were inserted into the SDA in 2013, rather than forming part of standalone discrimination

¹⁸ *Macabenta v Minister for Immigration & Multicultural Affairs* [1998] FCA 1643; (1998) 90 FCR 202 at 209-210 (Carr, Sundberg and North JJ).

¹⁹ By way of comparison to the attribute of “race”, see e.g. *Eatoock v Bolt* [2011] FCA 1103; (2011) 197 FCR 261, [169]-[190] (Bromberg J); *Wooton v Queensland (No 5)* [2016] FCA 1457; (2016) 157 ALD 14, [546]-[549] (Mortimer J); *King-Ansell v Police* [1979] 2 NZLR 531, 542 (Richardson J); *Mandla v Dowell Lee* [1983] 2 AC 548, 561-4 (Fraser LJ; Roskill, Brandon and Templeman LJ) agreeing).

²⁰ Convention on the Elimination of All Forms of Discrimination Against Women (**CEDAW**), art 5(a). See also CEDAW, art 10(c).

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²² Considering the equivalent NSW statute, see *NSW Registrar of Births, Deaths and Marriages v Norrie* [2014] HCA 11; (2014) 250 CLR 490, [42]-[43] (French CJ, Hayne, Kiefel, Bell and Keane JJ).

²³ CEDAW, art 5(a).

legislation. This recognises that the underlying and expansive concept of “sex” is also relevant to these attributes, and that this underlying concept is “not a binary concept”²⁴ nor confined to biological considerations fixed in time at any particular moment.

22 The SDA protects different attributes not because those attributes (or people with those attributes) can be quarantined into distinct biologically-delimited classes (cf e.g. **LS**[10]-[20]), but because sex-based discrimination manifests differently for different subgroups.²⁵ It can be based on a person’s sex; characteristics and stereotypes generally associated with their sex group; their designated sex not according with their current gender identity or appearance; the fact that they have less typical biological sex characteristics than is common for men and women, or the fact that they are attracted to people of their own or different sexes. Each finds protection in the provisions of ss 5-7A, which can be argued in the alternative.²⁶

23 All of these forms of discrimination are sex-based in that they relate to social and cultural expectations regarding sex, and specifically what is expected of a woman or a man. As Gorsuch J, delivering judgment for the majority of the US Supreme Court in *Bostock v Clayton County*, stated: “[While] homosexuality and transgender status are distinct concepts from sex... discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex; the first cannot happen without the second.”²⁷

24 The potential overlap between the grounds of “sex”, “gender identity” and “intersex status” was a deliberate aspect of the 2013 SDA amendments, as it recognised that different forms of sex-based discrimination manifested differently for persons who are transgender or intersex:²⁸

While there may be some overlap between the grounds of “sex”, “gender identity” and “intersex status”, it is important that intersex status is protected as a separate ground because people who are intersex are also vulnerable to discrimination. It also recognises that discrimination on this ground manifests differently to discrimination on the grounds of sex and gender identity.

²⁴ SDA, ss 5A-7A. See also EM, [15] (relating to “sex”, “gender identity” and “intersex status”). Regarding the attribute of “potential pregnancy”, see Explanatory Memorandum, Sex Discrimination Amendment Bill 1995 (Cth), [24] (“necessary to prevent discrimination against women on the basis of their potential or perceived potential to become pregnant”). Regarding the attributes of “breastfeeding” and “family responsibilities”, see Explanatory Memorandum, Sex and Aged Discrimination Legislation Amendment Bill 2010 (Cth), [19] (“this ground of discrimination is only available to women who are breastfeeding. The ground is not available to men, or to women who are not breastfeeding”) [25] (“[the new definition of “family responsibilities”] is intended to be equally available to both women and men. The ground does not allow complaints to be brought by people without family responsibilities in relation to rights, privileges, or other conditions which recognise the special needs of people with family responsibilities”).

²⁵ EM, [16].

²⁶ See footnote 21.

²⁷ *Bostock v Clayton County, Georgia* 140 S.Ct. 1731 (2020), 1746-1747.

²⁸ EM, [16].

- 25 Where Parliament intended transgender or intersex people to be treated differently from the sex group with which they identify and are socially recognised, it specifically said so by putting in place exemptions that applied to the attributes of “gender identity” or “intersex status” alongside the attribute of “sex”: e.g. s 42 dealing with sport, or s 38(1) dealing with religious educational institutions. The deliberate omission of “gender identity” or “intersex status” in several exemptions specifically dealing with “sex” (e.g. ss 30, 41 and 41A), is a clear indication that, for the most part, transgender and intersex people are to be recognised under the SDA in accordance with their lived and identified sex, not relegated as a “third sex” against their will,²⁹ and not defined solely by reference to their biological characteristics, or their designated sex at birth (should that now be discordant with their gender identity).
- 26 Different attributes allow for different forms of sex-based discrimination to be readily identified when comparisons must be made *within* the same sex-based group,³⁰ when sex-based characteristics (e.g., pregnancy, breastfeeding, expected biological sex characteristics, sexual attraction, or gender presentation) must themselves be extended to further characteristics appertaining or imputed to these sex-based characteristics,³¹ or where specific exceptions need to apply to some within the same sex-based group but not to everyone.³²
- 27 For example, the gender identity attribute allows for a comparison to be undertaken *among* men and *among* women, where a person who now identifies as a man or woman is treated less favourably or disadvantaged because of their designated sex at birth. The gender identity protections also allow characteristics generally appertaining or imputed to transgender identity (such as the process of gender transition or having comparatively larger or smaller hand or feet sizes due to a previous male or female puberty) to find protection from discrimination, in ways that the definition of “sex” discrimination under s 5 alone could not facilitate.
- 28 The separate attributes of “sexual orientation” and “intersex status” similarly recognise particular forms of discrimination that LGBTIQ+ people may face based on their sexual attraction or physical sex characteristics that do not accord with expected norms for men and women.
- 29 Nothing in the SDA, as amended in 2013 to be more inclusive and beneficial towards the LGBTIQ+ population as a whole, should be construed as denying a person the dignity and autonomy of being recognised as the sex with which they identify, and have taken genuine

²⁹ EM, [15] (“[Intersex status] does not require a person who is intersex to identify as either male or female in order to access protections under the SDA. The definition is not intended to create a third sex in any sense”).

³⁰ See SDA, ss 7(1) (pregnant versus not), 7AA(1) (breastfeeding versus not) and 7A (people with family responsibilities versus without).

³¹ See SDA, ss 5A(1)(b)-(c), 5B(1)(b)-(c), 5C(1)(b)-(c), 6(1)(b)-(c), 7(1)(b)-(c), 7AA(1)(b)-(c) and 7A(b)(ii)-(iii).

³² See SDA, s 31 (applying only to pregnancy, childbirth and breastfeeding).

steps to become socially recognised by, where there is no basis for such an interpretation, and indeed, strong textual, contextual and purposive reasons (as his Honour found at **PJ**[55]-[64]) going in the opposite direction.

30 While the SDA refers to “sex” by reference to “men” and “women” in a small number of provisions (e.g., ss 7D(1)(a), 25(4)-(5)), those references are to men and women as a class of persons; a social group. These references do not prescribe the characteristics of what makes an individual person a man or a woman. Indeed, the capacity to fall pregnant or breastfeed has never been definitive of what makes a woman, because if it did then individual women who are infertile would lose the protection afforded to women as a class under the SDA. That the SDA provides additional protection to the subset of women who do fall pregnant or breastfeed does not define a “woman” throughout the SDA.

31 A protected attribute such as “sex” need not be defined in simple, binary or temporally-fixed terms for it to provide effective protections against discrimination for anyone, including women. Neither biological characteristics appertaining to, nor imputed to, sex need confine the meaning of “sex”. The history of the SDA, particularly since 2013, has been to adopt an inclusive and expansive understanding of sex-based discrimination and the many forms it can take.

18 July 2025



Ruth Higgins



Christopher Tran



Ghassan Kassisieh

Counsel for Equality Australia

NOTICE OF FILING

Details of Filing

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A handwritten signature in blue ink that reads "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.

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No. NSD1386/2024

Federal Court of Australia

District Registry: New South Wales Registry

Division: General

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 & Anor

Appellants

ROXANNE TICKLE

Respondent

EQUALITY AUSTRALIA'S SUBMISSIONS ON APPLICATION TO INTERVENE

A SUBMISSIONS IN SUPPORT OF LEAVE

- 1 **Equality Australia** Ltd applies for leave to appear as intervener, or alternatively as *amicus curiae*, in this appeal to make the written submissions commencing at paragraph 9; and if leave is granted, to present oral submissions limited to 10 minutes on that same subject matter. It seeks leave to intervene on the basis that no costs orders be made either for, or against, it.
- 2 Equality Australia relies on the affidavit of Anna Shelley Brown affirmed 18 July 2025 (**Brown Affidavit**) in support of its application.
- 3 The timing of the application calls for immediate explanation. Equality Australia seeks leave to respond to submissions filed by the Lesbian Action Group (**LAG**) on 7 July 2025. Equality Australia has acted expeditiously since receiving access to those submissions from the Court (on Equality Australia's application) on the afternoon of Friday 11 July 2025.¹
- 4 The contentions advanced by LAG have significant consequences for LGBTIQ+² people. This Court's evaluation of those contentions will be assisted by the distinctive perspective Equality Australia can bring.
- 5 Equality Australia is a national organisation representing LGBTIQ+ people.³ LGBTIQ+ people constitute a diverse population comprising persons who belong to one or more

¹ Affidavit of Anna Shelley Brown affirmed 18 July 2025 (**Brown Affidavit**), [25]-[28].

² LGBTIQ+ is a term used to identify lesbian, gay, bisexual, trans*, intersex, queer and other persons belonging to minority social groups based on the personal attributes of sexual orientation, gender identity and/or sex characteristics: **Brown Affidavit**, [6]-[7].

³ **Brown Affidavit**, [10]-[19].

minority social groups based on their sexual orientation, gender identity and/or sex characteristics.⁴ The LGBTIQ+ umbrella covers several subpopulations, including transgender and gender diverse people whose gender identity differs from their sex assigned at birth,⁵ and intersex people, who are born with physical sex characteristics that differ from medical or social norms for male and female bodies.⁶ Not all LGBTIQ+ people have the same sexual orientation, gender identity or hold an “intersex status”, but all LGBTIQ+ people share the common experience of belonging to a minority protected by one or more of these protected attributes.⁷

6 LGBTIQ+ people comprise a group that is a principal beneficiary of the protections afforded by the *Sex Discrimination Act 1984* (Cth) (**SDA**) as amended in 2013. They have a substantial interest in the interpretation of the SDA.⁸ In turn, Equality Australia is an organisation dedicated to addressing the discrimination and disadvantage faced by LGBTIQ+ people,⁹ and it has both relied on, and provided support to, individuals who have relied on the protections found in the SDA.¹⁰

7 LAG’s submissions agitate the issue of the meaning of “sex” within the SDA. “Sex” is a critical concept in the statute. Its meaning has implications for all of the protections — as well as exceptions and exemptions — the legislation confers.

8 Among the current parties and interveners, Equality Australia is uniquely placed to offer this Court a useful and different perspective on the construction of the SDA that is sensitive to the differences found within the LGBTIQ+ population as a whole. Its submissions focus upon issues of legal construction which have not (to its knowledge) been ventilated before the Court below or in submissions on the appeal and cross-appeal.

B PROPOSED SUBMISSIONS

(1) The meaning of “sex”, “men” and “women”: Notice of Appeal, Ground 2

9 Equality Australia submits that the primary judge was correct to find that “sex” for the purposes of the SDA is: (a) non-binary and changeable; (b) not confined to a biological concept, and (c) has a broader meaning, informed by use including in State and Territory legislation: at **PJ**[55]-[64]. His Honour was also correct not to determine the metes and

⁴ Brown Affidavit, [7]-[9].

⁵ Brown Affidavit, [7(b)].

⁶ Brown Affidavit, [7(c)].

⁷ Brown Affidavit, [9].

⁸ Brown Affidavit, [20]-[23].

⁹ Brown Affidavit, [10]-[19].

¹⁰ Brown Affidavit, [18(a)].

bounds of the meaning of sex in the particular circumstances of this case, which involves a transgender woman who has affirmed her female sex both medically and legally: **PJ**[3], [62]. Not all transgender people (particularly young people) will be in the same position as the respondent in this case in respect of their willingness or ability medically or legally to affirm their gender identity.¹¹

10 LAG’s position is that the terms “sex”, “men” and “women” are defined or limited by biological sex characteristics held (or assumed to be held) at a particular point in time by a person. Equality Australia joins issue with LAG’s submissions (**LS**). LAG’s construction would lead to anomalous consequences for the diverse LGBTIQ+ group that the SDA was specifically amended to recognise and protect as a whole.

11 In addition to the submissions made by the Sex Discrimination Commissioner at first instance, accepted by His Honour at **PJ**[55]-[62], Equality Australia makes the following submissions informed by its experience representing and supporting LGBTIQ+ people.

(2) “Sex” is a unifying concept underpinning the SDA, not a defined class limited to biological characteristics

12 The SDA prohibits sex-based discrimination across the whole life course, including in the areas of education (s 21), work (ss 14-20) and in the provision of goods and services (s 22). The SDA contains a series of exemptions to the prohibitions on discrimination, including some that apply only to specific attributes: e.g. ss 30-44.

13 A person’s sex¹² under the SDA defines the group to which a person belongs for the purposes of:

- a. applying the comparisons required by the tests for direct and indirect sex discrimination;¹³

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- b. identifying the characteristics *generally* appertaining, or imputed, to the person's sex group (that is, by definition, the expected or stereotypical characteristics of the person's sex group, not necessarily characteristics uniformly held);¹⁴
- c. applying the exceptions that only apply to the attribute of sex (such as under ss 21(3), 30, 32, 34(2) and 35(1)); and
- d. identifying whether the person is same, or different, sex oriented for the purposes of the attribute of "sexual orientation".¹⁵

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²⁰ Convention on the Elimination of All Forms of Discrimination Against Women (**CEDAW**), art 5(a). See also CEDAW, art 10(c).

²¹ SDA, s 5(1)(b)-(c). See e.g. *Human Rights & Equal Opportunity Commission v Mt Isa Mines* (1993) 466 FCR 301, 327-328 (Lockhart J); *Thomson v Orica Australia Pty Ltd* [2002] FCA 939; (2002) 116 IR 186, [165]-[170] (Allsop J); *Escobar v Rainbow Printing Pty Ltd (No 2)* [2002] FMCA 122, [33], [37] (Driver FM), also citing *Hickie v Hunt & Hunt* [1998] HREOCA 8, [6.17.10] (Commissioner Evatt); *Mayer v Australian Nuclear Science and Technology Organisation* [2003] FMCA 209, [69]-[73] (Driver FM); *Howe v Qantas Airways Ltd* [2004] FMCA 242, [112], [117] (Driver FM). See also *New South Wales v Amery* [2006] HCA 14; (2006) 230 CLR 174, [9], [12] (Gleeson CJ) and [114] (Kirby J dissenting). But see contra *Kelly v TPG Internet Pty Ltd* [2003] FMCA 584, [79]-[83] (Raphael FM).

²² Considering the equivalent NSW statute, see *NSW Registrar of Births, Deaths and Marriages v Norrie* [2014] HCA 11; (2014) 250 CLR 490, [42]-[43] (French CJ, Hayne, Kiefel, Bell and Keane JJ).

²³ CEDAW, art 5(a).

legislation. This recognises that the underlying and expansive concept of “sex” is also relevant to these attributes, and that this underlying concept is “not a binary concept”²⁴ nor confined to biological considerations fixed in time at any particular moment.

22 The SDA protects different attributes not because those attributes (or people with those attributes) can be quarantined into distinct biologically-delimited classes (cf e.g. **LS**[10]-[20]), but because sex-based discrimination manifests differently for different subgroups.²⁵ It can be based on a person’s sex; characteristics and stereotypes generally associated with their sex group; their designated sex not according with their current gender identity or appearance; the fact that they have less typical biological sex characteristics than is common for men and women, or the fact that they are attracted to people of their own or different sexes. Each finds protection in the provisions of ss 5-7A, which can be argued in the alternative.²⁶

23 All of these forms of discrimination are sex-based in that they relate to social and cultural expectations regarding sex, and specifically what is expected of a woman or a man. As Gorsuch J, delivering judgment for the majority of the US Supreme Court in *Bostock v Clayton County*, stated: “[While] homosexuality and transgender status are distinct concepts from sex... discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex; the first cannot happen without the second.”²⁷

24 The potential overlap between the grounds of “sex”, “gender identity” and “intersex status” was a deliberate aspect of the 2013 SDA amendments, as it recognised that different forms of sex-based discrimination manifested differently for persons who are transgender or intersex:²⁸

While there may be some overlap between the grounds of “sex”, “gender identity” and “intersex status”, it is important that intersex status is protected as a separate ground because people who are intersex are also vulnerable to discrimination. It also recognises that discrimination on this ground manifests differently to discrimination on the grounds of sex and gender identity.

²⁴ SDA, ss 5A-7A. See also EM, [15] (relating to “sex”, “gender identity” and “intersex status”). Regarding the attribute of “potential pregnancy”, see Explanatory Memorandum, Sex Discrimination Amendment Bill 1995 (Cth), [24] (“necessary to prevent discrimination against women on the basis of their potential or perceived potential to become pregnant”). Regarding the attributes of “breastfeeding” and “family responsibilities”, see Explanatory Memorandum, Sex and Aged Discrimination Legislation Amendment Bill 2010 (Cth), [19] (“this ground of discrimination is only available to women who are breastfeeding. The ground is not available to men, or to women who are not breastfeeding”) [25] (“[the new definition of “family responsibilities”] is intended to be equally available to both women and men. The ground does not allow complaints to be brought by people without family responsibilities in relation to rights, privileges, or other conditions which recognise the special needs of people with family responsibilities”).

²⁵ EM, [16].

²⁶ See footnote 21.

²⁷ *Bostock v Clayton County, Georgia* 140 S.Ct. 1731 (2020), 1746-1747.

²⁸ EM, [16].

- 25 Where Parliament intended transgender or intersex people to be treated differently from the sex group with which they identify and are socially recognised, it specifically said so by putting in place exemptions that applied to the attributes of “gender identity” or “intersex status” alongside the attribute of “sex”: e.g. s 42 dealing with sport, or s 38(1) dealing with religious educational institutions. The deliberate omission of “gender identity” or “intersex status” in several exemptions specifically dealing with “sex” (e.g. ss 30, 41 and 41A), is a clear indication that, for the most part, transgender and intersex people are to be recognised under the SDA in accordance with their lived and identified sex, not relegated as a “third sex” against their will,²⁹ and not defined solely by reference to their biological characteristics, or their designated sex at birth (should that now be discordant with their gender identity).
- 26 Different attributes allow for different forms of sex-based discrimination to be readily identified when comparisons must be made *within* the same sex-based group,³⁰ when sex-based characteristics (e.g., pregnancy, breastfeeding, expected biological sex characteristics, sexual attraction, or gender presentation) must themselves be extended to further characteristics appertaining or imputed to these sex-based characteristics,³¹ or where specific exceptions need to apply to some within the same sex-based group but not to everyone.³²
- 27 For example, the gender identity attribute allows for a comparison to be undertaken *among* men and *among* women, where a person who now identifies as a man or woman is treated less favourably or disadvantaged because of their designated sex at birth. The gender identity protections also allow characteristics generally appertaining or imputed to transgender identity (such as the process of gender transition or having comparatively larger or smaller hand or feet sizes due to a previous male or female puberty) to find protection from discrimination, in ways that the definition of “sex” discrimination under s 5 alone could not facilitate.
- 28 The separate attributes of “sexual orientation” and “intersex status” similarly recognise particular forms of discrimination that LGBTIQ+ people may face based on their sexual attraction or physical sex characteristics that do not accord with expected norms for men and women.
- 29 Nothing in the SDA, as amended in 2013 to be more inclusive and beneficial towards the LGBTIQ+ population as a whole, should be construed as denying a person the dignity and autonomy of being recognised as the sex with which they identify, and have taken genuine

²⁹ EM, [15] (“[Intersex status] does not require a person who is intersex to identify as either male or female in order to access protections under the SDA. The definition is not intended to create a third sex in any sense”).

³⁰ See SDA, ss 7(1) (pregnant versus not), 7AA(1) (breastfeeding versus not) and 7A (people with family responsibilities versus without).

³¹ See SDA, ss 5A(1)(b)-(c), 5B(1)(b)-(c), 5C(1)(b)-(c), 6(1)(b)-(c), 7(1)(b)-(c), 7AA(1)(b)-(c) and 7A(b)(ii)-(iii).

³² See SDA, s 31 (applying only to pregnancy, childbirth and breastfeeding).

steps to become socially recognised by, where there is no basis for such an interpretation, and indeed, strong textual, contextual and purposive reasons (as his Honour found at **PJ**[55]-[64]) going in the opposite direction.

30 While the SDA refers to “sex” by reference to “men” and “women” in a small number of provisions (e.g., ss 7D(1)(a), 25(4)-(5)), those references are to men and women as a class of persons; a social group. These references do not prescribe the characteristics of what makes an individual person a man or a woman. Indeed, the capacity to fall pregnant or breastfeed has never been definitive of what makes a woman, because if it did then individual women who are infertile would lose the protection afforded to women as a class under the SDA. That the SDA provides additional protection to the subset of women who do fall pregnant or breastfeed does not define a “woman” throughout the SDA.

31 A protected attribute such as “sex” need not be defined in simple, binary or temporally-fixed terms for it to provide effective protections against discrimination for anyone, including women. Neither biological characteristics appertaining to, nor imputed to, sex need confine the meaning of “sex”. The history of the SDA, particularly since 2013, has been to adopt an inclusive and expansive understanding of sex-based discrimination and the many forms it can take.

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