

## **NOTICE OF FILING**

### **Details of Filing**

Document Lodged:	Notice of a Constitutional Matter under s78B Judiciary Act 1903 - Form 18 - Rule 8.11(2)
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	9/10/2024 5:53:03 PM AEDT
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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.

**Notice of a Constitutional matter  
under section 78B of the Judiciary Act 1903**

No. NSD1386 of 2024

Federal Court of Australia

District Registry: New South Wales

Division: Administrative and Constitutional and Human Rights

On appeal from the Federal Court of Australia

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

Appellants

**ROXANNE TICKLE**

Respondent

The Appellants give notice that the proceeding involves a matter arising under the Constitution or involving its interpretation within the meaning of section 78B of the *Judiciary Act 1903*.

**Nature of Constitutional matter**

The Appellants apprehend that the matter as framed by the Notice of Appeal filed in the proceedings on 2 October 2024, gives rise to the question of whether s 5B of the *Sex Discrimination Act 1984* (Cth) (**SDA**) is inoperative as it pertains to the Appellants.

**Facts showing that section 78B Judiciary Act 1903 applies**

1. The Respondent is a natal male who asserts a gender identity of a “female” and a personhood protected from being unlawfully discriminated against because of a “**perceived** gender identity as a transgender person.” [emphasis added]
2. The Respondent was born in the state of Queensland and has had been issued with a birth certificate, pursuant to Part 4 of the *Births, Deaths and Marriages, Registration Act 2003* (Qld) which records the Respondent’s sex as “female”.

Filed on behalf of (name & role of party)	Giggle for Girls Pty Ltd & Sally Grover, First & Second Appellants
Prepared by (name of person/lawyer)	Katherine Deves, Solicitor for the Appellants
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[Version 2 form approved 09/05/2013]

3. The First Appellant was the provider of a digital application styled “Giggle for Girls” (**Giggle**) which is marketed as a digital platform exclusively for females as a “safe space”. The CEO of the First Appellant is the Second Appellant.
4. Giggle is no longer operational.
5. At the time when Giggle was operational, to access it, a user was required to provide a self-taken photograph, referred to as a “selfie” and upload it to the application. The purpose of this was to ensure that the proposed user was female. An artificial intelligence feature was used to make this determination in the first instance.
6. The Respondent was originally granted access to the Giggle App based on a selfie uploaded.
7. The Respondent’s access was removed, most likely, following a visual inspection by the Second Appellant for and on behalf of Giggle, on the basis that the Respondent had the characteristics that pertain generally to persons of the male sex or that are generally imputed to persons of the male sex.
8. The Respondent alleges that this is conduct which amounts to discrimination on the ground of gender identity for the purposes of section 5B of the SDA, by reason of the allegation that access to the Giggle App could only be granted to a “cisgendered female” or a person “determined as having cisgendered physical characteristics during the Application Process”. This alleged conduct is alleged to be in breach of s 22 of the SDA on the grounds of gender identity because the Respondent, a transwoman, was treated less favourably than a cisgender woman, and thereby was discriminated against by the Appellants on the basis of “gender identity” within the meaning of s 5B of the SDA.
9. Sections 5B of the SDA are amendments made to the SDA by the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* (Cth).
10. The federal Parliament has very limited constitutional powers to enact laws concerning discrimination. The constitutional basis for the SDA is s 51(xxix) to implement Convention on the Elimination of Discrimination Against Women (**CEDAW**). To be constitutionally valid, the proposed legislation must implement an international obligation or secure a benefit under a treaty in a manner which is appropriate and adapted to implementing the treaty. Discrimination on the basis of gender identity is not the subject of a specific treaty like CEDAW and nor could it plausibly be said that by enacting anti-discrimination provisions concerning gender identity, the Parliament is in some way giving effect to a Convention or treaty. It is doubtful that the provision could be validly enacted pursuant to the external affairs power by reference to an isolated Article of the

international instruments<sup>1</sup>, or, indeed, Article 26 of the International Covenant on Civil and Political Rights.

11. Further, Giggle is not a “trading and financial” corporation within the meaning of s 51 (xx) of the Constitution.
12. Accordingly, the Appellants will contend that s 5B of the SDA inserted into the SDA by the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act* 2013, and s 22 of the SDA, is inoperative in so far as it purportedly pertains to them.

Date: 9 October 2024



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Signed by Katherine Deves  
Alexander Rashidi Lawyers  
Lawyer for the Appellants

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<sup>1</sup> Explanatory Memorandums to the Sex Discrimination Amendment (Sexual Orientation, Gender Identity And Intersex Status) Bill 2013