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:	26/02/2025 2:54:06 PM AEDT
Date Accepted for Filing:	26/02/2025 4:51:34 PM AEDT
File Number:	NSD1386/2024
File Title:	GIGGLE FOR GIRLS PTY LTD (ACN 632 152 017) & ANOR v ROXANNE TICKLE
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	Interlocutory Hearing
Time and date for hearing:	07/04/2025, 10:15 AM
Place:	Court Room Not Assigned, Level 17, Law Courts Building 184 Phillip Street Queens Square, Sydney

Registrar

Important Information

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

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

Form 35
Rule 17.01(1)

Interlocutory application

No. NSD 1386 of 2024

Federal Court of Australia

District Registry: New South Wales

Division: General Division

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

Appellants

ROXANNE TICKLE

Respondent

To the Appellants

The Respondent 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: 10.15am on 7 April 2025

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

Date: 26 February 2025

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

Filed on behalf of (name & role of party) Respondent, Roxanne Tickle

Prepared by (name of person/lawyer) Kylie Stone and Tinashe Makamure

Law firm (if applicable) Barry Nilsson

Tel 03 9909 6365 Fax (02) 8651 0299

Email Corrina.Dowling@bnlaw.com.au / Tinashe.Makamure@bnlaw.com.au / Kylie.Stone@bnlaw.com.au

Address for service (include state and postcode) Barry Nilsson, Level 9, 1 O'Connell Street, Sydney NSW 2000

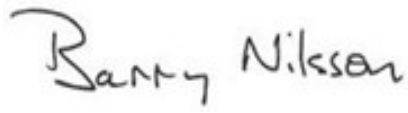
Interlocutory orders sought

1. Pursuant to s 56(1) & (2) of the *Federal Court of Australia Act 1976* (Cth) (**Federal Court Act**) and r 36.09(1)(a) of the *Federal Court Rules 2011* (Cth) (**Rules**), the Appellants are to give security for the Respondent's costs of the proceeding up to the hearing of the appeal, on the following terms:
    a. The Appellants pay security in the amount of $100,000 (**Security Amount**).
    b. The Security Amount be paid into Court within 28 days of the Court making the Orders sought by the Respondent.
2. Pursuant to r 36.09(1)(b) & (c) of the Rules, the proceeding be stayed until the Appellants have paid the Security Amount referred to in [1(a)] above.
3. Liberty to apply.
4. Costs.

Service on the Respondents

It is intended to serve this application on all the Appellants

Date: 26 February 2025



Signed by Tinashe Makamure
Barry Nilsson
Lawyer for the Respondent

Schedule

No. NSD 1386 of 2024

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

Second Appellant: SALLY GROVER

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:	26/02/2025 2:54:06 PM AEDT
Date Accepted for Filing:	26/02/2025 4:51:30 PM AEDT
File Number:	NSD1386/2024
File Title:	GIGGLE FOR GIRLS PTY LTD (ACN 632 152 017) & ANOR v ROXANNE TICKLE
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

Registrar

Important Information

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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 another named in the schedule

Appellants

Roxanne Tickle
Respondent

Sex Discrimination Commissioner
Intervener

Affidavit of: **Kylie Stone**

Address: [redacted]

Occupation: Lawyer

Date: 26 February 2025

Contents

Filed on behalf of (name & role of party) Respondent, Roxanne Tickle
Prepared by (name of person/lawyer) Kylie Stone and Tinashe Makamure
Law firm (if applicable) Barry Nilsson
Tel 03 9909 6365 Fax (02) 8651 0299
Email Corrina.Dowling@bnlaw.com.au / Tinashe.Makamure@bnlaw.com.au / Kylie.Stone@bnlaw.com.au
Address for service (include state and postcode) Barry Nilsson, Level 9, 1 O'Connell Street, Sydney NSW 2000

[Version 3 form approved 02/05/2019]

1431

Document number	Details	Paragraph	Page
5	Annexure "**KS4**", being screenshots of the 'Giggle Crowdfunding' website page (from Wayback Machine) dated 23 August 2024	9	19-22
6	Annexure "**KS5**", being screenshots of the 'Giggle Crowdfunding' website page accessed 26 February 2025	10	23-26
8	Annexure "**KS6**", being a true copy of a letter to the Appellants' solicitors dated 2 May 2024	12	27-29
8	Annexure "**KS7**", being a true copy of an email to the Appellants' solicitors dated 20 May 2024	13	30-32
9	Annexure "**KS8**", being a true copy of an email to Barry Nilsson from the Appellants' solicitors dated 20 May 2024	14	33-35
10	Annexure "**KS9**", being a true copy of an email to the Appellants' solicitors dated 4 June 2024	15	36-39
11	Annexure "**KS10**", being a true copy of an email to Barry Nilsson from the Appellants' solicitors dated 4 June 2024	16	40-43
12	Annexure "**KS11**", being a true copy of an email to Barry Nilsson from the Appellants' solicitors dated 24 October 2024	17	44-46
13	Annexure "**KS12**", being a true copy of a letter to the Appellants' solicitors dated 18 November 2024	18	47-51
14	Annexure "**KS13**", being a true copy of a letter to Barry Nilsson from the Appellants' solicitors dated 22 November 2024	19	52-54
15	Annexure "**KS14**", being a true copy of an email to the Appellants' solicitors dated 11 February 2025	20	55-57

I, Kylie Stone, Lawyer, affirm:

1. I am a solicitor at Barry Nilsson Lawyers (**BN**), and subject to the supervision of the principals at BN. I am one of the solicitors with carriage of this matter for the Respondent (**Ms Tickle**) and I am authorised to make this affidavit on Ms Tickle's behalf.

2. The contents of this affidavit is based on my own knowledge or, where indicated, on information provided to me by the sources identified in this affidavit, which I believe to be true.

3. I make this affidavit in support of Ms Tickle's application for security for costs pursuant to r 36.09(1) of the *Federal Court Rules 2011* (Cth) and s 56 of the *Federal Court of Australia Act 1976* (Cth) and paragraph 3(a) of the Orders of the Hon Justice Abraham dated 12 February 2025.

4. Now produced and shown to me and marked "**KS**" is an annexure bundle of documents to which I refer in this affidavit and which is sequentially paginated.

Background

5. On 1 June 2023, Justice Bromwich made orders which required the Appellants to pay the Respondent's costs incidental to the interlocutory applications heard on 28 April 2023, including post-hearing submissions (**Interlocutory Costs Orders**). A true copy of those orders is at "**KS-1**" pages 9 to 12. His Honour's Reasons for Judgment are published: *Tickle v Giggle for Girls Pty Ltd* [2023] FCA 553.

6. On 23 August 2024, Justice Bromwich made orders which required the Appellants to pay the Respondent's costs of the trial (subject to certain cost capping orders) and that the Appellants pay $10,000 compensation (by way of general damages) to the Respondent (**Trial Costs Orders**). A copy of those orders is at "**KS-2**" pages 13 to 15.

Appellants' Crowd Funding

7. The Appellants have raised substantial amounts of money through crowd funding – the 'Giggle Crowdfunding' website – to support their costs of litigation.

8. By way of example, as at 8 April 2024, being the day before the first day of trial, the Appellants had raised $442,816 via the 'Giggle Crowdfunding' website page. That screenshot was provided in Ms Tickle's Tender Bundle provided to Justice Bromwich's chambers on 8 April 2024. On 26 February 2025, I used the website web.archive.org (known as 'Wayback Machine') to view an archived version of the 'Giggle Crowdfunding' website as at 9 April 2024, which shows that the Appellants had raised $484,414. Screenshots of those 'Giggle Crowdfunding' website pages are at "**KS3**" pages 16 to 18.

9. As at the date of judgment (*Tickle v Giggle for Girls Pty Ltd (No 2)* [2024] 960), on 23 August 2024, the Appellants had raised at least $578,695 in crowd funding to pay for the Appellants' legal fees for the trial. On 26 February 2025, I used the website web.archive.org (known as 'Wayback Machine') to view an archived version of the 'Giggle Crowdfunding' website as at 23 August 2024. Under the "Use of funds" tab of that website page, the Appellants stated the funds raised:

> "*will be used exclusively to cover legal fees and related costs for this case only (and any appeals that may be necessary). If, however, at the conclusion of this case, there are excess funds remaining, I will donate those funds to other gender critical crowdfunders and causes.*
>
> *I will not keep any of the funds raised".*

As at the date of this affidavit, the trial crowd funding page can no longer be accessed on the Internet. Screenshots of those 'Giggle Crowdfunding' website pages are at "**KS4**" pages 19 to 22.

10. As of 26 February 2025, the 'Giggle Crowdfunding' website featured a new donation page allowing persons to donate money towards funding the Appellants' legal costs associated with the appeal for the matter. The Appellants have presently raised a total of $281,077. Under the "Use of funds" tab of that website page, the Appellants state the funds raised:

> "*will be used exclusively to cover legal fees and associated costs incurred in the appeal proceedings, any subsequent hearings, and efforts necessary to ensure this important matter is fully and properly determined*.
>
> *Any excess funds remaining at the conclusion of the case will be held on trust and donated to other litigation efforts and advocacy projects supporting sex-based rights, and constitutional legal challenges to ideological overreach".*

Screenshots of those 'Giggle Crowdfunding' website pages are at "**KS5**" pages 23 to 26.

11. Based on the Appellants' crowdfunding endeavours above, the Appellants have raised at a total of at least $859,772 towards the legal costs for the matter.

Correspondence concerning costs

12. On 2 May 2024, Corrina Dowling and Tinashe Makamure of BN wrote to the Appellants' solicitors seeking to explore an agreement regarding the costs to be paid by the Appellants to Ms Tickle pursuant to the Interlocutory Costs Orders. A copy of this letter is at "**KS6**" pages 27 to 29.

13. On 20 May 2024, I wrote to, Katherine Deves, the Appellants' solicitors, proposing that we jointly write to Justice Bromwich's Chambers for Ms Tickle's costs to be assessed by a Registrar pursuant to paragraph 5 of the Interlocutory Costs Orders, due to the Appellants' solicitors not responding to my correspondence dated 2 May 2024. A copy of this correspondence is at "**KS7**" pages 30 to 32.

14. On 20 May 2024, the Ms Deves wrote to me stating that the order referred to above "*was not made on a forthwith basis*" and "*is to be determined at the end of the matter with the costs of the substantive proceedings*". A copy of this correspondence is at "**KS8**" pages 33 to 35.

15. On 4 June 2024, I wrote to Ms Deves stating that Ms Tickle disagreed with the Appellants' position, and I again proposed to write to the Chambers of Justice Bromwich, noting the respective positions of the parties and seeking that the matter be referred to a Registrar for assessment. A copy of this correspondence is at "**KS9**" pages 36 to 39.

16. On 4 June 2024, Ms Deves wrote to me stating that the Appellants did not consent to me sending any communications to the Chambers of Justice Bromwich and referred to

r 40.13 of the *Federal Court Rules 2011* (Cth). A copy of this correspondence is at "**KS10**" pages 40 to 43.

17. On 24 October 2024, Ms Deves wrote to me seeking an undertaking from Ms Tickle not to enforce either the Interlocutory Costs Orders or the Trial Costs Orders until the conclusion of this appeal proceeding. A copy of this correspondence is at "**KS11**" pages 44 to 46.

18. On 18 November 2024, Corrina Dowling and Tinashe Makamure of BN wrote to Ms Deves confirming that Ms Tickle did not agree to give an undertaking not to enforce either the Interlocutory Costs Orders or the Trial Costs Orders. In the same correspondence, Ms Tickle's interlocutory costs, trial costs and the $10,000 compensation awarded to the Respondent (detailed below at [22]) were demanded to be paid into BN's trust account as a matter of urgency. A copy of this letter is at "**KS12**" pages 47 to 51.

19. On 22 November 2024, Ms Deves wrote to me, stating inter alia, that Ms Tickle's demand for costs and payment of the judgment sum was "*premature*" and "*misplaced*". Ms Deves confirmed that she was holding the $10,000 compensation in the Alexander Rashidi Lawyers trust account accruing interest. To the best of my knowledge, Ms Deves is no longer employed at Alexander Rashidi Lawyers, and Ms Deves has not updated BN as to the status of this discrete sum. A copy of this letter is at "**KS13**" pages 52 to 54.

20. On 11 February 2025, I wrote again to Ms Deves seeking that the Appellants give an undertaking that an amount of the crowd funding raised by the Appellants would be preserved for the payment of the extant Interlocutory Costs Orders and Trial Costs Orders. A copy of this correspondence at "**KS14**" pages 55 to 57.

21. The Appellants' solicitors have not yet responded to my email dated 11 February 2025.

Security for Costs

22. The legal costs to date amount to **$356,901.94** (excluding GST) for the interlocutory applications and substantive application, which are comprised of:

    (a) Interlocutory Costs Sum

        i. Solicitor's Fees: $69,375.00 (ex GST);

        ii. Counsels' Fees: $46,025.00 (ex GST).

    (b) Costs on Constitutional Validity and Statutory Construction Issues

        i. Solicitor's Fees: $2,739.00 (ex GST);

        ii. Counsels' Fees: $48,514.00 (ex GST).

(c) Substantive Application Costs Sum

i. Solicitor's Fees: $76,712.00 (ex GST);

ii. Counsels' Fees: $154,251.94 (ex GST).

23. I am informed by Tinashe Makamure, Special Counsel of BN who also has carriage of this matter for the Respondent (under supervision of Principals), that he estimates that **$100,000** would be required in security, consisting of:

(a) $25,000 in solicitors fees; and

(b) $75,000 for counsel fees.

24. Solicitor's fees are estimated to account for the costs of preparation for and attendance at the final hearing. This would involve:

(a) Taking instructions;

(b) Conferring with the representatives for the appellants, the amicus and any interveners;

(c) Research and drafting material at counsel's directions;

(d) Drafting material and updating briefs to counsel;

(e) Reviewing submissions and any associated supporting material; and

(f) Attending any final and interlocutory hearings before the Court.

25. Counsel fees are estimated for the cost of senior and junior counsel preparing for and attending a final hearing which has an estimated length of 2 days according to the appellants' representatives. This would involve:

(a) Taking instructions from instructing solicitors;

(b) Research;

(c) Settling material prepared by instructors and/ or junior counsel;

(d) Conferring with counsel for the appellants, amicus and any interveners;

(e) Drafting oral and written submissions;

(f) Preparing for and attending any interlocutory and final hearings before the Court.

26. This estimate is conservative with a view to allowing the parties fair prospects of recovering costs without being oppressive and is based on Tinashe Makamure's experience of having carriage of this matter and similar claims in this jurisdiction.

27. For the avoidance of doubt, the security sought by the Respondent relates only to costs associated with the Appeal and any cross appeal. The Respondent maintains that the appellants should pay and/ or undertake to hold in trusts, the costs ordered at first instance both in relation to the interlocutory and final hearings.

Affirmed by the deponent)
at Melbourne)
in Victoria)
on 26 February 2025)
before me:)

[redacted]
Signature of deponent

Jason Xue
Signature of witness

Jason Xue
Lawyer

Jason Xue
Level 6, 600 Bourke Street
Melbourne, VIC. 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Schedule

No. NSD 1386 of 2024

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

Second Appellant: SALLY GROVER

Exhibit Certificate

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 another named in the schedule

Appellants

Roxanne Tickle
Respondent

Sex Discrimination Commissioner
Intervener

ANNEXURE "KS1"

A true copy of the Orders of the Hon Justice Bromwich dated 1 June 2023.

This is the exhibit marked "KS1" now produced and shown to Ms Kylie Stone at the time of affirming her affidavit on 26 February 2025 before me.

Jason Xue

Jason Xue

Lawyer

Jason Xue
Level 6, 600 Bourke Street
Melbourne, VIC. 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Federal Court of Australia

District Registry: New South Wales

Division: General No: NSD 1148 of 2022

ROXANNE TICKLE
Applicant

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

ORDER

JUDGE: JUSTICE BROMWICH

DATE OF ORDER: 01 June 2023

WHERE MADE: Sydney

THE COURT ORDERS THAT:

1. Pursuant to s 46PO(2) of the *Australian Human Rights Commission Act 1986* (Cth), the applicant be allowed until 22 December 2022 to make the originating application that was filed on that date.
2. The respondents' notice of objection to competency dated 15 February 2023 and filed 16 February 2023 be dismissed.
3. The applicant's interlocutory application dated 23 March 2023 and filed 24 March 2023 seeking a maximum costs order pursuant to r 40.51 of the *Federal Court Rules 2011* (Cth) be allowed in sum of $50,000, confined to the constitutional validity and statutory construction issues.
4. The respondents' interlocutory application dated 30 March 2023 and filed 31 March 2023 seeking an order pursuant to s 56 of the *Federal Court of Australia Act 1976* (Cth) and r 19.01 of the *Federal Court Rules* that the applicant provide security for costs and related relief be dismissed.
5. The respondents pay the applicant's costs of and incidental to the applications heard on 28 April 2023, including the post-hearing submissions, such costs to be assessed by a registrar on a lump sum basis unless agreed.

Date that entry is stamped: 1 June 2023

Registrar

Schedule

No: NSD 1148 of 2022

Federal Court of Australia

District Registry: New South Wales

Division: General

Second Respondent SALLY GROVER

Exhibit Certificate

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 another named in the schedule

Appellants

Roxanne Tickle
Respondent

Sex Discrimination Commissioner
Intervener

ANNEXURE "KS2"

A true copy of the Orders of the Hon Justice Bromwich dated 23 August 2023.

This is the exhibit marked "KS2" now produced and shown to Ms Kylie Stone at the time of affirming her affidavit on 26 February 2025 before me.

Jason Xue

Jason Xue

Lawyer

Jason Xue
Level 6, 600 Bourke Street
Melbourne, VIC. 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Federal Court of Australia

District Registry: New South Wales Registry

Division: General No: NSD 1148 of 2022

ROXANNE TICKLE
Applicant

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

ORDER

JUDGE: Justice Bromwich

DATE OF ORDER: 23 August 2024

WHERE MADE: Sydney

THE COURT ORDERS THAT:

1. The parties confer and within 7 days provide to the chambers of Justice Bromwich an agreed draft, or competing drafts, of a declaration of contravention by way of indirect gender discrimination.
2. The first and second respondents pay to the applicant a sum of $10,000 within 60 days.
3. The respondents pay the applicant's costs.
4. The component of the costs awarded by order 3 which relate to the constitutional validity and statutory construction issues, be capped at $50,000, being the cap imposed in respect of those issues by order 3 made on 1 June 2023, for the reasons given in *Tickle v Giggle for Girls Pty Ltd* [2023] FCA 553.

Date orders authenticated: 23 August 2024

Registrar

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

Schedule

No: NSD 1148 of 2022

Federal Court of Australia

District Registry: New South Wales Registry

Division: General

Second Respondent SALLY GROVER

Exhibit Certificate

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 another named in the schedule

Appellants

Roxanne Tickle
Respondent

Sex Discrimination Commissioner
Intervener

ANNEXURE "KS3"

A true copy of screenshots of the 'Giggle Crowdfunding' website page (from Wayback Machine) dated 9 April 2024.

This is the exhibit marked "KS3" now produced and shown to Ms Kylie Stone at the time of affirming her affidavit on 26 February 2025 before me.

Jason Xue

Jason Xue
Level 6, 600 Bourke Street
Melbourne, VIC. 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Jason Xue
Lawyer

Giggle crowdfunding

Join this landmark fight to reclaim sex based rights and protections for all women and girls

Tickle v Giggle

Federal Court, Sydney, Australia

Constitutional challenge

About this case | History | Constitutional Challenge | Use of funds

Federal Court of Australia Tackles Unprecedented Sex Discrimination Case with International Implications : Click "Latest News Button for updates"

The Federal Court of Australia is set to hear a landmark case that tests the boundaries of the Sex Discrimination Act as it relates to CEDAW, with significant international consequences. The applicant, Roxanne Tickle, is biologically male and legally recognised as female on his Queensland issued birth certificate. He alleges that Giggle for Girls Pty Ltd, the respondent, has discriminated against him based on his appearance not aligning with societal expectations of women who are biologically female.

Latest News

Target

$500,000

About this case | History | Constitutional Challenge | Use of funds

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This case is the first of its kind and holds considerable international significance, as it is the first to scrutinise the application of the Sex Discrimination Act focus on eliminating gender stereotypes, in the context of CEDAW, to the harmful entrenchment of those same stereotypes by gender-identity ideology. The case's outcome will be a touchstone for whether gender identity can be accommodated when it conflicts with sex-based rights in the digital age, especially in sex-specific spaces. It will potentially set a global precedent.

In its recently filed legal submissions and evidence, which includes expert evidence from Dr Helen Joyce, Dr Kathleen Stock and Dr Colin Wright, the respondent argues that its policy is in the spirit of CEDAW and hence the Sex Discrimination Act, by aiming to protect and promote women's rights and well-being by providing a safe, women-only space. This case, thus, stands at the crossroads of domestic legislation's implementation of international agreements promoting women's rights and the international insidious advance of gender identity ideology.

The decision by the Federal Court will have far-reaching implications, likely influencing not only the Australian legal system but also international law and policy regarding the intersection of gender identity and sex-based rights. It will serve as a crucial reference for future legal frameworks and discussions on sex discrimination and sex-based rights, and their direct conflict with gender-identity ideology worldwide.

Latest News

Target
$500,000

Trial Date
April 9-12, 2024

Funds Raised
$484,414

Legal Team:
Alexander Rashidi, **Lawyer**
Katherine Deves, **Lawyer**
Alexander Rashidi Lawyers, Brisbane
B.K.Nolan, **Barrister**
Wentworth Selborne Chambers

Donate Now

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Exhibit Certificate

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 another named in the schedule

Appellants

Roxanne Tickle
Respondent

Sex Discrimination Commissioner
Intervener

ANNEXURE "KS4"

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Jason Xue

Jason Xue

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Level 6, 600 Bourke Street
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Lawyer

Giggle crowdfunding

Join this landmark fight to reclaim sex based rights and protections for all women and girls

Tickle v Giggle

Federal Court, Sydney, Australia

Constitutional challenge

About this case | History | Constitutional Challenge | Use of funds

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Latest News

Target

$850,000

About this case | History | Constitutional Challenge | Use of funds

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The decision by the Federal Court will have far-reaching implications, likely influencing not only the Australian legal system but also international law and policy regarding the intersection of gender identity and sex-based rights. It will serve as a crucial reference for future legal frameworks and discussions on sex discrimination and sex-based rights, and their direct conflict with gender-identity ideology worldwide.

Latest News

Target
$850,000

Trial Decision Pending
Appeal Fund Open

Funds Raised
$578,695

Legal Team:
Alexander Rashidi, **Lawyer**
Katherine Deves, **Lawyer**
Alexander Rashidi Lawyers, Brisbane
B.K.Nolan, **Barrister**
Wentworth Selborne Chambers

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About this case | History | Constitutional Challenge | Use of funds

Donate

My case is likely to have far reaching consequences. This is the first time that the gender amendments have been tested in a court of law. This case will not only benefit all Australians, but international law and policy by bringing clarity to a very important part of the law. Be part of it, if you can. There really is no contribution that is too small.

About donating

All of the donations made via this crowdfund are by way of gift. All of the monies raised via this crowdfund, less bank charges and processing fees, will be used to pay my legal fees and related costs in respect of my legal defence in the Tickle v Giggle case currently before the Federal Court.

All of the funds raised will be used exclusively to cover my legal fees and related costs for this case only (and any appeals that may be necessary). If, however, at the conclusion of this case, there are excess funds remaining, I will donate those funds to other gender critical crowdfunders and causes.

I will not keep any of the funds raised.

Latest News

Target
$850,000

Trial Decision Pending
Appeal Fund Open

Funds Raised
$578,695

Legal Team:
Alexander Rashidi, **Lawyer**
Katherine Deves, **Lawyer**
Alexander Rashidi Lawyers, Brisbane
B.K.Nolan, **Barrister**
Wentworth Selborne Chambers

Donate Now

Follow Us on X ,(formerly Twitter)

Exhibit Certificate

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 another named in the schedule

Appellants

Roxanne Tickle
Respondent

Sex Discrimination Commissioner
Intervener

ANNEXURE "KS5"

A true copy of screenshots of the 'Giggle Crowdfunding' website page accessed 26 February 2025.

This is the exhibit marked "KS5" now produced and shown to Ms Kylie Stone at the time of affirming her affidavit on 26 February 2025 before me.

Jason Xue

Jason Xue

Jason Xue
Level 6, 600 Bourke Street
Melbourne, VIC. 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Lawyer

Giggle crowdfunding

Join this landmark fight to reclaim sex based rights and protections for all women and girls

Giggle v Tickle

The "what is a woman" case

Federal Court, Sydney, Australia

To appeal the judgement of 5 September 2024

About this case | It Matters | Constitutional Challenge | Use of funds

Appeal Announcement – Protecting Women's Rights and Single-Sex Spaces

Announcing our appeal against the recent ruling of Justice Bromwich in the Federal Court of Australia in **Tickle v Giggle for Girls Pty Ltd (No 2) [2024] FCA 960** (read the summary here), which we contend misinterprets the fundamental rights of women and girls and undermines the legal protections for single-sex spaces that are essential for their safety, dignity, and freedom of association. This case presents a critical legal question: how should the **Sex Discrimination Act 1984 (Cth)** be interpreted to uphold sex-based rights while addressing gender identity claims?

Our appeal challenges the declaratory judgment that found our actions constituted "unlawful indirect discrimination" on the basis of gender identity. We assert that the ruling contains serious legal errors, including:

Latest News

Appeal target
$850,000

Next court date
April 12 2025

Giggle crowdfunding

About this case | It Matters | Constitutional Challenge | Use of funds

Appeal Announcement – Protecting Women's Rights and Single-Sex Spaces

Announcing our appeal against the recent ruling of Justice Bromwich in the Federal Court of Australia in **Tickle v Giggle for Girls Pty Ltd (No 2) [2024] FCA 960** (read the summary here), which we contend misinterprets the fundamental rights of women and girls and undermines the legal protections for single-sex spaces that are essential for their safety, dignity, and freedom of association. This case presents a critical legal question: how should the **Sex Discrimination Act 1984 (Cth)** be interpreted to uphold sex-based rights while addressing gender identity claims?

Our appeal challenges the declaratory judgment that found our actions constituted "unlawful indirect discrimination" on the basis of gender identity. We assert that the ruling contains serious legal errors, including:

- A misinterpretation of the legal definition of "sex" under the **Sex Discrimination Act**, which extends beyond biological reality in a way that risks diluting the legal protections specifically designed for women and girls. The ruling's interpretation of "sex" is inconsistent with both domestic and international law, including Australia's obligations under **CEDAW**.
- A failure to recognise the Giggle App as a lawful "special measure" under the **Sex Discrimination Act**, designed to achieve substantive equality for women by providing a female-only space. The Act explicitly permits sex-based measures where they are necessary to promote women's safety, equality, and dignity, yet the ruling does not adequately engage with this principle.
- A disregard for critical evidence and expert testimony, limiting our ability to fully present the broad social and legal consequences of this ruling. By failing to consider key material, the decision risks setting a precedent that could erode the ability of women to lawfully maintain spaces and organisations based on sex.

As we move forward with our appeal, we emphasise that women standing up for sex-based rights, including the right to single-sex spaces, are acting in defence of fairness, honesty, and legal clarity. This is not an act of exclusion or bigotry—it is a necessary assertion of women's rights in law and policy. Discussions surrounding gender identity must not come at the expense of the safety, dignity, and autonomy of women and lesbians, nor

Latest News

Appeal target
$850,000

Next court date
April 12 2025

Funds Raised
$281,077

Legal Team led by:
Stuart Wood AM KC, **Barrister**
Aickin Chambers, Melbourne
B.K.Nolan, **Barrister**
12 Selbourne Wentworth Chambers, Sydney
Katherine Deves, **Lawyer**
Pryor Tzannes & Wallis, Sydney

Donate Now

Follow Us on X (formerly Twitter)

Giggle crowdfunding

About this case | It Matters | Constitutional Challenge | Use of funds

All donations made via this crowdfund are by way of gift.

These funds are being raised in the public interest to ensure that critical legal principles concerning sex-based rights are fully ventilated and determined, allowing this important matter to be properly argued and resolved.

The funds raised, less any processing fees, will be used exclusively to cover legal fees and associated costs incurred in the appeal proceedings, any subsequent hearings, and efforts necessary to ensure this important matter is fully and properly determined.

Any excess funds remaining at the conclusion of the case will be held on trust and donated to other litigation efforts and advocacy projects supporting sex-based rights, and constitutional legal challenges to ideological overreach.

How You Can Help

If you believe in the importance of defending sex-based rights, safeguarding female-only spaces, upholding constitutional principles, and ensuring that same-sex attracted people can lawfully define their identity and advocacy on their own terms, then your support is critical.

Every contribution strengthens the fight to restore clarity to Australian anti-discrimination law, to ensure that international human rights treaties are not manipulated to override women's rights, and to protect the fundamental freedoms of women, lesbians, and all those affected by gender ideology's encroachment into law and policy.

Thank you for standing with us in this important fight.

Latest News

Appeal target
$850,000

Next court date
April 12 2025

Funds Raised
$281,077

Legal Team led by:
Stuart Wood AM KC, **Barrister**
Aickin Chambers, Melbourne
B.K.Nolan, **Barrister**
12 Selbourne Wentworth Chambers, Sydney
Katherine Deves, **Lawyer**
Pryor Tzannes & Wallis, Sydney

Donate Now

Follow Us on X (formerly Twitter)

Exhibit Certificate

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 another named in the schedule

Appellants

Roxanne Tickle
Respondent

Sex Discrimination Commissioner
Intervener

ANNEXURE "KS6"

A true copy of a letter to the Appellants' solicitors dated 2 May 2024.

This is the exhibit marked "KS6" now produced and shown to Ms Kylie Stone at the time of affirming her affidavit on 26 February 2025 before me.

Jason Xue

Jason Xue
Level 6, 600 Bourke Street
Melbourne, VIC. 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Jason Xue
Lawyer

BN Law Limited
ABN 22 621 026 864
Gadigal Country
L9, 1 O'Connell Street
Sydney NSW 2000
PO Box R1794
Royal Exchange NSW 1225
T +61 2 8031 2600
F +61 2 8031 2699
enquiries@bnlaw.com.au

2 May 2024

Our reference
CLD:TBM:144178-68

Contact
Tinashe Makamure
03 9909 6365
tinashe.makamure@bnlaw.com.au

Principal
Corrina Dowling
03 9909 6320
corrina.dowling@bnlaw.com.au

Katherine Deves
Alexander Rashidi Lawyers
Level 12, Suite 1205, 239 George Street
Brisbane, QLD, 4000

Dear Ms Deves,

RE: Roxanne Tickle v Giggle for Girls Pty Ltd (NSD1148/2022)

We refer to Justice Bromwich's Orders dated 1 June 2023.

Pursuant to Order 5, your clients are to pay the Applicant's costs of and incidental to the applications heard on 28 April 2023, including post-hearing submissions. Such costs are to be assessed by a registrar on a lump sum basis, unless agreed.

With a view to avoiding the costs of referring the costs matter to a registrar, we write to explore reaching agreement on the costs to be paid by the Respondents.

Background

On 16 February 2023, your clients filed a notice of objection to competency on the basis that our client's application was allegedly brought in contravention of section 46PO(2) of the *Australian Human Rights Commission Act 1986* (Cth).

On 24 March 2023, our client filed an interlocutory application and written submissions seeking a capped costs order pursuant to r 40.51 of the *Federal Court Rules 2011* (Cth).

On 31 March 2023, your clients filed an interlocutory application and written submissions seeking an order pursuant to s 56 of the *Federal Court of Australia Act 1976* (Cth) and r 19.01 of the *Federal Court Rules 2011* that our client provide security of costs and related relief.

On 14 April 2023, our client filed two separate written submissions in response to your clients' notice of objection to competency and security for costs application.

On 28 April 2023, we attended the six-hour interlocutory hearing before Justice Bromwich in the Federal Court of Australia.

On 12 May 2023, our client filed post hearing submissions on the termination of our client's Australian Human Rights Commission Complaint pursuant to Order 3 of Justice Bromwich's Orders dated 28 April 2023.

On 1 June 2023, we attended the hearing before Justice Bromwich in the Federal Court of Australia for the handing down of judgment on the interlocutory matters. At the hearing, Justice Bromwich made orders to dismiss your clients' notice of objection to competency and interlocutory application seeking that our client provide security of costs. Further, His Honour allowed our client's interlocutory application seeking a capped costs order confined to the constitutional validity and statutory construction issues in the sum of $50,000.00.

We refer to this component of the proceedings as the **Interlocutory Applications**, for which costs are payable to the Applicant pursuant to his Honour's orders.

Costs

The total costs incurred in relation or incidental to the Interlocutory Applications amounts to **$115,400.00 (ex GST)**, consisting of:

(a) Solicitor's Fees: $69,375.00 (ex GST);
(b) Counsels' Fees: $46,025.00 (ex GST).

Having regard to Schedule 3 of the *Federal Court Rules 2011*, we seek costs from your clients in the total amount of **$98,174.00 (ex GST)**:

(a) Solicitor's Fees: $52,149.00 (ex GST);
(b) Counsels' Fees: $46,025.00 (ex GST;

(**Costs Sum**).

We request that your client deposit the Costs Sum into our trust account by no later than **5:00pm** on **17 May 2024** using the following details:

Account Name:	BN Law Limited t/a Barry Nilsson
BSB:	184-446
Account Number:	30 441 9286
Ref:	301923.181

We request that the remittance is sent to accounts@bnlaw.com.au.

In the event that your clients do not agree to the Costs Sum, we reserve the right for such costs to be assessed by a Registrar.

If you have any questions, please contact me on the details below.

Yours faithfully

Corrina Dowling
Principal
03 9909 6320
corrina.dowling@bnlaw.com.au

Tinashe Makamure
Senior Associate
03 9909 6365
tinashe.makamure@bnlaw.com.au

Exhibit Certificate

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 another named in the schedule

Appellants

Roxanne Tickle
Respondent

Sex Discrimination Commissioner
Intervener

ANNEXURE "KS7"

A true copy of an email to the Appellants' solicitors dated 20 May 2024.

This is the exhibit marked "KS7" now produced and shown to Ms Kylie Stone at the time of affirming her affidavit on 26 February 2025 before me.

Jason Xue

Jason Xue
Level 6, 600 Bourke Street
Melbourne, VIC. 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Jason Xue
Lawyer

Kylie Stone

From: Katherine Deves <katherine.d@rashidi.com.au>
Sent: Monday, 20 May 2024 4:20 PM
To: Kylie Stone; Alex Rashidi
Cc: Tinashe Makamure; Rachael Mellington; Corrina Dowling
Subject: Re: Roxanne Tickle v Giggle For Girls Pty Ltd (NSD1148/2022) [BN-GENERAL.144178.68.FID1137967]

Dear Colleagues,

Thank you for your email.

The order was not made on a forthwith basis, it is to be determined at the end of the matter with the costs of the substantive proceedings.

Kind regards,

Katherine Deves
Lawyer
T +61 7 2139 0100 | **M** +61 423 675 015
E katherine.d@rashidi.com.au
Alexander Rashidi Lawyers
Level 12, Suite 1205, 239 George Street, Brisbane QLD 4000
www.rashidi.com.au

From: Kylie Stone <Kylie.Stone@bnlaw.com.au>
Sent: Monday, May 20, 2024 3:54 PM
To: Katherine Deves <katherine.d@rashidi.com.au>; Alex Rashidi <alex.r@rashidi.com.au>
Cc: Tinashe Makamure <Tinashe.Makamure@bnlaw.com.au>; Rachael Mellington <Rachael.Mellington@bnlaw.com.au>; Corrina Dowling <Corrina.Dowling@bnlaw.com.au>
Subject: Roxanne Tickle v Giggle For Girls Pty Ltd (NSD1148/2022) [BN-GENERAL.144178.68.FID1137967]

Dear Colleagues,

We refer to our correspondence dated 2 May 2024 regarding your clients' payment of costs incidental to the applications heard on 28 April 2023.

As we have received no response from you, we have set below the correspondence we will send to Justice Bromwich's Chambers for our costs to be assessed by a Registrar pursuant to Order 5 of His Honour's Orders dated 1 June 2023:

"Dear Associate,

We act for the Applicant in the above matter and refer to Order 5 of His Honour's Orders dated 1 June 2023.

We have written to the Respondents with a view to reaching a mutual agreement as to costs, but did not receive a response.

Bearing this in mind, we request his Honour makes an order referring the matter to a Registrar to assess our costs on a lump sum basis."

Kind regards,

Kylie Stone
(she/her)
Solicitor

+61 3 9909 6378
+61 421 451 927
Kylie.Stone@bnlaw.com.au
Wurundjeri Woi Wurrung Country
Level 6 600 Bourke Street Melbourne VIC 3000
PO Box 13277 Law Courts VIC 8010

Barry Nilsson

Exhibit Certificate

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 another named in the schedule

Appellants

Roxanne Tickle
Respondent

Sex Discrimination Commissioner
Intervener

ANNEXURE "KS8"

A true copy of an email to Barry Nilsson from the Appellants' solicitors dated 20 May 2024.

This is the exhibit marked "KS8" now produced and shown to Ms Kylie Stone at the time of affirming her affidavit on 26 February 2025 before me.

Jason Xue

Jason Xue

Jason Xue Lawyer
Level 6, 600 Bourke Street
Melbourne, VIC. 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Kylie Stone

From: Katherine Deves <katherine.d@rashidi.com.au>
Sent: Monday, 20 May 2024 4:20 PM
To: Kylie Stone; Alex Rashidi
Cc: Tinashe Makamure; Rachael Mellington; Corrina Dowling
Subject: Re: Roxanne Tickle v Giggle For Girls Pty Ltd (NSD1148/2022) [BN-GENERAL.144178.68.FID1137967]

Dear Colleagues,

Thank you for your email.

The order was not made on a forthwith basis, it is to be determined at the end of the matter with the costs of the substantive proceedings.

Kind regards,

Katherine Deves
Lawyer
T +61 7 2139 0100 | **M** +61 423 675 015
E katherine.d@rashidi.com.au
Alexander Rashidi Lawyers
Level 12, Suite 1205, 239 George Street, Brisbane QLD 4000
www.rashidi.com.au

From: Kylie Stone <Kylie.Stone@bnlaw.com.au>
Sent: Monday, May 20, 2024 3:54 PM
To: Katherine Deves <katherine.d@rashidi.com.au>; Alex Rashidi <alex.r@rashidi.com.au>
Cc: Tinashe Makamure <Tinashe.Makamure@bnlaw.com.au>; Rachael Mellington <Rachael.Mellington@bnlaw.com.au>; Corrina Dowling <Corrina.Dowling@bnlaw.com.au>
Subject: Roxanne Tickle v Giggle For Girls Pty Ltd (NSD1148/2022) [BN-GENERAL.144178.68.FID1137967]

Dear Colleagues,

We refer to our correspondence dated 2 May 2024 regarding your clients' payment of costs incidental to the applications heard on 28 April 2023.

As we have received no response from you, we have set below the correspondence we will send to Justice Bromwich's Chambers for our costs to be assessed by a Registrar pursuant to Order 5 of His Honour's Orders dated 1 June 2023:

"Dear Associate,

We act for the Applicant in the above matter and refer to Order 5 of His Honour's Orders dated 1 June 2023.

We have written to the Respondents with a view to reaching a mutual agreement as to costs, but did not receive a response.

Bearing this in mind, we request his Honour makes an order referring the matter to a Registrar to assess our costs on a lump sum basis."

Kind regards,

Kylie Stone
(she/her)
Solicitor

+61 3 9909 6378
+61 421 451 927
Kylie.Stone@bnlaw.com.au
Wurundjeri Woi Wurrung Country
Level 6 600 Bourke Street Melbourne VIC 3000
PO Box 13277 Law Courts VIC 8010

Barry Nilsson

Exhibit Certificate

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 another named in the schedule

Appellants

Roxanne Tickle
Respondent

Sex Discrimination Commissioner
Intervener

ANNEXURE "KS9"

A true copy of an email to the Appellants' solicitors dated 4 June 2024.

This is the exhibit marked "KS9" now produced and shown to Ms Kylie Stone at the time of affirming her affidavit on 26 February 2025 before me.

Jason Xue

Jason Xue

Jason Xue
Level 6, 600 Bourke Street
Melbourne, VIC. 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Lawyer

Kylie Stone

From: Kylie Stone
Sent: Tuesday, 4 June 2024 8:45 AM
To: Katherine Deves; Alex Rashidi
Cc: Tinashe Makamure; Rachael Mellington; Corrina Dowling
Subject: RE: Roxanne Tickle v Giggle For Girls Pty Ltd (NSD1148/2022) [BN-GENERAL.144178.68.FID1137967]

Dear Colleagues,

We refer to your email dated 20 May 2024 in which you stated that Order 5 of His Honour's dated 1 June 2023 was not made on a forthwith basis.

While Order 5 does not specify the basis it was made on, we do not agree that the costs for the interlocutory matters are to be determined at the end of the matter with the costs of the substantive proceedings. In our view, the disposition of an interlocutory application is a discrete event in proceedings, involving separate consideration of costs for such an application (consistent with an order for costs being made, rather than costs being reserved).

Assuming your client maintains its position, we propose to write to chambers noting the respective positions of the parties, and seeking that the matter be referred to a Registrar for assessment. Please let us know if you are content with this approach by no later than **5pm** on **7 June 2024** (if we do not hear from you, we will proceed on the basis set out in this correspondence).

Kind regards,

Kylie Stone
(she/her)
Solicitor

+61 3 9909 6378
+61 421 451 927
Kylie.Stone@bnlaw.com.au
Wurundjeri Woi Wurrung Country
Level 6 600 Bourke Street Melbourne VIC 3000
PO Box 13277 Law Courts VIC 8010

Barry Nilsson

From: Katherine Deves <katherine.d@rashidi.com.au>
Sent: Monday, May 20, 2024 4:20 PM
To: Kylie Stone <Kylie.Stone@bnlaw.com.au>; Alex Rashidi <alex.r@rashidi.com.au>
Cc: Tinashe Makamure <Tinashe.Makamure@bnlaw.com.au>; Rachael Mellington <Rachael.Mellington@bnlaw.com.au>; Corrina Dowling <Corrina.Dowling@bnlaw.com.au>
Subject: Re: Roxanne Tickle v Giggle For Girls Pty Ltd (NSD1148/2022) [BN-GENERAL.144178.68.FID1137967]

Dear Colleagues,

Thank you for your email.

The order was not made on a forthwith basis, it is to be determined at the end of the matter with the costs of the substantive proceedings.

Kind regards,

Katherine Deves
Lawyer
T +61 7 2139 0100 | **M** +61 423 675 015
E katherine.d@rashidi.com.au

Alexander Rashidi Lawyers
Level 12, Suite 1205, 239 George Street, Brisbane QLD 4000

www.rashidi.com.au

From: Kylie Stone <Kylie.Stone@bnlaw.com.au>
Sent: Monday, May 20, 2024 3:54 PM
To: Katherine Deves <katherine.d@rashidi.com.au>; Alex Rashidi <alex.r@rashidi.com.au>
Cc: Tinashe Makamure <Tinashe.Makamure@bnlaw.com.au>; Rachael Mellington <Rachael.Mellington@bnlaw.com.au>; Corrina Dowling <Corrina.Dowling@bnlaw.com.au>
Subject: Roxanne Tickle v Giggle For Girls Pty Ltd (NSD1148/2022) [BN-GENERAL.144178.68.FID1137967]

Dear Colleagues,

We refer to our correspondence dated 2 May 2024 regarding your clients' payment of costs incidental to the applications heard on 28 April 2023.

As we have received no response from you, we have set below the correspondence we will send to Justice Bromwich's Chambers for our costs to be assessed by a Registrar pursuant to Order 5 of His Honour's Orders dated 1 June 2023:

> *"Dear Associate,*
>
> *We act for the Applicant in the above matter and refer to Order 5 of His Honour's Orders dated 1 June 2023.*
>
> *We have written to the Respondents with a view to reaching a mutual agreement as to costs, but did not receive a response.*
>
> *Bearing this in mind, we request his Honour makes an order referring the matter to a Registrar to assess our costs on a lump sum basis."*

Kind regards,

Kylie Stone
(she/her)
Solicitor

+61 3 9909 6378
+61 421 451 927
Kylie.Stone@bnlaw.com.au
Wurundjeri Woi Wurrung Country
Level 6 600 Bourke Street Melbourne VIC 3000
PO Box 13277 Law Courts VIC 8010

Barry Nilsson

Barry Nilsson supports flexible working for all staff. If I have sent this email at a time that is outside of your work hours, please do not feel that you need to respond or action it immediately.

Exhibit Certificate

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 another named in the schedule

Appellants

Roxanne Tickle
Respondent

Sex Discrimination Commissioner
Intervener

ANNEXURE "KS10"

A true copy of an email to Barry Nilsson from the Appellants' solicitors dated 4 June 2024.

This is the exhibit marked "KS10" now produced and shown to Ms Kylie Stone at the time of affirming her affidavit on 26 February 2025 before me.

Jason Xue

Jason Xue

Lawyer

Jason Xue
Level 6, 600 Bourke Street
Melbourne, VIC. 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Kylie Stone

From: Katherine Deves <katherine.d@rashidi.com.au>
Sent: Tuesday, 4 June 2024 2:05 PM
To: Kylie Stone; Alex Rashidi
Cc: Tinashe Makamure; Rachael Mellington; Corrina Dowling
Subject: Re: Roxanne Tickle v Giggle For Girls Pty Ltd (NSD1148/2022) [BN-GENERAL.144178.68.FID1137967]

Dear Colleagues,

Thank you for your email.

Please refer to Federal Court Rules, r 40.13 and note that the order was not made on a basis contrary to the usual rule.

We do not consent to any communication being made to Chambers and we do not agree that the Court should re-open its decision to make the order on a lump sum basis.

Kind regards,

Katherine Deves
Lawyer
T +61 7 2139 0100 | **M** +61 423 675 015
E katherine.d@rashidi.com.au
Alexander Rashidi Lawyers
Level 12, Suite 1205, 239 George Street, Brisbane QLD 4000
www.rashidi.com.au

From: Kylie Stone <Kylie.Stone@bnlaw.com.au>
Sent: Tuesday, June 4, 2024 8:44 AM
To: Katherine Deves <katherine.d@rashidi.com.au>; Alex Rashidi <alex.r@rashidi.com.au>
Cc: Tinashe Makamure <Tinashe.Makamure@bnlaw.com.au>; Rachael Mellington <Rachael.Mellington@bnlaw.com.au>; Corrina Dowling <Corrina.Dowling@bnlaw.com.au>
Subject: RE: Roxanne Tickle v Giggle For Girls Pty Ltd (NSD1148/2022) [BN-GENERAL.144178.68.FID1137967]

Dear Colleagues,

We refer to your email dated 20 May 2024 in which you stated that Order 5 of His Honour's dated 1 June 2023 was not made on a forthwith basis.

While Order 5 does not specify the basis it was made on, we do not agree that the costs for the interlocutory matters are to be determined at the end of the matter with the costs of the substantive proceedings. In our view, the disposition of an interlocutory application is a discrete event in proceedings, involving separate consideration of costs for such an application (consistent with an order for costs being made, rather than costs being reserved).

Assuming your client maintains its position, we propose to write to chambers noting the respective positions of the parties, and seeking that the matter be referred to a Registrar for assessment. Please let us know if you are content with this approach by no later than **5pm** on **7 June 2024** (if we do not hear from you, we will proceed on the basis set out in this correspondence).

Kind regards,

Kylie Stone
(she/her)
Solicitor

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+61 421 451 927
Kylie.Stone@bnlaw.com.au
Wurundjeri Woi Wurrung Country
Level 6 600 Bourke Street Melbourne VIC 3000
PO Box 13277 Law Courts VIC 8010

Barry Nilsson

From: Katherine Deves <katherine.d@rashidi.com.au>
Sent: Monday, May 20, 2024 4:20 PM
To: Kylie Stone <Kylie.Stone@bnlaw.com.au>; Alex Rashidi <alex.r@rashidi.com.au>
Cc: Tinashe Makamure <Tinashe.Makamure@bnlaw.com.au>; Rachael Mellington <Rachael.Mellington@bnlaw.com.au>; Corrina Dowling <Corrina.Dowling@bnlaw.com.au>
Subject: Re: Roxanne Tickle v Giggle For Girls Pty Ltd (NSD1148/2022) [BN-GENERAL.144178.68.FID1137967]

Dear Colleagues,

Thank you for your email.

The order was not made on a forthwith basis, it is to be determined at the end of the matter with the costs of the substantive proceedings.

Kind regards,

Katherine Deves
Lawyer
T +61 7 2139 0100 | **M** +61 423 675 015
E katherine.d@rashidi.com.au
Alexander Rashidi Lawyers
Level 12, Suite 1205, 239 George Street, Brisbane QLD 4000
www.rashidi.com.au

From: Kylie Stone <Kylie.Stone@bnlaw.com.au>
Sent: Monday, May 20, 2024 3:54 PM
To: Katherine Deves <katherine.d@rashidi.com.au>; Alex Rashidi <alex.r@rashidi.com.au>
Cc: Tinashe Makamure <Tinashe.Makamure@bnlaw.com.au>; Rachael Mellington <Rachael.Mellington@bnlaw.com.au>; Corrina Dowling <Corrina.Dowling@bnlaw.com.au>
Subject: Roxanne Tickle v Giggle For Girls Pty Ltd (NSD1148/2022) [BN-GENERAL.144178.68.FID1137967]

Dear Colleagues,

We refer to our correspondence dated 2 May 2024 regarding your clients' payment of costs incidental to the applications heard on 28 April 2023.

As we have received no response from you, we have set below the correspondence we will send to Justice Bromwich's Chambers for our costs to be assessed by a Registrar pursuant to Order 5 of His Honour's Orders dated 1 June 2023:

> *"Dear Associate,*
>
> *We act for the Applicant in the above matter and refer to Order 5 of His Honour's Orders dated 1 June 2023.*
>
> *We have written to the Respondents with a view to reaching a mutual agreement as to costs, but did not receive a response.*
>
> *Bearing this in mind, we request his Honour makes an order referring the matter to a Registrar to assess our costs on a lump sum basis."*

Kind regards,

Kylie Stone
(she/her)
Solicitor

+61 3 9909 6378
+61 421 451 927
Kylie.Stone@bnlaw.com.au
Wurundjeri Woi Wurrung Country
Level 6 600 Bourke Street Melbourne VIC 3000
PO Box 13277 Law Courts VIC 8010

Barry Nilsson

Exhibit Certificate

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 another named in the schedule

Appellants

Roxanne Tickle
Respondent

Sex Discrimination Commissioner
Intervener

ANNEXURE "KS11"

A true copy of an email to Barry Nilsson from the Appellants' solicitors dated 24 October 2024.

This is the exhibit marked "KS11" now produced and shown to Ms Kylie Stone at the time of affirming her affidavit on 26 February 2025 before me.

Jason Xue

Jason Xue

Jason Xue
Level 6, 600 Bourke Street
Melbourne, VIC. 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Lawyer

Kylie Stone

From: Katherine Deves <katherine.d@rashidi.com.au>
Sent: Thursday, 24 October 2024 9:17 AM
To: Tinashe Makamure; Kylie Stone
Cc: Alex Rashidi; Aisha Rashidi; Corrina Dowling
Subject: Order 2 of Orders of 23 August 2024 | Tickle -v- Giggle NSD1148 of 2022 & Giggle -v- Tickle NSD1386/2024 | 23GIG001

External email >
Discusses sensitive information >
Contains topics of a financial nature >

Dear Colleague,

We refer to the orders made by the primary judge on 23 August 2024, in particular order 2 which requires our clients to pay your client $10,000.00 today.

Our clients have bought an appeal from the decision and orders of the primary judge. We seek your client's undertaking not to enforce the judgment until the conclusion of the appeals process.

Would you be so kind as to confirm that your client will give that undertaking by no later than **4 pm today**.

In the event that such an undertaking is not forthcoming, our client will need to approach the court for a stay of those orders.

Given that our client has taken the approach that there should be no orders as to costs on the appeal and do not seek their costs below in the event that the appeal is successful, we would be pleased if your client could confirm that no enforcement action will be taken until the inclusion of the appeals process, with a view to minimising costs.

Kind regards,

Katherine Deves
Lawyer
T +61 7 2139 0100 | **M** +61 423 675 015
E katherine.d@rashidi.com.au
Alexander Rashidi Lawyers
Level 12, Suite 1205, 239 George Street, Brisbane QLD 4000
www.rashidi.com.au

recorded in any electronic communication (text or email) from us requesting that you pay, transfer or deposit money. This includes any notice of change to our bank account details. Note that we will never contact you by electronic communication alone to tell you of a change to our payment details.

Exhibit Certificate

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 another named in the schedule

Appellants

Roxanne Tickle
Respondent

Sex Discrimination Commissioner
Intervener

ANNEXURE "KS12"

A true copy of a letter to the Appellants' solicitors dated 18 November 2024.

This is the exhibit marked "KS12" now produced and shown to Ms Kylie Stone at the time of affirming her affidavit on 26 February 2025 before me.

Jason Xue

Jason Xue
Level 6, 600 Bourke Street
Melbourne, VIC. 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Jason Xue

Lawyer

BN Law Limited
ABN 22 621 026 864
Gadigal Country
L9, 1 O'Connell Street
Sydney NSW 2000
PO Box R1794
Royal Exchange NSW 1225
T +61 2 8031 2600
F +61 2 8031 2699
enquiries@bnlaw.com.au

18 November 2024

Our reference
CLD:TBM:144178-68

Contact
Tinashe Makamure
03 9909 6365
tinashe.makamure@bnlaw.com.au

Principal
Corrina Dowling
03 9909 6320
corrina.dowling@bnlaw.com.au

Katherine Deves
Alexander Rashidi Lawyers
Level 12, Suite 1205, 239 George Street
Brisbane, QLD, 4000

Dear Ms Deves,

RE: Roxanne Tickle v Giggle for Girls Pty Ltd (NSD1148/2022)

We refer to your emails dated 24 October 2024 and 28 October 2024 regarding the enforcement of Justice Bromwich's Orders on costs dated 23 August 2024.

We also refer to our correspondence dated 2 May 2024 wherein we requested that your client deposit the costs incidental to the Interlocutory Applications into our trust account in accordance with Order 5 of Justice Bromwich's Orders dated 1 June 2023.

1. Background

1.1 On 16 February 2023, your clients filed a notice of objection to competency on the basis that our client's application was allegedly brought in contravention of section 46PO(2) of the *Australian Human Rights Commission Act 1986* (Cth).

1.2 On 24 March 2023, our client filed an interlocutory application and written submissions seeking a capped costs order pursuant to r 40.51 of the *Federal Court Rules 2011* (Cth).

1.3 On 31 March 2023, your clients filed an interlocutory application and written submissions seeking an order pursuant to s 56 of the *Federal Court of Australia Act 1976* (Cth) and r 19.01 of the *Federal Court Rules 2011* that our client provide security of costs and related relief.

1.4 On 14 April 2023, our client filed two separate written submissions in response to your clients' notice of objection to competency and security for costs application.

1.5 On 28 April 2023, we attended the six-hour interlocutory hearing before Justice Bromwich in the Federal Court of Australia.

1.6 On 12 May 2023, our client filed post hearing submissions on the termination of our client's Australian Human Rights Commission Complaint pursuant to Order 3 of Justice Bromwich's Orders dated 28 April 2023.

1.7 On 1 June 2023, we attended the hearing before Justice Bromwich in the Federal Court of Australia for the handing down of judgment on the interlocutory matters. At the hearing, Justice Bromwich made orders to dismiss your clients' notice of objection to competency and interlocutory application seeking that our client provide security of costs.

(**Interlocutory Applications**)

1.8 Further, His Honour allowed our client's interlocutory application seeking a capped costs order confined to the constitutional validity and statutory construction issues in the sum of $50,000.00.

(**Constitutional Validity and Statutory Construction Issues**)

1.9 On 9 June 2023, we attended the Case Management Hearing before Justice Bromwich in the Federal Court of Australia where Orders were set for the directions of the matter.

1.10 On 13 September 2023, we filed and served material that our client intended to rely on, including the Affidavit of Roxanne Tickle and an outline of submissions dealing with the Constitutional and Construction Questions and the substance of the application.

1.11 On 25 March 2024, after consultation with you, we filed and served a paginated court book.

1.12 On 2 April 2024, after consultation with you, we filed and served an agreed joint list of authorities.

1.13 From 9 – 11 April 2024, we attended the three-day hearing before Justice Bromwich in the Federal Court of Australia.

1.14 On 23 August 2024, we attended the hearing before Justice Bromwich in the Federal Court of Australia for the handing down of judgment. At the hearing, Justice Bromwich made orders for the parties to provide a declaration of contravention by way of indirect gender discrimination. Further, His Honour ordered the Respondents to pay the Applicant's costs.

(**Substantive Application**)

1.15 With a view to avoiding the costs of referring the costs matter to a registrar, we write to explore reaching agreement on the costs to be paid by the Respondents.

2. Costs from Interlocutory Applications

2.1 Pursuant to Order 5, your clients are to pay the Applicant's costs of and incidental to the applications heard on 28 April 2023, including post-hearing submissions. Such costs are to be assessed by a registrar on a lump sum basis, unless agreed. As outlined in our correspondence to you dated 2 May 2024, we set out again below the costs incurred in relation or incidental to the Interlocutory Applications, which amounts to **$115,400.00 (ex GST)**, consisting of:

(a) Solicitor's Fees: $69,375.00 (ex GST);

(b) Counsels' Fees: $46,025.00 (ex GST).

2.2 Having regard to Schedule 3 of the *Federal Court Rules 2011*, we also seek costs from your clients in the total amount of **$98,174.00 (ex GST)**:

(a) Solicitor's Fees: $52,149.00 (ex GST);

(b) Counsels' Fees: $46,025.00 (ex GST);

(**Interlocutory Costs Sum**).

2.3 We refer to your correspondence dated 20 May 2024 wherein you stated that Order 5 of Justice Bromwich's Orders dated 1 June 2023 was not made on a forthwith basis and that it is to be determined at the end of the matter with the costs of the substantive proceedings. While we reject your position, we note that we have reached the end of the substantive proceeding and that your client is required to pay us the Interlocutory Costs Sum.

3. Costs on Constitutional Validity and Statutory Construction Issues

3.1 The total costs incurred in relation to the Constitutional Validity and Statutory Construction Issues amount to **$51,253.00 (ex GST)**, consisting of:

(a) Solicitor's Fees: $2,739.00 (ex GST);

(b) Counsels' Fees: $48,514.00 (ex GST).

3.2 Having regard to Order 3 of Justice Bromwich's Orders dated 1 June 2023 and Order 4 of His Honour's Orders dated 23 August 2024, we seek costs from your clients in the amount of **$50,000.00 (ex GST)**.

(**Costs Capping Sum**).

4. Costs on Substantive Application

4.1 Our client is not agreeable to give an undertaking to not enforce Justice Bromwich's Orders on costs dated 23 August 2024.

4.2 The total costs incurred in relation or incidental to the Substantive Application amounts to **$230,963.94 (ex GST)**, consisting of:

(a) Solicitor's Fees: $76,712.00 (ex GST);

(b) Counsels' Fees: $154,251.94 (ex GST).

4.3 Having regard to Schedule 3 of the *Federal Court Rules 2011*, we seek costs from your clients in the total amount of **$208,727.94 (ex GST)**:

(a) Solicitor's Fees: $54,476.00 (ex GST);

(b) Counsels' Fees: $154,251.94 (ex GST);

(**Substantive Application Costs Sum**).

5. Total Costs Sum

5.1 The total of the Interlocutory Costs Sum, Costs Capping Sum and Substantive Application Costs Sum equates to **$356,901.94 (ex GST)** (**Total Costs Sum**).

6. Compensation

6.1 On 23 August 2024, Justice Bromwich ordered that your client was to compensate our client in the sum of **$10,000.00** (**Compensation Sum**) within 60 days of that order. That sum became payable on 28 October 2024.

6.2 On 28 October 2024, you wrote to our offices seeking an undertaking not to enforce that judgment. Our client will not be providing that undertaking and requests that your clients effect payment of the Compensation Sum immediately.

7. Account Details

7.1 We request that your client deposit the Total Costs Sum and the Compensation Sum in ***two separate payments*** into our trust account by no later than **5:00pm** on **29 November 2024** using the following details:

Account Name:	BN Law Limited t/a Barry Nilsson
BSB:	184-446
Account Number:	30 441 9286
Ref:	301923.181

7.2 We request that the remittance is sent to accounts@bnlaw.com.au.

7.3 In the event that your clients do not agree to deposit the Total Costs Sum, we reserve the right for such costs to be assessed by a Registrar. Similarly, our client reserves her rights to enforce the judgment for payment of the Compensation Sum.

7.4 If you have any questions, please contact me on the details below.

Yours faithfully

Corrina Dowling
Principal
03 9909 6320
corrina.dowling@bnlaw.com.au

Tinashe Makamure
Senior Associate
03 9909 6365
tinashe.makamure@bnlaw.com.au

Exhibit Certificate

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 another named in the schedule

Appellants

Roxanne Tickle
Respondent

Sex Discrimination Commissioner
Intervener

ANNEXURE "KS13"

A true copy of a letter to Barry Nilsson from the Appellants' solicitors dated 22 November 2024.

This is the exhibit marked "KS13" now produced and shown to Ms Kylie Stone at the time of affirming her affidavit on 26 February 2025 before me.

Jason Xue

Jason Xue

Lawyer

Jason Xue
Level 6, 600 Bourke Street
Melbourne, VIC. 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Alexander Rashidi Lawyers

Principal	Alex Rashidi
Writer	Katherine Deves
Direct Line	07 2139 0100
Email	Katherine.d@rashidi.com.au
Our ref.:	23GIG001
Your ref.:	CLD: TBM: 144178-68

22 November 2024

Barry Nilsson
BN Law Limited
Level 9, 1 O'Connell Street
SYDNEY NSW 2000

Attn Corinna Dowling, Tinashe Makamure, Kylie Stone
By email only Corinna.Dowling@bnlaw.com.au; Tinashe.Makamure@bnlaw.com.au; Kylie.Stone@bnlaw.com.au

Dear Colleagues,

Re: ROXANNE TICKLE -V- GIGGLE FOR GIRLS PTY LTD & ANORS (NSD1148/2022)
GIGGLE FOR GIRLS PTY LTD & ANORS -V- ROXANNE TICKLE (NSD1386/2024)

---

1. We refer to the matter above and your letter of 18 November 2024 where you demand the Appellants pay the Respondent's costs and disbursements of $356,901.94 (ex GST) and the award ordered by the Court to the Respondent of $10,000.00.

2. We do not agree with your purported assessment of your costs. So that we might consider your client's asserted costs we are instructed to request all cost disclosures, fee agreements, and itemised invoices (including disbursements) for all costs claimed be provided within 7 days.

3. Given the extraordinary step by your client to apply to cross appeal, we consider that your demand for costs and payment of the judgment sum is premature, if not, misplaced.

4. That said, we confirm that our firm holds in its trust account the $10,000 judgment award sum accruing interest, which it will hold for the benefit of your client, pending the outcome the appeal process. Should this not be satisfactory to your client, we will move immediately to stay the judgment pending the outcome of the appeal and rely on this letter on the question of the costs of the application, which we shall seek your client

pay on an indemnity basis. We trust given the above that the application will not be necessary.

Yours faithfully
Alexander Rashidi Lawyers

Katherine Deves
Lawyer

Exhibit Certificate

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 another named in the schedule

Appellants

Roxanne Tickle
Respondent

Sex Discrimination Commissioner
Intervener

ANNEXURE "KS14"

A true copy of an email to the Appellants' solicitors dated 11 February 2025.

This is the exhibit marked "KS14" now produced and shown to Ms Kylie Stone at the time of affirming her affidavit on 26 February 2025 before me.

Jason Xue

Jason Xue

Jason Xue
Level 6, 600 Bourke Street Lawyer
Melbourne, VIC. 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Kylie Stone

From: Kylie Stone
Sent: Tuesday, 11 February 2025 9:20 AM
To: Katherine Deves
Cc: Corrina Dowling; Tinashe Makamure
Subject: RE: Giggle -v- Tickle NSD1386/2024 | Letter to Respondent's Solicitor [BN-GENERAL.144178.68.FID1137967]

Dear Ms Deves,

We refer to your correspondence dated 5 February 2025 regarding costs in respect of the appeal.

We are instructed that our client does not agree to a nil costs order. We further note that your correspondence makes no mention of the significant crowd funding that your clients have raised.

In order for the appeal to proceed in a cost-efficient manner, we invite your clients to agree to:

a) a costs cap of $100,000 to apply to your clients for both the appeal and cross appeal;
b) a costs cap of $100,000 to apply to our client for both the appeal and cross appeal;
c) give an undertaking that the amount of crowd funding raised by your clients for the case at first instance and any further amounts raised, including with respect to the appeal/cross appeal, is preserved for payment of the adverse costs orders (including those ordered following the interlocutory proceedings) that have been made on first instance and any adverse costs orders that may be made on appeal.

If your client is not agreeable to the undertaking outlined above, our client reserves her rights to seek security for costs in the face of an impecunious individual appellant and in light of the risk of the corporate appellant disbursing the money otherwise available to pay past and future costs orders.

In any event, we note that our client intends to press for payment of our interlocutory costs as per the Court's orders dated 1 June 2023 and the costs associated with the substantive matter as per the Court's orders dated 23 August 2024. We will issue you with further correspondence regarding these demands shortly.

If your clients are agreeable to the above, we will provide you with a draft minutes of consent orders for your client to review.

Please do not hesitate to contact us if you would like to discuss further.

Kind regards,

Kylie Stone
(she/her)
Solicitor

+61 3 9909 6378
+61 421 451 927
Kylie.Stone@bnlaw.com.au
Wurundjeri Woi Wurrung Country
Level 6 600 Bourke Street Melbourne VIC 3000
PO Box 13277 Law Courts VIC 8010

Barry Nilsson

From: Katherine Deves <katherine.deves@ptwlaw.com.au>
Sent: Wednesday, 5 February 2025 3:12 PM

To: Tinashe Makamure <Tinashe.Makamure@bnlaw.com.au>
Cc: Corrina Dowling <Corrina.Dowling@bnlaw.com.au>; Kylie Stone <Kylie.Stone@bnlaw.com.au>
Subject: Giggle -v- Tickle NSD1386/2024 | Letter to Respondent's Solicitor

External email >
Discusses sensitive information >
Contains topics of a financial nature >

Dear Colleagues,

Please find **attached** a letter of 5 February 2025.

Kindest regards,
Katherine Deves | Solicitor

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Pryor Tzannes & Wallis Solicitors & Public Notaries
1005 Botany Road Rosebery NSW 2018
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ABN: 30 735 178 645

NOTICE OF FILING

Details of Filing

Document Lodged:	Submissions
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	26/02/2025 2:54:06 PM AEDT
Date Accepted for Filing:	26/02/2025 4:51:27 PM AEDT
File Number:	NSD1386/2024
File Title:	GIGGLE FOR GIRLS PTY LTD (ACN 632 152 017) & ANOR v ROXANNE TICKLE
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

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.

Federal Court of Australia

District Registry: New South Wales

Division: General Division

No: NSD 1386/2024

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

ROXANNE TICKLE
Respondent

SEX DISCRIMINATION COMMISSIONER
Intervener

SUBMISSIONS FOR MS TICKLE - SECURITY FOR COSTS

A. Introduction

1. The Appellants (separately, **Giggle** and **Ms Grover**) are impecunious.[1] They have amassed significant sums – conservatively, $850,000 – from crowdfunding "to cover legal fees and associated costs".[2] They have failed to satisfy not one, but two costs orders made against them in the Court below. A decision has been made by the Court below that this Court, in assessing this application, presumes to be correct. In these circumstances, is Ms Tickle entitled to an order for security for costs? For the reasons that follow, the answer must be "**yes**".

B. Law and principles

2. The applicable legal framework concerning a security for costs application in an appeal before this Court is governed by two provisions: s 56 of the *Federal Court of Australia Act 1976* (Cth) and r 36.09(1) of the *Federal Court Rules 2011* (Cth). Together, these provisions confer upon the Court a broad and unfettered discretion.[3]

---

1 Affidavit of Katherine Deves sworn 7 February 2025 at [9]-[10] (**Deves Affidavit**).
2 Affidavit of Kylie Stone affirmed 26 February 2025 at [11] (**Stone Affidavit**).
3 *Chawk v Callan* [2024] FCA 92 at [12] (Rofe J), and the authorities cited therein by her Honour.

3. Section 56 relevantly provides:

> (1) The Court or a Judge may order … an appellant in an appeal under Division 2 of Part III, to give security for the payment of costs that may be awarded against him or her.
>
> (2) The security shall be of such amount, and given at such time and in such manner and form, as the Court or Judge directs.
>
> …
>
> (4) If security, or further security, is not given in accordance with an order under this section, the Court or a Judge may order that the proceeding or appeal be dismissed.

4. Rule 36.09(1) provides:

> (1) A party may apply to the Court for an order that:
>
> (a) the appellant give security for the costs of the appeal, and for the manner, time and terms for the security; and
>
> (b) the appeal be stayed until security is given; and
>
> (c) if the appellant fails to comply with the order to provide security within the time specified in the order – the appeal be stayed or dismissed.

5. The principles applicable to the Court's discretionary power to order security for costs are well-versed and not controversial. These principles were recently and (respectfully) helpfully summarised by Abraham J in *Lehrmann v Network Ten Pty Limited*.[4] As her Honour explained, the discretion is broad, and must be exercised in light of the facts and circumstances of the particular case: the "issue is essentially one of risk management".[5] The only limitation on the Court's power is that its discretion must be exercised judicially.[6]

6. Although there is no rigid taxonomy of factors the Court must weigh in the exercise of its discretion, the following seven factors have, time and again, formed the basis upon which the Court has decided whether to grant security:[7]

---

4 [2024] FCA 1226 at [19]-[26].
5 [2024] FCA 1226 at [19].
6 *Lehrmann v Network Ten Pty Limited* [2024] FCA 1226 at [26].
7 *Lehrmann v Network Ten Pty Limited* [2024] FCA 1226 at [21]-[25]; *Chawk v Callan* [2024] FCA 92 at [12] (Rofe J).

(a) *one*, whether the application for security has been brought promptly;

(b) *two*, whether the appellant is impecunious such that it/they could not satisfy a costs;

(c) *three*, whether the appellant is a natural person or a corporation, noting that the Court's ordinary disinclination to order security against an impecunious natural person is not some fixed rigid rule operating to preclude the making of such an order;

(d) *four*, the prospects of success of the appeal;

(e) *five*, whether the appellant has shown that an order for security would be oppressive, and consequently that it would stifle a reasonably arguable appeal;

(f) *six*, whether the appellant's impecuniosity was caused by/contributed to by the respondent's conduct; and

(g) *seven*, whether there are aspects of public interest which stand against making an order.

7. While the Court may proceed with more caution in a first instance decision, that is not so in the context of an appeal.[8] As Emmett J held in *Dye v Commonwealth Securities Ltd*:[9]

> As a general rule, in relation to proceedings at first instance, impecuniosity, and even insolvency, does not mandate that an order for the provision of security for costs should be made. However, that principle does not necessarily apply in relation to an appeal, where the appellant has had the benefit of a decision of a court at first instance. An insolvent party will not be excluded from an appeal, but if [she or he] cannot find security, [she or he] may be prevented from taking [her or his] opponent from one court to another. The feature of an appeal that marks it out from a proceeding at first instance is that there has already been a decision given by the court that heard the matter at first instance. That is to say, the appellant has had his or her day in court and has had an opportunity to present his or her case, and has had a ruling that must be presumed to be correct. Security

[8] See *Mathews v All Options Pty Ltd* [2019] FCA 1972 at [15] (O'Bryan J); *Sheather v Staples Waste Removals Pty Ltd* [2012] FCA 998 at [17] (Nicholas J); *Carey v Freehills* [2014] FCA 325 at [16] (Marshall J).

[9] [2012] FCA 992, most recently cited in *Chawk v Callan* [2024] FCA 92 at [13] (Rofe J).

> may not necessarily be ordered if an appeal is brought in good faith and raises substantial questions of law. However, the position will be different where the appeal turns largely on questions of fact and it does not give rise to any important question of law. (emphasis added)

8. In a similar light, Jagot J (as her Honour then was) in *Clack v Collins* (No 1)[10] endorsed the following observation from Spender J in *Tait v Bindal People*:[11]

> The difference is that, at the appellate level, there has already been a determination adverse to the person against whom security for costs is sought and, if it be shown that there is a substantial risk that even if successful the respondent … to an appeal, will be deprived of [her or his] costs, such an outcome would clearly be unjust. (emphasis added)

C. Application of principles

9. *First*, it is uncontroversial that Ms Tickle has acted promptly. Her application was presaged at the first case management hearing – on 12 February 2025 – in this proceeding. Relevantly, the application has been made before any substantive steps taken, noting no hearing date has been set down, nor timetabling orders made, for the appeal. Moreover, in prescient correspondence, on [6] February 2025, Ms Tickle foreshadowed to the Appellants that an application for security may be made. That was said in the face of uncertainty as to the Appellants' ability and/or willingness to meet extant costs orders – arising from the interlocutory hearing on 28 April 2023 and the trial nearly one year later on 9 to 11 April 2024 – against them.

10. *Secondly*, the Appellants assert impecuniosity (albeit in the context of their application for cost capping orders).[12] As matters presently stand, there are three flaws with that broad assertion.

    (a) *One*, no evidence has yet been provided as to Ms Grover's financial position, other than Ms Deves' instructions that "Ms Grover is a single mother on single parenting benefits who owns no real property".[13] Such evidence could and should include bank statements, evidence of government benefit entitlements

[10] [2010] FCA 513 at [11].
[11] [2002] FCA 322 at [3].
[12] Deves Affidavit at [9]-[10(a)].
[13] Deves Affidavit at [8].

and/or evidence of (non)-employment for any weight to be given to it.[14] Moreover, that Ms Grover "has no financial capacity whatsoever to meet an adverse costs order"[15] is irrelevant. As Ms Grover would appreciate, the risk of an adverse costs order goes hand-in-hand with pursuing litigation. The real question is whether Ms Grover "would be precluded from pursuing the appeal if the security for costs order sought were made".[16] Clearly, Ms Grover would not be so precluded; rather, the inference, available on the evidence, is that she is willing and able to meet the "conservative estimate" of her legal costs in the amount of $340,000.[17]

(b) *Two*, the specific evidence that "Giggle has limited financial resources: Giggle has never generated profit, has no assets, and has no income" having been "accepted"[18] by the primary Judge is incorrect. Rather, as is apparent from the primary Judge's Reasons for Judgment, His Honour made various observations concerning *inter alia* Giggle's balance sheets, profit and loss statements, and seed funding received, in each case for the purposes of determining whether Giggle was a trading corporation within the meaning of s 51(xx) of the *Constitution*.[19] The primary Judge concluded that Giggle was a trading corporation.[20]

(c) *Thirdly*, while the Appellants advert to the fact of crowd funding, the Appellants fail to disclose the *specific amount* they have raised.[21] The crowd funding page for the appeal has raised $281,077, and the page for trial raised, at least, $578,695.[22] As indicated under the "Use of funds" tab of each page, the funds raised will be used to cover *inter alia* "related costs for this case only (and any appeals that may be necessary)" (trial page) and "associated costs incurred in the appeal proceedings" (appeal page).[23] These amounts are not modest. No

---

14 *Ezekiel-Hart v Reis* [2024] FCA 1203 at [23] (Abraham J).
15 Deves Affidavit at [8].
16 *Ezekiel-Hart v Reis* [2024] FCA 1203 at [23] (Abraham J).
17 Deves Affidavit at [16].
18 Deves Affidavit at [10].
19 *Tickle v Giggle for Girls Pty Ltd (No 2)* [2024] FCA 960 at [191]-[196].
20 *Tickle v Giggle for Girls Pty Ltd (No 2)* [2024] FCA 960 at [189], [192], [194]-[196].
21 Deve's Affidavit at [11].
22 Stone Affidavit at [8]-[10].
23 Stone Affidavit at [9]-[10].

evidence is given as what has been done with these funds, but plainly this evidence undercuts the assertion that Ms Grover has no capacity "whatsoever" to meet an adverse costs order.

11. *Thirdly*, while it may be accepted that courts hesitate before ordering security for costs against a natural person, it is well-accepted that this is no bar to so ordering (a principle with which the Appellants would be well familiar).[24]

12. *Fourthly*, because the Appellants have already "had their day in court", the prospects of success of the appeal are especially relevant. The Appellants' notice of appeal, dated 2 October 2024, discloses that the matters sought to be raised are in substantially the same nature as the matters that have already been decided against them.[25] While the Appellants' appeal raises some questions of law, it is to be recalled that "a first instance decision is not, and should not be treated as, a provisional decision" and "[t]here is a prima facie assumption that the judgment the subject of the appeal is correct".[26] In the words of Gleeson CJ in *Swain v Waverley Municipal Council*:[27]

> The system does not regard the trial as merely the first round in a contest destined to work its way through the judicial hierarchy until the litigants have exhausted either their resources or their possibilities of further appeal.

Notably, the grounds of appeal seek to agitate the same, or substantially the same, matters that were ventilated below. In the case of appeal ground 3(b) – concerned with s 7B of the *Sex Discrimination Act 1984* (Cth) – this did not form part of the Appellants'

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[24] That is put on the basis of the Appellants' own application for security for costs in the Court below, in support of which they referred to, *inter alia*, *Knight v Beyond Properties Pty Ltd* [2005] FCA 764 at [32]-[33] (Lindgren J): *Tickle v Giggle For Girls Pty Ltd* [2023] FCA 553.

[25] *Singh v Secretary, Department of Employment and Workplace Relations* [2007] FCA 90 at [12].

[26] *Wooldridge v Australian Securities and Investments Commission* [2015] FCA 349 at [11] (Middleton J), although these statements were made in the context of an application to stay a costs order, the broader principle stated is apposite, and is consistent with the observation made by Emmett J in *Dye v Commonwealth Securities Ltd* [2012] FCA 992 at [27] (above at [7]).

[27] (2005) 220 CLR 517 at [2].

pleaded defence, and was only touched on briefly in closing submissions.[28] As was stated by the High Court of Australia in *Metwally v University of Wollongong* :[29]

> It is elementary that a party is bound by the conduct of [her or his] case. Except in the most exceptional circumstances, it would be contrary to all principle to allow a party, after a case had been decided against [her or him], to raise a new argument which, whether deliberately or by inadvertence, [she or he] failed to put during the hearing when [she or he] had and (sic) opportunity to do so."

13. *Fifthly*, and related to point two above, the Appellants have not (yet) discharged their burden of showing that the security sought would be oppressive, or that it would stifle the appeal. To the contrary, the evidence filed in support of the cost capping orders, coupled with the evidence of crowd funding in the order of $850,000, militates against finding in favour of the Appellants on this factor.

14. *Sixthly*, there can be no suggestion that Ms Tickle's conduct has contributed to the Appellants' alleged impecuniosity (leaving to one side the substantial crowd funding raised). Further, the Appellants declined to participate in conciliation when invited to do so by the Australian Human Rights Commission, and this was "the sole reason" why the complaint was then terminated, leading to this proceeding.[30]

15. *Seventhly*, while it is accepted that there is significant public interest in this proceeding,[31] this factor must be balanced with the preceding six factors which militate in favour of ordering security for costs.

16. There are additional factors which weigh in favour of Ms Tickle's application for security. As alluded to at the outset, the Appellants have failed to satisfy two costs orders made against them, that is so notwithstanding repeated attempts from Ms Tickle's legal team to productively engage with the Appellants' legal team on the question of costs.[32] Most recently, with a view to negating the need for this application, the solicitors for Ms Tickle wrote to the Appellants' solicitors seeking an undertaking

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28 *Tickle v Giggle for Girls Pty Ltd (No 2)* [2024] FCA 960 at [37].

29 (1985) 59 ALJR 481 at 483 (Gibbs CJ, Mason, Wilson, Brennan, Deane and Dawson JJ). To a similar effect, see: *Coulton v Holecombe* (1986) 162 CLR 1 at 7 (Gibbs CJ, Wilson, Brennan and Dawson JJ); *Whisprun Pty Ltd v Dixon* (2003) 200 ALR 447 at [51] (Gleeson CJ, McHugh and Gummow JJ).

30 *Tickle v Giggle for Girls Pty Ltd* [2023] FCA 553 at [70].

31 Deves Affidavit at [19]-[26].

32 Stone Affidavit at [12]-[21].

that an amount of crowd funding raised by the Appellants would be preserved for the payment of the extant adverse costs orders.[33] No response was received.[34] While security for costs is not a substitute for the Appellants' failure to discharge adverse costs orders, there is a very real concern that by the end of this appeal proceeding,

17. Ms Tickle will be left with three costs orders in her favour that the Appellants cannot and will not satisfy; as has been recognised by this Court, "such an outcome would clearly be unjust".[35] In any event, the Appellants have not applied for a stay of either costs order; in this connection, it is a trite observation that "the mere filing of an appeal will not, of itself, provide a reason" for the grant of a stay.[36]

D. Conclusion

18. In light of the foregoing, and noting that Ms Tickle seeks an order against both Appellants – the natural person and the corporation[37] – the interests of justice are best served by granting Ms Tickle the security she seeks in the amount of $100,000.[38]

26 February 2025

GEORGINA COSTELLO KC

CHRISTOPHER MCDERMOTT

ELODIE NADON

Counsel for Ms Tickle

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33 Stone Affidavit at [20].
34 Stone Affidavit at [21].
35 *Clack v Collins (No 1)* [2010] FCA 513 at [11] (Jagot J), quoting *Tait v Bindal People* [2002] FCA 322 at [3] (Spender J).
36 *Flight Centre Ltd v Australian Competition and Consumer* Commission [2014] FCA 658 at [9] (Rangiah J).
37 Cf *Street v Luna Park Sydney Pty Ltd* [2006] NSWSC 1317 at [26]-[28] (Brereton J).
38 *Lehrmann v Network Ten Pty Limited* [2024] FCA 1226 at [26] (Abraham J).

Schedule

No. NSD 1386 of 2024

Federal Court of Australia

District Registry: New South Wales

Division: General Division

Second Appellant: SALLY GROVER

NOTICE OF FILING

Details of Filing

Document Lodged:	Outline of Submissions
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Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

Registrar

Important Information

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

Federal Court of Australia, Full Court

District Registry: New South Wales

Division: Administrative and Constitutional and Human Rights

No. NSD 1386 of 2024

On appeal from the Federal Court

Giggle for Girls Pty Ltd & Anor

Appellants

Roxanne Tickle

Respondent

Appellants' Brief Outline of Submissions on their Interlocutory Application brought under Rule 40.51 of the Federal Court Rules 2011 (Cth)

1. The Court has power to make the orders sought in the appellants' Interlocutory Application dated 7 February 2025 under Rule 40.51 of the Federal Court Rules 2011 (Cth). The appellants seek an order that no party be entitled to recover party/party costs in this appeal, or, in the alternative, that recoverable costs be capped at $50,000 per party.

2. The appellants rely on the affidavit of Katherine Deves dated 7 February 2025 filed in support of the interlocutory application, which demonstrates that the complexity, significance, and financial burden of these proceedings warrant the imposition of a costs cap or a nil costs order. The litigation has expanded considerably since the commencement of the appeal, and without cost containment, the financial burden will deter the appellants from pursuing the appeal to final determination, contrary to the interests of justice.

3. The breadth of the Court's discretion under Rule 40.51 is well established. Courts have consistently exercised this discretion to limit recoverable costs where litigation involves significant public interest elements, complex legal issues with broad implications, and financial risks that could otherwise render continued litigation unviable. See, for example, *Corcoran v Virgin Blue Airlines Pty Ltd* [2008] FCA 864 at [6]-[13] per Bennett J; *Maletic v Comcare* [2016] FCA 1111; *King v Virgin Australia Airlines Pty Ltd* [2014] FCA 36; *King v Jetstar Airways Pty Ltd* [2012] FCA 413; *Haraksin v Murrays Australia Ltd* [2010] FCA 1133, (2010) 275 ALR 520; and *Shurat HaDin, Israel Law Centre v Lynch (No 2)* [2014] FCA 413. The New

South Wales Court of Appeal has adopted a similar approach under the equivalent rule in the Uniform Civil Procedure Rules 2005 (NSW): *Delta Electricity v Blue Mountains Conservation Society Inc* [2010] NSWCA 263; 176 LGERA 424.

4. The discretion conferred by Rule 40.51 must be exercised judicially, having regard to all relevant circumstances. Relevant considerations include:

    a) The nature of the relief sought and its broader legal significance;

    b) The complexity of the litigation and the interests of both parties in prosecuting and defending the litigation;

    c) Whether the appellants' claims are reasonably arguable and raise substantial legal issues;

    d) Whether a party would otherwise be forced to abandon proceedings due to financial constraints;

    e) Whether there is a clear public interest element to the case; and

    f) The likely costs to be incurred in the proceedings.

5. The orders sought will incentivise the parties to litigate in accordance with the overarching principles of civil litigation set out in sections 37M and 37N of the *Federal Court of Australia Act 1976* (Cth). These principles ensure that litigation is conducted efficiently, cost-effectively, and in a manner that facilitates the just resolution of the real issues in dispute.

6. The appeal raises fundamental legal and constitutional questions that warrant appellate review and have good prospects of success. Central to the appeal is, inter alia, the proper construction of s 7D of the *Sex Discrimination Act 1984 (Cth)* (**SDA**), which the appellants contend was misapplied by the primary judge in a manner that distorts the legislative intent behind special measures and undermines the statutory framework of the SDA. The primary judge's reasoning failed to account for the correlative nature of sex-based rights, erroneously expanding the scope of s 7D to accommodate gender identity in a way that contradicts both the statutory language and the broader principle of substantive equality as recognised under international law. Additionally, the appeal challenges the misuse of the external affairs power and also questions whether Giggle for Girls Pty Ltd (**Giggle**) was correctly characterised as a trading corporation, an issue that engages significant, and somewhat unsettled, legal principles under s 51(xx) of the *Constitution*. These matters are not factual disputes but issues of broad legal significance,

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justifying full appellate review to ensure that the SDA is interpreted consistently with legislative intent, constitutional principles, and established precedent.

7. When the appeal was originally filed, the appellants provided a conservative estimate of legal costs, based on the assumption that the proceedings would be confined to the appeal proper. That estimate—$340,000 plus GST—did not contemplate the participation of multiple interveners, the filing of a cross-appeal (for which leave has now been granted), or the potential for this appeal to be heard alongside the Lesbian Action Group (**LAG**) appeal or with its intervention. Given the substantial expansion of the proceedings, the appellants can no longer reliably estimate the full financial burden of litigation, but it is clear that the costs will significantly exceed the initial estimate.

8. The financial position of the appellants supports the imposition of a nil costs order, or, in the alternative, a costs cap. Giggle does not trade, has never generated revenue, and does not operate on a commercial basis. Ms Sall Grover is a private individual, (a single mother) who uncontroversially has no capacity to meet an adverse costs order. The $265,644[1] raised through small, grassroots donations, underscores the public significance of this appeal but falls short of even the initial $340,000 ex GST estimate, let alone the expanded costs now faced. These funds, gifted specifically for legal representation, do not equip the appellants to bear the risk of an uncapped adverse costs order. The evidence unequivocally shows that, absent a nil costs or capping order, the appellants cannot proceed due to unacceptable financial risk, in particular, that posed to Ms Grover, a single mother financially responsible for her daughter, for whom personal insolvency is not an option.

9. The respondent, by contrast, has secured pro bono legal assistance and grant of $50,000 from the Grata Fund to meet an adverse costs order and has already a favourable costs order at first instance.

[1] It should also be noted that this figure is raw, and subject to reduction by reason of the fees and charges incurred by the crowdfunding platform GiveSendGo. The appellants intend to update this figure, and the appeal costs estimate with evidence immediately before the interlocutory hearing.

A Proceeding in the Public Interest

10. As a general proposition, there is nothing heterodox about the use of Rule 40.51 to relieve the parties from the indemnity rule, assuming that it applies in this case, which, it is submitted it does not, given the appellants' crowdfunding and the respondent's pro bono legal assistance and grant from the Grata Fund. This is discussed further below.

11. Rule 40.51 confers power on the Court to specify the maximum costs as between party and party that may be recovered for the proceeding. The phrase "maximum costs" does not constrain the Court's discretion solely to the fixing of a quantum. Courts frequently turn their minds to the question of costs and award no quantum; such is the case when the Court specifically makes a "no order as to costs' or that "each party bear their own costs" order, meaning that no party is awarded costs against another, and the indemnity rule does not apply. There is no novelty in a nil costs order in appropriate circumstances.

12. The importance of removing costs obstacles in public interest litigation has been recognised in legal and policy contexts. The Australian Law Reform Commission (ALRC) in its 1995 report *Costs Shifting – Who Pays for Litigation? (Report 75)* concluded that public interest litigation should not be impeded by costs allocation rules due to its substantial benefit to the broader community.

13. While it may be argued that the parties are advancing private interests, this characterisation does not capture the full legal and public significance of these proceedings. The parties' circumstances provide a factual matrix for the appeal, however, the legal questions the appeal raises transcend their individual interests. As Beech-Jones CJ at CL (as his Honour then was) observed in ***Kassam*** *v Hazzard* [2021] NSWSC 1320; 393 ALR 664, litigants must demonstrate a special interest in the impugned law or decision in order to establish standing (*Kassam* at [107], citing *Australian Conservation Foundation Inc v Commonwealth* [1980] HCA 53; 146 CLR 493 at 530-531 per Gibbs J). The appellants, in seeking to challenge the construction and application of the SDA, do so not merely in relation to their own circumstances, but in a manner that will have broad consequences for the Australian community. The issues raised in this appeal, particularly regarding the interpretation of s 7D of the SDA, the external affairs and corporations powers, and the regulation of single sex spaces under the SDA, have far-reaching implications for statutory anti-discrimination law and its interaction with constitutional principles. In this respect, the appellants' legal challenge is not confined to personal grievances

but engages with systemic legal questions affecting a wide class of persons and institutions, reinforcing the public interest dimension of the appeal.

14. The public interest element of these proceedings is manifestly evident, as demonstrated by:

    a) The fundamental constitutional and statutory issues raised in the appeal, including:

        A. The proper statutory interpretation of "sex" under the SDA and whether gender identity must be accommodated within that definition;

        B. The proper construction of s 7D of the SDA and whether "special measures" can be interpreted to include gender identity, despite the provision being designed to achieve substantive equality for a defined sex class;

        C. The extent to which the external affairs power has been validly invoked to support gender identity protections under international treaty obligations; and

        D. The limits of the corporations power in imposing federal anti-discrimination obligations on private entities such as Giggle.

    b) The widespread domestic and international attention on the legal and social implications of the Federal Court's ruling in *Tickle v Giggle for Girls Pty Ltd (No 2)* [2024] FCA 960;

    c) The intercession of the Sex Discrimination Commissioner (**SDC**), and, potentially, the Australian Christian Lobby (**ACL**); and

    d) LAG's indication in correspondence dated 6 February 2025 that it is considering applying to intervene or having its own appeal heard alongside these proceedings.

The Respondent's application for Security for Costs supports the making of the cost capping order sought

15. The respondent argues that the financial position of Giggle and Ms Grover warrants a security for costs order. This argument is misconceived and inconsistent with the principles underpinning Rule 40.51. The fact that the appellants have limited financial resources—while not being impecunious—should not be used as a basis to impose security for costs. Rather, it is a reason to impose a costs cap or nil costs order, ensuring that litigation proceeds on a proportionate and fair basis. The appeal is public interest litigation in the fullest sense, and it would be entirely inconsistent with the rationale for costs containment orders for the respondent

to seek security for costs while simultaneously opposing a costs cap that would ensure fair litigation expenditure.

16. The reasoning of Abraham J in ***Lehrmann*** *v Network Ten Pty Ltd* [2024] FCA 1226 reinforces the principle that security for costs should not be imposed where it would operate to stifle an appeal raising significant legal and public interest issues. In that case, the Court recognised that the expansion of proceedings through notices of contention materially increased the complexity, length, and cost of litigation, a consideration that applies with even greater force here given the respondent's cross-appeal, which has broadened the scope of the proceedings beyond the original appeal. Just as Abraham J found that security should not be ordered where the expansion of issues was driven by the respondents, the same principle applies here: the appellants should not be subjected to an additional financial burden as a result of the respondent's own procedural choices. The respondent cannot, on one hand, seek to expand the litigation by filing a cross-appeal while, on the other, arguing that the appellants should provide security for costs on the basis that the appeal alone would impose financial risk.

17. The appellants' fundraising efforts to date have been directed solely to meeting the legal costs of the appeal proper and not at covering any adverse costs orders. The existence of a public fundraising campaign does not indicate any financial capacity to meet an adverse costs order, nor should it be mischaracterised as a basis for a security for costs order. These funds are intended to ensure that the appeal can be properly pursued and that the significant legal and constitutional questions raised in this case can be fully ventilated. The Court's reasoning in *Lehrmann* confirms that financial constraints should not prevent an appeal where arguable grounds exist, particularly where the litigation raises complex legal issues that require appellate review.

18. Further, crowdfunding does not justify security for costs: financial contributions from third-party donors do not establish a party's ability to meet an adverse costs order. The respondent cannot rely on speculative assumptions about the appellants' financial position to justify imposing security for costs, particularly where public donations by way of gift are directed to legal representation and costs associated with the appeal and not to satisfying adverse costs orders.

19. Moreover, despite being squarely on notice of the appellant's contention that the respondent needs to demonstrate a financial liability for costs by the appellants' solicitor's letter of 22 November 2024 (Annexure KS13 to the affidavit of Kylie Stone dated 26 February 2025), the

respondent's affidavit in support of security for costs fails to establish that there is a present and enforceable liability to pay legal representatives. The affidavit does not contain direct evidence to support the respondent's legal liability for costs. Security for costs should not be granted where the party seeking security has failed to demonstrate with full transparency at the outset an actual financial liability for legal fees. It is perhaps so self-evident that it need not be stated that a party seeking security must establish real financial exposure rather than rely on broad approximations and unsupported assertions of financial liability. The absence of this material defies a finding that there is any real financial exposure warranting a security for costs order and further underscores the appropriateness of a nil costs or costs capping order under Rule 40.51.

20. The respondent, benefiting from pro bono representation and a $50,000 indemnity from the Grata Fund, along with a favourable costs order at first instance, faces minimal personal financial exposure, standing in stark contrast to the appellants, who must rely on uncertain crowdfunding while Ms Grover, a single mother, bears a significant personal financial risk. The costs cap awarded at first instance stands an important precedent. The primary judge orders a costs cap of $40,000 for the constitutional and statutory arguments, which are precisely the findings that the appellants challenge on appeal.

21. While unironically simultaneously seeking to broaden the litigation through a cross-appeal, the respondent may well argue that a costs cap would constrain the ability to defend the primary judgment. This is to be contrasted however with the fact that the absence of a costs cap would entirely preclude the appellants from pursuing appellate review, producing an outcome fundamentally at odds with the interests of justice. As reaffirmed in *Lehrmann*, the appellate process is a cornerstone of the administration of justice, and public confidence in the legal system would be undermined if financial constraints were permitted to prevent a party from challenging an important legal ruling.

22. The appellants have been entirely transparent regarding the purpose and use of crowdfunding, which has been directed exclusively towards covering legal fees for the appeal and ensuring the proper ventilation of the legal issues before the Court. The respondent, by contrast, has failed to provide any clear evidence that legal costs have been incurred as a personal liability or that security for costs is required beyond what can be managed through a reasonable costs capping order under Rule 40.51.

23. The appropriate approach in circumstances where litigation is supported by public contributions and raises significant issues of statutory interpretation and constitutional law is to impose a costs cap. A costs cap under Rule 40.51 ensures that the litigation is conducted in a just, efficient, and proportionate manner, allowing for the full adjudication of the complex legal issues while preventing unwarranted financial barriers from obstructing access to justice.

The ACL's Arguments on Special Measures

24. The appellants support the ACL's application to appear as amicus curiae on the basis that the ACL's submissions provide legal argument and statutory interpretation analysis that will materially assist the Court in determining the proper construction of s 7D of the SDA. The ACL's assistance is justified as it raises arguments regarding the legislative intent behind special measures, the principle of substantive equality, and the application of international human rights instruments such as CEDAW, which align with the appellants' contentions. The ACL's submissions offer a distinct perspective on the broader implications of the appeal, particularly for faith-based organisations and single-sex spaces. Given the public interest nature of this litigation and the significant statutory and constitutional issues at stake, the appellants submit that the ACL's participation as amicus will enhance the Court's deliberations and should be granted.

25. The legal arguments advanced by the ACL in relation to the proper construction of s 7D of the SDA are aligned with the arguments of the appellants in this appeal, and contended for below. The ACL's submissions, filed on 26 February 2025, contend that the primary judge's construction of s 7D miscarried, having failed to properly apply the statutory framework, legislative history, and the principle of substantive equality under international human rights law. These submissions reinforce the complexity and importance of the issues raised in the appeal, demonstrating that the litigation is not merely a private dispute but a case of broad legal significance requiring careful judicial determination.

26. The ACL and the appellants share the position that s 7D of the SDA was intended to protect sex-based rights as part of substantive equality and must be interpreted as correlative with biological sex. The ACL's submissions contend that the primary judge's ruling, by reading s 7D as inclusive of gender identity, undermines the provision's core function and legislative intent. The ACL argues, consistently with the appellants, that:

    a) Section 7D of the SDA was introduced by the *Sex Discrimination Amendment Act 1995 (Cth)* to remove special measures from the "exceptions" section of the Act and instead

incorporate them into the substantive definition of discrimination. This amendment ensured that special measures were understood as expressions of substantive equality, rather than exceptions to the principle of non-discrimination.

b) The proper construction of s 7D(1) is that "special measures" are designed to advance substantive equality between men and women, in accordance with the correlative and binary nature of sex under the SDA. As such, a special measure must be directed at achieving equality for a disadvantaged sex class—that is, biological females in cases where the measure is designed to address systemic sex-based discrimination.

c) The primary judge's approach erroneously interpreted s 7D in a manner that extends beyond its intended purpose. By reading "women" in s 7D as inclusive of "transgender women", the judgment undermines the very function of the provision, which was intended to ensure substantive equality for biological females in contexts where their rights, safety, or participation require protection.

d) The ruling also failed to apply the proportionality assessment required under s 7D. A proper application of s 7D requires the court to assess whether it was reasonable for a person taking the measure to conclude that it would further the purpose of achieving substantive equality between men and women. Instead, the primary judge substituted his own reasoning on equality rather than assessing whether the measures taken were proportionate to the objective of protecting female-only spaces.

27. The ACL and the appellants submit that the reasoning in ***Jacomb*** *v Australian Municipal Administrative Clerical and Services Union* [2004] FCA 1250; 140 FCR 149 remains authoritative and should have been applied. The ACL's argument that *Jacomb* supports a subjective test as to the purpose of special measures aligns with the appellants' contention that Giggle's purpose was the provision of a protected female-only digital space, which falls squarely within the meaning of a special measure under s 7D.

28. By contrast, the SDC and the respondent, adopt an entirely different construction of s 7D, arguing that special measures must be assessed in a non-binary framework that includes gender identity protections as a necessary extension of the principle of equality. The SDC and the respondent submitted that s 7D does not permit exclusionary criteria based on sex alone, and that any special measure must be assessed against evolving human rights principles that prioritise identity-based discrimination protections. This is an entirely different interpretive framework from that adopted by the appellants, and now the ACL, who argue that special

measures must be assessed within the binary framework of biological sex as required under CEDAW.

29. The fact that multiple parties are now engaging in substantive argument on the meaning and operation of s 7D further demonstrates not only the appeal's public interest nature, but that this public interest nature has expanded the appeal's scope and complexity. The participation of the SDC and concomitantly, the proposed participation of the ACL, means that the parties must respond to additional legal argumentation, requiring increased legal resources and preparation time. These factors significantly increase the cost of litigation beyond the original estimate provided by the appellants. However, the expansion is warranted because the proper construction of s 7D is central to the resolution of the appeal and has significant implications for countless in the community affected by the interpretation of special measures under anti-discrimination law. The participation of the ACL, along with the engagement by the SDC, ensures that the Court has the benefit of comprehensive argument on the legislative intent, statutory framework, and international law considerations that inform the operation of s 7D. The complexity of the proceedings reflects the broader legal significance of the issues at stake and reinforces the necessity of appellate clarification to provide certainty in the application of the SDA.

Conclusion and Orders Sought

30. The appellants' primary submission is that a nil costs order is the appropriate outcome in these circumstances, ensuring that the appeal is not prejudiced by financial constraints and that the legal and constitutional issues at stake are properly argued and determined.

31. In the alternative, consistent with the approach taken by the primary judge, the alternative cap of $50,000 per party reflects a proportionate ceiling, aligning with the respondent's Grata Fund grant indemnity and ensuring both sides can litigate efficiently within reasonable means, consistent with ss 37M and 37N of the *Federal Court Act*. This would strike the right balance between allowing both parties to recover reasonable legal expenses, for which the respective parties have capacity to pay, and preventing litigation costs from escalating to a level that could undermine access to justice.

B. K. Nolan

Counsel for the Appellants

28 February 2025

NOTICE OF FILING

Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
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Form 59
Rule 29.02(1)

Affidavit

No. 1386 of 2024

Federal Court of Australia

District Registry: New South Wales

Division: Administrative and Constitutional and Human Rights

On appeal from the Federal Court

GIGGLE FOR GIRLS PTY LTD (ACN 632 152 017) & ANOR

Appellants

ROXANNE TICKLE

Respondent

Affidavit of: **Katherine Deves**

Address: 1005 Botany Road, Rosebery NSW 2018

Occupation: Legal Practitioner

Date: 20 March 2025

Contents

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Document number	Details	Paragraph	Page
4	Annexure "KD-3", being copy of an email to Barry Nilsson of 14 March 2025	3	2
5	Annexure "KD-4", being copy of a letter to the Appellants	4	2

I, Katherine Deves, of 1005 Botany Road, Rosebery NSW 2018, Lawyer, say on oath:

1. I am the solicitor under supervision at Pryor Tzannes & Wallis Solicitors (**PTW**) with day-to-day carriage of this matter on behalf of the Appellants, Giggle for Girls Pty Ltd (**Giggle**) and Ms Sally Grover (**Ms Grover**).

2. On 14 March 2025, I sent a letter to Barry Nilsson, the solicitors for the respondent, and at the time of this affidavit have not yet received a response.

   Annexed to this affidavit and hereto labelled "KD-1"is a copy of this letter of 14 March 2025

   Annexed to this affidavit and hereto labelled "KD-2" is copy of the email of same date sent to the other side with the letter attached

3. On 14 March 2025, I wrote an email to Barry Nilsson, solicitors for the respondent, and at the time of this affidavit have not received a response.

   Annexed to this affidavit and hereto labelled "KD-3"is a copy of the email of 14 March 2025 date with the letter attached sent to the other side

4. On 20 March 2025, I provided the appellants with a revised estimate of costs.

   Annexed to this affidavit and hereto labelled "KD-4" is a copy of this letter of 17 March 2025

[redacted]

Sworn by the deponent)
at Sydney)
in New South Wales)
on 20 March 2025)
Before me:)

[redacted]

Signature of witness

Edwin Nelson
Lawyer

IN THE FEDERAL COURT OF AUSTRALIA

District Registry: New South Wales

Division: Appeals and Related (Human Rights)

FILE NO: NSD1386 of 2024

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 & ANOR

(Appellants)

AND

ROXANNE TICKLE

(Respondent)

ANNEXURE SHEET

The following 5 pages comprise the document referred to as Annexure KD1 in the affidavit of Katherine Deves sworn on 20 March 2025 before me.

Solicitor in the State of New South Wales
No. 91231

Name: Edwin Nelson

Signed: _____

PRYOR TZANNES & WALLIS
SOLICITORS & NOTARIES

Our ref: TS:KD:JJ:24560

14 March 2025

Barry Nilsson Law
PO Box 13277
Law Courts VIC 8010

By email: Tinashe.Makamure@bnlaw.com.au; Corrina.Dowling@bnlaw.com.au; Kylie.Stone@bnlaw.com.au;

Dear Colleagues,

RE: Giggle for Girls Pty Ltd & Anor v Tickle (NSD1386/2024)
Interlocutory Applications for Costs Capping and Security for Costs

We write in respect of the interlocutory applications filed by the parties in the above matter, namely the appellants' application concerning costs capping orders and the respondent's application for security for costs.

The costs of the appellants' interlocutory applications alone are estimated to be in the vicinity of $50,000 for our clients. It is in the interests of both parties to avoid the expense and burden of an interlocutory hearing, particularly given the substantial legal and constitutional questions raised in the appeal.

In the proceedings below, the primary judge recognised the significant public interest element of the litigation and, accordingly, made a costs capping order of $50,000 in respect of the statutory and constitutional arguments. The primary judge's reasoning was largely premised on the fact that the Sex Discrimination Commissioner was expected to carry the statutory and constitutional arguments, and indeed, these were the arguments that ultimately prevailed. This precedent is highly relevant to the appeal,

where the Commissioner has once again been granted leave to appear as amicus curiae and will be advancing the same legal contentions that were accepted at first instance, and which are the subject of challenge in the Appeal.

The primary judge determined that a costs cap was appropriate given the nature of the issues, the complexity of the statutory and constitutional arguments, and the broader implications of the case. Additionally, the respondent's funding arrangements, including an indemnity from the Grata Fund, were a material consideration in the making of the costs capping order. We assume that this indemnity remains available for the respondent in the appeal.

The appellants maintain that no order as to costs should be made in the appeal or the proceedings below, given the established public interest in these proceedings. The appellants' submissions on costs capping emphasise the necessity of ensuring that costs do not operate as a deterrent to the determination of significant statutory and constitutional questions. The arguments advanced by the appellants demonstrate that the litigation engages fundamental issues of statutory interpretation and constitutional validity, warranting a costs structure that does not unfairly burden either party. Furthermore, the participation of the Sex Discrimination Commissioner as amicus curiae on the appeal, whose arguments accepted at first instance are central to the appeal, reinforces the need for a consistent and fair approach to costs. Accordingly, a costs capping order remains the appropriate mechanism to ensure proportionate litigation and to uphold access to justice in a matter of broad legal and public significance.

The respondent's security for costs application is predicated on two flawed assumptions: first, that crowdfunding guarantees the appellants' ability to meet an adverse costs order, and second, that the respondent's entitlement to costs below is well-

founded. However, at no stage has the respondent moved to assess or enforce the costs order below, meaning that FCR 36.08 has not yet been engaged. Furthermore, the respondent has provided no evidence as to a liability for costs below or on the appeal, a crucial omission given the operation of the indemnity principle. The passage of time and the lack of supporting evidence raise serious doubts as to whether any costs entitlement exists, particularly given that the respondent previously asserted the receipt of pro bono legal assistance in the proceedings below.

This flawed premise underpins the respondent's security for costs application, which assumes that crowdfunding ensures the appellants' ability to meet an adverse costs order and that the respondent's entitlement to costs below is beyond question. However, crowdfunding does not function as an unlimited resource, nor does it guarantee financial certainty for litigation. Instead, it is an inherently precarious and demanding process that requires sustained effort, public engagement, and the goodwill of donors, none of which is assured. It is not, as some might perceive, a limitless resource or an inexhaustible well of financial support, but rather an ongoing challenge requiring continuous outreach and advocacy.

Moreover, if a security for costs order were imposed, our client would have no choice but to discontinue the appeal, effectively precluding appellate review of significant legal and constitutional issues. Such an outcome would be fundamentally unjust, particularly in light of the acknowledged public interest considerations at stake in these proceedings. Financial constraints should not operate to prevent a party from pursuing an appeal where genuine legal questions are at stake. If a security order were imposed in these circumstances, it would not only bar appellate review of substantive legal issues but would also undermine the broader public interest in ensuring that matters of statutory and constitutional interpretation receive proper judicial consideration.

Our clients have deliberately chosen not to seek security for costs in relation to the respondent's cross-appeal. This decision reflects both the financial burden of pursuing such an application and the broader stance our clients have taken on costs in these proceedings. The appellants have sought to ensure that legal argumentation is not stifled by prohibitive financial requirements, and in that spirit, they have refrained from seeking security for costs despite being equally entitled to do so. It is inconsistent for the respondent to press for security against our clients while benefiting from public interest funding arrangements and amicus support. In these premises, the respondent's attempt to impose a security order creates an inequitable litigation environment that runs contrary to the overarching principles of access to justice and fair procedure.

So as to avoid the appellants incurring the costs of arguing the interlocutory applications, it is proposed that these two applications be resolved on the following without admission basis, without prejudice to the appellants' ultimate position on costs as sought in the Notice of Appeal:

1. **Security for Costs:** The solicitors for the appellants will hold the sum of $50,000 on trust as security for the respondent's costs of the appeal.

2. **Costs Capping Order:** The parties agree that the costs of the appeal be capped at $50,000 per party.

3. The costs of the Security for Costs Application and the Costs Capping Application be costs in the Appeal.

We consider that this proposal represents a pragmatic resolution that avoids unnecessary costs and ensures that the substantive issues can be properly ventilated.

Please confirm your client's position on this proposal at your earliest convenience, and in any event, **by no later than 12 noon on 18 March 2025.**

Should your client wish to discuss any aspects of this offer, we are available to do so at a mutually convenient time.

We look forward to your response.

Yours faithfully
Pryor Tzannes & Wallis

Tolly Saivanidis
02 9669 6333
tolly.saivanidis@ptwlaw.com.au

Contact: Katherine Deves
katherine.deves@ptwlaw.com.au

IN THE FEDERAL COURT OF AUSTRALIA

District Registry: New South Wales

Division: Appeals and Related (Human Rights)

FILE NO: NSD1386 of 2024

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 & ANOR

(Appellants)

AND

ROXANNE TICKLE

(Respondent)

ANNEXURE SHEET

The following 1 page comprise the document referred to as Annexure KD2 in the affidavit of Katherine Deves sworn on 20 March 2025 before me.

Solicitor in the State of New South Wales
No. 91231

Name: Edwin Nelson

Signed: _____

"KD-2"

From: Katherine Deves
To: "Mr Tinashe Makamure (Respondent"s solicitor)"
Cc: corrina.dowling@bnlaw.com.au; Kylie.Stone@bnlaw.com.au
Subject: Giggle -v- Tickle NSD1386/2024 | Letter re. Interlocutory Applications for Costs Capping and Security for Costs
Date: Friday, 14 March 2025 5:55:00 PM
Attachments: 20250314 PTW Law Letter to Barry Nilsson_Giggle v Tickle_NSD1386 of 2024_24560.pdf

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Dear Colleagues,

Please find **attached** a letter of even date.

Kindest regards,
Katherine Deves | Solicitor

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IN THE FEDERAL COURT OF AUSTRALIA

District Registry: New South Wales

Division: Appeals and Related (Human Rights)

FILE NO: NSD1386 of 2024

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 & ANOR

(Appellants)

AND

ROXANNE TICKLE

(Respondent)

ANNEXURE SHEET

The following 2 pages comprise the document referred to as Annexure KD3 in the affidavit of Katherine Deves sworn on 20 March 2025 before me.

Solicitor in the State of New South Wales
No. 91231

Name: Edwin Nelson

Signed: _____

PRYOR TZANNES & WALLIS
SOLICITORS & NOTARIES

Our ref: TS:KD:JJ:24560

17 March 2025

Ms Sall Grover
Giggle For Girls Pty Limited
PO Box 487
Main Beach QLD 4217

By email: sallgrover@gmail.com; robgrover1959@gmail.com; rob@giggle-girl.com;

Dear Sall,

RE: GIGGLE -V- TICKLE NSD1386/2024 | REVISION OF COSTS ESTIMATE

We refer to your matter above.

We refer to our Costs Agreement with you of 13 December 2024 and the estimate of costs provided therein.

We write to provide you with a revised estimate of costs for your matter. This revision is necessitated by the estimated four day hearing and several developments, including the Cross Appeal filed by the Respondent, the interlocutory hearing scheduled for 7 April 2025, the intervention of the Sex Discrimination Commissioner, and the proposed intervention of the Australian Christian Lobby.

These factors have contributed to an increase in the complexity and scope of the proceedings, requiring additional resources and preparation. As a result, the estimated costs have been adjusted from $340,000 to $446,000 based on the following:

Mr Stuart Wood AM KC	$192,000
Ms Bridie Nolan	$100,000
PTW Law	$150,000
Other disbursements and internal expenses	$4,000
Total	$446,000 plus GST

We remain committed to providing you with the highest level of service and ensuring that you are fully informed of any changes that may impact your case. Should you have any questions or require further clarification regarding this revised estimate, please do not hesitate to contact our office.

Thank you for your understanding and continued trust in our services.

Yours faithfully
Pryor Tzannes & Wallis

Tolly Saivanidis
02 9669 6333
tolly.saivanidis@ptwlaw.com.au

Contact: Katherine Deves
katherine.deves@ptwlaw.com.au

IN THE FEDERAL COURT OF AUSTRALIA

District Registry: New South Wales

Division: Appeals and Related (Human Rights)

FILE NO: NSD1386 of 2024

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 & ANOR

(Appellants)

AND

ROXANNE TICKLE

(Respondent)

ANNEXURE SHEET

The following 1 page comprise the document referred to as Annexure KD4 in the affidavit of Katherine Deves sworn on 20 March 2025 before me.

Solicitor in the State of New South Wales
No. 91231

Name: Edwin Nelson

Signed: 

Katherine Deves

From:	Katherine Deves
Sent:	Friday, 14 March 2025 6:07 PM
To:	'Mr Tinashe Makamure (Respondent's solicitor)'
Cc:	corrina.dowling@bnlaw.com.au; Kylie.Stone@bnlaw.com.au; Lara.Renton@humanrights.gov.au; Graeme Edgerton; admin@hrla.org.au; valentino@hrla.org.au
Subject:	Giggle -v- Tickle NSD1386/2024 | Evidence Due Date -Appellants
Categories:	LEAP

Dear Colleagues,

We refer to the matter above.

We write to you as a courtesy to let you know that our client resides in South-Eastern Queensland and was affected by ex-Cyclone Alfred, including limited access to internet and her home. This has potentially occasioned a short delay in providing her evidence due by 4pm on Tuesday 18 March 2025. We will make every effort to ensure that it is filed by the due date, but we are just indicating that it may be a day or two late.

Kindest regards,
Katherine Deves | Solicitor

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SOLICITORS & NOTARIES

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NOTICE OF FILING

Details of Filing

Document Lodged:	Outline of Submissions
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	21/03/2025 5:14:30 PM AEDT
Date Accepted for Filing:	21/03/2025 5:14:42 PM AEDT
File Number:	NSD1386/2024
File Title:	GIGGLE FOR GIRLS PTY LTD (ACN 632 152 017) & ANOR v ROXANNE TICKLE
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

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.

Federal Court of Australia

District Registry: New South Wales

Division: General Division

No: NSD 1386/2024

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

ROXANNE TICKLE
Respondent

SEX DISCRIMINATION COMMISSIONER
Intervener

SUBMISSIONS FOR MS TICKLE – COSTS-CAPPING ORDERS

A. Introduction

1. By Interlocutory Application filed 7 February 2025, and pursuant to r 40.51 of the *Federal Court Rules 2011* (Cth) (**FCR**), the Appellants seek orders as to the maximum costs recoverable by any party in respect of the appeal be either:

   (a) set at nil,[1] such that each party bears its own costs, regardless of the outcome; or, alternatively

   (b) capped at $50,000 per party,[2] such that:

      (i) if the Appellants are successful in their appeal, the Respondent (**Ms Tickle**) would be required to indemnify both Appellants in the total of $100,000; and

      (ii) if the Appellants were unsuccessful in their appeal and/or Ms Tickle were successful in her cross-appeal, the Appellants would be required to indemnify Ms Tickle in the amount of $50,000.

---

[1] Prayer [1(a)].
[2] Prayer [1(b)].

2. The Appellants also seek that the costs of their Interlocutory Application be costs in the appeal.[3]

3. Ms Tickle opposes the orders sought in the Interlocutory Application in so far as the maximum costs recoverable by a party be set at nil. However, Mr Tickle does not oppose an order that the maximum costs recoverable be capped in the amount as follows:

   (a) if the Appellants were successful in their appeal (and Ms Tickle were unsuccessful in her cross-appeal), Ms Tickle would be required to indemnify the Appellants in the amount of $50,000 each (collectively$100,000); and

   (b) if the Appellants were unsuccessful in their appeal and Ms Tickle were successful in her cross-appeal, the Appellants would be required to indemnify Ms Tickle in the amount of $100,000 ($50,000 each).

4. Otherwise, if each of the Appellants and Ms Tickle are respectively unsuccessful in their appeal and cross-appeal, Ms Tickle's position is that each party would bear their own costs.

B. Relevant legal principles

5. This Court has a broad discretionary power as to costs in s 43 of the *Federal Court of Australia Act 1976* (Cth) (**FCA**). FCR 40.51(1) relevantly provides that a party may apply to the Court for an order specifying the maximum costs as between party and party that may be recovered for the proceeding. FCR 40.51(2) conditions the Court's discretionary power connected to r 40.51(1) by exclusion of an amount a party is ordered to pay for certain events, such as where a party "(d) has not conducted the proceeding in a manner to facilitate a just resolution as quickly, inexpensively and efficiently as possible, and another party has been caused to incur costs as a result".[4]

---

[3] Prayer [2].

[4] Noting the "Overarching Purpose" and parties' obligations in ss 37M-37N of the FCA.

6. In ***Houston*** *v State of New South Wales* [2020] FCA 502 (at [17]), Griffiths J identified relevant and non-exhaustive[5] principles[6] which inform the exercise of the Court's discretionary power "having regard to all the relevant circumstances", including:

   (a) the nature of the relief sought;

   (b) the complexity of the litigation[7] and the interests of the parties in both prosecuting and defending the litigation;

   (c) whether a party's claims are reasonably arguable;

   (d) whether a party would be otherwise be forced to abandon a proceeding if such an order were not made;

   (e) whether there was a public interest element to the proceeding the party opposing, noting that the "task of characterising the litigation as public interest litigation or not [is] a broadly evaluative one";[8] and

   (f) the timing of the maximum costs application and whether the party opposing the making of the orders has been uncooperative and/or delayed the proceedings.

7. His Honour also observed (*Houston* at [18]) that the normal rule of costs being awarded to a successful party as compensation could be "displaced in an appropriate case", and that a purpose of FCR r 40.51(1) is "not so much a desire to limit the exposure of a [party] in complex and lengthy commercial litigation, but rather with concerns as to access to justice, public interest, and a desire to limit the costs of all parties, particularly in less complex and shorter cases".

8. The factors in *Houston* (identified above at [6]) are equally relevant the Court's discretion in an appeal setting,[9] noting the additional consideration that the Appellants

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5 *Houston* at [18] (Griffiths J).

6 See, too, the Appellants' Submissions dated 28 February 2025 at [4].

7 Noting that "if [a] proceeding is complex forensically and also lengthy then this may militate against the making of such an order": *McKay Super Solutions Pty Ltd (Trustee) v Bellamy's Australia Ltd (No 2)* [2019] FCA 215 at [74] (Beach J); *Houston* at [20] (Griffiths J).

8 *Houston* at [32] (Jagot J).

9 ***King*** *v Jetstar Airways Pty Ltd* [2012] FCA 413 at [6]-[8] (Perram J), citing *Corcoran v Virgin Blue Airlines Pty Ltd* [2008] FCA 684 at [6]-[13] (Bennett J).

have already had their day in court and that a trial has taken place and its outcome is known – an outcome that is presumed to be correct.[10]

9. The relevant principles identified in *Houston* were adopted by Bromwich J in *Tickle v Giggle For Girls Pty Ltd* [2023] FCA 553 (***Tickle v Giggle (No. 1)***) (at [51]). His Honour was satisfied that it was appropriate to make an order as sought by Ms Tickle under FCR 40.51(1) for a maximum costs order in the sum of $50,000 confined to the constitutional validity and statutory construction issues agitated at first instance.[11] His Honour did not accede to Ms Tickle's application for a maximum costs order in relation to the costs of and incidental to the preparation and hearing of the remainder of the proceeding (if it were reached).[12] His Honour observed that the case was (at [56]):

> "neither a purely public interest proceeding, not a purely private interest proceeding…[it] has more of a private interest dimension insofar as [Ms Tickle] seeks access to a service, and more of a public interest dimension insofar as that access, and the application of any finding that denial of such access in these and legally like circumstances is unlawful or lawful, would be likely to have wider application than the facts and circumstances of this case. That in turn is largely driven by the validity and scope of the legislation. It does have a test case quality to it, either way".

10. His Honour also noted (at [58]) that the constitutional validity and statutory construction arguments were of "relatively narrow ambit in terms of time and effort".

C. Response to the Appellants' Submissions dated 28 February 2025

11. In summary, the Appellants rely upon the following matters to justify the orders sought, which Ms Tickle responds to as follows:

    (a) **First**, the Appellants say that the "appeal raises fundamental legal and constitutional questions that warrant appellate review and have good prospects

---

10 *King* at [8], [10] (Perram J). See, in the broadly analogous context of security for costs, *Swain v Waverley Municipal Council* (2005) 220 CLR 517 at [2] (Gleeson CJ); *Dye v Commonwealth Securities Ltd* [2012] FCA 992 at [27] (Emmett J); *Chawk v Callan* [2024] FCA 92 at [13] (Rofe J). See, generally *Wooldridge v Australian Securities and Investments Commission* [2015] FCA 349 at [11] (Middleton J).

11 *Tickle v Giggle (No. 1)* at [62(b)] (Bromwich J, and see Orders set out in the Reasons for Judgment (at [3])).

12 *Tickle v Giggle (No. 1)* at [61], [62(c)] (Bromwich J).

of success".[13] Acknowledging that arguments of constitutional validity and legal construction of s 7D of the *Sex Discrimination Act 1984* (Cth) are properly raised by the Appellants, nonetheless this Court ought not proceed as though the first instance judgment is a "provisional decision" and should proceed on the basis that "[t]here is a prima facie assumption that the judgment the subject of the appeal is correct".[14] This Court is otherwise not in a position at this juncture to assess the strength of the parties' arguments on the appeal (and the cross-appeal), noting too, that the primary Judge was significantly assisted on the questions of law by the Sex Discrimination Commissioner as intervener.[15] Absent further revelation as to the nature of the submissions on the appeal, there is "scant material"[16] before this Court to determine the strength of the merits of the appeal at this interlocutory stage.

(b) **Second**, the Appellants point to the "substantial expansion of the proceedings",[17] by reason of potential interveners impacting the assessment of costs in the appeal. There is limited substance to this submission having regard to the primary Judge's (correct) characterisation of the confined nature of the constitutional and statutory construction issues (see above at [10]), and noting that the oral submissions of the potential intervener (the Australian Christian Lobby) are confined to approximately 25 minutes duration.[18] The potential impact on this proceeding arising from it being potentially heard in tandem with the appeal of the Lesbian Action Group[19] is otherwise speculation (noting, too, that any such proceeding would be in this Court's original, not appellate, jurisdiction).

---

13 Appellants' Submissions dated 28 February 2025 at [6].

14 Ms Tickle's Submissions in support of the security for costs application dated 26 February 2025 at [12], citing *Wooldridge v Australian Securities and Investments Commission* [2015] FCA 349 at [11] (Middleton J), (noting this Judgment concerned an application to stay a costs order).

15 *Tickle v Giggle for Girls Pty Ltd (No 2)* [2024] FCA 960 at [14] (Bromwich J).

16 *Lehrmann v Network Ten Pty Limited* [2024] FCA 1226 at [52] (Abraham J).

17 Appellants' Submissions dated 28 February 2025 at [7].

18 Submissions of the Australian Christian Lobby dated 26 February 2025 at [18]. Ms Tickle will address the potential intervention of the Australian Christian Lobby in a separate written submission.

19 Appellants' Submissions dated 28 February 2025 at [7].

(c) **Third**, the Appellants highlight their respective precarious[20] financial positions, as an individual and as a corporate entity, as justification for the maximum costs order(s).[21] As to this factor, Ms Tickle relies upon her earlier submissions in support of her security for costs application. As noted in those submissions, there is evidence before this Court of the Appellants having amassed, both at first instance and for this appeal, a significant amount of crowd-funding, in the magnitude of over $850,000.[22] The Appellants' submissions that their crowd-funding is insufficient for their estimate of "$340,000 ex GST"[23] to prosecute their appeal does not account for the amount and the potential available uses of the amount actually sourced by way of crowd-funding.[24]

These considerable sums of potential financial resources are not addressed, or not adequately addressed, in the Appellants' submissions or evidence.[25] In no sense can these amounts of crowdfunding be described as "small";[26] nor is it indicative of a financially disastrous position.[27] No evidence has been put forward to establish that adverse costs orders are not part of the potential available uses of the crowd-funding.[28] The same position obtains in relation to the Appellants' resistance to a security for costs order. It was otherwise open to the Appellants to have presented more cogent evidence as to their respective financial positions, for example, bank statements, evidence of government benefit entitlements and/or evidence of (non-)employment.[29]

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20 Noting that they do not accept they are "impecunious": Appellants' Submissions dated 28 February 2025 at [15].

21 Appellants' Submissions dated 28 February 2025 at [8].

22 See Affidavit of Kylie Stone affirmed 26 February 2025 at [7]-[11] (**Stone Affidavit**), being the affidavit filed in support of Ms Tickle's security for costs application. Note, the crowd sourced funding raised at first instance was also intended to be used in "any appeals that may be necessary": Stone Affidavit at [8].

23 Appellants' Submissions dated 28 February 2025 at [8]. The Appellants have since updated their estimate to approximately $446,000 plus GST: see, p 13 of Annexure "**KD-3**" of the Affidavit of Katherine Deves sworn 20 March 2025 (**Second Deves Affidavit**).

24 Appellants Submissions dated 28 February 2025 at [17]-[18]. For evidence as to which see the Stone Affidavit at [7]-[11]and the Makamure Affidavit at [12]-[13].

25 Contra First Deves Affidavit at [11] and Appellants' Submissions dated 28 February 2025 at [22].

26 Appellants' Submissions dated 28 February 2025 at [8].

27 Compare, *King v Jetstar Airways Pty Ltd* [2012] FCA 413 at [11] (Perram J).

28 To the contrary, as is apparent in the Stone Affidavit at [10], under the "Use of Funds" tab of Giggle Crowdfunding website, the crowd-sourced funds "will be used exclusively to cover legal fees **and associated costs incurred** in the appeal proceedings" (**emphasis added**). Adverse costs fall within the ordinary understanding of "associated costs". There is otherwise no express de-limitation / carve-out on the use of the funds. See similarly [9] of the Stone Affidavit.

29 Compare, *Ezekiel-Hart v Reis* [2024] FCA 1203 at [23] (Abraham J).

(d) **Fourth**, the Appellants highlight the "public interest" nature of their appeal.[30] The public and private interest of this litigation is essentially as was characterised by the primary Judge at first instance (see above at [9]), noting, too, that the Appellants have essentially the same (and opposing) private interest as Ms Tickle as to whether or not she was able to use the relevant service – the appeal is therefore not "public interest litigation in the fullest sense".[31]

(e) **Fifth**, the Appellants do no more than make a bare assertion as to the expansion of the scope of the proceeding in the appellate jurisdiction by reference to the fact of Ms Tickle having filed a cross-appeal.[32] No meaningful attempt is made by the Appellants to explain how Ms Tickle's principal arguments as to the correct characterisation of the mutually exclusive discriminatory conduct (direct v indirect discrimination)[33] or the quantum of damages,[34] would otherwise so expand this proceeding as to make the Appellants' prosecution of their own appeal so prohibitively costly and unwieldy such that the continued litigation is untenable.

(f) **Finally**, to the extent the Appellants suggest that Ms Tickle has no real legal liability for costs, it is not the usual course for the Court to make inquiry as to whether the party in whose favour the order was made had a liability to pay costs.[35] Otherwise, the Appellants bear, and have here not discharged, the onus of establishing that Ms Tickle has no liability to meet a costs order.[36] To the extent there is any criticism levelled towards Ms Tickle for not having yet sought to

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30 Appellants' Submissions dated 28 February 2025 at [10]-[14].

31 Appellants' Submissions dated 28 February 2025 at [15].

32 Appellants' Submissions dated 28 February 2025 at [21]

33 Notice of Cross-Appeal filed 19 February 2025 at [1]-[3].

34 Notice of Cross-Appeal filed 19 February 2025 at [4].

35 *Frigger v Banning (No 13)* [2023] FCA 923 at [22] (Colvin J). His Honour noted *Lowbeer v De Varda* (2018) 264 FCR 228 at [13] (Reeves, Farrell & Colvin JJ), where the Court stated:

> "…in the absence of proof of an agreement to the contrary, a solicitor who acts on instructions for a party on the record is taken to be entitled to look to that party for costs, even if the instructions have come to the solicitor from another party or from some non-party interested in the litigation…On that basis, the requirements of the indemnity principle whereby a party who does not have a liability to the solicitor on the record for costs cannot recover costs against the unsuccessful party…may be presumed to have been met" (**citations omitted**).

36 See, generally, *Harvard Nominees Pty Ltd v Dimension Agriculture Pty Ltd (in liq)* (2023) 299 FCR 224 at [18] (Colvin, Stewart & Feutrill JJ). Otherwise, there is some evidence relating to this topic: see, Stone Affidavit at [12]-[20].

proceed to any taxation of the costs order,[37] a more reasonable inference is that she has acted consistently with this Court's Practice Note GPN-COSTS,[38] and otherwise with common sense by not engaging in a step that might (theoretically) be impacted in the outcome of an appeal.

12. Ms Tickle otherwise agrees that that a maximum costs orders "will incentivise the parties to litigate in accordance with the overarching principles of civil litigation set out in [FCA ss 37M-37N]" (and see above at [5]). Ms Tickle's solicitors estimate the total legal costs for the appeal / cross-appeal (assuming between to two to four hearing days, depending on the extent of intervention) to be $400,000 ex. GST.[39]

13. To the contrary, the evidence of crowd-funding "unequivocally" shows that the Appellants can afford the appeal and the risk of adverse costs – a risk that goes hand-in-hand with pursuing an appeal – and which risk appears to be the sole basis upon which the maximum costs order sought is predicated.[40] That is not the relevant test.

14. Ms Tickle otherwise submits that the Appellants have had their day in court, they have lost, and Ms Tickle's success at first instance was not a Pyrrhic victory.[41] The Appellants are now willing litigants in this appeal; Ms Tickle is not (while acknowledging she has exercised her right to cross-appeal). A further relevant consideration is that the Grata Fund have agreed to indemnify Ms Tickle of $100,000 for the appeal,[42] an amount that pales in comparison to the crowd-funding amassed by the Appellants.

D. Conclusion

15. If the Court is inclined to make a costs-capping order, Ms Tickle seeks orders for the amounts identified above at [3] on the basis that such orders are appropriate in all circumstances, but especially given the Appellants have the benefit of significant sums of crowdfunding (see above at [11(c)]). Ms Tickle should have her costs of, and

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37 See, p 6 of Annexure "**KD-1**", p 6, of the Second Deves Affidavit.

38 See, for example, GPN-COSTS at [3.14]: "A party should never embark on a costs-related process within this Court as a strategic device to gain advantage in litigation, such as to delay the litigation process".

39 Affidavit of Tinashe Makamure affirmed on 21 March 2023 at [15]-[16]. (**Makamure Affidav**it).

40 Although nowhere in the First Deves Affidavit is stated that failure to make the maximum costs order will stifle their appeal. Moreover, nowhere is the risk of personal insolvency adverted to in the First Deves Affidavit contra Appellants' Submissions dated 28 February 2025 at [8].

41 *King* at [8] (Perram J).

42 Affidavit of Tinashe Makamure Affidavit at [14].

incidental to, responding to the Appellants' Interlocutory application given she did not oppose a cost-capping order from the outset.[43]

Georgina Costello KC

Christopher McDermott

Elodie Nadon

[43] Makamure Affidavit at [8].

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:	21/03/2025 5:14:30 PM AEDT
Date Accepted for Filing:	21/03/2025 5:14:41 PM AEDT
File Number:	NSD1386/2024
File Title:	GIGGLE FOR GIRLS PTY LTD (ACN 632 152 017) & ANOR v ROXANNE TICKLE
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

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 another named in the schedule

Appellants

Roxanne Tickle
Respondent

Sex Discrimination Commissioner
Intervener

Affidavit of: **Tinashe Makamure**

Address: Level 6, 600 Bourke Street, Melbourne

Occupation: Lawyer

Date: 21 March 2025

Contents

Filed on behalf of (name & role of party) Respondent, Roxanne Tickle
Prepared by (name of person/lawyer) Kylie Stone and Tinashe Makamure
Law firm (if applicable) Barry Nilsson
Tel 03 9909 6365 Fax (02) 8651 0299
Email Corrina.Dowling@bnlaw.com.au / Tinashe.Makamure@bnlaw.com.au / Kylie.Stone@bnlaw.com.au
Address for service (include state and postcode) Barry Nilsson, Level 9, 1 O'Connell Street, Sydney NSW 2000

Document number	Details	Paragraph	Page
6	Annexure "**TM-5**", being a screenshot of the 'Giggle Crowdfunding' website dated 19 March 2025	13	23-24
7	Annexure "**TM-6**", being a copy of an email sent by the Federal Court Registry dated 7 March 2025	16	25-32
8	Annexure "**TM-7**", being a screenshot of the ACL's media release dated 20 March 2025	17	33-34
9	Annexure "**TM-8**", being a copy of relevant excerpts of the ACL's constitution	18	35-39

I, Tinashe Makamure, Lawyer, affirm:

1. I am a solicitor at Barry Nilsson Lawyers (**BN**), and subject to the supervision of the principals at BN, I am one of the solicitors with carriage of this matter for the Respondent (**Ms Tickle**) and I am authorised to make this affidavit on Ms Tickle's behalf.

2. The contents of this affidavit are based on my own knowledge or, where indicated, on information provided to me by the sources identified in this affidavit, which I believe to be true.

3. I make this affidavit in addition to the Affidavit of Kylie Stone that was filed in this Court on 26 February 2025, in support of Ms Tickle's application for security for costs pursuant to r 36.09(1) of the *Federal Court Rules 2011* (Cth) and s 56 of the *Federal Court of Australia Act 1976* (Cth) and in response to the Appellants application for cost capping orders pursuant paragraph 4(a) of the Orders of the Hon Justice Abraham dated 12 February 2025,.

4. I am not authorised to, and do not, waive legal professional privilege (**LPP**) in respect of matters addressed in this affidavit. If any statement is taken to be a waiver of LPP then I withdraw it and do not rely upon it.

5. I make this affidavit to provide an update on the relevant matters to the above-mentioned interlocutory applications.

6. Now produced and shown to me and marked "**TM**" is an annexure bundle of documents to which I refer in this affidavit and which is sequentially paginated.

Offer to agree to costs cap

7. On 5 February 2025, the Appellants' solicitors wrote to our office seeking that our client agree to a nil costs order for both the appeal and the cross appeal and that a $50,000 costs cap be imposed. A copy of the correspondence is at "**TM-1"**.

8. On 11 February 2025, our offices responded to that correspondence offering instead, *inter alia*, to proceed with the matter on the basis that the parties agree to a costs cap of $100,000. A copy of the correspondence is at "**TM-2"**.

9. On 14 March 2025, the Appellants' solicitors sent correspondence seeking, among other things, that the Court disregard the costs ordered against the Appellants in the first instance and that a costs cap of $50,000 be imposed in relation to the appeal and cross-appeal. A copy of the correspondence is at "**TM-3"**.

10. On 20 March 2025, our offices responded to that correspondence addressing the matters contained therein and offering to, among other things, agree to a costs cap of up to $100,000 to be applied to both the Appellants and the Respondents for the appeal and cross appeal. A copy of the correspondence is at "**TM-4**".

The Appellants' submissions regarding the costs cap

11. Notwithstanding the correspondence of 11 February 2025, on 28 February 2025, the Appellants filed and serve submissions which propose a nil costs order for the appeal, alternatively that each party's costs be capped at $50,000.

Update on the Appellants' Crowd Funding

12. The total amount of crowd funding that the Appellants' have raised to support their costs of litigation for the appeal have increased since the Affidavit of Kylie Stone (filed with this court on 26 February 2025) was drafted.

13. As of 19 March 2025, the Appellants' crowd funding stands at a total of $300,475 being raised. A screenshot of the 'Giggle Crowdfunding' website dated 19 March 2025 is at "**TM-5**".

The Respondent's Indemnity

14. I confirm that an in-principle agreement has been reached between the Grata Fund Limited (**Grata Fund**) and the Respondent for the Grata Fund to indemnify the Respondent against an adverse costs order in the amount of $100,000.

Costs of the Appeal

15. I estimate that the following costs will be incurred for preparation and the hearing of the appeal:

    a) Solicitor fees: $100,000

    b) Counsel fees: $300,000

    This amount comprises appearance fees at the appeal, preparation of up to four days, up to four days for preparing written submissions both in response to the appeal and for the cross-appeal and up to one day for miscellaneous hearing preparation.

16. The above estimate is based on the registry's suggestions that the matter will be listed for 4 days. A copy of the correspondence is at "**TM-6**".

Australian Christian Lobby (ACL)

17. On 20 March 2025, I conducted a search of the ACL's website (https://www.acl.org.au) and found a Media Release titled "The Word 'Woman' is Now Meaningless". A copy of the Media Release is at "**TM-7**".

18. Also on 20 March 2025, I located a copy of the ACL's Constitution on the Australian Charities and Not-for-Profits Commission website (via its Charities Register) (https://www.acnc.gov.au). A copy of the clause 5 "Statement of Faith" and clause 6 "Objects" of the ACL's is at "**TM-8**".

Affirmed by the deponent)
at Melbourne)
in Victoria)
on 21 March 2025)
before me:)

Signature of deponent

Signature of witness

Kylie Stone
Lawyer

This affidavit was affirmed by the deponent via an audio-visual link

Schedule

No. NSD 1386 of 2024

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

Second Appellant: SALLY GROVER

Exhibit Certificate

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 another named in the schedule

Appellants

Roxanne Tickle
Respondent

Sex Discrimination Commissioner
Intervener

ANNEXURE "TM-1"

A true copy of a letter from the Appellants' solicitors dated 5 February 2025.

This is the exhibit marked "TM-1" now produced and shown to Mr Tinashe Makamure at the time of affirming his affidavit on 21 March 2025 before me.

.....

Kylie Stone

Lawyer

PRYOR TZANNES & WALLIS
SOLICITORS & NOTARIES

Our ref: TS:KD:JJ:24560
Your ref: CLD:TBM:144178-68

5 February 2025

Barry Nilsson Lawyers
Level 6, 600 Bourke Street
Melbourne VIC 3000

Email: Tinashe.Makamure@bnlaw.com.au; Corrina.Dowling@bnlaw.com.au; Kylie.Stone@bnlaw.com.au

Dear Colleagues,

Costs in Giggle for Girls Pty Ltd & Anor v Tickle (NSD1386/2024)

We write in respect of the appeal proceedings in the above matter in which we act for the appellants.

As you are aware, the appeal is confined to the issues of constitutional and statutory construction, and it does not engage with findings of fact made by the primary judge. In contrast, the cross-appeal—if leave is granted—will substantially increase the scope and cost of the proceedings by seeking to challenge multiple factual determinations.

It is apparent that all parties face financial constraints. As was adduced in evidence in the trial proceedings, your client does not have financial resources to meet an adverse costs order and has relied upon pro bono legal representation throughout. Giggle for Girls Pty Ltd and Ms Grover are similarly without financial means, with no revenue having been generated by the company, and Ms Grover being a single mother on a pension. In these circumstances, any adverse costs order would be practically unenforceable and would serve no legitimate purpose.

Given the complexity of the legal issues and the number of interveners seeking to be heard in the appeal, there is also a real risk that litigation costs will escalate beyond what is

proportionate. The previous costs cap of $50,000 imposed by the primary judge in respect of constitutional and statutory construction arguments remains a relevant precedent, but in circumstances where neither party has financial resources to meet such an order, we propose a more efficient and equitable solution.

Accordingly, we invite your client to agree to a nil costs order for both the appeal and the cross-appeal. If this agreement is reached, we will consent to the cross-appeal being filed. This would allow the issues to be properly ventilated without the risk of oppressive cost burdens being imposed on either side. If agreement cannot be reached, we will proceed to file an interlocutory application pursuant to rule 40.51 of the Federal Court Rules seeking a nil costs order or, alternatively, a capped costs order of $50,000 per party, with the intention of raising the issue at the next case management hearing.

Given the direction made today by Abrahams J that parties provide proposes minutes of order by Monday next, there is some urgency in this issue being resolved. Please confirm by no later than **5pm tomorrow, 6 February 2025** whether your client agrees to this proposal. If further discussion is required, we are happy to engage in direct discussions to reach a practical resolution.

We look forward to your response.

Yours faithfully
Pryor Tzannes & Wallis

Tolly Saivanidis
02 9669 6333
tolly.saivanidis@ptwlaw.com.au

Contact: Katherine Deves
katherine.deves@ptwlaw.com.au

Exhibit Certificate

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 another named in the schedule

Appellants

Roxanne Tickle
Respondent

Sex Discrimination Commissioner
Intervener

ANNEXURE "TM-2"

A true copy of an email to the Appellants' solicitors dated 11 February 2025.

This is the exhibit marked "TM-2" now produced and shown to Mr Tinashe Makamure at the time of affirming his affidavit on 21 March 2025 before me.

.....

Kylie Stone

Lawyer

From: Kylie Stone
Sent: Tuesday, 11 February 2025 9:19:39 AM
To: Katherine Deves
Cc: Corrina Dowling;Tinashe Makamure
Bcc: {F1137967}.General@bneimanage02.bn.local
Subject: RE: Giggle -v- Tickle NSD1386/2024 | Letter to Respondent's Solicitor [BN-GENERAL.144178.68.FID1137967]

Dear Ms Deves,

We refer to your correspondence dated 5 February 2025 regarding costs in respect of the appeal.

We are instructed that our client does not agree to a nil costs order. We further note that your correspondence makes no mention of the significant crowd funding that your clients have raised.

In order for the appeal to proceed in a cost-efficient manner, we invite your clients to agree to:

a) a costs cap of $100,000 to apply to your clients for both the appeal and cross appeal;
b) a costs cap of $100,000 to apply to our client for both the appeal and cross appeal;
c) give an undertaking that the amount of crowd funding raised by your clients for the case at first instance and any further amounts raised, including with respect to the appeal/cross appeal, is preserved for payment of the adverse costs orders (including those ordered following the interlocutory proceedings) that have been made on first instance and any adverse costs orders that may be made on appeal.

If your client is not agreeable to the undertaking outlined above, our client reserves her rights to seek security for costs in the face of an impecunious individual appellant and in light of the risk of the corporate appellant disbursing the money otherwise available to pay past and future costs orders.

In any event, we note that our client intends to press for payment of our interlocutory costs as per the Court's orders dated 1 June 2023 and the costs associated with the substantive matter as per the Court's orders dated 23 August 2024. We will issue you with further correspondence regarding these demands shortly.

If your clients are agreeable to the above, we will provide you with a draft minutes of consent orders for your client to review.

Please do not hesitate to contact us if you would like to discuss further.

Kind regards,

Kylie Ston
e
(she/her)
Solicito
r

+61 3 9909 6378
+61 421 451 927
Kylie.Stone@bnlaw.com.au
Wurundjeri Woi Wurrung Country
Level 6 600 Bourke Street Melbourne VIC 3000
PO Box 13277 Law Courts VIC 8010

Barry Nilsson

Barry Nilsson supports flexible working for all staff. If I have sent this email at a time that is outside of your work hours, please do not feel that you need to respond or action it immediately.

From: Katherine Deves <katherine.deves@ptwlaw.com.au>
Sent: Wednesday, 5 February 2025 3:12 PM
To: Tinashe Makamure <Tinashe.Makamure@bnlaw.com.au>
Cc: Corrina Dowling <Corrina.Dowling@bnlaw.com.au>; Kylie Stone <Kylie.Stone@bnlaw.com.au>
Subject: Giggle -v- Tickle NSD1386/2024 | Letter to Respondent's Solicitor

External email >
Discusses sensitive information >
Contains topics of a financial nature >

Dear Colleagues,

Please find **attached** a letter of 5 February 2025.

Kindest regards,
Katherine Deves | Solicitor

PRYOR TZANNES & WALLIS
SOLICITORS & NOTARIES

OVER 70 YEARS 70 Est 1954
Our knowledge. Your advantage.

Pryor Tzannes & Wallis Solicitors & Public Notaries
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Exhibit Certificate

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 another named in the schedule

Appellants

Roxanne Tickle
Respondent

Sex Discrimination Commissioner
Intervener

ANNEXURE "TM-3"

A true copy of a letter from the Appellants' solicitors dated 14 March 2025.

This is the exhibit marked "TM-3" now produced and shown to Mr Tinashe Makamure at the time of affirming his affidavit on 21 March 2025 before me.

.....

Kylie Stone

Lawyer

PRYOR TZANNES & WALLIS
SOLICITORS & NOTARIES

Our ref: TS:KD:JJ:24560

14 March 2025

Barry Nilsson Law
PO Box 13277
Law Courts VIC 8010

By email: Tinashe.Makamure@bnlaw.com.au; Corrina.Dowling@bnlaw.com.au; Kylie.Stone@bnlaw.com.au;

Dear Colleagues,

RE: Giggle for Girls Pty Ltd & Anor v Tickle (NSD1386/2024)
Interlocutory Applications for Costs Capping and Security for Costs

We write in respect of the interlocutory applications filed by the parties in the above matter, namely the appellants' application concerning costs capping orders and the respondent's application for security for costs.

The costs of the appellants' interlocutory applications alone are estimated to be in the vicinity of $50,000 for our clients. It is in the interests of both parties to avoid the expense and burden of an interlocutory hearing, particularly given the substantial legal and constitutional questions raised in the appeal.

In the proceedings below, the primary judge recognised the significant public interest element of the litigation and, accordingly, made a costs capping order of $50,000 in respect of the statutory and constitutional arguments. The primary judge's reasoning was largely premised on the fact that the Sex Discrimination Commissioner was expected to carry the statutory and constitutional arguments, and indeed, these were the arguments that ultimately prevailed. This precedent is highly relevant to the appeal,

where the Commissioner has once again been granted leave to appear as amicus curiae and will be advancing the same legal contentions that were accepted at first instance, and which are the subject of challenge in the Appeal.

The primary judge determined that a costs cap was appropriate given the nature of the issues, the complexity of the statutory and constitutional arguments, and the broader implications of the case. Additionally, the respondent's funding arrangements, including an indemnity from the Grata Fund, were a material consideration in the making of the costs capping order. We assume that this indemnity remains available for the respondent in the appeal.

The appellants maintain that no order as to costs should be made in the appeal or the proceedings below, given the established public interest in these proceedings. The appellants' submissions on costs capping emphasise the necessity of ensuring that costs do not operate as a deterrent to the determination of significant statutory and constitutional questions. The arguments advanced by the appellants demonstrate that the litigation engages fundamental issues of statutory interpretation and constitutional validity, warranting a costs structure that does not unfairly burden either party. Furthermore, the participation of the Sex Discrimination Commissioner as amicus curiae on the appeal, whose arguments accepted at first instance are central to the appeal, reinforces the need for a consistent and fair approach to costs. Accordingly, a costs capping order remains the appropriate mechanism to ensure proportionate litigation and to uphold access to justice in a matter of broad legal and public significance.

The respondent's security for costs application is predicated on two flawed assumptions: first, that crowdfunding guarantees the appellants' ability to meet an adverse costs order, and second, that the respondent's entitlement to costs below is well-

founded. However, at no stage has the respondent moved to assess or enforce the costs order below, meaning that FCR 36.08 has not yet been engaged. Furthermore, the respondent has provided no evidence as to a liability for costs below or on the appeal, a crucial omission given the operation of the indemnity principle. The passage of time and the lack of supporting evidence raise serious doubts as to whether any costs entitlement exists, particularly given that the respondent previously asserted the receipt of pro bono legal assistance in the proceedings below.

This flawed premise underpins the respondent's security for costs application, which assumes that crowdfunding ensures the appellants' ability to meet an adverse costs order and that the respondent's entitlement to costs below is beyond question. However, crowdfunding does not function as an unlimited resource, nor does it guarantee financial certainty for litigation. Instead, it is an inherently precarious and demanding process that requires sustained effort, public engagement, and the goodwill of donors, none of which is assured. It is not, as some might perceive, a limitless resource or an inexhaustible well of financial support, but rather an ongoing challenge requiring continuous outreach and advocacy.

Moreover, if a security for costs order were imposed, our client would have no choice but to discontinue the appeal, effectively precluding appellate review of significant legal and constitutional issues. Such an outcome would be fundamentally unjust, particularly in light of the acknowledged public interest considerations at stake in these proceedings. Financial constraints should not operate to prevent a party from pursuing an appeal where genuine legal questions are at stake. If a security order were imposed in these circumstances, it would not only bar appellate review of substantive legal issues but would also undermine the broader public interest in ensuring that matters of statutory and constitutional interpretation receive proper judicial consideration.

Our clients have deliberately chosen not to seek security for costs in relation to the respondent's cross-appeal. This decision reflects both the financial burden of pursuing such an application and the broader stance our clients have taken on costs in these proceedings. The appellants have sought to ensure that legal argumentation is not stifled by prohibitive financial requirements, and in that spirit, they have refrained from seeking security for costs despite being equally entitled to do so. It is inconsistent for the respondent to press for security against our clients while benefiting from public interest funding arrangements and amicus support. In these premises, the respondent's attempt to impose a security order creates an inequitable litigation environment that runs contrary to the overarching principles of access to justice and fair procedure.

So as to avoid the appellants incurring the costs of arguing the interlocutory applications, it is proposed that these two applications be resolved on the following without admission basis, without prejudice to the appellants' ultimate position on costs as sought in the Notice of Appeal:

1. **Security for Costs:** The solicitors for the appellants will hold the sum of $50,000 on trust as security for the respondent's costs of the appeal.

2. **Costs Capping Order:** The parties agree that the costs of the appeal be capped at $50,000 per party.

3. The costs of the Security for Costs Application and the Costs Capping Application be costs in the Appeal.

We consider that this proposal represents a pragmatic resolution that avoids unnecessary costs and ensures that the substantive issues can be properly ventilated.

Please confirm your client's position on this proposal at your earliest convenience, and in any event, **by no later than 12 noon on 18 March 2025**.

Should your client wish to discuss any aspects of this offer, we are available to do so at a mutually convenient time.

We look forward to your response.

Yours faithfully
Pryor Tzannes & Wallis

Tolly Saivanidis
02 9669 6333
tolly.saivanidis@ptwlaw.com.au

Contact: Katherine Deves
katherine.deves@ptwlaw.com.au

Exhibit Certificate

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 another named in the schedule

Appellants

Roxanne Tickle
Respondent

Sex Discrimination Commissioner
Intervener

ANNEXURE "TM-4"

A true copy of a letter to the Appellants' solicitors dated 20 March 2025.

This is the exhibit marked "TM-4" now produced and shown to Mr Tinashe Makamure at the time of affirming his affidavit on 21 March 2025 before me.

.....

Kylie Stone

Lawyer

BN Law Limited
ABN 22 621 026 864
Gadigal Country
L9, 1 O'Connell Street
Sydney NSW 2000
PO Box R1794
Royal Exchange NSW 1225
T +61 2 8031 2600
F +61 2 8031 2699
enquiries@bnlaw.com.au

20 March 2025

Our reference
CLD:TBM:144178-68

Contact
Tinashe Makamure
03 9909 6365
tinashe.makamure@bnlaw.com.au

Principal
Corrina Dowling
03 9909 6320
corrina.dowling@bnlaw.com.au

Katherine Deves
Pryor Tzannes & Wallis Solicitors
1005 Botany Road
Rosebery, NSW, 2018

Dear Ms Deves,

RE: Giggle for Girls Pty Ltd & Anor v Roxanne Tickle (NSD1386/2024)

1.1 We refer to your correspondence dated 14 March 2025 regarding the interlocutory applications for costs capping and security for costs. We similarly respond on an open basis.

1.2 We consider that your arguments regarding your clients' liability for our client's costs lack substance in circumstances where there are orders in our client's favour as to costs (as per Justice Bromwich's Orders dated 1 June 2023 and 23 August 2023) (**Costs Orders**). Our client is entitled to those costs as per the Costs Orders.

1.3 It appears that, despite the considerable funds raised by your client, your client is now foreshadowing a new ground of appeal, being that the Court overturn the costs order/s made against your clients on purely public interest grounds. The time to raise any such argument was alongside the interlocutory applications heard in on 28 April 2023, in particular, our client's application for a maximum costs order, not **after** the trial has concluded and our client has been successful. Accordingly, we are instructed to object to this proposed course and consider there to be no proper basis for doing so.

1.4 The assessment as to the efficacy of the arguments advanced by your clients in relation to statutory interpretation and constitutional questions represents, in our view, an inaccurate and self-serving assessment. Your position in this respect ignores the comments made in the judgment at first instance and the cogent counter position advanced by our client and the Sex Discrimination Commissioner at first instance and should similarly be rejected.

1.5 Further to the above, and contrary to the representations made in your correspondence, our client has made multiple attempts to engage with your client to enforce the costs order (and avoid incurring further costs associated with enforcement proceedings). Your assertion that our client "has not moved to enforce or assess the costs order below" is disingenuous at best.

1.6 In circumstances where you have personally engaged in correspondence with us regarding our client's (reasonable) attempts to reach agreement on the costs orders, the response from your offices (whether it be through your former firm or your current firm) has been to either ignore our correspondence, or defer the issue until after the Appeal has been heard (noting your clients have not applied for a stay of the Costs Orders).

1.7 We remind you of the following correspondence exchanged between our offices in relation to the enforcement of costs:

(a) We first wrote to you on 2 May 2024 seeking payment of our client's costs and inviting your client to explore the resolution on the issue of costs. You did not respond.

(b) We engaged in further correspondence with you by email on 20 May 2024 wherein we sought your response to our correspondence dated 2 May 2024.

(c) Further email correspondence was exchanged on 4 June 2024 regarding our client's position on payment of the costs.

(d) We wrote to you again on 18 November 2024 in response to your correspondence dated 24 October 2024 wherein you sought an undertaking that our client would not enforce the costs orders (which we rejected and once again demanded payment of the costs).

(e) We wrote to you again on 11 February 2025 proposing an alternative resolution being that your clients give an undertaking that an amount of the crowdfunding raised be preserved for payment for our costs.

1.8 In each of our correspondences, we have set out the costs sought, *and* the unpaid compensation owed to our client as ordered by Bromwich J, which are as follows:

(a) $356,901.94 being the total costs sum excl. GST (**First Instance Costs**); and

(b) $10,000 being the compensation ordered in the first instance (**Compensation Sum**).

1.9 Our approach to date has been to avoid the further incursion of costs (via taxation) by enabling the parties to resolve the issue by agreement.

1.10 In our view, it is disingenuous to suggest that your clients' failure to satisfy the First Instance Costs Order (and Compensation Sum) should be attributed to our client and to now seek to agitate concerns about costs or impecuniosity (despite your clients' known and very public crowdfunding efforts). Further still, it borders on misleading to diminish the significant funds raised by your clients for the express purpose of litigating this matter.

1.11 We note that at first instance, your client pressed for our client to raise security for costs (an argument which was rejected in that instance) while firmly, albeit unsuccessfully, opposing our client's application for a costs cap.

1.12 Your client then proceeded to, once a costs cap was imposed, conduct its litigation in a way that was unnecessarily costly including by providing copious amounts of irrelevant and/ or inadmissible evidence.

1.13 Our client is rightly concerned that your clients will proceed in a similar manner and otherwise continue in their attempts at avoiding payment of the First Instance Costs ordered at first instance, in addition to the outstanding Compensation Sum.

1.14 As to your assertions of impecuniosity or inability to satisfy adverse costs orders, we note that your client has so far:

(a) raised over $300,000 on the crowdfunding website in relation to the appeal; and

(b) raised over three quarters of its $850,000 goal on a different website called GiveSendGo (noting that the amount raised is shown by a bar line without a specific figure).

1.15 Bearing this in mind, we estimate that your client has, to date, raised approximately $1,000,000 in relation to the appeal alone, noting that the crowdfunding appears to have been re-set following the decision at first instance. We consider these sums to be more than sufficient to cover your clients' costs and our client's compensation and as such, we do not accept the unsustainable assertions contained in your correspondence as to your clients' ability to meet an adverse costs order and our client's entitlement to costs from the decision at first instance.

1.16 Notwithstanding the above, our client does consider there to be utility in the parties agreeing to a costs cap be it for a higher quantum than that sought by your client. However, considering the funds raised further to your clients undisguised attempt to avoid paying costs rightly ordered against them, before our client can agree to any costs cap, we consider it necessary that your client agrees to:

(a) Place $356,901.94 of the funds raised to date into your firm's trust account to be kept in that account until the appeal is heard and determined, with the express purpose of satisfying the First Instance Costs; and

(b) Place $10,000 of the funds raised into your firm's trust account to satisfy the Compensation Sum.

1.17 Subject to the above, our client would be agreeable to consent orders providing that:

(a) your firm hold monies in trust as proposed above;

(b) our client withdraws the application for security for costs by consent;

(a) the parties agree to a costs cap of **$100,000** for the total costs of the appeal and cross appeal; and

(b) there be no order as to costs in relation to the applications for security for costs and or the costs cap.

1.18 In proposing the above, we note that our client has secured an indemnity for an adverse costs order from the Grata Fund in the sum of $100,000.

1.19 For completeness, our firm and counsel have agreed to act in this matter on a speculative basis being that our client will only be required to pay costs if costs are ordered. Costs have been ordered and, subject to the costs cap proposed above, we consider the conventional position as to costs should proceed.

1.20 If your client is agreeable to this approach, we invite your client to respond to the above by **5pm** on **24 March 2025**.

1.21 Our client reserves the right to enforce the Costs Orders. However, consistent with the parties' obligations under the Federal Court Practice note 'GPN-Costs', we are instructed that our client does not seek taxation of the First Instance Costs until the appeal is determined.[1]

1.22 If you have any questions, please contact me on the details below.

Yours faithfully

Corrina Dowling

Principal
03 9909 6320
corrina.dowling@bnlaw.com.au

Tinashe Makamure

Special Counsel
03 9909 6365
tinashe.makamure@bnlaw.com.au

[1] See clause 3.14 of https://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/gpn-costs.

Exhibit Certificate

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 another named in the schedule

Appellants

Roxanne Tickle
Respondent

Sex Discrimination Commissioner
Intervener

ANNEXURE "TM-5"

A screenshot of the 'Giggle Crowdfunding' website dated 19 March 2025.

This is the exhibit marked "TM-5" now produced and shown to Mr Tinashe Makamure at the time of affirming his affidavit on 21 March 2025 before me.

.....

Kylie Stone

Lawyer

Giggle Crowdfunding

https://gigglecrowdfund.com

Relativity | a | Toll Case | End a case by dismi... | Costs Capping | FOI | EQUAL OPPORTUNI... | EOA | Vicariousliability | Vi... | Other favorites

Giggle crowdfunding

About this case | It Matters | Constitutional Challenge | Use of funds

Appeal Announcement – Protecting Women's Rights and Single-Sex Spaces

Announcing our appeal against the recent ruling of Justice Bromwich in the Federal Court of Australia in **Tickle v Giggle for Girls Pty Ltd (No 2) [2024] FCA 960** (read the summary here), which we contend misinterprets the fundamental rights of women and girls and undermines the legal protections for single-sex spaces that are essential for their safety, dignity, and freedom of association. This case presents a critical legal question: how should the **Sex Discrimination Act 1984 (Cth)** be interpreted to uphold sex-based rights while addressing gender identity claims?

Our appeal challenges the declaratory judgment that found our actions constituted "unlawful indirect discrimination" on the basis of gender identity. We assert that the ruling contains serious legal errors, including:

- A misinterpretation of the legal definition of "sex" under the **Sex Discrimination Act**, which extends beyond biological reality in a way that risks diluting the legal protections specifically designed for women and girls. The ruling's interpretation of "sex" is inconsistent with both domestic and international law, including Australia's obligations under **CEDAW**.
- A failure to recognise the Giggle App as a lawful "special measure" under the **Sex Discrimination Act**, designed to achieve substantive equality for women by providing a female-only space. The Act explicitly permits sex-based measures where they are necessary to promote women's safety, equality, and dignity, yet the ruling does not adequately engage with this principle.
- A disregard for critical evidence and expert testimony, limiting our ability to fully present the broad social and legal consequences of this ruling. By failing to consider key material, the decision risks setting a precedent that could erode the ability of women to lawfully maintain spaces and organisations based on sex.

As we move forward with our appeal, we emphasise that women standing up for sex-based rights, including the right to single-sex spaces, are acting in defence of fairness, honesty, and legal clarity. This is not an act of exclusion or bigotry—it is a necessary assertion of women's rights in law and policy. Discussions surrounding gender identity must not come at the expense of the safety, dignity, and autonomy of women and lesbians, nor

Latest News

Appeal target
$850,000

Next court date
April 7 2025

Funds Raised
$300,475

Legal Team led by:
Stuart Wood AM KC, **Barrister**
Aickin Chambers, Melbourne
B.K.Nolan, **Barrister**
12 Selbourne Wentworth Chambers, Sydney
Katherine Deves, **Lawyer**
Pryor Tzannes & Wallis, Sydney

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Follow Us on X (formerly Twitter)

1560

3:31 PM
19/03/2025

Exhibit Certificate

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 another named in the schedule

Appellants

Roxanne Tickle
Respondent

Sex Discrimination Commissioner
Intervener

ANNEXURE "TM-6"

A true copy of an email sent by the Federal Court Registry dated 7 March 2025.

This is the exhibit marked "TM-6" now produced and shown to Mr Tinashe Makamure at the time of affirming his affidavit on 21 March 2025 before me.

.....

Kylie Stone

Lawyer

From: Tali Rubinstein
Sent: Friday, 7 March 2025 11:38:41 AM
To: Katherine Deves;Tinashe Makamure;Lara.Renton@humanrights.gov.au
Cc: Catherine Forbes;Christopher Daniele;Kylie Stone;Corrina Dowling;Graeme.Edgerton@humanrights.gov.au;admin@hrla.org.au;nsd13862024@fedcourt.gov.au
Subject: Status Check - August 2025 Full Court and Appellate Sitting Period - NSD1386/2024 GIGGLE FOR GIRLS PTY LTD (ACN 632 152 017) & ANOR v ROXANNE TICKLE [BN-GENERAL.144178.68.FID1137967] (Giggle -v- Tickle NSD1386/2024 | 24560) [SEC=OFFICIAL]
Attachments: RE: Status Check - March 2025 Full Court and Appellate Sitting Period - NSD1386/2024 GIGGLE FOR GIRLS PTY LTD (ACN 632 152 017) & ANOR v ROXANNE TICKLE [SEC=OFFICIAL], RE: Status Check - March 2025 Full Court and Appellate Sitting Period - NSD1386/2024 GIGGLE FOR GIRLS PTY LTD (ACN 632 152 017) & ANOR v ROXANNE TICKLE [SEC=OFFICIAL] [BN-GENERAL.144178.68.FID1137967]

OFFICIAL

Dear practitioners

The Court has commenced preparations for the August 2025 Full Court and appellate sitting period.

I understand that the above matter is listed before Justice Abraham on 7 April 2025 for the hearing of interlocutory applications filed. Subject to the views of Justice Abraham, as the case management judge, the above matter is being considered by the Court for an up to 4-day listing during the August 2025 sittings.

To assist the Court in considering listing arrangements, I would be grateful if the parties could confirm:

- expected appearances; and
- mutually available dates between 28 July and 29 August 2025. If any party is no longer available during the week commencing 11 August 2025, brief reasons for this should also be provided.

Please also advise the Court if any party would like to draw the Court's attention to any other information that could affect the listing arrangements for this matter.

Please respond as soon as possible but no later than the close of business on **Friday, 14 March 2025**.

Listing arrangements for the August 2025 sittings are expected to be finalised by the Court in early April 2025. If the matter is to be listed in the August 2025 sittings, the parties should receive a formal Notice of Listing prior to the Easter break.

Finally, I note that all queries in relation to appeal books in this matter should be directed to the local registry for the attention of the Duty Registrar and not to the National Operations Team.

Kind regards

Tali

FEDERAL COURT OF AUSTRALIA

Tali Rubinstein | National Registrar
National Operations Registry (Appeals)
NSW Registry | Federal Court of Australia
Level 17, Law Courts Building | Queens Square, Sydney NSW 2000
1300 720 980
www.fedcourt.gov.au

From: Catherine Forbes <Catherine.Forbes@fedcourt.gov.au>
Sent: Thursday, December 12, 2024 12:46 PM
To: Katherine Deves <katherine.deves@ptwlaw.com.au>
Cc: tinashe.makamure@bnlaw.com.au; nsd13862024@fedcourt.gov.au; Kylie.Stone@bnlaw.com.au; corrina.dowling@bnlaw.com.au; Lara.Renton@humanrights.gov.au; Graeme.Edgerton@humanrights.gov.au; Tali Rubinstein <Tali.Rubinstein@fedcourt.gov.au>; Christopher Daniele <chris@ptwlaw.com.au>
Subject: RE: Status Check - March 2025 Full Court and Appellate Sitting Period - NSD1386/2024 GIGGLE FOR GIRLS PTY LTD (ACN 632 152 017) & ANOR v ROXANNE TICKLE [BN-GENERAL.144178.68.FID1137967] (Giggle -v- Tickle NSD1386/2024 | 24560) [SEC=OFFICIAL]

OFFICIAL

Dear practitioners

Dates for the August sittings will not be allocated until April 2025, however, noting an estimated duration of up to 4 days, the Court expects the parties to reserve at least one week of mutual availability during the sittings. The Court's preference is the week commencing 11 August 2025, if possible.

The Court will be in further contact about dates next year.

Kind regards

Catherine

Catherine Forbes
National Judicial Registrar - Appeals, National Operations Team
Federal Court of Australia, 305 William Street, Melbourne Victoria 3000
03 8638 6776 | catherine.forbes@fedcourt.gov.au | www.fedcourt.gov.au
Please note that I am currently working part time – on Mondays, Wednesdays and Thursdays

From: Katherine Deves <katherine.deves@ptwlaw.com.au>
Sent: Thursday, December 12, 2024 12:39 PM
To: Catherine Forbes <Catherine.Forbes@fedcourt.gov.au>
Cc: Tinahse.Makamure@bnlaw.com.au; nsd13862024@fedcourt.gov.au; Kylie.Stone@bnlaw.com.au; Corinna.Dowling@bnlaw.com.au; Lara.Renton@humanrights.gov.au; Graeme.Edgerton@humanrights.gov.au; Tali Rubinstein <Tali.Rubinstein@fedcourt.gov.au>; Christopher Daniele <chris@ptwlaw.com.au>
Subject: RE: Status Check - March 2025 Full Court and Appellate Sitting Period - NSD1386/2024 GIGGLE FOR GIRLS PTY LTD (ACN 632 152 017) & ANOR v ROXANNE TICKLE [BN-GENERAL.144178.68.FID1137967] (Giggle -v- Tickle NSD1386/2024 | 24560) [SEC=OFFICIAL]

Dear Registrar,

We refer to the matter above.

We advise of further **un**available dates for hearing for Counsel for the Appellants being 1-5 August 2025 (inclusive).

Please confirm whether the matter will be set down for Hearing in the coming days as we envisage further unavailable dates will arise before early March 2025.

Kindest regards,
Katherine Deves | Solicitor

Our offices will be closed from 5:00pm, Friday 20 December 2024 and will reopen 8:30am, Monday 6 January 2025.

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e: katherine@ptwlaw.com.au w: www.ptwlaw.com.au

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ABN: 30 735 178 645

From: Catherine Forbes <Catherine.Forbes@fedcourt.gov.au>
Sent: Monday, 9 December 2024 11:34 AM
To: Katherine Deves <katherine.deves@ptwlaw.com.au>
Cc: Tinahse.Makamure@bnlaw.com.au; nsd13862024@fedcourt.gov.au; Kylie.Stone@bnlaw.com.au; Corinna.Dowling@bnlaw.com.au; Lara.Renton@humanrights.gov.au; Graeme.Edgerton@humanrights.gov.au; Tali Rubinstein <Tali.Rubinstein@fedcourt.gov.au>
Subject: RE: Status Check - March 2025 Full Court and Appellate Sitting Period - NSD1386/2024 GIGGLE FOR GIRLS PTY LTD (ACN 632 152 017) & ANOR v ROXANNE TICKLE [BN-GENERAL.144178.68.FID1137967] (Giggle -v- Tickle NSD1386/2024 | 24560) [SEC=OFFICIAL]

OFFICIAL

Dear practitioners

The proceeding has been referred to Abraham J for case management.

Following consultation with the case management judge, I can confirm that the proceeding will not be listed for hearing during the March 2025 Full Court and appellate sittings.

Chambers will be in contact with the parties about arranging a case management hearing in February 2025, including with a view to considering the applications by the respondent and the Sex Discrimination Commissioner.

The National Operations Team will be in contact with the parties again in early March 2025 about listing the proceeding for hearing during the August 2025 Full Court and appellate sittings.

Kind regards

Catherine

Catherine Forbes
National Judicial Registrar - Appeals, National Operations Team
Federal Court of Australia, 305 William Street, Melbourne Victoria 3000
03 8638 6776 | catherine.forbes@fedcourt.gov.au | www.fedcourt.gov.au
Please note that I am currently working part time – on Mondays, Wednesdays and Thursdays

---

From: Katherine Deves <katherine.deves@ptwlaw.com.au>
Sent: Monday, December 9, 2024 9:31 AM
To: Catherine Forbes <Catherine.Forbes@fedcourt.gov.au>
Cc: Tinahse.Makamure@bnlaw.com.au; Catherine Forbes <Catherine.Forbes@fedcourt.gov.au>; nsd13862024@fedcourt.gov.au; Kylie.Stone@bnlaw.com.au; Corinna.Dowling@bnlaw.com.au; Lara.Renton@humanrights.gov.au; Graeme.Edgerton@humanrights.gov.au
Subject: Status Check - March 2025 Full Court and Appellate Sitting Period - NSD1386/2024 GIGGLE FOR GIRLS PTY LTD (ACN 632 152 017) & ANOR v ROXANNE TICKLE [SEC=OFFICIAL] [BN-GENERAL.144178.68.FID1137967] (Giggle -v- Tickle NSD1386/2024 | 24560)

Dear Registrar Forbes,

We refer to the matter above.

We act for the Appellants.

We confirm a Notice of acting – change of lawyer in this matter was filed on the portal of the Federal Court of Australia on Friday 6 December 2024 and is pending acceptance. Accordingly, a sealed copy has not yet been served on the Respondent.

We refer to your email of 4 December 2024 that was sent to the Appellants' previously instructed solicitors, Alexander Rashidi Lawyers and the practitioners for the Respondent.

We are instructed the Appellants maintain their position as to the scheduling of the Appeal Hearing and accordingly provide the unavailable dates for Counsel for the 28 July- 29 August 2025 sitting as per your request by 10am today.

We confirm that Counsel for the Appellants are **unavailable** on **20, 21 and 22 August 2025** during the period 29 July 2025 to 29 August 2025.

Please let us know should you require any further information to assist.

Kindest regards,
Katherine Deves | Lawyer

Our offices will be closed from 5:00pm, Friday 20 December 2024 and will reopen 8:30am, Monday 6 January 2025.

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e: katherine@ptwlaw.com.au w: www.ptwlaw.com.au

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ABN: 30 735 178 645

Exhibit Certificate

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 another named in the schedule

Appellants

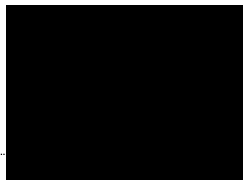
Roxanne Tickle
Respondent

Sex Discrimination Commissioner
Intervener

ANNEXURE "TM-7"

A screenshot of the ACL's media release dated 20 March 2025.

This is the exhibit marked "TM-7" now produced and shown to Mr Tinashe Makamure at the time of affirming his affidavit on 21 March 2025 before me.



Kylie Stone

Lawyer

The Word "Woman" is Now Meaningless

August 23, 2024

Tickle sued Giggle and the ruling is no laughing matter for Australian women. The case which saw Tickle who "was of the male sex at time of birth" (Judgment paragraph 3) successfully sue a women-only space for alleged gender discrimination is being watched around the world, and will have far-reaching consequences for every Australian girl and woman.

Commenting on the court case, Wendy Francis, National Director of the Australian Christian Lobby (ACL), said, "Following the Federal court decision that, "sex is not confined to being a biological concept referring to whether a person at birth had male or female physical traits, nor confined to being a binary concept, limited to the male or female sex, but rather takes a broader ordinary meaning, informed by its use, including in State and Territory legislation. (Judgment paragraph 55) the word woman is now meaningless. This finding was made accepting arguments put by the Australian Human Rights Commission.

"The Australian federal court has effectively revised how being a woman – is interpreted. It is no longer a biological reality, but a a matter of self-determination. Tickle the Court found "identifies, and is legally recognised, as a woman. She was male sex at birth, and since about June 2017 she has lived as a woman, which has been a gradual process of transitioning her gender including social, medical and legal components. (Judgment paragraph 87)"

"This judgment means that women's only spaces such as DV shelters, school changerooms, toilets, online chatrooms and prisons will see an increasing presence of born male people present. Female sex-based rights no longer exist in Australia with the word "woman" having been meaningless under the Sex Discrimination Act."

The ACL urgently calls for government to call for a review of this decision and amend the Sex Discrimination Act to protect female born people or women as they used to be known.

Exhibit Certificate

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 another named in the schedule

Appellants

Roxanne Tickle
Respondent

Sex Discrimination Commissioner
Intervener

ANNEXURE "TM-8"

A copy of relevant excerpts of the ACL's constitution.

This is the exhibit marked "TM-8" now produced and shown to Mr Tinashe Makamure at the time of affirming his affidavit on 21 March 2025 before me.

Kylie Stone

Lawyer

(d) an expression used in a particular part or division of the Law that is given by that part or division a special meaning for the purpose of that part or division has, in any of these regulations that deals with the matter dealt with by that part or division, unless the contrary intention appears, the same meaning as in that part or division;

(e) headings and the table of contents are inserted for convenience only and are to be disregarded in the interpretation of this Constitution; and,

(f) a reference to dollars ($) shall mean a reference to Australian dollars, unless otherwise expressly intended.

4 EFFECT OF THE CONSTITUTION

This Constitution shall have effect as a contract:

(a) between ACL and each Trustee;

(b) between ACL and each Director, Special Observer and Company Secretary; and,

(c) between a Trustee and each other Trustee,

pursuant to which each Trustee agrees to observe and perform the Rules within the Constitution so far as they apply to that Trustee.

5 STATEMENT OF FAITH

ACL is a Christian organisation. Those involved are expected to live in a manner worthy of the Christian Gospel and to adhere to the doctrines of Christian teaching expressed in the Nicene Creed. The Nicene Creed is as follows:

We believe *in one God,*
the Father, the Almighty,
maker of heaven and earth,
of all that is, seen and unseen.

We believe *in one Lord, Jesus Christ,*
the only Son of God,
eternally begotten of the Father,
God from God, Light from Light,
true God from true God,
begotten, not made,
of one Being with the Father.
Through him all things were made.
For us and for our salvation
he came down from heaven:
by the power of the Holy Spirit
he became incarnate from the Virgin Mary,
and was made man.

For our sake he was crucified under Pontius Pilate;
he suffered death and was buried.
On the third day he rose again
in accordance with the Scriptures;
he ascended into heaven
and is seated at the right hand of the Father.

He will come again in glory to judge the living and the dead,
and his kingdom will have no end.

We believe *in the Holy Spirit, the Lord, the giver of life,*
who proceeds from the Father and the Son.
With the Father and the Son he is worshiped and glorified.
He has spoken through the Prophets.

We believe *in one holy catholic and apostolic Church.*
We acknowledge one baptism for the forgiveness of sins.
We look for the resurrection of the dead,
and the life of the world to come. Amen

In addition to these beliefs ***we also believe:***

that the Bible is God's authoritative and inspired Word. It is without error in all its teachings. We submit to its divine authority, both individually and corporately, in all matters of belief and conduct, and

that God created marriage to be a holy union sanctified by God and affirmed by our Lord Jesus as between one man and one woman joined by God for life as acknowledged by family and the community. We believe God's perfect design for human sexuality and gender is perfected in this exclusive union. (Mark 10:7-9)

6 OBJECTS

ACL is a charity and exists solely for the purpose of the advancement of the Christian religion. Without limiting the generality of this purpose ACL seeks:

(a) To ensure that Christian principles and ethics are accepted and influence the way Australians are governed, do business and relate to each other as a community;

(b) To support those in public office and key professions who believe in and articulate the Christian faith;

(c) To promote the profile and relevance of Christian values in public opinion, law and public policy to all people; and petition governments so that Christian principles find expression in legislation, and public policy at federal, state and local levels;

(d) To inform both Christian denominations and individual Christians in order that they may more effectively participate in the formation of public opinion, law and public policy;

(e) To educate Christians on the role and responsibility of the church and individual Christians in the formation of public opinion, law and public policy in a democracy;

(f) To conduct research and publish papers in support of these objects;

(g) To provide an example through practical support and action of Christian concern for the vulnerable and disadvantaged; and,

(h) Do such other acts and things as may be deemed reasonably necessary or incidental to advancing the Christian religion.

7 POWERS

ACL may, by resolution or Special Resolution as the Law requires, exercise from time to time any power by the Law a company limited by guarantee may exercise if authorised by its Constitution for the purposes of carrying out its Objects of advancement of the Christian religion.

8 LIMITED LIABILITY

The liability of the Trustees is limited.

9 CONTRIBUTIONS IN THE EVENT OF WINDING UP

Each Trustee of ACL undertakes to contribute to the property of ACL, if ACL is wound up while he or she is a Trustee or within one (1) year after he or she ceases to be a Trustee, for payment of the debts and liabilities of ACL contracted before he or she ceases to be a Trustee and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributors among themselves, such amount as may be required but not exceeding ten dollars ($10.00). An Advisor is not liable to contribute to the property of ACL, if ACL is wound up.

10 APPLICATION OF INCOME AND PROPERTY

The income and property of ACL however derived shall be applied solely for the benefit and promotion of ACL's objects and no portion thereof shall be:

(a) paid or transferred directly or indirectly by way of dividends, bonus, or otherwise to the Trustees of ACL; or,

(b) paid to Directors as fees or other remuneration or other benefit in money or money's worth;

provided that nothing in this Rule shall preclude, with the prior approval of the Board:

NOTICE OF FILING

Details of Filing

Document Lodged:	Submissions
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	25/03/2025 10:35:03 PM AEDT
Date Accepted for Filing:	25/03/2025 10:35:07 PM AEDT
File Number:	NSD1386/2024
File Title:	GIGGLE FOR GIRLS PTY LTD (ACN 632 152 017) & ANOR v ROXANNE TICKLE
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

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.

District Registry: New South Wales

Division: Administrative and

Constitutional and Human Rights

No. NSD 1386 of 2024

On appeal from the Federal Court

Giggle for Girls Pty Ltd & Anor

Appellants

Roxanne Tickle

Respondent

Appellants' Reply Submissions on the Interlocutory Applications brought under Rule 40.51 of the Federal Court Rules 2011 (Cth), s 56 of the *Federal Court of Australia Act 1976* (Cth) and Rule 36.09 of the Federal Court Rules 2011 (Cth)

Introduction

1. These submissions reply to the respondent's submissions filed 21 March 2025 in opposition to the appellants' interlocutory applications for a protective costs order under r 40.51 of the Federal Court Rules 2011 (Cth) and opposing the respondent's application for security for costs under s 56 of the *Federal Court of Australia Act 1976* (Cth) and r 36.09 of the Rules. These applications engage two complementary but distinct discretionary powers, each concerned with ensuring that litigation proceeds in a fair, proportionate and principled manner. The appellants submit that a nil costs order is the appropriate procedural response in the circumstances of this appeal, and that no order for security should be made. A nil costs order, if granted, would render the respondent's application for security otiose.

2. Rule 40.51 empowers the Court to specify the maximum recoverable party/party costs in a proceeding. It is a provision designed to ensure that litigation—particularly where it raises novel legal questions or involves public interest elements—is conducted in a manner consistent with ss 37M and 37N of the *Federal Court of Australia Act*. It permits the Court to reduce or even eliminate cost-shifting where that would serve the just resolution of proceedings, including by enabling litigants of limited means to bring or defend important claims. Section 56 and r 36.09, by contrast, provide the Court with power to order an appellant to give security for the respondent's costs. That power is discretionary and must be exercised with regard to the risk of irrecoverable costs, the financial position of the parties, the merits and purpose of the

appeal, and the broader interests of justice. Both applications require a contextual, fact-sensitive evaluation.

3. The question for the Court is whether it is just, in the circumstances of this appeal, to impose cost burdens on the appellants that may inhibit their ability to prosecute a proceeding that raises constitutional and statutory questions of general importance. These submissions show why the answer is no. The appeal raises issues of broad legal significance; the appellants are not commercial litigants; the respondent has failed to demonstrate any enforceable legal costs liability; and the funding relied upon is limited, conditional, and not directed to adverse costs. In these circumstances, a nil costs order—applying to both the appeal and cross-appeal—is the most fair and proportionate outcome. The submissions that follow develop these points in detail and respond to the matters raised by the respondent.

Costs capping

4. The respondent has accepted that a protective costs order is appropriate in principle but opposes a nil costs order. The respondent also proposes an asymmetrical costs cap under which the respondent may recover up to $100,000, while bearing no more than $50,000 in liability if unsuccessful. The appellants respectfully submit that such a structure is neither equitable nor consistent with the policy or operation of r 40.51. The correct order, having regard to all relevant considerations, is that there be no order as to costs.

The inconsistency of the respondent's proposed costs structure

5. The respondent's position, as stated in paragraph 3 of its 21 March 2025 submissions, is that costs should be capped in the amount of $50,000 per party—but only in one direction. Specifically, if the appellants are successful on the appeal (and the respondent is unsuccessful on the cross-appeal), the respondent accepts that the appellants would recover a total of $100,000 in costs. But if the respondent succeeds in the cross-appeal (and the appellants fail on the appeal), the appellants would be required to pay $100,000 in total. The asymmetry is plain: while each side bears the same theoretical risk, in practice the respondent's exposure is halved.

6. This formulation also fails to account for the outcome in which both the appeal and cross-appeal fail. The respondent's position, in that case, is that each party should bear their own costs. This creates an anomalous position in which the respondent alone benefits from every possible outcome: capped if the respondent wins, capped if the respondent loses, and neutral if both fail. No comparable benefit is afforded to the appellants.

7. That structure lacks parity. It proceeds from the premise that the appellants are to be treated as two cost-bearing parties, while the respondent, who alone prosecutes the cross-appeal, is to be treated as if the respondent bears only a single risk. The principle of symmetry in costs protection requires that each party stand to gain or lose on equal terms. The respondent's

proposal undermines that basic premise, and there is no authority or principle that supports it. Were parity to be achieved, it needs be symmetrical, fixed at $50,000 per party, and apply to the appeal and cross-appeal alike.

8. The cross-appeal is significant. It introduces an attempt to recharacterise the finding of indirect discrimination as direct discrimination. That is not a mere technicality. The distinction between direct and indirect discrimination is legally and evidentially meaningful, and the reframing necessarily widens the factual inquiry and increases the burden of the proceeding. The respondent's submission that the cross-appeal does not materially alter the case fails to engage with the consequence of that pleading choice. Moreover, the respondent's proposed costs structure would allow it to expand the proceeding while limiting its own exposure. Such an approach inverts the logic of r 40.51 and risks encouraging precisely the kind of tactical broadening that protective costs orders are designed to deter.

The continued uncertainty around costs liability and indemnity

9. Similar uncertainty arises from earlier references to an indemnity said to have been secured from the Grata Fund. To date, no material has been filed confirming the existence, scope, or operative effect of such an indemnity in relation to the appeal. It is unclear whether it has been formally accepted, whether it applies to both the appeal and the cross-appeal, or whether it is intended to meet any prospective liability for costs. This uncertainty is further compounded by the fact that the respondent now claims to be acting under a speculative costs agreement—a position not disclosed earlier in the proceeding, and for which no evidence of compliance with the applicable statutory requirements has been produced.

10. The asymmetry is striking: the appellants who have relied on modest public donations to fund representation are said to have financial capacity sufficient to justify both security and cost exposure; while the respondent, who incurs no costs unless successful, seeks to benefit from those same donations through a costs order. Having drawn on crowdfunding to pay for legal representation the appellants will never have a personal liability for costs, accordingly, the indemnity principle does not arise. By contrast, the respondent claims to have a costs liability that arises only if successful, in which event it is asserted that those costs may be recovered from the crowdfunding raised for the appellants' representation. That structure inverts the logic of indemnity and distorts the rationale underpinning protective costs orders.

11. The respondent's position on costs has not been consistent. Earlier communication suggested that the matter was being conducted on a pro bono basis. The later suggestion of a speculative arrangement—still unsupported by any documentation—raises a legitimate inference that no enforceable liability exists. These shifting positions underscore the respondent's failure to meet the burden imposed by the indemnity principle, and further support the submission that neither a security order nor a costs-shifting regime should be imposed in its favour.

12. These unresolved matters highlight the difficulties inherent in assessing the respondent's actual cost exposure and undermine the rationale for imposing any form of security or adverse costs order. The most coherent and proportionate outcome is a nil costs order applying to both the

appeal and cross-appeal. That approach would reflect the public interest nature of the proceeding, which centres on complex and novel questions of statutory and constitutional interpretation, and would avoid further interlocutory controversy about the parties' respective cost exposures. It is also consistent with the principled approach adopted by the primary judge in *Tickle v Giggle for Girls Pty Ltd* [2023] FCA 553, where the Court imposed protective costs orders in relation to the constitutional and statutory issues and declined to make an order for security.

Crowdfunding and financial transparency

13. It is also appropriate to observe that the respondent's application for security for costs must be assessed in light of the principles which govern the exercise of the discretion under s 56 of the *Federal Court of Australia Act* and r 36.09 of the Rules. That discretion is broad, but it must be exercised judicially and having regard to all relevant circumstances, including the availability of alternative protective measures such as a costs capping order. It is a settled principle of appellate practice that where the Court is satisfied that a protective costs order is appropriate, the rationale for a security for costs order largely falls away.

14. The application for security cannot be considered in isolation. To impose security on a party who has already sought and justified a costs cap—particularly where the Court is inclined to grant such a cap—would be to duplicate protective mechanisms and distort the balance of the discretion. This was expressly recognised by the primary judge, and more generally by Griffiths J in *Houston v State of New South Wales* [2020] FCA 502 at [17]–[18], where his Honour observed that protective costs orders serve to manage risk and promote access to justice in cases with public interest dimensions. The decision to grant a cap must be taken into account in any proper weighing of the security application.

15. Here, the respondent's claim for security is not supported by evidence of actual financial exposure. The assertion of speculative costs liability remains unverified and unexplained. The continued failure to produce a costs agreement, or to articulate the nature of the retainer or the circumstances in which costs would become payable, places the respondent outside the class of litigant for whom the protective rationale of security applies. Where the applicant for security has not shown real personal exposure to unrecoverable costs, and the opposing party has demonstrated the public interest character of its appeal, the proper exercise of the discretion is to decline the order sought.

16. This conclusion is not just consistent with authority; it is compelled by it. In the presence of a valid application under r 40.51, and in the absence of probative evidence from the respondent on cost exposure, the order for security would amount to a miscarriage of discretion. The applications must be considered together, and the protective framework already established by the Court must be allowed to do its work.

17. Before turning to the issues arising from the crowdfunding evidence, it is appropriate to say something about the procedural history and character of the appellants' application under r 40.51. The application for a costs capping order was made promptly on 7 February 2025, before any cross-appeal was filed. It was accompanied by an open offer that there be no order as to party/party costs on the appeal or cross-appeal. That offer was made in recognition of the nature of the issues raised by the appeal, the limited means of the appellants, and the fact that both sides are proceeding without institutional backing. The respondent declined that proposal, but now accepts that some form of costs capping order is appropriate.

18. That concession is proper. However, the respondent's position has been marked by a degree of fluidity not easily reconciled with the requirements of transparency and good faith in interlocutory procedure. The respondent resists a nil costs order while advancing a cross-appeal directed to the characterisation of the discrimination found by the primary judge. That cross-appeal is not directed to legal principle but to the form of the findings, and serves to emphasise the personal dimensions of the dispute. While the respondent invokes broader considerations when opposing a protective costs order, the cross-appeal underscores the essentially private nature of the respondent's interest in the proceeding.

19. The manner in which the respondent has approached the issue of costs also warrants comment. The respondent has, at various stages, claimed to be assisted pro bono, to have retained his lawyers on a speculative basis, and to be protected by an indemnity from the Grata Fund. Yet no documentation has been provided to substantiate any of these positions. The respondent's solicitors have repeatedly sought undertakings that the appellants' crowdfunding be held on trust for the benefit of their own client. That approach betrays a misconception of the nature of protective costs orders: the object of such orders is not to protect a party from losing, but to ensure that litigation proceeds in accordance with the overarching purpose.

20. In this case, the fundraising efforts of the appellants have been undertaken to support the legal costs of a proceeding raising issues of significant public importance. The Court's discretion under r 40.51 should not be exercised in a manner that would enable those funds—raised by ordinary members of the public in support of a legal cause—to be converted into a private costs entitlement for the benefit of the respondent. It is against that backdrop that the respondent's submissions on costs capping must be understood.

21. The respondent submits that the appellants' crowdfunding displaces any claim to financial vulnerability. That submission misconceives the nature of the funds raised. Crowdfunding in this proceeding consists of episodic, modest donations from members of the public made to support legal representation in a case of public interest. The funds are not held on trust, are not replenishable, and are not structured in any way that would equate to commercial litigation funding.

22. That the appellants have relied on public donations is not a basis to impose greater financial risk—it is a reason to limit it. The donations do not reflect institutional backing, nor do they confer financial capacity in the conventional sense. To treat public donations as equivalent to commercial litigation funding would be to collapse a principled distinction. It would set a

precedent whereby any public interest litigant who turns to community support may find that support weaponised against them. That outcome is neither consistent with r 40.51 nor conducive to the principles of access to justice which underscore its purpose.

23. The respondent has not discharged the evidentiary burden of demonstrating an enforceable liability to pay legal costs. Assertions of a speculative costs agreement have not been supported by the production of any costs agreement, disclosure notice or invoice. Where such documents must exist, their absence permits a strong inference that no such liability exists.

Consistency with the first instance approach

24. The respondent submits that the appellants have already had their "day in court" and should not now be relieved of the ordinary costs consequences of litigation. That submission does not align with the approach taken by the primary judge, where his Honour accepted that the proceeding bore features of a test case and made a protective costs order to ensure that serious legal issues could be determined without the chilling effect of disproportionate financial risk.

25. That approach recognises that litigation of this kind—raising new and difficult questions of statutory and constitutional law—requires a careful balancing of fairness, access and the public interest. The same considerations apply with equal, if not greater, force in the appeal, particularly now that the scope of the proceeding has been expanded by a fact-intensive cross-appeal.

26. The participation of the Sex Discrimination Commissioner as amicus—expected on the appeal to mirror her participation below—serves to relieve the respondent of much of the legal burden ordinarily borne by a private litigant. As occurred below, it is anticipated that the Commissioner will again conduct the principal constitutional and statutory arguments. In practical terms, this means that the respondent is not required to bear the cost or responsibility of advancing the central public interest issues in the case. That support materially alters the balance of litigation risk and reinforces the appropriateness of a costs-neutral outcome. A protective costs order ensures that the parties most directly affected—who are proceeding without institutional support—are not exposed to disproportionate financial consequences, while those with the resources and authority to argue the public interest issues are able to do so without distorting the cost consequences for others.

No new ground of appeal

27. The respondent has suggested that the appellants' position on costs represents a novel ground of appeal. That submission cannot be sustained. The appellants do not seek to disturb the costs orders made below through a new challenge; rather, they contend that no further order for costs should be made, on the appeal or cross-appeal or on a revisitation of the orders made below. That position is consistent with long-established authority and reflects the principle that the indemnity rule may be displaced where the interests of justice so require.

28. As recognised by the High Court in *Oshlack v Richmond River* Council [1998] HCA 11; 193 CLR 72, a costs-neutral outcome may be warranted in proceedings that raise issues of broad public significance and where the litigation serves to clarify statutory provisions or the exercise of public power. That principle is no less applicable in appellate proceedings. The appeal in this case raises serious questions about the construction of several key provision of the *Sex Discrimination Act 1984* (Cth), the scope of the external affairs and corporations powers, and the correct application of international instruments implemented in anti-discrimination legislation to female-only spaces. These are not private disputes but questions of far-reaching constitutional and statutory importance.

29. The appellants seek no order as to costs of the appeal. If successful in their substantive challenge to the costs orders below, the appellants seek only that those orders be set aside, with no further order made in their place. That approach is principled, proportionate, and reflects the public character of the issues raised. It avoids unnecessary procedural dispute and ensures that the funds raised from members of the public in support of the appellants' legal representation are not redirected to underwrite costs claims of uncertain provenance. In that context, the only order that aligns with the settled principles of costs discretion is a nil costs order.

Conclusion

30. The appellants submit that a nil costs order is the appropriate outcome in the circumstances. That order would reflect the nature of the issues raised, the financial position of the parties, and the interests of justice. It would also dispose of the security for costs application, since the assumption of a recoverable costs entitlement would no longer hold.

Dated: 25 March 2025

B. K. Nolan

Counsel for the Appellants

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:	25/03/2025 3:49:51 PM AEDT
Date Accepted for Filing:	25/03/2025 3:50:29 PM AEDT
File Number:	NSD1386/2024
File Title:	GIGGLE FOR GIRLS PTY LTD (ACN 632 152 017) & ANOR v ROXANNE TICKLE
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

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. 1386 of 2024

Federal Court of Australia

District Registry: New South Wales

Division: Administrative and Constitutional and Human Rights

On appeal from the Federal Court

GIGGLE FOR GIRLS PTY LTD (ACN 632 152 017) & ANOR

Appellants

ROXANNE TICKLE

Respondent

Affidavit of: **Katherine Deves**

Address: 1005 Botany Road, Rosebery NSW 2018

Occupation: Legal Practitioner

Date: 25 March 2025

Contents

Filed on behalf of (name & role of party) Giggle for Girls Pty Ltd & Sall Grover (First & Second Appellants)
Prepared by (name of person/lawyer) Katherine Deves
Law firm (if applicable) Pryor Tzannes & Wallis Solicitors & Notaries
Tel 02 9669 6333 Fax
Email Katherine.deves@ptwlaw.com.au
Address for service (include state and postcode) 1005 Botany Road, Rosebery NSW 2018

Document number	Details	Paragraph	Page
6	Annexure "KD-5", being copy of email to Barry Nilsson dated 4 June 2024	6	18
7	Annexure "KD-6", being copy of email to Barry Nilsson dated 24 October 2024	7	22
8	Annexure "KD-7", being copy of email to Barry Nilsson dated 28 October 2024	8	25
9	Annexure "KD-8", being copy of email from Barry Nilsson with attached letter of 18 November 2024	9	28
10	Annexure "KD-9", being copy of email to Barry Nilsson with attached letter of 22 November 2024	10	36
11	Annexure "KD-10", being copy of email to Barry Nilsson with attached letter of 5 February 2025	11	42
12	Annexure "KD-11", being copy of email to Barry Nilsson with attached letter of 14 March 2025	12	46
13	Annexure "KD-12", being copy of email from Barry Nilsson with attached letter of 20 March 2025	13	53
14	Annexure "KD-13", being copy of email to Barry Nilsson dated 20 March 2025 with attached letter of 22 November 2024 from Alexander Rashidi Lawyers	14	59
15	Annexure "KD-14", being copy of letter to Barry Nilsson dated 25 March 2025 and covering email of same date	15	65

I, Katherine Deves, of 1005 Botany Road, Rosebery NSW 2018, Lawyer, say on oath:

1. I am the solicitor under supervision at Pryor Tzannes & Wallis Solicitors (PTW) with day-to-day carriage of this matter on behalf of the Appellants, Giggle for Girls Pty Ltd (Giggle) and Ms Sally Grover (Ms Grover).

2. On 2 May 2024, I received an email from Barry Nilsson with an attached letter of even date. Annexed to this affidavit and marked **"KD-1"** is a copy of the email of 2 May 2024 and the attached letter.

3. On 20 May 2024, I received an email from Barry Nilsson.
Annexed to this affidavit and marked **"KD-2"** is a copy of the email of 20 May 2024.

4. On 20 May 2024, I sent an email to Barry Nilsson.
Annexed to this affidavit and marked **"KD-3"** is a copy of the email of 20 May 2024.

5. On 4 June 2024, I received an email from Barry Nilsson.
Annexed to this affidavit and marked **"KD-4"** is a copy of the email of 4 June 2024.

[redacted]

6. On 4 June 2024, I sent an email to Barry Nilsson.
   Annexed to this affidavit and marked **"KD-5"** is a copy of the email of 4 June 2024.

7. On 24 October 2024, I sent an email to Barry Nilsson.
   Annexed to this affidavit and marked **"KD-6"** is a copy of the email of 24 October 2024.

8. On 28 October 2024, I sent an email to Barry Nilsson.
   Annexed to this affidavit and marked **"KD-7"** is a copy of the email of 28 October 2024.

9. On 18 November 2024, I received an email from Barry Nilsson with an attached letter of even date.
   Annexed to this affidavit and marked **"KD-8"** is a copy of the email of 18 November 2024 and the attached letter.

10. On 22 November 2024, I sent an email to Barry Nilsson with an attached letter of even date.
    Annexed to this affidavit and marked **"KD-9"** is a copy of the email of 22 November 2024 and the attached letter.

11. On 5 February 2025, I sent an email to Barry Nilsson with an attached letter of even date.
    Annexed to this affidavit and marked **"KD-10"** is a copy of the email of 5 February 2025 and the attached letter.

12. On 14 March 2025, I sent an email to Barry Nilsson with an attached letter of even date.
    Annexed to this affidavit and marked **"KD-11"** is a copy of the email of 14 March 2025 and the attached letter.

13. On 20 March 2025, I received an email from Barry Nilsson with an attached letter of even date.
    Annexed to this affidavit and marked **"KD-12"** is a copy of the email of 20 March 2025 and the attached letter.

14. On 20 March 2025, I sent an email to Barry Nilsson with an attached letter of 22 November 2024 from Alexander Rashidi Lawyers.
    Annexed to this affidavit and marked **"KD-13"** is a copy of the email of 20 March 2025 and the attached letter.

15. On 25 March 2025, I sent a letter to Barry Nilsson and, at the time of this affidavit, have not yet received a response.

[redacted]

Annexed to this affidavit and marked **"KD-14"** is a copy of the letter of 25 March 2025 and the email of the same date with the letter attached.

Sworn by the deponent)
at Sydney)
in New South Wales)
on 25 March 2025)
Before me:)

[redacted]

Signature of deponent

Signature of witness

Joel Alexander Johnson
JP for NSW
Reg. No. 256003.

IN THE FEDERAL COURT OF AUSTRALIA

District Registry: New South Wales

Division: Appeals and Related (Human Rights)

FILE NO: NSD1386 of 2024

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 & ANOR

(Appellants)

AND

ROXANNE TICKLE

(Respondent)

ANNEXURE SHEET

The following 3 pages comprise the document referred to as Annexure KD1 in the affidavit of Katherine Deves sworn on 25 March 2025 before me.

Justice of the Peace in and for the State of New South Wales
Reg. No. 256003

Name: Joel Alexander Johnson

Signed: 

Katherine Deves

From: Kylie Stone <Kylie.Stone@bnlaw.com.au>
Sent: Thursday, May 2, 2024 1:55 PM
To: Katherine Deves <katherine.d@rashidi.com.au>; Alex Rashidi <alex.r@rashidi.com.au>
Cc: Corrina Dowling <Corrina.Dowling@bnlaw.com.au>; Tinashe Makamure <Tinashe.Makamure@bnlaw.com.au>; Rachael Mellington <Rachael.Mellington@bnlaw.com.au>
Subject: Roxanne Tickle v Giggle For Girls Pty Ltd (NSD1148/2022) [BN-GENERAL.144178.68.FID1137967]

Dear Colleagues,

Please find **attached** correspondence for your attention.

Kind regards,

Kylie Stone
(she/her)
Solicitor
+61 3 9909 6378
+61 421 451 927
Kylie.Stone@bnlaw.com.au

Wurundjeri Woi Wurrung Country
Level 6 600 Bourke Street Melbourne VIC 3000
PO Box 13277 Law Courts VIC 8010

Barry Nilsson

BN Law Limited
ABN 22 621 026 864
Gadigal Country
L9, 1 O'Connell Street
Sydney NSW 2000
PO Box R1794
Royal Exchange NSW 1225
T +61 2 8031 2600
F +61 2 8031 2699
enquiries@bnlaw.com.au

2 May 2024

Our reference
CLD:TBM:144178-68

Contact
Tinashe Makamure
03 9909 6365
tinashe.makamure@bnlaw.com.au

Principal
Corrina Dowling
03 9909 6320
corrina.dowling@bnlaw.com.au

Katherine Deves
Alexander Rashidi Lawyers
Level 12, Suite 1205, 239 George Street
Brisbane, QLD, 4000

Dear Ms Deves,

RE: Roxanne Tickle v Giggle for Girls Pty Ltd (NSD1148/2022)

We refer to Justice Bromwich's Orders dated 1 June 2023.

Pursuant to Order 5, your clients are to pay the Applicant's costs of and incidental to the applications heard on 28 April 2023, including post-hearing submissions. Such costs are to be assessed by a registrar on a lump sum basis, unless agreed.

With a view to avoiding the costs of referring the costs matter to a registrar, we write to explore reaching agreement on the costs to be paid by the Respondents.

Background

On 16 February 2023, your clients filed a notice of objection to competency on the basis that our client's application was allegedly brought in contravention of section 46PO(2) of the *Australian Human Rights Commission Act 1986* (Cth).

On 24 March 2023, our client filed an interlocutory application and written submissions seeking a capped costs order pursuant to r 40.51 of the *Federal Court Rules 2011* (Cth).

On 31 March 2023, your clients filed an interlocutory application and written submissions seeking an order pursuant to s 56 of the *Federal Court of Australia Act 1976* (Cth) and r 19.01 of the *Federal Court Rules 2011* that our client provide security of costs and related relief.

On 14 April 2023, our client filed two separate written submissions in response to your clients' notice of objection to competency and security for costs application.

On 28 April 2023, we attended the six-hour interlocutory hearing before Justice Bromwich in the Federal Court of Australia.

On 12 May 2023, our client filed post hearing submissions on the termination of our client's Australian Human Rights Commission Complaint pursuant to Order 3 of Justice Bromwich's Orders dated 28 April 2023.

On 1 June 2023, we attended the hearing before Justice Bromwich in the Federal Court of Australia for the handing down of judgment on the interlocutory matters. At the hearing, Justice Bromwich made orders to dismiss your clients' notice of objection to competency and interlocutory application seeking that our client provide security of costs. Further, His Honour allowed our client's interlocutory application seeking a capped costs order confined to the constitutional validity and statutory construction issues in the sum of $50,000.00.

We refer to this component of the proceedings as the **Interlocutory Applications**, for which costs are payable to the Applicant pursuant to his Honour's orders.

Costs

The total costs incurred in relation or incidental to the Interlocutory Applications amounts to **$115,400.00 (ex GST)**, consisting of:

(a) Solicitor's Fees: $69,375.00 (ex GST);

(b) Counsels' Fees: $46,025.00 (ex GST).

Having regard to Schedule 3 of the *Federal Court Rules 2011*, we seek costs from your clients in the total amount of **$98,174.00 (ex GST)**:

(a) Solicitor's Fees: $52,149.00 (ex GST);

(b) Counsels' Fees: $46,025.00 (ex GST;

(**Costs Sum**).

We request that your client deposit the Costs Sum into our trust account by no later than **5:00pm** on **17 May 2024** using the following details:

Account Name:	BN Law Limited t/a Barry Nilsson
BSB:	184-446
Account Number:	30 441 9286
Ref:	301923.181

We request that the remittance is sent to accounts@bnlaw.com.au.

In the event that your clients do not agree to the Costs Sum, we reserve the right for such costs to be assessed by a Registrar.

If you have any questions, please contact me on the details below.

Yours faithfully

[redacted]

Corrina Dowling

Principal
03 9909 6320
corrina.dowling@bnlaw.com.au

[redacted]

Tinashe Makamure

Senior Associate
03 9909 6365
tinashe.makamure@bnlaw.com.au

IN THE FEDERAL COURT OF AUSTRALIA

District Registry: New South Wales

Division: Appeals and Related (Human Rights)

FILE NO: NSD1386 of 2024

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 & ANOR

(Appellants)

AND

ROXANNE TICKLE

(Respondent)

ANNEXURE SHEET

The following 1 pages comprise the document referred to as Annexure KD2 in the affidavit of Katherine Deves sworn on 25 March 2025 before me.

Justice of the Peace in and for the State of New South Wales
Reg. No. 256003

Name: Joel Alexander Johnson

Signed: _____

Katherine Deves

From: Kylie Stone <Kylie.Stone@bnlaw.com.au>
Sent: Monday, May 20, 2024 3:54 PM
To: Katherine Deves <katherine.d@rashidi.com.au>; Alex Rashidi <alex.r@rashidi.com.au>
Cc: Tinashe Makamure <Tinashe.Makamure@bnlaw.com.au>; Rachael Mellington <Rachael.Mellington@bnlaw.com.au>; Corrina Dowling <Corrina.Dowling@bnlaw.com.au>
Subject: Roxanne Tickle v Giggle For Girls Pty Ltd (NSD1148/2022) [BN-GENERAL.144178.68.FID1137967]

Dear Colleagues,

We refer to our correspondence dated 2 May 2024 regarding your clients' payment of costs incidental to the applications heard on 28 April 2023.

As we have received no response from you, we have set below the correspondence we will send to Justice Bromwich's Chambers for our costs to be assessed by a Registrar pursuant to Order 5 of His Honour's Orders dated 1 June 2023:

> *"Dear Associate,*
>
> *We act for the Applicant in the above matter and refer to Order 5 of His Honour's Orders dated 1 June 2023.*
>
> *We have written to the Respondents with a view to reaching a mutual agreement as to costs, but did not receive a response.*
>
> *Bearing this in mind, we request his Honour makes an order referring the matter to a Registrar to assess our costs on a lump sum basis."*

Kind regards,

Kylie Stone
(she/her)
Solicitor

+61 3 9909 6378
+61 421 451 927
Kylie.Stone@bnlaw.com.au
Wurundjeri Woi Wurrung Country
Level 6 600 Bourke Street Melbourne VIC 3000
PO Box 13277 Law Courts VIC 8010

IN THE FEDERAL COURT OF AUSTRALIA

District Registry: New South Wales

Division: Appeals and Related (Human Rights)

FILE NO: NSD1386 of 2024

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 & ANOR

(Appellants)

AND

ROXANNE TICKLE

(Respondent)

ANNEXURE SHEET

The following 2 pages comprise the document referred to as Annexure KD3 in the affidavit of Katherine Deves sworn on 25 March 2025 before me.

Justice of the Peace in and for the State of New South Wales
Reg. No. 256003

Name: Joel Alexander Johnson

Signed: _____

Katherine Deves

From: Katherine Deves <katherine.d@rashidi.com.au>
Sent: Monday, May 20, 2024 4:20 PM
To: Kylie Stone <Kylie.Stone@bnlaw.com.au>; Alex Rashidi <alex.r@rashidi.com.au>
Cc: Tinashe Makamure <Tinashe.Makamure@bnlaw.com.au>; Rachael Mellington <Rachael.Mellington@bnlaw.com.au>; Corrina Dowling <Corrina.Dowling@bnlaw.com.au>
Subject: Re: Roxanne Tickle v Giggle For Girls Pty Ltd (NSD1148/2022) [BN-GENERAL.144178.68.FID1137967]

Dear Colleagues,

Thank you for your email.

The order was not made on a forthwith basis, it is to be determined at the end of the matter with the costs of the substantive proceedings.

Kind regards,

Katherine Deves
Lawyer
T +61 7 2139 0100 | **M** +61 423 675 015
E katherine.d@rashidi.com.au
Alexander R
Level 12, Suite 1205, 239 George Street, Brisbane QLD 4000
www.rashidi.com.au

From: Kylie Stone <Kylie.Stone@bnlaw.com.au>
Sent: Monday, May 20, 2024 3:54 PM
To: Katherine Deves <katherine.d@rashidi.com.au>; Alex Rashidi <alex.r@rashidi.com.au>
Cc: Tinashe Makamure <Tinashe.Makamure@bnlaw.com.au>; Rachael Mellington <Rachael.Mellington@bnlaw.com.au>; Corrina Dowling <Corrina.Dowling@bnlaw.com.au>
Subject: Roxanne Tickle v Giggle For Girls Pty Ltd (NSD1148/2022) [BN-GENERAL.144178.68.FID1137967]

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"Dear Associate,

We act for the Applicant in the above matter and refer to Order 5 of His Honour's Orders dated 1 June 2023.

We have written to the Respondents with a view to reaching a mutual agreement as to costs, but did not receive a response.

Bearing this in mind, we request his Honour makes an order referring the matter to a Registrar to assess our costs on a lump sum basis."

Kind regards,

Kylie Stone
(she/her)
Solicitor

+61 3 9909 6378
+61 421 451 927
Kylie.Stone@bnlaw.com.au
Wurundjeri Woi Wurrung Country
Level 6 600 Bourke Street Melbourne VIC 3000
PO Box 13277 Law Courts VIC 8010

IN THE FEDERAL COURT OF AUSTRALIA

District Registry: New South Wales

Division: Appeals and Related (Human Rights)

FILE NO: NSD1386 of 2024

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 & ANOR

(Appellants)

AND

ROXANNE TICKLE

(Respondent)

ANNEXURE SHEET

The following 3 pages comprise the document referred to as Annexure KD4 in the affidavit of Katherine Deves sworn on 25 March 2025 before me.

Justice of the Peace in and for the State of New South Wales
Reg. No. 256003

Name: Joel Alexander Johnson

Signed: _____

Katherine Deves

From: Kylie Stone <Kylie.Stone@bnlaw.com.au>
Sent: Tuesday, June 4, 2024 8:44 AM
To: Katherine Deves <katherine.d@rashidi.com.au>; Alex Rashidi <alex.r@rashidi.com.au>
Cc: Tinashe Makamure <Tinashe.Makamure@bnlaw.com.au>; Rachael Mellington <Rachael.Mellington@bnlaw.com.au>; Corrina Dowling <Corrina.Dowling@bnlaw.com.au>
Subject: RE: Roxanne Tickle v Giggle For Girls Pty Ltd (NSD1148/2022) [BN-GENERAL.144178.68.FID1137967]

Dear Colleagues,

We refer to your email dated 20 May 2024 in which you stated that Order 5 of His Honour's dated 1 June 2023 was not made on a forthwith basis.

While Order 5 does not specify the basis it was made on, we do not agree that the costs for the interlocutory matters are to be determined at the end of the matter with the costs of the substantive proceedings. In our view, the disposition of an interlocutory application is a discrete event in proceedings, involving separate consideration of costs for such an application (consistent with an order for costs being made, rather than costs being reserved).

Assuming your client maintains its position, we propose to write to chambers noting the respective positions of the parties, and seeking that the matter be referred to a Registrar for assessment. Please let us know if you are content with this approach by no later than **5pm** on **7 June 2024** (if we do not hear from you, we will proceed on the basis set out in this correspondence).

Kind regards,

Kylie Stone
(she/her)
Solicitor

+61 3 9909 6378
+61 421 451 927
Kylie.Stone@bnlaw.com.au
Wurundjeri Woi Wurrung Country
Level 6 600 Bourke Street Melbourne VIC 3000
PO Box 13277 Law Courts VIC 8010

From: Katherine Deves <katherine.d@rashidi.com.au>
Sent: Monday, May 20, 2024 4:20 PM
To: Kylie Stone <Kylie.Stone@bnlaw.com.au>; Alex Rashidi <alex.r@rashidi.com.au>
Cc: Tinashe Makamure <Tinashe.Makamure@bnlaw.com.au>; Rachael Mellington <Rachael.Mellington@bnlaw.com.au>; Corrina Dowling <Corrina.Dowling@bnlaw.com.au>
Subject: Re: Roxanne Tickle v Giggle For Girls Pty Ltd (NSD1148/2022) [BN-GENERAL.144178.68.FID1137967]

Dear Colleagues,

Thank you for your email.

The order was not made on a forthwith basis, it is to be determined at the end of the matter with the costs

of the substantive proceedings.

Kind regards,

Katherine Deves
Lawyer
T +61 7 2139 0100 | **M** +61 423 675 015
E katherine.d@rashidi.com.au

Alexander Rashidi Lawyers

Level 12, Suite 1205, 239 George Street, Brisbane QLD 4000
www.rashidi.com.au

From: Kylie Stone <Kylie.Stone@bnlaw.com.au>
Sent: Monday, May 20, 2024 3:54 PM
To: Katherine Deves <katherine.d@rashidi.com.au>; Alex Rashidi <alex.r@rashidi.com.au>
Cc: Tinashe Makamure <Tinashe.Makamure@bnlaw.com.au>; Rachael Mellington <Rachael.Mellington@bnlaw.com.au>; Corrina Dowling <Corrina.Dowling@bnlaw.com.au>
Subject: Roxanne Tickle v Giggle For Girls Pty Ltd (NSD1148/2022) [BN-GENERAL.144178.68.FID1137967]

Dear Colleagues,

We refer to our correspondence dated 2 May 2024 regarding your clients' payment of costs incidental to the applications heard on 28 April 2023.

As we have received no response from you, we have set below the correspondence we will send to Justice Bromwich's Chambers for our costs to be assessed by a Registrar pursuant to Order 5 of His Honour's Orders dated 1 June 2023:

> *"Dear Associate,*
>
> *We act for the Applicant in the above matter and refer to Order 5 of His Honour's Orders dated 1 June 2023.*
>
> *We have written to the Respondents with a view to reaching a mutual agreement as to costs, but did not receive a response.*
>
> *Bearing this in mind, we request his Honour makes an order referring the matter to a Registrar to assess our costs on a lump sum basis."*

Kind regards,

Kylie Stone
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Solicitor
+61 3 9909 6378
+61 421 451 927

Kylie.Stone@bnlaw.com.au
Wurundjeri Woi Wurrung Country
Level 6 600 Bourke Street Melbourne VIC 3000
PO Box 13277 Law Courts VIC 8010

Barry Nilsson

IN THE FEDERAL COURT OF AUSTRALIA

District Registry: New South Wales

Division: Appeals and Related (Human Rights)

FILE NO: NSD1386 of 2024

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 & ANOR

(Appellants)

AND

ROXANNE TICKLE

(Respondent)

ANNEXURE SHEET

The following 3 pages comprise the document referred to as Annexure KD5 in the affidavit of Katherine Deves sworn on 25 March 2025 before me.

Justice of the Peace in and for the State of New South Wales
Reg. No. 256003

Name: Joel Alexander Johnson

Signed: _____

Katherine Deves

From: Katherine Deves <katherine.d@rashidi.com.au>
Sent: Tuesday, 4 June 2024 2:05 PM
To: Kylie Stone; Alex Rashidi
Cc: Tinashe Makamure; Rachael Mellington; Corrina Dowling
Subject: Re: Roxanne Tickle v Giggle For Girls Pty Ltd (NSD1148/2022) [BN-GENERAL.144178.68.FID1137967]

Dear Colleagues,

Thank you for your email.

Please refer to Federal Court Rules, r 40.13 and note that the order was not made on a basis contrary to the usual rule.

We do not consent to any communication being made to Chambers and we do not agree that the Court should re-open its decision to make the order on a lump sum basis.

Kind regards,

Katherine Deves
Lawyer
T +61 7 2139 0100 | **M** +61 423 675 015
E katherine.d@rashidi.com.au
Alexander R
Level 12, Suite 1205, 239 George Street, Brisbane QLD 4000
www.rashidi.com.au

From: Kylie Stone <Kylie.Stone@bnlaw.com.au>
Sent: Tuesday, June 4, 2024 8:44 AM
To: Katherine Deves <katherine.d@rashidi.com.au>; Alex Rashidi <alex.r@rashidi.com.au>
Cc: Tinashe Makamure <Tinashe.Makamure@bnlaw.com.au>; Rachael Mellington <Rachael.Mellington@bnlaw.com.au>; Corrina Dowling <Corrina.Dowling@bnlaw.com.au>
Subject: RE: Roxanne Tickle v Giggle For Girls Pty Ltd (NSD1148/2022) [BN-GENERAL.144178.68.FID1137967]

Dear Colleagues,

We refer to your email dated 20 May 2024 in which you stated that Order 5 of His Honour's dated 1 June 2023 was not made on a forthwith basis.

While Order 5 does not specify the basis it was made on, we do not agree that the costs for the interlocutory matters are to be determined at the end of the matter with the costs of the substantive proceedings. In our view, the disposition of an interlocutory application is a discrete event in proceedings, involving separate consideration of costs for such an application (consistent with an order for costs being made, rather than costs being reserved).

Assuming your client maintains its position, we propose to write to chambers noting the respective positions of the parties, and seeking that the matter be referred to a Registrar for assessment. Please let us know if you are content with this approach by no later than **5pm** on **7 June 2024** (if we do not hear from you, we will proceed on the basis set out in this correspondence).

Kind regards,

Kylie Stone
(she/her)
Solicitor

+61 3 9909 6378
+61 421 451 927
Kylie.Stone@bnlaw.com.au
Wurundjeri Woi Wurrung Country
Level 6 600 Bourke Street Melbourne VIC 3000
PO Box 13277 Law Courts VIC 8010

From: Katherine Deves <katherine.d@rashidi.com.au>
Sent: Monday, May 20, 2024 4:20 PM
To: Kylie Stone <Kylie.Stone@bnlaw.com.au>; Alex Rashidi <alex.r@rashidi.com.au>
Cc: Tinashe Makamure <Tinashe.Makamure@bnlaw.com.au>; Rachael Mellington <Rachael.Mellington@bnlaw.com.au>; Corrina Dowling <Corrina.Dowling@bnlaw.com.au>
Subject: Re: Roxanne Tickle v Giggle For Girls Pty Ltd (NSD1148/2022) [BN-GENERAL.144178.68.FID1137967]

Dear Colleagues,

Thank you for your email.

The order was not made on a forthwith basis, it is to be determined at the end of the matter with the costs of the substantive proceedings.

Kind regards,

Katherine Deves
Lawyer
T +61 7 2139 0100 | **M** +61 423 675 015
E katherine.d@rashidi.com.au

Alexander R

Level 12, Suite 1205, 239 George Street, Brisbane QLD 4000
www.rashidi.com.au
Important information

From: Kylie Stone <Kylie.Stone@bnlaw.com.au>
Sent: Monday, May 20, 2024 3:54 PM
To: Katherine Deves <katherine.d@rashidi.com.au>; Alex Rashidi <alex.r@rashidi.com.au>
Cc: Tinashe Makamure <Tinashe.Makamure@bnlaw.com.au>; Rachael Mellington <Rachael.Mellington@bnlaw.com.au>; Corrina Dowling <Corrina.Dowling@bnlaw.com.au>
Subject: Roxanne Tickle v Giggle For Girls Pty Ltd (NSD1148/2022) [BN-GENERAL.144178.68.FID1137967]

Dear Colleagues,

We refer to our correspondence dated 2 May 2024 regarding your clients' payment of costs incidental to the applications heard on 28 April 2023.

As we have received no response from you, we have set below the correspondence we will send to Justice Bromwich's Chambers for our costs to be assessed by a Registrar pursuant to Order 5 of His Honour's Orders dated 1 June 2023:

> *"Dear Associate,*
>
> *We act for the Applicant in the above matter and refer to Order 5 of His Honour's Orders dated 1 June 2023.*
>
> *We have written to the Respondents with a view to reaching a mutual agreement as to costs, but did not receive a response.*
>
> *Bearing this in mind, we request his Honour makes an order referring the matter to a Registrar to assess our costs on a lump sum basis."*

Kind regards,

Kylie Stone
(she/her)
Solicitor

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+61 421 451 927
Kylie.Stone@bnlaw.com.au
Wurundjeri Woi Wurrung Country
Level 6 600 Bourke Street Melbourne VIC 3000
PO Box 13277 Law Courts VIC 8010

IN THE FEDERAL COURT OF AUSTRALIA

District Registry: New South Wales

Division: Appeals and Related (Human Rights)

FILE NO: NSD1386 of 2024

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 & ANOR

(Appellants)

AND

ROXANNE TICKLE

(Respondent)

ANNEXURE SHEET

The following 2 pages comprise the document referred to as Annexure KD6 in the affidavit of Katherine Deves sworn on 25 March 2025 before me.

Justice of the Peace in and for the State of New South Wales
Reg. No. 256003

Name: Joel Alexander Johnson

Signed: _____

Katherine Deves

From: Katherine Deves [redacted]
Sent: Thursday, October 24, 2024 9:17 AM
To: [redacted]
Cc: [redacted]
Subject: Order 2 of Orders of 23 August 2024 | Tickle -v- Giggle NSD1148 of 2022 & Giggle -v- Tickle NSD1386/2024 | 23GIG001

Dear Colleague,

We refer to the orders made by the primary judge on 23 August 2024, in particular order 2 which requires our clients to pay your client $10,000.00 today.

Our clients have bought an appeal from the decision and orders of the primary judge. We seek your client's undertaking not to enforce the judgment until the conclusion of the appeals process.

Would you be so kind as to confirm that your client will give that undertaking by no later than **<u>4 pm today</u>**.

In the event that such an undertaking is not forthcoming, our client will need to approach the court for a stay of those orders.

Given that our client has taken the approach that there should be no orders as to costs on the appeal and do not seek their costs below in the event that the appeal is successful, we would be pleased if your client could confirm that no enforcement action will be taken until the inclusion of the appeals process, with a view to minimising costs.

Kind regards,

Katherine Deves
Lawyer
T +61 7 2139 0100 | [redacted]
E [redacted]
Alexander R
Level 12, Suite 1205, 239 George Street, Brisbane QLD 4000
www.rashidi.com.au

IN THE FEDERAL COURT OF AUSTRALIA

District Registry: New South Wales

Division: Appeals and Related (Human Rights)

FILE NO: NSD1386 of 2024

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 & ANOR

(Appellants)

AND

ROXANNE TICKLE

(Respondent)

ANNEXURE SHEET

The following 2 pages comprise the document referred to as Annexure KD7 in the affidavit of Katherine Deves sworn on 25 March 2025 before me.

Justice of the Peace in and for the State of New South Wales
Reg. No. 256003

Name: Joel Alexander Johnson

Signed: 

Katherine Deves

From: Katherine Deves [redacted]
Sent: Monday, 28 October 2024 12:30 PM
To: [redacted] Kylie Stone
Cc: Alex Rashidi; Aisha Rashidi; [redacted]
Subject: Order 2 of Orders of 23 August 2024 | Tickle -v- Giggle NSD1148 of 2022 & Giggle -v- Tickle NSD1386/2024 | 23GIG001

Dear Colleagues,

We refer to our email below of Thursday 24 October 2024.

Would you please provide a response to the abovementioned email by **4pm tomorrow**?

Our clients reserve their rights.

Kind regards,

Katherine Deves
Lawyer
T +61 7 2139 0100 | **M** +61 423 675 015
E [redacted]
Alexander R
Level 12, Suite 1205, 239 George Street, Brisbane QLD 4000
www.rashidi.com.au

From: Katherine Deves <katherine.d@rashidi.com.au>
Sent: Thursday, October 24, 2024 9:17 AM
To: [redacted]
Subject: Order 2 of Orders of 23 August 2024 | Tickle -v- Giggle NSD1148 of 2022 & Giggle -v- Tickle NSD1386/2024 | 23GIG001

Dear Colleague,

We refer to the orders made by the primary judge on 23 August 2024, in particular order 2 which requires our clients to pay your client $10,000.00 today.

Our clients have bought an appeal from the decision and orders of the primary judge. We seek your client's undertaking not to enforce the judgment until the conclusion of the appeals process.

Would you be so kind as to confirm that your client will give that undertaking by no later than **4 pm today**.

In the event that such an undertaking is not forthcoming, our client will need to approach the court for a stay of those orders.

Given that our client has taken the approach that there should be no orders as to costs on the appeal and do not seek their costs below in the event that the appeal is successful, we would be pleased if your client could confirm that no enforcement action will be taken until the inclusion of the appeals process, with a view to minimising costs.

Kind regards,

Katherine Deves
Lawyer
T +61 7 2139 0100 | **M** [redacted]
E [redacted]
Alexander R
Level 12, Suite 1205, 239 George Street, Brisbane QLD 4000
www.rashidi.com.au

IN THE FEDERAL COURT OF AUSTRALIA

District Registry: New South Wales

Division: Appeals and Related (Human Rights)

FILE NO: NSD1386 of 2024

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 & ANOR

(Appellants)

AND

ROXANNE TICKLE

(Respondent)

ANNEXURE SHEET

The following 7 pages comprise the document referred to as Annexure KD8 in the affidavit of Katherine Deves sworn on 25 March 2025 before me.

Justice of the Peace in and for the State of New South Wales
Reg. No. 256003

Name: Joel Alexander Johnson

Signed: _____

Katherine Deves

From: Kylie Stone <Kylie.Stone@bnlaw.com.au>
Sent: Monday, 18 November 2024 4:32 PM
To: Katherine Deves; Alex Rashidi
Cc: Aisha Rashidi; Corrina Dowling; Rachael Mellington; Tinashe Makamure
Subject: RE: Order 2 of Orders of 23 August 2024 | Tickle -v- Giggle NSD1148 of 2022 & Giggle -v- Tickle NSD1386/2024 | 23GIG001 [BN-GENERAL.144178.68.FID1137967]
Attachments: 20241118 Ltr to Alexander Rashidi Lawyers.pdf

Dear Colleagues,

Please find **attached** correspondence for your attention regarding the below.

Kind regards,

Kylie Stone
Solicitor
+61 3 9909 6378
+61 421 451 927
Kylie.Stone@bnlaw.com.au
Wurundjeri Woi Wurrung Country
Level 6 600 Bourke Street Melbourne VIC 3000
PO Box 13277 Law Courts VIC 8010

From: Katherine Deves <katherine.d@rashidi.com.au>
Sent: Monday, 28 October 2024 12:30 PM
To: Tinashe Makamure <Tinashe.Makamure@bnlaw.com.au>; Kylie Stone <Kylie.Stone@bnlaw.com.au>
Cc: Alex Rashidi <alex.r@rashidi.com.au>; Aisha Rashidi <aisha.r@rashidi.com.au>; Corrina Dowling <Corrina.Dowling@bnlaw.com.au>
Subject: Order 2 of Orders of 23 August 2024 | Tickle -v- Giggle NSD1148 of 2022 & Giggle -v- Tickle NSD1386/2024 | 23GIG001

Dear Colleagues,

We refer to our email below of Thursday 24 October 2024.

Would you please provide a response to the abovementioned email by **4pm tomorrow**?

Our clients reserve their rights.

Kind regards,

Katherine Deves
Lawyer

T +61 7 2139 0100 | M +61 423 675 015
E katherine.d@rashidi.com.au

Alexander Rashidi

Level 12, Suite 1205, 239 George Street, Brisbane QLD 4000

www.rashidi.com.au

From: Katherine Deves <katherine.d@rashidi.com.au>
Sent: Thursday, October 24, 2024 9:17 AM
To: Tinashe.Makamure@bnlaw.com.au <Tinashe.Makamure@bnlaw.com.au>; Kylie Stone <Kylie.Stone@bnlaw.com.au>
Cc: Alex Rashidi <alex.r@rashidi.com.au>; Aisha Rashidi <aisha.r@rashidi.com.au>; Corrina.Dowling@bnlaw.com.au <Corrina.Dowling@bnlaw.com.au>
Subject: Order 2 of Orders of 23 August 2024 | Tickle -v- Giggle NSD1148 of 2022 & Giggle -v- Tickle NSD1386/2024 | 23GIG001

Dear Colleague,

We refer to the orders made by the primary judge on 23 August 2024, in particular order 2 which requires our clients to pay your client $10,000.00 today.

Our clients have bought an appeal from the decision and orders of the primary judge. We seek your client's undertaking not to enforce the judgment until the conclusion of the appeals process.

Would you be so kind as to confirm that your client will give that undertaking by no later than **4 pm today**.

In the event that such an undertaking is not forthcoming, our client will need to approach the court for a stay of those orders.

Given that our client has taken the approach that there should be no orders as to costs on the appeal and do not seek their costs below in the event that the appeal is successful, we would be pleased if your client could confirm that no enforcement action will be taken until the inclusion of the appeals process, with a view to minimising costs.

Kind regards,

Katherine Deves
Lawyer
T +61 7 2139 0100 | **M** +61 423 675 015
E katherine.d@rashidi.com.au

Alexander R

Level 12, Suite 1205, 239 George Street, Brisbane QLD 4000

www.rashidi.com.au

Barry Nilsson

BN Law Limited
ABN 22 621 026 864
Gadigal Country
L9, 1 O'Connell Street
Sydney NSW 2000
PO Box R1794
Royal Exchange NSW 1225
T +61 2 8031 2600
F +61 2 8031 2699
enquiries@bnlaw.com.au

18 November 2024

Our reference
CLD:TBM:144178-68

Contact
Tinashe Makamure
03 9909 6365
tinashe.makamure@bnlaw.com.au

Principal
Corrina Dowling
03 9909 6320
corrina.dowling@bnlaw.com.au

Katherine Deves
Alexander Rashidi Lawyers
Level 12, Suite 1205, 239 George Street
Brisbane, QLD, 4000

Dear Ms Deves,

RE: Roxanne Tickle v Giggle for Girls Pty Ltd (NSD1148/2022)

We refer to your emails dated 24 October 2024 and 28 October 2024 regarding the enforcement of Justice Bromwich's Orders on costs dated 23 August 2024.

We also refer to our correspondence dated 2 May 2024 wherein we requested that your client deposit the costs incidental to the Interlocutory Applications into our trust account in accordance with Order 5 of Justice Bromwich's Orders dated 1 June 2023.

1. Background

1.1 On 16 February 2023, your clients filed a notice of objection to competency on the basis that our client's application was allegedly brought in contravention of section 46PO(2) of the *Australian Human Rights Commission Act 1986* (Cth).

1.2 On 24 March 2023, our client filed an interlocutory application and written submissions seeking a capped costs order pursuant to r 40.51 of the *Federal Court Rules 2011* (Cth).

1.3 On 31 March 2023, your clients filed an interlocutory application and written submissions seeking an order pursuant to s 56 of the *Federal Court of Australia Act 1976* (Cth) and r 19.01 of the *Federal Court Rules 2011* that our client provide security of costs and related relief.

1.4 On 14 April 2023, our client filed two separate written submissions in response to your clients' notice of objection to competency and security for costs application.

1.5 On 28 April 2023, we attended the six-hour interlocutory hearing before Justice Bromwich in the Federal Court of Australia.

1.6 On 12 May 2023, our client filed post hearing submissions on the termination of our client's Australian Human Rights Commission Complaint pursuant to Order 3 of Justice Bromwich's Orders dated 28 April 2023.

1.7 On 1 June 2023, we attended the hearing before Justice Bromwich in the Federal Court of Australia for the handing down of judgment on the interlocutory matters. At the hearing, Justice Bromwich made orders to dismiss your clients' notice of objection to competency and interlocutory application seeking that our client provide security of costs.

(**Interlocutory Applications**)

1.8 Further, His Honour allowed our client's interlocutory application seeking a capped costs order confined to the constitutional validity and statutory construction issues in the sum of $50,000.00.

(**Constitutional Validity and Statutory Construction Issues**)

1.9 On 9 June 2023, we attended the Case Management Hearing before Justice Bromwich in the Federal Court of Australia where Orders were set for the directions of the matter.

1.10 On 13 September 2023, we filed and served material that our client intended to rely on, including the Affidavit of Roxanne Tickle and an outline of submissions dealing with the Constitutional and Construction Questions and the substance of the application.

1.11 On 25 March 2024, after consultation with you, we filed and served a paginated court book.

1.12 On 2 April 2024, after consultation with you, we filed and served an agreed joint list of authorities.

1.13 From 9 – 11 April 2024, we attended the three-day hearing before Justice Bromwich in the Federal Court of Australia.

1.14 On 23 August 2024, we attended the hearing before Justice Bromwich in the Federal Court of Australia for the handing down of judgment. At the hearing, Justice Bromwich made orders for the parties to provide a declaration of contravention by way of indirect gender discrimination. Further, His Honour ordered the Respondents to pay the Applicant's costs.

(**Substantive Application**)

1.15 With a view to avoiding the costs of referring the costs matter to a registrar, we write to explore reaching agreement on the costs to be paid by the Respondents.

2. Costs from Interlocutory Applications

2.1 Pursuant to Order 5, your clients are to pay the Applicant's costs of and incidental to the applications heard on 28 April 2023, including post-hearing submissions. Such costs are to be assessed by a registrar on a lump sum basis, unless agreed. As outlined in our correspondence to you dated 2 May 2024, we set out again below the costs incurred in relation or incidental to the Interlocutory Applications, which amounts to **$115,400.00 (ex GST)**, consisting of:

(a) Solicitor's Fees: $69,375.00 (ex GST);

(b) Counsels' Fees: $46,025.00 (ex GST).

2.2 Having regard to Schedule 3 of the *Federal Court Rules 2011*, we also seek costs from your clients in the total amount of **$98,174.00 (ex GST)**:

(a) Solicitor's Fees: $52,149.00 (ex GST);

(b) Counsels' Fees: $46,025.00 (ex GST);

(**Interlocutory Costs Sum**).

2.3 We refer to your correspondence dated 20 May 2024 wherein you stated that Order 5 of Justice Bromwich's Orders dated 1 June 2023 was not made on a forthwith basis and that it is to be determined at the end of the matter with the costs of the substantive proceedings. While we reject your position, we note that we have reached the end of the substantive proceeding and that your client is required to pay us the Interlocutory Costs Sum.

3. Costs on Constitutional Validity and Statutory Construction Issues

3.1 The total costs incurred in relation to the Constitutional Validity and Statutory Construction Issues amount to **$51,253.00 (ex GST)**, consisting of:

(a) Solicitor's Fees: $2,739.00 (ex GST);

(b) Counsels' Fees: $48,514.00 (ex GST).

3.2 Having regard to Order 3 of Justice Bromwich's Orders dated 1 June 2023 and Order 4 of His Honour's Orders dated 23 August 2024, we seek costs from your clients in the amount of **$50,000.00 (ex GST)**.

(**Costs Capping Sum**).

4. Costs on Substantive Application

4.1 Our client is not agreeable to give an undertaking to not enforce Justice Bromwich's Orders on costs dated 23 August 2024.

4.2 The total costs incurred in relation or incidental to the Substantive Application amounts to **$230,963.94 (ex GST)**, consisting of:

(a) Solicitor's Fees: $76,712.00 (ex GST);

(b) Counsels' Fees: $154,251.94 (ex GST).

4.3 Having regard to Schedule 3 of the *Federal Court Rules 2011*, we seek costs from your clients in the total amount of **$208,727.94 (ex GST)**:

(a) Solicitor's Fees: $54,476.00 (ex GST);

(b) Counsels' Fees: $154,251.94 (ex GST);

(**Substantive Application Costs Sum**).

5. Total Costs Sum

5.1 The total of the Interlocutory Costs Sum, Costs Capping Sum and Substantive Application Costs Sum equates to **$356,901.94 (ex GST)** (**Total Costs Sum**).

6. Compensation

6.1 On 23 August 2024, Justice Bromwich ordered that your client was to compensate our client in the sum of **$10,000.00** (**Compensation Sum**) within 60 days of that order. That sum became payable on 28 October 2024.

6.2 On 28 October 2024, you wrote to our offices seeking an undertaking not to enforce that judgment. Our client will not be providing that undertaking and requests that your clients effect payment of the Compensation Sum immediately.

7. Account Details

7.1 We request that your client deposit the Total Costs Sum and the Compensation Sum in ***two separate payments*** into our trust account by no later than **5:00pm** on **29 November 2024** using the following details:

Account Name:	BN Law Limited t/a Barry Nilsson
BSB:	184-446
Account Number:	30 441 9286
Ref:	301923.181

7.2 We request that the remittance is sent to accounts@bnlaw.com.au.

7.3 In the event that your clients do not agree to deposit the Total Costs Sum, we reserve the right for such costs to be assessed by a Registrar. Similarly, our client reserves her rights to enforce the judgment for payment of the Compensation Sum.

7.4 If you have any questions, please contact me on the details below.

Yours faithfully

[redacted]

Corrina Dowling

Principal
03 9909 6320
[redacted]

[redacted]

Tinashe Makamure

Senior Associate
03 9909 6365
[redacted]

IN THE FEDERAL COURT OF AUSTRALIA

District Registry: New South Wales

Division: Appeals and Related (Human Rights)

FILE NO: NSD1386 of 2024

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 & ANOR

(Appellants)

AND

ROXANNE TICKLE

(Respondent)

ANNEXURE SHEET

The following 5 pages comprise the document referred to as Annexure KD9 in the affidavit of Katherine Deves sworn on 25 March 2025 before me.

Justice of the Peace in and for the State of New South Wales
Reg. No. 256003

Name: Joel Alexander Johnson

Signed: _____

Katherine Deves

From:	Katherine Deves <katherine.d@rashidi.com.au>
Sent:	Friday, 22 November 2024 1:51 PM
To:	Kylie Stone
Cc:	Aisha Rashidi; Corrina Dowling; Rachael Mellington; Alex Rashidi; Tinashe Makamure
Subject:	Re: Order 2 of Orders of 23 August 2024 | Tickle -v- Giggle NSD1148 of 2022 & Giggle -v- Tickle NSD1386/2024 | 23GIG001 [BN-GENERAL.144178.68.FID1137967]
Attachments:	ARL Letter to Barry Nilsson 22.11.2024 23GIG001.pdf

Dear Colleagues,

Please find **attached** a letter of today's date.

Kind regards,

Katherine Deves
Lawyer
T +61 7 2139 0100 | **M** +61 423 675 015
E katherine.d@rashidi.com.au
Alexander R
Level 12, Suite 1205, 239 George Street, Brisbane QLD 4000
www.rashidi.com.au

From: Kylie Stone <Kylie.Stone@bnlaw.com.au>
Sent: Monday, November 18, 2024 4:31 PM
To: Katherine Deves <katherine.d@rashidi.com.au>; Alex Rashidi <alex.r@rashidi.com.au>
Cc: Aisha Rashidi <aisha.r@rashidi.com.au>; Corrina Dowling <Corrina.Dowling@bnlaw.com.au>; Rachael Mellington <Rachael.Mellington@bnlaw.com.au>; Tinashe Makamure <Tinashe.Makamure@bnlaw.com.au>
Subject: RE: Order 2 of Orders of 23 August 2024 | Tickle -v- Giggle NSD1148 of 2022 & Giggle -v- Tickle NSD1386/2024 | 23GIG001 [BN-GENERAL.144178.68.FID1137967]

Dear Colleagues,

Please find **attached** correspondence for your attention regarding the below.

Kind regards,

Kylie Stone
Solicitor

+61 3 9909 6378
+61 421 451 927
Kylie.Stone@bnlaw.com.au
Wurundjeri Woi Wurrung Country
Level 6 600 Bourke Street Melbourne VIC 3000
PO Box 13277 Law Courts VIC 8010

From: Katherine Deves <katherine.d@rashidi.com.au>
Sent: Monday, 28 October 2024 12:30 PM
To: Tinashe Makamure <Tinashe.Makamure@bnlaw.com.au>; Kylie Stone <Kylie.Stone@bnlaw.com.au>
Cc: Alex Rashidi <alex.r@rashidi.com.au>; Aisha Rashidi <aisha.r@rashidi.com.au>; Corrina Dowling <Corrina.Dowling@bnlaw.com.au>
Subject: Order 2 of Orders of 23 August 2024 | Tickle -v- Giggle NSD1148 of 2022 & Giggle -v- Tickle NSD1386/2024 | 23GIG001

Dear Colleagues,

We refer to our email below of Thursday 24 October 2024.

Would you please provide a response to the abovementioned email by **4pm tomorrow**?

Our clients reserve their rights.

Kind regards,

Katherine Deves
Lawyer
T +61 7 2139 0100 | **M** +61 423 675 015
E katherine.d@rashidi.com.au

Alexander Rashidi

Level 12, Suite 1205, 239 George Street, Brisbane QLD 4000
www.rashidi.com.au

From: Katherine Deves <katherine.d@rashidi.com.au>
Sent: Thursday, October 24, 2024 9:17 AM
To: Tinashe.Makamure@bnlaw.com.au <Tinashe.Makamure@bnlaw.com.au>; Kylie Stone <Kylie.Stone@bnlaw.com.au>
Cc: Alex Rashidi <alex.r@rashidi.com.au>; Aisha Rashidi <aisha.r@rashidi.com.au>; Corrina.Dowling@bnlaw.com.au <Corrina.Dowling@bnlaw.com.au>
Subject: Order 2 of Orders of 23 August 2024 | Tickle -v- Giggle NSD1148 of 2022 & Giggle -v- Tickle NSD1386/2024 | 23GIG001

Dear Colleague,

We refer to the orders made by the primary judge on 23 August 2024, in particular order 2 which requires our clients to pay your client $10,000.00 today.

Our clients have bought an appeal from the decision and orders of the primary judge. We seek your client's undertaking not to enforce the judgment until the conclusion of the appeals process.

Would you be so kind as to confirm that your client will give that undertaking by no later than **4 pm today**.

In the event that such an undertaking is not forthcoming, our client will need to approach the court for a stay of those orders.

Given that our client has taken the approach that there should be no orders as to costs on the appeal and do not seek their costs below in the event that the appeal is successful, we would be pleased if your client could confirm that no enforcement action will be taken until the inclusion of the appeals process, with a view to minimising costs.

Kind regards,

Katherine Deves
Lawyer
T +61 7 2139 0100 | **M** +61 423 675 015
E katherine.d@rashidi.com.au
Alexander R
Level 12, Suite 1205, 239 George Street, Brisbane QLD 4000
www.rashidi.com.au

Alexander Rashidi Lawyers

Principal	Alex Rashidi
Writer	Katherine Deves
Direct Line	07 2139 0100
Email	Katherine.d@rashidi.com.au
Our ref.:	23GIG001
Your ref.:	CLD: TBM: 144178-68

22 November 2024

Barry Nilsson
BN Law Limited
Level 9, 1 O'Connell Street
SYDNEY NSW 2000

Attn Corinna Dowling, Tinashe Makamure, Kylie Stone
By email only [redacted]

Dear Colleagues,

Re: ROXANNE TICKLE -V- GIGGLE FOR GIRLS PTY LTD & ANORS (NSD1148/2022)
GIGGLE FOR GIRLS PTY LTD & ANORS -V- ROXANNE TICKLE (NSD1386/2024)

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1. We refer to the matter above and your letter of 18 November 2024 where you demand the Appellants pay the Respondent's costs and disbursements of $356,901.94 (ex GST) and the award ordered by the Court to the Respondent of $10,000.00.

2. We do not agree with your purported assessment of your costs. So that we might consider your client's asserted costs we are instructed to request all cost disclosures, fee agreements, and itemised invoices (including disbursements) for all costs claimed be provided within 7 days.

3. Given the extraordinary step by your client to apply to cross appeal, we consider that your demand for costs and payment of the judgment sum is premature, if not, misplaced.

4. That said, we confirm that our firm holds in its trust account the $10,000 judgment award sum accruing interest, which it will hold for the benefit of your client, pending the outcome the appeal process. Should this not be satisfactory to your client, we will move immediately to stay the judgment pending the outcome of the appeal and rely on this letter on the question of the costs of the application, which we shall seek your client

pay on an indemnity basis. We trust given the above that the application will not be necessary.

Yours faithfully
Alexander Rashidi Lawyers

[redacted]

Katherine Deves
Lawyer

IN THE FEDERAL COURT OF AUSTRALIA

District Registry: New South Wales

Division: Appeals and Related (Human Rights)

FILE NO: NSD1386 of 2024

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 & ANOR

(Appellants)

AND

ROXANNE TICKLE

(Respondent)

ANNEXURE SHEET

The following 3 pages comprise the document referred to as Annexure KD10 in the affidavit of Katherine Deves sworn on 25 March 2025 before me.

Justice of the Peace in and for the State of New South Wales
Reg. No. 256003

Name: Joel Alexander Johnson

Signed: _____

Katherine Deves

From: Katherine Deves
Sent: Wednesday, 5 February 2025 3:12 PM
To: [redacted]
Cc:
Subject: Giggle -v- Tickle NSD1386/2024 | Letter to Respondent's Solicitor
Attachments: 20250205_PTW Letter to Barry Nilsson_Costs_Giggle v Tickle_NSD1386-2024_24560.pdf

Categories: LEAP

Dear Colleagues,

Please find **attached** a letter of 5 February 2025.

Kindest regards,
Katherine Deves | Solicitor

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SOLICITORS & NOTARIES

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Pryor Tzannes & Wallis Solicitors & Public Notaries
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w: www.ptwlaw.com.au

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ABN: 30 735 178 645

PRYOR TZANNES & WALLIS
SOLICITORS & NOTARIES

Our ref: TS:KD:JJ:24560
Your ref: CLD:TBM:144178-68

5 February 2025

Barry Nilsson Lawyers
Level 6, 600 Bourke Street
Melbourne VIC 3000

Email: [redacted]

Dear Colleagues,

Costs in Giggle for Girls Pty Ltd & Anor v Tickle (NSD1386/2024)

We write in respect of the appeal proceedings in the above matter in which we act for the appellants.

As you are aware, the appeal is confined to the issues of constitutional and statutory construction, and it does not engage with findings of fact made by the primary judge. In contrast, the cross-appeal—if leave is granted—will substantially increase the scope and cost of the proceedings by seeking to challenge multiple factual determinations.

It is apparent that all parties face financial constraints. As was adduced in evidence in the trial proceedings, your client does not have financial resources to meet an adverse costs order and has relied upon pro bono legal representation throughout. Giggle for Girls Pty Ltd and Ms Grover are similarly without financial means, with no revenue having been generated by the company, and Ms Grover being a single mother on a pension. In these circumstances, any adverse costs order would be practically unenforceable and would serve no legitimate purpose.

Given the complexity of the legal issues and the number of interveners seeking to be heard in the appeal, there is also a real risk that litigation costs will escalate beyond what is

proportionate. The previous costs cap of $50,000 imposed by the primary judge in respect of constitutional and statutory construction arguments remains a relevant precedent, but in circumstances where neither party has financial resources to meet such an order, we propose a more efficient and equitable solution.

Accordingly, we invite your client to agree to a nil costs order for both the appeal and the cross-appeal. If this agreement is reached, we will consent to the cross-appeal being filed. This would allow the issues to be properly ventilated without the risk of oppressive cost burdens being imposed on either side. If agreement cannot be reached, we will proceed to file an interlocutory application pursuant to rule 40.51 of the Federal Court Rules seeking a nil costs order or, alternatively, a capped costs order of $50,000 per party, with the intention of raising the issue at the next case management hearing.

Given the direction made today by Abrahams J that parties provide proposes minutes of order by Monday next, there is some urgency in this issue being resolved. Please confirm by no later than **5pm tomorrow, 6 February 2025** whether your client agrees to this proposal. If further discussion is required, we are happy to engage in direct discussions to reach a practical resolution.

We look forward to your response.

Yours faithfully
Pryor Tzannes & Wallis

[redacted]

Tolly Saivanidis
02 9669 6333
[redacted]

Contact: Katherine Deves
[redacted]

IN THE FEDERAL COURT OF AUSTRALIA

District Registry: New South Wales

Division: Appeals and Related (Human Rights)

FILE NO: NSD1386 of 2024

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 & ANOR

(Appellants)

AND

ROXANNE TICKLE

(Respondent)

ANNEXURE SHEET

The following 6 pages comprise the document referred to as Annexure KD11 in the affidavit of Katherine Deves sworn on 25 March 2025 before me.

Justice of the Peace in and for the State of New South Wales
Reg. No. 256003

Name: Joel Alexander Johnson

Signed: _____

From: Katherine Deves
Sent: Fri, 14 Mar 2025 17:55:00 +1100
To: 'Mr Tinashe Makamure (Respondent's solicitor)'
Cc: [redacted]
Subject: Giggle -v- Tickle NSD1386/2024 | Letter re. Interlocutory Applications for Costs Capping and Security for Costs
Attachments: 20250314 PTW Law Letter to Barry Nilsson_Giggle v Tickle_NSD1386 of 2024_24560.pdf
Categories: LEAP

Dear Colleagues,

Please find **attached** a letter of even date.

Kindest regards,
Katherine Deves | Solicitor

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Pryor Tzannes & Wallis Solicitors & Public Notaries
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w: www.ptwlaw.com.au

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PRYOR TZANNES & WALLIS
SOLICITORS & NOTARIES

Our ref: TS:KD:JJ:24560

14 March 2025

Barry Nilsson Law
PO Box 13277
Law Courts VIC 8010

By email: [redacted]

Dear Colleagues,

RE: Giggle for Girls Pty Ltd & Anor v Tickle (NSD1386/2024)
Interlocutory Applications for Costs Capping and Security for Costs

We write in respect of the interlocutory applications filed by the parties in the above matter, namely the appellants' application concerning costs capping orders and the respondent's application for security for costs.

The costs of the appellants' interlocutory applications alone are estimated to be in the vicinity of $50,000 for our clients. It is in the interests of both parties to avoid the expense and burden of an interlocutory hearing, particularly given the substantial legal and constitutional questions raised in the appeal.

In the proceedings below, the primary judge recognised the significant public interest element of the litigation and, accordingly, made a costs capping order of $50,000 in respect of the statutory and constitutional arguments. The primary judge's reasoning was largely premised on the fact that the Sex Discrimination Commissioner was expected to carry the statutory and constitutional arguments, and indeed, these were the arguments that ultimately prevailed. This precedent is highly relevant to the appeal,

where the Commissioner has once again been granted leave to appear as amicus curiae and will be advancing the same legal contentions that were accepted at first instance, and which are the subject of challenge in the Appeal.

The primary judge determined that a costs cap was appropriate given the nature of the issues, the complexity of the statutory and constitutional arguments, and the broader implications of the case. Additionally, the respondent's funding arrangements, including an indemnity from the Grata Fund, were a material consideration in the making of the costs capping order. We assume that this indemnity remains available for the respondent in the appeal.

The appellants maintain that no order as to costs should be made in the appeal or the proceedings below, given the established public interest in these proceedings. The appellants' submissions on costs capping emphasise the necessity of ensuring that costs do not operate as a deterrent to the determination of significant statutory and constitutional questions. The arguments advanced by the appellants demonstrate that the litigation engages fundamental issues of statutory interpretation and constitutional validity, warranting a costs structure that does not unfairly burden either party. Furthermore, the participation of the Sex Discrimination Commissioner as amicus curiae on the appeal, whose arguments accepted at first instance are central to the appeal, reinforces the need for a consistent and fair approach to costs. Accordingly, a costs capping order remains the appropriate mechanism to ensure proportionate litigation and to uphold access to justice in a matter of broad legal and public significance.

The respondent's security for costs application is predicated on two flawed assumptions: first, that crowdfunding guarantees the appellants' ability to meet an adverse costs order, and second, that the respondent's entitlement to costs below is well-

founded. However, at no stage has the respondent moved to assess or enforce the costs order below, meaning that FCR 36.08 has not yet been engaged. Furthermore, the respondent has provided no evidence as to a liability for costs below or on the appeal, a crucial omission given the operation of the indemnity principle. The passage of time and the lack of supporting evidence raise serious doubts as to whether any costs entitlement exists, particularly given that the respondent previously asserted the receipt of pro bono legal assistance in the proceedings below.

This flawed premise underpins the respondent's security for costs application, which assumes that crowdfunding ensures the appellants' ability to meet an adverse costs order and that the respondent's entitlement to costs below is beyond question. However, crowdfunding does not function as an unlimited resource, nor does it guarantee financial certainty for litigation. Instead, it is an inherently precarious and demanding process that requires sustained effort, public engagement, and the goodwill of donors, none of which is assured. It is not, as some might perceive, a limitless resource or an inexhaustible well of financial support, but rather an ongoing challenge requiring continuous outreach and advocacy.

Moreover, if a security for costs order were imposed, our client would have no choice but to discontinue the appeal, effectively precluding appellate review of significant legal and constitutional issues. Such an outcome would be fundamentally unjust, particularly in light of the acknowledged public interest considerations at stake in these proceedings. Financial constraints should not operate to prevent a party from pursuing an appeal where genuine legal questions are at stake. If a security order were imposed in these circumstances, it would not only bar appellate review of substantive legal issues but would also undermine the broader public interest in ensuring that matters of statutory and constitutional interpretation receive proper judicial consideration.

Our clients have deliberately chosen not to seek security for costs in relation to the respondent's cross-appeal. This decision reflects both the financial burden of pursuing such an application and the broader stance our clients have taken on costs in these proceedings. The appellants have sought to ensure that legal argumentation is not stifled by prohibitive financial requirements, and in that spirit, they have refrained from seeking security for costs despite being equally entitled to do so. It is inconsistent for the respondent to press for security against our clients while benefiting from public interest funding arrangements and amicus support. In these premises, the respondent's attempt to impose a security order creates an inequitable litigation environment that runs contrary to the overarching principles of access to justice and fair procedure.

So as to avoid the appellants incurring the costs of arguing the interlocutory applications, it is proposed that these two applications be resolved on the following without admission basis, without prejudice to the appellants' ultimate position on costs as sought in the Notice of Appeal:

1. **Security for Costs:** The solicitors for the appellants will hold the sum of $50,000 on trust as security for the respondent's costs of the appeal.

2. **Costs Capping Order:** The parties agree that the costs of the appeal be capped at $50,000 per party.

3. The costs of the Security for Costs Application and the Costs Capping Application be costs in the Appeal.

We consider that this proposal represents a pragmatic resolution that avoids unnecessary costs and ensures that the substantive issues can be properly ventilated.

Please confirm your client's position on this proposal at your earliest convenience, and in any event, **by no later than 12 noon on 18 March 2025.**

Should your client wish to discuss any aspects of this offer, we are available to do so at a mutually convenient time.

We look forward to your response.

Yours faithfully
Pryor Tzannes & Wallis

[redacted]

Tolly Saivanidis
02 9669 6333
tolly.saivanidis@ptwlaw.com.au

Contact: Katherine Deves
katherine.deves@ptwlaw.com.au

IN THE FEDERAL COURT OF AUSTRALIA

District Registry: New South Wales

Division: Appeals and Related (Human Rights)

FILE NO: NSD1386 of 2024

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 & ANOR

(Appellants)

AND

ROXANNE TICKLE

(Respondent)

ANNEXURE SHEET

The following 5 pages comprise the document referred to as Annexure KD12 in the affidavit of Katherine Deves sworn on 25 March 2025 before me.

Justice of the Peace in and for the State of New South Wales
Reg. No. 256003

Name: Joel Alexander Johnson

Signed: _____

From: Kylie Stone <Kylie.Stone@bnlaw.com.au>
Sent: Thu, 20 Mar 2025 15:34:05 +1100
To: Katherine Deves
Cc: Corrina Dowling;Tinashe Makamure;Rachael Mellington
Subject: RE: Giggle -v- Tickle NSD1386/2024 | Letter re. Interlocutory Applications for Costs Capping and Security for Costs [BN-GENERAL.144178.68.FID1137967]
Attachments: 20250320 Ltr to Pryor Tzannes and Wallis Solicitors.pdf
Categories: LEAP

Dear Colleagues,

Please find **attached** correspondence for your attention.

Kind regards,

Kylie Stone

(she/her)
Solicitor

+61 3 9909 6378
+61 421 451 927
Kylie.Stone@bnlaw.com.au

Wurundjeri Woi Wurrung Country
Level 6 600 Bourke Street Melbourne VIC 3000
PO Box 13277 Law Courts VIC 8010

Barry Nilsson

From: Katherine Deves <katherine.deves@ptwlaw.com.au>
Sent: Friday, 14 March 2025 5:57 PM
To: Tinashe Makamure <Tinashe.Makamure@bnlaw.com.au>
Cc: Corrina Dowling <Corrina.Dowling@bnlaw.com.au>; Kylie Stone <Kylie.Stone@bnlaw.com.au>
Subject: Giggle -v- Tickle NSD1386/2024 | Letter re. Interlocutory Applications for Costs Capping and Security for Costs

Dear Colleagues,

Please find **attached** a letter of even date.

Kindest regards,
Katherine Deves | Solicitor

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Barry Nilsson

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20 March 2025

Our reference
CLD:TBM:144178-68

Contact
Tinashe Makamure
03 9909 6365
tinashe.makamure@bnlaw.com.au

Principal
Corrina Dowling
03 9909 6320
corrina.dowling@bnlaw.com.au

Katherine Deves
Pryor Tzannes & Wallis Solicitors
1005 Botany Road
Rosebery, NSW, 2018

Dear Ms Deves,

RE: Giggle for Girls Pty Ltd & Anor v Roxanne Tickle (NSD1386/2024)

1.1 We refer to your correspondence dated 14 March 2025 regarding the interlocutory applications for costs capping and security for costs. We similarly respond on an open basis.

1.2 We consider that your arguments regarding your clients' liability for our client's costs lack substance in circumstances where there are orders in our client's favour as to costs (as per Justice Bromwich's Orders dated 1 June 2023 and 23 August 2023) (**Costs Orders**). Our client is entitled to those costs as per the Costs Orders.

1.3 It appears that, despite the considerable funds raised by your client, your client is now foreshadowing a new ground of appeal, being that the Court overturn the costs order/s made against your clients on purely public interest grounds. The time to raise any such argument was alongside the interlocutory applications heard in on 28 April 2023, in particular, our client's application for a maximum costs order, not **after** the trial has concluded and our client has been successful. Accordingly, we are instructed to object to this proposed course and consider there to be no proper basis for doing so.

1.4 The assessment as to the efficacy of the arguments advanced by your clients in relation to statutory interpretation and constitutional questions represents, in our view, an inaccurate and self-serving assessment. Your position in this respect ignores the comments made in the judgment at first instance and the cogent counter position advanced by our client and the Sex Discrimination Commissioner at first instance and should similarly be rejected.

1.5 Further to the above, and contrary to the representations made in your correspondence, our client has made multiple attempts to engage with your client to enforce the costs order (and avoid incurring further costs associated with enforcement proceedings). Your assertion that our client "has not moved to enforce or assess the costs order below" is disingenuous at best.

1.6 In circumstances where you have personally engaged in correspondence with us regarding our client's (reasonable) attempts to reach agreement on the costs orders, the response from your offices (whether it be through your former firm or your current firm) has been to either ignore our correspondence, or defer the issue until after the Appeal has been heard (noting your clients have not applied for a stay of the Costs Orders).

1.7 We remind you of the following correspondence exchanged between our offices in relation to the enforcement of costs:

(a) We first wrote to you on 2 May 2024 seeking payment of our client's costs and inviting your client to explore the resolution on the issue of costs. You did not respond.

(b) We engaged in further correspondence with you by email on 20 May 2024 wherein we sought your response to our correspondence dated 2 May 2024.

(c) Further email correspondence was exchanged on 4 June 2024 regarding our client's position on payment of the costs.

(d) We wrote to you again on 18 November 2024 in response to your correspondence dated 24 October 2024 wherein you sought an undertaking that our client would not enforce the costs orders (which we rejected and once again demanded payment of the costs).

(e) We wrote to you again on 11 February 2025 proposing an alternative resolution being that your clients give an undertaking that an amount of the crowdfunding raised be preserved for payment for our costs.

1.8 In each of our correspondences, we have set out the costs sought, *and* the unpaid compensation owed to our client as ordered by Bromwich J, which are as follows:

(a) $356,901.94 being the total costs sum excl. GST (**First Instance Costs**); and

(b) $10,000 being the compensation ordered in the first instance (**Compensation Sum**).

1.9 Our approach to date has been to avoid the further incursion of costs (via taxation) by enabling the parties to resolve the issue by agreement.

1.10 In our view, it is disingenuous to suggest that your clients' failure to satisfy the First Instance Costs Order (and Compensation Sum) should be attributed to our client and to now seek to agitate concerns about costs or impecuniosity (despite your clients' known and very public crowdfunding efforts). Further still, it borders on misleading to diminish the significant funds raised by your clients for the express purpose of litigating this matter.

1.11 We note that at first instance, your client pressed for our client to raise security for costs (an argument which was rejected in that instance) while firmly, albeit unsuccessfully, opposing our client's application for a costs cap.

1.12 Your client then proceeded to, once a costs cap was imposed, conduct its litigation in a way that was unnecessarily costly including by providing copious amounts of irrelevant and/ or inadmissible evidence.

1.13 Our client is rightly concerned that your clients will proceed in a similar manner and otherwise continue in their attempts at avoiding payment of the First Instance Costs ordered at first instance, in addition to the outstanding Compensation Sum.

1.14 As to your assertions of impecuniosity or inability to satisfy adverse costs orders, we note that your client has so far:

(a) raised over $300,000 on the crowdfunding website in relation to the appeal; and

(b) raised over three quarters of its $850,000 goal on a different website called GiveSendGo (noting that the amount raised is shown by a bar line without a specific figure).

1.15 Bearing this in mind, we estimate that your client has, to date, raised approximately $1,000,000 in relation to the appeal alone, noting that the crowdfunding appears to have been re-set following the decision at first instance. We consider these sums to be more than sufficient to cover your clients' costs and our client's compensation and as such, we do not accept the unsustainable assertions contained in your correspondence as to your clients' ability to meet an adverse costs order and our client's entitlement to costs from the decision at first instance.

1.16 Notwithstanding the above, our client does consider there to be utility in the parties agreeing to a costs cap be it for a higher quantum than that sought by your client. However, considering the funds raised further to your clients undisguised attempt to avoid paying costs rightly ordered against them, before our client can agree to any costs cap, we consider it necessary that your client agrees to:

(a) Place $356,901.94 of the funds raised to date into your firm's trust account to be kept in that account until the appeal is heard and determined, with the express purpose of satisfying the First Instance Costs; and

(b) Place $10,000 of the funds raised into your firm's trust account to satisfy the Compensation Sum.

1.17 Subject to the above, our client would be agreeable to consent orders providing that:

(a) your firm hold monies in trust as proposed above;

(b) our client withdraws the application for security for costs by consent;

(a) the parties agree to a costs cap of **$100,000** for the total costs of the appeal and cross appeal; and

(b) there be no order as to costs in relation to the applications for security for costs and or the costs cap.

1.18 In proposing the above, we note that our client has secured an indemnity for an adverse costs order from the Grata Fund in the sum of $100,000.

1.19 For completeness, our firm and counsel have agreed to act in this matter on a speculative basis being that our client will only be required to pay costs if costs are ordered. Costs have been ordered and, subject to the costs cap proposed above, we consider the conventional position as to costs should proceed.

1.20 If your client is agreeable to this approach, we invite your client to respond to the above by **5pm** on **24 March 2025**.

1.21 Our client reserves the right to enforce the Costs Orders. However, consistent with the parties' obligations under the Federal Court Practice note 'GPN-Costs', we are instructed that our client does not seek taxation of the First Instance Costs until the appeal is determined.[1]

1.22 If you have any questions, please contact me on the details below.

Yours faithfully

[redacted]

Corrina Dowling

Principal
03 9909 6320
corrina.dowling@bnlaw.com.au

[redacted]

Tinashe Makamure

Special Counsel
03 9909 6365
tinashe.makamure@bnlaw.com.au

[1] See clause 3.14 of https://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/gpn-costs.

IN THE FEDERAL COURT OF AUSTRALIA

District Registry: New South Wales

Division: Appeals and Related (Human Rights)

FILE NO: NSD1386 of 2024

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 & ANOR

(Appellants)

AND

ROXANNE TICKLE

(Respondent)

ANNEXURE SHEET

The following 5 page comprise the document referred to as Annexure KD13 in the affidavit of Katherine Deves sworn on 25 March 2025 before me.

Justice of the Peace in and for the State of New South Wales
Reg. No. 256003

Name: Joel Alexander Johnson

Signed: _____

From: Katherine Deves
Sent: Thu, 20 Mar 2025 16:17:57 +1100
To: 'Kylie Stone'
Cc: Corrina Dowling;Tinashe Makamure;Rachael Mellington
Subject: RE: Giggle -v- Tickle NSD1386/2024 | Letter re. Interlocutory Applications for Costs Capping and Security for Costs [BN-GENERAL.144178.68.FID1137967]
Attachments: 22112024 - ARL Letter to Barry Nilsson 22.11.2024 23GIG001.pdf
Categories: LEAP

Dear Colleagues,

Thank you for your letter.

So that we may take instructions, and in line with the request made by our client's previous solicitors on 22 November 2024 (**attached**), may we please have copies all documents which support the claim for the costs in the proceedings below and copies of the costs agreements to which you refer at paragraph 1.19 of your letter of 20 March 2025. Please kindly provide same by COB tomorrow so that we may better consider your offer.

Kindest regards,
Katherine Deves | Solicitor

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1005 Botany Road Rosebery NSW 2018

PO Box 411 Mascot NSW 1460
t: 02 9669 6333 f: 02 9693 2726
e: katherine.deves@ptwlaw.com.au
w: www.ptwlaw.com.au

From: Kylie Stone <Kylie.Stone@bnlaw.com.au>
Sent: Thursday, 20 March 2025 3:34 PM
To: Katherine Deves <katherine.deves@ptwlaw.com.au>
Cc: Corrina Dowling <Corrina.Dowling@bnlaw.com.au>; Tinashe Makamure <Tinashe.Makamure@bnlaw.com.au>; Rachael Mellington <Rachael.Mellington@bnlaw.com.au>
Subject: RE: Giggle -v- Tickle NSD1386/2024 | Letter re. Interlocutory Applications for Costs Capping and Security for Costs [BN-GENERAL.144178.68.FID1137967]

Dear Colleagues,

Please find **attached** correspondence for your attention.

Kind regards,

Kylie Stone

(she/her)
Solicitor

+61 3 9909 6378
+61 421 451 927
Kylie.Stone@bnlaw.com.au

Wurundjeri Woi Wurrung Country
Level 6 600 Bourke Street Melbourne VIC 3000
PO Box 13277 Law Courts VIC 8010

Barry Nilsson

From: Katherine Deves <katherine.deves@ptwlaw.com.au>
Sent: Friday, 14 March 2025 5:57 PM
To: Tinashe Makamure <Tinashe.Makamure@bnlaw.com.au>
Cc: Corrina Dowling <Corrina.Dowling@bnlaw.com.au>; Kylie Stone <Kylie.Stone@bnlaw.com.au>
Subject: Giggle -v- Tickle NSD1386/2024 | Letter re. Interlocutory Applications for Costs Capping and Security for Costs

Dear Colleagues,

Please find **attached** a letter of even date.

Kindest regards,
Katherine Deves | Solicitor

PRYOR TZANNES & WALLIS
SOLICITORS & NOTARIES

70

Pryor Tzannes & Wallis Solicitors & Public Notaries
1005 Botany Road Rosebery NSW 2018

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w: www.ptwlaw.com.au

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Alexander Rashidi Lawyers

Principal	Alex Rashidi
Writer	Katherine Deves
Direct Line	07 2139 0100
Email	Katherine.d@rashidi.com.au
Our ref.:	23GIG001
Your ref.:	CLD: TBM: 144178-68

22 November 2024

Barry Nilsson
BN Law Limited
Level 9, 1 O'Connell Street
SYDNEY NSW 2000

Attn Corinna Dowling, Tinashe Makamure, Kylie Stone
By email only Corinna.Dowling@bnlaw.com.au; Tinashe.Makamure@bnlaw.com.au; Kylie.Stone@bnlaw.com.au

Dear Colleagues,

Re: ROXANNE TICKLE -V- GIGGLE FOR GIRLS PTY LTD & ANORS (NSD1148/2022)
GIGGLE FOR GIRLS PTY LTD & ANORS -V- ROXANNE TICKLE (NSD1386/2024)

---

1. We refer to the matter above and your letter of 18 November 2024 where you demand the Appellants pay the Respondent's costs and disbursements of $356,901.94 (ex GST) and the award ordered by the Court to the Respondent of $10,000.00.

2. We do not agree with your purported assessment of your costs. So that we might consider your client's asserted costs we are instructed to request all cost disclosures, fee agreements, and itemised invoices (including disbursements) for all costs claimed be provided within 7 days.

3. Given the extraordinary step by your client to apply to cross appeal, we consider that your demand for costs and payment of the judgment sum is premature, if not, misplaced.

4. That said, we confirm that our firm holds in its trust account the $10,000 judgment award sum accruing interest, which it will hold for the benefit of your client, pending the outcome the appeal process. Should this not be satisfactory to your client, we will move immediately to stay the judgment pending the outcome of the appeal and rely on this letter on the question of the costs of the application, which we shall seek your client

pay on an indemnity basis. We trust given the above that the application will not be necessary.

Yours faithfully
Alexander Rashidi Lawyers

[redacted]

Katherine Deves
Lawyer

IN THE FEDERAL COURT OF AUSTRALIA

District Registry: New South Wales

Division: Appeals and Related (Human Rights)

FILE NO: NSD1386 of 2024

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 & ANOR

(Appellants)

AND

ROXANNE TICKLE

(Respondent)

ANNEXURE SHEET

The following 4 pages comprise the document referred to as Annexure KD14 in the affidavit of Katherine Deves sworn on 25 March 2025 before me.

Justice of the Peace in and for the State of New South Wales
Reg. No. 256003

Name: Joel Alexander Johnson

Signed: _____

"KD-14"

Katherine Deves

From: Katherine Deves
Sent: Tuesday, 25 March 2025 3:37 PM
To: [redacted]
Subject: Giggle -v- Tickle NSD1386/2024 | Letter from PTW Law - Response to Offer of 20 March 2025
Attachments: 20250325 PTW Law Letter to BN Law Response to Offer 20 March 2025_24560 (1).pdf

Categories: LEAP

Dear Colleagues,

Please find **attached** a letter of today's date.

Kindest regards,
Katherine Deves | Solicitor

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w: www.ptwlaw.com.au

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SOLICITORS & NOTARIES

Our ref: TS:KD:JJ:24560
Your ref: CLD:TDM:144178-68

25 March 2025

Barry Nilsson Law
PO Box 13277
Law Courts VIC 8010

By email: [redacted]

Dear Colleagues,

RE: GIGGLE -V- TICKLE NSD1386/2024 | RESPONSE TO OFFER OF 20 MARCH 2025

We write in response to your letter of 20 March 2025 regarding the interlocutory applications presently before the Court.

Our clients have considered the proposal advanced on your client's behalf. Having done so, they are not able to accept it. While we acknowledge your client's willingness to explore a negotiated outcome, the conditions proposed, including the quarantining of a sum in excess of $366,000, are not ones that can appropriately be agreed to in the circumstances of this appeal.

As you are aware, the proceedings raise complex and novel questions of constitutional and statutory interpretation which go beyond the interests of the parties. These are the very issues in relation to which Bromwich J previously imposed a protective costs cap of $50,000, observing that the case bore features of a test case and that there was a clear public interest in facilitating its resolution. The reasoning in *Tickle v Giggle for Girls Pty Ltd* [2023] FCA 553 underscores the principle that where litigation raises novel or important questions of law, the ordinary approach to costs require modification.

In that context, the primary judge assisted by detailed submissions from the Sex Discrimination Commissioner acting as amicus curiae. The same arrangement applies in the present appeal. The Commissioner's participation again ensures that the primary burden of advancing the respondent's position on the central legal issues will not fall upon your client. This is an

important consideration in evaluating the necessity and proportionality of the interlocutory relief now sought.

Our clients have consistently sought to resolve these matters on a principled and practical basis. On 5 February 2025, they proposed that the parties consent to a nil costs order in the appeal and cross-appeal. That proposal was made with a view to ensuring the legal issues could be heard without disproportionate costs exposure to either party. It remains, in our respectful submission, the appropriate outcome.

It is relevant in this context that the respondent's cross-appeal introduces no new questions of legal significance. Rather, it seeks to recharacterise the primary judge's finding of indirect discrimination as one of direct discrimination. That issue is inherently fact-driven and does not materially affect the substantive relief or the legal contentions in issue. The filing of the cross-appeal has, however, considerably expanded the appeal proceeding and necessarily increased the potential costs burden — a factor that in our submission reinforces the case for a symmetrical and protective approach to costs.

We also note that your client continues to assert a substantial entitlement to costs below and on appeal, yet has not, despite repeated requests, provided any documentation to substantiate those claims. No costs agreement, invoice, or assessment material has been produced.

Although you now state that you are acting under a speculative fee agreement, earlier communication to the Court has described the representation as pro bono. The change in characterisation has not been accompanied by any disclosure of the terms or evidence of compliance with the relevant requirements of the Legal Profession Uniform Law. In the absence of such evidence, there is a real question as to whether any enforceable liability exists, and it is difficult to see how the indemnity principle can be said to be satisfied.

Similar uncertainty arises from your earlier reference to an "in principle" indemnity in the amount of $100,000 said to have been secured from the Grata Fund. To date, no material has been produced confirming the existence, scope, or operative effect of such an indemnity in relation to the appeal. It is unclear whether it has been formally accepted, whether it applies to both the appeal and the cross-appeal, or whether it is intended to meet any prospective liability for costs.

These unresolved matters highlight the difficulties inherent in assessing the respondent's actual cost exposure and undermine the rationale for imposing any form of security or adverse costs order.

In these circumstances, the appellants contend that the most coherent and proportionate outcome is a nil costs order applying to both the appeal and the cross-appeal. That approach reflects the public interest nature of the proceeding, which centres on the important questions of statutory and constitutional interpretation consistent with the principled approach adopted by the Court at first instance, which imposed a capped costs order in relation to the constitutional and statutory issues, and declined to order security. This approach recognised that the litigation raises novel legal issues and that procedural protection was necessary to ensure those issues could be properly ventilated. The same considerations apply on appeal. A nil costs order across both the appeal and the cross appeal would resolve both interlocutory applications as to costs and allow the appeal and cross-appeal to proceed on an equal footing, in a manner that accords with the Court's previous treatment.

We understand that these are contested issues and that your client holds a different view. Nonetheless, we remain of the view that a nil costs order is the most appropriate mechanism for resolving both interlocutory applications in a way that is consistent with the public interest character of the appeal, and the need for proportionality in litigation of this kind.

Should your client be willing to engage further on that basis, we remain open to continuing the dialogue. Otherwise, the appellants will proceed with their application for a protective costs order and will oppose the application for security.

Yours faithfully
Pryor Tzannes & Wallis

Tolly Saivanidis
02 9669 6333
[redacted]

Contact: Katherine Deves
[redacted]

Placeholder

Affidavit of [Clayton Utz Solicitor] in support of Respondent's proposed cost-cap orders, affirmed [30 July 2025]

NOTICE OF FILING

Details of Filing

Document Lodged:	Affidavit of Service - Form 59 - Rule 29.02(1)
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	28/07/2025 12:23:28 PM AEST
Date Accepted for Filing:	28/07/2025 12:23:32 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 of Service

No. NSD1386 of 2024

Federal Court of Australia
District Registry: New South Wales

Division: Appeals and Related (Human Rights)

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 & ANOR

Appellants

Cross-Respondents

ROXANNE TICKLE

Respondent

Cross-Appellant

Affidavit of:	**Katherine Deves**
Address:	1005 Botany Road, Rosebery NSW 2018
Occupation:	Legal Practitioner
Date:	28 July 2025

Filed on behalf of (name & role of party) Giggle for Girls Pty Ltd and Sall Grover, First and Second Appellants/ First and Second Cross-Respondents
Prepared by (name of person/lawyer) Katherine Deves
Law firm (if applicable) Pryor Tzannes & Wallis, Solicitors & Notaries
Tel (02) 9669 6333 Fax (02) 9693 2726
Email katherine@ptwlaw.com.au
Address for service 1005 Botany Road, Rosebery NSW 2018

[Version 3 form approved 02/05/2019]

Contents

I, Katherine Deves of 1005 Botany Road, Rosebery 2018 in the State of New South Wales, Legal Practitioner, state on oath:

1. I, Katherine Deves, am a Solicitor under supervision, employed by Pryor Tzannes & Wallis Solicitors & Notaries, and I am the legal practitioner with day-to-day carriage of this matter for the First and Second Appellants.

2. I make this affidavit to the best of my knowledge and recollection.

3. On **28 July 2025**, the First and Second Appellants filed an amended Notice of a Constitutional matter under section 78B of the Judiciary Act 1903 ("**Section 78B Notice**").

4. On **28 July 2025**, the Section 78B Notice was sealed by a Registrar of the New South Wales Registry of the Federal Court of Australia.

   Annexed to this affidavit and marked "KD1" is a stamped copy of the 'Notice of a Constitutional matter under section 78B of the Judiciary Act 1903' accepted for filing on 28 July 2025.

Service of Notice

5. On **28 July 2025**, an email was sent by me to the Attorneys-General of the Commonwealth of Australia, the States of New South Wales, Queensland, Victoria, South Australia, Tasmania and Western Australia, and the Territories of the Australian Capital Territory and Northern Territory enclosing a copy of the Section 78B Notice.

[redacted]
Deponent

Witness

Annexed to this affidavit and marked "KD2" is a copy of this email to the Attorneys-General of the Commonwealth of Australia, States and Territories enclosing a stamped copy of the section 78B Notice, dated 28 July 2025.

Response to the Notice

6. As at the date of swearing this affidavit I have not received a response in my capacity as the legal practitioner with day-to-day carriage of this matter at Pryor, Tzannes & Wallis from any of the Attorneys-General.

Sworn by the deponent
at Rosebery
in the State of New South Wales
on 28 July 2025

)
)
)
)
)

[redacted]
Signature of deponent

Before me:

Signature of witness

Joel Alexander Johnson
Justice of the Peace in and for the State of New South Wales
Reg. No. 256003

Address: 1005 Botany Road, Rosebery NSW 2018

Schedule

No. NSD 1386 of 2024

Federal Court of Australia
District Registry: New South Wales

Division: Appeals and Related (Human Rights)

Appeal

First Appellant	Giggle for Girls Pty Ltd ACN 632 152 017
Second Appellant	Sall Grover
Respondent	Roxanne Tickle

Cross-Appeal

Cross-Appellant	Roxanne Tickle
First Cross-Respondent	Giggle for Girls Pty Ltd ACN 632 152 017
Second Cross-Respondent	Sall Grover

IN THE FEDERAL COURT OF AUSTRALIA

District Registry: New South Wales

Division: Appeals and Related (Human Rights)

FILE NO: NSD1386 of 2024

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 & ANOR

(Appellants/Cross-Respondents)

AND

ROXANNE TICKLE

(Respondent/Cross-Appellant)

ANNEXURE SHEET

The following 7 pages comprise the document referred to as Annexure KD-1 in the affidavit of Katherine Deves sworn on 28 July 2025 before me.

Justice of the Peace in and for the State of New South Wales
Reg. No. 256003

Name: Joel Alexander Johnson

Signed: 

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:	28/07/2025 11:12:00 AM AEST
Date Accepted for Filing:	28/07/2025 11:12:00 AM AEST
File Number:	NSD1386/2024
File Title:	GIGGLE FOR GIRLS PTY LTD (ACN 632 152 017) & ANOR v ROXANNE TICKLE
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

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 18
Rule 8.11(2)

Amended 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

1. This proceeding raises a matter arising under the Constitution, or involving its interpretation, within the meaning of s 78B of the *Judiciary Act 1903 (Cth)*.

2. Specifically, it concerns whether s 46PO(4)(d) of the *Australian Human Rights Commission Act 1986* (Cth) (**AHRC Act**), if construed so as to permit compensatory liability to be imposed for expressive conduct occurring during the course of litigation, impermissibly burdens the implied freedom of political communication guaranteed by the Constitution.

3. The conduct in question occurred within the compulsory context of adversarial proceedings, during cross-examination, in response to satirical material introduced to support an argument about aggravated harm. The satire targeted a publicly asserted

Filed on behalf of (name & role of party) Giggle for Girls Pty Ltd (First Appellant) & Sall Grover (Second Appellant)
Prepared by (name of person/lawyer) Bridie Nolan of Counsel
Law firm (if applicable) Pryor Tzannes & Wallis Solicitors & Notaries
Tel 02 9669 6333 Fax
Email Katherine.deves@ptwlaw.com.au
Address for service 1005 Botany Road, Rosebery NSW 2018

[Form approved 01/08/2011]

narrative advanced by the Respondent in a public forum, as part of a broader claim to a gender identity of "woman".

4. The Respondent's public narrative, advanced outside the proceeding, included the assertion that the realisation of being a woman arose from an aversive reaction to the smell of a men's change room. This explanation, while anecdotal, was framed as a moment of self-identification and has since been satirised as emblematic of the subjectivity and reversibility of gender identity claims advanced by males seeking access to female-only spaces.

5. The political significance of that narrative lies not in its evidentiary value but in what it reveals about the logic of the underlying claim: that womanhood may be constituted by male discomfort with male spaces, and that such discomfort, when asserted through the framework of gender identity, may become the basis for displacing or qualifying the rights of women to sex-based privacy, association, and safety.

6. In that respect, the Respondent's gender identity claim operates not merely as a personal expression, but as a legal and political instrument by which access to female-designated spaces is asserted against women's interests, even where the basis for that identity arises from a subjective, non-embodied experience. That subjectivity is then accorded legal force, such that the male subject is treated as a member of the protected female class under anti-discrimination law—entitled to enter, and to remain within, spaces otherwise reserved for women.

7. The effect is that aversion-based self-identification—untethered to material or embodied realities—is elevated to a legally enforceable status, giving rise to entitlements that override the interests of actual women in maintaining female-only spaces. The satire to which the second appellant reacted sought to expose that logic. The judicial imposition of compensatory liability for such a reaction engages the implied freedom of political communication because it burdens expressive dissent concerning the legal elevation of gender identity over sex, and the displacement of sex-based rights by subjective male self-perception.

8. The subject matter of that narrative—and the contested legal definition of "woman"—is at the core of political discourse concerning sex, gender identity, and anti-discrimination law at the heart of these proceedings.

9. The case therefore raises the constitutional question whether the imposition of compensatory liability for expressive reaction to satirical political material introduced in cross examination constitutes an impermissible burden on political communication, including expression about legal identity categories, sex-based classification, and the operation of federal discrimination law.

10. The party giving this notice contends that s 46PO(4)(d) should be construed, pursuant to s 15A of the *Acts Interpretation Act 1901 (Cth)*, as not applying to expressive conduct engaged in during compelled testimony that burdens political communication.

11. Alternatively, if the provision cannot be so construed, then it is invalid or inoperative to the extent of its inconsistency with the implied freedom.

~~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

12. The Respondent commenced proceedings in the Federal Court of Australia alleging indirect discrimination on the ground of gender identity, pursuant to s 5B(2) of the *Sex Discrimination Act 1984 (Cth)* (SDA), and sought relief under s 46PO(4) of the AHRC Act, including a declaration of contravention, general damages, and aggravated damages.

13. The primary allegation concerned the denial of access to a female-only social media platform operated by the First Appellant. It was alleged that the imposition of a condition requiring users to appear to be cisgender women resulted in the Respondent being treated as ineligible for access and thereby subjected to indirect discrimination.

14. In support of the claim, the Respondent adduced evidence of undergoing various forms of transition—social, medical, surgical, aesthetic and legal—as the basis for self-identification as a woman. That material formed part of the evidentiary case advanced at trial.

15. Separately, and prior to the proceedings, the Respondent made a statement in a public broadcast forum (SBS Insight) concerning a subjective experience of sex-based identity. That statement was not relied upon in evidence in the proceeding and formed no part of the legal case advanced by the Respondent.

16. A piece of political satire in the form of a scented candle was subsequently created by third parties, satirising the Respondent's statement made on *SBS Insight*. The satire referenced a public explanation given by the Respondent as to how the Respondent came to identify as a "woman". The item was not created or endorsed by either Appellant.

17. During the trial, in the course of cross-examination of the Second Appellant, the Respondent caused the satirical material to be shown to the Second Appellant. The Respondent submitted that the satire was indicative of conduct—by the Second Appellant or those associated with the Second Appellant—which aggravated the harm suffered by the Respondent. The satire was not relied upon to prove liability, but to support a claim for aggravated damages.

18. Upon being shown the satirical material during cross-examination, the Second Appellant gave an involuntary expressive response—a laugh. The Respondent submitted that the response was contemptuous or mocking, and relied upon that conduct as aggravating the harm caused by the alleged discrimination, and thus relevant to the assessment of damages under s 46PO(4)(d) of the AHRC Act.

19. The primary Judge found that the Respondent had not substantiated a case for general damages. The evidence of psychological injury was found to be vague and uncorroborated. There was no expert, medical, or observational evidence, and the primary Judge rejected the claim for exacerbation of any pre-existing psychiatric condition. The primary Judge found that any hurt feelings suffered by the Respondent were modest and not shown to result in lasting disadvantage. The claim was characterised as being brought on a point of principle rather than in response to substantial harm.

20. The claim for aggravated damages was similarly rejected in all but one respect. The primary Judge declined to find any compensable nexus between the Respondent's alleged injury and the conduct of the Appellants in relation to social media posts, commentary by third parties, or pleadings. However, the Court accepted one limited aspect of the aggravated damages case: namely, that the Second Appellant's laugh, when shown the satirical material, was offensive and belittling, and that it was appropriate to infer some limited degree of additional harm from that incident.

21. The primary Judge made a single undifferentiated award of $10,000 in compensatory damages under s 46PO(4)(d). That sum reflected what the primary Judge described as a modest level of hurt feelings associated with the exclusion from the platform, together with the only successful aspect of the aggravated damages claim, namely the laugh given by the Second Appellant in court. The primary Judge expressly stated that this conduct contributed to the quantum of damages awarded.

22. Accordingly, the only conduct found to have caused compensable harm was expressive conduct occurring during the hearing of the proceeding, in response to political satire introduced by the Respondent. The primary Judge found no other act or omission by either Appellant had caused any compensable injury. The entire award of compensatory

damages under s 46PO(4)(d) is thus attributable to an involuntary expressive reaction occurring under cross-examination in a proceeding involving contested political claims about sex, gender identity, and the operation of anti-discrimination law.

~~23. 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]~~

~~24. 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".~~

~~25. 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.~~

~~26. Giggle is no longer operational.~~

~~27. 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.~~

~~28. The Respondent was originally granted access to the Giggle App based on a selfie uploaded.~~

~~29. 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 are pertain generally to persons of the male sex or that are generally imputed to persons of the male sex.~~

~~30. 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.~~

~~31. 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).~~

~~32. 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[1], or, indeed, Article 26 of the International Covenant on Civil and Political Rights.~~

~~33. Further, Giggle is not a "trading and financial" corporation within the meaning of s 51 (xx) of the Constitution.~~

~~34. 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~~ 27 July 2025

Signed by Pryor Tzannes & Wallis
Lawyer for the Appellants

[1] Explanatory Memorandums to the Sex Discrimination Amendment (Sexual Orientation, Gender Identity And Intersex Status) Bill 2013

IN THE FEDERAL COURT OF AUSTRALIA

District Registry: New South Wales

Division: Appeals and Related (Human Rights)

FILE NO: NSD1386 of 2024

GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 & ANOR

(Appellants/Cross-Respondents)

AND

ROXANNE TICKLE

(Respondent/Cross-Appellant)

ANNEXURE SHEET

The following 9 pages comprise the document referred to as Annexure KD-2 in the affidavit of Katherine Deves sworn on 28 July 2025 before me.

Justice of the Peace in and for the State of New South Wales
Reg. No. 256003

Name: Joel Alexander Johnson

Signed: _____

Joel Johnson

From:	Katherine Deves
Sent:	Monday, 28 July 2025 11:40 AM
To:	processservice@ags.gov.au; CHEYNE@act.gov.au; actgso@act.gov.au; enquiries@vgso.vic.gov.au; crownsol@cso.nsw.gov.au; sso@sso.wa.gov.au; crownlaw@qld.gov.au; solicitor.general@justice.tas.gov.au; minister.boothby@nt.gov.au; office@daley.minister.nsw.gov.au; cso-reception@sa.gov.au; attorney.general@ministerial.qld.gov.au
Cc:	Joel Johnson
Subject:	Giggle -v- Tickle NSD1386/2024 | Service of Amended Notice of a Constitutional Matter under s78B Judiciary Act 1903
Attachments:	Giggle v Tickle - Appeal - Giggle Amended s78B Notice STAMPED.pdf

Dear Attorneys General,

We write to inform you, pursuant to s 78B of the *Judiciary Act 1903 (Cth)*, that the Appellants have filed an **amended** Notice of a Constitutional Matter in the above proceeding.

Please find **attached** ***by way of service*** a stamped copy of the aforementioned.

The Appellants no longer press Grounds 5 or 6 of the Notice of Appeal. However, a question has arisen on the Respondent's cross-appeal in relation to the statutory basis for an increase in compensatory damages, where the entire award of damages was found to be attributable to expressive conduct occurring during the hearing of the proceeding. Specifically, the primary Judge found that an involuntary laugh by the Second Appellant during cross-examination—in response to political satire—constituted the only proven basis for compensable harm under s 46PO(4)(d) of the *Australian Human Rights Commission Act 1986 (Cth)*.

While the Appellants maintain that this issue is properly resolved as a matter of statutory construction, consistent with s 15A of the *Acts Interpretation Act 1901 (Cth)*—namely, that s 46PO(4)(d) must be read down so as not to apply to conduct burdening the implied freedom of political communication—the Sex Discrimination Commissioner has expressed the view that a notice under s 78B should nonetheless be issued.

Although we do not consider that the proceeding properly involves a "matter arising under the Constitution or involving its interpretation" within the meaning of s 78B(1), and therefore no notice is strictly required, we issue this notice out of an abundance of caution, and to avoid any procedural issue arising from disagreement about the classification of the question.

The hearing is listed to commence on **4 August 2025**, as previously advised. Should any Attorney-General wish to intervene or make submissions, we respectfully ask that written notice be provided as soon as practicable.

Please do not hesitate to contact us should you require any further information

Kindest regards,
Katherine Deves | Solicitor

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SOLICITORS & NOTARIES

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Pryor Tzannes & Wallis Solicitors & Public Notaries
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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:	28/07/2025 11:12:00 AM AEST
Date Accepted for Filing:	28/07/2025 11:12:00 AM AEST
File Number:	NSD1386/2024
File Title:	GIGGLE FOR GIRLS PTY LTD (ACN 632 152 017) & ANOR v ROXANNE TICKLE
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

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 18
Rule 8.11(2)

Amended 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

1. This proceeding raises a matter arising under the Constitution, or involving its interpretation, within the meaning of s 78B of the *Judiciary Act 1903 (Cth)*.

2. Specifically, it concerns whether s 46PO(4)(d) of the *Australian Human Rights Commission Act 1986* (Cth) (**AHRC Act**), if construed so as to permit compensatory liability to be imposed for expressive conduct occurring during the course of litigation, impermissibly burdens the implied freedom of political communication guaranteed by the Constitution.

3. The conduct in question occurred within the compulsory context of adversarial proceedings, during cross-examination, in response to satirical material introduced to support an argument about aggravated harm. The satire targeted a publicly asserted

Filed on behalf of (name & role of party) Giggle for Girls Pty Ltd (First Appellant) & Sall Grover (Second Appellant)
Prepared by (name of person/lawyer) Bridie Nolan of Counsel
Law firm (if applicable) Pryor Tzannes & Wallis Solicitors & Notaries
Tel 02 9669 6333 Fax
Email Katherine.deves@ptwlaw.com.au
Address for service 1005 Botany Road, Rosebery NSW 2018

[Form approved 01/08/2011]

narrative advanced by the Respondent in a public forum, as part of a broader claim to a gender identity of "woman".

4. The Respondent's public narrative, advanced outside the proceeding, included the assertion that the realisation of being a woman arose from an aversive reaction to the smell of a men's change room. This explanation, while anecdotal, was framed as a moment of self-identification and has since been satirised as emblematic of the subjectivity and reversibility of gender identity claims advanced by males seeking access to female-only spaces.

5 The political significance of that narrative lies not in its evidentiary value but in what it reveals about the logic of the underlying claim: that womanhood may be constituted by male discomfort with male spaces, and that such discomfort, when asserted through the framework of gender identity, may become the basis for displacing or qualifying the rights of women to sex-based privacy, association, and safety.

6. In that respect, the Respondent's gender identity claim operates not merely as a personal expression, but as a legal and political instrument by which access to female-designated spaces is asserted against women's interests, even where the basis for that identity arises from a subjective, non-embodied experience. That subjectivity is then accorded legal force, such that the male subject is treated as a member of the protected female class under anti-discrimination law—entitled to enter, and to remain within, spaces otherwise reserved for women.

7. The effect is that aversion-based self-identification—untethered to material or embodied realities—is elevated to a legally enforceable status, giving rise to entitlements that override the interests of actual women in maintaining female-only spaces. The satire to which the second appellant reacted sought to expose that logic. The judicial imposition of compensatory liability for such a reaction engages the implied freedom of political communication because it burdens expressive dissent concerning the legal elevation of gender identity over sex, and the displacement of sex-based rights by subjective male self-perception.

8. The subject matter of that narrative—and the contested legal definition of "woman"—is at the core of political discourse concerning sex, gender identity, and anti-discrimination law at the heart of these proceedings.

9. The case therefore raises the constitutional question whether the imposition of compensatory liability for expressive reaction to satirical political material introduced in cross examination constitutes an impermissible burden on political communication, including expression about legal identity categories, sex-based classification, and the operation of federal discrimination law.

10. The party giving this notice contends that s 46PO(4)(d) should be construed, pursuant to s 15A of the *Acts Interpretation Act 1901 (Cth)*, as not applying to expressive conduct engaged in during compelled testimony that burdens political communication.

11. Alternatively, if the provision cannot be so construed, then it is invalid or inoperative to the extent of its inconsistency with the implied freedom.

~~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

12. The Respondent commenced proceedings in the Federal Court of Australia alleging indirect discrimination on the ground of gender identity, pursuant to s 5B(2) of the *Sex Discrimination Act 1984 (Cth)* (SDA), and sought relief under s 46PO(4) of the AHRC Act, including a declaration of contravention, general damages, and aggravated damages.

13. The primary allegation concerned the denial of access to a female-only social media platform operated by the First Appellant. It was alleged that the imposition of a condition requiring users to appear to be cisgender women resulted in the Respondent being treated as ineligible for access and thereby subjected to indirect discrimination.

14. In support of the claim, the Respondent adduced evidence of undergoing various forms of transition—social, medical, surgical, aesthetic and legal—as the basis for self-identification as a woman. That material formed part of the evidentiary case advanced at trial.

15. Separately, and prior to the proceedings, the Respondent made a statement in a public broadcast forum (SBS Insight) concerning a subjective experience of sex-based identity. That statement was not relied upon in evidence in the proceeding and formed no part of the legal case advanced by the Respondent.

16. A piece of political satire in the form of a scented candle was subsequently created by third parties, satirising the Respondent's statement made on *SBS Insight*. The satire referenced a public explanation given by the Respondent as to how the Respondent came to identify as a "woman". The item was not created or endorsed by either Appellant.

17. During the trial, in the course of cross-examination of the Second Appellant, the Respondent caused the satirical material to be shown to the Second Appellant. The Respondent submitted that the satire was indicative of conduct—by the Second Appellant or those associated with the Second Appellant—which aggravated the harm suffered by the Respondent. The satire was not relied upon to prove liability, but to support a claim for aggravated damages.

18. Upon being shown the satirical material during cross-examination, the Second Appellant gave an involuntary expressive response—a laugh. The Respondent submitted that the response was contemptuous or mocking, and relied upon that conduct as aggravating the harm caused by the alleged discrimination, and thus relevant to the assessment of damages under s 46PO(4)(d) of the AHRC Act.

19. The primary Judge found that the Respondent had not substantiated a case for general damages. The evidence of psychological injury was found to be vague and uncorroborated. There was no expert, medical, or observational evidence, and the primary Judge rejected the claim for exacerbation of any pre-existing psychiatric condition. The primary Judge found that any hurt feelings suffered by the Respondent were modest and not shown to result in lasting disadvantage. The claim was characterised as being brought on a point of principle rather than in response to substantial harm.

20. The claim for aggravated damages was similarly rejected in all but one respect. The primary Judge declined to find any compensable nexus between the Respondent's alleged injury and the conduct of the Appellants in relation to social media posts, commentary by third parties, or pleadings. However, the Court accepted one limited aspect of the aggravated damages case: namely, that the Second Appellant's laugh, when shown the satirical material, was offensive and belittling, and that it was appropriate to infer some limited degree of additional harm from that incident.

21. The primary Judge made a single undifferentiated award of $10,000 in compensatory damages under s 46PO(4)(d). That sum reflected what the primary Judge described as a modest level of hurt feelings associated with the exclusion from the platform, together with the only successful aspect of the aggravated damages claim, namely the laugh given by the Second Appellant in court. The primary Judge expressly stated that this conduct contributed to the quantum of damages awarded.

22. Accordingly, the only conduct found to have caused compensable harm was expressive conduct occurring during the hearing of the proceeding, in response to political satire introduced by the Respondent. The primary Judge found no other act or omission by either Appellant had caused any compensable injury. The entire award of compensatory

damages under s 46PO(4)(d) is thus attributable to an involuntary expressive reaction occurring under cross-examination in a proceeding involving contested political claims about sex, gender identity, and the operation of anti-discrimination law.

23. 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]

24. 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".

25. 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.

26. Giggle is no longer operational.

27. 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.

28. The Respondent was originally granted access to the Giggle App based on a selfie uploaded.

29. 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 are pertain generally to persons of the male sex or that are generally imputed to persons of the male sex.

30. 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.

31. 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).

32. 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[1], or, indeed, Article 26 of the International Covenant on Civil and Political Rights.~~

~~33. Further, Giggle is not a "trading and financial" corporation within the meaning of s 51 (xx) of the Constitution.~~

~~34. 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~~ 27 July 2025

Signed by Pryor Tzannes & Wallis
Lawyer for the Appellants

[1] Explanatory Memorandums to the Sex Discrimination Amendment (Sexual Orientation, Gender Identity And Intersex Status) Bill 2013

NOTICE OF FILING

Details of Filing

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Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

SEAL OF THE FEDERAL COURT OF AUSTRALIA

Registrar

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Form 18
Rule 8.11(2)

Amended 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

1. This proceeding raises a matter arising under the Constitution, or involving its interpretation, within the meaning of s 78B of the *Judiciary Act 1903 (Cth)*.

2. Specifically, it concerns whether s 46PO(4)(d) of the *Australian Human Rights Commission Act 1986* (Cth) (**AHRC Act**), if construed so as to permit compensatory liability to be imposed for expressive conduct occurring during the course of litigation, impermissibly burdens the implied freedom of political communication guaranteed by the Constitution.

3. The conduct in question occurred within the compulsory context of adversarial proceedings, during cross-examination, in response to satirical material introduced to support an argument about aggravated harm. The satire targeted a publicly asserted

Filed on behalf of (name & role of party) Giggle for Girls Pty Ltd (First Appellant) & Sall Grover (Second Appellant)
Prepared by (name of person/lawyer) Bridie Nolan of Counsel
Law firm (if applicable) Pryor Tzannes & Wallis Solicitors & Notaries
Tel 02 9669 6333 Fax
Email Katherine.deves@ptwlaw.com.au
Address for service 1005 Botany Road, Rosebery NSW 2018

. [Form approved 01/08/2011]

narrative advanced by the Respondent in a public forum, as part of a broader claim to a gender identity of "woman".

4. The Respondent's public narrative, advanced outside the proceeding, included the assertion that the realisation of being a woman arose from an aversive reaction to the smell of a men's change room. This explanation, while anecdotal, was framed as a moment of self-identification and has since been satirised as emblematic of the subjectivity and reversibility of gender identity claims advanced by males seeking access to female-only spaces.

5. The political significance of that narrative lies not in its evidentiary value but in what it reveals about the logic of the underlying claim: that womanhood may be constituted by male discomfort with male spaces, and that such discomfort, when asserted through the framework of gender identity, may become the basis for displacing or qualifying the rights of women to sex-based privacy, association, and safety.

6. In that respect, the Respondent's gender identity claim operates not merely as a personal expression, but as a legal and political instrument by which access to female-designated spaces is asserted against women's interests, even where the basis for that identity arises from a subjective, non-embodied experience. That subjectivity is then accorded legal force, such that the male subject is treated as a member of the protected female class under anti-discrimination law—entitled to enter, and to remain within, spaces otherwise reserved for women.

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8. The subject matter of that narrative—and the contested legal definition of "woman"—is at the core of political discourse concerning sex, gender identity, and anti-discrimination law at the heart of these proceedings.

9. The case therefore raises the constitutional question whether the imposition of compensatory liability for expressive reaction to satirical political material introduced in cross examination constitutes an impermissible burden on political communication, including expression about legal identity categories, sex-based classification, and the operation of federal discrimination law.

10. The party giving this notice contends that s 46PO(4)(d) should be construed, pursuant to s 15A of the *Acts Interpretation Act 1901 (Cth)*, as not applying to expressive conduct engaged in during compelled testimony that burdens political communication.

11. Alternatively, if the provision cannot be so construed, then it is invalid or inoperative to the extent of its inconsistency with the implied freedom.

~~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.~~

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12. The Respondent commenced proceedings in the Federal Court of Australia alleging indirect discrimination on the ground of gender identity, pursuant to s 5B(2) of the *Sex Discrimination Act 1984 (Cth)* (SDA), and sought relief under s 46PO(4) of the AHRC Act, including a declaration of contravention, general damages, and aggravated damages.

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18. Upon being shown the satirical material during cross-examination, the Second Appellant gave an involuntary expressive response—a laugh. The Respondent submitted that the response was contemptuous or mocking, and relied upon that conduct as aggravating the harm caused by the alleged discrimination, and thus relevant to the assessment of damages under s 46PO(4)(d) of the AHRC Act.

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22. Accordingly, the only conduct found to have caused compensable harm was expressive conduct occurring during the hearing of the proceeding, in response to political satire introduced by the Respondent. The primary Judge found no other act or omission by either Appellant had caused any compensable injury. The entire award of compensatory

damages under s 46PO(4)(d) is thus attributable to an involuntary expressive reaction occurring under cross-examination in a proceeding involving contested political claims about sex, gender identity, and the operation of anti-discrimination law.

~~23. 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]~~

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~~26. Giggle is no longer operational.~~

~~27. 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.~~

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~~29. 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 are pertain generally to persons of the male sex or that are generally imputed to persons of the male sex.~~

~~30. 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.~~

~~31. 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).~~

~~32. 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[1], or, indeed, Article 26 of the International Covenant on Civil and Political Rights.~~

~~33. Further, Giggle is not a "trading and financial" corporation within the meaning of s 51 (xx) of the Constitution.~~

~~34. 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~~ 27 July 2025

Signed by Pryor Tzannes & Wallis
Lawyer for the Appellants

[1] Explanatory Memorandums to the Sex Discrimination Amendment (Sexual Orientation, Gender Identity And Intersex Status) Bill 2013