



GIGGLE V TICKLE: CASE SUMMARY

This is a summary of [Giggle for Girls Pty Ltd v Tickle \[2026\] FCA 960](#), handed down on 15 May 2026 by the Full Court of the Federal Court of Australia. The Full Court, comprising Justices Perry, Abraham and Kennett, unanimously upheld a decision that a women-only app unlawfully discriminated against a transgender woman by excluding her from the platform. Justice Perry delivered separate reasons, but all members of the Court agreed with the result.

BRIEF SUMMARY

The Full Court of the Federal Court unanimously decided that a women-only social app unlawfully discriminated against transgender woman Roxanne (Roxy) Tickle after excluding her from the platform, Giggle for Girls, owned by Sally (Sall) Grover.

The Court upheld the decision of the primary judge – Justice Bromwich – which was the first federal court decision to consider the gender identity protections in the *Sex Discrimination Act 1984* (Cth) (SDA). Further, it found that Tickle was to be treated as a woman under federal discrimination law. The Court rejected arguments that sex under federal discrimination law is determined solely by ‘biology’ or sex assigned at birth.

Ms Tickle succeeded in a counter-appeal, with the Court finding the discrimination was direct, and not indirect, as originally decided. It held that excluding a trans woman because she was perceived to “look male” was discrimination on the basis of gender identity, including gender-related appearance and characteristics ([94]–[98], [156]).

The Court also clarified several important principles under Australian discrimination law, including that:

- knowledge of a person’s attribute is not necessary to prove discrimination – this means a person need not “out” themselves to be protected by the law;
- discrimination can occur based on gender identity

when someone is judged based on a stereotypical assumption of what a person of that sex should look like;

- the gender identity attribute encompasses cis people who may experience discrimination because of their gender-related characteristics (e.g. masculine-presenting lesbian women);
- while it might depend on the circumstances, for direct discrimination the appropriate comparator to a trans woman is generally going to be a cisgender woman (not a cisgender man);
- courts should not rely on narrow or rigid biological definitions of “woman” or “female” when interpreting discrimination law
- there is no hierarchy of protected attributes allowing discrimination against one group in order to benefit another;
- “special measures” claimed to be for the benefit of women do not automatically permit exclusion of trans people – the rights of everyone covered by the SDA must be considered together; and
- the SDA is beneficial or remedial legislation and should be interpreted broadly to achieve the purpose of eliminating discrimination so far as possible on the ground of gender identity ([41]).

The appeal court increased compensation from \$10,000 to \$20,000, including aggravated damages because of the way Ms Tickle was treated by Ms Grover throughout the proceedings and in public commentary surrounding the case.

The judgment is now the leading Australian authority on gender identity discrimination and the interpretation of sex and gender. It is also likely to be influential internationally because it contains one of the most detailed appellate court analyses of gender identity discrimination to date.

FACTUAL BACKGROUND

Ms Tickle is a woman who was assigned male at birth. She took social, legal and medical steps to affirm her gender, beginning in 2017, and was issued with a Queensland birth certificate recording her sex as female in September 2020.

Giggle for Girls Pty Ltd operated a women-only app established by Sall Grover. The app was promoted as a safe online social, messaging and dating platform for women.

In February 2021, Ms Tickle downloaded the app and successfully registered as a member. To register, users were required to provide a phone number and upload a “selfie” photograph, which was screened by AI technology to assess whether the applicant was female or had the characteristics of being female.

In September 2021, Ms Grover manually reviewed Ms Tickle’s profile photograph and removed her access to the app.

Ms Tickle subsequently commenced proceedings alleging unlawful discrimination in the provision of goods and services on the basis of gender identity under s 22 of the SDA.

INTERVENERS

There were three parties intervening or assisting as amicus curiae (friend of the court), the Australian Human Rights Commission, Equality Australia and Lesbian Action Group.

Interveners do not appear for either side in the proceedings, but assist the court in interpreting the law.

Equality Australia intervened because the issues raised in the appeal had potentially far-reaching consequences for the operation of federal anti-discrimination laws and the rights of LGBTIQ+ people more broadly.

The Court refused applications by the Australian Christian Lobby and the Free Speech Union to participate as interveners.

FINDING OF DIRECT DISCRIMINATION

In 2024, the primary judge found that Ms Tickle had experienced indirect discrimination. However, the Full Court held that the conduct instead constituted direct discrimination ([11], order 3(a)–(b)) on two separate acts:

- Excluding Ms Tickle from the app on the basis of her gender-related appearance.

- Refusing to restore her access to the app.

The Court observed that previous federal discrimination authorities have treated direct and indirect discrimination as mutually exclusive concepts. Therefore in determining it was direct discrimination, the Court also decided that the primary judge erred in characterising the conduct as indirect discrimination ([172]).

The distinction is significant because indirect discrimination may be lawful if the conduct is considered “reasonable”, whereas direct discrimination cannot. Determining this case as direct discrimination may therefore make similar cases easier to argue, given that the ‘reasonableness’ defence would not be available.

GENDER IDENTITY INCLUDES GENDER-RELATED CHARACTERISTICS

The Court said the definition of “gender identity” in the SDA is broad. It includes not only a person’s internal sense of gender, but also gender-related appearance, mannerisms and other characteristics generally appertaining, or imputed to people with the same gender identity ([94]–[96], [129]).

Limiting gender identity to a person’s subjective identity alone would undermine both the breadth of the statutory definition and the purpose of the SDA in eliminating discrimination as far as possible for trans people ([98]).

The Court confirmed that discrimination on the basis of gender identity can occur because of characteristics that are generally associated with, or imputed to, a person with a protected attribute ([49]).

Consistent with the explanatory materials accompanying the 2013 amendments to the SDA, the Court recognised that discrimination often arises because a person’s outward appearance does not conform to stereotypical expectations associated with sex or gender ([96]).

The Court recognised that trans women may possess physical features or appearances that others associate with being assigned male at birth, including during or after transition. Treating someone unfavourably because of those perceived characteristics was discrimination on the basis of gender identity. In this case, the Court essentially found that Ms Grover excluded Ms Tickle because she perceived her as “looking male”, relying upon assumptions about how women should appear or present ([156], [264]).

This aspect of the reasoning is significant because it prevents respondents from avoiding liability by asserting they did not know a person was transgender. That is the very purpose of including “characteristics” associated with protected attributes within discrimination law ([55]).

COMPARATOR

To establish direct discrimination, it is necessary to identify an appropriate comparator — that is, how a person without the protected attribute would have been treated in the same or similar circumstances.

Ms Grover and Giggle argued the appropriate comparator was a cisgender man seeking access to the app. The Court rejected that argument and held that the correct comparator was a cisgender woman ([88], [139]–[145]).

The Court reasoned that comparing a transgender woman with a cisgender man would effectively reproduce the very discrimination alleged:

“A comparison between a transgender woman and cisgender man in a case such as the present would, in effect, re-enact that discrimination and invalidate the gender identity and/or gender presentation of a transgender woman” ([88]).

While clarifying this matter in discrimination law, this is not a new or novel interpretation. Australian statutes and courts have for many years recognised that trans people should be recognised as the sex with which they identify for legal purposes. This approach is also consistent with the broader purpose of Australia’s anti-discrimination framework, which is to ensure that all women are protected from unfair treatment, including trans women.

KNOWLEDGE OF A PERSON’S TRANSGENDER STATUS

The Court also confirmed that a discriminator does not necessarily need actual knowledge that a person possesses a protected attribute in order to discriminate against them ([125]–[129]).

The Court recognised that many transgender people are not “out” in all aspects of their lives and that allowing respondents to avoid liability through claimed ignorance would substantially weaken the operation of discrimination law ([134]):

“...a person’s gender identity may not be broadcast to the public at large; nor should an aggrieved person be required to disclose their gender identity so as to be protected against direct discrimination”. ([131])

In this case, it was sufficient that Ms Grover and Giggle acted on the basis of a perception that Ms Tickle was male or “looked male” ([165]).

Nonetheless, the Court also noted that evidence showed Ms Grover was clearly aware of Ms Tickle’s self-identification as a woman before reviewing the selfie photograph ([159]).

HOW THE COURT INTERPRETED “SEX”, “WOMAN” AND “FEMALE”

The Court was clear that, for the purposes of the SDA, Ms Tickle was properly regarded as a woman and female ([280]).

The Court considered that while earlier understandings of sex under discrimination law may have reflected a binary concept fixed at birth, the 2013 amendments substantially altered the legislative framework ([275]).

The Court examined both:

- longstanding Australian authorities concerning legal sex, and
- the 2013 amendments to the SDA introducing protections for gender identity, intersex status and sexual orientation. ([277]–[280]).

The Court referred in particular to the 1993 decision in *Secretary, Department of Social Security v SRA* [1993] FCA 573, recognising that sex as a legal concept extends beyond chromosomes or reproductive anatomy can involve psychological and social dimensions ([279]).

The Court also considered the broader legislative context of the 2013 amendments, including:

- the removal of statutory definitions of “man” and “woman”
- the replacement of references to “opposite sex” with “different sex”
- the introduction of gender identity protections.

The Court concluded that the amendments demonstrated a legislative intention that sex under the SDA is not necessarily binary or immutable ([45], [275]).

Importantly, however, the Court emphasised that the question of whether someone is “female” or a “woman” depends on the statutory context in which the question is asked ([270]). In this case, the question arose in the context of resolving a complaint under anti-discrimination law, not for scientific, religious, ideological or political purposes.

The Court further observed that contemporary

Australian usage increasingly recognises transgender people according to their affirmed sex and gender ([282]).

The Court also regarded Ms Tickle’s updated Queensland birth certificate as relevant contextual evidence, although not determinative of the interpretation of Commonwealth law ([272]).

The Court rejected all attempts to reduce womanhood to “narrow or rigid” biological definitions ([276]).

Importantly, the Court did not need to determine broader questions regarding the legal status of trans people who have socially affirmed their gender without medical transition or surgery. Nonetheless, the Court left open the possibility that ordinary contemporary Australian usage of the term “sex” may recognise such individuals according to their affirmed gender ([282]-[283]).

SPECIAL MEASURES AND WOMEN-ONLY SPACES

Ms Grover and Giggle argued that the app constituted a lawful “special measure” intended to promote substantive equality for women.

Special measures are measures designed to address disadvantage or achieve substantive equality for protected groups ([67]). They are sometimes described as affirmative action measures, including things like leadership programs for women or recruiting only women for roles in a male-dominated industry.

Ms Grover and Giggle argued for an interpretation that would mean where a measure benefits one protected group (women, as compared with men), it is unnecessary to consider its discriminatory impact on other groups protected under the SDA such as intersex people, or pregnant women ([68]).

Both the primary judge and the Full Court rejected that argument.

The Court held there is nothing in the SDA suggesting Parliament intended to create a hierarchy of protected attributes permitting discrimination against one protected group in order to benefit another ([292]).

The Court warned that Ms Grover’s interpretation would produce outcomes fundamentally inconsistent with the purpose of the SDA, including permitting exclusion of lesbians from women-only services without legal consequence ([293]).

However, the Court did not determine whether the app itself genuinely constituted a special measure intended to advance equality between men and

women. The Court considered that issue unnecessary because the relevant discrimination in this case occurred on the basis of gender identity, not sex ([81]).

The Court also emphasised that the SDA continues to contain exemptions and exceptions in some contexts, including in relation to certain single-sex services, competitive sporting activities and religious organisations. None of those exemptions were relied upon in this proceeding ([32]).

For example, s 32 of the SDA still permits certain services to be provided exclusively to members of one sex where the services “can only be provided to members of one sex”, and the court did not consider how this would apply to trans people.

The Court stressed that this case ultimately turned on the particular facts before it and the proper interpretation of the SDA.

AGGRAVATED DAMAGES

Aggravated damages are extra compensation awarded to a person in situations they have suffered distress because of the conduct of the other party/s to the case.

The aggravated damages award in this case reflected the Court’s strong criticism of Ms Grover’s conduct throughout the litigation and associated public commentary.

The Court accepted Ms Tickle’s evidence that she had been subjected to sustained public attacks on her integrity and gender identity in a manner that was “improper, unjustifiable or lacking in bona fides” ([317]).

The Court was particularly critical of repeated misgendering and inflammatory commentary directed at Ms Tickle during the proceedings, finding such conduct was “gratuitous, disrespectful and unnecessary” and did not advance Ms Grover’s legal case ([314]).

The Court concluded that the discrimination was deeply personal and harmful to Ms Tickle’s dignity and identity. It further found that public portrayals of Ms Tickle as a predatory man caused additional harm justifying aggravated damages ([322]).

INTERNATIONAL LAW

The Court noted that the SDA was originally enacted in part to implement Australia’s obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

However, the Court also recognised that the SDA has since expanded to give effect to a broader range of international human rights obligations, including under:

- the International Covenant on Civil and Political Rights
- the International Covenant on Economic, Social and Cultural Rights.

The Court observed that these treaties protect against multiple forms of discrimination, including discrimination on the basis of gender identity ([300]).

WHY THE DECISION MATTERS

The appeal raised arguments that, if accepted, could have substantially narrowed the operation of federal anti-discrimination protections for trans people as well as other groups protected under the SDA.

It also reaffirms that Australian law differs significantly from the position recently adopted in the United Kingdom in *For Women Scotland Ltd v The Scottish Ministers* [2025] UKSC 16. Much of that difference arises from the careful drafting of the 2013 amendments to the Sex Discrimination Act, which avoided many of the gaps, ambiguities and interpretive complexities created by the UK *Equality Act 2010*. Far from creating clarity, the practical implications and broader fallout from the UK decision, including how it will operate in practice, remain the subject of ongoing public, legal and political debate.

The findings are consistent with international human rights jurisprudence recognising legal gender identity, non-discrimination, and upholding the rights to private life.¹

Ultimately, the decision confirms that trans Australians are entitled to participate in public life openly, safely and with dignity, equal before the law, and is likely to be of international significance too.

For more information contact us at
info@equalityaustralia.org.au.

¹ Such as: *Goodwin v United Kingdom* (2002) 35 EHRR 18, *I v United Kingdom* (2002) 36 EHRR 53, and decisions of the United Nations Human Rights Committee recognising gender identity as protected under the right to non-discrimination, including *G v*

Australia (Communication No 2172/2012, UN Doc CCPR/C/119/D/2172/2012), *C v Australia* (Communication No 2216/2012, UN Doc CCPR/C/119/D/2216/2012).