

**FAMILY COURT OF AUSTRALIA**

**HUFFMAN & GORMAN**

**[2015] FamCA 317**

FAMILY LAW – CHILDREN – Final parenting arrangements – where the father is the victim of domestic violence – where the father covertly recorded conversations between himself and the mother – where recorded conversations were admitted into evidence – where there are serious allegations of family violence – where the mother alleges the father was violent to her – where the mother alleges that the father maltreated the children – credibility of witnesses – meaningful relationship between each parent and each child – risk of harm – best interests of the children.

FAMILY LAW – PROPERTY – Final property orders – pre and post separation contributions.

*Evidence Act 1995* (Cth) s 140(2)

*Family Law Act 1975* (Cth) ss 60B, 60CA, 60CC, 60CC(2), 60CC(3), 61C, 61C(1), 61DA, 61DA(2), 61DA(4), 65DAC, 75(2), 79, 79(4),

*Bevan & Bevan* [2013] FamCAFC 116

*Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362

*Farmer and Bramley* [2000] FamCA 1615; (2000) FLC 93-060

*G & C* [2006] FamCA 994

*Goode & Goode* (2006) FLC 93-286

*Jones v Dunkel* (1959) 101 CLR 298

*Johnson & Page* [2007] FamCA 1235

*M v M* (1988) 166 CLR 69

*McCall & Clark* (2009) FLC 93-405; 41 Fam LR 483; [2009] FamCAFC 92

*Mazorski & Albright* (2009) FLC 93-405; 41 Fam LR 483; [2009] FamCAFC 92

*Stanford v Stanford* (2012) 247 CLR 108

*W & W (abuse Allegations: Unacceptable Risk)* 2005 FLC 93-235

**APPLICANT:**

Mr Huffman

**RESPONDENT:**

Ms Gorman

**INDEPENDENT CHILDREN'S LAWYER:**

**FILE NUMBER:**

PAC 3882 of 2011

**DATE DELIVERED:**

29 April 2015

**PLACE DELIVERED:**

Parramatta

**PLACE HEARD:**

Parramatta

**JUDGMENT OF:**

Hannam J

**HEARING DATE:**

13 - 17 October 2014, 1 - 5, 11 December 2014 & 30 January 2015.

**REPRESENTATION**

**COUNSEL FOR THE APPLICANT:**

Mr Maddox

**SOLICITOR FOR THE APPLICANT:**

Caldwell Martin Cox

**COUNSEL FOR THE RESPONDENT:**

Ms Judge

**SOLICITOR FOR THE RESPONDENT:**

Redmond Hale Simpson

**COUNSEL FOR THE INDEPENDENT CHILDREN'S LAWYER:**

Ms Wearne as advocate

**SOLICITOR FOR THE INDEPENDENT CHILDREN'S LAWYER:**

Legal Aid Parramatta

**ORDERS**

**PARENTING**

- (1) All previous parenting Orders with respect to the children **L** born ... 2006, **S** born ... 2008 and **Z** born ... 2010, (collectively, "the children") are discharged.

**Living arrangements**

- (2) The children shall live with their father, Mr Huffman ("the father" or "the husband").

**Parental responsibility**

- (3) The father shall have sole parental responsibility for the children.

**"Time with" arrangements**

- (4) The children shall spend no time with their mother, Ms Gorman ("the mother" or "the wife"), for a period of 12 months from the date of these orders.
- (5) Thereafter, the children shall spend supervised time with their mother each second month, at a supervised contact centre.
- (6) The mother shall be at liberty to make the child T born ... 2013 available to spend supervised time with the children at the same times the mother is spending time with the children pursuant to Order 5.

### **Communication**

- (7) The mother may communicate with the children by forwarding to them letters and gifts on two occasions per year:
  - (a) On each of the children's birthday each year; and
  - (b) At Christmas

AND the father shall do all acts and things to ensure that the children receive such letters and gifts from their mother, provided that the letters contain no denigration of the father, his wife, or other member of his family.

- (8) The father shall forward to the mother:
  - (a) Any letters, gifts, artwork and other items as he is asked to do (whether for the mother or for the child T) by the children or any of them; and
  - (b) Photographs of the childrenon no less than two occasions each year

### **Therapy:**

- (9) The father shall do all acts and things necessary to engage and continue to consult a therapist recommended to him by the Independent Children's Lawyer in consultation with Dr K to address the recommendations made in the Expert Report of Dr K dated 14 May 2014 and to facilitate this order the father shall:
  - (a) Attend at such frequency and for such duration as directed by the therapist;

- (b) Do all acts and things necessary to encourage and arrange for his wife, Mrs H, to attend appointments with the therapist at such frequency and for such duration as directed by the therapist; and
- (c) Make the children and each of them available for consultations with the therapist; and
- (d) Be responsible for the costs of the therapy.

**Facilitation**

- (10) The order for independent representation of L, S and Z shall continue for a period of 15 months from the date of these orders.
- (11) Within 14 days of 29 October 2015 each parent shall do all acts and things and sign all documents necessary to make application for facilitated / supervised contact service to the M Children's Contact Service, or such other supervised contact service as may be recommended to them by the Independent Children's Lawyer.
- (12) The parents share equally the costs of the children's supervised time with their mother, even if the supervised time is provided on a "full fee for service" basis.
- (13) The parents shall forthwith do all acts and things necessary to obtain an extract of transcript of the oral evidence of Dr K given in this matter on 3 December 2014 and upon receipt of same, shall provide a copy to the Independent Children's Lawyer.
- (14) The Independent Children's Lawyer shall provide to:
  - (a) The therapist in Order 9;
  - (b) The NSW Department of Family and Community Services ("FACS")copies of the following:
  - (c) Dr K's expert report dated 14 May 2013 (if required by the therapist in Order 9);
  - (d) A transcript of Dr K's oral evidence in these proceedings on 3 December 2014; and
  - (e) The Court's Reasons for Judgment in these proceedings.



- (15) It is requested that Staff of FACS place a copy of these Orders and the Court's Reasons for Judgment on their KIDS database so that it is available and accessible to Helpline staff and any caseworkers subsequently assigned to the matter.
- (16) The Independent Children's Lawyer may provide to the co-ordinators of any supervised contact service which facilitates the children's time with the mother a copy of:
- (a) Dr K's expert report dated 14 May 2013;
  - (b) A transcript of Dr K's oral evidence in these proceedings on 3 December 2014; and
  - (c) The Court's Reasons for Judgment in these proceedings.
- (17) The mother may provide to any therapist that she consults for psychotherapy:
- (a) A copy of Dr K's expert report; and
  - (b) A copy of the transcript of Dr K's oral evidence in these proceedings on 3 December 2014; and
  - (c) The Court's Reasons for Judgment in these proceedings.
- (18) The father shall provide to the therapist in Order 9 above an irrevocable authority to facilitate the Independent Children's Lawyer obtaining information from the therapist in relation to the children's progress, welfare and development in the care of the father.

**Injunction:**

- (19) The father is restrained by injunction from consuming any alcohol for a period of 12 months from the date of these orders.

**Notations**

- (20) The Independent Children's Lawyer may arrange for the parties to attend Family Dispute Resolution or restore the matter to the list to consider the establishment of other time arrangements between the children and the mother upon being:

- (a) Served with a report from an appropriately qualified therapist (other than Ms B) who has regularly and consistently treated the mother for a period of no less than 12 months to address:
- (i) the “Cluster B” personality traits;
  - (ii) her role in perpetrating family violence against the father;
  - (iii) her awareness of her coercive capacity;
  - (iv) her acceptance of the children’s living arrangements in the care of the father; and
  - (v) other issues identified by Dr K in his expert report dated 14 May 2014 and in the oral evidence he gave in these proceedings on 3 December 2014; which report confirms the mother’s:
  - (vi) consistent and current attendance at behavioural change therapy; and
  - (vii) co-operation with and progress towards the therapeutic goals of that therapy.

AND

- (b) An authority to facilitate the Independent Children’s Lawyer obtaining information from the mother’s therapist in relation to the mother’s work with the therapist.

## PROPERTY

- (21) The wife shall pay to the husband the sum of \$424,613.00 within six weeks of the date of these Orders.
- (22) In the event that the wife has not paid the said sum of \$424,613.00 to the husband within six weeks of the date of these Orders, the parties shall forthwith join in the sale and do all such acts and things and shall execute all deeds, documents and instruments as may be necessary to list for sale and sell the former matrimonial home situate at and known as O Road, Suburb P in the State of New South Wales (being the whole of the land comprised in Certificate of Title Folio Identifier ...) for a list price and sale price and with an agent to be agreed upon between the parties or, in default of such agreement as to the list price and/or selling price and/or agent for more than 14 days, at a list price

and with an agent appointed by the President of the Australian Property Institute Inc. (NSW Division) whose decision shall be final and binding upon both parties.

- (23) That upon completion of the sale of the former matrimonial home in accordance with Order 22 above, the parties shall distribute the proceeds of sale in the following order and priority:
- (a) in payment of legal costs, real estate agent's commission and GST upon the said sale;
  - (b) in payment of any fees due for the nomination of a valuer and fixing of a price as hereinbefore provided, in payment of valuation fees, and GST, if any;
  - (c) in payment of municipal council and water rates;
  - (d) in payment of 55 percent of the balance then remaining together with interest, if applicable, to the husband;
  - (e) in payment of a further sum of \$6,600.00 to the husband (being 55 percent of the estimated value of the Subaru motor vehicle retained by the wife at separation);
  - (f) in discharge of any mortgages secured over the title to the home as at the date of these Orders;
  - (g) in payment of the balance to the wife.
- (24) The husband shall be declared to be the sole legal and beneficial owner of all his right, title and interest in and to:
- (a) all cash at bank and monies invested by him in his sole name;
  - (b) all furniture and personal effects in his possession;
  - (c) any motor vehicle in his possession;
  - (d) any superannuation entitlements received by the husband and invested by him or on his behalf.

- (25) Upon the husband being paid all monies due to him pursuant to these Orders, the wife shall be declared to be the sole legal and beneficial owner of all her right title and interest in and to:
- (a) all cash at bank and monies invested by her in her sole name;
  - (b) all furniture and personal effects in her possession;
  - (c) any motor vehicle in her possession;
  - (d) any superannuation entitlements received by the wife and invested by her or on her behalf.
- (26) Unless otherwise specified in these Orders, and except for the purpose of enforcing the payment of any money due under these or any subsequent Orders, each party shall be solely entitled to the exclusion of the other in both law and in equity to:
- (a) all property (including choses-in-action) in the possession of such party as at the date of this agreement;
  - (b) all insurance policies in relation to which they are the Life Insured.
- (27) In the event that either party fails to sign any necessary documents or instruments or to do any acts required or contemplated by these Orders to be done, with such failure continuing for 14 days, then the Registrar of the Family Court of Australia shall pursuant to section 106A of the *Family Law Act 1975*, have the power to execute any documents or instruments in the name of the person who has refused or neglected to sign any necessary document or instrument or to do any act required or contemplated by these Orders.
- (28) Each party shall be solely liable for all debts and liabilities in their sole name and/or encumbering any item of property in their possession and each party shall indemnify the other in relation thereto.
- (29) Liberty is granted to the parties to re-list the matter upon seven days' notice in relation to the implementation of these Orders.
- (30) By consent, it is declared that the wife holds on trust for the benefit of the children all her interest in AXA and Telstra shares owned by her at the date of these orders.



**IT IS NOTED** that publication of this judgment by this Court under the pseudonym *Huffman & Gorman* has been approved by the Chief Justice pursuant to s 121(9)(g) of the *Family Law Act 1975* (Cth).

FAMILY COURT OF AUSTRALIA AT PARRAMATTA

FILE NUMBER: PAC 3882 of 2011

**Mr Huffman**  
Applicant

And

**Ms Gorman**  
Respondent

## REASONS FOR JUDGMENT

### INTRODUCTION

1. This matter concerns the long term parenting arrangements for L who is eight, S who is six and Z who is four, the three children of Ms Gorman (“the mother”) and Mr Huffman (“the father”) who separated after a five year marriage. The parties are also in dispute in relation to property.
2. Following the breakdown of the parents’ relationship, the children continued to live with their mother. The children have spent limited time with their father, but he now seeks to have them live with him as he is concerned that they require protection from their mother who he contends has a personality dysfunction and is violent. The Independent Children’s Lawyer (“ICL”) supports the father’s position and proposes orders which would see the children live with their father and spend very limited time with their mother.
3. The mother denies that the children have been or will be harmed as a result of her personality or behaviour and seeks orders that she have sole parental responsibility for long term issues concerning the children, that they live with her and spend defined time with their father. She also contends that the children would be at risk of physical harm if they were to live with the father and his wife.
4. My task is to make orders in relation to parenting that are in the best interests of the children.
5. So far as property is concerned the mother proposes that the father receive a very small amount of the total asset pool and the father proposes that it be a significant proportion of that pool. I must make orders adjusting the parties’ property interests if it is just and equitable to do so.

## **BACKGROUND**

### **The beginning of the relationship 1999 – 2005**

6. The mother is 42 and the father is 43 years old. The parties commenced a relationship in 1999 when they were in their late twenties. At that stage the mother was living in a property in Suburb P (“the P home”) which she had purchased for \$240 000 in January 1998, using \$24 000 of her own funds and borrowing \$216 000, which was secured by a mortgage.
7. From the time the mother purchased the P home she took in a number boarders or housemates who lived at the property and the money they paid in rent was used to assist in repaying the home loan.
8. The father says that he and the mother lived together in her house from about November 1999 and that he made a contribution to the accumulation of joint property. Although the mother agrees that the father stayed at her home in Suburb P from time to time, and sometimes regularly, she says that they did not live together until after they were married. She also says that the father made no contribution to the accumulation of assets prior to their marriage. This issue is dealt with later in these Reasons.
9. The mother alleges that the father was violent to her throughout the relationship and that this violence escalated by around 2005. The father denies that he was ever violent towards the mother and contends that the mother was violent and coercive towards him which she denies. This significant area of dispute is dealt with later in these Reasons.
10. The parties were married in 2005 and lived in the P home throughout the marriage.

### **The Marriage – October 2005 – December 2010**

11. In March 2006 the parties purchased a property in Town N in joint names for \$430 000. \$41 925 was paid by way of deposit and the balance was borrowed with the loan being secured by a mortgage. The property was let and the rental income was applied to mortgage repayments. The father also paid \$440 per month towards this mortgage. The mother paid for expenses associated with this property from bank accounts in her name.
12. The first child L was born in late 2006. The mother worked full time up until the child’s birth and had approximately three months maternity leave following his birth.
13. From about December 2006, the father began secretly taping conversations, particularly arguments between himself and the mother. The father says that his motivation for making the recordings was that they could be used as evidence if he or his children were killed or seriously injured by the mother. The father used a dictaphone to record the conversations which was placed inside his belt buckle or waistband of his pants and covered with his shirt. The tapes record

arguments between the parents in which the mother is threatening and abusive towards the father and in some conversations threatens to harm the child L. Some of the recordings are of entire conversations, while others are of portions of conversations. All of the conversations were recorded without the mother's knowledge.

14. At some time between mid-2007 (according to the mother) and mid-2008 (according to the father) the mother discovered the father's hidden dictaphone at their home and demanded that the father give her any tapes that he had made. He gave her four or five tapes that he had in the garage at home and the father has not seen the dictaphone or those tapes since. The father retained many more tapes of recorded conversations. He made no more recordings following this incident.
15. The recorded conversations were not mentioned by the father subsequently until late 2013 when he sought for the first time that they be provided to the expert psychiatrist appointed in the proceedings. A large number of the taped conversations were transcribed by a transcription service at that time agreed upon between the parties. The mother was also provided with the recordings so that she could compare the transcripts with them and ensure that the transcripts were accurate. For the purposes of the hearing, the father selected 22 recorded conversations from the tapes and the transcripts of those conversations are reproduced in his affidavit. Although the mother agrees that it is her voice and the father's voice recorded in the taped conversations and that the transcripts in the father's affidavit accurately record the words spoken by them, she sought to exclude the taped conversations and the paragraphs in the father's affidavit that contained the transcripts from evidence in these proceedings. My reasons for admitting the taped conversations and transcripts in these proceedings were given in a judgment on 4 December 2014 ([2014] FamCA 1077). These Reasons should be read in conjunction with that judgment. Each of the 22 taped conversations was played in Court.
16. The mother returned to work initially one day, then increasing to four days per week when L was three months old. The child was cared for in a day care centre when the mother was working, as the father also worked full time.
17. The parents' second child, a daughter named S, was born in 2008. The mother also took three months maternity leave following S's birth and returned to work in about November 2008 four days a week. The child S also went to day care.
18. The parents each describe themselves as having "separated" in early 2009, but both remained living in the P home with the children.
19. From the date of their marriage until at least this "separation" each of the parents applied their income towards family expenses. They also held a joint bank account which was used from at least November 2005 for the receipt of funds from both parties and for the payment of joint expenses. The parties also



held separate accounts in their own names and paid for some joint expenses from their personal bank accounts. Financial and non-financial contributions of each of the parents in this period are a matter of dispute which is dealt with later in these Reasons.

20. In about April 2009 the mother became pregnant with the father's child, but this pregnancy was terminated due to life-threatening malformations in the baby.
21. In around January 2010, the parties' third child was conceived, though there is a dispute surrounding the circumstances of this conception.
22. While the father still lived at the P home, improvements were made to add a fourth bedroom for the impending arrival of the parents' third child. The mother paid for these improvements.
23. The parties' third child, a daughter named Z was born in 2010.

### **Final separation – December 2010**

24. The father moved out of the P home in December 2010. He continued to make payments on the N property until about May 2011. This property was subsequently sold and after discharging the mortgage and payment of fees associated with the sale, almost \$65 000 was deposited into the parties' joint bank account. These funds were subsequently used to pay various joint expenses in accordance with court orders.
25. The financial and non-financial contributions from the date of "separation" in early 2009 until December 2010, when the father moved out of the family home, are also dealt with later in these Reasons.
26. The mother has re-partnered with Mr X, who is 39 and resides overseas. This relationship commenced in early 2011 shortly after the father left the family home.
27. The father started living with his current wife, Mrs H, in April 2011. Mrs H agreed at that time to allow the mother to attend her home to satisfy herself about the circumstances if the children were to spend time at their home.
28. On 22 August 2011, the father commenced these parenting proceedings.
29. The parents reached agreement about interim parenting orders which were made by consent on 5 October 2011. Under these orders L and S were to spend alternate weekends, including overnight on a Saturday with their father and all three children were to spend two hours with him each Wednesday afternoon. The father was to travel to the mother's home for the purposes of spending time with the children and changeover and the mother was not required to do any of the travelling.
30. On 18 November 2011 the parenting orders were amended so that the father could spend time with the children on L's birthday and over Christmas. The

orders were also amended so that changeover was to occur at a McDonalds Restaurant.

31. At two changeovers at McDonald's on 3 December 2011, there was an incident between one of the mother's friends (Mr C), Mr X, who had attended changeover on behalf of the mother, and the father.
32. On Christmas Day 2011, there was a further incident arising from a dispute between the parents concerning changeover, which involved the attendance of police who handed the child Z over to her father.
33. On 28 January 2012, when the children were spending overnight time with their father, the mother contacted police to carry out a welfare check on the children. No matters of concern were noted by police.
34. The parties divorced in March 2012.
35. The father married his current wife in May 2012. Mrs H has two adult daughters and a five-year-old daughter from a previous relationship. The father, his wife and her daughter live in Suburb V.
36. At the time of separation the father was employed at a courier company, but was made redundant in August 2012.
37. In August 2012, there were concerns about L's behaviour at school when he was in kindergarten. He was described as showing concerning attention-seeking behaviours and was regularly in trouble.

#### **Federal Magistrates' Court proceedings (August 2012) and events following**

38. On 22 August 2012, the proceedings were listed to commence in the Federal Magistrates Court and affidavits had been filed by the parties for the purposes of those proceedings. On that date the parents sought that the Federal Magistrate, as he then was, make orders the parents had consented to, which provided for the children to reside with the mother and spend alternate weekends with the father. The father had made serious allegations of violence against the mother for the first time in his affidavit filed in those proceedings and the Federal Magistrate declined to make the consent orders sought. The mother had not made any allegations in her case that the father or his wife had harmed the children.
39. On 29 August 2012 the children spent time with their father on a Wednesday afternoon in accordance with their usual arrangements, but the mother alleges there was an incident at McDonald's in which the father harmed L. The father denies this and the issue is dealt with later in these Reasons.
40. On 19 October 2012 the father amended his parenting application to seek orders that the children reside with him and spend alternate weekends with their mother.

41. On 22 November 2012, there were negotiations at Court between the parties and the ICL, concerning a gradual increase in the father's time with L and S to two consecutive nights and for overnight time with Z to commence. There were some other matters that were not finally agreed and no orders were made by the Court at that time, but the children spent time with the father from late December in accordance with the agreement that had been reached. The father's time increased to two nights each alternate weekend for all three children from February 2013 and this arrangement continued until about the beginning of April 2013.
42. The mother's fourth child, T, whose father is Mr X, was born in early 2013.
43. The child L's classroom teacher described difficulties in L's behaviour throughout 2013. The teacher told the Court appointed expert, for example, that the child had thought it was funny to push someone down the stairs or to wrap his hands around someone's neck and apply pressure and that the child was struggling to build friendships. The child reported to his teacher that he loved his step-dad Mr X and mentioned once or twice that he did not like his biological father.
44. From the beginning of April 2013 the pattern of the children's time with their father changed. Although the parents had reached agreement that all three children were by this stage to spend two nights on each alternate weekend with their father, there were many occasions when this did not occur. There were some specific difficult incidents such as on Mother's Day in May 2013, when L refused to spend time with his father and the father contacted police. In August 2013 there was also an incident in which police were involved, when the father followed the mother for a considerable distance in his car after a failed handover which caused the mother to become upset.
45. From August 2013 the arrangements changed so that the mother delivered the children to the father's home for the purposes of his time with the children. On 21 out of 25 occasions from August 2013 to June 2014, the mother transported the children to the father's home but the children did not pass into the care of the father. On these occasions Z remained in her carseat and the older two children walked out of the car and told their father they would not be coming to spend time with him, while the mother stood next to the car.
46. In August 2013, Dr K, the Court appointed expert, interviewed the parents and members of their households and observed the children with them.
47. On the weekend of 27 – 29 September 2013 the children spent time with their father for the first time in almost three months. During the weekend the father and his wife observed that Z's foot was swollen and appeared sore. Z was later diagnosed with cellulitis, a skin infection, and was hospitalised for a few days.
48. L's classroom teacher reported to Dr K that that towards the end of 2013 L's behaviour again deteriorated.



49. On 18 October 2013 the ICL advised Dr K that the father had made an application to provide him with the recorded conversations for the purposes of his assessment. The doctor decided to suspend finalising his report until the issue of the additional material had been resolved.
50. The children spent a single 24 hour period of time with their father at his home over Christmas 2013.
51. On 31 January 2014 there was another incident following the children being brought to the father's home but failing to pass into his care. After the failed changeover the father's wife, Mrs H, was followed by the mother and Mr X in their car when she took her dog for a walk and she became shaken and upset. The incident was reported to police.
52. On 17 March 2014 Foster J determined that the sound recordings and transcripts of conversations covertly recorded by the father were not to be provided to Dr K for the purposes of his assessment.
53. On 5 May 2014 Dr K had further telephone conversations with each of the parents and on 14 May finalised his report which was released to the parties on 16 June 2014. Dr K recommended that the court consider suspending the children's time and all contact with the father on an interim basis to "protect [the children] from needing to take a role in the partisan conflict" leading up to the final hearing. An application for such an interim order was not made.
54. After the release of Dr K's report, the children spent time with the father on four occasions without any apparent difficulties at changeover. On the last of these weekends, 29 – 31 August 2014, there was an incident which gave the father cause to admonish L about his behaviour. In the course of the conversation the child became very angry and said "I want you to treat me bad. Then I can go home and tell Mum the bad things you do to me cause she wants to tell the court." On 10 September 2014 the father's solicitor contacted the mother's solicitor on the father's instructions and advised that the father would not see the children between that date and the hearing as had been recommended by Dr K in his report of 14 May 2014.

#### **Hearing in October 2014 and events following**

55. At the time of the first hearing days in October 2014, the children had not spent any time with their father since he suspended it on 10 September. However, on 17 October 2014 when the matter was adjourned until early December, orders were made by consent for the children to spend time with their father each alternate weekend from after school Friday until Sunday afternoon. The children recommenced spending time with the father in accordance with these orders.
56. On Sunday 23 November 2014, after the children had spent time with their father, the mother says that she observed a scratch on L's neck. L then complained that he had been injured by Mrs H on the previous Saturday night.



The mother's sister, Ms D, took L to a Police Station to report the incident. The child told the police officer that Mrs H came into the bedroom at bedtime when he was talking with his sister, told him to stop talking and came to him and scratched him on the neck. A JIRT team subsequently interviewed L and S (who had reported that she heard L cry) and each child repeated the complaint in similar terms. A provisional Apprehended Violence Order ("AVO") was made against Mrs H for L's protection but was revoked at a subsequent court hearing.

57. At the time of the adjourned hearing in December 2014, the children were living with the mother and their half brother, T, who was almost two. T's father, Mr X, visits from the overseas from time to time on a visitor's visa and stays with the mother and the children at the P home. The mother is an assistant manager with a food wholesaler and works two full days per week. She currently earns about \$30,500.00 per year.
58. Mrs H owns a three bedroom home which she and the father propose extending if finances allow.
59. At the time of hearing, the father was casually employed as a part time food production assistant for about 15 hours per week. His wife has worked full time for many years. The father proposes to continue to work part-time in the event the Court makes the orders he seeks and the children come to live with him.

## THE AREAS OF DISPUTE

60. In relation to parenting there are three significant factual disputes. First, the father contends that he was the victim of serious systematic violence perpetrated by the mother for most the relationship. The mother contends that it was the father who was violent towards her and that if she also engaged in violence, it was in response to the father's antagonism. Second, the mother contends that the father and his wife Mrs H abused the children after separation, which is denied by the father. Finally, it is central to the father and the ICL's case that the mother has a significant personality dysfunction with prominent narcissistic, antisocial and borderline personality traits. The mother disputes this diagnosis.
61. There were other factual disputes between the parties which did not ultimately become significant issues regarding the best interests of the children such as whether the father's dogs are dangerous, the details of disputes that occurred at some of the changeovers and assertions about the mother's lack of co-operation with the father after separation. As these matters were not pursued in final submissions and are not in my view of significance, no determination about them will be made in these Reasons.

## FAMILY VIOLENCE

### **The father's allegation of the mother's violence from 1999 to December 2006**

62. As noted, it is the father's case that he was the victim of serious violence perpetrated by the mother for most of the relationship. The father first detailed allegations of this nature in the affidavit he filed when these proceedings were to be heard in August 2012.
63. So far as the period prior to the first child's birth (in late 2006) is concerned, I understand from submissions made on behalf of the mother, that she denies that she was violent during this period.
64. The father says in his affidavit that the first indication of the mother's violence was about six months into the relationship, when the mother had a verbal outburst on Christmas Day 1999 and within a week of Christmas Day she first physically attacked him.
65. The first assault according to the father occurred on New Year's Eve in 1999 when he and the mother had a disagreement when he was driving and without warning the mother hit him hard in the face with a closed fist.
66. The father says that the abuse worsened just before the parties married in October 2005 and that he sought assistance from their priest and also made an appointment for them both to see a counsellor at a mental health service. The father says that the mother refused to attend these appointments and became very angry with him, and that in the course of an ensuing argument, the mother hit him, threatened suicide, and jumped through a large window at their front of their house. The father said he subsequently learnt that their flatmate at the time was at home in a back bedroom and the father claims that this flatmate heard the incident but was too scared to come out and pretended not to be at home.
67. The father says that the abuse intensified after the wedding and that the mother said she would only obtain counselling or help if the problems continued after they had a child.
68. The father deposes to a specific occasion before the parties' first child was born when the mother was ironing her clothes and became angry with him and grabbed him by the hair. The mother held the iron very close to his face and he could feel the heat and the mother threatened to "burn [his] face off".
69. The father gives no other specific instances of abuse between the date of the parties' marriage in October 2005 and late 2006, but says generally that as the relationship continued, the abuse worsened. Initially he says that the violence was accompanied by considerable anger and a lack of control by the mother, but as the relationship progressed the father describes the mother as being more in control and on occasions very calculated and pre-meditated when violent.

70. The father was not cross examined about any of the specific alleged incidents of violence in this period, nor was it put to him that the mother was not violent towards him between the commencement of their relationship and the first child's birth.

### **The mother's violence after December 2006**

71. The father says that he became particularly concerned about the mother's behaviour from the time of L's birth and was of the view that she was suffering from a psychiatric condition. The father's affidavit contains numerous specific instances of abuse towards himself that he says occurred from this time.
72. The father says that the mother also regularly denigrated him and made him feel worthless and isolated from his friends and family. He also says that the mother falsely alleged that he was the person abusing her and said that he was always the person at fault in these incidents.
73. It is also the father's case that the mother harmed the children, particularly the eldest child, on occasions, threatened to harm the children on other occasions and perpetrated violence against him in the presence of the children on other occasions.
74. In about late 2006, the father began collecting evidence of the mother's conduct. He covertly taped conversations between the mother and himself and relies upon the contents of some of these recordings in the proceedings, as evidence of some instances of the mother's violent, coercive and threatening conduct.
75. The mother does not dispute that her voice and the father's voice are recorded on the tapes, though she does dispute the date of some of the conversations. Although the mother gives no evidence about the dates on which she says the various recorded conversations occurred, it is her case that she discovered some of the father's tapes and his dictaphone in June or August 2007, and that none of the recorded conversations occurred after August 2007. The father says that the mother did not find some of the tapes until around mid-2008, and that he had been recording conversations up until this time. He did not make any further tapes after the mother discovered the dictaphone.
76. It is the mother's case, as I understand it, that the recorded conversations may have been in some way reconstructed, and that one or more of them consists of a selection of recorded sentences joined together in an order other than the order in which they were recorded. However, the mother does not identify any particular conversation in which she suggests that this has occurred. The father denied under cross-examination that he changed the order of any of the sentences spoken. Although he says that he did make selections from some parts of conversations and put them together to make the recordings "manageable", he denied portraying these conversations as complete conversations. He says that one, or possibly two of the tapes he relies upon,



contain parts of conversations put together in this way. He said that in these one or two recorded conversations he selected full sentences and did not put them together to create the appearance of one conversation. There is no expert evidence that the tapes were reconstructed, or the recordings interfered with.

77. Under cross-examination the father agreed that on one occasion and possibly more he engaged in “contact” with the mother, left the area, made commentary on a tape and went back “into the fray”.
78. The father says that there was a particularly bad period approximately four weeks after the eldest child’s birth (late 2006) where the mother demanded that he commit suicide and gave him a deadline of a couple of days after Christmas in which to do it. The father says the mother also threatened to kill or harm the child.
79. At this time the following conversation between the parents was recorded by the father. “M” indicates words spoken by the mother and “F” indicates words spoken by the father.

M: You’ve got Thursday off. I’ll give you till the end of Thursday to say goodbye to your son properly. If you dare to fuckin think I’m kidding again, I’ll suffocate him in the meantime, okay?

F: Yeah.

M: Understood?

F: Thursday, alright, end of (background noise).

M: Understood?

F: Understood.

M: Understood?

F: Understood.

M: I swear, as God is my witness, [father’s first name], I will fuckin kill him if I think you’re taking it as a joke, do you understand me?

F: I understand you. I understand.

M: you have got to the end of Thursday to say your proper goodbye. You either kill yourself or I swear to you, [father’s first name], your son and I go. You fuckin dare, at any stage, treat this like a fuckin joke again, which is what you’ve done for the past three fuckin days – I almost did it yesterday, I’m telling you now, because I fuckin knew you were going to do what you did. Then I thought, give you the benefit of the doubt, like I always fuckin do, but I promise you, I won’t do it again. If you think for one moment you take this for granted, I’ll fuckin’ kill



him – that I'm still alive because I've got (indistinct) gaol, do you fuckin hear me?

80. The father also says that at this time, when the child L was just a few weeks old, following an argument between himself and the mother, she acted on her threat to harm the child. It is not clear whether the father alleges that the following events occurred after the particular conversation set out in the above paragraph, but he says he saw the mother walk towards the child's bedroom and followed her. He then saw her place a pillow over the child's face and hold it there. He says he removed the pillow and stopped her.

81. The following conversation between the parents was also recorded by the father at around the same time and is said by the father to relate to L.

M: Do it again and I swear to God I'll kill your son. Do it again. I'll walk in there and fuckin stab him to death now. Want to push me again?

F: No, I don't want to.

M: I've got a real fuckin lack of sleep at the moment because of you, fuckin prick. You known I'll carry out. [sic]

F: Yeah.

M: Just fuckin told you I tried to suffocate him, so you fuckin push me again. Push me again. Yeah you just fuckin argued with me didn't you cunt?

F: Yeah.

82. The father says that he and the mother had a number of conversations along these lines in late 2006 where the mother demanded that he kill himself and that if he did not do so she would kill the child and herself. The father says these threats were not said in anger, but were said in a very calm voice and that he believed them. He said that on the day he was expected to kill himself, he was driving to work and rang his parents at about 6:00 am. As a result of the father informing his parents about the mother's threats, the paternal grandparents telephoned the mother's obstetrician and the doctor made arrangements to attend upon the mother at the home that morning. The father left work and travelled home and saw the doctor at the home but did not have a chance to speak to the doctor alone. The mother presented to the doctor as fine and unconcerning though the doctor recalled that the father and his family seemed concerned. The father did not tell the doctor about the threats to kill the baby.

83. The father says that the mother regarded the involvement of the doctor as a betrayal of her and following this incident the mother attempted to isolate him from his family, and her level of abuse towards him greatly increased.

84. The father also alleges that threats towards the child L continued. He says that the following conversation between himself and the mother, which was recorded by him, occurred in early 2007.

M: Fucking lying cunt, you did fuckin realise

(Child crying)

M: Shut him up. Fucking shut him up or I'll punch him in the fuckin head.

F: I'll shut him up (inaudible conversation)

M: Put him in there now, fuckin cunt.

(Child crying)

F: Good boy. Good boy.

M: I'll tell you what, you're determined to be the death of us aren't you?

F: No.

M: Fucking will be. You are absolutely determined. We shouldn't have brought him into the world for me to kill him, [father's first name]. I swear to you the end is near, I fuckin swear to you.

85. At around the same time that the father started covertly taping conversations with the mother, the father also began taking photographs of injuries he says he received when he was assaulted by the mother. At the time the father stored the camera or phone which was used to take the photographs at his parents' home or hid it in the garage, but did not print the photographs until the commencement of the proceedings. The father says that he took the photographs as he wanted evidence of the mother's assaults and he had genuine fears for his safety and the safety of his children. He said he did not report the incidents to police as he was frightened of the consequences and he did not want the mother to hurt the children. He said that he planned at some point to use the photographs, if he decided to report the mother to the police or Community Services.

86. The father also says that between about March 2007 and 19 August 2007 he made notes at the time of, or shortly after particular incidents. He says that these notes do not record all of the incidents involving himself and the mother. The father still had these notes in his possession at the time of the hearing and they were originally annexed to his affidavit and relied upon as evidence of the matters asserted. After they were objected to in that form, the father filed a further affidavit setting out the events he alleges occurred and the admission of the notes into evidence was not pressed.

87. By reference to the photographs and the two affidavits, the father alleges that there were numerous incidents where the mother assaulted and threatened him and L between late 2006 and December 2010, when he and the mother finally physically separated. Some of these incidents are outlined in the following paragraphs.
88. The father says that he was struck by the mother on an unspecified occasion in late 2006 causing his nose to bleed. A photograph of the father with a bleeding nose is annexed to his affidavit. On two other occasions in late 2006, the father says that he was struck and scratched by the mother to his neck, chest and arm and he took photographs of the marks and bruises which he says were occasioned during this time, which are also annexed to his affidavit.
89. The father denied under cross examination that at least some of the injuries shown in the photographs were as a result of playing soccer and were not caused by the mother. It was, however, not put to him that the mother did not assault him in the way in which he alleges resulting in the injuries depicted in the photographs. When the mother was cross examined about the photographs she agreed that they appeared to show injuries, that she had seen injuries like that on the father and that some of them were caused by physical contact between the father and herself. She also maintained that he was also injured in soccer and was lying when he asserted that all of the injuries came from her violence.
90. According to the father, on 20 March 2007 he received a call at work from the mother who was at home with L. He deposes that the mother said:

He was screaming so I hit him, not really hard but it was hard enough that the shock made him scream so much he couldn't breathe. I stuffed his feeding towel into his mouth to muffle him but could still hear him snorting, so I picked up a pillow to finish the job. As I did I started crying and he stopped screaming because he could see I was upset so I didn't need to do it... it's lucky I am working tomorrow because he won't last the day I'll kill him for sure.

91. In a conversation which the father says he recorded after March 2007, the following words were said:

M: Don't forget [father's first name].

F: Okay.

M: And don't you (indistinct) that because I (INAUDIBLE CONVERSATION) fucking idiot (INAUDIBLE CONVERSATION) is going to make me (indistinct) more. No fucking shit cunt. When I smacked him [father's first name] he screamed so bad he can't fucking breathe, and I know that's coming?

92. The father says that there were further threats to harm the child in April 2007. He recorded a conversation which he says occurred in late April 2007. Some of the words spoken by the mother and father are as follows:

M: That's when the fuckin homicide happens dickhead. Do you know what you just caused?

F: No.

M: You know what you just caused? You don't? You don't know what you just caused?

(CHILD CRYING)

F: Caused you to hold him.

M: You don't know what you just caused?

F: No.

M: You're gonna come home and find him dead now. (INAUDIBLE CONVERSATION)

F: Oh, oh, ow.

...

M: Yeah. (CHILD CRYING) You just told me I've got no rights. (CHILD CRYING) (INAUDIBLE CONVERSATION) I've got no fucking rights. I'll show you what my fuckin rights are right – **you fucking watch what comes next [father's first name]. (CHILD CRYING) He'll be dead by tomorrow night I swear to God.** [emphasis added]

F: Who will?

M: [L]. (CHILD CRYING) You've just done it [father's first name]. You just told me I have no fuckin rights. (CHILD CRYING) You took what little fuckin rights I had in this house, you just took from me. (CHILD CRYING)

F: Yes [mother's first name], I shouldn't have taken your rights.

M: You fucking did. Too late.

...

F: Do you want to go and pick him up or put him in the car or something?

M: No, you fucking leave him there.

F: Okay.



M: So you (INAUDIBLE CONVERSATION) ---

F: I'll leave him.

M: --- (INAUDIBLE CONVERSATION) **be dead tomorrow so it won't matter.** [emphasis added] (CHILD CRYING) He can scream all he fuckin wants. The last days on Earth. (CHILD CRYING) (INAUDIBLE CONVERSATION) [father's first name] (INAUDIBLE CONVERSATION). (CHILD CRYING) You're gonna pay for what you just did [father's first name]. (CHILD CRYING)

(STATIC)

F: I'll, I'll get it out of the car. Okay, I'll get it.

M: (INAUDIBLE CONVERSATION)

F: I'll get it out of the vehicle.

M: (Indistinct)

F: Ow.

M: (INAUDIBLE CONVERSATION)

F: I'll get it out of the vehicle. (CHILD CRYING) I'll get the Panadol. I'll get the ---

M: **I'll fuckin kill him [father's first name]. I'm gonna kill him.** [emphasis added]

F: No, you don't want (indistinct) ---

M: (INAUDIBLE CONVERSATION) [father's first name]. Don't leave him, **I'm gonna kill him.** [emphasis added].

F: Okay you don't need to kill him. I'll get the Panadol.

M: No I do. I fucking do now.

F: You don't.

M: Yes I fuckin do. Yes I fuckin do. Fuck. (CHILD CRYING) Fuck. (CHILD CRYING)

F: Sit down and I'll get the Panadol.

M: Don't you fuckin tell me what to do.

F: Okay, okay. (CHILD CRYING)

93. The father also relates incidents of the mother's controlling and coercive behaviour, other than violence, such as an incident in about March 2007 where the parties argued one evening and in the course of the argument the mother told him that he could not use her car the next day and would have to walk to work. The father says he walked to work from Suburb P the following day, a distance of about eight kilometres. He said he left at about 4:00 am to arrive just before 6:00 am. The father also says that he was regularly forced by the mother to sleep on the floor, in the car, on the driveway or front or back porch, including on occasions in winter. He also alleges that the mother withheld food from him and regularly cut up or otherwise damaged his clothing.
94. The father also alleges that the mother controlled his access to finances and regularly gained access to his wallet and went through its contents and questioned about him receipts and his expenditure. He gives an example of buying a packet of chewing gum for 70 cents and the mother questioning him about it saying "who said you could buy it? You didn't ask me. Who said you could buy it?" The mother agreed under cross examination that she said these things but denied exercising financial control over the father. The father says that in around April 2007 he complained about the mother's financial control and some of the assaults and abuse to his brother, and that his brother set up and continued to fund a bank account for him, which the father says he used to buy food and other personal items.
95. The father also related humiliating punishments that he says the mother inflicted in response to actions he had taken in relation to the children. For example, he says that when L was a few months old, he changed the child on the floor near the front door of the house. The mother accused him of being stupid and selfish, and said "So you think it's good for him, you can do it for yourself and see how you like it" and then took the father to the backdoor and required him to go outside, take off all his clothes and stand there naked for five minutes. The father says he did what he was told as he was fearful of the consequences if he did not.
96. On 25 April 2007 an incident occurred in relation to L's reflux medication, which the parents administered by way of a syringe. The father says that the rubber plunger seal of the syringe had become loose and he put glue on it to fix it. The mother came into the room and saw him and said "you're poisoning him. You can put some glue into your mouth and see how you like it."
97. A lengthy argument ensued, and in the course of the argument when the father left the room, he obtained the dictaphone and recorded the following conversation:
- M: So where were you when I just asked?
- F: In the kitchen putting the syringe back on the cart thing for washing.
- M: So I beg your pardon?

F: Okay, I'm sorry for doing that first before getting the glue.  
(Background TV noise).

M: In the shit one more time [father's first name], one more time I swear  
on my own dying oath I'll fucking stab you, do you understand?

F: I understand.

M: (indistinct) one more time.

F: I understand.

M: (inaudible conversation) now or I'll stab you to death, which is first?

F: I don't want you to stab me to death.

M: (inaudible conversation) in your mouth or I'll just stab you.

F: I wasn't going to squeeze this in his mouth though.

M: No [father's first name] you were putting it in his mouth.

F: In the syringe.

M: Squeeze (Background noise)

F: I will squeeze that in my mouth no problem, but I'm not squeezing the  
glue straight from the tube into my mouth.

M: [Father's first name]?

F: What?

M: You've got a choice, I'm not kidding, he's overdue for his feed and I  
haven't even given him solids. Squeeze it in your fucking mouth or I'm  
going to just stab you [father's first name].

F: Okay, was I going to squeeze the glue straight from the tube into his  
mouth?

M: [Father's first name], I've had this conversation so you can question me  
all you want.

F: No I wasn't.

M: I've got the (indistinct) behind me, squeeze it in your mouth or else  
'I'm going to stab you.

F: No I'm not going to squeeze glue from the tube into my mouth.

M: (indistinct) which one do you want?

F: No it's not a toy. [Mother's first name].

M: Which one do you want?

F: I don't want either.

M: (indistinct) I swear to God you've got a choice. Squeeze that in your mouth or you will be fucking stabbed to death.

F: No. I'll squeeze out of a syringe into my mouth, no problem.

M: [Father's first name]?

F: But I won't squeeze glue out of a tube into my mouth.

M: You'll squeeze it into your mouth.

F: No I won't because I wasn't doing that to him.

M: Squeeze it into your mouth.

F: No I won't because I was not doing that to him [mother's first name].

M: [Father's first name] I swear on my own dying oath now, now you've just fucking dared me to do it.

F: No I haven't dared you to do that.

M: I swear on my own dying oath one or the other?

F: Well I'm not squeezing glue into my mouth?

M: One or the other?

F: I'm not squeezing glue into my mouth.

M: Want me to swear on his life because I'm about to do it.

F: No I don't want you to do (indistinct).

M: Fucking squeeze It in your mouth now?

F: Mel it doesn't make sense –

M: Squeeze it in your mouth now?

F: No, it doesn't make sense to squeeze glue –

M: Squeeze it in your mouth [father's first name].

F: -- out of a tube into my mouth.

M: Squeeze it into your fucking mouth?



F: No (inaudible conversation).

M: I don't care if you go wash your mouth. Squeeze it in your fucking mouth.

F: If it sits (sic) in your mouth you can't wash it.

M: Squeeze it in your mouth.

F: Here, are you happy, ready. There, happy? Bloody happy? I hope you're happy. Are you happy that I squeeze glue into my mouth?

M: If I was you I would shut up now [father's first name] (Baby talking).

98. At various stages throughout this conversation, a baby is heard crying in the background. The father says because he was so frightened he did put some glue in his mouth.

99. Although the mother does not give a version of this event in her affidavit, the father was closely cross-examined about this particular conversation. It was put to the father that in this incident the mother walked into the kitchen and found him with a smile on his face and that he was holding the medication syringe against the baby's mouth. The mother said "[Father's first name], that's not [medication] that's glue in the syringe". It was then suggested that the father was laughing and saying that it was not glue and that the mother asked him to give her the syringe. The father denied this version of events or that he had in any way set up the scene so that the mother would become angry and he could gather evidence. Although it was not put to the father that he had interfered with the recording of this conversation, it was put to him that pieces of the conversation were missing from the recording and transcription, which he denied. The words said to have been missing were not put to him.

100. The father also alleges in March 2007 that the mother threatened to harm herself and to harm their pet dog. He annexes a lengthy transcript of threats of this kind contained in a recording of an argument between them in about March 2007, which was played in the proceedings and includes the following:

M: Fuck off. Fuck off. Fuck off. You're so fucking damaging. Fuck off, [father's first name]. Fuck off before I fucking cark it. I'm so fucking sick, [father's first name], I can't even laugh. It hurts. I can't cry. It's hurting. I'm in so much fucking pain.

F: Okay, and I want to help you.

M: Bullshit.

F: I want to. I don't --

M: You're making it worse. You've done nothing but damage my home and my life. Fuck off. Fuck off. You want help, fuck off, selfish fucking little cunt. (Background noise). (Screaming).

F: [Mother's first name], [mother's first name]

...

M: (Indistinct). I can't (Inaudible conversation). (Crying). Oh, I want to die (Screaming). (Indistinct). (Crying).

F: Are you going to hit me again?

M: (Screaming). (Crying).

F: Don't hit me.

M: (Inaudible conversation). (Crying). I can't (Indistinct).

F: Hey, off. Off. Fuck.

M: (Indistinct). (Crying).

F: Oh, ow, ow please.

M: (indistinct).

F: Oh. [Mother's first name], don't. oh.

...

F: Don't hit your head, okay.

M: (Crying). Oh, fuck off.

F: Don't hit your head. Don't hit your head.

M: (Indistinct).

F: You're hitting your head.

M: Fuck, I don't give a fuck. I want to die.

F: You don't want to die, [mother's first name].

M: (Crying). Leave.

...

M: You fucking Jesus, you little cunt.

(Background noise).

F: Oh.

M: Don't fucking speak to me like that, you fucking piece of shit. Fuck off, Fuck off.

F: I'm going.

M: Get out of my house now.

F: I'm going.

M: Leave my fucking car. Fuck off and take your fucking (indistinct) with you.

(Background noise).

(Static).

M: (Inaudible conversation).

F: What, sorry?

M: You heard.

F: I didn't hear you.

M: If you're here when I walk out of this room, you're dead.

...

M: You can fucking take your dog now, you fucking cunt of fucking cunt. Fucking piece of shit, you want the house to look like fucking shit. (background noise). Thanks for doing things, [father's first name]. Thanks very much (background noise). Thanks for your help.

(Background noise).

(Child in background).

M: [E].

F: What are you doing with [E]?

M: [E], come here.

F: You can't put her out on the road.

...

F: I won't let you. You can't put her on the road. She'll get hit by a car.

...

F: [Mother's first name], you can't throw a dog out on the road because the dog barks.

M: I can do whatever I fucking want. I can do whatever I fucking want.

F: If you want to get rid of her, get rid of her properly. Go and do it that way.

M: Come on, [E]. (Child in background). Keep going, [father's first name].

F: Okay, I'm not going to let you throw the dog out on the road.

M: [Father's first name].

F: What?

M: I'm going to stab you to death. I am going to do it tonight, you fucking dare to come near me again. Fuck off out of my home now.

F: Okay, look, [mother's first name], if you want me to go, I'll go. Let me get my stuff and I'll go.

M: No, no, no. We've all discussed this a thousand times. Get the fuck out of my home now. Get the fuck out of my home. Get the fuck out of my home or I'll call the police. Get out now.

F: Well, can I get my –

M: Get out now. Get the fuck out of my home.

F: Well, at least let me get some shoes or something.

M: Get out of my home.

F: Well, can I –

M: Get the fuck out of my home.

(Background noise).

(Static).

(Background noise).

M: I swear to God, I'll (indistinct). I'll get a fucking knife and I'll stab it through so fucking quick you won't know what's hit you.

101. The father gives evidence of a number of particularly serious assaults or threats between late March and August 2007. In many of these incidents the father alleges that the mother used a knife to assault him or damage his property. In particular he says that on 26 March 2007 when he and the mother were sitting



on the lounge in their home and eating, following some conversation the mother threw the TV remote control at him, hitting him on the knee cap hard enough so that the remote control ceased operating. He then says the following occurred:

I got up, pushed her back on the cushion which was there, and started to walk out the back of the house. She approached me with the tea towel and started hitting me with it and it flicked around my head, so that it nearly flicked into my eye. I said: "Don't do that again". She headbutted me and I pushed her away. My nose was bleeding and the blood dripped onto the tea towel. I went to the tap to wash the tea towel and she said "That's it. I'm going to shred your stuff." I couldn't get the blood off with water, so I went to the laundry to use detergent. [The mother] had cut up 8 items of my clothes, using a chef knife. I said "stop it" and she waved the knife at me and said "You'll be next".

Later that day she hit and kneed me in the face near the nose. I had pain in my nose and it started bleeding. I went outside. [The mother] locked me out of the house and cut up 3 more of my items of clothing. She soon let me inside and said to me "I will shred your legs so badly you will never play soccer again."

102. On an unspecified Monday in March 2007 the father says the mother hit and kneed him, so that his ear was bleeding and bruised. He says that she sliced up his jacket with a knife and when he followed her and told her to stop, she pointed the knife at him. In the struggle that followed, the mother hit the father with her other hand, kneed him and bit his shoulder. Two days later the father says that the mother threw a knife at him, cut up more of his clothes and threatened to kill him. It was put to the father that these incidents did not occur but no alternate version was suggested to him under cross-examination or in the mother's affidavit.
103. On 6 April 2007, the father says that he and the mother had an argument about him doing the washing at 10:00 pm the previous night, and the mother obtained a knife and cut up a shirt and said "I will slice you if you try and stop me". He said that the following then occurred:
 

... she threw a thin black-handled knife at me from about three to four metres away, hitting me on the arm. She said "get out of the house". I had nothing except my clothes and my phone. She said "get your parents to come and get you. I would rather kill [L] than let you have anything to do with him."
104. The father says on 18 April 2007 the mother also kneed and kicked him and hit and poked him with a vegetable knife and threatened to kill him. He said that the knife cut his arm and the back of his fingers.
105. The father relates a particularly serious incident which he says occurred on 6 May 2007 when he and mother were arguing about him going to soccer

training. The father says that when he was seated the mother hit him in the face which caused his nose to bleed and as he tried to make his way to the laundry, she struck him in the back. The father turned around and pushed the mother and she said "you hurt me. You're gone. That's it." The mother walked away and he walked to the laundry sink. Moments later he saw the mother come at him swearing with a knife which she was swinging in the air. The father says he put his arm up and tried to avoid contact with the knife but it connected with his sleeve three times before cutting his skin. The father says that the mother cut him on the outside of his right elbow and the wound bled badly, and that the mother kept swinging the knife at him. He grabbed the mother and wrestled the knife from her hand and put it in the laundry sink. The father says that when he told the mother of his injury she accused him of overreacting and told him to grow up. He pulled up his sleeve, looked at the wound and could see the bone. The father said he wrapped his elbow in toilet paper and a towel and drove to the Emergency Department at the local hospital. He was admitted to the hospital, had surgery to his right elbow the following day, and remained in hospital another night.

106. Under cross-examination, it was put to the father that in this incident an argument began in the kitchen, that he moved aggressively towards the mother, that she grabbed a knife and ran to the laundry crying and distressed, that she was against the wall in the corner of the laundry and he came at her in a threatening manner and that she waved the knife at him and told him to stay back, all of which he denied. It was not put to him that the mother cut him in these circumstances.
107. Following the surgery on 7 May 2007, the father says he telephoned the mother and told her that there would be weeks of recovery, to which the mother said "I should have killed you. You're fucking useless to me now. You can't go to work. How are we going to pay the bills?"
108. The father says that he was required to keep the wound bandaged for ten days and was not able to move his arm at all and had two to four weeks off work. He also says he was not well enough to return to soccer that year.
109. The father also relates an incident on 17 May 2007, 10 days after the serious knife injury, when in the course of an argument the mother threw a cup of hot water on the side of his face. The father says that the water was not boiling but was hot enough to be painful and when he ran to wipe the water off his face the mother approached him with a knife and hit him with it forcefully enough to put a hole in his sleeve. He says she then cut up some of his clothing and waved the knife around, kicked him and hit him with the handle of the knife.
110. The father also says that in the course of an argument on 9 June 2007 the mother grabbed "two of the largest knives we had and came after me screaming, 'Sorry, I've got to kill you'".

111. In a number of the recorded conversations relied upon by the father, the mother refers to using a knife. For example, in an undated recorded conversation the mother says “if I use the knife we’ll achieve more”. Later in the same conversation she says:

That’s your last warning. Talk to me like it again like I’m a fuckin piece of shit, you’ll know how it all works and **I’ll fuckin show you how it works with a fuckin knife to your throat**. One more time [father’s first name]. You (indistinct) out to me one more fuckin time. You know what (INAUDIBLE CONVERSATION) (CHILD CRYING) completely ignoring the problem (INAUDIBLE CONVERSATION) you piece of shit (INAUDIBLE CONVERSATION) (CHILD CRYING) (INAUDIBLE CONVERSATION) fuckin put you out of this life. That is your last warning [father’s first name], do you understand me? (emphasis added)

112. In another conversation which the father says he recorded on 6 August 2007, the following is said:

M: No you’re not. (Indistinct). Where the fuck is my hot tea?

F: I, well I’m getting you a hot drink now.

M: Ah cunt?

F: Yes.

M: Talk to me like that again. Right. You know what? I’m absolutely fed up with empty threats. I’m fed up. You know what? I’m gonna get to a point very soon, I’m really close to it now, where I’m not gonna warn you. You’re gonna just fuckin walk in and **I’m gonna have the knife already out and I’m gonna fuckin stab you to death** cause I’m fed up with warning you cause you don’t believe me. (emphasis added)

F: I do.

M: And you know what? The more I empty threat you (sic) out loud, the more disappointed I get in myself.

F: I do believe you [mother’s first name].

113. Another conversation which the father says he recorded in late December 2007 to early 2008 includes the following words spoken by the parties:

M: I hate lying. (RUSTLING SOUND) I kid you not, [father’s first name]. I’m going to fuckin take your life. **I told you I’d cut you open that night and I fuckin did it**. (emphasis added)

114. In his affidavit, the father says that in addition to physical abuse, the mother also often threatened to harm him, destroy his possessions, maim and kill him. He says the mother also threatened self-harm and ultimately suicide and sometimes threatened to damage her own property and threatened the lives of



their dogs and children. The father says he tried to avoid further abuse by attempting to comply with anything the mother wanted.

115. The father says that during many of their arguments the mother demanded that he leave but when he did start to leave, the mother's behaviour would escalate.
116. The father also says that the mother often required apologies of him for his actions or she harmed him in retaliation if she perceived the father had harmed her. For example, he relates an incident in late August 2007 where he says that in the course of an argument he pushed the mother away because she struck him. In doing so he touched her breast and the father said the following occurred:

She became very angry and said "because you hurt me, just to pay you back I am going to kick you in the nuts". [The mother] made me stand there in front of her and allow her to kick me in the testicles.
117. By reference to the photographs and trial affidavits the father alleges that in 2008 he was assaulted by the mother on a number of occasions including three times in June, once in July, four times in August, twice in September, once in October and once in November. He describes being struck and/or bitten and/or scratched on each occasion and annexes photographs to his affidavit which show injuries to various parts of his body, including his ear, back, shoulder and arms.
118. On 13 September 2008, the father says that in the course of an argument when he was driving the mother hit him. He says he pulled over to the side of the road, the mother was scratching and grabbing him, and he got out of the car. He says the car was parked on a hill and the mother threatened to take the handbrake off and let the car go. He saw her release the handbrake and he says he had to hold the car to prevent it from moving. After further argument the mother agreed that if he got back into the car she would put the brake on, which he says occurred. The father said a police car then approached and stopped next to them and that he had blood on his face from the scratches and strikes. Police spoke to both of the parents.
119. It is also the father's case that the mother's threats or actual assaults upon the child L continued while the parties remained in a relationship. He says that in about October/November 2008 when they were out shopping and the child was crying, the mother said to him "shut him up or I will – for good". He says that at one point she hit the child across the face while he was in his pram in an aisle at K-Mart and a little while later when he was still crying she placed her hands on his throat and the father saw the child's face go red. The father says he pushed the mother away and told her not to do that.
120. The parents both agree that they "separated" in early 2009 but continued to live together after this date. The father also alleges that the mother's abuse of him and L continued after this "separation".



121. He says that on 7 January 2009 he saw the mother smack the child L hard on his thigh and that it left a very red hand mark. He says that he took the child away and comforted him. The father annexes to his affidavit a photograph which he says he took of the mark on the child's leg from this incident. The annexed photograph shows a large red mark on a male child's thigh.
122. The father alleges that the mother scratched and struck him on the weekend of 17 to 18 January 2009 and annexes photographs of injuries to his arm and chest which he says he took at work on the following Monday.
123. The father says that on the weekend commencing 14 February 2009 he saw the mother put her hands around L's mouth and head and he heard the child struggling to breathe. The father says he intervened and the mother said to him "if you don't shut up I'm going to smack you in the fucking head".
124. The father says that in the course of an argument with the mother on the Mother's Day weekend in May 2009 the following occurred:

She admitted to me that she had thrown [L] across the room when he was naughty and said words to the effect of: "I will do serious damage to him and break bones if you don't fix it" and "I'll end up suffocating him" and "I hate the fuckin cunt and I'd rather kill him" and "I think he's disgraceful, he's just like you, he's a rude fuckin liar".
125. The father alleges that the mother scratched and hit him on the long weekend in June 2009, on one occasion in August and one occasion in September 2009 and annexes photographs he took following these events of injuries to his chest and neck.
126. Although the parents "separated" in early 2009, both parties remained living in the P home, and their third child, Z, was conceived in about January 2010. The father says that the mother threatened to kill the other two children and herself if he did not assist her in conceiving a third child. He said that she repeatedly told him that if he did assist her in this way he would be permitted to see the children whenever he wanted. He says that in these circumstances, he and the mother agreed that he would remain at the P property until the third child was born and additions to the home were completed to accommodate the child.
127. The father says that during the 12 months prior to vacating the family home, the mother insisted he remove all of his clothing from the house and that his clothing stay in the garage for that period. He says that on the day he left the premises in December 2010 he saw the mother tip a bottle of turps or methylated spirits over his clothing, and when he approached her she turned around and threw the contents of the bottle into his face. This was the event which he says caused him to leave.

## **Father's allegations of mother's violence or coercion after physical separation**

128. It is the father's case that the mother's physical violence and coercion towards him continued for a short time after separation. He says that soon after he left the home in December 2010 he received a telephone call from the mother at midnight complaining that one of their dogs was barking, and asking him to collect the dog. The father says that he told the mother that he would come the next day, but the mother said that if he did not come and get the dog then she'd stab the dog to death. The father says he was concerned for the dog's safety and collected the dog and brought her home to his parents' home.
129. Following their physical separation the father contends that he continued to have concerns about the mother's behaviour and the children's safety. Under cross-examination he did not agree that the behaviour he complains of had been "put behind" the parties and that he was confident that the children were in good hands.
130. The father alleges ongoing abuse by the mother against the children. He says that on the weekend commencing 8 September 2012, L told him that he was "scared of mummy", that she "locks [him] outside" and had "put [him] in the bin [when] it was dark". The father says that S confirmed that their mummy had put L in the bin "because he did not eat his dinner". According to the father, on the same weekend S told him that the mother had hit her in the tummy and that it hurt and she indicated a closed fist and punching actions when describing the incident. The father says that L told him on a number of other occasions in the previous 12 months that his mother put him in the bin with the yellow lid or the yellow bin.
131. The father maintained all of his evidence concerning the mother's violence under cross-examination.
132. The mother says in her affidavit that she and the father had a very volatile relationship and some of their many arguments "involved physical violence". She admits that she pushed and hit the father on occasions in self defence and outlines three specific incidents which are dealt with later in these Reasons. She does not, however, generally deny the allegations of violence made against her by the father or provide an alternative version for specific allegations.
133. Under cross examination about the allegations of violence against her, the mother agreed that her counsel had conceded on her behalf that the transcriptions are an accurate representation of the words spoken on the tapes. However, she said that when she heard the taped conversations she did not accept that they accurately reflected what was said. Although she agreed that she was "the aggressor" in a lot of the taped conversations she initially maintained that she had not ever been violent towards the father. She also did

not agree that she had ever threatened to harm the child L, or had actually harmed him.

134. The mother was cross-examined about particular words spoken by herself in the recordings that had been played in Court. She said that she did not remember hearing herself say particular words which were clearly spoken by her when the recording was played in court. For example, she said she did not believe she had ever threatened to kill L.
135. In relation to the allegation that she had stabbed the father on 6 May 2007, the mother agreed that the father “was cut” but said it did not occur as alleged. She agreed that there was an incident where she required the father to put glue in his mouth but said it did not occur as alleged by the father.
136. Under later cross-examination, the mother agreed that she had been “physically violent” toward the father on occasions other than when his arm was cut and he was hospitalised. When asked to identify these incidents the mother was unable to do so but said there were occasions over the years where she “would push back if [she] was being pushed”.
137. The mother has at all times said that she was shocked when she heard her use of language on the recordings of taped conversations as she had always maintained she did not swear. Under cross-examination she said that she had sworn on the tapes because she was “reacting to a man who was abusing her”.
138. The mother agreed under cross-examination that she had cut the father’s clothes on more than one or two occasions but said that she did so in response to him damaging her car and her belongings. She denied all other behaviour alleged by the father that was coercive, controlling or punitive.

### **The mother’s allegations about the father’s violence**

139. The mother alleges that the father “started being physically aggressive” toward her from about September 2002 when her flatmate moved out of the P home. It is the mother’s case that the father was not living at the home at this stage. She describes the father’s violence as starting “with small incidents like pushing me or grabbing my arm, but after ... 2005 [date of their marriage] it escalated to pushing, punching, slapping and grabbing me”.
140. The mother says there was no pattern to the violence but the father was “more vicious towards me verbally and physically” when he had been drinking. She says that on occasions when the father was physically violent she defended herself and did push and hit him.
141. There are only three specific incidents set out in the mother’s affidavit of the father’s violence towards her.
142. First, the mother says that “in [an unspecified occasion in] 2007” the following occurred:



During an argument in which [the father] was forcibly pushing me, I had grabbed a knife and ran to the back of the house. [The father] ran after me and I was in our laundry against the wall holding a kitchen knife and saying to [the father] “get away from me”.

143. No other details are provided concerning this incident.
144. The second incident was said to have occurred in around mid-December 2007. The mother says that during an argument the father forcibly pushed her, knocked her off balance and caused her to land on her bottom, and that she was pregnant at the time. The mother suggests that this incident led to her losing one of the twins she was then carrying, as she refers to attending the Emergency Department following some bleeding two weeks after the incident and being informed on 3 January 2008 that she had a surviving baby (the child S) but had lost the twin.
145. The third specific incident of violence allegedly perpetrated by the father, according to the mother, occurred on 21 January 2008, when the mother says she woke up in the middle of the night to find that the father had gone. She says that he returned around 7:00 am the next morning, so drunk that he could barely stand. The mother says he verbally abused her and pushed her and was “right up in my face spitting on me as I spoke” and that he then collapsed on the garage floor and fell asleep or passed out. She later woke him and told him to tell his parents to come and get him and he pushed her over into the garage wall. She alleges that at one stage during this incident the father knocked L over and as a result she told the father to leave. The mother says the father came back to her, yelled and swore at her, lunged at her and grabbed her neck while she was holding the child and that the paternal grandfather was required to pull the father off her. The mother says the father left with his parents and he smashed a pot plant on his way out to the car.
146. The father agreed under cross-examination that there was an occasion when the mother called his parents to intervene, but was not sure that it happened in January 2008. He agreed that this occurred when the mother found out about the credit card his brother had given him and that he was on that occasion drunk, abusive and aggressive and that he did push the mother up against a wall. He described this as a one off occasion and said that the mother was also angry and abusive on this occasion.
147. The father did not agree that there were two incidents when the mother called his parents and also denied that his father dragged him off the mother in any incident. The father also denied that it was a regular occurrence for him to be absent from the home and denied that on the one occasion his parents intervened he was so drunk that he could barely stand and had passed out. The father also denied pushing L over in this incident or lunging at the mother and grabbing her at the neck. He said that he did not recall smashing a pot.



148. The mother also annexes photographs which she says were taken on 19 February 2008, 20 September 2008 and 12 October 2008. There is a bruise or bruises to her arm or arms apparent in the photographs which she says were caused by the father hitting her.

### **Allegations of abuse of the children against the father and his wife**

149. The second area of significant factual dispute in relation to parenting is the allegation by the mother that the father and his wife have been and continue to be physically abusive to the children. It is the mother's case that the main concern currently and in the future is that Mrs H may harm the children.
150. The mother's first allegation in her affidavit is of physical maltreatment in the father's home in April 2012. The mother says that following the father spending time with the children on 29 April 2012 she observed insect bites on L's face, stomach and back. When she questioned L about it, she says S said to her "[L] got into trouble and dad got him to stand outside so he could be eaten by the mossies". She says L said "it was night time and I was scared. I wasn't allowed to scratch when they hurt me".
151. Although the mother does not refer to this incident in her affidavit, she next contends that on 29 August 2012 when the children spent time with their father on a Wednesday afternoon, the father harmed L. It is her case, as I understand it, that complaints made by L caused her to make a complaint to police and seek an Apprehended Domestic Violence Order ("ADVO") for L's protection. The mother also arranged for the child to receive counselling for trauma following this incident but none of these matters are referred to in her affidavit.
152. The father refers to becoming first aware of the 29 August 2012 allegation in a telephone conversation with L on 30 August 2012 when he heard the child say "mum can I tell dad about the police?". The father says subsequently he participated in an interview with police at their request and was served with an application for an ADVO and attended Court on three occasions. No interim ADVO was made and the application was ultimately withdrawn by police.
153. So far as the alleged conduct is concerned, it was put to the father under cross examination that on 29 August 2012 at McDonalds he dragged L to the car, placed him inside and locked the doors. The father denied dragging him but agreed that he had pulled the child along as he was walking and he had placed him in the car with the door shut.
154. The only evidence concerning L's alleged complaint about the father's conduct is contained in the application for an ADVO made by police for the child's protection. In that application it is alleged that when the children were returned from spending time with the father on 29 August, L said (to his mother) that the father was saying he was bigger and stronger than the rest of the family. When L said "I could beat you dad" the father allegedly said "you think you could

boy, come on boy, I'll take you on" and hit the child in the chest and kicked him in the "rude parts" which the child indicated were his testicles. L is recorded as having said that the father was very angry when he said this. It is also alleged in the application that L repeated this same complaint to the mother's partner, Mr X, when he telephoned from overseas the same night and to the mother's friend, Mr C. The mother is then said to have contacted police and L told the police officer in the absence of the mother, the same version of events and showed the officer a small scratch on his right shoulder, where he says the father's fingernails scratched him.

155. Mr C who gave evidence in the proceedings does not refer to L's complaint about this incident in his affidavit, even though he specifically refers to attending the children's changeovers on behalf of the mother. Mr X, the mother's partner who was also a witness in the proceedings, also does not refer to hearing L's complaints in his affidavit, even though he refers to a number of conversations that he had with the children following their visits with their father about events that had occurred during that time.
156. It was not put to the father under cross examination that he had hit L in the chest or kicked him in the testicles.
157. On 2 December 2012 the mother says that she observed grazes on the child Z's leg, after the children returned from spending time with the father. She alleges that S and Z told her that Mrs H had pushed Z over and she hurt her knee. On 13 December 2012, the mother says she observed insect bites on Z's legs following a visit with her father.
158. The next incident involving an allegation of maltreatment of the children in the father's household, according to the mother, was on the weekend of 1–3 February 2013, when the children spent time with their father. The mother says she asked the father about a bruise on Z's forehead on 3 February and the father told her that the child had fallen off the bed. The mother claims that "the children" said that the father had lied and that Mrs H had "pulled [Z] off the bed by her arm, [and she] hit her head on the ground and cried" and that Mrs H then hit Z and caused her to scream. The mother annexes of a series of photographs which says she took between 4 and 6 February 2013 which depict a small bruise on Z's forehead and temple and some marks around Z's eye.
159. The mother next says that she observed a bruise on Z's forehead on 14 April 2013 after the children spent time with their father. She alleges that S and Z told her that Mrs H pushed Z off the lounge.
160. Under cross-examination Mrs H denied ever dragging Z off the lounge or requiring the children to stand outside with their hands on their head. Mrs H said that on occasions the children all arrive with mosquito bites when they are to spend time with their father.

161. The mother also says that she observed bruising and blisters on various parts of Z's legs on 28 April 2013 and 7 July 2013, following occasions when the children spent time with the father.
162. Although it is not specifically referred to in the mother's affidavit, the children have apparently alleged to their child care workers in early 2013 that Mrs H has put Z's face near to her dogs' faces. Under cross-examination Mrs H denied that Z had ever been bitten by her dogs or that she had ever put Z's face near a dog's face.
163. There was a particular incident of significance following the weekend of 27 to 29 September 2013 when the children spent time with their father. The mother says in her affidavit that she received a text from the father on 29 September, about 45 minutes before the children were due to be returned to her. The text indicated that the father had observed Z's ankle as swollen and bruised, and that Zara had reported that L jumped on her while she was sleeping. The father asked in the text whether the mother wanted him to take Z to have her leg checked or to return the children to her. The mother sent a message back asking for Z's leg to be checked.
164. According to the mother's affidavit she received a further text from the father at around 6:18 pm which said "... X-ray not available for couple of days. Your GP can request a copy. She requires Nurofen for swelling. We are leaving hospital now". The mother says that when the children were delivered at about 7:40 pm the father was holding Z in his arms. When she asked him what the hospital had said, the father told her that S had a note for her. The mother took photographs of Z's ankle at the time, but makes no reference to receiving the note from S. The mother says that when she went inside with the children, all of the children confirmed that L did not jump on Z or hurt her and that L and S "between them" said:

We went shopping mum. [Z] kept crying and falling over. [Mrs H] and [the father] were laughing and then [Mrs H] started kicking her along the ground.

She went on in her affidavit to say:

[L] then said "I tried to help her mum. I wanted to help her up. [Mrs H] told me F... off".

[L] then also said "then [Mrs H] later let me help her walk through the Shopping Centre".

[L] then went on to tell me "We went home and had lunch. When we laid down for our sleep [Z] was crying and I called out to dad and said her ankle is bruised. Dad yelled back shut up and go to sleep. I called dad again and said it's hurting her dad. Dad came in and told me to shut the F... up I am eating lunch and slammed the door".



[S] said “[L] had to stand in the corner at the hospital”.

[L] said “[Mrs H] said she would smash my head through the wall”.

165. The mother says that the next morning that she took Z to her GP who told her to go straight to the Emergency Department of the local hospital, which she did. The mother says that the child was admitted and remained in hospital for a few days and that she understood that a DOCS notification was made by the hospital. The mother says that a social worker from the hospital told her that the nursing staff had made a complaint against the father and that hospital staff were concerned for the safety of the mother and her children. The mother does not identify the reason for Z’s hospitalisation in her affidavit.
166. The father does not refer to this incident in his affidavit and was not cross examined about it when he first gave evidence in October 2014.
167. Mrs H’s version of this incident in her affidavit is that on the Sunday afternoon, she noticed swelling and discolouration around the top of Z’s foot after getting the child up from her rest and before returning her to the mother. Mrs H asked the child whether she had tripped over or somebody had jumped on her and Z nodded. She saw the father send a text to the mother notifying her of the injury and attended a hospital with the father at around 3:45 pm. She says that x-rays were taken and no visible damage was found. The child was prescribed Nurofen and they were told to watch for increased swelling. She said that she explained to the nurse that Z was to be returned to the mother, so the nurse drew lines on the child’s ankle so the mother could see if swelling increased. They obtained two copies of a report from the hospital. Upon arriving at the mother’s residence, Mrs H said she heard the father explain that x-rays had been done and no damage was found and she heard S tell the mother that “[L] had hurt [Z]”. She also heard the father explain about the pen marks and swelling and the need to take Z to a doctor if the swelling increased. Mrs H’s evidence, as to this incident, was not challenged under cross-examination. It was also not in dispute that Z was subsequently diagnosed when admitted to hospital as suffering from cellulitis, a skin infection.
168. On 17 August 2014, following a weekend with their father, the mother says she observed a bruise on Z’s temple and took a photograph of it. She says that the child told her partner, Mr X, that Mrs H pushed her over and that L and S both told Mr X that “[Mrs H] hurt [Z]”.
169. Under cross-examination, the mother alleged for the first time that she had other concerns about harm to the children in the father’s household when the children spent time with their father in July and August 2014 after the release of Dr K’s report and prior to the father suspending his time with the children. She said L on one occasion complained that Mrs H said “she’d punch his head through the wall” and that “he [[L]] should be dead because he is naughty”.



170. During the adjournment of the hearing between October and December 2014, the children's time with their father recommenced, following a three month suspension of that time. In this period, the mother alleges that Mrs H was again violent towards the children.
171. At the resumed hearing the mother said that when the children were returned to her on 23 November 2014, she observed a scratch on L's neck and asked the child what happened. He told the mother in the presence of the mother's sister Ms D that on the previous Saturday night at bedtime, Mrs H told him to go to sleep, and scratched at his neck in a scooping motion, which hurt and caused him to bleed and cry. S apparently said that she heard L crying at the time. The mother's sister Ms D took L to the Police Station and reported the incident and police took photographs of the child's neck. A small scratch can be seen on the child's neck in the photograph. Subsequently, L and S were interviewed by the JIRT team and Police told the mother that they would apply for an AVO on L's behalf.
172. Although the mother did not give evidence of another complaint made by Z on the same evening, Ms D says that about half an hour after she returned from the police station, Z came to her and whispered in her ear "they pinch me". When Ms D asked Z who did this, the child said "Dad and [Mrs H]. They pinch me and punch me in the back. You can't tell anyone. They said I can't tell mummy because if you tell mummy they'll take mummy away from me and I'll never see her again." Under cross-examination Ms D said that Z indicated that she was pinched on the underside of her bicep, inside her arm and in the small of her back. Ms D said that she checked Z for evidence of pinching and found a slight bruise on her left arm. Ms D said that she advised the mother about Z's allegations within a few minutes and she also mentioned the allegations the following day at the JIRT interview.
173. The father said in further oral evidence at the resumed hearing that on the evening of Monday 24 November 2014 police came to their home and told him and Mrs H that L had alleged that he was scratched by Mrs H on the previous Saturday night at bedtime. The father says that on Saturday 22 November 2014 the children were put to bed by 6:45 pm by him and that he did have some difficulty getting them to bed. Mrs H was out at the cinema with her older daughter and was absent from the home from about 6:00 pm and arrived back at about 9:35 pm. When she arrived home the children were in bed asleep and the father was watching television. The father and his wife deny that there was any incident during the evening which involved Mrs H checking on the children or having any interaction with the children at bedtime. Mrs H's older daughter made a statement to police corroborating her mother's version about events and says that she was dropped home at about 9.45 pm. Documents such as cinema tickets and receipts were tendered to corroborate Mrs H's version.

174. The father also took photographs of the children on the afternoon of 23 November 2014, prior to returning them to their mother. There is no scratch on L's neck apparent in these pictures.
175. The father also said that he had never observed his wife hitting or touching the children in anger and that neither of them had done anything on the weekend of 22 – 23 November 2014 that could be misinterpreted by Z as pinching. Under cross examination Mrs H said that she did not know of any allegation made against her of having pinched or punched Z.
176. Police records indicate that when interviewed by JIRT the child L said that on the Saturday night (22 November 2014) he was talking with S at bedtime and "[Mrs H] came in and said be quiet and scratched me ... with her nails". L said after the incident he started to cry because it started bleeding. L also reported that he and S were sitting on the lounge the following morning when Mrs H approached him and swore at him, grabbed him by the t-shirt and pushed him off the lounge. S was interviewed by JIRT and said that when she was in the bedroom on Saturday night on the top bunk, Mrs H came in and after she left the room L was crying and told her that Mrs H had scratched him. S said she saw red scratches on L's neck but was not sure about any blood.
177. A provisional AVO was granted for L's protection but when the matter came before the Local Court on 27 November 2014 the provisional AVO was revoked.
178. In relation to the other allegations that he and his wife abused the children, the father says in his affidavit that he first experienced behavioural difficulties with the children in late July 2012. At this stage the children told him about complaints their mother had made about he and his wife and denigrating remarks she had made, but no complaint had been made at this stage about any alleged physical abuse. It is the father's case that the mother first started making allegations against he and Mrs H after he first raised the issue of the mother's violence towards him in August 2012 and subsequently amended his application for parenting orders. He denies all allegations against he and Mrs H.

### **Analysis of allegations of family violence and physical abuse of children**

179. The parents give diametrically opposed evidence in relation to family violence and physical abuse of the children. Each of the parents alleges violence and associated coercive and controlling behaviour against the other and denies such behaviour in themselves and each alleges physical abuse of the children which the other denies.
180. So far as the allegations of family violence are concerned, it is in my view important to make a definitive finding as to which of the parents is truthful, for the reason given in Dr K's first report, when he says the following:

*Exposure to family violence*

215. The issue of family violence appears to be a key issue in this case.
216. Both parents told me that the father's application of 19th October 2012 for the children to live with him was prompted by the judicial officer's expressed concern about the dissonance between the serious nature of the father's description of maternal coercion and aggression within the home, and the father's then application for only alternate weekend time.
217. Both parents have presented themselves as victims of a pattern of family violence instigated and perpetuated by the other parent, and both have made limited admissions regarding their own violence, portraying it as reactive to or in defence against the other.
218. It is easy in such circumstances to attribute circular causality, that is to say that the parents were equally at fault in a vicious cycle of mistrust and reactive aggression. To some extent, this will have been true.
219. But, in my view, it is important to endeavour to determine relative contribution of each parent to the couple's relationship dysfunction, as this will be a marker of relative degree of personality function or dysfunction in each parent, and will determine prognosis for each parent with regard to future relational functioning, parenting capacity, and risks to the children.
181. So far as the allegations of abuse of the children are concerned, although this is not a matter concerning allegations of sexual abuse, the authorities dealing with such allegations are equally applicable to the allegations of physical abuse. The question to be determined in this regard is whether there is an unacceptable risk of harm to the children should the orders sought by the parties be made. In my view, having regard to the authorities concerning the inter-relationship between being satisfied that alleged harmful acts occurred, and a finding of unacceptable risk<sup>1</sup>, it is appropriate to approach the matter by first determining whether I am satisfied that the abuse did occur.
182. One of the cases reviewed in *Johnson and Page* at [65] is *W & W (abuse Allegations: Unacceptable Risk)*<sup>2</sup> where the Full Court noted at [111]:
- We accept as a matter of practice, a Trial Judge will almost inevitably be required in a case where sexual abuse allegations are raised to consider whether abuse has been proven on the balance of probabilities as well as considering whether or not an unacceptable risk of abuse exists.

<sup>1</sup> See for example the cases reviewed at [64]-[67] *Johnson & Page* [2007] FamCA 1235.

<sup>2</sup> 2005 FLC 93-235



183. I will, therefore, first determine whether I am satisfied that the allegations of family violence and abuse of the children that each parent makes against the other are proven.
184. In *M v M*<sup>3</sup> the High Court said [at 76]:
- In considering an allegation of sexual abuse, the Court should not make a positive finding that the allegation is true unless the Court is so satisfied according to the civil standard of proof, with due regard to the factors mentioned in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362.
185. In *Johnson & Page* [at 72] the Full Court agreed that reference to the *Evidence Act 1995* rather than *Briginshaw* is the appropriate standard, particularly having regard to s 140(2)(c) of that Act.
186. In considering whether the allegations of family violence and abuse of the children are proved on the balance of probabilities having regard to the matters set out in s 140(2)(a) to (c) of the *Evidence Act*, a number of observations can be made.
187. First, there is the issue of the timing of the complaints. There was at times some prevarication and in my view a lack of candour by the mother as to this issue, but she ultimately conceded that she had not filed any document prior to 22 August 2012 in which she raised allegations of physical abuse of the children allegedly perpetrated by the father or Mrs H. The mother also ultimately conceded that she had no concerns about the father or Mrs H's conduct towards the children prior to 22 August 2012 other than a relatively minor complaint of exposing the children to being bitten by insects.
188. On 22 August 2012, the Federal Magistrate declined to make the consent orders sought by both parents and each parent understood that this was due to the disquiet expressed by the Federal Magistrate that the father only sought to spend time on alternate weekends with the children while making allegations of very serious violent conduct against the mother.
189. Within seven days of this Court occasion the mother contacted police and alleged for the first time that the father had harmed the child L. Following this alleged incident, it is the mother's case that the children were harmed regularly in the father's home. She alleges that each of the occasions the children spent time with their father in December 2012 Mrs H harmed Z by pushing her over, and causing her to graze her knee and exposed Z to being bitten by insects. In February 2013, she alleges that Mrs H pulled Z off the bed by her arm, causing her to hit the ground and hit her and that on 14 April 2013 Mrs H pushed Z off the lounge causing a bruise to her forehead. The mother then alleges that Z received bruises and blisters to her legs during a weekend she spent with her father in July 2013. The mother claims that during the weekend of 27 to 29

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<sup>3</sup> (1988) 166 CLR 69



September 2013, Mrs H kicked Z along the ground in a shopping centre, causing her ankle to be so seriously injured that she was hospitalised. She alleges that in August 2014 Mrs H pushed Z over and hurt her and verbally abused L. She also alleges that Mrs H continued to abuse the children when the proceedings were part-heard on the weekend of 22 to 23 November 2014.

190. Specific findings in relation to mother's evidence concerning particular incidents, are dealt with later in these Reasons. In relation to the timing of the complaints alone, it is in my view, inherently unlikely that the father and Mrs H would first start to harm the children physically when the father was seeking for the first time to have the children live with him, was experiencing difficulties in having the children spend time with him and at around the time Dr K was assessing the respective households of each of the parents. It is equally inherently unlikely that he and Mrs H would regularly continue to abuse the children as the hearing drew closer and during the adjournment period during the hearing.

191. A second observation about the allegations of violence against the children is that they all arise from reports given to the parents by the children themselves. I am of the view that the children's complaints are particularly unreliable, given the circumstances in which they were made.

192. While I accept that the children did begin making complaints about the father and Mrs H in around late August 2012, it is not to the mother's credit that she uncritically accepted them and effectively encouraged the children to continue making them.

193. In relation to the children's complaints about the father generally, in his report, Dr K said:

387. I formed the view that the children, in particular [L] and [S], when with the mother, experienced a partisan need to show loyalty to and align themselves with the mother over the father, and going further to proactively devalue the father and his household whilst idealising the mother and her household.

...

391. It appeared to me that both [L] and [S] on both 5th and 23rd August 2013 [the dates on which Dr [K] carried out his assessment] entered their individual interviews with a burden of duty to pass on to me certain information. They each informed me that the mother had told them of or reminded them of certain information to pass on to me.

194. Although Dr K was of the view that the children had not been asked to memorise a script in the lead up to the interviews, he said:

392. ... they presented as children who were aware of (and had been reminded of) their duty to relay to me what had become a familiar

narrative and a narrative by which they were currently understanding their life circumstances.

195. Dr K also said:

417. ... whilst I am concerned that the mother may have elicited or initiated some of these “disclosures”, I think it likely that most are being initiated by the children in a context of perceived maternal need for the same, and experience of relative stability in the mother in the context of the shared “good” alliance against a “bad” other. These disclosures have then been reinforced by their unquestioning acceptance by the mother.

196. Further allegations against the father’s household were made between the release of Dr K’s report, and the commencement of the trial and also during the adjournment of the proceedings. These complaints were in Dr K’s view further evidence of the children having adopted the “familiar narrative” of the harmful father and relaying events in continuance of that narrative to meet their perception of the mother’s need. It is to be remembered that in his report released in June 2014 Dr K recommended that:

543. The court consider on an interim basis suspending the children’s time with the father, including telephone contact, to protect the children from their needing to take a role in partisan conflict, in the leadup to the partisan process of final hearing.

197. An application to suspend the children’s time and contact with their father was not made following the release of Dr K’s report and the children did see their father regularly in July and August 2014. According to the mother, the children continued to make complaints about Mrs H abusing them during these visits. The father also reported that L became very emotionally distressed on the last weekend in August 2014, when spending time with him and said to the father: “I want you to treat me bad. Then I can go home and tell mum the bad things you do to me because she wants to tell the court.”

198. A similar pattern of the children again reporting abuse by Mrs H occurred when the children recommended spending time with their father during the adjourned period, between October and early December 2014.

199. This reporting by the children was as predicted by Dr K in the lead up to the final hearing and formed the basis for his recommendation that the children have no contact with the father during this period. It is also consistent with the earlier extracts from his report dealing with the children experiencing a partisan need to proactively devalue the father and having a duty to relay to their mother a familiar narrative of abuse in the father’s home. Dr K describes L’s experience of “needing to maintain vigilant loyalty to the mother against the father”.

200. In my view, the observations of Dr K, which I accept, concerning the children's need to make allegations against the father in order to understand their life circumstances and the timing and context in which those allegations were made, suggest that the children's allegations are unreliable.
201. As noted however, the mother accepts the truth of the children's disclosures without question. She confirmed under cross examination that she believed that the father had kicked L in the testicles and punched him to the chest in August 2012. When cross examined about the incident which caused Z to be hospitalised (for cellulitis), the mother said she believed the complaints of L and S that Mrs H had kicked Z along the ground when the children were out shopping. The mother also said she believed the complaints that when the children were at the hospital, having Z's foot attended to, L was required to stand in the corner and that Mrs H told him she would smash his head into a wall in the hospital waiting room.
202. In accepting the children's allegations without question, the mother has reinforced the truth of the allegations in the children's minds, and in effect encouraged them to repeat the "familiar narrative" of abuse in the father's home.
203. Further, in my view, it is of significance that although the mother says she believes that the children's complaints of abuse in the father's household are true, she makes no reference at all to a number of significant incidents in her trial affidavit. She omits any reference to L's complaint that the father hit him in the chest and kicked him in the testicles in August 2012 and this incident was also not referred to in the affidavits of Mr X or Mr C. This alleged assault was particularly significant for the mother, as it was the first complaint made by L of the father's abuse and lead to L receiving extensive counselling over years from a therapist, Ms Y. It also seems, inconsistently, that the mother's version of this event has also changed over time, in that it was put to the father under cross examination that he had dragged the child and locked him in the car, and it was not put that he hit him in the chest or kicked him in the testicles.
204. I also make adverse findings about the mother's credit in relation to her conduct concerning L's counselling with Ms Y.
205. In a letter of 29 January 2013 (actually dated 29 January 2012 but conceded to be an error) from her solicitor to the ICL the mother indicated that she does not attend any of L's sessions with Ms Y and that only the child and Ms Y are in the room together during the sessions. Cross-examination by the ICL revealed that at the stage that letter was written the mother had attended the child's sessions with Ms Y on at least two of six sessions. The mother also denied providing information to Ms Y throughout the entire period L received therapy and, in particular, denied that she had discussed the child's alleged abuse in his presence. It was subsequently revealed under cross-examination that Ms Y recorded a number of matters that the mother told her about L throughout the



period he received counselling from her, including matters that were incorrect such as that L had a diagnosis of defiant behavioural disorder. The mother also volunteered in cross examination that the child was aware that she did not discuss his appointments with Ms Y, but it was revealed under cross examination that there were numerous occasions where the content of L's sessions with Ms Y was discussed by the mother and Ms Y at the completion of the session when the child was in the general vicinity.

206. Not only was the mother proved to be incorrect on these various matters, but she also seemed unable to concede that her presence in the room during L's sessions with Ms Y may have contaminated the child's discussions with Ms Y. She also seemed unable to comprehend that discussing the child's progress with Ms Y when the child was in the vicinity, sent a message to L that his conversations with Ms Y were not confidential and that the contents were being passed onto the mother.
207. That counselling, which should have been confidential and therapeutic for L (if he required it at all), was, in my view, tainted by the interference of the mother and used by the mother for her own purposes.
208. Ms Y described to Dr K the way in which disclosures of the father's abuse were made by L in the course of "play therapy" sessions as follows:

She said: "He always does... play... then [he will say] 'I want to tell you something'... there will be something from the session about going to dad's... [[the child] will be] a bit detached from the emotional connection from the day".

209. Ms Y informed Dr K in October 2013 about her impressions regarding L's perspectives. She told Dr K that she felt that the child "doesn't feel heard by dad", "doesn't now believe his dad" and "[he describes] things happening to him that he thinks are unreasonable [such as] dad's girlfriend not treating his sisters well". She told Dr K at the time "[L] will say 'we've done this at mum's and that's been happy'. When he draws figures, he will draw a big smiley face, and say, 'that's the feeling I have at mum's'. Then, he draws an angry one, for when he's at 'dad's'."
210. On 8 May 2014, when Dr K spoke to Ms Y again, Ms Y reported that L started to do quite well from the end of 2013 and that the mother reported a connection between this improvement and the children refusing to spend time with the father.
211. Dr K's opinion of L's apparent improvement is that his "focus and wellbeing has improved as he has more resolvedly come down on the mother's 'side', and has not held the stress of carrying both a dad-loving and a dad-hating self alongside one another." In other words, it appears that the stress of the tension between L's lived experience (a dad-loving self) and the narrative he is required to adopt to meet his mother's needs (the dad-hating self) is resolved by fully



adopting the negative view of his father. As a result his wellbeing is seen to have improved.

212. The “therapy”, in my view, which was meant to have been beneficial for L, is likely to have provided him with a further opportunity to express the “familiar narrative” of the father’s abuse. Due to the way in which the mother involved herself in discussions with Ms Y at the end of a number of the sessions, L is likely to have been aware that his mother was being informed of him repeating the narrative of the abusive father. In circumstances where the child appeared to be making these allegations to meet his perception of the mother’s needs, the therapy was, in my view, being used to promote the mother’s position rather than operate therapeutically for L.
213. The allegation made by the mother that Mrs H kicked Z along the ground in a shopping centre in September 2013 (which the mother also uncritically accepts), also gives rise to particular concern about the mother’s credit.
214. Although the mother maintains that she believed the children’s allegations, she also must have known that they were inconsistent with the diagnosis of cellulitis given when Z was hospitalised and being informed at the time that the condition could have arisen from Z wearing shoes that were too tight. The mother’s description of the incident in her affidavit is, in my view, misleading, as she omits to mention the diagnosis of cellulitis and implies incorrectly that a notification made to Community Services surrounding the event related to concerns about the father’s abuse. She prefers to provide an explanation of abuse in the father’s household which she must have known was untrue rather than accept the diagnosis of cellulitis which she knew to be correct.
215. It was also revealed under cross-examination of the mother’s counsellor, Ms B that the mother reported to her that the incident resulting in Z’s swollen foot was characterised by hospital staff as having been caused by domestic violence occasioned when the child was in the care of her father. Ms B said that she understood that the swollen and bruised foot was caused by Z’s step-mother (Mrs H) “stomping” on her foot. She said that at no time did the mother tell her that the child’s sore foot was caused by cellulitis.
216. It is also not clear whether the mother resiled from this allegation even though she maintained it was true, as it was not put to the father or Mrs H under cross-examination that Mrs H kicked Z along the ground in a shopping centre in September 2013. Their versions of events consistent with the cellulitis diagnosis were not challenged.
217. In summary, there are a number of features of the mother’s case in relation to the allegations of abuse by the father and Mrs H, which cause me to prefer the evidence of the father over the mother where it differs as to this issue. These features are the timing of the allegations which only commenced after the Federal Magistrate refused to make the consent orders and the inherent

unlikely that the father and Mrs H would for the first time physically harm the children at this stage of the proceedings and then regularly continue to do so throughout the rest of the proceedings. The allegations also are based entirely on unreliable evidence, that is, complaints made by the children themselves. The omission of critical incidents from the mother's affidavit, such as the alleged assault on L in August 2012 and the failure to put the mother's case as to this incident to the father in cross-examination, also cause me to prefer the father's version. The mother's evidence in relation to her involvement in the sessions with Ms Y was also misleading and the way in which she attempted to utilize those sessions for her own purpose also affects the mother's credit.

218. There are also particular issues relating to a number of specific complaints that also cause me to reject the mother's version. For example, the allegation that on 14 April 2013 Mrs H pushed Z off a lounge and caused a bruise to her forehead is inconsistent with evidence that the children did not spend time with the father on that weekend, which was unchallenged by the mother.
219. The allegation that Mrs H kicked Z along the ground in a shopping centre, causing her ankle to be seriously injured, in September 2013 is also inherently unbelievable. Further, Mrs H's version of the circumstances surrounding this incident was not challenged by the mother and there is no dispute that Z was hospitalised for cellulitis.
220. The incident that was said to have occurred during the proceedings where it is alleged that Mrs H scratched L's neck is inconsistent with Mrs H's undisputed alibi evidence. It is also inherently unlikely to have occurred at that time in the proceedings and is inconsistent with the extremely minor skin mark apparent in the photographs of L's neck. There are also internal inconsistencies in the evidence of the maternal aunt and between her evidence and the mother's. The entire complaint, including the allegation that Mrs H had also pushed the children off the couch, was not put to either the father or Mrs H.
221. The mother has also not explained her inconsistent position in claiming that the children were harmed physically and emotionally in the father's household from late 2012 to August 2014 and yet she continued to make the journey with the children to the father's home each alternate weekend even though she was not legally obliged by court orders to do so.
222. For all of the foregoing reasons, in circumstances where I have no concerns about the credit of the father or Mrs H as to this issue, I am not satisfied that the father or Mrs H abused the children as alleged by the mother.
223. My findings in relation to the mother's credit generally are equally applicable when considering the allegations of violence between the parents.

224. There are also a number of additional features concerning the parents' allegations of abuse against each other which, in my view, adversely affect the mother's credit.
225. First, the mother has failed to explain adequately or at all her role in a number of very serious incidents of violence which she seems to accept did occur, albeit in a different manner than alleged by the father. For example, although she accepts there was an incident in which she required the father to put glue in his mouth, she fails to give any version in her affidavit of that incident. She also seems to accept that on a number of occasions she used a knife in the course of altercations with the father in 2007 but fails to explain how she came to be using a knife. She describes one single incident "in 2007" where she grabbed a knife in the course of an argument, but does not say she used the knife to harm the father, even in self-defence. Even though the father was not challenged about his assertion that the mother stabbed him on 6 May 2007 sufficiently seriously to require his hospitalisation and surgery, she could offer no more than to agree under cross examination that the father "was cut" in that incident. Although it was suggested to the father under cross examination that on a number of occasions the mother held out a knife to him because he was following her, she does not give any evidence in her affidavit of any incident where this occurred.
226. Similarly, although it was submitted on behalf of the mother that in late 2007, she and the father discussed their relationship and each agreed to "stop bringing out the knives", the mother does not refer to incidents in her affidavit (other than the one "in 2007") when either or both of the parents used knives or to this conversation having occurred.
227. It was also put to the father that he had lied, exaggerated or embellished "innocent incidents" throughout 2006, but the mother does not give evidence of any "innocent incident" which she says was exaggerated or embellished.
228. It is also the mother's case generally, as put under cross examination and in submissions, that the altercations between herself and the father in 2006 and 2007 occurred because of difficulties she experienced after L's birth due to his reflux and her extreme tiredness.
229. However, the mother makes no reference in her affidavit to any parenting difficulties or L's reflux or any incident that may have been connected to these difficulties. The father did agree under cross-examination that L did suffer from reflux and screamed a lot as an infant. This contention that she had particular difficulties in parenting L is also inconsistent with the mother's own evidence that she had returned to work three months after the child was born, and that the child was in day care. The mother's general competence as a parent is also supported by her evidence that she worked up to the day S was born, that she worked part time from home during maternity leave and that she took the children into work approximately once per week during maternity leave.



230. The mother also contends generally that on each occasion that she was involved in a physical altercation with the father she was responding to provocation or acting in self-defence. The mother provides no evidence in relation to these matters in her own affidavit and under cross-examination generally broad propositions only, were put to the father in relation to provocation and self-defence. For example, the following was put to the father on behalf of the mother, if the mother ever used the phrase "I'll kill you" she said it "in an atmosphere that she was put upon and she was not intending to harm you".
231. It was also suggested on numerous occasions that the father was "working the mother up". Some specific examples of the father's alleged provocation of the mother were put to him under cross-examination. It was suggested that on a number of occasions in 2006 he said "I'm glad your mother is dead" which he denied. It was also suggested that on many occasions the father threatened to take the mother's home from her, which he also denied. It was also suggested to the father that he provoked the mother by hiding L from her by locking him in the garage, which the father denied.
232. Otherwise the mother's allegations about the father's provocation in her affidavit are extremely general, and no other specific words or actions allegedly amounting to provocation were put to him either generally or in relation to specific incidents.
233. In relation to the mother's position that she was a victim of domestic violence, the mother was shown hospital records at the time S was born, where it was recorded that the mother denied that there was any domestic violence in her home. The mother said that she had lied in answering these questions. On other occasions where the mother was confronted with records made by other people which were inconsistent with her evidence, she asserted that the author of the records was wrong. For example, the mother said that a number of Ms Y's records were incorrect, such as that she had told Ms Y that L had a diagnosis of defiant behavioural disorder, that she had discussed the evidence in the proceedings with Ms Y and that she told Ms Y she and the father had lived together for six years prior to marriage.
234. So far as the father's credit is concerned, it is also the case that he did not make allegations about the mother's violence in the proceedings until August 2012, 12 months after he first sought parenting orders. There is no dispute, however, that from April 2007 he reported to his brother that he was abused by the mother and that she was threatening and harming L. He also began to gather "evidence" to support his claims from December 2006 when he began covertly taping conversations, taking photographs of his injuries and taking notes of incidents.
235. The father's explanation for his own failure to report serious abuse by the mother of himself and L is contained in his own affidavit and a consistent



explanation was given to Dr K. The father says that it was his intention to avoid conflict with the mother until property and parenting orders had been made and he would then approach Community Services with this evidence and try to protect his children in that way. Dr K describes this plan as reflecting the “distorting impact of the pragmatic (in the immediate circumstance) but problematic (in the longer-term) thinking of the family violence victim ... to maintain safety by not provoking the aggressor”.

236. In my view it is also to the father’s credit that he conceded that on the one occasion that his parents were called and took him from the family home that he was drunk, abusive and aggressive.
237. There is also some specific independent evidence which in my view corroborates some of the father’s allegations of the mother’s violence. The records of the hospital in relation to the father’s admission for the laceration to his elbow in May 2007 is consistent with the father’s allegation that the laceration extended to his bone and required surgery. The police records relating to the incident on 13 September 2008 which was sufficiently serious to cause a member of the public to contact police, while not specifically allocating fault between the parties, nominate the father as the victim and the person of interest (the alleged offender) as the mother.
238. Without considering the contents of the taped conversations at this stage for a hearsay purpose, that is only considering the words spoken, I am of the view that the words spoken by the parents on the tapes are consistent with the father’s allegations and inconsistent with the mother’s case. For example, the mother is heard to say clearly on a number of occasions in one of the recordings played in Court “I want to die”. In another taped conversation the mother clearly says “I’ll kill him” (with reference to [the father’s] “son” when L was an infant). Under cross-examination the mother denied that she had said these things and said she did not recall hearing them on the tapes. It was also specifically put to the father that the mother had not said these things even though they are clearly recorded as having being said by her in the taped conversations.
239. Taking into account all of the foregoing, and a consideration of all of the evidence other than the taped conversations (except for considering them for a non-hearsay purpose) I prefer the father’s version of the events relating to violence between him and the mother over the mother’s version. I am satisfied to the requisite standard that the mother was a perpetrator of serious family violence against the father throughout their relationship and that the children were at times exposed to this violence.
240. I am of a view that the contents of the taped conversations are also entirely consistent with my finding that the mother was the perpetrator of this violence and did not act in self defence as she asserts. The taped conversations provide compelling corroboration of the father’s version. It is to be remembered that

Dr K also formed his opinion without considering the contents of the taped conversations. In oral evidence he said, having then heard the taped conversations:

I'm always uneasy giving advice, because I don't know what's true and isn't. And I suppose, in many ways, what was on the tape was very consistent with my impressions. So I suppose, having heard the tapes, I felt more competent – confident in my professional opinion. And I suppose the other comment I would make ... is that the lived experience of hearing the intensity of the mother's coercion and verbal aggression, I suppose reinforced to me my concerns about risk. Because part of me feels very uneasy about recommending disrupting what looks like a very functional life that these kids are living. But I suppose listening to these tapes, it reinforced why I had ended up giving that advice, even without listening to them.

### **Mother's personality**

241. The orders proposed by the father and the ICL respond to the contention that the mother has a significant personality dysfunction which, as I understand it, is disputed by the mother.
242. The father and the ICL rely to a very large extent upon the assessment of Dr K, the expert, in relation to this diagnosis and also to some extent on other factual matters which it appears were in dispute in the proceedings.
243. Dr K is a consultant child, adolescent and family psychiatrist engaged in private practice in clinical and medico-legal child, adolescent and family psychiatry. He has an Honours degree in medicine and has training in child and adolescent psychiatry and holds a Doctor of philosophy in psychological medicine. He has also been a Fellow of the Royal Australian and New Zealand College of Psychiatrists since 2003. He is a member of a number of professional organisations related to psychiatry, has written in peer refereed journals and written two chapters in books relating to psychiatry. Dr K has been a lecturer at the New South Wales Institute of Psychiatry Child and Adolescent Psychiatry Advance Training Program since 2005 and presents regularly at professional conferences or educational meetings for mental health for a varied audience including mental health professionals and legal practitioners.
244. For the purposes of his assessment Dr K interviewed the parents and members of the respective households and had access to some documents produced upon subpoena in August 2013.
245. In October 2013, the father sought to provide the recorded conversations and transcripts to Dr K for the purposes of his assessment. At that stage, Dr K's report was suspended until the issue of the additional material was resolved. On 17 March 2014, it was determined that the tapes and transcripts were not to be provided to Dr K. On 5 May 2014 Dr K had further telephone conversations

with each of the parents. At this stage the contents of the taped conversations had been revealed in the course of the father's application to have them provided to Dr K. The doctor made it clear to the mother when he spoke to her that she was under no obligation to discuss the tapes but said that "she appeared to wish to comment upon her response to having heard them". On 14 May Dr K finalised his report.

246. Dr K is of the opinion that the mother "does not have a serious or ongoing mental disorder and is very unlikely to have a serious mood disorder such as a recurrent major depressive disorder". The doctor noted that the mother "maintained a consistent high level of personal and occupational functioning". In Dr K's opinion the mother also "presents well to others and functions well and to her own strategic advantage in non-intimate relationships". He described the mother's functioning in these areas as "supra normal".
247. Of significance, the doctor expressed the following view:
  295. The mother's attitudes and behaviour towards the father and probably towards the children over time reveal **significant personality dysfunction, with prominent narcissistic, antisocial and borderline personality traits.**
  296. By using these 3 descriptors, I am not suggesting that the mother has 3 separate pathologies, but rather that she has dysfunctional personality traits that span these 3 descriptors. Such a clustering is commonly seen, and these 3 descriptors (along with "histrionic", which does not describe the mother) are part of the DSM V "Cluster B" of descriptors of personality dysfunction.
  297. It is unclear to me whether these aberrant attitudes and behaviours have existed mostly in the domain of the mother's intimate relationship with the father, as part of a pattern of family violence within that relationship, or whether they reflect a broader pattern of behaviour in intimate relationships, and are present also in other spheres such as in her occupational, friendship and broader family relations. If the latter is the case, the mother may have a personality disorder.
  298. The differentiation between personality traits and disorder is one of degree, and is not central to the matters before the court ... Even if the mother's aberrant behaviours have been limited to the sphere of relations with the father and children, this is predictive of the continuation of similar behaviours within those relationships and future partner and parenting relationships.
248. When the doctor considered the issues of both the mother's personality and the allegations of family violence, he was of the following opinion:
  230. It appeared to me that out of her own childhood adversity, the mother had developed a (rather idealised, but productive) drive to



become a strong, independent, functional and successful woman, but that along with this came a devaluing disdain for what she came to view as the weak and dependent father, whom she viewed as a failure. This might be termed a “secondary narcissism” in the mother (secondary because it functions as a defence against insecurity and fear, as opposed to primary narcissism, which occurs in those born and therefore accustomed to an entitled sense of self), along with which comes a sense of entitlement, capacity for interpersonally exploitative behaviour, and lack of empathy for others.

231. The intensity of the mother’s disdain for the father leads me to believe that this was in part an insecure need for the mother to project out from herself and to destroy any vulnerable part of herself, that might threaten her own failure as a person or in life. This more emotionally “hot” maternal aggression arose from borderline personality dysfunction. Sometimes it could appear as a “hot” and explosive rage occurring in response to perceived threat to self.
232. I observed also a pragmatic side to the mother’s coercive behaviour towards the father, which continued because it worked to her own advantage. This more strategic, utilitarian and emotionally “cool” maternal aggression arose from antisocial personality dysfunction, ie. a pattern of disregard for and violation of the rights of the father, incorporating deceitfulness, irritability and aggression, and reckless disregard the safety or wellbeing of the father. The mother showed a lack of remorse for her actions towards the father, being indifferent to or rationalising having hurt or mistreated him.
249. Dr K concluded that the mother was the main perpetrator of serious violence against the father and that her actions were not in self-defence. He said that following the various interviews and review of documents and follow up interviews with each of the parents and involved professionals, and having not heard the recorded conversations:
  222. I have formed the view that the relationship between the parents was characterised primarily by a pattern of family violence perpetrated by the mother against the father, present from early in their relationship, and continuing until well after relational separation.
250. He went on to say:
  223. It is important to note that in using the term “family violence” I am not speaking only or even primarily of physical violence towards the father, though it is my impression that the mother was recurrently physically violent to the father during the course of their relationship. I am using this term as it is commonly used in clinical practice and in the clinical and social sciences literature (interchangeably with the term “domestic violence”) to denote a



pattern of behaviour within a family relationship that is coercive, intimidating, disrespectful, and harmful to the other.

224. I formed the view that this pattern of violence was at the severe end of the spectrum, in particular with regard to the mother's entitled, controlling, threatening, demeaning, cruel and withholding behaviour towards the father, and her use of control, intimidation and strategic/ deceptive behaviour to project an appearance of normalcy and good character regarding herself and her household whilst continuing to behave towards the father in an emotionally and physically abusive way.
225. The father contributed to the development and perpetuation of this pattern of family violence through a pattern of passivity and accommodation to the mother's control, which both reinforced in the mother's mind her superiority and the father's lack of significance, and reinforced her coercive behaviours through their success and the lack of challenge to them.
226. Put another way, the more entitled, demanding, threatening and demeaning the mother became, the more meek, yielding and (in the mother's eyes, I believe) pathetic the father became, and the more pathetic the father became, the more justified the mother felt in (literally and figuratively) "kicking him around" (my words).
251. Dr K's opinion was based not only on an assessment of the allegations of violence I have determined, but on other sources. He says:
  234. My impressions of the mother as perpetrator of family violence and of her personality style are drawn from others' account of their experience of her (specifically the father, the father's extended family, the father's partner, and the father's partner's daughter ...), from her own account of her experiences, from the documents, from her presentation at interview, and from other's descriptions of and my own observations of the children.
252. The mother also presented herself to Dr K as the victim of family violence perpetrated by the father. In relation to this presentation, Dr K said:
  274. I formed the view overall, that the mother was a perpetrator not a victim of family violence, and that her presentation of herself as a victim was a deliberate strategy aimed to distract from or to attempt to contextualise away her own aggressive or coercive behaviour ...
253. Dr K remained firm in his opinion that the mother was the perpetrator of violence and not a victim under cross-examination. In relation to the issue of family violence, the doctor was cross-examined about the possibility that it was mutual and that the father was the instigator of most of the aggression. He said he had considered that possibility but did not come to that conclusion. When asked about a particular occasion when the father agreed he was the aggressor,

the doctor did not think that this was different to the facts presented by the father or that it changed his opinion. In this regard he said:

If the court found that it [the father was aggressive] happened from time to time, that would not be a huge difference, because someone under that sort of pressure will often behave in that way from time to time.

254. Under cross-examination Dr K was unmoved in relation to his opinion concerning the mother's personality. He was extensively cross-examined by counsel on behalf of the mother concerning potential sources of information that he did not pursue and information given by the mother which was not included in his report. He did not agree that he ought to have contacted other sources including the childcare centre attended by the children. The doctor agreed that he did not list everything that the mother and Mr X had told him in his report. He did not agree, however, that various matters omitted were of significance and ought to have been in the report and said that each of the matters of significance put to him were, in fact, contained in his report.

255. The doctor was challenged as to some of the factual matters he relied upon in forming his opinion. In relation to the aspect of the alleged financial control of the father by the mother, the doctor said it was not one of the most concerning things mentioned but was an element of how the father was treated. When he was asked about evidence which indicated that the father had access to significant funds at the time that he says the mother was financially controlling, the doctor said the issue was not access to money but that the father was subject to scrutiny, control and consequences by the mother. When asked about specific details concerning the father's access to money and whether this was a different scenario to that given to the doctor by the father. The doctor said:

If overall, his presentation to his parents and his brother of him being the victim – of coercion, aggression, blame, retribution – is accurate, then – I suppose a few facts here and there might be part of – sort of, not a big deal. If, overall, his presentation to the family is inaccurate, that suggests a form of, sort of, dependent or histrionic personality in him, that he has needed to, sort of, fabricate a big drama to get a bit of sympathy from his family. So – yes, I think it – the extent to which, if at all, he has amplified or exaggerated his narrative to his family is relevant.

256. It was suggested to the doctor that the mother's behaviour, particularly when L was a small baby, may have been a result of her experience and mental state in the post-birth period. The doctor was of the view that her behaviour was part of her personality and he said that he had considered the issue of depression. He said that if the court found that the mother had only engaged in more extreme behaviour such as coercion and threats in the six months postpartum period and then had successfully had other children, that reduces her risks to the children. He also said:

If the court found more like what the father described, that there was maternal aggression that also stretched back to early in the relationship pre-kids and that also persisted through 2007, 2008, 2009 then it's less reassuring, I suppose that these events occurred around the birth of the child.

257. The doctor was cross-examined about how it was possible for the mother to present so well to so many people if she did have the personality dysfunction he described. The doctor said:

I think what's more likely is that the mother has a personality disorder, and that part of that personality disorder is a marked disintegration of self so that the self that functions day-to-day is supra normal in a driven, insecure way ... but that there's a part of her that is not well integrated, that includes despair, distress, anger. And that in the relationship with the father, something very dark happened, in terms of that part of her being projected onto him. Made worse, I think, by his personality, in that the more aggressive she became, the more pathetic he became. And the more pathetic he became, the more part of her hated that in him ... that potential for her to split that far is very concerning. Because I see a lot of mothers who have severe post-natal depression, and it's not typical that they threaten their partner or their child's life, or their partner needing to kill themselves in order to protect the child's life. So these splits under stress very concerning, and I think it difficult to ignore.

258. There is no alternative evidence about the mother's personality from a similarly qualified expert, though the mother's counsellor, Ms B, a clinical psychologist, expressed an opinion in January in 2012 that the mother at that time was experiencing anxiety related symptoms. Ms B also said she did not see any traits of a cluster B personality dysfunction in the mother.
259. I prefer the opinion of Dr K that the mother does have a borderline personality dysfunction to the opinion of Ms B. Dr K, in my view, has greater expertise than Ms B and had available to him a wider and more objective range of sources of evidence than that which was available to Ms B. It was also revealed under cross-examination that information provided to Ms B by the mother was incorrect or unreliable such as the mother telling Ms B that Z's foot was injured in September 2013 by Mrs H stomping on it and that hospital staff were of the view that Z's foot was injured in a domestic violence incident. Ms B was also, in my view, partisan in her evidence towards the mother, in particular, in her interpretation of matters reported by the mother that she regarded as physical abuse. Ms B also appeared to be primed to deal with the issue of the timing of the mother's allegations of physical abuse of the children which was a significant issue in these proceedings as she had created a number of notes on the morning she gave evidence to assist her if she was asked to give an account of when the mother had disclosed this abuse. Ms B also did not listen to the recordings of the covertly taped conversations or read any of the



transcripts and appeared to be consciously avoiding any material that contradicted the mother's presentation to her.

260. For the reasons given, I am satisfied that the mother suffers from a personality disorder as identified by Dr K.

## **THE LAW & DISCUSSION - PARENTING**

261. The objects of Part VII of the *Family Law Act 1975* (Cth) ("the Act") and the principles underlying it set out in section 60B, form the framework for the part of the Act dealing with parenting.

262. The objects are to ensure that the best interests of children are met by:-

- a) ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child; and
- b) protecting children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence; and
- c) ensuring that children receive adequate and proper parenting to help them achieve their full potential; and
- d) ensuring that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children.

263. The principles underlying these objects are that (except when it is or would be contrary to a child's best interests):

- a) children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together; and
- b) children have a right to spend time on a regular basis with, and communicate on a regular basis with, both their parents and other people significant to their care, welfare and development (such as grandparents and other relatives); and
- c) parents jointly share duties and responsibilities concerning the care, welfare and development of their children; and
- d) parents should agree about the future parenting of their children; and
- e) children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture).

264. According to section 60CA of the Act, in deciding whether to make a particular parenting order in relation to a child, a Court must regard the best interests of a child as the paramount consideration.

265. Section 60CC sets out the primary considerations and additional considerations to be considered by a Court in determining what is in a child's best interests.



## Primary considerations

### *Meaningful relationship with both parents*

266. The primary considerations (under s 60CC(2)) as applied to these children are:

- a) The benefit to them of having a meaningful relationship with both of their parents; and
- b) The need to protect them from physical or psychological harm, from being subjected to or exposed to abuse, neglect or family violence.

267. These proceedings were commenced prior to June 2012 when the law changed in a number of aspects. The law to be applied is as it stood when the proceedings began, which requires that each of these primary considerations to be balanced equally.

268. The meaning of the phrase “meaningful relationship” is not defined in the Act. The Full Court in *McCall & Clark*<sup>4</sup> has approved the interpretation of the phrase by Brown J in *Mazorski & Albright*<sup>5</sup> and has also agreed with the reasoning of Bennett J in *G & C*<sup>6</sup>. Brown J in *Mazorski & Albright* (supra) said at [26], after setting out the definition of “meaningful” and “meaning”:

What these definitions convey is that “meaningful”, when used in the context of “meaningful relationship”, is synonymous with “significant” which, in turn, is generally used as a synonym for “important” or “of consequence”.

269. Bennett J discussed the terminology in *G & C* (supra) and said “the enquiry was a ‘prospective’ one which requires a court to evaluate the extent to which a meaningful or significant relationship with both parents is going to be of advantage a child (sic).”

270. The orders proposed by the ICL and supported by the father would not result in the children having a significant relationship with their mother as they provide for the children to live with their father, spend no time with their mother for 12 months and then provide for her to spend time with them six times a year in a supervised setting.

271. It would only be appropriate to make the orders proposed by the ICL and father if I were of the view that maintenance of a meaningful relationship with the mother would not be in the children’s best interests. As the Full Court said in *McCall & Clark* at [122]:

No doubt in the majority of cases there will be a positive benefit to a child of having a significant relationship with both parents, but there will also be some cases where there will be no positive benefit to be derived by a child

<sup>4</sup> (2009) FLC 93-405; 41 Fam LR 483; [2009] FamCAFC 92

<sup>5</sup> (2007) Fam LR 518

<sup>6</sup> [2006] FamCA 994

by a court attempting to craft orders to foster a relationship with one parent if this would not be in the child's best interests.

272. The ICL's proposal is based to a large extent upon the recommendations of Dr K. In his report Dr K was of the view that the children should live with their father and he should have sole parental responsibility for them. He then said:

529. After a significant period of time to allow the children to develop security and connection in their father's home, it would be ideal for the children to maintain some time spent with the mother. But I am cautious about whether this can be achieved without the mother drawing the children into partisan conflict, and without the mother disrupting the security and wellbeing of the father and his household.

273. Dr K considered that one alternative would be for there to be very limited supervised time with the mother which would "maintain for the children a thread of connection" with her. In his report he had also considered that another alternative would be to allow more substantial time with the mother such as a full day or full weekend once per month, unsupervised. A third alternative in his report was for the children to continue to live mostly with the mother and to spend time with the father but that it be clear that the children actually engage in contact, with the father.

274. In his report, Dr K had concerns about allowing the children more substantial time with their mother. Under cross-examination he became more firm in his view that if the Court found that the father is "not dangerous" it was in the best interests of the children to live with him and spend very limited time with the mother. Dr K's final recommendation was as follows:

I must admit, I would lean towards an ongoing process of just letters, rather than supervised face-to-face. Because I think supervised face-to-face, because of the intense paradoxical positivity for the kids of their time with mum, that in some ways it's so functionally positive, but in other ways it's dangerous. That – even every two months face-to-face contact could be confusing and challenging for them. So it might be better for them to get on with being raised dad, with an ongoing awareness of what's going on with mum. And then I've made that suggesting [sic] that at 15 there be – for each child there be an opportunity for a shift. And then at 16, an opportunity for residence choice, which really is just a reflection of reality in today's society.

275. So far as the mother's proposed orders are concerned, it may appear at first blush that such orders would result in the children maintaining a meaningful relationship with their father. However, I accept and place weight on Dr K's opinion in relation to this issue.

276. Dr K remained of the view under cross-examination that it is highly likely that if the children lived mostly with their mother it would not be "feasible or

constructive in the longer term for the children to have regular time with the father". In this context he reiterated his evidence concerning the children's alignment with the mother and their "need to lock in with their mother's stance". Part of this stance is to reject the father to meet the mother's needs. The doctor felt that it was not reasonable for the children to be placed in the position of being taken to spend time with their father but refusing to do so, which he described when it happened in the past as "this sort of theatre of driving down there and needing to refuse". He said that it was not tenable and would be problematic for the children and their relationship with their father if the children were required under orders to spend time with him. He felt that if the mother's proposal were to be implemented under orders, it would "likely ... lead to the children not having a relationship with their father".

277. Due to the factors set out in the foregoing paragraphs, I am of the view that under both suites of proposed orders the children would not have a meaningful relationship with the non-residential parent.

***Protection from harm occasioned by being subject to abuse, neglect or family violence***

278. This section requires the court to consider harm that may be occasioned to children in a particular way, that is physical or psychological harm from being **subjected to or exposed to abuse, neglect or family violence**. This consideration looms large in this case.
279. Allegations that the children have been subjected to abuse in the paternal household have been considered and for the reasons indicated, I am not satisfied that the children have been subjected to such abuse. However, the question still remains as to whether there is an unacceptable risk of harm to the children should they live with the father as alleged by the mother.
280. The issue of risk in the father's household was considered by Dr K both in his report and in oral evidence. Dr K was of the view that neglect of the children and emotional or physical abuse of them by the father or his partner was unlikely based on his overall assessment including his view of the "personalities and relational styles" of the father and his partner.
281. Dr K said he could not discount that the abuse towards the children in the paternal home may be occurring and said "one of the challenges in this setting is, in a sense, the boy that cried wolf". He said that he could not reject the possibility that what the children were reporting was accurate but it did not "fit with what [he] saw". I, likewise, cannot dismiss that there is some risk of abuse in the father's household but having regard to the totality of the evidence I am of the view that the magnitude of such a risk is low and could not be regarded as an unacceptable risk.
282. Dr K also referred to the link between the perpetration of family violence to a partner and the risk of abusive behaviour by that perpetrator towards children.



As I have found that the father did not perpetrate a pattern of family violence against the mother, then there is no increased risk on this basis that he has or will abuse the children.

283. There is no suggestion that the children will be neglected in the mother's household. The issue of the children being subjected to abuse by their mother if they were to live with her is associated with my finding that she has a history of perpetration of family violence. Under cross-examination, Dr K elaborated on the link between the perpetration of family violence to a partner and the risk of abusive behaviour towards the children. The doctor said that in addition to the epidemiological evidence concerning abuse of children in the families where there is family violence, he also expressed a specific opinion concerning this family. He said "the same processes that in my view have led the mother to become very controlling, demeaning, aggressive and violent to the father can occur with the children in a similar setting where there is tension within the relationship or challenge within the relationship". He conceded that there is some level of protection of the children by their genetic connection to their mother. He was, however, particularly concerned about the mother's "loss of maternal or parental role" when intensely aggressive or distressed as evidenced in the recorded conversations when L as a baby was crying in the background and the mother's focus "was very much on her own coercive process with the father" and at other times on the intensity of her own distress rather than her role as a mother.
284. In addition, according to Dr K, there are other significant concerns for the welfare of the children in the care and/or under the influence of the mother. He says these concerns are:
- The indirect effect on the children of the mother's perpetuation of a pattern of family violence towards the father, such that the father is at risk of emotional harm and harm to reputation, which can then disrupt his parenting capacity. This is particularly relevant considering the severity of the pattern of family violence during the parental relationship.
  - The direct effect on the children of witnessing maternal aggression or coercive behaviour towards the father and others, in terms of each child's subsequent fear and distress.
  - The effect on the children in terms of the mother modelling antisocial or borderline behaviour and relational patterns to the children, and the children incorporating these into their own personality and relational patterns. As the children grow older and transition from childhood to adolescence, the risk would increase.



- The risk to the children posed by the mother's emotional or physical aggression to the children, as each child grows up and individuates from the mother.

285. Dr K describes the risk which is associated with the mother's perpetration of family violence as difficult to "quantify, treat and monitor" because of the mother's denial and failure to acknowledge it.

286. Dr K was cross-examined extensively about his opinion about the mother's comments to him in May 2014 concerning her response to hearing the taped conversations. The doctor was of the opinion that the mother did express some "dissonance" in that conversation in that she said her behaviour recorded on the tapes was not indicative of her normal behaviour and that she "probably expressed some regret". He maintained that the mother's tone overall, however, was "explaining her behaviour in terms of her being the victim of the father's abuse and concluding that the tapes must be manipulated". The doctor did not agree that the mother had been reflective and said:

I suppose, overall, one of my biggest concerns in listening to those tapes and looking at the two folders I was sent [transcripts of the tapes] was the lack of maternal engagement with those very very serious, in my view, sequences, that there's much, much more than just a fight between parents, that the mother, in those sequences, is making threats to the child's life, is making threats to the father's life, is being demeaning, coercive, and I suppose what I would have wanted to see is some engagement with that and some connection with that. But what I observed is more of what I call in my report that sort of disintegration, that her explanation in her documents remains that she only ever did those things in response to paternal abuse, whereas, in my view, when one listens to her tone and the sequence, she isn't – she does not present as frightened in those recordings. She presents as actually demeaning, controlling, demanding the father restate things, mocking his comments. There's nothing in there that feels like she is reacting to someone she is frightened of. So because she hasn't given me back anything that connects with that, it is difficult for me to even give advice about therapy or to have a sense of how to manage that risk, because she hasn't really gone to what I would see as very serious behaviour, even if it's true that that only occurred when she was severely depressed for six months after the birth of the child, which I don't think is true. If children are in her care, one wants to manage risk that could happen if she gets cornered by future adversity ... the father's description of events and those recordings, even though, of themselves, suggest significant psychopathology that needs addressing, and I suppose I'm not comforted by any sense that the mother is connecting with that part of herself.

287. Overall, the doctor did not change his views about the mother's personality pathology. He did, however, remain firm about the significance of his opinion that the mother was the aggressor in forming that view. He said that his

concern was that the mother's "ongoing narrative about her being the victim of abuse and afraid and only secondarily reacting" is "fundamentally incorrect". He reiterated that if the Court finds that the father has engaged in a pattern of behaviour as the aggressor then that would reduce the significance of his views about the mother's personality and risks associated with it. For the reasons previously given I do not find that the father did engage in a pattern of behaviour as the aggressor.

288. It was submitted on behalf of the mother that she has acknowledged her violent behaviour and reliance was placed upon the evidence of Ms B, the mother's therapist. Ms B, who had commenced giving the mother psychological therapy in August 2011, was still treating the mother as at the date of the hearing. Ms B did not agree with Dr K's opinion that the mother "did not appear to acknowledge or connect with any past or present negative thought or emotion with regard to relational matters".
289. Ms B was of the view that the mother had taken responsibility for her role in the family violence because the mother could see that she would "act out when she felt frustrated", but at all times the mother continued to maintain that she was responding to the father's antagonism. Ms B confirmed that the mother did not ever acknowledge that she was the aggressor or was coercive or was a perpetrator of violence in her relationship with the father.
290. As a result of my findings that the mother was the perpetrator of family violence and was not responding as a victim, I do not accept the evidence of Ms B as to the mother's acknowledgement of her role in the violence in the relationship.
291. I am also of the view that because the mother continues to portray herself as the victim and the father as the aggressor and has not initiated any treatment in respect of her own personality dysfunction, she remains a risk for the children.
292. There are also risk factors associated with the mother's "coercive power" to ensure that the family dynamics were not reported externally. In one of the recorded conversations played in Court the parents are recorded as saying the following:

M: I promise you this [father's first name], you mention this to one fucking soul cunt, and I swear to God I will fucking kill him, yes.

F: [Mother's first name] yes I understand that very well.

M: I said it to you before not to mention it to anybody and you fucking treated me like shit. I fucking promise you one thing [father's first name] you will pay with his life if you fucking dare say this to anyone again.

F: Yeah.

M: Do you understand me?

F: Yes I understand.

293. Dr K was of the view that this recording demonstrated a concerning risk for the children “that cornered and under pressure in her relationship with the father, the mother pulled into coercive secrecy”.
294. Dr K was also of the view that because of the mother’s capacity to present normally to the outside world and ensure that any of the realities of the domestic circumstances are contained within the household, that risk in the mother’s home “will not necessarily be reduced by apparent household normalcy or by compliance with monitoring”.
295. The risk that the mother will be abusive, which Dr K believes will be ongoing and likely, is also associated with the “intermittent maternal splits” displayed by the mother as a feature of her personality dysfunction. Dr K believes that this risk would increase if orders are made as the mother seeks as “there is no longer the stabilising structure of the household organising against the external threat” [of the possibility that the children may be moved to the father’s care].
296. In summary, I accept and place significant weight on Dr K’s opinion that there are particular risk factors to the children in the mother’s care associated with her personality dysfunction and my finding that she is the perpetrator of serious family violence. The mother has not acknowledged that violence and continues to portray herself as victim. The fact that she presents so well externally and that through her coercion managed for many years to ensure that her conduct was not reported are added risk factors.
297. The relative risk of physical and psychological abuse of the children and exposure to family violence, in my view, is significantly greater if the children live with the mother than if they live with the father. In my view there is an unacceptable risk of harm to the children if they are to live with their mother as proposed by her.

#### **Additional considerations**

298. Section 60CC(3) then sets out additional considerations the Court must consider when determining a child’s best interests and I will refer to those which are relevant in this case.

#### ***Views of the children and factors underlying those views***

299. When interviewed by Dr K, L that he would like to “live with mum and not see dad” but then is described as pausing and appearing ambivalent and saying “... maybe... some time with dad”.
300. Dr K was not sure that S had fully understood his question concerning her views and she said that she would prefer the adults to decide. She told Dr K



that she would worry about getting it wrong or upsetting one of her parents if she were to decide and said “I don’t wanna upset mum”.

301. I attach little weight to the views of L and S given their age and that I have accepted Dr K’s evidence about the children’s need to align themselves with their mother when expressing their views.
302. The child Z is too young to express a view.

***Nature of the children’s relationship with each parent and other significant persons (including grandparents or other relatives)***

303. I accept Dr K’s evidence that each of the children has an attachment relationship with their mother and that she has been their consistent and main attachment figure since birth. He also formed the view that the attachment relationship was secure in a day-to-day sense.
304. I also accept Dr K’s opinion that the children’s elaboration of the negative narrative of the father’s household more likely “arises from dysfunction in the child-mother relationships” than from anything associated with their relationship with their father. He felt that the children’s rejection of what has been a “valued relationship” with the father and invention of untrue negative stories, in particular, in relation to Mrs H to their mother, is “the one overt sign of dysfunction in a mother-child relationship that otherwise has appeared perfect by all reports since the children stopped staying for visits with the father”. He noted the contrast between the devaluing of the father and his household and the idealised expressions concerning the mother and her household and observed that the children had “little or no capacity to express negative opinion or emotion about their relationship with or experience of their mother”.
305. Dr K was of the view that the children had a comfortable relationship with the mother’s partner, Mr X, and spoke fondly of the child T. He described the relationship between the three children as “strong and loyal”.
306. Dr K described the children’s relationship with the father as significant for each child and as an attachment relationship, though he thought it likely that their attachment relationship to their father has always been secondary to the attachment relationship to the mother.
307. When Dr K first spoke to the children alone at a time when they were in their mother’s care they were negative about the father and his household but as noted Dr K felt this arose from “the demands of the child-mother relationship not the child-father relationship”. On the second occasion when he saw the children he observed that the interaction of the children with the father and members of his household “was consistent with the children having a positive relationship with the father, his partner and their household”.



308. Dr K's opinions with respect to the children's relationships did not shift under cross-examination.

***Willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the children and the other parent***

309. This is a significant consideration in this matter. Dr K is of the opinion that the father is capable of supporting the children's relationship with the mother and I find that that is the case. The father's conduct in the proceedings initially indicated that he was willing and able to support the children continuing to live with their mother despite his concerns about her parenting capacity and the risk of harm to the children. His conduct since the Federal Magistrate rejected the then proposed consent orders, is also consistent with his willingness and ability to support this relationship.
310. So far as the mother is concerned, Dr K is of the view that the mother is capable of, but has not yet shown a willingness, to support the children's relationship with the father and that her energies to date have been directed towards disrupting the relationship.
311. The mother presented to Dr K and to the Court as promoting the relationship between the children and the father by continuing for a lengthy period of time to present them in accordance with an agreement she had reached with the father that the children spend time with him even though it was not supported by orders. During that period on most occasions when the children were taken to spend time with their father L and S left the mother's car and told the father at the door of his home that they would not be spending time with him while Z stayed in the car. The also children expressed to Dr K that they felt that their mother wanted them to spend time with their father.
312. Dr K expressed the following view about the mother's purported support of the children spending time with the father:
416. I formed the view that the mother acted as described above to maintain the children's partisan loyalty, but was careful then to make clear to the children (and to those observing) that she would be happy for them to spend time with the father if they so wished. The theatre of the 2½ hour round trip to give the children "opportunity" each fortnight is part of this process. This is harmful to the children as it makes them carry the full weight of the partisan rejection of the father, rather than the mother taking some of the burden.
313. I accept Dr K's evidence that although the mother is able to facilitate and encourage the close and continuing relationship she has been unwilling to do so. I am also of the opinion that she will remain unwilling and will continue to disrupt the relationship if orders are made for the children to live with her.

***Likely effect of change in the children's circumstances***

314. This consideration in my view is of great significance in this matter. The orders proposed by the ICL and supported by the father would result in a dramatic change in the children's circumstances. The children would, under this proposal, not only move from their primary attachment figure for the whole of their lives to their father's home, but they would move from a home which they have come to regard as completely good with no negative features to one which they had come to describe as negative in order to understand their life circumstances.
315. Dr K expressed some concern that if the children have an "absolute or significant separation from the mother" where they "perceive a role for themselves and an expectation in the mother that they rise up against such a separation, they may do so with gusto". Under cross-examination Dr K elaborated upon this possibility and said that this sort of behaviour in the children would need to be carefully managed with the assistance of an appropriate therapist. He said that the need may arise to use "containment and even restraint" with respect to the children and said "if parents do it in a sort of half-cocked, random, aggressive, reactive way that can be very dangerous and it can actually perpetuate more behaviour". He went on to say that "a change like that creates an acute period of risk that needs to be properly managed" and recommended that the father and his wife seek therapy in advance of that occurring. The ICL's proposed orders that the children live with the father are conditional on him arranging and continuing with this therapy.
316. Dr K was cross-examined about his view that difficulties may arise in the future in the relationship with Mrs H. He described the father's expression of concern about this relationship as refreshing and he was encouraged "that there was a recognition of that, but there was a commitment to overcome and work around that".
317. Dr K said in his report and remained of the view under cross-examination that if the children have an absolute or significant separation from their mother which they perceive as immutable they would experience grief but would adapt to the loss. Dr K agreed, under cross-examination, that it would be a large loss for the children to be totally separated from their mother. It will also be a loss for the children to be separated from their half-sibling, T.
318. Overall, he felt that "because of their capacity for compulsively compliant behaviour, the children are likely to adapt well behaviourally to any such change made in an absolute way, as they have adapted to the current disconnection from the father". He stressed on a number of occasions that there should be therapy in place if this shift were to occur.
319. Dr K was of the view that the children would manage better with an absolute separation from their father. As discussed previously, he did not think that it

would be tenable for the children emotionally or psychologically to live with their mother and have a continued relationship with their father through spending time with him as proposed by the mother. He recommended that if the Court were minded to make orders that the children live with their mother that they have something akin to absolute separation from their father. At the time of his report he was of the view that they “would actually experience relief and feel more settled in the absolute and competent care of the mother”. This evidence which I accept, suggests that if I determine that it would be in the children’s best interests to live with their mother then an absolute separation from the father should also be ordered.

***Practical difficulty or significant expense involved in spending time with and communicating with the other parent***

320. There would be no significant expense associated with the children spending time with the father, if they were to live with their mother. Practical difficulty may arise in the future if the children find it psychologically untenable to have a relationship with their father and refuse to spend time with him, and they were required to do so. This is most unlikely to occur, in my view, as I have accepted that the mother’s relationship with the children “requires” them to simply reject their father: the mother will not likely then require them to spend time with him, even if it were ordered.
321. As the ICL’s proposed orders provide for very limited time with the mother there would be no significant expense or practical difficulty entailed in this proposal.

***Capacity of each parent and any other person (including grandparent or other relative) to provide for the children’s needs including emotional and intellectual needs***

322. The capacity of each parent to provide for the children’s needs is also a key matter in this case. As noted, the mother has been described by Dr K as presenting externally as “supra-normal” and the other evidence supports it as an accurate description. She has great capacity to provide for the children’s physical, educational and financial needs. The mother’s household is one in which there is in the words of Dr K, “fun, pleasure, creativity, learning and growth”. It is in many ways a superior household to the father’s and Dr K was very cautious to recommend such a change when there was no suggestion of neglectful parenting and where the mother presents as “supra normal”. Dr K is of the view that the mother in the day-to-day care of the children had superior capacity to provide for the needs of the children but he had significant concerns about her capacity to meet the children’s “emotional and developmental need for expression of self, separate from the mother”. Although the mother is able to present particularly well to others Dr K also expressed concern about “the mother’s capacity to model genuine respect for relating to others”.



323. The greatest concern about the mother's capacity relate to her meeting the children's emotional needs. As discussed in relation to the consideration of risk factors in the mother's home arising principally from her perpetration of family violence and her personality dysfunction, there are significant concerns that she will not be able to meet the children's emotional needs especially as they mature and individuate over time. As discussed, in the opinion of Dr K, which I accept, the prognosis for treatment of her personality dysfunction is poor given her own lack of insight into it and acknowledgment and ownership of her own behaviour and the risks it presents to the children.
324. Dr K had some concerns about the capacity of the father. Firstly, he suggested that the father's description of his past and current drinking patterns at the time of the report (May 2014) is suggestive that the father is drinking at a hazardous rate but not to the level of an overt disorder. Dr K also recommended that there be a period of time where the father not drink any alcohol if the children were to live with him. The orders proposed by the ICL and supported by the father include an injunction restraining him from consuming any alcohol for 12 months from the date of the orders. This, in my view, will protect the children at a particularly vulnerable time if they are transferred to the father's care from the possibility of his adverse behaviour associated with excessive drinking.
325. Dr K also had some concerns about the father's passivity which "would be of concern in terms of his capacity to strongly guide and to advocate for his children".
326. In his report Dr K said that "in the context of the parental relationship, the father showed passive, yielding and ineffective personality characteristics". Other than the complaints made to his brother the father did not take any steps to alert any agency about the severe abuse he received from the mother and her very concerning behaviour towards L. He also seemed to require "a push" from the Federal Magistrate to seek orders to protect the children by proposing that they live with him. The doctor was of the view that this:
346. Must demonstrate some personality vulnerability in the father in terms of his vulnerability to allow himself to fall into such a passive and ineffective state, but I would comment that he had come up against a partner with a powerful capacity for coercion, that such ineffectiveness is common in the victims of family violence, and that such characteristics often resolve in the context of a subsequent more respectful, mutually supportive relationship.
327. In relation to the relationship between the father's personality functioning and family violence, the doctor was of the following opinion:
366. I have put forth a view that the father is a man of sound personality functioning, observed under stress of adapting to and recovering from a pattern of family violence perpetrated by the mother, and personality vulnerabilities in the mother.

367. If the court finds that the father holds genuine beliefs and concerns about the mother, her being abusive to him, and about her risk to the children, but that these beliefs and concerns are ill-founded (being based on distorted, amplified or selective recollection of events), then this would be suggestive of greater personality dysfunction in the father, of histrionic or borderline type.
368. If the court finds that the father does not hold genuine beliefs and concerns about the mother, her being abusive to him and about her risk to the children, but that he has deliberately fabricated these beliefs and concerns (and his account of events in his relations with the mother) for his own advantage, then this would be suggestive of greater personality dysfunction, of antisocial type.
328. I do not find that the father's beliefs and concerns about the mother's abuse are ill-founded or not genuine, so it does not appear that the father may have the greater personality dysfunctions referred to by Dr K. I also do not find that the father has demonstrated long-standing and current ongoing "passive, ineffective and dependent" personality traits after he had freed himself from the relationship with the mother.
329. Dr K said that he could not be "absolutely confident" in the father's capacity to "rise to the challenge of taking these children on" but said he had "a significant amount of confidence" as he was of the view that the father was very committed to the children and connects with supports pretty well. Dr K described the father as a "bit dependent" but said "there's constructiveness to his dependence on his brother, and his family and [his wife] ... [and] what he lacked perhaps in an individual strength he had in collaborative strength".
330. Overall, I accept the description given by Dr K that the father has the capacity to be "a good enough" parent to the children.

***Aboriginal or Torres Strait Islander background and the children's right to enjoy their culture***

331. Although the mother asserts she is of aboriginal descent and the father accepts this is correct, she provides no information about any aspects of her life which she says are related to her enjoyment of an aboriginal culture. She refers only to having access to health services from time to time from an aboriginal health service, attending aboriginal picnic days with the children and on occasions taking them to "dream time story time and art and craft lessons" at a suburban library.
332. The mother was unable under cross-examination to identify the tribal group her family are connected to, and although she asserts aboriginal descent through the maternal and paternal family, she was unsure which of her grandparents on her maternal side was aboriginal. The mother and her sister gave contradictory evidence about which family members had conducted research into the

aboriginal family connection, with the sister nominating the mother as the person who had undertaken the research. It was particularly telling, in my view, that the mother had no knowledge of the concept of “connexion to country”, as when she was asked about this connexion she did not understand the question and said that the “country” her family were connected to was “Australia”.

333. In my view, although the children probably are of aboriginal heritage, there is no evidence that they have enjoyed their “aboriginal culture” in the care of either or both of their parents. Neither suite of proposed orders will promote the enjoyment of that culture including enjoyment of it with others who share that culture.

***Attitude to the children and responsibilities of parenthood demonstrated by each parent***

334. As previously indicated in these Reasons, the mother has presented externally in a very positive light in relation to her attitude towards her children and parental responsibilities. Apart from the adverse findings I have made about the way in which she involved herself in L’s therapeutic counselling and used it as an opportunity to benefit herself, the mother has demonstrated that she is a responsible parent.
335. Apart from the father’s attitude towards his employment after he was made redundant in 2012, he has also shown himself to be a responsible parent. I am of the view that the father was working more than he revealed in his affidavit after he was made redundant, but he consciously chose not to receive any income for this work. I am inclined to conclude that he was attempting to minimise his income for the purpose of minimising the child support he would be required to pay. It is of concern and does not reflect well upon the father and his responsibilities that he did not financially support his children for 18 months following separation. However, he now works part-time and I am of the view that he is committed to supporting the children in the future.

***Family violence [include any family violence order applicable if post-June 2012] relating to the children or a member of the children’s family***

336. The issue of family violence has been dealt with at length earlier in these reasons.

***Whether it would be preferable to make an order least likely to lead to the institution of further proceedings in relation to the children***

337. If orders are made in accordance with the proposal of the ICL and the father, the resulting parenting arrangement will be extremely challenging for the mother to accept, particularly, as a result of her personality dysfunction. However, there will be little opportunity for contravention proceedings to be instituted. These proposed orders also allow for the mother’s time with the children to be revisited in the event that she addresses the underlining concern of her personality dysfunction.



338. The orders proposed by the ICL and the father do not go as far as those ultimately recommended by Dr K who had some disquiet about any face-to-face time between the children and the mother. He was concerned that even limited supervised time with the mother could be as “dangerous” and “confusing and challenging” for the children. There are some risks that if the children do not manage this time with their mother well the father may institute proceedings to further reduce or remove that time.
339. If the mother’s proposed orders are made, for the foregoing reasons it is highly likely that the children will not manage spending time with their father. This may lead to further proceedings if the father cannot accept the cessation of that relationship.

## PARENTAL RESPONSIBILITY

340. Unless the Court makes an order changing the statutory conferral of joint parental responsibility, section 61C(1) of the Act provides that each of the parents of a child has parental responsibility for the child.
341. In *Goode & Goode*<sup>7</sup> the Full Court held that there is a difference between parental responsibility which exists as a result of s 61C of the Act and an order for shared parental responsibility, which has the effect set out in s 65DAC of the Act. The Court held that in the former, as there is no Court order in effect, the parties will exercise the responsibility either independently or jointly. On the other hand, once the Court has made an order allocating parental responsibility between two or more people, including an order for equal shared responsibility, the major decisions for long-term care and welfare of children must be made jointly, unless the Court provides otherwise.
342. In this matter, each of the parents seeks an order that they be allocated sole parental responsibility for the children.
343. Where the Court is to determine parental responsibility, the starting point is section 61DA. This section provides that when making a parenting order in relation to a child, the Court must apply a presumption that it is in the best interests of the child for the child’s parents to have equal shared parental responsibility for the child. The presumption does not apply if there are reasonable grounds to believe that a parent or person who lives with a parent has engaged in abuse of the child, or another child, or family violence (subsection 61DA(2)), or may be rebutted by evidence satisfying the Court that it would not be in the child’s best interest for the parents to have equal shared parental responsibility for them (subsection 61DA(4)).
344. As indicated earlier in the Reasons, there are more than reasonable grounds to believe that the mother has engaged in family violence so the presumption does not apply.

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<sup>7</sup> (2006) FLC 93-286

## OTHER PARENTING ORDERS

345. As earlier indicated, each of the parenting arrangements proposed will result in the children having a meaningful relationship only with the parent with whom they live. Under the mother's proposal it is likely that they will have no relationship with their father and under the ICL and father's proposal they will have a very limited relationship with their mother. Although the mother has been the children's primary attachment figure throughout their life and has generally shown a responsible attitude to her responsibilities as a parent, I have serious misgivings about risks to the children that may arise in her care. The mother has been a perpetrator of serious family violence over the course of many years and has a personality dysfunction such that she presents a risk to the children. She has not acknowledged that she does pose this risk to the children or sought treatment for it. The mother's capacity to meet the children's needs is seriously compromised, especially as they mature and individuate. The father has had an attachment relationship with the children and has the capacity to be a "good enough" parent for them. He is well supported by his wife and neither of them poses an unacceptable risk of harm to the children. While the children will undoubtedly experience a loss if they are separated from their mother, they are likely to adapt to the care of their father. Accordingly, in my view, the orders for residence and time proposed by the ICL and supported by the father are in the best interests of the children.
346. Given the entrenched, diametrically opposed position of the parents and the nature of the relationship between them that supports their respective positions it would not be possible for these parents to co-operate in any sense with each other at any time in the future. It is, in my view, in the best interests of each of the children for the parent with whom the children live to exercise sole parental responsibility for them. Accordingly, I make the orders sought by the ICL with respect to parental responsibility.
347. The balance of the parenting orders sought by the ICL are also in my view in the children's best interests. Specific submissions were sought in relation to the order sought by the ICL and the father that the mother be required to bring the children's half-brother, T, with her when she is to spend time with the children. The mother opposed such an order and it was submitted that the Court had no power to make it. As this order was not proposed until after the evidence was closed, in my view, the issue is best dealt with by giving the mother the option of bringing T to the contact centre when she sees the children. The orders concerning the provision of Dr K's report, transcript of his evidence and these Reasons to other agencies such as therapists and FACS are appropriate and in the best interests of the children due to the mother's unwillingness to acknowledge the risk she presents to the children and her pattern of seeking help without this acknowledgment.

## ISSUES IN DISPUTE – PROPERTY

### Contributions prior to marriage

348. Although there was significant dispute relating to an issue identified originally as the commencement date of cohabitation, the nub of this dispute relates to contributions made by the father prior to the parties' marriage.
349. It is the father's case that he made financial contributions to the property accumulated by the parties during this period (1999 to October 2005) while the mother's case is that he made no financial or non-financial contribution during this period.
350. At the commencement of the relationship, the mother had an interest in the P home which she had purchased for \$240,000.00 in the previous year. She had borrowed \$216,000.00 in January 1998 and paid a deposit of \$24,000.00 from her own funds. In November 1999, when the husband says his contributions began, \$208,852.00 was owed on this loan and the agreed value of the property was \$275,000.00.
351. It is not in dispute that rent paid by boarders or housemates who lived at the property prior to the marriage was used to assist in repaying the home loan. It is also not in dispute that while boarders contributed to the payment of bills, the father did not. It is also agreed that the mother was in full-time employment throughout this period and applied her income to the reduction of this loan, though the amount she earned is unknown.
352. Each party had a small superannuation interest at the time their relationship commenced, which increased over time.
353. The father says that he had \$17,407.69 in savings at the commencement of the relationship and his only liability was a High Education Contribution Scheme (HECS) debt of approximately \$12,000.00.
354. The father was employed full-time for the whole of the relationship and his taxable income from November 1999 and the date of marriage ranged between \$29,999.00 and \$54,730.00 per year.
355. The father says that he applied his income to meet personal living costs, and he gave money to the mother to meet household and other joint expenses. He says that the availability and use of his income for these expenses enabled the mother's income to be used for other purposes and, in particular, payments towards the mortgage over the P property. By October 2005 when the parties married, the loan had been reduced to \$125,426.00. It is the father's case that by applying his income to other joint expenses he contributed to this \$83,426.00 reduction in debt.
356. The father's evidence is that in November 1999 when he and the mother started living together, he opened a NAB Bank account in his own name with deposits totalling \$15,445.87 from his initial savings. On 29 November 1999, he says



he deposited \$10,000.00 from this account into a jointly held account with the wife at Punchbowl Credit Union (later known as Sydney Credit Union). Bank records corroborate this evidence.

357. The father also says that he contributed \$500.00 towards the purchase of a Ford motor vehicle in August 2000 which was registered in joint names in September 2000. In September 2000, he says he contributed another \$9,000.00 towards a second Ford car which was used by the mother after that date.
358. The mother says in her affidavit that the father held the Credit Union account jointly with her from about 2001 to 2002 and at that stage they had discussed buying a house together in the future. Cross-examination of the father indicates that she did not dispute his contention that this account was held jointly from 1999. In her affidavit, the mother says that the father did not contribute to the joint account. She also describes the second Ford vehicle valued at \$9,000.00 as an asset she brought to the marriage. However, the mother does not refer to the purchase of motor vehicles in her affidavit and the father's evidence concerning these contributions was not challenged under cross-examination of him.
359. The father says that in mid-2002 he and the mother were looking at properties to purchase as an investment and the mother located a property in Suburb W and negotiated to purchase it for \$270,000.00. It is not in dispute that the mother did acquire this property in her own name for this sum.
360. The father says that the mother suggested to him that she would be able to borrow the money required to purchase the W property in her own name. According to him, he was to provide the deposit but the mother said she had been advised by a mortgage broker that the father needed to "sign something saying that it was a non-repayable gift" from him to her. The father said he agreed to proceed in this manner. There is no dispute between the parties that on 16 September 2002 the father executed a document headed "Confirmation of non-repayable gift" in which he stated that he "made a gift of \$27,000.00 to [the mother] ... to assist in their purchase of the [[W] property]" and confirmed it was "not repayable". The father said that the \$27,000.00 he gave the mother was provided to him by his parents as a repayment of \$20,000.00 that they owed him and \$7,000.00 which was lent by his parents and repaid by him and the mother. The father says that the stamp duty for the purchase of this property came from the joint credit union account. The only challenge to the father about his version concerning the execution of the loan document under cross-examination focussed on the address he used in that document. He was not challenged about his assertion that the document was executed on the date it bears or that he, in fact, gifted the \$27,000.00 to the mother.
361. The mother refers to the gift document only for the purpose of noting the father's stated address at the time. She said this document was "completed as a precautionary measure in case [she] did not obtain loan approval". She says in

her affidavit that the \$27,000.00 deposit was paid by her from her savings. She makes no connection between the non-payable gift document and the deposit of \$27,000.00 and asserts in her affidavit that the father did not contribute funds towards the purchase of the property. The mother's version that she paid the \$27,000.00 deposit from her own savings and that the non-repayable gift document was only executed as a "precautionary measure" was not challenged under cross-examination.

362. The father says that the repayments on the \$243,000.00 loan came from the rent received from the W property which was let. The mother's affidavit does not address repayment of this loan. It is the father's case that the mother was responsible for and in control of the financial arrangements of both parties at the time. He says that the rent from the W property may have been insufficient to meet the mortgage payments and that the mother may have made up the shortfall from pooled finances during this period.
363. There is no dispute that the W property was sold for \$350,000.00 in early October 2005, around the time of the parties' marriage. After the discharge of mortgage the mother received just over \$104,000.00 which she deposited into the parties' joint credit union account.
364. The mother's evidence concerning the period between the commencement of the relationship and the date of marriage is mainly related to her position that she and the husband were not living together. Apart from referring in passing to the jointly held bank account and the \$27,000.00 loan document, she does not address the father's evidence of his contributions in this period in her affidavit.

### **Contributions following marriage**

365. The mother's position, related to her contention that she and the father did not live together prior to marriage, is that her interest in the P property as at November 2005 is to be treated as her contribution alone from the date of marriage. It is the father's position that as he made contributions for the previous six years to the reduction in the mortgage on that property his contribution should be recognised. The value of the property at the commencement of the marriage is agreed to be \$440,000.00 and the debt secured by a mortgage had been reduced by \$83,426.00 between the date of the commencement of the relationship and the date of marriage.
366. The mother also contends that the proceeds of the sale of the W property should be treated as her contribution while the father's position is that due to his payment of the deposit and the fact that he and the mother were intermingling their finances, this should also be regarded in part as his contribution.
367. So far as contributions to the P property after November 2005 are concerned, there is no dispute that the mother paid the mortgage repayments and all

outgoings associated with the property from her personal Westpac account and clearly separated the expenses associated with the home from other family expenses.

368. The mother worked full-time until the first child was born in late 2006 and continued to receive an income through long service leave and annual leave payments during her three months maternity leave. She returned to work for one day per week then built up to four days a week from around March 2007 until the second child was born in 2008. She also took maternity leave following S's birth and returned to work in about November 2008 four days per week. The mother's actual income in this period is unknown.
369. The mother also received bonus payments from her employer totalling \$20,000.00 in 2008 to 2009 and paid \$18,560.00 towards the loan account on the P property from these bonus payments.
370. The father was in full-time employment throughout the relationship. Between July 2007 and 30 June 2011, he earned between \$52,349.00 and \$81,293.00 per year. He applied his income to meet his own personal expenses and family expenses and says he provided money to the mother to assist in meeting household and other expenses. It is not disputed that he paid health insurance for the family between October 2006 and 2 May 2011 totalling \$10,488.10 and childcare expenses between April 2009 to 30 September 2010, totalling \$25,038.54.
371. Both parties agree that the net amount received from the sale of the W property was \$104,000.00 which was deposited into their joint Credit Union account in October 2005. In February 2006, the mother used \$44,000.00 from the sale proceeds to buy a new Subaru motor vehicle which she held at the time of separation.
372. In about March 2006 the parties purchased an investment property in Town N in their joint names. The purchase price of this property was \$430,000.00 and the deposit of \$43,000.00 was withdrawn from the parties' joint Credit Union account. The balance of the purchase was financed by a loan from St George Bank secured by a mortgage.
373. From the date of the purchase of the N property until October 2006, the father says he provided the mother with cash each week. From 2 October 2006 until 28 February 2011, the loan repayments on this loan were funded by the rent on the property and regular weekly payments of \$440.00 made by the father. The father contributed \$81,620.00 towards the home loan in this period. The father also made a number of lump sum payments to reduce the mortgage over the N property between October 2007 and December 2009 totalling \$37,800.00.
374. Although the parties say they "separated" in 2009 but remained living at the P property together, it appears that their financial relationship at least continued on the same basis until physical separation in December 2010. The mother



continued to make the mortgage repayments on the P property and paid \$20,000.00 between June and October 2010 for renovations on that property. The father continued to apply his income to household and family expenses and continued to make weekly payments on the N mortgage.

375. In determining the respective contributions of the parties prior to their marriage and after their marriage up until physical separation, I prefer the father's version over the mother's where the two versions differ for the following reasons.
376. Firstly, although I do not regard the issue of cohabitation as crucial, in my view, the totality of the evidence is more consistent with the father having lived with the mother from the date he contends, around November 1999, than with the mother's assertion that cohabitation commenced at the date of marriage.
377. The father relies upon the mother's comments in a number of the taped conversations as evidence of cohabitation during this time. For example, in a conversation, which he says was recorded in late May to early June 2007, the mother is recorded as saying: "In eight years, ... you are the only person I've had to continuously warn about the toilet paper and I've lived with all males". In another conversation which the father says he recorded in about August 2007 the mother is recorded as saying: "You lived here for a long fucking time, fucking five nights a week and never paid a fucking cent". A particularly compelling piece of evidence is the mother's statement to Ms Y, L's counsellor recorded in Ms Yr's notes, that the mother "and her ex-partner lived together for six years from 1999 to 2005".
378. The undisputed fact that the father did not contribute to household bills during the period is also consistent with his contention that he and the mother intermingled their finances at this stage and that he had a different status than the "housemates" who were required to make a contribution to household bills. I do not attach particular weight to the father's continued use of his parents' address during this period as evidence that he lived with his parents, as it is not contested that he continued to use their address for some purposes after the parties were married when there is no dispute that he was living at Suburb P.
379. Second, so far as the credit of the parties is concerned, the general credit findings I made in relation to the parenting issues are equally applicable in relation to the parties' evidence generally.
380. Further, the objective evidence such as the parties having a joint Credit Union account from as early as 1999 and the use of it to receive the proceeds of the W property are consistent with the father's contention that he and the mother operated financially as a couple from an early stage in their relationship.
381. The parties' agreed position that they discussed the possibility of buying a property about 2002 is consistent with them operating as a single unit financially at that stage.

382. The execution by the father of the non-refundable gift document is consistent with him giving the mother \$27,000.00 in 2002 as he asserts, especially as the mother made the deposit on the W property in this exact sum at this time.
383. It was submitted on behalf of the mother that as the husband was not frank in relation to his post-separation employment this affects his credit as to the entirety of his evidence. It is also submitted on behalf of the mother that as the father did not call his parents to give evidence in support of his contention that the \$27,000.00 he gave to the mother was given or lent to him by them an inference should be drawn<sup>8</sup> that the parents would not be able to assist the father's case. The husband's lack of frankness concerning his recent employment does cause me to make an adverse credit finding against him. However, this is the only adverse finding I make as to his credit and on balance he is in my view the far more creditable witness. The provenance of the \$27,000.00 given by the father to the mother is not, in my view, of great significance in circumstances where the mother relies upon the document evidencing that gift in her own case for another purpose. She also does not indicate where she says \$27,000.00 came from apart from asserting it was from her own "savings" without producing any bank records to corroborate that assertion.
384. Extensive submissions were made on behalf of the mother to the effect that the parties had always agreed that the P property would belong to the mother regardless of the circumstances of the relationship. In particular, it was submitted on her behalf that she brought the asset into the relationship, it remained in her sole ownership at all times, she made the sole contributions to the payment of the mortgage and maintenance of that property and the finances in relation to it were kept separate. There is no doubt that the mother asserted throughout the relationship that the P property was hers and there are vehement assertions to this effect recorded in many of the taped conversations. However, these assertions while supporting the mother's belief about entitlement are not matters to which I attach much weight in determining contributions. In my view, their greater significance is as evidence of the mother's entitled stance within the relationship with the father which is a feature of her personality dysfunction.
385. As a result of accepting the father's version in relation to contributions throughout the relationship up until the time of physical separation, I make the following findings:
- At the commencement of the relationship the mother had an interest in the P property of \$66,000.00.
  - The parties commenced living together in November 1999.

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<sup>8</sup> *Jones & Dunkel* (1959) 101 CLR 298

- Each party had a small superannuation interest at the commencement of their relationship which was roughly similar and which increased over time.
- The father contributed \$15,000.00 in cash when the parties commenced living together.
- The parties began intermingling their finances and operating their finances jointly from the time they commenced living together.
- The father made contributions to the purchase of motor vehicles which were used by both parties and contributed to joint household expenses other than the mortgage on the P property from the time of cohabitation.
- Repayments for the mortgage loan on the P property came from the rent paid by boarders or housemates prior to the marriage and from bank accounts held in the mother's sole name throughout the entire period prior to separation.
- The W property was purchased in the sole name of the mother with a \$27,000.00 deposit provided by the father and the balance from a loan from Aussie Home Loans.
- Repayments of the W property loan came from the rent received from the tenant at the W property and some pooled finances of the parties.
- After the sale of the W property the proceeds were paid into a joint bank account and treated as the joint funds of the parties.
- The father worked full-time throughout the relationship to the date of physical separation and his income was utilised by himself and the mother for joint purposes and later when the children were born for family purposes.
- The mother worked full-time prior to the birth of each of the children and after three months maternity leave for each child returned to work for between one to four days per week. The entirety of her income was applied to joint expenses of her and the father and later the family and, in particular, was utilised to make mortgage repayments on the family home at Suburb P.
- The N property was purchased with joint funds and the mortgage repayments were funded by the rent received from the tenant and regular payments made by the father.
- Each of the parties paid lump sums from time to time towards the loan accounts for the N and P properties.



### **Contributions after separation**

386. Although there are not any significant factual disputes concerning the parties' respective financial and non-financial contributions after physical separation, it is convenient to outline those contributions here.
387. At the time of separation in December 2012 the loan from Aussie Home Loans for the Pt home had been fully paid with only a nominal amount less than \$50.00 owing on it.
388. The father continued to make regular loan payments on the N property until the end of February 2011 and he made one payment on that loan in May 2011. The N property remained tenanted until it was sold in January 2012 and the mother continued to receive the rent payments. She initially paid the father his share of the rent, but from 27 May 2011 to January 2012 did not account to him for this rent. No payments were made on this mortgage during this period.
389. The father and mother reached an agreement at the time the father left the family home that the father would pay \$200.00 per week for the children's expenses and he says he did so from December 2010 to May 2011. The mother says that although they reached this agreement the father paid only half this sum during this period. I prefer the version of the father for the reasons earlier given in this Judgment. The father also transferred \$2,000.00 to the mother on 22 December 2010 and paid health insurance for the family and some of the children's other expenses such as swimming lessons and some household bills up until May 2011. From May 2011 the father paid child support as assessed by the Child Support Agency of \$1,291.33 per month.
390. In July 2012 the father was made redundant and received a \$26,000.00 payout which he spent on living expenses and legal fees. After this date until February 2013 the father paid a reduced but unknown amount in child support as assessed by the Child Support Agency. The father made a single payment of \$700.00 in child support in mid-2013 and otherwise made no other payments in support of the children from February 2013 until just prior to the trial when he recommenced employment and paying child support.
391. After the father was made redundant in July 2012 he followed financial advice that he should not actively look for work. It was revealed under cross-examination that from early 2014 he attended the business premises of a friend who now employs him and remained on a number of occasions for many hours at that business. He said under cross-examination and I accept his evidence that he was not paid for "helping out" on these occasions. He agreed at this time that he prioritised his current household over supporting the mother at the former residence.
392. Since the date of separation the mother has borne all of the expenses and outgoings on the P property, though she has had the benefit of occupation of that property for the benefit of herself and the children. She also received the

benefit of all of the rent on N from the end of May 2011 until January 2012. In September 2012, the mother paid an unknown sum for renovation of the bathroom at the P property. This renovation and the fourth bedroom added in 2010 have resulted in a modest increase in the value of the property. A significant increase in value of the property has occurred over time and its agreed value at the date of the hearing was \$750,000.00.

393. The mother has continued in paid employment since around the beginning of 2011. She drew down on the Aussie Home Loans account for her own purposes to purchase a car and to pay legal fees in the post-separation period so the repayment of that loan since separation is her own liability.

## THE LAW & DISCUSSION - PROPERTY

394. The approach to the determination of an application for property settlement orders is set out in *Stanford v Stanford*<sup>9</sup>, which was considered in detail by the Full Court in *Bevan & Bevan*<sup>10</sup>.
395. The starting point is a consideration of “whether it is just and equitable to make a property settlement order by identifying, according to ordinary common law and equitable principles the existing legal and equitable interests of the parties in the property”.
396. This involves identifying the existing interests and then considering whether having regard to the particular circumstances before me, it would be just and fair to make orders for the alteration of property interests.
397. I should next consider the matters set out in s 79(4)(a) to (c) of the Act, that is the financial and non-financial contribution made by the parties to the property and to the welfare of the family.
398. I must then consider the remainder of the matters in s 79(4) including the matters referred to in sub-section 75(2) so far as they are relevant, and determine on this basis whether there should be a further adjustment to the parties’ contribution-based entitlements.
399. Finally, I must then consider the justice and equity of the proposed orders. As was said in *Bevan* at [86], the just and equitable requirements are “not a threshold issue, but rather one permeating the entire process”.

### What are the existing interests of the parties?

400. There is agreement between the parties as to their current interests. Some items on the balance sheet were excluded by agreement due to their minimal value and other items were excluded in the course of submissions. The current interests of the parties are set out in the following table:

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<sup>9</sup> (2012) 247 CLR 108

<sup>10</sup> [2013] FamCAFC 116

LIST OF ASSETS AND LIABILITIES			
ASSET	FATHER	MOTHER	JOINT
O Road, Suburb P		\$ 750,000.00	
Proceeds held in trust by mother's solicitor's			\$ 5,717.00
Subaru ... car		\$ 12,400.00	
Shares		\$ (6,000.00)*	
Total Assets	\$ NIL	\$ 762,400.00	\$ 5,717.00
LIABILITIES	FATHER	MOTHER	JOINT
Mortgage on O Road		\$ 28,000.00	
NET ASSETS	FATHER	MOTHER	JOINT
	\$ NIL	\$ 734,400.00	\$ 5,717.00
SUPERANNUATION	FATHER	MOTHER	JOINT
	\$ 77,624.00		
		\$ 85,418.00	
<b>TOTAL NET ASSETS</b>	\$ 77,624.00	\$ 819,818.00	\$ 5,717.00
<b>TOTAL ASSETS</b>			<b>\$ 903,159.00</b>

\*Wife holds AXA and Telstra shares on trust for children. The parties have consented to a Declaration of Trust being made in relation to the shares and they are excluded on this basis.

401. The question to be determined is whether it would be just and equitable to leave the property rights intact having regard to there currently being total assets to the value of \$903,159.00 with the husband's interests totalling \$77,624.00 and the wife's interests totalling \$819,818.00.
402. As was indicated in *Stanford* the requirement that it would be just and equitable to make *an* order is in many cases readily satisfied by observing that at [42]:

... as the result of a choice made by one or both of the parties, the husband and wife are no longer living in a marital relationship. ... any express or implicit assumption that the parties may have made to the effect that existing arrangements of marital property interests were sufficient or appropriate during the continuance of their marriage relationship is brought to an end with the ending of the marital relationship. And the assumption that any adjustment to those interests could be effected consensually as needed or desired is also brought to an end. Hence it will be just and equitable that the Court make a property settlement order. ...



403. In this case, the parties were in a relationship where they lived together for 11 years before physically separating. Each brought property and financial resources to the marriage. Assets were accumulated over time for the common purpose of providing for their life together in their future and this arrangement continued to some extent while the parties remained separated within the same household. That arrangement came to an end upon actual physical separation. At this time, virtually all of the assets were owned by the mother even though the father had made significant contributions. In these circumstances, I am satisfied that it is just and equitable to make orders under s 79 of the Act.

### The Balance Sheet

404. As noted, agreement was reached concerning the current interests of the parties which included the exclusion of certain items which could not properly be characterised as matrimonial assets and liabilities. The table set out in paragraph 400 reflects that agreement.
405. In addition, the \$28,000.00 owed by the mother on the mortgage over the P property also should be excluded from the “pool” for the purposes of adjustment as the loan for the purchase of that property was fully repaid at the time of physical separation, and the further loan after that date was incurred by the mother alone and is not a matrimonial liability. Accordingly, for the purposes of property adjustment the current matrimonial assets and liabilities are set out in the following table:

LIST OF ASSETS AND LIABILITIES			
ASSET	FATHER	MOTHER	JOINT
O Road, Suburb P		\$ 750,000.00	
Proceeds held in trust by mother's solicitor's			\$ 5,717.00
Subaru ... car		\$ 12,400.00	
Total Net Assets	\$ NIL	\$ 762,400.00	\$ 5,717.00
SUPERANNUATION	FATHER	MOTHER	JOINT
	\$ 77,624.00		
		\$ 85,418.00	
<b>TOTAL NET ASSETS</b>	\$ 77,624.00	\$ 847,818.00	\$ 5,717.00
<b>TOTAL ASSETS</b>			<b>\$ 913,159.00</b>

## Contributions

406. In *Farmer and Bramley* [2000] FamCA 1615; (2000) FLC 93-060, Kay J stated two things clearly:

The Court's task is to evaluate all of the contributions from the time of the commencement of the parties' relationship until the time of the hearing and give such weight to such contributions as the Court thinks is appropriate in the circumstances. Further, there is nothing in the legislation that requires s 79(4) (a) (b) and (c) contributions to be measured only in terms of what either party contributed to the assets of which they are presently possessed.

407. Under s 79(4) of the Act, in considering what order should be made in property settlement proceedings, I must take into account the financial and non-financial contributions directly or indirectly made to the acquisition, conservation or improvement of any of the property of the parties and the contributions made to the welfare of the family and the children, including contributions as a homemaker or parent.
408. I assess the initial financial contribution of the mother (\$66,000.00 equity in the P property and superannuation) as significantly greater than the father (\$15,000.00 cash and superannuation). On the basis of my findings summarised at paragraph 385 the financial contribution of each of the parties throughout the relationship until their final physical separation is, in my view, roughly equal.
409. After physical separation, on the basis of the discussion and my findings at paragraphs 365 to 393 the financial contribution of the mother was slightly greater than the father.
410. So far as the non-financial contributions are concerned, I note that it is not in dispute that each of the parties made some contributions towards the maintenance and up-keep of the home and the care and support of the children after they were born, although the mother made a greater contribution than the father in relation to the care of the children up until the time of separation. After physical separation the mother also made a greater non-financial contribution than the father to property and to the welfare of the children.
411. The father's financial contributions and more particularly his contributions to the welfare of the family and as a parent were impacted by the serious violence upon him perpetrated by the mother for the entire relationship. So far as financial contributions are concerned, he was hospitalised and required surgery following a serious knife attack in May 2007 and he missed several weeks work as a result of this injury. On one occasion the father was required to walk to work and on many occasions was required to sleep outside, on the floor or in the garage by the mother as part of her course of violent conduct. His parental contributions were diminished by his reduced capacity to advocate for and protect the children throughout the course of the relationship.

412. Having regard to my assessment of the relevant contributions up until the date of hearing, I make a five percent adjustment in favour of the mother. Accordingly, I assess the mother's contribution based entitlement under s 79(4)(a) to (c) to be 55 percent of the asset pool and the husband's contribution based entitlement to be 45 per cent.

413. In my view relevant matters under s 75(2) are as follows:

- Both parties are of a similar age and in good physical health.
- Each of the parents is equally physically and mentally capable of full-time employment in the future, though currently each of them works part-time.
- The only significant property owned by the mother is the P home which is the major matrimonial asset being considered. The father owns no other property.
- Under the proposed parenting orders the father will have care and control of the three children and due to the nature of the orders he will incur all expenses associated with their care. This is a significant issue due to the age of the children.
- The mother has the care of her two year old child, T.
- Each of the parents lives with another person. The father has remarried and sets out in his financial statement that his wife earns an average gross income of \$1,117.00 per week. Mrs H also owns the home in which they reside. The mother's partner and father of her child, Mr X resides with her from time to time and at the time of the trial was not financially supporting her or their child. Their financial circumstances in the future and his income are unknown.
- It is likely that the mother will be liable to provide child support for the children in the future especially as the father will have their exclusive care and she will spend very little time with them. On the basis of the mother's past conscientious attitude in supporting her children, I am of the view that it is likely she will pay any child support as assessed to be paid by her.

## CONCLUSION

414. Having regard to the s 75(2) factors and attaching particular weight to the fact that the father will have the full-time care and control of the three children of the marriage who are aged between four and nine years of age, I make an adjustment of 10 percent in favour of the father.

415. The final orders I propose making will involve the father receiving 55 percent of the total pool of assets and the mother receiving 45 percent of the pool.



416. Each of the parties accepts that the respective superannuation interests should remain untouched. The father's 55 percent share of the total net assets of \$913,159.00 is \$502,237.00 and the mother's share is \$410,921.00. When the respective superannuation interests are deducted then the father is entitled to receive \$424,613.00 and the mother is to receive \$325,503.00.
417. In my view having regard to all of the evidence in relation to the property these orders are just and equitable.
418. For the reasons given, I have found that the non-superannuation pool is more than as contended by the husband. On this basis I make the associated mathematical adjustments to the Orders he seeks. I also make an order declaring that the mother holds her shares on trust for the children. Otherwise, I make orders in the terms sought by the father with respect to property for the reasons given.
419. The orders that I make are set out at the forefront of these reasons for Judgment.

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**I certify that the preceding four hundred and nineteen (419) paragraphs are a true copy of the reasons for judgment of the Honourable Justice Hannam delivered on 29 April 2015.**

Associate:

Date: 29 April 2015