

**FAMILY COURT OF AUSTRALIA**

**Re Brodie (Special Medical Procedures) [2008] FamCA 334**

FAMILY LAW – CHILDREN – Special medical procedures

*Family Law Act 1975*

**APPLICANT:** MOTHER

**RESPONDENT:** FATHER

**BY COURT ORDER THE FILE NUMBER IS SUPPRESSED:**

**DATE DELIVERED:** 15 May 2008

**PLACE DELIVERED:** Melbourne

**PLACE HEARD:** Melbourne

**JUDGMENT OF:** Carter J

**HEARING DATE:** 12, 13 & 14 December 2007

**REPRESENTATION**

**BY COURT ORDER THE NAMES OF COUNSEL AND SOLICITORS HAVE BEEN SUPPRESSED**

## ORDERS

- (1) That until further order the child of the relationship born in 1995 (“the child”) be known as, addressed as, and accommodated by the name Brodie (“the new name”) and IT IS REQUESTED that all relevant Government Departments and/or Agencies give effect to this order.
- (2) That until further order the child live with the mother.
- (3) That until further order the mother have sole parental responsibility for the child.
- (4) That the father be at liberty to apply on reasonable notice to discharge and/or vary par (2) and/or (3) hereof.
- (5) That without in any way limiting par (1) and/or (3) hereof the mother is hereby authorised:
  - (a) to change the child’s name to the new name referred to in par (1) hereof, the Court being satisfied that the change of name is in the child’s best interests AND IT IS REQUESTED that the Registrar of Births Deaths and Marriages in Victoria gives force and effect to this order upon request by the mother;
  - (b) to apply for a passport of the child in the new name referred to in par (1) hereof and without first obtaining the consent of the child’s father;
  - (c) to apply for and/or request the issue of a Medicare Card for the child in the new name referred to in par (1) hereof;
  - (d) to apply to any authority for identification of the child in the new name referred to in par (1) hereof;
  - (e) to apply for and/or request a driver’s learner’s permit for the child in the new name referred to in par (1) hereof.
- (6) That until further order the mother be authorised to consent to the following Special Medical Procedure on behalf of the child, namely, the administration of a gonadotrophin releasing hormone analogue (“the treatment”) on a continuous basis subject to the medical opinion of the child’s treating specialists from time to time.

- (7) That until further order the child undergo regular psychotherapeutic counselling with Associate Professor P or such other psychiatrist experienced in gender identity disorder cases as he might nominate from time to time with the view (*inter alia*) to the child exploring any issues arising from the treatment and to improving the child's general well being.
- (8) That pursuant to s 65L(1)(a) and (b) of *The Family Law Act 1975* the parenting orders be supervised by a Family Consultant nominated by the Director of Court Counselling of this Registry of the Court for a period of three years and IT IS REQUESTED that Ms T, Family Consultant, be appointed pursuant to this order.
- (9) That the Family Consultant referred to in par (8) hereof:
  - (a) be authorised on his or her own initiative and as may be considered necessary to provide to the Court a Report pursuant to s 62G on such matters relevant to these proceedings;
  - (b) if so directed by the Court at any time during the period of supervision to provide to the Court pursuant to s 62G on such matters relevant to the proceedings as the Court thinks desirable; and
  - (c) to request the Court on his or her own initiative to extend the period of supervision.
- (10) That the Independent Children's Lawyer be duly authorised to communicate with, attend and generally facilitate the issue of the identifying material referred to in par (11) hereof and to explain these orders to appropriate persons.
- (11) That the applicant and the Independent Children's Lawyer have leave to provide a copy of this order to all persons and/or organisations relevant to the advancement of the child's interests.
- (12) That the appointment of the Independent Children's Lawyer not be discharged and IT IS REQUESTED that Victoria Legal Aid continue to fund the Independent Children's Lawyer on the basis that this will not involve an active on-going role but rather provide a continuing contact point for the child as the course of treatment progresses and in case there is a need to seek any further order from the Court.

- (13) That pursuant to s 65DA(2) and s 62B, the particulars of the obligations these orders create and the particulars of the consequences that may follow if a person contravenes these orders and details of who can assist parties adjust to and comply with an order are set out in the Fact Sheet attached hereto and these particulars are included in these orders.
- (14) That the Court provide a sealed copy of this order to the father as soon as practicable by forwarding the same to him by ordinary registered post at his Notice of Address for Service, with a further copy to be sent to him by email at ....
- (15) That for all publication and reporting purposes the file number of this case and the names and other identifying features of counsel and/or solicitors involved in this case be suppressed.
- (16) That save as aforesaid all applications be otherwise dismissed and the matter be removed from the list of cases awaiting determination.
- (17) That there be general liberty to apply.

**IT IS DIRECTED**

- (18) That Exhibit "TCL1" remain on the Court file until further order.

**IT IS CERTIFIED**

- (19) That pursuant to r 19.50 of the *Family Law Rules 2004* this matter reasonably required the attendance of Counsel, including Senior Counsel.

**IT IS NOTED** that publication of this judgment under the pseudonym ***Re Brodie (Special Medical Procedures)*** is approved pursuant to s 121(9)(g) of the *Family Law Act 1975* (Cth).

FAMILY COURT OF AUSTRALIA AT MELBOURNE

**By Court Order the file number is suppressed**

**Applicant Mother**

and

**Respondent Father**

and

**Public Advocate**

and

**Independent Children's Lawyer**

**REASONS FOR JUDGMENT**

[In order to assist in editing for purposes of anonymity the child's name has been altered and the parents are at times referred to as "father" and "mother"]

1. On 14 December 2007 I made orders which, *inter alia*, permitted a 12-year old girl ("Brodie") to commence treatment with a gonadotrophin-releasing hormone analogue ("the treatment"). The purpose and effect of the treatment in lay terms is to suppress Brodie's pubertal development as a female child for the duration of the course of the treatment. It is the first step in a process which, if continued, would enable Brodie to pursue life as a boy.
2. The expert evidence made it clear that if I determined to make an order for the treatment, I should do so with expedition. I had the opportunity to consider all the evidence and submissions following the hearing which had concluded on 13 December 2007 and accordingly made the orders which are set out at the commencement of this judgment.
3. I now turn to explain my reasons for so doing.

## APPLICATIONS

4. Brodie's mother commenced these proceedings when she caused to be filed an application on 11 April 2007 in which she sought procedural and substantive orders. The substantive orders which were sought included:
  - An order for Brodie's name to be changed together with consequential orders;
  - An order authorising the mother, as Brodie's legal guardian, to consent to a Special Medical Procedure on behalf of Brodie. That involved the treatment to which I have already referred and which I will later describe in more detail.
5. The mother had legal representation at all relevant times and throughout the hearing was represented by Senior Counsel.
6. Brodie's father, who lives in another State, was named as the respondent to the mother's application. He was represented by a solicitor and participated in the proceedings for some months, but did not appear and was not legally represented at the final hearing. It was clear from an affidavit which he had earlier filed that he opposed the application, although he did not file a Response until 26 November 2007.

## OTHER PARTICIPANTS IN THE PROCEEDINGS

7. An Independent Children's Lawyer ("ICL"), had been appointed on 4 May 2007 pursuant to s 68L(2) of the *Family Law Act 1975* (Cth) ("the Act"). Counsel appeared on behalf of the ICL at all relevant times, following that appointment.
8. The Office of the Public Advocate had been notified of the proceedings and a representative of that Office appeared at each hearing of the matter commencing 4 May 2007. There was no application formally to intervene in the proceedings and accordingly the Advocate involved appeared *amicus curiae*.
9. The Court is most grateful for the assistance provided by the ICL and her counsel as well as the Advocate for the Office of the Public Advocate, particularly in circumstances where there was no contradictor at the final hearing.

## EVIDENCE

### The Mother

10. Two affidavits were filed on behalf of the mother. The first was affirmed on 10 April 2007 and filed 11 April 2007. The second affidavit was affirmed on 12 October 2007 and filed 17 October 2007.

11. The mother also gave *viva voce* evidence and was cross-examined. On the second day of the hearing she was recalled by leave and with the consent of all other participants, and gave some further evidence. She was not cross-examined about that evidence.
12. A Statement of Argument was filed on behalf of the mother on 5 December 2007. In that document she set out in detail the orders which were proposed. The substantive orders were not dissimilar to the orders set out in her initiating application. The most significant change was as to the treatment. The final order sought on behalf of the mother in this regard was:
  - “4. That the child be given a subcutaneous implant of a gonadotrophin-releasing hormone analogue (GnRH) every 2-3 months to suppress puberty until considered necessary by the subject child’s treating medical practitioners and upon further review by the Court.”
13. It should also be noted that the mother adopted the submission of the ICL, made during final submissions to the effect that the mother should have sole parental responsibility for Brodie.

#### **The Father**

14. The father swore or affirmed an affidavit on 30 April 2007 which was filed on 3 May 2007.
15. The father also swore or affirmed a Response dated 8 May 2007 which was filed 26 November 2007. As I have earlier recorded the father opposed the mother’s Application but did not attend the final hearing.

#### **EXPERT EVIDENCE**

16. Professor W swore an affidavit on 21 August 2007 which was filed on 22 August 2007. Annexed to that affidavit was his Report dated 26 March 2007 and a further Report dated 30 July 2007. The further Report was prepared after Professor W had read the Family Report of Ms T and it resulted from orders which I had made on 24 July 2007 which will be discussed later in this Judgment.
17. Professor W reviewed Brodie on 6 December 2007 and provided the Court with a brief Report dated 6 December 2007 which he adopted in his evidence at the final hearing. That Report remains on the Court file.
18. Professor W was cross-examined.
19. Professor W is an Endocrinologist and he set out in his affidavit his academic qualifications. There was no challenge to his expertise.
20. Associate Professor P swore an affidavit on 4 December 2007 which was filed 11 December 2007. Associate Professor P is a Consultant Psychiatrist and he has set out in his affidavit details of his academic qualifications and experience.

He annexed to his affidavit two reports in relation to Brodie. The first was dated 4 April 2007 and the second affidavit was dated 16 October 2007.

21. Associate Professor P was cross-examined. His expertise was not challenged.
22. Ms T prepared a Family Report which was dated 25 June 2007. That order was prepared as a consequence of orders I made on 14 May 2007.
23. Ms T has set out at the conclusion of her Report her *curriculum vitae* which includes details of her academic qualifications and experience. Her expertise was not challenged. Ms T gave evidence but was not cross-examined.
24. On 17 October 2007 I made an order that the above experts confer. The meeting took place on 14 November 2007 and the expert witnesses prepared a Joint Statement, dated 27 November 2007, which they all signed.
25. All three expert witnesses adopted the Joint Statement at the hearing.
26. It is convenient to note here that arrangements were made for each of the three expert witnesses to be present in Court while the other expert witnesses gave their evidence.

#### **Standard of Proof**

27. The standard of proof I have applied is the civil standard, namely the balance of probabilities with regard to the particularity and gravity of the matter (see s 140 *Evidence Act* (Cth); *Briginshaw* (1938) 60 CLR 336).

#### **LEGAL PRINCIPLES**

28. The relevant statutory provisions for proceedings relating to children are to be found in Pt VII of the Act.
29. On 10 July 2007, as a preliminary matter, the ICL raised the question of the Court's jurisdiction to hear these proceedings, given that Brodie was not a child of a marriage. In the event I determined that the Court had the jurisdiction and power to deal with the application for reasons discussed in my Judgment which was handed down on 24 July 2007 (*Re Brodie (Special Medical Procedures; Jurisdiction)* [2007] FamCA 776).
30. Section 60B of the Act sets out the Objects of Pt VII and the underlying principles. 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.”

The principles underlying those objects are set out in s 60B(2). Those principles apply except when it is or would be contrary to a child’s best interests. The principles are that:

- “(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).”

31. Section 60B(3) is not relevant to this case.
32. In these proceedings it is clear that the Court is required to regard Brodie’s best interests as the paramount consideration. In determining where a child’s best interests lie, the Court must consider the primary considerations set out in s 60CC(2). The primary considerations are consistent with the first two objects of Pt VII. The Court is also required to consider the additional considerations which are set out in s 60CC(3).
33. Both parents of a child have parental responsibility for that child pursuant to s 61C of the Act which is defined by s 61B to mean:
  - “... all the duties, powers, responsibility and authority which, by law, parents have in relation to children.”
34. That parental responsibility, however, is subject to any Court order which might be made altering it, and it is also subject to any presumption arising from s 61DA of the Act. The presumption does not relate to the time a child spends with each of his or her parents. It relates to the allocation of parental responsibility, and it does not apply if there are reasonable grounds to believe that a parent has engaged in abuse of the child or family violence. Furthermore, it can be rebutted if the Court is satisfied that equal shared parental responsibility is not in the child’s best interests.

35. Parental responsibility generally includes the authorisation of ordinary medical treatment for a child, however parents cannot consent to all forms of medical treatment. Some treatment requires authorisation by the Court.
36. Rules 4.08 – 4.12 of the *Family Law Rules 2004* (Cth) (“the Rules”) deal with a “Medical Procedure Application” in relation to a child. The Dictionary which forms part of the Rules defines Medical Procedure Application as “an Application for Final Orders seeking an order authorising a major medical procedure for a child that is not for the purpose of treating a bodily malfunction or disease”.
37. In my judgment of 24 July 2007 I raised the question of whether the treatment was a “special medical procedure”. I noted that the same question arose in *Re Alex: Hormonal Treatment for Gender Identity Dysphoria* (2004) FLC ¶ 93-175 (“*Re Alex*”). The initiating application in *Re Alex* sought an order for reversible medical treatment, however, ultimately Nicholson CJ was asked to deal with a staged clinical program as part of a “single package” incorporating both reversible and irreversible components.
38. The present case, of course, seeks treatment which is completely reversible, according to the expert evidence. However, as was pointed out in the Statement of Argument filed on behalf of the ICL it was envisaged that at a later stage a further application would be made for permission to commence treatment with testosterone, the male sex hormone. Testosterone would cause permanent physical changes.
39. Whilst the application before the Court concerns treatment which is fully reversible, it is nonetheless appropriate to regard it as the first stage of an overall treatment plan which should be viewed as a single treatment. I accept the submission made by the ICL that to do otherwise would be “an artifice”. This first stage should not be looked at in isolation from the overall treatment plan.
40. I accept the ICL’s submission that all stages of that treatment plan should be treated as a single treatment plan, even though later stages will be dealt with at different times and by subsequent applications, in the circumstances of this case. I will expand upon this later.
41. I am not satisfied that the treatment plan is a procedure “for the purpose of treating a bodily malfunction or disease”.
42. I accept the submission that the treatment plan and its component stages require authorisation of the Court.

## **BACKGROUND**

43. The father was born in 1962 and was 45 years old at the date of the hearing. He is a salesman and he lives in another State. The mother was born in 1956

and was 51 years old at the time of the hearing. She was not in employment but hoped to do some refresher courses, after which she would be seeking employment.

44. It is common ground that the mother and father lived together from about 1985. Brodie was born in 1995 and was 12 years of age at the date of the hearing. There is another child of the relationship, a daughter, who will be referred to as "G". G was born in 1999 and she was 8 years of age at the date of the hearing.
45. The mother and the father disagree as to when they separated. According to the mother they ceased living together in or about 1998. According to the father's affidavit they "officially seperated" (sic) in or about 2004. It is clear that there was a relationship of some kind which continued, given G's birth and it is not necessary for the purposes of this judgment to explore the nature of that relationship in any detail.
46. It is common ground that the father saw Brodie and G, although it is not clear how often, at least until about the middle of July 2004. At that time the father suffered a heart attack and shortly after that time moved interstate to live with his parents and recuperate. It was the mother's case that the father continued to promise to reunite the family and find a home for them all to live in interstate, however this never eventuated. It is difficult to tell from the father's affidavit what his position was, given the extraordinarily poor grammar and spelling of that affidavit which purports to have been prepared or settled by his solicitor. It is clear from it, however, that he was prepared to assist the mother with a rental home in the other State. Again, this need not be explored.
47. It is common ground that from about July 2004, and for a period of some two years, the father travelled from interstate from time to time and spent time with Brodie and G by agreement.
48. The father commenced a new relationship and the mother discovered this in July 2006. She felt that he had betrayed the children and herself and from her perspective things became much more difficult after that time.
49. It appears to be common ground that the father did not spend any face-to-face time with Brodie and/or G after August or September 2006, at least until relatively recently.
50. I accept the mother's evidence, which has not been denied by the father, which is to the effect that at all relevant times she has had the primary responsibility for the care, welfare and development of the children which has extended to all relevant aspects of their lives.
51. I also accept the mother's evidence, which again is not disputed by the father, that no orders have been made in relation to the children. Nonetheless, both parents have parental responsibility for Brodie and G, as I have earlier explained.

52. In her first affidavit the mother deposed:
- “30. From a very early age, [Brodie] identified strongly as a boy and whilst she is a normal female in terms of her anatomy and physiology, I have observed that she really behaves and considers herself to be a boy in every practical sense.”
53. I note that in his answering affidavit the father agreed with the mother about this, save that he pointed out that Brodie was very young “to making (sic) whole of life decisions that will effect (sic) her identity and sexuality and could create a personality crisis worse than what she is experiencing now”.
54. It is convenient to note here that, notwithstanding what he had said in his affidavit, the father told the Family Consultant that he did not accept that Brodie had always seen herself as a boy.
55. The mother went on in her first affidavit to say:
- “31. [Brodie] has always behaved in a way that I would describe as like a boy and she likes to dress like a boy and when we go shopping for clothes, [Brodie] will always look to purchase clothes from the boy (sic) section of the particular store that we are in at the particular time. She has worn boy’s underwear since she was about six years’ old.”
56. In his answering affidavit the husband agrees with this save to say that the mother “should have been responsible over the period of time to ensure that the daughter did wear more feminin (sic) clothes and be interested in female clothes in being the primary female role model in [Brodie’s] life”.
57. The mother has also described in her first affidavit that she had observed a noticeable increase in stress and anxiety experienced by Brodie as she approached puberty and that this was particularly so over the last twelve months. She went on to say that Brodie had become more acutely aware that she wanted not only to look like a boy but also to be treated like and thought of as a boy by others.
58. This was raised with the family doctor and Brodie was referred initially to a psychiatrist, Dr S, whose assessment was that she had a clear, strong and persisting identification with the male gender, which was unchanged since at least the age of four, and seemed irreversible (see Associate Professor P’s Report dated 4 April 2007).
59. Dr S referred Brodie in April 2006 for further assessment and Associate Professor P saw Brodie, her mother and G on a number of occasions thereafter. In his Report dated 4 April 2007 Associate Professor P noted that his opinion concurred with that of Dr S.
60. Associate Professor P arranged collaborative assessment with Professor W, who first saw Brodie on 14 December 2006. I will consider the evidence of Professor W and Associate Professor P in more detail later.

61. The mother experienced extreme financial hardship in the latter part of 2006, as a result of which she was not able to pay rental on the property in which she and Brodie and G had been living at all relevant times. At the time she affirmed her first affidavit she was hoping that certain public housing would be made available for her. If that did not eventuate she anticipated being evicted at the end of March 2007. She was fortunate in the sense that she had a friend who lived in another suburb who had offered accommodation for her, Brodie and G.
62. In his answering affidavit the father agreed with what the mother had said, adding that the person who had offered the assistance was one of his “former best friends”.
63. As it transpired the mother and the two children needed to take up the offer of accommodation and lived with the family friend for some eight months. Throughout that period of time the mother ensured that the children continued at their school, notwithstanding that there was some quite considerable distance between the two suburbs. It is convenient to note here that the mother was eventually able to obtain a three-bedroom home through the Ministry of Housing in yet another suburb and moved there in November 2007. Again, she did not change the children’s schools and again considerable travel was involved.
64. As I have recorded elsewhere the mother commenced these proceedings on 11 April 2007. The application was given a return date of 26 April 2007. The father had not been served at that time and the matter was accordingly adjourned until 4 May 2007. Due to the sensitivity of the nature of the proceedings I ordered that all proceedings were to be heard *in camera*.
65. I accept the wife’s evidence that over the weekend of 28 to 29 April 2007 the father sent various SMS text messages to Brodie and to the mother, one of which was as follows:

“don’t want to talk to her [Brodie] she has not got your best interests at heart as I will prove that to you very soon I want you and (G) to live with me right away from that drug dependent couple.”
66. On 30 April 2007 the father swore or affirmed an affidavit, opposing the treatment. It was a response to the mother’s first affidavit. As earlier noted, it was filed on 3 May 2007.
67. In the meantime, on 1 May 2007, solicitors acting for the father forwarded a letter to the mother’s solicitors dated 1 May 2007. The letter was forwarded by facsimile and it is Annexure “EC1” to the mother’s second affidavit. With respect to the father’s solicitor the letter appears to display a lack of understanding as to procedure in this Court. It is clear, however, from the letter that the father foreshadowed that an application would be made for an

adjournment and the possibility of a transfer of the proceedings to the Brisbane Registry was also raised.

68. The mother's solicitors responded on 1 May 2007. The letter was sent by facsimile and it is Annexure "EC2" to the mother's second affidavit.
69. In the course of this reply the mother's solicitors raised the SMS text messages, one of which I have earlier set out, respectfully suggesting that it was very inappropriate to communicate with Brodie in this manner. The reply also went on to advise that a further SMS text message had been sent which read:

"do you know that if (sic) Friday your application goes threw (sic) there will be a solicitor appointed as her legal guardian from then on you or I don't get a say and our little girl will become an experimental (sic) it shes not old enough to make a serious decision like this and you have no right to let her think about it."
70. The mother's solicitors requested that the father should provide an undertaking that he would desist from sending any further SMS text messages to the mother or the children.
71. The father's solicitors wrote again to the mother's solicitors on 2 May 2007. The letter was sent by facsimile and it is Annexure "EC3" to the mother's second affidavit.
72. The mother's solicitors responded, again by facsimile, on 3 May 2007. Amongst other things, it was pointed out that the father had not denied sending the aforesaid SMS text messages to the mother and to Brodie and also noted that the father had indicated his intention to continue using SMS text messages for communications, although I do note that the letter from the father's solicitors said he would "restrict his SMS text messages from (sic) matters relevant to this application".
73. The mother was unable to attend the hearing on 4 May 2007. Sadly her mother had passed away earlier that week. She was, however, represented by her solicitors and Senior Counsel.
74. By that time the father's affidavit had been filed, although it had not been served upon the mother's solicitors. The father's solicitor appeared via a telephone link. As already noted the Office of the Public Advocate had been advised of the proceedings and a representative of that Office appeared on 4 May 2007, and thereafter.
75. The orders which I made on 4 May 2007 included the appointment of the ICL. I also made an order giving the father leave to file any supplementary affidavit upon which he might seek to rely provided that the same was filed by 12 noon on 11 May 2007. The father was also ordered to file a Response to the mother's application. The proceedings were adjourned for further hearing on 14 May 2007.

76. The father's solicitor attempted to file a Response, however, because the requisite filing fee was not paid, the Response was not permitted to be filed. The father did not file any supplementary affidavit as had been envisaged in the orders of 4 May 2007.
77. On 14 May 2007 I made an order for the preparation of a Report pursuant to s 62G of the Act. The matter was otherwise adjourned to 6 August 2007 for final hearing as a two-day case. The father's solicitor appeared via telephone link on this occasion. The mother was again represented by Senior Counsel. Counsel appeared for the ICL, and the Office of the Public Advocate was also represented.
78. The Family Consultant, Ms T, noted in the preface to her Report that it would address the issues relating to Brodie's desire for the medical procedure as described by Professor W and Associate Professor P, in the context of Brodie's family situation and broader social networks.
79. Her interviews with the members of this family were conducted on 24 May 2007 and 13 June 2007. They were structured in this way so as to enable an initial exploration of issues with Brodie. Thereafter the father was to fly down from interstate for an appointment some two weeks later.
80. Ms T observed that the mother's initial presentation:

“was that of an intelligent and devoted mother who was struggling alone through an intensely difficult phase in her family's life, and perceived herself as having been abandoned by the father of her children.”
81. Ms T went on to say that the mother:

“Spoke of the struggle to feed, clothe and house her children since (the father) ‘betrayed’ her family and indeed another family, by becoming involved with a married woman. On top of this she has been forced to deal with the incredibly difficult and sensitive issue of [Brodie's] on going, abiding desire to become a boy.”
82. The information provided to Ms T by the mother, Brodie and G during the first day of interviews demonstrated to her that the family group was united in supporting Brodie's desire to be a boy, despite their reservations. The mother expressed to the Family Consultant sadness and deep concern about the implications for Brodie, however, was clear that she would support Brodie whatever the Court decided. It is a matter of concern, however, that during the course of those interviews, all three individuals expressed a very clear view that the family had been betrayed by the father, who was the cause of “all their woes”. He was perceived by the other family members as making the already difficult process even harder for Brodie. Both G and Brodie indicated to Ms T that they did not wish to see their father at the next appointment and Brodie expressed profound anger towards him.

83. Ms T described the mother's anger towards the father as being "intense" and it became increasingly obvious to Ms T that the mother had discussed with the children every aspect of what the mother believed were the father's failings.
84. Ms T noted that throughout the contact which she had with the child, Brodie presented as an angry, intelligent, pre-pubescent boy. Her anger was said to have turned to rage when discussing and then being interviewed with her father. Brodie was at the time aged 11 years and 7 months.
85. Brodie was reported as wearing loose-fitting, unisex clothing to the interviews; walking with shoulders hunched and head down; and avoiding eye contact. Brodie's mannerisms were described as being that of a defiant adolescent and indeed in the child-care room Brodie was accepted by others as a boy.
86. Ms T reported that Brodie was clearly angry at having to go through the process which was being faced, in order to achieve her life's dream to become a boy. Accordingly, Brodie was not inclined to be co-operative with Ms T and was described as being, at times, quite rude and verbally abusive. Examples of this were set out in the Report.
87. The Family Consultant explained her role to Brodie, which included meeting with the father and ascertaining his views about Brodie's wish to commence the process of gender reassignment. Brodie immediately launched into a "tirade" about her father which Ms T detailed in her Report. A number of the matters raised by Brodie are similar, if not identical, to some of the mother's reported statements to Ms T.
88. Brodie was said to be "enraged" when seen with her father. Ms T reported that Brodie blamed her father, as did her mother, for everything that was going wrong in their lives. She "appeared to be almost out of control".
89. Ms T summarised Brodie's presentation at the time as being "an angry, articulate, self-absorbed individual". It was said that her manner of interacting during discussions with the Family Consultant was "designed to control the direction and content of conversation in order to maintain the focus on her and reject other views".
90. Ms T concluded the section in her Report dealing with Brodie by saying that Brodie was "a child in crisis".
91. G was aged seven years and nine months at the time of her interview. It was said that she impressed as a sad little girl who seemed to feel left behind in the current family chaos. Her perspective was said to be one where she felt that everyone's focus was on Brodie and where her own needs were secondary. G appeared to accept this as her lot in life, according to Ms T.
92. G was said to experience bullying by Brodie, however, at the same time, looked constantly to Brodie for approval and indeed, as a role model. Ms T recorded that G imitated, or went along with, Brodie's negative behaviour

towards the mother and professed hatred of her father. Ms T went on to describe G's ambivalence towards her father, saying that it was epitomised by the way she refused to see him and yet, when he came into the room, she remained there, refusing eye contact with him, despite many opportunities to leave. Ms T recorded that there were a few moments when G did acknowledge the happy memories she shared with her father, however, she appeared unable to permit him to reach out to her, "for fear of the repercussions".

93. Ms T had had discussions by telephone with teachers at the children's school and recorded that each child's performance and general attitude at school was deteriorating. She described G as also being "in crisis" and in need of help.
94. In her Report Ms T had recorded that there had been no indication given during the initial set of interviews of the intense turmoil in the lives of the mother and the children. However, during the second set of interviews the mother, who was accompanied by a friend (the owner of the house in which the mother and children were living) was very open to Ms T about "the impossible tensions that existed". The mother was said to be:

"... adamant that she could no longer cope with the children and did not want to parent them any more. Her reasons for this related to the constant conflict between the siblings and their total lack of consideration for her needs. She felt that the children were out of control and that she was helpless to do anything about this."
95. It emerged from Ms T's Report that the father had received text messages from the mother in the week prior to his interview on 13 June 2006 in which he was asked to take the children back to live with him interstate, after the interviews. The father was described as being very troubled by this, however, he indicated that he was willing to have either, or both, of the children "any time, either temporarily or permanently."
96. Ms T described the deep concern which the father had in respect of Brodie's desire to change her gender, however, it was clear to Ms T that the father would support Brodie, whatever the Court decided. Regrettably, and in view of later events, I have my doubts about this.
97. An attempt was made to interview Brodie and her father together, however, Brodie refused and again expressed extreme anger about her father, "screaming at the Family Consultant".
98. A family interview had to be abandoned when the mother persisted in telling the children and the father "how he had essentially destroyed their lives". After the mother left the interview room, Ms T described that Brodie had become "even angrier at her father, screaming at him, to the point that consideration was given by the Family Consultant to calling security".
99. When the mother told Ms T that she was not coping with the children and that she no longer wanted to care for them because of their intolerable behaviour,

Ms T canvassed a number of possible arrangements which could be made, however, Ms T reported that the mother was clear that in her view, either foster care or placing both of the children with their father, were the only options she would accept.

100. The mother also would not agree to only one child being with the father and one with her and she told Ms T the children “could go with their father immediately”.
101. Ms T has recorded that the mother:

“told the children of her position in the presence of the Family Consultant. It was clear that this was not a surprise to the children. The children continued their adamant opposition to their father and their stance was such that it was clear that the option of going with (the father) could not be pursued at that point. [G] said little and continued to be sad, [Brodie] remained angry, blaming everyone but herself and most particularly [G], for the crisis in the family.”
102. The possibility of the father taking the children back with him interstate could not be considered at that time and he returned home. However, Ms T has described that he ensured that the mother and the children were aware that he would take the children either temporarily or permanently under any arrangement.
103. Ms T contacted Associate Professor P in order to obtain help for the mother and the children and an appointment was made with him. Ms T believed, and Associate Professor P concurred, that the situation warranted a Notification to the Department of Human Services, which Ms T then made.
104. On 14 and 15 June 2007 Ms T made further contact with the Department of Human Services, requesting intervention with this family. She subsequently spoke with both parents by phone and has recorded that the mother continued to maintain a position that the children could either both go to their father, or to foster care. The father was reported as maintaining his position that he would take the children on any terms and he was said also to have advised Ms T that he was pursuing the matter “via his solicitor”. If he did so, the Court was not made aware of it.
105. On 19 June 2007 the mother telephoned Ms T, advising the children were behaving well; that she was coping; that she did not want the children taken from her care; and that the children did not wish for this to happen.
106. After Ms T’s Report was released the Court was contacted by the ICL who requested that the proceedings be relisted, as a result of matters set out in that Report, and arising from the interviews.
107. As I have already noted arrangements were made for the matter to be listed on 10 July 2007 and as a preliminary matter the ICL raised the question of

jurisdiction. As seen, I delivered judgment on 24 July 2007. One of the orders I made at the time required the file number of the case and any other identifying features of counsel and/or solicitors involved in the case to be suppressed.

108. One of the recommendations which Ms T had made in her Report was that there should be further psychiatric assessment of Brodie and her family, on an urgent basis, in order to obtain a second opinion as to Brodie's readiness to cope with the proposed procedure. This was also considered on 24 July 2007. The Public Advocate's Office was represented at this time; Senior Counsel appeared on behalf of the mother; the father's solicitor appeared by telephone link; and the ICL appeared.
109. After hearing submissions I ordered the ICL to provide a copy of the Family Report as soon as practicable to Associate Professor P and Professor W and at that time enquire:
  - whether either of them wished to comment on the Family Report and if so, to request for such comments to be provided; and
  - whether or not it was thought advisable and/or necessary for there to be further interviews with Brodie and/or any member of her family.
110. The proceedings were otherwise adjourned to a date to be fixed upon advice being received from the experts as to the matters which I have just detailed.
111. In the event no one pressed for any additional psychiatric assessment.
112. The matter next came to Court on 17 October 2007. In anticipation of that hearing the mother swore or affirmed a further affidavit on 12 October 2007. Leave was subsequently granted for her to file it. In her affidavit the mother provided further information, noting the passage of time since her initiating application had been filed. She also responded to the father's affidavit.
113. The mother expressed her continuing concern that the father failed to appreciate and show understanding of and empathy for the issues that Brodie was dealing with, and further that he had failed to acknowledge that she (the mother) had attempted to do everything possible to ensure that Brodie received appropriate treatment from practitioners at the hospital.
114. It was in this affidavit that the mother raised text messages sent by the father back in May 2007 to which I have referred earlier.
115. The mother explained that, to her mind, Brodie had had a fairly difficult year at home and otherwise since these proceedings began. She expressed her belief that the continued appointments with the treating medical practitioners, together with her clearly strong feelings about proceeding with the treatment, (noting however that this was all in the context of these proceedings which

needed to determine the matter on a final basis), had had an impact, resulting in Brodie feeling frustrated and, at times, angry.

116. The mother also noted, that as the 2007 calendar year progressed, she had observed the child's behaviour to fluctuate dramatically. The mother deposed that she had done her best to demonstrate love and support towards Brodie but expressed her belief that the child was craving acceptance and understanding from the father and also wished to be supported by him. Again, however, she expressed her concern about the father's ability to provide the child with the emotional support necessary to assist her through the process.

117. On 23 September 2007 the mother viewed a television news story that dealt with persons seeking to change gender and she sent a text message to the father as the program went to air to alert him to it, in the hope that he might also watch the program and perhaps gain some insight into how people dealt with this sort of issue. She went on to say:

“However, the Respondent Father's response by SMS text message caused me to be continually concerned. He does not seemingly have much insight into what [Brodie] is currently experiencing.”

118. The mother then set out a number of SMS text messages which the father sent to her. They are contained in par 17 of her second affidavit and I will not repeat them. It is sufficient to note that, in my view, they supported the mother's concerns.

119. The father also sent an SMS text message to Brodie that evening and I accept that its content does cast grave doubts on the father's insight into the child's difficulties. The message is reproduced in the mother's affidavit as follows:

“[Brodie] I don't believe you can treat me like shit after all I am prepared to do for you if its too soon for you to come up then stay down there I will cancel it and keep it for when [G] wants to come up but it may not be quite yet when she is older she will say sorry. [Brodie] *I want the little girl up here not some girl that thinks she is a boy* so if you want another phone card ask your mother. *You're a nasty little girl [Brodie] with no heart.*”

(My emphasis.)

120. The mother later deposed in her affidavit that Brodie had spent two weeks with the father and his girlfriend interstate during the most recent school holiday period. She went on to advise that the child had recently expressed a strong desire to relocate interstate at the end of the 2007 school year. The mother had told Brodie's treating medical practitioners about this.

121. The mother repeated her concerns about whether the father would provide meaningful support to Brodie and explained that after Brodie had returned from her holiday with her father, she overheard a telephone discussion between them in which Brodie was crying and yelling over the telephone to her father that “I am a boy, Dad, and I will kill myself if I have to live as a girl! ...” The mother

went on to say that, whilst she could not be certain, she was pleased to hear that the following day the father had told Brodie that he would accept the treatment “if the Judge decided that it was the best for [Brodie]”.

122. The mother had given thought to relocating herself to the State in which the father lived at the end of 2007 but said that she was yet to finalise her decision in that regard. She explained she was very wary of making any hasty decisions, nonetheless was mindful of the need to ensure that Brodie knew that she continued to have her mother’s love and support and that she was close by. On the other hand, the mother also deposed that Brodie had been treating G very badly during the year and G’s self-confidence was very low. She wondered whether on a short-term basis it might be of benefit to G to have a break from Brodie.
123. Whilst the mother acknowledged her hurt to hear that Brodie wanted to live with her father, she also deposed that she was very aware of the need to ensure that the child was able to cope with the changes that she would experience if or when the proposed treatment began. If Brodie’s desire to live with her father was very strong, the mother wanted to avoid imposing any further stress on her or the rest of the family that could otherwise be avoided.
124. It is convenient to note here that the mother later gave evidence during the hearing before me that the interstate relocation was no longer to take place. I will refer to this later.
125. On 17 October 2007 the father was again represented by his solicitor via a telephone link up. As the preamble to the order explains the solicitor was not present for the whole of the hearing, at his request. Senior Counsel continued to appear for the mother; a representative from the Office of the Public Advocate appeared; and the ICL was also present.
126. Subsequently, on the same date I made orders in Chambers dealing with procedural matters for trial.
127. Those orders included an order for the father to file a Response to the mother’s Application within seven days and to pay any necessary filing fee. This matter remained outstanding, notwithstanding that it had been mentioned on a number of earlier occasions. The father was also ordered to make, file and serve within 14 days, any affidavit upon which he sought to rely in response to the mother’s affidavit which had been sworn or affirmed on 12 October 2007, and filed by leave on 17 October 2007. The father did not file any further affidavit material. He did not file any Response within the prescribed time but did file a Response on 26 November 2007.
128. The proceedings had been fixed for a hearing to commence on 10 December 2007. Subsequently it transpired that the Family Consultant would not be available. There was considerable correspondence between my Associate and

the solicitors for all the parties in late October 2007 in order to accommodate this and in the event the commencement date was changed to 12 December 2007. All parties were consulted about this beforehand and advised of the change.

129. On 23 November 2007 the father's solicitors wrote to my Associate advising that they had ceased to act on behalf of the father. The solicitors enclosed a Notice of Ceasing to Act dated 20 November 2007; the father's Response which had apparently been sworn or affirmed on 8 May 2007; and the required filing fee. It appeared to be the view of the solicitors for the father that the documents had been filed in accordance with the Rules by being sent to my Associate. In the event, my Associate kindly arranged for the documents to be filed in the Registry.
130. On 26 November 2007 the father, or some person on his behalf, purported to file a Request to Attend by Electronic Means dated 8 May 2007. Save that the hearing date had been altered from 14 May 2007 to 12 December 2007 the document was in identical terms to an earlier Request which had been filed in interlocutory proceedings and, indeed, made reference (*inter alia*) to a Case Assessment Conference to be held on 14 May 2007. The request was incomplete and defective.
131. On 27 November 2007 my Associate therefore, at my direction, sent an email to the father at the address of his former solicitors which was said in the Request to be his contact address. The father advised my Associate that he would not be proceeding with the Request to Attend by Electronic Means and also advised that he would be overseas at the time the hearing was due to commence.
132. On 28 November 2007, at my direction, my Associate communicated with the father, again by email, saying (omitting formal parts and relevantly):
- “Thank you for the advice that the Request for Electronic Communication is not to be proceeded with.
- I will make arrangements to have the same effectively discontinued.
- You have told me that you will not be in the country at the time the hearing is due to commence on 12 December 2007 and her Honour enquires, therefore, as to what your intentions are with regard to the hearing. For example, do you intend to be represented by a legal practitioner?
- Your urgent attention is requested to the above matters.
- I have not on the file your contact details, but you should also file a Notice of Address for Service. The relevant form (in pdf and Word format) is attached for completion and return by you.”
133. On 29 November 2007 the father filed, by facsimile, a Notice of Address for Service.

134. On 1 December 2007 the father corresponded with my Associate by email, providing a mobile phone number upon which he could be contacted in the United Kingdom and confirming that he could also still be contacted by email. Relevantly, the father also advised that he would “not be having any legal practitioner representing (him) for financial reasons”.
135. It is convenient to note here that the father later communicated again with my Associate. During the course of the hearing, by email, he advised my Associate that he was concerned about what might be going on in Melbourne and asked whether “we could keep in touch” with him in order to let him know. He was advised that he would be provided with a copy of the orders in due course and this was subsequently attended to.
136. On 6 December 2007 Professor W reviewed Brodie. He prepared a short Report or memorandum about this which was sent to my Associate and which remains on the Court file.
137. Professor W recorded that Brodie appeared to be “very angry about everything and towards everyone at the present time”. A physical examination could not take place as a consequence. However, the Professor was able to weigh and measure Brodie. Professor W recorded that the growth charts indicated that, if growth continued at the same rate, a final height of about 174 cm (five foot, four and a half inches) would be achieved. He said that Brodie “fairly strongly expressed his unhappiness about this prospect”. He noted that the child’s growth rate of 1.9cm in five months was relatively slow and still pre-pubertal.
138. Professor W was taken to this during cross-examination. He said that:
- “There was a fairly emotional sort of exchange about growth, and I used growth charts to show where he is now and where I thought it was most likely that he would end up and, you know, he certainly wasn’t happy with what I said about where he would end up.”
139. He later explained that if the treatment commenced the medication (Zoladex) would result in a slowing down of growth. Accordingly, Brodie would appear small when compared with boys, given that, at the average age of 14, boys experience a growth spurt, which Brodie would not have.
140. Professor W explained to counsel for the ICL that there was a certain amount of confusion in Brodie’s mind saying:
- “You know, in his mind, ‘I am a boy, so why can’t I end up the same size as other men?’ There is a bit of a gap there, in understanding some things about the XX chromosomes are not changeable by hormones.”
141. It is also convenient to note here that Professor W went on to say that he was of the view that once the treatment started the level of hostility and anxiety would drop; they would be able to have further discussion and exchange of opinions until an understanding was reached. He also thought that the child would have

the opportunity to meet other people who have had similar experiences and he concluded that this was an area where immaturity was not “helping very much”.

142. Associate Professor P was also cross-examined about this and he agreed that “the height issue” was “a big one” that Brodie was having to struggle with at the moment. However, he pointed out his own understanding that by the time Brodie reached late adolescence, the child’s height would be what it was going to be anyway even if there had been a period of slower growth in height than Brodie’s peers experienced. As he said:

“... we’re not proposing to make him taller or shorter in the long run because of the treatment.”

143. I now return to the Report of 6 December 2007. Professor W recorded that the mother had told him that “she was at her wits’ end” with the child and “was nearly ready to ask the State to take responsibility”. He said that Brodie was extremely abusive towards the mother during the time that they were together with him.

144. Professor W however still believed that the child’s best interests would be served by allowing the treatment to commence. He noted that the treatment would demand a level of co-operation from Brodie which the child might perhaps find difficult to give. He concluded by saying that he did not expect that it would be an easy road for anyone and that on-going psychiatric involvement was essential.

145. Professor W described in his Report that the child had now taken the name of Brodie and he proposed also to use that name in that letter or Report. He added that Brodie was extremely resentful that the mother kept swapping between personal pronouns and first names. Throughout his letter, presumably as a consequence of all of this, Professor W referred to Brodie as “he”. During the hearing before me the child was also referred to in most instances as “he” and by the name the child wishes to be known.

## **THE MOTHER’S ORAL EVIDENCE**

146. The mother gave evidence in chief and was cross-examined. She explained how the family had moved towards the end of November to a Ministry of Housing home. Both children had separate bedrooms. The children were still attending their previous school which must have involved the mother in quite some travelling. She told the Court that Brodie wanted to graduate from that school. As she saw it Brodie had been a good student until about half way through the 2007 calendar year when her behaviour had deteriorated. She now saw her however as becoming a good student and being more respectful. The children were improving in their relationship to each other, particularly since they had moved to the new home. In the mother’s view, Brodie was a little

resentful of G for reasons which the mother attributed to the child's perception of "favouritism" displayed by the father to G. However, she was becoming more tolerant and indeed was showing affection.

147. Professor P had suggested a particular school in an area local to the family's new home ("the College"). On the day before the hearing commenced the mother and both children met with the Principal and Welfare Officer at The College which the mother explained was a co-educational Catholic school. Associate Professor P later explained that work had been done with this school with another young person and the College had been provided with quite considerable background information about gender identity and approaches to management. In his view, the College had "a track record and body of experience" although it would also be necessary for there to be regular case conferences. Associate Professor P expressed confidence that the College was capable in this regard and of following through with working out solutions to problems which had arisen.
148. The mother identified a financial problem in respect of the fees charged by the College. Her income derived from a sole parent pension (\$520 per fortnight); Family Allowance (\$340 per fortnight); and child support (\$240 per month). She did not discuss financial matters during this attendance at the school. Sensibly, she refrained from doing so because both children were with her.
149. On the second day of the hearing, the mother was recalled by leave and without opposition. The Court was told that the mother had been able to have a further discussion with the Principal of the College and the Business Manager or some other person. A plan was devised which would require the mother to pay \$50 per month for the fees. Second-hand school books were able to be purchased and the mother told me that she felt confident that she would be able to purchase school uniforms and, if necessary, she could purchase second-hand uniforms.
150. All in all, it was clear that the financial difficulties had been overcome and there was no impediment to Brodie's commencement at the College in 2008.
151. The mother had referred briefly in her second affidavit to the Family Report. She had said that the timing of the interviews was unfortunate. She was under considerable stress at the time, given that her mother had recently passed away; further, at the time, Brodie was behaving particularly badly at home in that she was expressing a great deal of anger and strong feelings and was typically "lashing out" at G and the mother in so doing. The mother also commented in this affidavit that the notification to the Department of Human Services was only investigated to the extent that she received a single telephone call from a staff member.
152. During her oral evidence, the mother explained that at the time of these interviews she was "ready to throw in the towel". She stated that Brodie had

been very badly behaved and was disrespectful, even to the friend who had let the family stay in his home. The period involved had been eight months or thereabouts. The mother felt that she had had no security or stability. A bedroom was being shared. She repeated that she had lost her mother. In her view, at least, the father was giving her “grief”, and her emotions got the better of her. She repeated that, notwithstanding her request that she and the father not be in the interview room at the same time, this in fact had happened.

153. She confirmed that the instability in her environment, which has been referred to in the experts’ reports, had now settled, given the move to the new home, further noting that the family was starting afresh in a new area. She advised that Brodie was “very, very excited” in respect of The College at which it was proposed the child should attend. She felt her own relationship with Brodie had improved. She advised that G seemed to follow Brodie’s moods and it would appear therefore that G had also improved.
154. The mother was reminded of the most recent interview with Professor W and the Report which resulted. Her evidence was to the effect that the interview took place after school and Brodie was not at all well behaved that day. Brodie was described as being frustrated, tired, upset that they had to go to the interview and very angry; all of this was carried into the interview.
155. She explained that she had told Professor W that she hoped that the move to the new home would change things, however, she did feel that she had “got to the end of her tether” and was indeed nearly ready to hand Brodie over to the State authorities.
156. She told her counsel that she regretted this and indeed retracted it. She referred to the turbulent year which she had endured and explained that her emotions at times get the better of her. She went on to say that hopefully this would not happen in the future but pointed out that the turbulence of the times, the lack of security, and Brodie’s frustration had affected the whole family.
157. The mother was thoroughly cross-examined. Counsel on behalf of the ICL reminded her that her comments to Professor W (that she was nearly ready to ask the State to take responsibility), or similar comments, had also been referred to in the Family Report.
158. She was also reminded that in her second affidavit the possibility of Brodie living with her father on a permanent basis had also been raised. This situation had changed.
159. The mother explained that the father had given Brodie a phone but had not realised that there were still messages on that phone. Brodie found these messages and photos, one of which was described as being inappropriate. The mother’s evidence was that the father told Brodie that his trust had been abused. In fact, the mother said it was she who had taken the phone from

Brodie's bag. The child had not given it to her. She saw the messages and photos and deleted them. The father was told of this. However, the father told Brodie that she could not come and live with him, even though the mother explained that she, not the child, had taken the phone. The mother went on to explain that there had been very little contact since that time. She also told counsel that she had attempted to have the children get in touch with the father but G refused. She had sought and obtained help for G in that G had been having counselling at her school since June, sometimes twice a week. The mother herself had been having counselling on a monthly basis with Associate Professor P and a social worker at the Royal Children's Hospital. The possibility of counselling in a locality close to her previous residence had been investigated, however, given her move, she was now investigating counselling at a more convenient location.

160. She was asked what it was that Brodie was frustrated about. Her answer was to the effect that she was frustrated about having the transition started; the attendances upon the various doctors and professionals; that Brodie was very anxious about the onset of puberty; and that she did not understand what the process was which had to be undergone to make it possible for the transition to take place. She explained that she got "the backlash" and that she had not managed the situation very well at times. She was very frank about this.
161. She confirmed that Brodie would have to continue with appointments on a regular basis and expressed the view that once things actually started to happen, the child would be better, and further advised that Brodie knew that the attendances would have to continue.
162. She accepted the very strong recommendation about on-going psychiatric involvement. Her understanding was that it was very important and she confirmed that it would take place. She advised that Associate Professor P had been investigating the availability of child and family counselling in her local area. All in all, she was very definite that psychiatric involvement would continue.
163. The mother's evidence about G was that, somewhat to her surprise, G did not appear to be "fazed" by the situation. G accepted her sister as her brother and for example, when she was asked by a hairdresser whether she had any brothers or sisters, had told the hairdresser that she had a big brother. The mother also explained that G introduced Brodie as her brother.
164. The mother was not shaken by either cross-examiner.
165. There were a number of occasions when I was particularly struck by the mother's insight and undoubted love for the child.
166. One example concerned evidence that she had been at one stage concerned about what she described as "eagerness" or "over zealotness" of the doctors

who she thought were looking at the situation as a “test case”. She went on to say, however, that:

“To me, that’s my child.”

167. She explained that she had felt a little uncomfortable about this, however, had come to fully understand that what had to be done, had to be done. She also understood the doctors were in fact supporting her as well as Brodie.

168. It is useful to note here that questions were asked of Associate Professor P in respect of the mother’s ability to continue to cope with parenting Brodie. He was asked whether he was concerned about “that dynamic” and if so, the impact on the child of what was being proposed. Associate Professor P responded:

“I think what’s proposed in relation to [Brodie] with suppression of puberty will only be helpful in terms of the dynamic between he and his mother and his sister. It certainly was a concern before because I know his mother has been very concerned about the proposed treatment and her own feelings about it have vacillated, gone up and down, and she said, as any parent would, she goes to bed at night and prays that in the morning it will all be over and the issue will have disappeared. As each week, each month goes by, and as each year has gone by, I am sure I know that she knows it’s not going to happen, despite what she might wish. ...”

169. Another occasion occurred after the mother had completed her evidence on the first day. Re-examination had taken place and the mother left the witness box. However, she then asked spontaneously if she could say something else. She returned to the witness box. What she said then was not as important as the manner in which she said it. Love, concern and empathy for Brodie radiated from her. I commented on this during final submissions and concur with her counsel’s submission that she was “a mother who spoke from the bottom of her heart”.

170. Perhaps the last word should be left to Brodie. The child’s perception of the mother’s attitude and commitment emerged during a passage of Associate Professor P’s evidence. It follows on from the passage I have earlier cited and Associate Professor P had this to say:

“I think [Brodie] knows that his mother has his best interests at heart and is committed to him. And he knows better than I do I think. I remember one occasion when (the mother) was very distressed and [Brodie] had been an absolute pill and was being quite abusive towards her and teasing and tormenting his younger sister and his mother left and said, ‘Look, I can’t take any more of it. I’ve had enough. You’ll have to go and live with your father.’ I was quite shocked and I said to [Brodie], ‘What will we do. How do you manage this?’ He said, ‘That’s all right. Mum will be back. She will calm down and we’ll get on with things’. So he’s got a capacity to – well, I think what he knows is that his mother is committed to him, despite the volatility and the distress and the bitterness in the relationship between

his mother and his father. I think he does know that there's a commitment from his mother."

171. The mother's difficulty with Brodie and the volatile relationship which has been exhibited from time to time need to be looked at in light of the foregoing matters. I agree with Professor W that the road ahead would not be easy for anyone and that on-going psychiatric involvement is essential for the family. However, I am comfortably satisfied that the mother understands this. Underpinning her sometimes tumultuous relationship with Brodie is a deep and abiding love and commitment towards the child.
172. It can be seen from the joint statement with the conference of experts that all three were agreed:
- "As long as [Brodie] continues to 'battle' to obtain treatment, she will be side-tracked from taking (tackling) the issues of identity by focussing on the battle, not the identity issues."
173. I accept that observation. It is clear that this "battle" has coloured the relationship between Brodie and her mother and also the relationship between the two siblings.
174. I am satisfied that G has not been overlooked in all of this. This was raised with Associate Professor P and he confirmed that G was very much in her mother's mind. He observed that she was very concerned about the impact of all that was happening upon G and that she (the mother) was very hopeful that now that the family had obtained their own home and were going to be able to settle into their own community, that things would be much better. In particular, Associate Professor P went on to say, "If [Brodie's] behaviour settled, it would have a profound impact on the experience for [G]". He confirmed that there had been an indication of that when there "was a crisis a couple of months ago and the riot act was read to [Brodie]. For the next few weeks they got on very well and he was able to be much more friendly with his younger sister. So, I think the capacity for that changing is there and I think it will be most likely if the issue of gender is one that is removed from the forefront for [Brodie]."
175. I accept this opinion.
176. The relationship between Brodie and the father is problematic. I accept that Brodie loves the father but that Brodie has a perception (rightly or wrongly) of rejection by the father. I also accept that Brodie no longer wishes to live with the father. It is, of course, to be hoped that both children will in due course be able to pursue a relationship with the father.
177. It is difficult to give any meaningful assessment of the father, given his absence from the hearing. He was, however, interviewed by Ms T and she noted that it was clear that he would "be there" for Brodie whatever path was taken. I have

to say that I have some doubts about this, although I will not express any conclusion given that I have not had the opportunity to see the father myself.

178. I do note that Associate Professor P was cross-examined about the prospect of Brodie's relocation to live with the father. He said that he would have serious or strong reservations about this. He very properly pointed out that he had not met the father. He had however, read the Family Report and had had the opportunity to speak to him "at length" on the telephone. From the limited information which he had, Associate Professor P expressed the view that he did not believe that the father would be able to provide the emotional stability that the child required over time.
179. The hearing date which was assigned to this case was done so at a time when the father was represented and there has never been any suggestion that it would be inconvenient to him. Nonetheless, on the evidence before the Court, the father travelled overseas from about the end of November 2007. The evidence provided by the mother was that the father was visiting the family of his new partner in England and was to be overseas for some six weeks. In all the circumstances I have to regard that as a deliberate choice which the father made and it is difficult to reconcile it with the concern he has expressed for Brodie. However, I cannot take the matter any further.

## STATUTORY CONSIDERATIONS

### Part VII of the Act

180. As I have earlier recorded, the Court is required to regard Brodie's best interests as the paramount consideration. In so doing, I am required to consider two primary considerations and several additional considerations, all of which are set out in s 60CC of the Act.
181. The first of the primary considerations is the benefit to Brodie of having a meaningful relationship with both parents.
182. In *Mazorski v Albright* [2007] 37 Fam LR 518 Brown J defined "meaningful", when used in the context of "meaningful relationship" as being a relationship or involvement which is "important, significant and valuable to the child" in question and stated at par 26 "[i]t is a qualitative adjective, not a strictly quantitative one." With respect, I agree with her Honour.
183. When applying that definition, there can be no doubt that it is generally in a child's best interests to have a meaningful relationship with both parents. Subject to any countervailing best interests considerations, it would also be in Brodie's best interests.
184. The relationship between Brodie and the father at the moment, on the evidence, is non-existent. If the father maintained the stance that he exhibited in the SMS text message which he sent to Brodie on 23 September 2007, which I have

earlier set out, I cannot see that there would be any chance of a meaningful relationship being re-established. But as Professor Parkinson observed:

“... courts cannot by order create meaningful relationships between parents and children; they can only create or maintain the circumstances that make meaningful relationships possible”. (See *Patrick Parkinson*, “Decision Making about the Best Interests of the Child; The Impact of the Two-Tier” (2006) 20 AJSL 179.)

185. I recognise the importance of this consideration, and I am satisfied the mother is aware of the importance to Brodie of redeveloping the relationship with the father, however, the ball will really lie in the father’s court.
186. Fortunately, the second of the primary considerations does not apply to this case.
187. The additional considerations are set out in s 60CC(3) of the Act. It is not an exhaustive list and the additional considerations are not all relevant to this case.
188. I have had the benefit of written submissions filed on behalf of the mother as well as the ICL. I have been assisted by all of these submissions and there is a considerable overlap between them. My concentration will, however, be on the submissions provided by the ICL which have eloquently set out and dealt with the relevant additional considerations. No disrespect is intended by this to the mother’s legal practitioners.

**Section 60CC(3)(a) – Any Views Expressed by the Child and any Factors Relevant to the Weight the Court should give to those Views**

189. I accept the submissions of the ICL that Brodie “is adamant” that she wishes to live life as a male. I also accept she has not wavered from that position. As Professor W said when cross-examined by counsel for the ICL:

“Well, [Brodie] convinced me that from the earliest stage of his life he felt male and there was no transition there, that from the very beginning and from my experience with him, he has not wavered in the slightest in his conviction that he always was male and always will be male.”

190. Counsel for the ICL also explored whether or not Brodie was going through some form of a “tomboy phase”. Professor W disagreed but left it to Associate Professor P to expand upon this. Associate Professor P told the counsel for the ICL that:

“... a tomboy is a girl who has no question about her identity as a girl but just prefers to do masculine things. [Brodie’s] core identity is of a male, not of a female wanting to be like a boy.”

191. Associate Professor P was also asked as to whether Brodie had any real understanding of what the ultimate outcome of the path that was being proposed. I was very interested in Associate Professor P’s response and I accept his evidence that in broad terms, Brodie’s conception of being an adult

was one of a man with a wife and children. At the same time, Brodie was aware that he could not have his own children if the treatment proceeded but certainly had an image of being in a marital relationship, not necessarily a sexual one in the stereotypic view of men and women having genital sex. These were to my mind quite mature concepts and thoughts for this child to be having. I do note however, that there was other evidence in the reports, particularly, the Family Report which did express some concern about the child's maturity. It is also the case as was submitted by the ICL that nonetheless the recommendation was that the procedure should be permitted.

**Section 60CC(3)(b) & (c) – Relationships and Willingness and Ability of both Parents to Facilitate and Encourage the Same**

192. I have already discussed this in some detail and most recently in my consideration of the first of the primary considerations.

**Section 60CC(3)(d) – Likely Effect of Change**

193. The ICL correctly and vividly submitted:

“One could hardly imagine a greater change in a child's circumstances than to change her sex. The treatment sought in these proceedings, whilst it is only the first step in that process, nevertheless involves a major change for [Brodie]. It is the Independent Children's Lawyer's view that the court cannot consider this specific application in isolation from the treatment which will in all likelihood follow it, and that in considering this application, the likely effects of future treatment must be taken into account. ...”

194. I agree with that and will return later to the nature of the future treatment.

195. At the same time, it is necessary, in my view, to consider this factor from the perspective of the child's likely reaction should treatment not be permitted.

196. I asked Professor W myself about this and he told me that he would be “seriously worried about self-harm”. I accept his evidence.

197. Associate Professor P also agreed that this was “quite a likelihood”. He also raised the possibility of the child running away from home and refusing to go to school, which apparently had already been threatened. He went on to say, most perspicaciously in my view:

“I guess the hard thing is one shouldn't be held hostage to his statements but my understanding is that he would follow through with these statements if he felt that those avenues were closed off to him, that he sees the idea of going on through life with the spectre of being female and yet male so sort of severe a one that he would try and harm himself or undermine his general development.”

198. I accept this evidence.

### **Section 60CC(3)(f) – Capacity of the Child’s Parents and Other Relevant Persons to Provide for the Needs of the Child**

199. In this factor, consideration must be given not just to physical needs but also to emotional and intellectual needs. I agree with the submission of the ICL that the child’s “emotional and psychological needs are at the very heart of the Court’s decision in this matter”. I also agree that there is some concern on the evidence in relation to the capacity of both the mother and the father to provide “an emotionally healthy environment” for the child. I have discussed this elsewhere and I have had regard, in particular, to the Family Report and the Joint Statement of the Experts. In this latter regard, I note the experts agreed:

- “(v) Whilst her home circumstances are not ideal for tackling the issues associated with treatment, the supports that can be provided by the hostel and the community should be sufficient to assist [Brodie] in doing so. Without the opportunity for treatment, the impact of her home circumstances may compound the problems she has.
- (vi) There is greater risk to [Brodie’s] psychological well being if she does not have permission to commence treatment as soon as possible than if she does not have treatment at all.”

200. I accept this is so.

### **Section 60CC(3)(i) – Attitude to Child & Responsibilities of Parenthood**

201. This matter has been discussed or touched upon. The absence of the father and the circumstances of this case are such that further discussion is not possible.

### **Section 60CC(3)(l) – Likelihood of Further Proceedings**

202. It must be acknowledged that the proposal envisages a further application being made to the Court at some time in the future, perhaps when Brodie is about 16 years old, although the experts suggest some flexibility about the timing. The treatment proposed at this stage is only part of the treatment which will be necessary should the overall process be continued. It is inevitable and appropriate in the circumstances for the matter to involve further intervention by the Court.

### **Section 60CC(3)(m) – Any Other Relevant Factor or Circumstance**

203. Under this subsection a number of matters have been raised in the submissions filed on behalf of the mother and the ICL. I accept those submissions, but to my mind, they do not need to be detailed, given the discussion and findings elsewhere in this Judgment.

### **Section 60CC(4) and (4A)**

204. I have considered these sections. In my view, the discussion about these and allied matters which has taken place elsewhere is sufficient in the

circumstances of this case and need not be repeated or enlarged upon, particularly given the limited participation of the father in these proceedings.

### **Sole Parental Responsibility**

205. During the course of final oral submissions the ICL suggested that the Court should give consideration to making an order for sole parental responsibility in the mother's favour. That suggestion was adopted on behalf of the mother.

206. As I have earlier explained the mother and the father both have parental responsibility for Brodie pursuant to s 61C of the Act. However, this parental responsibility is subject to any court order which might be made altering it, and is also subject to any presumption arising from s 61DA of the Act.

207. In *Goode & Goode* (2006) FLC ¶93-286 the Full Court considered the question of whether parental responsibility under s 61C involved an obligation to consult, or to make decisions jointly. The Full Court distinguished the parental responsibility which exists as a result of s 61C from an order for shared parental responsibility which has the effect set out in s 65DAC, saying:

“[39] ... In the former, the parties may still be together or may be separated. There will be no court order in effect and the parties will exercise the responsibility either independently or jointly. Once the Court has made an order allocating parental responsibility between two or more people, including an order for equal shared parental responsibility, the major decisions for the long-term care and welfare of children must be made jointly, unless the Court otherwise provides.”

208. Section 61B defines “parental responsibility” in relation to a child, to mean “all the duties, powers, responsibilities and authority which, by law, parents have in relation to children”. This includes decision making about “major long-term issues” which is defined in s 4 of the Act as follows:

“... issues about the care, welfare and development of the child of a long-term nature and includes (but is not limited to) issues of that nature about:

- (a) the child's education (both current and future); and
- (b) the child's religious and cultural upbringing; and
- (c) the child's health; and
- (d) the child's name; and
- (e) changes to the child's living arrangements that make it significantly more difficult for the child to spend time with a parent.

209. Section 61DA requires the Court, when making a parenting order in relation to a child, to 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 of a child has engaged in abuse of the child or another child in the family, or family violence. The presumption may be rebutted by evidence that satisfies the Court that it would not be in the best interests of the child for the child's parents to have equal shared parental responsibility.

210. I am satisfied on the evidence that the presumption has been rebutted in that it would not be in Brodie's best interests for the mother and father to have equal shared parental responsibility. To make such an order would require the mother and father to consult and to make joint decisions about major and long-term issues. Put simply, they do not have the capacity to do this.
211. At the same time, it would be impractical for the parental responsibility under s 61C to continue. In reality, and as I have already found, the mother has had the primary responsibility for the care, welfare and development of Brodie (and G for that matter). Particularly since 2006 and probably even before then, it has fallen to the mother to make decisions both as to day-to-day and long-term issues. It would be in Brodie's best interests for the mother to have sole parental responsibility for the child.
212. The father, of course, did not receive any notice of this application and accordingly, it is appropriate to make the order on an interim basis and to reserve to the father liberty to apply on reasonable notice to discharge or vary that order.

#### **Rule 4.09 of the Rules**

213. In the excellent Statement of Argument provided by the ICL and settled by her counsel, the evidence under each part of r 4.09 has been summarised and set out. I can do no better than to incorporate it in these Reasons. In some respects I have myself already touched on the considerations in the discussion which precedes this section. In some aspects the evidence as it emerged at the hearing requires to be further detailed and I have done so where necessary. Otherwise, I accept and adopt the ICL's submissions which are reproduced in an italicised format below, save that the child's name has been anonymised.

***"[4.09(1)] If a Medical Procedure Application is filed, evidence must be given to satisfy the court that the proposed medical procedure is in the best interests of the child.***

*It is submitted that evidence from medical expert Professor [W], psychiatric expert Associate Professor [P], Family Consultant [Ms T] and evidence from the child's mother, [...], when taken together suggest overwhelmingly that the proposed medical procedure is in the best interests of the child [Brodie] born [in] 1995.*

*Taking into account all relevant considerations expanded upon below, the Independent Children's Lawyer considers that the present and future psychological benefit to the child in being permitted to begin the treatment*

*sought outweighs the psychological risks to her in not receiving the treatment and is therefore in her best interests.*

**[4.09(2)] The evidence must include evidence from a medical, psychological or other relevant expert witness that establishes the following:**

**(a) the exact nature and purpose of the proposed medical procedure;**

*The proposed medical procedure is for the child [Brodie] born [in] 1995 to receive pharmacological treatment, that treatment consisting of Zoladex, a gonadotrophin releasing hormone analogue, by implanting a 10.8 mg pellet under the skin, using local anaesthetic. This will be repeated every 3 months. The purpose of the treatment is to suppress pituitary gonadotrophin secretion, which will in turn suppress ovarian function and oestrogen secretion for the duration of the course of treatment. This will have the effect of suppressing [Brodie's] pubertal development as a female.*

*(Report of Professor [W] attached to affidavit affirmed 21 August 2007 and filed 22 August 2007 2007 at p 1.)*

214. As earlier discussed this is the first stage of an overall treatment plan. Professor W had explained in his Report that Brodie was much more fortunate than older children with gender dysphoria in that it was still the situation that puberty could be blocked before it had gone very far. He went on to say that whilst the application was only at this stage for the introduction of a gonadotrophin-releasing hormone analogue which was fully reversible, a further application would be made for permission to commence treatment with testosterone, the male sex hormone. That stage did not form part of the current application because the medical experts did not regard 'diagnosis as having been completed' and because testosterone would cause permanent physical changes such as deepening of the voice, growth of the clitoris and the development of a muscular build. Professor W had also said in his Report that the suppression of puberty allowed 'breathing time' during which a much more detailed psychological profile could be compiled in a more relaxed atmosphere, and accordingly, the treatment was an important contributor to the diagnostic process.

215. Counsel for the ICL took Professor W to these aspects of his Report, asking whether the diagnostic process was still taking place. Professor W responded:

'Well, I think it's been difficult for us to really probe the mind of the child because of the tremendous degree of anxiety that exists as a build up to this decision being taken. I think that the passing of this particular obstacle and the starting of the puberty-suppressing treatment will allow a greater degree of trust to be established between the child and the profession and a better communication about desires and intentions with regard to other treatment, so in that regard, yes.'

216. Professor W had also spoken of the next stage of treatment which, subject to approval, would commence when Brodie was at or around 16 years of age. In dealing with the question of flexibility for this stage of the treatment Professor W explained that:

‘... ideally, if this young person after a year or so of the Zoladex treatment was exhibiting the same 100 per cent conviction, progression towards maleness was what was desired, that the addition of testosterone at that time would further enhance the psychological well being and physical health of the person. But testosterone does have its own sort of psychological effects, as we know from the way young men behave, and while [Brodie] is in this tremendous state of turmoil and anger and aggression, I wouldn’t feel so happy about adding. So we would want some settling of emotions in readiness for that, but if we did start it, we would start at a very low dose anyway.’

217. Later Professor W also explained that the delay in commencing the next stage was because of anxiety that a young person might have a change of mind, and given that testosterone introduces changes which can’t be reversed, a very conservative approach was needed and subsequent stages of the procedure should wait for as long as possible.

218. Subsequently, Associate Professor P explained that it was very important for this child to have some flexibility about the timing of the next stage of the treatment, particularly because of the issue of height and growth, however:

“... he also needs time to be living as a male to realise what’s involved and also for further intellectual development and information to be gained so that he better understands the risks of testosterone treatment. So I wouldn’t imagine it happening, as Professor [W] was saying, within the next year or so but there should be some flexibility about that because I could imagine there will be time maybe before he’s 16 where it’s really a major physiological and psychological issue that needs resolving.”

**(b) the particular condition of the child for which the procedure is required;**

*Professor [W] states that [Brodie] is suffering from “a profound and persistent gender identity disorder”.*

*(Report of Professor [W] attached to affidavit affirmed 21 August 2007 and filed 22 August 2007 2007 at p 1.)*

219. Professor W succinctly explained that this was:

“... a disorder in which the person is so convinced that they are in fact the other gender that they can’t understand why other people don’t see them that way.”

**(c) the likely long-term physical, social and psychological effects on the child;**

**(i) if the procedure is carried out;**

*The physical effects of the treatment sought in this application, simply put, are that [Brodie] will not enter puberty as a female. (See Professor [W]'s report at page 2). That is, she will not menstruate, nor develop breasts, and the treatment would suppress the widening of her hips. The treatment sought at this stage does not involve the administration of males hormones.*

*The social effect will be that "[Brodie] can more successfully live her life as a boy, especially when in the more robust and challenging environment of secondary school". (Report of Associate Professor [P] dated 4 April 2007.)*

*The likely psychological effects of the treatment being carried out are that [Brodie] will obtain, at least in the short to medium term, the outcome that she desires and is likely to feel that the court has 'heard' her. However, it is common ground among the experts that she will need intensive psychotherapy to explore issues which will arise from the transition between being a girl to being a boy (Joint Statement of Experts dated 27 November 2007 paragraph 1(ix)). [Brodie] has some insight into those issues but Ms [T] in particular expresses concerns about the level of that insight (see Ms [T]'s family report dated 25 June 2007 at paragraphs 87 and 93).*

220. Professor W was cross-examined about the impact of oestrogen suppression on someone as young as Brodie. Professor W stated that this was an important consideration and one which the medical team had given thought to. He explained:

*"There is no cut and dried answer to it, but in the natural course of events bone density is progressively increasing from the beginning of adolescence until about age 25, and then it plateaus and then it declines in women after the menopause. The introduction of the Gn RH will completely stop any ovarian activity, so there will be a lower rate of accumulation of bone density for the duration of the treatment when testosterone is not also being given. So there would be a percentage of bone density that isn't accumulated in that time ... But once testosterone is started, that should catch up. So what we don't know is whether at age 25 [Brodie's] bone density would be the same as someone who had not had this treatment for a few years. There's no evidence one way or the other. I suppose just to add to that, we are always having to weigh up benefits and disadvantages and in this case the disadvantage of not doing it is a continuation of the present crises which, with unknown outcome, are not likely to be good."*

**(ii) if the procedure is not carried out;**

*If the procedure is not carried out, it is likely that [Brodie] will begin to menstruate, her breasts will continue to develop and her hips will widen. Were the treatment to begin later in [Brodie's] life, it would likely involved*

*(sic) the surgical removal of breast tissue (Report of Professor [W] at page 2).*

*The experts are all agreed that psychological effects on [Brodie] if the treatment were not carried out would be very detrimental and even catastrophic for her:*

*'In transsexual teenagers, it is known that menstruation is a time of greatly increased stress that can lead to self-harm. Suppression of menses is therefore highly desirable to prevent acute and recurring psychological distress.'* (Professor [W's] report at page 2, para 2, final bullet point.)

*'I believe that if [Brodie] is not able to pursue her life as a boy she will become increasingly distressed and would be at risk of developing major depression, putting at risk her healthy psychological development.'* (Associate Professor [P's] report dated 4 April 2007 at page 2, para 3.)

*'Whilst conditions are about as far from ideal as possible for the commencement of the process on which [Brodie] wishes to embark, it is the very precariousness of her position which necessitates the conclusion that the danger of not going ahead could, quite literally endanger [Brodie's] life.'*

*It is the view of this Family Consultant that the risks to [Brodie's] psychological state, should she commence menstruation and the development of secondary sexual characteristics at this point in her life, may well outweigh the risks of delaying puberty whilst she has time to safely explore her issues with the help of expert psychological assistance and the family has an opportunity to stabilise.'* (Family report dated 25 June 2007 at paragraphs 94 and 95.)

*'There is a greater risk to [Brodie's] psychological wellbeing if she does not have permission to commence treatment as soon as possible, than if she does not have treatment at all.'* (Joint Statement of Experts dated 27 November 2007.)

221. In the Joint Statement the experts agreed that, as long as [Brodie] continued to "battle" to obtain treatment, she would be sidetracked from tackling the issues of identity by focussing on the battle, not the identity issues.
222. Professor W and Associate Professor P also gave evidence, which I have already recorded, which outlined their concerns about the possibility of self-harm and other destructive behaviour which could eventuate if Brodie was not permitted to commence treatment.

***(d) the nature and degree of any risk to the child from the procedure;***

*The only statement made by the experts in relation to any risk to [Brodie] from the proposed treatment is 'there are no long term side effects that would harm the child and be contrary to her best interests' (Professor [W's] report page 2, para 3(b) second bullet point.)*

223. The only qualification I wish to make is by reference to Professor W's oral evidence during cross-examination concerning bone density. I have earlier discussed this. I repeat, however, that Professor W's opinion (which I accept) was that there was no evidence one way or the other to establish whether the cause in the accumulation of bone or bone density was permanent, given that this had not been measured by any long-term outcome study.

**(e) if alternative and less invasive treatment is available – the reason the procedure is recommended instead of the alternative treatments;**

*Professor [W] states that there is another way to suppress menstruation but that it would not be less invasive (as it would treat [Brodie] with an oestrogen-progestogen combination) and would have the unwanted side effect of promoting breast development and female body shape. (Professor [W's] report page 2, para 3(a).) The only other alternative is no treatment at all, which is not recommended for all the above reasons.*

**(f) that the procedure is necessary for the welfare of the child;**

*See sub-paragraph (c)(ii) above.*

**(g) if the child is capable of making an informed decision about the procedure – whether the child agrees to the procedure;**

*[Brodie] is capable of making an informed decision about the procedure:*

*'I believe that [Brodie] is a young person of above average intelligence. She's been able to investigate and understand the workings of the body in relation to gender and sexual organs beyond the information that she would have acquired in school-based health and sexual education sessions. She's clearly been informed in these matters by her mother, and from accessing other literature. I believe that [Brodie] has a very good understanding of her own anatomy, and of the impact of puberty blocking medication'. (Associate Professor [P's] report dated 4 April 2007 at page 1, paragraph 6.)*

*Not only does [Brodie] agree with the treatment, she has 'an unshakeable desire to prevent the process of puberty, and its associated physical changes, continuing'. (Family report para 87.)*

**(h) if the child is incapable of making an informed decision about the procedure – that the child;**

**(i) is currently incapable of making an informed decision; and**

**(ii) is unlikely to develop sufficiently to be able to make an informed decision within the time in which the procedure should be carried out, or within the foreseeable future;**

*Not applicable.*

**(i) whether the child's parents or carer agree to the procedure.**

*[Brodie's] mother, while having some reservations about the treatment, has brought these proceedings and supports [Brodie's] wish to become a boy. While [Brodie's] father has not filed a Response in the proceedings,*

*he has filed an Affidavit and did attend for the family report interviews, where he 'expressed very strong reservations' in relation to this application. (Family report para 80.)*

224. As I have already recorded the father did in fact file a Response, however, it was not served.
225. Finally, I note and accept the ICL's submission that the foregoing matters are relevant to some (at least) of the s 60CC factors earlier recorded.

## CONCLUSION

226. I have confidence in and place great reliance on the evidence of Professor W and Associate Professor P. They are clearly experts in their respective fields. It was clear from their evidence that they continue to keep up with research and they have diligently sought ways in which Brodie could be assisted. They did not overlook the difficulties outlined in Ms T's Report. These had been taken into account and they were realistic about the "rocky road" which lay ahead. They did not overlook G. They have suggested a conservative approach in Brodie's treatment.
227. As can be seen, I have also taken into account the thoughtful Report of Ms T. I am reassured by the fact that Ms T and Professor W and Associate Professor P reached consensus as has been set out in the Joint Statement.
228. Brodie is fortunate in the sense that the medical team has approached this matter with sensitivity and with reflection.
229. She is also fortunate in the sense that the treatment can commence at an early time, something which is not always open to young persons who have the same condition.
230. I asked Professor W myself about the frequency of this condition. As it happens there had been a meeting shortly before the hearing with a psychiatrist who runs the Gender Identity Clinic at Monash Medical Centre which only caters for adults. Professor W told me that this Clinic had had 80 new patients in the 2007 calendar year alone. Professor W had asked the psychiatrist for her views about the age at which those people would have sought attention had there been a clinic for younger people and was told that all of them would have done so. He went on to say that it was possible therefore that 80 teenagers a year might be seeking help if they knew that there was help available. He said that this was a great surprise because in his experience only a small number "trickle through" and it therefore appeared to be quite rare. Perhaps this was not the case.
231. I therefore asked Professor W what happened to those people and his telling response was:
- "They just suffer out there, I think."

232. In my view, and on all the evidence the treatment is in his best interests. Further, and as Counsel for the mother submitted without the treatment her best interests are jeopardised.

---

**I certify that the preceding two hundred and thirty-two (232) paragraphs are a true copy of the reasons for judgment of the Honourable Justice Carter.**

Associate:

Date: 15 May 2008