FAMILY LAW CHILDREN where theparties agreed the respondent should have sole parental responsibility with somerestrictions where the applicant is a transgender male where theparties settled all but four matters which were: how much timethe child shouldspend with the applicant on fathers day; how much time the child shouldspend with the applicant during schoolholidays; how much information theapplicant should receive about the childs schooling and health and howthe applicant shouldreceive that information; and the circumstances in whichthe applicant should attend the childs extra-curricular activities Family Law Act 1975 (Cth) APPLICANT: Mr Brown RESPONDENT: Ms Phillips INDEPENDENT CHILDRENS LAWYER: Mr ODowd FILENUMBER: SYC 1528 of 2012 DATE DELIVERED: 10 January 2014 PLACE DELIVERED: Sydney PLACE HEARD: Sydney JUDGMENT OF: Watts J HEARING DATE: 9 10 September 2013 REPRESENTATION COUNSEL FOR THEAPPLICANT: Mr Guterres SOLICITOR FOR THE APPLICANT: Inner City Legal Centre SOLICITOR FOR THE RESPONDENT: Litigant in person SOLICITOR FOR THE INDEPENDENT CHILDRENSLAWYER: Legal Aid NSW ORDERS Thechild B, (the child) born ... May 2006, spend time with theapplicant during the Christmas period on Christmas Dayfrom 8am to 3pm, with theapplicant to collect the child from the respondent at the commencement of thetime and the respondent tocollect the child from the applicant at theconclusion of time. Ineven numbered years, on the weekend that Fathers Day falls, the childspend time with the applicant from after school or3pm Friday until 6pm Sunday. Inodd numbered years, on the weekend that Fathers Day falls, the childspend time with the applicant from after school or3pm Friday to 3.30pm Sunday. IfFathers Day falls on a weekend the child is ordinarily with therespondent, then the childs time with the respondentis suspended and inlieu, the child will spend the following weekend with the respondent. Inote that the Orders made on 9 September 2013 provide that the child spend timewith the applicant each alternate weekend duringschool terms. Forthe purpose of the Orders made on 9 September 2013 and these Orders, a schoolterm will be defined as commencing on the morningof the commencement of schoolon the first day of school term and concluding at the conclusion of school onthe last day of schoolterm. Subjectto order 9 and any subsequent agreement or court order, the child will spendweekends with the applicant during all schoolholidays in the same

pattern asthe child was spending weekends with the applicant under Order 4(a) made 9September 2013 as if theschool term continued. Inaddition, in term 1 and term 3 school holidays, the child will spend anadditional four nights and four days with the applicantimmediately followingthe first weekend that the child spends with the applicant during those schoolholidays pursuant to these orders(the period would commence 3pm Friday andconclude 3pm the following Thursday). Thechild is to spend time with the applicant for six nights during the Brown familyholiday in term 2 school holidays but those sixnights are to include anyalternate weekend that the child would otherwise spend with the applicantpursuant to these orders andthe applicant is to do everything possible toattempt to arrange that the Brown family holiday includes the weekend that theapplicantwould ordinarily spend time with the child. If the Brown familyholiday cannot be arranged such that it would include the alternateweekend timethat the applicant would ordinarily spend with the child, the applicant is tospend six nights with the child but inlieu, the child shall not spend the nextscheduled alternate weekend time with the applicant. Duringthe Christmas 2013/2014 school holidays, unless the parties otherwise agree inwriting, the child spend time with the applicantfrom 9am on 13 January 2014 to6pm on 17 January 2014 and from 9am on 23 January 2014 to 6pm on 26 January2014. Duringthe 2014/2015 Christmas school holidays, the child spend time (such time inaddition to time pursuant to order 7) with theapplicant on two separateoccasions, one period for four days (three consecutive nights) and one periodfor five days (four consecutivenights), which periods are to be seven days (sixnights) apart. The dates of the two occasions are to be agreed by the parties inwriting by 1 November 2014, and failing agreement, either party has liberty toapply on 28 days notice on that limited issue. Therespondent is to inform the applicant in writing by 30 June 2015 as towhether or not she consents to the child spending additionaltime with theapplicant during Christmas school holidays and, if applicable, what that timewill be. In addition, either party caninform the other in writing by 30 June2015 as to whether they wish some amended arrangements in relation to schoolholidays fromthe 2016 school year onwards. In the event the parties are unableto reach agreement they are to attend a mediator agreed upon betweenthem (andfailing agreement, to be nominated by the Director of Child Dispute Services,Sydney Registry) and attempt to reach

agreement.Should agreement not bereached, either party has liberty to apply on 28 days notice on thoselimited issues. Therespondent is to inform the applicant in writing as soon as practicable of anyspecialist medical appointments for the child andthe contact details of thedoctor or other health professional providing treatment. Theapplicant be restrained from contacting any medical specialist, doctor or healthprofessional in respect of whom he has been giveninformation pursuant to theprevious order. Therespondent is to inform the applicant in writing as soon as is practicable, anyadvice or opinion given to the respondent by anydoctor or any other healthprofessional who is treating or consulting in respect of the child (includingany written report). Thisorder is not to include reporting to the respondent inrelation to the childs attendance on a psychologist in respect of hercurrent difficulties with anxiety, but the respondent is not precluded fromdoing so if she so chooses. Theapplicant is restrained from specifically seeking out the childs teacheror the principal of the childs school oranybody else at thechilds school for the specific purpose of inquiring as to thechilds progress or attending parent/teachernights. Therespondent is to send all school reports and any important notifications fromthe school that might affect something that thechild is doing. Thatcommunication is to be sent electronically in a timely way, preferably with theuse of PDF imaging so that theapplicant gets a copy of the report or notice.The respondent is to provide a written summary to the applicant as to what wassaidduring parent/teacher interviews. Theapplicant be at liberty to attend all school activities that are open to friendsand other family members (for example schoolconcerts, plays and the like). Subjectto order 20, the applicant may be involved in two school events per year towhich close family members are invited by theschool (for example, excursionsand reading groups). Theapplicant is restrained from participating at the school in any event that isdesigned solely for the primary carer of the child(for example parent/teachernights). Pursuantto s 65DA(2) and s 62B, the particulars of the obligations these orders createand the particulars of the consequences that may follow if a person contravenesthese orders and details of who can assist parties adjust to and comply with anorder are set out in the Fact Sheet attached heretoand these particulars areincluded in these orders. IT IS NOTED that publication ofthis judgment by this Court under the pseudonym Brown & Phillips hasbeen approved by the Chief

Justice pursuant to s 121(9)(g) of the Act. FAMILY COURT OF AUSTRALIA AT SYDNEY FILE NUMBER:SYC 1528 of 2012 Mr Brown Applicant And Ms Phillips Respondent REASONS FOR JUDGMENT INTRODUCTION Thereare two children in this matter, S (aged seventeen) and B (aged seven). Therespondent is the mother of both children. The applicantis a transgender maleand was previously the female de facto partner of the respondent. Theparties resolved all issues in relation to S and consent orders were made on 6September 2013 in the terms of Appendix A to thesereasons. Theparties reached agreement in relation to a significant number of parentingissues in relation to B (the child).Consent orders were made on9 September 2013 and those orders are Appendix B to these reasons. Duringfinal submissions, the parties reached agreement in relation to arrangements inrespect of Christmas holidays and those orderswill be part of the orders Imake, being orders made by consent. Theremaining controversies between the parties are about the following matters: 5.1. What timethe child should spend with the applicant on Fathers Day; 5.2. What timethe child should spend with the applicant during school holidays (and how shouldschool holidays be defined); 5.3. How muchinformation the applicant should receive in relation to the childsschooling and health and how the applicantshould receive that information; 5.4. In whatcircumstances should the applicant be permitted to attend school events andextra-curricular activities. DETAILEDCHRONOLOGY Therespondent Ms Phillips was born in 1977. Theapplicant Mr Brown (formerly Ms Brown) was born in 1979. Therespondent has a child, S, born in 1997. S is currently aged seventeen. S at alltimes has been a member of the respondentshousehold. Ssbiological father has not been involved in his upbringing. Theparties commenced a sexual (lesbian) relationship around September 2000. Theparties lived together in the same premises and their relationship wason-off. During a period of separation, therespondent travelledoverseas and was impregnated by a man from overseas (whose identity is unknown). Theparties reconciled during the respondents pregnancy and commenced toconsistently cohabit in December 2005. Thechild who is the subject of the unresolved issues in these proceedings, B, wasborn in May 2006 and is currently aged seven. Thechilds biologicalfather has not been involved in her upbringing. Theparties ceased cohabitation in December 2007. Theparties recommenced cohabitation in May 2008.

Theparties had a commitment ceremony in September 2009. InOctober 2009, the applicant began identifying as transgender. Thefollowing month the applicant discussed with the respondent the possibility ofthe applicant being transgender. InJanuary 2010 the applicant announced that he intended to have hormone treatmentin preparation for surgery to transition to a man.The applicant changed hisname from a female name to a male name. InAugust 2010 the applicant told the children separately, without the respondentbeing present, that he intended to transition tobeing male and in that month heunderwent the first treatment involving transition hormones. At that time theparties separated andthe respondent moved with the two children to the home ofher parents. FromAugust 2010 until February 2011, the children spent time with the applicant eachMonday after school until Thursday before schoolwith the respondent present atleast two out of three of those nights. InFebruary 2011, the respondent unilaterally reduced the amount of time thechildren spent with the applicant. The child began spendingTuesday andWednesday nights with the applicant, and S stayed with the applicant overnighton Wednesdays. Theapplicant commenced a relationship with Mr C (who is also a transgender male) inSeptember 2011. InMarch 2012, the applicant changed his name on his birth certificate from afemale given name to a male given name. InApril 2012, the applicant underwent gender affirming surgeryremoving his breasts. Theparties entered into interim consent orders on 17 September 2012. Those ordersprovided that the children live with the respondent.From the commencement ofTerm 4, 2012, the child was to spend time with the applicant on Tuesday andWednesday nights every week. InOctober 2012, the applicants father took the children camping. Theapplicant also attended. DrA completed her report on 8 April 2013. On7 September 2013, the applicant moved into a house in the Blue Mountains with MrC. Thehearing proceeded before me on 9 and 10 September 2013. CREDIT Therespondent gave evidence in a fairly frank and forthright manner. I did notbelieve that at any point she was attempting to fabricateevidence. Theapplicants demeanour in the witness box was less convincing. I have noreason to not accept the opinion of Dr A where shesays that she found it verydifficult to accept some of the assertions made by the applicant to Dr A inrelation to the behaviourof the respondent. Iam however able to resolve the issues in this case without making any generalfindings as to the

credit of either party. THE VIEW THERESPONDENT HAS IN RELATION TO THE APPLICANTS PARENTAL STATUS Anissue which impacts upon all the decisions I am asked to make is the view therespondent has as to the applicants parentalstatus and whether or notthat view is in the best interests of the child. DrA records [the respondent] stated she now sees [the applicant] as[the childs] ex-step-parent, someone whohas played a role in herlife. Exhibit13 is an email from the respondent to the applicant dated 14 January 2013. Therespondent says I know that in youropinion you are [the child] and[Ss] parent. It is not my opinion... You WERE a step parent to [S]. YouDID play a parentalrole for [the child]. Counselfor the applicant pointed out to the respondent that Dr A referred to theapplicant as the childs stepfather. The respondentsaid she rejectedthe father bit, not the stepfather bit... If you read in Dr [As]report, I see him as an ex-stepparent.She was explaining to me about how, tome, hes an ex, to [the child] he may be a stepparent. I still see him asan ex-stepparent...I accept that hes viewed as a stepparent. Idont like it personally. But I respond as if hes astepparent. Atone point during cross examination, the respondent said she believed that theapplicant had a stepfather role. Shequickly corrected herself andsaid stepparent role. Ilater asked the respondent that given she considered the applicant to be a male,and a stepparent, why stepfathercould not be substituted forstepparent. She replied because hes not a father...Hes not a stepfather...I dont know how to explain it. The wordfather has specific connotations. Underlyingthe attitude of the respondent is her conviction that the applicant, who nowlives his life as a male and is seen by therespondent as a male, is not thesame person as the woman with whom she had a de facto relationship. Herevidence was that whilstshe understood and was sympathetic in relation to thetransition, she had always thought that the person who the applicant wouldbecome would simply be a male version of the woman that she knew. She said thatdid not transpire and as a result she has grave reservationsin relation to thestatus the applicant should have in respect of the childs future. Therespondent did not accept easily that the child, at the age of seven, may have adifferent way of understanding who the applicantis. In the Child ResponsiveProgram Memorandum, the family consultant states [w]hen talking about herfamily, the child saidthat she sometimes calls her DadMum and during observations the child referred to [the applicant]asM... ([European language]

for my mum). The familyconsultant goes on to say [The child] said that herMums name is [the respondents givenname] and her Dads name is [anabbreviationof the applicants male given name]. The family consultantwas not called to give evidence and Iam mindful that Child Responsive ProgramMemoranda are prepared within strict limitations in respect of time forpreparation, butI accept what the family consultant has recorded in theassessment. Therespondent said she has never heard the child refer to the applicant asDad. She says the child refers to the applicantas [theapplicants male given name] or M.... The respondentdoubted that the child had said tothe family consultant, unprompted, that theapplicant was her dad. The respondent said I cannot say with certaintybecause Ive never heard [the child] do it in any other capacity that [the child] said [the applicantsmale given name] ismy dad. Inher report, Dr A notes [a]sked whether [the applicant] feels like aparent to her, [the child] confirmed he does he feels like a father. Sheadded Mum says he is not her father or her stepfather but allows her to call himDad.Dr A observed the children with the respondent andnoted that [The child] described [the applicant] by saying he use[sic] to be my stepmum and now not my stepdad or my Dad. Thefollowing day, Dr A observed the children with the applicant.During thatobservation, Dr A noted [The child] commented to [the applicant]you say youre in the family. Mumsays yourenot. Inoral evidence the respondent explained I didnt say outright to[the child] he is not your father, butwhen she talks about herdad, I, we do and [the applicant] always was the same mentionthat she has [overseas] heritage.So I wouldnt say outright to her [theapplicant] is not her father, but I have said when we talk about fatherwe talkabout [overseas]. She said when [the child] asks about herfather and [overseas], I give responses according to that.The respondentcould not recall if she had told the child that the applicant was not thechilds stepfather. The respondentaccepted that if she had said to thechild that the applicant was not her stepfather, that comment would stick in thechildsmind. Therespondent also accepted that the child indicated to Dr A that the applicantfeels like a father. The respondent went on to sayI also accept that[the childs] also said that she feels like [the applicant is] a mother,feels like a friend, feelslike a stepfather, feels like astepmother. Therespondent denied she had ever told the child that the applicant was not part ofthe childs family. The respondent explainedthat: When Ispeak to the

children about our family, I talk about myself, [the child] and[S]. She knows that. What she also sheknows that when Im talkingabout family, I dont include him. That does not mean that I specificallysay to her he isnot in it. But it just means when I talk to her about familythat is what I talk about. So when [the child] is going to be talkingabout myperception of family and his perception of family it is going to differ. Thatdoes not mean that I have said those thingsspecifically to her. Anyone who hasdealt with children would understand thats what happens. That is myperception, that ishis perception. That is how she would explain them both. Therespondent agreed the child views the applicant as part of her family. Counselfor the applicant also pointed to the therapy program summary andrecommendations by D Therapists dated 24 July2012 which said [Thechild] spoke several times about her dad, showing him as a consideration in herlife. It is unclear from this statement whether the child referredto the applicant as dad or whether those are the wordsof thereport writer. Iaccept that in the respondents presence, the child does not refer to theapplicant as dad. I accept the respondentsevidence that inthe respondents presence, the child has only ever referred to theapplicant as M..., (whichthe parties say is a European languageword for mother) or by the applicants male given name. Thechilds view of the identity of the applicant is far broader than the namethe child uses for the applicant in the presenceof the respondent. Theparties have agreed that it be left up to the child as to what nomenclature sheuses in relation to the applicant. THE CHILDSANXIETY Theparties both describe the child as suffering from anxiety. Dr A notes theapplicant described the child telling him that she isscared he isnot going to be there. She will not go to the toilet, her room or shower on herown and wants to eat constantly(and has been hoarding food). Dr A notesthat the respondent described the child as having experienced nightmares,makes a mess with her toys and belongings, wants to be safe (she will) - go to sleep in my bed, stayby my side, not wanting me toleave. DrA goes on to opine that the child presented as stressed by the familysituation and that at the assessment she demonstratedseparationanxiety, crying at not returning home with her mother but quickly settled andaccepted [the applicants] comfort.This observed behaviour was consistentwith reports she is clingy and anxious at other times. Themajor tension in this case is, on the one hand, to have in mind the bestarrangement for the child in relation

to having a continuingrelationship withthe applicant and what identity the applicant would have in that relationshipwith the child, on a continuing basis,but on the other hand recognising as Dr Asuggests I must, the primary relationship that exists between the child and therespondent.Dr A in a very pithy passage summarises those tensions in thefollowing way: Her time with [the applicant] must occursufficiently to protect their relationship but not be so frequent or lengthy itdestabilisesher relationship with her mother. DrA was asked by the Independent Childrens Lawyer [w]hat period oftime or at what age would it be expected for [thechild] to have gained thenecessary security and be settled? Dr A was of the opinion that theresolution of the childsanxiety cannot be predicted. Dr A opines thatthe childs anxiety undoubtedly...will be influenced by her beingtoldthat her living arrangements have settled and having livedthrough/experienced a period of stability and predictability, without adultconflict impinging upon her. [emphasis in original] Ihave not been asked in this case to predict how the childs currentanxiety and confusion will resolve. RELEVANT STATUTORYCONSIDERATIONS Theapplicants initiating application was filed before 7 June 2012, and assuch the applicable s 60CC Family Law Act 1975 (Cth)(FLA)is that that was in force before that section was amended by the Family LawLegislation Amendment (Family Violence and Other Measures) Act 2011(Cth). Primary considerations Thebenefit to the child of having a meaningful relationship with both of thechildrens parents (s 60CC(2)(a) FLA) Iaccept that the child has a meaningful relationship with bothparties. The need to protect the child from physical orpsychological harm from being subjected to, or exposed to, abuse, neglect orfamilyviolence (s 60CC(2)(b) FLA) Apartfrom the anxiety the child is experiencing as a result of the adult conflict,this is not an issue. The additional considerations Childsviews (s60CC(3)(a)) Thechild is seven years old. Given her young age, I am unable to place any weighton any view she has expressed, save those thatI have earlier recorded, as tohow she views the applicants identity. Relationships ofthe child with the parents and other persons (s60CC(3)(b)) Iaccept Dr As assessment that the child appeared to have a positiverelationship with both her mother and [the applicant],as well as with [S]. Herprimary attachment figure is her mother and this must not bejeopardised. Willingness and ability of each of thechilds parents to facilitate and encourage a close and continuingrelationship betweenthe child

and the other parent (s60CC(3)(c), noting(s60CC(4)) Counselfor the applicant submitted that the Court could have no confidence that therespondent would promote the childs relationshipwith the applicant giventhe respondents attitude towards the applicants parental status. Iaccept the respondents attitude is a cause for concern but I do not findthat she would not promote the childs relationshipwith the applicant.The respondent has reached agreement with the applicant on alternate weekendtime and special occasions (exceptFathers Day). There is no history ofsignificant non-compliance by the respondent. Likely effect ofany change in the childs circumstances (s60CC(3)(d)) Orderswhich enable the child to be told that she has settled living arrangements and aperiod of stability and predictability arelikely to improve the childsanxiety. Practical difficulties and expense of the childspending time and communicating with a parent (s60CC(3)(e)) Theapplicant has recently relocated to the Blue Mountains area. The respondentlives in Sydney. Although the parties live some distanceapart, I do notconsider this to be an impediment in relation to the four issues I am todetermine. The capacity of each of the parents to provide for theneeds of the child, including emotional and intellectual needs (s60CC(3)(f))andthe attitude to the child and the responsibilities of parenthood demonstrated byeach of the childs parents (s60CC(3)(i),noting (s60CC(4)) Ihave described above on the one hand matters going to the respondentsattitudes but on the other hand, the need to protecther capacity to fulfil herrole as the primary provider of the childrens needs. Whether it would be preferable to make the order that would beleast likely to lead to the institution of further proceedings inrelationto the child (s60CC(3)(l)) Theapplicant wanted Christmas school holiday time locked in for the years up to andincluding 2016/2017. Counsel for the applicantsubmitted that orders in thatform would limit future litigation between the parties. Dr A says theresolution of anxietyin six year old [the child] cannot be predicted. Iam prepared to create certainty by way of orders for 2013/2014 Christmasholidays and 2014/2015 Christmas holidays. After that time, there should be areassessment by the parties of the level of the childsanxiety. Eventhough it possibly (but hopefully not) involves another court application, Ithink it is best for the child not to predict theresolution of thechilds anxiety this far out. Noother statutory consideration is of any relevance. FATHERS DAY Theparties agree that the child should spend time with the

applicant on eachFathers Day. Theapplicant proposed that if Fathers Day falls on a weekend the child isspending time with him, he spend time with the childuntil 6pm on Sunday (as hewould for any other weekend he spends with the child). Theapplicant and the Independent Childrens Lawyer proposed that whenFathers Day falls on a weekend that the childis not ordinarily with theapplicant, the child spend that whole weekend with the applicant. TheIndependent Childrens Lawyerproposed that such time end at 4pm onSunday. The applicant wanted the mirror of the Mothers Day order which iscontainedin the consent orders made on 6 September 2013. Therespondent initially proposed that if Fathers Day falls on a weekend thatthe child is not spending time with the applicant,the child spend time with theapplicant from 1pm to 6pm on Fathers Day. However the respondent duringfinal submissions agreedto amend her application to allow the child to be withthe applicant from 9am to 3.30pm, if Fathers Day fell on a weekendthatthe child would not ordinarily spend time with the applicant. Therespondent initially proposed that if Fathers Day falls on a weekend thatthe child is spending time with the applicant,the child be returned at 5pmrather than 6pm. The respondent argued this would enable the child to spend timewith her maternal grandfatheron Fathers Day. However during submissionsshe amended her proposal and sought that the child be returned to her at 3.30pm.She said that if the child was delivered back to Suburb E at 3.30pm on theSunday, it would enable her to get to Suburb F so thatthe child could spendsome time with her maternal grandfather on Fathers Day. Therespondent submitted that there have only been three Fathers Days sincethe applicant transitioned from female to male,and that for the rest of thechilds life she has spent Fathers Day primarily with the maternalgrandfather, but alsowith the applicants father. Iaccept the respondents evidence that the child has communication with hermaternal grandfather on about three occasions aweek. I also accept her evidencethat she has a strong relationship with her maternal grandfather and sees him onFathersDay. Althoughthe parties have agreed that they will let the child work out what she is goingto call the applicant in an evolutionaryprocess, I find that it is likely onbalance that the child will see the applicant in the role of parent and becausehe has a beardshe will in her mind probably over time accept him as afather or dad. I acknowledge the respondentcurrentlyis resistant to that as a notion, but is conceding that the

childspend time with the applicant on each Fathers Day. I acceptttheapplicants and Independent Childrens Lawyers proposal thatthe child spend the whole Fathers Dayweekend with the applicant. Onbalance, I think it best to facilitate the child seeing her maternal grandfathereach second FathersDay and accordingly, on each second year the childshould be returned to the respondent at 3.30pm. SCHOOL HOLIDAYTIME Inher report dated 8 April 2013, Dr A recommends [The child] spend timewith [the applicant] on alternate weekends, FridayPM Sunday PM.She said that the child needs to gain security in her mothers homebut maintain her relationshipwith her stepfather and [s]pendingtime with him on alternate weekends... should assist [the child] tosettle. Ina letter dated 30 May 2013, Dr A clarified that [i]n school holidays [thechild] could spend extra time with [the applicant] four days, increasingto seven at Christmas. Neitherparty wished to cross examine Dr A. Although Dr As recommendation inrelation to holiday time was expressed in termsof a number of additional days,the parties agreed that that be interpreted to also mean nights. Counselfor the applicant submitted that the use of the word extra in DrAs letter dated 30 May 2013 must beinterpreted to mean Dr A recommendedthe alternate weekend time continue throughout school holidays. Iaccept that the childs time with the applicant on alternate weekendsshould continue throughout school holidays. That will not be relevant tothe Term 2 school holidays as it is agreed that the child will participate inthe Brown family holidaywhich happens in the winter school holidays. Theparties agree that the child is to spend time with the applicant for six nightsbut those six nights are to include the two nights he would ordinarily spendwith the child. If the Brown family holiday cannot bearranged such that itwould include the alternate weekend time that the applicant would ordinarilyspend with the child, the applicantis to spend six nights with the child butforfeit his weekend with her. Giventhat alternate weekends will continue during term 1 and 3 school holidays, Ineed to consider where to best place the four daysand nights in term 1 and term3 school holidays. A number of options are available. I could: 82.1. Attachall the additional nights onto the first weekend when the child is with theapplicant such that she would spend six nightsin a row with the applicant;or 82.2. Split theadditional nights and distribute them during the school holidays so that thechild would spend more than two nightsin a row but less than six nights in arow with the applicant; or 82.3. Attachnone

of the additional nights onto the weekend or weekends the applicant wouldordinarily spend time with the child. Ifind that the best arrangement is for the child to spend all of the additionalnights with the applicant immediately after the firstweekend when the child iswith the applicant during school holidays. Although six nights in a row may beat the outer limit in relationto time the child could spend away from therespondent, I find that six nights in a row is not too lengthy during schoolholidaytime, particularly in circumstances where the parties have alreadyagreed to the child spending six nights with the applicant duringterm 2(winter) school holidays. Christmas holidays Theparties consented to an order that the child spend time with the respondent fromBoxing Day through to 6 January for the purposeof attending therespondents familys annual camping holiday. Counselfor the applicant submitted that Dr As recommendation forextra time in relation to the applicantstime with thechild in the Christmas school holidays also meant that the applicantsalternate weekend time should continuethroughout Christmas school holidays. Theapplicant did not seek a specific order in that regard. Notwithstanding anexchange I hadwith counsel during submissions, I accept that Dr Asrecommendation should be read in that way. Subject to Order 5(e) of theOrdersdated 9 September 2013, the applicants time with the child on analternate weekend basis will continue throughout theChristmas school holidays. Theparties have agreed the applicant is to have an additional seven nights with thechild during the Christmas school holidays. Bothparties sought those sevennights be broken up. The order that the applicant sought in relation to the2013/14 holidays was for thereto be two blocks of time, the first three nightsand the second four nights (although, as I have already mentioned, that proposalexpands on what Dr A has suggested by creating an additional day which giventhat Dr A was quoting days is an extensionof what Dr A wasrecommending). AlthoughDr A recommended the child spend seven days with the applicant over Christmas(rather than seven nights), it seems that bothparties have agreed that at leastin the 2013/2014 Christmas school holidays, the arrangement would be for thereto be two separateoccasions, one period for four days (three consecutivenights) and one period of five days (four consecutive nights) as agreed uponbetween the parties. The applicant seeks that those two periods be five daysapart. The respondent seeks that those two periods be14 days apart. Given

thatthere are approximately three weeks from when the child returns from the campingholiday to when she isto recommence school, I am of the view that if the twoperiods were to be 14 days apart, the parties would have too little flexibilityas to the specific dates the child is to spend time with the applicant. Iconclude it is in the childs best interests forher to spend two periodswith the applicant this Christmas school holidays, such periods to be seven days(six nights) apart. Giventhe timing of the delivery of these reasons theparties may have already reached agreement as to dates. If they have not I willorderspecific dates for January 2014. For the 2014/2015 school holidays, thespecific dates are to be agreed by the parties in writing,and failingagreement, the parties are at liberty to apply to the Court on that limitedissue. Theapplicant sought that I make orders to cover the 2014/2015 holidays, 2015/2016holidays, and 2016/2017 holidays by gradually increasingholiday time that thechild spends with the applicant on each of those occasions and having an orderto safeguard the child thatthose times could be delayed only if the parties areadvised in writing by the childs therapist. Ihave referred to Dr As opinion as to the unpredictability of theresolution of the childs anxiety. I am not preparedto lock in ordersthat a non-judicial officer might then be able to vary. At this point I think itis prudent to give the child certaintyfor the next two school (summer) holidayperiods and I will make an order for the 2014/2015 Christmas school holidayperiod in identicalterms to the agreed position for this forthcoming schoolholidays. Afterthat time, the respondent is to inform the applicant in writing by 30 June2015 as to whether or not she is prepared to allowthe child to have additionaltime with him during Christmas school holidays, and if applicable, what thattime is to be. In the eventthe parties are unable to reach agreement they areto attempt to reach agreement using a mediator (such person to be agreed betweenthe parties or failing agreement nominated by the Director of Child DisputeServices, Sydney Registry) and if the parties cannotagree then they can comeback to court on that limited issue. PROVISION OFINFORMATION Thefirst important matter to note in relation to the provision of information isthe consensual agreement the parties have reached.That agreement is based onmaterial and opinions contained in Dr As report. Byconsent, the parties agreed that Order 13 made on 17 September 2012 should bemade as a final order. That order related to the parties providinginformation to one another about any specialist medical appointments

the childis to attend.Given the agreement between the parties as to parentalresponsibility, I will amend that order such that the respondent is responsiblefor providing that information to the applicant in writing. Thequestion arises as to whether or not the applicant should be able to directlycontact the childs treating professionals.The respondent opposes directcontact. Therespondents opposition was based upon her assertion that the applicanthas a history of interfering with healthprofessionals... in aninappropriate manner. She points to an example where in 2011 S broke hiscollarbone. She said she keptthe applicant updated in relation to Sscondition. She says that the applicant contacted the hospital andrequestedinformation. During her oral evidence she said the applicantobtained a report directly from the hospital that he wasntsupposed to have access to...[S] did not want him to have [thereport]. She explained the report and x-ray was to go directly tothe doctor. She said the applicant obtained the report before she had seenit. Therespondent also points to an incident where the childs treating therapistMs G withdrew her services. In the expert report,Dr A refers to the respondentdescribing an incident where she said that Ms G was allegedly intimidatedby [the applicant]and refused to see him again. Dr A noted that theapplicant reported that counselling with Ms [G] had not ended upworkingbecause she was not good at her job... she screamed at me and the ICLover the telephone. There are no independentrecords from Ms G. In hisoral evidence, the applicant said that he attended upon Ms G on two or threeoccasions. She suggested mediation,but he said that he was advised that Ms Gwas not able to conduct mediation because the parties were already engaged inlegal proceedings.The applicant said that Ms G hung up on him when they had atelephone conversation. Exhibit16 is correspondence between the applicant and Ms G. In an email on 13 September2013, the applicant wrote I am justwriting to you as I wanted toapologise for upsetting you. I am not sure what it was that I did that has upsetyou. I takethat statement by the applicant as an admission that theapplicant had done something to upset the childs treating therapist.Therespondent had filed some evidence indicating that she had had a conversationwith the childs therapist who, amongst otherthings, indicated that shedid not believe she could work constructively with the applicant. Exhibit 9 is aletter from the applicantslawyers to Ms G on 21 September 2012 askingher to consider whether it is

appropriate for you to continue yourinvolvementwith this family... There is no indication as to whether ornot Ms G responded to this letter. Exhibit21 is a chain of correspondence between the parties on 9 November 2010 about thechild commencing counselling with a childpsychologist. The respondent had madean appointment for the child and asked whether the applicant would like toattend. The applicantresponded I will not have any part of that you vilescum. This is just another way for you to abuse me and the children.Therespondent then reiterated that the applicant was welcome to attend. He thenreplied If you do this I will report thecar stolen to the police. Thisis abuse. The respondent had been driving a car that was registered inthe applicantsname. This evidences behaviour by the applicant which iscorroborative of the respondents assertion that friction may ariseif theapplicant is involved in direct contact with treating professionals. AsI later indicate, the respondent also blames the applicant for the cessation ofSs counselling with Ms H, asserting theapplicant inappropriately soughtinformation from Ms H about the content of Ss counselling sessions. Theapplicant deniesthat assertion. Ms H was not called as a witness and neitherparty subpoenaed her records and I reach no conclusion about the circumstancesof S ceasing counselling with Ms H. Counselfor the applicant submitted that the Court could not have confidence therespondent would comply with any order that is madein relation to the provisionof information and that is a strong reason why the applicant should have theability to go directlyto the source without relying upon the respondent toprovide information to him. Theapplicants position is fundamentally supported by the IndependentChildren's Lawyers orders as sought, althoughthere is a differencebetween the Independent Children's Lawyers orders and theapplicants orders. Theapplicant sought the following order: 23. The Respondent shallprovide an irrevocable written authority to any school, medical practitioner orother health care professionalengaged with [the child] to provide the Applicantwith copies of any reports and other information that the Applicant mayrequest of those persons, in relation to [the childs] health andeducation. [emphasis added] TheIndependent Childrens Lawyer sought the following order: 5.That the Respondent Mother do all acts and things and sign all documentsnecessary to provide to any medical health care professionalattended by [thechild] an authority to the medical health care professional to the

effectthat the Applicant receives the same written and verbal information asprovided by the medical health care professional to the Respondent mother.[emphasis added] Theeffect of the order the Independent Childrens Lawyer sought would be torequire the health care professional to initiatecontact with the applicant andrepeat any verbal advice that had been given to the respondent. The effect ofthe order the applicantseeks is that the applicant would be able to initiatecontact with the health care practitioner (or school) and request that advicethat had been given to respondent be repeated to him and he can seek otherinformation. Counselfor the applicant pointed to three examples where the applicant says therespondent did not comply with orders to provideinformation in the past. Firstly,the applicant says the respondent did not inform him about the childsappointment with Dr I pursuant to Order 13 ofthe Orders dated 17 September2012. The respondent said that she told her lawyer to pass on that information.The applicant sayshe didnt know about the appointment. I accept onbalance that the respondent did tell her lawyer and it wasnt passedon. Secondly,in his affidavit affirmed 8 September 2013, the applicant complains [Therespondent] did not tell me [the child]had seen the paediatrician, Dr [J] andshe did not give me a copy of the report from Dr [J]. I did not see the report,which is dated14 December 2012 until 14 March 2013 when my lawyer sent me acopy. Therespondent says in her affidavit sworn 14 December 2012 [The applicant]and I have attended UNIFAM in accordance with theinterim orders, and [thechild] has also seen a counsellor from UNIFAM. UNIFAM has recommended that [thechild] obtain a mental healthassessment, and I have made appointments for herwith Dr [J], being the doctor recommended by UNIFAM. The respondent saidin oral evidence that she thought that UNIFAM was going to tell the applicantabout the childs appointment with Dr J, sinceboth parties had beeninvolved in UNIFAM and that organisation had recommended Dr J. Therespondent explained in her oral evidence that the child saw Dr J on 8 December2012 and 14 December 2012. She said Dr J thenwent on leave, and she rang him inFebruary 2013 to ask whether he had finished his report. The respondent says shereceived theoriginal report sometime in February or March 2013, despite thedocument being dated 14 December 2012. She says she spoke to Dr Jabout how thereport inaccurately reflected the childs family history. Dr J agreed toamend his report. Exhibit 17 is a copyof Dr Js amended report

which sayson it Amended 20/03/2013. The applicants complaint aboutnot receivingDr Js report until March 2013, so far as it relates to theoriginal (backdated) report, can have no substance because I amcomfortablysatisfied that the respondent did not get the original report herself untilFebruary or March 2013. Thirdly,counsel for the applicant pointed to an inconsistency in relationto the respondents evidence regardingMs H (Ss psychologist) andthe evidence from Dr A. In her affidavit sworn 18 July 2012, the respondent saidS commenced seeingMs H before separation and ceased seeing her in early 2011.She says S has refused to attend upon Ms H since the applicant contactedMs H in2011, and demanded information be shared with him regarding things saidby and to [S]. Dr A notes the respondentreported between2009-2010, befor [sic] she and [the applicant] separated, [S] had seenpsychologist [Ms H] about four timesbecause they were having a hardtime following the deaths of several family members. These sessionsapparently stoppedwhen [the applicant] contacted Ms [H] wantinginformation. On page 17 of her report, Dr A says that therespondenttold her she had seen a counsellor in 2009, when she and [S]had seen psychologist [Ms H]. Counsel for the applicantsubmitted that DrA reports that S ceased attending upon Ms H before the parties separated,whereas the respondent asserts S commencedattending upon Ms H beforeseparation, and continued attending upon her until after the parties separated. Theapplicant denies he ever contacted Ms H. He asserts he never even knew the nameof Ss psychologist (although at one pointin his evidence he conceded heknew her given name) and sought information about her from the respondent. Theapplicant tenderedtwo letters (which became exhibit 15) from his solicitors tothe respondent requesting the details of Ss psychologist. On30 August2011, the applicants solicitor wrote to the respondent saying (interalia): [y]ou have advised that [S] is seeing a psychologist. Pleaseconfirm whether [S] is still seeing this psychologist and provide thepersons name and contact details. In her oral evidence, the respondent agreed that she declined to respond tothe applicants lawyers after receiving the letteron 30 August 2011, butasserted that she did respond to the applicant. On 12 October 2011, the applicants solicitors wrote to the respondentsaying (inter alia): We refer to your letter received by us on 26 September 2011...In your letteryou stated that [S] is commencing counsellingwith apsychologist... Please let us know the

psychologists name andcontact details, when [S] is attending, and howoften he is attending. Exhibit23 is a chain of emails between the parties on 22 March 2011. In thatcorrespondence, the applicant complains that the respondentscheduled Ssappointment with his psychologist during a time S was to be spending time withthe applicant. The applicant saysI will neither take him to thisappointment or allow this on my day. The respondent emailed the applicantat 11:45amsaying: ...You only get out from the counselor/psych[sic] what you put in...You have told me that you wished your parents had founda counselor[sic] who didnt judge you but was willing to be patient andwait everything out and get you to trust them. [Ms Hs givenname] isdoing that. And is reaching him... I find that S was seeing Ms H before and after separation. I do not acceptthat the respondent attempted to keep information aboutSs counsellingwith Ms H a secret, but as I have already indicated I have formed no view aboutwhy S ceased to see Ms H. Itis very clear that the parties currently have a minimal ability to communicatewith one another. Unfortunately the two days thatthey spent in my court roomprobably only entrenched and exacerbated the negative feelings the parties havefor one another. Thechild has particular uncertainties and psychologicaldifficulties primarily resulting from adult conflict surrounding the separationand issues arising out of the applicants transition from female to male.I accept Dr As strong recommendation thatthe respondents positionshould be protected and for those two fundamental reasons, I am inclined tostructure orders thatprovide the respondent with certainty and comfort movingforward in her role as the person with sole parental responsibility in relationto making decisions about major long term issues in respect of the childscare, welfare and development. Iam of the view that the order sought by the Independent Children's Lawyer (thatthe respondent provide an authority to any medicalhealth care professionalattended by the child to allow the applicant to receive the same written andverbal information as providedby the medical health care professional to therespondent) would be impractical. A doctor cannot be expected to telephone oneparentand repeat everything that has just been said to the other parent. Thereis insufficient evidence to establish that the respondent is unlikely to complywith an order that she provide to the applicanton a regular basis details aboutspecialist medical appointments for the child and any advice given by any doctoror any other

healthprofessional providing treatment for the child (includingwritten reports). Inrelation to medical matters, the respondent is to provide medical reports to theapplicant. The respondent under the consent orderhas to inform the applicant ofdecisions she is about to make of a medical nature that fall into the definitionof a majorlong term issue. Those issues would obviously cover anymajor medical operation or course of therapy that the child is aboutto embarkupon. The respondent should also summarise to the applicant in writing theeffect of any attendance on any medical practitionerand give a short summary asto what it was about and what treatment was suggested or prescribed. It is notnecessary for the respondentto report to the applicant the content of anytreatment the child is receiving from a child psychologist about her anxiety. Ifind that it is in the childs best interests to make an order that theapplicant be restrained from contacting any medicalspecialist, doctor or healthprofessional. Schooling Theorder the applicant wants in relation to the provision of information about thechilds schooling is set out at [101] ofthese Reasons. The applicantseeks to receive copies of school reports and any other information that theapplicant may request.The order the Independent Children's Lawyer seeks inrelation to information about the childs schooling is, again, moreonerouson the professionals themselves. Therespondent again opposes a direct approach by the applicant. She asserts inOctober 2012 the applicant was intimidatingand confrontationaltowards the childs teacher, Mr K. Mr K is not on affidavit. The applicantdenies he has ever behavedinappropriately towards the childs teachers. Consistentwith my approach in relation to medical matters, I find that it is in thechilds best interests for an order tobe made that the applicant notdirectly approach the childs school teachers for the specific purpose ofobtaining progressreports about her schooling. The applicant will not beprohibited from having a conversation with a school teacher in the ordinaryflowof events. For example, if a teacher is at the school gate when the applicant ispicking up the child he can have a casual conversationwith that teacher but heis not to specifically seek out the childs teacher or school principal oranybody else at the schoolfor the specific purposes of inquiring as to thechilds progress. That information should come via the respondent. Therespondentis to send all school reports and any important notifications fromthe school that might affect something that the child is doing.Thatcommunication is to be sent

electronically in a timely way, preferably with theuse of PDF imaging so that the applicant getsa copy of the report ornotice. EXTRA CURRICULAR ACTIVITIES AND SCHOOL ACTIVITIES Itwas agreed that the applicant could be involved in two school events per year(this would allow the applicant to participate inthings like excursions andreading groups which he has done in the past). Extra-curricular activitieshowever primarily fall on aweekend and given that the child will be with theapplicant every alternate weekend, there is no need for any special order inrelationto extra-curricular activities. The applicant has the option ofinvolving himself in those extra-curricular activities on occasionswhen thechild is with him, although I acknowledge the logistical difficulties if thoseactivities are in the Sydney area and theapplicant has taken the child to theBlue Mountains for the weekend. Theapplicant also wanted an order that he be able to attend events at the schoolsuch as parent/teacher interviews. It was the respondentsposition thatthe applicant should not go to such events if they were solely for parents. In2011, the parties had separate parent/teacher interviews with the childsschool. Both parties take credit for organisingthose interviews. Thisis not really an issue about the applicants status as a parent. It isreally an issue about the respondent having theability to function as freely asshe can as the parent who has sole parental responsibility. I accordingly accedeto the respondentsrequest to injunct the applicant from participating atthe school in any event that is designed solely for the primary carer of achild. Theorders that I have made attempt to respect the respondents position asthe person with sole parental responsibility. Theydo however impose obligationsupon the respondent to keep the applicant informed in a proper way aboutimportant matters in respectof the childs health and education. If therespondent fails to do that then the applicant has remedies arising out ofnon-compliancewith my orders. The orders have attached to them informationabout those remedies. I would urge the respondent to carefully considerwhatobligations are created upon her as a result of these orders in respect ofproviding information to the applicant and be diligentand mindful of thoseorders as she receives important information from time to time about thechilds health and education. I certify that the precedingone hundred and twenty-four (124) paragraphs are a true copy of the reasons forjudgment of the HonourableJustice Watts delivered on 10 January2014. Associate: Date: 10.1.2014 Orders made on

6 September 2013 relating to the child S Appendix A Thatall previous parenting orders in relation to [the child S] born ... January 1997[S] be discharged. That[S] live with the respondent. Thatthe respondent have sole parental responsibility in relation to [S]. That[S] spend time with the applicant at times as arranged between [S] and theapplicant. Orders made on 9 September 2013 relating to the child B Appendix B Allprevious Parenting Orders in relation to the child [B] born ... May 2006 ("[thechild]") be discharged. Subjectto Order 15(a) to (c) and Order 18 below, the Respondentretain sole parental responsibility for [the child] born ... May 2006, exceptthat: (a) Beforemaking any major decisions, the Respondent shall: Advisethe Applicant in writing of the decision to be made; Considerwith regard to [the childs] best interests, any response in writing fromthe Applicant; and (b) Advise theApplicant in writing with 48 hours after making the decision. [Thechild] live with the Respondent. [Thechild] spend time with the Applicant as follows: (a) Duringschool terms, unless otherwise agreed in writing between the parties, eachalternate week from after school or 3pm on Fridayuntil 6pm Sunday, with theApplicant to collect [the child] from school at the commencement of time andreturn her to the Respondentor her delegate at [Business L] at the conclusionof time, with such time to commence on the second Friday immediately followingthe making of these Orders. (b) Onspecial occasions as agreed and at times as agreed, with such time toinclude: (i) For[the childs] birthday each year, by agreement and failing agreement, fromafter school or 3pm if a non-school day until7pm; (ii) For theApplicant's birthday each year, by agreement and failing agreement, from afterschool or 3pm if a non-school day until6pm. (iii) ForEaster, from 3pm or after school on the Thursday immediately before Good Fridayto 6pm on Good Friday. Notwithstandingany other Order, [the childs] time with the Applicant is to be suspendedas may be necessary to facilitate[the child] spending special occasion timewith the Respondent and is to include the following: (a) If [thechilds] birthday falls on a weekend she is with the Applicant, then [thechilds] time with the Applicantwill be suspended for that weekend andinstead, [the child] will spend the following weekend with the Applicant and theApplicantotherwise spend time with [the child] for her birthday in accordancewith Order 4(b)(i). (b) If theRespondents birthday falls on a weekend [the child] is with theApplicant, then [the childs] time with theApplicant will be suspendedfor that weekend and instead, [the child] will

spend the following weekend withthe Applicant. (c) If Mother'sDay falls on a weekend [the child] is with the Applicant, then [thechilds] time with the Applicant will besuspended for that weekend andinstead, [the child] will spend the following weekend with the Applicant; (d) For Eastersuch that [the child] shall be with the Respondent from 6pm on Good Friday until6pm on Easter Monday. (e) Forthe weekend gathering of the Respondent's extended family in December each yearfrom Boxing Day to 6 January inclusive. Unlessotherwise provided in these Orders or agreed in writing between the parties,changeover when not at school shall be facilitatedby the Applicant or hisdelegate collecting [the child] from the Respondent or her delegate at [BusinessL] at the beginning of [thechilds] time with the Applicant, and theRespondent or her delegate collecting [the child] from the Applicant or hisdelegateat [Suburb E] McDonalds at the conclusion of [the childs] timewith the Applicant. Forthe purposes of these Orders, in the event that [the child] has weekend sportsor extracurricular activities during the timesshe is with the Applicant, thenthe Applicant shall ensure [the childs] attendance at these activities,and for the purposesof these orders such commitments shall be limited to oneactivity per period of time with the Applicant for not more than 2 hours. Eachparty shall facilitate [the child] communicating with the other party bytelephone at any reasonable time if [the child] wishesto do so, andspecifically, the Applicant will facilitate [the child] telephoning theRespondent at 6pm on each night [the child]spends with the Applicant. Eachparty is to keep the other informed of their current residential address, atelephone number and an email address and will advisethe other party of anychange to those details, at least 7 days prior to any change in residentialaddresses and within 24 hoursof any changes to telephone number and emailaddress. Inthe event [the child] is seriously injured or hospitalised, the party who hasthe care of [the child] at that time is to advisethe other by telephone call assoon as practicable and in no more than two hours. Itis noted that the Respondent has arranged for [the child] to attend counsellingwith Dr [I] and the Respondent will continue tofacilitate [the childs]attendance for counselling in accordance with Dr [Is] recommendations. Itis noted that the Respondent has provided to Dr [I], the Applicant's emailaddress and telephone number. TheRespondent shall cause [the child] to attend upon paediatrician Dr [J] inaccordance with Dr [Js] recommendations. Eachparty is hereby

restrained by injunction from denigrating the other party or anymember of the other party's family to or in[the childs] presence or onany social media site. TheRespondent be restrained by injunction from: (a) Changing[the childs] surname from "[Brown]" to any name other than "PhillipsBrown]". (b) Relocating[the childs] place of residence to any place outside the Greater Sydneymetropolitan area. (c) Causing[the child] to attend upon any therapist or counsellor other than UNIFAM or Dr[I], other than in accordance with advicefrom Dr [I] or Dr [J]. Thatthe parties are to re-engage in the "Keeping in Contact" program through UNIFAMand are to remain engaged with that program untilsuch time as their UNIFAMtherapist recommends in writing that the engagement cease. Bothparties are restrained from instructing [the child] as to what name to call ornot to call each of the parties. TheRespondent shall enrol [the child] into [M] Public School in 2014, and in theevent the Respondent intends to change [the childs]schooling in thefuture, the Respondent shall provide not less than 4 weeks' notice of anyproposed changes to the Respondent.