

FAMILY LAW CHILD ABDUCTION Return application in which requesting parent seeks return of only one of five siblings delay need for a Regulation 26 report mediation under Victoria Legal Aid's Hague model of mediation APPLICANT: State Central Authority RESPONDENT: Ms Teru INTERVENOR: INDEPENDENT CHILDRENS LAWYER: Mr M Finn FILE NUMBER: MLC 8491 of 2014 DATE DELIVERED: 10 October 2014 PLACE DELIVERED: Melbourne PLACE HEARD: Melbourne JUDGMENT OF: Bennett J HEARING DATE: 10 October 2014 REPRESENTATION COUNSEL FOR THE APPLICANT: SOLICITOR FOR THE APPLICANT: Ms Accornero Department of Human Services, Legal Services Branch COUNSEL FOR THE RESPONDENT: In Person SOLICITOR FOR THE RESPONDENT: COUNSEL FOR THE INDEPENDENT CHILDRENS LAWYER: Ms Conlan SOLICITOR FOR THE INDEPENDENT CHILDRENS LAWYER: McKean Park ORDERS IT IS ORDERED THAT that this matter be fixed for final hearing before me on Thursday 11 and Friday 12 December 2014 at 10.00 am subject to part-heard cases only. That the Applicant State Central Authority file and serve any further evidence upon which it relies by not later than 12.00 noon on 24 October 2014. Until further order, the respondent mother, MS TERU, by herself, her servants or agents, be hereby restrained from causing or permitting any suffering of the child E born ... September 2005 from being assessed by a psychologist, medical practitioner, counsellor or like professionals for the purpose of evidence in this proceeding without the prior written consent of the applicant State Central Authority and the independent children's lawyer. Each party has leave to contact Registrars Riddiford or Sikiotis or my Associate email ... to arrange to have this matter listed for mention before him/herself or before me, on notice to all other parties, to seek any further directions as any party considers are necessary to ensure that the matter is ready for trial or to narrow the issues in dispute. The independent children's lawyer forthwith attend to the following matters:- to assess and make recommendations to the parties and the requesting parent about access between the child E and the requesting parent pending the final hearing; and to appoint a mediation, using the Victoria Legal Aid Hague Model to be conducted on 8, 9 or 10 November 2014- nothing in this Order precludes the parents agreeing to access between the father and the children B (14), L (13) and Z (10) as well as between the father and the child E. IT IS DIRECTED that

pursuant to Regulation 26(1) of the Regulations a report be prepared in relation to the child E born ... September 2005 and in particular the effect on the child of separation from his older siblings (aged 10, 13 and 14 years) in the event that he is ordered to return to New Zealand but the mother and/or the child's older siblings remain here. For the purpose of the preparation of the report, a family consultant nominated by the Director of Child Dispute Services in the Melbourne Registry of this Court be available to see the child and his siblings, including the oldest sibling MsC (24), at his/ her discretion. Such report to be commenced not later than 19 November 2014 and released by 5 December 2014. The mother and children comply with all reasonable directions as to attendance with the family consultant as and when required by the family consultant. Until further order, the family consultant who prepares the r 26(1) report interview the respondent mother if, and only if, the requesting parent, Mr S, is afforded an equivalent opportunity to be interviewed, including being interviewed by audio-visual medium as well as by telephone. The applicant State Central Authority forthwith obtain instructions as to whether the requesting parent will participate in the r 26(1) assessment and advise the independent children's lawyer, respondent and Manager of Child Dispute Services of this Registry of the Court accordingly. Subject to any order by me to the contrary, if the requesting parent does not participate in the preparation of the report the respondent mother is not to participate either over and above being responsible for the production of the children for the assessment process. Paragraph 5 of the Order made on 22 September 2014 apply mutatis mutandis to the requesting parent Mr S and I reserve liberty to the requesting parent to seek to vary or to set aside this Order or as he may be advised. Anything said or done during the mediation is not admissible as evidence in these proceedings. By 17 October 2014 the applicant State Central Authority ascertain whether the requesting parent is prepared to participate in a mediation or conciliation of parenting matters generally, including the issue of forum under the 1980 Convention, and any conditions on return. There be liberty to apply to all parties in relation to the mediation. AND IT IS NOTED that the independent children's lawyer was appointed an hour before the hearing. AND IT IS FURTHER NOTED that the applicant State Central Authority informs the Court that it is alleged that the children were wrongfully removed to Australia on 10 October 2013. IT IS NOTED that publication

of this judgment by this Court under the pseudonym State Central Authority & Teru has been approved by the Chief Justice pursuant to s 121(9)(g) of the Family Law Act 1975 (Cth). FAMILY COURT OF AUSTRALIA AT MELBOURNE FILE NUMBER: MLC 8491 of 2014 State Central Authority Applicant And Ms Teru Respondent And Independent Children's Lawyer REASONS FOR JUDGMENT EX TEMPORE These reasons for decision relate to the delay in this matter because, as a contracting state under the 1980 Convention and the country with which we have the most abduction cases, New Zealand has expressed concern about delay in dealing with matters. It does seem to me that this matter has unfortunately been delayed. RECORDED : NOT TRANSCRIBED In this matter, the State Central Authority seeks the return of E (the child), to New Zealand pursuant to the Family Law (Child Abduction Convention) Regulations 1989. Today is the third hearing date allocated to the application which was filed on 19 September 2014. The mother attended court this morning alone and has had the benefit of representation by the duty lawyer. Ms Accornere, solicitor, appears on behalf of the State Central Authority. Mr Finn, solicitor, was appointed independent children's lawyers some time within the last hour, and Ms Conlon of counsel appears on his behalf. The application of the State Central Authority seeks the return of only one of four children of the relationship between the respondent mother and the requesting parent who is Mr S. The child's siblings are his ten year old brother, his 13 year old brother and 14 year old sister. And there is the child's older sister, Ms C, who is aged 24 years and who has attended court with her mother. Ms C appears adept at communicating. I am somewhat concerned about the delay in this matter. The earliest final hearing that I can allocate to it is the 11 December 2014 when it may well displace another matter which has been listed for some time. From the day upon which the matter first came before the Court, on 22 September 2014, it was apparent that the application, if granted, would have the effect of separating the child from his four siblings in Australia. This gives rise to a consideration of the emotional impact on him of that separation and whether it will constitute a grave risk of emotional harm within the meaning of the regulations and, thereby, provide the Court with discretion to refuse return. This matter was allocated to me last week. Today was the first date upon which it could be listed before me, having regard to the necessity to obtain an

Ethiopian interpreter for the mother. The interpreter has attended court today. She is accredited as a level 2 NAATI interpreter and they are conversing in Amharic. A regulation 26 report is necessary and will be prepared. It is unable to be allocated prior to mid-November 2014 but I am assured by Child Dispute Services that it will be released by 5 December 2014. The independent children's lawyer which was requested on the second return date of this matter on 29 September 2014 is now known to be Mr Finn. But, as indicated, he has only known of the matter in the last hour or so. The tasks which I require him to fulfil, apart from his general duties, are to investigate what access is feasible between the child and the requesting parent. And I would not be surprised if that also involves the other children of the relationship. I note that the requesting parent has twice been to Australia since the children have been here but has not seen them on either occasion. Accordingly, the access to be considered will be electronic access as well as face-to-face access and I would expect that Mr Finn will be in contact with the requesting parent sooner rather than later. In the meantime, the restriction on the mother removing the child from Australia until these proceedings are concluded should be extended to the requesting parent. In the event that any orders or directions are necessary to facilitate access then the parties have liberty to apply to bring this matter back before me and it should be listed without delay. The next matter which the independent children's lawyer is required to investigate is the possibility of a structured Hague mediation in the model provided by Victoria Legal Aid. I request that he attend to this as soon as possible because a mediation cannot delay an eventual court determination. That said, the mediation should follow the release of the regulation 26 report. So it seems to me that the small window of opportunity for the parents to mediate with the assistance of the independent children's lawyer will be 8, 9 and 10 of December 2014. The purpose of the mediation is not merely to see if the matter can be resolved in its entirety but to have the parents prepare for outcomes. They are the outcomes which they do want and which they do not want. At the end of these proceedings, the child will either remain in Australia with his siblings, in which case the father will want to have some form of ongoing time with them, or alternatively the child will go back to New Zealand and the mother will be seeking either to pursue litigation in New Zealand or seek some form of time with the child. That is what I mean about preparing for outcomes. A mediation, as

conducted by Victoria Legal Aid, will afford the parents an opportunity to resolve any matter that can be resolved and to consider how each will be placed when these proceedings, if contested, conclude. The applicant State Central Authority did not oppose the concept of mediation although it is not expected that it will participate. RECORDED : NOT TRANSCRIBED The independent children's lawyer should not hesitate to have the matter listed before me for further directions if he thinks that further directions would help. I certify that the preceding fourteen (14) paragraphs are a true copy of the reasons for judgment of the Honourable Justice Bennett delivered on 10 October 2014. Associate: Date: 28 October 2014 AustLII: Copyright Policy | Disclaimers | Privacy Policy | Feedback URL: <http://www.austlii.edu.au/au/cases/cth/FamCA/2014/919.html>