

FAMILY LAW CHILDREN urgent ex parte application by Independent Childrens Lawyer for immediate change of residence of children application prompted by content of single experts report and recommendations. APPLICANT: Independent Childrens Lawyer FIRST RESPONDENT: Mr Rowe SECOND RESPONDENT: Ms Helbig INTERVENER: Secretary, Department of Family and Community Services FILE NUMBER: (N)PAC 5421 of 2010 DATE DELIVERED: 9 October 2014 PLACE DELIVERED: Newcastle PLACE HEARD: Newcastle JUDGMENT OF: Cleary J HEARING DATE: In Chambers REPRESENTATION APPLICANT: No appearance FIRST RESPONDENT: No appearance SECOND RESPONDENT: No appearance INTERVENER: No appearance ORDERS

(1) Pursuant to rule 1.12 of the Family Law Rules 2004 the requirement for strict compliance with any rules or regulations not complied with be dispensed with. (2) Leave is granted to the Independent Childrens Lawyer to file today and serve in accordance with these Orders an Application in a Case made ex parte by the Independent Childrens Lawyer supported by an affidavit of Susannah O'Reilly affirmed on 8 October 2014. (3) The Independent Childrens Lawyer shall forthwith serve on the father a copy of these Orders and the Application in a Case and supporting affidavit. (4) The Independent Childrens Lawyer shall this day deliver to the Principal (or his/her delegate) of P School at Town S a copy of these Orders and shall, subject to the agreement of the Principal to her remaining, stay in the precincts of the school with the children until the children are collected by their father from the school NOTING the Independent Childrens Lawyer may inform the Principal of the school that the Principal or his delegate is at liberty to advise the mother of the children having left the school with the father pursuant to Court Orders. (5) The Independent Childrens Lawyer shall thereafter forthwith serve a copy of these Orders and the Application in a Case and supporting affidavit on the mother and the Intervener by 10.00 am Friday, 10 October 2014. (6) That all prior parenting orders made in this Court and the Federal Circuit Court in relation to X born ... 2005 and Y born ... 2008 (the children) are suspended. (7) That the father shall have sole parental responsibility for the children. (8) The father shall collect the children from school today and they shall thereafter live with him and spend time and communicate with the mother as follows: 8.1 For a period of two weeks from the date of these Orders, there shall be no contact between the children and the mother

by any means whatsoever AND thereafter time and communication shall be as follows: 8.1.1 After the expiry of two weeks from the date of these Orders (commencing 25 October 2014) the father shall facilitate the children contacting the mother by telephone at 9.00 am each Saturday, on Ys birthday in 2014 and on Christmas Day 2014 and may to that end be present when the children make the calls and/or may arrange for the call to be on loud speaker. 8.1.2 The father shall terminate the call in the event that the mother questions the children about: (i) the father's household; (ii) the possibility of abuse of the children by the father or other members of his household. 8.2 After the expiry of four weeks from the date of these Orders (and commencing on 8 November 2014) the children shall spend time each fortnight with the mother supervised for two hours in a Contact Centre and failing agreement otherwise the PP Contact Centre each fortnight. (9) The mother is restrained pursuant to Section 68B(1) of the Family Law Act 1975 from: 9.1 Removing or taking possession of the children. 9.2 Attending on the father's residence or on P School at Town S (the school) or from being within 100 metres of the father's residence or the school. 9.3 The mother is to use her best endeavours to ensure that the maternal grandparents or Ms M do not attend upon the father's residence or the school or be within 100 metres of the father's residence or the school. 9.4 Contacting or communicating with the children other than in accordance with these Orders. 9.5 The mother is to use her best endeavours to restrain the maternal grandparents or Ms M from contacting or communicating with the children. 9.6 Speaking to the children about: 9.6.1 these proceedings; and 9.6.2 the allegations made by or on behalf of the children by the mother and third parties. THE COURT NOTES: (A) The Chapter 15 Single Expert appointed by the Court has expressed the view that the mother may need a Case Guardian (referred to in the report as a guardian ad litem (Recommendation 13, page 48) for reasons stated in the report dated 29 September 2014. IT IS NOTED that publication of this judgment by this Court under the pseudonym Independent Children's Lawyer & Rowe and Anor 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 NEWCASTLE FILE NUMBER: (P) PAC 5421 of 2010 Independent Children's Lawyer Applicant And Mr Rowe First Respondent And Ms Helbig Second Respondent And Secretary, Department of Family and

Community Services Intervener REASONS FOR JUDGMENT INTRODUCTION In this matter the Chapter 15 report by the single expert was received by the Court on 8 October 2014. I intend to release the report to each of the parents and to the Intervener. I have taken the unusual step of releasing the report to the Independent Children's Lawyer only in advance of the next Court event. I did that on Wednesday 8 October 2014 pursuant to an order made on that day. The single expert asked for the report to be read by me at first instance The Judge's Eyes alone. I also took the even more unusual step of seeing the Solicitor Advocate for the Independent Children's Lawyer in Chambers in the absence of all other parties. An application was made by the Independent Children's Lawyer to file an Application in a Case ex parte, supported by an affidavit of the Independent Children's Lawyer. The application is in summary for a change of residence immediately for both children from the mother to the father without prior notice to the mother. I have taken those unusual steps for the following reasons: The single expert has resolutely recommended an urgent change of residence for the children. Some relevant passages of a long detailed report are extracted as follows: Two scenarios were identified (pages 43-45) with regard to sexual abuse allegations. The second scenario was favoured by the Single Expert. It was that there had been a mis-assessment of sexual abuse having occurred. [1] In essence I formed the view that the second scenario was on balance the more likely one. I don't believe the sexual abuse on balance is likely to have occurred, and that this has been more the anxiety of the mother which has been projected onto the children. [2] For the best interests of the children in order for them to have a long term relationship with both parents, I believe that there would need to be a change of residence. However should there be a delay for such a change, where the children were exposed to the distress of the mother and maternal grandparents that the mother's distress would have extremely detrimental impact on the children's emotions. Specifically I conclude that there were signs that the son [X] is already demonstrating signs of parentification in support of the mother and he would feel obliged to stand by his mother to protect her. There is an extremely high likelihood the great emotional responses in the mother and maternal grandparents would lead to further police and FACS involvement making any decision of change of residence impossible. The pressure on the children would be so intense that they would,

I believe, refuse to leave the mother and that the likelihood of lasting damage to future contact with the father would be high. [3] Recommendations: [4] After two family reports it has been unsuccessful in establishing an ongoing relationship with both parents. I believe the only alternative now is for the children to be placed with the father. I recommend that this happen immediately and without notice. [5] I believe that now the only chance for a good outcome where the children can maintain a good relationship with both parents is if they are placed with the father. [6] I believe that the children are young enough to make such a change, and that they have got a very positive relationship with both parents. It is a drastic step to take and is not consistent with the usual procedural fairness afforded to parties before orders of such consequence are made. The other parties have been denied natural justice to the extent that they were not served with the application before orders were made. This adversely impacts on the mother and also impacts on the father. However the risks identified are both profoundly serious and potentially irreparable. The Single Expert concluded that the mother has developed an illusion of validity about the sexual abuse of the children. Even so, I would have been unwilling to take this step if not for the observation of the single expert as follows: The children were thrilled to see their father. They ran up to him and embraced him. They cuddled him and greeted him. This was so despite the presence of a woman Ms M, who came as a support person for the mother. Ms M forced her way into the office of the single expert refusing to wait outside when the children were interviewed. She had strongly and angrily told the doctor he should not interview the father and children together: The children seemed a little stressed by the fact that [Ms M] was there and I didn't want her present. Accordingly I have made interim orders for an urgent change of residence with provision for time and communication in accordance with the recommendations. The matter will be heard in approximately three months commencing 19 January 2015. I certify that the preceding eleven (11) paragraphs are a true copy of the reasons for judgment of the Honourable Justice Cleary delivered on 10 October 2014. Associate: Date: 10 October 2014 [1] Line 1722 and following [2] Line 1753 and following [3] Report Single Expert released 08/10.2014, par 4, p 46 [4] Line 1771 and following [5] Line 1787 and following [6] Line 1824 and following AustLII: Copyright Policy | Disclaimers | Privacy Policy | Feedback URL:

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