

FAMILY LAW CHILDREN With whom a child lives Parental Responsibility Where the Applicants are not the biological parents of the child Where the Applicants adopted the child pursuant to Tongan traditions Where the child is in hospital and likely to require a number of medical procedures Where all parties consent to final orders being made Family Law Act 1975 (Cth) FIRST APPLICANT: Mr Kapa SECOND APPLICANT: Ms Kapa FIRST RESPONDENT: Mr Sinoti SECOND RESPONDENT: Ms Finau FILE NUMBER: BRC 1214 of 2014 DATE DELIVERED: 17 February 2014 PLACE DELIVERED: Brisbane PLACE HEARD: Brisbane JUDGMENT OF: Kent J HEARING DATE: 17 February 2014 REPRESENTATION SOLICITOR FOR THE APPLICANTS: Harrington Family Lawyers FOR THE RESPONDENTS: In person by telephone ORDERS IT IS ORDERED BY CONSENT THAT (1) The child P SINOTI born ... April 2013 live with the Applicants. (2) The Applicants have shared parental responsibility for the care, welfare and development of the child in every respect including as to major long term issues. (3) The Applicants be at liberty to change the child's name from P SINOTI to B KAPA. (4) The Applicants be permitted to take and send the child from Australia and therefore be permitted to travel internationally. IT IS DIRECTED THAT (5) A transcript of today's proceedings be ordered, prepared and placed on the file and be made available to the parties. IT IS NOTED that publication of this judgment by this Court under the pseudonym Kapa and Anor & Sinoti 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 BRISBANE FILE NUMBER: BRC 1214 of 2014 Mr Kapa First Applicant Ms Kapa Second Applicant And Mr Sinoti First Respondent Ms Finau Second Respondent EX TEMPORE REASONS FOR JUDGMENT These are parenting proceedings, pursuant to Part VII of the Family Law Act 1975 (Cth) (the Act), concerning the child P Sinoti, (the child) born in April 2013. The Applicants in the proceedings, whilst not biological parents of the child, are plainly, on all the material, persons concerned with her care, welfare or development within the meaning of section 69C of the Act. The Respondents in these proceedings are the child's biological parents. The subject child, known as B and, indeed, all of the parties in these proceedings are of Tongan heritage. The application was initially framed and brought in circumstances that because of grave illness of the child, decisions needed to be made about her

medical needs. Unfortunately, the child's circumstances are such that she is presently in hospital in Melbourne where she is and has been in recent times treated for life-threatening conditions. She has required a number of medical procedures and significant surgery and is likely to require further significant medical treatment. The proceedings come against a background that pursuant to Tongan traditions the child was adopted by the Applicants. I am informed and accept that even prior to her birth it was agreed, as between the child's biological parents and the Applicants, that the Applicants would be for all intents and purposes, within the understanding of Tongan tradition and culture, the parents or adoptive parents of the child. That agreement arose even before her birth and having been born in April of last year, from June of last year the child came into the care of the Applicants. The urgency of the current application was that interim orders were sought on an urgent basis to provide the Applicants with shared parental responsibility to allow them to make decisions about the child's medical needs. In the event, both of the biological parents have been served with the Initiating Application filed 11 February 2014 and the material filed in support of it. The biological parents appeared by telephone at the proceedings this morning. Both of them had the opportunity to hear what Mr Page, the solicitor for the Applicants had to say about the relevant background to the matter, additional to what appears in the material filed in support of the application, which has been served upon both of the biological parents. The biological parents have indicated they consent to the orders sought by the Applicants. I sought to obtain from the biological parents a clear indication of whether they were consenting only to the interim orders that were sought on the application listed before me for hearing today or whether they wished to consent to orders being made on a final basis. I am satisfied on what they each imparted to the Court, on the hearing of the application, that both of the biological parents had no objection to and effectively consent to the making of the final orders that are sought by the Applicants. Section 65G of the Act sets out the special conditions that apply when making a parenting order about with whom a child lives or the allocation of parental responsibility by consent, where the order is being made in favour of a non-parent. It is clear that both Applicants are non-parents, in the sense of being not the biological parents of the subject child, but I am satisfied on the submissions that have been made to me this morning that at least one

of the Applicants is a relative within the meaning of section 65G(1AB). If I am wrong about that, I am satisfied in any event that there are circumstances in this case that make it appropriate to make the proposed final orders, even if it could be said a condition in paragraph (a) of that section is not satisfied. That is so because of the relevant contextual background I have briefly referred to in terms of the child's adoption and agreement by the biological parents to place her in the care of the present Applicants. I reiterate that both of the biological parents confirmed to the Court that they had heard what Mr Page, the solicitor for the Applicants had said on the hearing and for his part, the father expressed clearly that he regarded what had been said as all true and he confirmed the cultural matters that Mr Page identified in his submissions and that it had always been his wish and intention that the child be placed in the care of the Second Applicant, who he describes as the first cousin. To similar effect, the mother expressed her agreement with all that had been said by Mr Page. The fact of the matter is that the child known as B has been in the care of the Applicants essentially since soon after her birth in accordance with a pre-existing arrangement that had been made as between the Applicants and the biological parents. The obvious need for decisions to be made in the child's best interests concerning her medical needs would compel the conclusion that the interim orders sought should be made, but in the event I am satisfied that the child's best interests are also met by the making of final orders in these circumstances. I am satisfied that the biological parents expressed their consent to the making of orders on a final basis, as sought by the Applicants. I direct that a transcript of the proceedings that occurred today be prepared and placed on the file and that also such a transcript be made available to the parties. I incorporate the exchanges that occurred on the hearing today as part of my reasons. I therefore make orders by consent in terms of the final orders sought as set out in the Initiating Application filed on 11 February 2014. I certify that the preceding eighteen (18) paragraphs are a true copy of the reasons for judgment of the Honourable Justice Kent delivered on 17 February 2014. Associate: Date: 21 February 2014 AustLII: Copyright

