

FAMILY LAW CHILDREN Leave granted to commence adoption proceedings agency can inspect court file and make such use of copy documents as it deems fit. APPLICANT: Ms Laughlin RESPONDENT: Mr Jenkins INDEPENDENT CHILDRENS LAWYER: Ms Smith FILE NUMBER: MLC 4356 of 2014 DATE DELIVERED: 8 October 2014 PLACE DELIVERED: Melbourne PLACE HEARD: Melbourne JUDGMENT OF: Bennett J HEARING DATE: 8 October 2014 REPRESENTATION COUNSEL FOR THE APPLICANT: Mr Sayer SOLICITOR FOR THE APPLICANT: TJ Mulvany & Co COUNSEL FOR THE RESPONDENT: No appearance COUNSEL FOR THE INDEPENDENT CHILDRENS LAWYER: Ms Harris SOLICITOR FOR THE INDEPENDENT CHILDRENS LAWYER: Victoria Legal Aid ORDERS IT IS ORDERED THAT Mr Laughlin and Ms Laughlin (the applicants) have equal shared parental responsibility for the children C Morgan born... 2001 and D Morgan born ... 2005 (the children). The said children live with the applicants. For the purposes of s 33 of the Births Deaths and Marriages Registration Act 1998 (Western Australia) this Court approves the registration of change of name for the children so that henceforth C Morgan born ... 2001 will be known as C Laughlin and D Morgan born ... 2005 will be known as D Laughlin and the Court is satisfied that those changes of names are in the best interests of each of the children. Pursuant to s 60G(1) of the Family Law Act 1975 (Cth) (the Act) the applicants are hereby granted leave for proceedings to be commenced for the adoption of the children by the first named applicant Mr Laughlin, it being determined that granting leave to do so is in the best interests of the children. Pursuant to r 24.13(1)(c) of the Family Law Rules 2004 (Cth) I grant the proper officer of any department or authority to whom an application is made in relation to the adoption of the children to search the Court record in relation to this matter and to inspect and take copies of any documents forming part of the Court record and, for the avoidance of doubt, that person, authority or department may make such use of the document or record of the Court as he/she considers appropriate in the conduct of his/her statutory duties. IT IS DIRECTED That the independent children's lawyer send a sealed copy of this Order and my reasons for decision (when published) to the biological father at the last known email address that she has for him to advise him of the conclusion of these proceedings. My reasons for decision this day be transcribed and when

settled be placed on the Court file and published to the parties. IT IS FURTHER ORDERED: That all extant applications are otherwise dismissed and this matter be removed from the pending cases list maintained by the Court. That pursuant to s 65DA(2) and s 62B of the Act the particulars and 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 those particulars are included in these orders. IT IS NOTED that publication of this judgment by this Court under the pseudonym Laughlin & Jenkins 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 4356 of 2014 Ms Laughlin Applicant And Mr Jenkins Respondent And Independent Children's Lawyer REASONS FOR JUDGMENT EX TEMPORE

This matter comes before me having been adjourned from the judicial duty list with the children C, aged 13, and D, aged nine, now having their interests represented by an independent children's lawyer, Ms Smith, of Victoria Legal Aid. Today, Ms Harris of counsel appears on behalf of Ms Smith. The applicants, who are the mother and the stepfather of the children, did not attend court, but Mr Sayer, solicitor, appears on their behalf today. There have been some developments which are relevant to the application for leave to the stepfather to adopt the children and for the application of himself and the mother that they have shared parental responsibility in relation to the children, the children live with them and that the children's family name be changed to that of the stepfather being Laughlin. Since the hearing on 6 August 2014 the family has moved to Sydney. That may be a permanent move. The applicant stepfather has family in Sydney, in particular, his mother. In any event, it is conceded by Mr Sayer that if adoption proceedings are going to be taken, they will now need to be taken in the State of New South Wales rather than in the State of Victoria. The independent children's lawyer was able to interview the children face-to-face yesterday when she happened to be in Sydney. It appears that the children are pleasant young people. The elder child has some recollection of her father. She expressed some reluctance and doubt about being in any form of direct or indirect communication with her biological father by way of letters, gifts of photographs. The elder child has commenced high school and she has happily been

accepted into a sports team. The younger child is nine years old and has commenced school in New South Wales at primary level. He is happy to be starting a martial art this week. He expresses no reluctance in relation to letters, gifts or photographs going to his biological father but, by the same token, appears to have no knowledge of his biological father or memory of him and that is indeed consistent with the timeline in these proceedings, as the children have not seen their father since approximately 2007 when the younger child was only two years of age. The independent children's lawyer caused three subpoenas to produce documents to issue in September 2014. Those documents were accordingly produced by Western Australian Police, Victoria Police and the Department of Child Protection for Perth. The documents have been released for inspection. I am informed by counsel for the independent children's lawyer that it appears that the biological father and indeed the family were known to Western Australian Police and the protective services authorities which would be Department of Child Protection and that there appears to be material relevant to family violence. There is no appearance by or on behalf of the biological father today. He is overseas and the court has not received any application for him to participate by electronic means. These orders and reasons for judgment will be sent to him. I will direct that the independent children's lawyer send a copy of this order and these reasons to him care of the electronic email address to which she has corresponded recently. The independent children's lawyer is content for the application for leave to adopt to be granted by this court. Clearly, that is on the basis that the application will receive the scrutiny of the appropriate authorities in the State of New South Wales and ultimately judicial scrutiny as well. The independent children's lawyer also discussed the application that their family name be changed from Morgan to Laughlin. Neither of the children are fixated on the change as the mother's affidavit suggests or as the applicant's affidavit material suggests, in which it is deposed at paragraphs 16 and 17 of their affidavit sworn on 9 April 2014: The nature of the relationship which has developed between the children and [the stepfather] is such that they identify as and have sought to adopt the practice of being known as [Laughlins]. We respectfully consider that in the absence of the change of name, this will be an ongoing issue for the children and we wish to have their surname legally reflect their views and also to lend unity to our respective surnames as we

continue to live as a family. In addition to the above, we inform this Honourable Court that issues have already arisen in relation to the children's preference of using the surname [Laughlin] with their school and will continue to arise in relation to obtaining licence permits, driver's licences, identification for admissions, theatrical, sporting events, identification for travel and like matters. We are concerned that in the absence of a change of name where the children are referred to pursuant to their current surname which is different to ours, a necessary inquiry will follow which creates difficulty and discomfort for the children. This is particularly in circumstances where the children have expressly indicated to us and others that they have the preference of using the surname [Laughlin]. The independent children's lawyers direct conversation with the children leads her to believe that the children are somewhat less committed to a change of name than the stepfather and the mother. Both have started a new school. Both wondered if it could create some confusion in their new school, however, neither child objected to the change of name. And then, by way of conclusion, the elder child said in her brother's presence that it would be preferable if they did both share the name of their mother and stepfather and half-sibling and the younger child did not object. Given the consent of the father to the mother and stepfather having parental responsibility, the fact that parental responsibility and orders providing that the children live with the mother and stepfather and that their family name be changed to Laughlin, I will make orders in those terms. I will also grant the leave to adopt. I am satisfied that it is in the best interests of the children to make the order. It does occur to me that the appropriate authorities for any adoption application may be interested to look at this court's file. I will make an order that they be entitled to do so. For the avoidance of doubt, I will also make an order that they can obtain copies of documents from the court file and then use those documents in the course of handling whatever application they have. This should obviate the need for those authorities or indeed the applicants to have to return to court to seek relief from any confidentiality or privilege which is said to attach to documents made in the course of other legal proceedings. I certify that the preceding thirteen (13) paragraphs are a true copy of the reasons for judgment of the Honourable Justice Bennett delivered on 8 October 2014. Legal Associate: Date: 28

<http://www.austlii.edu.au/au/cases/cth/FamCA/2014/922.html>