

BETWEEN: RCB as litigation guardian of EKV, CEV, CIV and LRV
Plaintiff

10 AND: THE HONOURABLE JUSTICE COLIN JAMES FORREST, ONE
OF THE JUDGES OF THE FAMILY COURT OF AUSTRALIA
First Defendant

DIRECTOR-GENERAL, DEPARTMENT OF COMMUNITIES
(CHILD SAFETY AND DISABILITY SERVICES)
Second Defendant

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Third Defendant

TV
Fourth Defendant

THIRD DEFENDANT'S SUBMISSIONS

30 **Part 1: Publication**

1. These submissions are in a form that are suitable for internet publication.

Part II: Issues arising

2. The Third Defendant adopts the Plaintiff's recitation of issues arising.

Part III: Section 78B *Judiciary Act* 1903 (Cth) Notices

3. The Third Defendant certifies consideration as to whether any notice should be given in compliance with section 78B of the *Judiciary Act* 1903, and notes the service of relevant Notices.

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THIRD DEFENDANT'S SUBMISSIONS



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Part IV: Citation

4. The Third Defendant notes this Part of the Plaintiffs' submissions.

Part V: Material Facts

5. The Third Defendant adopts the recitation of material facts as set out in the Plaintiff's submissions, save that the Third Defendant's acceptance of the matters set out at the Plaintiff's paragraph 13 are "for the purposes of this proceeding."

Part VI: Third Defendant's Argument

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6. The Third Defendant adopts the contentions set out in this Part of the Plaintiff's submissions, but augments those arguments as follows.

7. These are proceedings that plainly affect the rights, liberty and welfare of the Plaintiffs, two of whom are young women aged 15 years and turning 14 years on 26 August. The Plaintiffs bring this matter in circumstances where "society"¹ is recognising the autonomy of children, who have "sufficient maturity and understanding",² to make decisions that affect their very own welfare, rights and liberty. Equally, "societal attitudes" see children as "individuals with legitimate views to be heard."³

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8. The present legislative scheme denies procedural fairness to 'children', particularly those who possess 'sufficient maturity and understanding' in so far as those children's own rights, liberty and welfare will be directly and significantly affected.⁴
9. It is no answer, it is submitted, to assert that an interview for a Family Report⁵, or the appointment of an Independent Children's Lawyer ("ICL") adequately or suitably provides for sufficiently mature and intelligent children's participation in proceedings

¹ *J v Lieschke* (1986) 162 CLR 447 at 452, per Wilson J,

² *J v Lieschke* (1986) 162 CLR 447 at 452, per Wilson J citing *Gillick v West Moreton and Wisbech Area Health Authority* [1986] A.C. 112 in particular per Lord Scarman at 184

³ NSW Law Reform Commission, Report 119, "Young People and Consent to Health Care", October 2008

⁴ *Secretary, Department of Health and Community Service v JWB and SMB [Marion's Case]* [1991-1992] 175 CLR 218 at 237

⁵ *Family Law (Child Abduction Convention) Regulations 1986* - Reg 26; see also s.62G *Family Law Act 1975*

that will directly and significantly affect, for example, in which country and with which parent a mature child or young adult shall live.

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10. Family Reports are a filter through which a child's wishes may be placed before the Court, but in a manner which keeps the child quarantined from the actual proceedings.⁶ As for the appointment of an ICL, section 68L(3) of the *Family Law Act* provides that in Convention proceedings, an ICL is only appointed in "exceptional circumstances" – whatever that phrase may mean (and the Third Defendant refers to the Plaintiffs' submissions in this regard). Further, the role of the ICL is prescribed as follows:
- a. that the ICL is not the child's legal representative, s.68LA(4)(a); and
 - b. that the ICL is not obliged to act on the child's instructions in the proceedings, s.68LA(4)b).

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11. Thus, otherwise "Gillick competent" young adults are presently, by s.68L of the *Family Law Act*, but impermissibly, being denied procedural fairness rights of the right to be heard, the right to instruct those representing them and the right to be legally represented in circumstances where they are the very subject of litigation, which will appreciably and substantially affect their rights, liberty and welfare.

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Part VII: Applicable Provisions

12. The Third Defendant does not cavil with this Part of the Plaintiff's submissions.

Part VIII: Orders Sought

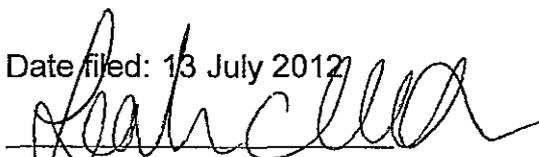
13. The Third Defendant agrees with and adopts the submission made by the Plaintiff under this Part of its submissions.

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⁶ Section 62G, *Family Law Act 1975*

Leah Elizabeth Clark