

Australian Journal of Family Law (AJFL)

Volume 35 Part 1

(editorial, practice bite and articles included in this part are linked to the LexisNexis platform)

CONTENTS

Editorial

Editorial 1

Practice Bite

Interim financial orders — Tips and traps
— *Dr Juliet Behrens* 4

Articles

Reconsidering Kelvin: Cross-sex hormone treatment as a
response to adolescent gender dysphoria
— *Patrick Parkinson* 11

In the 2017 decision of *Re Kelvin*, a five-member appellate Bench of the Family Court of Australia unanimously held that the prescription of cross-sex hormones to adolescents did not require court approval if parents and doctors are in agreement. This departed from the Full Court's decision in *Re Jamie* only 4 years earlier. The judges who were in the majority in their reasoning justified this on the basis of advances in medical and scientific knowledge that changed the substratum of fact on which the Full Court's earlier decision in *Re Jamie* was based. However, the decision in *Re Kelvin* was not actually based upon a comprehensive review of that medical and scientific knowledge. The Court declined to read any of the medical and scientific literature referred to in the case stated. Its understanding of the medical and scientific knowledge was informed entirely by what the parties to the litigation agreed as facts, and the litigation lacked a contradictor on those issues. This fatally undermines the ratio decidendi of the judges in the majority.

Since that decision, Watts J, in *Re Imogen [No 6]* has clarified that court approval is still required if a parent disputes either the Gillick-competence of an adolescent, a diagnosis of gender dysphoria, or the proposed treatment; or if treating clinicians disagree on any of these issues. Since *Re Kelvin*, there have been considerable advances in medical and scientific knowledge about the issue of adolescent gender dysphoria. Much of this research raises questions about the wisdom and efficacy of gender reassignment treatments for adolescents. There are also significant issues about how Gillick-competence is to be assessed in this population of adolescents, many of whom have serious psychiatric comorbidities. This has led to changes in practice in other countries. Treatments for gender dysphoria such as the provision of cross-sex hormones and double mastectomies are likely to be increasingly contested in the family courts of Australia as well, as a consequence of these developments in medical and scientific knowledge.

The High Court and family law: The Hague child abduction cases

— *Richard Chisholm and Belinda Fehlberg*

39

This article is the first of what we hope will be a series of papers examining the contribution made to family law by the High Court of Australia. It deals with the Hague Convention on International Child Abduction. We analyse the six existing High Court decisions on various aspects of implementation of the Convention in Australia, and explore how the Court deals with some of the issues that have troubled courts internationally as they implement the Convention. We hope this discussion, together with future articles in this series, will contribute to an understanding of the role and significance of the Court as the ultimate Australian court of appeal, and the nature of its contribution to family law.

The university teaching of family law

— *Miranda Kaye and Jackie Jones*

68

We have co-taught a family law property subject over the last 2 years. The experience has led us to reflect upon the content, structure and teaching methodology of family law courses. Reflecting upon our teaching has cemented our views that some knowledge of family law should be core knowledge for all law graduates. In particular, we believe that competencies required for good family law practice (understanding family violence; child-abuse; trauma-informed practice; and cultural awareness) are essential requirements for all legal graduates. The remainder of the article is a conversation outlining our thoughts and experiences in relation to the teaching of Family law which we hope will contribute to and inform broader debates about the role of the legal academy, legal education, and the place of vocational qualifications within them. Such a conversation is particularly important in the age of the neoliberal university and the recasting of law as a purely vocational skill. It is hoped that the article starts a conversation about the future purpose and meaning of the university study of family law.

A sex worker first and a mother second: Treatment of sex worker parents in Family Court Parenting Proceedings

— *Janelle Koh*

89

In parenting matters, the occupation of a parent is not usually a contentious issue. If a party is gainfully employed, able to support the child on their wages, and their work can accommodate parenting arrangements, that is usually the end of the story. However, where a parent to the proceedings is employed as a sex worker, their occupation is often subject to further scrutiny by the Court, and often in a dim light.