Can I Change my Child's Name?

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Name change applications: would a rose by any other name *really* smell just as sweet?

For many cultures, your name holds a lot of importance and ties to your personal identity. It is a valuable source of information; it signifies and carries deep roots for your cultural and familial historical connections. It can represent a lot about a person's social standing, ethnicity, and gender-identity. It is one of the first things we learn as a child, so it goes without saying that changing something so rooted in our identity is a huge decision and not to be taken lightly.

A parent is not able to change the name of their child without written consent of the other parent.

Without permission from both parents, a person under the age of eighteen (18) is not able to legally change their name without an order from the Court. Likewise, a parent is not able to change the name of their child without written consent of the other parent.

What are the options available to change your child's name? And which avenue may be more preferable for your family law matter.

1. Name Change Application – Queensland

If you do not have permission of the other parent to change your child's name and your child was born in Queensland, you may be able to apply to the Queensland Magistrates Court seeking an Order dealing with this specific issue only.

The main issue for the court is whether the name change will be in the **child's best interest**.

In deciding a Name Change Application,[1] the Court considers the following as to whether a proposed change of name for a child is in the **child's best interests**:

(a) The number of previous changes of the child's name;
(b) The views of the child's parents on the change of name, to the extent the parents' views are available;
(c) The views of the child's guardian on the change of name, to the extent the guardian's views are available;
(d) The child's views on the change of name, to the extent that the child's views are available;
(e) The likely impact of the change of name on the child;
(f) The child's cultural, ethnic or indigenous background and whether the change of name is likely to adversely impact on the child's current cultural, ethical or indigenous identity.

[1] *DKL v Van K [2017] QMC 19* at [19] and [24] also see *Births Deaths and Marriages Registration 2003* (Qld), Section 9 and 17 and *Births Deaths and Marriages Registration Regulation 2015* (Qld) Section 9.

The Magistrates Court uses guidance from case law assisting the Federal Circuit and Family Court of Australia (as discussed further below). However, an Application in the Magistrates Court is not bound by the same pre-action requirements as an Application in the Federal Circuit and Family Court of Australia.

The Magistrates Court is also only able to deal with the discreet issue in respect to the *Name Change Application*, which means it is not empowered to make Orders in respect of child contacts or parental responsibility. This is dealt with in the Federal Circuit and Family Court of Australia.

Before considering a Name Change Application, it will be helpful to show the Magistrates Court the following:

1. Previous attempts between the parents (or child) to negotiate a name change (in writing); and
2. Any views of the child expressed through professionals such as, but not limited to; a report through a child psychologist or medical practitioner, or victim impact statement or any other document, that is speaking to the child's views on the name change proposal.

Generally, the other parent needs to be made aware of the proceedings before a Court can determine it. However, substituted service can be sought, where you are unable to physically locate the other parent but can serve via electronic means. However, an order seeking the location of the other party is not readily available through this process.

2. Name Change Application – Federal Court and Family Court of Australia

The changing of a child's name under the Federal Court and Family Court of Australia is expressly referred to in the *Family Law Act 1975 (Cth)* to be a joint decision to be made together by the parents (or guardians) of a child. If a joint decision cannot be made, the parents have the option to make an Application to the Federal Court and Family Court of Australia.

The decision of *Chapman and Palmer* (1978) FLC 90-510 set out a range of factors to consider when deciding to change to a child's name as follows:

(a) The welfare of the child is the paramount consideration.
(b) The short- and long-term effects of any change in the child's surname.
(c) Any embarrassment likely to be experienced by the child if its name is different from that of the parent with custody or care and control.
(d) Any confusion of identity which may arise for the child if his or her name is changed or not changed.
(e) The effect which any change in surname may have on the relationship between the child and the parent whose name the child bore during the marriage.
(f) The effect of frequent or random changes of name.

The decision of *Beach and Stemmler* (1979) FLC 90-692 identified six (6) additional factors to take into consideration as follows:

(a) The advantages both in the short term and in the long term which will accrue to the children if their name remains as it is now.
(b) The contact that the husband has had and is likely to have in the future with the children
(c) The degree of identification that the children now have with the father.
(d) The degree of identification which the children have now with their mother and their stepfather.
(e) The degree of identification which the children will have with the child that is about to be born to their mother and any likely confusion in the future if their father's name is restored.
(f) The desire of the father that the original name be restored.

Before you file an Application

If you are considering filing in the Federal Court and Family Court of Australia, you would be required to comply with any pre-action requirements such as attending mediation before filing an Initiating Application (unless any exemptions apply to these processes).

The initiating parent would also be required to file a *Genuine Steps Certificate* which would speak to your previous attempts at mediation and your written notice to the other parent notifying them of your intention to file court proceedings.

This would also mean that if you make an Application the Federal Court and Family Court of Australia you may have to anticipate a response from the other parent in seeking parenting orders or time with the child (or related children) at the centre of the Name Change Application and not just the Name Change as a discreet issue.

3. Comparing the Options

	Magistrates Court	Federal Circuit Court and Family Court
Dealing with discreet issue of name change?	Yes	Yes – however the Court can also determine Parenting Orders depending on the other parent's response
Pre-Action Procedures required prior to filing?	No	Yes
Substituted Service?	Yes	Yes
Location Order.	No	Yes
Filing Fee (current as at 13 February 2022).	$118.35	$365.00 to $490.00 (depending on what Orders you are seeking)
Bailiff/ Service Fee (costs will depend on where the other party is located).	$140.00 to $300.00	$140.00 to $300.00
Financial Hardship Application or Fee Waiver.	No	Yes
Additional Filing Fees with Births, Deaths and Marriages – registering Change of Name	$193.20	$193.20
Time to first appearance	1 month	1 month – 3 months

Each name is as unique as the family it represents and so the same approach is not going to work for every family. Our experienced Family Lawyers at O'SheaDyer Solicitors can recommend the best course of action for you.

If this is something you wish to pursue, call us on 47 725 155 to make an appointment to discuss which approach may be best for your situation.

We offer first appointments with an experienced family lawyer for a low fixed fee of $220 (inc gst).

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Karina Andrew is an experienced family lawyer at OSheaDyer Solicitors, Townsville. Karina was Admitted in 2013 and has since been practicing throughout Queensland. Karina now works exclusively in family law and can advise and represent people in all types of family law matters including property law, parenting matters, spouse maintenance, child support, child safety and domestic violence.

Everyone's situation is unique. We always recommend that people see an experienced family lawyer so you can discuss your situation and obtain customised advice about how this process specifically applies to you.