

Can I change my child's surname after separation/divorce?

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Following separation or divorce, it is not uncommon for a parent to change the surname of a child to recognise their surname in the child's name. Whilst it is common for parties to change their surname following a separation, and this can be done relatively quickly and easily, changing the surname of a child requires agreement from both parents.

Change of surname – major long-term issue

Under the*Family Law Act 1975* (Cth), there is a presumption of shared parental responsibility. This means the parents of a child must decide on major long-term decisions for the child, including decisions in relation to the child's religion, what school the child is to attend and decisions about the child's surname.

In a previous blog, "What does Parental Responsibility mean", the issue of parental responsibility is explored in more detail.

Agreement to change a child's surname

If both parents consent to change the child's name, this can be done easily through an application to the Births, Deaths and Marriages Registry.

In New South Wales, more information can be found here at Service NSW.

In Western Australia, more information can be found here.

When agreement cannot be reached to change a child's surname

If there is no agreement to change a child's surname, the first avenue to attempt to resolve this issue is to attend mediation.

The *Family Law Act* requires parties who cannot reach agreement on any parenting matters to, prior to filing an application with the Family Court, attend and participate in dispute resolution and make a genuine effort to resolve their dispute prior to commencing court proceedings.

In our blog, "What is Family Dispute Resolution", mediation for parenting matters is explored in more detail.

If no resolution is reached at mediation, an application can be filed with the Family Court to change the child's surname.

What does the Court consider in applications to change a child's surname?

If an application is made with the Court to change a child's surname, as with all orders sought for parenting matters, the best interests of the child is the paramount consideration. In relation to this matter, the Court will consider if it is in the best interests of the child for their surname to be changed.

The factors the Court will consider for an application to change a child's surname will include:

the reasons for the proposed name change;

the views of the other parent;

whether the proposed surname will be double-barrelled (hyphenated);

any possible confusion of identity for the child;

- the child's views, depending on their age and maturity;

the effect of the name change on the child's relationship with each of their parents;

any short-term embarrassment weighed up against the long-term effects; and

any advantages to keeping the current name.

Get help from a family lawyer

If you are recently separated and are considering changing your child’s surname, we recommend you seek legal advice from an experienced family lawyer.

Meillon & Bright’s team of experienced family lawyers can assist you and provide you with information about the options available to lodge an application to change your child’s surname.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.