

## Family Law: Changing your child's name

*This factsheet provides basic information only on family law. This factsheet should not be substituted for legal advice. You should seek legal advice about what to do in relation to your matter.*

This factsheet explains what steps a parent can take to change the name of their child. If you are a child or young person who would like to change your name yourself, contact Legal Aid ACT's Youth Law Centre on **(02) 6173 5410**.

### Who must consent to change the name of a child?

Usually both parents must consent to change the name of a child. If the child is at least 14 years old, they must also consent to changing their name.

Only one parent can apply to change the name of their child without the consent of the other parent if one of the following circumstances apply:

- The other parent is deceased (and the surviving parent can produce the death certificate).
- There is only one parent listed on the child's birth certificate.
- An Australian Court has made an order or a finding to allow the child's name to be changed by one parent.

Alternatively, a child can wait until they are 18 years old, and then apply to change their name themselves.

If a child is aged at least 12 years of age, and they would like to change their name to better reflect their sex or gender identity,

they may be able to do this without the permission of both parents. For more information about this process, the child or young person should contact Legal Aid ACT's Youth Law Centre on **(02) 6173 5410**.

### Legal Aid ACT Youth Law Centre

Phone: **(02) 6173 5410**

Email: [contact@youthlawact.org.au](mailto:contact@youthlawact.org.au)

Address: 2 Allsop Street, Canberra City ACT

### Do I need permission from the other parent?

Yes. If the other parent is alive and named on the child's birth certificate, you will need them to consent to the application to change your child's name.

If the other parent does not consent to the name change, or you are unable to contact them to get their consent, you will need to apply to the Federal Circuit and Family Court of Australia for an Order that allows you to change your child's name.

### What if I have Sole Parental Responsibility for the Child?

Even if you have a family law order that gives you sole parental responsibility for the child, you still need the other parent's permission to apply to change the name of your child, or an additional family law order that expressly allows you to change the name of your child. If you have final family law orders in place, and you are not sure if those orders allow you to change your child's name without the permission of the other parent, you should contact Legal Aid ACT for free family law help.

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### Legal Aid ACT Family Law Duty Service

Phone: 1300 654 314

#### What if the other parent does not agree to change the child's name?

If the other parent does not agree to change the name of your child, the first step is to invite the parent to a Family Dispute Resolution Conference ('FDRC') to see if you can come to an agreement. An FDRC is a type of mediation. You cannot apply to the court straight away – you must first make reasonable attempts to resolve the dispute through an FDRC.

If the other parent refuses to go to an FDRC with you, or if you are unable to come to an agreement during the FDRC, an FDRC practitioner will issue you with a certificate called a Family Dispute Resolution Certificate. This is also sometimes referred to as a 'Section 60I Certificate'. This certificate is required to file an application with the Federal Circuit Court and Family Court of Australia. You may not be able to apply to the Court for an order without this certificate, unless certain exceptions apply. You should contact Legal Aid ACT for advice in relation to whether an exception applies to your matter.

#### How do I get a court order to allow me to change my child's name?

Once you have your Family Dispute Resolution Certificate that shows you have attempted FDRC, you can apply to the Federal Circuit and Family Court of Australia for an order that specifically allows you to change the name of your child. You will need to file the following documents at the Federal Circuit

and Family Court of Australia: -

1. Initiating Application which tells the court that you are seeking an order to change the name of your child.
2. An Affidavit which tells the court about recent events that has caused you to apply to the court. The affidavit should include what you have seen or heard that causes you to believe that it is in the best interest of the child to change their name.
3. The Family Dispute Resolution Certificate.
4. Genuine Steps Certificate. This document is filed to tell the Court what steps you have taken to comply with the pre-action procedures (such as attending an FDRC) or why you have not been able to comply with the pre-action procedures.
5. Notice of Child Abuse, Family Violence and Risk. This document sets out for the court all allegations you are making in relation to risk issues relevant to your matter.
6. A Parenting Questionnaire. This document sets out additional information about the child/ren and the care you provide.
7. An Undertaking as to Disclosure. This document is a legal promise to the Court that you have and will continue to provide the Court and the other parent all information relevant to the case.
8. A copy of any family violence order affecting the child/ren or a member of the child/ren's family.

After you have filed the court documents, you will be required to 'serve' the other parent with a copy of your application. This means the other parent will get a copy of all the documents that

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you have filed. You and the other parent will be told when to come back to court to have the matter heard. The other parent will also be given an opportunity to respond to your application.

### What will the court consider when deciding my application to change my child's name?

The primary consideration of the Court is the best interests of the child. The court will not order that the child's name can be changed unless they are of the view that it is in the child's best interest to do so.

The following are some examples of where a parent may believe it is in the best interest of a child to change their name: -

- The child has siblings with a different family name and there is evidence to suggest that this is causing them identity conflicts.
- The child has a different last name to their primary carer and there is evidence to suggest that this is causing them identity conflicts.
- The child has the same last name to a parent that has been abusive or engaged in family violence, and there is evidence to suggest that the name causes or exacerbates trauma that is experienced by the child.

Please note that a range of factors will be considered when the court is determining what is in the best interest of a child. If you believe that the above circumstances apply to you, this does not necessarily mean the court will make an order to change the name of a child. If you are considering applying to change the name of your child, you should get legal advice that is tailored to your specific circumstances before you apply to the Court.

### What if the Court orders that my child's name can be changed?

If the Court makes an order allowing you to change the name of your child, you can apply to Access Canberra to change your child's name. To apply to Access Canberra, you will need to complete the application form and provide a copy of your child's original birth certificate, a copy of the family law order allowing you to change the child's name and proof of residency. You will also be required to pay an application fee. For more information about applying to Access Canberra to change your child's name, visit the Access Canberra website [here](#).

### Get Free Family Law Help

#### Family Law Duty Service

If you do not have legal representation for your family law matter, a Legal Aid Family Law duty lawyer may be available to provide you with limited **one-off** legal help.

If you would like ongoing legal help, rather than 'one-off' duty help, you should apply for a grant of legal assistance instead.

The Legal Aid Family Law Duty Service is free of charge and is provided by telephone. You do not need to apply for a grant of legal assistance to access the Family Law Duty Service. This means any person can have free 'one-off' duty assistance through the Family Law Duty Service, regardless of their income. To get free help from our Family Law Duty Service, call our Helpline on **1300 654 314**.

**Legal Aid ACT Family Law Duty Service**

Phone: **1300 654 314**

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### Legal Aid Family Law Practice

If you would like a lawyer to provide **ongoing** help to you, rather than 'one-off' duty assistance, you must apply for a grant of legal assistance. To do this, you will be required to complete a Legal Aid Application Form, provide documents relevant to your matter (such as court documents) and provide information about your finances. If your application for a grant of legal assistance is approved, you will be appointed a family lawyer from our Family Law Practice.

Our Family Practice lawyers provide ongoing family law assistance. This may include:

- Writing you letters of advice
- Negotiating with the other parent or their lawyer on your behalf
- Representing you in FDRs
- Drafting your court documents
- Appearing on your behalf in the Federal Circuit Court and Family Court of Australia.

For more information about applying for a grant of legal assistance for family law matter, please contact our Helpline on 1300 654 314, or visit our website [here](#).

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