

# Changing your child's name by court order

This factsheet

- Provides information for people who want to apply to the Court to change a child's name
- Is intended for situations where there are no current court orders about the child
- May not apply if a Court has already made orders about the child

You can make an application to the NSW Registry of Births, Deaths and Marriage to change your child's name if your child was born in NSW (or was born overseas and has lived continuously in NSW for at least the last three years) and:

- You are the only parent named on the birth certificate OR
- The other parent is deceased OR
- Both parents agree to the change of name (and complete the application form) OR
- One parent cannot be found or does not agree to the change of name but a Court has given you permission to change your child's name

## Applying to Court

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You will need to:

- Try family dispute resolution or mediation and obtain a section 60I certificate OR  
Apply for an exemption from this requirement. Exemptions will only be granted in limited circumstances and you should get legal advice first.
- Prepare and file an **Initiating Application**, an **Affidavit** and a **Notice of Risk** usually in the Federal Circuit Court.

Attach your child's birth certificate, the section 60I certificate and any parenting plans or court orders to the **Initiating Application**.

If you do not have your child's birth certificate, you should apply for a replacement birth certificate by post, online or in person at the Births Deaths & Marriages Registry Office or Service NSW. The Court will not usually make an order changing a child's name unless they have seen a copy of the birth certificate.

- Pay a filing fee or apply for a fee exemption by completing the **Application for exemption from fees**.

The above forms are available from [www.familycourt.gov.au](http://www.familycourt.gov.au), [www.federalcircuitcourt.gov.au](http://www.federalcircuitcourt.gov.au), by calling 1300 352 000 or at your nearest family law registry.

An application to change a child's name is dealt with by the Court in the same way as any other parenting application. The Court must make a decision based on the best interests of the child. [Section 60CC of the Family Law Act 1975](#) outlines what factors the Court considers when deciding what is in the best interests of a child.

Remember that an application to the Court should only be considered as a last resort. Legal action can be expensive and time consuming.

Even if you are only asking the Court to make an order about your child's name, the other parent may respond to your application asking for other parenting orders, such as spending time with the child.

Sometimes the Court may find that it is not in the best interests of your child to allow the change of name. In some cases, the Court could also order that you are not allowed to let anyone call the child a different name.

## Your Affidavit

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An **affidavit** is your written statement of evidence and tells the Court why it should make the orders that you are asking for.

As a guide, your **affidavit** should include information like this:

- Your personal history including your date of birth, date of marriage/relationship, date of separation and child's name/s and date of birth.
- All current court orders including any family violence orders. Attach copies to the **Initiating Application**.
- Circumstances of the care of your child since the court orders were made.
- The other parent's attitude to parenting and whether they pay child support.
- Whether your child has a different family name to other people that they live with, such as brothers or sisters.
- Why the name change is being sought.
- Any attempts to resolve the issue.
- Details of discussions or conversations with the other parent concerning the child's name, in

### Tips for writing an affidavit

- Divide the affidavit into paragraphs.
- Number each paragraph.
- Keep each paragraph short and deal with one issue only.
- Be specific rather than general. Think about who, what, when, where, and how. Provide exact dates wherever possible. If you can't be exact, make your best estimate.
- Focus on the issues that are relevant (related) to your application.
- When you are writing about a conversation, quote it exactly, or write: 'On or around [DATE and TIME], [NAME] said to me words to the effect of "*I'm going to my Mum's. Don't call.*"
- Keep your affidavit under 10 pages.
- To attach a document, you should refer to it in your affidavit and then write "**Annexed to this affidavit and marked with the letter "A" is a copy of [DOCUMENT NAME]**". Write the letter "A" at the top of the front page of the document you are attaching to your affidavit. If you have more than one annexure, the second document should be marked "B" and the third document marked "C", etc.
- You can attach up to 5 annexures.
- Sign the bottom of each page of the affidavit in front of a Justice of the Peace (JP) or lawyer and complete and sign the "jurat" at the end of the affidavit. This is the statement at the end of your affidavit which sets out when, where and before whom you have signed the affidavit.
- If you have attached a document (annexure) to your affidavit, make sure the JP or lawyer who is witnessing the affidavit signs each document.
- If you need to correct any errors, cross out the error and put your initials next to the change. The JP or lawyer who is witnessing the affidavit must also put their initials next to the change. These changes can only be made prior to completing the jurat.

particular, whether consent was ever sought or provided by a party for a change to a name.

- Any particular ties to the proposed name.
- How old your child is and whether they identify themselves with a particular name.
- Whether the child has been known by any other name.
- Any views expressed by the child about changing or not changing their name.
- Whether there are any emotional/psychological reasons for changing the name.
- Anything else you think is relevant.

## Sample court orders

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These are some of the types of orders you can ask for and some suggested wording. Remember that each case is different and that the type of orders you should ask for will depend on the circumstances of your case.

### Substantive orders

You will need to ask the court for final orders allowing you to change your child's name.

These orders should be included under the heading **Final Orders** in your **Initiating Application**.

If your child was born in NSW, you could ask for orders such as:

#### Sample wording

1. That the applicant mother/father be authorised to apply to the Registrar of Births, Deaths and Marriages for the State of New South Wales that the Child registered as **[FULL NAME]** born **[DD Month YYYY]** now be registered as **[NEW FULL NAME]**.
2. Pursuant to s28(5) of *Births, Deaths and Marriages Act NSW 1995*, the Registrar register the Child's name in the form specified in Order 1 of these Orders.
3. The applicant mother/father shall serve a sealed copy of these Orders upon the Registrar of Births, Deaths and Marriages for the State of New South Wales.

If the Court finds that it is in the best interests of your child for their name to be changed, they can still make an order different to the order you have asked for.

### Service and procedural orders

These are examples of service and procedural orders and should be included under the heading **Interim Orders** in your **Initiating Application**.

#### If you have not attempted family dispute resolution:

- You may need to apply for an exemption. You should get legal advice about whether an exemption applies in your circumstances.

If you need to apply for an exemption, you will need to ask for a procedural order such as:

#### Sample wording

That the requirement for a section 60I certificate be dispensed with.

**If you cannot find the other parent or will have difficulty serving them, then you may want to ask for:**

- **Substituted service** – If you do not have an address for the other party, or will have difficulty serving them, you may need to ask for permission to ‘serve’ the other party through a different method – for example via email, texting message or social media, or sending it via registered post to someone who you know is in contact with the other party. To ‘serve’ someone essentially means to provide them with a copy of the court documents you have filed.

#### Sample wording

That the rules for service be dispensed with provided that the Applicant send the Initiating Application, Affidavit and Notice of Risk to the Respondent by e.g. private Facebook message, email, text message, etc.

- **A location order** – If you are unable to locate the other parent and do not have a way of contacting them, then you may need to ask for a location order. This is an order that requires a person or government department like Centrelink or a school to provide information to the Court about a child’s location. If this is required, you should get further legal advice.

#### Sample wording

That pursuant to s67N(2) of the *Family Law Act* that the Chief Executive Officer of Centrelink furnish forthwith to the Federal Circuit Court of Australia at [state where Court is situated] information about the location of the child [child/ren name/s born DOB] or the mother/father [name born DOB] that is contained or comes into the records of Centrelink.

That pursuant to section 67P(1)(d) of the *Family Law Act* leave be granted to disclose the information provided to the Registrar of the Federal Circuit Court of Australia at [state where the court is situated] and that the Court arrange for a process server to effect service of the documents on the respondent and that the applicant pay the costs associated with such service.

- **Ex parte listing** – If there are concerns that a child is at risk of serious harm, and the matter needs to be heard urgently, or there are concerns that the other parent will go into hiding with the child, then you may ask for an order that your application be dealt with ‘ex parte’. This is asking for permission not to serve the other parent first and for the application to be dealt with without the other parent being there. If this is required, you should get further legal advice.

#### Sample wording

That the service of the application be dispensed with and that the application proceed on an ex parte basis.

**This fact sheet is intended as a general guide to the law. It should not be relied on as legal advice and it is recommended that you talk to a lawyer about your particular situation. At the time of writing, the information shown is correct but may be subject to change. If you need more help, contact LawAccess NSW on 1300 888 529.**

Family Law Early Intervention Unit: 1800 551 589 • Legal Aid NSW [www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au)