

CHANGE OF NAME APPLICATIONS: WHAT YOU NEED TO KNOW



**TAHLIA
FERRARI**

About the author

Tahlia Ferrari

Tahlia is a family law barrister and nationally accredited mediator. Tahlia appears regularly in the Federal Circuit and Family Court of Australia in relation to parenting and property proceedings and at mediations. Tahlia appears in interim and final defended hearings on behalf of individual parties and on behalf of the Independent Children’s Lawyer.

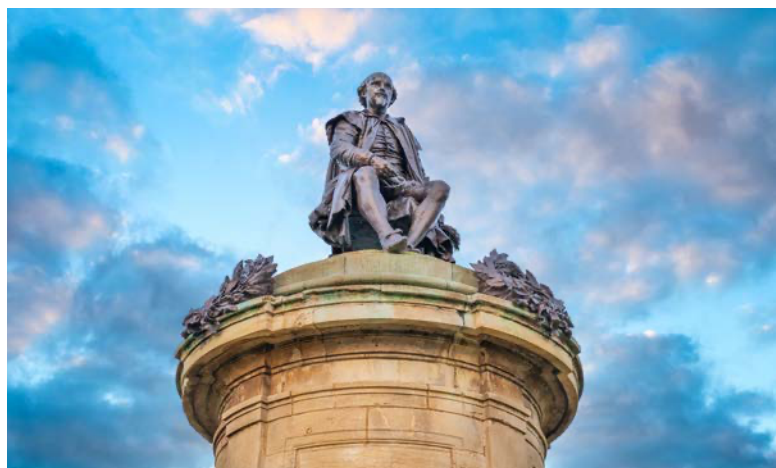
Before coming to the Bar, Tahlia was an Associate to His Honour Judge Michael Tinney at the County Court of Victoria. There she gained experience in the criminal jurisdiction, including proceedings related to family violence. Immediately prior to coming to the Bar, Tahlia worked at Galbally and O’Bryan as an instructing solicitor to Senior Counsel and Junior Counsel in a complex and long running terrorism trial before the Supreme Court.

Tahlia lectures in Family Law at the Australian Catholic University, having previously been appointed as national lecturer in charge across the NSW and Victorian campuses.

“What’s in a name? That which we call a rose by any other name would smell as sweet”.

William Shakespeare – Romeo and Juliet.

Shakespeare entertains the notion in *Romeo and Juliet*, that their surnames should be of no impediment to the love they shared for each other and be united. However, since the Capulets and Montagues resented each other, love was forbidden between them due to their surnames. Shakespeare suggests that a name is just a label to distinguish oneself from another, of no worth or true meaning.



In family law, we know this not to be true. Case law and social science demonstrate that a name is important and associated with identity, especially for a child. This is an important area of family law with long-lasting effects. To that end, the *Family Law Act*¹ categorises change of name as a major long-term decision. There is no special test contained in the *Family Law Act* pertaining to change of name

¹ *Family Law Act 1975* (Cth), s 4.

applications. The child's best interests² remain the paramount consideration when the Court determines whether to make an order pertaining to a change of name application for a child.

Where both parents agree to the Change of Name:

Should both parents consent to a child's name being changed, there is no need to involve the Federal Circuit and Family Court of Australia. In that instance, both parents apply to Registry at Births, Deaths, and Marriages³ in the State or Territory in which they reside.

Where both parents do not agree to the Change of Name:

In this instance, consideration ought be given to making a change of name application to the Federal Circuit and Family Court of Australia. If proceedings are already on foot, and time is not of the essence, the Initiating Application or Responding Initiating Application may be amended to reflect the change of name order sought.

When does Change of Name arise:

The need to change a child's surname arises in many ways, including but not limited to the following scenarios:

- Post separation, whereby the child residing with the parent who has primary care of the child, has a different surname than their primary carer;
- A child may have one parent's surname, and there is a desire for the child to be known by both parent's surname, which is colloquially known as a double-barrelled surname;
- A child's parent may be incarcerated for a substantial period of time and the child lives in the primary care of another person, whose surname the child wishes to assume;
- A child's parent may have allegedly committed criminal offences or have been found guilty of having committed criminal offences, which is subsequently widely published in the media, consequently exposing the child to embarrassment, and affecting their psychological well-being;

- A child may reside with their half-sibling and non-biological carer and seek to assume the same surname as their sibling;
- A child may be exposed to significant family violence, and does not have a relationship with the alleged perpetrator of family violence, but carries the same surname, which causes anxiety upon hearing their surname; or
- A child may be abandoned by the parent whose surname they carry, and on that basis seek to assume the surname of their primary carer or their new husband or wife's surname.

Key Principles distilled from Case Law

There are numerous cases that touch upon change of name applications. Two key cases that are frequently cited from over forty years ago include *Chapman v Palmer*⁴ and *Beach v Semmler*.⁵ Their guiding principles have stood the test of time and remain relevant today. Be sure to address these key principles as they relate to your client's case, in their supporting affidavit. It will also greatly assist counsel with submissions, should the matter proceed to a final hearing.

Chapman v Palmer⁶

- The welfare of the child is the paramount consideration;
- Short and long-term effects of the proposed change of name;
- Any embarrassment likely to be experienced;
- Any confusion about identity; and
- The effect which any change in surname may have on the relationship between the child and the parent, whose name the child bore before the marriage.

Beach v Semmler⁷

- Advantages both in the short and long term;
- Contact that the husband has had and is likely to have;
- Degree of identification the child has with the father;

² Ibid s 60CA.

³ In the state of Queensland, the Registry is known as Births, Deaths, Marriages, and Divorces.

⁴ (1978) 4 Fam LR 462; *Chapman v Palmer* (1978) FLC 90-510.

⁵ (1979) FLC 90-692.

⁶ Above n 4.

⁷ Above n 5.

- Degree of identification the child has with the other parent;
- Degree of identification of the child that is about to be born to the mother and likely confusing; and
- The desire of the father that the original name is restored.

Sample Change of Name precedent:

Here is a sample precedent of a mother seeking to change a child’s name, that has been successfully accepted and made as an Order of the Federal Circuit and Family Court.

1. That the mother be hereby permitted to make an application to Birth Deaths and Marriages to change the name of the Child from **ORIGINAL FIRST NAME AND LAST NAME to NEW FIRST NAME AND LAST NAME** AND IT IS REQUESTED that Births, Deaths and Marriages accept such an application from the mother for the Child without the consent of the Father.
2. That the mother is at liberty to provide a copy of these Orders to the Births Deaths and Marriages Registry.

When a parent unilaterally changes the child’s name

In the event of one parent unilaterally changing a child’s name without the consent of the other parent, consideration ought to be given to an application, to restrain by injunction, the parent from doing so. The Federal Circuit and Family Court of Australia is generally the appropriate forum. In the matter of *Fooks v McCarthy*⁸ an injunction was granted, which restrained the mother from using any other surname, save for the Father’s surname. This restraint extended to a double-barrelled surname comprising both the mother’s and father’s surnames. In this matter, the Court held that it was in the best interest of the child to retain his father’s surname because he identified with this surname.

Where a child proactively seeks their name be changed

Increasingly, I am contacted on behalf of a parent whose child is the driving force, proactively seeking that their name be changed. In these circumstances, consideration ought be given to obtaining supporting evidence in contemplation of proceedings. Examples of evidence that may assist include:

1. The child writes a letter to the presiding judge, explaining in their own words why they seek to change their name. Further, explaining why it is so important to them. I have seen first-hand this type of handwritten letter in grey lead containing numerous spelling and grammatical errors, which was well received by the presiding judge. It was abundantly clear in this matter, that it was the child seeking to change their surname who was not pressured or influenced by either party in the proceeding;
2. The child may have discussed their desire to change their surname with their psychologist. This often occurs in the context of the child witnessing and or being on the receiving end of significant family violence. In this scenario, sometimes the primary carer has sole parental responsibility, and the child has no contact with the alleged perpetrator. I have seen first-hand supporting letters from child psychologists detailing the child’s desire to change their name and their reasons for seeking the change.
3. The child may have shared their desire to change their name with a school teacher or counsellor who is willing to attest to the child’s wishes in the form of a letter or affidavit. In one such matter I was involved in, the child was so overwhelmed with anxiety when their surname was called out at school, that they started to tremble and become highly distressed. It got to the point that the child’s teacher ceased using their surname in class, upon the child’s request.

Appearing for an Applicant seeking a change of name

If appearing on behalf of an applicant seeking a change of name, ensure you submit the reasoning justifying why the change of name is in the child’s best interest. Address the key principles in *Chapman v Palmer*⁹ and *Beach v Semmler*¹⁰ as they support

8 (1994) FLC 92-450.

9 Above n 4.

10 Above n 5.

your case. Consider any evidence that could be relied upon to support your application. If obtaining a child impact report or family report, ensure that change of name is included in Court Orders as a matter of contention between the parties requiring consideration from the report writer.

Appearing for a Respondent resisting a change of name

If appearing on behalf of a respondent who is resisting a change of name application, ensure you submit the reasoning and justify why the change of name is not in the child’s best interest. This would include evidence pertaining to the child’s ties to their original name. Address the key principles in *Chapman v Palmer*¹¹ and *Beach v Semmler*¹² as they support your case against the change of name.

11 Above n 4.
12 Above n 5.



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