

FAMILY FLYER

BROUGHT TO YOU BY



SEPTEMBER 2019



your family law update
advice | service | solutions

IN THIS ISSUE

- ▶ WHAT IS CHILD-INCLUSIVE MEDIATION?
- ▶ APPOINTMENT OF RACHEL STUART & ZOE ADAMS
- ▶ CHANGING A CHILD'S SURNAME
- ▶ FREE BOOK - A GUIDE TO FAMILY LAW
- ▶ TESTING A CHILD'S WISHES

WHAT IS CHILD-INCLUSIVE MEDIATION?



The role of mediation between separated couples has become better understood over recent years but what is 'child-inclusive' mediation? It's becoming more common, so let's look at it.

Child-inclusive mediation

It is important to remember that mediation for the parents is only compulsory if an application is to be made to the court, in all other situations attendance is voluntary. Until recent times, children have never been a part of that process.

Resolving parenting arrangements after separation is often difficult. Knowing what the child thinks about possible arrangements is often an issue but how to independently ascertain those wishes can be a challenge.

Child-inclusive mediation can assist parents in understanding how their child is coping with the separation and current parenting arrangements.

What is Child-inclusive mediation?

Child-inclusive mediation is a voluntary process (although sometimes the court may order it) whereby children are included in the mediation process with a qualified child consultant.

It is a chance for children to speak safely and meaningfully about their experience through play and discussion.

The information obtained in a child-inclusive mediation is confidential and is not admissible in court.

The process

1. The Mediator will meet individually with each parent and determine if mediation is suitable and the potential for a child-inclusive process.
2. The child and child consultant meet with the Mediator. The child must give their permission before their views are passed on to the parents.

3. Feedback session. This involves the parents, the child consultant and the Mediator. The child consultant will deliver any key messages the child would like the parents to know.
4. Mediation. The child is not present during the parents' mediation.

The benefits:

- The child may express their views and it gives them a voice without fear of upsetting either parent.
- The child may be a part of the decision-making processes without putting the pressure on them.
- It gives the parents an understanding of how the child is feeling/coping.
- It ensures that all parties are focussed on the child's best interests.

Child-inclusive mediation is not for everyone, it is another option that can be considered. If you would like to discuss your personal circumstances with an experienced family lawyer, call **(07) 3221 4300**, email law@mlynch.com.au, or fill in our online form to arrange an appointment.

APPOINTMENT OF RACHEL STUART and ZOE ADAMS



A warm welcome to Rachel Stuart (solicitor) and Zoe Adams (associate), who have recently joined our team!

Rachel has a broad general practice background, covering experience in Family Law, wills and estates, conveyancing and commercial law, plus almost two years as a Family Court Judge's Associate. *Welcome, Rachel!*

Zoe has over ten years of experience in Family Law and has represented clients in all areas of Family and Relationship Law, including property division, spouse maintenance, child support, parenting disputes and divorce. *Welcome, Zoe!*



CHANGING A CHILD'S SURNAME

A child's surname can be changed at any time when there is consent between the parties. If there is no agreement, a parent needs to apply to the court to seek a change.

Considerations for the court

The case law is clear, that the welfare of the child is paramount in determining whether a court should change a child's surname. A court will consider the following:

- short-term and long-term effects of a change;
- any embarrassment to the child and/or confusion of identity for the child;
- any effect which a change of surname may have on the relationship between the child and the parent whose surname the child had during the relationship;
- advantages, both, short and long term in a change;
- the contact the other parent has with the child;
- the degree of identification the child has with the father and mother, and with any siblings;
- the effect of frequent or random changes of name.

Here's an example of how the court has dealt with such an application.

Case example

The parties were married for 18 months, during which time their child was born. During the marriage the mother used the father's surname and the child's birth was registered under that surname.

Following separation, the mother reverted to her maiden name. The father discovered that the mother had enrolled the child in pre-school under the mother's surname, so he then made an application to the court seeking orders to ensure that the child used his surname.

The father argued that the child had used his surname for the majority of his life and closely identified with it. The mother argued that the child strongly identified with her surname and proposed that in the future the child have a hyphenated surname, comprising of both the mother and father's surnames.

The court held that the child did not have any particular attachment or identification with either parent's surname and, therefore, a hyphenated surname was in the child's best interest.

Summary

Each case to change a child's surname is unique. It is, therefore, important that prior to commencing any application you obtain specific advice from a Family Lawyer. If you would like to discuss your personal circumstances with an experienced family lawyer, contact us to arrange a fixed-fee no-obligation appointment today.



FREE BOOK - 'A GUIDE TO FAMILY LAW'

Have you obtained a copy of our popular book – **"A Guide to Family Law – Everyday Answers."**

Over the years, more than 200,000 copies have been printed and distributed. All at no cost to you! The book is an invaluable resource and includes information on children's arrangements, child support and property division. It is a **MUST** for everyone going through a separation.

If you or your organisation would like a bulk delivery, please call us on **(07) 3221 4300**.



TESTING A CHILD'S WISHES

When the court considers parenting arrangements for a child, the court must consider the 'best interests' of the child. One of the factors considered in this process are any wishes expressed by the child.

In a recent case, the question arose as to whether the strong views expressed by a 9 year old child were his own or whether they were enmeshed in the mother's own views.

Facts:

- The parties had been in a brief relationship and at the time of the trial, the child was 9 years old.
- Following separation, the child had lived with the mother and spent time with the father.
- The matter had a difficult history, with the parents involved in litigation over many years, and the mother having a history of making unfounded abuse allegations against the father.
- The mother had left Victoria and went to Sydney, and did not return. The father succeeded in an application for the return of the child to Victoria. He then sought orders that the child remain living with him. The mother opposed this and sought an order that she have sole parental responsibility.
- A family report was prepared and the child expressed strong and consistent views that he preferred to live with his mother. The report recommended that the child live with the father, as the father provided stability at home and for the child's education.

Findings:

- The report noted that the child was of an age where his wishes should be given substantial weight, the difficulty was that his views were tangled in the "parenting role" the child had taken on whilst living with the mother.
- The court was unconvinced as to the mother's alleged reasons for moving to Sydney, and then insisting on remaining.

The Order:

- The child live with the father and spend time with the mother.

If you would like to discuss your personal circumstances with an experienced family lawyer, phone **(07) 3221 4300**, email **law@mlynch.com.au** or alternatively fill in our online form to arrange a fixed-fee no-obligation appointment.