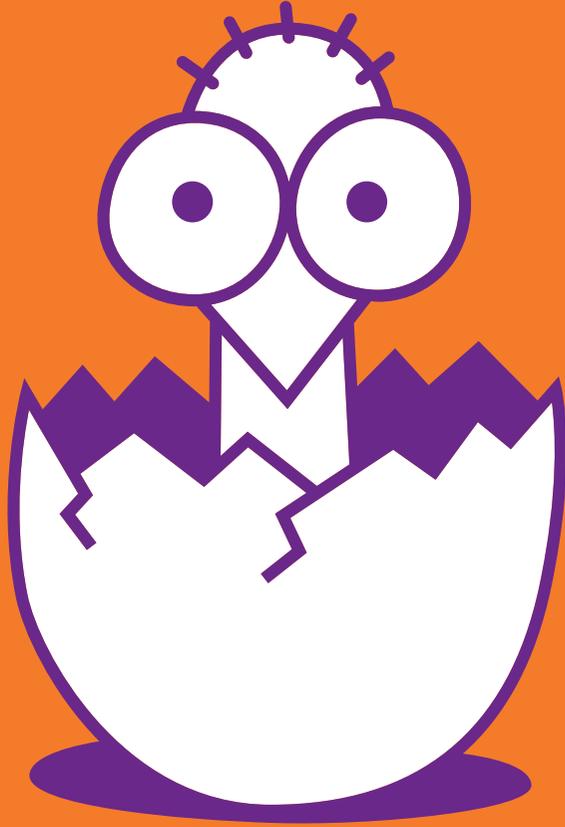


4th Edition



# Talking Turkey

A legal guide for lesbian, gay, bisexual, transgender,  
intersex and queer parents and donors in New South Wales



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*Talking Turkey is intended for  
LGBTIQ families in NSW.*

# 1



## Introduction



Throughout this booklet we talk about same sex parents, lesbian mums, gay dads, and LGBTIQ parents. Since the earlier editions of *Talking Turkey*, rainbow families have become more visible, unique and diverse. The language used in this booklet seeks to be inclusive of people of diverse sexualities, diverse gender identities and expressions, and intersex people; and we use the singular gender-neutral pronoun 'they' throughout this publication.

This publication is a guide to the law around starting a family and parenting in NSW for lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) parents and donors. It attempts to answer some of the most commonly asked questions about legal rights and responsibilities.

This publication does not provide information on situations where a child is conceived through heterosexual sexual intercourse with the intention that the sperm donor will be regarded as a donor only.

Talking Turkey is intended for LGBTIQ individuals, couples and diverse families in NSW. It does not provide information on the laws of other states or territories. Individuals in other states or territories should seek legal advice in their location.

In 2008, there were major changes to NSW and Federal laws affecting same sex couples. Same sex couples and their children are now recognised by most areas of the legal system, with additional protections existing for their families.

It provides information on a range of questions LGBTIQ couples may consider when starting a family, including donor arrangements, surrogacy arrangements, and co-parenting arrangements between two, three or four people.

A number of offences are referred to in this publication. Due to the private nature of family arrangements, it can be difficult for these offences to be enforced. However, the penalties for some of these offences may be severe.

The information in this publication should be used as a guide only and should not be relied upon as legal advice. The laws relating to many issues in LGBTIQ parenting arrangements continue to evolve, with courts and legislators being called upon to respond as new issues develop. As a result, it is impossible to provide a definitive answer to many of the questions raised in this publication. It is also likely that additional questions not addressed in this publication will arise for LGBTIQ individuals, couples and diverse families.

**Note to readers:**

**While every effort has been made to ensure that the information in this guide is as accurate and up to date as possible, this guide is not a substitute for legal advice. The law is complex and readers are advised to seek legal advice in relation to their particular situation.**



*This section explains some of the legal and other terms referred to in this publication.*

# 2

## Definitions



**Artificial insemination:** Artificial insemination or donor insemination (insemination) is a fertility procedure in which sperm is inserted via a fine catheter (tube) into a person's uterus directly. Artificial insemination also includes self-insemination where the parties use syringes to insert sperm into the uterus of a person.

**Assisted Reproductive Technology (ART):** Includes a range of medical methods used to circumvent human infertility, including in vitro fertilisation (IVF), embryo transfer, gamete intra-fallopian transfer, and artificial insemination.

**Birth parent:** The person who gives birth to the child. The birth parent may be the genetic parent, or have no genetic connection to the child, or may be a surrogate.

**Cisgender:** When a person is cisgender, they identify as the gender that matches the sex that they were assigned at birth. A cisgender woman is a person who was assigned female at birth and identifies as female.

**Co-parent:** In the past 'co-parent' typically referred to the partner of the birth parent, however there are many LGBTIQ families where there is no 'birth parent' at all. Co-parent is now a term used by any LGBTIQ couple or family who share the responsibility of caring for a child together. In LGBTIQ families there may be two, three or four co-parents depending on the family structure.

**De facto relationship:** Two people are in a de facto relationship if they live together as a couple and are not married or related to one another. In determining whether two people are living together as a couple, a court will consider a range of factors including the length of the relationship, degree of financial interdependence, existence of a sexual relationship, and public reputation of the relationship. LGBTIQ partners may be able to register their relationship under the *Relationships Register Act 2010* (NSW). Registration generally gives a couple conclusive proof that they are in a de facto relationship, although some laws also require that the couple live together.

**Donor:** Because a sperm or egg donor may not be recognised as a legal parent of a child, this publication uses the term 'donor' to avoid confusion. However, it is understood that differing levels of relationship and involvement can exist between donors and children, with some donors regarded by the parties as a child's parent.

**Family Law Courts:** Both the Family Court of Australia and the Federal Circuit Court can make decisions regarding parenting and property applications. The appropriate court in which to file an application will be determined by the nature of the application. Generally, applications filed in the Family Court relate to complex matters such as international abduction and relocation, special medical procedures, and jurisdictional questions. All other applications should be filed in the Federal Circuit Court.





## Definitions

**Intersex:** Intersex people are born with physical, hormonal or genetic features that are neither wholly female nor wholly male; or a combination of female and male; or neither female nor male.

**IVF:** In vitro fertilisation (IVF) is the process of fertilising eggs with sperm outside of the human body. Once the eggs are fertilised, the resulting embryos are placed in the uterus in the hope that a successful pregnancy will follow.

**LGBTIQ:** LGBTIQ is the acronym for Lesbian, Gay, Bisexual, Transgender, Intersex, Queer. In this publication we use the acronym to refer inclusively to people of diverse sexuality, diverse gender identity and expression, and intersex people who may or may not identify as being LGBTIQ or be in same sex relationships.

**Lives with:** A legal term referring to the person whom a child lives with, replacing the terms 'custody' and 'residence'.

**Parenting orders:** Orders made by a court concerning one or more of the following issues:

- Who the child will live with;
- The time a child will spend with another person or other persons;
- The communication a child will have with another person or other persons; and/or
- Other aspects relating to parental responsibility.

Parenting orders can be made by consent between the parties, or by the Family Law Courts in situations where the parties cannot agree.

**Parental responsibility:** A legal term that refers to the responsibility, authority and duty parents have in relation to children and their long term needs. It is presumed to be shared. Parents with shared parental responsibility are expected to make joint decisions concerning the long term needs of the children including but not limited to; health, education, living arrangements, name, overseas travel, religious and cultural upbringing.

**Surrogacy:** An arrangement whereby a person ('the surrogate') carries and gives birth to a child for a couple ('the intended couple') or an individual. The surrogate agrees to give the child to the intended couple or individual after the birth.

**Time spent with:** A legal term referring to the time a child spends with their parents. It has replaced the terms 'access' and 'contact'.

**Transgender:** When a person is transgender, they do not identify as the gender that matches the sex that they were assigned at birth. A transgender man is a person who was assigned female at birth but who identifies as a male.



*The information below applies to a range of LGBTIQ family structures, which involve a birth parent, a co-parent and a sperm donor.*

3



Birth parent  
and co-parent



## Birth parent and co-parent

LGBTIQ families are diverse and are becoming more visible. The information below applies to a range of LGBTIQ family structures, which involve a birth parent, a co-parent and a sperm donor. Some examples are:

- two lesbians and a sperm donor;
- a transgender man and his partner and a sperm donor;
- two people of diverse gender identity and a sperm donor;
- a transgender woman and her partner and a sperm donor;
- an intersex person and their partner and a sperm donor; and
- a gay couple, an egg donor and a surrogate.

### Can the birth parent's partner (co-parent) be recognised on a child's birth certificate?

A birth parent's partner can be recognised as the second parent on the birth certificate of a child born in NSW. For the partner to be recognised on the birth certificate:

- The couple must have been living in a de facto relationship or have registered their relationship **at the time of conception**;
- The child must have been conceived by an insemination or IVF procedure using donor sperm; and
- The co-parent must have consented to the procedure that led to their partner's pregnancy.

### Is the process different for obtaining a birth certificate for LGBTIQ parents?

When your child is born, most hospitals in NSW will provide you with a 'parenting kit' that contains all of the required forms for birth registration, obtaining a birth certificate, Centrelink, etc. There is currently no kit for LGBTIQ parents and most of the forms still refer to 'mother' and 'father'. However, the 'Same Sex Parents Birth Registration Statement' may be given to you at the hospital or ordered over the phone from the NSW Registry of Births, Deaths and Marriages. For more information go to [www.bdm.nsw.gov.au/Pages/births/births.aspx](http://www.bdm.nsw.gov.au/Pages/births/births.aspx). It is recommended that you obtain a form at the earliest opportunity.

The registration form must be signed by someone who witnessed the birth (other than the parents). This will generally be the doctor who delivered the child or another member of the medical staff. Unless you have a private obstetrician there may be administrative difficulties in having the form signed once you leave the hospital.





### What if our child was born before November 2008?

If your child was born before November 2008, you can apply to have the birth register amended and a new birth certificate issued listing the other co-parent.

For the partner to be recognised on the birth certificate:

- The couple must have been living in a de facto relationship or have registered their relationship at the time of conception;
- The child must have been conceived by an insemination or IVF procedure using donor sperm; and
- The co-parent must have consented to the procedure that led to their partner's pregnancy.

An 'Adding a Mother's Details to a Birth Registration' form can be located on the NSW Registry of Births, Deaths and Marriages website or ordered over the phone. For more information go to [www.bdm.nsw.gov.au/Pages/births/births.aspx](http://www.bdm.nsw.gov.au/Pages/births/births.aspx).

### What if the donor is registered on the birth certificate as a parent?

If the donor is registered on the birth certificate, you should also include a statutory declaration written by the donor when submitting an 'Adding a Mother's Details to a Birth Registration' form to the NSW Registry of Births, Deaths and Marriages. In the statutory declaration, the donor should write that;

- they are the donor;
- the child was conceived through an insemination or IVF procedure; and
- they consent to the removal of their name from the birth certificate.

### What if the donor won't consent to being removed from the birth certificate?

If the donor will not consent to being removed from the birth certificate, you will need to get a *declaration of parentage* ('declaration') from the District Court of NSW stating that the donor is not the parent of the child. In deciding whether to make a declaration, the Court will look at the evidence and determine how the child was conceived. If the Court finds the child was conceived through an insemination or IVF procedure, it will make a declaration that the donor is not the legal parent. If it finds the child was conceived through heterosexual sexual intercourse, a declaration will be made that the donor is the legal parent.





## Birth parent and co-parent

The case of *AA v Registrar of Births, Deaths and Marriages and BB* (2011) demonstrates that a donor will not be the legal parent of a child conceived through insemination under NSW law, even if they are listed on the birth certificate. In this case, a lesbian co-parent applied to the District Court to be listed on her daughter's birth certificate. The sperm donor, who had ongoing involvement with the child, did not consent to having his name removed from the birth certificate. The judge ordered that the donor's name be removed and the birth parent's partner be registered as the child's legal parent.

### Will we need to get a parenting order?

Prior to changes to NSW and Federal law recognising LGBTIQ parents in 2008, many couples applied to the Family Law Courts for a parenting order. This order gave parental responsibility to both parents, and was useful when engaging with institutions such as schools and hospitals.

Since 2008, parents in LGBTIQ relationships who are recognised as legal parents have all the same rights and responsibilities as different sex parents in heterosexual relationships. Because a birth certificate can be used as evidence of parental status, a parenting order will not be necessary where both birth parent and co-parent are named on the certificate.

However, if there are difficulties relating to a child's education or medical care, LGBTIQ parents can apply to the Family Law Courts for an order by consent stating that the parties have parental responsibility for the child. In granting an order of this kind in *Maurice v Barry* (2010), the judge remarked that it was largely unnecessary due to the legal presumption that a birth parent's de facto partner is a parent of their donor-conceived child.

### What if we have separated and are both still parenting the child?

If you have separated from your partner, you can still apply to the NSW Registry of Births, Deaths and Marriages to have your name recorded on your child's birth certificate. The birth parent must consent to the change. If the birth parent will not give their consent, you will need to obtain an order from the Family Law Courts stating that you are the child's legal parent.

In *Dent v Rees* [2012] a mother made an application to the Federal Magistrates Court (now the Federal Circuit Court) to change the birth certificates of the three children of the 17-year same sex relationship. The same unknown donor was used for all three children and at the time the children were born the law did not recognise two women could be named on birth certificates. Only the birth parent of each child was named on the child's birth certificate. One child was genetically related to one mother, and two





children were genetically related to the other mother. The court ordered the Registrar of the NSW Registry of Births, Death and Marriages to alter the birth certificates of the three children to record both mothers as the parents on each of the children's birth certificates.

### Does the co-parent have any rights or responsibilities regarding the child?

If a co-parent is recognised as a child's legal parent, they have the same rights and responsibilities in respect of the child as the birth parent. This includes, but is not limited to, having the responsibility to make decisions about the child's health, education, living arrangements, name, overseas travel, religious and cultural upbringing. The family will be considered a 'family unit' for tax purposes and by agencies such as Medicare and Centrelink.

#### Child Support and maintenance

In the event of a relationship breakdown, a co-parent will be liable under the *Child Support (Assessment) Act 1989* (Cth) to pay child support. The Child Support Agency must be satisfied that the co-parent is a legal parent of the child, whether or not the co-parent is named on the child's birth certificate. If you are in doubt about your or your partner's obligations; or your child's entitlements, it is recommended that you seek independent legal advice.

Following changes to the law on 1 March 2009, LGBTIQ de facto partners are able to seek orders from the Family Law Courts regarding property division after a relationship breakdown. This includes applications for child maintenance orders. As above, it is recommended that you seek independent legal advice in the event of a relationship breakdown.

### Can the birth parent state in their Will that the co-parent will care for the child if they die?

Where a presumption of parentage arises, a co-parent will be able to care for their child in the event of the birth parent's death. A presumption of parentage ('presumption') will arise if the following three requirements are met:

- The couple must have been living in a de facto relationship or have registered their relationship at the time of conception;
- The child must have been conceived by an insemination or IVF procedure using donor sperm; and
- The co-parent must have consented to the procedure that led to their partner's pregnancy.





## Birth parent and co-parent

A presumption will also arise if the co-parent is registered as the child's second parent, however this presumption can be challenged in court.

A legal parent can nominate someone in their Will as a 'testamentary guardian' of their child and/or children. In the event of the parent's death, that person will be responsible for taking care of the child's daily and long term needs, except where there are other court orders setting out who will be responsible for the child's care. Nominating a co-parent as a testamentary guardian is particularly important where the co-parent does not appear on the child's birth certificate and there are no existing court orders.

A court has the power to remove a testamentary guardian where it is satisfied that to do so would be in the child's best interests. However, if a co-parent has a significant relationship with the child and has been involved in their development for several years, a court would be unlikely to discontinue this. To do so would generally be viewed as not being in the best interests of the child.

The Family Law Courts are able to make parenting orders about whom a child lives with and who has the power to make decisions for them. If a birth parent dies, regardless of their Will, a court may make orders stating that their child is to live with a co-parent. Parenting orders may also be made stating that the co-parent alone has, or shares with some interested person, responsibility for making decisions about the long term care, welfare and development of the child.

### **Will the co-parent's income affect the birth parent's eligibility for Centrelink payments?**

Yes. Since 1 July 2009, LGBTIQ couples have been recognised by Centrelink and have an obligation to disclose their relationship if they are receiving payments. This means LGBTIQ partners in a de facto or registered relationship will be paid the partnered rate instead of the rate for two single people. If one partner is working, their income and assets will be taken into account in determining whether their partner is eligible for benefits.

LGBTIQ partners are not eligible for single parent benefits.



*In Wilson v Roberts (No 2) (2010), the Family Court made parenting orders that a two-year-old child spend time with his donor and his donor's same-sex partner.*

# 4



## Co-parenting



### What other options are available to LGBTIQ couples or individuals wishing to have children?

It is not uncommon for gay men to enter into co-parenting arrangements with single women or lesbian couples.

For example, a single gay man may provide a female couple or single woman with a sperm donation for an insemination or IVF procedure and co-parent the child. Alternately, where one member of a gay couple provides a sperm donation, the couple may co-parent with a lesbian couple or a single woman.

The parties to a co-parenting arrangement should discuss and agree upon the details of the arrangement prior to conception. Important issues to resolve include:

- the amount of time the child will spend with each of the parties;
- how decisions will be made; and
- what financial support will be provided by each of the parties.

It is recommended that parties to an arrangement speak to a counsellor experienced in issues relating to LGBTIQ parents planning a family and parenting. It is also recommended that all parties seek legal advice in deciding who will be the legal parents of the child. Under Australian law, a child can only have two legal parents.

*Parental responsibility* can, however, be shared between three or more people. To enable such an arrangement, an application for a parenting order conferring parental responsibility upon all of the parties should be made to the Family Law Courts. The parenting order will be granted if the court considers that it would be in the best interests of the child to do so. If an order is made, decisions about major long-term issues relating to the child will be required to be made jointly by those persons sharing parental responsibility.

Where there is disagreement as to a co-parenting arrangement after a child's birth, a party may be able to apply to the Family Law Courts for parenting orders. For more information, please see the below sections;

- **Section 5: Sperm Donors** - 'Can the donor be prevented from forming a relationship with the child, or having contact with the child?'; and
- **Section 7: Surrogacy** - 'What if the birth parent refuses to surrender the child?'; which may also apply to co-parenting arrangements.





In *Wilson v Roberts (No 2)* (2010), the Family Court made parenting orders that a two-year-old child spend time with his donor and his donor's same-sex partner. Prior to the child's birth the man and his partner had formed an oral agreement with the child's birth parent and her same-sex partner that he would donate his sperm, on the understanding that both men would play a significant role in parenting the child. After the child's birth, the women refused to allow the men to have contact with the child. The Court found that the child should have the benefit of the men's involvement in the child's life, although the women were the child's legal parents and had parental responsibility for the child.



*...where the sperm donor is not known to the LGBTIQ couple, the donor will not be regarded as a legal parent of the child.*

# 5



## Sperm Donors



## Is the sperm donor regarded as the legal parent?

The *Status of Children Act 1996* (NSW) and the *Family Law Act 1975* (Cth) set out who is the parent of a child. They provide that where the sperm donor is not known to the LGBTIQ couple, the donor will not be regarded as a legal parent of the child.

If the couple **know the donor**, the couple will be the child's legal parents where the requirements set out below are met:

- The couple must have been living in a de facto relationship or have registered their relationship **at the time of conception**;
- The child must have been conceived by an insemination or IVF procedure using donor sperm; and
- The co-parent must have consented to the procedure that led to their partner's pregnancy.

The donor will not be a legal parent of the child, regardless of whether or not the donor is named as the parent on the birth certificate or any other document.

However, it is not settled whether or not a known sperm donor will be the legal parent of a child conceived by parent/s who do not meet these requirements. The Family Court decision of *Groth v Banks* (2013) suggests that a known sperm donor can be a legal parent of a child (in addition to the birth parent) where a LGBTIQ couple were not in a de facto relationship at the date of conception. Where this may be the case, it is important that all parties seek independent legal advice.

### Child Support

Where a child is born to LGBTIQ parents, the sperm donor is not assessed as a 'parent' for the purposes of child support under the *Child Support (Assessment) Act 1989* (Cth) (see *B v J* (1996)). A donor is also not considered a 'parent' for the purposes of child maintenance under the *Family Law Act* (see *Re Patrick* (2002)). A donor therefore has no legal liability to pay child support.

However, if the donor has made a promise to a birth parent or co-parents to financially support the child and then reneges on that promise, a court may order that the donor fulfil that promise.

### Passports

Under the *Australian Passports Act 2005* (Cth), before a passport may be issued to a child under 18 years who has never married, the written consent of all persons with parental responsibility for the child is needed. Alternatively, a passport can be issued if a court order is made permitting the child to travel internationally. If neither of these conditions is met, there is provision for the Minister of Foreign Affairs to issue a passport in special circumstances. For more information go to [www.passports.gov.au/Web/Newppt/Consent.aspx](http://www.passports.gov.au/Web/Newppt/Consent.aspx).





### Can the donor be prevented from forming a relationship with the child, or having contact with the child?

Under the *Family Law Act* a person concerned with the 'care, welfare or development of the child' can apply to the court for parenting orders. The courts have accepted that this can include a sperm donor. A co-parent cannot prevent a donor from making an application.

Where LGBTIQ parents and a sperm donor agree on parenting arrangements, the parties can apply to the Family Law Courts for parenting orders made with the consent of both parties (consent orders). An application for consent orders can be made after the child's birth. If the orders are made they will be binding on the parties. A consent orders kit can be located in the 'Forms' section on the Family Court's website. For more information go to [www.familycourt.gov.au/wps/wcm/connect/fcoaweb/family-law-matters/parenting/if-you-agree-on-arrangements/](http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/family-law-matters/parenting/if-you-agree-on-arrangements/).

If parties do not agree on parenting arrangements, a court will decide what parenting orders to make following an application to the court. Parenting orders can deal with a variety of issues, including:

- Who will have parental responsibility for a child;
- The person/s with whom a child is to live;
- The time a child is to spend with other persons;
- The communication a child is to have with other persons; and
- Any aspect of the care, welfare or development of a child.

In making parenting orders, the court's paramount consideration is the **best interests of the child**. The court will consider a number of factors to determine what will be in the child's best interests:

- The benefit to the child of having a meaningful relationship with both of their parents;
- The need to protect the child: from physical or psychological harm, being subjected to or exposed to abuse, neglect and/or family violence;
- The views of the child, and any factors (such as the child's age, maturity or level of understanding) that the court thinks are relevant to the weight it should give to the child's views;
- The nature of the child's relationship with each parent and with any other person;
- The extent to which each of the child's parents has taken, or failed to take, the opportunity to participate in making decisions about major long-term issues in relation to the child, to spend time with the child and to communicate with the child;





- The extent to which each of the child's parents has fulfilled (or failed to fulfil) their obligation to maintain the child;
- The likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from either parent or any other child, or their separation from either of their parents or any other person (such as a grandparent or other relative) with whom they have been living;
- The practical difficulty and expense of a child spending time with and communicating with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis;
- The capacity of each parent (or any other person) to provide for the needs of the child, including emotional and intellectual needs;
- If the child is an Aboriginal child or a Torres Strait Islander child, the child's right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and the likely impact any proposed parenting order will have on that right;
- The attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents;
- Any family violence involving the child or a member of the child's family;
- If a family violence order applies, or has applied, to the child or a member of the child's family, any relevant inferences that can be drawn from the order, taking into account the following:
  - (i) the nature of the order;
  - (ii) the circumstances in which the order was made;
  - (iii) any evidence admitted in proceedings for the order;
  - (iv) any findings made by the court in, or in proceedings for, the order;
  - (v) any other relevant matter;
- Whether it would be preferable to make the order that would be least likely to lead to further litigation in relation to the child, and
- Any other fact or circumstance the court thinks is relevant.

The orders that a court makes will depend on the specific circumstances of the case. There has been cases where donors known to LGBTIQ parents have applied for parenting orders. Previous court decisions do not necessarily indicate how a court would decide the case at hand. It is important to seek legal advice if issues arise regarding the contact a donor has with a child and/or their ability to make decisions for a child.





## Sperm Donors

In *Reiby v Meadowbank* (2013) a judge of the Federal Circuit Court made orders that lesbian parents had parental responsibility for their donor conceived child. Orders were also made that the child was to live with the parents, but spend time and communicate with the sperm donor by agreement between the parties or according to the schedule set out by the Court. The judge said that these orders would allow the child to benefit from knowing and having a genuinely meaningful relationship with the donor, while at the same time recognising that her primary family consisted of the child's lesbian parents. The donor's application for equal shared parental responsibility was unsuccessful. In part, this was because the presumption in the *Family Law Act* that it is in the child's best interests for the child's parents to have equal shared parental responsibility was held to apply to the child's legal parents (the lesbian parents) and not the sperm donor.

### Does the donor have any rights regarding the child?

The fundamental focus of the *Family Law Act* is on the rights of the child, rather than the rights of parent(s) or other people. As a result, no person has automatic rights regarding a child.

A donor can apply to the Family Law Courts for parenting orders as a person concerned with the 'care, welfare or development of the child'. For a discussion of this, see the above section at:

- **Section 5: Sperm Donors** - 'Can the donor be prevented from forming a relationship with the child, or having contact with the child?'

### What is the legal status of a written agreement between the donor and the birth parent and co-parent?

Written agreements regarding parties' rights and responsibilities in relation to a child are not legally enforceable in Australia. They can however be useful as evidence of the parties' intentions.

The Family Court in *Re Patrick* (2002) strongly recommended that parties enter into written agreements prior to conception and/or birth. In this case, the Court found that the parties had intended, at conception, for the donor to be significantly involved in the child's life, and that ongoing contact with the donor was of benefit to the child. The Court ordered the donor could have contact with the child on a gradually increasing basis.

However, the Federal Circuit Court in *Reiby v Meadowbank* (2013) reaffirmed that the best interests of the child is the paramount consideration. The judge found that any agreements the parties may have made before the proceedings should not influence a judge's decision; and that the best interests of the child are paramount when deciding on parenting orders.





Despite the uncertain position of written agreements in court actions, it is a good idea for parties to consider seriously the need for an agreement dealing with the issues surrounding the donor's role. The process of making such an agreement can itself be very valuable as a means of assisting parties to think about and articulate their needs and/or expectations in regards to parenting. This may help to prevent disputes from arising in the future.

If you are considering drafting a written agreement, you can contact the Inner City Legal Centre by telephone at 02 9332 1966 to make a face-to-face or telephone appointment to speak with a lawyer. Please note that the Inner City Legal Centre will only be able to advise one party to a proposed agreement.

## Are self-insemination arrangements legal?

In NSW there is no law against self-insemination. Sperm donation through assisted reproductive technology treatment providers (such as fertility clinics) is governed by the *Assisted Reproductive Technology Act 2007* (NSW). This Act sets the standards for these providers.

However these standards may not apply to self-insemination arrangements, and so persons entering into these arrangements take more health and legal risks. If things go wrong, they will not have the same recourse to legal redress as those who use an authorised provider.

Under the *Assisted Reproductive Technology Act*, donors are required to give information to assisted technology treatment providers about their medical and genetic history. There are significant penalties for giving false or misleading information. This requirement applies only when the procedures are provided for a fee, reward or in the course of a business (whether or not for profit).

## Can the donor charge a fee for supplying semen?

It is illegal in NSW for a donor to charge for the provision of semen. The *Human Tissue Act 1983* (NSW) prohibits 'the sale or supply of tissue' by anyone other than an authorised provider (such as a clinic). The maximum penalty for a donor who provides semen for a fee is a fine of \$4,400 and/or six months imprisonment.

However, it is legal for recipients to cover the costs of medical procedures and other expenses connected to the process of donating sperm.





### What are the rights and responsibilities regarding screening for HIV or other infections?

During the sperm donation process, a donor should be tested for various infections and diseases. The *Assisted Reproductive Technology Act* and associated regulations set out the infections and diseases that a donor must be tested for. They include HIV, Hepatitis B and C, and Syphilis. In addition a donor's sperm count and activity should also be tested to ensure they are fertile.

The practices of clinics are specially formulated to prevent the transmission of HIV and other infections. Semen is frozen and stored for three to six months while the donor is tested and retested to make sure they do not carry transmissible infections.

Semen obtained as part of a self-insemination arrangement may not undergo the same level of testing. Prior to self-insemination it is recommended that the donor have two HIV tests three months apart, with no 'risk activities' engaged in during the time between the tests (e.g. unprotected penetrative sex, sharing of drug injection equipment). It is important for donors to be tested twice due to the existence of a 'window period' within which a person's positive HIV status cannot be detected by a HIV test.

It is also important to discuss a broad range of health issues with a potential donor so that informed decisions can be made before proceeding with that donor. For example, it is advisable to obtain the donor's medical history, including information on their experience of diabetes, allergies, mental illness, and inherited health conditions, such as haemophilia. It is useful to know if there is any family history of repeated miscarriages, twins, and breast or cervical cancer.

### Is there anything stopping gay and bisexual men from donating sperm?

Under the *Assisted Reproductive Technology Act* and its regulations, clinics must abide by the National Health and Medical Research Council's ethical guidelines on assisted reproductive technology (ART). These guidelines provide that clinics should not accept donations from people at an increased risk of transmissible infections.

Gay and bisexual men who do not practice safe sex with their sexual partners may be at increased risk of HIV infection. Some clinics may not accept sperm donations from men who engage in male-to-male sex. Other clinics may accept donations from gay and bisexual men but conduct more extensive testing procedures. For example, the *Assisted Reproductive Technology Act* requires that all donors provide blood, urine and semen samples to be tested for genetic and infectious diseases. The samples are then quarantined





for a period of 3-6 months before the semen can be used. However, if the donor has engaged in male-to-male sex, the sample could be held for a longer period, with some clinics holding samples for up to 12 months. As clinics approach donations from gay and bisexual men differently, it is important to ask the individual clinic about their procedures before making a donation.

## Will the child be able to find out the identity of the donor?

Clinics are required under the *Assisted Reproductive Technology Act* to obtain identifying information from donors, including:

- their full name;
- residential address;
- date and place of birth;
- ethnicity; and
- relevant medical history.

Clinics also collect non-identifying information (year of birth and sex) about the donor's children and any other offspring of the donor. All of this information is entered onto the Central ART donor register.

With regards to self-insemination arrangements, if fertility clinic services are used to treat the birth parent or store the sperm, the donor is required to consent to their information being listed on the Central ART donor register.

A person conceived through ART treatment can apply to the Central ART donor register for identifying information about the donor once they have turned 18. They can also obtain both non-identifying information about the donor's children or offspring, and identifying information where the donor's children or offspring consent.

The parents of a child under 18 conceived through ART treatment may be able to obtain identifying information about the donor in the event of a medical emergency or life threatening situation.

Donors can obtain non-identifying information (year of birth and sex) about their offspring born as a result of ART treatment by making an application to NSW Health. Identifying information can be provided to a donor where the donor's offspring gives their consent after turning 18, or without their consent in special circumstances.



*Under the Status of Children Act 1996 (NSW), an egg donor is not considered to be the parent of a child.*



# Egg Donors and Egg Sharing



## Is the egg donor regarded as a legal parent?

Under the *Status of Children Act 1996* (NSW), an egg donor is not considered to be the parent of a child. The person who is the recipient of the egg (ovum) and who carries the pregnancy and gives birth to the child will be presumed to be the parent of the child whether they are married, single, or in a de facto relationship.

## Should there be a written agreement between the donor and recipient/s?

Registered fertility clinics through which egg donations are processed will require the donor and recipient/s to sign documentation confirming their agreement. The forms provided by the clinic do not extend to any arrangements beyond an agreement to donate and receive eggs and to create embryos. If the parties want a more complex arrangement, such as one where the donor participates in the child's life, a non-enforceable written agreement may be appropriate. For more information, please read the sections above;

### • Section 5: Sperm Donors -

- 'What is the legal status of a written agreement between a donor and the birth parent and a co-parent?' and
- Can the donor charge a fee for supplying semen?',

which also apply to egg donors.

If you are considering drafting a written agreement, you can contact the Inner City Legal Centre by telephone on 02 9332 1966 to make a face-to-face or telephone appointment to speak with a lawyer. Please note that the Inner City Legal Centre will only be able to advise one party to a proposed agreement.

### Case examples:

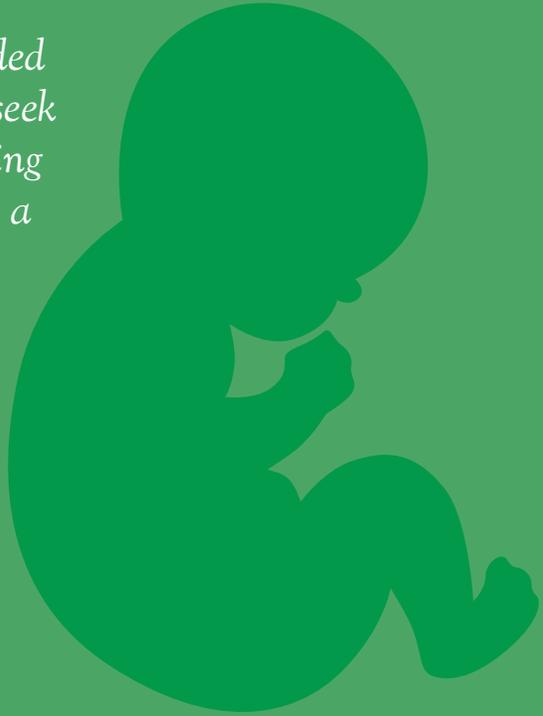
Patrick and Liam have been in a de facto relationship for 5 years. They have decided they want to raise a family. They agree to use a donor egg and Liam's sperm.

Sean, a transgender man, had his eggs harvested before commencing/completing his transition. Sean and Felicity, his de facto cisgender female partner, decided to have a child together using Sean's eggs and an unknown sperm donor. Felicity carried the pregnancy and gave birth to their child.

Sally and Bridget are two lesbians in a de facto relationship and they have decided to start having a family. They have decided that Sally will have her eggs harvested, they will use an unknown sperm donor, and Bridget will carry the pregnancy and will give birth to their child.



*It is advised that intended couples or individuals seek legal advice before paying money or giving gifts to a surrogate.*



# 7



## Surrogacy



## Can surrogacy arrangements be entered into?

In all Australian states and territories (except for the Northern Territory), it is illegal to enter into a **commercial surrogacy** arrangement within Australia. This is an arrangement whereby a couple or individual provide a fee, reward or other material benefit or advantage to a surrogate for conceiving a child and giving up that child to be raised by the couple or the individual.

It is also illegal for a couple or individual residing in NSW to enter into a commercial surrogacy arrangement outside of the state, including in a foreign country. The maximum penalty for entering into (or offering to enter into) a commercial surrogacy arrangement is a fine of \$110,000 and/or imprisonment for 2 years.

**Altruistic surrogacy** arrangements are not illegal, however they cannot be legally enforced. For a surrogacy arrangement to be considered altruistic, the surrogate must only be reimbursed for their reasonable surrogacy costs. Section 7 of the *Surrogacy Act 2010* (NSW) provides a list of the types of expenses that can be reimbursed by an intended couple or individual, including:

- medical;
- travel; and
- accommodation costs.

It is advised that intended couples or individuals seek legal advice before paying money or giving gifts to a surrogate.

### Case example

Charlie and Thomas have been in a de facto relationship for 3 years. They have decided they want to raise a family. They agree to use a donor egg and Charlie's sperm. Their long-term friend Louise offers to be a surrogate for the couple. Louise agrees to carry the pregnancy and birth the child for Charlie and Thomas (the intended couple). Charlie and Thomas will pay for Louise's medical expenses in relation to the pregnancy and birth.

Because altruistic surrogacy arrangements cannot be legally enforced, a surrogate who gives birth to the child cannot be forced to surrender a child upon birth to the intended couple or individual. In this situation, following the birth of the child, an intended couple or individual may apply to the Family Law Courts for a parenting order stating that the child is to live with them. However, the likely outcome of such an action is uncertain.





### Can a couple or individual advertise for a surrogate?

It is illegal to distribute by print or online, or provide people with access to a **paid** advertisement, statement, or notice that:

- Suggests a person is willing to enter into, or arrange, a surrogacy arrangement;
- Seeks a person willing to act as a birth parent under a surrogacy arrangement;
- Suggests a person is willing to act as a birth parent under a surrogacy arrangement; or
- Is intended or likely to induce a person to act as a birth parent under a surrogacy arrangement.

If the advertisement is for a commercial surrogacy arrangement, the advertisement will be illegal even if no fee has been paid for the advertising. The maximum penalty for an individual is a fine of \$110,000 and/or imprisonment for two years.

Not all advertising is illegal. You can advertise for an altruistic surrogacy arrangement provided you do not pay for the advertisement. If you do pay for the advertisement, and it is an altruistic surrogacy arrangement, the maximum penalty for an individual is an \$11,000 fine.

### Who has parental responsibility in surrogacy arrangements?

The legal parents of a child will generally have parental responsibility for the child. In NSW, when an altruistic surrogacy arrangement is entered into, the surrogate and their partner (married or de facto) are presumed to be the legal parents of the child. This will be the case even where the child does not have the DNA of the surrogate couple. The intended couple or individual will not have parental responsibility for the child and cannot legally make decisions about the child.

An intended couple or individual can apply to the Supreme Court of NSW for a parentage order that has the effect of transferring parental responsibility to the intended couple or individual. An application for a parentage order must be made between **30 days and six months after** the child's birth. The application must be supported by a report prepared by an independent counsellor on whether the proposed parentage order is in the best interests of the child.

There are a number of preconditions that must be met before a court will grant a parentage order. These include:

- Each of the affected parties must consent to the order;
- The child must be living with the intended couple when the application is heard;
- There must be a written, pre-conception surrogacy agreement, signed by each of the affected parties after receiving legal advice and counselling;





- The parties must have provided the NSW Health Central ART donor register with the information about the surrogacy arrangement required under the *Assisted Reproductive Technology Act*; and
- The court must be satisfied that the order is in the best interests of the child.

The consent of a birth parent to the making of a parentage order will be necessary unless the court is satisfied that the birth parent has died or lost capacity to give consent, or they cannot be located after reasonable attempts are made.

To establish that a birth parent has given their consent, there must be evidence of the consent. Unless consent is given in person in court, this will require a written instrument stating that the person consents to the making of a parentage order under the *Surrogacy Act* in respect of the child, verified by the affidavit of an **attesting witness**.

A birth parent's consent must also be informed and freely and voluntarily given while they had the capacity to do so. To establish this, there will need to be affidavit evidence demonstrating;

- the legal and practical effect of their consent and of a parentage order had been explained to the birth parent; and
- the birth parent appeared to understand the explanation, to give their consent freely and voluntarily, and to have the capacity to do so.

The attesting witness should provide this evidence. The Supreme Court of NSW in *AP v RD* (2011) recommended an appropriately qualified legal practitioner fill this role. In that case it was held that statements in a counsellor's report that the birth parents were comfortable with the orders and 'quite informed' as to the consequences of their consent were not sufficient evidence of consent.

Each of the parties to the pre-conception surrogacy agreement must have received counselling about the social and psychological implications of the surrogacy arrangement. In addition the birth parent and their partner (if any) must receive further counselling after the child's birth and before consenting to the parentage order. A report by an independent counsellor must be filed containing the counsellor's assessment of:

- Each party's understanding of the implications of the making of a parentage order;
- Each party's understanding of the principle that openness and honesty about a child's birth parentage is in the best interests of the child;
- The care arrangements proposed by the intended parents in relation to the child;
- Any contact arrangements proposed in relation to the child and their birth parents;
- The parenting capacity of the intended couple or individual; and
- Whether any consent given by the birth parents is informed consent, freely and voluntarily given.





## Surrogacy

In addition, each of the parties must have received legal advice from a legal practitioner about the surrogacy arrangement and its implications. The legal advice obtained by the birth parent and their partner (if any) must have been obtained from a legal practitioner independent of the legal practitioner who provided legal advice to the intended couple or individual.

An affidavit sworn by each of the legal practitioners who gave advice must accompany an application for a parentage order. Each affidavit must include:

- The name of the affected party to whom the advice was given;
- The role of the affected party;
- The date the advice was given;
- A statement that independent legal advice was given to that person; and
- The practitioner's belief that the person appeared to understand the legal advice given.

If a parentage order is made, the intended couple or individual will be recognised as the child's legal parent/s and have parental responsibility for the child. The child will no longer be the child of the birth parent/s. The child's birth certificate can be amended to reflect the intended couple's parental status. Where a parentage order is refused, intended couples or individuals have a right to appeal the decision in the NSW Court of Appeal.

*MM and KF Re FM* [2012] was the first application for a parentage order made by a gay couple in NSW. In this case, the Court was satisfied that, having regard to the surrogacy arrangement and the care arrangements for the child since birth, the making of the parentage order would be in the best interests of the child. The Court was satisfied by the affidavits that each party consented to the making of the order.

## What if the birth parent refuses to surrender the child?

Because surrogacy arrangements are not legally enforceable, a birth parent cannot be forced to surrender a child to an intended couple or individual. However, persons with an interest in the care, welfare and development of a child can apply to the Family Law Courts for parenting orders. An intended couple or individual may be able to obtain parenting orders that provide the intended couple or individual with parental responsibility or shared parental responsibility for a child, and/or that the child is to live with, spend time with and/or communicate with them. For more information on parenting orders, see the section above:

- **Section 5: Sperm Donors** - 'Can the donor be prevented from forming a relationship with the child, or having contact with the child?',

which may also apply to an intended couple or individual in a surrogacy arrangement.





When determining what parenting orders to make, a court's paramount consideration is the best interests of the child. The *Family Law Act* provides that a primary consideration of a court must be the benefit to a child of having a meaningful relationship with both of their legal parents. However, a court is also required to consider the nature of a child's relationship with a non-parent, and the capacity of a non-parent to provide for the needs of the child.

The Family Court indicated in *Aldridge v Keaton* (2009) that the Family Law Act does not create additional barriers or presumptions against non-parents. Further, in *Donnell v Dovey* (2010), the Family Court acknowledged that the maintenance of a meaningful relationship with a non-parent may be equally or more important for a child than the maintenance of a meaningful relationship with a parent. Whether a court will grant parenting orders reflecting this to an intended couple will depend on the particular circumstances of the case.



*Parties should be aware that the financial aspects of donor agreements are enforceable.*

# 8



## Donor Agreements



## What should be included in a written donor agreement?

It is difficult to include examples of donor agreements on the basis that each and every agreement is unique and needs to be tailored to individual parties' circumstances. There are however standard or necessary clauses that should be included in agreements to ensure the parties are clear about each other's position. The following are some suggestions for matters that should be considered in agreements:

- **Background:** It is a good idea to start with a background section that outlines the relationship between each party and the reason for the agreement. This should also include whether or not the donor has children or a partner themselves so that everyone is clear about the family situation of each party.
- **Refer to relevant legislation:** Donor agreements are affected by several pieces of legislation such as the *Human Tissue Act* and the *Family Law Act*. The relevant sections should be referred to so that each party is clear about the law and any penalties that might apply to breaches of that law.
- **Expenses:** Any agreement with regard to expenses should be outlined clearly so that each party is clear about their commitment in that regard. This should be as detailed as possible but remember the limitations of payments to donors.
- **Counselling/Psychological evaluations:** If the donation is dealt with by a registered ART provider then counselling will occur. It should be made clear that each party agrees to the counselling and is willing to share the outcome or report of the counselling.
- **Medical tests and treatment:** The donor process, particularly for egg donation, can be medically invasive. On that basis the agreement to undergo any required medical tests or treatment should be clearly outlined.
- **Conduct during treatment:** The quality of sperm or eggs can be affected by the donor's conduct. For example, drinking alcohol or using drugs while undergoing treatment may decrease the potency and quantity of sperm and eggs. The parties may wish to consider an agreement about the donors conduct during the treatment period.
- **Use of embryos after donation:** The agreement should be clear about whether or not the donor has any say in the embryos created out of their donation. Whilst the ART provider will require the donor to sign forms relinquishing their rights to the donated sperm or eggs it is preferred the parties make clear their agreement in this regard.
- **Estate of the parties:** What do you want to happen to any eggs or sperm that is donated if one of the parties dies? It is best to outline this decision in the agreement.
- **Confidentiality:** All cases differ in this regard depending on the structure and nature of the party's relationship. It is preferable to be clear about what level of confidentiality each of the parties expect from one another.





## Donor Agreements

- **Termination:** Outline how the agreement can be terminated and in what circumstances.
- **Dispute resolution:** It is always a good idea to outline which dispute resolution process, such as mediation, should be undertaken to resolve any issues that arise.
- **Legal advice:** All of the parties should receive legal advice before signing the agreement and the fact that advice has been given should be outlined in the agreement.

This list is not an exhaustive list and each agreement may include unique clauses specific to the parties' circumstances.

### Are the financial aspects of a donor agreement enforceable?

Parties should be aware that the financial aspects of donor agreements are enforceable. If the parties agree that one or both of the parties will pay for certain expenses, the agreement can be enforced through the courts. Legal advice should be sought in all cases.

Felix and Mez, a LGBTIQ couple, and intended parents, entered into an agreement with Liz who would be a surrogate for them. They agreed to cover the costs of pregnancy but then did not make the payments as agreed. Liz, by necessity, ended up paying the costs for medical treatments and the cost of the birth. Liz can sue Felix and Mez to recover the out of pocket expenses.



FAO

9



# Other Frequently Asked Questions



### What rights does the child have to my estate?

Parents, co-parents, donors, donors' partners, surrogates, and adoptive parents may all make provision in their Will for a child and are free to dispose of their property (estate) as they see fit.

It is important for an individual to have a Will to ensure when they die their wishes are clear and can be given effect.

If an individual dies without a Will it is called intestacy. This means that the *Succession Act* rules regarding how the estate will be distributed apply. Priority is given to a spouse /de facto partner, then a child, and then to other close relatives.

A Will may be contested under the *Succession Act* if it is considered that the testator (the person who made the Will) has failed to make proper provisions for an 'eligible person'.

Where there is no Will, claims can also be made for a share of the estate. To contest or make a claim, an eligible person may apply for a family provision order in respect of the estate.

Eligible persons include spouses or former spouses, de facto partners, children, and other dependents that were members of the deceased's household.

The definition of a child of a deceased person is inclusive. If the deceased person was in de facto relationship or domestic relationship with a person at the time they died, a 'child' will include:

- A person adopted by the deceased person;
- A child of a surrogacy arrangement in respect of whom a parentage order was made and the deceased person was their intended parent;
- A child of an ART procedure where two women in a de facto relationship consented to the procedure and the deceased person was either the birth parent or co-parent; or
- A child born as a result of heterosexual intercourse and the deceased person is presumed to be the parent.

In the above situations, the deceased person is the legal parent of the child.

In circumstances where there are three or more parents, informal parenting arrangements, a donor's name recorded on the birth certificate, a co-parent's name not recorded on the birth certificate, or a significant relationship between the child and the deceased person; the Court may consider the nature and duration of the relationship, any obligations or responsibilities between the people (or adult and child), or any other factors in determining if someone is an eligible person to make an application to contest or make a claim to an estate.



The usual limitation period to make a claim under the *Succession Act* is 12 months from the death of the deceased. After 12 months, an individual must 'seek leave' (or permission) from the court to bring an application.

## Can health insurance be obtained at the reduced 'family' rate?

Most health insurance companies do offer the family rate to LGBTIQ couples, and those that refuse to do so can be pursued for discrimination under the *Sex Discrimination Act 1984* (Cth) and the *Anti-Discrimination Act 1977* (NSW). In the case of *Hope v NIB Health Funds Ltd* (1995) it was found that the insurance provider had discriminated against a gay couple and their child by refusing them the concessional family rate for health insurance.

## Is the issue of homosexuality or gender diversity taken into account by the courts?

In making any decision regarding a child, a court's paramount consideration will be the best interests of the child. While the Family Law Courts may consider the parties' sexualities or gender diversity when assessing what will be in the child's best interests, the effect this has will depend on the circumstances of the individual case before the court. The Family Court in *Wilson v Roberts (No 2)* (2010) recognised that it deals with a full spectrum of families, including homosexual parents, and stated: 'It is always the particular child and their particular needs that must be at the centre of a decision'.

## Am I able to adopt my partner's child?

LGBTIQ de facto and registered partners, and LGBTIQ individuals are eligible to apply for adoption in NSW. An application can be made in respect of a child known to the person/s (e.g. a partner's child) or a child who has been relinquished by other parents in NSW or overseas. Under the *Adoption Act 2000* (NSW), once an adoption order has been made the rights of the existing legal parent(s) are transferred to the new parent(s), who are then, for all purposes, treated as the legal parents of that child.

Before a court will allow an individual ('step parent') to adopt their partner's child, the court must be satisfied that an adoption order is clearly *preferable and in the best interests* of the child to any other legal action that could be taken. For example, an order may be made granting the step parent 'parental responsibility' but not full parental status. As a consequence, adoption orders are difficult to obtain. This is because making an adoption order severs the legal relationship between the child and the child's other existing legal parent who is not the step parent's partner. The consent of both the child's legal parents





## Other Frequently Asked Questions

and any person who has parental responsibility for the child is also usually required, although consent requirements can be waived in certain circumstances.

The *Adoption Act* sets out a number of other criteria that must be met before an adoption order will be made, including:

- Both partners must live in NSW;
- The couple must have been living together in a de facto or registered relationship for a continuous period of at least two years;
- Both partners must be of good repute and be fit and proper persons to fulfil the responsibilities of parents;
- The child must be at least five years old;
- The child must have lived continuously with their original parent and their partner for at least two years (unless the child is 18 years of age or more); and
- The court must be satisfied that an adoption order would be in the best interests of the child.

Due to the extent of the requirements that must be met, and the greater availability of parenting orders, adoption may be not be an achievable outcome for many couples.





# 10



## Sample Parenting Orders



### Parental Responsibility

1. That [Parent 1] and [Parent 2], the parents of the children namely [Child 1] and [Child 2] born [birth date] have equal shared parental responsibility, and for this purpose are to be jointly responsible for making decisions about major long term issues in respect of the Children including but not limited to:
  - 1.1 The Children's education;
  - 1.2 The Children's health (excluding minor ailments); and
  - 1.3 Changes to the Children's living arrangements, which might make it significantly more difficult for the Children to spend time with either parent.
2. That for the purposes of making decisions about major long term issues, those decisions must be made:
  - 2.1 In writing;
  - 2.2 Carried out in good faith;
  - 2.3 Child focused;
  - 2.4 Non-derogatory;
  - 2.5 Without threat or coercion; and
  - 2.6 Conducted with the parents attending mediation if no agreement can be reached.
3. That the parent with whom the Children are living or spending time with shall have responsibility for making day to day decisions concerning the Children without reference to the other parent.
4. That the parents are to keep each other informed of any significant issues concerning the Children while in their care, such as but not limited to, the Children becoming ill or injured or requiring hospitalisation.
5. That the parents will inform the other of any medication prescribed for the Children from time to time and provide the medication and appropriate instructions for its administration at the time of any handover or spend time.
6. That [Parent 1] is entitled to a copy of the Children's school reports, bulletins or other information from the Children's school relevant to the Children's educational progress.





## Spend Time Arrangement

7. That the children live with [Parent 2] and spend time with [Parent 1];
  - a) Every alternate weekend from the end of school on Friday until the commencement of school on Monday or 10am if a non school day;
  - b) One afternoon each alternate week from the end of the school day until 6.30pm with [Parent 1] returning the children to [Parents 2's] premises at the end of the visit;
  - c) Every alternate Christmas from 3pm Christmas Eve until 9am Boxing Day commencing December [year];
  - d) 5 separate periods a year during school holidays for 7 nights in each period with the pickup and drop off at [place]; and
  - e) Makeup time for any missed days or overnight time (example: 3 hours make up time owed – [Parent 1] picks the children up from school, takes them on an outing, and returns them in 3 hours).
8. That [Parent 1] is entitled on equal occasions, or as otherwise agreed in writing, to attend any school functions or events that require parental participation and if the other parent is not attending then that other parent is entitled to photographs of such event if photographs are taken;
9. On any other occasion as agreed in writing.

## Communication

10. That [Parent 1] is permitted telephone contact with the Children on Monday evenings between 5pm – 6pm;
11. That [Parent 1] is permitted to write to the children and send them reasonable gifts and that [Parent 2] will deliver those letters and gifts as and when they are received;
12. That [Parent 2] will disclose all sporting, schooling and extracurricular activities to [Parent 1] and provide schedules where relevant;
13. That [Parent 2] will notify [Parent 1] of any occasion in which the children are taken out of the state of NSW or overseas, including who they are with, their contact information and how long they will be away;





## Sample Parenting Orders

14. That [Parent 1] is entitled to telephone contact on the Children's birthdays if they are not in their care;
15. That [Parent 1] is entitled to telephone contact on Christmas Day if the Children are not in their care;
16. That the parents will notify each other about any significant medical and health issues in relation to the Children at the time they arise and provide the other parent with copies of any medical reports prepared in relation to the Children;
17. That the parents will consult with each other concerning the children attending birthday parties but that no reasonable request for the Children to attend a party will be declined by the other parent;
18. That [Parent 2] is to consult with [Parent 1] about any activities scheduled for the Children on the weekends or at other times when they are to be spending time with [Parent 1], any time missed as a result of scheduled activities will be made up in accordance with part 7(e) of these Orders;

## Birth Certificate

19. That [Parent 1] is authorised to apply to the Registrar of Births, Deaths and Marriages for the State of New South Wales to request that:
  - Their name be added to the birth certificates of [Child 1] and [Child 2] as a parent.
20. That the Registrar of Births, Deaths and Marriages for the State of New South Wales shall upon such an application of [Parent 1] do all acts and things required to alter the particulars in the register for each child notwithstanding that the consent of [Parent 2] has not been obtained.

NOTING that pursuant to s 60H of the *Family Law Act* [Parent 1] and [Parent 2] are each the parents of each child.



*Overviews, phone numbers  
& websites for helpful and  
related organisations*

# 11



## Contacts



## Contacts

### Anti Discrimination Board of NSW

Investigates complaints of discrimination, and provides an enquiry service for people who want to know about their rights and responsibilities under anti-discrimination law.

**Ph: 02 9268 5544** or  
**free call 1800 670 812**

**[www.lawlink.nsw.gov.au/adb](http://www.lawlink.nsw.gov.au/adb)**

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### Australian Human Rights Commission

The Australian Human Rights Commission can investigate and resolve complaints of discrimination based on a person's sex including pregnancy, marital or relationship status (including same-sex de facto couples) status, breastfeeding, family responsibilities, sexual harassment, gender identity, intersex status and sexual orientation.

**Ph: 1300 656 419** or **02 9284 9888**

**[www.humanrights.gov.au/  
complaint-information](http://www.humanrights.gov.au/complaint-information)**

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### Centrelink

Delivers a range of payments and services, including to families.

**Ph: 136 150** (Family Payment Line)

**[www.humanservices.gov.au](http://www.humanservices.gov.au)**

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### Community Legal Centres (CLC)

Provide free legal information, advice and referral.

To find the CLC closest to you, contact the NSW Community Legal Centres State Office.

**Ph: 02 9212 7333**

**[www.nswclc.org.au/Contact](http://www.nswclc.org.au/Contact)**

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### Department of Foreign Affairs and Trade - Australian Passport Information Service

Provides information on applying for a passport, including a child's passport. Also arranges appointments for callers to urgently lodge their passport or renewal applications at an Australian passport office in special circumstances.

Level 7, 26 Lee Street, Sydney NSW 2000

**Ph: 131 232**

**[www.passports.gov.au/Web/index.aspx](http://www.passports.gov.au/Web/index.aspx)**

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### Family Law Courts of Australia National Enquiry Centre

The entry point for all telephone and email enquiries on Family Court matters. Provides information and procedural advice, forms and brochures and referral advice to community and support services.

**Ph: 1300 352 000**

**[www.familylawcourts.gov.au](http://www.familylawcourts.gov.au)**

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### Family Planning NSW

Offers bulk-billing clinics in a number of locations throughout NSW. The clinics provide a range of reproductive and sexual health services, including fertility assessments; testing for Sexually Transmissible Infections (STIs); and pregnancy tests, information and counselling.

**[www.fpnsw.org.au/index\\_clinics.html](http://www.fpnsw.org.au/index_clinics.html)**

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### Family Planning NSW - Talkline

Provides telephone information, advice and referral on reproductive and sexual health.

**Ph: 1300 658 886**

**[www.fpnsw.org.au/talkline](http://www.fpnsw.org.au/talkline)**

### Gender Centre

The Gender Centre offers a wide range of services to transgender and gender diverse people, their partners, families and friends in New South Wales.

**Ph: 02 9569 2366**

**[www.gendercentre.org.au](http://www.gendercentre.org.au)**

### HIV/AIDS Legal Centre

A specialist community legal centre providing free legal services and advice to people with HIV-related legal matters.

414 Elizabeth Street, Surry Hills NSW 2010

**Ph: 02 9206 2060**

**[www.halc.org.au](http://www.halc.org.au)**

### Inner City Legal Centre (ICLC)

ICLC provides free legal advice for LGBTIQ people throughout NSW. Provides advice on a range of topics, including LGBTIQ parenting, surrogacy, de facto relationships, discrimination, and domestic violence.

Lower Ground, 50-52 Darlinghurst Rd  
Kings Cross NSW 2011

**Ph: 02 9332 1966** or  
**free call 1800 244 481** or  
**text 0466 724 979**

**[www.iclc.org.au](http://www.iclc.org.au)**

### IVF Australia

IVF Australia offers a comprehensive and supportive donor program to assist LGBTI families. People can use known or unknown donors.

**Ph: 1800 111 483**

**<http://ivf.com.au/fertility-treatment/same-sex-couple-options>**

### Leichhardt Women's Community Health Centre

Provides low-cost health care to women, including information about fertility charting, known donor insemination techniques, referrals to fertility clinics, sexual health screening, pregnancy advice and childbirth classes.

55 Thornley Street, Leichhardt NSW 2040

**Ph: 02 9560 3011**

**[www.lwchc.org.au](http://www.lwchc.org.au)**

### OII Australia – Intersex Australia

OII Australia is an independent support, education and policy development organisation, by and for people with intersex variations or differences. Our work focuses on human rights, bodily autonomy and self-determination, and on evidence-based, patient-directed healthcare.

**<https://oii.org.au/>**





## Contacts

### QLife

QLife is Australia's first nationally-oriented counselling and referral service for people of diverse sex, genders and sexualities. QLife provides nation-wide, early intervention, peer supported telephone and web based services to support Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) people of all ages.

**Ph: 1800 184 527**

(5:30pm to 10:30pm every day)

**[www.qlife.org.au](http://www.qlife.org.au)**

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### Registry of Births, Deaths and Marriages

The Registry's website contains forms and information on registration and certificates for births, deaths, marriages, relationships and official change of name.

35 Regent Street, Chippendale NSW 2008

**Ph: 13 77 88**

**[www.bdm.nsw.gov.au](http://www.bdm.nsw.gov.au)**

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### Royal Prince Alfred Hospital - Fertility Clinic

A specialist clinic that provides medical and scientific services to strengthen patients' capacity to have children. The clinic is open on Tuesday and Thursday afternoons and covers known donor arrangements (sperm and egg) only. Appointments can be made to see an infertility counsellor at any time. It is not necessary to be on the programme to see the counsellor.

Level 5, Building 89, Missenden Road  
Camperdown NSW 2050

**Ph: 02 9515 7101** for clinic appointment

**[www.sswahs.nsw.gov.au/rpa/fertility](http://www.sswahs.nsw.gov.au/rpa/fertility)**

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### Welfare Rights Centre (WRC)

A community legal centre which provides independent advice and representation on social security and family assistance matters, and appeals to Centrelink.

**Advice: 02 9211 5300** or  
**free call 1800 226 028**

**[www.welfarerights.org.au](http://www.welfarerights.org.au)**

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# 12.



## Further Reading



## Further Reading

American Psychological Association, *Lesbian and Gay Parenting* (2005)

<http://www.apa.org/pi/lgbt/resources/parenting-full.pdf>

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(Centre for Family Research, University of Cambridge, 2010)

[http://www.glhv.org.au/files/different\\_families\\_stonewall.pdf](http://www.glhv.org.au/files/different_families_stonewall.pdf)

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<http://glrl.org.au/index.php/Rights/Parenting/New-Lesbian-Parenting-Laws>

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[http://www.glhv.org.au/files/goldberg\\_smith\\_journal\\_counselling\\_psychology\\_2011.pdf](http://www.glhv.org.au/files/goldberg_smith_journal_counselling_psychology_2011.pdf)

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<http://onlinelibrary.wiley.com/doi/10.1111/cdev.12155/epdf>

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[http://www.glhv.org.au/files/to\\_tell\\_or\\_not\\_tell\\_edu\\_change\\_0.pdf](http://www.glhv.org.au/files/to_tell_or_not_tell_edu_change_0.pdf)

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[http://www.qahc.org.au/files/shared/docs/Lesbian\\_Parenting\\_in\\_Aust.pdf](http://www.qahc.org.au/files/shared/docs/Lesbian_Parenting_in_Aust.pdf)

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*Useful online websites  
& resources*

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Internet Sites



## Internet Sites

**COLAGE:** <http://www.colage.org/>

**Donor Conception Network (UK):** <http://www.dcnetwork.org/>

**Families Like Mine:** <http://familieslikemine.com/>

**Family Pride Coalition:** <http://www.familypride.org>

**Gay & Lesbian Rights Lobby – Parenting Rights:**

<http://gllr.org.au/index.php/Rights/Parenting/>

**Gay Dads Australia:** <http://gaydadsaustralia.com.au/>

**Gay Parent LGBT Magazine (US):**

<http://www.gayparentmag.com/>

**Lesbian Parents Australia – Facebook:**

<https://www.facebook.com/same.sex.parenting>

**Rainbow Families Council:** <http://www.rainbowfamilies.org.au/>

**Rainbow Families Council – Outspoken:**

<http://www.rainbowfamilies.org.au/resources/outspoken-families/>

**Our Family Coalition (US):** <http://www.ourfamily.org/>

**Women Alive:** <http://www.thebody.com/wa/wapage.html>



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