

# same laws different solutions

## Different families

Families come in different combinations and come about in different ways. Some families include children and others don't. Those that have children may have them from previous relationships, surrogacy, through donors (known or not) or with involved fathers either gay or straight.

Recent changes to State and Federal laws have affected GLBTI families.

There are changes which affect:

- Which people are considered to be the legal parents of children
- Lesbians' access to fertility treatment
- Who is financially responsible for children
- The financial responsibilities which partners have to each other
- How couples divide property if their relationship breaks down.

## Children

### Who has access to infertility treatment?

From 1 January 2010, single women and lesbian couples have had access to IVF services in Victoria without having to prove that they are medically infertile.

Previously, many women travelled to New South Wales to access infertility services. This is no longer necessary.

Since 1 January 2010, women have been able to self inseminate sperm without fear of prosecution. This is no longer a criminal offence in Victoria.

The *Family Law Act* covers the rights and responsibilities that parents have for the care of children in Australia, such as who a child lives with, who they spend time with and how decisions are made about medical treatment, education and other matters. The *Family Law Act* applies regardless of whether the child's parents are married, in de facto relationships (gay, lesbian or straight) or from parents who fell over each other in a nightclub and found themselves pregnant.

## **Who are legally the child's parents?**

Until recently, the law did not recognise the reality of children and parenting arrangements in gay and lesbian relationships.

If a lesbian couple had a child, the *Family Law Act* only recognised the birth mother as a legal parent. The non birth mother had to apply for a Court order to give her the right and responsibility to make parenting decisions. She was considered by the law to be a "non parent".

When lesbian couples separated, the non biological mother could claim child support from the mother but not the other way around.

Also, there were questions about whether a sperm donor was a legal parent, regardless of the intention of the parties. Bizarrely, a great deal turned on the method of conception. This had an impact for parenting decisions and also on Centrelink and child support entitlements.

Recent changes to the *Family Law Act* expanded the categories of people who are considered to be parents to include non biological mothers in certain circumstances. While this has clarified the position for many lesbian couples, it may have worsened the position of gay men who want to be parents rather than sperm donors.

## **Lesbian couples**

Under the new laws, if a woman undergoes an artificial conception procedure, she and her partner are the parents of the child provided:

- They were in a de facto relationship at the time of conception
- They both consented to the artificial conception procedure
- The donor of the egg or sperm also consented

In Victoria, both mothers can be registered on the child's birth certificate. They share the responsibility to make parenting decisions for the child.

Both mothers are financially responsible for the child and if they separate they can each claim child support from each other.

## **Donor/father**

The donor/father (in this brochure we use the phrase "donor/father" to describe "donor/father/donors/fathers" because it is too hard to read four different options and you know what we mean) is not a legal parent. He does not have any legal child support liability.

If there is a disagreement between a donor/father and a lesbian couple about his involvement with the child, he has to apply to the Court for orders to give him time with the child and parental responsibility.

## **Our advice**

Before making a decision to have children, no doubt you and your partner have spent time getting to know each other's values and expectations. There is still, however, the potential for misunderstandings about parenting values and expectations.

When more than two people are involved in parenting, there is the potential for even greater misunderstandings. Couples and the co-parent/donor may have very different expectations and values.

From our experience, it's a great idea to discuss values and expectations before trying to get pregnant especially if you haven't had children before. You may want to talk with a counsellor to increase your understanding of the needs of children at different ages and stages of development. This will help you make decisions together about how you can best provide for your child.

You can also:

- Discuss the expectations you each have of each other
- Discuss the involvement you each want in decision making

There are many organisations and private practitioners who would welcome the opportunity to work with you. We are happy to make recommendations.

In our experience common issues which lead to misunderstandings or disagreements are:

- Who will attend obstetric appointments?
- Who will be at the birth and what role will they have?
- Who will make medical decisions for the birth mother and the child during the birth if the birth mother can't?
- Who will decide the child's name?
- Who will go on the child's birth certificate?
- What sort of contact will the donor/father have with the child and at what ages?
- What will the donor/father be called?
- What education will the child to have?
- What if one of the couples separates?
- What if someone wants to move interstate? Or overseas?
- How will medical decisions be made? Immunisation? What if the child is disabled or has special needs?
- What financial contribution will everyone make for the care of the child?

It is best to sort out these issues before trying to get pregnant and commit them to writing. They are a statement of everyone's intentions. Sometimes these written agreements are called "Donor Agreements" and they can be converted into parenting orders and become enforceable when the child is born.

Donor Agreements are not legally binding but can:

- provide a good focus for discussion
- help you sort out any disagreements or misunderstandings as you have written down what you agreed
- be used as evidence in Court of what was discussed and agreed.

The contents of this brochure are not legal advice and not to be used as such. People should obtain their own legal advice.

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