



Are Donor Agreements legally binding?

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A Donor Agreement is a written agreement between a sperm donor and the recipient parent(s). In our previous article [‘Donor Agreements – is the sperm donor a legal parent?’](#) we looked at Donor Agreements in the context of parentage. In this article, we explore Donor Agreements in more detail, specifically dealing with the issue of enforceability and purpose.

Are Donor Agreements legally binding?

Donor Agreements are not legally binding. This is a fact that often takes people by surprise. From the sperm donor’s perspective, they want to ensure that they have no financial obligation to any child born as a result of a donor arrangement. From the recipient parent(s) perspective, they want to ensure that the sperm donor is not considered to be the child’s parent.

Purpose of a Donor Agreement

A common question is, ‘If a Donor Agreement is not legally binding, why have one?’

This is often asked during initial discussions. While a Donor Agreement is not legally binding, it is helpful for two reasons.

1. Donor Agreements ensure that the sperm donor and the recipient parent(s) are on the same page

Some recipient parent(s) know their sperm donor well (they may be a friend or family member). Others meet their sperm donor online (through online Apps and/or Facebook groups). Regardless of how you meet your sperm donor/recipient parent(s), an important starting point is to ensure that all parties to the donor arrangement are on the same page.

The Donor Agreement can be broken down into two sections:

Part 1 of a Donor Agreement: Recitals

This sets out the parties' details, conception methods (i.e. home insemination or Intrauterine Insemination (**IUI**)/Invitro Fertilisation (**IVF**) at a fertility clinic) and how donor sperm will be owned and treated.

Conception must be by way of artificial insemination. Where a child is conceived via sexual intercourse, the 'sperm donor' will be presumed to be the child's parent.

If you intend to conceive via IUI or IVF or you are considering this as a backup option if home insemination is unsuccessful, you need to plan ahead. Any sperm donated via a fertility clinic must be quarantined for a minimum of three months.

Part 2 of a Donor Agreement: General terms

The general terms of a Donor Agreement set out the agreement reached in relation to any child born as a result of the donor arrangement.

The types of issues that are covered include:

- Parentage – the recipient parent(s) are the parents, and the sperm donor is not.
- Financial responsibility – the sperm donor will not be financially responsible for the child.
- Arrangements for the conception and birth and who will be present.
- Informing the child of their identity – who will do this and when?
- The role (if any) that the sperm donor will play in the child's life.
- The publishing of information on social media – do the parties intend the donor arrangement to be known to others?
- Ongoing disclosure obligations in relation to the health of the sperm donor.
- Expenses to be paid by the recipient parent(s) on behalf of the sperm donor. Sperm donation in Australia is altruistic, meaning it is illegal to pay/to be paid for donor sperm. However, the recipient parent(s) can pay expenses on behalf of the sperm donor, for example, travel, medical and legal fees.
- How any future disputes will be resolved, for example counselling and/or [mediation](#).

The process of entering into and preparing a Donor Agreement acts as a checklist. It enables the parties to discuss the above issues in detail and will highlight any issues that the parties may not agree on. This reduces the chances of future disputes and, in some cases, may result in you choosing an alternative sperm donor/recipient parent(s).

1. The Donor Agreement is written evidence of the agreement between the parties

The purpose of the Donor Agreement is to record the intentions of the sperm donor and the recipient parent(s) as to any relationship the sperm donor will have with the child. More often than not, the Donor Agreement seeks to:

1. Prevent the sperm donor from making a claim that they are a parent to the child or a person 'concerned with the care, welfare and development of the child'; and
2. Prevent the sperm donor from seeking [Parenting Orders](#) from the Federal Circuit and Family Court of Australia to spend time with and/or communicate with the child.

Essentially, the Agreement seeks to avoid a situation whereby a sperm donor may claim that they are the child's father, as happened in the matter of [Masson v Parsons & Ors \[2019\]](#).

If a future dispute does end up before the Court, the Agreement will be written evidence that the Court will consider when making any decision. However, as with all [parenting disputes](#), the court's paramount consideration is what is in the [best interests of the child](#).

How to make your Donor Agreement carry more weight in Court

1. The Donor Agreement should be prepared and signed by all parties prior to conception.
2. All parties should seek legal advice from a family lawyer who has experience with Donor Agreements. A Donor Agreement will carry more weight in Court if all parties have sought legal advice in relation to the effect of the Agreement on their rights and the advantages and disadvantages to them entering into the Agreement.

How can a family lawyer help?

If you are considering donating sperm or using a sperm donor to start a family and would like more information in relation to this process, please get in touch with one of our family lawyers for a free initial discussion.

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.