



Donor Agreements – is the sperm donor a legal parent?

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Date: **Monday June 7, 2021**

Some parents may want their sperm donor to be involved in their child's life and others may be clear that the donor will not be involved. How do we determine the parties' intentions? And, whether the sperm donor is a donor or a dad? In this blog, we will look at Donor Agreements, parentage and the result of a case involving a sperm donation.

What is a Donor Agreement?

A Donor Agreement is a written agreement between a sperm donor and a recipient parent(s) which sets out the intentions and expectations of the parties.

Whilst Donor Agreements are not legally enforceable, they are helpful where sperm donations are done outside a clinic (for example, home insemination) and/or when using a known sperm donor. Sperm donors who are identified, without the use of a fertility clinic, are often referred to as private sperm donors.

Entering into a Donor Agreement prior to becoming pregnant provides an opportunity for all parties to consider the arrangements around pre-conception, pregnancy and birth and what, if any, relationship the donor is to have with the child. The process itself will enable the parties to make informed decisions and will reduce the risk of conflicts arising in the future.

Who is a “parent”?

[Section 60H of the Family Law Act 1975](#) (Cth) ("**the Act**") provides that where a child is born to a biological mother, by way of artificial insemination, the biological mother is deemed to be the parent of the child. If the biological mother had a partner (de facto or married) at the time of conception, that partner will also be deemed to be a parent providing that they consented to the

treatment. This means that under the Act if the mother was in a relationship at the time of conception, the sperm donor would not be considered a parent of the child.

For example: where a lesbian couple in a de facto relationship conceive via artificial insemination, the couple are deemed to be the parents and the donor is not.

However, a sperm donor that has a relationship with the child may have grounds to apply to the Family Courts for [parenting orders](#) in relation to the child later down the track.

As family dynamics change, the case law in this area continues to evolve and we have seen interesting examples of the legal challenges of parentage over the past few years.

Sperm donor legal issues in the case of *Masson v Parsons & Ors* [2019]

In the matter of [Masson v Parsons](#), Mr Masson and Ms Parsons had been close friends for many years.

Background

- In 2006, Mr Masson and Ms Parsons entered into an informal agreement where Mr Masson donated sperm to Ms Parsons.
- A child was conceived by way of artificial insemination - Child A.
- Ms Parsons was not in a de facto or married relationship at the time of conception.
- Ms Parsons later commenced a same-sex de facto relationship.
- The couple conceived a child by way of artificial insemination – Child B.
- Child A and B lived with the couple.

In donating his sperm, Mr Masson believed that he would play a significant role in Child A's life and did so in the following ways:

- Mr Masson attended ultrasounds, the baby shower and the birth.
- Mr Masson was listed as the father on Child A's birth certificate.
- Mr Mason provided financial support to Child A and was involved in the child's health, education and welfare.
- Mr Mason had a secure and close attachment with Child A.
- He spent a significant amount of time with Child A and Child B and both children called him "Daddy".

In 2015, Ms Parsons and her partner decided to relocate to New Zealand. Mr Masson initiated proceedings in the Family Court of Australia to prevent Ms Parsons from relocating with Child A. Mr Masson sought to be involved in the day to day and long term decisions in relation to Child A (joint parental responsibility) and to spend consistent and significant time with Child A.

The matter was heard in three courts:

1. The trial judge found that Mr Masson was a legal parent “*in the ordinary meaning of the word*” and in accordance with the Act. Ms Parsons was restrained from relocating to New Zealand with Child A.
2. On appeal by Ms Parsons, the Full Court of the Family Court of Australia reversed this decision and held that Mr Masson was not a legal parent under the [NSW Status of Children Act 1996](#).
3. On appeal by Mr Masson, the High Court upheld the trial judge’s decision and concluded that Mr Masson was in fact, a parent of Child A.

In the judgement, it was noted:

‘The question of whether a person is a parent of a child born of an artificial conception procedure depends on whether the person is a parent of the child according to the ordinary, accepted English meaning of ‘parent’.

Some clarifications that came out of this case

What is clear is that a sperm donor may have the ability to seek parenting orders from the Family Court regardless of whether they are a parent.

A sperm donor may also be legally obliged to provide financial support ([child support](#)) to a child born as a result of artificial insemination. Each case is dependent on its own set of circumstances and it is important for all parties involved, to carefully consider and understand the legal ramifications of such arrangements.

How can we help?

If you are considering donating sperm or using a sperm donor to start a family, we have experience working with clients in this very specialised area of family law. [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.