

Family Law Fact Sheet

Same sex couples – parentage and babies born through artificial conception

When a child is conceived naturally by a husband and wife or a man and a woman in a de facto relationship, it is obvious who the parents of the child are.

However, it is often not so clear who the law considers the mother and father of the child in circumstances where the child is conceived through artificial conception with donated genetic material.

There have been recent changes to the definition of a parent in the *Family Law Act* that now recognise the role of both partners in a same sex de facto relationship as parents.

Female same sex relationships

Where a child is born to a female same sex couple, the law presumes that the child's mother is the partner who has carried and given birth to the child.

The new changes mean that provided the couple was a de facto couple at the time the artificial conception procedure was carried out and that the non-birth parent consented to the carrying out of the procedure, the child is a child of both de facto partners.

It is irrelevant who provided the genetic material or whether the genetic material is provided by several different people. For example, it is irrelevant if both donor sperm and donor ova were used, such that the child has no biological relationship to either parent.

Registering the birth

In those circumstances, both partners can be listed as "parents" on the child's Birth Certificate, although only the partner that carried and gave birth to the child can be listed as the child's mother.

In some cases, female same sex couples can have a child through a surrogacy arrangement. In that instance, both partners would also be recognised as the child's parents under both State and

Federal Law and both parents could be listed on the child's Birth Certificate.

Male same sex couples

Whilst the definition of "parent" covers heterosexual de facto couples, as well as female same sex couples, it does not cover male same sex couples. The definition of parent refers to a child born to a woman and for this reason the definition of parent in the Federal *Family Law Act* and various State Acts do not assist male same sex couples seeking to be recognised as parents of a child.

Queensland legislation currently does not allow adoption by same sex de facto couples.

Male same sex couples should see our information sheet concerning surrogacy arrangements.

In the event a male same sex couple has a child through a surrogacy arrangement, the partners would be recognised as the child's parents under State and Federal law and both parents could be listed on the child's Birth Certificate.

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