



The Assisted Reproductive Treatment Act 2010

What does this mean for the GLBTI Community?

The introduction of the Assisted Reproductive Treatment Act 2010 ("the ART Act") makes it illegal to discriminate against a person on the basis of their sexual orientation, marital status, race or religion. Of significance with the introduction of the ART Act is that;

- It affords lesbian women and single women the right to access IVF;
- Legally recognises the role of the non biological mother;
- Allows non biological mothers to be registered on their child's birth certificate;
- Legislates against it being an offence to conceive a child through self insemination;
- Correctly recognizes the role of a donor.

Prior to the introduction of the ART Act, the Victorian law governing a lesbian women's right to access IVF was limited and could even be described as non-existent. Under the previous legislation, a woman who did not have a male partner had to be deemed clinically infertile in order to access IVF. This requirement made it impossible in most cases for lesbian women to access IVF. With this strict eligibility women began opting to access IVF treatment facilities interstate, often having to incur unnecessary expense and time.

In addition to this, and possibly most importantly, for those lesbian couples that were fortunate enough to bear a child, the non biological mother was not legally recognized as a parent of their child, and accordingly had no legal rights to their child. Children raised in these families lacked many of the rights and protections afforded to the children of heterosexual couples.

Birth Certificate

Contemporaneously with the implementation of the ART Act, amendments were made to the Births, Deaths and Marriages Registration Act to reflect the changes to the status of parents under the ART Act. There are no longer requirements for the donor to be recorded on the child's birth certificate as they are not legally considered to be the child's father.

There is now provision for the inclusion of the non-biological mother's details on the child's birth certificate, correctly referring to them as the other "parent" of the child. Accordingly, the birth certificate of any child born through IVF or assisted reproduction (including self insemination) will correctly reflect their parentage.

Most importantly, this legislation operates retrospectively, meaning that any child born to a lesbian couple prior to the implementation of the ART Act, will be able to have their birth certificate amended so that the donor's name is removed as the biological father, and the non-biological parent included as a parent of the child. Birth certificates issued to children of a same sex relationship will not differ to those certificates issued to children of heterosexual relationships. If you would like to amend your child's birth certificate please go to www.bdm.vic.gov.au and download the appropriate form.

If a child was born as a result of self insemination from a known donor, following the birth of the child, the mother and her partner, if any, and the donor must also submit a letter addressed to the Registrar, which gives the following details for the donor:

- full name;
- date of birth;
- place of birth;
- postal address;
- daytime phone number; and
- email address.

The donor must sign the letter and supply one proof of identity document. The donor's details will not appear on the child's birth record or certificate.

Legal Recognition of non-biological parent

Prior to the introduction of the ART Act, the law failed to recognize the role of the non-biological parent in lesbian relationships, despite recognizing the legal parental role of heterosexual couples who conceived a child through IVF (even when donor sperm or eggs were used). This clearly highlighted the difference in the law relating to parental responsibility between heterosexual couples and same sex couples. It elevated those rights of heterosexual couples in relation to child conceived through IVF above those of same sex couples.

In reality, this meant that the law failed to recognize the non biological mother as a parent of a child conceived through artificial insemination procedures.

Under the ART Act this distinction between the rights of heterosexual couples and those of same sex couples has been abolished. Under the ART Act, if a child is conceived through artificial insemination by a woman in a same sex relationship, this means:

- The non-biological mother is deemed to be the other parent of the child, where there is consent to the partner undergoing the IVF treatment and the parties are living in a genuine domestic relationship at the date of conception.
- The woman who gives birth is presumed to be the mother of any child born as a result of the pregnancy regardless of whether donor eggs were used; and
- The non biological mother will be named on the child's birth certificate as the other parent.

Eligibility to undergo IVF procedure

Although the limitations in relation to lesbians access to IVF have been, to some extent, abolished, there has been the inclusion of a provision in the ART Act which outlines the ineligibility of women to undergo IVF. This provision outlines that a woman and her partner (regardless of sexual orientation) must first

undergo a police check and a child protection check prior to being able to have access IVF.

Under the ART Act, ART clinics are prohibited from providing fertility treatment in the following circumstances:

- If either party have any convictions for offences of either a sexual or violent nature; and
- If either party have ever had a child removed from their care from the department of human services (or like organizations).

The Donor

The ART Act clarifies for the first time, the status of a donor when a child is conceived through assisted reproductive treatment. The ART Act clearly states that a man who donates semen to a woman who does not have a male partner (regardless of whether she is in a same sex relationship) is for all purposes not the father of any child born as a result. This is regardless of whether or not the donor is known to the parties.

This is a significant step forward as provides clarity to men who would like to become a donor whilst also protecting and recognizing the importance of the non-biological parent's role.

Conclusion

This has been a significant and monumental step towards equality for the GLBTI community. For the first time in Victoria, the status of the non-biological parent is confirmed and recognized by the law. Most importantly, children raised by same sex parents no longer are discriminated against and their rights and protections are recognized as equal to those children of heterosexual couples.

Nicholes Family Lawyers have experience in this area of the law and we welcome any enquiries you may have.



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