



Rainbow families and the law

An information kit for
same-sex couples and
single people in Victoria

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Introduction and definitions

In January 2010, legal changes came into effect in Victoria, recognising same-sex couples as legal parents of children they conceive through assisted reproductive treatment (including donor insemination, home insemination, IVF and altruistic surrogacy).

What's in this information kit

This kit provides an overview of Victorian laws (and some federal laws) that affect same-sex parented – or 'rainbow' – families. This includes prospective parents and single people.

The six information sheets describe:

- how existing families can be recognised
- options for prospective lesbian and gay parents (including prospective sole parents)
- options for potential sperm and egg donors and surrogates
- how donor information is stored and managed, and
- additional resources, including organisations. Websites, books and support groups.

The kit can be read as a whole, but each information sheet is also designed to stand alone.

The kit makes a number of references to what might happen if relationships break down, whether between couples, between parents and donors, or between co-parents. This is not because conflict is necessarily more likely to happen in rainbow families than in any other. It is because this is what much of family law, in particular, is about: what should happen if things go wrong.

However, it is also important to acknowledge that while same-sex parents have been successfully raising children for decades, our diverse family formations are in many ways still relatively new, and the law is still coming to terms with them. As a result, parents, co-parents and donors can be vulnerable to confusion and differing expectations, which can sometimes contribute to conflict. Every family has issues to talk through from time to time, but only a tiny proportion need to attend mediation or family court. Yet it is important to understand the relevant laws, not least because they might influence how people go about creating and recognising their families.

The Victorian *Assisted Reproductive Treatment Act 2008* (ART Act), removed discrimination in fertility treatment for lesbian couples and single women,



Hundreds of parents, children and their supporters march each year at Pride March in St Kilda.

recognised non-birth mothers as legal parents, and effectively legalised 'altruistic' surrogacy, providing a new option for gay men and others to become legal parents through Victorian fertility services.

In addition, many federal reforms came into effect in 2008 and 2009, recognising rainbow families in relation to issues like maintenance, child support, parental responsibility, social security, taxation, Medicare and superannuation. Federal law now recognises most same-sex parents as their children's legal parents, provided they were in a legally recognised 'de facto' relationship at the time, and the non-biological parent consented to the 'treatment' that resulted in the child's conception. The main exception at present is gay dads of children conceived via overseas surrogacy, who still need court parenting orders to recognise their family relationships. See the 'Resources and links' information sheet for where to find out more about how the federal reforms affect couples and families.

This information kit has been produced by Rainbow Families Council – a voluntary community organisation – for use by families, prospective parents, and prospective donors and surrogates. We hope it is also useful for service providers and others who support and are involved with 'rainbow' families.

Acknowledgements

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Disclaimer

Rainbow Families Council produced this information kit in October 2010. We have made every effort to ensure the kit is correct, but accept no liability for information given. Information will be regularly updated on our website. We strongly advise that you seek medical and legal advice and specialist counselling relevant to your specific situation.

The kids come first

Research shows that donor-conceived people want and need information about their donor origins. Well before many other states and countries, Victoria legislated that people have the right to identifying information about their donor. The ART Act strengthens the rights of donor-conceived people. Its key principles are that:

- the interests of donor-conceived children are paramount, and children have a right to information about their biological origins
- fertility treatment must not exploit anyone – men, women or children
- the health and wellbeing of people undergoing fertility treatment must be protected, and
- people seeking fertility treatment must not be discriminated against on the basis of sexual orientation, marital status, race or religion.

How the laws fit diverse rainbow families

This kit describes the current laws most relevant to rainbow families, prospective parents, donors and surrogates. It outlines how these laws might impact on the choices that people make about creating families, and provides additional information with regard to the emotional issues and medical procedures involved.

Rainbow families have always been very diverse. The structure of some rainbow families – such as those with three or more co-parents, or two dads who create their family through overseas surrogacy – are not reflected in the current laws, as we describe in the relevant information sheets. However, there are legal mechanisms, such as court parenting orders by consent, that can legally recognise and protect the relationships between children and adults other than their legal parents. If your situation (whether you have an existing family or are planning to create one) is complex in this sense, we advise that you speak with Births, Deaths and Marriages and/or seek legal advice.

Definitions of terms used

Rainbow families use a wide range of terms to describe themselves and their relationships. Language is powerful, in terms of people's understanding of their own role, and the expectations of others in their community and society. It is critical to be precise about

language in relation to people in and connected with rainbow families. In this kit we use terms that fit most meaningfully with how most rainbow families describe themselves, but which are also *legally clear*. However, our language is not necessarily the same as that used in the relevant Victorian and federal legislation. Below we define the key terms, as we use them in this kit:

Parent: an adult who *in fact* bears parental responsibility for a child. This includes the birth mother and non-birth mother (for lesbian couples who are parents) and the biological and/or non-biological father (for gay male couples who are parents), even when they are not currently recognised as legal parents, for example if their child/ren were conceived via overseas surrogacy. We generally refer to parents in co-parent families as 'co-parents', regardless of who is recognised as the legal parents (see the information sheets). We do not use this term for a donor, although we acknowledge that some donors call themselves a 'father' and are called 'Dad' or equivalent for children for whom they donate.

Co-parent/s: two or more adults, not in a couple, who share significant parenting responsibilities. However, children cannot have more than two legal parents, and who those are depends on whether the child was born prior to the recent reforms and who is listed on the birth certificate (see the information sheets).

Birth mother: a woman who gave birth to a child, intending to parent them, who is their legal parent.

Non-birth mother: a woman who is a parent, who did not give birth to her child/ren; the domestic/de facto (see below) partner of the birth mother, who consented to the procedure that led to the child's conception, with the intention of being the child's parent; their legal parent, except for children born before the reforms who are not listed on the child's birth certificate, although certificates can now be corrected (see information sheet 'Recognition of pre-existing families'). We use the phrase 'the mothers' or 'both mothers' to mean the birth mother and the non-birth mother.

Mother: a woman who is a parent (a birth mother or non-birth mother), who is usually recognised as the legal parent. The exception is non-birth mothers of children born before the reforms who are not listed on their child/ren's birth certificate, although certificates can now be corrected (see information sheet 'Recognition of pre-existing families'). When we use the word 'mother' we do not mean a surrogate or egg donor, although the Victorian ART Act uses the term 'surrogate mother', and surrogate is the child's legal mother until the substitute parentage order is processed and the commissioning parent/s become the legal parent/s. Also, some rainbow families might choose to refer to their surrogate or egg donor as a 'mother', although neither is a legal parent (once the substitute parentage order is processed – see information sheets for prospective gay male parents and prospective egg surrogates).

Domestic/de facto partner: both Victorian and federal law recognise lesbian couples as parents if they were in a partnership at the time of conception and the non-birth

mother consented to the conception (see below). Victorian law uses 'domestic partner' for same-sex and unmarried heterosexual couples, which generally includes a requirement that the couple live together 'on a genuine domestic basis', although couples who do not live together can also be recognised as domestic partners if their relationship is registered, or they provide 'personal or financial commitment and support of a domestic nature for the material benefit of the other'. The federal *Family Law Act* uses 'de facto partner', which also generally includes the requirement of living together or having a registered relationship (in their state), but also considers how long you have been together or lived together, whether you are sexual partners, financial inter-dependence, responsibility for children and so on. See the Acts (online) for details.

Biological father: a man who is an actual parent (legally recognised or not, see above), who contributed his sperm for the child's conception. We generally refer to parents in co-parent families as 'co-parents', regardless of who are the legal parents (see the information sheets). We do not use the terms 'father' or 'biological father' for a donor, but acknowledge that some known donors call themselves a 'father', and are called 'Dad' or equivalent by the child/ren for whom they donated, although they are not their legal or actual parent/father in the sense these words are used here.

Non-biological father: a man who is a parent (legally recognised or not – see above under 'parent') who did not contribute his sperm to the child's conception. This includes both legal parents, such as a member of a gay couple whose child was conceived via altruistic surrogacy in Victoria. It also includes members of gay couples whose children were conceived via overseas surrogacy, although Australian law does not currently recognise them as their child's legal parent. We also use this term for men who have a parenting role in co-parent families with single women or lesbians, but specify in the relevant section that these men are not legal parents under current law. Not a known donor or the partner of a donor (see under 'father').

Father: a man who is an actual parent (legally recognised or not, see above), not a donor. We do not use the terms 'father' for a donor, but acknowledge that some known donors call themselves fathers, and are called 'Dad' or equivalent by the child/ren for whom they are a donor, although they are not their legal or actual parent/father in the sense these words are used here.

The commissioning parent/s or couple; a couple or single person who engages in an arrangement with a surrogate to bear a child for them to raise. In Victoria this must be altruistic (unpaid) and also involve a known egg donor. The legal parents, once the substitute parentage order is processed, for altruistic surrogacy in Victoria. Overseas surrogacy can be paid, and might involve an egg donor (known or anonymous) or not. Parents whose children are conceived via overseas surrogacy are not recognised as their children's legal

parents under current federal or Victorian law.

Surrogate: a woman who carries and gives birth to a child with the intention that another person or couple (the commissioning parent/s) will raise that child. The Victorian ART Act calls her the 'surrogate mother'. However, she is only a legal parent under the substitute parentage order is processed, transferring legal parentage from the surrogate (and her partner if she has one) to the commissioning parent/s.

Egg donor: a woman who donates her egg, in the context of this kit usually in the context of a surrogacy arrangement between a gay couple or single man and a surrogate. Egg donors are generally known to the person or couple.

Clinic-recruited donor: a man who is a sperm donor recruited by a fertility clinic, to donate to clients of the clinic. There are currently no clinic-recruited egg donors. Victorian law and federal law are clear that a donor is not a legal parent, and refer to him as 'a donor'.

Known (sperm) donor: a man who is a sperm donor, known to the lesbian couple or single woman (in most cases, in the context of this kit), who donates to them through a directed donation made at a clinic, or via home insemination with fresh sperm. Victorian law and federal law are clear that a known donor is not a parent, and refer to him as 'a donor'. We do not use the terms 'father' or 'biological father' for a donor, but note that some known donors call themselves a 'father', and might be called 'Dad' or equivalent by the child/ren for whom they donated, although they are not their legal or actual parent/father in the sense these words are used here. Some gay men who are partners might both be 'donors' to a woman or couple. This might reflect their social role, or conception might be actually attempted with both men's sperm (for example, on alternate cycles, or for subsequent children in a family)

Home insemination: also called 'self-insemination' – attempted conception outside a clinic through insemination using fresh semen or frozen, screened sperm.

Treatment procedure/artificial conception procedure: a procedure, carried out in a clinic or through home insemination – not sexual intercourse – with the aim of conceiving a child. The former term is used in the ART Act, and the latter in the *Family Law Act*. Clinic procedures include donor/intra-uterine insemination, in-vitro fertilisation (IVF) and surrogacy.

What else is in this information kit?

- Recognising pre-existing families
- Options for prospective lesbian parents
- Options for prospective gay male parents
- Options for prospective sperm donors, egg donors and surrogates
- Donor information and registers
- Resources and links

Recognising pre-existing families

People were creating rainbow families long before the Victorian *Assisted Reproductive Treatment Act 2008* (the ART Act, in place since 1 January 2010) and a raft of federal law reforms (which came into effect in 2008 and 2009) allowed them to do so without legal discrimination. These new laws mean that most same-sex parented families can now be legally recognised.

About this kit

This kit makes many references to what might happen if relationships break down, whether between couples, between parents and donors, or between co-parents. This is not because conflict is necessarily more likely to happen in rainbow families than in any other. It is because this is what much of family law, in particular, is about: what should happen if things go wrong.

However, it is also important to acknowledge that while same-sex parents have been successfully raising children for decades, our diverse family formations are in many ways still relatively new, and the law is still coming to terms with them. As a result, parents, co-parents and donors can be vulnerable to confusion and differing expectations, which can sometimes contribute to conflict. Every family has issues to talk through from time to time, but only a tiny proportion need to attend mediation or family court. Yet it is important to understand the relevant laws, not least because they might influence how people go about creating and recognising their families.

Lesbian couples with children conceived before the reforms

Victorian law

Lesbian couples are now assumed to be their children's legal parents, provided they were in a 'domestic partnership' (the Victorian legal equivalent of what federal law calls a 'de facto' relationship – see below) and the non-birth mother consented to the 'treatment procedure' (including home insemination) that resulted in conception. This includes couples who separate prior to the birth. This recognition extends to grandparents and other relatives of the non-birth mother. The Victorian *Status of Children Act 1974* states that a child's donor, known or clinic-recruited, is not a parent (see below).



Lesbian couples with children conceived before the reforms came into effect can now amend their children's birth certificates to recognise both mothers. The birth mother is listed as 'mother' and the non-birth mother as 'parent'. Birth certificates provide important documentation to assist with, for example, giving consent for medical treatment or school excursions. Children of the same parents can also have older siblings recognised on their birth certificates.

If you previously listed your donor under 'father'

Prior to the ART Act coming into effect, people made all sorts of choices around birth certificates. Some chose to list only the birth mother. If that applies to you, you simply need to fill in a form at the Victorian Registry of Births, Deaths and Marriages (BDM) and sign a statutory declaration that the non-birth mother consented to the 'treatment' that resulted in conception.

Some people chose to list their known donor on their child/ren's birth certificate under 'father'. For children conceived and born after the reforms, this is no longer a legal option. The only people that can be listed on a child's certificate are their legal parents; the birth mother and her partner, if she has one. To list anyone else, under the current law, is to make a 'false declaration'.

If you listed your child's donor on their birth certificate prior to the reforms, he is assumed to be the legal parent, not the non-birth mother. However, the ART Act allows you to correct the certificate by removing his name and listing the non-birth mother (she will be listed as 'Parent') – you cannot list all three as a child cannot have three legal parents. Legally, the birth certificate should represent the actual situation, which is that the mothers are the parents (in that you have the parenting responsibilities), and your child/ren's donor (whatever level of contact he might have with your family) is a donor. You need a County Court order to change the certificate, and your donor's consent is not required. We strongly advise that you speak to BDM before taking any action toward seeking an order.

Your donor will be listed as the child's donor in their birth record at the Registry of Births, Deaths and Marriages (BDM), but not on their birth certificate. Contact BDM to find out about the process.

It is important to seek legal advice if it comes to a dispute. Although Victorian law states clearly that a donor is not a parent, the federal *Family Law Act* also presumes a person listed as a parent on a child's birth certificate is their legal parent. This can be 'rebutted' (argued against) in court, based on the non-rebuttable presumption (also in the *Family Law Act*) that a non-birth mother who fits the criteria (see below under federal law) is a legal parent, but this contradiction in the legislation is yet to be tested in court. Also, courts take legal parentage as only one factor in deciding on things like who should live with, make decisions for, and have contact with a child. See the information sheet on 'Options for prospective lesbian parents' for more on what happens if relationships break down.

Even if he is not listed on the birth certificate, your donor might well have a role in your child/ren's life. If desired, you might explore the idea of recognising this role through court parenting orders by consent.

Federal law

The federal reforms included amendments to a number of laws, including those covering maintenance, child support, parental rights and responsibilities, social security, tax, Medicare and superannuation.

Since November 2008, federal law has automatically recognised lesbian couples as their children's legal parents, provided that the couple were in a 'de facto' relationship at the time, and that the non-birth mother consented to an 'artificial conception procedure' (including home insemination) that resulted in conception. The donor (known or otherwise) is assumed not to be a parent, where the intention was for the non-birth mother to be a parent. See above for possible complications, if the donor was listed as a 'father' on the birth certificate. The federal changes are retrospective; that is, they apply regardless of whether your child was conceived before or after they came into effect.

This means, for example, that if your relationship breaks down, both mothers remain equal legal parents, with responsibilities including maintenance and child support. Many more rights and responsibilities arise from these reforms – see below for where to find out more about the federal reforms. See the information sheet on 'Options for prospective lesbian parents' for more on what happens if relationships break down.

Families with more than two parents (co-parent families)

Some rainbow families include three or more parents who share significant parenting responsibilities. At present, neither Victorian nor federal laws allow for equal recognition of more than two legal parents.

Since the reforms, a child's legal parents are their birth mother and her partner (if she has/had one at the time of conception – see above). The exception is where a child is conceived through sex between the biological mother and father, in which case they are the legal parents and the non-birth mother (if there is one) is not. Thus, for children born after the reforms, only the birth mother and her partner (if she has one) can be listed on the certificate, as the legal parents. To list anyone else is to make a false declaration.

Historically, co-parent families might have chosen to list the birth mother only, or the birth mother and biological father on the birth certificate. If the latter applies to you, the biological father is presumed to be the legal parent, not the non-birth mother, unless the certificate is changed by County Court order. If you wish to change the certificate, refer to the above procedures for families who listed their donor under 'father'.

Many co-parent families have historically chosen to list the birth mother only on the birth certificate, and sought parenting orders for other co-parents. One reason for this is because listing the biological father on the birth certificate would have created implications for social security, tax and other matters that may not have fitted the family's needs. It is important to note that if a conflict arises, legal parentage (reflected on the birth certificate) is only one factor in determining the outcome. A court can award full residence and parenting responsibilities to parties other than the legal parents. For more discussion, look under 'If relationships break down' in the sheets for prospective lesbian and prospective gay male parents, and seek legal advice.

You should also seek legal advice as to which adults in your family situation (even if there is no dispute) require court parenting orders to legally recognise their parenting role/s. All parties who have parenting responsibilities under court order are, along with a child's legal parent/s, required to give their consent for a child to obtain a passport. Parenting orders can include most of the rights and responsibilities of legal parentage, but end at age 18, and don't include things like inheritance and superannuation in most situations. So it is important for those who require parenting orders to, for example, ensure they specifically recognise children in their wills and seek legal advice about choices in relation to making financial provision for children (including a choice not to make provision, which may be subject to legal challenge in very limited circumstances, even if you are not a legal parent).

Gay male couples with children conceived via overseas surrogacy

The ART Act opened up 'altruistic' (unpaid) surrogacy in Victoria as an option for gay men to become parents, and allowed for recognition of parents (including both partners in a gay male couple) of children conceived this way. See the information sheet on 'Options for gay male prospective parents' for details.

Commercial surrogacy is illegal within Australia. However, some gay couples and single men create families through overseas commercial surrogacy services. Some countries where this is available can provide birth certificates listing both fathers, while others do not. Even where this is possible, this does not at present translate into legal parentage in Australia. Fathers whose children were conceived via overseas surrogacy – whatever their birth certificates state about parentage – currently require court parenting orders (see above) to recognise the parenting role of both the biological and non-biological father in Australia. These orders would continue (although they may need some amendment) if a couple separates. Refer to the information sheet on ‘Options for prospective gay male parents’ and Gay Dads Australia’s website for details (see the sheet ‘Resources and links’).

Sole parents

If you are a single woman who conceived a child with a donor – clinic-recruited or otherwise – then you might well be raising them on your own, without your donor’s involvement. Since the recent reforms, Victorian law, in the *Status of Children Act*, is very clear that a donor is not a father or parent, whether he is involved in your child’s life or not. However both Victorian and federal law come into play, should there be a dispute between you and your known donor. The federal *Family Law Act* is ‘silent’ on the question of donors to single women, only severing the parental status of donors where there is an ‘other intended parent’.

It is possible, if a dispute reached court, that your donor might seek to be recognised as a legal parent. It is yet to be tested what a court would decide if this was the case. This does not mean that a court would grant your donor parental responsibilities, especially if he has never had them. Legal parentage is only one factor in a court’s decision about issues like who should have contact with, live with and make decisions for a child. However, it is possible that even if a court did not grant parental status, they might grant your donor some contact with your child should he seek it. We highly recommend you seek legal advice on this issue.

If you are a sole parent, male or female, and you enter a same-sex relationship after your child’s conception, your partner is not considered your children’s legal parent. He or she can be recognised as a step-parent (see below under step-parents) and their role can be recognised through a court parenting order. Should there be a dispute, he or she can apply for such an order, as a ‘significant person’ in the child’s life.

If you conceived your child/ren in a lesbian relationship where the non-birth parent consented to the treatment resulting in the conception of a child, but are now separated, you are both recognised as the child’s legal parents. Seek advice from Births, Deaths and Marriages to find out more.

Families that include step-children

If you began your same-sex relationship after your children were conceived (whether in a previous relationship or as a sole parent), then the non-biological parent can be recognised as a step-mother or step-father, just like step-parents in heterosexual relationships. Step-parents’ rights and responsibilities are covered by federal law, and are not equal to those of legal parents – see below for where to find out more. The best option for legally recognising a step-parent’s role is a court parenting order (see above under co-parent families for more about orders by consent).

The ART Act came about through a five-year enquiry by the Victorian Law Reform Commission. The Commission made recommendations to reform adoption laws to allow same-sex couples to apply for adoption. The Victorian government referred the adoption recommendations of the Victorian Law Reform Commission to a federal committee in December 2007. At present, most forms of same-sex adoption – including step-parent adoption – are still not allowed in Victoria. If this changes, step-parent adoption may be an option for children who have one legal parent.

The Victorian Department of Human Services recommends against step-parent adoption for children who already have two legal parents (for example from the biological parent’s prior relationship). Research shows that for these children, parenting orders are often a better option for recognising their same-sex step-parent. This is because step-parent adoption severs children’s legal relationship with their former parent and extended family, removing their inheritance rights, and potentially leave them with an incomplete sense of their origins and history. See the end of this sheet for where to find out more about this issue.

Families that include children being fostered or on permanent care orders

Some foster care agencies have long recognised that gay, lesbian, bisexual, transsexual, intersex and queer (GLBTIQ) people, coupled or single, can provide loving, stable homes for children requiring short or long term care. Many same-sex couples and single people (including many who already have biological children) welcome children needing foster care into their families. But what if a child on a permanent care order becomes available for adoption?

At the time of writing, same-sex couples are not permitted to adopt in Victoria. The *Adoption Act* 1984 does, however, make provision for ‘individual’ people to adopt ‘only in special circumstances’. The definition of special circumstances has until recently only been granted to single people who wish to adopt a relative, and in one case a lesbian foster carer who sought to adopt a child with extreme ‘special needs’. In August 2010, a Victorian judge ruled in favor of one member of a gay male couple, who – with his partner – had been the long term foster carers of a child. In this case the

child's birth parents relinquished the child, and had no opposition to the carer adopting the child. Rainbow Families Council is hopeful that this case will help set a precedent for one half of a gay or lesbian partnership – or a single gay or lesbian person – to adopt a child who is in their care, although each case is decided on its particular circumstances.

Rainbow Families Council hopes that the Victorian government will act on the recommendations of the Victorian Law Reform Commission enquiry to extend the eligibility definition to include both members of a same sex couple and single people specifically. We also hope they will permit all GLBTI people or single applicants to apply for all forms of adoption – including inter-country, infant, familial – and the adoption of foster or permanent care children. We note that the Victorian Government has committed to continuing work on this issue through existing national processes and a review of the *Adoption Act* 1984.

Gay and lesbian foster carers, permanent carers and kinship carers in Victoria are eligible to join the Gay and Lesbian Carers Support Group, which provides information, telephone support and social opportunities for gay and lesbian carers and their children. See the end of this sheet for contact details.

Registering donor information: children's right to know their origins

A guiding principle of Victorian law is that children conceived through donation and surrogacy in Victoria have the right to know their donor origins. Historically, parents in rainbow families have tended to be much more open about their children's donor origins than heterosexual parents. After all, same-sex couples and sole parents clearly require some assistance to conceive their children!

The Victorian Registry of Births, Deaths and Marriages (BDM) is responsible for managing information about children's births and their donor information. For children conceived using Victorian fertility services, BDM receives their donor information from the treating doctor or clinic. Those who conceive via home insemination, for example, must give BDM this information themselves — the parents through the Birth Registration Statement and the donor through a letter. See the information sheet 'Donor information and registers' for more about what is required, and who can have access to donor information.

If your children were conceived outside a clinic before the ART Act came into effect on 1 January 2010, you are legally obliged to provide information about their donor origins to BDM. If you have not previously done so, you should do so now. Please refer to the information sheet on 'Donor information and registers', about how donor information is lodged, stored, managed and released.

Disclaimer

Rainbow Families Council produced this information kit in October 2010. We have made every effort to ensure the kit is correct, but accept no liability for information given. Information will be regularly updated on our website. We strongly advise that you seek medical and legal advice and specialist counselling relevant to your specific situation.

Find out more about:

- the federal reforms affecting same-sex couples and parents at www.wearitwithpride.com.au and at the www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_SameSexReform
- step-parents' legal rights and responsibilities from your local legal service or Step-parenting Australia at the Drummond Street Centre, www.dsrc.org.au.
- the potential impact of step-parent adoption, should it become legal: search on "stepchild adoption" on the Victorian Government's Children, Youth and Families website, www.cyf.vic.gov.au.
- registration and management of donor information under 'Donor registers and information' in this kit, or from Births, Death and Marriages. Phone 1300 369 367 or visit their website: Google 'Victoria births deaths and marriages', click on 'Births', and then 'Donor treatment registers'.
- joining the Gay and Lesbian Carers Support Group, for gay and lesbian foster carers, permanent carers and kinship carers in Victoria, by contacting Tracey on 0427 811 186.
- The Council for Single Mothers and their Children at www.csmc.org.au.
- Telling a child about their donor origins The Victorian Assisted Reproductive Treatment Authority, about telling, www.varta.org.au. VARTA's *Time to Apply?* brochure covers making an application to the donor registers including personal stories

What else is in the Rainbow Families and the Law Information Kit?

- Introduction and definitions
- Options for prospective lesbian parents
- Options for prospective gay male parents
- Options for prospective sperm donors, egg donors and surrogates
- Donor information and registers
- Resources and links

Options for prospective lesbian parents



When a lesbian couple or single woman starts thinking about trying for a family, there are lots of issues to consider. Many relate to how you conceive: clinic-recruited or known donor, or are you interested in co-parenting? If you choose a known donor or co-parent, what role might he (and perhaps his partner) have in your family life? Would you consider fostering?

Thinking it through

Many factors will influence the decisions you make. The main ones fall into two groups: the relevant laws, and your personal values and circumstances. Below we touch on some key points to consider. In the following sections we outline what is involved with various options for attempting conception, look at how parentage is recognised, list issues to consider when making agreements with known donors and co-parents, and briefly discuss what can happen if relationships break down. We finish by mentioning fostering – another option for welcoming children into your family.

This kit makes many references to what might happen if relationships break down, whether between couples, between parents and donors, or between co-parents. This is not because conflict is necessarily more likely to happen in rainbow families than in any other. It is because this is what much of family law, in particular, is about: what should happen if things go wrong.

However, it is also important to acknowledge that while same-sex parents have been successfully raising children for decades, our diverse family formations are in many ways still relatively new, and the law is still coming to terms with them. As a result, parents, co-parents and donors can be vulnerable to confusion and differing expectations, which can sometimes contribute to conflict. Every family has issues to talk through from time to time, but only a tiny proportion need to attend mediation or family court. Nevertheless, it is critical to understand and talk through the implications of the relevant laws, not least because it might influence how you go about creating your family.

All that being said, having children is one of most wonderful, heart-expanding experiences in the world, and we wish you the very best with your journey!

Victorian and federal laws

The Victorian *Assisted Reproductive Treatment (ART) Act 2008* (in effect since 1 January 2010) gave lesbians and single women equal access to fertility services without the need to prove ‘medical infertility’. In particular it opened up access to donor insemination using clinic-supplied donor sperm, or stored and screened sperm from your known donor or co-parent.

In addition, the ART Act recognised lesbian couples as equal legal parents of their child/ren, provided they were in a ‘domestic partnership’ (the Victorian legal equivalent to what federal law calls a ‘de facto’ relationship, although the criteria might differ slightly) and the non-birth mother consented to the ‘treatment’, including home insemination, that resulted in conception. If you conceive with a donor (known or clinic-recruited), he is presumed **not** to be the child’s father, unless you conceived through sex with him. Victorian law also protects children’s right to information (stored by the Victorian Registry of Births, Deaths and Marriages) about their donor at age 18, or earlier with parental consent or once assessed as sufficiently mature by a counselor.

When considering your options for donor conception, it is important to know how family law works in Australia. You will be your child’s legal parents, but anyone with ‘an interest’ in a child’s welfare (such as a grandparent, step-parent or known donor) can apply for a court order creating contact or other arrangements with regard to the child. You can make your own written agreement with your donor about issues like how much time he spends with the family, and we recommend that you do. But these agreements are not legally binding, should there be a dispute. You cannot make a legally-enforceable contract or agreement (written or verbal) about a child.

A court will always act in what they consider a child’s best interests. They cannot change the legal parentage of a child (except in the case of surrogacy and adoption) but if they consider it in a child’s best interests, they could grant contact, and in some cases even some parenting responsibilities, to a donor.

The situation for women who choose to co-parent with a man (and his partner if he has one) is potentially even more complex – see below under ‘Legal parentage and other roles’ in this information sheet.

Your values and circumstances

Only you can decide how to create your family. Personal values and circumstances play a big role. Who do you think should be involved in raising children? Do you know a man suitable to ask? Do you think children should ideally grow up having a relationship with the man who contributed to their genetic makeup, or are you happy with your child being able to contact him, if they want to, at age 18 or earlier?

Some women want to welcome others into helping raise their children, and decide to explore co-parenting. Some women decide to welcome a known donor (and his partner, and perhaps his extended family) into their lives, with contact varying from occasional to significant time together. Many start with an agreement to minimal contact, but an openness to seeing (and a process for deciding) where the journey might lead them. See below under ‘Known donors: making decisions and writing agreements’ for some issues to consider.

Other women decide that they don’t want to bring other adults into their family – that one or two loving mothers (and any extended family) are all the family their children need. Some decide this because they do not know a man who is suitable, with whom they have a close or trusting enough relationship. Some women ask the brother of the intending non-birth mother.

Any of these decisions is legitimate. The most important thing is that you base your choices on your own values. Try not to let fear – of what might happen, or of what other people might think – dictate this critical life decision. In particular, try to challenge the idea (even within yourself) that ‘all children need a mother and a father’. Three decades of rigorous Australian and international research show that children of same-sex parents are not disadvantaged, and are in some ways – such as in their capacity for empathy – better off! See below under ‘Known donors: making decisions and writing agreements’ for more issues to consider.

Lesbians have been creating and raising families in many ways for many years, and will continue to do so. Victorian children of lesbian couples now have legal equality. Social attitudes have also improved immeasurably, and this is increasing as our numbers and diversity grow.

That old biological clock

Another issue for women to consider is that of fertility and their age. It is important to be aware that women’s fertility decreases at a sharp rate after the age of 35.

Although some women do conceive after age 40, others cannot. There are also a variety of other reasons why conception might not be as straightforward as you hope, or might not even succeed. If you are a couple and one of you cannot conceive, hopefully the other can. However we strongly advise that you do not delay trying for a family for too long (while certainly not rushing processes like finding the right donor), or seeking further medical advice if conception is proving difficult.

Conception with a clinic-recruited donor

First steps

If you decide to attempt conception with a clinic-recruited donor, your first step will be to visit your GP for a referral to a fertility clinic. If you can (for example through a support group such as Prospective Lesbian Parents – see the ‘Resources and links’ information sheet) ask around about which specialists have experience working with same-sex couples.

Before receiving fertility services, Victorian law requires all potential clinic patients to go through a number of procedures (the clinic will assist you with these):

- a police check, to ensure neither of you has ever been convicted of a violent offence or charges have been proven against either party in relation to a sexual offence
- a child protection order check, to ensure neither of you has had a child removed from your care, and
- clinic counselling, to ensure you both understand the implications of donor conception and consent to the procedures involved.

An overseas police check is required if either party has resided overseas for a consecutive 12 month period in the past 10 years. There is a presumption against treatment for anyone who does not pass the police and child protection checks and treatment must not be provided. If barred, you can appeal to the Patient Review Panel, and subsequently to the Victorian Civil and Administrative Affairs Tribunal.

The intending birth mother is also required to undergo a series of medical checks, including basic fertility checks and blood tests, including for HIV.

Choosing a clinic donor

Since the ART Act passed, some clinics have recruited new donors, including gay donors. A maximum of ten women (not families) may conceive with each donor, which can disadvantage couples hoping to both be birth mothers using the same donor. If this applies to you, let the clinic know; they are likely to try to help you to select a donor with whom this will be possible.

Clinic-recruited donors are health screened, counselled and give consent to the use of their sperm, to relinquishing all parenting rights to any child/ren conceived, and to releasing of their identity to the child at age 18, or beforehand with parental permission or if the child is assessed as sufficiently mature by a counsellor. The donor's consent for use of their sperm lapses after a maximum of ten years, or earlier if specified by the donor. You might be able to import sperm from overseas or interstate sperm banks, provided it meets the requirements of Victorian legislation: that it was not obtained commercially, identifying details of the donor are available, and the donor has been counseled by a counsellor providing services for a registered ART provider. You need permission from VARTA to import sperm – see www.varta.org.au for more information about the guidelines for import or export of donor gametes (egg or sperm) or donor-produced embryos.

Options for attempting conception

The recent reforms gave equal access to lesbian couples and single women to a range of fertility treatments in Victoria, without being 'medically infertile'. For many women, attempting conception at a clinic will probably begin with simple fertility testing, tracking of your cycle and intra-uterine insemination, or IUI. If, however, you are older (generally 40 or above) or have compromised fertility for some other reason (diagnosed, or unknown but demonstrated by previous unsuccessful conception attempts) the clinic might recommend further testing and treatment, such as via pharmaceutical support for ovulation or IVF (see below under 'When insemination is not working'). If you begin with IUI but are unsuccessful, the clinic is likely to recommend testing and further treatment. Some women require the services of a surrogate to have a baby. Please refer to the information sheets on 'Options for prospective gay male parent' (who are more likely to use surrogacy) and 'Options for prospective sperm donors, egg donors and surrogates' for more information.

Your child/ren's donor information

A guiding principle of Victorian law is that all donor-conceived children have the right to know their biological origins. Historically, same-sex parents have tended to be much more open about their children's donor origins than heterosexual parents. After all, same-sex parents clearly require some assistance to conceive their children!

The Victorian Registry of Births, Deaths and Marriages (BDM) is responsible for registering information about children's births and their donor information. If you conceive via a Victorian clinic, they will pass on the donor information to BDM. Please refer to the information sheet on 'Donor information and registers'

for information about how your donor information is lodged, stored, managed and released.

Contact before age 18 and the legal status of donors

The Victorian *Status of Children Act*, and the federal *Family Law Act* establish that a donor is not a legal parent. In the case of the federal law, this applies when conception occurred there was an 'other intended parent' – see below for what this could theoretically mean for single women. The ART Act also says that clinic donors can obtain identifying information about children conceived using their sperm once the child is over 18, but consent is required from the parent before the child is 18, or donor-conceived person once they are 18, before the donor can receive this information. Non-identifying information can be released to all parties without consent. Identifying information about the donor can be released to parents with donor consent, and to the child without consent once the child turns 18, or beforehand with parental permission or if a counselor assesses them as sufficiently mature.

Some parents want their children to have the option of finding out about and/or contacting their donor before 18 if they wish. You may also be able to contact other families who used the same donor. Research indicates that some donor-conceived children are very interested in this information in their early teens or even younger. Some families have made such contact, to their children's benefit.

It is important to know the possible legal ramifications of having ongoing contact with a donor. Most (but not all) clinic-recruited donors are happy to meet, if a child or family wishes. Some are not interested in ongoing contact. Some might want to have ongoing contact, and you might also want that. If not, and it came to a dispute in court, it is possible that a court would grant the donor some contact with your child. It is important to know how family law works in Australia. You will be your child's legal parents, but anyone with 'an interest' in a child's welfare (such as a grandparent, step-parent or known donor) can apply for a court order creating contact or other arrangements with regard to the child.

The issue is potentially more complex for single women. Since the recent reforms, Victorian law, in the *Status of Children Act*, is very clear that a donor is not a father or parent. However both Victorian and federal law come into play, should there be a dispute. The federal *Family Law Act* is 'silent' on the question of donors to single women, only severing the parental status of donors where there is an 'other intended parent'.

If you had contact with your donor, he might, if a dispute reached court, seek to be recognised as a legal parent. It is yet to be tested what a court would decide if this

was the case. This does not mean that a court would grant your donor parental responsibilities, especially if he has never had them. Legal parentage is only one factor in a court's decision about issues like who should have contact with, live with and make decisions for a child. However, it is possible that even if a court did not grant parental status, they might grant your donor some contact with your child should he seek it. We highly recommend you seek legal advice on this issue.

While you need to be aware of the relevant laws should there be a dispute, it is also important to recognise that the motivations of clinic-recruited donors are very altruistic, and they are, in practice, very respectful of the wishes of parents and donor-conceived people.

Conception with a known donor or co-parent

Options for attempting conception

If you choose to conceive with a known donor or co-parent, you have three options for attempting conception: home insemination using fresh semen; home insemination using screened, stored sperm; and clinic-based insemination using screened, stored sperm.

Home insemination with fresh sperm

One advantage of home insemination with fresh semen is that it is free, apart from the costs of health screening. Fresh semen has a higher sperm count and lasts longer (inside your body) than frozen. Using it often means you can attempt conception over a number of your fertile days during one cycle, further increasing your chances of conception. There is additional information about techniques for successful home insemination in the resources listed at the end of this information sheet; they can really make a difference, so find out everything you can before you begin, including from other women.

Your donor/co-parent should be tested for gonorrhoea, chlamydia, HIV, syphilis, Hepatitis B and Hepatitis C and CMV (cytomegalovirus), plus blood group and antibody tests. It is also worth him having his sperm tested before you begin, as problems are not uncommon. All of these tests can be arranged by his GP. If he has problems with his fertility, this does not necessarily mean he cannot be your donor/the biological co-parent, but you are unlikely to succeed with home insemination. A fertility specialist can tell you what are options are.

The prospective birth mother should also have the recommended pre-pregnancy checks, including a pap test and HIV, rubella, blood group and antibody tests. Talk to your GP for more information about these and other aspects of preparing for pregnancy, including understanding your cycle and the timing of ovulation. Find out as much as you can about other aspects of successful home insemination. See the resources

suggested at the end of this information sheet. You can do much to support your chance of conception; for example, there is good evidence that specialist acupuncture can help.

Some women choose home insemination because it is less medical and more private. But if you use fresh semen, the logistics can be challenging, as semen should be used within an hour of (but not straight after) ejaculation. Using fresh semen may also be less safe if your donor has had any risk of infection since his last screening test. It can be challenging to talk to your donor about repeating his screening tests if he or his partner have had any risk of infection, but it is critical that you do so, as there are implications for your own health and that of the baby. These issues, along with lack of availability of the donor/biological co-parent are the main reasons why people choose to use frozen sperm from their donor instead.

Home insemination with screened, stored sperm

Melbourne IVF Clinic also offers a service where your donor/co-parent can donate his sperm to you through the clinic, which then provides you with his screened, stored sperm for home insemination. The clinic will conduct all health checks, quarantine the sperm for six months (to cover the 'window period' for HIV testing), and provide frozen sperm for you to take home. You can still inseminate at home, but do not have to coordinate with your donor/co-parent, or ask him to update his screening tests. This option means becoming clients of a clinic – see above for procedures (including checks, counseling and consents) involved. It also costs (approximately \$1000 per cycle at the time of writing), especially as Medicare does not cover fertility services not medically required. Contact the clinic for details.

Your donor/co-parent (and his partner, if he has one) will undergo clinic counseling both with, and separate from you. He will fill out questionnaires about his medical background, see a medical specialist, and give consent to the procedures involved. The law no longer requires the donor's partner to give their consent as well, although some clinics may require this, because openness about the process with all members of the donor's family is now widely recognised as important to a good outcome for them. Some counsellors will also take you through issues around your donor/co-parent's (and his partner's) potential role in your family life. See 'Making an agreement', below, for an outline of such issues.

Clinic-based insemination with screened, stored sperm

The third option is clinic-based insemination using your donor/co-parent's sperm. Aside from the advantages related to health screening and not having to coordinate with your donor/co-parent, this option means the clinic will conduct some basic fertility tests, and help track your cycle. A clinic can also do 'intra-uterine'

insemination, inserting sperm directly into your uterus, which increases your chance of conception (but is not safe to do at home). However, Medicare will not cover clinic-based insemination unless there is a medical reason (such as trouble with ovulation).

Note that Victorian clinics can screen and store your known donor/co-parent's sperm even if he lives interstate or overseas. You may be able to get permission from VARTA (the Victorian Assisted Reproductive Treatment Authority) to 'import' his sperm into Victoria, if he cannot come here to donate. He is required to undergo counseling through your clinic, but some clinics are willing to do this over the phone.

When insemination isn't working; dealing with infertility

If you have had around six unsuccessful, well-timed attempts at conception, talk to your GP (if you are home inseminating) or the clinic about investigating your fertility. Depending on your age, how long you have been trying, and any medical issues identified, further treatment may be recommended, such as drugs to support ovulation, intra-uterine insemination (if you are not already using it) or in-vitro fertilisation (IVF). The out-of-pocket costs of IVF are considerably higher than clinic insemination (between \$1,000 and \$3,000 per cycle at the time of writing) but if you are undergoing IVF due to medical infertility, you are eligible for Medicare rebate (50% up to the Medicare threshold and 80% thereafter). Contact the clinics for details.

If there are ongoing problems with conception, or with miscarriage, it is possible that you and your donor would be required to undergo genetic testing. The fertility clinic will provide information and counselling support to assist you if this is needed.

It will be important for you to talk about the possibility of fertility treatment such as IVF in your initial discussions with your prospective donor. It is not uncommon, even for women under 35, to require assistance to conceive. It might well be that you and your donor (and his partner) have no issues with IVF, but it is important to talk it over before you begin trying to conceive, as it might be devastating for you if you needed IVF to conceive, and he was unwilling to be your donor under those circumstances. See below under 'Talking with your known donor' for more on this issue.

What about the 'natural way'?

Some women (and/or sometimes their prospective donor) might be interested in the idea of conception through sex between the donor and prospective birth mother. This is not advisable, partly because of the potential emotional complications for everyone involved, but also because of the legal ramifications. Victorian law, in the *Status of Children Act*, says that if your child is conceived through a 'treatment procedure',

including home insemination, then you (whether you are single or a couple) are their legal parent/s, and the donor is not, although his role in the child/s life can be legally recognised and protected (see below). But if he 'donates' by having sexual intercourse with the prospective birth mother to conceive, this makes him the child's legal parent, and not the non-birth mother, because children cannot have more than two legal parents. In one such case, a donor was successfully pursued for maintenance against the wishes of both the mothers and their donor.

Registering births and donor information

For births that after 1 January 2010, lesbian couples can both be on their child's birth certificate; the birth mother as 'mother' and the non-birth mother as 'parent'. To do so, they must complete a Birth Registration Statement (BRS). The hospital, medical facility or midwife will give you the BRS when your child is born. Children born to lesbian couples before 1 January 2010 can have their birth certificates corrected to add the non-birth mother; see the information sheet 'Recognising pre-existing families' for information.

A guiding principle of Victorian law is that children conceived through donation in Victoria have the right to know their donor origins when they reach the age of 18, or before with parental permission or if found sufficiently mature by a counsellor. Historically, parents in rainbow families have tended to be much more open about their children's donor origins than heterosexual parents. After all, same-sex couples and sole parents clearly require some assistance to conceive their children!

The Victorian Registry of Births, Deaths and Marriages (BDM) is responsible for managing information about children's births and donors. For children conceived using Victorian fertility services, BDM receives their donor information from the doctor or clinic, and stored it in the Central Donor Registry. Those who conceive via home insemination must give BDM this information themselves – the parents through the BRS and the donor through a letter. This information is entered into the child's birth record at BDM (but is not listed on the birth certificate). See the sheet 'Donor information and registers' for more about what is required, and who can have access to donor information.

Legal parentage and other roles

Single women who conceive with a known donor

If you are a single woman who conceives with a donor, you might well plan to raise your child on your own, without their involvement. Historically, some women have chosen to list their known donor on their child's birth certificate. This is no longer a legal option. Since the recent Victorian reforms, only the mother (and her

partner if she has one) are the legal parents, and thus able to be listed on the birth certificate. To list your donor as a father is to make a 'false declaration'.

Although he is not listed on the birth certificate, your donor may still have a role, or some contact, in your child's life. You might explore the idea of recognising this role through court parenting orders by consent.

If relationships breaks down and a dispute comes to court, it is possible that a court would grant the donor some contact with your child. It is important to know how family law works in Australia. You will be your child's legal parent, but anyone with 'an interest' in a child's welfare (such as a grandparent, step-parent or known donor) can apply for a court order creating contact or other arrangements with regard to the child.

Since the recent reforms, Victorian law, in the *Status of Children Act*, is very clear that a donor is not a legal father or parent. However both Victorian and federal law come into play, should there be a dispute that comes to court. The federal *Family Law Act* is 'silent' on the question of donors to single women, only severing the parental status of donors where there is an 'other intended parent'.

It might be possible, if a dispute reached court, that your donor might seek to be recognised as a legal parent. It is yet to be tested what a court would decide if this was the case. This does not mean that a court would grant your donor parental responsibilities, especially if he has never had them. Legal parentage is only one factor in a court's decision about issues like who should have contact with, live with and make decisions for a child. However, it is possible that even if a court did not grant parental status, they might grant your donor some contact with your child should he seek it. We highly recommend you seek legal advice on this issue.

If you enter a same-sex relationship after your child's conception or birth, your partner is not considered their legal parent. She can be recognised as a step-parent, and her role can be recognised through a court parenting order if desired. Should there be a dispute, she can apply for a court parenting order as a 'significant person' in the child's life.

Lesbian couples who conceive with a known donor

If you are a lesbian couple who conceives your child with a donor, you are presumed to be their legal parents, provided you were in what Victorian law defines as a 'domestic partnership' and federal law a 'de facto relationship' at the time of conception, and the non-birth mother consented to the 'treatment procedure'/artificial conception procedure' that resulted in conception. Please note that this covers home insemination, but not sex with your donor. In the latter case, the donor is a legal parent, not the non-birth mother – children

cannot have more than two legal parents. A donor will not be held liable for child support or maintenance, and children have no rights to his estate or superannuation (except in very limited circumstances).

Recognition of lesbian parents includes couples who were together when a child was conceived, but separate prior to or after the birth. The recognition extends to grandparents and other family, who are now legally related to the child through the non-birth mother, for example in relation to inheritance rights.

Both mothers can now be recognised on Victorian birth certificates; the birth mother will be listed as 'mother' and the non-birth mother as 'parent'. Children can also now have older siblings who have the same parents recognised on their birth certificates. If you have children conceived prior to the *ART Act* came into effect, please refer to the information sheet 'Recognising pre-existing rainbow families' for how you can have their birth certificates corrected.

Since the recent reforms, only the birth mother, and her partner if she has one (the non-birth mother) can be parents, and therefore listed on the birth certificate. To list anyone else (such as a known donor) is to make a 'false declaration'. See 'Recognising pre-existing rainbow families' for how you remove a known donor's name from a certificate and insert the non-birth mother's name instead (you cannot list all three). See below for options for legally recognising the role of your child/ren's donor in your family's life.

What parentage means under federal law

The federal reforms that came in during 2008 and 2009 included amendments to a number of laws, including those covering maintenance, child support, parental rights and responsibilities, social security, tax, Medicare and superannuation.

Federal law automatically recognises lesbian couples as their children's legal parents, provided that the couple were in a 'de facto' relationship (as defined by the law) at the time, and that the non-birth mother consented to an 'artificial conception procedure' (including home insemination) that resulted in conception. The federal changes are retrospective; that is, they apply regardless of whether your child was conceived before or after they came into effect.

This means, for example, that if your relationship breaks down, you both remain equal legal parents, with responsibilities including maintenance and child support. Many more rights and responsibilities arise from these reforms – see below for where to find out more about the federal reforms.

The legal status of donors

Since the recent reforms, Victorian law, through the *Status of Children Act*, and federal law are clear that

a donor is not a legal parent, although as discussed, this is in the context of there being an other 'intended parent' (the non-birth mother). However, federal family law also allows for the recognition of relationships a child has with people other than their legal parents. Therefore, although the donor is not a legal parent and cannot be on the birth certificate, his role in your child/ren's life can be legally recognised, for example through a court order by consent (without a dispute having arisen), to cover things like the agreed level of contact. See 'Find out more about', below.

There are costs associated with consent order, and many families are happy with their own informal agreement, including a process for negotiating changes if needed, and for resolving any conflicts that may arise. It is a good idea to make your own agreement about the role your donor (and his partner, if he has one) will have in your family life, although such agreements cannot be legally binding. See below, under 'Known donors: making decisions and writing agreements' for issues your agreement might include.

In addition, children born via a fertility procedure (whether conceived via a clinic or home insemination) must have their biological origins registered by the Victorian Registry of Births, Deaths and Marriages. Thus the details of the child's biological father (legally the donor) will be included in the child's birth record (but not on their certificate) if they were conceived by home insemination, or in the Central Donor Register if their were conceived via a clinic.

As mentioned, family law allows anyone with 'an interest' in a child's welfare to apply for a court order creating contact or other arrangements with regard to the child. In the event of a conflict, a donor could seek such an order. See 'If relationships break down' below.

Couples and single women who conceive with co-parent/s

Some lesbian couples and single women are interested in co-parenting with their child/ren's biological father (and his partner, if he has one). Co-parenting means sharing all significant parenting responsibilities, such as living with the child (whether in one household or two) and making decisions about things like the child's education, spirituality/religion and daily life. See below for issues to explore around co-parenting.

At present, the law does not allow for equal recognition of more than two legal parents. Since the federal and Victorian reforms, a child's legal parents are the birth mother and her de facto/domestic partner at the time of conception, if she has one. The exception is where a child is conceived through sex between the biological mother and father, in which case they are the legal parents. Co-parents who are not legal parents can have their role legally protected through consent orders.

Some co-parent families have historically listed the biological mother and father on the birth certificate. This is no longer a legal option. To list anyone other than the legal parent/s – the birth mother and her partner if she has one – is to make a 'false declaration'.

Even before the law changed, many co-parent families chose to list the birth mother on the birth certificate, and seek parenting orders for the other co-parents. One reason for this is because listing the biological father on the birth certificate would have created implications for social security, tax and other matters that may not have fitted the family's needs.

It is important to note that if a conflict arises, legal parentage is only one factor in determining the outcome. A court can award full residence and parenting responsibilities to parties other than the legal parents. For more discussion, see 'If relationships break down' in the information sheets for prospective lesbian and prospective gay male parents, and always seek legal advice about the specifics of your situation.

You should also seek legal advice in regard to obtaining court parenting orders to legally recognise the role of co-parents who are not legal parents. People who have parenting responsibilities under court order are, along with the legal parent/s, required to give their consent for a child to obtain a passport. Parenting orders can include most of the rights and responsibilities of legal parentage, but end at age 18, and don't include things like inheritance and superannuation in most situations. So it is important for those who require parenting orders to, for example, ensure they specifically recognise children by name in their wills and seek legal advice about choices in relation to making financial provision for children (including a choice not to make provision, which may be subject to legal challenge in very limited circumstances, even if you are not a legal parent).

We recommend that each of the 'parties' – mother/s and father/s – seek separate legal advice on what will work for you all before making any decisions or attempting conception.

Known donors: finding a donor, making decisions and writing agreements

Finding a known donor

Some women explore the possibilities of creating a family with someone they have known for years – perhaps even a sibling or other relative of the prospective non-birth mother. Others find someone through friends, colleagues, support groups, personal advertisements or the internet. Think about your criteria for a donor, and think outside the square when making your list, including people you might have been close to earlier in life. Trust your instinct if you feel someone is not suitable, whether they were your suggestion, or your partner's. Take your time, and try not to feel rushed.

You must feel absolutely comfortable with this decision. If you initially feel that you would prefer a known donor, remain open to the possibility of a clinic-recruited donor if you can't find the right known donor.

Remember that you might ask a good friend or relative who loves you dearly, and is very supportive of your desire to parent, but who does not feel that this is something he can do for you. Helping someone to create a child by donating is a profound act, and there might be many reasons that he (and/or his partner, if he has one) does not feel that this is a role he wants, many of which are likely to be very separate from your relationship with him, or his feelings for you. It might be challenging, but try not to take a refusal too personally.

All of the options for finding a donor we've listed can work, but it is very important to get to know each other well, and have talked through all of the issues a number of times over a considerable period of time before you decide to go ahead, and certainly before you begin trying to conceive. We also highly recommend making an agreement (see below). Some fertility clinics offer the (paid) service of a counselling 'information session' prior to committing to any treatment, which might be useful to explore issues.

A donor who is already a friend

Some people who have an existing friendship with their prospective donor may be less likely to really thrash through the more difficult issues, because they feel that 'they can always work it out'. However, this is not always the case, and sometimes the most intimate, longstanding friendships can end, or even turn into bitter disputes in this context. You may feel impatient to make a baby, but remember that this decision is critical and irreversible. If you conceive a child with someone, you are connected to them for life. Most importantly, the decision you make will affect not only you, but also the one or more children whom you create.

So take your time – perhaps as long as a year – to get to know each other in this new context, reflect on your own needs and feelings, and talk about the issues many times before you begin. It might be useful, when you begin talking seriously, to think about 'putting on a different hat' during your discussions. It is very different to talk as prospective parents and donors than to talk as friends. The issues for parents and donors are different, and it is important to acknowledge and talk through those differences without feeling that they reflect negatively on your friendship or care for one another.

Is this the role he really wants?

The most critical question to explore with your prospective donor is whether that being a known donor is a role he really wants. A lot of men relish this opportunity. Many say it is the best thing they have ever

done in their lives. But for some, it might actually be a compromise of their own deep desire to be a parent/father themselves. Some families call their donor the child/ren's 'father', and the child/ren might call their donor 'Dad' or equivalent. But the law is clear that you are the legal parent/s, and that a donor is not a legal parent or father, and has no parental responsibility.

Donors can be gay, bisexual, heterosexual or sometimes non-operative or pre-operative M2F transsexual. Historically, coming out for many men has meant letting go of any desires they may have to be parents. This is changing as social attitudes and relevant laws change. But when you ask a gay or bisexual friend or acquaintance if he will consider donating to you, it might be the first time he will have really thought about himself in relation to having children. It could open up a can of worms for him, emotionally! It is important to give him time and encourage him to talk about it with you, his partner if he has one, other donors, his family of origin if appropriate, and his friends, especially any who are parents.

He might discover, on reflection, that he really wants to be a parent himself. Perhaps you will all be open to discussing the possibility of co-parenting together. Co-parent is a very different role to known donor, as we discuss below. Perhaps he would be willing to help you have a child, and also pursue becoming a parent himself, separately. Or perhaps being a donor is not a role he really wants. The options for gay men to have a baby (without female co-parents) are not easy in Victoria, but the numbers of gay dads are increasing, and support groups are available. Of course for some men, being a donor might be a compromise, but one they have truly made peace with. Only your donor can know the answer, but the potential consequences of not truly resolving this question can be heartache – and sometimes devastating conflict – for you, and for him, but most importantly for any child/ren you conceive.

If you find yourself growing uncomfortable with a prospective donor or co-parent as you talk things over and get to know him in this context, it is critical that you do not go ahead. You could find someone else (many women talk with or even try to conceive with more than one donor before they succeed in creating a family) or you could use a clinic-recruited donor.

The ART Act opened up all fertility services in Victoria for lesbians and single women, including donor insemination with a clinic-recruited donor. Remember that children conceived in this way have the right to contact their donor if they wish at age 18, or beforehand with parental permission or if assessed as sufficiently mature by a counsellor. In practice, many parents get in contact with their donor when their children are quite young. Research that when parents are open with children about their donor origins, children fare very well. It might well be that using a clinic-recruited donor is a better option than a known donor whom you do not completely trust and feel comfortable with.

What will work for you?

Whether you are single or a couple, it is crucial to be clear about what you want, before talking to your prospective donor/s or co-parent/s about their hopes. Ask questions of as many people as you can, whose families include donors or co-parents. Read books and websites, seek out groups and online forums, and go to counselling. If you are in a couple, be clear with each other about why you are choosing a known donor, and what you hope for out of this choice. The clearer you are about your own feelings and expectations, the more clearly you can negotiate with a prospective donor.

Try not to be influenced by fear of what other people might think, including your prospective donor/s or co-parents. This is a critical life choice, and it has got to work for you now and forever. Try to challenge any beliefs, even deep within yourself, that 'all children need a mother and a father'. You may well decide that this is what you want for your family. But three decades of rigorous Australian and international research show that children suffer no disadvantage from being raised by two mums or two dads, and that the disadvantage that some children of sole parents experience is because of the poverty many single mothers are forced into, and perhaps the conflict between their separated parents.

What roles can donors have?

Many families successfully involve known donors. The term 'known donor' covers a huge variety of relationships and levels of contact. Some are happy for the child/ren to know their name, see their photos, and perhaps meet up when the child/ren are old enough to be interested. Some live overseas or interstate, and exchange cards, emails, perhaps Skype chats and maybe the occasional visit. Some visit a few times a year, others more often. Some become a significant part of family life, spending regular time, perhaps holidaying together and being regular baby-sitters. Some rainbow families think of their donor as part of their extended family, something like an uncle. Sometimes people are open to the relationship growing into something more akin to co-parenting. Some children call their known donors 'Dad', even though they do not share parenting responsibilities and are not their legal parent. Some do not. The diversity of people's choices is endless.

Talking with your known donor

Be very clear about what you want before you begin negotiating with a prospective known donor. This is especially important if you are single. Couples can talk it over between themselves; single women can use friends or therapists. It can be hard for single women to keep their boundaries, especially if your donor is also single. The dynamic can feel like a heterosexual relationship, to yourself and others. Single women are often more open to co-parenting or expect more

involvement from a donor. This choice is legitimate, but be clear it is what you *all* want. Ask yourself whether you might feel differently down the track, if you partner with someone you want to parent with.

When you begin talking with a prospective donor, remember that you have probably been thinking about this for a lot longer than he has. He will appreciate having clarity about what you want, in order to think through what would work for him. Take it slowly, and give him time to get over his initial response (often awkwardness, even if positive). If you are partnered, try to both be involved in all your negotiations; it is easy for the prospective non-birth mother to feel marginalised.

We have produced a sheet like this one for donors. Encourage your prospective donor to read this and other materials early in your discussions. Resist the temptation to gloss over differences, or agree to things you don't really feel comfortable with because you like him, because you are so grateful for his assistance, or because you are desperate to start making a baby. If he has very different ideas to you, take time to reflect before responding. It is critical that you all feel good about what you are agreeing to, before you begin trying. Remember there are other possibilities, including a clinic-recruited donor. It is also important (if perhaps hard) to ask your donor to take a sperm test before you go into deeper negotiations, as problems are not uncommon (see 'Conception with a known donor or co-parent', above).

Making an agreement

It is a good idea to make a written agreement with your donor (and his partner, if he has one), even though it is not legally binding. Australian law does not allow you to make a legally-enforceable contract or agreement about a child, whether written or verbal. Some people make their agreement, then put it in a drawer and never look at it again. Some revisit it when they conceive, when their child is born, when it comes to trying for any subsequent children, and when any major life changes happen that have possible implications for the relationship (such as someone moving interstate or overseas). Many people find their agreements to be an extremely useful tool, and a record of what they wanted and agreed to at the time. And in a conflict, a written agreement demonstrates your intentions, which might be one (but not the only) factor a court would consider.

Most people make agreements that are legally clear in language, but also express their feelings. Think about how your children might feel if they read it, as they may do later in life. The best thing an agreement can do is encourage you all to sit down, talk about and reach agreement on the important issues. Your agreement should clearly state what each person's role will be (including the donor's partner, if he has one), and who are the child's parents. It should also state clearly what all of your intentions are in making the agreement.

The most important part of the agreement relates to how you will negotiate changes, and what you will do in the event of conflict. The only certainty in life is change. Children change, people's circumstances change, and so do their feelings. The feelings of everyone involved – you (the parent/s), your donor (and his partner if he has one) and your children as they grow – will inevitably change over time. This does not mean that your arrangements will also shift, although they often do. Some donors become much more involved in family life, for example, while others are less so than originally intended. The key is to agree on clear processes to negotiate change, and to deal with conflict (such as through a counselor or mediator), so that whatever happens you can stay out of court.

Specific topics to discuss

People's agreements vary enormously, but there are some key issues to consider, including:

- Will your donor be known to the child? Some donors are happy to be introduced to the child when they are old enough to show an interest, but have no other contact. There is strong evidence that children fare best when their parents are open about their donor origins from early in life, whether or not they have a relationship with their donor.
- Will he be open about his role with his friends and family, and with your mutual friends and acquaintances? Bring this up early in your negotiations, before mentioning him as a possibility to others. Remember that when your child knows his identity and is old enough to talk, you will lose control of who else has this information! There is strong evidence that any sense of secrecy about children's donor origins is not in children's best interests.
- Does your donor want to tell or involve his family of origin? This is a major issue for many donors. A lot of gay men, for example, have had to deal with their parents' feelings (on coming out) that they are unlikely to be grandparents through them. Their son being a donor might be an exciting possibility (or a real challenge) for them to deal with. Think about what contact with his family you are open to. This can be an added complication, and may be something you don't want, especially if they seem homophobic. But remember that people can change (especially when it comes to children), and it is potentially wonderful to have more loving grandparents, aunties, uncles and cousins.
- If your donor is partnered, what role might his partner have? Are you negotiating with both of them, or only with your prospective donor? Remember that if you use a clinic, they might require your donor's partner to attend counseling and consent to the donation. If your donor has some contact with your family, this is likely to impact on his partner, at least to some extent. Would you be open to his partner's contact with the family increasing over time, if he or she wants this? If he is single and partners, or re-partners, will you be open to his new partner having contact? Does your donor have children? Does he plan to? Will the children know about each other, and perhaps have contact?
- What language will you all use around his role, and that of his partner if he has one? How will he speak with the children about this? Some women are open to their donor being called 'father' or 'Dad', when their role is not that of a parent. Some donors want this; others want children to use their first names, or to call them (and perhaps their partner) 'Uncle John' and so on. Men might refer to themselves as a child's donor, or donor dad, or father. It is important to be agree on what language you will all use, in what context, and exactly what you all mean by it. Language is extremely powerful, in terms of the feelings and expectations of everyone involved (not least your children), and also in the wider community. It is worth revisiting this issue when you conceive, and when a child is born, as people's feelings about this issue often change, either way. Remember, it is far easier emotionally to give (for example, to decide later that you are comfortable with the name 'Daddy') than to take away.
- What processes for donating is he open to? Explain what is involved with each option, including how available he will need to be if you are home inseminating with fresh sperm. Also explain the testing required, including if he or his partner is exposed to a risk of sexually transmitted infection.
- What if you need to use IVF? Does he have any feelings about that, for example if there are unused embryos at the end of the process?
- Is he open to donating for more than one child?
- What will you do if there is a likelihood of your unborn child having a profound disability or serious medical issue? People can have very strong, and different, feelings about issues like this.
- What contact might he have with you during the pregnancy? What role, if any, will he have during the birth? How soon will he meet the child? What role or contact might he have during early infancy? Will he have any say in the naming of your child? Do you want any part of his name in their name?
- What kind of time do you want him to spend with your family? Do you want occasional or regular contact? Will it involve family celebrations, birthdays, school or social activities? Will the amount of contact and nature of the contact change over time?

- Will his contact always be with the whole family, or sometimes just with the child/ren? If the latter, would you ever be open to the possibility of them staying with him overnight? At what age? Talk to other parents about children's capacity to be away from their home and parents at different ages, before exploring these issues.
- Who will be financially responsible for the child? If your donor wants to make a financial contribution (and you want this too), would this be regular or ad hoc? What about inheritance, superannuation, insurance and wills?
- What kind of support (other than financial) and involvement, if any, would you like from him, and what does he want to give?
- Will he have any say in the decisions about your children's lives? For example, will you ask for his input about things like education choices or religion? What about health care or other aspects of your children's upbringing?
- Since the passing of the ART Act, you (and your partner if you have one) are your child's legal parents, and only you can be listed on the birth certificate. You cannot list the donor as 'father' – this is making a 'false declaration'. The donor's role is recognised through his listing with the Victorian Registry of Births, Deaths and Marriages (BDM). If you use a clinic to conceive, his name is listed in the Central Donor Register. If you home inseminate, he is listed on the child's birth record (but not on the certificate). Ensure your prospective donor understands this, and perhaps include it in the agreement to ensure it is clear.

As we have said, the most important thing to agree on is how to negotiate change and any conflict. You might want to make some agreements on hypothetical scenarios, such as what you will do if someone wants to move interstate or overseas. It is worth all the 'parties' seeking separate legal advice before making decisions or attempting conception.

Commit seriously to the agreements you make in good faith, but acknowledge the reality that people's needs, feelings and circumstances change. It is important to finalise your agreement before beginning to attempt conception; some people do not, then discover they still had very different expectations down the track. However, it is also a good idea to revisit the decisions you made after your child is born.

Consider starting slow

For most people, this is all very new territory. No matter how many children you have had in your life previously, if you have not had your own children before, you cannot know what it will be like, and how you will feel. That goes for both you and your donor/s or co-parents.

Talk to parents of babies and young children. There is no greater change in most people's lives than when children come into their lives.

When thinking about the kind of involvement you might want from your donor before and after birth, is important to consider the nature of pregnancy, birth and early infancy, and your choices around issues like birth, breastfeeding and sleeping. The Australian National Health and Medical Research Council recommends that children are exclusively breastfed for the first six months, and continue to be breastfed until at least two years old. Of course, every family makes their own choices around issues like breastfeeding, for example, and not all birth mothers can breastfeed, or want to short or long-term. Everyone involved in this process will have their own particular experiences of the exhausting, exhilarating, emotional and sometimes difficult processes of trying to conceive, pregnancy, birth, establishing breastfeeding and early infancy. Everyone will need different support at different times.

One option that works for many is to start with a lower level of contact (however you define that – perhaps a short fortnightly visit) to begin with, but be open to that increasing over time as you all learn and explore your new roles. Roles can be very different when a child is a toddler or preschooler to when they are newborn. Bear in mind, too, that it is much easier (both emotionally and legally) to increase than to decrease the amount of contact you have with your donor.

Exploring co-parenting

Co-parenting is a less commonly chosen option than parenting in a couple or as a sole parent with a known donor (and his partner, if he has one). There are certainly happy, successful families in our community with two, three, four or more co-parents. However, co-parenting challenges the very strong notions that mainstream Australian culture, at least, has about family. It is difficult enough, sometimes, to negotiate parenting in a couple, let alone with people with whom you are not in an intimate relationship.

A brief note on language: in this section we talk about mother/s and father/s, as those are usually the roles people have in co-parent families. However, 'co-parent' is a social term, not a legal one. Since the recent legal changes, a child's legal parents (the only people who can legally be listed on the birth certificate) are the birth mother and her partner if she has one. Other adults with a parenting role can have that role legally recognised and protected with court parenting orders by consent. In addition, all children conceived through a treatment procedure, including home insemination, must have their biological origins registered at BDM (see above under 'Legal parentage and other roles').

Co-parenting is a lifelong connection and commitment to each other and your child/ren. Being co-parents

requires a deep level of trust, respect and goodwill towards one another, and a commitment to shared values and maintaining your family relationships when times get tough, as they can do for every family.

When considering co-parenting, it is critical to be sure it is what everyone involved truly wants. The options for gay men to have a baby without female co-parents are not easy; overseas surrogacy is prohibitively expensive, and altruistic surrogacy in Victoria requires men to find both a surrogate and an egg donor. One key question to discuss is whether your prospective male co-parent/s would choose co-parenting if they had an easy option to become parents on their own?

Be very clear that this is what you want too, whether you are single or a couple, before going too deeply into negotiations. Do you want to share every aspect of parenting, from daily life to the big decisions? Think about why you would choose co-parenting, rather than a known or clinic-recruited donor. In particular, remember that three decades of research clearly shows that children are not disadvantaged by being raised by two mum or two dads, and that the disadvantage children of single mothers experience is related to the poverty many are forced into, as well as conflict between their separated parents.

Co-parent families do not fit neatly into any available 'box', in terms of the law, social security, tax and so on. 'Co-parent' is not a legal term, although co-parents other than the legal parents (the birth mother and her partner, if she has one) can have their roles recognised through court parenting orders. We recommend that each of the 'parties' – mother/s and father/s – seek separate legal advice on what will work for you all before making any decisions or attempting conception. This advice can then inform your discussions, and any written agreement you make about your intentions.

Co-parenting means sharing all significant parenting responsibilities, such as living with and raising a child (in one household or two) and making all the significant and day-to-day decisions about their life. How will you share these responsibilities?

It is critical to be clear on what you want (including the non-birth mother, if you are coupled) before beginning negotiations with your prospective father/s. What is your ideal? What is negotiable, and what is not? Your ideas might change, but it is important to begin by clearly communicating what you think, so that your prospective co-parent/s can consider what, in your vision, will work for them. If you are all clear with each other, there is less likely to be confusion that can lead to conflict.

It is a good idea to make a written agreement, even though they are not legally binding. The most important part of your agreement will be agreeing a process (such

as seeing a counsellor or mediator) for negotiating changes in life circumstances, and dealing with any conflict that may arise.

Many of the issues outlined above for families involving donors are also relevant for co-parent families to explore and agree on before they attempt conception. The answers to the questions are likely to be very different, because the relationship is different. There are some additional issues to consider, including:

- Health issues, fertility and the logistics of conception. It can be harder to bring up issues like sperm counts and screening for sexually transmitted infections with prospective co-parents than with prospective donors, but it is equally important to do so, for your health and the baby's.
- Everyone's different roles and needs for support during the processes of attempting conception, pregnancy, birth, breastfeeding (if you choose to, and the birth mother can breastfeed) and early infancy. Talk about the values that might inform your choices during these early stages, for example with regard to birth, breastfeeding or sleeping. You will probably all need to research, think about and discuss these things much more deeply than most parents before your baby is born, to ensure that the choices you make work for all of you.
- Where a child will live, and how the arrangements will change over time. A child's needs change enormously from birth to six months and beyond. What co-parenting looks like for a child under six months or a year may be very different from when they are 18 months old, four years old, and so on.
- Financial power and support. The reality is that the income and wealth gap between men and women is still very wide in Australia. If there is financial support involved, including sometimes the purchase of a home, it is particularly important to put all arrangements in writing, including what will occur if you get into conflict. It is important to seek legal advice around these kinds of arrangements.
- The role of non-biological co-parents. Try to involve all parties in the discussions, for example the prospective birth and non-birth mothers, and the prospective biological and non-biological fathers. It is easy for non-biological co-parents to feel marginalised.
- If one or both co-parents are single. People's lives can change in many ways. One of the biggest issues for co-parents can be if one or both later partner with someone they want to parent with; this can be very challenging for everyone involved, including the new partner.

If relationships break down

If parents separate

If you are a lesbian couple recognised as your child/en's legal parents and your relationship ends, then you are both still their legal parents. You can negotiate your own shared care arrangements, as many women do very successfully.

If you cannot agree, you have access to the same resources as heterosexual parents to help you work it out: family therapy, mediation, or as a last resort, court. The court will recognise you both as parents, and must start with the presumption that it is in your child/ren's best interests to have an ongoing relationship with both of you. However, each case is determined on the specific facts of the situation, and what the court believes is in the child's best interests, for example when it comes to issues such as where a child lives, who makes decisions about the child's life, and what level of contact a non-residential parent has. One option may be shared care, if the court thinks that the relationship and communication between the separated parents is strong enough to negotiate this.

Conflict between parents and donors, and between co-parents

The escalation of conflict is not good for anyone. Most importantly, a breakdown in relationships between adults in a child's life always has a negative impact on the child. Every family has issues to deal with from time to time. Ideally, you will be able to talk them through. It can be useful to involve a third party, such as a counsellor or mediator, well before things get too difficult. Issues around family and children can get very emotional very quickly. Try hard to see each others' points of view, to maintain a sense of mutual goodwill and common purpose, and above all to keep the focus on the child/ren.

Australian family law, like the rest of our legal system, is based on an adversarial model particularly poorly suited to the complex, emotional nature of conflict over children. Going to court is extremely stressful and costly. But if you do end up in court, remember that family law allows anyone with 'an interest' in a child's welfare to apply for a court order creating contact or other arrangements with regard to the child. This could include a grandparent, a known donor, conceivably a clinic-recruited donor you have had contact with before your child was 18, and certainly a co-parent.

The family court will not change who is recognised as a child's legal parents in such cases, but will decide on issues like who sees, lives with and makes decision for a child on the individual facts of the case, and what they see as the child's best interests. A court could certainly

make an order for a donor (and his partner, if he has one) or for male co-parent/s to have contact, and even some parenting responsibilities, if it considers this to be in the best interests of the child.

If people other than a child's legal parents 'formalised' recognition of their role through a consent order before the relationship broke down, this provides strong evidence of their role and relationship with the child. But even if there was no such order, unless there is a good reason (related to the child's safety) why not, the court is likely to make a decision which maintains the child's relationship with all of the significant people in their life. As always we recommend you seek legal advice on the specifics of your situation.

Many factors will come into play; your arrangements to date might be a factor, as might your original intentions (for example, as documented in an agreement) and any orders made previously. Previous cases also have an impact, although family law is less bound by legal precedent than other parts of Australian law, and this area of law is still emerging.

Fostering: another way of welcoming children into your family

Some foster care agencies have long recognised that gay, lesbian, bisexual, transsexual and intersex (GLBTI) people, coupled or single, can provide loving, stable homes for children requiring short or long term care. Many same-sex couples and single people (including many who already have biological children) welcome children needing foster care into their families. This can be a very positive experience for everyone involved – something that is demonstrated by the fact that many foster carers themselves grew up in homes that welcomed children needing foster care.

Foster care can include respite (occasional) care, short-term/emergency care and long-term care. Permanent care is generally the preferred option for children and young people requiring long-term care. In these cases the Victorian Government has determined that the child cannot return home, but the biological parent/s have not relinquished them for adoption. Permanent care orders are similar to court parenting orders in that they cease at 18 years; but although permanent care and fostering legally ends at this age, most people have life-long relationships with their foster carers/parents.

Both foster and permanent carers receive a modest fortnightly payment to assist with meeting some of the financial needs of the child. In addition, foster and permanent carers are eligible in most cases to qualify for Centrelink Family Tax Benefit and Child Care Benefit payments.

What if a child being fostered or on a permanent care order becomes available for adoption?

At the time of writing, same-sex couples are not permitted to adopt in Victoria. The *Adoption Act* does however make provision for 'individual' people to adopt 'only in special circumstances'. The definition of special circumstances has until recently only been granted to single people who wish to adopt a relative, and in one case a lesbian foster carer who sought to adopt a child with extreme 'special needs'. In August 2010, a Victorian judge ruled in favor of one member of a gay male couple, who along with his partner, had been the long term foster carers of a child. In this case the child's birth parents relinquished the child, and had no opposition to the carer adopting the child. It is anticipated that this case will set a precedent for one half of a gay or lesbian partnership – or a single gay or lesbian person – to adopt a child who is in their foster or permanent care.

Rainbow Families Council hopes that the Victorian government will act on the recommendations of the Victorian Law Reform Commission enquiry to extend the eligibility definition to include both members of a same sex couple and single people specifically. We also hope they will permit all GLBTI people or single applicants to apply for all forms of adoption – including inter-country, infant, familial – and the adoption of foster or permanent care children.

Gay and lesbian foster carers, permanent carers and kinship carers in Victoria are eligible to join the Gay and Lesbian Carers Support Group, which provides information, telephone support and social opportunities for gay and lesbian carers and their children. See below for contact details.

Disclaimer

Rainbow Families Council produced this information kit in October 2010. We have made every effort to ensure the kit is correct, but accept no liability for information given. Information will be regularly updated on our website. We strongly advise that you seek medical and legal advice and specialist counselling relevant to your specific situation.

Find out more about:

- the federal reforms at www.wearitwithpride.com.au and www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_SameSexReform
- amending birth certificates for children conceived before the ART Act came into effect in the sheet 'Recognising pre-existing families'.

- registration and management of donor information under 'Donor information and registers' in this kit, or from BDM. Phone 1300 369 367 or visit their website: google 'Victoria births deaths and marriages', click on 'Births', and then 'Donor treatment registers'.
- maximising your chance of conception through home insemination, and medical procedures involved in various forms of assisted reproductive treatment from the Royal Women's Hospital's Pride and Joy booklet, available at www.thewomens.org.au/PrideandJoyonline (note that the legal information in this resource is not yet updated).
- detailed information about home insemination and every aspect of the process in 'The New Essential Guide to Lesbian Conception, Pregnancy and Birth' by Stephanie Brill
- a detailed guide to all forms of fertility treatment in 'IVF and Beyond for Dummies' by Karin Hammerberg, published in Australia in 2010
- fertility clinics in Victoria at www.fertilitysociety.com.au/rtac/accredited-units/victoria/
- how to apply for a court parenting order in the Family Court of Australia Consent Orders Kit at www.familylawcourts.gov.au/wps/wcm/connect/
- where to seek legal advice about agreements and other matters through the Law Institute of Victoria's Directories at www.liv.asn.au/Specialists
- parenting orders and child maintenance, on Victoria Legal Aid's website under Children & Parenting, www.legalaid.vic.gov.au/childrenparenting.htm
- becoming a foster or permanent carer, by calling the foster care hotline on 1800 013 088, or visiting www.fosterabrighterfuture.com.au/
- The Gay and Lesbian Carers Support Group: contact Tracey on 0427 811 186.
- The Victorian Assisted Reproductive Treatment Authority (VARTA), for information about telling a child about their donor origins at www.varta.org.au.

What else is in this information kit?

- Introduction and definitions
- Recognising pre-existing families
- Options for prospective gay male parents
- Options for prospective sperm donors, egg donors and surrogates
- Donor information and registers
- Resources and links

Options for prospective gay male parents



When a gay couple or single man starts thinking about trying to make a family, there are a lot of issues to consider. Many relate to how you might go about creating your family. Is overseas surrogacy an option? What about altruistic surrogacy in Victoria? What relationship might your family have with your egg donor or surrogate? Would you consider co-parenting with a single woman or lesbian couple? How about fostering?

Thinking it through

Many factors will influence your decisions. The main ones fall into two groups: the relevant laws, and your personal values and circumstances. The latter will determine what your options might be, as we discuss. Following that we outline what is involved with different forms of surrogacy, and with fostering and permanent care. We then explore ideas around co-parenting, including how it differs from being a known donor. Finally we touch on what can happen if relationships break down, and provide links to further information.

This kit makes many references to what might happen if things go wrong, whether between couples, between parents and their donors or surrogates, or between co-parents. This is not because conflict is necessarily more likely to happen in rainbow families than in any other. It is because this is what much of family law, in particular, is about: what should happen if things go wrong.

However, it is also important to acknowledge that while same-sex parents have been successfully raising children for decades, our diverse family formations are in many ways still relatively new, and the law is still coming to terms with them. As a result, parents, co-parents and donors can be vulnerable to confusion and differing expectations, which can sometimes contribute to conflict. Every family has issues to talk through from time to time, but only a tiny proportion need to attend mediation or family court. Nevertheless, it is critical to understand and talk through the

implications of the relevant laws, not least because it might influence how you go about creating your family.

All that being said, having children is one of most wonderful, heart-expanding experiences in the world – we wish you the very best with your journey!

Your values and circumstances

Only you can decide how to create your family. Personal values and circumstances play a big role. Who do you think should be involved in raising children? Do you think children should ideally grow up having a relationship with the woman who contributed to their genetic origins? And if your child was conceived through 'gestational surrogacy', what about the woman who carried and gave birth to them?

Some men might want to welcome other people into helping raise their children, and decide to explore co-parenting with a lesbian couple or single woman. The issues are complex, but there are many successful examples of rainbow families with two, three or more co-parents.

Some men decide that rather than being parents themselves, they prefer to have children in their lives by becoming the known and involved donors for a lesbian couple or single woman. We explore the possible role of known donors briefly below, and in more detail in the information sheet 'Information for prospective sperm and egg donors, and surrogates'.

If you are considering being a known donor or donor/s, is it absolutely critical to be sure that this is what you really want. Too many men compromise their deepest desires to be parents/fathers, and become known donors instead. You can be very involved in a child's life as a donor, but it is a very different role from parenting. If what you truly want is to be a parent/father, explore ways that you can make this happen. The options available for gay men to become parents are not easy, but the number of gay dads is increasing, and there are support and discussion groups available. If you compromise on this issue, but do not 'make peace' with your decision, the evidence is that it can too often result

in heartache for everyone concerned: you, the mother/s, and most importantly the child or children.

Some men decide that they don't want to bring other adults into their family – that one or two loving fathers (and any extended family) are all the family their children will need. Some decide this by default, because they do not know anyone suitable, with whom they have a close enough relationship to co-parent. Some men decide to pursue overseas surrogacy. Some investigate fostering. Some explore altruistic surrogacy in Victoria.

To conceive through altruistic surrogacy, you need to know (or find through your personal networks) a woman willing to be your surrogate. You also need an egg donor. Some men may ask sisters or other relatives they are close to. Some men will have little contact with their donor and/or surrogate after their child is born and legal parentage established (see below). Some men might welcome one or both women into their lives long-term, with the levels of contact varying from very occasional to significant time together. Some may start with an agreement to minimal contact, but an openness to seeing (and a process for deciding) where the journey might lead them.

Any of these decisions is absolutely legitimate. The most important thing is that you base your choices on your own values. Try not to let fear – for example of what other people might think – dictate this critical life decision. In particular, try to challenge the idea (even within yourself) that 'all children need a mother and a father'. Three decades of rigorous Australian and international research show that children of same-sex parents are not disadvantaged, and are in some ways – such as in their capacity for empathy – better off!

Gay men have been creating and raising families in many ways for many years, and will continue to do so. Laws and social attitudes have improved a great deal, and will continue to do so as our numbers grow.

Altruistic surrogacy and egg donation in Victoria

The word surrogate means 'one that acts in place of another'. Surrogacy is when a woman agrees to conceive, carry and birth a baby for another person or couple to raise.

The Victorian *Assisted Reproductive Treatment (ART) Act 2008* (in effect since 1 January 2010) effectively legalised the option of altruistic (unpaid) surrogacy in Victoria, opening this up as an option for gay men to become legal parents through Victorian fertility services. It removed the requirement that a woman be medically infertile to access the fertility services needed to be a surrogate, and allowed for recognition of the legal parentage of the 'commissioning' parent/s.

All surrogacy arrangements in Victoria must be altruistic. That is, the surrogate cannot be paid to act as a surrogate. However, she can be reimbursed for costs she incurs as a direct consequence of entering into the surrogacy arrangement. To be a surrogate, a woman must be at least 25 years old, and have previously carried a pregnancy and given birth to a live child. A friend or relative may be able to act as your surrogate, but you are not allowed to advertise for a surrogate, for example through television, radio, the internet or other public means.

In addition, only 'gestational' surrogacy is allowed in Victoria. This means that you will also need to have an egg donor, as you are not allowed to use the surrogate's own eggs to conceive. Some clinics may have egg donors available. However, clinics often find it difficult to recruit egg donors, so you are likely to need to find your own. You are allowed to advertise that you are seeking an egg donor, but must have approval from the Minister of Health, under Section 40 Of the *Human Tissue Act 1982* before doing so. Egg donation must also be altruistic, although the donor can also be reimbursed for actual medical and associated travel costs incurred.

All surrogacy arrangements must be approved by the Patient Review Panel. The Panel must be satisfied that all 'parties' have received counseling (from a fertility clinic, see below) and legal advice, and that they are 'prepared for the consequences if the arrangement does not proceed in accordance with their intentions' – for example if the commissioning parents decide not to accept the child, or the surrogate refuses to relinquish them. The experience in countries where surrogacy has long been an option is that while such disputes might be the subject of midday movies, they are extremely rare in reality.

In addition, you might have compromised fertility yourself, and require a sperm donor. Fertility clinics have clinic-recruited sperm donors available; donors are required to be 'identity release' – that is, the child has the right to identifying information about them at age 18, or earlier with parental permission or if judged mature enough by a counsellor. As their parent, you can also request this information, although the donor must consent for it to be released to you. Alternatively, you might prefer to ask someone you know. The issues for a known sperm donor will be much the same as for an egg donor – see the information sheet 'Options for prospective sperm donors, egg donors and surrogates' for information about the process involved.

Asking a prospective surrogate or egg donor

Just as it can be difficult for men to decide whether to be a sperm donor, it might be hard for a woman you ask to be your surrogate to decide whether she is willing. There are certainly women who want to be surrogates, and who find it a very fulfilling role. Sometimes women will make the offer themselves, and sometimes there

might be a woman in your life willing to do it, whom it might not at first occur to you to ask. In the case of altruistic surrogacy, surrogates are usually a very close friend or relative of the commissioning parent/s.

Remember, you might ask a woman who loves you dearly and supports your desire to become parents, who still might feel that carrying a baby for you is something that she cannot do. Trying to conceive, pregnancy and birth is hard on most women, physically and emotionally, and even if you are willing for her to be very involved with your family, she might find it difficult to imagine not actually parenting a child to whom she has given birth. It might be worth trying to find stories from families (same-sex and otherwise) who were created through surrogacy, including in Australia and elsewhere, when talking to a prospective surrogate. In addition, we have written an information sheet 'Options for prospective sperm donors, egg donors and surrogates' that it might be helpful to give her.

The issues might be similar in some ways for prospective egg donors. Egg donation is not anywhere near as arduous as carrying and birthing a child, but the process of egg donation involves taking hormones and undergoing a medical procedure. Probably more importantly, as with prospective sperm donors, helping someone to create a child by donating is a profound act, and there might be many reasons that she (and/or her partner, if she has one) does not feel that this is a role she wants to take on, many of which are likely to be very separate from your relationship with her, or her feelings for you. It might be challenging, but try not to take a refusal too personally.

Becoming a client of a fertility service

To conceive a child through altruistic surrogacy, you need to use a fertility service. Victorian law requires everyone involved in the arrangement to have sought legal advice, and to go through a number of procedures (the clinic will assist you with these):

- a police check, to ensure neither of you has ever been convicted of a violent offence or charges have been proven against either party in relation to a sexual offence
- a child protection order check, to ensure neither of you has had a child removed from your care, and
- clinic counselling, to ensure you both understand the implications of donor conception and consent to the procedures involved.

An overseas police check is required if either party has resided overseas for a consecutive 12 month period in the past 10 years. There is a presumption against treatment for anyone who does not pass these checks and treatment must not be provided. If barred, you can appeal to the Patient Review Panel, and subsequently to the Victorian Civil and Administrative Tribunal

(VCAT).

The intending biological father will also undergo standard health checks, including for HIV.

The journey with your egg donor and surrogate

The donation process and storage of donor information

The process of conception with an egg donor in Victoria involves a fair amount of contact, even with a donor you did not know previously. The minimum is counselling of all the parties, separately and jointly. The medical procedures are lengthy and invasive; essentially the first half of an IVF procedure, hyperstimulation and 'harvesting' of multiple eggs from her ovaries. Awaiting the results can be nerve-wracking for everyone, and if no eggs from her first donation lead to a successful birth, you may all go through this multiple times.

A key principle of Victorian law is that people conceived via donation in Victoria to have the right to identifying information about their donor at age 18, or earlier if they have parental consent and a counsellor has judged that they are able to handle the information. All Victorian donor information is lodged, stored, managed and released by the Victorian Registry of Births, Deaths and Marriages. If you conceive via egg donation at a Victorian clinic, they will give your child's donor information to the Registry. For more information see the information sheet 'Donor information and registers'.

The surrogacy process

Your contact with the surrogate during the processes of trying to conceive, pregnancy, birth and after will necessarily be much greater than with your egg donor. The surrogate's menstrual cycle is pharmaceutically 'managed' to enable transfer of an embryo (at least for the first egg successfully fertilised from any donation cycle) – at the appropriate time. Then you wait for a pregnancy test two weeks later, and if that is positive until 12 weeks, when the highest risk of miscarriage abates.

The processes of attempting conception, pregnancy and birth are amazing for everyone involved, but potentially exhausting and stressful. Your relationship with your surrogate (and her partner) will determine the extent to which you have contact and give support to each other during these processes.

Everyone will need to talk openly, perhaps many times, about their hopes for the birth and early infancy. What sort of birth does the surrogate want to have? What professional and other supports will she need at this time? Is she willing for you to play a role, and if so what? Would she be willing to breastfeed, at least during the period when her body is producing colostrum? Is this what you would want? When and how will you take home the baby, and what sort of contact might she have with your family in the early days?

Options for ongoing contact

Historically, same-sex couples have tended to be more open with their children about the circumstances of their conception than heterosexual couples; after all, it is obvious that same-sex couples needed some help to create their families! If you had a prior relationship with your donor and/or surrogate – or even if you did not – you may also decide to welcome one or both women into your family's life in a variety of ways. You will probably have some ideas about whether you would like to have ongoing contact with your egg donor or surrogate, after they have helped you create your family. This is something you should discuss in detail and agree on before you decide to go ahead. It is worth reading the information sheet 'Options for prospective sperm donors, egg donors and surrogates' to see which issues might be relevant in your situation.

Altruistic surrogacy in Victoria is a new option for gay men. It remains to be seen what choices men who create their families in this way will make around ongoing contact with their donor and/or surrogate. Many couples who conceive through overseas surrogacy choose to have ongoing relationships with their surrogates, at least. Some have contact with their egg donors, but this may not be an option if egg donation in that country is generally anonymous. The relationships between men and their Victorian egg donors and surrogates are likely to be different; because they live in the same country, because they are altruistic, because men must usually know or find them, and because of the laws around release of donor information.

One possible parallel is the variety of relationships that lesbian couples and single women create with their donors. Some known sperm donors are just happy for the child/ren to know their name, see their photos, and perhaps meet up when the child/ren are old enough to show an interest. Some live in another state or country, and may exchange cards, emails and the occasional visit. Some may visit a few times a year, others more often. Some become a significant part of family life, spending regular time, perhaps holidaying together and becoming regular baby-sitters. Some children call their known sperm donor 'Dad', even though the man (and his partner, if he has one) does not share parenting responsibilities. Some do not. The diversity of people's choices is endless, as are the diversity of options open to you and your donor and surrogate to negotiate.

It is also important to bear in mind how family law works in Australia. If you use altruistic surrogacy in Victoria, you will be your child's legal parent/s once your substitute parentage order has been processed (see 'Establishing your legal parentage'). However, anyone with 'an interest' in a child's welfare (such as a grandparent, step-parent, donor or surrogate) can apply for a court order creating contact or other arrangements with regard to the child. You can make an

agreement with your donor or surrogate about a whole range of issues, and we recommend that you do. See the discussion about making agreements with known donors on the information sheet 'Options for prospective lesbian parents' for issues to consider. However, these agreements are not legally binding, should there be a dispute. You cannot make a legally-enforceable contract or agreement (written or verbal) about a child.

If a dispute arose, a court cannot change your status as your child's legal parents (once the substitute parentage order is made), but it will make its judgement – on things like who has contact with a child, who lives with them, and who makes decisions about their lives – on the facts of the case, and what they see as a child's best interests. Courts can award contact, and even, in some cases, might award some parenting responsibilities, to someone other than the legal parents, if they think this is in a child's best interests.

Establishing your legal parentage

At the time of writing, the only way that both men in a same-sex couple can be recognised as their child's equal legal parents in Victoria is if the child is conceived and born through altruistic surrogacy here. This is done by transferring legal parentage from the surrogate (and her partner, if she has one) to you through a Supreme or County Court order.

When a baby is born in Victoria, the woman who gives birth is deemed to be its mother, and is recorded as such on the birth certificate. Her partner, if she has one, is recorded as the father or parent. As the commissioning parent/s of a child conceived through a surrogacy arrangement and treatment procedure (that is, IVF) in Victoria, you then apply to the Supreme or County Court for a 'substitute parentage order' naming you as the child's legal parent/s. You must live in Victoria when you make the application, and make it no less than 28 days after a child's birth but before six months.

The Court will make the order once it is satisfied:

- that the order is in the child's best interests,
- that the surrogacy was commissioned through a fertility clinic and approved by the Patient Review Panel
- that the child is living with you, the commissioning parent/s when the application is made
- that the surrogate (and her partner if she has one) received no material benefits from the arrangements, and
- that the surrogate and her partner freely consent to the order.

Overseas surrogacy

Even if altruistic surrogacy in Victoria sounds like a great option to you, it might well be very difficult to find both an egg donor and surrogate. Commercial surrogacy – whereby the surrogate is paid a fee beyond the cost of her medical bills – is illegal in Australia. However, you might be able to consider using the services of a commercial surrogacy service in another country. For some men, this is their preferred option.

There are gay couples and single men in our community who have created their families through commercial surrogacy services in countries including Canada, the United States and India. The costs can vary, but at the time of writing they ranged from approximately \$40,000 to \$200,000. The fees paid to women who act as surrogates do not make up a large proportion of these costs; the remainder goes to the clinics, lawyers, medical fees and egg donors (if used).

It may be possible, in some countries and jurisdictions, to access 'traditional' surrogacy, where the surrogate uses her own eggs. It is more common to be able to access only 'gestational' surrogacy, using donor eggs. This is generally more expensive, as it requires complex medical procedures and usually a fee to the egg donor.

The medical procedures involved in conception through commercial surrogacy are pretty much as described above, although there might be considerable differences in the way that IVF procedures, for example, are managed in different countries. If 'traditional' surrogacy is offered, conception is (usually) achieved through the simpler process of artificial insemination, unless there are fertility problems, for example with the biological father's sperm.

There are, however, many other procedures involved in overseas surrogacy. They include the contract process, choosing a donor, the surrogate matching process, consultation and sperm donation with the clinic, and the potentially complex procedures around obtaining a birth certificate, citizenship and passport for your child to bring them home. You can find much more detail about the extensive procedures involved with commercial surrogacy on the Gay Dads Australia website – see the contacts section at the end of this sheet. It is also well worth talking to men who have been through the process before you begin your own journey.

Contact with your donor and surrogate

Some men who conceive through commercial surrogacy are able, and choose, to have ongoing contact with their surrogate after the child is born. Women who choose to do commercial surrogacy generally have very altruistic motivations, and are often interested in some form of ongoing contact with the families they helped create, for example through the occasional exchange of emails and photos.

However, there may not be the option of a relationship with your donor, if you use gestational surrogacy and an egg donor. Although you will often receive very detailed biographical and medical information about your donor from the donor agency, clinic-recruited egg and sperm donors may have agreed to complete anonymity when they donate (as in many clinics in the US). This means that children will generally have no option for obtaining identifying information about their donor. This might be an issue to consider in choosing a clinic. Check the websites of relevant surrogacy services and donor agencies, or contact them for details of their policy and the relevant laws where they operate.

Recognition of parentage

Some countries where commercial surrogacy is available can provide birth certificates listing both fathers, while others do not. Even where this is possible, it does not at present translate into legal parentage in Australia.

Gay male couples whose children were conceived via overseas surrogacy – whatever their birth certificates states about parentage – currently require court parenting orders to recognise the parenting role of both the biological and non-biological father. These parenting orders continue (although they may need some amendment) if a couple separates. See below under 'If relationships break down'.

Parenting orders can allow you to consent to things like school excursions or medical treatment. All parties who have parenting responsibilities under court order are required to give their consent for a child to obtain a passport. Parenting orders can include many rights and responsibilities of legal parentage, but end at age 18, and don't include things like inheritance and superannuation in most situations. So it is important for those who require parenting orders to, for example, ensure they specifically recognise children in their wills and seek legal advice about choices in relation to making financial provision for children (including a choice not to make provision, which may be subject to legal challenge in very limited circumstances, even if you are not a legal parent).

Fostering: another way of welcoming children into your family

Foster care agencies have long recognised that gay couples and single men can provide loving, stable homes for children requiring short or long term foster care or those on permanent care orders. Many same-sex couples and single people (including many who already have biological children) welcome children needing foster care into their families. This can be a very positive experience for everyone involved – something that is demonstrated by the fact that many foster carers themselves grew up in homes that welcomed children needing foster care.

Foster care includes respite (occasional) care, short-term/emergency care and long-term care. Permanent care is generally the preferred option for children and young people requiring long-term care. In these cases the Victorian Government has determined that the child cannot return home, but the biological parent/s have not relinquished them for adoption. Permanent care orders are similar to court parenting orders in that they cease at 18 years; although permanent care and fostering legally ends then, most people have life-long relationships with their foster carers/parents.

Both foster and permanent carers receive a modest fortnightly payment to assist with meeting some of the financial needs of the child. In addition, foster and permanent carers are eligible in most cases to qualify for Centrelink Family Tax Benefit (FTB) and Child Care Benefit (CCB) payments.

What if a child being fostered or on a permanent care order becomes available for adoption?

At the time of writing, same-sex couples are not permitted to adopt in Victoria. The *Adoption Act* does however make provision for 'individual' people to adopt 'only in special circumstances'. The definition of special circumstances has until recently only been granted to single people who wish to adopt a relative, and in one case a lesbian foster carer who sought to adopt a child with extreme "special needs". In August 2010, a Victorian judge ruled in favor of one member of a gay male couple, who along with his partner, had been the long term foster carers of a child. In this case the child's birth parents relinquished the child, and had no opposition to the carer adopting the child. It is anticipated that this case will set a precedent for one half of a gay or lesbian partnership – or a single gay or lesbian person – to adopt a child who is in their care.

Rainbow Families Council hopes that the Victorian government will act to extend the eligibility definition to include both members of a same sex couple and single people specifically. We also seek them to permit all gay and lesbian people or single applicants to apply for, all forms of adoption including inter-country, infant, familial and the adoption of foster or permanent care children.

Gay and lesbian foster carers, permanent carers and kinship carers in Victoria are eligible to join the Gay and Lesbian Carers Support Group, which provides information, telephone support and social opportunities for gay and lesbian carers and their children. See below for contact details.

Exploring co-parenting with a lesbian couple or single woman

Some men are interested in creating their family as co-parents with a lesbian couple or single woman. Co-parenting means sharing all significant parenting

responsibilities, such as living with (whether in one household or two), providing for the child, and making both day-to-day and longer-term decisions about them, for example around medical treatment, spirituality/religion, educational choices and every aspect of how they are raised.

A brief note on language: in this section we talk about mother/s and father/s, as those are usually the roles people have in co-parent families. Co-parent families do not fit neatly into any available 'box', in terms of the law, social security, tax and so on. 'Co-parent' is a social term, not a legal one. Since the recent reforms, a child's legal parents (and the only people legally able to be listed on the birth certificate) are their birth mother and her partner if she has one, although other co-parents can have their roles recognised through court parenting orders (see below). In addition, children born via a fertility procedure (whether conceived via a clinic or home insemination) must have their biological origins registered by the Victorian Registry of Births, Deaths and Marriages. Thus the details of the child's biological father (legally their donor) will be included in the child's birth record (but not on their certificate) if they were conceived by home insemination, or in the Central Donor Register if they were conceived via a clinic.

At present, co-parenting is a less commonly-chosen option than being a known donor to a single woman or lesbian couple, or becoming parents through surrogacy, fostering or permanent care. There are certainly happy, successful families in our community with two, three, four or more co-parents. However, co-parenting challenges the very strong notions that mainstream Australian culture, at least, has about family. It is difficult enough, sometimes, to negotiate parenting in a couple, let alone with people with whom you are not in an intimate relationship.

Co-parenting is a lifelong connection and commitment to each other and your child/ren. Being co-parents requires a deep level of trust, respect and goodwill towards one another, and a commitment to shared values and maintaining your family relationships when times get tough, as they can do for every family.

Make sure it is what you all really want

When considering co-parenting, it is critical to be sure it is what everyone involved truly wants. Do you want to share every aspect of parenting, from daily life to the big decisions? The options for gay men to have a baby without female co-parents are not easy; overseas surrogacy is prohibitively expensive, and altruistic surrogacy in Victoria requires men to find both a surrogate and an egg donor. But it is important to ask yourself: would you choose co-parenting if you (and your partner, if you have one) had an easy option to become parents on your own?

Be very clear that this is what your prospective female co-parents want too, whether you are single or a couple, before going too deeply into negotiations.

Try to challenge any beliefs, even deep within yourself, that 'all children need a mother and a father'. You may well decide that this is what you want, but in particular remember that three decades of research clearly show that children are not disadvantaged by being raised by two mum or two dads, and that the disadvantage that children of single parents (most often mothers) experience is related to the poverty many are forced into, as well as conflict between their separated parents.

Ask questions of as many people as you can whose families include co-parents. Read books and websites, seek out groups and online forums, and go to counselling. Try not to be influenced by fear of what other people might think of your decision, including your prospective co-parent/s. This is a critical life choice, and it has got to work for you.

You might decide you don't want to co-parent because you want to parent on your own, whether you are single or a couple. On the other hand, you might decide that you want children in your life, but don't necessarily want all of the responsibilities of parenthood. You might decide you actually want the role of known donor.

How does co-parenting differ from being a donor?

Co-parenting is about sharing every aspect of what parenting is: day-to-day life, and the responsibility for raising small human beings to adulthood. Being a known donor is very different. As described above, the term 'known donor' covers a huge variety of relationships and levels of contact. Some are just happy for the child/ren to know their name, see their photos, and perhaps meet up when the child/ren are old enough to show an interest. Some live overseas or interstate, and may exchange cards, emails, Skype chats and the occasional visit. Some may visit a few times a year, others more often. Some become a significant part of family life, spending regular time, perhaps holidaying together and becoming regular baby-sitters. Some children call their known donors 'Dad', even though they do not share parenting responsibilities and are not legal parents or fathers. Some do not. Again, the diversity of people's choices and journeys is endless. Find out more in our information sheet 'Options for prospective sperm donors, egg donors and surrogates'.

If you are a known donor, rather than a co-parent, this does not mean that your role in a child's life is not important or protected by the law. Australian family law clearly protects the relationships between children and significant people in their lives other than their legal parents. As a known donor, you can make any agreement you like with the woman or couple you donate to, and we recommend that you do make

an agreement. These agreements are not legally enforceable, but they are an important tool for ensuring you all agree on the key issues. If a dispute should arise, they also show everyone's initial intentions, which is an important (though not the only) factor in a court's decision-making. As a donor, you and the parents have the option of seeking parenting orders by consent (without a dispute arising) that recognise your role, for example your level of contact with the family. And in the event of a dispute, a court could grant you contact, and in some cases, even some parenting responsibilities, if they consider it in the child's best interests. See the information sheet on 'Information for prospective sperm and egg donors and surrogates' for more information.

If you are thinking of being a known donor, take your time deciding whether that is what you really want. Talk to men and women who have made families as parents, co-parents and known donors. You can be very involved in a child's life as a donor, but it is a different role. However much you might see the child/ren, you will not have parenting responsibilities or be their legal father or parent. If what you actually want is to be a parent/father, find a way to make it happen, through co-parenting, surrogacy, fostering or permanent care. If you compromise a deeply-held desire to be a parent by becoming a donor, but do not 'make peace' with your decision, the evidence is that it can too often result in heartache for everyone concerned: you, the mother/s, and most importantly the child and children.

Finding and talking to prospective co-parents

Some men explore the possibilities of creating a family with someone they have known for many years. Others find someone through friends, colleagues, support groups, personal advertisements or the internet. Any of these options can work, but it is very important to get to know each other well (perhaps for about a year) and have talked through all of the issues many times before you decide to go ahead, and certainly before you begin trying to conceive. We also highly recommend making an agreement (see below). If you find yourself growing uncomfortable with your prospective co-parents as you talk things over and get to know them in this context, it is critical that you do not go ahead. You can find someone else, or explore other options. It might be wise to seek assistance with this process, for example from a counsellor. Some fertility clinics offer a paid service of a counselling 'information session' prior to committing to any treatment, which could be useful.

Some people who have an existing friendship with their prospective co-parents may be less likely to really thrash through the more difficult issues, because they feel that 'they can always work it out'. However, this is not always the case, and sometimes the most intimate, longstanding friendships can end, or even turn into bitter disputes in this context. You may feel impatient to make a baby, but remember that this decision is critical

and irreversible. If you conceive a child with someone, you are connected to them for life. Most importantly, the decision you make will affect not only you, but also the one or more children whom you create.

So take your time to get to know each other in this new context, reflect on your own needs and feelings, and talk about the issues many times before beginning. It might be useful to put on 'different hats' when engaging in these discussions. It is very different talking as friends than as prospective co-parents. You need to be able to be honest about where your views differ without feeling that it reflects on your care for each other.

Having discussions and making agreements

It is critical to be very clear (including with each other, if you are a couple) on what you want before beginning negotiations with the prospective mother/s. What is your ideal? What is negotiable, and what is not? Your ideas might change, but it is important to begin by clearly communicating them, so that your prospective co-parent/s can think about where your vision coincides with theirs, and where it might differ. If you are all clear with each other, there is less likely to be confusion that can lead to conflict.

It is a good idea for everyone intending to create a co-parent family to make a written agreement, even though it is not legally binding. Australian law does not allow you to make a legally-enforceable contract or agreement about a child, written or verbal. We recommend each of the 'parties' – mother/s and father/s – seek separate legal advice on what will work for you all before making any decisions or attempting conception. This advice can inform your discussions, and the agreement you make about your intentions.

Agreements can be very useful as a record of your intentions and what you agreed to at the time. Some people make their agreement, then put it in a drawer and never look at it again. Many find their agreement a very useful tool, and revisit it when they conceive, when their child is born, when it comes to trying for any subsequent children, and when any major life changes happen that have possible implications for the relationship (such as someone moving interstate or overseas). And in a conflict, a written agreement demonstrates your intentions, which might be one (but certainly not the only) factor a court would consider.

Most people make agreements that are legally clear in language, but heartfelt. Think about how your children might feel if they read it, as they may well do later in life. The most valuable thing an agreement can do is encourage you all to sit down and talk about the important issues. Your agreement should clearly state all your intentions, and what each person's role will be.

A key part of the agreement relates to how you negotiate changes, and what you will do in case of

conflict. The only certainty in life is change. Children change, people's circumstances change, and so do their feelings. The feelings of everyone involved – including children as they grow – will inevitably change over time. This does not mean that your arrangements will shift, although they often do. The key is to agree on clear processes to negotiate change, and to deal with conflict (such as through a counselor or mediator), so that whatever happens you can stay out of court.

Specific topics to discuss

There is so much to discuss with your prospective co-parents, and it is easy to get pre-occupied with your dreams of family and forget about some of the nuts and bolts issues. These include:

- How you will attempt conception: the options include home insemination with fresh semen, home insemination with sperm 'donated' to the woman or couple through a fertility clinic, and clinic-based insemination (or other fertility treatment, such as IVF, if needed due to fertility problems in the intending biological mother, father or both). Remember that you will need to be available at short notice if you are using fresh semen for home insemination. The processes are exactly the same as for known donors, so please read the detailed information on 'The process of donating' in the information sheet 'Options for prospective sperm donors, egg donors and surrogates'.
- Fertility: consider having a sperm test early in the process, as problems are not uncommon. If you are a couple, and the intending biological father has fertility issues, then the other man may consider taking this role. If this is not possible, you might need to explore other methods of conception such as IVF; talk to a fertility specialist. There are also diet and other lifestyle changes that the intending biological father and birth mother can make to support your changes of conception.
- Health screening: insemination with fresh semen carries similar risks of infection to unprotected sex. You should be tested for gonorrhoea, chlamydia, HIV, syphilis, Hepatitis B and Hepatitis C and CMV (cytomegalovirus), plus blood group and antibody tests. If you or your partner are exposed to any risk of infection, you must re-test, to ensure you do not put the prospective birth mother, her partner or the baby at risk.
- What if you need to use IVF? Does anyone involved have issues with IVF, for example if there are unused embryos at the end of the process? What will you do if there is a likelihood of your unborn child having a profound disability or serious medical issue? People can have very strong (and different) feelings about such things.

- Everyone's different roles and needs for support during the processes of attempting conception, pregnancy, birth, breastfeeding (if you choose to, and the birth mother can breastfeed) and early infancy. Talk about the values that might inform your choices during these early stages, for example with regard to birth, breastfeeding or sleeping. You will probably all need to research, think about and discuss these things much more deeply than most parents before your baby is born, to ensure that the choices you make work for all of you.
- Where a child will live, and how the arrangements will change over time. A child's needs change enormously from birth to six months and beyond. What co-parenting looks like for a child under six months or a year may be very different from when they are 18 months old, four years old, and so on.
- How will you make decisions about your children's lives, for example about things like educational choices, healthcare, religion and spirituality, and all aspects of your children's upbringing?
- What will your financial arrangements be? Who will be financially responsible for the child? You will also need to be clear about inheritance, superannuation, insurance and wills, including specifically naming children in your will if you are not their legal parent (see under 'Recognising parentage').
- Financial power and support. The reality is that the income and wealth gap between men and women is still very wide in Australia. If there is financial support involved, including sometimes the purchase of a home, it is particularly important to put all arrangements in writing, including what will occur if you get into conflict. It is important to seek legal advice around these kinds of arrangements.
- The role of non-biological co-parents. Try to involve all parties in the discussions – for example the prospective birth and non-birth mothers, and the prospective biological and non-biological fathers. It is easy for non-biological co-parents to feel marginalised at this stage, and throughout the process.
- If one or both co-parents are single. People's lives can change in many ways. One of the biggest issues for co-parents can be if one or both later partner with someone they want to parent with; this can be very challenging for everyone involved, including the new partner.
- Will you involve your families of origin, and to what extent? This is a major issue for many LGBTI people, who might have had to deal with their parents' feelings (on coming out) that they are unlikely to be grandparents. Some extended families might continue to be homophobic, and it

can be difficult to know what to do then. But people can and often do change, especially when it comes to children and grandchildren.

- Ensure you understand the legal requirements with regard to the birth certificate and registering information about the child's biological origins, and spell them out in the agreement.
- As we have said, it is critical to have agreed processes (such as seeing a counsellor or mediator) for negotiating changes in life circumstances. What if someone wants to move, including interstate or overseas? What say might the child/ren have, when they are old enough to have an opinion? Make sure you have processes for negotiating changes in your arrangements, and dealing with any conflict that may arise.

Recognising parentage

At present, the law does not allow for equal recognition of more than two legal parents. Both Victorian law, through the *Status of Children Act*, and federal law say that if a child is born through a treatment procedure (including home insemination), then the birth mother (and her partner at the time of conception) are the legal parent/s, and able to be listed on the birth certificate. To list anyone else is to make a 'false declaration'. The exception is if the child is conceived via sex between the mother and biological father, in which case they are both legal parents and not the non-birth mother (if there is one).

The role of co-parents other than the legal parent/s can be recognised via court parenting orders by consent (without a conflict arising – see below). The biological origins of a child conceived via a treatment procedure (including through a clinic or home insemination) must be registered by the Victorian Registry of Births, Deaths and Marriages. Contact the Registry for more information about your situation.

Prior to the recent reforms, some co-parent families chose to list the biological mother and father on the birth certificate. This is no longer a legal option. Historically, however, many have chosen to list the birth mother on the birth certificate, and seek parenting orders for the other co-parents. One reason for this is because listing the biological father on the birth certificate would have created implications for social security, tax and other matters that may not fitted the family's needs.

It is important to note that if a conflict arises, legal parentage is only one factor in determining the outcome. A court can award full residence and parenting responsibilities to parties other than the legal parents. See under 'If relationships break down' below, and seek legal advice about your situation.

Court parenting orders

You should seek legal advice about your situation, including which adults (even if there is no dispute) require court parenting orders (in this case called 'consent orders') to legally recognise their role/s. All parties who have parenting responsibilities under court order are, along with a child's legal parent/s, required to give their consent for a child to obtain a passport. Parenting orders can include most of the rights and responsibilities of legal parentage, but end at age 18, and don't include things like inheritance and superannuation in most situations. So it is important for those who require parenting orders to, for example, ensure they specifically recognise children in their wills and seek legal advice about choices in relation to making financial provision for children (including a choice not to make provision, which may be subject to legal challenge in very limited circumstances, even if you are not a legal parent).

We strongly recommend that each of the 'parties' – mother/s and father/s – seek separate legal advice on what will work for you all before making any decisions or attempting conception.

If relationships break down

If parents separate

If you are a gay male couple recognised as your child/ren's legal parents (for example, if you conceived through altruistic surrogacy in Victoria) and your relationship ends, then you both remain their legal parents. You can negotiate your own shared care arrangements, as many parents do very successfully.

If you cannot agree, you have access to the same resources as heterosexual parents to help you work it out: family therapy, mediation, or as a last resort, the courts. The court will recognise you both as parents, and must start with the presumption that it is in your child/ren's best interests to have an ongoing relationship with both of you. However, each case is determined on the specific facts of the situation, and what the court believes is in the child's best interests, for example when it comes to issues such as where a child lives, who makes decisions about the child's life, and what level of contact a non-residential parent has. One option may be shared care, if the court thinks that the relationship and communication between the separated parents is strong enough to negotiate this.

If you are a separating couple who originally required parenting orders to recognise the your parenting roles (for example if you conceived through overseas surrogacy), your situation will, in practice, be similar.

Conflict between parents and donors, and between co-parents

The escalation of conflict is not good for anyone. Most importantly, a breakdown in relationships between adults in a child's life always has a negative impact on the child. Every family has issues to deal with from time to time. Ideally, you will be able to talk them through. It can be useful to involve a third party, such as a counsellor or mediator. Well before things get too difficult. Issues around family and children can get very emotional very quickly. Try hard to see each others' points of view, to maintain a sense of mutual goodwill and common purpose, and above all to keep the focus on the child/ren.

Australian family law, like the rest of our legal system, is based on an adversarial model that is particularly poorly suited to the complex and emotional nature of conflict over parenting and children. Going to court is extremely stressful and very costly.

The court will not change a child's legal parentage (the only circumstances in which this happens is in the case of children conceived via surrogacy in Victoria or adoption). A court makes its judgement – about things like where a child lives, who makes the decisions (parenting responsibility) and who has contact with the child – on the facts of the case, and what they see as the child's best interests. As mentioned, legal parentage is only one factor; a court can certainly award contact, and sometimes some parenting responsibilities, to parties other than the legal parent. This could include, for example, a co-parent, a known sperm or egg donor (and their partner, if they have one), a surrogate, a grandparent, a step-parent or anyone else significant in the child's life. A court could even award full residence and all parenting responsibilities to someone other than a child's legal parents, if they think that is in the child's best interests.

If people other than a child's legal parents 'formalised' recognition of their parenting role through a court order before the relationship broke down, the order provides strong evidence of their role and relationship with the child. But even if there was no such order, unless there is a good reason (related to the child's safety) why not, the court is likely to make a decision which maintains the child's relationship with all of the significant people in their life. As always we recommend you seek legal advice on the specifics of your situation.

Many factors will come into play, such as your arrangements to date and your original intentions (for example, as documented in an agreement, or even notes from your discussions). Previous cases also have an impact, although family law is less bound by legal precedent than other parts of Australian law, and this area of law is still emerging.

Stand by for more information

In October 2010, Rainbow Families Council received a referral to a major law firm facilitated through PILCH (Public Interest Law Clearing House). The Council has asked for pro bono legal advice and research to be undertaken in response to the question "The issue of two men being legally recognised as parents in their own right on a state and federal level – can it happen, and how?". Please check the website for updates on the referral, and answers to other FAQs related to rainbow families at www.rainbowfamilies.com.au.

Disclaimer

Rainbow Families Council produced this information kit in October 2010. We have made every effort to ensure the kit is correct, but accept no liability for information given. Information will be regularly updated on our website. We strongly advise that you seek medical and legal advice and specialist counselling relevant to your specific situation.

Find out more about:

- the federal reforms affecting same-sex couples and parents at www.wearitwithpride.com.au and www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_SameSexReform
- applying to the Patient Review Panel re a surrogacy arrangement at www.health.vic.gov.au/prp
- more about what is involved in altruistic and commercial surrogacy at Gay Dads Australia's website, www.gaydadsaustralia.com
- latest information about options for parentage, and what other gay men have done, by joining support groups or online email groups such as the Gay Dads Vic yahoo group, at groups.yahoo.com/group/GayDadsVic/
- becoming a foster or permanent carer, by calling the foster care hotline on 1800 013 088 or visiting www.fosterabrighterfuture.com.au

- the Gay and Lesbian Carers Support Group, for gay and lesbian foster carers, permanent carers and kinship carers in Victoria, by contacting Tracey on 0427 811 186.
- registration and management of donor information under 'Rainbow families: donor registers and information' in this kit, or from Births, Death and Marriages. Phone 1300 369 367 or visit their website: google 'Victoria births deaths and marriages', click on 'Births', and then 'Donor treatment registers'.
- a good, detailed guide to all forms of fertility treatment, including surrogacy, in 'IVF and Beyond for Dummies' by Karin Hammerberg, published in Australia in 2010
- fertility clinics in Victoria at www.fertilitysociety.com.au/rtac/accredited-units/victoria/
- how to apply for a court parenting order in the Family Court of Australia Consent Orders Kit at www.familylawcourts.gov.au/wps/wcm/connect/
- where to seek legal advice about agreements and other matters through the Law Institute of Victoria's Directories at www.liv.asn.au/Specialists
- parenting orders and child maintenance, on Victoria Legal Aid's website under Children & Parenting, www.legalaid.vic.gov.au/childrenparenting.htm
- The Victorian Assisted Reproductive Treatment Authority, for information about telling a child about their donor origins at www.varta.org.au.

What else is in this information kit?

- Introduction and definitions
- Recognising pre-existing families
- Options for prospective lesbian parents
- Options for prospective sperm donors, egg donors and surrogates
- Donor information and registers
- Resources and links

Options for prospective sperm donors, egg donors and surrogates

Helping somebody else have a child is a profound and generous act. It is critical to understand the issues involved, both legal and emotional, and discuss them in depth with the prospective parents before making any decisions. Will you have an ongoing relationship with the family and children? What might that look like? Will it change over time? If you have a partner and/or your own children, it is also important to think about how your choices will affect them.

About this information sheet

This information sheet explores options and issues for prospective sperm donors, egg donors and surrogates to same-sex couples and single people. The issues overlap to some extent, although in other ways they are very different. In this information sheet we outline relevant Victorian and federal laws for prospective sperm and egg donors and surrogates, and the processes (medical and other) involved.

We also go into some depth about the choices and emotional journeys men often make around being a sperm donor. We can do this because men have

been helping lesbian couples and single women create families in Victoria for decades. In contrast, altruistic surrogacy was only effectively legalized in this state with the passing of the *Assisted Reproductive Treatment Act* (ART Act) in 2008. We do not yet know the extent to which gay men will take this option up as a way to create their families, or what kind of relationships they will form with their egg donors and surrogates. If you are considering being an egg donor or surrogate, it is worth reading the material for prospective sperm donors, to decide how relevant some of the issues explored there may be to you.

This kit makes many references to what might happen if things go wrong, whether between couples, between parents and their donors or surrogates, or between co-parents. This is not because conflict is necessarily more likely to happen in rainbow families than in any other. It is because this is what much of family law, in particular, is about: what happens if things go wrong.

However, it is also important to acknowledge that while same-sex parents have been successfully raising children for decades, our diverse family formations are in many ways still relatively new, and the law is still coming to terms with them. As a result, parents, co-parents and donors and others involved can be vulnerable to confusion and differing expectations, which can sometimes contribute to conflict. Every family has issues to talk through from time to time, but only a tiny proportion need to attend mediation or family court. Nevertheless, it is critical to understand and talk through the implications of the relevant laws, not least because it might influence the decisions you make.

All that being said, helping to bring a child into the world – and perhaps in your own life – is a wonderful, heart-expanding experience. We wish you the very best with your journey!

Prospective sperm donors

Donor or parent/father?

One of the most critical issues for prospective sperm donors to consider is whether being a donor is what you want, or whether you would really prefer to become a parent/father yourself.



The differences between donors and parents

Gay, bisexual and heterosexual men have been helping lesbian couples and single women create families for decades in Australia and elsewhere. The role of donor can be very rewarding – many men say it is one of the best things they have ever done in their lives.

Donor's roles and relationships with the families they help to create vary enormously, from virtual anonymity (although Victorian law emphasises children's right to identifying information about their donor) to exchanges of emails or Skype chats (for donors who live in another state or country), occasional visits, to being a regular part of family life – sharing time with the family, perhaps holidaying together, and sometimes becoming regular babysitters and spending time alone with kids. For many men, it is not only about helping someone else in an extraordinary way, but also having the joy of children in their own lives, without any of the hard work!

Sometimes the relationship between a known donor and family is more akin to co-parenting, or grows into this over time (see our sheet on 'Options for prospective gay male parents' for more on co-parenting). But legally – and in everyday life – the role of donor is very different from that of a parent. Donors do not live with children, or provide for them, or make decisions about children's lives such as where they live, how they are raised, where they go to school and so on. Depending on the relationship with the family, a donor's input on issues like these might be welcome, but ultimately – and legally – these are parental responsibilities. Both federal and Victorian law now recognise lesbian couples as their children's legal parents, and clearly state that a donor is not a parent, as we explain below.

What are your options?

Sometimes men become donors when what they really want is to be a parent or father themselves. You can potentially be very involved in a child's life as a donor, but it is a different role. Some donors call themselves fathers, and are called 'Dad' or equivalent by the children for whom they donated. But however much contact they have with a child, both federal and Victorian law is clear that they do not have parental responsibility, and are not the legal father or parent.

Some gay couples and single men might feel that being a donor is the closest they can come to being a father. Many gay men feel, when they come out, that they must quash any desire to be a parent. Historically – and even today – some men have denied their sexuality and married women (although many come out later in life), largely because they felt this was the only way they could become fathers.

Many LGBTI (lesbian, gay, bisexual, transsexual and intersex) people have internalised homophobic messages that they cannot, or should not, have children

because of their sexuality or gender identity. It can be hard to challenge those feelings within yourself. But remember, there are more and more gay and same-sex couple dads in Australia and around the world, and both social attitudes and relevant laws are changing.

Try not to let fear – for example of what other people might think – dictate this critical life decision.

In particular, try to challenge the idea (even within yourself) that 'all children need a mother and a father'. Three decades of rigorous Australian and international research show that children of same-sex parents are not disadvantaged, and are in some ways – such as in their capacity for empathy – better off!

Even if a good friend asks you if you would be willing to donate to them, it is critical that you think carefully about what this would mean for you, and whether it is what you really want for yourself, whether you are in a couple or single. If what you truly want is to be a parent/father, explore ways that you can make this happen.

The options currently available for gay men to become parents are not easy, but the number of gay dads is increasing, and there are support and discussion groups available. If you compromise on this issue, but do not 'make peace' with your decision, the evidence is that it can too often result in heartache for everyone concerned: you, the mother/s, and most importantly the child/ren. See our information sheet 'Options for prospective gay male parents' for further information, including about altruistic surrogacy in Victoria, overseas commercial surrogacy, co-parenting with single women and lesbians couples, and foster and permanent care.

It might be that the woman or couple who asked you if you would be willing to donate is open to co-parenting with you, if this feels like something you might want. Co-parenting means sharing all the aspects of bringing up children, from day to day life to the big decisions. It is important to realize, however, that co-parenting is a social term, not a legal one. The law does not recognise more than two legal parents, and since the recent reforms, a child's legal parents can only be the birth mother and her partner if she has one, although other co-parents can have their role legally recognised by court order. Co-parenting is a less common choice for both gay men and lesbians, and while there are many successful co-parent families, it can be challenging to negotiate. See our information sheet 'Options for prospective gay male parents' for more about co-parenting and other options for becoming a parent.

Thinking it through

There are many men whose first preference is the role of donor. And there are many others who feel some desire to become parents, but decide to become known donors instead, and make their peace with that decision. If you feel that this might apply to you, take whatever time you need to be very sure. Think about what you might feel once conception has been

successful, when a baby comes along, or as a child grows. Talk to your partner (if you have one), to other men who are donors, and to parents (same-sex parents and others). Talk to your own family of origin, if this feels appropriate. Explore these issues many times, over a considerable period of time, with the couple or woman you are considering donating to. We outline some of the issues your discussions might include (in relation to your possible role as a known donor) in much more detail below, under 'Talking and making agreements'.

The emotional challenges you face now, deciding whether to be a donor and what this might look like, are very different from the emotional reality of there being a child in the world you helped create. Try to imagine what it will be like. Will you be happy and comfortable with the role you have committed to, and with the agreements you have made with the couple or woman you donated to? Will you feel any sense of loss at not being a parent yourself? Of course, people's emotions often change over time, but it is very important that you do not go ahead until all such issues are resolved.

Whether you decide to be a known donor, or to pursue becoming a parent yourself (or both!), remember that both roles are absolutely legitimate. The most important thing is that you base your choices on your own values and desires. Gay, bisexual and straight men have been involved in both making their own families, and in helping lesbian couples and single women make families in a rich variety of ways for many years, and will continue to do so. Laws and social attitudes have improved a lot, and this is increasing as our numbers and diversity grow.

Your emotional journey

Working out whether to say yes

We have talked about making sure the role of known donor is what you want. But how do you decide if the woman or couple who has asked you is who you really want to donate to? Do you like them? Can you envisage working through difficult issues with them? Even the most smooth-sailing donor/family relationships involve some challenging conversations; indeed, good communication on difficult issues is an important foundation for a good relationship.

It might be very difficult to decide, even if you are close to the person asking you. Even if you are very supportive of their desire to parent, you might not feel this is something you can do for them. Helping someone to create a child by donating is a profound act, and there might be many reasons that you (and/or your partner, if you have one) do not feel that this is a role you want, many of which are likely to be separate from your relationship with the mother/s.

Is it important to you, in making your decision, that you share some key values around how children are raised? You might not have (or want) any input into these kinds of choices once a child is born; many donors do not. But you need to decide whether this matters to you, and what values you want to discuss in this context.

Some men might feel that they may not have another chance to help create a child. But remember that there are other options. You could explore being a parent yourself, if you are not already. You could find another woman or couple to be a known donor for. Or you could become a clinic donor. There is a shortage of clinic donors throughout Australia, and in Victoria, children have the right to contact their clinic donor, should they wish at age 18. In practice, it is not uncommon for parents to ask for contact with clinic donors before the child is 18 (they need to donor's permission for this). Clinics are often happy to include in their records whether a particular donor is open to being contacted before children are 18. See below for more on storage, management and release of donor information.

If you are interested in donating to the woman or couple who has approached you, you will need to work out if the role they envisage for their known donor is something you can see working for you. You also need to be clear about what you want out of the role, and talk many times about this, over a significant period of time, with the prospective mother/s. Think of it as a negotiation, with both of you clearly articulating what you want, and then working out whether you can come to a solid agreement. Do your visions coincide? What points of difference do you have? Are they negotiable? We list some of the key issues to consider below, under 'Talking and making agreements'. It might be worth getting assistance from a counsellor to work through some issues. Some fertility clinics, for example, offer the paid service of a counselling 'information session', prior to committing to any treatment.

When you are already friends

Some prospective mothers and donors who have an existing friendship might be less likely to really thrash through the more difficult issues, because they feel that 'they can always work it out'. However, this is not always the case, and sometimes the most intimate, longstanding friendships can end, or even turn into bitter disputes in this context. You might all feel impatient to make a baby, but remember that this decision is critical and irreversible. If you conceive a child with someone, you are connected to them for life. Most importantly, the decision you make affects not only you, but also the child/ren whom you help to create.

So take your time – perhaps as long as a year – to get to know each other in this new context, reflect on your own needs and feelings, and talk about the issues many times before you begin. It might be useful, when you begin talking seriously, to think about 'putting on a

different hat' during those discussions. It is very different to talk as prospective parents and donors than as friends. The issues for parents and donors are different, and it is important to acknowledge and talk through those differences without feeling that they reflect negatively on your friendship or care for one another.

Working out what your role is (and is not)

As we have said, men have been helping lesbian couples and single women make families for decades, through a constellation of types of arrangements and level of involvement. But on a personal level, it is likely that you will not have thought in very great depth about what being a donor might mean for you, before being approached by a friend or acquaintance about it. It is very important that you do so, however, before agreeing to donate, and certainly before attempting conception.

So how can you make sense of the role of donor, and what you might want out of it? As we have said, the role varies enormously, from very minimal contact to a high degree of involvement. You will not be a legal parent or father, even though some known donors call themselves fathers (with the agreement of the mother/s) and are perhaps called 'Dad' (or equivalent) by the children. Parents have particular roles and responsibilities, including legal responsibilities. If you want to be a parent/father, then explore ways to make this happen, and do not agree to be a donor unless you have resolved your feelings about this.

Sorting out the difference between being a known donor and a parent can be confusing and difficult, especially if you plan to be quite involved and/or use language like or 'Dad'. But it is important to be clear about this difference, and to revisit the issue as often as needed throughout your journey of being a known donor, with support from your partner (if you have one), friends or a counsellor. If you are not clear in your own mind, this can lead to conflict, and cause real heartache for you, the mother/s, and most importantly the child or children.

Some men think of being a donor as a sort of in-between space, between being a father (but not a legal parent), a family friend, and part of the children's extended family. You are not just a friend, because you helped create the child/ren; they are genetically connected to you, and probably look a bit like you, which many donors find an amazing experience. Whether you all think of yourselves as extended family depends on your relationship, and how you all think about family. There's a big range of possibilities in that in-between space, and you need to be clear about where you see yourself, and where the prospective mother/s see you. One idea is to map out all the family relationships, and where you see yourself in relation to them. Try doing this separately from the prospective mother/s, then comparing your two diagrams to work out where you can find common ground.

Your partner and (perhaps future) children

If you have a partner, what role might he or she have? Do both of you want to be involved, or only you? If you both do, it will be particularly important that you are both part of the conversations with the prospective mother/s. It can be easy for the donor's partner to feel marginalised at this point, and throughout the process.

If you have some contact with the family, this is likely to impact on your partner to some extent. If the mother/s need to use a clinic to conceive, they may require your partner to attend counseling with you, and with the prospective mother/s, and give his or her consent to the donation. Might the prospective mother/s be open to your partner's contact with the family increasing over time, if desired? If you are single now and later partner (or if you separate and re-partner), would they be open to your new partner having contact with the family?

If you have children yourself, or plan to later, how will you talk to them about your role? At what age would you tell them? There is strong evidence that children fare best when adults are open about issues around donation. If they are older, would you talk with them about it before making your decision to go ahead? If you plan to have regular contact with the family, in particular, it will be important to be open with your children. You might wish the children to have a relationship with the family. There are resources available on the VARTA website (see below) to help you think about talking to your children about donating, including interviews with donors and their older children.

The F-word

The language question is a very personal one, and the answer might change for you and the mother/s over time. It is important to agree on what language you will all use, in what context, and exactly what you all mean by it. Language is extremely powerful, in terms of the feelings and expectations of everyone involved (not least the children), and also in the wider community.

Some known donors feel strongly that they want to call themselves a father, and would like the children to call them 'Dad' (or equivalent), even though they are not a parent. Some men feel strongly that they do not want this, prefer to call themselves a donor, or a compromise such as 'donor dad', and want the children to use their first name, or 'Uncle John' or equivalent. There is also the question of what your partner might be called.

Some men start out being open to being called 'Dad', but feel after a child is born that this term is really only for men who are actually in a day-to-day parenting role. Others don't really want the name, but are happy for the children to call them 'Dad' if they choose to, as they grow older. Children will usually follow what the adults around them model when they are young.

It is worth revisiting this issue when you conceive, when a child is born, and in the year or two after. It might also be helpful to explore whether you are all comfortable to leave the question open or flexible until then.

Your family of origin and other people

Other people's issues and expectations can have a big influence. It is important to acknowledge this and be clear about which are your feelings, and which are other people's. On a broad social level – in your own friendship circle, family or community – the role of known donor might not be well understood. People can put their own expectations of what it means to be a 'father' on you (even if you do not call yourself one) without understanding your feelings about it, or your agreement with the mother/s. People might find it tricky to understand if you call yourself a father, but do not have parenting responsibilities. Remember that the children's parent/s made a positive choice of you as a known donor, and your role is not less in value to that of a parent, but simply different.

Confusingly, many men find that being a known donor brings up a lot of issues for them around fatherhood, and what that means to them, even when they are very clear that their role is not that of a parent and/or father in this family. In particular, it can bring up a lot of feelings about how you were parented (or not) by your own father. This can be the case whether or not you have an ongoing relationship with your family of origin.

For many men, the response of their family of origin to them being a donor can be a major issue. A lot of gay men have had to deal with their parents' feelings (on coming out) that they are unlikely to be grandparents through their gay son. You being a donor might be an exciting possibility (or a challenge) for them to deal with. Think about what contact you might wish your family of origin to have with the child/ren, and talk about this in detail with the prospective mother/s. They might or might not be open to contact with your family, and the possibility of them being grandparents, aunts and uncles to their children. It can be an added complication for you all to negotiate, and might be something that you or the prospective mother/s don't want, especially your family is still dealing (or not) with their own homophobia. But remember that people can change (especially when it comes to children), and it is potentially wonderful for children to have more loving extended family if this is what everyone wants.

If you or the prospective mother/s do not want your parents or others involved, it will be very important that you be clear with your family of origin about this. They might well have understandably strong feelings about it, but you will need to help them understand that you are a donor, not a parent in this family, and that the arrangement is between you and the mother/s only.

It's all about the kids

Some men have extensive experience of being around children before they are approached about being a donor, perhaps because they are fathers themselves, or uncles, or have many friends with children. Other men have much less experience, and don't know what to expect from being in contact with children. It will be helpful to talk with other donors, and parents (particularly those whose families involve donors) about what kind of contact can work for children at different ages. Whatever level of contact you negotiate with the mother/s, from very occasional visits to regular time spent together, and even time alone with children as they grow, the key to building a relationship with the child/ren themselves over time will be the quality of attention you give to them when you are with them, and the consistency of your involvement (at whatever level that might be) in their lives.

Ensuring that you have support too

It is important for you to have the support you need throughout the emotional journey of becoming and being a known donor. This starts when you are making the decision about whether to donate. It continues during your negotiations with the prospective mother/s, and throughout the processes of trying to conceive, during the pregnancy, birth, early infancy and as the child or children grow.

Sometimes the focus can be very much on the mother/s, particularly the birth mother, when they are trying to conceive, and particularly if they have a miscarriage – remember that around one in six pregnancies ends in miscarriage. It is often the case during pregnancy, birth and early infancy. The mother/s will certainly need lots of support during all of those processes, and you might well be involved in giving that support, especially if you are good friends.

However, it is important to recognise that you also need support for your own journey, particularly if it proves difficult to conceive, or if there is a miscarriage or some other problem. It is possible that this support might not be able to come, to any great extent, from the mother/s because they are dealing with their own feelings. But if you are a couple, you can support each other, and whether you are coupled or single you can ask for support from your friends, family members (if appropriate), a counsellor, and support groups, including online groups.

Even if there is no such problem, helping to create new life is a momentous experience, and can be an unexpected emotional rollercoaster. If you are in a couple, for example, being a donor can bring up issues in your relationship, perhaps related to your feelings about family and future, including whether you might have your own children. And if you already have your

own children, you will need to think about how to talk with them about it all – see below for more on this. Whatever your own situation, it is important that you work out what being a donor might mean for you before you decide to take on this role, and help a couple or single woman to create a child.

The process of donating

There are three options for attempting conception: home insemination using fresh semen; home insemination using screened, stored sperm; and clinic-based insemination using screened, stored sperm. We explore each in some detail below. It is important to remember that although some people conceive the first time they try (be warned, it certainly does happen!), for others the process might be much longer and more complex than they first envisaged.

Checking and supporting your fertility

Consider having a sperm test early in the process, as problems are not uncommon. If you are a gay couple, and the intending donor has fertility issues, then the other man may consider taking this role. If this is not possible, you might still be able to donate, although probably not through home insemination; if they are open to it, the prospective mother/s can find out about other options from a fertility specialist. There are also diet and other lifestyle changes that both you and the prospective birth mother can make support your chances of conception.

Health screening and safer sex

However you plan to attempt conception, you will need to be screened for a number of sexually transmissible infections. Donor insemination carries many of the same risks of infection as unprotected sex. If you are planning to home inseminate using fresh semen, you will need to ask your GP to arrange these tests, which should include gonorrhoea, chlamydia, HIV, syphilis, Hepatitis B and Hepatitis C and CMV (cytomegalovirus), plus blood group and antibody tests.

If you or your partner are subsequently exposed to any risk of infection, you will need to test again, to ensure you do not put the prospective birth mother, her partner or the baby at risk. It is more important than ever that you have safer sex throughout the period you are attempting conception. Talk openly with your partner/s about your sexual practices, together and (if relevant) with other people, and minimize your risk of infection through safer sex and avoiding other risks (such as through injecting drug use).

Another option is to make a 'directed donation' to the mother/s through a fertility clinic. The clinic will arrange all the screening tests, and after a quarantine period

(to allow for the HIV testing window), will provide the mother/s with your frozen, screened sperm for home insemination, clinic-based insemination or IVF. You will not need to re-test unless more sperm is required.

Options for attempting conception

Home insemination with fresh semen

One advantage of home insemination with fresh semen is that it is free, apart from the costs of health screening (see above). The prospective birth mother should also have the recommended pre-pregnancy checks, including a pap test and HIV, rubella, blood group and antibody tests. She should talk to her GP for more information about preparing for pregnancy, including understanding her cycle and the timing of ovulation.

Some people choose home insemination because it is less medical and more private. Other advantages are that fresh semen has a much higher sperm count than frozen. You can also increase the chance of conception by making more attempts each cycle, because women are fertile for a number of days, and fresh sperm is viable for longer (inside a woman's body) than frozen. However, the logistics can be challenging, as semen should be used within an hour of (but not straight after) ejaculation. You will also need to ensure that you get the entire ejaculate into the clean, dry glass container you are using to transport it, as there is more sperm in the first part of the ejaculate. Find out more about maximizing the chance of conception through home insemination in resources listed in the information sheet 'Options for prospective lesbian parents'.

Home insemination with screened, stored sperm

Melbourne IVF Clinic also offers a service, mentioned above, where you can give a 'directed donation' to the mother/s through the clinic. After a 'quarantine period' (to cover the window period for HIV testing), the clinic provides the mother/s with your screened, stored sperm for home insemination. This means that the mother/s will need to become clients of the clinic, which involves a number of complex procedures and legal checks (see the information sheet 'Options for prospective lesbian parents'). It also costs (approximately \$1000 per cycle at the time of writing), especially as Medicare does not cover fertility services not medically required.

If the mother/s need to become clients of a clinic, as their donor you will undergo clinic counseling both with, and separate from them. Many clinics also require your partner to attend counselling and give his or her consent to the donation. The mother/s will also have to undergo police and child protection checks. You will fill out questionnaires about your medical background, see a medical specialist, and give consent to the procedures involved. Some counsellors will also take you through issues around your (and your partner's) potential role in the family's life. See 'Thinking about it and making agreements', below, for an outline of such issues.

Clinic-based insemination with screened, stored sperm

The third option is clinic-based insemination using your sperm. The advantage of this method is that the clinic will conduct some basic fertility tests, and help track the prospective birth mother's cycle, maximizing her chances of conception. A fertility clinic can also do 'intra-uterine' insemination, inserting the sperm directly into her uterus, which increases her chance of conception (but is not safe to do at home). However, Medicare will not cover clinic-based insemination unless there is a medical reason (such as trouble with ovulation).

Note that Victorian clinics can screen and store your sperm even if you live interstate or overseas. The prospective mother/s may be able to get permission from VARTA (the Victorian Assisted Reproductive Treatment Authority) to 'import' your sperm into Victoria, if you cannot come here to donate. You will be required to undergo counseling and give consents through the Victorian clinic, but some are willing to do this over the phone and by mail.

What about the 'natural way'?

Some prospective sperm donors (and/or sometimes the prospective mother/s) might be interested in the idea of conception through sex between the donor and prospective birth mother. This is not advisable, partly because of the potential emotional complications for everyone involved, but also because of the legal ramifications. The law says that if you are the sperm donor for a child conceived through a 'treatment procedure', including home insemination, you are not their legal parent. That is, you are not responsible for them, financially or otherwise. Your role in their lives can be legally recognised and protected, as we explain below. But you cannot be pursued for child maintenance, and they have no claim on your estate, insurance or superannuation (except in very limited circumstances). But if you 'donate' by having sex to conceive, this makes you the child's legal parent. In one such case, a donor was successfully pursued for maintenance, against the wishes of both the mothers and donor.

When insemination isn't working

If the mother/s have had around six unsuccessful. Well-timed attempts at conception, she/they will need to talk to their GP (if home inseminating) or a clinic about investigating their fertility. Depending on the prospective birth mother's age, how long they have been trying, and medical issues identified, further treatment may be recommended, such as drugs to support ovulation, intra-uterine insemination (if they are not already using it) or in-vitro fertilisation (IVF). The out-of-pocket costs of IVF are considerably higher than clinic insemination (between \$1,000 and \$3,000 per cycle at the time of writing) but they are eligible for Medicare rebate (50% up to the Medicare threshold and 80% thereafter).

If there are ongoing problems with conception, or with miscarriage, it is possible that you and the prospective birth mother would be required to undergo genetic testing. The fertility clinic will provide information and counselling support to assist you if this is needed.

It is important that you discuss the possibility of fertility treatment such as IVF in your initial discussions with the prospective mother/s. It is not uncommon, even for women under 35, to require assistance to conceive. You might well have no issues with IVF, but it is important to think it over before you decide to donate. See 'Thinking about it and making agreements', below, for more.

Your legal status

If you are a donor, even if you plan to have a high level of contact with the family and child/ren, you are not a legal parent or father. Victorian law, through the *Status of Children Act*, defines a child's legal parent as the birth mother and her partner (if she has one). They are the only people who can be listed on the child's birth certificate. To list anyone else is to make a 'false declaration'. The exception is if the child was conceived via sex between you and the birth mother, in which case you are both legal parents, and the non-birth mother (if there is one) is not. Children cannot have more than two legal parents.

As a donor, you will not be held liable for child support or maintenance, and children have no rights to your estate, superannuation or insurance (except in very limited circumstances). Recognition of lesbian parents includes couples who were together when a child was conceived, but separate prior to or after the birth.

Legal recognition of your role in a child's life

Your role in the child's conception must be recorded with the Victorian Registry of Births, Deaths and Marriages. For children conceived via a clinic, the clinic gives this information to BDM for storage in the Central Donor Register. For children conceived via home insemination, you and the mother/s inform BDM. The mother/s fill in the Birth Registration Statement, and you write a letter, providing your contact details and proof of identity (see the information sheet 'Donor information and registers'). You are responsible for keeping your contact information up to date with the Registry.

In addition, Australian family law recognises and protects the relationships a child has with people other than their legal parents. Your role (and that of your partner, if you have one) in the child/ren's life can be recognised and legally protected if you all wish. It is a good idea to make your own agreement about the role you (and your partner, if you have one) will have in the family's life, although such agreements cannot be legally binding. You also have the option of formalising your arrangements by seeking a court order by consent (without a dispute arising), to cover things like the

agreed level of contact. There are costs, and many donors and families are happy with their own informal agreement, including a process for negotiating changes if needed, and for resolving any conflicts that may arise. See below for issues your agreement might include.

Thinking about it and making agreements

It is a good idea for you (and your partner, if you have one) to make a written agreement with the prospective mother/s, even though it is not legally binding. Australian law does not allow you to make a legally-enforceable contract or agreement about a child, written or verbal. Some people make their agreement, then put it in a drawer and never look at it again. Some revisit it when they conceive, when a child is born, when it comes to trying for any subsequent children, and when any major life changes happen that have possible implications for the relationship (such as someone moving interstate or overseas). Many people find their agreement a useful a tool, and a record of what they wanted and agreed to at the time. And in a conflict, a written agreement demonstrates your intentions, which might be one (but certainly not the only) factor a court would consider.

Most people make agreements that are legally clear in language, but also express their feelings. Think about how the children you help conceive might feel if they read your agreement, as they may do later in life. The most valuable thing an agreement can do is encourage you all to sit down and talk about the important issues. Your agreement should clearly state what each person's role will be (including your partner, if you have one), and who are the child's parents. It should clearly state what all of your intentions are in making the agreement.

The most important part of the agreement relates to how you will negotiate changes, and what you will do in case of conflict. The only certainty in life is change. Children change, people's circumstances change, and so do their feelings. The feelings of everyone involved – the parent/s, you, your partner, and the children as they grow – will inevitably change over time. This does not mean that your arrangements will also shift, although they often do. Some donors become much more involved in family life, for example, while others are less so than originally intended. The key is to agree on clear processes to negotiate change, and to deal with conflict (such as through a counselor or mediator), so that whatever happens you can stay out of court.

Specific topics to discuss

People's agreements vary enormously, but there are some key issues to consider including:

- Will you be known to the child? Some donors are happy to be introduced when the child is old enough to show an interest, but have no other contact.

There is strong evidence that children fare best when their parents are open about their donor origins from early in life, whether or not they have an ongoing relationship or contact with their donor.

- Will you all be open about your role as donor with friends, family and acquaintances, including those you have in common? Bring this up early, before any of you mention the issue to others. Remember that when a child knows your identity and is old enough to talk, the adults involved will lose control of who has this information! There is strong evidence that any sense of secrecy about children's donor origins is not in children's best interests.
- Do you want to tell or involve your family of origin? This is a major issue for many donors, as previously discussed under 'Your emotional journey'.
- If you have a partner, what role might he or she play? We also discuss this above.
- What language will you all use around your role, and that of your partner if you have one? How will you speak with the children about this? How will you describe your role to other people? See above under 'The F-word'.
- What processes for donating are you open to? Make sure you understand what is involved with each option, described above, and the health screening required, including if you need to re-test. See above, under 'The process of donating'.
- What if the mother/s need to use IVF? Do you have any feelings about that, for example what choices the mother/s might make around unused embryos at the end of the process?
- Are you open to donating for more than one child? And for either mother to be the birth mother?
- How will you feel there is a likelihood of an unborn child having a profound disability or serious medical issue? People can have very strong, and different, feelings about issues like this.
- What contact might you have with the mother/s during the pregnancy? Would the mother/s want you to have any role (and would you want to) during the birth? How soon will you meet the child? What role or contact might you have during early infancy? Will you have any say in the naming of the child?
- What kind of time do you want to spend with the family? Do you want occasional or regular contact? Will it involve family celebrations and birthdays, school or social activities? Will the amount and nature of the contact you have with the family change over time?
- Will your contact always be with the whole family, or sometimes just with the children? If the latter, are you interested in – and would the mother/s ever be open to the possibility of – the children staying with you overnight? At what age? Talk to other parents about children's capacity to be away from

their home and parents at different ages, before exploring these issues.

- Who will be financially responsible for the child? If you want to make a financial contribution (and the mother/s are open to this), would this be regular or ad hoc? What about inheritance, superannuation, insurance and wills?
- What kind of support (other than financial) and involvement, if any, would you like to give to the family, and what might the mother/s want from you?
- Do you want – and are the mother/s open to you having – any say in the decisions about their children's lives? For example, will they ask for your input about things like education choices or religion? What about health care or other aspects of their children's upbringing?
- Make sure you understand the law in regards to who are the child's legal parents, who is listed on the birth certificate, and the legal requirements for listing donor information with the Registry of Births, Deaths and Marriages. Discuss whether you all want to seek court parenting orders by consent.

As we have said, the most important thing to agree on is how to negotiate change and any conflict. You might want to make some agreements on hypothetical scenarios, such as what you will do if someone wants to move interstate or overseas. It is worth all the 'parties' seeking separate legal advice before making decisions or attempting conception.

Commit seriously to the agreements you make in good faith, but acknowledge the reality that people's needs, feelings and circumstances change. It is important to finalise your agreement before beginning to attempt conception; some people do not, then discover they still had very different expectations down the track. However, it is also a good idea to revisit the decisions you made after the child is born.

Consider starting slow

For most people, this is all very new territory. If you do not have children yourself, you cannot know what it will be like when this child is born, and how you will feel. That goes for you and your partner if you have one, and the mother/s. Talk to parents of babies and young children. There is no greater change for many people than when children come into their lives.

When thinking about the kind of involvement you might have before and after birth, is important to consider the nature of pregnancy, birth and early infancy, and the mother/s choices around issues like birth, breastfeeding and sleeping.

The Australian National Health and Medical Research Council recommends that children are exclusively breastfed for the first six months, and continue to breastfeed until at least two years old. Of course, every

family makes their own choices around issues such as breastfeeding, for example, and not all birth mothers can breastfeed, or want to, short or long-term. Everyone involved in this process will have their own particular experiences of the exhausting, exhilarating, emotional and sometimes difficult processes of trying to conceive, pregnancy, birth, establishing breastfeeding and early infancy. Everyone will need different kinds of support at different times.

One option that works for many is to start with a lower level of contact (however you all define that – perhaps a short fortnightly visit) to begin with, but be open to that increasing over time as you all learn and explore your new roles. Your role can potentially be very different when a child is a toddler or preschooler to when they are newborn.

If relationships break down

The escalation of conflict is not good for anyone. Most importantly, a breakdown in relationships between adults in a child's life always has a negative impact on the child. Every family has issues to deal with from time to time. Ideally, you will be able to talk them through. It can be useful to involve a third party, such as a counsellor or mediator, well before things get too difficult. Issues around family and children can get very emotional very quickly. Try hard to see each others' points of view, to maintain a sense of mutual goodwill and common purpose, and above all to keep the focus on the child/ren.

Australian family law, like the rest of our legal system, is based on an adversarial model that is particularly poorly suited to the complex and emotional nature of conflict over parenting and children. Going to court is extremely stressful and costly. Do everything you can to stay out of court if you can avoid it, including trying different counsellors or mediators if the first is not helpful.

Australian family law allows anyone with 'an interest' in a child's welfare to apply for a court order creating contact or other arrangements with regard to the child. The court will not change who is recognised as a child's legal parents in these circumstances, but it will decide on issues like who sees, lives with and makes decision for a child on the individual facts of the case, and what they see as the child's best interests.

A court might make an order for you (and your partner, if you have one) to have contact, and in some circumstances even some parenting responsibilities, if it considers this to be in the best interests of the child. Many factors will come into play, including your arrangements to date and perhaps your original intentions (for example, as documented in an agreement) or evidence shown by consent orders recognising your role. Previous cases also have an impact, although family law is less bound by legal precedent than other parts of Australian law, and this area of law is still emerging.

Information for prospective egg donors and surrogates

This information sheet

The information provided here is written on the assumption that the majority of egg donors and surrogates involved in creating rainbow families will be doing so with a gay couple or single man. It is also possible, of course, that a lesbian couple or single woman would need the assistance of an egg donor and/or surrogate.

As noted above, we have not explored the emotional and legal issues for prospective egg donors and surrogates in the depth we have for prospective sperm donors, as the option of surrogacy (with egg donation) has only recently been effectively legalised in Victoria, and we do not know yet what kind of ongoing relationships parents, surrogates and donors will form. We advise you to read the information provided above for prospective sperm donors to see whether you feel that any of the issues explored are relevant for you.

A new option for gay men to become parents

The Victorian *Assisted Reproductive Treatment (ART) Act 2008* (in effect since 1 January 2010) effectively legalised the option of altruistic (unpaid) surrogacy in Victoria, opening this up as an option for gay men to become legal parents through Victorian fertility services. It removed the requirement that a woman be medically infertile to access the fertility services needed to be a surrogate, and allowed for recognition of the legal parentage of the 'commissioning' parent/s.

If you have been approached by a gay couple or single man to be their egg donor or surrogate, they might not have explained to you the limitations of their other options for becoming parents. At present, same-sex couples are not allowed to apply to adopt in Victoria, although a Victorian Court recently approved one member of a same-sex couple's application to adopt an older child for whom they had both been long-term foster carers. Nonetheless, even if same-sex adoption was legalised, there is a tiny number of 'stranger' adoptions across Australia, particularly of infants. Some men become parents through overseas commercial surrogacy services, but these are very expensive (\$40,000 to \$200,000 at the time of writing). Some men co-parent with a single woman or lesbian couple, but they cannot be the child's legal parents, and this option is not possible or desirable for everyone, for a variety of reasons.

Some foster care agencies have long recognised that gay men can provide loving, stable homes for children requiring short or long term foster care or those on permanent care orders. Fostering can be a very positive

experience for everyone concerned, but it has its own challenges, and is not the same as legal parentage of a child from birth, who might be biologically related to at least one of the parents.

What is surrogacy?

The word surrogate means 'one that acts in place of another'. Surrogacy is when a woman agrees to conceive, carry and birth a baby for another person or couple to raise.

All surrogacy arrangements in Victoria must be altruistic. That is, if you are a surrogate, you cannot be paid to act as one. However, you can be reimbursed for costs you incur as a direct consequence of entering into the surrogacy arrangement. To be a surrogate, you must be at least 25, and have previously carried a pregnancy and given birth to a live child. You might be a friend, relative or acquaintance of the prospective commissioning parent/s, but they are not allowed to advertise for a surrogate, for example through television, radio, the internet or other public means.

Just as it is a difficult decision for men about whether to be a sperm donor, it might be very difficult for you to decide whether to be a surrogate, particularly if the person asking you is a very close friend or family member. There are certainly women who are willing to be altruistic surrogates, and who find it a very fulfilling role. In the case of altruistic surrogacy, they are usually a very close friend or relative of the commissioning parent/s. It is worth trying to find stories from women who have been surrogates, including in Australia and elsewhere, when thinking about whether or not you are willing to be a surrogate. However, although you might strongly support the prospective father/s desire to parent, you might feel that carrying a baby for them is something that you cannot do. Trying to conceive, pregnancy and birth are hard on most women, physically and emotionally, and even if the prospective father/s are willing for you to be very involved with their family, you might find it difficult to imagine not actually parenting a child to whom you have given birth.

Read the material above for prospective sperm donors and consider which issues might be relevant to you in making your decision, or negotiating the arrangements under which you might agree to be a surrogate. You will need to sign consent forms at the clinic (see below) and undergo counseling, but we also recommend making your own agreement – even though it cannot be legally binding – especially if you are likely to have ongoing contact with the family. Agreements are a very useful tool for thinking through all the major issues. Clinic counselling can also help. Many clinics offer a paid service of a counselling 'information session' before committing to any treatment, which might be helpful.

All surrogacy arrangements must be approved by the Patient Review Panel. The Panel must be satisfied that all 'parties' have received counseling (from a fertility clinic, see below) and legal advice, and that they are

‘prepared for the consequences if the arrangement does not proceed in accordance with their intentions’ – for example if the commissioning parents decide not to accept the child, or the surrogate refuses to relinquish him or her. The experience in countries where surrogacy has long been an option is that such disputes might be the subject of midday movies, but they are extremely rare in reality.

What is egg donation?

Only ‘gestational’ surrogacy is allowed in Victoria. This means that gay couples or single men also need to find an egg donor, as the surrogate’s own eggs are not allowed to be used to conceive. Many ask friends or relatives. Prospective parents are allowed to advertise that they are seeking an egg donor, but must have approval from the Minister of Health before doing so. Egg donation must also be altruistic (that is, unpaid) although egg donors can also be reimbursed for actual medical and associated travel costs incurred. Egg donation cannot be anonymous in Victoria. All egg donors meet the recipients of their donation, and are required to attend counseling separately and together, and sign consents to the processes involved before they go ahead.

Just as it is a difficult decision for men about whether to be a sperm donor, it might be hard for you to decide whether to be an egg donor, particularly if you are close to the person asking you. Even if you are very supportive of the father/s desire to parent, you might not feel that this is something you can do for them. Helping someone to create a child by donating is a profound act, and there might be many reasons that you (and/or your partner, if you have one) do not feel that this is a role you want to take on, many of which are likely to be very separate from your relationship with him/them.

Read the material above for prospective sperm donors and consider which issues might be relevant in making your decision, or negotiating the arrangements under which you will donate. You will need to sign consent forms at the clinic (see ‘Using a fertility service’, below) and undergo counseling, but we also recommend making your own agreement, even though it is not legally binding, especially if you are likely to have ongoing contact with the family.

Information about a child’s donor origins is lodged in the Central Donor Register at the Victorian Register of Births, Deaths and Marriages. Children conceived through donation have the right to access their donor information, and to contact their donor at age 18 if they wish, or earlier with parental consent or if a counsellor judges them to be sufficiently mature. See the information sheet on ‘Donor information and registers’ for more. Donors can also seek identifying information about children. Before children are 18, a donor will only receive this information with the parent/s’ permission. After the child is 18, they must consent for this informa-

tion to be released. In practice, the parents of many children conceived through sperm donation obtain such information when their children are much younger. If you are an egg donor, you will have had to have had some contact, at least, with the recipients of your donation before it goes ahead. It is possible that contact will be ongoing, even if it is only occasional.

The egg donation and surrogacy process

A note on language: as stated, altruistic surrogacy and egg donation might be needed by a lesbian couple or single woman, as well as by a gay male couple or single man. The latter is much more likely, therefore our language reflects this scenario, but the process is similar regardless of who the commissioning parent/s may be. If they are a lesbian couple or single woman, however, or if the gay male couple or single man has compromised fertility themselves, they might also require a sperm donor. Fertility clinics have clinic-recruited sperm donors available, or the prospective parent/s might ask someone they know.

Using a fertility service

Conceiving a child through altruistic surrogacy and egg donation requires the services of a fertility clinic. Victorian law requires everyone involved in the arrangement (including partners) to have sought legal advice, and to go through a number of procedures (the clinic will assist you with these):

- a police check, to ensure neither of you has ever been convicted of a violent offence or charges have been proven against either party in relation to a sexual offence
- a child protection order check, to ensure neither of you has had a child removed from your care, and
- clinic counselling, to ensure you both understand the implications of donor conception and consent to the procedures involved.

An overseas police check is required if either party has resided overseas for a consecutive 12 month period in the past 10 years. There is a presumption against treatment for anyone who does not pass the police and child protection checks and treatment must not be provided. If barred, you can appeal to the Patient Review Panel, and subsequently to the Victorian Civil and Administrative Tribunal (VCAT).

Egg donors must undergo a number of health screens, see a medical specialist and fill in a questionnaire about their medical and family history. If there is an indication of a family genetic condition, the clinic will discuss the implications of this with you and the prospective father/s for your role as a donor. The prospective surrogate and biological father will also undergo standard health checks, including for HIV.

What is actually involved

The medical procedures for the egg donor are lengthy and invasive. They are essentially the first half of an IVF procedure, usually beginning with 'down-regulation' (taking the birth control pill for some weeks) and hormonal hyperstimulation of your ovaries to produce the maximum safe number of eggs. Blood tests and vaginal ultrasounds will determine when eggs should be collected from your ovaries. This involves a day hospital procedure, using a light sedation or general anaesthetic. The procedure takes 20 minutes, but you might need to rest for the following 24 to 48 hours.

While the eggs are developing in the donor's ovaries, the surrogate's menstrual cycle will usually be medically managed to synchronise with the egg collection process. If you are the surrogate, you will take oestrogen and progesterone to prepare the lining of your uterus for a possible embryo transfer.

When the donor's eggs are collected, they are fertilised with frozen, screened sperm from the prospective biological father. One or more eggs may be successfully fertilised, and go on to develop into an embryo that can be transferred into the surrogate's uterus. This is a short procedure, akin to a pap test, that does not usually require any anaesthetic. Any additional embryos can be frozen for subsequent transfers, if needed.

Awaiting the results of the pregnancy test two weeks later can be nerve-wracking for everyone, and if no eggs from the first donation lead to a successful pregnancy and birth, you might all go through this multiple times.

If conception is successful

The processes of attempting conception, pregnancy and birth are amazing for everyone involved, but potentially exhausting and stressful. The relationships between the prospective father/s, the egg donor (and her partner if she has one) and surrogate (and her partner if she has one) will determine the extent to which you all have contact and give support to each other during these processes.

The prospective parent/s and surrogate (and the egg donor, if she is to have any ongoing contact with the family) will need to talk openly, perhaps many times, about their hopes for the birth and early infancy. What sort of birth does the surrogate want to have? What professional and other supports will she need at this time? Is she willing for you to play a role, and if so what? Would she be willing to breastfeed, at least during the period when her body is producing colostrum? Is this what the parent/s would want? When and how will the parent/s take home the baby, and what sort of contact might the surrogate or egg donor have with the new family in the early days?

Transferring legal parentage

At the time of writing, the only way that both men in a same-sex couple can be recognised as their child's equal legal parents in Victoria is if the child is conceived and born through altruistic surrogacy here. This is done by transferring legal parentage from the surrogate (and her partner, if she has one) to the commissioning parent/s through a Supreme or County Court order.

When a baby is born in Victoria, the woman who gives birth (in this case, the surrogate) is deemed to be its legal mother, and is recorded as such on the birth certificate. Her partner, if she has one, is recorded as the father or parent. The commissioning parent/s must apply to the Supreme or County Court for a 'substitute parentage order', naming themselves as the child's legal parent/s. They must live in Victoria when they make the application, and make it no less than 28 days after a child's birth but before six months.

The Court will make the order once it is satisfied:

- that the order is in the child's best interests,
- that the surrogacy was commissioned through a fertility clinic and approved by the Patient Review Panel
- that the child is living with the commissioning parent/s when the application is made
- that the surrogate (and her partner if she has one) received no material benefits from the arrangements, and
- that the surrogate and her partner freely consent to the order.

Options for ongoing contact

Historically, same-sex couples have tended to be more open with their children about the circumstances of their conception than heterosexual couples; after all, it is obvious that same-sex couples needed some help to create their families! If you had a prior relationship with the prospective father/s – or even if you did not – you might or might not want to have ongoing contact with the family. They will probably have their own ideas about whether they would like to have ongoing contact with you, as the egg donor or surrogate, after you have helped them create their family. This is something you should discuss in detail and agree on before you decide to go ahead. Read the information for prospective sperm donors to see what issues might apply to you.

As mentioned, altruistic surrogacy in Victoria is a new option for gay men. It remains to be seen what choices men who create their families in this way will make around ongoing contact with their donor and/or surrogate. Many couples who conceive through

overseas surrogacy choose to have ongoing relationships with their surrogates, at least, such as exchanges of emails and photographs, and perhaps the occasional visit. Some have contact with their egg donors, but this may not be an option if egg donation in that country is generally anonymous. The relationships between men and their Victorian egg donors and surrogates might well be different; because they live in the same country, because these roles are altruistic father than paid, because there is usually a pre-existing relationship, or at least some contact before, and because of the laws around release of donor information.

One possible parallel is the variety of relationships that lesbian couples and single women create with their donors. Some known sperm donors are just happy for the child/ren to know their name, see their photos, and perhaps meet up when the child/ren are old enough to show an interest. Some live in another state or country, and exchange cards, emails, Skype chats and perhaps the occasional visit. Some visit a few times a year, others more often. Some become part of family life, spending regular time, perhaps holidaying together and becoming regular baby-sitters. Some children call their known donor 'Dad', even though the man (and his partner, if he has one) does not share parenting responsibilities and is not a legal father or parent. Some do not. The diversity of people's choices is endless.

It is important to bear in mind how family law works in Australia. The commissioning parents of a child conceived via altruistic surrogacy in Victoria are their child's legal parent/s once the transfer of parentage is complete. However, anyone with 'an interest' in a child's welfare (such as a grandparent, step-parent, donor or surrogate) can apply for a court order creating contact or other arrangements with regard to the child. Whether you are the egg donor or surrogate, you can make an agreement with the parent/s about a whole range of issues, and we recommend that you do. See the discussion for sperm donors about making agreements above, for issues to consider. However, these agreements are not legally binding, should there be a dispute. You cannot make a legally-enforceable contract or agreement (written or verbal) about a child.

If a dispute arose, a court will not change who is recognised as a child's legal parents (once the parentage has been transferred – see above), but it will make its judgement – on things like who has contact with a child, who lives with them, and who makes decisions about their lives – on the facts of the case, and what they see as a child's best interests. Courts can award contact, and in some circumstances even some parenting responsibilities, to someone other than the legal parents, if they think this is in a child's best interests.

Disclaimer

Rainbow Families Council produced this information kit in October 2010. We have made every effort to ensure the kit is correct, but accept no liability for information given. Information will be regularly updated on our website. We strongly advise that you seek medical and legal advice and specialist counselling relevant to your specific situation.

Find out more about:

- registration and management of donor information in the 'Donor information and registers' sheet in this kit, or from Births, Death and Marriages. Phone 1300 369 367 or visit their website: google 'Victoria births deaths and marriages', click on 'Births', and then 'Donor treatment registers', or 'Births' and then 'Self-insemination'.
- maximising the chance of conception through home insemination and lots of information about every aspect of the process in *The New Essential Guide to Lesbian Conception, Pregnancy and Birth* by Stephanie Brill
- a guide to all forms of fertility treatment in *IVF and Beyond for Dummies* by Karin Hammerberg, published in Australia in 2010
- fertility clinics in Victoria at www.fertilitysociety.com.au/rtac/accredited-units/victoria/
- how to apply for a court parenting order in the *Family Court of Australia Consent Orders Kit* at www.familylawcourts.gov.au/wps/wcm/connect/
- where to seek legal advice about agreements and other matters through the Law Institute of Victoria's Directories at www.liv.asn.au/Specialists
- parenting orders and child maintenance, on Victoria Legal Aid's website under Children and Parenting, www.legalaid.vic.gov.au/childrenparenting.htm
- The Victorian Assisted Reproductive Treatment Authority at www.varta.org.au.

What else is in this information kit?

- Introduction and definitions
- Recognising pre-existing families
- Options for prospective lesbian parents
- Options for prospective gay male parents
- Donor information and registers
- Resources and links

Donor information and registers

Whether you created your family with assistance from a clinic-recruited or known sperm donor, egg donor or surrogate; whether you did so at a registered fertility clinic or at home, there are requirements for registering information about your child's donor origins with Births, Deaths and Marriages.

Victorian law protects the right of donor-conceived people to information about their origins at age 18 (or earlier under some circumstances), and also gives other people involved the right to apply for this information under certain conditions.

It's all about the kids

A key principle of Victorian Assisted Reproductive Treatment Act 2008 (ART Act) is that children conceived through donation in Victoria have the right to know their biological origins when, or if appropriate before, they reach the age of 18.

There is strong evidence that children benefit from their parents and other adults in their lives being open about their donor origins, and if possible doing so from when they are very young, whether or not they have contact or a relationship with their donor or surrogate. Historically, parents in rainbow families have tended to be much more open about their children's donor origins than heterosexual parents. After all, same-sex couples and sole parents clearly require some assistance to conceive their children!

Children in rainbow families are often in contact with other families like theirs. There are also many other children in the broader community conceived through fertility services, and being raised in a constellation of family formations including same-sex parents, sole parents, separated parents, step-parents, grandparents, adoptive parents, foster parents and others. It is not unusual for children of same-sex and sole parents to be told their own special story from an early age about the wonderful person or people who helped to bring them into their loving family.



Donor registers: a complex history

The Victorian Registry of Births, Deaths and Marriages (BDM) is responsible for registering information about children's births and their donor information. Where a child is conceived through a clinic, the information is held in the Central Donor Register. Where a child is conceived via home insemination, the information is in their birth record, but not on their birth certificate.

On 1 July 1988 the Central Register commenced operation, recording information about people associated with births resulting from donor conception from that time onwards, including donors, parents and donor-conceived people. Information about anyone on the Central Register from that time could be released with that person's written consent.

Prior to 1 July 1988, donor information about children conceived in Victoria (through clinics) was essentially anonymous. Children conceived prior to then have no automatic right to access information about their donor origins, and indeed such information is often not available, as men donated under condition of anonymity. Children conceived between 1988 and 1998 can request their donor information, but are not automatically entitled to it – the donor must consent for it to be released.

Early on, a register (now called the Voluntary Register) was set up to allow people to voluntarily lodge information about themselves, and their consent to release this information to other parties (such as the

donor and donor-conceived people, including half biological siblings). At the time this was only available to people involved in treatment procedures that took place after 1 July 1998. In 2002, the capacity of the Voluntary Register was expanded to include people associated with births resulting from donor conception prior to 1 July 1988.

At the same time, the conditions of donation through a fertility clinic changed, requiring donors to consent to release of their identifying information to an adult (over 18) conceived using their egg or sperm, if that person applied. Information from this point was required to be released to the (adult) donor-conceived person without permission.

A donor or the donor-conceived person's parents could also apply for information about other people associated with the birth (for example, a donor could apply for information about the child/ren created from his or her gametes) but this information could only be released with that person's permission – in the case of donor conceived people, after they had turned 18 or beforehand with their parent/s' permission.

In 2010, the ART Act transferred responsibility for the registers from the Infertility Treatment Authority (or ITA, the statutory body then responsible for them) to the Victorian Registry of Births, Deaths and Marriages. The ITA became VARTA, the Victorian Assisted Reproductive Treatment Authority, and its role now focusses on education for people associated with births resulting from donor conception.

The ART Act also extended the rights of donor-conceived children by allowing them to apply for identifying information about their donor before 18. There is evidence that many children are most interested in this information in adolescence or earlier. To receive the information, the donor-conceived person must have the consent of their parents or a written assessment from a counsellor (as defined in the ART Act) stating that they are sufficiently mature to understand the consequences of receiving this information. Parents of a donor-conceived person can also apply for identifying information, but it cannot be released without the donor's permission.

The ART Act also said that eligible people can only obtain information about a donor-conceived person, or his/her parent, or the donor/s, and no-one else. It also made it mandatory that people receive approved counselling prior to the release of identifying information from the Voluntary Register, the same as applicants to the Central Register.

Lodging information

The Central Register records information about the people who are connected to births resulting from donation, including:

- the donor/s
- the woman who underwent treatment using donated gametes (egg or sperm) or a donated embryo, and her partner (if any), and
- the donor-conceived person.

Information held about these people is specified in the ART Act regulations, and may include details such as their full name, date of birth and medical history,

The Voluntary Register records a wide range of information that eligible people wish to lodge about themselves, including information like that held on the Central Register. Eligible people include the above parties, along with other people associated with a birth resulting from donation, such as half biological siblings of donor-conceived people and descendants of donor-conceived people. The application form for lodging information on the Voluntary Register includes questions, but the law does not prescribe the nature of information required. Each person who lodges details on the Voluntary Register decides what information to include and what information they want released.

Who lodges the information?

For children conceived using Victorian fertility services, BDM receives their donor information from the treating doctor or clinic, and stores it on the Central Register. Those who conceive via home insemination (without involving a clinic, for example to provide screened, stored sperm from their known donor) must give BDM this information themselves. It is then recorded as part of the child's birth record in the Registry, but not listed on their birth certificate.

When your child is born, you as their parent/s must register their birth with the Birth Registration Statement (BRS), which the hospital or midwife gives you. If you are a lesbian couple together at the time of conception – and thus both the child's legal parents – you list both of you on the BRS. You will both be listed on the child's birth certificate, the birth mother as 'mother' and the non-birth mother as 'parent'. Prior children of the relationship can also be listed as siblings.

You send the BRS to the Registry of Births, Deaths and Marriages, along with a letter from the child's donor/s addressed to the Registrar of Births Deaths and Marriages. This letter must give the following details for the donor/s: full name, date of birth, place of birth, postal address, daytime phone number and email address. The donor/s must sign the letter and supply one proof of identity document (as listed in the BRS). Their details will not appear on the birth certificate. It is also up to donors to ensure their contact details remain up to date at the Registry.

Anyone associated with a birth resulting from donation can lodge information with the Voluntary Register, including donors, parents of donor-conceived people, donor-conceived people, half biological siblings and descendants of donor-conceived people.

Registering surrogate births

Following the birth of a child to a surrogate in Victoria, the surrogate and her partner, if any, must register the child's birth with the Victorian Registry of Births, Deaths and Marriages. As outlined in the information sheet 'Options for prospective gay male parents', at the child's birth the surrogate and her partner (if she has one) are the legal parents. Legal parentage must be transferred through a substitute parentage order: the commissioning parent/s apply to the County Court of Victoria at least 28 days, and no more than 6 months, after the birth of the child. If the Court approves the application it will issue a substitute parentage order to the Registry. The Registry will cancel the existing birth record showing the surrogate and create a new record showing the commissioning parent/s as the child's parent/s, in accordance with the substitute parentage order.

For children conceived before the ART Act

If your children were conceived through a clinic before the ART Act came into effect in January 2010, their donor information is on the Central Register. The Register was then managed by the ITA, and is now managed by BDM. Thus, BDM are now responsible for managing your child's donor information.

If your child was conceived outside a clinic (via home insemination) before the *Victorian Assisted Reproductive Treatment (ART) Act 2008* came into effect in January 2010, you should now provide information about their donor origins to BDM, even you have not previously done so.

If you listed your donor as 'father' on the certificate, he is currently assumed to be the legal parent. However, Victorian law, through the Status of Children Act, and federal law are clear that a donor is not a parent. Legally, the birth certificate should reflect the reality that you are the legal parent/s (and have parental responsibility) and the donor (however much contact he has with your family) is not a legal parent or father.

You can remove the donor's name (and insert the non-birth mother's name, if there is one), but will need a court order to do so. Your donor's permission is not required. You cannot list all three of you, as children cannot have more than two legal parents. We strongly advise that you speak with BDM before taking action. See our information sheet 'Recognising pre-existing families' for information. Once the certificate is corrected, donor's details will be held by the Victorian

Registry of Births, Deaths and Marriage, but will not appear on the child's birth certificate.

Who can access information?

The Assisted Reproductive Treatment Act 2008 (ART Act) outlines conditions for access to information held in the Central and Voluntary registers. This includes outlining who can apply for access to information held in the registers and what information may be released to applicants.

You are eligible to apply for access to information held on the Central Register if you are:

- a donor conceived person
- a parent of a donor conceived person
- a descendant of a donor conceived person
- a donor.

In Victoria all current clinic-recruited sperm donors are 'identity release', meaning that once the child born from the donation turns 18, the child will have an automatic access to identifying information about the donor. Your child has the right to apply before 18, but must have your permission or that of a counsellor (see above). You, as the parent may also apply for information, as may the donor, but the person who that information relates to must give their written permission before the information is released. All parties may apply for non-identifying information at any time.

Prior to the commencement of the ART Act on 1 January 1 2010, many lesbian couples and single women had accessed reproductive services interstate to conceive their children. All states and territories have different regulations governing the right to apply to information; contact your interstate clinic for details, as well as BDM, to discuss your situation.

For children born from donations made in Victoria between 1988 and 1998, and before 1988, access to information is more complex. Please see the Births Deaths and Marriages website for more information (see below under 'Find out more about').

The same kinds of people who can apply for information from the Central Register can apply for information from the Voluntary Register, along with relatives of a donor-conceived person (such as half-biological siblings). Information is only released if it is available (that is, if it has been lodged by the relevant person), and the person it concerns has consented to its release to you.

Why people apply for information

VARTA publishes resources and information sheets designed to assist donors and donor-conceived people and their families. We recommend you read both the *Time to Tell?* and the *Time to Apply?* brochures.

The reason behind why donor registers are useful can best be summed up in the introduction to the *Time to apply?* brochure:

'For many years, donor practice throughout the world was dominated by the belief that secrecy was paramount to protect all parties to the arrangement - donors, parents and the person born. This belief was based on myths: that donors would not want to be contacted and that people conceived from them would not want information about their donors if they really loved their parents.'

'It is now understood that it is very normal for donor-conceived people to want to know more about their donors. They are often interested to learn more about their medical history, cultural background, personality and appearance.'

'Donors do not forget they have donated and often wonder about the people they helped to create. Who are they? Are they healthy? Are they happy? Are they loved? Parents may also want more information about the person who helped create their child. They may wish to thank them for helping them to become a family and may wonder what they are like and what characteristics their child has inherited from them.'

Counselling

BDM staff can tell you what is involved with making an application for release of information from the donor registers. Counselling is offered through BDM for anyone making an application to the donor registers. Counselling is mandatory if the person is seeking identifying information about another party.

In addition, VARTA lists counselors who may assist a person to think through the issues in considering whether and when to apply for the release of information from the donor registers, see the section 'Find out more about' for details.

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Find out more about:

- registration of births, and lodging, management and release of donor information from Births, Death and Marriages. Phone 1300 369 367 or visit their website: google 'Victoria births deaths and marriages', click on 'Births', and then 'Donor treatment registers'.
- The Victorian Assisted Reproductive Treatment Authority, for information and advice about telling a child about their donor origins at www.varta.org.au.

What else is in this information kit?

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- Options for prospective lesbian parents
- Options for prospective gay male parents
- Options for prospective sperm donors, egg donors and surrogates
- Resources and links

Resources and links

This information sheet has been produced as part of the Rainbow Families Council's 'Rainbow Families and the law' information kit for same-sex couples and single people in Victoria.

Websites

Websites related to donor conception and recognition of parentage

- The Department of Health Website. The Victorian Department of Health is responsible for administering the Victorian Assisted Reproductive Treatment Act, and their website contains a range of information about its operations. Go to www.health.vic.gov.au/art/
- The Victorian Assisted Reproductive Treatment Act (2008) – follow the links at www.legislation.vic.gov.au.
- Find information and resources about the federal reforms affecting couples and families at www.wearitwithpride.com.au and at the Federal Attorney-General's department website, www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_SameSexReform
- Births, Death and Marriages Victoria (BDM), which includes information on registering a child born through self-insemination, surrogacy and the Central and Voluntary Registers. See also "correcting a birth certificate" for information on adding the non-birth mother to an existing birth certificate. Go to www.bdm.vic.gov.au/donorregisters.
- Victorian Assisted Reproductive Treatment Authority (VARTA), which includes range of education resources for donor conceived people, their families and donors, and a list of all fertility clinics. Go to www.varta.org.au.
- Patient Review Panel, which must approve all surrogacy procedures and is the avenue for appeal for anyone barred from treatment at a fertility clinic. Go to www.health.vic.gov.au/prp/
- Clinic websites contain a wealth of information about aspects of using fertility services to create your family, including Melbourne IVF at www.mivf.com.au and Monash IVF at www.monshivf.com.
- The Fertility Society of Australia also lists all fertility clinics in Victoria, at www.fertilitysociety.com.au/rtac/accredited-units/victoria/
- The Centre for Excellence in Child and Family Welfare has information about becoming a foster carer. Call the foster care hotline on 1800 013 088 or visit www.fosterabrighterfuture.com.au

Other useful websites

- Parents, Family and Friends of Lesbians and Gays' (PFLAG) at www.pflagvictoria.org.au
- Gay and Lesbian Health Victoria Clearinghouse at www.glhv.org.au

Social, support and advocacy groups and organisations

The groups listed are Victoria-based, although some might provide support, information and advocacy on a national level.

Rainbow families and prospective parents groups

- Gay Dads Australia is a voluntary group providing information, email discussion groups, advocacy and support to gay fathers and prospective parents. It includes state-based groups, including in Victoria. Go to www.gaydadsaustralia.com.au
- Rainbow Families Council is a volunteer information, education and advocacy organisation for people in rainbow families, prospective parents and their allies. Its website contains a range of information, family stories and advocacy information. Go to www.rainbowfamilies.org.au



- The Gay and Lesbian Carers Support Group provides support to gay and lesbian foster carers, permanent carers and kinship carers in Victoria. Contact Tracey on 0427 811 186.

Links to a range of support and social groups can be found on the Rainbow Families Council website at www.rainbowfamilies.org.au, including:

- Prospective Lesbian Parents
- Sole Parents group
- Maybebaby Melbourne
- The Meeting Place
- Rainbow Playgroups
- Gay and Lesbian Carers Support Group

Other organisations

- The Council for Single Mothers and their Children provides support, information and advocacy to single mothers, including a help line, publication and support and social groups. Go to www.csmc.org.au.
- The Drummond Street Centre includes a range of programs for rainbow families, including family counselling, mediation, information and advocacy. Go to www.dscc.org.au.
- Step-parenting Australia provides information, support and resources to families that include step-parents. Go to www.stepfamily.org.au.
- The Foster Care Association of Victoria includes information, support and advocacy around fostering and permanent care. Go to www.fcav.org.au

Books for grownups

Visit Hares and Hyenas bookshop in Fitzroy, or online at www.hares-hyenas.com.au. Check out the parenting section for books covering all aspects of parenting, conception and raising children, as new books are produced regularly. Here are a few to get you started.

- *The New Essential Guide to Lesbian Conception, Pregnancy and Birth*, Stephanie Brill, Alyson books, 2006
This is a US book, but it provides a huge amount of excellent, research-based information and guidance related to every step in the process, including finding and negotiating with donors and co-parents, preparing for pregnancy, birth and beyond.
- *Fatherhood for gay men – and emotional and practice guide to becoming a gay dad*, Kevin McGarry and Margaret Tatich, US, 2003. Recommended for its emotional content, although the practice information is US-based and the links and resource provided now out of date.
- *IVF and Beyond for dummies*, Dr Karin Hammarberg, Wiley, 2010

An Australian book with up-to-date information in most areas. Good information, as in most of the 'Dummies' series. More focussed on processes such as IVF than on other aspects of creating rainbow families.

- *The Infertility Handbook*, Jacqueline Tomlins, Allen & Unwin, 2003, Australia
An Australian book, its legal information is now out of date, but it provides guidance to many aspects of fertility services as well as a long chapter on creating rainbow families, including making agreements with donors.
- *And Baby Makes More*, Edited by Chloe Brushwood Rose and Susan Goldberg. Insomniac Press 2009
A Canadian book exploring the many different ways LGBTI people create families together in considerable depth. Well worth reading when thinking about options for creating families.

Books for children

- *Sometimes it takes three to make a baby: Explaining Egg Donor Conception to Young Children*, Kate Bourne (Melbourne IVF Pty Ltd, 2008) Australia
- *Where did I really come from?* Narelle Wickham (Learn To Include, 2008) Australia
- *Here I am* by Kath D, a comic book about conception with a clinic donor, at kathd2000.wordpress.com/2010/05/13/here-i-am-comic-book/
- *So that's where I came from*, Gina Dawson (Black Dog Books, 2010) Australia
- Also check <http://booksfordonoroffspring.blogspot.com> for a range of books from the UK, US, Canada and Australia.

Disclaimer and additional links

These resources and links were compiled in October 2010. We welcome suggestions for other resources and links that might be of use for this kit.

The resources and links are provided for information only, and do not represent endorsement by the organisations associated with producing this information kit.

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