

EXPLANATORY STATEMENT

Australian Capital Territory
Artificial Conception Ordinance 1985
No. 57 of 1985

The purpose of the Ordinance is to create in certain circumstances a conclusive presumption as to the parentage of a child born as a result of artificial insemination by donor, or in vitro fertilization involving donor semen and/or a donated ovum. In all cases where a child is born to a woman who has become pregnant as a result of such a procedure, the woman is to be deemed to be the mother of the child. In addition, where a child is born to a married woman who has undergone such a procedure with the consent of her husband, the husband is to be deemed to be the father of the child. Where, at the time of the procedure, a woman was living in a stable de facto relationship, then that man is treated as her husband for the purposes of the Ordinance.

Background

The Ordinance is necessary to rectify the anomalous situation at common law, whereby, contrary to the wishes of the mother of a child born as a result of an artificial conception procedure and of the mother's husband, the donor of sperm would be regarded as, and have the rights and responsibilities of, the father of the child. For example, if aware of the donor's

identity, the child would be able to seek financial support from the donor under the Maintenance Ordinance 1968.

Similarly, the child at the moment would have no rights of inheritance from his mother's husband, even though he or she may have been raised from birth in that family and have always been regarded as an integral part of it.

Likewise, in the donated ovum situation, the Ordinance is necessary to make clear that it is the woman who bears the child, rather than the donor of the ovum, who is to be regarded as the mother of the child.

The Ordinance is broadly based around principles agreed in the Standing Committee of Attorneys-General. Legislation is already in force in New South Wales, Victoria, South Australia and Western Australia.

Section 1 provides that the Ordinance may be cited as the Artificial Conception Ordinance 1985.

Section 2 provides for a date of commencement to be determined by the Minister.

Section 3 is an interpretation section.

Sub-section (1) defines "procedure", for the purposes of the Ordinance, as artificial insemination or in vitro fertilization (that is, the transferring into the uterus of a woman an embryo derived from an ovum fertilized in vitro).

Sub-section (2) extends references in the Ordinance to a married woman, to include a woman living with a man as his wife on a bona fide domestic basis. In that situation the man with whom such a woman is living is to be deemed to be her husband.

Similarly, sub-section (3) extends references in the Ordinance to a husband or wife, to include a man or woman, respectively, living with another person of the opposite sex as that person's spouse on a bona fide domestic basis. The sub-section also provides that this is to be to the exclusion of the actual spouse (if any) of that other person.

Section 4 is an application section.

Sub-section (1) applies the provisions of the Ordinance to a conception or birth, whether occurring before or after the commencement of the Ordinance, and whether occurring in the Australian Capital Territory or not.

Sub-section (2) modifies the generality of sub-section (1) by specifically removing from the operation of the Ordinance any vesting of property occurring before the commencement of the Ordinance.

Sub-section (3) provides that the Ordinance does not affect the operation of sections 9, 33, 42, and 43 of the Adoption of Children Ordinance 1965. This ensures that the law as to adoption applies to children born as a result of artificial insemination by donor or in vitro fertilization as it does to other children.

Section 5 is the first of the operative provisions of the Ordinance, and deals with paternity.

Sub-section (1) provides that where a married woman, with her husband's consent, undergoes a procedure leading to pregnancy -

- (a) her husband shall be conclusively presumed for all purposes to be the father of any resulting child; and
- (b) the donor of semen shall be conclusively presumed for all purposes not to be the father of any resulting child.

Sub-section (2) provides that the consent of the husband to the carrying out of the procedure shall be presumed, although the presumption may be rebutted by evidence led to prove that he did not consent.

Section 6 deals with maternity. It provides that where a woman undergoes a procedure leading to pregnancy -

- (a) she shall be conclusively presumed for all purposes to be the mother of any resulting child; and
- (b) the donor of the ovum shall be conclusively presumed for all purposes not to be the mother of any resulting child.

Section 7 deals with the donor of semen where the procedure is carried out on an unmarried woman or on a married woman without her husband's consent. It provides that, in these circumstances, the donor of semen shall be conclusively presumed for all purposes not to be the father of any resulting child. The section does not operate to sever the father/child link where the man who produced the semen was the woman's husband at the time of the procedure.

Section 8 is a machinery provision amending the Seat of Government (Administration) Ordinance 1930 to add the Ordinance to the list of those administered by the Attorney-General.

(Authorised by the
Attorney-General)

Ord. 60/83