



# Donor agreements in family law - are they legally binding?

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Donor agreements are increasingly used by people planning to have a child through sperm or egg donation. In Australia, many parents and donors assume these agreements are legally binding, but family law does not always treat them that way. This article explains what donor agreements are, how they interact with Australian family law, when they may carry legal weight, and the risks of relying on them without proper legal advice.

## What is a donor agreement?

A donor agreement is a written document that sets out expectations between a donor and intended parents before conception occurs.

It usually addresses issues such as:

whether the [donor will have a parental role](#);

whether the donor will have contact with the child;

financial responsibilities, including [child support](#);

decision-making about the child's upbringing;

what happens if circumstances change in the future.

These agreements are commonly used by single parents, same-sex couples, and people using known donors rather than clinic-based donors.

## Why donor agreements are common in Australia

People create donor agreements to provide clarity and reassurance at the start of a donor arrangement.

You might use one to avoid misunderstandings about roles and expectations, provide a written record of what was agreed before conception, reduce the risk of disputes after a child is born, or support trust between donors and intended parents.

While these aims are understandable, the legal effect of donor agreements is often misunderstood.

## Are donor agreements legally binding under Australian family law?

Donor agreements are not legally binding under Australian family law.

The *Family Law Act 1975* (Cth) places the [child's best interests](#) above any agreement made between adults. This means:

a donor agreement cannot override the rights of a child;

the court is not required to follow the terms of the agreement;

parenting and child support issues are determined by law, not private contracts.

Even if all parties signed the agreement willingly, a court may disregard it if it conflicts with the child's best interests.

### An important legal requirement

Donor agreements are only potentially relevant if conception occurs through artificial insemination (such as IUI or IVF). If a child is conceived through sexual intercourse, the person providing sperm is presumed to be the parent. A donor agreement cannot change this. This is why fertility clinic-based conception offers better legal protection than home insemination.

## Parenting status and donor agreements

One of the most important issues is whether a donor is legally considered a parent.

Under Australian law, this depends on several factors, including:

whether the child was conceived through assisted reproductive technology at a clinic;

whether state or territory legislation applies;

whether the donor is named on the birth certificate;

the nature of the relationship between the donor and the child.

A donor agreement alone does not determine parentage. In some cases, a donor who was never intended to be a parent may later be found to have parental status under the law.

A landmark 2019 High Court case, [Masson v Parsons](#), demonstrated this risk. The court found that a sperm donor was a legal parent because he believed he would be a parent, was registered on the child's birth certificate, and provided ongoing financial support and care. This case shows that actual involvement with the child matters more than what the donor agreement says.

## Can donor agreements influence parenting arrangements?

While donor agreements are not binding, they may still influence court decisions.

If a parenting dispute arises, the court may consider a donor agreement as part of the broader evidence, particularly where it shows the intentions of the parties before conception, the expectations about involvement in the child's life, and whether ongoing contact was anticipated or discouraged.

However, the court's focus will always remain on what is in the child's best interests at the time of the dispute, not what adults previously agreed.

## Child support and donor agreements

Donor agreements often state that the donor will not be financially responsible for the child.

Under Australian law:

child support obligations cannot be contracted out of by private agreement alone;

Services Australia applies child support laws regardless of donor agreements;

a donor found to be a legal parent may be assessed for child support.

Even where all parties intended that the donor would have no financial role, this intention may not be enforceable

While parties cannot contract out of child support by private agreement alone, the parties may be able to enter into a [Binding Child Support Agreement](#). Binding Child Support agreements have specific legal requirements and require all parties entering into the agreement to obtain legal advice.

## Are donor agreements enforceable in any circumstances?

Courts will consider a donor agreement as evidence of the parties' intentions, but the agreement cannot override family law principles. For example, a donor agreement may be relevant in complex parentage cases to show what the parties originally intended. It may also support applications under state-based reproductive laws.

However, donor agreements cannot prevent the court from making parenting or child support orders based on the child's best interests.

## The difference between donor agreements and binding financial agreements

Some people assume donor agreements operate like [Binding Financial Agreements](#) under family law. This is incorrect.

Binding Financial Agreements:

are governed by strict provisions of the *Family Law Act*,

require independent legal advice for each party;

can be [set aside in certain circumstances](#).

Donor agreements do not fall within this framework and do not receive the same legal recognition or protection.

## Risks of relying on a donor agreement alone

Relying solely on a donor agreement can create significant legal and emotional risks, including:

unexpected parenting claims by a donor;

disputes about time spent with the child;

- [child support assessments](#) contrary to the agreement;

stressful and costly court proceedings;

outcomes that differ sharply from the original intentions.

These risks often emerge years after the agreement was signed, when circumstances have changed, and the donor has developed a relationship with the child.

## How courts approach disputes involving donors

When disputes arise, the court focuses on the present situation, not the original plan.

Key considerations include:

the child's relationship with each adult involved;

who has been caring for the child on a day-to-day basis;

emotional and psychological bonds;

the child's need for stability and security;

protection from harm.

Even a carefully drafted donor agreement may carry little weight if it does not reflect the child's lived reality. If a donor has been actively involved in the child's life and the child views the donor as a parent figure, courts will prioritise the child's established relationships over a piece of paper.

## Steps to reduce legal risk before conception

While no document can guarantee outcomes, there are steps that may reduce risk.

These include:

obtaining family law advice before conception;

understanding both federal and state-based laws;

using licensed fertility clinics where possible;

carefully considering birth registration details;

reviewing arrangements as circumstances evolve.

Legal advice at the planning stage is often far more effective than trying to fix problems later. Different states and territories have different presumptions about sperm donor status. Getting advice before conception helps you make informed choices about conception method, birth registration, and donor involvement.

[GET ADVICE FROM AN EXPERIENCED FAMILY LAWYER: 08 6245 0855](tel:0862450855)

## Frequently asked questions

### Are donor agreements recognised by Australian courts?

They are not binding on parenting or child support decisions. However, courts will consider a donor agreement as evidence of what the parties intended at the time of conception. The court's focus remains on the child's best interests at the time of any dispute. If circumstances have changed since the agreement was signed, the court may disregard it.

### Can a donor later seek time with the child?

Yes. If the donor has an established relationship with the child, the court may consider parenting orders regardless of the agreement.

### Does it matter if the donor is a friend or known donor?

Yes. Known donor arrangements carry a higher legal risk than anonymous clinic-based donations. This is because known donors are more likely to have an ongoing relationship with the child.

## Can a donor agreement stop child support claims?

No. Child support obligations are determined by law and cannot be excluded by private agreement alone.

## Should donor agreements be reviewed over time?

Yes. Family circumstances change, and arrangements made before conception may no longer reflect reality years later.

## Get help from a family lawyer

Donor agreements can be useful planning tools, but it's important to understand that they may be challenged. They cannot override the court's duty to act in a child's best interests or prevent legal obligations from arising.

Anyone considering a donor arrangement should understand that good intentions and written agreements do not guarantee legal certainty. Clear legal advice, careful planning, and an understanding of the law before conception are essential. A family lawyer will help you understand your specific risks and make informed decisions about donor arrangements. Talk to a family lawyer before you proceed with any donor arrangement.

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