

Domestic Partnership and Children

A domestic partnership becomes legally recognised in one of three ways.

- It is recognised if the two people live together as a couple for three years (or a total of three out of the last four years).
- It is also recognised if the couple become the legal parents of a child, even if they have not yet reached the three-year mark.
- It is also possible for a couple to be recognised as domestic partners even if they have not lived together for three years or have not had a child together, if the court believes that the interests of justice require that the couple be recognised. This power will be used to prevent injustice to people who have lived in close personal relationships.

Will two women be recognised as domestic partners if they have a child by IVF?

No. This is because only the woman who gives birth to the child is legally the parent. Her partner, however emotionally close to the child, is legally no relation. Thus, where legal recognition depends on the birth of a child, it only applies to opposite-sex couples where both parents are legally the parents.

The two women will have to live together for three years before they are legally recognised as domestic partners, unless, in their particular case, the court is persuaded that the interests of justice require otherwise.

Once they become domestic partners, does the other woman become a co-parent?

No. In South Australian law, the child conceived by IVF using donor sperm and born to a woman living in a same-sex relationship has only one parent, the birth mother.

Could the other same-sex partner legally adopt the child?

Not in South Australia. The law of South Australia only permits an opposite-sex couple to adopt children.

What about children adopted elsewhere?

There are some jurisdictions where same-sex couples can legally adopt children. If the couple have legally adopted a child in another state or country, and the adoption is one that South Australian law recognises, then the child will be legally the child of those two people if they come to live here.

Further information

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