

**J AND ANOTHER v DIRECTOR GENERAL, DEPARTMENT OF HOME  
AFFAIRS, AND OTHERS 2003 (5) SA 621 (CC)**

**Headnote : Kopnota**

The provisions of s 5 of the Children's Status Act 82 of 1987 (which deals with the status of children conceived by artificial insemination within the context of a heterosexual marriage) does not permit the partner of a permanent same-sex life partnership who did not give birth to a child, conceived by artificial insemination, to become a legitimate parent of the child. The section discriminates unfairly between married persons and permanent same-sex life partners and is accordingly inconsistent with s 9(3) of the Constitution of the Republic of South Africa Act 108 of 1996, which prohibits the State from discriminating directly or indirectly against anyone on the ground of sexual orientation. Section 5 of Act 82 of 1987 cannot be justified in terms of s 36 of the Constitution. (Paragraphs [13] and [15] at 627A/B - B/C and E/F.)

The Court accordingly confirmed the decision of a Local Division that s 5 of Act 82 of 1987 was unconstitutional and issued an order that (i) s 5 of Act 82 of 1987 was declared to be inconsistent with the Constitution to the extent that the word 'married' appeared in that section and to the extent that the section did not include the words 'or permanent same-sex life partner' after the word 'husband' wherever it appeared in that section; (ii) in s 5 of Act 82 of 1987 the word 'married' was struck out wherever it appeared in that section; (iii) in s 5 of Act 82 of 1987 the words 'or permanent same-sex life partner' were read in after the word 'husband' wherever it appeared in that section; and (iv) the words in s 5(1)(a) 'as if the gamete or gametes of that woman or her husband were used for such artificial insemination' were struck out. (Paragraph [28] at 632E/F - H.)