

**Rainbow Families Victoria
Submission to the Australian Law
Reform Commission
Family Law System Review**

Responding to the Issues Paper

May 2018

Thank you for opportunity to submit to the Australian Human Rights Commission's Family Law System Review Issues Paper released on March 14 ,2018.

Introducing Rainbow Families Victoria

Rainbow Families Victoria is a small incorporated community group in Victoria which aims to empower, educate and support lesbian, gay, bisexual, transgender, intersex, queer, gender diverse and non-binary parented families - including parents, carers, prospective parents and our children. We coordinate events, produce educational material and resources, provide training and professional development as well as advocate to local, state and federal governments on behalf of rainbow families. Established in 2006, we have a long history of demonstrated success in achieving law reform to support our rainbow family communities and plan to continue our work into the future, including developing presentations and a kit to update rainbow families, and services, on the law as it pertains to their relationships, children and families.

Our submission

Rainbow Families Victoria have endeavoured to produce a response to the Issues paper that demonstrates our considerable awareness of issues faced by LGBTIQ, gender diverse and non-binary parenting community in Victoria, collectively known as rainbow families, and our desire to see a family law system that is responsive to our diverse rainbow families and one which places children's rights and best interests at the centre of future family law system reforms.

We define a "*child's rights and best interests*" in relation to being part of a rainbow family as:

- a) Consideration for the diverse family form the child has grown up in and lives in
- b) Consideration for the diverse ranges of roles adults take on in the child's life - beyond definitions defined purely by biology or constrained by only having the option of listing two parents on a birth certificate.
- c) Consideration of the range of sibling relationships and relationships with extended family members that a child may have, regardless of biology or whether siblings live in one home or across many homes.
- d) Consideration of being culturally responsive to the child, both as a member of the LGBTIQ, gender diverse and non-binary communities and of being part of a rainbow family within those communities
- e) Consideration as to whether the child or young person is themselves same sex attracted, trans, gender diverse or gender non-binary, or are a member of the LGBTIQ communities in their own right.

We define "*family law system*" along the same definition provided for by the Australian Law Reform Commission in the Issues Paper – namely "*collectively to the family courts (the Family Court of Australia, the Family Court of Western Australia and the Federal Circuit Court of Australia) and all family law and post-separation services, including family relationships services (such as government funded family counselling services, post-separation parenting*

programs, and children's contact services) as well as legal aid, community legal sector and private legal services".

In an online survey conducted through survey monkey and disseminated online between April 27 and May 4 2018, we collected examples of experiences our rainbow family communities have had when accessing, or attempting to access, the family law system in both Victoria and Australia. We also spoke to members of our community, had young people and their parents/carers respond to a short online quiz and worked closely with legal academics and lawyers who work in the fields of family law, family formation and with an interest in LGBTIQ, gender diverse and non-binary parented families.

We thank everyone for their gracious support and contributions to our final submission.

For further comment or clarification

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Introducing rainbow families

Rainbow Families Victoria defines rainbow families as including one, two, three, four or more LGBTIQ, gender diverse and non-binary parents or carers who care for and nurture the children in their family. Children are also included in our definition of rainbow families and, in some instances, they are members of the LGBTIQ, gender diverse or non-binary communities too.

When our rainbow families intersect with the legal system it is usually, but not always, because the primary relationship of *at least* two people identified as parents is read as, or assumed to be, a 'same sex relationship'. However, the diverse family forms in rainbow families can be more complex. Formations can include, but are not limited to: step or blended families, separated families, children who are fostered, in permanent care or adopted, children conceived through assisted reproductive technology, children living across two or more primary homes as part of their parenting arrangement, families with known donors who have limited involvement initially (which may change over time), families within existing kinship networks, families with donors and/or surrogates who helped create them, either through altruistic surrogacy in Victoria or through international surrogacy arrangements.¹ These complexities in our diverse rainbow family forms are further explained below but please note this is by no means a definitive list but rather an attempt to illustrate the diversity of rainbow families and the people who live in them :

Step or blended families: many rainbow families that are created through step or blended families, in which a single parent or couples may be parenting with a former partner (or the same or opposite gender) and/or their partner if they have one. Some of these families can live across two or more homes and have extended family members involved in the upbringing of children.

Separated rainbow families: As in all family forms, there are rainbow families that separate. These families often encounter challenges when seeking services that meet specific needs or which understand the complexity of a rainbow family relationship with children involved. Exact numbers of separated rainbow families are unknown however we recommend reading a recent research study undertaken by Luke Gahan (2017) "Separated Same-Sex Parents Experiences and Views of Services and Service Providers" for an overview of heteronormative practice, lack of specific LGBTIQ services and assumptions made by same sex couples prior to accessing support services when needed.² One specific consequence of the amendments to legal recognition in Victoria, enacted by the ART Act (2008) in 2010 is that separated families with children born in Victoria prior to 2010 or with children in the family born both *prior to* and *after* 2010 may have not have retrospectively amended the birth certificate of a child born pre-2010. This could mean that the non-birth parent is not listed or that the donor/father could be listed instead, making the legal documentation at

¹ <https://aifs.gov.au/cfca/publications/same-sex-parented-families-australia>

² Gahan, Luke (2017) "Separated Same-Sex Parents' Experiences and Views of Services and Service Providers," *Journal of Family Strengths*: Vol. 17 : Iss. 2 , Article 2.

odds with the reality of who is engaged in the day-to-day parenting of the child (which may be referred to in court proceedings for example).

Families with foster children, children on permanent care or who are adopted: Many same-sex couples or LGBTIQ, gender diverse and non-binary single parents foster in Victoria. In Victoria from September 2016, the law changed to allow LGBTIQ people as same sex couples to apply to adopt³. Many LGBTIQ, gender diverse and non-binary people have for years been foster carers or carers of children on permanent care orders. Rainbow Families Victoria is unable to provide accurate numbers of children currently being fostered, living on permanent care orders or who have been adopted by, same sex couples or LGBTIQ, gender diverse or non-binary single people.

Co-parented families: These families may have more than two parents actively involved in the day-to-day care of children from birth (as opposed to through separation or divorce). These families may be formed through 'co-parenting arrangements' in which, for example, the known sperm donor (and partner if they have one) actively co-parents with a couple or a single woman. Many children who are parented by same-sex couples already live across two households (as opposed to this occurring as a result of separation). Many co-parenting arrangements, but not all, include a written agreement of intention that provides a framework for parenting children across different ages and stages. Some people co-parent as sole parents across two homes.

Families where children are conceived through different methods or across different jurisdictions: Rainbow families may include children who were conceived via a different method from each other but are legal siblings (eg; one child raised with four co-parents over two homes - where one member of each co-parent relationship is biologically related to that child - and another child born through international surrogacy with a biological link to one parent in one home). Furthermore, some children in rainbow families may not be biologically related to each other (for example: where one child is a born with a known donor and another with a clinic donor to two women in a relationship but listed as siblings on a birth certificate) or may have been conceived or born in different legal jurisdictions.

Sole parented families: Sole parents by choice are also becoming recognised as being more common. An Australian study (Work, Love, Play, see Power et al 2010) has suggested that there may be a large number of single mothers who identify as lesbian or bisexual. Many of these mothers conceive children when they are single and may or may not have a co-parenting arrangement with the donor or father of the child. In these circumstances, the donor/father will most likely not be listed in a child's birth certificate if they were conceived via artificial means (home-insemination, clinic-based insemination or IVF). The Victorian Assisted Reproductive Treatment Authority reported in their 2017 Annual Report that single women continue to be the largest proportion of women treated with donor sperm (53 per cent), followed by women in same-sex relationships (34 per cent). Rainbow Families Victoria

³ <http://www.lawreform.vic.gov.au/all-projects/art-adoption>

does not have access to any data that identifies the sexuality or gender identity of single women nor are we sure if clinics ask for or keep this information. Some members of the LGBTIQ, gender diverse and non-binary communities may also access surrogacy (in Victoria and overseas), foster children and adopt children and parent as sole parents.

Families with a bisexual parent or a parent who is trans and/or gender diverse and/or non-binary: Many LGBTIQ, gender diverse and non-binary people face, or have faced, being assigned a specific gender by service providers (due to lack of understanding or inability to fit neatly on a form) or expectations based on either biology, gender expression or due to heteronormative assumptions about gender-roles in parenting and families. Some rainbow family forms are perceived by some support services to be heterosexual yet one of more parent or carers may in fact be bisexual. Some families begin as being termed ‘opposite-sex parented families’ yet after a child is born one parent might transition, come out as gender diverse or be non-binary both making the family a rainbow family and making the heteronormative assumptions of gender roles harder for some service providers, including those involved in the family law system, to place. One or more parents or carers may be trans, gender diverse and/or non-binary.

Families created through altruistic or overseas surrogacy arrangements: Since January 1, 2010 same sex couples have been able to access altruistic surrogacy in Victoria. The exact numbers of rainbow families created this way are not know – although we know some do exist. These families have had to engage both an egg donor and a surrogate. Since the early 2000’s more and more gay/bisexual-male same-sex parented rainbow families have been created through overseas surrogacy arrangements – again, exact numbers are not known. Anecdotal reports provided by Gay Dads Victoria representatives place the number of children living in Victoria born through these arrangements at approximately 300 plus children and increasing annually.

Our families are growing in number and visibility

Our rainbow family community is rapidly growing but data collection is not keeping up with us!

Rainbow Families Victoria have asked for, but are yet to receive, the combined numbers of children born to same sex couples registered since January 2010 as well as the numbers of birth certificates retrospectively changed to record a child has same sex parents.

However, In data provided by the Registry of Births, Deaths and Marriages Victoria for 2018, we know that from January 1, to 21 March 2018 there were 54 births registered where couples are same sex. This includes five births pre-2010 where amendments were made to the birth record. Of these, four amendments were to add a parent, and one was for a change of name. In Victoria no data is collected on the sexuality or gender identity (or both) of single mothers nor are trans or gender diverse Victorian able to easily change their birth certificates so in some cases births may appear registered to opposite sex couples.

The 2016 Census found that there are now just under 46,800 same-sex couples living together in Australia.⁴ Although an increase of 39% since the 2011 Census, Rainbow Families Victoria concurs with the ABS that this is a largely underreported number as it does not consider the sexuality or gender diversity of respondents as individuals in households or even parenting across more than one household, only as a 'same sex couple'. Of those who completed the census, 23,700 identified as a male same-sex couple and 23,000 as a female same-sex couple.⁵ A total of 15% of same sex couples indicated they were living in same-sex couple families with children – representing a total of 10,500 children and young people aged under 25. Given the complexities of collecting statistics of sole LGBTIQ and gender diverse parents and carers, as well as co-parenting families over two or more households, we expect that number of children living in rainbow families to be *significantly* higher.

Rainbow Families Victoria believes that improved data collection would go a long way towards ensuring improved and increased service provision for rainbow families and LGBTIQ and gender diverse people.

⁴ <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2071.0main+features852016>

⁵. ibid

Terms we use in our submission (explanatory and not definitive)

Rainbow families - includes one, two, three, four or more lesbian, gay, bisexual, trans, gender diverse, intersex, queer and/or non-binary parents or carers and their children.

Parent - a person who cares for, nurtures and undertakes the rights and responsibilities for parenting a child. May or may not be biologically related to that child,

Co-parents - could be two, three, four or more grown-ups who take on the rights and responsibilities of parenting a child, who may or may not be in an intimate relationship and may or may not live across different homes.

Carer - a person with primary care responsibility and who may include foster carer, extended family member such as a grandparent, aunt or uncle, for example.

‘Same sex’ parents and ‘same sex’ couples: common terms used to describe relationships in some rainbow families where the parents/carers are not defined as ‘opposite-sex’ parents or couple. The use of the term fails to include the gender identity of the individual parent/carers who could also be lesbian and trans, bi and non-binary, gay and gender diverse – for example. Also the use of the term ‘couples’ implies only two people in an intimate relationship and therefore assumes only two people involved in the parenting roles. These are not descriptors useful for many rainbow families and should be used or referred to with caution.

Donor - could refer to a donor of gametes including sperm, egg or embryo. A donor may or may not have a relationship with the child and/or their family and may or may not take on parenting responsibilities, including as a co-parent.

Surrogate - a woman who acts as a gestational or traditional surrogate.

Transgender: A person whose gender identity, gender expression or behaviour does not align with their sex assigned to them at birth. They may or may not undergo medical transition.

Gender diverse: Someone who is gender diverse does not identify as (only) a woman or a man but instead may be gender fluid, gender non-binary (identify as neither two binary opposites of man or woman) or agender (having no gender).

Non-binary: term used to describe a person who identifies as neither male nor female, as neither of the binary opposites of masculine or feminine. See gender diverse (above).

Prospective parent: a person who is engaged in the process of creating a family - attending information sessions, considering options, currently pregnant or waiting for their child to be born.

Objectives and principles

Question 1 *What should be the role and objectives of the modern family law system?*

Question 2 *What principles should guide any redevelopment of the family law system?*

Rainbow Families Victoria submits that the role of the modern family law system is to be inclusive of, and responsive to, the lives of ever-changing, diverse Australian families and the many ways these families are formed and structured.

We have responded to both Question 1 and Question 2 by providing a set of guidelines and recommendations for consideration in the development of a more inclusive modern family law system.

A modern family law system will:

- Reflect and include the life, social and cultural experiences of children who grow up and live in rainbow families.
- Be inclusive of diverse family forms and the language and terms that describes these families.
- Be inclusive of children’s voices and incorporate a child-centred approach that informs an understanding of the child’s best interests.
- No longer privilege biology over quality of relationships and parenting or the best interests of the child (for example).
- Provide accessible and inclusive information and support services
- Acknowledge the intersexuality of people’s lives - that sex, sexuality, gender identity, ability, cultural identity, religion and race can be, and often are, interwoven and need to be considered in full when developing and providing services to LGBTIQ, gender diverse and non-binary people and rainbow families.

Further Rainbow Families Victoria suggests the following:

- a) Changing the understood definition of family within the family law system so it explicitly includes diverse family forms such as rainbow families in contemporary Australia.

Rainbow Families Victoria asserts that the term ‘family’ is now widely understood to have a broader definition and scope than envisaged when original Family Law Act (1975) was developed. We recommend working towards developing a more expansive definition of family.

Rainbow Families Victoria recommends updating the use of language, terms and definitions in the Family Law Act (1975) and all associated documents, manual, court books or regulations to include, and be inclusive of, many diverse family forms including rainbow families by:

- Removal or terms or language that intimates that sexuality, sexual or gender identity may be a choice and/or a ‘lifestyle’ - including rewording section 60CC.

- Remove words “each” and “both” in the Act and associated documents as many children have only one or more than two parents or carers.
 - Considering the use of the term 'couple' when referring to parents or 'both' parents as this term may not does not include the relationships of parents in diverse family forms within the rainbow family communities.
- b) Review and update the modern family law system to demonstrate an integrated and thorough understanding of national, state and territory laws and legal reforms pertaining to rainbow families (including international law as required)

Recent legal reforms in Victoria and nationally, including changes to donor laws have had a profound impact on how many members of rainbow families preserve the legal certainty of their family structures and relationships. In turn, the speed by which the law has caught up with the reality of our families and children’s lives has NOT been matched by a timely uptake by many services within the family law system. These services continue to have minimal understanding of the law and recent reforms and how these intersect with the lives of rainbow families. It is also important to be aware that some rainbow families have been created across multiple international, national and state jurisdictions.

In Victoria, significant legal changes to parentage, the introduction of altruistic surrogacy and access to assisted reproductive treatment came into effect on January 1 2010 with the enactment of the *Assisted Reproductive Treatment Act (2008)*. Adoption equality allowing same sex couples to apply to adopt coming into effect in September 2016. Laws around donor identification has also changed significantly during the last eight years.⁶

Federal same sex relationships reforms to family tax benefit, Medicare and other legal reforms came into effect in July 2009⁷ and then marriage equality as of January 9, 2018.

It is important to consider the impact of these recent law reforms on LGBTIQ, gender diverse and non-binary people accessing the family law system– the ‘new-ness’ of these legal changes, real or misplaced fear of legal system, fear that their relationship, sexuality, gender diversity or family form will be misunderstood at one or all stages of engagement – from counselling, to dispute resolution, by the independent children’s lawyer to a family court judge. In addition people may have a real or perceived fear of homophobia, transphobia, biphobia or intersexism when considering accessing services within the family law system.

⁶ <https://www.varta.org.au/information-and-support/donor-conception>

⁷ <https://www.dss.gov.au/our-responsibilities/families-and-children/programs-services/recognition-of-same-sex-relationships>

- c) Creating a modern family law system that is responsive to the life, social and cultural experiences of children who grow up and live in rainbow families.

Many children in rainbow families may have a strong queer or rainbow family identity.

Children may attend participate in cultural events like Midsumma Carnival, Chillout Festival or Pride March, or attend a rainbow families playgroup, for example. Some children strongly identify as being a member of a rainbow family – anecdotally our members report that when a rainbow family separates, some children ask if they are still a rainbow family. Adult children of some rainbow families report that they continue to relate strongly to the LGBTIQ, gender diverse and non-binary community.

A modern family law system will also need to be culturally responsive and sensitive to the needs of children in rainbow families who do identify with the LGBTIQ, gender diverse and non-binary communities. These needs must be appreciated and considered in parenting arrangements or court proceedings, as well as throughout mediation or dispute resolution processes.

Respondents to a short online survey provided anecdotal evidence of children from rainbow families identifying strongly with being a member of a rainbow family. Please refer to Page 17 -18.

- d) Develop pre-service and ongoing education and training and workforce professional development that is inclusive of, and responsive to, diverse family forms including rainbow families.

Rainbow Families Victoria concurs that the families requiring support from the family law system are no longer the families that were envisaged at the time the Act was created. This means that there needs to be ongoing opportunities for the family law system workforce to attend ongoing professional development across the sector. Judicial staff and judges should also be kept up-to-date on data and research about new or emerging family forms.

Rainbow Families Victoria would like to see the development of pre-service education and training for anyone considering a role in counselling, mediation, dispute resolution, family therapy, child psychology and undertaking any course leading to legal role pertaining to family law, to be required to take compulsory subjects or modules on rainbow families and the LGBTIQ, gender diverse and non-binary parenting communities in Australia.

Respondents to our community survey provide numerous examples demonstrating a lack of awareness and understanding across many services within the family law system. Please refer to Page 20 referring to our responses to Question 41 and 42.

Access and engagement

Question 3 *In what ways could access to information about family law and family law related services, including family violence services, be improved?*

Question 8 *How can the accessibility of the family law system be improved for lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) people?*

Rainbow Families Victoria has provided a combined response to Question 3 and Question 8 specifically. We assert that there is a demonstrated lack of appropriate information and accessible services within the family law system for members of rainbow families. We believe that there is a significant lack of community and service awareness about the scope and circumstances in which rainbow families experience family violence in Australia. We also believe that there continues to be a systemic lack of support across the family law system for LGBTIQ, gender diverse and non-binary people and members of rainbow families, or the people who support them, including for those wanting to find out about, or access, inclusive family violence services. Please also refer to our response to Question 41 and 42 on Page 20.

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The accessibility of the family law system for lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ), gender diverse and non-binary people and members of rainbow families requires a vast array of improvements.

Rainbow Families Victoria believes that there are a range of circumstances impacting accessibility including a significant lack of adequately resourced “LGBTIQ friendly” or “LGBTIQ specific” counselling, family support and health services across the state, including in regional and rural areas in combination with reportedly long wait lists for appropriate services.

We need... more support to access a service that was affordable and had LGBTIQ practitioners or people who understood our community (queer single mum of school age child)

There are no support services for families in regional Victoria. If you live in excess of 2 hours from Melbourne, forget it. (lesbian mother, one child, non-biological)

Metropolitan areas of Melbourne provides several LGBTIQ and gender diverse specific counselling and family support services - queerspace at Drummond Street Services in Carlton, VAC in St Kilda, Mind Equality in North Fitzroy - as well as some mainstream services like Bouverie in East Brunswick who promote the service as also being LGBT or rainbow family friendly. Some of these services also offer outer urban or regional support with co-located services offered in Werribee (queerspace) or Bendigo (VAC) and Gateway Health in Wodonga which operates a gender clinic, for example.

LGBTIQ and gender diverse specific health services that may provide services or information regarding family formation, support during pregnancy or in relation to fertility preservation are few and far between. These include clinics like Equinox Gender Diverse Health Clinic in Fitzroy and Northside Clinic, North Fitzroy, both in inner Melbourne. Specialist clinics such as Rainbow Fertility (provider of IVF, DI and fertility preservation services to the LGBTI community) and those supporting trans and gender diverse clients like the Monash Gender Centre (provider of individualised, client centred care for trans, gender diverse and non-binary people with the aim of improving their health and well-being) are popular. Rainbow Families Victoria have heard from people accessing IVF/ART clinics who were perplexed by the limited services available for emotional or therapeutic therapy around decision making and starting a family - for example: counselling at most IVF/ART clinics tends to only refer to family creation, donor choice, suitability for the service, and so on. (Please note that clinics tend to make it clear what their counselling includes but some rainbow families claim that community expectations differ).

The counselling was not what we expected – no questions about our relationship, how prepared we were emotionally to become parents, just a two-session, box-ticking check in that we understand the process and could pay for it. (queer mum of newborn baby)

Community members (and anecdotally some services) also report long wait times for LGBTIQ – inclusive counselling or family therapy services.

It took approximately 6 weeks to access for the intake appointment and then a further 4 weeks for an appointment.

LGBTIQ specific services in regional and rural settings are very limited. Rainbow Families Victoria have heard from community members that sometimes the lack of detailed knowledge about rainbow families or the inability to provide support to every member of a rainbow family, especially in small communities where people know each other and/or the LGBTIQ, gender diverse and non-binary parenting community is small, can be barriers to seeking any support at all.

The result of both a lack of specific LGBTIQ, gender diverse and non-binary services and long wait lists means that some members of rainbow families turn to social media for advice.

There are numerous rainbow-family related Facebook groups that do an excellent job addressing the social isolation felt by many prospective parents or new parents and provide great parenting tips or referrals to crucial services like PANDA or sleep schools, for example. However there appears to be increasing numbers of people requesting, and receiving, what is tantamount to 'legal advice' on some social media sites. Due to privacy concerns Rainbow Families Victoria has chosen not to name these social media sites however we remain deeply concerned about the use of such sites to elicit advice which should only be provided by a professional.

The family law system is complex, there is no 'one size fits all' approach. It's always tempting to seek out advice from other people, but they can only tell you about their experience. If you are in the midst of a dispute you should seek the advice of an expert. (Family lawyer, Melbourne)

Some practitioners across the family law system lack adequate knowledge of our diverse families and specifically the myriad of laws and regulations, and in some cases multiple jurisdictions, related to our rainbow families. Respondents to our community survey reported that they had the following interactions with family law system service providers:

- a) Counselling and mediation services that had little to no understanding of the law as it pertains to rainbow families or who are neither responsive to or inclusive of the LGBTIQ, gender diverse and non-binary communities:

Counselling very poor understanding of issues and power differential dealing with breakdown lesbian parenting relationship... (there was a) lack of understanding

I found mediation to be a waste of time unless both parties are willing. Mediator had very little knowledge of same sex laws.

Awful. All the couples in the video were heterosexual. I was the only Queer person in the room at my group session. I cried the whole time, feeling overwhelmed and like I didn't belong. (referring to a group information session on dispute resolution)

- b) Legal services who claim awareness of LGBTIQ and gender diverse parenting issues in relation to family law but are unable to effectively provide service for rainbow families who are formed outside “two same-sex attracted parented families” family forms or if one parent or carer is trans, gender diverse or non-binary:

While legal aid services will use the acronym LGBTIQ in their service delivery, they actually are well versed in the needs of the lesbian and gay community, but have absolutely no idea about the trans lived experience.

Furthermore, the systemic response to family violence in the LGBTIQ, gender diverse and non-binary communities is very new, under-developed and under-resourced with few support services to be referred to - and those services that do exist are predominantly in Melbourne.

The Victorian Government's Royal Commission into Family Violence included Recommendations 166 to 169 which specifically pertain to the LGBTI communities and the new Family Safety Unit includes an LGBTI Family Violence Working Group. Services such as Drummond Street (Queerspace), GLHV and VAC are working to develop training and professional development and to support LGBTIQ, gender diverse and non-binary communities in relation to family violence. However, a focus on how children are impacted upon by the family law system in relation to family violence services requires, in our opinion, more research and urgent consideration. (Please note we did not seek responses

from our membership and community on access to family violence services as we are about to undertake a prevention project focussed on healthy relationships and FV)

Rainbow Families Victoria recommends the development of rainbow family inclusive and responsive professional development for frontline family violence service providers on diverse family forms including rainbow families.

Recommendations related to access and engagement include:

Rainbow Families Victoria recommends the development of information on family law and the family law related services be available to individuals and families in a range of ways:

- Online - easy to navigate, plain English information.
- Regular community forums on the law in relation to rainbow families
- Workshops for prospective parents on decision making including rights and responsibilities under the law and in jurisdictions across states/territories.
- Written material that is LGBTIQ and gender diverse culturally responsive - material that acknowledges rainbow families including with the appropriate use of language and terms.
- Age-appropriate material produced for children and available in hard copy and online.
- Webinars aimed at service providers providing regular updates and information on regulatory and legislative changes, as well as referral pathways, as related to members of rainbow families AND including national, state and territory jurisdictions. Reviewed and updated annually or earlier as required.
- A regularly updated, legal information portal for members of rainbow families that can be accessed by anyone who is part of a rainbow family, a support person or someone who is considering becoming a part of a rainbow family: a new partner, a donor, a newly separated parent, a sole parent re-partnering, etc – with information on rights and responsibilities.

Legal principles in relation to parenting and property

Question 14 *What changes to the provisions in Part VII of the Family Law Act could be made to produce the best outcomes for children?*

Question 16 *What changes could be made to Part VII of the Family Law Act to enable it to apply consistently to all children irrespective of their family structure?*

Rainbow Families Victoria have some immediate concerns with the current Family Law Act namely that section 60CC refers to the term “lifestyle”. We suggest this is a word that has been historically used in a derogatory manner to describe homosexual or queer behaviour and identify. We also suggest that Section VII does not provide adequate information for our diverse family forms or structures. We would like some focus in the review to consider the impact on children born through international surrogacy arrangements who live with their parents in Victoria (and around Australia) yet have no legal certainty about the status of either one or both of their parents.

Rainbow Families Victoria recommend reviewing and updating the language used in the Family Law Act in consultation with family law specialists with an in-depth understanding of rainbow families and diverse family forms AND with consumer groups recruited from the rainbow family communities.

Children’s experiences and perspectives

Question 39 What changes are needed to ensure that all children who wish to do so are able to participate in family law system processes in a way that is culturally safe and responsive to their particular needs?

Rainbow Families Victoria believes that the experiences of children and young people within the family law system needs to be urgently updated to ensure a process allowing for active participation by, and engagement with, children and young people. We believe that for many rainbow families, and the children who are part of them, the family law system processes fail to be culturally safe and responsive to the children’s particular needs *because it fails to appreciate, understand or be inclusive of rainbow families.*

Rainbow Families Victoria appreciates that attempting to specifically define a “rainbow family culture” is difficult. However, if we were to assume that in any given rainbow family there is an understanding of shared social norms (for example, an openness towards, and discussions about, the LGBTIQ and gender diverse communities, thought and intention behind creating the family, care given towards explaining to a child how their family was created) and a set of common characteristics that make up a rainbow family (for example, including people who are LGBTIQ, gender diverse and non-binary, attendance at rainbow families events or LGBTIQ and gender diverse pride events and activities) then we would say that there is a, perhaps loosely defined, rainbow family identity. It should be noted that for many parents and carers, we do identify strongly as part of a rainbow family and a rainbow family community.

We also believe that there can be a considerable impact on the mental health and wellbeing of members of rainbow families when hetero-normative narratives or beliefs about child rearing, parenting, the roles people play in families, language used in families, family formation and family forms, are imposed upon rainbow families by some services, a form of discrimination that can be either overt or covert.

In addition, a lack of understanding and support for parents or carers who transition, come out as, or who are gender diverse or nonbinary can have a considerable impact on the ability of those parents and carers to access safe and responsive services, in turn impacting on the ability for their children to participate in the family law system processes in a safe way.

Rainbow Families Victoria used a short online survey to ask children and young people in rainbow families if they identify as a member of a rainbow family, and if so, how strongly and to provide examples of what their rainbow family means to them:

Being part of a rainbow family means knowing that I will always be accepted whatever my gender or sexuality. It means knowing a lot more about politics than other kids, and going to places that are very rainbow – like Pride March, Midsumma Festival, rallies and Mardi Gras. (female, age 11, two mums)

Being part of a rainbow family basically means being like any other family, but being different in a good, special way that is really cool. (male, age 15, two mums)

I have a mummy and a mama. That's two mums are of my family. I don't have a Dad, I have two mums. Oh, and I have a donor - he helped make me and we love him. (child, age 4.5 years old)

Our children identify very strongly and comfortably identify as being part of a rainbow a family. - it's part of their spiel if they are writing a 'who am I' type of introduction- say at the start of a school year, as an example. (lesbian mums of four children, including one child on permanent care)

We also asked parents and carers the question “As a parent/carer, how important is it to you that your children have their identification as a member of a rainbow family acknowledged by service providers”. Some responses included:

Essential! Assuming anything different invalidates our family, dismisses their truth and erases something important, positive and worthwhile from their lives. (mum of two pre-school children)

Awareness of this is paramount. For example we've met counsellors where we were the first rainbow family encountered and it's harder to get through introducing ourselves and getting on with issues etc. In fact we felt like a novelty/ misunderstood/ a little judged.

As a parent, having my family acknowledged as a rainbow family by service providers is extremely important. For me, this has come into play on many occasion over the years, for example, when I have taken the kids to the GP, the paediatrician or ophthalmologist. It's also been very important for staff at day care, kinders and schools that the kids have attended to know about our family structure and to understand something of what that means. And, apart from any practical considerations, it's just hugely important to me that the diversity of our family is recognised and acknowledged and supported by services providers. (lesbian mother , three secondary school age children)

Recommendations regarding children's experiences and perspectives include:

- a) Consideration for the diverse family form the child has grown up in and lives in
- b) Consideration for the diverse ranges of roles adults take on in the child's life - beyond definitions defined purely by biology or constrained by only having the option of listing two parents on a birth certificate.
- c) Consideration of the range of sibling relationships and relationships with extended family members that a child may have, regardless of biology or whether siblings live in one home or across many homes.
- d) Consideration of being culturally responsive to the child, both as a member of the LGBTIQ, gender diverse or non-binary communities and of being part of a rainbow family within those communities

- e) Consideration as to whether the child or young person is themselves same sex attracted, trans, gender diverse or non-binary, or are a member of the LGBTIQ, gender diverse or non-binary communities in their own right.

Professional skills and wellbeing

Question 41 What core competencies should be expected of professionals who work in the family law system? What measures are needed to ensure that family law system professionals have and maintain these competencies?

Question 42 What core competencies should be expected of judicial officers who exercise family law jurisdiction? What measures are needed to ensure that judicial officers have and maintain these competencies?

Rainbow Families Victoria believes that the current family law system lacks the understanding of our rainbow families in their many shapes and sizes. We believe that the current family law system is fundamentally unable to adequately support rainbow families.

We recommend extensive pre-service education and professional development for all professionals and judicial officers, including judges, who work in the family law system.

Services that support members of rainbow families, or prospective parents or carers, when deciding how to create their families, and which provide services to do so, also require considerable education and training. We expand on this further in response to questions 3 and 8 on Page 12.

In our response to Questions 41 and 42 we highlight concerns about the general lack of relevant legal knowledge and law reforms many family law system professionals have about our rainbow families. We include quotes from respondents to our community survey which introduce a range of perceived and real problems within the current family law system.

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The legal landscape for rainbow families has changed significantly in recent years.

In Victoria, significant legal changes to parentage and access to assisted reproductive treatment came into effect on January 1 2010 with the enactment of the *Assisted Reproductive Treatment Act (2008)*. Likewise, other states and territories around Australia have also enjoyed legal reforms recently, especially in regards to access to assisted reproductive treatment services, legal parentage, donor identification and adoption. With federal reforms in 2009 and again with marriage equality as of January 9, 2018, Rainbow Families Victoria is concerned that there is little to no professional development across the family law system addressing the impact of these federal reforms on state-based parentage nor vice-versa.

Fitzroy Legal services runs an LGBTIQ Family Law clinic once a fortnight in Victoria. While a free service, the capacity is limited by location and times (3 hours from 6pm to 9pm). We believe considerable funding is urgently required to allow for the Federation of Community Legal Centres and Victoria Legal Aid to develop their capacity to educate and inform both service providers and the LGBTIQ, gender diverse and non-binary parenting community of

their rights and expectations under the law as well as explain the legal process. We acknowledge the efforts of these, and other legal services, who work to address the issues our rainbow families face.

Some examples provided by respondents concerned (commonly reported) situations where judges have allegedly commented on the biological relationships of children in rainbow families to parents and their donors, misused the term 'father' or misrepresented donors as fathers (clearly not the case under the ART Act (2008)), and misunderstood the role of the parents involved:

A judge asked to see more information "about the father" during the case. As there are two female parents named as "mother" and parent on the birth certificate this was offensive and upsetting to me at a difficult time as we as showing how uneducated the judge was about LGBTIQ and donor insemination law.

The judge seemed more favourable to the birth mother. I had to prove my role in the child's life and still when this was proven I was subject to further scrutiny. The whole process was very degrading of my status of a mother. (Lesbian mum of 2, one biological child, one non-biological child)

One respondent suggested:

Counsellor, lawyers and Judges in the process undertaking education specific LGBTIQ issues and also unconscious bias training so look for heteronormative values and assumptions from which they approach issues. (Lesbian mum of four kids in a blended family)

Recommendations for action related to Professional skills and wellbeing include:

- a) develop preservice education and training and workforce professional development in consultation with rainbow families, LGBTIQ , gender diverse and non-binary advocacy organisations and services who specialise in the provision of LGBTIQ and gender diverse support, counselling and legal aid.
- b) develop workforce professional development for a range of providers and services within the family law system including but not limited to: dispute and mediation practitioners, from Relationships Australia staff, to court support, Independent Children's Lawyers or report writers and judicial staff including Family Court judges.
- c) develop an audit for legal services who claim to provide advice and information to the LGBTIQ, gender diverse and non-binary community in regards to the family law system – such services must be assessed as being competent, and display a significant level of commitment to updating and reviewing services, in relation to understanding and awareness of rainbow families, diverse family forms and the legal landscape on a state, territory and national level.

FINAL SUMMARY OF RECOMMENDATIONS

1. review and update the modern family law system to demonstrate an integrated and thorough understanding of national, state and territory laws and legal reforms pertaining to rainbow families (including international law as required).
2. create a modern family law system that is responsive to the life, social and cultural experiences of children who grow up and live in rainbow families.
3. develop a more expansive definition of family inclusive of rainbow families – across the family law system including family violence services.
4. improve data collection to accurately reflect the numbers of diverse family forms and therefor improve service provision for rainbow families and LGBTIQ, gender diverse and non-binary people.
5. review and update language used in the Family Law Act in consultation with family law specialists with an in-depth understanding of rainbow families and diverse family forms AND with consumer groups recruited from the rainbow family communities
6. update the language, terms and definitions in the Family Law Act (1975) and all associated documents, manual, court books or regulations to include, and be inclusive of, many diverse family forms including rainbow families by:
 - a) Removal or terms or language that intimates that sexuality, sexual or gender identity may be a choice and/or a ‘lifestyle’ - including rewording section 60CC.
 - b) Remove words “each” and “both” in the Act and associated documents as many children have only one or more than two parents or carers.
 - c) Considering the use of the term 'couple' when referring to parents or 'both' parents as this term may not does not include the relationships of parents in diverse family forms within the rainbow family communities.
7. Review and update information on family law and the family law related services in a range of ways:
 - a) Online - easy to navigate, plain English information.
 - b) Regular community forums on the law in relation to rainbow families
 - c) Workshops for prospective parents on decision making including rights and responsibilities under the law and in jurisdictions across states/territories.
 - d) Written material that is LGBTIQ and gender diverse culturally responsive - material that acknowledges rainbow families including with the appropriate use of language and terms.
 - e) Age-appropriate material produced for children and available in hard copy and *online*.
 - f) Webinars aimed at service providers providing regular updates and information on regulatory and legislative changes, as well as referral pathways, as related to members of rainbow families AND including national, state and territory jurisdictions. Reviewed and updated annually or earlier as required.
 - g) A regularly updated, legal information portal for members of rainbow families that can be accessed by anyone who is part of a rainbow family, a support person or someone who is considering becoming a part of a rainbow family: a new

partner, a donor, a newly separated parent, a sole parent re-partnering, etc – with information on rights and responsibilities.

8. Recommendations for action related to children’s experiences and perspectives:
 - a) Consideration for the diverse family form the child has grown up in and lives in.
 - b) Consideration for the diverse ranges of roles adults take on in the child’s life - beyond definitions defined purely by biology or constrained by only having the option of listing two parents on a birth certificate.
 - c) Consideration of the range of sibling relationships and relationships with extended family members that a child may have, regardless of biology or whether siblings live in one home or across many homes.
 - d) Consideration of being culturally responsive to the child, both as a member of the LGBTIQ, gender diverse and non-binary communities and of being part of a rainbow family within those communities.
 - e) Consideration as to whether the child or young person is themselves same sex attracted, trans, gender diverse or gender non-binary, or are a member of the LGBTIQ communities in their own right.

9. Recommendations for action related to professional skills and wellbeing include:
 - a) develop preservice education and training and workforce professional development in consultation with rainbow families, LGBTIQ and gender diverse advocacy organisations and services who specialise in the provision of LGBTIQ and gender diverse support, counselling and legal aid.
 - b) develop workforce professional development for a range of providers and services within the family law system including but not limited to: dispute and mediation practitioners, from Relationships Australia staff, to court support, Independent Children's Lawyers or report writers and judicial staff including Family Court judges.
 - c) develop an audit for legal services who claim to provide advice and information to the LGBTIQ, gender diverse and non-binary community in regards to the family law system – such services must be assessed as being competent, and display a significant level of commitment to updating and reviewing services, in relation to understanding and awareness of rainbow families, diverse family forms and the legal landscape on a state, territory and national level.

A note on the intersex community

Rainbow Families Victoria recommend that the Australian Law Reform Commission consult specifically with the intersex community and suggest contacting Intersex Human Rights Australia. We note that IHRA have put in a submission.

<https://ihra.org.au/>

Recommended reading on the diversity of 'family types' and rainbow families in recent Australian research

Same-sex parented families in Australia

Deb Dempsey (2013)

<https://aifs.gov.au/cfca/publications/same-sex-parented-families-australia/diversity-australian-same-sex-parented-families>

What makes a same-sex parented family?

Simon R Crouch, Ruth P McNair, Elizabeth B Waters and Jennifer J Power

<https://www.mja.com.au/journal/2013/199/2/what-makes-same-sex-parented-family>

Diversity, tradition and family : Australian same-sex attracted parents and their families

Jennifer Power, Amaryll Perlesz, Rhonda Brown, Margot Schofield, Marian Pitts, Ruth McNair and Andrew Bickerdike (2010)

<https://core.ac.uk/display/13988023>

The Desire for Parenthood - Gay Men Choosing to Become Parents Through Surrogacy

Dean Murphy (2013)

<http://journals.sagepub.com/doi/pdf/10.1177/0192513X13484272>

Surrogacy, gay male couples and the significance of biogenetic paternity

Deborah Dempsey (2013)

<https://www.tandfonline.com/doi/abs/10.1080/14636778.2012.735859>

Institutional Stressors and Individual Strengths: Policy and Practice Directions for Working with Australian Lesbian and Gay Foster Carers.

Damien W. Riggs & Martha Augoustinos (2009)

<https://www.tandfonline.com/doi/abs/10.1080/09503150902875919>

Reassessing the Foster-Care System: Examining the Impact of Heterosexism on Lesbian and Gay Applicants.

Damien Riggs (2009)

<https://onlinelibrary.wiley.com/doi/full/10.1111/j.1527-2001.2007.tb01153.x>

Bisexual Parents and Family Diversity: Findings From the Work, Love, Play Study.

Jennifer J. Power, Amaryll Perlesz, Rhonda Brown, Margot J. Schofield, Marian K. Pitts, Ruth McNair & Andrew Bickerdike (2012) *Journal of Bisexuality*, 12:4, 519-538

<https://www.tandfonline.com/doi/abs/10.1080/15299716.2012.729432?journalCode=wjbi20>

Separated Same-Sex Parents' Experiences and Views of Services and Service Providers

Gahan, Luke (2017)

<http://digitalcommons.library.tmc.edu/jfs/vol17/iss2/2>

Australian Family Diversity website: <http://www.australianfamilydiversity.com/>