Tina O'Brien

Executive Assistant

Australian Law Reform Commission | www.alrc.gov.au

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# Submission in response to Review of the family law system

Dear Executive Assistant,

Thank you for the invitation to provide a submission responding to the Discussion Paper.

We are encouraged by proposals that seek to engage LGBTIQ organisations to make the family law system more responsive to our community. It is vital that LGBTIQ parents see the family law system as relevant and inclusive.

We thank the Committee for their consideration of our submission.

For further information, please contact us on 0481 565 958, or by email advocacy@rainbowfamilies.com.au

Yours sincerely

Justine Fields

Rainbow Families

# About Rainbow Families NSW

Rainbow Families NSW was formed in 2015 as the peak body for lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) families in NSW.

The mission of Rainbow Families is to build a community that fosters resiliency by connecting, supporting and empowering LGBTQI families. Rainbow Families has a growing membership and includes people from across NSW.

Its volunteer Board consists of committed LGBTIQ members who share the common experience of raising families. Rainbow Families is in the final stages of registering as a charity under the Australian Charities and Not-for Profits Commission Act 2012.

Rainbow Families is an incorporated organisation, governed by a [constitution](http://www.rainbowfamilies.com.au/s/Rainbow-Families-Constitution-February-2016-Cleanv3.pdf) which provides a structure for how the group operates.

## What is a Rainbow Family?

A Rainbow Family is a same-sex or LGBTIQ parented family.

At Rainbow Families, we define a Rainbow Family as: any lesbian, gay, bisexual, transgender or intersex person who has a child or children; or is planning on having a child or children by way of donor insemination (known or unknown), surrogacy (altruistic or commercial), foster care, foster to adoption, adoption (domestic or international), opposite­ sex relationship, co-parenting or other means.

Rainbow families, like many modern families, come in all shapes and sizes and are formed in many different ways. But the thing we all have in common is that our families are created through love.

Over thirty years of peer reviewed research into same-sex parented families shows that children from these families do as well as their peers from heterosexual-parented families.

## For the community, by the community

Rainbow Families is a volunteer-led organisation, providing a network of support to children and families within the NSW LGBTIQ community. **Introduction**

In our response to the Issues Paper earlier this year, Rainbow Families NSW focused on question 8 which asked how the family law system could be made more accessible to the LGBTIQ community. We identified the following issues as being of major concern within the community:

* The heteronormative underpinnings of the family law system and lack of understanding from people working within the system necessary to respond to the experiences of LBGTIQ families
* Particular barriers for transgender parents accessing the family law system
* Parentage definitions that do not accommodate the complexity of LBGTIQ families, with the lack of recognition for families formed through surrogacy arrangements remaining a serious concern.

These concerns remain central to our response to the Discussion Paper. We have targeted our response to those areas of the Discussion Paper that deal specifically with the LGBTIQ community. We are encouraged by proposals that seek to engage LGBTIQ organisations to make the family law system more responsive to our community. It is vital that LGBTIQ parents see the family law system as relevant and inclusive. Otherwise, barriers to accessing the family law system will continue to prevent parents from accessing necessary support and obtaining outcomes that are in the best interests of their children.

**Education awareness and information**

We note that proposals 2.2 and 2.8 of the Discussion Paper recommend consulting with community groups including the LGBTIQ community in relation to developing a national education and awareness campaign and an information package to enhance understanding of the Australian family law system.

We support the establishment of a centralised source of information for separating parents. Ideally this would take the form of a website supported by resources such as books and brochures accessible in local facilities such as public libraries. Having access to sound legal and procedural information is vital. However, for many separating parents the necessary first steps often arise from practical needs such as finding accommodation, financial support or counselling. Parents experiencing personal crisis would be greatly assisted by a comprehensive and reliable list of available services, including specialised services for different groups in the community. For such an information package to have broad application and relevance it needs to be inclusive such that the content, language and images used reflect the diversity of family experience.

An information package should also provide practical guidance about formulating arrangements for the care of the children. Separating LGBTIQ parents have expressed a need for models of parenting post-separation that are ethical, collaborative and child-focused. The types of co-parenting arrangements more common in families with heterosexual parents are often not a good fit as same sex parents tend to dispense with traditional male/female parenting roles. Given the tendency within the family law system to preference biological parents, non-biological parents are sometimes unsure of their role and legal recognition of it post separation. In our experience, the most valuable guidance arises from the shared experiences of parents who have had to grapple with these challenges. Rainbow Families NSW welcomes any opportunity to be involved in the development of the national education awareness campaign and information package including the testing of resources such as websites and brochures.

**Simpler and clearer legislation**

Rainbow Families NSW supports any measures that go towards making the family law legislative framework more accessible and readily understood. We note the proposal to remove provisions defining parentage for Commonwealth purposes to other legislation. We welcome the opportunity to provide a more coherent approach and to bring about consistency with relevant state and territory legislation in this area.

Rainbow Families NSW previously expressed concern about current parentage provisions of the *Family Law Act* on the basis that they do not reflect the diversity of LGBTIQ family structures. These parenting relationships do not fit easily within the two parent model that has been central to the operation of the *Family Law Act*. This has had real implications for parents in the court system, resulting in uncertainty and for some families, sub-optimum outcomes. We welcome broadening of the definition of parent to recognise co-parenting arrangements involving more than one parent.

Providing greater legislative certainty about parentage would reduce disputes that arise when previous agreements about parenting roles break down. Future agreements would turn be guided by greater clarity in the legislation. The status of donors needs to be made more explicit so that they are not treated like fathers at the expense of other parents such as non-biological mothers. There also needs to be greater certainty for non-biological mothers where the circumstances do not fit the current legislative requirements. We agree that the language of provisions regarding artificial conception procedures is unnecessarily complex and would benefit from simplification.

Parentage legislation also needs to be amended to provide full legal recognition to families that have been formed through surrogacy arrangements. Such recognition ensures that children in these families will be able to access essential services including emergency medical treatment when sought by their parents. It is in the best interests of children to have the stability and security afforded by legally recognising their parents.

**Getting advice and support**

We note proposal 4.4 to involve local service providers including LGBTIQ organisations in the design of the proposed Families Hubs to ensure that they are culturally safe and accessible, responsive to local needs and build on existing networks and relationships between existing services. It is essential that such as service has the capacity to be inclusive across a range of family types so that anyone who attends can be confident their needs will be met. Many LGBTIQ parents are reluctant to engage with mainstream family law services due to a perception that the providers of such services do not understand the experiences of LGBTIQ families or know how to respond appropriately and therefore miss out on vital support.

We welcome a community-based approach in establishing the network of Families Hubs as entry points to accessing family law services. This enables services to be responsive to the needs of the local community so that community members are more likely to feel that the service is relevant to them. Hubs in areas with significant LGBTIQ populations can include services that are LGBTIQ specific and draw on networks of local services providers, in the same way that Hubs would reflect the cultural composition of the local community. In Hubs where specialised services are not available, all staff should have general competence in dealing with LGBTIQ parents. Having a good relationship with LGBTIQ community organisations would enhance understanding of the needs of LGBTIQ parents and as well as equipping Families Hubs to refer parents requiring more specialised assistance were necessary.

We welcome the opportunity for LGBTIQ community organisations to be involved in the design and delivery of services in a way that is culturally safe and accessible. The skills and experience of organisations already providing services can be utilised and built upon.

**Dispute resolution**

We note proposal 5.9 that Government should work with providers of Family Dispute Resolution (FDR) services and LGBTIQ and other organisations to support the development of culturally appropriate and safe models of family dispute resolution and proposal 5.10 to develop practice guidelines for the delivery of legally assisted mediation in property and parenting matters. We also note that the guidelines as proposed would include supporting effective participation of LGBTIQ families in FDR. Models of family dispute resolution need to be inclusive and be underpinned by family dispute resolution practitioner competencies including the ability to understand the diversity of families and respond to their needs.

In mediating with LGBTIQ families, family dispute resolution practitioners need to understand the law as it applies to LGBTIQ families as well as the realities of how those families function and the issues unique to LGBTIQ families. For example, it is often the case that a child with same sex parents does not have one primary carer but that the role is shared equally between them. This can be challenging to family law professionals who are more familiar with a single primary carer model of parenting, particularly when this remains entrenched in the orthodoxy of the court system. Similarly, internalised assumptions about the superiority of biological relationships may lead practitioners to undervalue non-biological parents. Lack of understanding has the potential to cause significant hurt even when not intended, particularly with regard to transgender parents who continue to be marginalised in the family law system.

Understanding LGBTIQ families also extends to the screening stage of family dispute resolution where a decision is made whether mediation is suitable for a particular family. The dynamics of family violence in same sex relationships may differ from those of heterosexual relationships and inability to recognise them may place vulnerable parents at risk.

**Reducing Harm**

We note Proposal 8.2 that the Government commission research projects to examine the strengths and limitations in the *Family Law Act* in relation to the experience of family violence for LGBTIQ people.

The experience of family violence is different for people in same sex relationships and mainstream services tend to be based on a heterosexual model that assumes a male perpetrator and female victim. Consequently, LGBTIQ people seeking support may feel that their experience of family violence is not validated. Patterns of control and coercion can be just as damaging in same sex relationships but less recognisable if viewed through the prism of a conventional understanding of family violence. Greater understanding is needed in order to respond sensitively and appropriately. LGBTIQ parents need to be confident that they can obtain the support necessary to leave abusive relationships and ensure that that their children are protected from exposure to family violence.

**A skilled and supported workforce**

We support the family law system professionals to develop core competencies that enable cultural competency towards the LGBTIQ community. This has been discussed above in relation to the provision of various services such as family dispute resolution. Development of core competencies in this area could be guided by way of consultation with advocacy services and organisations specialising in service provision to LGBTIQ families. Professionals working within the family law system need to have an adequate level of competency in recognising and responding to the needs of LGBTIQ families. All family law professionals including judicial officers should be required to demonstrate understanding of LGBTIQ families as part of their core competencies.

**System oversight and reform evaluation**

We note proposal 12.8 that the Government should develop a cultural safety framework to guide the development, implementation and monitoring of reforms to the family law system arising from the review and welcome the recommendation that this be done in consultation with LGBTIQ organisations. We further note that this would be overseen by a newly established Family Law Commission.

We agree that the Cultural safety framework should address the provision of community education about the family law system; the development of a culturally diverse and culturally competent workforce; provision of and access to culturally safe and responsive legal and support services and provision of access to culturally safe and responsive dispute resolution processes.

It is encouraging to see the priority being given to providing culturally appropriate and safe services within the family law system. Barriers to access need to be addressed in a systematic way so that the family law system is made more responsive to the needs of LGBTIQ families and more inclusive towards families generally. Providing oversight is the best way to promote consistency and to address any gaps in culturally safe service provision.

**Conclusion**

Unless LBGTIQ families can be confident that the family law system is understanding of and responsive to their needs, fear, distrust and apprehension will continue to stand in the way of engagement with the system. Such engagement is necessary if LGBTIQ families are to access much needed support and be afforded the opportunity to obtain outcomes in their children’s best interests. Rainbow Families NSW looks forward to having a role in the development of a more inclusive and effective family law system.