



# LOVE (still) MAKES A FAMILY

A report into discrimination faced by LGBTIQ+-parented families  
when accessing Australian Government services

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Accessing government services as a rainbow family is often difficult. Our families are more vulnerable. It's not simply the forms, which are often wrong and need amending, but dealing with government employees who need to interpret law and policy. Being told, as I was, that the requirements for my partner and I to register our child's birth were different because we were same-sex parents was a deeply upsetting experience.

- Lesbian mum

“

Inclusion is key. Too often, it's the incidental things that take me by surprise. There needs to be an overhaul of all paperwork and online forms to use neutral terms. Staff need to be trained to use inclusive terms and not make assumptions. For example, using the term 'partner' until the customer discloses otherwise.

- Lesbian mum



*Love (still) makes a family: A report into discrimination faced by LGBTIQ+-parented families when accessing Australian Government services*

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# Contents

About Rainbow Families.....	5
What is a rainbow family?.....	6
Introduction.....	7
Family structure.....	9
Legal recognition of our families.....	10
Citizenship, passports and international travel.....	13
LGBTIQ+ asylum seekers.....	17
Centrelink.....	18
Education.....	20
Medicare.....	24
Other issues for LGBTIQ+ parents.....	26
Nationally consistent laws.....	27
Full list of recommendations.....	29
Endnotes.....	32

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## About Rainbow Families

Rainbow Families NSW (Rainbow Families) was formed in 2015 as the peak body for LGBTIQ+ families in NSW. The acronym LGBTIQ+ refers to lesbian, gay, bisexual, transgender and gender diverse, intersex and queer. The + recognises that there are a range of other terms that rainbow families identify with, and that these members of our community are loved and included.

The mission of Rainbow Families is to build a community that fosters resilience by connecting, supporting and empowering LGBTIQ+ 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 or working with children of rainbow families.

Rainbow Families is in the final stages of registering as a charity under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth). Rainbow Families is an incorporated association, governed by a constitution that provides a structure for how the group operates.

### For the community, by the community

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



## What is a rainbow family?

At Rainbow Families, we define a rainbow family as a family comprising a lesbian, gay, bisexual, transgender or gender diverse (TGD), intersex, asexual or queer person who identifies with our community and has a child or children, or is planning to have a child or children.

Rainbow families may have created their families through donor insemination (known or unknown donor/s), surrogacy (altruistic or commercial), foster care, foster to adoption, adoption (domestic or international), natural conception, 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.

Rainbow Families is proud to say that more than thirty years of peer-reviewed research demonstrates that children from same-sex-parented families do as well as their peers from heterosexual-parented families.<sup>1</sup>

### A note on language

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Language is a powerful tool for building inclusion of families. The way we speak to each other creates a culture in which everyone can feel valued and respected (included), instead of feeling undervalued, disrespected, and out of place (excluded).

It's important to acknowledge that language is constantly evolving. Rainbow Families recognises that one label or description may not be able to capture the breadth of the LGBTIQ+ community. Our intention is always to be as succinct as we can, but inclusive of everyone.



## Introduction

This report is a follow-up to the 2017 Rainbow Families NSW report *Love makes a family: A report into discrimination faced by LGBTIQ+-parented families when accessing state government services*.

This report looks at the experiences of members of our community when accessing services provided through the Australian Government. What we found is that families still face exclusion and discrimination in the most basic day-to-day interactions with government – from forms that don't reflect the makeup of our families, to schools who can exclude our children because of who their parents are or have the right to fire us because of who we love and who we are.

Two things are clear from this report: the power of language to make us feel included or excluded; and that family diversity and inclusivity training would go a long way to remove barriers for our community.

In 2017, our community campaigned for marriage equality. While that battle was won, what this report reveals is that there is still a long way to go before members of our community experience full equality when accessing government services.

## Our sample

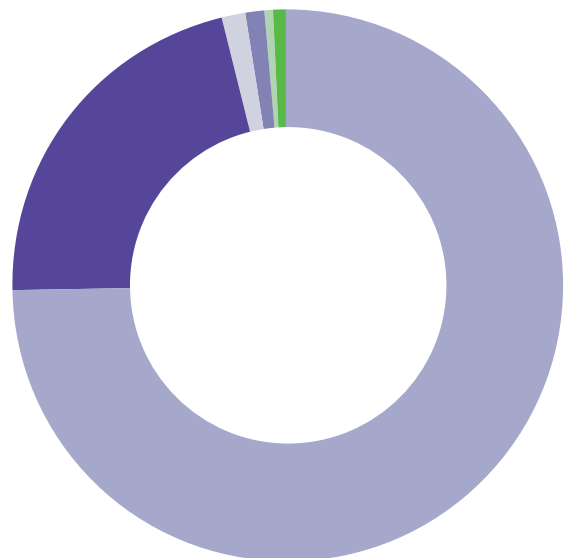
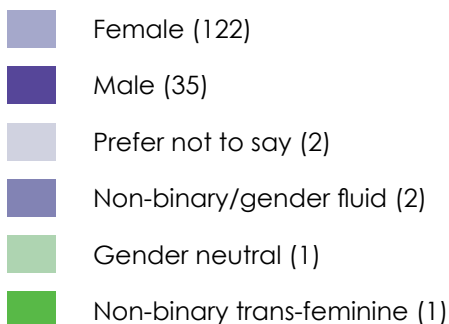
We surveyed the Rainbow Families community in May 2018 and collated the results of the 163 responses received. The vast majority of our respondents were lesbian women (people whose current gender identity is female and who identify as gay, lesbian or homosexual), followed by gay men (people whose current gender identity is male and who identify as gay or homosexual), which broadly reflects the makeup of rainbow families in Australia.

According to the Australian Bureau of Statistics, female same-sex couples in Australia are more likely to have children than male same-sex couples. In 2016, one quarter (25 per cent) of female same-sex couples had children, compared with 4.5 per cent of male same-sex couples.<sup>2</sup>

Increasingly, members of our community are identifying as non-binary and/or trans and gender diverse, making up four per cent of our sample.

Three individuals indicated that they had an intersex variation, with three others unsure or unaware.

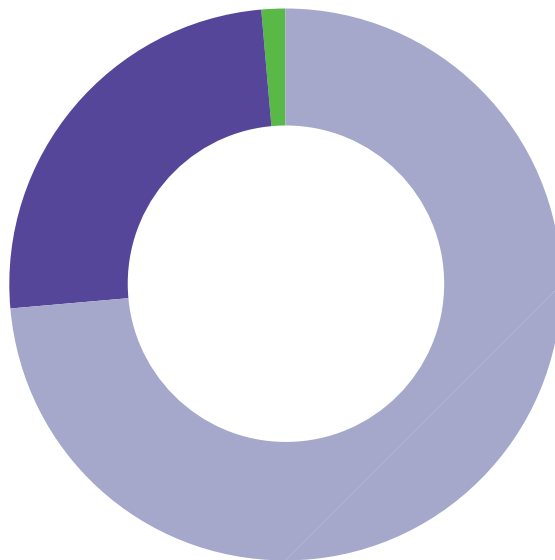
### Which of the following best describes your current gender identity?





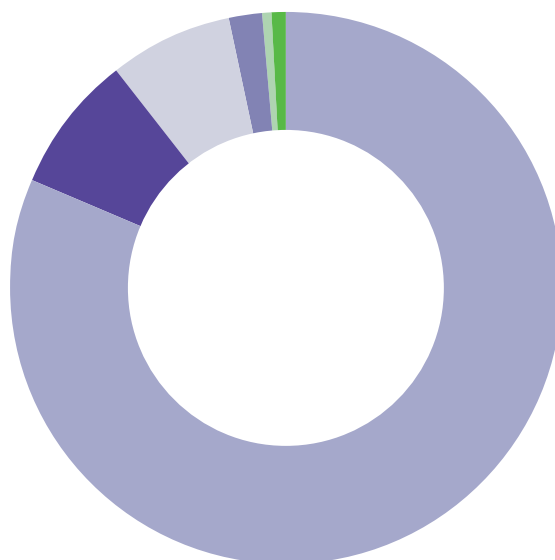
**What sex were you assigned at birth (i.e.: what was specified on original birth certificate)?**

- Female (120)
- Male (41)
- Prefer not to say (2)



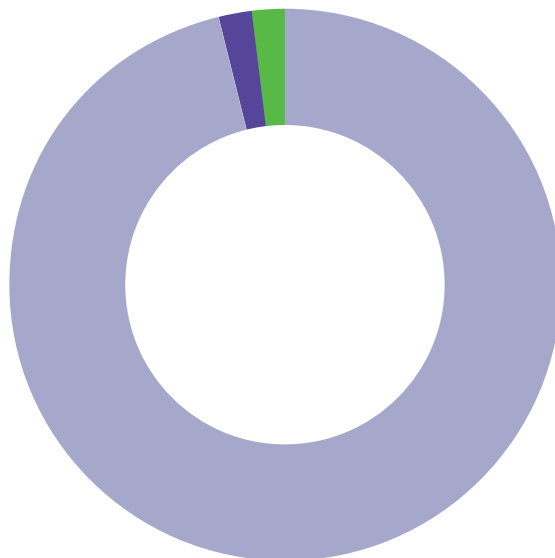
**Sexual Orientation – Do you consider yourself to be:**

- Lesbian, gay or homosexual (133)
- Queer (13)
- Bisexual (12)
- Pansexual (3)
- Demisexual, polyamorous, happily married pansexual (1)
- No response (1)



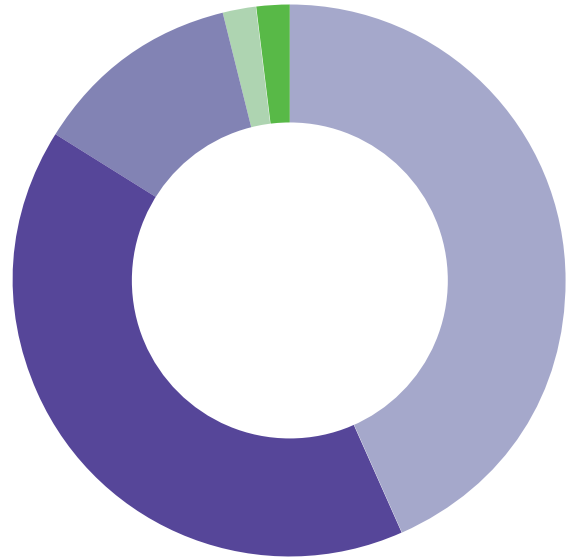
**Do you have an intersex variation?**

- No (157)
- Unsure/don't know (3)
- Yes (3)



### How many children in your family?

- One (71)
- Two (66)
- Three (20)
- Four or more (3)
- No response (3)

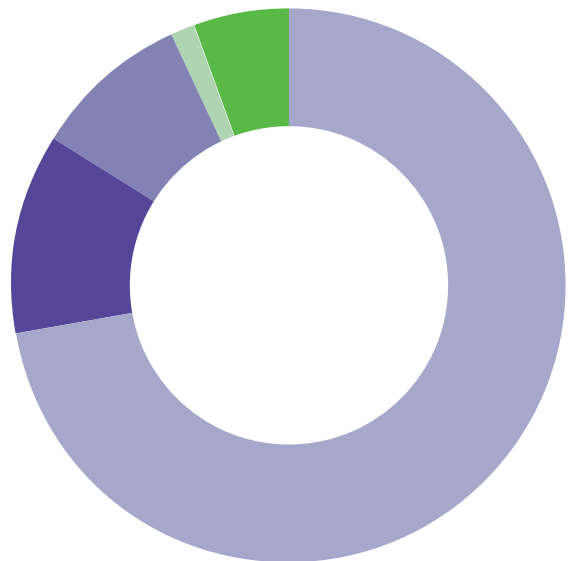


## Family structure

The most common family structure of the respondents from our community was two-parent families (72 per cent), followed by single-parent families (12 per cent) and co-parents (9 per cent).

### What best describes your family structure?

- Two-parented (118)
- Single-parented (19)
- Co-parented (15)
- Widowed (2)
- Other (9)

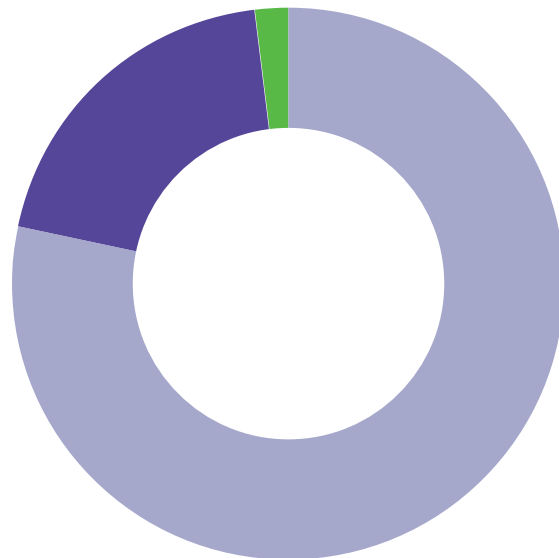
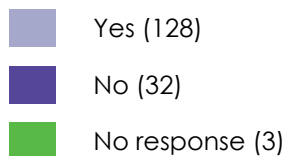


## Legal recognition of our families

Legal recognition of parents continues to be an issue for many families in our community.

Twenty per cent of the respondents to our survey were not recognised as the legal parents of the children they cared for.

### Are you legally recognised as parent of all your children?



## Surrogacy

“ I am concerned about the lack of rights for children born via surrogacy. I fear for friends who don't have parental and legal rights in relation to their own children.

– Lesbian mum

The biggest barrier to legal recognition of parents was encountered where children were born through international surrogacy. Of our sample, nine respondents indicated that they had children born through overseas commercial surrogacy, which is illegal in NSW.<sup>3</sup>

“ My children were born through international surrogacy. Due to parenting laws in Australia I am not recognised as the legal parent of my children. Their surrogate and her husband are considered the legal parents of my children. I am listed on their birth certificates, and the surrogate has no contact with the children.

– Gay dad

“ I have not applied for a parenting order for fear of being prosecuted for engaging in commercial surrogacy. This leaves my family in legal limbo. In all practical areas, I am considered my children's parent. I have had no issues accessing Medicare or enrolling them in school, for example. However, in the back of my mind it is unsettling to know that I am not considered their legal parent.

– Gay dad

“ Parenting orders need to be accessible for people who use commercial surrogacy to create their families.

– Gay dad

“ Our children were born through surrogacy overseas and we would like the government to make it easier to recognise parental rights for intended parents who undertake surrogacy.

– Gay dad

Despite the fact that commercial surrogacy is illegal in all Australian states and territories,<sup>4</sup> there are a large number of families in our community who have been formed in this way.

Children born through commercial surrogacy are often denied the permanency and certainty of legal parenthood, may experience difficulty accessing basic services and can grow up feeling their parentage and stories of origin render them illegitimate or illegal.

There is a breadth of opinion in the LGBTIQ+ community concerning surrogacy, including some concerns for the safety and wellbeing of children, surrogates and intending parents.

However, on balance, we contend that the ban on commercial surrogacy in NSW forces the practice underground, exposing children, surrogates and intending parents to greater risk, and that the current system is not in the best interests of children or families.

It is the children in our community who suffer as a result.

The Family Law Council notes that:

There have been only 19 reported cases dealing with overseas surrogacy arrangements in the family courts, while there have been many hundreds of children born to Australian couples through overseas surrogacy arrangements. This means that the great majority of children born as a result of surrogacy arrangements overseas do not have the legal protection of having a legally recognised parent in Australia.<sup>5</sup>

While the Australian Government – through the Department of Foreign Affairs and Trade and the Department of Immigration

and Border Protection – facilitates granting citizenship to children born overseas through surrogacy, it is the responsibility of parents to seek parentage orders. The orders are determined according to the different criteria and processes of individual states, meaning that there is little consistency or certainty in the process.

To obtain parentage in NSW, the birth of the child must have been registered in accordance with the requirements (if any) of the law of the jurisdiction in which the child was born.<sup>6</sup> In some overseas jurisdictions the law stipulates that the surrogate is listed on a child's birth certificate, along with the husband of the surrogate, if they are married. This means a child may have a legal parent they have never met and never will.

The result is that children are denied their right to have the parents with whom they live be recognised as their legal parents.

This is clearly not in the best interests of the child, with the potential for far-reaching consequences.

We support the Family Law Council's assertion that:

it is in the best interests of children born from international surrogacy arrangements that a child has at least one parent in Australia who is legally recognised as a parent.<sup>7</sup>

But we believe this does not go far enough. Children have the right to have both parents legally recognised when both parents live together, take responsibility for children, and love and care for them as parents in traditional family relationships would.

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## Children who joined families through foster care

The second biggest barrier to legal recognition of parents was encountered when children joined families through foster care. In NSW, adoption by same-sex couples only became possible in 2010,<sup>8</sup> so for families who fostered before that date, adoption was not a possibility, meaning that some children aged out of care.

“ My two eldest came into the family via a permanent care order that expired when they turned 18 ... although we had joint custody and guardianship, [government departments] would not accept our family as a family. We didn't tick the right boxes. It made us feel invalidated.

– Lesbian mum

Another family indicated that they struggled to deal with the adoption processes of privately-run agencies.

## Trans and gender diverse parents

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There were also specific issues identified for parents who are non-binary and/or trans and gender diverse. For example, some official forms fail to recognise non-binary gender, which prohibits accurate formalisation of parentage:

“

Forms, certificates etc. are still in male, female, husband and wife.

### – Non-binary parent

For trans and gender diverse parents who have not undergone surgery, and are therefore unable to have their gender affirmed in NSW, the following issues arose:

“

We filled out our details on a NSW birth certificate for our child in the fields that were labelled ‘parent one’ and ‘parent two’.

As I have not had any trans health-related (or sterilisation) surgeries, the gender on my birth certificate cannot be changed – and at the time of the birth there was still the divorce rule<sup>9</sup> as well (ew!). So, we got the birth certificate in the mail during those precious newborn days and it says: ‘Mother’ and ‘Father’.

It was a big blow to both of us.

So to sum it up, I am recognised as a legal parent when I out myself as trans and take the time to explain that I am assigned the mother. (To people who don’t know, I am read as male more often than not.) This is not always possible and is never my preference, particularly as usually these situations should focus on the wellbeing of the child and not the gender or social status of a parent. It is just degrading to all involved to have to bring any of this up, say, during getting medical attention for my child, enrolling in school or activity programs, ordering a Shebah/Uber/cab or booking a holiday etc.

### – Non-binary/gender fluid parent

## Recommendations

### Attorney General

1. The Australian Government should work with state and territory governments to review state and territory laws relating to surrogacy in Australia, and work with state and territory ministers to create a consistent approach to legal parentage, adoption and fostering, assisted reproductive medicine, altruistic and commercial surrogacy and gamete donation.
2. A nationally consistent approach should be developed in relation to surrogacy that removes the ban (in some jurisdictions) on commercial surrogacy. This new national regime should be regulated by an independent agency or non-government organisation, which would monitor surrogacy arrangements with the view to protecting children, surrogates and intending parents, potentially within the context of a highly regulated local market.
3. The Australian Government should review state and territory fostering and adoption laws to make them nationally consistent.
4. Resources about family diversity should be developed for foster and adoption agencies, to help improve understanding and promote inclusiveness for all prospective foster and adoptive parents.
5. The Australian Government should work with trans and gender diverse people, particularly parents, to review and provide consistent guidance on how trans and gender diverse people are recognised on Australian Government identification documents.

# Citizenship, passports and international travel

## Obtaining passports for children

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Almost two-thirds of the families in our sample had encountered some difficulties in obtaining passports for their children.

Almost half our sample said that this was because, at the time they applied, the forms didn't reflect their family (two mums or two dads). Other reasons specified included:

- there are passport forms available for single-mother families, but not for single-father families
- complexities because of children born through surrogacy
- issues for trans and gender diverse parents whose personal identification had changed since their children had been born.

Almost half our sample experienced issues because, at the time they applied, passport forms required 'mother' and 'father' fields to be completed, which did not reflect the details on the birth certificates of the children for whom they were applying.

Since we conducted our survey, passport forms have been updated to reflect family diversity. Unfortunately, outdated forms continue to be issued in some areas at the time of this report's publication.

Many parents sought advice from the Department of Foreign Affairs and Trade (DFAT), and were told to simply cross out father or mother:

“

I emailed through a complaint that we had to cross out 'father', despite legislation being changed years ago to recognise my partner as a legal parent. I got a response saying a review had been underway for the past two years ... that was two years ago and the forms haven't changed.

– Lesbian mum

But when they attended Australia Post for the passport interview, some parents were anxious about being questioned by staff about the validity of their family structure:

“

Every time we apply for a passport for our children, the form still says 'mother' and 'father'. DFAT just say cross it out and put 'mother'. But the form specifically says it must not be defaced. I was anxious that I would then experience discrimination at the post office. I was lucky enough that staff didn't question the crossed-out form, but I'm not sure that would be the case in everywhere. It could all be avoided if they just changed the form to say 'Parent 1', 'Parent 2' (and even 'Parent 3' – but that would be asking too much!)

– Lesbian mum

The process of obtaining passports for their children was frustrating, embarrassing and upsetting for many LGBTIQ+ parents:

“

We tried three post offices before we found one that was okay to help but in the end even staff at that post office were confused and tried to get us to fill out another form because there was “no father mentioned on the birth certificate”. So we explained, “Yes, but both parents are mentioned”. The staff member called the passport authority, but then had trouble explaining our situation. We were in there for over an hour and a half before we could get it all finalised. Incredibly embarrassing and frustrating.

– Lesbian mum

“

It was highly demeaning. The post office refused to accept the application on the basis that the form did not allow for two dads. The officer handling the application was quite happy to broadcast the issue to the queue of people standing in the post office. I went home feeling very embarrassed and contacted the passports information line. The operator I spoke to said the forms were going to be changed very soon and to just cross out 'mother' and insert 'father'.

– Gay dad

Despite the issues with forms, some families had a positive and inclusive experience with staff at Australia Post:

“

The staff at the post office were helpful and inclusive, though there was some anxiety about needing to cross out 'father' on an official form and some concern that there may be difficulty when we travel.

– Lesbian mum

Parents who formed families through surrogacy experienced additional barriers, including requests for additional information that was irrelevant as it had been superseded by other court documents:

“

We are required to get approval from our surrogate. However, legally, she has no rights.

– Gay dad

Where a single father had legal parent status, further difficulties arose:

“

Yes, there are passport forms available for single-mother families, but not for single-father families.

– Gay dad

This was also an issue for people who created their families as single parents:

“

The post office employee didn't know what to do and wanted me to fill out a form that was irrelevant to my family. I recall there was a section about the other parent giving permission. They couldn't compute people parenting alone by choice. I wrote to the passport office twice about the issue and never even got a courtesy reply to say they'd received my complaint.

– Gay dad

## Recommendations

### Minister for Foreign Affairs and Trade

6. Passport forms should be updated to include single-father families.

### Minister for Communications and the Minister for Finance

7. Australia Post staff who conduct passport interviews should receive family inclusivity training.

## Obtaining citizenship for children born overseas

For a number of parents (five respondents), obtaining citizenship for children born overseas was a time-consuming process:

“

The process was in fact straightforward and citizenship was granted without a hitch. However, the time delay (five months) meant that we had to leave the country because our son was in Australia on a tourist visa and could only stay up to 90 days. The 'advice' we received from the Immigration Department after a long wait on the phone suggested we should not put our son into a situation that made him illegal in the country. Other friends in the same situation subsequently applied for a bridging visa.

– Gay dad



The time to obtain citizenship for children born overseas varies depending on where the child is born. For example, the process is comparatively quick for children born in Thailand whereas for children born in the United States, the process is quite slow. Parents not recognised as legal parents can still apply for citizenship.

## Recommendations

### Minister for Foreign Affairs and Trade

8. The Australian Government should work with embassies around the world to streamline the process for granting citizenship to children born overseas.

## Additional requirements when travelling overseas

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LGBTIQ+ parents often travel with additional documentation for children in their care. In some countries, LGBTIQ+ parents may not be legally recognised as the parents of all their children. Children may have different surnames to some of their siblings or parents may have different surnames to their children. And the family structures may be seen as unusual or abnormal in certain countries. As a result, many LGBTIQ+ parents take additional precautions such as travelling with birth certificates, statutory declarations and other legal documentation. Sometimes, despite this preparation, travelling can be a frustrating and upsetting experience:

“

Generally, the experience has been poor at border security. Staff have varying levels of ignorance. This has ranged from being rude and giving judging looks to being asked who is the ‘real’ mother.

– Lesbian mum

“

We travel with documentation pertaining to our adoption because we have been pulled up a number of times as our children do not share my family name, and because our children do not reflect the same racial identity as their other father.

– Gay dad

## Recommendations

### Minister for Home Affairs

9. The Department of Border Security should mandate family diversity and inclusivity training for all frontline staff in order to recognise the diversity of families.

## Co-parented families travelling overseas

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Families in our community come in all shapes and sizes. Just under 10 per cent of the families in our sample were co-parented families. In these situations, children would have at least one parent who is not recognised legally (this person is usually the child's biological father who is denied parenting status because of section 60H of the *Family Law Act 1975* (Cth)). While the Australian Government has rightly taken strong steps to prevent child abduction, these steps can also create barriers to parents in our community, and co-parented families must sometimes travel with additional documentation to prove their family connections.

Respondents made a range of suggestions on how to better accommodate families with co-parenting arrangements that are not reflected in legal documents:

“

Have a letter from the other parent – certified by a police officer or justice of the peace – which outlines the family situation and details all relevant contact information. This is what is recommended for all parents in Canada, including straight parents.

“

Relevant authorities should provide clear and accessible information on which documents are required for travel.

“

Change the language on the forms – for example, change the titles on passport forms to include all kinds of families and guardians etc.

“

Allow for recording of remarks in the Australian passport system clarifying that this parent, who is not named on the birth certificate/s, is permitted to travel with the child/ren.

“

Allow extra parents to be listed on the birth certificate as parents – for example, allow naming of two mums and two dads on a birth certificate.

## Recommendations

### Minister for Home Affairs and Minister for Foreign Affairs

10. The Australian Government should provide guidance on the Smart Traveller site for co-parented families travelling overseas with children on carrying appropriate documentation for the children they are traveling with.

## LGBTIQ+ asylum seekers

We asked respondents if they were concerned that the Australian Government is sending LGBTIQ+ asylum seekers to countries where people can be imprisoned for consensual same-sex sexual activity. Respondents were overwhelmingly (95 per cent) concerned that this was the case.

### Recommendations

#### Prime Minister and Minister for Home Affairs

11. The Australian Government should immediately cease sending LGBTIQ+ asylum seekers to countries where people can be imprisoned for consensual same-sex sexual activity.
12. The Australian Government should immediately act to remove LGBTIQ+ asylum seekers from countries where same-sex sexual activity is unlawful.

# Centrelink

One quarter of respondents (42 people) told us that they have experienced difficulties with Centrelink because of their family/marital status, or because they are LGBTIQ+.

Respondents told us that dealing with Centrelink was frustrating, confusing

and at times embarrassing. A lack of understanding about rainbow family formation, and of trans and gender diverse people generally, created a range of issues for respondents to our survey.

## Lesbian families applying for entitlements

Lesbian families who had used unknown donors often experienced issues when trying to apply for paid parental leave:

“

I was sent a ‘standard’ letter upon the birth of my child saying I needed to supply the father’s details and obtain child support when I was trying to apply for my Paid Parental Leave. I was not applying for child support (I used an unknown donor) and had given Centrelink a copy of my child’s birth certificate which clearly had the terms Mother/Mother, indicating parental rights.

– Lesbian mum

“

We had a bit of an issue with Centrelink asking us to pursue child support from our children’s ‘father’ (an unknown sperm donor) before we could qualify for parenting payments. It took a lot of paperwork and meetings before our family structure was understood and payments approved.

– Lesbian mum

This created barriers that meant families in our community were not applying for benefits to which they were entitled:

“

Basically, my experience can be summed up as: failure to recognise our family and relationships and poor treatment by staff. When our second child was born, I didn’t claim anything due to the treatment received when trying to organise things after our first child. I will avoid Centrelink at all costs.

– Lesbian mum

For lesbian women who used a known donor, heteronormative attitudes to family formation were similarly problematic:

“

Centrelink’s unstated/informal policy is that if the donor father is known, he should pay child support. In our case, the donor father has children with his heterosexual wife, and we agreed he would have no financial responsibilities. Centrelink’s position was retrograde and narrow.

– Lesbian mum

“

Centrelink told me they might need to chase my donor for child support. I explained that he’s the donor, not the dad. They said they’d need a social worker to call me. As though I was an ‘at risk’ person. Even the social worker didn’t really know what to do. It felt so alienating and stressful to be going through that with a tiny newborn to be caring for, too.

– Lesbian mum

## Transphobia

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Some trans and gender diverse parents experienced transphobic attitudes from staff:

“

They didn't recognise me as female and refused to use my pronouns even after I presented them with my new female birth certificate. They insulted my wife for remaining married to me.

– Trans mum

“

My partner has been consistently misgendered, though they were happy enough to count her as my partner when it meant they could cut off my payment.

– Trans mum

“

They treated me with blatant transphobia – calling me by my deadname, using the wrong pronouns, insinuating my wife should leave the relationship. They required a statutory declaration from my wife for me

to be her carer even though we were married and this had not changed with my transition to a new gender.

– Trans mum

“

In order to use my pensioner concession card I also have to out myself as trans and risk being called by my legal name instead of my actual name.

– Trans mum

For others, however, the experience was affirming:

“

Changing my name and gender with them was relatively straightforward.

– Trans mum

“

I've actually had positive experiences. I have been surprised by the inclusive paperwork, particularly in terms of my daughter's birth certificate.

– Trans dad

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## Domestic violence

Domestic violence in LGBTIQ+ families is often unrecognised due to heteronormative attitudes in our broader community. For those experiencing domestic violence, getting help from Centrelink was made more difficult due to a lack of understanding of how this issue can impact LGBTIQ+ people:

“

I am separated from my ex-partner and she earned the income via a small business. We income split as part of that business. We separated due to her being abusive. She is very controlling. She has not filed a tax return in the last three years.

Even though we have been separated for over a year, I am unable to receive Centrelink support due to an outstanding debt and not having filed a tax return with the Australian Tax Office (ATO). But I can't do that as I don't have access to the business and my ex-partner is controlling and abusive.

This means that she can still hold money over me and the children. I am scared of her and find this so hard to resolve. The ATO don't really understand and have simply granted me an extension to pay a debt for which I am not responsible.

I have tried repeatedly to access Centrelink support as I have three children under five, but my applications have been refused. This leaves me intolerably dependant on my ex for financial support and allows her to manipulate me.

– Lesbian mum

## Recommendations

### Minister for Human Services

13. The Department of Human Services should mandate LGBTIQ+ inclusivity training for all frontline staff, in particular in relation to LGBTIQ+ family formation and trans and gender diverse people.
14. Centrelink forms should be reviewed to be inclusive of LGBTIQ+ people and our families.
15. Centrelink processes should be reviewed to ensure that trans and gender diverse people are appropriately recognised and not required to answer intrusive questions or use names and/or pronouns that do not relate to their affirmed identity.

## Education

Many families in our community have experienced issues in relation to their children's school or early childhood education and care services because of their family/marital status.

We asked respondents if they had experienced difficulties with procedures or educators because they identified as an LGBTIQ+ parent.

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### Early childhood education and care services

Some families told us that education and early childhood services lacked specific resources related to family diversity:

“

All the books reflect heterosexual families – I had to request resources that reflected diverse family structures – they purchased one book.

– Trans mum

One respondent told us that such resources were banned at their children's centre due to complaints from other parents:

“

I found out that some parents had written to the preschool, forbidding their children from being exposed to children's literature depicting same-sex families. As a result, the preschool would not read stories that showed families like ours, with two mums.

– Lesbian mum

Despite some staff having good intentions, a lack of understanding by educators about diverse families was also an issue for a number of respondents:

“

I've had to explain my family countless times to staff who have no training in diversity and have no idea how a child can have same-sex parents. It's awkward at best.

– Lesbian mum

“

Despite thinking they're inclusive, carers who have little exposure to the LGBTIQ+ community make massive assumptions about the type of parenting same-sex parents give their children. In my case they assumed our son did not have access to parents who roughhoused because we were both women. Nothing could be further from the truth – we are super physical with our son. There are lots of dads who couldn't do what we do.

– Lesbian mum

Where children attended government schools, there were a range of issues that left their parents excluded from the school community, and without proper supports for their children.

Again, for school-age students, a lack of resources depicting diverse families was problematic:

“

Our school refuses to have inclusive books in the library (even if we buy them) and won't change their forms or processes. It's very frustrating.

– Lesbian mum

Two respondents told us about opt-outs offered for presentations at their children's schools because they related to LGBTIQ+ people. They noted that similar opt-outs were not offered in relation to religious presentations:

“

My kids had a note sent home asking families if they wanted to opt out of a presentation about Mardi Gras. We have raised concerns about the NSW Government's 'controversial issue' policy<sup>10</sup> and been disappointed with the response from the school. I understand that this has been the result of departmental policy and not policy at the school level.

– Gay dad

The Australian Marriage Laws Postal Survey posed unique challenges for LGBTIQ+ families, which were compounded by some schools not providing support to families and even tolerating discrimination from special religious education teachers:

“

During the same-sex marriage debate, our school allowed religion teachers to say things that are discriminatory to our families.

– Lesbian mum

“

We tried to contact our school several times during the same-sex marriage vote to get help in supporting our kids through such an awful time and they were very unresponsive and made us feel like we were overreacting. In one case, at kindy, kids were openly bullying our four-year-old about her parents and her teacher reported to us that she 'didn't feel it was [her] place' to intervene. We were shocked!

– Lesbian mum

## Trans and gender diverse parents

Trans and gender diverse parents told us about being misgendered and being asked to provide additional information:

“

I have to show my name change and birth certificate along with my child's birth certificate to prove I am one of their parents. I have to take a gamble and trust that this interaction will remain polite and private. I have to walk out of that office knowing there is a photocopy of my old identity on file to legitimise our family. I am uncomfortable with that linkage between who I really am and the old 'deadname' details, what body parts I was born with.

– Trans dad

Some families also raised the issue that school chaplains may not be able to offer appropriate support to children of LGBTIQ+ parents:

“

School chaplains cause lots of problems for our family. We try to avoid our kids having contact with them but they are on excursions, in the playground etc. We feel very uncomfortable with the new funding that sets them up as dealing with bullying issues as this is a massive conflict of interest in terms of kids like ours. We feel that we would be doing our kids a disservice in teaching them that the chaplain is a safe place for them when this may not be true.

– Lesbian mum

Trans and gender diverse parents also told us that schools were not a supportive place for transitioning parents:

“

They couldn't cope when I was transitioning. They were not rude, but it was this awkward silence.

– Trans mum

Rainbow Families' *Trans and gender diverse parents guide* investigated the experiences of trans and gender diverse parents and their children. While it was not part of this survey process, the conversations with members of our community revealed specific issues in school environments:



The willingness and capacity of schools to create supportive and culturally safe environments for children with TGD [trans and gender diverse] parents varies enormously. Even schools that consider themselves open and progressive – perhaps because they supported marriage equality in the postal survey – may have little or no understanding of the issues for TGD parents, and especially for their children. Plain English written information that outlines the issues for children and describes best practice for schools would be helpful. Such information would ensure teachers, counsellors, support staff and principals have a good basic level of knowledge. Advocacy training for parents to help them navigate the issues with their children's schools would also be extremely helpful.<sup>11</sup>

Trans and gender diverse parents have also encountered issues at non-government and religious schools:

“ [We were] refused enrolment as we don't fit into their community, however we are Catholic and our son is being raised Catholic.

– Trans mum

Some also found that religious schools were not supportive of anti-bullying measures to protect students from being bullied for having same-sex parents.

## Employees at non-government and religious schools

A number of our respondents (six people) were employees of non-government schools who had to hide their LGBTIQ+ status or identity:

“ I needed to have a 'beard' – my children's sperm donor pretended to be my husband in order to protect my job.

– Lesbian mum

“ I felt unable to disclose the nature of my relationship as I was not a permanent employee and feared that if a parent complained, the school may opt not to continue my casual employment.

– Lesbian mum

“ I am bothered by the constant assumptions when I speak to people in HR regarding leave or other entitlements: whenever I refer to my 'partner' or 'fiancé', their response is to refer to my 'husband'.

– Lesbian mum

“ I was advised to not tell my boss about my partner/sexuality upon interview and whilst working at that school. I told some people who I felt supported me.

– Gay dad

“ During the marriage equality campaign in 2017 and 2018, I experienced a complete lack of support and actually attended a few meetings where we were advised not to publicly support marriage equality.

– Lesbian mum

## LGBTIQ+-inclusive sex and relationship education in schools

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Overwhelmingly, our community supports the teaching of LGBTIQ+-inclusive sex and relationship education as part of the Australian Curriculum.

### Recommendations

#### Minister for Education (Early Childhood)

16. The Department of Education should develop a program of inclusive practice for preschools, early childhood education centres and long day care centres around family diversity.
17. The Department of Education should work with Rainbow Families and other peak groups for trans and gender diverse families to develop plain English resources that outline issues faced by children of trans and gender diverse parents and describe best practice for schools. Such information would ensure teachers, counsellors, support staff and principals have a good basic level of knowledge.
18. The Department of Education should work with Rainbow Families and other peak groups to facilitate LGBTIQ+ advocacy training for parents to help them navigate issues with their children's schools.
19. The Department of Education should mandate LGBTIQ+ inclusivity training for all school and early education staff, particularly in relation to LGBTIQ+ family formation and trans and gender diverse people.
20. The Department of Education's forms should be reviewed to be inclusive of LGBTIQ+ people and our families, including families with more than two parents.

#### Minister for Education

21. We reiterate the recommendation we made in our submission to the Expert Panel to examine religious freedom protection in Australia: the *Sex Discrimination Act 1984* (Cth) should be reviewed with a view to removing exemptions that allow for discrimination against LGBTIQ+ people and our families – particularly in the case of publicly funded organisations. As major employers that are allocated taxpayer funds to deliver services to the general public, these organisations should be required to deliver services in a way that is equitable and accountable to the public. Discrimination against LGBTIQ+ people and our families should not be enshrined in law, nor supported by public funding.
22. LGBTIQ+-inclusive sex and relationship education should be included in the Australian Curriculum.

# Medicare

## Registering LGBTIQ+ families for Medicare

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Thirteen per cent of respondents (21 people) told us that they experienced issues registering their family for Medicare.

“

It took five months to get a Medicare card for our youngest because we had to apply for a separate benefit in order to get a card and it took a while to be able to do that.

– Gay dad

“

I have tried a number of times to get my partner added to the family card. Still working on it!

– Lesbian mum

“

To apply for Medicare for my child, I had to provide evidence that my child lives in Australia. As we had just arrived after a lengthy process to get my child's passport, it was very difficult to find such evidence (name, address etc. on officially accepted documents). I realised that I had taken out private health insurance for my child prior to their birth to ensure the waiting period was served. I figured the insurance policy could serve as an official document. So I approached the health insurance company for documentation only to be told that you can only get private health insurance if you already have Medicare! So I had paid private health insurance premiums for a few months and was never covered!

– Gay dad

“

My children were removed from my Medicare account and put onto my ex-wife's new partner's card. When I eventually fixed this up, my ex-partner's details were also mistakenly reinstated to my account and my address, and if she changes her details it is now changing my personal details (address and bank account). It has been difficult to separate and continue to share responsibility for the children.

– Lesbian mum

“

Staff assumed my partner was the sole parent and did not want to let me (non-gestational mother) have our child on my Medicare card.

– Lesbian mum

“

Medicare seem ill-equipped to deal with anything beyond traditional families.

– Lesbian mum

## Rebates for surrogacy

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Over two-thirds of respondents (109 people) agreed that Medicare rebates for In Vitro Fertilisation (IVF) should be available for families using surrogacy.

“

We all pay taxes and should have the option to claim for services we need and use.

– **Lesbian mum**

“

We either rebate for IVF or don't. We shouldn't discriminate based on whether there is a viable uterus in the couple.

– **Gay dad**

“

Families need support if they decide to go this route. Not just if you are an LGBTIQ+ but for anyone.

– **Lesbian mum**

## Recommendations

### Minister for Health

23. Medicare rebates for IVF should be available for families using surrogacy.

## Other issues for LGBTIQ+ parents

### Regional services for trans and gender diverse parents

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Rainbow Families' *Trans and gender diverse parents guide* resource investigated the experiences of trans and gender diverse parents. While it was not part of this survey process, the conversations with members of our community revealed that there is a lack of services for families outside of metropolitan areas:

General medical and mental health services that can work effectively with TGD parents can be few and far between. Like support groups, some exist in inner cities, but access to knowledgeable doctors, surgeons and allied health professionals can be very limited. Many TGD parents travel long distances for appointments. Trained GPs and other local support options in regional and rural areas would make life much easier and ensure parents and families are better supported.<sup>12</sup>

### Recommendations

#### Minister for Health

24. The Department of Health should investigate making more general medical, mental health and specialist medical services for trans and gender diverse people available in regional and rural areas.

### National Disability Insurance Scheme

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One member of the community raised an issue with the National Disability Insurance Scheme (NDIS) not being inclusive of LGBTIQ+-parented families. For a program that has been established in the wake of major legislative reforms that recognise

same-sex parents, this respondent was shocked that the process to register still did not recognise her family structure:

“ We found registering our son for the NDIS challenging as the forms did not recognise lesbian parents and one of us had to be listed as ‘other’. This is crazy with a new program.

– Lesbian mum

### Recommendations

#### Minister for Social Services

25. The Department of Social Services should review all forms and processes of its programs, including the National Disability Insurance Scheme, to ensure inclusion of LGBTIQ+-parented families.

## Nationally consistent laws

While Rainbow Families advocates on behalf of LGBTIQ+-parented families in NSW, our advocacy is often relevant to citizens of other states and territories. But there are instances where state laws differ.

National inconsistency of laws around surrogacy, adoption, fostering, access to IVF and assisted reproductive technology (ART) disproportionately negatively impacts parents and children in our community.

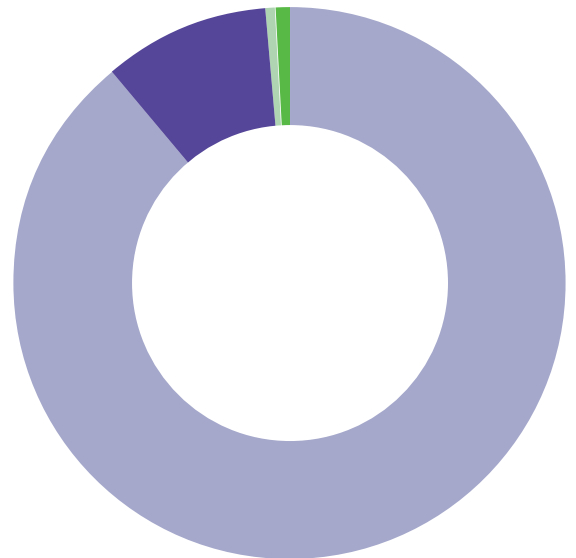
We asked our community about these laws and overwhelmingly they told us they would like to see a consistent national approach. However, a note of caution came from one respondent:

“

One comment about national laws relating to adoption and IVF, for example, is that national laws often set lower standards than those that exist in progressive states – so I hesitated when answering the three questions about national laws. Perhaps there needs to be a test that the national law will leave no individuals worse off than they would be under current state laws, i.e.: the national law has to maintain or improve current standards.

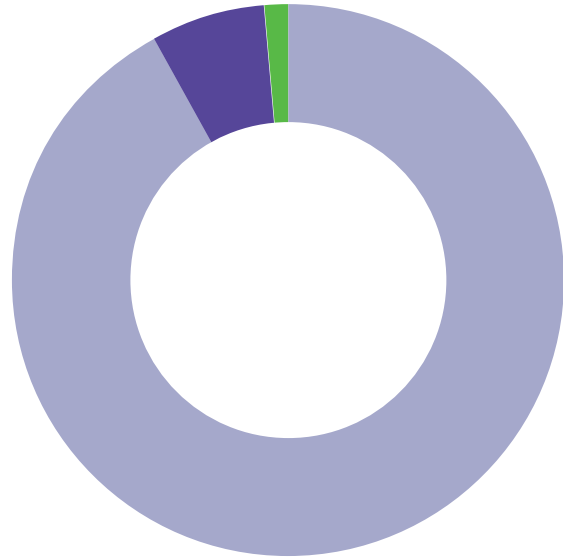
**Legal inconsistencies in different jurisdictions governing surrogacy, adoption and access to assisted reproductive technologies have a disproportionate negative impact on LGBTIQ+-parented families:**

- Agree (145)
- Neither agree nor disagree (16)
- Disagree (1)
- No response (1)



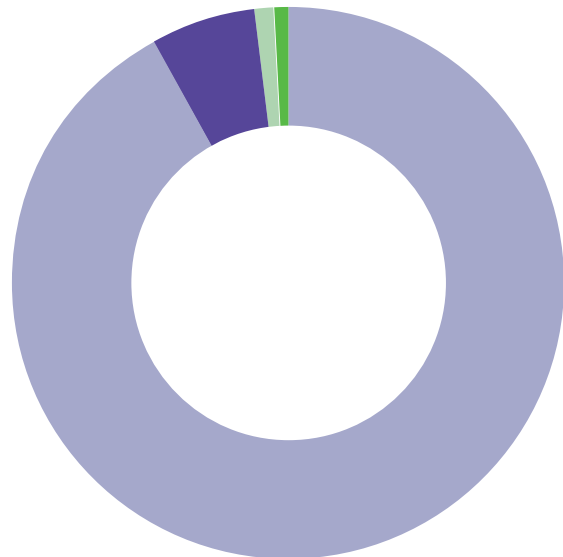
**The Australian Government should develop a nationally consistent legislative approach to surrogacy:**

- Agree (150)
- Neither agree nor disagree (11)
- Prefer not to say (2)



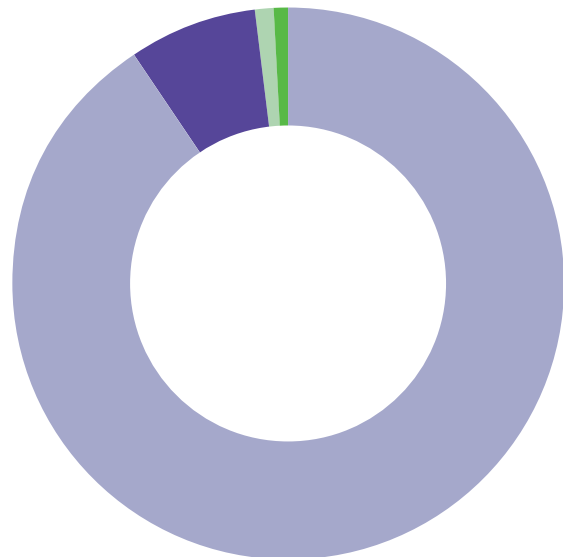
**The Australian Government should develop a nationally consistent legislative approach to adoption:**

- Agree (150)
- Neither agree nor disagree (10)
- No response (2)
- Disagree (1)



**The Australian Government should develop a nationally consistent legislative approach for people accessing assisted reproductive technologies (ART):**

- Agree (148)
- Neither agree nor disagree (12)
- No response (2)
- Disagree (1)





# Full list of recommendations

## Attorney General

1. The Australian Government should work with state and territory governments to review state and territory laws relating to surrogacy in Australia, and work with state and territory ministers to create a consistent approach to legal parentage, adoption and fostering, assisted reproductive medicine, altruistic and commercial surrogacy and gamete donation.
2. A nationally consistent approach should be developed in relation to surrogacy that removes the ban (in some jurisdictions) on commercial surrogacy. This new national regime should be regulated by an independent agency or non-government organisation, which would monitor surrogacy arrangements with the view to protecting children, surrogates and intending parents, potentially within the context of a highly regulated local market.
3. The Australian Government should review state and territory fostering and adoption laws to make them nationally consistent.
4. Resources about family diversity should be developed for foster and adoption agencies, to help improve understanding and promote inclusiveness for all prospective foster and adoptive parents.
5. The Australian Government should work with trans and gender diverse people, particularly parents, to review and provide consistent guidance on how trans and gender diverse people are recognised on Australian Government identification documents.

## Minister for Foreign Affairs and Trade

6. Passport forms should be updated to include single-father families.

## Minister for Communications and the Minister for Finance

7. Australia Post staff who conduct passport interviews should receive family inclusivity training.

## Minister for Foreign Affairs and Trade

8. The Australian Government should work with embassies around the world to streamline the process for granting citizenship to children born overseas.

## Minister for Home Affairs

9. The Department of Border Security should mandate family diversity and inclusivity training for all frontline staff in order to recognise the diversity of families.

## **Minister for Home Affairs and Minister for Foreign Affairs**

10. The Australian Government should provide guidance on the Smart Traveller site for co-parented families travelling overseas with children on carrying appropriate documentation for the children they are traveling with.

## **Prime Minister and Minister for Home Affairs**

11. The Australian Government should immediately cease sending LGBTIQ+ asylum seekers to countries where people can be imprisoned for consensual same-sex sexual activity.
12. The Australian Government should immediately act to remove LGBTIQ+ asylum seekers from countries where same-sex sexual activity is unlawful.

## **Minister for Human Services**

13. The Department of Human Services should mandate LGBTIQ+ inclusivity training for all frontline staff, in particular in relation to LGBTIQ+ family formation and trans and gender diverse people.
14. Centrelink forms should be reviewed to be inclusive of LGBTIQ+ people and our families.
15. Centrelink processes should be reviewed to ensure that trans and gender diverse people are appropriately recognised and not required to answer intrusive questions or use names and/or pronouns that do not relate to their affirmed identity.

## **Minister for Education (Early Childhood)**

16. The Department of Education should develop a program of inclusive practice for preschools, early childhood education centres and long day care centres around family diversity.
17. The Department of Education should work with Rainbow Families and other peak groups for trans and gender diverse families to develop plain English resources that outline issues faced by children of trans and gender diverse parents and describe best practice for schools. Such information would ensure teachers, counsellors, support staff and principals have a good basic level of knowledge.
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## **Minister for Health**

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24. The Department of Health should investigate making more general medical, mental health and specialist medical services for trans and gender diverse people available in regional and rural areas.

## **Minister for Social Services**

25. The Department of Social Services should review all forms and processes of its programs, including the National Disability Insurance Scheme, to ensure inclusion of LGBTIQ+-parented families.

## Endnotes

- 1 Ken W Knight et al, 'The kids are OK: it is discrimination not same-sex parents that harms children' (2017) 207 (9) *The Medical Journal of Australia*.
- 2 Australian Bureau of Statistics, *Same-sex couples in Australia, 2016* (18 January 2018) <<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~2016~Main%20Features~Same-Sex%20Couples~85>>.
- 3 Under the *Surrogacy Act 2010* (NSW) pt 2 div 2 s 8, 'A person must not enter into, or offer to enter into, a commercial surrogacy arrangement. Maximum penalty: 2,500 penalty units, in the case of a corporation, or 1,000 penalty units or imprisonment for 2 years (or both), in any other case.'
- 4 See, for example, *Surrogacy Act 2010* (NSW), s 8.
- 5 Family Law Council, *Report on Parentage and the Family Law Act* (Report, December 2013) (*Report on Parentage*).
- 6 *Surrogacy Act 2010* (NSW) pt 3 div 4 ss 38(2)–(3).
- 7 *Report on Parentage* (n 5).
- 8 *Adoption Amendment (Same Sex Couples) Act 2010* (NSW) sch 1, item 1, amending *Adoption Act 2000* (NSW) s 23 (1).
- 9 *Miscellaneous Acts Amendment (Marriages) Bill 2018* (NSW) sch 3, item 1, repealing *Births, Deaths and Marriages Registration Act 1995* (NSW) s 32B (1) (c); and *Miscellaneous Acts Amendment (Marriages) Bill 2018* (NSW) sch 3, item 2, repealing *Births, Deaths and Marriages Registration Act 1995* (NSW) s 32B (2) (c).
- 10 NSW Government, *Controversial Issues in Schools Policy* (5 March 2019) <<https://education.nsw.gov.au/policy-library/policies/controversial-issues-in-schools>>.
- 11 Jacqui Tomlins, *Trans and gender diverse parents guide* (Rainbow Families NSW, 2019).
- 12 *ibid*.