

Committee Secretary
House of Representatives Standing Committee on Social Policy and Legal Affairs
PO Box 6021
Parliament House
Canberra ACT 2600

Submission to the Inquiry into local adoption

Dear Secretary,

Thank you for the opportunity to provide a submission to the Inquiry into local adoption.

Rainbow Families is the peak organisation for LGBTIQ parented-families in NSW, home to the largest number of LGBTIQ parents in Australia.

For many in our community, adoption and fostering have been the means by which our families are formed. Fostering and adoption are the source of pride, joy and abiding love. The legalities, limitations and obstacles to local adoption are deeply personal and deeply felt.

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

Yours sincerely



Mat Howard
Co-Chair, Rainbow Families NSW



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 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. 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](#) 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.

A note on Indigenous communities, fostering, adoption and kinship care

We recognise that fostering and adoption raise specific challenges and complexities for indigenous communities, with substantive differences in cultural approaches to out of home care, and the continued oppression and dispossession of Aboriginal and Torres Strait Islander peoples. We acknowledge the limitations of this submission in this regard given the lack of involvement in Aboriginal and Torres Strait Islander people in its drafting, and leave this critically important area of consideration to others.



Introduction

Any consideration of reform to fostering or adoption law in Australia must be predicated on what is best for the child. The process by which children are adopted must be complex, rigorous and above all else, rooted in the primacy of the needs of the individual child.

In 2010, the NSW Government legislated to allow same-sex adoptions. Since that time, Census data clearly shows that more and more LGBTIQ couples have opted to become parents. But adoption rates by LGBTIQ parents have remained low, primarily due to the low levels of adoptions overall.

This submission argues that increasing rates of open adoption will have a positive impact on children in out of home care in NSW by providing greater permanency. It also argues that increasing the number of open-adoptions will benefit the LGBTIQ community by expanding options by which couples – particularly male same-sex couples – can form a family.

Finally, this submission will argue that existing exemptions that allow faith-based organisations providing foster and adoption services must be removed in order to maximise the benefit of open adoptions for children.

Adoption and fostering in NSW

According to the NSW Department of Family and Community Services (FACS), as of 30 June 2017m there are 18,780 children and young people in NSW living in statutory out of home care.¹

Of these, 9,144 are in relative and Aboriginal kinship care; and 7,868 are in foster care.

These figures do not include children and young people who are living with carers and relatives under guardianship orders, meaning that the number of children not living with their birth parents are significantly higher.

The Australian Institute of Health and Welfare's *Adoptions Australia 2016-17*, only 315 children were adopted across Australia in 2016-17, including only 177 in NSW.² Of the 177 adoptions finalised in NSW, 152 were known child adoptions, where the adoptive parents had an existing relationship with the child, 13 were from overseas and 12 were local adoptions.

To repeat, only 12 children found permanent homes through local adoption in NSW in 2016-17.

129 of the total adoptions finalised in NSW were open adoptions, where contact with birth parents was maintained in some shape or form.

¹

https://public.tableau.com/profile/facs.statistics#!/vizhome/Improvingthelivesofchildrenandyoungpeople/Dashboard1?embed=y&loadOrderID=0&display_count=yes

² www.aihw.gov.au/getmedia/4b533699-e466-42aa-b65c-9815aeaa82df/aihw-cws-61.pdf.aspx?inline=true



The stated objective of FACS in relation to the future of out of home care is to “(increase) the proportion of children and young people in safe and permanent families and homes through guardianship and open adoption.”³

It is also noted that Premier Berejiklian lists decreasing the number of kids and young people re-reported as at risk of serious harm to 15% by 2020.⁴

It is also noted that the NSW State Government has setting a goal of 1,000 local adoptions in the next four years.⁵

Despite these worthwhile goals, the system continues to fail children, with the 2015 independent Tune Report into out of home care finding that “despite significantly increased government expenditure, the number of children and young people in out of home care has doubled over the past 10 years, and continues to increase. Moreover, the system is failing to improve long-term outcomes for children and to arrest the devastating cycles of intergenerational abuse and neglect. Outcomes are particularly poor for Aboriginal children, young people and families.”⁶

Adoption and fostering in the NSW LGBTIQ community

The LGBTIQ community has played a critical role in the foster care system over the past forty years.

In 2010, the Labor Keneally Government legislated to legalise same-sex parent adoption in NSW.

At that time, estimates suggest that roughly 1,300 children were being raised in same-sex parent households. That number has increased dramatically: The 2016 Census recorded that 15% of the almost 50,000 same-sex couples in Australia had children living with them (including 25% of female couples compared to 4.5% of male couples.)⁷

It is clear that more and more LGBTIQ couples are choosing to raise children, with the strong likelihood that this will increase following the historic adoption of marriage equality in 2017.

Prior to the legalisation of same-sex adoption in NSW, children in foster care could only be adopted by one parent in cases where their prospective parents identified were of the same gender, and children being raised by two same-sex parents could only legally have one of their parents legally recognised as such.

The reform – subject, of course, to such heated debate and political contest – provided permanency, security and recognition to children, and recognised the prevailing truth that the well-being of children is not determined by the gender of their parents.

³ www.facs.nsw.gov.au/providers/children-families/permanency-support/about-the-permanency-support-program

⁴ www.nsw.gov.au/improving-nsw/premiers-priorities/protecting-our-kids/

⁵ www.smh.com.au/politics/nsw/funding-boost-for-out-of-home-care-adoption-in-nsw-20180604-p4zjf3.html

⁶ www.childabuseroyalcommission.gov.au/sites/default/files/WFB_0189_001.1036.pdf

⁷ www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0-2016-Main%20Features-Same-Sex%20Couples-85



As of April 2018, adoption by same-sex couples via joint petition is legal in every State and Territory.

Given the relative newness of this reform, it is unsurprising that adoption by same-sex parents remains limited in practice.

Evidence suggests that only a handful of local adoptions have occurred in NSW since the reform was passed, with the Australian Institute of Family Studies (AIFS) describing the number of same-sex adoptions across Australia as “negligible.”⁸

The AIFS names three reasons behind the small number of same-sex adoptions (also within the context of low numbers of adoptions as a whole):

1. Fewer children available for adoption;
2. Expanded access to assisted reproductive technology; and
3. The fact that no country with which Australia has inter-country adoption agreements allows for same-sex couples to adopt (*NB: changes subsequent to this report have meant that children can now be adopted from Colombia, although no known adoptions by LGBTIQ identified parents).

Additionally, we would argue that persistent stigma and discrimination against prospective LGBTIQ parents in the media and public discourse serves to dissuade many in the LGBTIQ community from pursuing options for parenthood.

The following excerpts from Brendan, in an SBS report into LGBTIQ foster parents, best sums up the challenges of LGBTIQ people looking to become a parent:⁹

“Twenty-five years ago when I came out the only thing I ever grieved was the fact that I would not have a family. And until I met Paul I did not feel settled enough in a relationship with someone who was on the same journey.

“We looked at going straight to adoption, we looked at overseas adoption. We spoke to a few of our girlfriends about surrogacy, we contemplated shared parenting.

“In the end we came back to fostering and it was full loop because of that ability to provide a home for someone who already existed who needed that help.”

For parents like Brendan who has overcome stigma, explored options to be a parent and decided on foster-care and adoption as a means to do so, the journey has just begun.

Barriers to foster-care and adoption for LGBTIQ parents

Every child deserves to be in a home – temporary or otherwise – that is safe and secure. The process for fostering or adopting a child in Australia is and should always be rigorous, complex and unwaveringly focused on the needs of the child.

If we accept that a child does best when they are being raised in a loving and secure home, then we must also accept that it is not in the best interests of children to be denied one

⁸ <https://aifs.gov.au/publications/families-policy-and-law/10-gay-and-lesbian-parenting-legislative-response>

⁹ www.sbs.com.au/news/call-for-more-lgbt-foster-carers-as-number-of-children-in-need-tops-43-000



because prospective LGBTIQ foster carers or adoptive parents face systemic barriers not faced by heterosexuals.

The Australian Psychology Society list key challenges facing prospective LGBTIQ foster carers and adoptive parents as:

- Discrimination and stigma (perceived and actual)
- Lack of support (including from friends, family, the workplace, and neighbourhood)
- Having to adopt as a 'single parent' (*NB: no longer relevant)
- A lack of role models and lack of access to similar LGBT adoptive and foster families
- the expectation to be 'perfect parents'
- Broader challenges relating to the contexts of fostering and adoption, such as dealing with agencies who lack knowledge about LGBT people and relationships, or having to disclose and explain their sexual orientation and/or gender to foster and adoptive agency workers.¹⁰

Exemptions in foster-care and adoption services

Currently, under NSW law, non-government organisations providing foster-care, out-of-home care and adoption services are allowed to discriminate against prospective parents. This is clearly discriminatory and serves only to suppress the number of prospective parents that identify for foster and adoption services.

Adoption services in NSW are provided by FACS, Barnardos, Anglicare and CatholCare, with the latter two able to discriminate against prospective parents on the basis of sexuality or gender.

We know that fostering remains one of the main pathways to adoption and permanency. Denying LGBTIQ parents the right to foster necessarily means fewer children will be adopted and find permanency in LGBTIQ-parented families.

A member of our community recently reported applying to be a social worker with one of the latter two organisations. The final question put to her in what had otherwise been a positive job interview was whether she would feel comfortable denying LGBTIQ prospective parents the right to provide foster care services.

FACS statistics (Dashboard 8) show that as of 30 June 2017, 6,218 kids and young people were in statutory care by FACS; 8,183 were in care by NGOs including those able to discriminate, roughly 54% of all the children and young people in statutory out of home care.¹¹

While we acknowledge and celebrate the important work of non-government religious agencies like CatholCare and Anglicare do in our community, we firmly and respectfully believe that they should not be able to discriminate against prospective LGBTIQ foster carers or adoptive parents.

¹⁰ www.psychology.org.au/getmedia/4897a5b7-3af7-4d9e-9f1d-7487ec9603b7/LGBT-adoption-and-foster-care.pdf

¹¹

https://public.tableau.com/profile/facs.statistics#!/vizhome/Improvingthelivesofchildrenandyoungpeople/Dashboard1?:embed=y&:loadOrderID=0&:display_count=yes



With the number of children in care steadily rising,¹² it is incomprehensible that the Government would continue to block prospective parents from providing safe and secure homes, subject to all the checks and balances of other parents and carers, only because they identify as LGBTIQ.

Retaining exemptions works against the stated objectives of the NSW Premier to reduce re-reporting of kids at risk and to provide children in out of home care with permanence.

Secondly, non-government organisations are in receipt of public funds to manage children in care and adoptions.

According to the NSW 2017-18 Budget Papers, the NSW Government provided an additional \$148 million for out-of-home care services in the current financial year, and the Government has re-announced \$100 million for the provision of these services over the next four years.¹³ The recently released Tune Report into child protection services indicates that the NSW Government spends \$41,000 for a child in NGO-foster care as opposed to \$27,000 per child cared for by FACS.¹⁴

The public rightly expects this money to be spent in a way that does not discriminate against segments of the community.

Thirdly, evidence clearly points to a surge in young LGBTIQ people living rough on the street or experiencing homelessness, often as a result of being estranged from their biological families on account of their sexuality or gender identification. Some reports suggest the rate of LGBTIQ youth homelessness could be as high as 25%.¹⁵

Reducing the pool of prospective LGBTIQ foster carers and prospective parents will not assist to stem the tide of growing LGBTIQ youth homelessness.

Conversely, the benefits of encouraging LGBTIQ foster carers and adoptive parents for the benefit of children in care has also been argued: A University of Melbourne study suggests that 33.7% of lesbian and gay people have experienced homelessness at least once in their lives, and 25.8% of people who identified as bisexual.¹⁶ Other studies report significantly higher use of illicit substances than the heterosexual community,¹⁷ and experiences of mental health.¹⁸

As these are some of the primary drivers of children being statutorily removed from their families of origin, LGBTIQ foster carers and parents are often uniquely placed to care for and help manage the trauma and experiences of children and young people in out of home care.

We strongly recommend that the Commonwealth Government remove exemptions from anti-discrimination legislation that disadvantage both prospective LGBTIQ foster carers and adoptive parents, and the children and young people who would otherwise be best served by living with them in secure and permanent homes.

¹² <https://aifs.gov.au/cfca/publications/children-care>

¹³

www.treasury.nsw.gov.au/sites/default/files/2017-09/2017-18%20Budget%20Paper%20-%20Budget%20Statement-1_L0.pdf

¹⁴ www.abc.net.au/news/2018-06-12/secret-report-shows-out-of-home-care-fails-to-help-nsw-children/9857966

¹⁵ www.abc.net.au/news/2016-03-31/push-to-support-growing-number-of-lgbti-homeless-youth/7286354

¹⁶ www.galfa.org.au/wp-content/uploads/2018/01/LGBTI-Homelessness-project-Final-report-September-2017.pdf

¹⁷ www.abc.net.au/worldtoday/content/2015/s4209950.htm

¹⁸ <https://lgbtihealth.org.au/statistics/>



Inconsistencies in state and territory-based laws

While all states and territories have passed laws that provide access to foster-care and adoption services, there are still inconsistencies with the Northern Territory Government only allowing individual adoption by LGBTIQ identified persons in exceptional circumstances.

Variations in laws around parentage orders and how parents are recorded on birth certificates and other identification also require Commonwealth leadership to resolve.

A national approach to adoptions would assist to iron out remaining inconsistencies in adoption and family law.

In a recent community survey we conducted on LGBTIQ parent and children's rights, 93% of 161 respondents agreed that the Commonwealth Government should take a consistent approach to adoption.

In areas where this has occurred, including the passing of the *Australian Citizenship Act 2007*, which made it easier for adoptive children from overseas to gain citizenship when one of the parents is Australian, the benefit for children has been indisputable.

The need to standardise adoption practices and laws is also apparent in other areas, such as the lack of consistency on laws around surrogacy. NSW currently outlaws overseas and commercial surrogacy, meaning that many parents (including LGBTIQ couples and men) do not seek parentage orders or adoption orders for their partners upon returning to Australia.

This is not the case for parents in other states and territories where there are no criminal sanctions against prospective parents who pursue commercial surrogacies.

There is something of a Catch 22 here for many LGBTIQ individuals and couples from NSW who would otherwise have fostered and adopted but for the restrictions that made it difficult.

Differences in state and territory laws and regulations also impact LGBTIQ prospective carers and parents, including differences in age limits, health or socio-economic limitors and whether single or married persons are able to apply. These varying factors can be confusing, are often arbitrary, and serve to suppress the number of prospective parents opting for foster care or adoption.

We strongly recommend that the Commonwealth Government work to standardise adoption laws across the country in the best interests of children in out of home care.

Improving services and support for families formed through foster care and adoption

Given that rates of adoption by LGBTIQ parents are "negigible," it is true that there are few supports for families. While organisations such as FACS and Barnardos actively reach out the LGBTIQ community and provide substantial supports, there are many families who fall through the gaps.

This might include families formed overseas through fostering and adoption (and therefore not tapped into the services and communities offered by FACS and Barnardos), or those living in CALD or geographically isolated communities.



Governments at all levels must also play a greater role in providing support to families if they are to meet their goals of encouraging permanency.

This includes a greater focus on inclusion training in schools, hospitals, Centrelink services, passport offices and other government agencies. It includes removing stigma and discrimination by standardising forms in line with the 2013 Guidelines on the Recognition of Sex and Gender.

And it means removing exemptions to anti-discrimination legislation for religious organisations which formalise discrimination against LGBTIQ people and families, no matter how they are formed.

Recommendations

Thank you again for the opportunity to make a submission to this vitally important Inquiry into Local Adoption.

We recommend that the Commonwealth Government:

1. Organisations providing foster care, adoption and out-of-home care services no longer be exempted from anti-discrimination legislation that allows them to discriminate against prospective carers and parents on the basis of sexuality or gender;
2. Act to standardise laws and processes pertaining to foster care, out of home care, and adoption;
3. Invest in supports that work to remove stigma for LGBTIQ families formed through foster care, out of home care and adoption.