LOVE MAKES A FAMILY:

A report into experiences of discrimination faced by LGBTQ parented families when accessing NSW State Government services.
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INTRODUCTION

Families come in all shapes and sizes and are made in lots of different ways. Each family has value and each is built on love.

Children in NSW are being raised in families with same-sex parents, single-parents, grandparents or other kinship carers, or in foster homes. Some children are raised in co-parent relationships, with multiple parents and homes (sometimes referred to as poly-parented families). Some families do not have children in them at all, but are no less valued.

All families are deserving of respect and have the right to access basic services and protections afforded by the NSW State Government.

This report focuses on the experiences of lesbian, gay, bisexual, transexual, intersex and questioning (LGBTIQ) parents and their children. These families - broadly defined as LGBTIQ families - continue to face obstacles when accessing government services.

This situation is often caused by a lack of adequate training of government employees or by outdated protocols that guide their work. Unfortunately state and federal government agencies have failed to keep up with the changing face of Australian family life.

Governments, community leaders and media all have a responsibility to stamp out discrimination. As the 2015 Gayby Baby furore in NSW demonstrated, LGBTIQ families continue to face prejudice and stigmatisation. Often this can begin with our political leaders.

As the public debate on marriage equality in Australia continues, the experiences of children in LGBTIQ families continue to be politicised.

This additional scrutiny has exacerbated the challenges faced by children in LGBTIQ families and intensified the barriers faced by LGBTIQ parents.
Even our most progressive and comfortable families can feel isolated from society and the wider LGBTIQ community. They can feel alone and marginalised.

This report seeks to elucidate the key challenges faced by LGBTIQ families and to offer recommendations to improve access to basic services.
LGBTIQ FAMILIES

In an LGBTIQ family, one or both parents identify as lesbian, gay, bisexual, transgender, intersex, queer and/or questioning. Sometimes LGBTIQ families are referred to as “rainbow families”.

For the purpose of this report, we use “LGBTIQ-parented” or “LGBTIQ families” to define those families where one or both parents identify as LGBTIQ. This is also to distinguish from Rainbow Families NSW, the advocacy organisation/not-for profit.

LGBTIQ-parented families are made in many ways - through surrogacy, adoption and fostering, co-parenting arrangements, gamete/embryo donation, because parent/s have a child or children from a previous relationship, or by parent/s transitioning gender.

Children in these families are also raised in a variety of ways - in two-parent households, single-parent households, co-parented by multiple parents in one home or co-parented across multiple homes.

Just as with other families, children in LGBTIQ-parented families are raised in complex communities with evolving social structures.

They have multiple role models and mentors, such as uncles, aunts, family friends, teachers and child care workers, religious leaders, medical professionals, social workers, coaches and instructors.

Children of LGBTIQ-parented families have strong and unique bonds to others, both within the LGBTIQ community and outside of it. They are reliant on the same services and social structures as other children, and should have the same protections.
RAINBOW FAMILIES NSW

Rainbow Families NSW was formed in 2015 as the peak body 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 strong and growing membership and includes people from across NSW. Its volunteer board consists of committed LGBTIQ community members who share the common experience of raising families, but who draw from careers in community services, the law, politics and governance, public relations management, mercantile trading and other fields.

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 regularly partners with other organisations including ACON, Australian Marriage Equality, NSW Police Force, the Gay and Lesbian Rights Lobby, the National LGBTI Health Alliance, Australian Lawyers for Human Rights, Dowson Turco Lawyers and others. Rainbow Families offers support by:

- organising LGBTIQ family community events;
- advocating and 'being a voice' for LGBTIQ member families;
- creating and distributing educational materials, research, information (including advocacy) and support material in respect of LGBTIQ families;
- facilitating participation of financially disadvantaged, and geographically and socially isolated, LGBTIQ family members in community events organised by Rainbow Families;
- facilitating participation in wider LGBTIQ and other community events; and
- supporting other related LGBTIQ parenting and family diversity initiatives, and organisations, consistent with the above.
Our work impacts other communities indirectly. For example, one issue many LGBTIQ people face in life is that sometimes third parties assume that LGBTIQ people will not be able to parent or make a family.

This can be particularly harmful for those young LGBTIQ Australians who have been rejected by their parents, siblings or extended families.

By creating visibility of diverse families, Rainbow Families reminds everyone in our society that if they choose, they too may experience the joy and fulfillment that comes from raising children.

Promoting family diversity also strengthens acceptance of all non-traditional family structures, including single parent families, grandparent carers, blended families and families formed through the multitude of technologies available to assist with fertility.

This has a knock-on effect of promoting social harmony, equity and strengthening the self-esteem of kids who might otherwise feel different.
DATA & SURVEY METHODOLOGY

While there have always been LGBTIQ families, there has been a growth over the past two decades in our community due to:
- increased visibility and acceptance of LGBTIQ people and communities;
- a greater visibility and acceptance of non-nuclear family structures;
advances in legislation promoting equality and inclusion, including in adoption and fostering law; and
- improvements in Assisted Reproductive Technology (ART); and access to altruistic surrogacy.

According to the Australian Bureau of Statistics, in 2011 12 percent of Australian LGBTIQ couples had children living with them and over 6,120 children lived in LGBTIQ families.

Sifris made the following comment:

“While perceptions of stigmatisation within the gay and lesbian community and lack of funded research ensure that there remains a paucity of information regarding the number of children raised in these families, the most recent Australian Census data indicate that 12% of same-sex couples have children of any age (including adults) living in their family.” (1)

This report is based on data collected from a two-month long online survey conducted by Rainbow Families through paper and online submissions. The survey was launched on Sydney Gay and Lesbian Mardi Gras’ Fair Day (February 19, 2017) and closed on Easter weekend (April 15, 2017), with a total of 200 responses received.

The report also draws on follow-up email and telephone correspondence with survey respondents, research offered by the NSW Parliamentary Library, academic publications and news reports, and finally, submissions to our previous report on commercial surrogacy legislation.
SNAPSHOT OF SURVEY RESPONDENTS

**IDENTIFICATION**
- Lesbian: 58%
- Trans: 2%
- Did not say: 6%
- Queer: 3%
- Asexual: 1%
- Bisexual: 6%
- Gay: 23%

**FAMILY STRUCTURE**
- Two parent: 67%
- Single parent: 8%
- Coparent 1: 3%
- Coparent 2: 7%
- Coparent 3: 6%
- Other: 9%

Total # of Respondents: 200
Total # of Families represented: 136

Co-parent 1: more than 2 parents cohabiting
Co-parent 2: more than 2 parents not co-habiting
Co-parent 3: parents separated
The data is skewed towards female-identifying respondents. This reflects the demography of our networks and the wider LGBTIQ parenting community - women continue to make up the vast majority of LGBTIQ parents in NSW.

Sifris makes the following comment in relation to the demographics of LGTBIQ parents:

“Unsurprisingly, lesbian couples (22%) are more likely than gay male couples (3%) to have children living with them (Australian Bureau of Statistics [ABS], 2012). (2)

In our view, there is greater cultural acceptance of women raising children, lesbians have historically been raising children for a longer period of time, and in greater numbers, women can give birth using low cost means and current laws make it significantly more difficult for gay men to start families in NSW.

Transgender and Intersex parents
Transgender and intersex parents are underrepresented in this survey and face unique challenges that may not be adequately captured in this report. Intensive efforts will be made in subsequent editions to engage with transgender, gender diverse and intersex parents and to better reflect their experiences.

Traditional family structures
The majority of respondents indicate that they are living in circumstances that closely resemble so-called traditional family structures, with two parents raising children in a single home.

Accurate data on the number of families raising children in co-parenting relationships is unavailable as census data does not capture this information. The census continues to privilege traditional two parent families by failing to nuance questions to reveal co-parenting arrangements.
FAMILY FORMATION

One of the key issues for prospective LGBTIQ parents is restrictions around how families are formed.

We believe it is the right of all LGBTIQ Australians to create a family if they choose, and posit that unnecessary and discriminatory laws limit the options to make this a reality.

Although NSW has moved to permit same-sex parent adoption, adoption is limited in practice with only a small number of adoptions in NSW each year.

The current NSW Government’s recent reforms in Out of Home Care have meant that services have been outsourced to organisations such as church-run NGO’s that are able to discriminate against LGBTIQ prospective-parents.

Faced with these barriers, many rely on IVF/ART treatment or surrogacy, which are socially and legally complex.

The field of gamete (sperm and ova) donation remains confused and legally ambiguous.

In the case of surrogacy, altruistic surrogacies are extremely rare and commercial surrogacy remains illegal in NSW.

Close examination of the restrictions and limitations faced by prospective LGBTIQ parents and the impacts of these restrictions on their children is urgently needed.
Did you encounter issues with state gov’t services, agencies or laws in the formation of your family?

- Yes: 43%
- No: 57%

FAMILY FORMATION

- IVF/ART 1: 32%
- IVF/ART 2: 16%
- Self Insemination 1: 13%
- Surrogacy: 7%
- Self Insemination 2: 5%
- Combination: 4%
- Other: 3%

IVF/ART 1 - Clinic using unknown sperm
IVF/ART 2 - Clinic using known sperm
Self-Insemination 1 - unknown sperm
Self-insemination 2 - known sperm
FOSTERING & ADOPTION

Practices around child protection and care are necessarily complex and sensitive. It is critical that the wellbeing of children be at the heart of any discussion around the need for reform.

In this vein, we are concerned with the wellbeing of both the children in foster or adoptive care, who studies show are best served by the permanency and security of long-term care; and also for the wellbeing of young LGBTIQ youth in care.

Homelessness is a critical issue amongst LGBTIQ youth. While there is no clear data on rates of LGBTIQ homelessness, studies in the US put the rate at between 20-40% of the total homelessness community, compared to the 5-10% of the general population. (3)

The Kids Under Cover project in Victoria details some of the factors leading to high rates of homelessness in the LGBTIQ community:

"Studies indicate the most common reasons LGBT young people become homeless are: family rejection (including those forced out by their families and those who ran away due to rejection); and physical, emotional or sexual abuse at home. A 2011 survey of over 6,400 transgender adults age 18 and older reported high percentages had been victims of physical or sexual assault (64%), lived in extreme poverty (61%), harassment or bullying in school (51%) and attempted suicide (41%). (4)

“Where do I start! FACS still has discriminatory staff members who put their discrimination above gov policies.”

“When we adopted the children in 2012, they didn't have a template for male/male adoption, and my partner was listed as the Mother.”
The report also notes that the risk to LGBTIQ homeless are markedly higher than the general homeless population:

"Once homeless, life for LGBT young people is even more dangerous than for their non-LGBT counterparts. Fifty-eight per cent report having been sexually assaulted on streets or in shelters, compared to 33% of non-LGBT young people. Conditions for homeless transgender persons are worst of all as they are more likely to have been incarcerated, more likely to have done sex work, to be HIV-positive and to have attempted suicide (69%) than transgender persons who are not homeless. Nearly one-third report having been turned away from shelters because they are transgender, and 42% report being forced to stay in facilities for the wrong gender." (5)

It is clear that specialised services for LGBTIQ youth are essential if we are to truly protect and nurture young people at risk. Similarly, we must provide clear and secure pathways for young people in out of home care if we are to stem the tide of youth homelessness, LGBTIQ identified or not.

Historically, LGBTIQ people and women in particular, have played a significant role in providing foster care in NSW. Whereas matches between kids at risk and prospective foster parents can be made along the lines of gender and cultural background, there is no provision for matches around LGBTIQ identification.

An improved system that recognised the needs of LGBTIQ-identified youth and openly identified LGBTIQ parents could assist to keep young people off the streets and into secure family placements.

The Government’s recent decision to outsource out of home care services has raised concerns in the community, namely the outsourcing of services to church-run organisations that are able to discriminate on the basis of a prospective parent’s sexuality.
Given the limited number of avenues available to LGBTIQ people to create a family, restricting foster care is seen as a retrograde step, both for carers and children requiring emergency care.

According to the most recent data from the Australian Institute of Family Studies, roughly 47% of the 16,843 children in out of home care in NSW were living in foster care arrangements (6). With roughly 3,500 children a year entering the out of home care system, demand for foster care continues to rise, exacerbated further by legislative obstacles to adoption in NSW.

While the Government continues to reform the process of adoption, including the recent announcement of financial support for adoptive parents, adoption rates in NSW continue to flatline. Only 292 children were adopted by Australians in 2015.

Given those rates, it follows that adoption rates by LGBTIQ parents are negligible. NSW permitted same-sex parent adoptions in 2014 and since that time, there have only been a handful of adoptions finalised. Sifris posits other cultural and legislative obstacles to same-sex adoption:

“For same-sex couples, there are other, more obvious reasons for the low numbers of same-sex couples adopting children. No country with which Australia has intercountry agreements facilitating international adoptions allows same-sex couples to apply (AIHW, 2013). Furthermore, same-sex couples are not eligible to adopt children in all jurisdictions in Australia. The Australian Capital Territory (Adoption Act 1993, s 14), New South Wales (Adoption Act 2000, ss 23, 28), Tasmania (Adoption Act 1988, s 20) and Western Australia (Adoption Act 1994, s 39) have legislated so that same-sex couples are eligible to adopt. In all other states, same-sex couples are ineligible to adopt children.” [note: adoption is now permitted in South Australia and Victoria]. (7)
Further reform to simplify and increase adoption rates will have a corollary effect on LGBTIQ prospective-parents and we strongly support moves to increase adoption rates.

However, any reforms must be sensitive to the needs of children, biological parents, foster carers and of the specific needs and social structures of Aboriginal and Torres Strait Islander cultures.

One respondent to the survey also noted negative experiences and alleged discrimination by officers of the NSW Department of Family and Community Services. That respondent recommended that training be provided for officers interacting with LGBTIQ prospective-parents.

Respondents also raised questions was to whether the absence of marriage equality put LGBTIQ prospective parents at a disadvantage when it came to foster placements or adoption panels.
RECOMMENDATIONS

Family and Community Services; Housing

- Fund specialist services for homeless LGBTIQ youth.

- Collect data on homeless residents identifying as LGBTIQ in a way that respects privacy and protects respondents from discrimination.

- Establish a stronger process to match LGBTIQ identified youth at risk with openly identified LGBTIQ prospective parents.

- Remove exemptions for religious organisations providing OOHC from discriminating against prospective parents on the basis of sexuality.

- Act to increase adoption rates, while respecting the needs of children, biological parents, foster carers and of the specific needs and social structures of Aboriginal and Torres Strait Islander cultures.

- Provide specific training for FACS staff interacting with LGBTIQ identified youth or prospective parents. Require NGO’s to identify LGBTIQ training as part of tender process.
ASSISTED REPRODUCTIVE TECHNOLOGY

“I feel the rights of parents, children, surrogates, donors, carers, adoptive parents are all different and have varying situations. I know as a parent I feel that my rights and the rights of my children are paramount and I don’t agree with extending rights to donors, if that wasn’t your agreement in the first place. This is a confusing and multifaceted problem that legally needs to be addressed, with people in mind.”

“I don’t think lgbti people that go through ivf are open to great exploitation. We are not technically infertile but treated as such. I think there could be far more options to treat lgbti people in these clinics but we are a money maker so we are told that ivf is the most likely way of achieving our baby.”

“Previously we were limited in IVF and the use of donor sperm with the wording that did not recognise a same sex couple as a family and allow them to use the same donor. I believe this has since changed. But at the time this was an added stress to the process of how we would manage conceiving using donor sperm.”

“Had to fly interstate to be able to use IVF, I’m not named on my kids birth certificates.”

“The clinic initially counted us as two separate families. They wouldn’t let us use the same donor for our second child because he had reached his quota of use. We had to threaten to sue them and they coughed up the sperm for us to complete our family. It was very distressing at the time as we were already pregnant with baby #1 and had always planned to use the same donor for both kids.”

“At the time an audit of the ivf clinic deemed we were unable to use the sperm we had bought and already had a son through as their provider could not guarantee how many families the sperm had gone to.”
“I am the adult daughter of lesbian parents and am in a relationship with a woman myself. I was conceived using an anonymous donor and have been denied any access to information about my donor or my half-siblings. Also, I have a birth certificate that has been changed so as to include both of my mother’s and the legitimacy of this birth certificate was questioned when I was applying for a passport.”

“Our marriage is not recognized - We want a second child. Preferably we want to do this via home insemination with a known donor. Because of the ‘rules’ it is too risky to do this as the donor can change his mind and get custody over the child. We are going to try to get pregnant via a clinic so it is all registered so there is no risk. The down side is financial. It is expensive to go via a clinic. In the Netherlands where I am originally from these expensive are so much less e.g. a cycle here (insemination without hormones) = 1700 dollars. In the Netherlands this is 200 euros.”

### Question: Do you believe that the current laws around assisted reproductive technologies go far enough to protect parents, gamete donors and/or donor conceived individuals?

- **Yes**: 31%
- **No**: 28%
- **I don't know**: 41%
- **Did not answer**: 1%
Assisted Reproductive Technology - including IVF - remains the most common means by which LGBTIQ women start their families.

However, it has been largely unregulated over the 40 years it has existed, and this lack of regulation, or hetero-normative regulatory frameworks has created a number of issues for LGBTIQ women, and their children.

Legislators have made hetero-normative assumptions about family formation.

Regulation of ART has largely been reactive and has tended to be framed through the experience of heterosexual couples:

“Commencing in the 1980s, legislation was introduced at the federal, state and territory levels that recognised non-biological parents in heterosexual couples as the legal parents of children born as a result of assisted conception procedures, at the expense of the donors of the gametes.” (8)

It wasn’t until 2009 that non-birth lesbian mums (partners of women undergoing ART) were legally recognised as parents in NSW. Furthermore, in 2010, NSW introduced laws restricting the use of donor sperm to 5 women.

The legislation lifted the limit restricting access to any given donor sperm from 5 to 10 and also recognised that lesbians accessing sperm should be counted as one family, not as two women, a move overwhelmingly welcomed by the community.

In effect, a “five women” limit became a “five family limit,” removing a key piece of discrimination for same-sex attracted women.
A number of women raise the issue of the family cap in our survey, noting that the rules created significant issues prior to a change in legislation in 2016. Many respondents reported difficulties accessing the sperm used by their partners in a previous pregnancy given the state’s limit on the number of families that could access sperm deposits.

That meant that attempts to create biological links for children - despite having two different birth mothers for each pregnancy - were often foiled.

**Rights of children born from donor gametes**

Regulation of ART draws strongly-felt differences of opinion within the LGBTIQ community.

Many respondents were supportive of these parentage presumptions introduced in 2009, however, questions around the rights of donors and in particular donor-conceived children are critically important. As The Hon Penny Sharpe noted in her parliamentary speech on the Baird Government’s Assisted Reproductive Technology Amendment Bill 2016:

> “Many diverse, wonderful families that I am proud to know and that I have advocated for since becoming a member of this place would not exist without assisted reproductive technology. But I have also seen over the time I have been in this place the emerging issues for the people created as a result of these technologies—issues that the law has had trouble keeping up with. The Assisted Reproductive Technology Amendment Bill before us today tries to update the regulation of artificial reproductive technology [ART], in particular when it comes to the rights of people who were conceived using this technology and their donor was anonymous.” (9)
The Baird Government’s legislation sought to balance these concerns with a need to improve regulation and protections for parents accessing IVF treatment.

On the other hand, questions have been raised about the level of access to donor records and the rights of donor-conceived individuals. Criticism of the legislation pointed to the fact that the Government had made previous promises regarding record-keeping and access that were dropped in the final legislation.

In the view of some donor-conceived individuals, the legislation was a cop-out and did not go far enough is delivering the protections afforded by contemporaneous reforms in Victoria.

“The NSW government had agreed to transfer the donor files from clinics, which had been caught destroying records, to a central electronic database after a recommendation by a 2013 NSW parliamentary inquiry.

“But lobbying by the IVF industry, which claimed it would be too expensive, has resulted in a significantly watered down bill being introduced to NSW Parliament this week by Health Minister Jillian Skinner.

“The offspring of anonymous donors must instead apply directly to the clinics to request basic, but non-identifying, information about donations made before 2010, after which time anonymous donation became illegal in NSW. They can also make the request to the Ministry of Health, which will contact the clinic on their behalf.” (10)

This view was reflected in one survey response, which raised objection to the lack of available information around her donor or donor-siblings.
Exploitation of LGBTIQ people by ART providers

The survey responses touched a theme that is often heard in the community that because the options for creating a family is limited, the cost is exorbitant and the community taken advantage of.

Follow-up conversations with respondents revealed a sense of dissatisfaction with some IVF clinics and with warnings about one clinic in particular that was viewed as having a reputation for “preying on LGBTIQ women”.

Further investigation of the IVF industry is crucial to ensure better transparency and fairness. This is crucial for the LGBTIQ-parent community given that:

• ART and IVF are pivotal to the creation of the vast majority of LGBTIQ-parented families;
• The sense of distrust towards clinics and the industry as a whole;
• The sense of division and confusion within the community about the industry; and
• Given the importance of clear regulation and the primacy of rights for children conceived through ART.
• How potentially easy it is to exploit people given their desperate need to start a family
SURROGACY

“In NSW, legally I am not regarded as my children’s legal parent, even though I am on the birth certificate in the country where they were born - in NSW I am considered the gamete donor. However, my overseas surrogate is considered the legal parent. In the country where my children were born I am considered the legal parent and the surrogate is not. This is an enormous disparity and is not in the best interest of my children, effectively they are parent-less. It’s a joke!”

“We had a difficult experience with altruistic surrogacy with a friend, with the inability to use ivf owing to a traditional surrogacy arrangement, meaning that our surrogate had to self inseminate, and it eventually ended the arrangement. If we are not able to access paid surrogacy, at least the ability to open up ivf to traditional surrogacy would be great.”

“It became illegal for me to pursue overseas commercial surrogacy at the beginning of my surrogacy journey. This made me feel pressured to try for a baby sooner, rather than later. It also meant that once this became ‘illegal’ I was unable to obtain paid parental leave when my child was born - it took over 2 years for my employer to give me this leave. As a result I had to put my child in daycare at a very early age and return to work. This was not good for attachment for an infant.”

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**Do you think the ban on overseas surrogacy should remain in place?**

- **No**: 62%
- **Not sure**: 26%
- **Yes**: 10%
- **Did not answer**: 2%
As has been noted earlier, ART technologies have been pivotal in allowing more LGBTIQ people to have children.

The evolving technology around surrogacy has meant that a growing number of same-sex attracted men can start a family.

Surrogacies can be defined as altruistic (where a woman offers to carry a child as a gift to intending parents and receives no financial compensation beyond medical or “reasonable costs” incurred) or commercial surrogacy, where a woman is paid to carry a child.

Altruistic surrogacies are scarce given the medical risks and social complexities of the practice. Even where they do occur, the current framework is not entirely supportive of all participants.

One respondent indicated that there was insufficient counselling available to he, his partner and to the surrogate throughout their altruistic surrogacy journey. This must be immediately addressed to ensure families using altruistic surrogacy are given the tools to navigate this deeply complex process.

Stuhmcke (2011) notes that surrogacy has grown in popularity over the past thirty years due to declining numbers of children available for adoption, globalisation, a lack of other options, an increase in infertility, technological advances and greater acceptance of ART.

Many LGBTIQ families in NSW are formed through surrogacy: women choose to carry embryos formed from their partner’s ova (or an anonymous donor); women act as surrogates for gay men. More commonly, gay men opt to engage an altruistic surrogate or to pay a surrogate overseas, despite the possibility of criminal conviction.
According to Wilmott (2006), historically, Australia has taken a reactive approach to ART technologies:

“The fact that ART and rapid advances in scientific knowledge give rise to difficult ethical and moral dilemmas has not meant that we, as a community, have sought to deny infertile couples access to ART.” (11)

Stuhmcke (2011) agrees, arguing that Australia:

“respond(s) to biomedical developments (such as embryo freezing, cloning, xenotransplantation and surrogacy) by initially applying the heavy-handed legal regulatory model of the criminal law and then subsequently to adopt more nuanced and flexible regulatory frameworks.” (12)

This regulation has often excluded LGBTIQ people, either directly – as in the case of barring lesbian women from accessing IVF – or indirectly, disproportionately impacting LGBTIQ people more than the general population.

We believe the laws around commercial surrogacy fall into the second category.

Currently, it is illegal for prospective parents to engage in commercial surrogacy wither in Australia or overseas. Despite this law, many fathers have opted to take this course as it remains the only viable means of starting a family given restrictions placed on fostering and adoption and the social complexities of poly-parenting or sperm donation.

Many have used surrogates in India, Thailand, Mexico, Nepal, Canada and the United States and have been able to access passports and citizenship for their children as at least one of their parents is recognised as their biological parent.
When children are brought home to NSW, however, the NSW law banning commercial surrogacy means that parents risk prosecution. As a result, they rarely seek parentage orders, leaving their children in a legal limbo.

NSW’s existing surrogacy laws disproportionately impact LGBTIQ parents and the children born through surrogacy: These children are often denied the permanency and certainty of legal parenthood; can experience difficulty accessing basic services; and can grow up feeling their parents and stories of origin render them illegitimate or illegal.

The lack of parentage orders also create confusion in family courts in the event of family breakdown.

The survey data reflects the fact that there are divided opinions in the LGBTIQ community concerning surrogacy, and that the community is cognisant of a broader ethical debate around the safety and wellbeing of children, surrogates and intending parents.

Concerns within the community about commercial surrogacy include that it:
- Represents the commodification of human reproduction;
- May exploit women and/or children;
- May present risks to intending parents.

Similarly, other concerns include that surrogacy might deny children access to their biological or ancestral lineage, disconnecting them from their story of origin and any ongoing participation in their culture.

While the ethical ramifications of surrogacy are complex, on balance, we contend that the ban on commercial surrogacy 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.
The community is still awaiting the NSW Government’s legislative review of the 2011 legislation that outlawed commercial surrogacy.

The Federal Government’s recent Senate Inquiry opted for the status quo, despite considerable evidence in support of reform.

Given that the options for overseas commercial surrogacy continue to shrink, leaving a large regulated industry in the USA as the only feasible path, our recommendation is to lift the current ban that puts kids and parents at risk and to investigate options for a heavily regulated surrogacy industry in NSW.

Millbank (2015) notes that:

“The body of empirical studies does provide compelling evidence for surrogacy as an elected practice that has provided satisfaction to the great majority of women who have undertaken it in the domestic national context.

“The established Australian context of overarching health care regulation and family law as well as specific surrogacy laws would prevent risky reproductive treatments and contracts that purport to inhibit women’s reproductive autonomy or determine the parental status or physical custody of resulting children.” (13)

In our view, a regulated industry in NSW may:

- Ensure that women and children are not exploited by providing oversight by NSW’s rigorous legal and robust health systems;
- Allow for closer ties between involved parties, including the surrogate and child;
- Clarify the legal position of children, surrogates and intending parents.
RECOMMENDATIONS

**Attorney General**

- Release the Government’s response to the 2016 Legislative Review into surrogacy laws.

- Lift the existing ban on commercial surrogacy.

**Health**

- As part of a NSW Legislative Council Inquiry into Assisted Reproductive Technology/IVF, investigate the establishment of a heavily regulated local surrogacy industry that better protects the rights of children, women and prospective parents.

- Provide adequate counselling for those using altruistic surrogacy to create a family by fully trained and supervised therapists/psychologists.
The vast majority of respondents to the survey have children enrolled in primary school or younger. The experiences of high school-aged school students are not adequately represented here, nor that of their parents’ interactions with high-school educators.

The data strongly biases the experiences of students and families in the public school system, with a strong representation of children in child-care services. The few high-school students captured in this survey are more or less split between government schools and religious and/or private schools.

What is the highest level of education your eldest child is currently enrolled in?

What about your youngest child? What is the highest level of education they are currently enrolled in?
EXPERIENCES OF BULLYING

Thankfully, the survey suggests that the majority of children and families had not experienced bullying at school on account of their family structure. Of those that were, roughly half believed it was handled well and half considered the incidences to have been handled poorly.

This data likely reflects the fact that the majority of respondents had children in daycare and primary schools.

Studies show that schools are significant sites of homophobic and transphobic bullying and that rates of bullying and hostility are increasing (14). More recent studies indicate that 80 per cent of homophobic bullying involving LGBTI young people occurs at school and has a profound impact on their well-being and education. (15)

US organisation, GLSTEN, noted in a 2008 study that roughly half of the students they interviewed reported feeling unsafe at school on account of their family structures. Almost 40% of that was reported as verbal harassment. Alarmingly, the report suggests that 23% of students who took part reported that the verbal abuse or harassment was from the parents of fellow students. (16)

Have your children ever experienced bullying at school or childcare as a result of belonging to an LGBTIQA+ parent/carer family? If so, how effectively did the school or centre manage any bullying behaviour?
While no such study has been conducted here in Australia, children in our community have reported similar incidences of verbal bullying and harassment.

The survey was conducted prior to the Berejiklian Government’s announcement that it would not renew funding for the Safe Schools Program once Federal funding expires in July 2017.

Numerous respondents expressed support for the program, not only as a framework for discussing diverse sexuality and gender, but as a way to create a space for better understanding diverse family structures.

Respondents also spoke of the Government’s earlier actions in relation to the film Gayby Baby, which was “banned” from being shown to students during school classes.

The documentary film, which depicts a variety of diverse LGBTIQ-parented families, was derided as unsuitable in all NSW government schools following a small number of complaints to a showing at Burwood Girls High School in Sydney’s inner west.

The community broadly viewed the former Education Minister’s interventions as unnecessary and inflammatory. The message being sent to the community was that their families did not have value and should remain invisible. This can also be compared this to the Government’s refusal to release results of an inquiry into religious education in schools.

The perception is that the current NSW State Government is deriding LGBTIQ experiences and families, while at the same time protecting the views or religious educators, residents and families.
“Our son attends ethics classes and we don’t send him to Christian class because we can’t vet the politics of the people delivering the message. I know for sure the Catholic Nun delivering education to the catholic kids told them gay people were bad and sinful and a friend’s daughter got into an argument with her and never went back....there is no recourse in such matters ....the church decides who does the damage teaching these Catholic classes.”

A key disappointment in the abolition of the Safe Schools program is that educators who require assistance in their schools no longer have access to it. Many educators feel unprepared or ill-equipped to help students who identify as having diverse sexuality or gender.

Similarly, educators do not always have the skills to manage the unique experiences or challenges of children with gender diverse or same-sex attracted parents.

**Educator Interactions**

While survey respondents had both positive and negative experiences with educators to relay, a key theme that emerged was the need for specialist training around family diversity to encourage the greatest degree of inclusivity in our schools.

Multiple parents reported needing to “go back into the closet” in their children’s school environments.

“Last year, when our eldest child started kindergarten, the P&C compiled a parent directory, with all parents listed under the category of mother or father. I was listed as mother and my female partner was listed in the father category. We complained and it was fixed (parent/parent) this year.”
“I had to stay in the closet.”

“Father’s day is usually okay but my youngest had a conversation with a teacher, she got two years in a row who told her "You wouldn’t be here if you didn’t have a father. You are alive so you must have a father."

“Staff have avoided my partner, not really knowing how to address her. When our youngest son was in kindy he kissed his friend goodbye after school. The friends mother was very unhappy and made a complaint to the principal. I was called in for a discussion. The language used was very hurtful, things like ‘if that’s how you choose to behave at home that’s ok, but he can’t behave like that at school. What you do in your own home is your business’.

“We purchased over $500 worth of books that depicted diverse families and donated them to the school library. The librarian told me that he couldn’t have them in the library unless they had been approved by the board of studies. My partner is a deputy in a secondary school and was very quick to contact him and advise him that books in the school library didn’t not require approval by the board of studies.”

“Being singled out or picked on for having two mums by other children, teachers not responding appropriately. Child being told that we were illegal as we were unable to get married.”

“The boys constantly having to make Mother’s Day cards, essays, etc. This can be upsetting as their child protection counselors cooled the relationship with their abusive mother to help soothe their PTSD.”

“When on a tour of my local public high school, the principal asked (in front of the entire group of parents and students) who was the ‘real mother’.”
In each of these instances, specialist training in family diversity could have avoided embarrassment and harm. Many of these situations would have been just as distressing for students living in single parent families, or in step-parented families, children being raised by grandparents or other kin, in foster care or adoptive families.

Have you or your children ever had a negative interaction with a teacher, principal or staff member in an educational facility or child-care centre based on the fact you identify as an LGBTIQ+ parent/carer?

- Yes: 11%
- No: 89%
- No response: 7%

Have you had a positive interaction with a teacher, principal or at school you would like to tell us about?

- Yes: 48%
- No: 45%
- No response: 7%
Promoting a culture of acceptance in our schools is critical to the well-being of the entire school community, as the following comments demonstrate. In each of the incidences described below, inspirational leadership is demonstrated by educators, acting in the interests of children.

“Our son’s high-school teacher spoke with him privately said I’m aware you have two mums if you ever get a hard time I’m here for you to talk with.”

“The childcare centre that we eventually went to was excellent. They had a diversity policy and were very queer friendly. Also the kindergarten at their primary school has an out and proud dyke teacher. She is excellent and she is one of the reasons that we chose the School.”

“Our child care makes us two cards on Mother's Day. We didn’t even have to ask.”

“Coming out as trans to my children’s primary school teacher at a tiny (70 children) school in the country and advising that after the forthcoming holidays my children would have two mothers, she replied "well you aren’t the first!" Was not expecting that!”

“As a recently widowed lesbian parent we have had so much support from both our day care and our local public school, they have provided resources, looked out for the children and supported me. Our families differences have never been an issue.”

“Pre-school teacher has borrowed some books from us (Heather Has Two Mummies; Tango Makes Three) to read to the 3-5 year olds and to talk about different type of families with the 5 year olds. Principal has registered with safe schools and insisted school events be couched in gender neutral terminology.”
ENROLMENT COMPLICATIONS

Again, the majority of respondents thankfully reported few concerns enrolling children in schools. Reports of complications extended from non-inclusive enrolment forms through to negative interactions with teachers.

There were reports of complications arising with co-parents living in different school catchments. In co-parent arrangements, children sometimes move between homes on a regular basis - as is the case with many children whose parents have separated or divorced - and still, there is little flexibility within the catchment rules to accommodate this.

“When looking at early childhood services for our first child (who is now 12), we found that some staff we were uncertain and almost hesitant about enrolling him. One director asked me ‘what do you want from us?’ And stepped away from as at the same time. At another service after explaining that my son had 2 mums, I was asked to note that under the section 'special needs'.”

“Enrolment forms assume a two parent family only”

“There is always the confusion over the 2 women parent thing - I ask them to put Ms and Ms - from the high-school I am down as step-parent. This one angers me because the primary school says mother and mother. I just don’t know maybe the computer doesn’t cope with it. If that is the case, I would rather be guardian or something.”

“Not recognizing the non biological mother’s new partner for school matters.”

“We had to meet with the head-master and identify ourselves as a family with two fathers.”
Did you experience any complications enrolling your child/ren in education or care services?

Yes
10%

No
90%

Recommendations

Education

- Provide ongoing funding to the Safe School program or to an anti-bullying program that addresses LGBTIQ harassment and assault.
- Allow Gayby Baby to be shown in class-times as an example of family diversity
- Provide specialist training for teachers and educators in family diversity, respecting the fact that children come from single parent families, LGBTIQ-parent families, foster families and more.
- Update school catchment policy to accommodate diverse family structures.
- Standardise all paper and electronic enrolment forms to stipulate the more neutral “parents” as opposed to “mother” and “father.”

Early Childhood Education

- Provide specialist training for teachers at preschools and long daycare services in family diversity, respecting the fact that children come from single parent families, LGBTIQ-parent families, foster families and more.
- Standardise all paper and electronic enrolment forms to stipulate the more neutral “parents” as opposed to “mother” and “father.”
HEALTH

As is the case in all other families, LGBTIQ parents rely on a robust public health system that sets aside people’s differences and treats each and every person with the same level of care and professionalism.

While our survey reveals that this is the case more often than not, unsurprisingly, concerns were raised with the way health staff and professionals interacted with LGBTIQ families.

As our survey demonstrates, while health policy more broadly may be moving towards greater inclusivity, the systems and personnel in place to deliver actual services often fail to keep pace with social progress.

Have you or your children ever been admitted to a public hospital and experienced difficulty doing so or discrimination on the basis of being part of an LGBTIQ+ parented family?

If you, your partner or surrogate gave birth to your child/ren in a NSW public or private hospital, did you experience any difficulties or discrimination as a result of being part of an LGBTIQ+ parented family?
INTERACTIONS WITH HEALTH PROFESSIONALS

“Overall the staff of health services are wonderful and very interested and helpful. Some may need training. I had one ask " which one is the real mother?" Of course it was not intended to offend but just lack of knowledge about appropriate language. I just told her that " now in nsw our son has his 2 mothers in his birth certificate”

“Hospital system were ill-equipped to deal with our situation. Legal requirements were unclear and ambiguous.”

“First, a male Dr at my hospital visit questioned how I had sex. Stating his daughter wanted to know. I filed a complaint and her was reprimanded and made to undertake professional development on LGBT families. After the birth, I had to change the Birth Certificate application to show Mother/Mother as opposed to mother/father that is printed.”

“GPs often ask about medical history and I sometimes get eye rolls when I say I cannot be sure about my child’s paternal line.

“When I birthed our second child, he was in NICU and the hospital gave us a hard time about feeding him my partner’s breast milk. The excuse they used was that the name on her milk being stored in the NICU fridge would not match the birth mothers’ name (me). We called them out on their homophobia and pressed on with giving our sick baby breastmilk. We labelled it with the baby’s name so there was absolutely no issue with confused identity.

While the majority of interactions with health and medical professionals are positive, it is clear from the responses above that specialist training is required in family diversity if LGBTIQ-parented families are to avoid stigmatization and discrimination in our hospitals and health settings.
It is never acceptable for medical professionals to question the private life of a family or individual unless it pertains to their medical circumstances. While negative interactions may be put down to “bad bedside manner,” they can have extremely serious impacts on patient health and well-being.

Firstly, these negative interactions can result in LGBTIQ-identified people (and parents) not seeking medical attention. A recent report from the United States revealed that 30% of transgender and gender diverse people delayed or did not seek medical care because of fear of discrimination. (17)

Secondly, negative interactions with medical professionals poses the very real threat of exacerbating poor mental health amongst LGBTIQ-patients.

The National LGBTI Health Alliance reports that (18):

Compared to the general population, LGBT people are more likely to experience and be diagnosed with a mental health disorder, specifically:
- Lesbian, Gay and Bisexual people are twice as likely to have symptoms that the criteria for a mental health disorder in the past 12 months
- LGBT people are twice as likely to be diagnosed and treated for mental health disorders

Statistics for LGBTI Population:
- 41.1% of homosexual/bisexual people aged 16 and over met the criteria for a mental disorder and had symptoms in the last 12 months
- 37.1% LGBT people aged 16 and over reported being diagnosed or treated for any mental disorder in the past three years

Statistics for the General Population
- 20% of people (22.3% female; 17.6% male) aged 16 and over met the criteria for a mental disorder and had symptoms in the last 12 months.
The Alliance also notes that LGBTIQ Australians are far more likely to experience suicide ideation or to attempt suicide or self harm in their lifetimes.

Negative interactions with medical professionals like those detailed in the survey pose only serve to further isolate LGBTIQ-parents and their children. They are completely unacceptable.

**Accessing Health Services**

“*My Wife was killed in a pedestrian accident in Feb 2016, when I rushed to the scene of the accident the ambulance had already left. The police would not give me any information or help me get to the hospital. At the hospital I was initially not allowed into the hospital and had to jump through hoops to be able to get in and be told what was going on. Even though I was holding our baby in my arms that she had given birth to in the same hospital 3 weeks earlier.*

“*My wife didn’t receive proper follow up after our first was born and didn’t get treated for Severe PND until months later.*

“*Our child was admitted to hospital at 4 months of age. It was a very stressful time and it was made worse by the fact that we were constantly having to explain that we were both able to be by his side.*
Specialised training in family diversity would serve to improve experiences of LGBTIQ-parents in medical settings.

As is the case with children raised by single parents, or by kinship carers or children in fostering and adoption arrangements, the full medical history of a child raised by LGBTIQ parents might not be known. Ditto their biological family’s medical history.

Respondents noted that this caused intermittent issues with vaccinations, care for allergies, the issuing of prescriptions and medications, as well as delaying diagnosis of genetic illness.

Importantly, training might help to identify the supports a child or parent needs when they present for medical attention.

The harrowing story of a woman who was initially denied access to her wife in hospital is heart-breaking and cruel, and demonstrates the risks and human consequences of failing to understand LGBTIQ family structures. So, too, does the story of the parent who was not diagnosed with postnatal depression.

It is clear that, particularly in hospital settings, an LGBTIQ liaison officer would be well-placed to meet these challenges and lead the kind of cultural change that will lead to more positive health outcomes for LGBTIQ families.

The Gay and Lesbian Liaison Officer (GLLO) program within the NSW Police service provides a workable model. We recommend funding a similar LGBTIQ-focused patient advocate, particularly in larger metropolitan hospitals or health networks with a higher proportion of LGBTIQ residents.
We also strongly recommend a policy of recognising the National LGBTI Health Alliance’s Genders, Bodies and Relationships Passport.

(19)

“The passport is available to anyone who wishes to ensure that their genders, bodies, relationships are respected in their interactions with health and social care services. It was developed specifically to support the following groups:
- Intersex, trans, and gender diverse people.
- Health and social care services that wish to ensure inclusive care and the best possible health outcomes for intersex, trans, and gender diverse people.”

Adopting this program and ensuring it is widely understood and recognised at NSW hospitals and health services would acknowledge the specific risks posed to transgender and gender diverse people and their families.
"When registering for the Child Health Services there was no option for other parent, except to place my details in the allocated spot for 'father'."

"I did present to Katoomba emergency (when I lived there) with a sick child. He was born there. They said " I have someone else listed as mother" and I tried to explain and she was like " ok ok too hard whatever" I am not sure if the computer system only allows recording one mother and that was the problem or the same sex parent was noble. I’m resilient and was ok but it would upset others."

“On two occasions we have had a child admitted to Westmead children's hospital. Their forms only allow for mother and father, rather than parent 1 and parent 2. The parent whose name goes under the "father" tab is entered as "other relative" which means they cannot give the same consent the parent can. They were constantly seeking out the parent listed under mother, even though the other parent was right there. This had significant impact when my eldest was flown in by Care flight with my partner, who then had to leave to go and get her phone while I stayed with our son. I was told I could not be his mother because my partner was on the form as his mother.

“Main issues have been about attitudes and assumptions in health. Mostly a conservative management and the forms are so out of date. I often had to cross out 'father' and write 'mother'. The prenatal class we attended they were very welcoming of us as parents but the commentary often included "hubby" and my partner included in that. Which is nice in one way but offensive given we can’t even marry, and it’s the wrong gender reference.”
A key component to ensuring full access to health services for LGBTQ parents and their children is ensuring that the systems, procedures and forms used to process admissions and medical care in a patient’s lifetime reflects the realities of diverse families.

Too often, LGBTQ parents are left to navigate archaic systems that require them to identify as a “mother” and “father,” causing offense and more importantly confusion.

As the survey responses above demonstrate, these bureaucratic errors have a real impact on the well-being of children and parents and must be addressed as a matter of urgency.

**Baby Blue Book**

“Our baby comes from 3 parents (I carried my partner’s egg with donated sperm as my partner had cancer and had her reproductive organs removed) and there is no room for additional information that may genetically impact on the child.

“There is no option to add other parent. There is only options for mother and father.

“I had in a normal heterosexual relationship at the time when blue book was issued. Only issue now is I am primary carer for oldest kid (with some mental health issues) and don’t have blue book. May need to follow up with former Partner

“sometimes heavily geared towards mother. our bub doesn’t have a mum, only two happy daddys

“Heteronormative language but I understand this is being updated? It also failed to recognise non traditional forms of family units.
“I work in health and some of the information, posters, booklets, official documents are gender specific and heterosexual eg baby blue book and antenatal and postnatal information which could easily be changed without much effort by the NSW Health and the Local Health Districts. Thanks for your interest in these matters ....much appreciated.”

The Baby Blue Book (or Child Personal Health Record) is a cherished part of childhood and of being a parent.

Unfortunately, few LGBTIQ-parents feel that the book reflects their circumstances, reducing its efficacy and usefulness.

Rainbow Families NSW successfully lobbied the NSW Government to consult more widely around the content of the book, and was pleased to be included in subsequent consultations.

Small changes to the content would go a long way to making the record more inclusive, including the:

- Depiction of diverse family structures;
- Inclusion of contacts and resources for LGBTIQ parents and families;
- Amending language to not specify “mother” and “father” in instances where it was not necessary to define a gender. This would benefit all parents, including single parents and carers.

Other documentation and publications should be revised along similar lines. For example, many women reported being given pamphlets about “being the dad” following the birth of their children at RPA Hospital.
Recommendations

Health

- Establish and fund Gay and Lesbian Liaison Officers at major NSW public hospitals to assist with providing health care to LGBTIQ-parent families.

- Provide specialist training to medical professionals and health workers on family diversity.

- Adopt and promote the National LGBTI Health Alliance’s Genders, Bodies and Relationships Passport in all NSW public health settings.

- Update the Baby Blue Book (or Child Personal Health Record) to make it more inclusive of family diversity.

- Update all medical records and health-related forms to be gender neutral where feasible, including removing “mother” and “father” in instances where it is not necessary to know the sex of a parent.

Have you ever been issued with a Baby Blue Book or Public Health Record? If so, what was your reaction to reading the book?
Interactions with NSW Government

The Commonwealth Government is moving towards gender neutral government, whereby:

“The Australian Government recognises that individuals may identify and be recognised within the community as a gender other than the sex they were assigned at birth or during infancy, or as a gender which is not exclusively male or female. This should be recognised and reflected in their personal records held by Australian Government departments and agencies.” (20)

The 2013 Guidelines on the Recognition of Sex and Gender seek to collect gender information only when required, and to privilege the collection of data on gender over the collection of data on sex where noting a person’s physical sex is not necessary.

The NSW Government should adopt a similar framework and issue a similar directive across NSW agencies and departments.

Have you ever encountered a Government-issued form that you felt was discriminatory or which excluded you as an LGBTIQ-parented family?

No
20%

Yes
80%
Doing so would:

- Eliminate confusion arising from forms where gendered language is unnecessarily gendered, including but not limited to school enrolment forms, registration of land, property and vehicles, or on application for licenses etc;
- End the need for transgender and gender diverse residents to nominate a gender that does not match their gender as presented;
- Remove the need for transgender and gender diverse people to undergo sex reassignment surgery before changing their gender markers on government issued identification;
- Remove the need for intersex residents to “choose” a gender when completing forms or accessing basic services;
- Contribute to positive cultural change to improve inclusion, health and social benefits.
- The NSW Government should also immediately address issues faced by LGBTIQ-parents in government employment and lead cultural change by refusing to play politics with LGBTIQ families.

The Office of Births, Deaths and Marriages

“Registering for BDM the hospital did not have the "special form" so we rang and ordered it. There shouldn’t be a special form but every registration able to record all births.”

“I have transitioned male to female, and am still legally married to my wife from before transition. I am unable to: - Update the gender marked on my own birth certificate, as I would have to divorce my wife. I have fought so hard to keep us together, why would I want to do this? I would also have to undergo forced sterilisation which is inhumane. - Update the parent names on my childrens’ birth certificates, as they will forever show my pre-transition name. I am told these are a snapshot in time, and are never altered.”
“Had to prove myself with facts so went to court and had a judge ok me. Female name had to be on birth certificate even tho gender didn’t match.”

“Couldn’t fill out birth certificate, needed to go into Births deaths marriages with new-born in tow to get a special form.”

“I had to have an interview to prove my ‘status’ in order to get the birth certificate amended for my son, so that I could be put on as his parent.”

“Births Deaths and Marriages required paperwork from our IVF clinic confirming we were in a partnership at the time of undergoing IVF. The fact that we completed relevant questions on the application for the birth certificate, that our child had two parents, didn’t suffice.”

“In 2011 when we had our first daughter at a Sydney hospital the hospital did not have the forms for same sex parents and we needed to visit the office birthday deaths and marriages. It took them 4 staff members to find the forms we needed.”

“NSW birth registration doesn’t recognise actual adults undertaking parenting duties.”

“Only two parents were allowed to be listed on the birth certificate - we wanted to list three.”

“NSW BDM rejected both kids birth registration because we listed both Mums on the form (2005 and 2006). When the law was changed, we had to pay $$$ for both kids to get two mums birth certificate updated.”
“Births deaths and marriages didn’t know that two mothers could be listed on the birth certificate. We encountered this at Rockdale service NSW office. The staff had to scramble around asking supervisors if it was OK to list 2 mothers. They also asked repeatedly for the "father’s" details.”

“Registering the births our our children in 2011 and 2013 - needing to ask for forms for same sex families after being presented with opposite sex family forms. We complained to Births Deaths Marriages both times and to HRC the second time.”

"I changed my surname legally to be the same as my child but that cost $174 when I could have changed it with my marriage certificate. Also my child’s parents are already different without them not being able to marry like their friends parents.”

“Our international marriage is recorded on our second son’s birth cert, but not our first. I wonder if legislation will allow retrospective changes and waiting of fees?"

“The registration of the birth of our 3 children was pretty smooth and straight forward, however last year my partner and I got married in the Netherlands. On advice from some friends I tried to register this marriage at the department of birth-death-marriages. I’m fully aware that Australia is not recognising gay marriage however you would think they would need to acknowledge what happens overseas. For us to be able to marry we were required to obtain a certificate single-status. One would hope that now that we are married we would not able to get this certificate again. We were offered a registered partnership for $280 (I think) however the person informed us this has very little value and is mainly used by couples for immigration reasons. This is not a request for gay marriage (although it is sad we had to go to Holland for this) more a request for a proper system to make sure me or my partner can’t get a single status certificate again ;)
"
Government issued forms are inconsistent and continue to cause offence and confusion for parents seeking access to basic government services. Adopting a gender neutral framework would eliminate many of these concerns.

In the meantime, training in family diversity and inclusive language is clearly required at the Office of Births, Deaths and Marriages given the large number of complaints about the poor quality of services and the complexity of processes.

We recommend enabling same-sex parents to register births online, ending the need for a special paper form. It is simply discriminatory that same-sex parents be required to go through extra steps to register the birth of a child. There is no need for the process to be different.

Similarly, we also recommend changing the form to read “parent 1” and “parent 2.”

We also recommend that the NSW Government follow British Columbia’s lead and move legislation allowing for up to four people to be listed on a birth certificate. (21) This would better reflect the growing number of families where more than two adults have contributed to the birth of a child and to raising the child.

Allowing for more than two parents to be listed on a birth certificate:
- Gives a greater sense of permanency and legal certainty for a child;
- Improves the accuracy of record keeping by better reflecting the family structure of a child at the time of its birth; and
- Reduces confusion as the child accesses government services including in health, early childhood care and education.
- Reflects the reality of modern family structures and relationships.
A similar law in Ontario, Canada, is more restrictive but achieves a similar goal:

“The case created a precedent in Ontario that looks at four different situations: if the sperm donor is known; if he doesn’t want to concede parental rights; if the mother has a partner who wants recognized parental rights; and if the biological mother and father both agree to a third parent.” (22)

Parentage orders could be issued dependant on who was legally respondent for the care and well-being of a child.

Finally, we recommend immediately removing the requirement for transgender and gender diverse people to undergo gender reassignment surgery before being able to change a gender marker on their government issued identification.

As well as being cruel and unfair to parents, the current arrangement can have deleterious impacts on the children of transgender and gender diverse people. Their birth certificates may not be accurate in that their parent’s gender as marked may not match that which their parent presents. This can cause confusion in a variety of settings.
**Government Employment**

“Service NSW staff could not face the fact that I suddenly became a parent... after being told at my interview that I was going to become a foster parent and they were guaranteeing that I would only have school hours shifts then rostered me at times not conducive to having school age children. Even denying me a transfer to an office 10 minutes from home... forcing me to resign.”

“I think it’s still hush hush to be gay in many government jobs. Why aren’t more government departments part of pride in diversity? All jobs say "LGBTI encouraged to apply" but then I rang my HR and they have no specific policies! That’s FACS. When I spoke to the HR line and enquiries about policies on things like "gay staff or even use of toilets for gender diverse" she was helpful but said "oh that’s a new one! Never had that before" and a manager rang me and was helpful but said they offered support on a one by one case. Not preventative abs inclusive.”

“Discrimination in regards to Leave from Work to travel overseas for the birth of my daughter.”

Many LGBTIQ parents are government employees. Numerous survey respondents spoke of not feeling supported in their workplaces, or of feeling that they were best off to “stay in the closet.”

While being closeted at work has a deleterious impact on any LGBTIQ person, it is worsened when children are involved and employees are reluctant to access family benefits or entitlements through their workplace such as parental or carers’ leave.

When LGBTIQ or diversity policies do exist, they are infrequently applied or applied on a needs-only basis, meaning there is little in the way of holistic cultural change to promote inclusion.

The Government must develop and implement diversity or inclusion policies that envelop the needs of LGBTIQ employees and their families.
**Marriage Equality**

“The ability to exclude LGBTQ+ people from one function of society opens the door to exclude us from many.”

“Same Sex marriage should be legalised to show our children that their families are acknowledged and respected in society. I have more than earned the right to marry my love. We have been together for 17 yrs, have a delightful 3 yr old son and a daughter due in March. It is time!”

“The majority of people we meet are supportive of our family. I would like my children to grow up in a country where their family is acknowledged and equal to any other.”

“We feel lucky to be living in a gay friendly part of a gay friendly city in a gay friendly state. We have experienced relatively little overt discrimination but we still feel like 2nd class citizens when our (UK) marriage is not recognised or where health services have to scramble to find the right words for us or where the non-birth partner is treated as an appendage rather than an equal part of the parenting. Australia needs to recognise rights at a federal level so all Australian residents can enjoy them!”

It is clear that a great many of the concerns and issues raised in this report would be resolved by marriage equality.

Marriage equality will engender positive social and cultural change and create better inclusion of diverse family structures.

While the rainbow families community is eager for marriage equality and are committed to ensuring it in the interests of our children and grandchildren, as well as the vulnerable LGBTIQ youth across Australia, we also want to fix the discrimination at every level of Government.
The community acknowledges the work of the NSW Parliamentary Friendship Group of LGBTI and both the Legislative Assembly’s support of the Member for Sydney’s motion for marriage equality and the historic apology to the ‘78ers.

While we wait for marriage equality, the NSW Government can move to resolve a host of issues that serve to alienate, denigrate and discriminate against LGBTIQ families.

**Recommendations**

**Premier**

- Issue government-wide guidelines on the Recognition of Sex and Gender.

- Develop and implement diversity or inclusion policies across government that envelop the needs of LGBTIQ employees and their families.

- Review all NSW Government documents to ensure consistent use of inclusive language across all forms and resources.

**Attorney General**

- Provide training for staff at the Office of Births, Deaths and Marriages around family diversity and non-traditional family structures and inclusive language.

- Remove the need for same-sex parents to complete a special registration of birth form; standardise all forms and make them available online.

- Allow up to four parents to be listed on NSW Birth Certificates.
CONCLUSION

“When our children’s family situation is demeaned in newspaper articles, on the news, or in politicians speeches/interviews, it makes them feel less. Though it’s not violent, we experience the discrimination of non-inclusive language every day. It’s made our kids tough.”

“The laws are in place to protect LGBTIQ people but more community education needs to take place to stop individuals discriminating and spreading hatred and misinformation.”

“I feel a shift back to being a target and that it’s become acceptable to treat us as less than. All the Gayby Baby and Safe Schools debate has been hurtful. And I feel the unwillingness of the state government to defend our rights is sad.”

“I believe the Safe Schools (or some version of it) is essential for our schools. If the federal gov doesn't provide funding for it then the nsw gov should!”
Ending discrimination against LGBTIQ families starts at the top. As our survey results show, the majority of LGBTIQ parents don’t believe the NSW Government acts in their interests, with 60% believing the Government does a poor job of protecting the rights of families and only 17% believing that they do.

The Gayby Baby furore, whereby the former Education Minister restricted schools from showing a documentary about family diversity in class times, was felt deeply by the community.

Similarly, the Government’s decision to refuse to fund the Safe Schools program when the Federal Government funding runs out in July 2017, is felt deeply as an attack on LGBTIQ people and young people in particular.

Both of these issues impact parents as LGBTIQ Australians. Perhaps more deeply, they affect parents because they create less safe spaces for our children.

Both of these program seek to foster a greater understanding of non-traditional family structures and nurture a greater sense of understanding and acceptance.

The full-throated criticism of these programs by high ranking members of the Baird and Berejiklian Governments has caused significant distress within the community.

They send a clear message - to our kids no less - that their families are different and somehow worth less. We reiterate that all families have value: families with two mums, two dads, families led by single parents or by grandparents, and families with no children at all.

Family diversity - understanding and respecting that families come in all shapes and sizes - is at the core of Rainbow Families’ work. It should also form a basis for the work of those we elect to lead us.
ENDNOTES

(1) Sifris, A, Gay and lesbian parenting: the legislative response. p.89
(2) Sifris, A, Gay and lesbian parenting: the legislative response. p.89