

# Key principles of rainbow family law reform

April 2007

**These are the key principles underlying the rainbow family law reforms advocated by the Rainbow Families Council through its Love Makes a Family Campaign, and supported by the Victorian Gay and Lesbian Rights Lobby.**

- **The rights and best interests of children are primary**, and do not compete with the rights of same-sex and single parents or prospective parents.
- There is a **wide diversity** of legitimate family structures in Australian society, including same-sex and single-parented families.
- **Children have the right to equality under the law**, whatever the structure of their family, sexual orientation of their parents, or method of their conception.
- All children have the right to know and be cared for by their parents, as recognised by the UN Convention on the Rights of the Child (the Convention does not define nor gender the term 'parents'), and to have information about their biological origins.
- All children have the right to certainty about the legal status of their families, including parents, siblings, donors and extended family, and to **protection of their family relationships**.
- Equality under the law is an **important step towards greater social acceptance and equality**. Both are essential to the wellbeing of all children, including children of rainbow families.
- Equality of access to fertility services benefits both prospective parents and their children, in particular children's **right to information** about their biological origins.
- Creating family is a deeply-felt human need, regardless of sexual orientation. **Discriminatory laws do not stop people creating their families**. They simply make it harder, and undermine the rights of children living in those families.
- All children living in rainbow families should **enjoy the same legal protection for their family relationships as their siblings**, regardless of the time, place or method of their conception.

These principles arose from broad community consultations, including in response to interim recommendations of the current VLRC Enquiry into Assisted Reproductive Technology, Adoption and Surrogacy.

## RAINBOW FAMILY LAW REFORM INFORMATION PACK



# The rights and best interests of children

April 2007

## In Victoria, not all children are treated equally.

Discriminatory laws don't stop people from creating loving homes and families. They just undermine the rights of children living in those families. Here are ten reasons why law reform is needed to support the rights of children in rainbow families:

- 1 There is no legal protection of the relationship between children in rainbow families and their non-biological parents or siblings. Addressing this issue will protect children's family relationships if, for example, their biological parent dies.
- 2 Children cannot receive entitlements such as workplace or transport accident or crimes compensation, nor their non-biological parent's estate or superannuation.
- 3 Children's non-biological parents are not held to the same legal obligations as other parents, for example to provide for their care and basic needs, to ensure they attend school or to pay maintenance if the child no longer lives with them.
- 4 Children's non-biological parents cannot consent to school excursions, nor can they consent to emergency medical treatment, such as a blood transfusion, if their child is sick.
- 5 Children's non-biological parents cannot take action on behalf of their child, for example to make a complaint about discrimination or family violence.
- 6 Children's non-biological parents do not have the right to be consulted on proceedings concerning their child's care and welfare, nor to be present if their child is being questioned by police.
- 7 Lack of access to fertility services increases the health risks to prospective birth mothers and children

from the use of unscreened donations for home insemination.

- 8 Lack of access to fertility services forces some prospective parents to travel interstate or overseas, to jurisdictions that may not protect children's right to information about their biological origins.
- 9 Lack of consistency between state and federal laws put family stability in jeopardy, particularly in relation to the lack of clarity of the legal status of donors, and the privileging of biology over actual family relationships.
- 10 Thirty years of Australian and international scholarly research shows that children in rainbow families are in no way disadvantaged by their parents' gender or sexual identity. Their only disadvantage is social prejudice, which is reinforced and pandered to by discriminatory laws.

Family Court parenting orders can help with some of the issues listed, but represent nothing like full equality; they can be rescinded by the Court, they cover a limited range of practical issues, and do not carry the legal weight nor social recognition of legal parentage.

In his Occasional Paper prepared for the VLRC, John Tobin, legal expert on the *UN Convention on the Rights of the Child* found that:

***'Same-sex parenting is not contrary to the rights or best interests of the child and there is no legitimate basis on which to deny same-sex couples access to adoption or ART when this matter is viewed from the perspective of the rights of a child'***

and indeed that the failure of current laws to recognise both same-sex parents discriminates against children in several respects.

## RAINBOW FAMILY LAW REFORM INFORMATION SHEET



# Impacts of the current laws: case scenarios

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These case scenarios illustrate the impact of the current laws, as well as potential impacts of some of the VLRC's interim recommendations on parentage. They are based on a synthesis of the experiences and concerns of a number of families, with names and identifying details changed.

- 1. The non-birth/non-biological parent of a child cannot consent to medical treatment if a child is sick.**

Suzanne and Josie are having twins. Josie conceived the twins using sperm from an unknown donor. There are complications with the birth and both Josie and the babies need urgent medical treatment. Josie is unconscious and unable to consent to any treatment. Suzanne is Josie's next of kin under Victorian law because she is her domestic partner, so she can make medical decisions on Josie's behalf. However, Suzanne has no legal right to make medical decisions on behalf of the twins. Suzanne and Josie had planned to get parenting orders to cover this kind of practical issue as soon as they could but this was not possible before the twins were actually born.
- 2. Same-sex couples cannot adopt children.**

Kathy is 8. She suffers various physical and emotional disorders and has been cared for in various institutions and foster placements after her biological parents abandoned her. Kuang and Andy are currently providing foster care for Kathy and would like to adopt her. She has told the social worker at the foster care agency that she does not want to leave them ever again. It is possible that either Kuang or Andy might be able as to adopt Kathy as a sole parent but they cannot adopt her as a couple.
- 3. Children in rainbow families have no automatic legal relationship with their non-birth/non-biological parent or their siblings**

Louis is 5 and Roland is 2. They have two mothers, Angela and Maria, who have been together for 8 years. Angela conceived Louis through home insemination using sperm from Tom, a friend of both mothers. Maria conceived Roland using IVF through a clinic in Victoria, again using Tom's donated sperm. Tom is known to both the boys. Recently, Angela and Maria separated and Angela is denying Maria any role in Louis' life. The brothers have not seen each other for 6 months. Maria and Angela had not previously sought parenting orders because they did not think they would ever need them. Although Maria can now approach the Family Court for a parenting order, she is not recognised as Louis' parent and therefore the presumption of shared custody under federal law does not apply to her. If she had been recorded as a parent on Louis' birth certificate, that would provide a presumption that she is Louis' parent.

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**4. Children in rainbow families do not inherit from their non-birth/non-biological parent under intestacy laws.**

Hannah is the 16 year old daughter of Mitra and Deborah. Mitra was Hannah's birth mother. Mitra died last year, leaving only minor assets with a combined value of \$80,000. Under Victorian intestacy laws, Deborah inherited Mitra's assets. This year, Deborah died in a car accident. She had not made a will. Under Victorian intestacy laws, Deborah's estranged parents receive Deborah's entire estate, including inheriting Deborah's house, in which Hannah and Deborah were had been living. Had Deborah been recognised at law as Hannah's mother at law, then Hannah would have inherited the house. Victorian intestacy laws would have given Deborah's entire estate to Hannah, including the house.

**5. Children in rainbow families have no legal relationship with the extended families of their non-birth/non-biological parent.**

Miranda is 3 years old. Her fathers Henry and Carlo have been together for 13 years. Miranda was conceived using surrogacy in the United States. Henry is his biological father and Carlo has been her primary carer since birth. Henry and Carlo obtained a parenting order from the Family Court. Carlo's father, Pedro, was very involved in Miranda's life, in the same way as with his other grandchildren. Pedro died last month. In his will, he left his property to his grandchildren without identifying them by name. Miranda is not Pedro's grandchild at law and is not entitled to inherit under his will.

**6. Amendments that only apply to children born after law reform will discriminate between children.**

The recommendations of the Victorian Law Reform Commission in relation to gay and lesbian parenting are enacted into law in October 2007. Christine is the birth mother of Archie and Matilda, conceived using IVF. Archie was born in 2002 and his sister Matilda in 2008. Their donor is unknown. As a result of the law reform, Matilda is recognised as the child of both Christine and her partner Amanda, who are recorded as her parents on her birth certificate. In contrast, Archie, her older brother, does not have his two parents recorded on his birth certificate; only Christine is recorded as his parent.

**7. Amendments that only apply to children born through a clinic will discriminate between children.**

The recommendations of the Victorian Law Reform Commission in relation to gay and lesbian parenting are enacted into law in October 2007. Samia and Ching are a lesbian couple whose friend Terry has agreed to be their donor. Samia gives birth to Josh, conceived using home insemination with sperm donated by Terry, in November 2008. Samia's partner Ching has difficulty becoming pregnant, and seeks assistance from a clinic. She conceives using IVF with sperm donated by Terry and gives birth to Jasper in May 2009. As a result of the law reform, Jasper is recognised as the child of both Samia and Ching, who are recorded as his parents on his birth certificate. In contrast, Josh, his older brother, does not have his two parents recorded on his birth certificate; only Samia is recorded as his parent, simply because of the method of his conception.