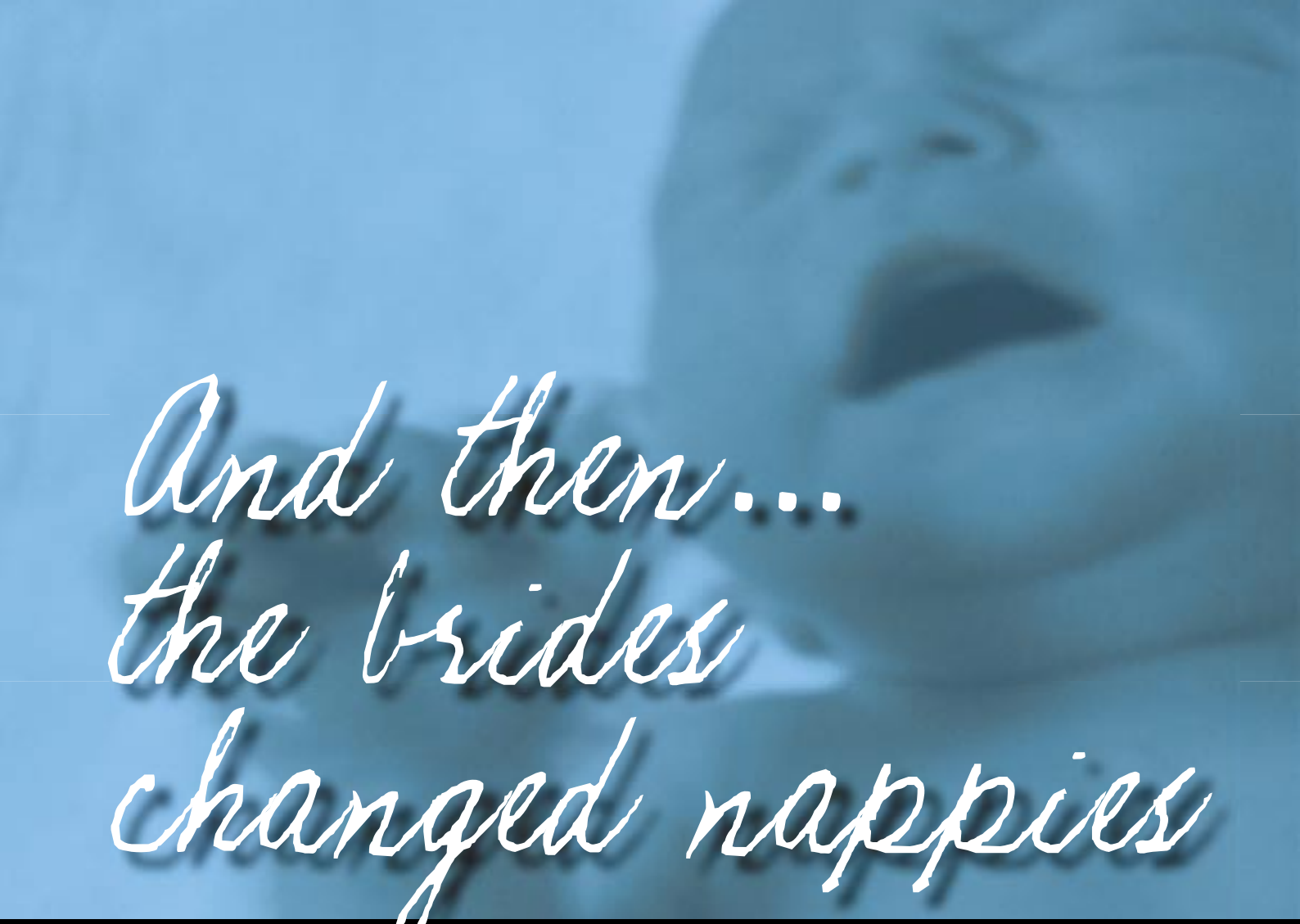

And then... the brides changed nappies

Lesbian mothers, gay fathers and the legal recognition of our relationships with the children we raise

A Community Law Reform Project

Final Report
April 2003

Gay & Lesbian Rights Lobby

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Published by the Gay and Lesbian Rights Lobby Inc (NSW), Sydney, 2003.

Printing by: Kwik Kopy Printing Centre Darling Harbour, 645 Harris Street, Ultimo NSW 2007.

With love and thanks to Hayley Katzen for her inspiration and help.

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ISBN 0-9580467-1-9

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Gay & Lesbian
Rights Lobby

Contents:

Nappies: Its origins and purpose

In 1993 the Lesbian and Gay Legal Rights Service, a project of the Gay and Lesbian Rights Lobby (GLRL) developed relationship recognition options for same-sex couples in *The Bride Wore Pink*. After a process of community consultation, a second edition of the *Bride* was developed in 1994. *Bride* became the basis for lobbying for law reform by the GLRL and others until laws recognising gay and lesbian relationships were passed in NSW in 1999. This second stage, *Nappies* is to take the law reform process further, from partnerships to parenting. Like *Bride* it takes the initiative on reform and aims to inform public policy debate about what we need and want.

In October of 2002 we released a discussion paper outlining some of the issues in the laws that regulate and (mostly do not) recognise our families. The discussion paper put forward pros and cons of various possibilities and recommended those we thought were the most practical.[1] The discussion paper was put up on the GLRL website and emailed in PDF form to community organisations, academics and lawyers. We also sent out over 100 paper copies to community legal centres, lesbian and gay community groups and social groups and to policy and social work organisations with interest in, or expertise in, lesbian and gay parenting issues. We included Sydney-based and NSW regional organisations in this mail-out. Copies of the paper were distributed in person at health and human rights conferences and community events such as Mardi Gras Fair Day. We placed advertisements and ran stories in the *Sydney Star Observer* and *Lesbians on the Loose* to inform community members that this process was taking place.

This report includes much information from the discussion paper and incorporates the responses of parents, lawyers and policy workers who have responded to the paper, either in writing or through attending one of the six community consultations held by us in 2002/2003. We are also informed in this report by existing social science research on gay and lesbian family forms[2] as well as by the GLRL 2001 general community consultation on parenting issues.[3]

Our starting point is that parenting issues are more of an issue generally for women than men, as lesbians are more likely to be parents than gay men are, and more likely to be the full time residential caregivers to children when they are parents. Acknowledging women's primacy in parenting issues does not mean we devalue men's parenting relationships. We believe that the recommendations put forward in this paper work to achieve greater justice for both mothers and fathers.

While we did not specifically address the issues facing transgendered parents in the discussion paper, two transgendered lesbian women did respond to the paper and ask for transgendered needs to be considered. Our focus on flexible non-gender specific forms of recognition and on *functional parental relationships* rather than biological connection mean all of our recommendations are equally applicable to transgendered people as they are to lesbians and gay men.

[1] Copies of the discussion paper can be found at www.glrl.org.au
[2] Summarised in *Meet the Parents* (2002), available on the GLRL website at www.glrl.org.au
[3] The report on these consultations is available at www.glrl.org.au

In our proposals we aim to cover the broadest range of family forms with the least possible fuss. Our guiding principles are: simplicity, flexibility and accessibility. We want the law to reflect the lived experiences and real needs of members of our communities, and to do so without unnecessary delay, expense or aggravation.

This report includes final recommendations for changes to both state and federal law, and will form the basis of the GLRL's lobbying efforts until such changes occur in the future. We propose three major changes:

- automatic recognition of non-biological mothers in lesbian couples having babies through donor insemination,
- making adoption available to same-sex couples (including provisions tailored to suit couples already parenting together), and
- reforms to family law to allow for a simpler process to formalise issues of parental responsibility.

Eleven specific recommendations follow to give effect to these three major reforms. It is essential to note that the three reforms we propose are intended to work *together* to cover the unmet legal needs of lesbian and gay families. They are not alternatives to each other and we do not consider them to be severable from each other.

The process of consultation

From December 2002 through to February 2003 the GLRL held a series of community consultations to see whether there was any support within the community for the changes we suggest.

Consultations in inner Sydney in early December were attended by mothers, and another later that month in inner Sydney by prospective mothers. We also held a consultation in the Blue Mountains in December attended by mothers and also by community lawyers and policy workers. In January we held a specific consultation for men in inner Sydney, attended by fathers and prospective fathers. In February we held two regional consultations: the first in Newcastle was attended by mothers, fathers, prospective mothers and community lawyers, while the second in Lismore was attended by mothers and community lawyers. Parents who attended our consultations had children in a wide range of family forms: while the majority were lesbian couples who had children together through donor insemination (of whom around half had done so through anonymous donors and half with known donors), there were also a number of single or separated lesbian mothers who had children through donor insemination. Most men present were biological fathers to children born to lesbian mothers; some of these men were actively involved in parenting the children along with their male partner who was the "other Dad". A significant number of women and men who attended were foster carers to children, and there were also several parents who had children from previous heterosexual relationships.

While part of this report is concerned with putting in place dispute resolution mechanisms for "mum versus mum" and "mum versus donor or dad" disputes, it is important to note that the vast majority of parents who attended our consultations had harmonious and rewarding relationships with the other parents and adults involved in their child's life.

Several parents who attended suggested to prospective parents that they be aware of the importance of being very clear about their own and others' expectations in advance of getting pregnant. Participants were divided on whether a written agreement was important prior to conception, but many people asked for assistance from the GLRL in developing model agreements to work from and a check-list of factors to consider when negotiating roles prior to conception (such as what the parties will be called, where the child will live, who will name the child, who will make educational and medical decisions about the child, who will be at the birth). Parents also urged those contemplating parenthood to be prepared to change over time as relationships changed and the child's own wishes and views developed. As one father stated, "It's compromise, compromise, compromise and love and good will that make it work."

We are extremely grateful to everyone who came to these consultations to express their views, as well as to partner organisations who helped us to arrange and advertise these consultations - Rainbow Babies, the Leichhardt Women's Health Centre, Nepean Community Legal Centre, Blue Mountains Community Legal Centre, ACON Hunter, ACON Northern Rivers, Hunter Community Legal Centre and Northern Rivers Community Legal Centre. Thanks also to Penny Cooper, Somali Ghosh and Anthony Powell for facilitating the consultations, and to the Law and Justice Foundation of NSW for providing funding to make such community consultation possible.

Who is parenting and how

Parenting is a big issue in our communities. As more of us choose to have children outside traditional two parent heterosexual relationships, new family forms are appearing without the social or legal categories to recognise them.

We use the following terms to try to be clear about who is undertaking what roles and to differentiate between relationships which are legally recognised and those which are not.

While biological mothers are legal parents, biological fathers may not be. Biological fathers who have chosen to have children with lesbian mothers through donor insemination (DI) are not legal parents. Such men may undertake any number of roles across a spectrum of involvement, from meeting the child on a single or limited number of occasions, to regular contact, or an involved and active parent figure.

We acknowledge that many parents would not use such terms to describe their own relationships – for instance many lesbian couples who came to consultations reported that they thought of themselves, and both referred to themselves, as “mothers”, while many men who are biological fathers felt hurt or offended at terms such as “donor” or “donor-dad”. We use the following terms in this paper to make different social and legal roles clear in the course of our discussion. We are not recommending that these terms be used in legislation.

Mothers	Biological mothers
Co-mothers	Non-biological mothers who have jointly planned, conceived and raised a child with a female partner
Fathers	Biological fathers
Co-fathers	Non-biological fathers who are co-parenting a child from birth with a male partner who is the biological or adoptive father
Co-parents	Co-mothers and co-fathers who are parenting equally with a partner who is the biological or legal (eg adoptive) parent of the child.
Step-mothers, Step-fathers	Partners of a parent who has had a child in a previous relationship
Known donors	Biological fathers through donor insemination who know, but have little involvement with, a child they have helped create
Donor-dads	Biological fathers who have involvement, and regular contact, with their children

Yes, we know, it is confusing.

And baby makes three (or four, or five, or two)

While we cannot say with any certainty exactly how many lesbian and gay parents exist, how many co-parenting couples have separated, what proportion of lesbian mothers are sharing residence or parental responsibility of children with gay fathers, or how much contact gay fathers are having with children born through donor insemination, there are some clear trends that emerge from available information.

Unless otherwise noted, all statements about family forms and the division of labour are drawn from *Meet the Parents* (GLRL, 2002)[4] which draws together available research on lesbian and gay family forms from the UK, USA and Australia through the 1980s and 1990s. The studies relied upon can be examined there in much more detail.

Statements that were clearly borne out in our consultations are marked with a pink triangle (▼).

- Up to 10% of gay men and 20% of lesbians are parents.
- ▼ Up to half of these parents have had children in the context of a previous heterosexual relationship, but this proportion appears to be gradually declining.
- ▼ The vast majority of lesbian mothers now having babies are doing so through donor insemination.
- ▼ Most, but not all, lesbian parents are having children in a lesbian couple (about 85%).
- ▼ Lesbian couples who have more than one child together often exchange roles as biological mother and co-mother.
- ▼ Lesbian co-mothers share a large amount (but not quite half) of the child care and home responsibilities with mothers, and both co-mothers and mothers see themselves as “equal parents”.
- ▼ Many lesbian mothers having children through donor insemination do so with known donors (up to 50-70%).
- ▼ Most, but not all, known donors are gay men.
- ▼ Of the gay men who are known donors, between half to two thirds of them have some contact with the child.
- Of the donor-dads who have contact with the child, around half of them had regular contact (so up to 20-25% of children born to lesbian mothers have regular contact with their biological father).
- ▼ A small but significant portion of donor-dads acted as co-parents with regular contact and some degree of responsibility in the child’s life (this could be up to 10% of known donors).
- ▼ In virtually all families lesbian mothers are the “primary parents”, having residence of the child, giving primary care and exercising parental responsibility by making all important decisions about the child (where they live, go to school, medical care etc).
- ▼ Contact with children appears to be a major issue facing gay fathers.[5]

[4] Available at www.glrl.org.au

[5] Contact was the major issue raised by gay fathers in the 2001 GLRL parenting consultations, predominantly concerning children from previous heterosexual relationships. This was also true of gay fathers in the data drawn from the non-identified files of gay and lesbian clients who obtained free legal advice from the Lesbian and Gay Legal Rights Service over a 5 year period from 1995-2000.

- Disputes between separating mothers and co-mothers over issues of residence, contact and child support appear to be more common than disputes between mothers and donor-dads over contact.[6]
- Lesbian parents who have been surveyed are almost universally in favour of equal legal recognition being afforded to co-mothers and mothers.

- Lesbian parents are divided on whether there should be some limited legal recognition of known donors, or none at all.

- Donor-dads want some legal recognition that varies in form and process according to individual circumstances.

[6] Mother versus co-mother disputes outnumbered mother versus donor-dad disputes 3:1 in the advice files noted above.

How the laws affect our lives

The laws governing parent-child relationships may be state or federal, or a combination of the two.[7] Because our starting point is what our families need and what our communities want, this report covers both NSW and federal laws when they impact on us.

Pre-baby laws

The legal environment may limit who has children and how, through discriminatory provisions that restrict access to adoption and to fertility services. In our earlier discussion paper we focused only upon legal recognition once children were born. Yet in consultations a number of people raised serious issues relating to the law *before* they were able to have children, and many reported that discriminatory laws forced them to form their family in a way they would not have chosen.

While no women reported being turned away from fertility services, many stated that access was very much on a "Don't ask, don't tell" basis. Even where two women were attending services together staff would often simply pretend that they were not a couple, although they would also not inquire about a male partner so were clearly aware that they were providing a service to lesbians. Other women reported very positive experiences with clinics.

A major issue reported by women was that when they wanted to access anonymous donor sperm they were told that they could only choose from donors who had consented to "unmarried" women being the recipients. This practice appears to be fairly common in private fertility clinics. In one instance this meant a choice of two donors, while the available donors for married (or de facto heterosexual) couples included over 100 donors. The couple in that instance raised the very real concern that every lesbian in their local community would end up having children with the same biological father; they chose instead to have a child with a known donor, although this had not been their preference. This practice may be unlawfully discriminatory and should be brought to an end.

Gay men are even more overtly discriminated against by fertility services. Regulations under the *Human Tissue Act* 1983 (NSW) require all sperm donors (as well as blood donors) to fill in a declaration which asks, among other things, about male-male sexual activity.[8] Some gay men reported that they had been turned away from donating semen as a result. Such measures are due to restrictions put in place at the outset of the HIV/AIDS epidemic in the early 1980s. Advances in testing for HIV and other communicable diseases render these restrictions unnecessary and discriminatory today. Other gay men who were intending to make a donation for a known lesbian woman or couple who accompanied them, reported that they were accepted but put through lengthy testing procedures. This involved the man undergoing HIV testing, a wait of 6 months and re-testing, in addition to the standard testing and storage of the semen itself. While this was clearly motivated by health concerns, such a practice is

[7] For instance the definition of a parent under the *Family Law Act* 1975 (Cth) relies in part upon definitions from state law.
[8] *See Human Tissue Regulation* 2000 Part 6, Schedule 2, in force under the *Human Tissue Act* 1983 (NSW).

also unacceptable because the declarations required of donors under the Act expressly do not apply when the recipient is the wife or de facto partner of the man donating. This is presumably on the basis that she is able to make an informed decision as to the risks posed by using his semen, and the same standard should be applicable to women who are not in a sexual relationship with a donor but are choosing to have a baby with him. Lengthy testing procedures should be available as an informed choice rather than mandated as a coerced one.

In light of the current federal government's entrenched opposition to non-discriminatory access to fertility services on the basis that heterosexual families are "ideal", it is notable that no one reported that discrimination in such services actually prevented them from going ahead and fulfilling their desire to have a child.

1	**Recommendation 1**
	Amend the regulations under the *Human Tissue Act* 1983 (NSW) so that gay men are treated equally with all other sperm donors, including when they are donating to a known woman.

It is also important to note that adoption is not currently available to lesbian and gay couples in NSW. Adoption transfers all of the legal rights and responsibilities of a parent onto a person who is not the biological parent of a child. Adoption is premised on the basis that all children can only have two parents, so adoption orders sever the legal relationship with one or both of the biological parents in order to award it to the adoptive parent/s. While a lesbian or gay man can adopt a child as a "single" person, a same sex couple cannot jointly adopt an unrelated child.

Several couples who attended consultations were involved in fostering children, some of whom had lived with them for many years. There is a desperate lack of foster carers in NSW and many agencies, including ones with religious affiliations, now actively recruit carers from the lesbian and gay communities in NSW. These carers, unlike heterosexual couples in the same situation, are unable to apply to adopt the child or children they are raising. This situation is not in the best interests of either foster children or their long term carers, who are prevented from obtaining formal recognition of their parent-child relationship with the added sense of stability and security that it would bring.

Where one partner has a biological child, same sex couples are also prevented from using adoption to give legal recognition to the non-biological parent. Adoption laws currently include a provision which allows step-parents to apply to adopt their partner's child, but this is framed to only include heterosexual couples. (These provisions would not be adequate for lesbian co-mother families in any case, as will be discussed below.)

Post-baby law

Who is a parent?

Having a baby through donor insemination has very different legal consequences compared to having a baby through intercourse. While a baby from intercourse has two legal, as well as biological, parents, donor insemination severs the legal relationship with the biological father. NSW law deems the consenting husband or male de-facto partner of a woman who has a child by donor insemination (DI) to be the child's father for all legal purposes. Where there is no male de-facto partner, children born through donor insemination have only one legal parent, their mother. So in heterosexual families where children are born through DI the child has two legal parents, while in lesbian families they have only one. In neither case is the biological father recognised as a legal parent: this is so whether he is a known or anonymous donor or whether he is or is not listed on the child's birth certificate.

With very few exceptions, a co-mother does not have a legally recognised relationship with her child under NSW or federal law.

Why it matters

Legal recognition of our relationships with the children we love and raise will matter at different times and for different purposes. It may, for example, affect who is entitled to receive child support from whom if the parents' relationships break down, or whether a child will automatically inherit property or superannuation from a parent at their death. Areas we have identified as important are:

- Inheritance
- Child support
- Contact and residence
- Parental authority – eg over schools, medical care etc

So, for example, if a co-father dies, his child will not automatically inherit from his estate if he has not left a will. If a lesbian couple separates, there are only very limited and expensive options for the mother to pursue the co-mother for child support. A co-parent may not be accepted by schools or doctors as authorised to make decisions about their child. Some laws only cover (and are only relevant to) children up to the age of 18, such as laws about contact and residence or child support. Other laws cover parent-child relationships with no age limit, such as inheritance law.

Contact and Residence

Contact between donor-dads and children was an area of significant concern for both mothers and biological fathers. One written submission from a researcher stated that in her experience, "Promises are not always delivered, especially between virtual strangers. The content of 'father involvement' may be poorly understood and poorly negotiated". The submission went on to note that:

> "A biological mother and biological father who are not negotiating reproduction in the context of an existing friendship may bring a great deal of fear and/or mistrust to the negotiations. The most prevalent fear expressed by lesbians was that the sperm donor would want to become 'Father of the Year'. This could mean either attempt to get residence of the child or usurp the non-biological mother as

the other parent or both. The most prevalent fear among gay men was that the lesbians just wanted to 'take the sperm and run'."

It is important to remember that issues such as *contact* with children, *responsibility* for children (including financial responsibility) and *authority* over children can all be distinct, and some may be more relevant to certain relationships than others.

Being legally recognised as a parent gives rise to the *presumption that parents are jointly responsible* for a child under the *Family Law Act* (Cth). But it is important to note that legal recognition is only a baseline and does **not necessarily** determine residence and contact disputes about children under the *Family Law Act*. Also note that the *Family Law Act* **can be used by any person** who has an interest in a child's well-being; they do not need to have a biological or legal relationship with the child. In Family Law, therefore, being a legal parent gives rise to a presumption that you have responsibility for a child and provide residence for them, and it may give an advantage in times of dispute, but it does not in and of itself conclusively determine where children live or who they have contact with.

Many people who attended the consultations were unaware that they were able to use the Court, regardless of their lack of biological or legal relationship with the child. So, for example one donor-dad said he "hadn't a leg to stand on" if the mother and co-mother denied him access to the child, because he thought that a lack of legal status as a father meant that he was unable to apply for contact through the Court. Likewise many co-mothers assumed that because they had no legal or biological relationship with the child they would not be entitled to use the Court to resolve a dispute with the mother if they separated.

11	**Recommendation 11**
	Government support for a concerted public education campaign to ensure that lesbian and gay families are aware of their new rights and responsibilities. A surprising number of parents who attended our consultations were still unaware that their partnerships had been granted legal recognition in NSW law in 1999.

Of those parents who were aware that they could use the Court, several parents still expressed considerable apprehension about how the Court would deal with lesbian and gay families.

There is a clear need to provide greater certainty for lesbian and gay parents having children together, as well as more accessible and user-friendly dispute resolution mechanisms if and when conflict arises.

Birth Certificates

In our consultations we found widespread misapprehension about the legal role of birth certificates. Many participants mistakenly believed that if a man is named on the birth certificate as a father then he is conclusively a legal father to the child. This is not so.

Birth certificates give rise to a legal *presumption* of paternity, but this can be *rebutted* by other evidence. If the man listed on the birth certificate did not have sex with the mother but instead contributed his semen through donor insemination a simple statutory declaration from both parties saying that this is so is enough to rebut the presumption that would ordinarily flow from the birth certificate. However, rebutting the

presumption involves having to go through the process of producing evidence and can be very invasive and unpleasant (and may, indeed, have to be produced many times for different official purposes, such as Centrelink payments, passports, etc). Therefore many women choose not to list the biological father on the birth certificate because it is much simpler not to.

A number of women stated that they felt unhappy leaving the biological father off the birth certificate, as they wanted the child to know his or her heritage and felt that the birth certificate had enormous symbolic and emotional importance to a child's sense of identity. Several men also expressed this view. The parents who expressed these views did not want legal consequences to follow from the naming of the biological father on the certificate, but equally they felt that a certificate of birth which excluded the biological father (through stating that he was "unknown") was a lie.

We have formed the view that it ought to be possible to list known donors on birth certificates without any legal presumption arising. This change would acknowledge biological paternity and would not have any legal effect. There is an increasing trend in Australia and elsewhere towards openness in providing children with information about their biological heritage in situations such as adoption and donor insemination. There have been moves to provide access to information about unknown donors and to relinquishing parents once children reach adulthood. Our recommendation is congruent with these general changes towards openness regarding information on their biological heritage.

Mothers and co-mothers reported that they wanted co-mothers to be listed on the child's birth certificate. Later in this report we make recommendations about automatic recognition of co-mothers from birth that would also allow them to be listed on the birth certificate, as they are now in Western Australia.

We recommend that the biological mother and co-mother both be listed as legal parents on the birth certificate by making the parents non-gender specific (as WA has done, with a certificate that has parent 1 and parent 2). In this situation, the co-mothers would be treated equally with men whose de facto partner have a child through donor insemination.

A new space would be included that could list other important people. At present there is a space for the "informer" (usually the doctor or another person present at the birth) – this space could be made generic and the biological father listed there without any legal effect. Such a change requires a simple amendment to the *Births, Deaths and Marriages Registration Regulations* 2001 (NSW).

3	**Recommendation 3**
	Amend the Births Deaths and Marriages Regulations 2001 (NSW) so that co-mothers of DI children can be listed as the second parent on birth certificates.

4	**Recommendation 4**
	Amend the Births Deaths and Marriages Regulations 2001 (NSW) so that biological fathers of children born through donor insemination can be named on the birth certificate. This change would not raise any legal presumptions.

Current recognition avenues

Existing recognition options are very limited. They are confined to parenting orders under federal law, and a few limited instances of functional parent presumptions under state law. These are explained below.

Parenting orders by consent from the Family Court

Under the *Family Law Act* (Cth) parenting orders can be made regardless of the biological or legal relationship between the parties or between the parties and the child. A mother and co-mother can jointly apply for *parenting orders by consent* covering issues such as residence and contact as well as other specific issues. If there is no legal father, or if there is and he consents, this is a fairly simple process and it has been used on numerous occasions to confirm that the child legally resides with the co-mother as well as confirming her authority to make medical and educational decisions about the child.

Consent orders could also cover involved donor-dads. Such orders could set out what contact the donor-dad is to have with the child, or establish that residence is to be shared between the donor-dad and the mothers.

The advantages of this process are that it is relatively simple, offers flexible coverage of issues so can be tailored to each family's needs, could cover more than two adults (so could cover multi-parent families) and can be used by co-parents as well as step-parents. Such orders can be sought through Local Courts (Family List) as well as the Family Court. As more Magistrates and Judicial Registrars become familiar with them, such orders are becoming simpler to achieve, and in general cost less than $1000.

However, this process requires proving to the court that your family form is in 'the child's best interests' – for heterosexual families this is assumed – and while several people in our consultations reported positive experiences with the Court, much will depend upon the Court personnel on the day. Not all registries will be as familiar with the issues or as comfortable with making orders as the few that are now well-practiced in the area. Particularly for parents outside of major cities, being the first applicant to seek orders could mean having a lot of explaining to do, and possibly result in expense and delay.

Furthermore, like all *opt-in* mechanisms, it does not help families where parents have not successfully completed this process. Even at its simplest it requires money, access to lawyers and a lot of effort, including coming out to a court.

Another major drawback of this process is that it does not make someone a parent for all legal purposes in the way adoption does. These orders only cover a limited range of laws and do not necessarily affect the definition of "parent" and "child" under other laws (eg they do not affect inheritance) and only cover children up to the age of 18, whereupon the effect of the orders lapse.

Limited functional parent presumption

In a few areas of NSW law, such as worker's compensation, a person who is living with a child and acts "in loco parentis" (or "in the place of a parent") even though they are not a biological parent, has that relationship recognised for a specific purpose. So if a 'functional parent' were to die in a work-related injury, the child would be entitled to compensation even though they were not biologically or legally related.

The few laws that include these provisions are very helpful because they are *presumptive*, so can simply be used when needed, and don't require any opt-in process. They are also flexible: they can cover co-parents or step-parents, and can reflect changes over time if different adults take on a parenting role with the child. However, these laws are very limited in effect, as there are relatively few of them in NSW and they are limited to particular areas. For instance such laws do cover worker's compensation but do not cover inheritance or accident compensation. They generally would only operate when the parent and child were living together and the child was under 18, and in operation may lead to difficult problems of proof for people who need to establish their relationship. As a result of these uncertainties in coverage and operation, we do not support pursuing this option as a method of widespread recognition.

In the following section of this report we outline our general approach to legal recognition. We then detail the pros and cons of three major proposals and outline how community members have responded to the proposals and why we support them. Specific recommendations follow each proposal.

Reform: How and why

Two overarching issues that run through reform possibilities are:

1. **Who should be covered?** Should we assume that the law will only cover two legal parents, or try to extend legal recognition to multi-parent families?

2. **How should that coverage occur?** Should it be automatic or require people to take formal steps?

Who

Our general approach is that wherever possible the broadest range of our parenting relationships should be recognised. Legal recognition is in children's, as well as their parents', best interests, as it reflects and protects their relationship of emotional and financial dependence. We emphasise relationships of care and dependence and do not prioritise biology.

Co-parents who raise a child from birth are in the position of most immediate need, as they have no legal relationship with their child in almost every area and are those most likely to suffer disadvantage without it. Co-parents should be legally recognised as the equal parents they really are in fact. We support the full legal recognition of all co-parents as an urgent priority.

Other people whose roles are more varied and are more likely to evolve with time, such as step-parents and donor-dads, should also have their relationships recognised. These relationships are more varied and need a greater variety of recognition options in order to suit each different family circumstance.

How

We propose change that is simple, flexible and achievable. Where possible, we suggest extending and modifying existing legal regimes. So, for example, we do not start by completely rewriting family law, but where current laws do not "fit" our families, we suggest new models.

We suggest a mix of automatic recognition and measures that require formal steps, in order to be flexible and yet simple. *Presumption based laws*, such as the current partnership recognition laws in NSW, apply *automatically* after you have met certain criteria (eg living together in a committed couple relationship) and you do not need to do anything to formalise your relationship status. With many of these laws, you can *opt-out* if you wish. *Opt-in* recognition works on the basis that you must take active steps to register a relationship or to formalise it.

Co-mothers are parenting from birth in partnership with mothers. We believe that legal recognition, like that for heterosexual couples who have children through donor insemination, should be *presumptive* from birth. This is a formal equality approach; simply extending existing laws to equally cover co-mothers who are similarly situated to male partners. This presumption is justified on the basis that co-mothers are fully involved and equal parents with mothers. It also means that where there are two or more children in a lesbian family (where commonly each woman may be the biological

mother of different children) these children are given legal recognition as siblings. We include a simple *opt-out* provision for the partners of mothers who do not want to be legal parents.

We need to be able to accommodate many biological fathers who have no legal relationship, but a varied spectrum of social relationships, with their child, as well as other parent figures who may not have any biological connection to the child (such as the biological father's partner). The law should also recognise other parent figures, such as step-parents, as lesbian and gay families separate and re-form. The range of parent figures whose roles may differ or evolve with time requires a more flexible range of options that can reflect the differences in their relationships. Recognition of these varied relationships therefore needs to be *opt-in*.

Biological fathers who have children as a known donor to a lesbian couple may have no relationship with the child; a loose friendly relationship with the child with occasional contact; a close relationship with regular contact; or may indeed be an equal parent with the mothers, sharing residence and parental responsibility. There is no one-size-fits-all for biological fathers and we are opposed to the imposition of one through the automatic ascription of legal status to all known donors – many of whom never planned to be, or were intended by the mothers to be, legal or social parents.

In our consultations we found that a minority of mothers and some fathers wanted the biological father in families formed through donor insemination to have legal recognition, but all were unanimous in agreeing that they wanted a form of recognition that was tailored to their individual family form and *opt-in*. In the fathers-only consultation there was strong agreement on this point. One father responded that while automatic recognition would suit his family situation, he was aware that of gay and lesbian DI families, those with equally involved dads were a small minority and added that, "It would be wrong to impose fathers onto all lesbian families." It was also noted that automatic recognition of a biological father did nothing to assist a father's partner, where the two of them were equally parenting with a lesbian couple.

Non-biological co-fathers in father-led families are not in the same situation as co-mothers in lesbian mother-led families because they are not having children with a partner through donor insemination – so current presumptive laws could not be extended to them. We support recognition of co-fathers to the fullest extent possible, depending upon how the relationship has come about. For example, where the child is adopted or fostered, co-fathers should be recognised through the availability of joint adoption. Where two gay men have entered into a family with a lesbian couple, the non-biological father may have an equally important role in the child's life to that of the biological father. Multi-parent adoption provisions could cover this situation, or more limited recognition could be afforded through reform proposal *3: A Simple Status Quo through the Family Court*. These proposals were strongly supported by fathers in our consultations.

The three proposals we support

There are many different legal avenues that could be pursued to obtain parenting recognition. Below we list the three we support and note their advantages and disadvantages. We explain why we support them, how we see them operating and what responses we have received through our consultation process.

1. A deeming provision from birth

As noted earlier, NSW law deems the consenting male de-facto partner of a woman who has a baby by donor insemination to be a legal father for all legal purposes. Currently, this does not cover same sex couples, so babies born through DI in lesbian couples have only one legal parent.

If this law were made gender-neutral, a consenting lesbian co-mother would be a full parent from birth across a wide range of laws. Western Australia introduced such a provision in 2002. This would have the same effect as adoption for co-mothers, but would be far cheaper and easier to use.

Pros

- covers all NSW laws at once
- may cover some federal law also (where the meaning of "parent" is anchored in NSW law)
- extremely simple
- *presumptive* rather than *opt-in*, it applies automatically from birth, so does not require money, lawyers etc
- a female partner can refuse consent and so *opt-out* – if she does not want to be a legal parent she can refuse consent
- formalises the equal responsibility that lesbian parents have for the care of their children in most lesbian-led families
- uses a simple "formal equality" approach, placing female partners in the same position as male partners in couples where children are born through DI
- is life-long, does not cease when the child turns 18
- if Western Australia can do it, so can we!

Cons

- currently such a law only covers children born after it has been introduced, so may not help all families with children already
- also does not cover children born through means other than DI
- does not cover most federal law (eg child support)
- would probably not cover children born outside of NSW if they later moved to NSW

All of the mothers, co-mothers and mothers-to-be we consulted responded with universal support to the proposal of a simple comprehensive presumption-based deeming provision for co-mothers. They felt that this reform would be an accurate reflection of what they intended when they became parents and what their lived

experience of parenting truly was. Lawyers and policy workers also supported this option because of its simplicity, equity and breadth of coverage. It is notable that no fathers who attended consultations objected to this proposal.

Only one written submission objected to this proposal because it rested upon a continuance of the legal assumption that biological fathers through donor insemination are not legal fathers. The author was concerned that in her experience there are some families formed between lesbians and gay men where it is not made clear that the biological father's contribution is to be a "Donation". In this context, she was of the view that legal recognition of the co-mother in lesbian-led families with a known donor could lead to increased marginalisation of biological fathers and to conflict with donor-dads who wanted to be involved with their children. The author argued that "Co resident lesbian couples who become the child's legal parents could have little inducement to extend even minimal contact to biological fathers who were not friends before the reproductive negotiations occurred."

These arguments are important and need to be addressed. We do not agree with the conclusions drawn for a number of reasons. Firstly, the objection relates only to lesbian-led families where there are known and involved donors. Many lesbian mothers have children through anonymous DI or with known but happily uninvolved donors. Opposing the recommendation prevents reform for all lesbian families with children from donor insemination.

We agree that mothers and fathers need more certainty when extended family forms are contemplated, and we make proposals in this report to achieve this. We do not accept that opposing this proposal achieves this aim. It is clear that conflicts have arisen between mothers and biological fathers over contact with children. As the author of the submission notes, "Co-resident lesbian couples have considerable power to prevent biological fathers from having the opportunity to develop relationships with infant children". This is true whether or not the co-mother's relationship is legally recognized. Conflicts have arisen to date even though the co-mother has no legal relationship with the child. A lack of legal recognition with the child does nothing to contribute to a harmonious relationship between the parents.

Indeed our position is the reverse of that posed in the submission: we believe that a lack of legal recognition of the co-mother's relationship with the child does much to generate uncertainty and defensiveness and contributes to the likelihood of conflict with the biological father. This is because if the co-mother feels that her own role is undervalued or marginalized she is more likely to be threatened by a biological father who asserts the importance of his role as "the dad". Likewise both mother and co-mother are more likely to object to regular or increasing contact between the biological father and the child if they think that this undermines them as a family unit or decreases the likelihood that the Court would see them as a complete family unit. Based on our consultations and research we are of the view that recognition of co-mothers from birth will encourage certainty and decrease the likelihood of conflict with biological fathers.

Further, we are of the view that co-mother recognition decreases the likelihood of mother versus mother conflict over residence and contact if the mothers' relationship with each other breaks down. One lawyer reported she had sought consent orders through the Family Court (discussed above) for 50 or 60 lesbian families over the years of her practice. The lawyer reported that of all the family law disputes she had handled between mothers, none of them had taken any steps to formalise the co-mother's relationship with the child through consent orders. This is consistent with American

research which found that where co-mothers had legal recognition (through second parent adoption in several US states) the co-mother was far more likely to have an on-going relationship with the child (including residence of the child) after the mothers had separated.

In addition, when many mothers are sharing the roles of biological mother and co-mother as they have two or more children, it is important that children's relationships with their siblings be legally recognised. Our proposal achieves this aim.

Procedure and coverage

In 2002 Western Australia introduced a law like this and made the operation of their amendments retrospective – that is they applied it to all lesbian families who had children before the laws were changed. They did not require any steps to be taken by the mothers for the law to have effect. Western Australia also introduced a simple process for the changing of birth certificates to include the non-biological mother so that in addition the co-mother of children already born could opt-in to the birth certificate.

A major issue with our reform proposal is whether it should cover babies born before it passed. If it were introduced *prospectively*, it would only cover babies born after the date it was introduced, and so would not cover the many children already in existence. By contrast if it were changed *retrospectively*, it could potentially cover women who never intended to be equal parents when their partner had a child through donor insemination. This would mean a very major change in the law for co-mothers without time for families to adjust their expectations or plans. Because this law is *presumptive*, it could also cover many families who remained unaware that the law had indeed changed.

While there is a danger of retrospective coverage including too many women (eg women who agreed to their partner having a baby but never intended to be equal parents or to take on parental responsibility) we are of the view that there is a much greater danger of prospective reform covering too few women. There are a great many lesbian families already in existence who need and want maximum legal coverage of their parenting relationships. All of the mothers in our consultations wanted such a change for their families, and all of the research data on lesbian families indicates that the vast majority are comprised of equal parents.

We have come to the view that this reform should be *retrospective* in operation but only if the mothers are still living together as couple and the child is under 18. This would allow for the simplest and broadest coverage without covering women who may have ceased to relate to the child as a parent, for example if they separated several years earlier. Women who were still cohabiting with minor children but did not want to be covered as parents could *opt-out* by a simple statutory declaration that they did not consent to being a parent when their partner conceived.

	Recommendation 2
2	Change the *Status of Children Act* 1996 (NSW) to make the definition of de-facto partner gender neutral. This will deem consenting co-mothers of DI babies born to lesbian couples as parents in all NSW laws. This would apply retrospectively to all lesbian couples who were still cohabiting and are jointly parenting resident children born to them as a couple through DI where those children are still under the age of 18 at the time the amendments came into effect.

2. Adoption

Adoption transfers all of the legal rights and responsibilities of parentage onto a person who is not the biological parent of a child. This is done through an order of the NSW Supreme Court for most adoptions, or the Family Court if it is a step-parent adoption. Adoption is a comparatively expensive, formal and complex process.

NSW adoption law prevents a lesbian or gay co-parent or step-parent formalising their relationship with a child they are raising with the biological parent.

Step-parent adoption

Step-parent adoption creates a legal relationship between the child and the step-parent. Step-parent adoption provisions assume that there are two biological/legal parents to start with. An order of adoption severs the relationship of one biological parent and awards it to the step-parent. Because of the effect on the parent whose relationship is severed, there is a presumption in the law against such an order.

These provisions do not currently cover same sex relationships. If extended to same sex couples, they could be used by lesbian and gay step-parents.

Pros

- covers all NSW laws
- may cover federal law also (where the meaning of parent is anchored in NSW law)
- can reflect changing family forms, after relationship breakdown
- has symbolic importance as family recognition
- uses a formal equality approach treating homosexual and heterosexual parent figures in the same way
- is life-long, does not cease when the child turns 18

Cons

- not a simple process
- is opt-in, so requires money, lawyers, effort. Will not cover the many people who do not use it
- is not flexible in that it only recognises two parents, and involves severing the relationship of the other biological parent (eg a former husband or wife)
- is unlikely to be approved where the other biological parent opposes it
- is really not appropriate when homosexual parent figures are not in the same situation as heterosexuals, i.e. they are in fact co-parents rather than step-parents (discussed below)
- may not cover all federal law (eg child support)

5	**Recommendation 5**
	Change the *Adoption Act* 2000 (NSW) to make the definition of de-facto partner gender neutral. This will allow gay and lesbian parents to use the current step-parent adoption provisions when they are actually in the position of step-parents.

Co-parent adoption

Step-parent provisions are not adequate to deal with co-parent relationships. These two situations need to be dealt with differently as they reflect very different relationships and needs.

Where there is only one legal parent to begin with – e.g. two lesbian mothers who have had a child together through donor insemination – and the co-parent has been present in the child's life since birth as an equal parent, they should not be treated as a step-parent because they are not, in fact a step-parent. Heterosexual co-parents from birth are already deemed to be parents for all legal purposes. While Proposal 1, (above) would deem the mothers of a baby born in NSW to both be legal parents, there would still be some mothers who were not covered – for instance if their child was born in another jurisdiction (interstate or overseas).

We support an additional adoption provision for co-parent adoption where there is either only one legal parent or consent from two legal parents. This provision should have a presumption in favour of such an order, or at the very least no presumption against it.

Pros

- covers all NSW laws
- may cover federal law also (where the meaning of parent is anchored in NSW law)
- if there is a presumption in favour, it would be relatively simple to use
- has symbolic importance as family recognition
- is life-long, does not cease when the child turns 18
- could cover children not covered by Proposal 1, for example if they were born outside NSW

Cons

- is opt-in, so it requires money, lawyers, effort and will not cover the many people who do not use it
- is not flexible in that it only recognises two parents
- may not cover all federal laws (eg child support)

This proposal received universal support in our consultations.

6	**Recommendation 6**
	Change the *Adoption Act* 2000 (NSW) to include a new provision for co-parent adoption. This will allow gay and lesbian co-parents to adopt with a presumption in favour of adoption where there exists only one legal parent or there is a second legal parent who is consenting

Some parents were surprised to find that adoption orders currently only contemplate two legal parents, and several people supported changing adoption law to allow for three or four legal parents. Some submissions were concerned that lesbians and gay men should not "buy into" a heterocentric nuclear family model.

A multi-parent adoption model would work best for families where lesbian and gay couples are equally parenting together. In that instance, the provisions would operate with the consent of the mother (or mothers if the co-mother already had legal status by virtue of Proposal 1. Deeming Provision, discussed above) so that all co- parents became legal parents.

7	**Recommendation 7**
	Consider whether changes to the *Adoption Act* 2000 (NSW) to include a new provision for co-parent adoption could be drafted to permit co-parent adoption that granted legal status to more than two parents.

It follows that if co-parents are equal parents and are legally recognised across a broad range of areas in NSW law, following Proposals 1 & 2 (above), they should be equally liable for child support obligations along with legal/biological parents. The law in this area is unnecessarily confusing and complex. Currently, while a co-mother could pursue a mother for child support under federal child support legislation if she was the primary residential parent after the couple had separated, the opposite is not true and a mother cannot use the Act to seek support from a co-mother. Both mothers and co-mothers can seek support from each other under general law contract principles, or as part of a property dispute in the NSW Supreme Court under the *Property (Relationships) Act* 1984 (NSW) but this is an extremely costly and difficult process.

We support a simple administrative procedure to enable separated lesbian parents in NSW to seek financial support from each other for their children. Because child support is not usually a matter of state law, child support obligations do not flow automatically from other changes we propose, and so we include a specific recommendation addressing it.

8	**Recommendation 8**
	Change the *Child Support (Assessment) Act* 1989 (Cth) to include a definition of "parent" reflecting the reforms in this report. Alternately, introduce *child support legislation in NSW* using a definition of "parent" reflecting the reforms in this report. A NSW version would mirror the payment provisions of the federal *Child Support Act*, and would apply until federal law changed to include the new definitions. This could be administered through a NSW government agency or through an inexpensive body such as a low level tribunal or the Local Court.

3. A Simple Status Quo through the Family Court

Disputes about children may arise between mothers and co-mothers if their relationship breaks down; such disputes typically cover residence, contact, and child support. Disputes may also arise between mothers and donor-dads – these disputes are typically about contact.

As many lesbians are having children with gay donors, all members of these families are starting with some idea of how all the parties should occupy different parenting roles. Agreements may be spoken or written down. They may cover emotional issues as well as practical ones – eg what the parties will call each other, and themselves, to the child (and to the outside world), who will have residence and primary care of the child, who will bear the costs of child-raising and so on. As neither co-mothers nor donor-dads have a legal relationship with the child, these agreements are very important in structuring everyone's understanding of how the family will function, but they are not legally binding. They have no legal effect if a residence or contact dispute develops.

We do not propose that parenting agreements between mothers or between mothers and donors be made binding for two important reasons.

The first reason is that research on lesbian and gay families suggests that as children grow up, agreements are often varied as relationships change – frequently a donor-dad's contact with the child increases over time. A binding agreement is unable to accommodate future developments. So, for example, if a donor-dad had agreed to little or no contact, but over the next few years saw the child weekly, a dispute over contact could not be resolved by a parenting agreement which recorded the original view that he would not see the child.

Secondly, no parenting agreement of any kind can be binding on the Family Court. The Court must always make orders in the child's best interests, and any agreement or prior order can always be overturned on this basis. It would be impossible to argue for binding agreements when they fly in the face of the Family Law system's emphasis on the child's best interests.

However, we do support options through the *Family Law Act* to provide that the parents of a child can record a legal status quo through a court order that gives legal effect to their agreement. This provides a presumption for where the child lives, who they have contact with and who had parental responsibility over them. This can always be varied, but it provides a form of legal recognition and also gives a starting point if there is a later dispute between the parents. This avenue could be pursued by simplifying Parenting Orders by Consent, under the *Family Law Act* (discussed above) or amending the current provisions for Registrable Parenting Plans.

This proposal is most useful taken *in conjunction with Proposals 1 & 2* (above). It is not and cannot be an alternative to them. This is because while Family Court orders cover a range of areas of parental responsibility, they do not make someone a parent for all legal purposes in the way that the deeming provision or adoption does. As noted earlier, Family Court orders only cover a limited range of laws and do not necessarily affect the definition of "parent" and "child" under other laws (eg they do not affect inheritance) and only cover children up to the age of 18, whereupon the effect of the orders lapse.

Several mothers who attended consultations had gone through the existing process of obtaining parenting orders by consent from the Family Court (discussed above) to cover the co-mother. Some women reported that they were considering doing this but were intimidated by the process. Many of the mothers present had no idea this was even possible. No biological fathers had gone through parenting orders by consent to formalise their relationship with children being raised jointly with lesbian mothers.

Both mothers and fathers strongly supported this proposal as a way of achieving some certainty around parental responsibility for mothers and contact for biological fathers.

Registrable Parenting Plans

Since 1999 it has been possible for heterosexual parents to register a written agreement, known as a *parenting plan*, with the Family Court. A parenting plan can cover residence, contact, child support, or any other issue of parental responsibility. A registered plan has the same effect as an order of the Court, so it binds the parties unless it is revoked by consent or is varied by a later order of the Court. This is simpler and cheaper than Parenting Orders by Consent, but has basically the same legal effect. Currently, this option is not available to lesbian and gay families because it covers plans 'between the parents of a child' (although it can also include other people) and neither co-mothers nor biological fathers through donor insemination are 'parents' under the Act.

We support changes to the *Family Law Act* 1975 (Cth) to broaden the range of people who can register plans. Such plans provide some certainty to lesbian and gay families as they set a baseline to start from if there is later dispute.

Pros

- flexible, can be used to reflect whatever arrangement families come up with
- can accommodate multi-parent families
- can cover mother-co-mother agreements as well as mother-donor-dad agreements
- provide increased certainty on issues of contact, residence and other decision-making about children
- can cover child support agreements
- relatively simple process
- uses an existing legal avenue
- many families are drawing up agreements anyway
- the process of drawing up agreements helps to clarify expectations and may assist in avoiding disputes later

Cons

- requires *opt-in*, if registering requires money, lawyers, a process of drawing up
- does not automatically flow on to other areas of law – eg inheritance
- assumes that people know in advance what their family form will be
- registered plans cannot be varied by consent, only revoked, so can't be varied to accommodate changes as time goes on

A major disadvantage of this proposal is that it requires amendment to federal legislation at a time when the Federal Government has shown a marked hostility to lesbian and gay families. The Federal Government has, among other things, refused to include lesbian and gay de facto couples in the Family Court regime if the states

give over their powers on de facto couples (five states and territories currently cover same-sex couples in their laws).

For this reason it may be more feasible to pursue a simplified form of **Parenting Orders by Consent**.

Parenting Orders by Consent

The operation of these orders is discussed earlier in this paper in the section: **Current Recognition Avenues**. These orders have very much the same effect as Registrable Parenting Plans would, but at present they are somewhat more complex to achieve because they require parents to convince a Registrar or Magistrate that the orders are in the child's best interests. Some Court personnel are bewildered by the use of this process by two applicants (the mothers applying as a unit) rather than an applicant and a respondent (separating heterosexual parents) and are unclear on the correct procedures to follow: this can cause delay. Some Court personnel are also hesitant to grant orders if there is a known donor and he is not involved in proceedings. However, these difficulties could all be addressed through training and changes to administrative practice.

If this process were made simpler and more user-friendly through changes to administrative practice, the same end result as registered plans would be achieved *without* requiring legislative reform. In the present political climate this is a very significant advantage and would enable change to be effected quickly. This proposal is far more possible given the fact that the Family Court of Australia has undertaken many steps in recent years to make itself more accessible to unrepresented parties, including the launch of Do-it-yourself kits on the Court's website. If the Court were to undertake to simplify the process for consent orders, train key personnel around procedure and issues for lesbian and gay families, and tailor some of their help kits to suit the needs of our families, this recognition option would be much more accessible.

9	**Recommendation 9** Allow a simpler and less costly process for lesbian and gay parents to formalise their relationships with children by consent through the Family Court. This could be done through changes to the *Family Law Act* 1975 (Cth) to enable registration of parenting plans for lesbian and gay families. Alternately the same effect could be achieved through administrative changes within the Court to simplify the process for parenting orders by consent.
10	**Recommendation 10** Government support for a concerted court personnel education program. This is essential to ensure that such decision-makers are aware of, and sensitive to, the particular forms and needs of lesbian and gay families. It is essential that court personnel do not work from stereotypes or improper analogies drawn from heterosexual family forms. This program needs to cover: judges and counsellors in the Family Court of Australia and magistrates in the Federal Magistrates Courts and those in NSW Local Courts, hearing family matters, as well as judges and masters of the NSW Supreme Court hearing property and adoption matters. Consideration could also be given to instituting a gay and lesbian liaison officer in courts, as some other NSW government agencies have already done within departments.

We recommend:

1. Amend the regulations under the *Human Tissue Act* 1983 (NSW) so that gay men are treated equally with all other sperm donors, including when they are donating to a known woman.

2. Change the *Status of Children Act* 1996 (NSW) to make the definition of de-facto partner gender neutral. This will deem consenting co-mothers of DI babies born to lesbian couples as parents in all NSW laws. This would apply retrospectively to all lesbian couples who were still cohabiting and are jointly parenting resident children born to them as a couple through DI where those children are still under the age of 18 at the time the amendments came into effect.

3. Amend the *Births Deaths and Marriages Regulations* 2001 (NSW) so that co-mothers of DI children can be listed as the second parent on birth certificates.

4. Amend the *Births Deaths and Marriages Regulations* 2001 (NSW) so that biological fathers of children born through donor insemination can be named on the birth certificate. This change would not raise any legal presumptions.

5. Change the *Adoption Act* 2000 (NSW) to make the definition of de-facto partner gender neutral. This will allow gay and lesbian parents to use the current step-parent adoption provisions when they are actually in the position of step-parents.

6. Change the *Adoption Act* 2000 (NSW) to include a new provision for co-parent adoption. This will allow gay and lesbian co-parents to adopt with a presumption in favour of adoption where there exists only one legal parent or there is a second legal parent who is consenting.

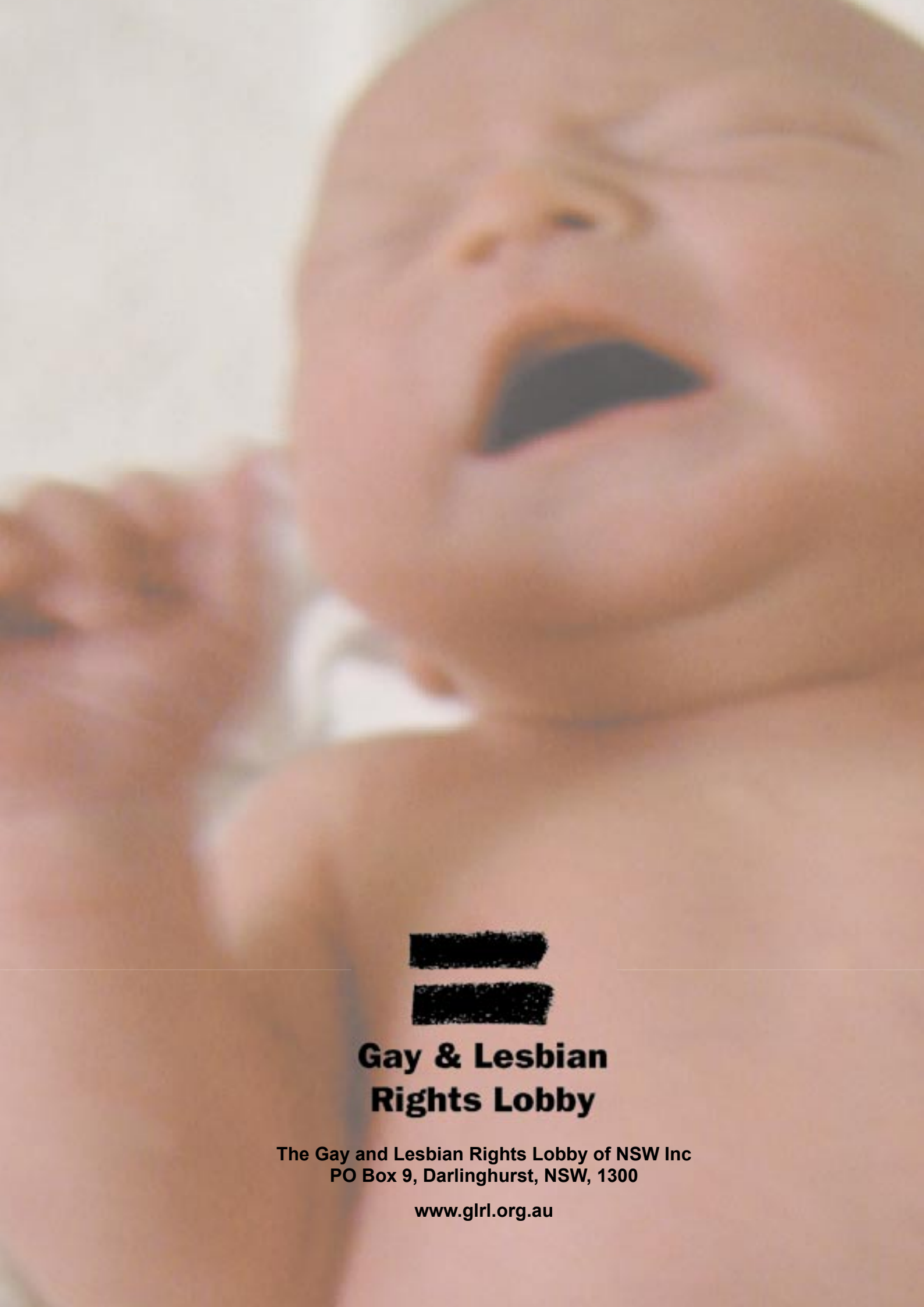
7. Consider whether changes to the *Adoption Act* 2000 (NSW) to include a new provision for co-parent adoption could be drafted to permit co-parent adoption that granted legal status to more than two parents.

8. Change the *Child Support (Assessment) Act* 1989 (Cth) to include a definition of "parent" reflecting the reforms above. Alternately, introduce *child support legislation* in NSW using a definition of "parent" that reflected the changes outlined above. A NSW version would mirror the payment provisions of the federal *Child Support Act*, and would apply until federal law changed to include the new definitions. This could be administered through a NSW government agency or through an inexpensive body such as a tribunal or Local Court.

9. Allow a simpler and less costly process for lesbian and gay parents to formalise their relationships with children by consent through the Family Court. This could be done through changes to the *Family Law Act* 1975 (Cth) to enable registration of parenting plans for lesbian and gay families. Alternately the same effect could be achieved through administrative changes within the Court to simplify the process for parenting orders by consent.

10. Government support for a concerted court personnel education program. This is essential to ensure that such decision-makers are aware of, and sensitive to, the particular forms and needs of lesbian and gay families. It is essential that court personnel do not work from stereotypes or improper analogies drawn from heterosexual family forms. This program needs to cover: judges and counsellors in the Family Court of Australia and magistrates in the Federal Magistrates Courts and those in NSW Local Courts, hearing family matters, as well as judges and masters of the NSW Supreme Court hearing property and adoption matters. Consideration could also be given to instituting a gay and lesbian liaison officer in courts, as some other NSW government agencies have already done within departments.

11. Government support for a concerted public education campaign to ensure that lesbian and gay families are aware of their new rights and responsibilities. A surprising number of parents who attended our consultations were still unaware that their partnerships had been granted legal recognition in NSW law in 1999.



Gay & Lesbian
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