



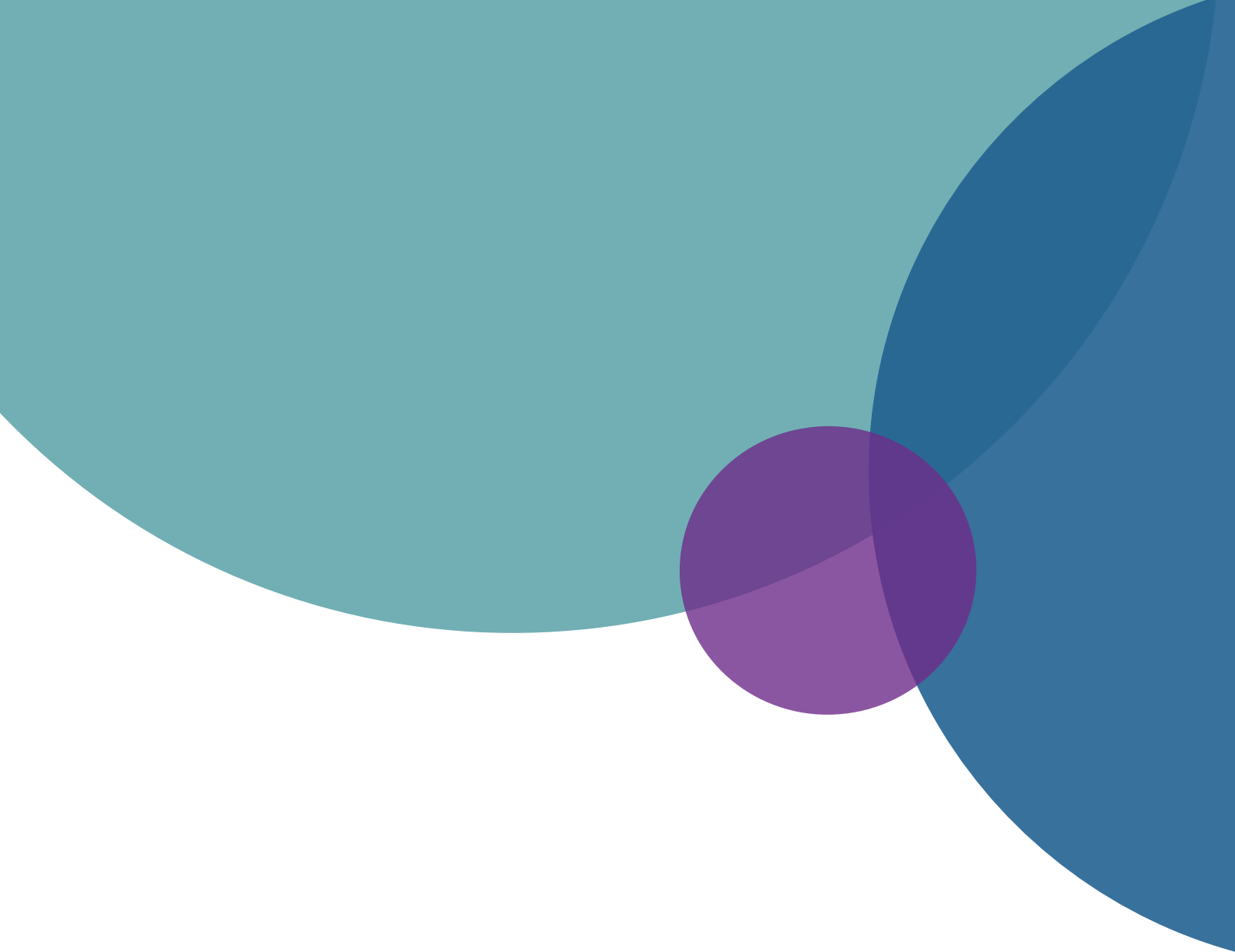
centre  
for better  
relationships

# Rainbow family formation and dissolution in Australia

A scoping review of the  
academic literature

**The Centre For Better Relationships**

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The Centre for Better  
Relationships is an initiative  
of Better Place Australia

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# About the Centre for Better Relationships

The Centre for Better Relationships is a dedicated research initiative of Better Place Australia created to conduct high quality, needs-driven research to support the work of the organisation, to improve client outcomes and contribute to best practice principles in the sector.

The Centre will strive to become a leader in the family and relationships field dedicated to improving the lives of people and their families through meaningful research, knowledge translation and dissemination of research to a wide range of audiences.

The Centre is committed to working in partnership with policy makers and non-government organisations to develop evidence-based policy and practice responses.

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## Researchers

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Paula has extensive research experience in the areas of families and relationships, mental health, filicide and incarceration.

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## Acknowledgements

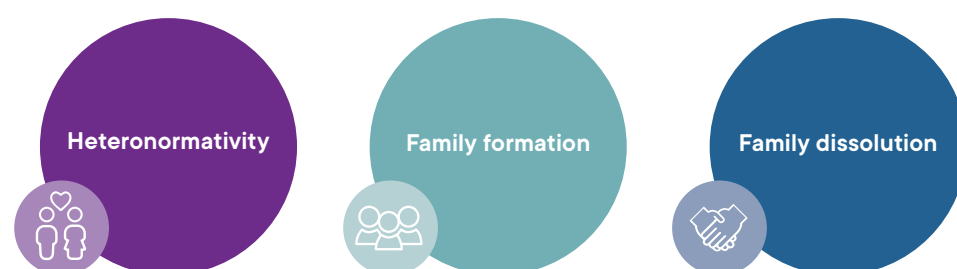
*The authors acknowledge the people of the Kulin Nation as the true and traditional custodians of the land on which this work was undertaken and pay our respects to Elders past, present and emerging. These lands have never been ceded, nor has a treaty ever been reached.*

*The authors acknowledge that this paper is limited by its focus on western framings of family, kinship and sexuality and that this silencing of Aboriginal and Torres Strait Islander ways of being, doing and knowing is part of the continued process of colonisation in Australia.*

# Abstract

The family as a structure has long been one of the central organising features of Australian society and societies around the world. We define, value, measure, and regulate familial groups through social life, policy, and the law. The family law system both supports and regulates the ways families form and dissolve. The aim of this study was to summarise and identify key themes within the Australian academic literature relating to rainbow family formation and dissolution and family law services. A systematic search of key databases and journals yielded 17 articles that met the inclusion criteria. Seven sub-themes have been categorised within three primary themes of **heteronormativity**, **family formation** and **family dissolution**. Several strengths and gaps in the current evidence base have been identified. A key finding from this review has been that very little is known about how rainbow families separate or their experiences with family law services during dissolution.

## Primary themes



# Introduction

This paper reports on a scoping review of the Australian academic literature. Our primary aim in conducting this review was to scope the literature relating to rainbow families' access to and experience of family law support services (family dispute resolution, mediation, and family counselling). Following some initial unsuccessful searches relating to family law services, the scope of our review was expanded. We had two primary research questions:

1. What is known in the current Australian academic literature about rainbow families' experiences of family law services?
2. What is known in the current Australian academic literature about rainbow families' experiences of family formation and dissolution as they relate to family law services?

To answer these questions, we conducted a scoping review of current Australian academic literature. As proposed by Arksey and O'Malley (2005), scoping reviews are useful in mapping current knowledge in a field and determining the need for larger reviews or further research. We selected this methodology as it was deemed most suitable for the broad nature of our research questions and our aim to map literature rather than to appraise it.

Despite the increasing number of households and families led by same-sex couples or lesbian, gay, transsexual, queer/questioning, and intersex (LGBTQI+<sup>1</sup>) parents, relatively little is known about their family experiences of formation and dissolution compared to their heterosexual counterparts (Perales et al. 2019). This is particularly true for how these families dissolve or separate. Nobody who has experienced it needs to be told that the process of ending an intimate partner relationship is a difficult and painful one. Children add an additional layer of complexity to separation as it is likely that parents will still need to communicate and co-parent after their own relationship has ended.

In circumstances where families struggle to make plans regarding finances, pets, or children post separation, the family law system assists in negotiating and regulating these arrangements. Family law services are an intermediate step between families resolving disputes themselves and the family court. Family law services such as mediation and family dispute resolution, assist families in post separation planning and resolving disputes without costly legal processes. Rainbow families form and dissolve with children,

finances, and pets just as hetero families do and require equitable and safe access to family law services should they need to utilise them.

Dominant socio-political discourses of heteronormativity and patriarchy result in the discrimination and marginalisation of LGBTQI+ communities. All of us, including health and human service providers, like family law service practitioners, are socialised within these dominant discourses (Wheeler & Dodd 2011). This creates personal biases, conscious or unconscious, that can result in heteronormative assumptions and homophobic discrimination from services and service providers. This limits LGBTQI+ people's access to services either through outright exclusion or fear of homophobia and discrimination. The impact of heteronormative discourses can be seen throughout the academic literature in rainbow families' decision making, access to services, feelings of legitimacy and community acceptance, and discriminatory policies. Understanding rainbow families' experiences of accessing family law services is essential for informing best practice principles. Combatting heteronormative assumptions and discrimination in service delivery requires an understanding of rainbow families' experiences of and pathways to formation and dissolution; including how these are distinct from and/or similar to hetero families. As well as this, understanding rainbow families' experiences of formation and dissolution as distinct and/or similar to hetero families can help service providers update their understanding of rainbow families and start to combat heteronormative assumptions about service users.

1 + denotes the inclusion of people who identify beyond these categories (e.g. asexual, pansexual, gender non-binary, gender fluid)

## Language and Definitions

There is a distinct absence of language in how we describe rainbow families, we lack appropriate language to describe parenthood beyond the mother-father binary that is laden with hetero and bionormative meanings. The language used in this field is highly contentious and political (Dempsey 2012a), every effort has been made to be as inclusive in the use of language as possible. Through this review we used terminology consistent with that in the academic literature however, we recognise the limitations of current terminology and the insufficiency of terms like ‘donor’ and ‘non-biological parent’ to describe the complexity of the range of family relationships and roles that exist within families. For clarity of expression we have used some consistent terms defined below:

<b>Rainbow family/ies:</b>	We use this term to describe families led by same-sex or LGBTQI+ parents (Rainbow Families 2019).
<b>Non-biological/social parents:</b>	Parents who are not genetically related to their children but are active parents.
<b>Known/unknown donor:</b>	A person who donates sperm or ova to another person or couple and is either known (e.g. a friend or family member) or unknown (e.g. through a clinic or donor registry) to the parents and child (Victorian Assisted Reproductive Treatment Authority (VARTA) 2019). <sup>2</sup>
<b>Multi-parent family:</b>	Also called ‘guild parented families’ in the literature (e.g. Gahan 2019), refers to a family with more than two involved parents (e.g. where a lesbian couple are parenting with the biological father and all three people having parenting roles).
<b>Co-parenting:</b>	The use of the term co-parenting or co-parents is inconsistent across the literature. In some cases, it is used to describe the parenting arrangements of multi-parent families. In this report we use the more common understanding of co-parenting to describe arrangements between parents with joint care responsibilities for children after separation.

<sup>2</sup> In Australia donors are not allowed to be anonymous. Once a person born through ovum or sperm donation turns 18, they are legally entitled to have information about the donor (VARTA 2019).

# Families in the contemporary Australian context

The family is a central organising structure for Australian society (Weston & Qu 2014), how families are defined and understood have important legal and policy implications. As appropriately summarised by Hayes and Higgins (2014, p.1) *“There are few areas of policy that carry greater complexity than those that focus on families”*. The regulatory frameworks for family formation and dissolution are reflective of current social norms and values (Hayes & Higgins 2014). The prevailing dominant discourses about families in Australia have long been heteronormative and patriarchal (Perlesz et al. 2006). This creates challenges for families, like rainbow families, who do not fit within this discourse. Unresponsive legal and service systems impede rainbow families’ access to institutions (e.g. marriage) and services (e.g. assisted reproductive technology clinics) and prevent their recognition as legitimate families.

At invasion of Australia in 1788, the British brought with them not only their marriage and family laws but also sodomy laws that criminalised gay male sex (Winsor, 2017). This remained across Australia until 1975 when South Australia decriminalised homosexuality, disappointingly, it was not until 1997 that it was decriminalised in all states and territories (Winsor, 2017). LGBTQI+ people continued to experience discrimination after decriminalisation and were excluded from institutions like marriage and de facto relationship recognition. The Australian policy context for rainbow families has undergone a slow transformation in the last two decades following decriminalisation. In 2009 the federal government introduced a set of reforms that meant that rainbow families would, in principle, have equal status and rights as hetero families under federal law (with the exclusion of marriage equality). This was following a backward step in 2004, when the Howard government added a definition of marriage to the *Family Law Act 1975* (Cth) that excluded same-sex couples and meant that international same-sex marriages were not recognised in Australia. During the same period changes to the regulation of Assisted Reproductive Technology (ART) (e.g. in vitro fertilisation (IVF) and surrogacy) were occurring at a state and territory level. In Victoria, all single women and lesbian

couples were excluded from accessing IVF until 2000, after which any women who were clinically infertile could access ART. It was not until 2010 that all single and lesbian women could access ART (Fiske & Weston 2014).

In 2017, the Marriage Amendment (Definition and Religious Freedoms) Bill 2017 (Cth) was passed and changed the 2004 definition of marriage to be ‘the union of two people’, making same-sex marriage legal in Australia. The process for this legislative change was not a smooth one, significant harm was caused to the LGBTQI+ community during the national postal survey, where the Australian public took a non-binding vote on same-sex marriage (Ecker et al. 2019). According to a study conducted by Ecker et al. (2019) the public debate resulted in considerable or extreme stress for LGBTQI+ people during the months leading up to the postal vote. This is yet another example of the continuing discrimination and prejudice experienced by the LGBTQI+ community. Nearly 13 million Australians took part in the postal survey that returned a result of 61.6% in favour of marriage equality (Australian Bureau of Statistics (ABS) 2017). This important amendment has not removed all the limitations in the family law system for rainbow families, however.



The limitations in the law can still be seen clearly in the *Family Law Act 1975* (Cth) where although no set definition of a parent is provided, heteronormativity is embedded in the law through the assumption that families only have two parents. For example, Division 1, Part VII, Subdivision B of the act states:

- (2) *The principles underlying these objects are that (except when it is or would be contrary to a child's best interests):*
- (a) *children have the right to know and be **cared for by both their parents**, regardless of whether their parents are married, separated, have never married or have never lived together; and*
  - (b) *children have a right to spend time on a regular basis with, and communicate on a regular basis **with, both their parents** and other people significant to their care, welfare and development (such as grandparents and other relatives); and*
  - (c) *parents jointly share duties and responsibilities concerning the care, welfare and development of their children; and*
  - (d) *parents should agree about the future parenting of their children; and*
  - (e) *children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture).*
- [emphasis added] (pp.159–160)

The Family Law Act centres the woman who gives birth to a child as the mother. While progress has been made in the use of non-gendered language which allows the birth mother's partner, regardless of gender and biological relationship, to be named as the other parent it does not protect any additional parents. This reliance on second parents being recognised based on their relationship to the birth mother, throws up several potential issues for families that form in non-traditional ways. This includes impact on cis-gendered gay male couples where neither parent can be the birth mother, and neither are in a relationship with the birth mother. This is not a unique legislative challenge, in New Zealand and the United Kingdom, family law also does not provide adequate protection for non-traditional parenting arrangements (Surtees & Bremner 2019). These policy and legal challenges disproportionately impact rainbow families, making their journey through the family law system distinct from hetero families.

The family law system in Australia is made up of family law courts, legal services, the Department of Human Services (Child Support), and family law services (Department of Social Services, 2019). Family law services provide an essential service as part of the family law system and include family relationship centres, parenting order programs – post separation co-operative parenting, supporting children after separation programs, children's contact services, family dispute resolution, family law counselling and the family relationship advice line (Department of Social Services, 2019). It is important that all families can access these services equally and receive equitable and appropriate service provision from both the organisation and individual practitioners.

## Family formation in Australia

Trends in family formation and dissolution in Australia reflect the influence of changing social norms over time. The Australian Bureau of Statistics (ABS) census data is a useful tool to identify broad trends in family formation, dissolution, and types. The ABS define a family as:

*“Two or more persons, one of whom is at least 15 years of age, who are related by blood, marriage (registered or de facto), adoption, step or fostering; and who are usually resident in the same household.” (ABS, 2016).*

This type of definition, while useful for the statistical purposes of the ABS, values certain types of connections over others (household composition, biological and formal institutions like marriage). What is not included in this definition is the function of family; the relational dimension of what defines family is essential for an inclusive definition that expands beyond hetero and bionormative families. Even as family types expand and change over time, the functions that families play in people's lives and society remain consistent. The family functions as a site of care, shared resources, social interaction, links to wider society, and the primary setting where children are raised (Thornton, Axin & Xie 2007; Weston & Qu 2014). A truly inclusive and comprehensive definition of family would reflect these functions and the less tangible features of families.

According to the ABS, in 2017 the crude marriage rate was 4.6 per 1000 residents, down from 4.9 in 2016. The divorce rate increased by 5.2%, from 1.9 per 1000 in 2016 to 2.0 in 2017. The median duration for marriages in Australia is 12 years (ABS 2018). While this provides some useful insight into how families form and dissolve, marriage and divorce rates are limited measures because not all couples want or have been allowed to get married. The institution of marriage has an exclusionary history, at different times discriminating against interracial, interreligious and same-sex couples. England followed the Roman Catholic Church in 1753 and

implemented strict guidelines for marriage, it was designed for the wealthy as a tool for protecting property and inheritance and creating alliances (Finlay 2005). For women marriage meant the denial of agency and for poor people without property it meant very little as a legal institution (Finlay 2005). Over 200 years later the institution of marriage looks very different, 28 countries now having marriage equality for same-sex couples, including Australia (Human Rights Watch 2019). Marriage has moved in and out of vogue as the importance of marriage diminishes as a marker of legitimate relationships. Weston and Qu (2014) in their analysis of trends in family formation and function, highlight the importance of social conditions in influencing the ways family form. An example of this were the peaks in marriage rates correlating with the beginning and end of World War II and the peaks again in the 1960s reflecting the influence of economic prosperity on family formation (Weston & Qu 2014). The impact of legislative instruments is clear in the increase in divorce rates after the *Family Law Act 1975* (Cth) was introduced and only required couples to be separated for 12 months and cite ‘irretrievable breakdown’ as grounds for divorce (Weston & Qu 2014).

At the time of the 2016 census same-sex marriage was not legal in Australia, cohabiting same-sex couples were included and made up 0.9% (n=46,800) of couples in Australia. Post the 2017 Marriage Amendment (Definition and Religious Freedoms) Bill (Cth) being passed, the ABS has released early data from the first six months from the date of the legislative changes. The total number of same-sex marriages registered by 30 June 2018 was 3149. Same-sex female couples made up 56.3% (n=1773) of same-sex marriages and males couples 43.7% (n=1376). Based on these previous examples of legislative and social conditions impacting family formation, it will be interesting to see the impact of the Marriage Amendment (Definition and Religious Freedoms) Bill (Cth) in future census data and in the lived experiences of rainbow families.

# Methodology

## Subject position of the researcher

The research assistant who conducted the search and analysis for this study is a cis gendered, heterosexual, white woman, her family of origin includes LGBTQI+ people. This position influences both the methodology and findings of this report.

## Search protocol

For this review we utilised Arksey and O'Malley's (2005) scoping study methodological framework, which suited our need for a rapid and rigorous process that was appropriate for the broad nature of our topic and research questions. The purpose of this review was to identify and summarise current knowledge and key themes in the Australian academic literature relating to rainbow family formation and dissolution and identify gaps for future research.

A search of the databases Web of Science, Scopus, and Google Scholar was conducted. Web of Science and Scopus were selected because of their coverage of social science studies where it was expected that most related articles would be catalogued. Google Scholar was selected as a multidisciplinary database to ensure thorough coverage of the relevant literature across other disciplines. Each database was searched using the terms: 'LGBT', 'same-sex', 'family formation', 'Australia', 'family dissolution', 'separate', 'divorce', 'family law', 'mediation', 'family dispute resolution' and 'family law services'. Truncation was used on the terms 'family', 'Australia' and 'separate' to cover various word endings (e.g. Australian), 'LGBT' was used in conjunction with a wildcard symbol to ensure coverage of alternative acronym order and endings. A hand search of key journals and reference lists was conducted to ensure no records were missed through database searching.

## Inclusion/exclusion criteria

Only published academic research studies were included in the review, grey and unpublished literature was excluded on the basis that the purpose of this study was to examine the academic literature. Studies needed to have been published between 2009–2019. The decision was made that due to the significant changes in legal and social context for rainbow

families, research from the last 10 years would provide the most accurate understanding of the research topic. Only Australian studies were included; the search identified a large body of work from the United States, United Kingdom, and Europe that was excluded because of the difference in socio-political and legal contexts. Included studies needed to be based on primary research however, systematic literature reviews were also included. They also needed to focus on rainbow families' perspectives of family formation and dissolution. Research based on the perspectives of wider community members (e.g. community attitudes towards rainbow families or service providers) and articles only focused on family law (e.g. legislative changes / social advocacy campaigns for marriage equality) were also excluded.

## Results

The search returned 1867 results, 34 papers were included for full text review and 17 were included for analysis, (see: diagram 1). Of the articles included for analysis, 70% were qualitative studies (n=12), followed by mixed methodology (n=3), literature reviews (n=1) and quantitative studies (n=1). Each article was coded for key themes by the research assistant, themes were then tested for relevance through discussion with the research manager. Themes were chosen based on salience in the literature and relevance to the research questions. Seven subthemes were separated under the three primary themes of **heteronormativity**, **family formation** and **family dissolution**.

In keeping with the scoping study methodology, no comments have been made on the quality or methodology of the included studies.

## Diagram One – Search results

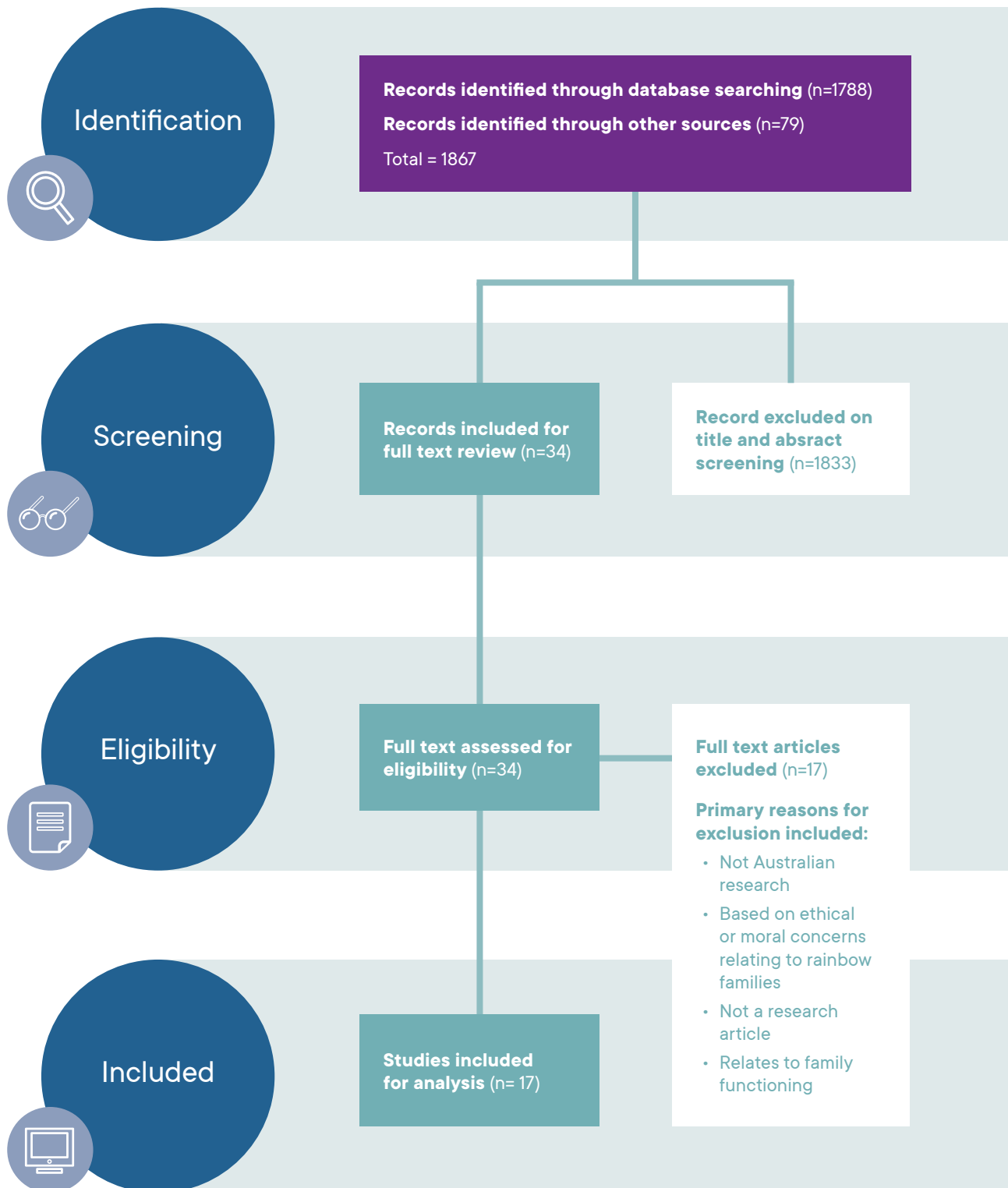


Diagram Two – Included articles by year

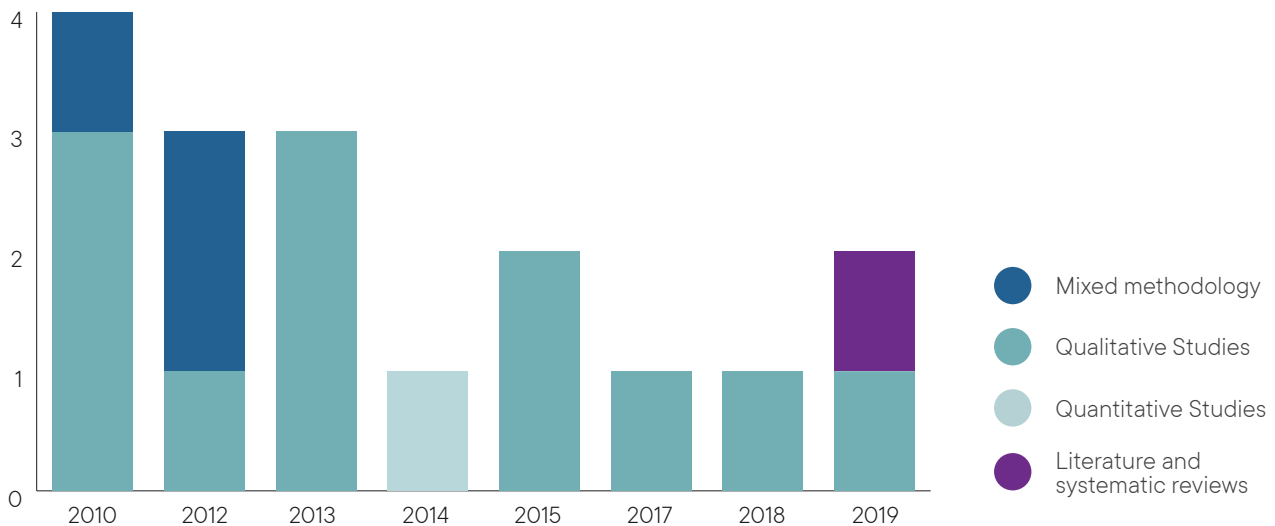
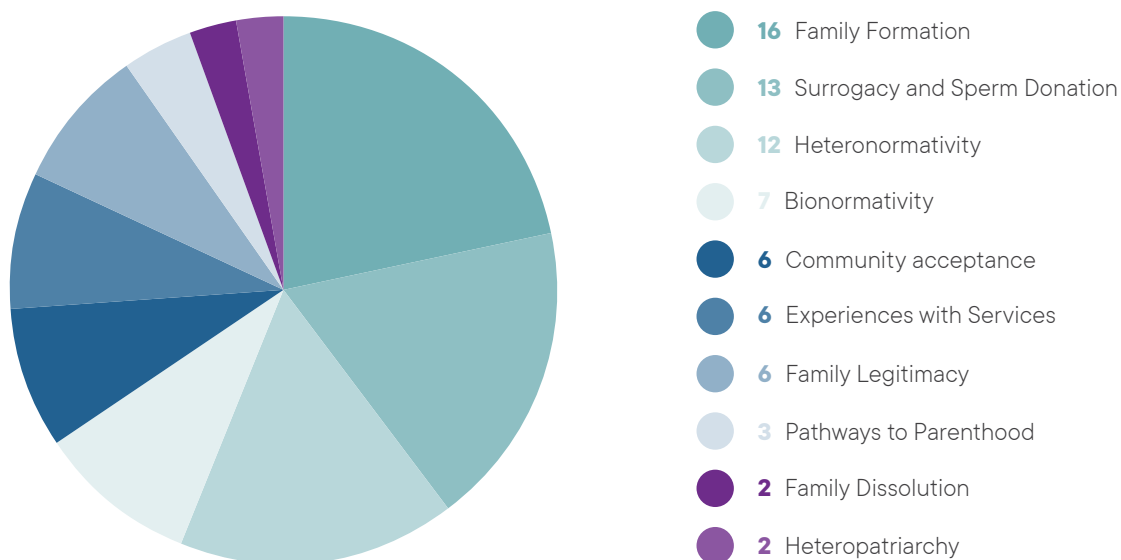


Diagram Three – Included articles by theme



### A note on family violence

Our search returned a small number of discrete papers focusing on family violence, these papers were excluded on title and abstract screening. An intentional choice has been made to exclude family violence literature from this review, the authors acknowledge that family violence is perpetrated among rainbow families and do not intend to devalue these experiences by excluding these papers. However, the complexities of family violence in rainbow families warrants a separate work and is beyond the scope of this study, thus the decision was made to not include it in this review.

# Findings

## Heteronormativity

A strong theme across the literature was the impact of heteronormativity on all aspects of family formation and dissolution for rainbow families. As defined by Jeppesen (2016):

*Heteronormativity refers to the Western social norm, or assumption, that the overwhelming majority of sexual relationships in society are heterosexual. Further, heteronormativity is the dominant sexual model of social, cultural, political, and economic organization, including the way it organizes identities, experiences, regimes of truth and knowledge, and ideologies of gender and sex.*

Heteronormativity was identified in 12 out of the 17 articles. Discussion of the impact of heteronormativity in the literature included: heteronormativity as an additional layer of complication to family formation and family life (Hayman et al. 2015; Luzia 2013; Perales et al. 2019; Tuazon-McCheyne 2010); perceived level of support and acceptance from heterosexual and LGBTQI+ communities for rainbow families (Perales et al. 2019; Power et al. 2012a); experiences of heterosexism and homophobia with health care and other service providers (Doussa 2015; Hayman & Wilkes 2017; Hayman et al. 2013; Perales et al. 2019); strategies for dealing with homophobia and heterosexism (Hayman et al. 2013; Perales et al. 2019; Tuazon-McCheyne 2010); pressure to be an 'acceptable' rainbow family in a heterosexual framework (Gahan 2019; Gahan 2018); exclusion from services and legal barriers (Hayman et al. 2013); children creating impetus for 'coming out' (Power et al. 2012a; Tuazon-McCheyne 2010); discrimination and combating homophobic stereotypes (Tuazon-McCheyne 2010); privileging of biological relationships between parents and children (Gahan 2019; Murphy 2013; Tuazon-McCheyne 2010); heteropatriarchal parental roles (Dempsey 2012b); and heteronormative parenting spaces (Luzia 2013). These findings have been organised into five subthemes and demonstrate the continued centrality and impact of heteronormative understandings of family.

It was clear in the Australian research that heteronormativity and homophobia made family formation and dissolution

more complicated for rainbow families than their hetero counterparts (e.g. Gahan 2019; Gahan 2018; Hayman et al. 2013; Luzia 2013; Perales et al. 2019; Tuazon-McCheyne 2010). Some examples in the literature were experiences of family formation and family life being influenced by ideas of the nuclear family being 'ideal' and heteronormativity and discrimination impacting access to services (Luzia 2013; Perales et al. 2019).

## Bionormativity

Bionormativity refers to the cultural importance of biological connections as a marker of familial connection (Haslanger 2009, p.93).

The advent of reproductive technologies and people being able to create blended families through separation and re-coupling has meant that an expanded definition of 'parent' is required to capture the range of parental roles that exist. These roles include biological parents who are related to children and have an active parenting role and social parents who are not biologically related to their children but are active parents in their children's lives. Heteronormative policies and social discourses that centre families formed by opposite-sex parents and their biologically related children, privilege and value biological parents over social parents. The literature consistently demonstrated the importance of biological connection in understandings of parenthood and family (e.g. Dempsey, 2012b; Hayman et al. 2013; Murphy 2013; Perales et al. 2019). Given that for most same-sex couples, only one parent is biologically related to their child/ren it is easy to understand why this was considered important across a range of studies. Social parents consistently struggled to be seen as legitimate parents in both a legal and social context.

Positive relationships with the other parent/s were described as important for non-biological parents. For example, participants in Dempsey (2012b) described that in multi-parent families a strong relationship with the child's mother/s had the impact of increasing the non-biological father's sense of belonging. Part of the importance of biological relatedness was the physical resemblance of children to their parents (Dempsey 2012b; Dempsey 2013; Hayman et al.

2015; Hayman et al. 2013). Physical resemblance, discussed further below, had a great deal of impact on decision making for couples. Heteronormative ideas of family based on biological connection also appear to impact rainbow families when separating. Separating rainbow families fall back on heteronormative and traditional family constructs when making decisions about primary caregivers and parental responsibility (Gahan 2019), this is an important finding for family law services and is discussed further below. Central to these bionormative discourses and experiences is children's 'right to know' who their genetic parents are, this permeates through Australian policy and indeed, the experiences of rainbow families (Dempsey 2012b).

## Heteropatriarchy

Heteropatriarchal gender and parenting roles can also be seen impacting and influencing rainbow families in the literature. Studies that explored the relationships between multi-parented families (Dempsey 2012b; Gahan 2019), demonstrated the influence of traditional patriarchal constructs of male and female parenting. Tensions exist between the obligations of sperm donors and their 'entitlement' to a connection with children that they are biologically related to. This question of where the boundaries of fatherhood begin, and end collide with unequal distribution of domestic labour between men and women (Dempsey 2012b). For example, as in hetero parenting or co-parenting arrangements, women in multi-parent or known donor arrangements often bare most of the care giver responsibilities and men are primarily involved in the more rewarding parenting tasks (Dempsey 2012b). This contradiction in rainbow families both challenging heteronormative patriarchal family structures but at times reinforcing them, demonstrates the complexity of rainbow family formation and dissolution in a heteronormative context (Dempsey 2012b).

## Community acceptance

Community support was an interesting domain across the literature, more quantitative data existed about how rainbow families perceived support for their family type in both hetero and gay communities. Reporting on findings from the *Work,*

*Love, Play Study*<sup>3</sup>, Power et al. (2012a) provide quantitative analysis from a sub-sample of 88 gay and bisexual fathers who participated in the larger study. Results were both encouraging in the sense that it would be reasonable to assume that these results would have been much lower 10 years previously, but also disappointing as only 50% (n=44) of participants agreed that the gay/lesbian community were supportive of them as parents and 56% (n=49) agreed that the heterosexual community was supportive of them as parents (Power et al. 2012a). An additional 10% (n=9) did not feel that the gay/lesbian community was supportive and 13% (n=12) felt this in relation to the hetero community, the remaining participants were neutral (Power et al. 2012a).

From this same sample, men who had children in previous hetero sexual relationships had additional challenges in coming out as gay and they were both less likely to be friends with and feel supported by the gay/lesbian community as parents (Power et al. 2012a). For some people, feelings of not being accepted as parents were associated with the idea that being gay is synonymous with being childless (Hayman et al. 2015; Murphy 2013). Homophobic ideas about LGBTQI+ people being unfit parents have been consistently demonstrated to be false in the Australian and international literature, often this comes from the perspective children speaking out in defence of their parents (Perales et al. 2019). Articles relating specifically to this topic were beyond the scope of this review but warrants recognition in the context of heteronormativity's impact on rainbow families. For more on this topic, see Perales et al. (2019) who provide a comprehensive review of this literature in their study.

Conservative social attitudes also influenced families in a way that they felt under greater pressure to be 'perfect' (Tuazon-McCheyne 2010), this presented itself not only in the way rainbow families formed and functioned but in how they dissolved (Gahan 2018). Tuazon-McCheyne's (2010) study provided clear insight into the pressure that gay dads felt to be beyond reproach because of patriarchal stereotypes of women being more nurturing than men and gay men being falsely associated with paedophiles. As well as the pressure to be perfect parents, participants in Tuazon-McCheyne's (2010) study reported that having

3 The *Work, Love, Play Study* was conducted during 2008–2009 in Australia and New Zealand and involved an online survey of 445 parents who identified as LGBT or other non-heterosexual and had children under the age of 18.

children meant men had to come out in spaces that they had not previously had to. Being out was also a strategy used by gay fathers to combat conservative views and for some participants coming out resulted in them feeling more accepted by the community and gave them greater access to support from other parents. This support from other gay and hetero parents was important as made it participants feel included as part of the “parent club” (Tuazon-McCheyne’s 2010, p. 319).

## Experiences with services

Discriminatory experiences with health care providers also featured heavily in the Australian literature. This is particularly important because of the increased amount of contact with services that comes with having children including health and education services (Tuazon-McCheyne 2010). Some parents expected less support from services because of their sexuality (Perales et al. 2019), experiences and expectations of discrimination mean that rainbow families act protectively and employ strategies for navigating discrimination including contacting service providers prior to accessing them to determine if they are culturally safe for rainbow families and choosing not to disclose their family status (Hayman et al. 2013; Perales et al. 2019).

Rainbow families also employed strategies for dealing with homophobic experiences in the wider community. Tuazon-McCheyne’s (2010) work demonstrated that one strategy employed by gay fathers was to use experiences of discrimination to educate other people. Common negative experiences described in the literature were related to assumptions about heterosexuality and not recognising the legitimacy of non-biological parents (Hayman et al. 2013; Perales et al. 2019). Some examples of this come from Hayman et al. (2013) where lesbian participants reported that service providers often assumed, they were sisters or other types of family connection instead of intimate partners. It was also reported that health service staff were reluctant to acknowledge the non-biological mother as an intimate partner and asked heterosexist questions about where/who the father was (Hayman et al. 2013). One particularly troubling example was from participants who reported being turned away from health services as they did not meet

inclusion criteria (e.g. the procedure rooms only allowing male partners in with women undergoing procedures or being excluded from the neonate intensive care unit because only the biological parents are allowed in (Hayman et al. 2013). Consistent with these examples of exclusion from health services were Luzia’s (2013) findings that the spaces of parenting do not always accommodate rainbow families. Positive experiences were commonly linked to professionals who focussed on the child or the reason for visiting a service and who acknowledged the role and legitimacy of non-biological parents (Perales et al 2019).

Only one Australian academic article, Doussa et al. (2015) contained information about inclusive practices for family law support services. Although this study collected data from the perspective of service providers, it was assessed as meeting the inclusion criteria as it also reported on the experiences of LGBTQI+ parents and was the only article identified to provide any insight into family law services. The study included 10 parents in same-sex relationships and 32 practitioners from the health and welfare sector however, it is not clear how many of these participants were from family law services.

For practitioners, the major concern was a lack confidence, knowledge and skills in working with rainbow families. Concerns about offending families, using appropriate language, and making assumptions or not asking questions were all key examples (Doussa et al. 2015, p. 462). Parents did not report experiencing any direct discrimination or homophobia, but they did state, consistent with the findings from Hayman et al. (2013) above, that service providers did not ask questions (assumptions of heterosexuality) or asked inappropriate questions. Parent participants reported it was difficult to correct service providers who had assumed that they were heterosexual and suggested that asking questions was preferable to silence or assumptions. Parents also disclosed that ‘coming out’ to providers made them feel anxious, providers reported feeling anxious about asking and thought it was invasive or inappropriate (Doussa et al. 2015, p. 464).

Parent participants in Doussa et al.’s (2015) study provided useful insight in developing best practice strategies for working with rainbow families. Primarily, parents seemed to



be looking for a more open dialogue that acknowledged their family's rainbow status. Specifically, parents wanted service providers to take the lead "in conversations with them about their relationships or sexuality" (Doussa et al. 2015, p.465). Parents suggested that this would have the dual effect of relieving their anxieties about 'coming out' to service providers and signal that practitioners were accepting of rainbow families. More specific strategies included offering inclusive options on intake forms and being explicit about family structure on clinical forms to ensure that all the relevant staff are aware of their rainbow family status to avoid repeatedly having to come out to multiple people in an organisation. Participants also reported that it was likely that "too much attention to their sexuality (even positive attention) [would] be uncomfortable" (Doussa et al. 2015, p. 466), suggesting that while acknowledgement was important rainbow families do not want this to become the central feature of their interactions with service providers.

Gahan (2019) made the recommendation in their study that specific training needed to be developed for family therapists and mediators to work with multi parent families during family formation and dissolution. This is supported by similar recommendations from Doussa et al. (2015) in response to the self-reported anxiety from practitioners who felt unsure about how to work with rainbow families in an inclusive way. Based on their findings Doussa et al. (2015) suggest that best practice with rainbow families requires an approach from practitioners that acknowledges their rainbow status but does not prioritise this over their reason for accessing the service.

## Family legitimacy

Closely linked with the push toward heteronormativity, rainbow families consistently struggle to have their legitimacy recognised. Having children often had the impact of increasing the feeling of family legitimacy for rainbow families (Perales et al. 2019), including feeling closer to their families of origin after having children because children had in some way legitimised their relationship (Power et al. 2012a).

Non-biological parents, parents who are not genetically related to their children (which is true for at least one parent in most same-sex couples due to only one parent being able to

contribute sperm or ova), were shown to experience a range of challenges in being recognised as socio-culturally and legally as legitimate parents (Hayman et al. 2013; Hayman & Wilkes 2017; Perales et al. 2019; Power et al. 2012a; Luzia 2013). Couples carefully considered who would be genetically related to their children and key motivation for this consideration is the perceived illegitimacy of non-biological parents. Some gay male couples withheld the identity of the biological father from other people, despite being regularly questioned about this (Murphy 2013). This speaks to a common theme in the literature, the fear that the non-biological parents would not be recognised as a 'real parent'.

Non-biological parents are also legally disadvantaged compared to biological parents (Hayman et al. 2013; Luzia 2013), the process to have social parents recognised as parents is more onerous than for hetero-biological parents and can require providing evidence that is difficult to arrange or be cost prohibitive (Luzia 2013).

Heteronormative definitions of parents that privilege biological relationships are challenged by non-biological parents and this can leave them exposed to discrimination, exclusion and homophobia (Hayman et al. 2013). Social parents are required to justify their position and their family structure, and as part of this lesbian couples in Hayman et al.'s (2013) study used a range of strategies to signify the non-biological mother's parental status. These strategies included: naming days and commitment ceremonies (at the time of this study same-sex marriage was illegal in Australia); children having the non-biological mother's surname or a double-barrel name (see also: Hayman & Wilkes 2017); names for non-biological mothers included 'mama', 'daddy' or non-English words like 'mutti' (see also: Hayman & Wilkes 2017).

## Family formation

### Pathways to parenthood

The largest amount of included quantitative research related to how rainbow families were formed and structured including pathways to parenthood (n=3 quantitative or mixed-methods articles). Included for analysis in this review were three articles reporting on the findings of the *Work, Love, Play Study*. The study was conducted during 2008–

2009 in Australia and New Zealand and involved an online survey of 445 parents who identified as LGBT or other non-heterosexual and had children under the age of 18 (Power et al. 2010). For clarity, each of the three articles included from this study are discussed separately below.

In the complete sample from the *Work, Love, Play Study*, participants were all LGBTQI+ parents who had active parenting roles for children under 18 (excluded from this sample were donors, including those who are known to children but do not have an active parenting role), 80% (n=354) were in a relationship, 91% (n=323) were cohabiting and 20% (n=91) were single (Power et al. 2010). At the time of this study same-sex marriage was illegal in Australia, couples marked commitment using formal commitment ceremonies (14%, n=48), civil unions (5%, n=16), or married in another country (7%, n=32). Participants in this study described their families in a variety of ways including: two parent models; known donor involvement in non-parental way; co-parenting with ex-hetero partner; co-parenting with ex-same sex partner; single parents; and multiple parents (Power et al. 2010). Of the entire *Work, Love, Play Study* 44% (n=190) had conceived through hetero sex making it the most common way to conceive. Other methods of conception included sperm donor (known and unknown) 34% (n=153), surrogacy 3% (n=13), and 5% (n=23) used other methods (Power et al 2010).

In a separate analysis of a sub-sample of 88 gay and bisexual fathers, 39% (n=34) had children from a previous heterosexual relationship, making it the most common method of conception and the second most common method was surrogacy at 23% (n=20) (Power et al. 2012a). This article also provided useful insight into parenting arrangements for gay and bisexual men, 79% (n=27) of respondents had at least fortnightly contact with children, 21% (n=7) had full time care, and 23% (n=20) had full time care of children conceived through surrogacy in their current relationship. Of the men who were donors to lesbian couples or single women (n=17), 53% saw their children fortnightly and two were seeking more contact time (Power et al. 2012a).

Power et al.'s (2012b) analysis of a sub-sample of 48 bisexual parents had a predominantly female sample (n=42). Again, in

this sample, the most common pathway to parenthood was through a previous heterosexual relationship (68%, n=33) and in second place was donor insemination at 15% (Power 2012b). Interestingly, only 25% (n=12) of participants were raising children in the couple in which they conceived them. Meaning that 75% (n=36) had conceived in a previous relationship or while single (Power et al. 2012b). These findings demonstrate that for Australian rainbow families, heterosexual sex is still a common method of conception. The high proportion of participants with children from a previous relationship suggests that blended rainbow families are very common. This is interesting considering the lack of research conducted about how rainbow families dissolve and their post separation arrangements.

## Surrogacy and sperm donation

### Decision making

Perales et al. (2019) identified in their review of Australian literature that same-sex couples have more decisions to make than hetero couples when it comes to having children. Not only are there more decisions but these decisions are also more complex. These decisions are both similar in nature and distinct from the decisions made by heterosexual couples wanting to have children. Where heterosexual couples do not necessarily need to involve third parties in their decision, same-sex couples need to use a donor or health service to conceive (Luzia 2013). As well as the involvement of third parties these decisions involve working out how to navigate complex legal contexts, policies, and discrimination (Perales et al. 2019).

The decision to have children for gay men and lesbian women is driven by a desire to have children (Hayman et al. 2015; Murphy 2013). This desire conflicts with the perception that being in a same-sex relationship is synonymous with being childless (Hayman et al. 2015; Murphy 2013). Some participants in both Murphy (2013) and Hayman et al. (2015) felt that their sexuality precluded them from having children, that "children weren't part of that identity" (Hayman et al. 2015, p. 398). Some women reported that they thought having children wasn't possible or were not sure how they could conceive without a male partner (Hayman et al. 2015).

Gay men also associated being gay with being childless (Murphy 2013). The decision to have children had a political dimension for same-sex-couples (Gahan 2018; Murphy 2013; Tuazon-McCheyne 2010), the assumptions of same-sex relationships being childless or that LGBTQI+ people are not suitable parents are challenged by rainbow families. This means that by their very nature rainbow families are resisting heteronormativity and homophobia and forging pathways and communities for future non-traditional families.

Consistent across the literature was that significant consideration was given to having children by same-sex couples. Multiple studies found that participants had spent anywhere up to several years discussing their options before conception (Hayman et al. 2015; Hayman et al. 2013; Hayman & Wilkes 2017; Murphy 2013; Tuazon-McCheyne 2010; Luzia 2013).

One of largest looming questions for couples as part of their decision making was which parent would be biologically related to the child. In Murphy's (2013) study of gay men's desire to have children participants reported that age, desire, and dynamics within their families of origin were all important factors for deciding who would be the biological parent. Some men randomised the decision by alternating sperm donation each month (Dempsey 2013). Despite randomising the selection, the identity of the biological father was important to these parents, all had DNA tests done after the child was born (Murphy 2013). There were legal reasons for DNA tests in some cases, as fathers who used international surrogacy needed to confirm that the father was Australian for the child to be given Australian citizenship (Dempsey 2013). For lesbian couples this decision was just as pertinent and came with the additional complexity that the birth mother also needed to carry the pregnancy, and this made randomisation impossible. Participants in Hayman et al.'s (2015) study reported similar factors in decision making as in Murphy (2013) including health, age and desire.

An additional consideration for lesbian couples was each partner's role in the relationship and how it was linked to traditional gender norms. In relationships where partners self-identified as butch or femme each woman saw her role in the relationship as different. Women who identified as

butch did not see carrying a pregnancy as their role in the relationship and the more femme mother carried the pregnancy (Hayman et al. 2015). For couples where there was not a butch-femme dynamic the decision about who would carry the pregnancy was primarily based on health and age (Hayman et al. 2015).

### Finding a donor / surrogate

As highlighted above, the decision to have children for same-sex couples necessarily involves a person (and in the case of donor clinics, an organisation) outside of the relationship. This requires that couples or single people who want children find a donor through clinics, advertising, or by approaching individuals/ other couples.

Dempsey's (2010) qualitative study involving 20 lesbian and 15 gay prospective or current parents, explored how Australian lesbian and gay men negotiate having and raising children together. Women made decisions about donors based on their desired level of involvement and were sometimes fearful that involved donors may make a latter claim for parental rights. Men who wanted to be donors or parents with significant involvement in their child's life, found it difficult to find what they wanted through advertising (Dempsey 2010). Female participants felt more comfortable approaching and advertising for sperm donors than male participants felt advertising or approaching women for surrogacy.

Couples who were seeking a donor or surrogate wanted a relationship with that person that was clearly distinct from their intimate relationship in terms of their social meaning and living arrangements, groups that were looking at multi-parenting arrangements usually intended to maintain separate households. When choosing a donor/surrogate people preferred friends over strangers. As part of negotiating parenting arrangements some people used written agreements, those who used written agreements were mostly aware that they were not legally binding (Dempsey 2010). Dempsey (2010) categorised the types of agreements made by multi-parent families as one of the following, (i) standard agreements: impersonal and business-like agreements that defined the donor as a donor rather than parent. Key to these types of agreements were that the

children belong to the parents who are raising them and that the donor playing a variation of a parental role would be detrimental, (ii) social solidarity agreements: distinct from standard agreements in that the donor (and in some cases their partner) would play a role in the child's life and the agreement was more about a positive relationship between the parents than about setting boundaries, (iii) Co-parenting agreements: where all parties have equal parental rights and responsibilities.

For female same-sex couples, decisions about who the sperm donor would be were very important (Hayman et al. 2015; Hayman et al. 2013; Hayman & Wilkes 2017), this makes sense in terms of the intimate nature of the process and potential significance to any future children. Factors that influenced decisions about donors included his willingness to have health screenings conducted, desired level of involvement with the child, availability during the birth mother's ovulation periods, age, ethnicity, physical characteristics, intellect and family history (Hayman et al. 2013). The physical likeness to the non-biological parent was important when choosing a sperm donor for lesbian couples (Hayman et al. 2013) and male couples choosing an egg donor (Dempsey 2013), again demonstrating the centrality of bionormativity for family formation. When considering a known donor, women were motivated by a desire for children to know their biological parents but were simultaneously concerned that if a donor was involved, they may make a parental claim to the child (Hayman et al. 2013). In the context of this concern from women using donors, it makes sense that men found it more difficult to find arrangements through advertising if they were seeking involvement in children's lives (Dempsey 2010).

### Utilisation of sperm donation

Sperm donation is the process by which a man donates sperm to a clinic or an individual/ couple for them to use to become pregnant through artificial insemination. Australian lesbian women who accessed sperm donation conducted extensive research prior to conception and as above, considered at length which partner would become pregnant (Hayman et al. 2015).

Methods for conception through sperm donation include Assisted Reproductive Technology (ART) at fertility clinics

(intrauterine insemination) or at home insemination (vaginal insemination). From a sample of 15 lesbian couples in Hayman et al.'s (2013) study, nine couples used ART at a fertility clinic and eight used at home vaginal insemination, the factors that informed this decision were preference for one method over another, health risks or concerns, age, availability of donor sperm, cost, and legal restrictions. As expected, legal restrictions have a large impact on the utilisation of ART. After the legislative change in 2010, utilisation of ART by lesbian couples in Victoria increased by 248.8% at the Monash IVF clinic (Fiske & Weston 2014).

Anonymous donor agreements are not practiced in Australia, donor records are available for people conceived via donor arrangement to access once they turn 18 (VARTA 2019). This again is reflective of the centrality of biological relationships in the way family is considered in the contemporary Australian context. A donor can, however, be known or unknown to the mothers when choosing a donor. Decisions about using a known or unknown donor were influenced by two factors – the desire for the child to know their genetic origins and being able to know the donor and the fear that known donors may wish to have a parental role in the future (Hayman et al. 2015).

Vaginal insemination at home with a known donor was used by 12 out of 15 participants in Hayman et al.'s (2015) study. Using at home insemination also meant that couples did not need to interact with health care providers, and this meant that there was no risk of experiencing discrimination from a fertility clinic. Intrauterine insemination was utilised by five couples four of whom also used known donors, to use this method couples were interviewed by health staff and counsellors as part of an assessment for their appropriateness as well as health and blood screenings (Hayman et al. 2015).

### Utilisation of Surrogacy

Surrogacy is a contentious issue and has been critiqued as a practice that runs the risk of commodifying women and children. International and commercial surrogacy are subject to critique because of the power imbalance between surrogates and prospective parents caused by gender, race and socio-economic status (Dempsey 2013). This is not to dismiss people's genuine desire to have children but

uncritical engagement in surrogacy, especially international and commercial surrogacy is being increasingly problematised (Dempsey 2013).

Surrogacy is the process by which a woman carries a pregnancy to term for another person or couple with the intention to then return the baby to the intended legal parent(s) after birth. There a range of different types of surrogacy arrangements: (i) traditional surrogacy, the surrogate provides the ovum and carries the pregnancy, (ii) gestational surrogacy, the surrogate carries the pregnancy but another woman's ovum is implanted in her uterus through IVF, (iii) altruistic surrogacy, a traditional or gestational surrogacy arrangement where the surrogate does not receive any compensation outside of medical expenses, (iiii) commercial surrogacy, where the surrogate receives financial compensation for the pregnancy (National Health and Medical Research Council 2017, p.66).

Surrogacy is a relatively recent option for family formation for gay men, the first incidence of this occurred in 2000 (Tuazon-McCheyne 2010). Commercial surrogacy being illegal in Australia, participants in Tuazon-McCheyne's (2010) study all accessed commercial surrogacy in the United States, where the cost was up to \$280,000 AUD. Increasingly, cheaper options in India are being accessed however the cost of international surrogacy continues to exclude couples who are unable to afford this (Tuazon-McCheyne 2010). Additional legal barriers exist for surrogacy arrangements – particularly in relation to the birth mother being listed on birth certificates, the expense and complications of parenting orders, and immigration. Participants in Tuazon-McCheyne (2010) were anxious about bringing children born through surrogacy to Australia and going through customs. Far less literature was identified that related to men's experiences of surrogacy when compared to women's use of sperm donation. What is clear is that legal restrictions loom larger for male same-sex couples in accessing surrogacy, the risk of commodification and exploitation of women, particularly in the global south, is one possible explanation for this. It is also possible that heteropatriarchal ideas about men not being nurturing or having a desire for children has made gay fatherhood a largely invisible experience.

## Family dissolution

Although there is an increasing body of evidence on non-traditional family formation in Australia and internationally, our search confirmed that there remains an absence of literature about these families when they separate (see also: Gahan 2018 and Perales et al. 2019). Gahan (2018, p. 246) identified four previous studies that focused specifically on separating rainbow families, all were conducted in the United States and these studies only explored female same-sex couple experiences. We did not identify any additional studies beyond Gahan's own work. Gahan's (2018) study is a seminal work, as it represents the first Australian study on same-sex separation and the first in the world to include male same-sex couples.

Only two articles were identified that address rainbow family dissolution. Both articles from Gahan (2018; 2019) examined the separation experience of rainbow led families. Gahan (2018) conducted 23 interviews with 24 people who had been involved in a same-sex separation and examined how dominant discourses about rainbow families impact their experiences of separation. The influence of heteronormativity is clear in how participants experienced separation, in the negative reactions from the LGBTQI+ community, and in couples feeling like they had "broken the rules of the same-sex parent family" (Gahan 2018, p. 250). The limited community acceptance that rainbow families experience coupled with negative stereotypes, makes same-sex parents feel like they need to be perfect. Participants felt like only a certain type of rainbow family is acceptable and that they still needed to conform to heteronormative standards by being in a committed relationship. There was additional pressure on families to be representatives of an ideal family type as a counter to homophobic stereotypes. Participants reported feeling this pressure not only from the hetero community but also from the LGBTQI+ community. This resulted in participants feeling isolated and like they could not talk to other LGBTQI+ people about their separation as it is still an invisible experience. Families also felt guilty when separating and like they were confirming that rainbow families are dysfunctional and should not be allowed to get married or have children.

A unique factor for rainbow families during separation is the presence of a donor. Some participants reported that they felt like they were letting the donor down by separating. An important finding from this study for family law services was that participants felt that they received less support than hetero couples during separation and more criticism.

Gahan (2019) conducted the first study, globally, on the separation experiences of multi-parent families. This article reported on a sub sample of six participants from the above study, three men and three women all who had separated as part of a multi-parent family. This group of participants had a distinct experience from the two parent model families in the larger cohort. The obvious explanation for this is that post separation arrangements are more complicated when more people need to be considered. Each participant's family navigated the separation process differently, original plans for family structure needed to be reworked during and after a separation. What was particularly interesting about the findings was the reliance on bionormative ideas of family connection, biological parents were often given preference in co-parenting arrangements. Some families co-parented with all social and biological parents but others were unable to and this resulted in some parents in the group having significantly reduced contact time. Parents had concerns for children living across multiple houses and felt guilty and concerned about the impact of this on their children. For multi parent families there is the added complexity of having another couple who have an investment in the family dynamic but are not involved in the separation – what their role is during this time, is difficult to determine.

Planning and communication were identified as protective factors for the initial intentions for the family to be preserved (Gahan 2019). For the participants that had chosen to have a multi-parented family for their children to have both male and female parents, the importance of this remained after separation. What did change was the definition of a parent, which was challenged after separation and the status of social parents was contentious. One participant provided an example where there were four parents (a male couple and a female couple) and both couples separated at different times (Gahan 2019). This meant that parenting arrangements were renegotiated twice. In this case after both couples

separated, the biological parents became the primary caregivers and the social parents were given new non-parental roles and greatly reduced contact time. A clear power imbalance exists during separation for all same-sex couples where only one parent is related to the child. Legally the biological parents are in a much better position should disputes end up in the family court. Biology was a central feature of all the post separation agreements for multi parented families in this study (Gahan 2019).

Gahan (2019) suggests that a potential explanation for the reliance on hetero bionormative ideas during separation is the lack of alternative ways that are visible and the broader lack of recognition for the legitimacy and value of this family structure. As Gahan (2019, p.110) states:

*Separated guild parented families highlight the tension between radical new family forms and traditional kinship ideals. Guild parented families not only came about because it was a pragmatic way for lesbians and gay men to have children, they often also exist as a consequence of an affinity with hegemonic, and heteronormative, family forms.*



# Summary

This scoping review aimed to answer two primary research questions:

1. What is known in the current Australian academic literature about rainbow families' experiences of family law services?
2. What is known in the current Australian academic literature about rainbow families' experiences of family formation and dissolution as they relate to family law services?

We found a diverse and exciting field of scholarship, that while not as extensive as its heterosexual counterpart (Perales et al. 2019), provides some clear insight into the contemporary experiences of rainbow family formation in Australia. While we identified some important studies relating to how rainbow families dissolve and their experiences of accessing family law services, more work needs to be done in this space. Family formation, dissolution and access to services are all located within heteropatriarchal policies and culture, rainbow families challenge this and are reshaping our notions of family, but they are also restricted and harmed by it. Our findings reveal many opportunities for celebration, including progressive policy changes, but also disappointments in continued discrimination and invisible experiences of rainbow families and the LGBTQI+ community.

## Gaps in the Australian academic literature

Based on our findings we have identified the following areas for further research: (i) the impact of current legal frameworks, (ii) family dissolution and family law services response, (iii) intersectionality and rainbow families. These gaps primarily relate to rainbow families' experiences of dissolution and family law services. The research in this field is largely qualitative and 76% of identified articles were published between 2010 and 2015. As no analysis of research methodologies or the quality of research was conducted as part of this review, we do not make any comments on gaps in types of study design or quality.

## Impact of current legal frameworks

Only 23% (n=4) of the included literature was published after 2017. As demonstrated by previous trends in family formation from the ABS data, legislative changes impact the various ways that families form and there is a need to examine the impact of marriage equality on the experiences of rainbow families (see also: Perales et al. 2019). Of significance based on our findings, is the question of whether marriage equality impacts rainbow families' feelings of legitimacy and experiences of discrimination. Legal barriers were discussed briefly across the literature (e.g. Hayman et al. 2015; Luzia 2013; Perales et al. 2019; Tuazon-McCheyne 2010). More research is needed regarding the impact of current legislation for rainbow families, including navigating the family law system during and post family dissolution.

## Family dissolution and Family law services response to rainbow families

Gahan's (2018; 2019) important work on rainbow family dissolution should be built upon to better understand dissolution for rainbow families. This is essential for family law services to be able to provide responsive services that are inclusive and appropriate. There was a clear gap in the Australian literature with only two articles being identified. This will also be important area for research in the context of marriage equality.

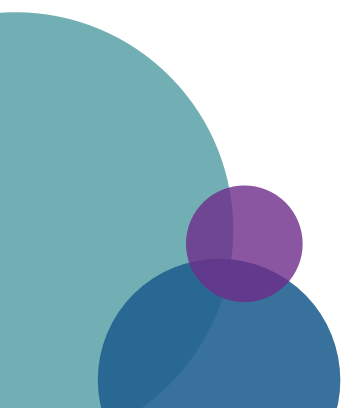
Very little is known about rainbow families' experiences of accessing family law services. Only one study from Doussa et al. (2015), included family law services in their exploration of rainbow families' interactions with service providers. Further research is needed to understand how/if rainbow families are accessing family law services when they dissolve or post-separation. It would not be unreasonable to think that rainbow families would have similarly mixed experiences of

family law services as the literature demonstrated they had of health and other services (e.g. Doussa et al. 2015). It is important to understand experiences of family law services and examine the outcomes of these processes for rainbow families. No evidence was identified that explored trends in family law service utilisation or successful resolution of disputes outside the family court.

An examination of outcomes in services like family dispute resolution and mediation is important and may provide insight into power dynamics between biological and social parents or donors during and post separation. Also missing from current literature is what disputes between parents and donors look like and how they are resolved. This is especially pertinent as a recent high-profile legal case ended up in the Australian High Court where it was ruled that a sperm donor could be a legal parent and have a role in decision making (Byrne 2019). Changing legal contexts will impact the experiences and decisions of rainbow families, as discussed above, lesbian couples accessing donors were fearful about donors making parenthood claims (Hayman et al. 2015) and expanding legal definitions may increase the use of unknown donors for Australian lesbian couples. How rainbow families navigate these decisions with or without the assistance of the family law system is an essential area for future research.

## Intersectionality

Missing from the current literature are the specific experiences of gender and culturally diverse people. In this review we take a critical position on bionormativity in the context of its relationship to heteronormativity. This is not to undermine the importance of biological connections in cultural understandings of family and kinship. More work is needed to explore the interactions between culture and sexuality for rainbow families. Intersecting marginalised identities compound experiences of discrimination and oppression. To deliver equitable services for rainbow families we must understand the intersectional nature of their experiences in greater depth.





# Discussion

As is the case for all areas of social policy, the family law system is deeply embedded in its historical context. Despite promising policy developments over the last two decades, increasing the rights of LGBTQI+ people, rainbow families continue to experience discrimination and be disadvantaged by legislative barriers. This creates a political dimension to rainbow family formation, dissolution and their interactions with the family law system. Having children can force LGBTQI+ parents to come out in new spaces and increase their risk of experiencing homophobia or discrimination (Power et al. 2012a; Tuazon-McCheyne 2010). Equally, it seems that having children or conforming to certain heteronormative norms can make rainbow families feel legitimate (Perales et al. 2019). This may speak to families of origin dismissing relationships as 'a phase' or not recognising same-sex relationships as valid until having children bestows some kind of perceived permanence on the relationship. Community and familial support for rainbow families was demonstrated to be important for rainbow families but not universally expected or experienced (Power et al. 2012a). Divided support from the hetero community while disappointing, is not surprising. What is more surprising is the lateral violence from within the LGBTQI+ community, where rainbow families did not always experience universal support in their decisions to have children and felt excluded from some sections of the community (Hayman et al. 2015; Murphy 2013; Power et al. 2012a). Gahan's (2018) research demonstrated that this same feeling of isolation and lack of support from both hetero and LGBTQI+ communities was felt sharply during separation for rainbow families.

One of the main findings of this review is the clear persistence of heteronormative ideals within the formation and dissolution of LGBTQI+ families. It seems counterintuitive to suggest that rainbow families are in any way endorsing the traditional biologically determined nuclear family that we have come to know however, the high level of importance and labour that are given to the creation of families that are bound by biology suggests that rainbow families are as much a product of a specific set of prevailing cultural norms as are heterosexual families. The oppressive discourse of heteronormativity and our continued socialisation within this paradigm has meant that traditional definitions of family

and parenthood continue to be harmful to rainbow families and inform a key part of their decision making. The literature highlights the significant role of gender in decision making for same-sex couples. The idea that children need both a male and female parent comes from heteropatriarchal norms and has been long used as an argument to prevent same-sex couples from having children. Despite this, for some LGBTQI+ parents this was an important part of their family formation decisions (Gahan 2019). Recent international research from Israel (Segal-Engelchin et al. 2019) also found that the motivation for gay and lesbian couples or singles to enter into multi-parenting arrangements was a perceived importance for children to have both male and female parents. The perceived significance of different gendered parents is linked to bionormativity and has complex implications for social parents. The concept of family is deeply, if not irrevocably, tied to biology and individuals who are not biologically linked struggle to assert the legitimacy of their parentage both within social and legal settings.

Based on the current evidence base it is not possible to make conclusive statements regarding rainbow families' experiences of family law services. More work needs to be done on rainbow family dissolution and on access to family law services. What can be said, is that it is likely that the discrimination and barriers to access that rainbow families experience in other service settings (e.g. health care services and schools) will also be present when accessing family law services. Thus, best practice for family law services must respond to issues of discrimination and heteronormativity by positioning themselves as inclusive and non-judgemental services. We agree with the recommendations from Doussa et al. (2015) and Gahan (2019) that practitioners require specific training for working with rainbow families that develops skills to provide inclusive services. We would extend on this to say that training for family dispute resolution practitioners and mediators must also include knowledge of the unique legal challenges for rainbow families, in particular the precarious position of social parents and to be cognisant of the power asymmetries these legal barriers create within relationships. Based on Gahan's (2018; 2019) work the political dimension of rainbow family formation is still acutely present when these families dissolve.

Where formation feels like a political triumph, dissolution feels like a failure. As is common with marginalised groups, members are held to an impossible standard of model citizenship to justify that their existence is valid and worthy of respect. Rainbow families going through a divorce or separation may be experiencing not only a personal loss but also a feeling of failure as a representative of the LGBTQI+ community (Gahan 2018). Family law service practitioners must be able to contextualise their practice within this political landscape and ensure they are not unconsciously (or consciously) reinforcing heteronormative and discriminatory discourses.

As social conditions change and diverse family forms become increasingly socially accepted and legally recognised our definitions, understanding, and language about families must adapt. Rainbow families are entitled to legitimate social and legal recognition and equitable service delivery. Their very existence challenges family boundaries being based on the correct type of members and forces definitions that relate to family function, including support, love and mutual exchange. Rainbow family dissolution again forces us to reconfigure how we practice and conceive family separation and parenthood. Post separation arrangements for multi-parent families or families with a known donor seem to be invisible in the current academic literature. How these arrangements are negotiated in heterosexual relationships has always been reflective of how we value and conceptualise motherhood, fatherhood and the best interests of children. A clear example of this is most of the parental responsibility falling to women within heterosexual relationships (Ting et al. 2015). One could predict that as rainbow family dissolution moves increasingly into the view of scholars and service providers, we will see both similar and different values and concepts of parenthood and children's best interests reflected in post separation agreements. The clearest example of this will be in the role of social parents and donors. How donorhood is distinct from parenthood and whether these identities and roles are fixed will be a site of significant legal and social contention.

As referenced at the start of this report, the family is an area of social policy that carries more complexity than most (Hayes & Higgins 2014). This has been demonstrated to be true in the literature relating to rainbow families. The impact for family law service providers at this early stage are that best-practice must contextualise rainbow families in the historical and contemporary political context, recognise the distinct challenges (e.g. the involvement of multiple parents or donors), acknowledge their rainbow status without prioritising this over the reason for presenting at a service, ensure that organisational practices like intake are inclusive (e.g. consent and assessment forms including multiple family forms), and provide staff with sufficient training and development that enables them to provide equitable service to rainbow families.

# Study limitations

This study has offered an overview of the Australian evidence base for the formation and dissolution of rainbow families and identifies gaps in current knowledge and future areas for inquiry. However, this study is limited by the lack evaluation of the quality of studies and the methodologies employed. Due to the rapid nature of this review, the scope was necessarily restricted. This review did not target the legal literature which should be a focus for future reviews. No research that specifically examined the experiences of Aboriginal and Torres Strait Islander rainbow families was identified, while this may reflect a gap in the literature, our search strategy also did not target this population.

# Conclusion

This scoping review sought to identify key themes about the formation and dissolution of rainbow families and family law services in the academic literature. The Australian literature is heavily skewed to family formation, very little is known about rainbow families' experiences of separation. What is clear from our findings is the continued centrality of heteronormative ways of 'doing family'. Rainbow families experience continued discrimination and have their legitimacy challenged based on heterosexist beliefs, bionormative conceptions of parenthood and insufficient language for describing social parents and family models. Despite this, rainbow families have forged new pathways for family formation and the increasing accessibility of ART has provided more options for couples or groups wanting to become parents. Understanding family formation and dissolution are essential for best practice service provision in family law services, this review offers an overview of current knowledge in this field that may be useful for practitioners to inform their understanding and for setting research agendas into the future.



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