



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*
(OFFICIAL REPORT—*Unrevised*)

Order of Business	2
An Bille um an gCeathrú Leasú is Tríocha ar an mBunreacht (Comhionannas Pósta) 2015: Céim an Choiste	12
Thirty-fourth Amendment of the Constitution (Marriage Equality) Bill 2015: Committee Stage	12
An Bille um an gCeathrú Leasú is Tríocha ar an mBunreacht (Comhionannas Pósta) 2015: An Tuarascáil agus an Chéim Dheiridh	55
Thirty-fourth Amendment of the Constitution (Marriage Equality) Bill 2015: Report and Final Stages	56
Ráiteas faoi Eolas do Vótálaithe: Tairiscint	59
Statement for Information of Voters: Motion	60
Children and Family Relationships Bill 2015: Committee Stage (Resumed)	61

SEANAD ÉIREANN

Dé hAoine, 27 Márta 2015

Friday, 27 March 2015

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

*Machnamh agus Paidir.
Reflection and Prayer.*

Order of Business

Senator Maurice Cummins: The Order of Business is No. 1, Thirty-fourth Amendment of the Constitution (Marriage Equality) Bill 2015 - Committee and Remaining Stages, to be taken at 11.30 a.m.; No. 2, statement for information of voters regarding the Thirty-fourth Amendment of the Constitution (Marriage Equality) Bill 2015, to be taken without debate at the conclusion of No. 1; and No. 3, Children and Family Relationships Bill 2015 - Committee Stage (resumed), to be taken at the conclusion of No. 2.

Senator Paschal Mooney: I want to bring to the attention of the Leader and the House a 15-point plan which has been published by the Oireachtas Joint Committee on Jobs, Enterprise and Innovation under the chairmanship of the Leader's party colleague, Deputy Marcella Corcoran Kennedy. This 15-point plan would, if many of its proposals were implemented, point the way to reviving the economic life of towns and villages across Ireland. The plan contains many positive proposals which can be implemented if there was the goodwill to do so. Two of the points, if implemented, would go a long way to helping small to medium-sized businesses in towns and villages specifically on the question of commercial rates which are crippling many such businesses. I was astonished to discover that while some €6 billion of Irish consumers' money is spent purchasing online, only 23% of small businesses have a digital platform. That is extraordinary in a country that prides itself on being at the cutting edge of technological innovation. I am putting this in context to ask that the Leader might consider having the 15-point plan discussed here after the Easter recess. One would presume it would be the Department of the Minister for Jobs, Enterprise and Innovation, Deputy Richard Bruton, that would be responsible, although the Leader can check.

I raise also the ongoing negotiations on the transatlantic trade and investment partnership, TTIP, regarding international trade. I understand one of the leading representatives of the European Union has been in Dublin in recent days. This has highlighted this issue and that if implemented and if the compromises are all agreed in the trading area, it would lead to the free-

ing up of much of the bureaucracy surrounding business. Perhaps the two issues might be put together, but the 15-point plan put forward by the Joint Committee on Jobs, Enterprise and Innovation is very worthy of debate, particularly as this House would be representative of both the urban and rural environment. Many of us from rural Ireland would welcome the opportunity to tease out the proposals and get a response from Government as to how it judges, assesses and evaluates them and whether it will implement them. There is not much point in having a report gathering dust on the shelf. It needs to be implemented and there are areas of it that can be implemented very quickly. One final point I wish to make in this context is on the introduction of free parking at particular times of the day across towns, villages and cities. That proposal can be implemented almost overnight and would go a long way to helping businesses in the centre of towns and villages. Every town, particularly large towns, has been affected by the location of multinational supermarkets and out-of-town retail parks which are strangling the life out of the traditional town centres. There is most definitely a need to address that issue.

Senator Aideen Hayden: In recent days we have seen at the Joint Committee of Inquiry into the Banking Crisis a discussion about the role of the media in the property boom. The discussion on the issue raises some disturbing questions about how journalists' objectivity can be affected by the reliance of newspapers on their property supplements. Aside from the critical issue of the impact that the media coverage had on the markets themselves and the demand for housing, there is also an issue that needs to be addressed on the influence that such coverage had on Government policy. For example, from the earlier days of the Celtic tiger when the affordability of property became an acute issue, even before the bubble developed there was remarkably little in-depth discussion of the issues of a small number of landowners profiting excessively at the expense of a generation of new house buyers. A leading construction economist said in 2003 that the site cost of a house had risen from 15% in the early 1990s to between 40% and 50% in 2003 and that, more important, eight major developers had cornered the entire market for development land in north County Dublin. That report received little or no attention in either of the property supplements of the main leading newspapers. Editors can say they were not influenced by the income their newspapers derived from property supplements, but I believe there remains substantial evidence that bias was at work and such assurances are insufficient. There is an issue that needs to be considered further about the way the media is regulated and that private interests can be in a position to bias the reportage.

I ask the Leader for a discussion on the transatlantic trade and investment partnership, TTIP. Today we saw Government-commissioned research outline projected economic benefits from the proposed TTIP for Ireland. Economists will always project economic gains from the lessening of trade barriers. I do not think there is anything new about that, but there is another issue. If we go down this road, what impact will it have on the future and coherence of the EU project? If all trade issues are to be determined within a US-led framework in the future, there is an issue for the European Union in terms of the different philosophies that underpin the Union, on the one hand, and the North American free trade area, on the other. In the EU case our position is based on the need to strengthen standards and protection for consumers, employees and the environment in parallel with opening up markets. I would not like to see a race to the bottom in terms of those particular standards. In the NAFTA case there has been virtually zero concern with strengthening or even maintaining such standards and regulation in the markets. The question is where TTIP will take us? Does it represent the victory of US views and US regulation over EU regulation and market fundamentalism at the expense of a social Europe? I do not think it is an issue we should take lightly. I strongly suggest the House give it more detailed analysis and consideration.

Senator Jillian van Turnhout: I seek a debate on child and adolescent mental health services. Anyone who reads any of the newspapers today will note the recent report from the independent review panel, chaired by Dr. Helen Buckley. It reviews any deaths or serious incidents of children in the care of the State or known by the care system. The study shows clearly that 26 young people known to social services died last year. The chair of the review group, Dr. Buckley, said it found that alcohol, drug abuse and domestic violence were issues in half of the cases. Other serious problems were parents suffering from mental health or intellectual disability. However, she said a strong theme was the difficulty of accessing appropriate psychological and mental health services for suicidal young people. There were long waiting lists, up to two years for psychological services, and the treatments were time-limited. Three out of four teenage girls who died by suicide were known to child protection services and had been on lengthy waiting lists for psychological services. One of the girls could not access a mental health service in the days before her death.

When debating the Child and Family Agency Bill I argued that the child and adolescent mental health services needed to be moved into the new Child and Family Agency. Certainly what I am reading in the reports substantiates that view. While there are issues around the number of social workers allocated to each case, in many cases social workers could not access the services needed for these children. A need was identified and the services could not be accessed. I have raised the issue repeatedly. A few months ago when the Minister of State at the Department of Health and Children, Deputy Kathleen Lynch, was in the House, I raised the issue because I believe it is an issue throughout the country. She stated on the record that she questioned her decision regarding the child and adolescent mental health services not moving to the Child and Family Agency. The difficulty is that we are witnessing the direct effect on lives which makes it very difficult for me. I ask the Leader for a debate on child and adolescent mental health services and how such services can be accessed from a local level by those in the social services. All too often social workers are told these people are now in their care and that the social services will look after the community care. I question whether they are looking after community care because year on year they have been allocated extra money, some of which is left over at the end of the year, and they have not employed the staff they are supposed to employ. I do not know what we need to do but, as Senators, we need to give this area a focus. We cannot fail the children of Ireland in this way.

Senator Hildegarde Naughton: Today is national daffodil day, the Irish Cancer Society's biggest fund-raising day of the year. There is not one member of the Chamber who has not been directly or indirectly affected by cancer. The funds raised today will go directly to families and people affected by cancer. I urge everyone to support the Irish Cancer Society's fund-raising event.

I wish to raise the five-day delay in issuing a warning of kerosene contamination of water to a Galway city estate. It appears that during a routine kerosene delivery, the water supply to 75 houses in Moyola Park in Newcastle, Galway, were contaminated. Ingesting kerosene has potentially very serious consequences and although a once-off exposure would not be fatal, it appears it took five days for all agencies concerned, the HSE, Irish Water and Galway City Council, to put their heads together and issue an official warning. To be fair, tankers were provided immediately, alternative washing facilities were provided and the matter is being handled efficiently once the problem had been identified. The issue seems to be the protocol involved in these matters. The first complaint was made on Saturday but no official notification was given until Thursday. This would appear to be an inordinate delay. There are many elderly

27 March 2015

residents in that estate who could have become quite ill. I have written to the Minister for the Environment, Community and Local Government, Deputy Alan Kelly, asking for a review of the incident. I would hope that response times could be speeded up.

Senator Sean D. Barrett: Senator Aideen Hayden has raised important matters about housing which I will bring to the attention of the Joint Committee of Inquiry into the Banking Crisis. One of the things that struck me about the evidence yesterday from Ms Geraldine Kennedy, the previous editor of *The Irish Times*, is that people at the top in society seem to think they have an entitlement to telephone editors all the time to complain about the newspapers. I found that quite surprising. The rest of us, for instance, would not try to influence a judge before a case, an examiner before an education test of people, or - it is not trivial either - the referee before a match on Sunday. It seems there is a stratum of society which feels it is quite normal to influence how issues are covered in newspapers. The issues Senator Aideen Hayden has raised about how the housing bubble was presented in the media are most important.

I support the call for a debate on the TTIP, about which I would be positive. There is a mention of 5,000 to 10,000 jobs. More of our exports go to the United States than to any European country and more investment by the United States is made in Ireland than in our European partners. The gainers are pharmaceutical, electronics, agrifood and insurance companies. The losers are beef farmers and accountants, but it seems that the gains will exceed the losses. If the insurance industry can get its act together to gain from the TTIP, the accountants could be called upon to pull up their socks. Sometimes, the losing sectors in Ireland are more successful at making noise than those who stand to gain.

I welcome the Taoiseach's visit to Northern Ireland. Yesterday, he met the relatives of the ten people killed in the 1976 Kingsmill massacre. Mr. Alan Black, who was shot 18 times and survived, stated he had felt elated by the meeting, as well as the Taoiseach's determination to get to the truth. Today, the Taoiseach is in Ballymurphy, where 11 people were killed in 1971. His interest in meeting the real people of Northern Ireland is to be commended. Those healing endeavours at Kingsmill and Ballymurphy deserve to succeed.

Senator Marie Moloney: I second Senator Jillian van Turnhout's call for a debate on the child and adolescent mental health service, CAMHS, but we should go a step further in a week that has focused people's minds on the question of suicide, given the dreadful aeroplane crash and deaths of many people that resulted from just one person wanting to commit suicide. Every year, approximately 500 people commit suicide in Ireland, 80% of whom are men. It is time that the national Parliament open up the debate on suicide. It is no longer taboo. Last year, €35 million was made available for mental health services. As such, it beggars belief that the HSE could not fill psychiatric nursing places. Young people are crying out for jobs. Let us bring our nurses home. There are places and money. Nearly one year ago, I gathered together a group in County Kerry comprising the coroner, Stand Against Suicide, the counselling centre, the Garda and everyone in the area involved in tackling suicide. We submitted a detailed and comprehensive submission to the national framework strategy for suicide prevention. Let us not play politics with this issue. Let us work across parties to save lives. Let us hold a debate in the Chamber on the matter.

Senator Trevor Ó Clochartaigh: Ba mhaith liom aontú leis an méid atá ráite ag an Seánadóir Naughton maidir leis an kerosene contamination i bPáirc Moyola sa Ghailimh. Tá ceist mhór le freagairt ansin i dtaobh cén fáth nár tugadh fógra do na daoine atá ina gcónaí ansin níos tuisce.

Yesterday, I engaged with stakeholders in London on the issue of the Irish diaspora. One of the major points that they raised with me related to voting rights in certain elections. In the Government's recent policy on the diaspora, examining the issue of voting rights in presidential elections was laid at the door of the Minister for the Environment, Community and Local Government, Deputy Alan Kelly. The stakeholders want the process to be accelerated and enfranchisement put in place as soon as possible. The concern is that, since the Government has only one year left in office, this issue could be kicked to touch. The stakeholders have asked whether the Seanad might debate the Minister's plans over the next year for facilitating people to vote in presidential elections at the least.

I wish to raise a major concern. The House has often debated the direct provision system, asylum seekers, etc. This morning, the CEO of the Irish Refugee Council, Ms Sue Conlan, made it public that she had tendered her resignation from the Government's working group on the protection process. She did not resign lightly. For years, she has given a significant commitment to the issue of refugee status and so on. She cited as one of her reasons the publication of the heads of the international protection Bill, the most significant change in refugee law in almost 20 years, by the Minister for Justice and Equality without the working group being allowed sight of it or to discuss it. She stated, "Given the importance of the Bill, which contains much more than a single protection procedure, it is difficult to understand why the decision was taken to withhold it from the working group." She also stated, "Any attempt within the Working Group to propose change which involves legislation, such as putting accommodation and support in a Bill or changing legislation to extend the role of the Ombudsman or Children's Ombudsman has been resisted by the Department of Justice." To put matters in a nutshell, it is a damning indictment of the working group that a key stakeholder like Ms Conlan has seen a need to resign. We must debate the working group's work with the Minister of State, Deputy Aodhán Ó Ríordáin. Media commentary has noted that the group has been used as an argument in High Court cases relating to direct provision. This is a serious issue and it is important that we debate it as soon as possible.

Senator Paul Coghlan: It is most disappointing to see who is driving the number of civil bills in our courts seeking house repossessions. In counties Cork, Limerick and Donegal and my own county of Kerry, Bank of Ireland accounts for 6% whereas the State-owned banks - AIB and PTSB - account for approximately 60%. Mortgage stress is the most painful legacy of the previous Administration's decade of economic mismanagement. The current Government is set to announce new measures designed to focus on the still unacceptably large number of families in long-term mortgage arrears and facing repossession. The Taoiseach has not excluded the possibility of further legislation on the matter. The Insolvency Service of Ireland does a good job. It is there to help in a practical and understanding way. Thankfully, the number of people availing of personal insolvency arrangements has increased. These arrangements form a solution to the arrears problem. However, the system only works with the co-operation of all concerned, including every bank. There can be no solution to the debt problem without the banks' co-operation. They must engage in good faith. Even at this stage, I encourage them to engage more forcefully and constructively with people in distress. I hope that there will be further progress. Judges act with compassion. I hope that we will see fewer cases before the courts. While there were more than 100 cases in Limerick recently, only two saw judges granting orders.

Senator Diarmuid Wilson: I endorse everything that my colleague, Senator Paul Coghlan, has stated about the banks, home repossessions and how the issue of insolvency is being

handled. Some time ago, I mentioned my concerns about the ways in which banks were using receiverships and I called on the Leader to arrange for a debate on same with the Minister for Finance. The receivership process is being abused by the banks.

I understand the Minister of State, Deputy Kathleen Lynch, proposed that all children with special needs, including those with Down's syndrome, should be entitled to medical cards.

To date, this has not happened. Members on all sides of this House have called for such a provision and I acknowledge the Leas-Chathaoirleach is an advocate for the provision of such cards to children with special needs, including those with Down's syndrome. I ask the Leader to inquire of the Minister of State, Deputy Kathleen Lynch, as to where stands her proposal in this regard.

Senator Colm Burke: I raise the issue of how in real terms, very little reform has occurred in the health service. One subject I raised during a Commencement matter this week was the issue of nurse prescribing, particularly in nursing homes. There still is a huge problem, in that nurses have the qualification and are competent to take on many of the roles on which the sign-off of a doctor previously was required. However, there appears to be an extremely slow process in dealing with this matter. In the reply I was given, I found that only somewhat more than 1,000 nurses had been trained up in nurse prescribing. Members need to have a debate on the reform of the entire health service. *11 o'clock* In addition, while I welcome the recruitment to the Health Service Executive, HSE, one major problem it now is causing is the executive is recruiting nurses from private nursing homes. This is now causing its own problems within the private nursing home sector. Service providers in that sector wish to bring in people from abroad but cannot because there is not adequate training here for those who come in from abroad. They must go through an educational process, rightly so, but not enough courses are available to fill the vacuum that has occurred within the private nursing home sector. One should remember that more than 22,000 people are participating in the fair deal scheme in private nursing homes, with another 7,000 or 8,000 people in community hospitals. There is an urgent need to examine this issue, as the numbers requiring nursing home care will continue to increase each year for the next 20 years. As it has been predicted that an additional 4,000 nursing home beds will be needed by 2021, this is a matter that cannot be pushed down the road and left to move along at its own pace. Members must dictate the pace and in particular, they must dictate the pace of reform as not enough reform is taking place in this area. Although a large percentage of nurses now have academic qualifications, their role has not been upgraded. I refer to where they are extremely competent and well able to manage patients in roles in which they must rely on junior doctors to make decisions. Members must have a major debate on that issue, as well as on the broader issue of reform in the health service.

Senator David Norris: I note that a report in today's edition of *The Irish Times* indicated a decline in support to 74% for the marriage equality referendum. While I hope that level of support remains true, I very much doubt it. I believe this referendum easily could be lost because of the confusion being shown. It is extremely important to get out the message that this referendum is in the balance. If people want it to pass, they must mobilise people and there cannot be indifference. This is the last hurrah for the reactionary forces in this country. They lost on contraception, divorce, the abortion issue and civil partnership and they will put every effort into winning this referendum campaign.

Second, I see the Order Paper contains the referendum wording and so on for the proposal to reduce the age at which one can become President of Ireland. This is just fiddling at the edges.

It is an utter waste of time and is avoiding the real issue. I was a delegate at the Constitutional Convention and succeeded in getting through a motion with 96% support, the highest figure of the entire convention, to the effect that the public should be given some degree of access to the nomination process for the Presidency. All the main parties in this House, namely, Fine Gael, the Labour Party and Fianna Fáil, supported this proposal some years ago. Not only that but they produced legislation for it. Why this deafening, stunning silence on something that 96% of the people at the Constitutional Convention voted through? I am aware the Government did not want this to be voted on or discussed but I managed to get it discussed and to get 96% of the people there to decide in favour. Let us hear from the Government. What is it doing about this? Has it shelved the legislation it produced all those years ago? It is the same with the Opposition. Everybody agreed, legislation was produced; this is an important democratic issue and the Government is ignoring it.

Senator Terry Brennan: Recently, the Minister of State, Deputy Joe McHugh, commissioned the INFOMAR programme's new survey vessel, naming her the *RV Tonn* at the Poolbeg Yacht Boat Club & Marina. This is part of Ireland's national marine mapping initiative and the programme carries out hydrographic and geophysical surveys of Irish territorial waters. It is a co-operative programme between the Geological Survey of Ireland and the Marine Institute and is funded by the Department of Communications, Energy and Natural Resources. This new vessel will support the completion of the first phase of the INFOMAR project's mapping of three priority areas and 26 bays around the coastline by the end of 2015. I commend the Minister of State and his Department for this much-needed and important initiative and look forward to the first stage of the programme being completed by the end of the year.

Senator Thomas Byrne: Once again, the people of County Meath are being treated as second-class citizens by the Fine Gael-led Government. I refer to the announcement this morning by EirGrid which I understand was tipped off to Fine Gael Deputies last night, although they did not tell their constituents until a representative of EirGrid appeared on radio this morning. EirGrid now has decided there will not be undergrounding of pylons and power lines in the north east in counties Meath, Cavan and Monaghan. This is despite a promise by the Fine Gael Party before the last election effectively to bury the cables and despite the fact it appears to be possible to bury the cables in the Taoiseach's constituency in County Mayo. I tell the Leader that the people of County Meath will not accept being treated as second-class citizens. It is wrong and unjust and they will not put up with it. It is essential that the Minister for Communications, Energy and Natural Resources be brought into this House as soon as possible to discuss his plans and to tell Members why people in the north east in counties Meath, Cavan and Monaghan are being treated as second-class citizens.

Senator Gerard P. Craughwell: First, I compliment Senators Aideen Hayden and Sean D. Barrett on bringing forward the request for a debate on the transatlantic trade and investment partnership, TTIP. While I support both calls, I am not sure that I am as enthusiastic as is my colleague, Senator Sean D. Barrett.

I also wish to support Senator Jillian van Turnhout on the issue of children's mental health. In particular, if Members are to have a debate on that subject, the issue of guidance should be included. In such a debate, I would also ask the Health Service Executive why one entire group of psychologists is excluded from employment within the health service through the official means, yet such psychologists can be employed unofficially.

In particular, however, I wish to comment on the Germanwings flight. I am extremely dis-

turbed to find that depression is being cited as one possible cause. Depression is a mental health issue and everyone lives and works with people all over the world who suffer severely from depression. Just because someone suffers from depression does not necessarily mean he or she will drive a car or an aeroplane into the ground. People are being a little previous in coming up with what caused this event. The other thing I find most disturbing today is that questions now are being asked about the religion of the pilot. Religion is a lifestyle choice. We now live in our multiethnic multireligious society and how dare anybody try to pin this on one particular religious belief or another. Consequently, I ask the Leader to acknowledge that not enough is known about what happened to the Germanwings flight to lay blame on any particular disease or religion. My colleague, Senator Rónán Mullen, will speak shortly. I propose an amendment to the Order of Business that Committee Stage of the Thirty-fourth Amendment of the Constitution (Marriage Equality) Bill 2015 be taken today and that Report Stage be taken next Monday. I do not do so because I agree with my colleague's views but because it is the right and democratic thing to do.

An Leas-Chathaoirleach: The Senator is proposing that Report Stage be delayed until next week.

Senator Gerard P. Craughwell: That is correct.

Senator Rónán Mullen: I second Senator Gerard P. Craughwell's excellent proposal. This is very bad parliamentary practice. I remember meeting other group leaders when I was a representative of the independent university panel and a general rule was that we did not take Committee and Report Stages on the same day, other than in the most exceptional of circumstances. The reason is to give the Government time to consider the amendments tabled on Committee Stage and any issue arising from them. I would hate to think it is so much of a done deal that the Government, recognising that there will be no meeting of minds, will rush the whole thing through today. It is extremely bad parliamentary practice and reflects contempt for Oireachtas procedures. I, therefore, ask the Leader to accede to our request to take Committee Stage today and Report Stage on another day. This is, to some extent, against my own interests because I have a work agenda next week, but it is bad parliamentary practice. Amendments have been tabled on Committee Stage and they should be thoroughly considered which means that we should not take Committee and Report Stages on the same day.

Senator Thomas Byrne is absolutely right about the undergrounding of lines. The establishment has shown contempt for ordinary people in this matter. The well organised protests about overhead lines and the erection of pylons have forced the limited rethink we have seen, but much more needs to be done. I support the in this regard.

Senator Maurice Cummins: Senator Paschal Mooney asked about the Joint Committee on Jobs, Enterprise and Innovation and its 15-point plan for small businesses, especially in rural Ireland. The Senator called for the Minister for Jobs, Enterprise and Innovation, Deputy Richard Bruton, to come into the House to discuss the proposals made. I will certainly try to get the Minister to come to the House as it is a very important issue. The Senator made a number of suggestions about rates and free car parking, but local authorities would have to compensated for the loss of rates and car parking revenue. Nevertheless, the matters can be discussed. We will try to arrange a debate on the matter as soon as possible.

Senators Aideen Hayden and Sean D. Barrett spoke about matters arising from the banking inquiry. I would prefer to wait until we have the report from the inquiry in order that we could

discuss everything at that stage. Otherwise we would discuss bits and pieces as they came up in the inquiry day by day.

The report on the Transatlantic Trade and Investment Partnership which will be launched today will show that a comprehensive EU-US trade deal would add up to 1.1% to Irish GDP, creating between 5,000 and 10,000 additional jobs in the exporting sector of the economy and providing benefits amounting, on average, to €1,200 per family. It is something on which we can have a discussion at a later date.

Senators Jillian van Turnhout, Marie Moloney and Gerard P. Craughwell spoke about child and adolescent mental health services. We will certainly try to get the Minister of State, Deputy Kathleen Lynch, to come to the House for a debate on the matter. As Senator Jillian van Turnhout said, the Minister of State has been in the House previously to speak about the matter, but we can certainly try to get her to come again.

Senator Hildegard Naughton lauded the Irish Cancer Society's Daffodil Day and urged support for what was a very worthy cause. With Senator Trevor Ó Clochartaigh, the Senator also spoke about the kerosene contamination of the water supply on an estate in Galway. She highlighted the delays in dealing with the matter and said she had brought it to the attention of the Minister for the Environment, Community and Local Government. It is a very serious matter and as delays cannot be tolerated, I will follow it up with the Minister.

Senator Sean D. Barrett welcomed the Taoiseach's visit to Northern Ireland and meeting with the victims of atrocities.

Senator Marie Moloney also called for a debate on suicide. We have had a number of debates on the issue, but I agree with the Senator that it is something we have to keep on the agenda at all times.

Senator Trevor Ó Clochartaigh spoke about voting rights for the diaspora, especially in presidential elections. We can try to find out what the Government's proposals are. Giving votes to the diaspora is not as simple as it sounds and there is a lot to be done first. We could have a situation where more people outside than inside the country would vote for the President. Such matters have to be taken into consideration.

The Senator also made points about the direct provision system, as he has done on a number of occasions. We will try to get the relevant Minister to come to the House to address the matter and talk about the report.

Senator Paul Coghlan talked about the matter of mortgage stress and the need for all banks to engage in a process with customers.

Senator Diarmuid Wilson asked about medical cards for children with special needs. I will try to obtain the information sought from the Minister of State, Deputy Kathleen Lynch.

Senator Colm Burke said there was a need for a further debate on the reform of the health service, in particular, the recruitment of nurses and care workers. The Minister for Health has been in the House on a number of occasions, but I am sure he would be willing to come again.

Senator David Norris spoke about the referendum. We will have plenty of time to discuss that matter. As the Senator said, as with any referendum, the result is in the balance until the people decide. I note his points on the selection process for the presidential election. I will try

27 March 2015

to find out what the up-to-date position is and whether the proposed legislation will be brought forward.

Senator Terry Brennan welcomed the new high-tech survey vessel, the *RV Tonn*, which will carry out very important work around the coastline.

Senator Thomas Byrne asked about EirGrid and the undergrounding of cables. I am sure we will have plenty of debates on the matter in the House with the Minister.

Senators Gerard P. Craughwell and Rónán Mullen proposed an amendment to the Order of Business regarding the arrangements for the Thirty-fourth Amendment of the Constitution (Marriage Equality) Bill 2015. It has been normal, especially when dealing with Bills providing for the holding of a referendum, to take Committee and Remaining Stages on the same day. We have given a lot of time to the matter and will devote a lot of time to it again today. Therefore, I do not propose to accept the amendment proposed to the Order of Business that Report Stage be taken on Monday.

An Leas-Chathaoirleach: Senator Gerard P. Craughwell has proposed an amendment to the Order of Business: “That only Committee Stage of No. 1 be taken today.” Is the amendment being pressed?

Senator Gerard P. Craughwell: Yes.

Amendment put:

The Seanad divided: Tá, 10; Níl, 20.	
Tá	Níl
Bradford, Paul.	Barrett, Sean D.
Byrne, Thomas.	Brennan, Terry.
Craughwell, Gerard P.	Burke, Colm.
Mooney, Paschal.	Coghlan, Eamonn.
Mullen, Rónán.	Coghlan, Paul.
Ó Clochartaigh, Trevor.	Cummins, Maurice.
O’Sullivan, Ned.	D’Arcy, Jim.
Power, Averil.	Hayden, Aideen.
Walsh, Jim.	Henry, Imelda.
Wilson, Diarmuid.	Mac Conghail, Fiach.
	Moloney, Marie.
	Moran, Mary.
	Mulcahy, Tony.
	Mullins, Michael.
	Naughton, Hildegarde.
	Noone, Catherine.
	Norris, David.
	Sheahan, Tom.
	van Turnhout, Jillian.
	Zappone, Katherine.

Tellers: Tá, Senators Gerard P. Craughwell and Rónán Mullen; Níl, Senators Paul Coghlan and Aideen Hayden.

Amendment declared lost.

Order of Business agreed to.

An Bille um an gCeathrú Leasú is Tríocha ar an mBunreacht (Comhionannas Pósta) 2015: Céim an Choiste

Thirty-fourth Amendment of the Constitution (Marriage Equality) Bill 2015: Committee Stage

An Leas-Chathaoirleach: I welcome the Minister for Justice, Deputy Frances Fitzgerald. Before Committee Stage commences, I would like to deal with a procedural matter concerning Bills to amend the Constitution. The substance of the debate on Committee Stage concerns the wording of the proposed constitutional amendment, which is contained in the Schedule to the Bill. The sections of the Bill are merely technical; therefore, in accordance with the long-standing practice, the sections are postponed until consideration of the Schedule has been completed. Is that agreed? Agreed.

AN SCEIDEAL.

SCHEDULE.

An Leas-Chathaoirleach: Amendments Nos. 5 and 6 in the name of Senator Rónán Mullen have been ruled out of order.

Senator Rónán Mullen: On a point of order, having checked it with the Clerk, Ms Deirdre Lane, just now, I understand the procedure whereby an amendment to a Bill is ruled out of order is that a recommendation comes up from the Bills Office, goes through to the Seanad Office and then on to the Cathaoirleach for a ruling. In this case, it came to the Leas-Chathaoirleach to rule it out of order. I understand no legal advice was obtained in the course of that decision being arrived at. You are not, of course, obliged to seek legal advice. As a legal man, I ask you to reconsider this decision because the amendments that are proposed to be ruled out of order are central to the public debate about this referendum, namely, the question of whether redefining marriage in the way proposed will have a knock-on constitutional impact on any attempt to regulate matters, for example, in the areas of adoption or assisted human reproduction, in such a way as to seek to ensure as far as practicable that a child is never deprived of the right to be brought up by his or her own father and mother or by a father and a mother. The amendments were carefully thought through. A lot of legal advice was sought. They are central to the question of what the precise impact of the proposed referendum change will be. They are not vexatious amendments and are not-----

An Leas-Chathaoirleach: The Senator raised a point of order and I allowed him a lot of latitude in making his point. I have signed the letters in good faith and made my decision that

27 March 2015

the matters raised were outside the scope of the Bill and I will stand by that ruling. I have given the Senator three or four minutes to make his point, which normally would not be allowed, because he feels strongly about it. The point he raised initially was not, in fact, a point of order. That is why I gave him a bit of latitude, but we will have to move on now. That is my ruling.

Senator Rónán Mullen: May I propose the amendments again on Report Stage? Is it possible for the Leas-Chathaoirleach to engage in separate consideration?

An Leas-Chathaoirleach: Certainly, on a point of procedure, that can be done and I will reflect on it and may come to the same decision. What has been done at this stage is done and if the Senator re-enters the amendments, I will have to look at the matter again. I am not going to pre-empt what might happen on Report Stage.

Senator Rónán Mullen: I am grateful for the courteous and careful way in which the Leas-Chathaoirleach has allowed me to express my major concern about this issue. It has the potential to bring the Seanad and the officials who work in these Houses and their decision making under public scrutiny in a way that will not reflect well on them. These issues are going to be central to the public debate and if it is out there that it is not even possible to amend the Constitution proposal, there is going to be nothing but contempt for the procedures of these Houses.

Níor tairgeadh leasuithe Uimh. 5 agus 6.

Amendments Nos. 5 and 6 not moved.

An Leas-Chathaoirleach: I appreciate that the Senator feels strongly about the issue. We are on amendment No. 7 in his name. Amendments Nos. 1, 2 and 7 form a composite proposal and may be discussed together, by agreement. Is that agreed? Agreed.

Senator Rónán Mullen: Tairgim leasú a 7:

I leathanach 7, idir línte 3 agus 4, an méid seo a leanas a chur isteach:

“5 Ní cead alt 4 den Airteagal seo a agairt chun oibriú Airteagail 42 nó 44 nó na saoirsí agus na cearta a admhaítear sna hAirteagail sin a thoirmeasc nó a rialú nó a bhac.”.

I leathanach 7, i ndiaidh líne 6, an méid seo a leanas a chur isteach:

“5 Section 4 of this Article shall not be invoked to prohibit, control, or interfere with the operation of Articles 42 or 44 or the freedoms and rights recognised in those Articles.”.

I move amendment No. 7:

In page 6, between lines 3 and 4, to insert the following:

“5 Ní cead alt 4 den Airteagal seo a agairt chun oibriú Airteagail 42 nó 44 nó na saoirsí agus na cearta a admhaítear sna hAirteagail sin a thoirmeasc nó a rialú nó a bhac.”.

In page 6, after line 6, to insert the following:

“5 Section 4 of this Article shall not be invoked to prohibit, control, or interfere with the operation of Articles 42 or 44 or the freedoms and rights recognised in those Articles.”.

Amendment No. 7 provides that section 4 of this Article shall not be invoked to prohibit, control or interfere with the operation of Article 2 or Article 44 or the freedoms and rights recognised in these articles.

Much that is very uninformed has been said about the issues that arise in terms of freedom of conscience when it comes to the provision of various services by people who have a sincere view, which may be political or religious, about the importance of marriage between men and women as being fundamental in our society from the point of view of securing as far as possible the best interests of children. Sometimes issues arise whereby people find themselves unable to act in conscience in accordance with what they are asked to do.

In recent days Senator Thomas Byrne sought to draw a distinction with regard to the controversy involving Ashers bakery in Belfast, which is run by people who have a Christian commitment to the importance of marriage. I am not concerned as to whether they are religiously motivated or otherwise. They were asked to produce a cake which would have a political message supporting gay marriage on the icing. They refused to do so and are now being prosecuted by the equality people in the North. There is considerable disquiet among many people about the intolerance which underlies such a possibility. We must ask whether anything we are doing here in redefining marriage in the Constitution could have a knock-on effect whereby this kind of spectre would raise its head.

In recent days in Drogheda a printing company declined to print a menu for a civil partnership event, as the people involved felt it would draw them into publicly supporting something with which they did not actually agree. I regard myself as a pragmatic person; if I were in their situation I would not necessarily be bothered, but that is not what tolerance is about. Tolerance is not about facilitating only those people whose point one actually sees. Tolerance is about facilitating the point of view of the person whose views one might actually despise. It is really important that we consider the operation of anti-discrimination laws, which are in themselves good but which may have unforeseen and perhaps undesired consequences if we do not seek to balance them in some way so as to protect people's right to live in accordance with their convictions.

The articles I seek to protect from any unforeseen interference with their operation by virtue of this proposed change should the referendum pass are articles which protect freedom of religion and religious-run institutions but also protect the rights of parents as educators. I seek simply to ensure nothing changes in the operation of these articles and it is a very conservative amendment in this sense as I do not seek to create any new rights in the Constitution. I want to ensure nothing changes merely by virtue of this referendum. This is a respectful approach to take.

We have not had a debate about how things might change if the referendum is passed. We have not had a debate about what will be tolerated in schools. Take, for example, a school where a teacher wishes to teach about love, care and respect for people's private lives and, because of the school's ethos, the teacher's personal conviction or just his or her desire to teach what he or she believes to be true, that - all things considered - a child deserves to have a father and a mother and this is what we should try to promote as a society. Will anything in the proposed constitutional change be invoked to prevent any future vindication of this teacher's right to teach what he or she truly believes to be true, what the employing organisation truly believes to be true and what many of the parents who send their children to that school truly believe to be true? All I am saying in the amendment is that nothing should change, and this is the only

27 March 2015

responsible thing to say considering the Minister has not told us what will change. She has not told us that nothing will change as a result of the amendment with regard to what goes on in schools and education. If she thinks anything will change, she has not told us what may change. If the Minister is sincere, as the Government and supporters of the amendment keep saying, that this is only about recognising love and relationships between two adults of the same sex and nothing more than this, she should not be afraid to accept the amendment.

There remains a problem with the amendments that have been ruled out of order, which is not in the best interests of the Minister or the Government, as she has just created an important political controversy about the amendment. Not only am I prevented from seeking to vindicate the right of a child to a father and a mother as far as practicable within the context of a new definition of marriage but the Minister is prevented from giving the necessary reassurances that this is not necessary. If the Government has the courage to debate this issue directly with opponents of the referendum in the weeks ahead, I hope the Minister will have a better answer than I have received so far. It will not go down very well with the Irish people to say we will not discuss the question of whether the amendment will impact on a child's right to a father and a mother because the Seanad ruled it out of order after a recommendation from the Bills Office which went through the Seanad Office and on which the Leas-Cathaoirleach ruled. It will not sound very good to the people of Ireland that the debate has been curtailed to this extent. There is a serious question to be asked about whether the proposed amendment has an impact on the rights of educators. Could somebody lose his or her job? Would people move a step closer to losing their job if the constitutional amendment passes without the insertion of the clause I propose?

To return to the providers of services, people here may not sympathise with those who have a conscientious objection. This issue was ventilated to some extent during the civil partnership legislation debate, which was disgracefully handled because the debate was guillotined to facilitate the Green Party having a press conference on the Friday in order that its members could tell the public how great they were in introducing civil partnership and full and thorough debate in Leinster House of the issues was of much less priority for the then Fianna Fáil and Green Party Government, unfortunately.

Senator Thomas Byrne: There was a lot of debate.

Senator Rónán Mullen: The debate was guillotined, which was unfortunate. Similar issues arose with regard to conscientious objection. Nobody should have any sympathy with anybody who would like to discriminate against a person on the grounds that he or she is gay. It should be and is against the law. Discrimination on the grounds of sexual orientation should be outlawed. There are exceptions to pretty much all of the prohibited grounds for discrimination simply to secure the common good. For example, a person employing somebody to look after his or her elderly parent is entitled to seek a person of a particular sex. The law would be a nonsense if exceptions to reflect important realities were not allowed. As a general principle, it should always be immoral and unlawful to discriminate against a person on grounds of his or her sexual orientation. However, refusing to provide a service in circumstances which one perceives to link one with something with which one conscientiously disagrees is not the same thing. This is why it is a real issue to ask where is the right to free expression, the constitutionally protected right to freedom of conscience, not just the freedom to believe certain things but the freedom to practise and live out one's beliefs. This freedom must be limited in accordance with public morality and order. For example, if my sincere beliefs put at risk another person's rights to safety or life, I am not, and should not be, allowed to express them. However, a person's right to full public recognition of his or her relationship could, in certain cases, hold

somebody's deeply held principles up to scrutiny in a way that would embarrass that person, compromise his or her business or affect his or her personal or business relationships. If two people are in business together and one of them has a sincere disagreement with the redefinition of marriage, not because he or she is opposed to anybody's sexual orientation but because he or she has a certain idea of what marriage is, means and does for society, is there room for this person or that business in our new, tolerant Ireland?

Surely, there can be a way to balance a person's right to public recognition of his or her relationship, given that the law will provide for it if the referendum is passed, with another person's right to refuse a service based on his or her particular views, with the best will in the world and with good wishes to the prospective customer? This is what happened in the Drogheda case. The printer in question had previously dealt with the people seeking the service. However, when he realised he was being asked to produce invitations for a civil partnership event, he and his business partner felt it would impact in some way on their need to be publicly consistent with what they believed. I presume that the issue was that some printers will always print their name on each document they print. It is not a State printing service and this is not a communist society in which there is a monopoly.

Senator Thomas Byrne: The person was a long-standing customer.

Senator Rónán Mullen: The printer went privately and respectfully and offered his hand and it was not taken. Can we not find a way to accommodate differences of opinion? Is that not what all the great liberal traditions are about, if we consider the separation of church and state in the American tradition? Is it not about allowing people to go their own way unimpeded by the higher force of law except where it is absolutely necessary to secure the common good? I am very concerned that there is a new intolerance in Ireland. It is almost as though the people running the country, in journalism, the media, politics and in the Government, have a memory of when issues were very suffocating because only one point of view was publicly allowed, and now they are determined that their point of view will be the only one that is publicly allowed. It is a very adolescent, juvenile way to craft the new Ireland.

The new Ireland should be about, to use a phrase that does not come naturally to me, letting 1,000 flowers bloom. This includes the flower that is planted by the person whom you and I think is a bigot and whom I might think is unnecessarily scrupulous, more to the point in this case, about his need to act in accordance with his beliefs in a given situation. Where is the tolerance? Why is there the desire to ram all this down people's throats? There is a fair question to be tried, to borrow a legal expression, whether the redefinition of marriage as proposed, if it goes through, will be invoked further to impact on the conscience rights of certain people. We will possibly find that such people are more likely to be Bible Christians than Roman Catholics, and this says much about the pragmatism of Roman Catholics. However, they might not be people of faith at all, and this should not worry us, because conscience goes beyond faith. There is a fair question to be tried as to whether the redefinition of marriage, as proposed, could be invoked in future court cases.

Even if the referendum goes through, it will be very interesting to see what the courts do, given the constitutional provisions around freedom of conscience and the freedom of religious institutions, and the rights of parents as primary educators, from which the right to denominational schooling flows. These issues are not going to go away and will not be removed from the Constitution by the amendment. However, there is an uncertainty as to how the amendment will operate when it comes to their interpretation in the event of future legal dispute. If

the Minister, as she and her Government say, simply wants to affirm the loving relationship between any two adults regardless of sex, to give public recognition to them and to let certain administrative and social benefits flow from that, fine. However, the Minister can do it, and reassure many people in the public that there are no implications for other people's freedoms, by accepting amendment No. 7. However, she will still have a problem regarding the amendments that have been ruled out of order.

I would love if the Government would call my bluff and find out whether I would support the referendum if the Minister were to accept my amendments. The Government might be pleasantly surprised. Perhaps, the Government thinks its majority in the opinion polls is still strong enough for it not to bother with people like me or the people whom I represent. Although I do not know what the people will decide in the end, I will represent the people whom I represent. There are hundreds of thousands of good people in our society who love and respect gay people and respect their private lives and personal commitments but who have concerns about the marriage proposal. These concerns are all the greater because there are certain issues in doubt about freedom of conscience, the rights of educators and questions regarding adoption and donor-assisted human reproduction. We must return to those issues sooner or later. I look forward to the Minister's response.

Senator Katherine Zappone: While there are several responses I could give to Senator Rónán Mullen's various comments, I will leave some of those remarks to when we meet outside the Chamber on the campaign trail. The Senator referred to Articles 42 and 44 of the Constitution. Article 42 states that, "The State acknowledges that the primary and natural educator of the child is the Family" and that parents have the right to ensure children are provided with appropriate education. The first point of Article 44 is that:

The State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honour religion.

Then, it goes on to refer to the freedom of conscience issues to which my colleague, Senator Rónán Mullen, referred. The Senator's amendment puts forward a presumption that one amendment to the Constitution might impact on other articles in a negative way. This is simply a way of trying to put forward the fundamental arguments he has been making fairly consistently, namely, that the child has the right to a mother and father. The Senator makes the presumption that an amendment to the Constitution that is being put before the people and which has been checked and rechecked by all our legal advisers and our Attorney General might somehow impact other articles in a negative way.

The fundamental issue at stake is not the right of a child to a mother and father but the protection of a minority's right to marry by opening a civil institution. While we have
12 o'clock all spoken about the issues of love, it is about the protection of a minority's right to marry by opening a civil institution, to be protected and to be able to become a constitutional family.

That is what the Government is proposing in this amendment to be put to the people by way of referendum.

All of the issues are interesting and are in the public debate in terms of what is happening, perhaps when people make choices to discriminate in terms of the provision of goods and services. They may be discriminating against people, in this case, in terms of their sexual identity.

We already have equality legislation in place in that regard and that is not changing.

My colleague, Senator Rónán Mullen, speaks about unforeseen consequences from which he is concerned to protect us. I remind the House of the enormous unforeseen consequences arising from section 37 of the equal status legislation that we are still trying to get changed. In fact there were additional layers in terms of protecting the religious ethos, which in some ways is what I see the Senator is trying to do now, with additional layers of protection over and above what we already have. When there was such an effort a long time ago to add such additional layers, what were the unforeseen consequences? It had extraordinarily negative consequences for teachers, nurses, civil servants and others who participate in various forms of employment who were fearful of revealing their identity, including those with whom they are in partnership. We know about unforeseen consequences and the potential of negative impact, but that is what we are trying to change.

Do we have enough respect for religious ethos in the Constitution already? I argue that we do. Do we have it enough in our legislation? There is an additional layer we need to get rid of. I am absolutely in favour of the protection of religious ethos. However, I would prefer that someday we might change that first part of Article 44.

The Senator asked us to think about what would change if we put this into place. What will change? The people need to continue to reflect on this. A minority is oppressed and is unequal in terms of our Constitution because they do not have access. I am banned from the civil institution of marriage because of my sexual identity. If the referendum is passed they will become free and will become equal to heterosexual couples, who have the right to access that civil institution and marry. That is the fundamental consequence of this amendment if the referendum is passed. We need to keep that centre stage and I hope the people keep it centre stage.

I agree that we need to have some debates in terms of equality legislation, discrimination etc. and those who have freedom of conscience. I do not belittle this. I understand. As Senator Rónán Mullen knows, I have had a lot of training on what freedom of conscience means, but it is not ultimately about those consequences. What will change is that a minority will have access to what the majority already has access to.

Minister for Justice and Equality (Deputy Frances Fitzgerald): I propose to respond to amendments Nos. 1, 2 and 7 together.

Amendment No. 7, the substantive amendment in the group, seeks to insert an additional clause in the Constitution that would explicitly provide that article 41.4, if passed, could not be used “ to prohibit, control, or interfere with the operation of Articles 42 or 44”. This additional clause would have the effect of limiting the constitutional effect of the proposed amendment of the Constitution. It would effectively be subordinate to Articles 42 and 44. At the same time it would prescribe how Articles 42 and 44 could be interpreted if they had to be read with reference to this provision.

Supreme Court case law, as Senators are very well aware, demonstrates that the court has over the years interpreted provisions of the Constitution in a harmonious and coherent manner. Article 44 gives robust protections for freedom of religion. These protections will remain in place. The general scheme of the marriage Bill which I circulated to Members of both Houses on 9 March and which will be introduced as a Bill in the event that the referendum is passed reflects these protections. It provides that nothing in that Bill, if enacted, would compel a re-

religious body to recognise a particular form of marriage ceremony or a religious solemniser to solemnise a marriage in accordance with a form of ceremony not recognised by the religious body of which he or she is a member. However, the core proposal in this referendum is about making available to same-sex couples a right to marry that is not available to them at present but is available to opposite-sex couples. If the people approve this proposal in the referendum, this right will also need to be protected. I would be concerned at the implication of these amendments that there would be a hierarchy of rights whereby one person's rights to freedom of religion would always be superior to another person's rights to equality of participation in our society.

I am concerned, furthermore, at the explicit reference to Article 42, which addresses education and the rights of children. The proposed constitutional amendment is not about children or education. It is about marriage. It is misleading to seek to add issues into the equation that are not relevant to the aim of the proposed amendment.

Amendments Nos. 1 and 2 are technical amendments to reflect the presence of the proposed new clause inserted by amendment No. 7. For these reasons I cannot accept the amendments.

Senator Jim Walsh: It is difficult to know where to start. I agree with much of what Senator Rónán Mullen said and with much of what Senator Katherine Zappone said. However, in all of this we need to be very mindful of the level of intolerance that there is among the gay ideological movement. I have used that phrase before and I have been criticised for it, yet this is all about ideology. I separate the case for individual gay people in loving relationships; they are deserving of every respect for that. However, now we are changing marriage and we are doing it without giving any consideration to the consequences of that for marriage.

I come from the perspective that children should be the main focus in all these issues. Adults, be they heterosexual, gay or whatever, are well able to look after themselves. There is a plethora of NGOs that cater for all sorts of adult interests, many of them extremely well funded and very professional in the manner in which they go about their business. There are very few, if any, that really champion the cause of children. I challenge those who might refute that by saying the silence of all those NGOs when we were debating in this House the most fundamental of all rights, the right to life, spoke volumes and still does.

I have tried to get Members of this House and others to support me in an all-party proposal that we will put condemning out of hand the issue of gendecide. However, I cannot do it. People who see themselves as champions of women's rights cannot support a motion that would outlaw and condemn an issue that is most diminutive of the status of women. That is that young babies in their mother's wombs are being killed for the reason that they are female. I think it is appalling, yet we cannot get consensus on it. People get caught up in all this ideology and we need to strip it all aside. We need to come back to being a tolerant and respectful society.

I know many people who are gay. I have the utmost admiration for them - they are brilliant people. Senator Katherine Zappone and her partner would be two of them. However, society needs to look at what is happening in all of this. I have been the victim of the intolerance coming from the other side. In my home town posters were placed stating "homophobic bigot" and "misogynistic bigot". I have been very consistent on this topic for at least the past decade and before, but primarily for the past decade because we have had many debates in this House on it. I have been consistent in what I have had to say and have not changed my views on it. Primarily they are driven by what I see as being in the best interests of children.

There is cause for reflection. A case such as that relating to Ashers Baking Company, which is due to be decided upon this week, should surely encourage those in government to stop and think about the conscience implications of redefining marriage. There have been many cases where individuals who have a genuine and conscientious objection to changing and redefining marriage or who express any interest in the protection of children have attracted a great deal of abuse and criticism and, in certain instances, even worse. I refer, for example, to Brendan Eich who was obliged to resign from his position as CEO of Mozilla-----

Acting Chairman (Senator Diarmuid Wilson): Will the Senator refrain from naming people in the House?

Senator Jim Walsh: This is a well known case and the details of it are in the public domain.

Acting Chairman (Senator Diarmuid Wilson): That may be the case, but the individual in question is not a Member of the House.

Senator Jim Walsh: No, he is not and he is no longer CEO of Mozilla either. Why is that the case? It is because he happened to support the Proposition 8 movement in California - a very liberal state in the United States - and gave \$1,000 to support its cause of maintaining marriage as being between a man and a woman. Regardless of whether one agrees or disagrees with him, surely to goodness he was entitled to do as I have outlined. The list of those who subscribed and donated to the movement - I could provide the names of the many other individuals involved - was obtained and the individual to whom I refer was forced to resign his position as a result of the damage done by those who targeted his then employer. Last week, a business of which I have never heard before called Dolce and Gabbana - I may have pronounced the names wrong - made a pronouncement on its opposition to the definition of marriage being changed. Dolce and Gabbana, a gay couple who cannot be accused of being homophobic, expressed their view. It is a perfectly legitimate view and it happens to be one which I hold. Everyone witnessed the litany of abuse directed at them and the attempts to boycott their business. I do not think things of that nature should happen.

I agree with what Senator Katherine Zappone said about people working. Individuals who are gay should not feel any fear. They should be respected and should enjoy equal opportunities in the context of their career prospects. Those prospects should not be affected by their particular orientation. Most people in this country would fully accept that. We need to cut out the intolerance, but we must also remember that there is intolerance on both sides. I am aware of the case of a lady, Sarah Mbuyi, who worked in Newpark Childcare in Shepherd's Bush, London and who was dismissed last January when a colleague asked her about what the Bible taught in respect of homosexuality. When Ms Mbuyi responded, her colleague became upset and complained to their employer. As a consequence, Ms Mbuyi was sacked.

The Minister referred to a hierarchy of rights. Such a hierarchy is already in place. Freedom of conscience is subsidiary to the other rights. There is also freedom of religion. There is an observatory in Austria which monitors and tabulates instances of discrimination against Christians throughout Europe. There is generally a long list of such instances. Some of them may be subtle or not that strong but they show a clear bias against Christians nonetheless. I do not accept the Minister's argument when people who have a conscience and who harbour a certain view are not respected, particularly in circumstances where the relevant services are available to others. As Senator Rónán Mullen stated, a situation arose in this Chamber - I thought it was an appalling episode - when we debated the civil partnership legislation. I tabled amend-

27 March 2015

ments with regard to freedom of conscience for people of religion and those who are members of the clerical state who would obviously come at matters from a religious perspective and in respect of whom major questions would not arise in the context of this being a conscience issue for them. All of the amendments in question were guillotined in order to facilitate, as Senator Rónán Mullen correctly pointed out, the members of the Green Party going out to the plinth in order to take part in a photocall for the “Six One News”. These things happen and they do not register on the radar. They should be exposed and those involved should be criticised.

Tolerance must be displayed by those on both sides. There must be freedom of expression. There is no point in people complaining here or in the media about the freedom people should enjoy. In that context, I refer to one of the recent atrocious incidents in France where several people were killed.

Senator Rónán Mullen: At the offices of *Charlie Hebdo*.

Senator Jim Walsh: Yes. Such atrocities must be condemned outright. It was very interesting that a person who tweeted a particular message on the day after the attack and was taken in by the police. I do not believe freedom of speech is unfettered. We need to be careful, respectful and tolerant but that must be the case on both sides. The latter is not the case. I advise Members to go on Twitter and see what people are saying about Senator Rónán Mullen and me. I have been through this before and I am aware that one must ignore what is being said and carry on.

Senator Rónán Mullen: The Senator must tell me what is being said sometime. I never check Twitter.

Acting Chairman (Senator Diarmuid Wilson): Senator Jim Walsh to continue, without interruption.

Senator Jim Walsh: People have been directing certain comments to me. The kind of abuse involved does nothing in the context of encouraging respectful debate on a matter which is very fundamental in nature. I completely accept that this is a fundamental issue for people who are lesbian or homosexual and I understand why that is the case. I happen to hold a different perspective and I am of the view that people who do hold an opposing view must be entitled to respect. That is not happening.

I ask the Minister to contemplate what I am about to say. I read an article many years ago in which it was stated that conscience is the only bulwark against the totalitarian tendencies of all states and that this finds recognition in the present German Basic Law, or conditions, which, to avoid a repetition of the totalitarianism of the Nazi period when the conscience of citizens was mercilessly crushed, insists that those elected to parliament shall be representative of the whole people, not bound by orders or instructions and responsible only to their conscience. The latter comes from Article 38.1 of the German Constitution and we would do well to be mindful of it. We are not being mindful of it and I become concerned when the Minister refers to a hierarchy. There already is a hierarchy in place and she is choosing to ignore it.

In the context of matters of conscience, people can be prosecuted. However, they should have the right to mount the defence that they are coming at particular matters from a conscientious perspective. The courts and our legal system in general should be well capable of determining whether what is involved constitutes prejudice or discrimination or whether it is a genuine matter of conscience for the individuals concerned. That is not an unreasonable proposition

and it is one I would like to see being respected by those in government. I am afraid, however, it has not really been taken on board by the latter as yet.

Senator Rónán Mullen: The Minister has stated on a number of occasions that the scheme which goes with the referendum proposal makes clear that religious organisations will not be required to provide marriage ceremonies and so on. Nobody has suggested it should be otherwise. This is a hare which no one opposed to the referendum has raised during the debate. This is one example of how the people who are most concerned about this referendum proposal are not throwing out just any old argument. If they do not think something is an issue, then they do not say it. There is no exaggeration here. Legitimate questions are being raised about knock-on effects. I will kick myself if the referendum is passed and if the result is used as a way to cut across the freedom of religious bodies in the future. One simply does not know what will happen when the courts start interpreting constitutional and legal provisions in accordance with prevailing ideas. I do not believe the latter will happen, particularly in view of the existing protections in the Constitution. I mention this merely as an example and say to the Minister nobody has gone there and I do not believe she needs to do so either. Obviously, however, what she tells us is her own business.

Senator Katherine Zappone is one of the most articulate and reasonable people on the side which is proposing change in this instance. I have great respect for her. In a recent article in *The Irish Times* she invited me to debate the issues publicly with her. I would have absolutely no problem in doing so. I enjoy any engagement I have with her and we agree on many issues. We have supported each other in the past on issues such as the dignity of women and the need to criminalise people purchasing the services of other people in prostitution, etc. I greatly admire her commitment on that issue. Nevertheless, I must insist on the justice of my position that equality is capable of being interpreted in many different ways. I see the position I am arguing for as very much about insisting on the equal rights of children to have the father-mother experience wherever possible and for that never to be deliberately interfered with. I see a greater need and onus on us legislators to legislate for children's best interests as they cannot speak for themselves nearly as well as adults. The children in question are yet to be born. There is a body of evidence about the value for children of the father-mother relationship, particularly in marriage. Even if there was not such evidence, there is a right to that experience.

The Minister argues in supporting the ruling out of order of the two amendments that this is not relevant. Will the Minister confirm that if in future it is proposed to legislate to restrict donor-assisted human reproduction to father-mother couples, nothing in this amendment could be invoked to render that legislative proposal unconstitutional?

I have another question for the Minister but I want to hear her address that point.

Deputy Frances Fitzgerald: Freedom of religion is already dealt with in Article 44 of Bunreacht na hÉireann. Article 42 addresses education and the rights of children. As the Senators are well aware, the courts, including the Supreme Court, interpret the provisions to the Constitution in a harmonious and coherent manner. The proposal before us is about extending access to marriage to persons of the same sex. No change is being proposed to existing Articles 44 or 42, including those regarding freedom of conscience. We have had the Equal Status Act for a long time and schools can protect their religious ethos. That has been in place for 15 years and schools have continued to be able to educate children with respect to the religious context of the curriculum unhindered. I also have to ensure that same-sex couples would not be at risk of discrimination by somebody using a general conscience clause. There are exemptions in the

Equal Status Act to protect services provided for a religious purpose, and that is how religious freedom is given expression in the Act.

The key point with regard to a change in a constitutional provision is well known from court practice, and it is that provisions in the Constitution are interpreted by the Supreme Court in a coherent and harmonious way. All provisions are examined when a court is deciding on particular issues. That is a key point. Supreme Court law demonstrates again and again that the court has over the years interpreted provisions of the Constitution in a harmonious and coherent manner. No change is being recommended whatever to the articles, including Article 44, which gives robust protection to freedom of religion, or Article 42. No changes are being recommended. We are not trying to change those provisions but we are inserting an extra right in the Constitution. Again I say Supreme Court case law demonstrates that the court has, over the years, interpreted provisions of the Constitution in a harmonious and coherent manner. That is the job of the Supreme Court when there is a constitutional challenge. It considers all the provisions.

Senator Feargal Quinn: The Minister has not answered Senator Rónán Mullen's question. This needs an answer if we are to stand back, consider the legislation and say we have done a good job. I remember former British Prime Minister Tony Blair - he may still have been in office at the time - being surprised that legislation introduced in Britain operated in a manner which he had not understood, particularly with respect to a religious community. He stated the community should have had the freedom to do whatever it was going to do but he was told that legislation had been passed which meant there could be no discrimination. On those grounds, he was told it must be accepted.

I hope what we are doing today and always is ensuring that all legislation passed can be considered later and seen to have worked for the community of which we are a part. We want to allocate the time, attention and the commitment to ensure the legislation is worthy of support. The Blair case I mentioned concerned adoption, with the religious body in question wanting to ensure that if a baby was to be adopted, it would go to a mother and father rather than a same-sex couple. Mr. Blair was told that this would amount to discrimination, and the Christian organisation in question could not discriminate on those grounds. That surprised Mr. Blair, who had not understood that in passing legislation he was depriving that religious body of ever being able to say that it could ensure the children being given to it for adoption would go to a mother and father rather than a same-sex couple. I am not arguing the case, but we must not let legislation go through without understanding its full impact.

Deputy Frances Fitzgerald: I repeat what I have said. The proposed constitutional amendment is not about children or education but rather about marriage. It is misleading to seek to add issues into the equation which are not relevant to the aim of the proposed amendment. Senators are speaking about assisted human reproduction legislation or the children and families legislation but we are now legislating for rights that people do not have at present. That is the job of the Dáil and the Seanad. We are legislators and we are legislating for the rights that we have discussed in the course of the Children and Family Relationships Bill. In future, there will be legislation relating to assisted human reproduction. That refers to legal rights rather than constitutional rights. With regard to constitutional rights, there is no proposal to change any protection that people have with regard to freedom of conscience or religion. We are talking about extending the right to marriage to same-sex couples.

Senator Rónán Mullen: I am sorry to press the Minister, but I need to do so. The public deserves that she would address this more specifically, with the assistance of her officials. They

are doing Trojan work, and I have noticed them here for the Children and Family Relationship Bill as well. They are working on many issues that are obviously connected to that extent. The officials have just moved chairs overnight.

It is all very well to talk about the difference between legal and constitutional rights but the Minister knows as well as I do and everyone else that what the Constitution is interpreted to mean affects the laws we can have in the country. It affects what legislative rights can stand and those which cannot. We also know that what is contained in a constitutional text is subject to interpretation by the courts. The Minister has correctly said these will be interpreted harmoniously. When something is added to the Constitution, the balance is changed by definition. I have asked the Minister for a specific answer and Senator Feargal Quinn is supporting me in that request. What would happen if a future Oireachtas proposed to change the provisions on donor-assisted human reproduction so as to require that it could only occur in the context of father-mother parenting? If it were proposed that, in adoption decisions, an essential aspect of the best interests of the child would have to be the possibility of a father and mother, save in exceptional cases, would or could anything in this referendum proposal render such a change unconstitutional? Is it the Minister's view that it could not have any impact and the issue would be determined in the same way as if marriage had not been redefined?

Deputy Frances Fitzgerald: It is the Supreme Court which makes decisions in respect of the provisions of the Constitution. The amendment is about marriage and access to marriage for same-sex couples, not parentage or children. The regulation of access to donor-assisted human reproduction will be a matter for the Department of Health and will be decided in the best interests of the children to be born. It will not be based on marital status or the sexuality of the intending parents. I will not digress into a discussion on current adoption laws because that is a separate issue. We have already discussed who may access adoption under current law and the position is clear in that regard.

The European Court of Human Rights has also taken a clear position on the rights of the child and the issue of limiting access to adoption. The court had much to say about these matters and Ireland is subject to the decisions of that court. I will not digress because the constitutional amendment is about access to marriage, not parentage, parenting or children. As I indicated, regulation of access to donor-assisted human reproduction will be a matter for the Department of Health, which will regulate the matter in the best interests of the children to be born along the lines I outlined.

Senator Rónán Mullen knows better than anyone that when one inserts a new constitutional provision, it is for the Supreme Court to interpret the balance between different constitutional provisions. People are being asked in the referendum if they want to extend the right to marriage to same-sex couples. If this proposition is accepted and a new clause is added to the Constitution - the Government's proposition would not result in any deletions to the wording of the Constitution - it will be for the Supreme Court to interpret and decide on the balances in the Constitution at a future point.

Senator Katherine Zappone: I listened to Senator Rónán Mullen's arguments, which move beyond his amendment. The Senator's proposal makes reference to Articles 42 and 44 of the Constitution which relate to freedom of conscience and whether it is adequately protected in legislation on equality and non-discrimination. The Minister has responded to this point several times and while her answer may not be what Senators wish to hear, she answered the question very well, so much so that Senator Rónán Mullen has made another argument on an issue that

27 March 2015

goes beyond Articles 42 and 44. He has raised the issue of children, human reproduction, etc., as distinct from freedom of conscience and what happens with a family's right to education. The Minister is correct not to entertain Senator Rónán Mullen's latest arguments because they go beyond his amendment.

Senator Rónán Mullen: The Minister is contradicting herself in a way by arguing that this issue will be left vague and uncertain because we do not know what the Supreme Court will decide. She chose her words carefully when she stated the referendum was about access to marriage. My point, however, is that she did not say it was only about access to marriage. I have access to a legal opinion on this question to the effect that it would be unconstitutional to give preference to mother and father relationships in the circumstances I described if the amendments I have proposed and which have been ruled out were not accepted. Does the Minister have a legal opinion to the effect that I am wrong?

To return to the issue of conscience, Senator Katherine Zappone is keen that we do not speak too much. She is technically correct because we have been speaking for some time about matters, the substance of which was primarily dealt with in the amendments that were ruled out of order. I urge her, as a legislator, to consider the fact that even having this discussion speaks volumes about the decision to rule the amendments out of order, particularly in light of my comment on the legal opinion that I have to the effect that it would be unconstitutional to give preference to father and mother relationships if the amendment I proposed is not made. This is a serious matter and one which the Senator should seriously consider. Clearly, this is the scenario the Minister wants to bring about, which is the reason she stated the referendum was about access to marriage but did not state it was only about access to marriage. There are knock-on effects, and my amendment seeks to ensure the only issue the referendum will be about is recognising the relationships in question. Without the changes I have suggested, it will be about very much more than that. The Government will clearly deny this and will not accept it publicly for political reasons.

On the freedom of conscience issue, let us imagine a scenario, albeit one in which I will never find myself. The fact that I am a politician may, by definition, mean that I am the pragmatic type of person who would print whatever people wanted to get printed. However, I respect the bona fides and freedom of expression rights of people who see things differently - in other words, people who, like me, believe in the right of a child, wherever possible, to have a father and mother in his or her life and, for that reason, value the institution of marriage, as currently defined, and would be uncomfortable about being seen to endorse anything else, even if it should be provided for legally. Is there room for such people in our society?

As I stated, people who have a conscientious objection are likely to be what one would describe as Bible Christians, Muslims or people with no religious conviction. It should not matter to us.

Senator David Norris: Muslims believe in polygamy.

Senator Rónán Mullen: The Senator can always be relied on to say something interesting, if perhaps not relevant.

Senator David Norris: It is totally relevant.

Senator Rónán Mullen: We know that some Muslims hold that view. It is all about sharing the love.

Assuming the referendum passes, let us take as an example the case of a small business which is asked to provide a particular type of catering service that would have the couple who own the business assume a hands-on role at a celebrity same-sex marriage. If the couple were to decide they preferred not to provide the service because they have a particular conviction about what some people view as the traditional definition of marriage, would their decision be discriminatory on the gender ground or the marital status ground in the new dispensation? It is hard to imagine how they could be said to be discriminating on the marital status ground because they are not refusing to provide a service on the basis of marriage but instead do not want to be seen to endorse a particular type of marriage. In that case, would it be discrimination on the gender ground because two people of the same gender are involved? I presume the Minister and her officials have thought through all of these issues. What would and should happen to the couple? Should they be prosecuted by the equality authorities on the gender ground or the marital status ground? What kind of penalty would they be subject to? Would that situation be affected by this referendum? That is what I am asking. This is a real-life scenario, involving a small business, a catering service, and a same-sex marriage ceremony and related celebrations. They wish the best to those people. They say, "The best of good luck to those people, but we have a different view and we would like not to be involved in the provision of that service. There are plenty of other service providers. We are willing to forgo the business because we want to honour the need to be publicly consistent with what we actually believe. Whether or not it is a religious belief is none of anybody's business. It is our belief. It is a belief that has been supported for a long time, and continues to be supported by many people, that there is a social good in marriage being defined as a man-woman relationship. We do not wish to push that down anybody's throats, but we do not want the contrary to be pushed down ours." What should happen to those people in that real-life scenario, in the Minister's view, what would happen to them and what change would this referendum make to what would happen to them if my amendment is not accepted?

Senator Jim Walsh: The area of freedom of conscience warrants more from the Minister than sticking to the script. It is an issue. She knows that it is an issue. As Minister for Justice and Equality, she has a particular responsibility in the area. We have seen, in Britain and in other countries, situations in which Catholic adoption agencies that were doing good work had to close. What will happen here in that regard? What will happen in regard to marriage guidance counselling, which some Catholic groups organise and which is often run primarily by lay people? What will their position be? What will the position be on pre-marriage courses, which are very necessary to prepare people? One of the great failures of the State has been the failure to provide some architecture to support marriages that run into difficulties in order to encourage people to get over those difficulties, with the intention of trying to save the marriage. We are good at giving support, which I am not condemning, to assist people in breaking up in a more harmonious way and to take the conflict out of it. I welcome that, but surely we should be inclined to more constructive, preventative measures.

What is the Minister's view on those issues, assuming this is passed? Does a business such as the one we are discussing have a choice between closing down and abrogating its conscience? Or do they have the defence - which would be genuine, as most people, regardless of which side of the fence they are on in this debate, would agree - that they have a conscience issue in relation to it? I would like the Minister to answer that very specifically.

Deputy Frances Fitzgerald: I have already made it clear that Articles 42 and 44 stand. Obviously, we have the equal status legislation. It is remarkable. We have a religious ground.

Senator Jim Walsh: I am sorry, but I did not catch that.

Deputy Frances Fitzgerald: Under the equal status legislation, we clearly have a religious ground. It is always open to people to take cases. Senator Jim Walsh is asking me to comment on a different piece of legislation, but I will just say that clearly there is a religious ground on which people can take a case if they feel they are being discriminated against. If any of the scenarios he described were to emerge, clearly, there is an equal status Act. The religious ground has featured very little to date, in fact, which is interesting. It suggests that there is little evidence in practice of the providers of goods and services being compelled to provide goods and services against their will. That is the reality. We have legislation and we have constitutional protection for religion and for freedom of conscience, and in this referendum the people are being asked to extend the right to marriage. The Supreme Court will interpret in a harmonious way, as it always does, the various provisions of the Constitution. I have nothing further to add.

Senator David Norris: The conscience clause is nonsense. It is like saying that in the United States of America one could have a conscientious objection to marriage between a black person and a white person. One might think that, but it should not be part of domestic law. The domestic law should be equality for everybody. I would have thought that was self-evident. I would say that with regard to the case in Northern Ireland, the people who went to the bakery and asked the owners to put “Hurray for gay rights” or whatever it was on a cake were being deliberately provocative. They were creating a stink and they were rather foolish to do so. If I were getting married, I would not go near a homophobe. I certainly would not get my hair done in a hair salon where they were objecting to gay people. They would fry the skull off one. I would not give them the bloody business of printing the invitations. This is just provocation. There are a small number of people who are a bit doolally on these issues. Leave them alone and let them suffer and stink in their ignorance. The idea that conscience is a ground for discrimination, for apartheid, and for taking rights away from other citizens is utterly shameful. I do not think it is conscience at all.

Senator Averil Power: I am a little out of breath after running up. I was watching this debate on the monitor in the office and felt compelled to come down and reply. Senator David Norris has rightly debunked the use of the word “conscience”. I do not understand why anyone would use that language to justify denying a fellow citizen - a fellow human being - a service solely on the grounds of their sexual orientation. It would not be acceptable if it was gender, race, colour or any of the other characteristics-----

Senator Rónán Mullen: On a point of order, nobody is talking about depriving people of a service solely on the grounds of their sexual orientation.

Acting Chairman (Senator Diarmuid Wilson): That is not a point of order.

Senator Rónán Mullen: That distinction was made clearly. Senator Averil Power is obviously not listening to the debate in full.

Acting Chairman (Senator Diarmuid Wilson): Senator Averil Power to continue, without interruption.

Senator Averil Power: The effect of what the Senator argued is that some people should be allowed to deprive others of a service from a shop or business solely because they object to the sexual orientation of a couple or an individual. They may ground their objections in a matter of conscience. They can call it what they like, but the effect is to deny people a service

purely because of who they are, because of an inherent personal characteristic. It would be outrageous to allow this. Where does this stop? There were pubs in this country for many years that did not let women in. Is that just as okay? Is it exactly the same? Can one decide not to let women into one's establishment? If one comes from other fundamentalist religious viewpoints, can one refuse to serve Christians? Can one refuse to serve women? Can one refuse to serve women unless they are dressed in a particular way? That is all part of this argument. We live in a republic, where all citizens should be entitled to equal rights, equal respect and equal esteem.

Senator Martin Conway: That is it.

Senator Averil Power: This is a very dangerous proposition. It is couched in language like “conscience”, but it is actually nothing more than a licence for prejudice and discrimination. I am glad the Minister is resisting it. I am also somewhat disappointed that all kinds of extraneous issues are being dragged into this debate on Committee Stage. The Bill is about one thing and one thing only, namely, the right of two adults who love each other and are committed to spending their lives together to marry. That is it. It is not going to force anybody else to get married. As the Minister pointed out at the start, the Government is clearly setting out in the other legislation the freedom of the churches not to marry anybody they do not wish to marry. It is bizarre that there are all kinds of tangential, unrelated issues being dragged into this debate.

Senator Sean D. Barrett: As I was detained by bankers during the week, I was not here to support the Minister on this legislation. I welcome it warmly. She and the Government are to be commended. Nothing in my conscience is infringed at all by the happiness of other people. The Presbyterian church in the United States declared itself in favour of same-sex marriage last Tuesday, and I have never accused Presbyterians of lacking conscience in addressing this or any other issue. Society should cherish and treasure those who want to express and have asked us to allow them to express their loyalty, commitment and dedication to one another. That should be recognised. I recognise that commitment and praise that loyalty and dedication which they wish to show to one another. LGBT people are valued members of this society. They do nothing that undermines the marriages of people who are heterosexual. There is no threat to anybody's marriage and nothing to worry their consciences in the slightest in the fact that other people wish to have institutional recognition for the commitment they wish to make. It comes after a period when marriage was in decline among heterosexual people, who felt it was a bourgeois institution. This resumption of interest in that institution as a commitment and as a bulwark in society is something we should commend. It is emphasising the spiritual, philosophical aspects of a relationship and not defining it in purely physical terms, such whether the couple can have children.

Wider society will gain because of the act of generosity. We will cherish and bring in fully into our community the members of the LGBT community and they will not be undermining anybody. We have been through these barriers and the sky has never fallen in. The first woman bishop in the Anglican community serves as the bishop of Meath and Kildare. Society and institutions evolve, change and improve through time. It enriches society. Let us recognise the principles the Minister has brought before the House and not be sidetracked by issues such as apartheid in the cake industry, Protestant cakes, Catholic cakes and whatever other kind of cakes we want to have.

Senator David Norris: Fairy cakes.

Senator Sean D. Barrett: Those issues are too trivial. We are asked, in a Seanad founded

27 March 2015

by Arthur Griffith and Michael Collins, to incorporate diversity. I am sure people were scandalised when W. B. Yeats gave the speech on divorce here, but society was open enough even then to listen to what Yeats had to say. I encourage and warmly welcome what we have heard in favour of this legislation. Those who feel threatened by it should really ask themselves what they are threatened by. I do not see any threats; I see an enrichment. I commend the Bill and the Minister for its introduction. I wish I had been here on earlier Stages to express that support. This is an important development in Irish society which should be warmly welcomed.

Senator Ivana Bacik: I echo the words of Senators Sean D. Barrett, Averil Power and others in saying this referendum Bill is about one issue, that of marriage equality. For the last hour, on this one amendment, we have been debating quite a number of extraneous issues and getting sidetracked, as Senator Sean D. Barrett said. I urge colleagues to focus on the core issue of marriage equality. I wholeheartedly support the Bill and support the Minister in her opposition to these amendments.

Senator Martin Conway: It would be remiss of me not to support Senator Ivana Bacik and commend Senator Sean D. Barrett for what I would describe as an excellent Second Stage speech.

Senator Sean D. Barrett: I was downstairs.

Senator Martin Conway: If only the *Irish Independent* would give him as much attention on the Aer Lingus issue as they gave Donald Trump today.

Acting Chairman (Senator Diarmuid Wilson): Introducing Aer Lingus is going a little too far. As the Minister has indicated that she has nothing further to add, unless Senator Rónán Mullen has something new, I will have to put the question.

Senator Rónán Mullen: Senator Martin Conway has a great gift we can all learn from. He manages to say affirming things about people on all sides of the debate in the Seanad and there is never the slightest tone of needling, unpleasantness, insult or moral outrage. We could all learn from him.

Senator David Norris: The Senator certainly could.

Senator Rónán Mullen: It will help him at the ballot box also.

Senator Mary M. White: Is that what the Senator is looking for?

Senator Rónán Mullen: That is not a promise. The Senator could possibly learn a thing or two from him also. Senator Sean D. Barrett might very well be right in what he says, and I would like to be associated with the general feeling of positivity he has towards people. With others, I have made it very clear that whatever reservations we have about this proposal, we want a culture where there is complete love and respect for people, gay people included, and respect for people's private lives and personal commitments. That is not what this issue is about. What Senator Sean D. Barrett has said has left me with a question: are people entitled to a different point of view? As I said before he came in, it is not the people whose views one agrees with whose freedom of speech one should be concerned about. It is the people with whom one disagrees. It is precisely when one is most repelled by somebody else's point of view that the question arises as to whether they should be free to go their own way. What is at issue is that people will not be free to go their own way. Some people are even willing to forgo

business, and most business people are quite conscious of the bottom line. If they are troubled by being publicly associated with something with which they disagree, should they not be free to dissociate themselves? The right to freedom of association in the Constitution surely implies a freedom to dissociate. I am raising the concern that this amendment will probably encroach upon that freedom. It is a problem with the political parties generally, because they are so fused and dominated by groupthink that they do not get the right of individuals, generally speaking, to go their own way. That is why Senator Jim Walsh is an Independent today.

Senator Thomas Byrne: He is not.

Acting Chairman (Senator Diarmuid Wilson): Senator Rónán Mullen should avoid commentary on different people and stick to the amendment. I have to put the question.

Senator Rónán Mullen: The point is relevant because Senator Averil Power does not seem to understand that I certainly have no truck with any discrimination against people on grounds of their sexual orientation. If a person is refused a service because he or she is gay, the person refusing the service should be prosecuted. I do not think Senator Averil Power believes me when I say that.

Senator David Norris: Neither do I.

Senator Rónán Mullen: She has not given evidence of understanding the distinction between-----

Senator Thomas Byrne: Why is the Senator not addressing the issue of equality?

Senator Averil Power: The Senator is avoiding a reply.

Acting Chairman (Senator Diarmuid Wilson): Excuse me. Everyone has had ample opportunity to contribute. Unless Senator Rónán Mullen has something further to add-----

Senator Rónán Mullen: I am just trying to explain the position. I will not refer to other Senators again, but when they are so enthused as to come from their offices to have a go I think I should at least be able to answer. It should be very clear. We heard Senator David Norris rightly pooh-pooh the provocation that was involved in the Ashers Bakery case, but let us remember that the business is probably in danger right now. They are being pursued-----

Senator David Norris: Rubbish. They have huge support. There are thousands of people at the Ulster Hall.

Senator Mary M. White: The Orange Order.

Senator Rónán Mullen: They are being pursued by the legal authorities in the North. That is why these issues are relevant. I appeal to whatever latent sense of tolerance there is in the Senators who disagree with me on this issue to please let people go their own way, even if the Senators think their concerns are despicable. The only way we can have a tolerant society is if we allow each other freedom to live according to our beliefs. That is what is at stake.

Senator Katherine Zappone: That is what I have been arguing - to be free to go my own way.

Senator Rónán Mullen: The Senator is entitled to go her own way.

27 March 2015

Senator Katherine Zappone: Am I free to marry the person I choose to love?

Senator Rónán Mullen: Would the Senator tolerate the teacher who wants to be able to teach that a father and a mother is the best thing for bringing up a child? Should that teacher, in the Senator's view, be in peril of his or her job? Those are the issues.

Senator David Norris: What about those teachers who are in danger of losing their jobs because of ethos?

Senator Ivana Bacik: On a point of order, I have sat here for over an hour and we are supposed to be debating amendment No. 7. The issue of a completely separate legal case is being raised time and again. There is already equal status legislation. We are debating a Bill to amend the Constitution and a specific amendment to that Bill.

Acting Chairman (Senator Diarmuid Wilson): If Senator Rónán Mullen has nothing further to add, I have two colleagues who wish to make brief comments and then I am putting the question. Is that clear?

Senator Jim Walsh: I acknowledge Senator David Norris's statement that in the Ashers Bakery case it was a set-up. People, in a provocative way, looked to get the response in order that a case could be taken. That is not unique.

Senator Ivana Bacik: We cannot comment on a case that is ongoing.

Acting Chairman (Senator Diarmuid Wilson): That is Senator Jim Walsh's personal opinion. I ask colleagues to, please, avoid mentioning businesses and the names of people who are not here.

Senator Jim Walsh: All I am saying is there have been many similar examples in this sphere. That should be obvious to all. Although the Minister says people can go to the Supreme Court or wherever to defend their position, we have not yet achieved a true republic in this country where people can access the courts.

I have argued many times that the exorbitant legal costs have been ignored by subsequent Governments and the courts are not accessible except to people of very significant financial means.

In the threat by a number of speakers, two in particular, but others here there is the issue that the exercise of conscience equates to or is the equivalent of homophobia. I ask people to take note of this. Should the referendum be passed many people, including parents, will have that charge levied at them because of the nature of the ideology which purports to promote same-sex marriage. It is highly regrettable that people use it and they serve their own case and their own interests no advantage and benefit in doing so.

Senator Gerard P. Craughwell: Like Senator Averil Power, I have been sitting in my office for the past hour watching this debate. I am coming to the conclusion that there is a lack of tolerance by some of my colleagues. There is a lack of understanding of what equality is and what it means. I was fortunate enough in my own life to find somebody I loved and I have lived with that somebody for 37 years. It might just as easily have been a man as a woman. My colleague, Senator Katherine Zappone, is fortunate enough to have found somebody she loves. What right have I or anybody else to deny them the same status that I enjoy?

Senator Martin Conway: Well said.

Senator Gerard P. Craughwell: I am glad the Acting Chairman said he would put the question. It has come to the time to put the question. I have the greatest respect for my colleagues and their position but there comes a time when one has to stop flogging a dead horse and find a new one. Now is the time to do that.

Acting Chairman (Senator Diarmuid Wilson): Does Senator Averil Power wish to comment, after which I will put the question?

Senator Averil Power: I wish to respond to Senator Rónán Mullen who took issue with me stating that what he was arguing for was for a service provider to be able to deny somebody a service because of their sexual orientation, yet he was clearly arguing that two married couples presenting in a cake shop or wherever, one a heterosexual married couple the other a same-sex couple, one can be denied a service. The only distinction between those two loving couples, who have just entered into the institution of marriage and profess their love, support and commitment to each other, is their sexual orientation. One can dress that up as one wishes and use the softest possible language but that is the only difference. That is why what is being proposed is a licence to discriminate. I would fight for the rights of all Members, even those who disagree most profoundly with me, to their freedom of speech and the right to argue their views but, as has been pointed out, they do not have a right to impose their views and a particular religious position on everybody else and to deny, as they are seeking to do, loving and committed gay couples and lesbian couples the right to marry because of their religious view. This Bill is on civil marriage and it is clear about that. It will not force the churches to marry, it is about giving equal rights to all citizens; therefore, there is a balance in all of these things. One person's freedom of speech should not and cannot in a republic be used to fundamentally strip away the most basic human right, the right to marry, from fellow citizens on an issue that is not going to affect anybody else. It would finally give beautiful people such as Senator Katherine Zappone and her partner who fought for such a long time for a right the rest of us take for granted, a right that many people do not take as seriously as gay and lesbian couples who have fought for years to marry because they care about marriage and value it, not because they want to undermine anybody else's marriage as they know that marriage is beautiful, not just for couples but for society. All they are asking is that we have the generosity of spirit and of love, as fellow citizens, to give them that opportunity.

Acting Chairman (Senator Diarmuid Wilson): Is Senator Rónán Mullen pressing amendment No. 7?

Senator Rónán Mullen: What Senator Averil Power has said is quite removed from the amendment I am proposing.

Acting Chairman (Senator Diarmuid Wilson): In fairness she is not unique in that respect.

Senator Rónán Mullen: I am just making the point that sauce for the goose has been very much sauce for the gander.

Acting Chairman (Senator Diarmuid Wilson): Is the Senator pressing the amendment?

Senator Rónán Mullen: The Minister might, perhaps, clarify the-----

27 March 2015

Senator Martin Conway: The Senator should put the amendment because he is-----

Senator Rónán Mullen: In regard to the case I cited, Senator Averil Power may be interested in the reply, would it be discrimination on the gender ground or the sexual orientation ground where people felt unable to provide services in the context of a same-sex marriage event?

Senator Ivana Bacik: On a point of order-----

Senator Rónán Mullen: Would it be discriminated against in the context of a same-sex marriage event?

Acting Chairman (Senator Diarmuid Wilson): There is a point of order.

Senator Rónán Mullen: It is a very legitimate point, essential to the amendment.

Senator Ivana Bacik: It is a legitimate question in a totally different context. It is not a legitimate question in this debate on a referendum Bill.

Acting Chairman (Senator Diarmuid Wilson): That is not a point of order. Is Senator Rónán Mullen pressing the amendment?

Senator Rónán Mullen: I am asking the Minister one more time to clarify whether she thinks that would be discrimination-----

Senator Gerard P. Craughwell: On a point of order, to ask the Minister to provide legal opinion today is nonsense.

Acting Chairman (Senator Diarmuid Wilson): That is not a point of order. Is Senator Rónán Mullen pressing amendment No. 7?

Senator Rónán Mullen: I am asking the Minister to answer the question I put, which is whether such a decision by a service provider - this is an amendment about freedom of conscience among other things for educators and service providers included - would be discrimination in her view on the gender ground or on the sexual orientation ground because that will be germane to the issue of how this amendment might be interpreted by the courts in dealing with any future dispute. I am doing my job as a legislator by asking what the likely scenario would be. If the Government is serious enough to put a referendum before the people it should have the homework done to give us the answer to that question.

Deputy Frances Fitzgerald: Senator Rónán Mullen knows well the answer to that question. When people are taking an equality case, they decide on what grounds they are going to take it.

Tarraingíodh siar an leasú faoi chead.

Amendment, by leave, withdrawn.

Aontaíodh an Sceideal.

Schedule agreed to.

ALT 1.

Seanad Éireann
SECTION 1.

Níor tairgeadh leasú a 1.

Amendment No. 1 not moved.

Senator Rónán Mullen: Tairgim leasú a 2:

I leathanach 5, líne 14, “an t-alt a bhfuil an téasc de” a scriosadh agus “na hailt a bhfuil an téacs díobh” a chur ina ionad.

I move amendment No. 2:

In page 4, line 14, to delete “the section” and substitute “the sections”.

Acting Chairman (Senator Diarmuid Wilson): Amendment No. 2 was discussed with amendment No. 7. Is it being withdrawn?

Senator Thomas Byrne: Does the House have to consent to the withdrawal of the amendment or is that purely in the hands of Senator Rónán Mullen?

Acting Chairman (Senator Diarmuid Wilson): The House does have to consent.

Senator Thomas Byrne: It would save time later.

Acting Chairman (Senator Diarmuid Wilson): Excuse me, but I did ask if amendment No. 2 was being withdrawn.

Senator Thomas Byrne: Senator Rónán Mullen was asked whether he wished to withdraw the amendment. I am saying that as we had a long debate, the intention of the Senator in withdrawing the amendment was to have another debate later tonight. Frankly, many of us have other things to do than listen to the same arguments again.

Acting Chairman (Senator Diarmuid Wilson): Is the Senator questioning the manner in which the Chair is chairing proceedings?

Senator Thomas Byrne: No.

Acting Chairman (Senator Diarmuid Wilson): Will the Senator, please, resume his seat then?

Senator Thomas Byrne: I am asking the Acting Chairman to put the question.

Senator Martin Conway: Will the Chair, please, clarify the position? Does the House have to consent to withdraw the amendment?

Acting Chairman (Senator Diarmuid Wilson): Amendment No. 2 is being withdrawn. Is that agreed?

Senator Thomas Byrne: No.

Acting Chairman (Senator Diarmuid Wilson): The question is: “That leave be given to withdraw amendment No. 2.” Those in favour say “Tá.”

Senator Thomas Byrne: Tá.

27 March 2015

Acting Chairman (Senator Diarmuid Wilson): Those against say “Níl”.

Senators: Níl.

Acting Chairman (Senator Diarmuid Wilson): I think the question is-----

Senator Thomas Byrne: Vótáil.

Acting Chairman (Senator Diarmuid Wilson): Excuse me, but I did not rule on the indication I had received. I think the question is carried.

Senator Thomas Byrne: Vótáil.

Acting Chairman (Senator Diarmuid Wilson): What is the point if the question is carried?

Rinne an Choiste vótáil ar mhodh leictreonach.

The Committee divided by electronic means.

An Leas-Chathaoirleach: As the Tellers for the “Tá” side have declined to sign the Tellers’ sheet, as Leas-Chathaoirleach, I must declare the question lost. In the circumstances, I am obliged to put the question on amendment No. 2.

Cuireadh an leasú agus faisnéiseadh go rabhthas tar éis diúltú dó.

Amendment put and declared lost.

ALT 2.

SECTION 2.

An Leas-Chathaoirleach: If amendment No. 3 is agreed to, amendment No. 4 cannot be moved. Amendment No. 4 is a physical alternative. Amendments Nos. 3 and 4 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Senator Jim Walsh: Tairgim leasú a 3:

I leathanach 5, línte 19 agus 20, “an tAcht um an gCeathrú Leasú is Tríocha ar an mBunreacht (Comhionannas Pósta), 2015” a scriosadh agus “an tAcht um an gCeathrú Leasú is Tríocha ar an mBunreacht (Pósadh a Athmhíniú), 2015” a chur ina ionad.

I move amendment No. 3:

In page 4, lines 19 and 20, to delete “Thirty-fourth Amendment of the Constitution (Marriage Equality) Act 2015” and substitute “Thirty-Fourth Amendment of the Constitution (Redefinition of Marriage) Act 2015”.

I have a number of questions and comments to make and I would appreciate it if the Minister could answer the questions I am asking, which are important. What is marriage? The definition I came across is that marriage unites a man and woman with each other and any children born from their union. This is the definition I quoted on Second Stage. It is an uncontroversial, generally accepted definition of marriage, but this Bill proposes to redefine marriage. Same-sex marriage is not a right recognised in international rights law. Neither the United Nations nor the

European Court of Human Rights does so.

The Minister has mentioned that it is a right on a number of occasions. Can she point to any such international recognition of same-sex marriage as a human right?

Currently, failure to consummate the marriage is grounds for divorce and annulment. Will this be affected should the referendum pass? It is ground used by people with regard to either separation, annulment or divorce and has implications for people if there is a change to it.

The term “marriage equality” in the Title of the Bill is an example of political framing. It is not a neutral term but a loaded one and shows a profound lack of respect for the people for the Government to try to condition and control how Irish voters think about the proposal by framing it in a loaded rather than neutral way. Marriage equality is a term that emanates from the pro same-sex marriage lobby groups in Ireland and internationally. Marriage equality is a lobby group slogan. It is not a neutral description of what the Government proposes to put before the people on 22 May. The irony is that while the Government included the word equality in the title of the Bill, the loaded term marriage equality clearly shows that the Government does not favour equal treatment for all sides and full opinions in this referendum. Irish constitutional law demands that all referendums be conducted in a fair, equal and impartial way. The loaded one-sided language is an inauspicious start to the referendum campaign. Is the Government deliberately ignoring the McKenna principle and the judgment of the Supreme Court in the McCrystal case? McCrystal v. the Minister for Children and Youth Affairs concerned the Government campaign in support of the children’s referendum. The Supreme Court ruled that the Government placed the rights of those in favour of the children’s referendum above those against when it put together its information campaign. That is the finding of the Supreme Court. Is the Government doing the same thing in its use of the term “marriage equality”? Is it prejudicing the outcome of the referendum? Is use of the term “marriage equality” intended to secure an affirmative result in the referendum? As an organ of the State, the Government has a constitutional obligation to other parties and cannot be seen to favour one side over another. Individual members of the Government are entitled to favour one side over the other, but the Government must treat all sides equally. The use of loaded language and subtle advocacy does not do this.

Its handling of the children’s referendum has been challenged in another case, brought by Joanna Jordan. The case urges a rerun of the children’s referendum because of the Government’s handling of it. Journalist Mr. Bruce Arnold said it was intemperate and overzealous of the Government to push ahead with the marriage referendum when the Supreme Court had not yet ruled in the Jordan case-----

Senator David Norris: He is English.

Senator Jim Walsh: -----where the referendum was under scrutiny. Mr. Arnold has already caused the Government embarrassment and forced it to change the marriage referendum’s Irish language text because it could be interpreted as banning opposite sex marriages. Constitutional law academic Dr. Seán Ó Conaill said the Government was reaping what it had sowed because it had made such a mess of the children’s referendum. The Government has an appalling record when it comes to respecting the views of people. The Taoiseach was in government at the time of the 1995 McKenna judgment and the current Minister for Justice and Equality, Deputy Frances Fitzgerald, was the Minister for Children and Youth Affairs at the time of the children’s referendum. Both should have learned lessons when it comes to pushing agendas in referendums.

27 March 2015

I take particular exception to the fact that the constitutional question before the people, and the Bill that underpins it, is a one-sided presentation of the argument. It is not the way to respect and treat the people. People on the other side have a different view and they are entitled to the same impartiality and neutrality from the Government as those following this side. I oppose it because children will be deprived of fathers and mothers and affected by this referendum. We have spent the past number of days, including all this week, talking about changes made to accommodate the referendum.

I also have concerns about the ideological aspect to redefine marriage and family and the application for children in schools, which I mentioned on Second Stage. With regard to my third concern, I preface what I will say by quoting from Keith Mills, a self-professed gay man but an anti same-sex marriage campaigner:

The ... 'one size fits all' method of legally recognising all unions fails to address the fact that the relationship that a man forms with another man is intrinsically different from the relationship that a man forms with a woman. This difference is as fundamental as a man and woman are themselves different.

There is a great deal of talk about diversity, but, when it comes to this, nobody wants to recognise that there is a difference and diversity. Existing marriage rights should remain unique to marriage because of its uniquely pro-child nature. It is not discrimination, despite what people say, to treat a unique institution such as marriage between a man and a woman in a unique way.

My third concern is that young gay people, in particular, who bought into the ideology will come to recognise that their relationships are different. That does not mean that they are not entitled to the same respect, but it is different. The relationship between a man and a man and a woman and a woman is different to the relationship between a man and a woman. There are biological and other differences underpinning that statement. This should not detract from the respect such people are entitled to.

As far as I am concerned, I never want to deny any loving gay couples the right to live together in happiness, to make a lifetime commitment in a monogamous relationship is already secured in civil partnership. That is not at issue. It has been recognised and legalised. Archbishop Martin put it well when he said an ethics of equality does not require uniformity. I ask the Minister to reflect on that and on the amendment I have tabled, which means that the people will, in a fair and objective way, go to the polls and vote as they see fit on the issue. I ask those people that they reflect on various arguments put forward for those who are looking to vote "Yes" and those looking to vote "No" and come to a decision in the best interests of society as a whole. There is an ongoing debate between individualism and the common good and there is ideology, particularly around the former. That is at issue in this referendum and I am disappointed the mistakes made in the children's referendum are being repeated. I am not a lawyer and I do not know whether it is open to legal challenge but it is disrespectful to the electorate, to their intelligence and to their independence to make a well considered, independent adjudication on the matter.

Senator David Norris: I have heard a lot of nonsense in this House, but for sheer fatuousness the last contribution take some beating. Marriage has always been in change and redefined. Let us forget the idea that there is some kind of absolute ideal that has always applied. That is nonsense as it has always been changing. Save me the business of controlling discus-

sion. That is a fat one. Who are the people who got involved in the row about homophobia when RTE coughed up €85,000? The person was clearly homophobic and there is no question about it. I indicated in the House the violently homophobic statements that person had made.

Senator Jim Walsh says the Government is not giving equal time to the Opposition. When did any Government argue against its own legislation? I never heard such nonsense in my life. A Government is in place to formulate policy and give instrumental effect to it. It is not in place to argue the case against its own legislation. That is simply daft. Of course, it is committed to winning. What else should one expect - that it is committed to losing?

I refer to the nonsense that children will be affected. The Bill we were discussing yesterday dealt with children and it will automatically pass, about which there is no question. As the Government has the numbers and the support required, it is dealt with, done and dusted; therefore, let us forget the question about children. This Bill is about marriage equality. Senator Jim Walsh produced the token gay man. In any population group one will find 96% going one way and a few dingbats going the other. It is interesting that these gay men are produced and pop up every so often because of the McKenna judgment. As I said yesterday, the Government should seriously look at that judgment. It is frightful nonsense that all sides are given an equal share, however absurd the arguments are. This is absolute nonsense and I thought so at the time.

On the question of ideologies, I agree with Senator Jim Walsh. The Iona Institute, courtesy of Domino's Pizza and Lolick Limited, is a classic example. It is the most ideologically driven group I have come across and it is not a charity. I would be very interested to know how it receives charitable status for such a campaigning political group? What is charitable about this? In the James Joyce Centre we had to argue for years to obtain charitable status. How is it that the people concerned received it at the snap of fingers? What are the charitable commissioners doing? How on earth did a group of self-appointed ideologues receive charitable status? How is it that they are able to give two fingers to the SIPO-----

Acting Chairman (Senator Marie Moloney): Will the Senator, please, confine his remarks to the subject of the debate which is not the Iona Institute.

Senator David Norris: I am very clearly sticking to the subject. I thank Senator Fidelma Healy Eames for her most helpful intervention. The previous speaker spoke about ideologies being in play, illustrating that ideologies were most certainly in play, particularly on the "No" side.

Acting Chairman (Senator Marie Moloney): He did not identify anyone in his contribution, but the Senator is doing so.

Senator David Norris: Neither have I.

Acting Chairman (Senator Marie Moloney): The Senator has.

Senator David Norris: Who did I identify?

Senator Martin Conway: It is shocking that the Iona Institute has charitable status.

Senator David Norris: The Iona Institute is not a human being; it is a body. Does this mean that we cannot mention the ESB? Hello - what is happening?

Acting Chairman (Senator Marie Moloney): Will the Senator, please, continue his con-

tribution and stick to the amendment?

Senator David Norris: I have just finished and I would have finished if I had not been interrupted. There are ideologies in play and the sooner we accept that fact and understand it and counter these ideologies, the better.

Senator Fidelma Healy Eames: These two amendments are interesting. They propose to delete the Thirty-fourth Amendment of the Constitution (Marriage Equality) Act 2015 and substitute the Thirty-Fourth Amendment of the Constitution (Redefinition of Marriage) Act 2015 and delete the Thirty-fourth Amendment of the Constitution (Marriage Equality) Act 2015 and substitute the Thirty-fourth Amendment of the Constitution (Marriage Without Distinction as to Sex) Act 2015. To be fair, both describe exactly what the Bill seeks to bring about. The Bill is preparing the ground for the holding of a referendum in order that the people can vote either to accept or reject a redefinition of marriage as framed in the Constitution and supported in case law that it is a union of a man and a woman. I am speaking about this issue in a very open way. I have yet to decide how I will vote, but that is exactly what the Bill seeks to do. The wording in amendments Nos. 3 and 4 provides honest and accurate descriptions. The Title of the Bill, Marriage Equality Bill, has been designed by the Government to confuse and achieve a certain result. It is disingenuous and misleading and unfair to the voter.

I voted in favour in the children's rights referendum and was glad that I had supported it. However, there is no definitive outcome. Therefore, lessons should be learned. Should the referendum on marriage equality be carried, I will accept the outcome, but we have a duty to be clear for the sake of the voter. That is our job in the Houses of the Oireachtas. Not every voter on the street reads legislation, but many people - I hope many more - will vote. People take time when they vote to read what they are voting on, but all that will be provided on the ballot paper is the Title of the Bill. The Minister should want it to be as clear as possible, which is only good and right.

I have received a lot of feedback which shows that the whole debate is underpinned by fear, so much so that people are afraid to express how they feel. That is unbelievable and outrageous. Senator David Norris spoke about how much he was against the McKenna judgment; I say thank God for that judgment, as otherwise no voices would be heard. To be fair to those involved in the gay movement, they have fought for decades to have their differences recognised, which is why I voted in favour of civil partnership. Now, the word, "equality" is being introduced into the marriage issue as if being gay and heterosexual is the same. We know that it is different, but it is okay to be different. They are equal as people but clearly different in their orientation, which is great and fine. I urge the Minister to be courageous and call it what it is - a redefinition of marriage or marriage without distinction as to sex. That would be new and different for the people and we are not in dispute on the issue of equality, but the reference to marriage equality is very misleading. The Government should be committed to framing the Title accurately.

Senator Rónán Mullen: Sometimes it has to do with the ruthlessness of people in power that they think they can shape things whatever way they want to manipulate public opinion and get a result, even if fair play in some way is the loser along the way. That is what is happening in this instance in the way this Bill has been titled. The Title is what will be on the ballot paper. Calling it the Marriage Equality Bill is just one last attempt by the Government to put a leaflet in people's hands as they go to vote stating, "This is the way you should vote if you are a nice person." That is unacceptable; it does not respect the referendum process or the practice fol-

lowed up to now of choosing non-leading language on the ballot paper. This issue will come up time and again during the debate unless the Title of the Bill is changed. In fairness, it would be very much better if we had a less compliant media which would scrutinise the decision of the Government to adopt a campaigning term that has been used by a highly successful and very talented lobby group - fair play to it - to advance its case for redefining marriage. The Government should have stood back from that but, of course, it has been about manipulation all along.

It has been about manipulation with the Constitutional Convention. We know that the Constitutional Convention was a ready-up in terms of how people ended up on it. There were married couples on the Constitutional Convention and this was supposed to be the organisation that represented the citizenry of Ireland. There were former councillors, political types, former and current members of the Labour Party and, remarkably, they all ended up on this representative group of 66 lay people on the Constitutional Convention. The whole thing was a ready-up to allow-----

Senator Martin Conway: On a point of order, to be fair, I do not think anybody ever said that.

Senator Rónán Mullen: What?

Senator Martin Conway: What the Senator is after saying.

Acting Chairman (Senator Marie Moloney): That is not a point of order.

Senator Rónán Mullen: I am delighted to be the first to say it. It should have been said a lot sooner. I think I did say it myself along the way.

Senator Katherine Zappone: The Senator did say it sooner.

Senator Rónán Mullen: The whole thing was a ready-up. It was the Labour Party in government creating the Constitutional Convention as a mechanism to build up a public impression that there was public support for this particular measure above other measures. We got a set menu of some of the Labour Party's favourite issues and, it has to be said, the Government's favourite issues, but this one was at the heart of it. Putting this issue before the Constitutional Convention was all about a fig leaf of legitimacy to say this is a burning issue that is coming up repeatedly again and has to be resolved. However, the decision on what to put to the people in a referendum is really a decision to prioritise an issue above all sorts of other issues.

We remember the former leader of the Labour Party, Deputy Eamon Gilmore, talking about this as the civil rights issue of our time. He was doing so, no doubt, at the behest of the very group of young Turks in the Labour Party that ended up throwing him out. We will see how enthusiastic he is during the campaign.

The Constitutional Convention brought forward this issue and there were some very tendentious presentations at that convention. That gave the Government the excuse it needed to act on the recommendation of the Constitutional Convention to bring forward this referendum. Not content with that little bit of readying up, however, the Government then engaged in the strategy of naming this referendum in such a way as to convey the idea that people who like equality and all of that good stuff will be in favour of this referendum. Meanwhile, the unpleasant people who do not like equality but like to discriminate against people, will be the ones to vote against it. In fairness, they do not always call them "unpleasant". They might otherwise portray them

as benighted in some way.

The Government has been in such a haste to do all this that we even had the fiasco of a wording as Gaeilge for the referendum that had the possible effect of banning heterosexual marriage in favour of same-sex marriage. A compliant media again let the Government right off the hook on that when they hastily went to amend their hand and came up with a better translation into the Irish language of what they were proposing to do. Does it not tell us an awful lot that that even happened? It tells us a lot about the arrogance and presumption that this could all be rushed through quickly, so much so that they did not even get it right at first. What does that tell us about the preparation that underlay this proposal in terms of understanding the full outworking of the legal issues involved? What does it tell us about the issues I, Senator Quinn and others have been raising in this House about the possible meaning of this referendum proposal down the line?

If the Government were to be judged on the fiasco of the Irish language wording of this amendment, it would tell us that it does not have the faintest idea of where exactly this amendment might lead when it comes to being interpreted in the courts. That should have received much more attention because it was very revealing.

Senator Fidelma Healy Eames mentioned the Patricia McKenna judgment and the Coughlan judgment. Those two individuals did much more public service for the cause of democratic legitimacy than this Government has ever done. It was thanks to Patricia McKenna's initiative, and the court decision that flowed from it, that we will have anything like a semblance of impartiality in the broadcast media's coverage during this campaign, and indeed in other coverage, by preventing the Government from spending public money to advocate one side or the other in the referendum. Mr. Anthony Coughlan's case concerned party political broadcasts.

Those two civic-minded individuals brought their cases in the context of the divorce referendum. I do not think anybody even knew their position on that referendum, but they saw the point about democracy and fairness. If the Government even half got the point, it would not be engaging in this patronising and manipulative pretence with the electorate by putting marriage equality as the title of this referendum. It is entirely tendentious campaigning and anything but in the spirit of the McKenna and Coughlan decisions. In a sense, the Government is using public money through its Oireachtas majority to tilt, or attempt to tilt, the public's view on what stand they should take on this issue.

It is a long way from the Government's earlier expressed line that it is only about marriage. If it was only about marriage, it would talk about it as marriage. However, by taking on the phrase of a lobby group on the ballot paper, it has shown what way it wants this referendum to go. That may well raise constitutional points. I do not know what view of it the courts would take if it were challenged. I do not think the Government can be relied upon to have thoroughly scrutinised that issue. It is so choked up with its own ideology, haste and arrogance to get all of this through that I doubt very much if it has considered any ideas that are unpalatable to it.

The same attitude is to be found in comments by the Minister for Children and Youth Affairs, Deputy James Reilly, and others who have tried to suggest that this referendum is about sending a message to gay people, and in particular young gay people, that they are loved and respected. Think about what that is saying. It is saying that the only way one can send that message of love, respect, acceptance and equal dignity is by voting "Yes".

Suppose, however, that people in their wisdom decide to vote “No” because they believe this referendum would undermine a child’s right to a father and mother, while they totally respect and love gay people and their right to equal dignity, their private life and all of those good things. It is quite clear that this Government is happy to use the mental health and happiness of those young people as some kind of a battering ram to get its will through. If the Government were more socially responsible, it would be sending messages to the effect that no matter what way this referendum goes, gay people in our society should know that they belong as much as anyone else, that they are loved, have equal dignity and rights, and that the right to marriage is specifically because it has to do with the two-gender nature of marriage, the complementarity of the male-female relationship and the particular good that does as a special case for the upbringing of children.

The Government would then be communicating much more sensitively so as to really send a message of inclusion and respect, but in fact it is doing the opposite. It is using others as a battering ram to get what it wants. It is trying to do so in a context of emotional manipulation, which does not do the Government credit.

Senator Sean D. Barrett: The Senator is the one who is doing that all the time.

Senator Rónán Mullen: How?

Senator Sean D. Barrett: In the speech he has just made.

Acting Chairman (Senator Marie Moloney): Senator Rónán Mullen to continue,, without interruption, please.

Senator Rónán Mullen: I do not think so. Senator Sean D. Barrett is wrong. In the context of this debate, I have been extremely careful to try to separate the issue of love and respect for people’s dignity, which it should be everyone’s duty to promote, and the particular question of what marriage means, and whether a change in that would undermine children’s rights in certain circumstances.

The Senator should reflect on his position in that regard, but he is entitled to his view.

I do not know whether this will lead to a constitutional challenge, but the public will note what the Government is trying to do. Irish people are astute. They do not like things being rammed down their throats. They do not like being emotionally bullied. They do not like being put on the bad step simply because they take a different view. That is what the
2 o'clock Government is trying to do to them. They have also shown a great ability to distinguish between issues. The example that springs to mind is the occasion when, on the same day, the people voted to allow for a reduction in judges’ pay but voted against allowing Oireachtas committees of inquiry to make findings of fact that could be adverse to people’s reputations. They smelled the rat of politicians losing the run of themselves sitting in judgment over others.

Acting Chairman (Senator Marie Moloney): Will the Senator stick to the Bill under discussion, please? He is straying from the subject.

Senator Rónán Mullen: I do not see how.

Acting Chairman (Senator Marie Moloney): The Senator is straying from the amendment and discussing other-----

27 March 2015

Senator Rónán Mullen: To be clear, I am stating that, on that occasion, people showed their ability not to be manipulated by the way wording-----

Acting Chairman (Senator Marie Moloney): The Senator has made his point.

Senator Rónán Mullen: It is exactly on point.

Acting Chairman (Senator Marie Moloney): Will we revert to the amendment, please?

Senator Rónán Mullen: It is exactly on point, but if what the Acting Chairman is really telling me is to hurry up and finish, I am about to finish.

We did not call the referendum on judges' pay the "Cut the Pay of Those Greedy Judges Referendum". We did not manipulatively entitle other referenda, but such is the ideology, agenda, determination and ruthlessness of the Government on this Bill that it is seeking to tilt the jury on the very day in that profound and serious moment when people enter the polling booths. It should not do this. Doing so will rebound to the disadvantage of its case.

Acting Chairman (Senator Marie Moloney): Senators Martin Conway, Katherine Zappone and Aideen Hayden are next.

Senator Martin Conway: I will be brief. I always listen with great interest to Senator Rónán Mullen. While I may not agree with him, he is articulate in the expression of his opinions. His comments on the Constitutional Convention are regrettable, however. Two thirds of the convention were selected by lot from the electoral register. Sixty six of the 100 people on the convention had no involvement in politics whatsoever. They were independent of politics. They were citizens of the country who made the recommendations-----

Senator Fidelma Healy Eames: Is the Senator speaking to the amendment?

Senator Martin Conway: I am correcting the record. I thank the Senator.

Acting Chairman (Senator Marie Moloney): Will Senators, please, speak through the Chair?

Senator Fidelma Healy Eames: Remember the rudeness yesterday?

Senator Martin Conway: The convention's members spoke and gave of their time voluntarily. The 33 Oireachtas Members came from across the political divide. Impugning the work done by the convention on our behalf was regrettable.

Senator Katherine Zappone: It is good that the issue of the Title of the Bill has been raised. I am happy to speak on it and have listened to all of my colleagues' contributions.

Before I discuss the substantive issues and without taking long, it detracts from any strength that Senator Rónán Mullen's argument might have to speak about the "ruthlessness" of people in power or the Government's "arrogance" or "emotional manipulation". It would be sufficient for the Senator to make his arguments without making such unfounded accusations.

Senator Jim Walsh raised a point about the use of the word "ideology". We all have ideologies. "Ideology" is not a negative term. It is a neutral term. The civil rights movement out of which I have been operating in respect of this Bill has ideas, concepts and values in which it roots its practices and actions, just as the Senators' do. I experienced something being named a

“gay ideology” as an effort to denigrate or side-step. The Senators probably do not mean to do that, but we all operate out of ideologies.

The argument from Senators Jim Walsh and Rónán Mullen is that we should change the Bill’s definition to avoid the Title being loaded or leading people one way as opposed to another. I respectfully disagree. This Title is accurate, not loaded or leading. To add the word “equality” to “marriage” is not to use the phrase of a lobby group as much as it is to use a word that is a foundational, philosophical and ethical category. I respectfully suggest that using the words “loaded” and “leading” as distinct from “accurate” is rooted in the Senators’ views and their plans to vote “No” in the referendum and to argue that this is not about equality, but about changing the definition of the traditional family and a child’s right to a mother and a father. The question is whether that stance reflects an accurate view of what the Bill is about. This is about equality, voting “Yes” or “No” to equalising homosexual and heterosexual people’s rights to marry. The Senators say “No”. I respect that. They do not believe that we should equalise people’s rights to marry because of questions about children and gender complementarity. While I respect that stance, I disagree with it.

The Bill is about equalising people’s access to recognition as families under the Constitution. Lesbian and gay couples are not considered constitutional families, whereas heterosexual married couples are. Lesbian and gay couples do not have that recognition, but the majority of heterosexual couples do. The Bill is also about equalising the rights and status of children of heterosexual, lesbian and gay couples. The children of lesbian and gay couples do not have equal status under the Constitution because their families do not have constitutional protection.

As the Bill is about equality, it is accurate to use the term “marriage equality”. This is why I will not support the amendments. To call the Title misleading or loaded is rooted in the Senators’ views of what marriage ought to be.

Senator Jim Walsh argued that it was a human right to marry and asked the Minister where that right was protected in the European convention. I will say a few words on why people want to marry. The European Court of Human Rights, ECHR, has acknowledged that marriage confers a special status on those who enter it, the right to marry gives rise to social, personal and legal consequences and marriage is a public undertaking carrying with it a body of rights and obligations of a contractual nature. It is true to say that, in 2010, the ECHR held that Austria had not violated the European Convention on Human Rights by not providing for same-sex marriage. However, it is important to remember that, in the same judgment, the court stated that it no longer considered that the right to marry under the convention had to be limited to persons of the opposite sex. The basis for the court’s judgment that Austria had not violated the convention lay in its view that “marriage has deep-rooted social and cultural connotations which may differ largely from one society to another”. For that reason, the court was not willing to impose its judgment against Austria. It is very important to remember that the court also stated it was no longer considered that the right to marry must be limited to persons of the opposite sex. It is worth pointing out that the court has always adopted that deferential stance in relation to sensitive issues. The European court has been deferential. A number of European states, subsequent to when we took our own case, have eventually come to argue for, include and provide for the right to marriage for same-sex couples. Europe is going in that direction.

The ultimate question is one of the impact of the issue that is before the Irish people. This is not like what happened in Senator David Norris’s case, when we were one of the last groups in Europe to come on board in relation to decriminalising homosexuality. The court ruled against

Ireland because there was an emerging consensus. In this regard, we could be one of the leading members of Europe. We do not have to be at the back of the bus in relation to this one. We can take the change in relation to this issue and help that emerging consensus with regard to Europe. That aside, it is true to say that the European court has not said that the right to marry is necessarily outside the scope of the convention.

Senator Aideen Hayden: I oppose the amendment. I would like to concur with the views that have been just expressed by Senator Zappone. I think the Title of this Bill could not be more appropriate. What is this Bill about? What is this referendum about? They are about giving equality of access to the institution of marriage. At the moment, we do not have equality of access to the institution of marriage. It is very clear and straightforward. I believe it states the case as it ought to be stated.

I agree with Senator Katherine Zappone that there is a further issue around equality. It is a fact that special protection is given to the family based on the institution of marriage. Obviously, there are many families that come outside that definition. Indeed, the children of gay and lesbian couples fall out of that particular special status. As a member of the Constitutional Convention, I was deeply struck by many of the presentations that were made, particularly by the children of a gay and lesbian couple. I would like us to revisit in the future the whole issue of the special status of the family based on marriage because I think it excludes other people who are not married. I sincerely hope this referendum passes when it goes to the people in May. I do not believe we can be complacent on it. If it is passed, I believe protection will be then afforded to the children of gay and lesbian couples. I want that protection to be afforded to families who are non-marital families - single people, for the sake of argument. I believe we will have to revisit the definition of family.

I will conclude by saying I do not believe I have ever heard such disrespect for a Minister in this House. It has been suggested that a Minister has been using the resources of her office to delude the people into making a decision on the basis of fraud. I have never heard such disrespect in this House. I have never heard such deep-seated contempt for the intelligence of the people. I will conclude by emphasising that the Labour Party is consistent and is proud of its history in relation to the marriage equality issue.

Senator Averil Power: I support what Senator Aideen Hayden has said about the deeply unfair remarks that were made about the Minister. Equally, the comments that were made about the Constitutional Convention, of which I was a part, were deeply disrespectful to the citizens involved, who gave a huge amount of their time to engage with this issue. They engaged with it in a very genuine and open way. Many of them changed their minds as a result of hearing all the presentations and all the speakers, one of whom was Senator Rónán Mullen. Everybody had an opportunity to speak at that forum. It is unfair and disrespectful to claim that people did not have the intelligence or wherewithal to make up their own minds.

I wish to comment briefly on the use of the word “equality”. The Oxford English Dictionary defines “equality” as “the state of being equal, especially in status, rights, or opportunities”. That is precisely what this Bill is about. It is about giving people the equal right and opportunity to marry. That is precisely the definition of equality. Some groups do not like to use the word “equality” because they like to tell us they are in favour of equality, equal esteem and, as Senator Rónán Mullen said, dignity for gay people. The same groups argue that it is okay to refuse a gay person a service just because of their sexual orientation. They say it is okay to refuse to employ somebody, to discriminate against somebody in employment or indeed to fire

somebody from their job just because of their sexual orientation. They think it is okay in this context to discriminate against two people in a loving and committed couple on the grounds of their sexual orientation. I am not aware of any definition of “equality” in which those views could possibly fit. People should be honest about where they stand. If they do not believe lesbian and gay couples are entitled to equality, they should argue the reasons for that but they should not manipulate language by trying to extend it to a ridiculous extent.

Senator Fidelma Healy Eames: On a point of order, I think the Senator is entering information that has never been put on the agenda. No one has said it is okay for gay people to be fired.

Acting Chairman (Senator Marie Moloney): That is not a point of order.

Senator Fidelma Healy Eames: I appreciate that, but there is a need for accuracy.

Acting Chairman (Senator Marie Moloney): It is not a point of order.

Senator Fidelma Healy Eames: Nobody is talking about anything like that. We are talking about the amendment and the Title of the Bill.

Acting Chairman (Senator Marie Moloney): That is not a point of order. Senator Averil Power should be allowed to continue.

Senator Fidelma Healy Eames: It is ridiculous in the extreme.

Senator Averil Power: I am quite happy to respond to that point.

Acting Chairman (Senator Marie Moloney): No, Senator.

Senator Averil Power: I will not respond directly to that point, but I will say that the Iona Institute and other groups that are arguing against marriage equality are the same groups that made submissions in favour of section 37 of the Employment Equality Act 1998, which has been debated in this House, as has the legislation I introduced here to change it. The same people argued that people should be able to be discriminated against or denied employment on the basis of sexual orientation.

Acting Chairman (Senator Marie Moloney): I pulled up another Senator a while ago about referring to groups that were not here to defend themselves.

Senator Averil Power: Fine.

Acting Chairman (Senator Marie Moloney): I ask the Senator to speak to the amendment.

Senator Averil Power: I will say that there is a coalition of people, including Members of this House, one of whom is no longer present in the Chamber but spoke earlier in this debate, who have argued for exactly the same thing. Those people need to be open and honest about their arguments. They do not like to use the word “equality”. They like to use the word “difference”. Those who argued against the abolition of slavery thought they were decent, fair-minded, right-thinking, religious and caring people. They did not like to be labelled as being in favour of inequality. They said that black people, slaves and people from the African continent were just different and had a different place in life, in society and in the world.

Acting Chairman (Senator Marie Moloney): May we get back to the subject matter of the Title of the Bill?

Senator Averil Power: I am talking about the word “equality”. The language that was used here was the language of difference. Those who argued that women should not serve on juries because we were functionally different would not accept that we were unequal. They said “well, women are just different”. The same logic has been used to justify apartheid in America and elsewhere and to justify the prevention of interracial marriage. I want to make it clear that this is part of a theme, and equality is not it. As I said in my opening remarks, the language that is being used in the Title of the Bill is entirely fitting with what it is about. The true definition of equality is about treating people the same in their status, their rights and their opportunities. That is precisely what this Bill is about. If people do not agree with equality and feel they have genuine reasons for that view, they can make those reasons known. However, they should not try to say they are in favour of equal rights for gay people when it is clear that they are not.

Senator Mary Moran: I will be brief. I could not let the comments made by Senator Rónán Mullen go without reacting to them. I think everybody has reacted in much the same way to some of the comments. That is the big thing. I will also be opposing the amendments. One cannot say one is in favour of equality, on the one hand, for one thing, as long as people do things the way one wants them to do those things and for as long as they agree with one. This referendum is about marriage equality for all people, regardless of their sexual orientation. One cannot say one is equal in that sense but that one cannot have equal rights in other ways. I apologise for getting personal about this, but it needs to be said. It is unfortunate that Senator Rónán Mullen can make all the comments he wants all day, leapfrog over the barrier to leave the room and is not hear to listen to other people’s points of view.

Senator Averil Power: He has been here consistently during recent days.

Senator Mary Moran: He jumped over the barrier, as if we are in a circus, to get out of the room and will not listen to the other legitimate comments Members have made. We sat here and listened to his point of view and let him speak.

Acting Chairman (Senator Marie Moloney): I remind the Senator that Members should not-----

Senator Mary Moran: I apologise, but I would like to refer to his comments about the Constitutional Convention about which I feel strongly. I was very proud to be part of it. Two thirds of the people on it were members of the public. I sat at a table with two people on the first day on the Saturday morning who were vehemently opposed to voting in favour of marriage equality but by the end of the Sunday they were speaking vehemently in favour of it. They had completely changed their view. It is an insult to the intelligence of the people who participated in the convention to imply that people did not have the intelligence to make up their own mind after they weighed up all the evidence. Those comments need to be taken up.

Acting Chairman (Senator Marie Moloney): I remind Members to speak to the amendments.

Senator Feargal Quinn: I welcome the Minister to the House again. I intend to speak to those two amendments that relate to the wording people will see when they go to the polling station to vote. It is not that long ago since we had the referendum on the abolition of the Seanad over which there was a great deal of confusion. I say that as someone who was delighted

to see that referendum lost. I accept that a very large number of people were concerned over the wording on that referendum paper because it was confusing. It is a reminder of how much attention we should give to the wording on this referendum paper. I believe Senator Rónán Mullen was correct when he proposed that the Title should be substituted with the wording “Thirty-Fourth Amendment of the Constitution (Redefinition of Marriage) Act”. That makes a great deal of sense because the inclusion of the wording “(Marriage Equality)” in the Title takes a biased view. The second proposal is that the words “(Marriage Equality)” in the Title should be substituted with words “(Marriage Without Distinction as to Sex)”. That explains what the referendum is about.

A number of people are concerned about this referendum but most of them are not necessarily, although some may be, anti-gay or anti-gay and lesbian movement; rather, they are concerned about it for other reasons. It is important we take into account that there are people who have legitimate reasons for being concerned. One of the reasons, and it is one I mentioned previously, is the question of giving the right to gay people to adopt children. The Minister may have read in recent weeks that Elton John and his partner, a gay couple, called for a boycott of Dolce & Gabbana because the designers said they believed adoption should be only between a male and a female. The Minister can understand people have a genuine concern about this issue. Therefore, some people have genuine concerns and they are expressing them and now we have the opportunity to have a referendum to express them. I would like to ensure there is no criticism in the aftermath of that referendum with people saying they did not understand it or that they were misled. Therefore, the amendment Senator Rónán Mullen has tabled is worthy of consideration and should be considered.

Deputy Frances Fitzgerald: In regard to the comments on the Constitutional Convention in terms of telling the citizen representatives who were members of it that it was ready-up, they are an outrageous reflection on the integrity of a process which has been being widely recognised and praised as a public deliberation process and a very genuine one. Certainly all of those who oversaw it, the academics and everyone who was involved in it will vouch for the integrity of that process.

I propose to respond to amendments Nos. 3 and 4 together. These amendments would have the effect of changing the Title of the Act from the “Thirty-fourth Amendment to the Constitution (Marriage Equality) Act 2015 to either the “Thirty-Fourth Amendment of the Constitution (Redefinition of Marriage) Act 2015” or the Thirty-Fourth Amendment of the Constitution (Marriage Without Distinction as to Sex) Act 2015”. The inclusion of the phrase “(Marriage Equality)” in the Title of the Bill is factual in nature. Same-sex couples do not at present have a right to get married. Opposite-sex couples do have that right. Therefore, as a matter of fact, the rights of the two categories of couples, as many Senators have said, are not equal at present. There are explicit prohibitions in place which prevent same-sex couples from marrying. Section 2(2)(e) of the Civil Registration Act 2004 provides that it is an impediment to marriage if both parties are of the same sex. Accordingly, the Title of the Bill sets out the purpose of the proposed amendment which is to extend equality of rights in respect of marriage to same-sex couples. If the referendum is passed, the effect, as is reflected in the Title, would be to put same-sex couples on a footing of equality in terms of marriage.

The proposed Title is clear and enables the electorate to understand the decision it will have to make. The Referendum Commission, in the discharge of its statutory duties, will provide information to the electorate concerning the proposal in the referendum and it will be clear to the people that what they are voting on, on 22 May, will be the wording which is proposed for

27 March 2015

insertion into the Constitution, that is: "Marriage may be contracted in accordance with law by two persons without distinction as to their sex." The Title of the Bill is the Title proposed by the Government to this House and as passed in the other House. This referendum is about the wording being proposed for the consideration of the people.

In addition, amendment No. 3 would have the effect, if accepted, of being misleading. It suggests the effect of the proposed constitutional amendment would be to redefine marriage. As I indicated in my Second Stage contribution, the proposed constitutional amendment would not redefine marriage. Marriage would continue to be regulated by statute and by the common law in the same way as at present. We are not redefining marriage, as I have said. Marriage, as an institution, will continue to enjoy the same constitutional recognition and protection as it has at present.

The purpose of the proposed constitutional amendment, as I have stated, is to extend access to that constitutionally protected institution to same-sex couples. For these reasons I cannot accept the amendments.

Senator Jim Walsh: I feel that if I said something was white, the Minister would say it was black. I was interested in a very thoughtful and cogent contribution from Senator Katherine Zappone, for which I commend her. It probably reflects the generality of the contributions she makes in this House. She said - I disagree with her - that the description of marriage equality was accurate. I do not believe it is and I will come to that issue shortly. She said something also which resonated somewhat with me, namely, that the constitutional recognition of the relationship that she and others who have the orientation is something she aspires to and that she believes she is entitled to. I have a difficulty in arguing with the Senator on that issue. In that regard, why not look at some sort of constitutional recognition for civil partnership, which would create a situation where children who arise in those relationships would also be covered? I would also say to the Minister that civil partnership carries practically all rights. As I stated on Second Stage and when this issue rose in 2010, I opposed this civil partnership model because it was analogous to marriage. Will the Minister outline just one substantive difference that her proposed change will make for people in gay relationships other than having gay marriage included in the Constitution? That could be done by including civil partnership in the Constitution.

I take a different view, for which I have explained my motivations. Same-sex relationships, by virtue of nature and biology, will always be different, but they should be respected in their own right. The obvious natural differences will endure regardless of any redefinition of marriage. This is a fundamental redefinition of marriage, regardless of what the Minister claims. The complementarity of male and female and procreation as a couple consummating marriage comprise a fundamental distinction that will not change. There are absolute, fundamental, natural and biological differences between the relationships, not between individuals. It is in the area of individuals that equality should apply, but we are discussing relationships.

I do not want to set red herrings running in the debate. I take on board what Senator Katherine Zappone said about ideology, as we all come with our own ideological thoughts on the matter. However, I have noticed a strong, well resourced, well funded and aggressive radical feminist agenda internationally. It probably emanated from the United States. It is amazing. I have spoken with feminists in the United States who are strongly pro-life. Feminism arose in the early part of the last century for good reasons. Women were seriously disadvantaged in all societies, including on these islands. The feminists of that era championed the right to life, but

they do not now. Radical feminists are mostly in favour of abortion or even gendercide. At the time, feminists were strongly opposed to slavery. That is interesting.

Senator Mary Moran: On a point of order, will the Senator speak on the amendment, please? This is more like a Second Stage speech.

An Leas-Chathaoirleach: That is a matter for the Chair, not a point of order.

Senator Jim Walsh: As such, ideologies need to be challenged, be it my ideology or someone else's. I endeavour to do so. Nothing will change the natural biological differences, but I am concerned that what we are doing will have a fundamental effect on children and their prospects. I have identified those issues and will not repeat them.

The Government has shown scant regard for the democratic institutions of the Republic. The routine guillotining of Bills in the Houses without adequate debate is unprecedented. The Minister was the distinguished Leader of the Opposition in the previous Seanad, when I recall only one debate on a Bill being guillotined. It is now a routine feature in both Houses. The dismantling of democratic institutions and systems, rather than simply reforming or improving them to better serve the people's interests, the abolition of town councils, the attempt to abolish this House and now the ultimate betrayal of the constitutional requirement to be fair and balanced in respecting the independent voice of people in a referendum are not good enough.

An Leas-Chathaoirleach: I call Senator Fidelma Healy Eames.

Senator Rónán Mullen: May I speak?

An Leas-Chathaoirleach: Senator Fidelma Healy Eames has indicated that she must leave.

Senator Fidelma Healy Eames: I stated I was available to speak, but I did not know I would be next.

Senator Jim Walsh: Did the Leas-Chathaoirleach ask whether my amendment was being pressed?

An Leas-Chathaoirleach: That was in the belief that no one else was offering and Senator Fidelma Healy Eames was leaving.

Senator Fidelma Healy Eames: I am an undecided voter. I mean that. I am open to listening to arguments from both sides, but I am dismayed that, because of my difficulty with how the Bill is titled, accusations are being thrown around that I might also be against women's equal rights and gay people's access to employment, and in favour of apartheid, and that it is all part of the same thinking.

Senator Averil Power: On a point of order, no one accused the Senator of that.

Senator Fidelma Healy Eames: Okay.

An Leas-Chathaoirleach: That is not a point of order.

Senator Averil Power: It is.

Senator Fidelma Healy Eames: There is a general throw at anyone who has an issue with any aspect of this Bill. That is wrong. It is exactly what is engendering fear and shutting people

27 March 2015

up. The public are afraid to express their opinions. The referendum could fail if we continue with this approach. I am not interested in any accusation against the Constitutional Convention or the Government, but I have difficulty with the Title of the Bill. It is unfortunate that the Title is the same as the name of a lobby group.

Senator Katherine Zappone's presentation was superb. Perhaps she might answer my question better. Can we not find a way to confer all equal rights and protections on gay people and any children they may have without it being seen as a redefinition of traditional marriage and the union of a man and a woman? Thus, we could respect difference while guaranteeing equality. The Senator or Minister might choose to answer in the course of this debate.

Senator Rónán Mullen: I am glad that Senator Fidelma Healy Eames said what she just said. I might make robust criticisms of institutions and the Government. I must stand by those. Telling it how I see it is part of my duty as a Member of the Oireachtas, but I try to do so without personalising it. We have done better than on previous occasions, but I am disappointed that we have not managed to be courteous in our dealings with one another.

One burger, two potatoes, some lukewarm carrots and a can of Diet Coke are the reason I jumped the barrier and was so light-hearted. I was going to get my lunch. Senator Mary Moran had plenty of time to have her lunch when she was not in the Chamber listening to the debate. I would prefer it if people did not take pot shots at me simply because I decided to leave the room. That is all I have to say.

Senator Mary Moran: I did not-----

An Leas-Chathaoirleach: Hold on one second. This matter has already been ruled on and it was wrong of the Senator to raise it. Is the amendment being pressed?

Senator Jim Walsh: I intend to press it, but the Minister did not respond to my question on the consummation of marriage. There are people who will choose an annulment over a divorce because of their religious beliefs. They can get annulments on the grounds of the non-consummation of their marriages. Will that situation be affected by this change? If so, in what way? It must have implications.

An Leas-Chathaoirleach: Does the Minister wish to add anything further?

Deputy Frances Fitzgerald: No. I have gone through the amendments and have nothing further to add.

Senator Jim Walsh: May I speak again?

An Leas-Chathaoirleach: The Minister has the right to reply and says that she has nothing further to add. The Senator cannot compel her to respond.

Senator Jim Walsh: I will not compel her. It is appalling that the Minister does not have a response to an important and pertinent question on the subject matter before us.

Cuireadh an leasú:

Amendment put:

The Committee divided: Tá, 4; Níl, 30.
--

Seanad Éireann

Tá	Níl
Healy Eames, Fidelma.	Bacik, Ivana.
Mullen, Rónán.	Barrett, Sean D.
Quinn, Feargal.	Brennan, Terry.
Walsh, Jim.	Burke, Colm.
	Byrne, Thomas.
	Coghlan, Eamonn.
	Coghlan, Paul.
	Conway, Martin.
	Craughwell, Gerard P.
	Cummins, Maurice.
	D'Arcy, Jim.
	Hayden, Aideen.
	Henry, Imelda.
	Mac Conghail, Fiach.
	Moloney, Marie.
	Mooney, Paschal.
	Moran, Mary.
	Mulcahy, Tony.
	Naughton, Hildegarde.
	Noone, Catherine.
	Norris, David.
	Ó Clochartaigh, Trevor.
	O'Brien, Mary Ann.
	O'Donnell, Marie-Louise.
	O'Keeffe, Susan.
	Power, Averil.
	van Turnhout, Jillian.
	White, Mary M.
	Wilson, Diarmuid.
	Zappone, Katherine.

Tellers: Tá, Senators Rónán Mullen and Jim Walsh; Níl, Senators Paul Coghlan and Aideen Hayden.

Amendment declared carried.

Faisnéiseadh go rabhtas tar éis diúltú don leasú.

An Leas-Chathaoirleach: Is amendment No. 4 being moved?

Senator Rónán Mullen: No.

Senator David Norris: May I ask for a ruling on a point of order? How can an amendment be discussed if it is not moved? I understand Members have discussed the amendment. I would have thought that discussing it was tantamount to moving it.

27 March 2015

An Leas-Chathaoirleach: No. Each amendment must be moved individually. Even though it has been discussed, the Senator-----

Senator David Norris: How can it be discussed if it is not moved? It does not apply in the parliamentary sense.

An Leas-Chathaoirleach: That is what the House agreed. The content has been debated. Senator Rónán Mullen is entitled to move or not move the amendment and he is not moving it.

Senator David Norris: I will only say this and then I will sit down: it is a nonsense to have people speaking on amendments without moving them.

An Leas-Chathaoirleach: It is standard procedure.

Senator David Norris: It revolts reason. That is all I will say.

Senator Rónán Mullen: May I speak?

An Leas-Chathaoirleach: Do not get involved in this debate. I am in Senator Rónán Mullen's favour.

Senator Rónán Mullen: I thought that I was speaking to Senator Jim Walsh's amendment.

Senator Thomas Byrne: I wish to raise a point of order about the Order of the day. I appeal to the Government to consider carefully the holding of a late night session to deal with the marriage equality Bill and the Children and Family Relationships Bill.

An Leas-Chathaoirleach: That is not a point of order.

Senator Thomas Byrne: It is playing into a certain side of the debate.

An Leas-Chathaoirleach: The Senator knows that this is not a point of order.

Senator Thomas Byrne: The Government will be blamed for late night sittings. It claims that these Bills are not linked, yet we are being rushed into a late night sitting to debate both.

An Leas-Chathaoirleach: That was agreed this morning and I cannot undo it.

Níor tairgeadh leasú a 4.

Amendment No. 4 not moved.

Aontaíodh alt a 2.

Section 2 agreed to.

Aontaíodh an Réamhrá.

Preamble agreed to.

TEIDEAL.

TITLE.

Tairgeadh am cheist: "Gurb é an Teideal an Teideal a ghabhann leis an mBille."

Question put: "That the Title be the Title to the Bill."

The Committee divided: Tá, 30; Níl, 4.	
Tá	Níl
Bacik, Ivana.	Healy Eames, Fidelma.
Barrett, Sean D.	Mullen, Rónán.
Brennan, Terry.	Quinn, Feargal.
Burke, Colm.	Walsh, Jim.
Byrne, Thomas.	
Coghlan, Eamonn.	
Coghlan, Paul.	
Conway, Martin.	
Craughwell, Gerard P.	
Cummins, Maurice.	
D'Arcy, Jim.	
Hayden, Aideen.	
Henry, Imelda.	
Mac Conghail, Fiach.	
Moloney, Marie.	
Mooney, Paschal.	
Moran, Mary.	
Mulcahy, Tony.	
Naughton, Hildegarde.	
Noone, Catherine.	
Norris, David.	
Ó Clochartaigh, Trevor.	
O'Brien, Mary Ann.	
O'Donnell, Marie-Louise.	
O'Keeffe, Susan.	
Power, Averil.	
van Turnhout, Jillian.	
White, Mary M.	
Wilson, Diarmuid.	
Zappone, Katherine.	

Tellers: Tá, Senators Paul Coghlan and Aideen Hayden; Níl, Senators Rónán Mullen and Jim Walsh.

Question declared lost.

Faisnéiseadh go rabhthas tar éis glacadh leis an gceist.

Tuairiscíodh an Bille gan leasuithe.

Bill reported without amendment.

27 March 2015

An Leas-Chathaoirleach: When is it proposed to take Report Stage?

Senator Maurice Cummins: Now.

Senator Rónán Mullen: Are we proceeding to Report Stage?

An Leas-Chathaoirleach: Yes.

Senator Jim Walsh: On a point of order, I was notified this morning by the Bills Office that there would be a sos of one hour at the conclusion of Committee Stage in order that Members would have an opportunity to submit amendments on Report Stage.

An Leas-Chathaoirleach: I understand those arrangements relate to the Bill due to be taken after this one.

Senator Thomas Byrne: On a point of order, will copies of the Report Stage amendments be circulated?

An Leas-Chathaoirleach: Yes.

Senator Thomas Byrne: In that event, proceedings should be suspended until they are circulated.

An Leas-Chathaoirleach: As the House has agreed to take Report Stage now, we are obliged to wait until the amendments are circulated. I understand copies are available in the anteroom and I will ask the ushers to circulate them now.

An Bille um an gCeathrú Leasú is Tríocha ar an mBunreacht (Comhionannas Pósta) 2015: An Tuarascáil agus an Chéim Dheiridh

Thirty-fourth Amendment of the Constitution (Marriage Equality) Bill 2015: Report and Final Stages

An Leas-Chathaoirleach: Before we commence, I remind Senators that they may speak only once on Report Stage, with the exception of the proposer of an amendment who may reply to the discussion on the amendment. Senators should also note that each Report Stage amendment must be seconded. Amendment No. 1 is in the names of Senators Rónán Mullen and Feargal Quinn. Amendments Nos. 1 and 4 form a composite proposal and may be discussed together, by agreement. Is that agreed? Agreed.

Senator Rónán Mullen: Tairgim leasú a 1:

I leathanach 5, líne 12, “an t-alt a bhfuil an téacs de” a scriosadh agus “na hailt a bhfuil an téacs díobh” a chur ina ionad.

I move amendment No. 1:

In page 4, line 12, to delete “the section” and substitute “the sections”.

I do not yet have a copy of the amendments.

An Leas-Chathaoirleach: They are being circulated.

Senator Rónán Mullen: This amendment involves deleting the term “the section” and replacing it with “the sections”, which term would be necessary in the event that one of my proposed additions to the wording of the constitutional amendment is accepted.

An Leas-Chathaoirleach: Is there a seconder?

Senator Rónán Mullen: Senator Feargal Quinn is due to second the amendment.

An Leas-Chathaoirleach: It must be formally seconded. If Senator Feargal Quinn is not present-----

Senator Rónán Mullen: Is it necessary for it to be formally seconded at this point?

An Leas-Chathaoirleach: Yes. I have pointed out that each amendment on Report Stage must be seconded. If there is no seconder present-----

Senator Rónán Mullen: I do not believe Senator Feargal Quinn has left the House permanently.

An Leas-Chathaoirleach: That is not-----

Senator Rónán Mullen: Must the amendment be seconded before the debate on it can proceed?

An Leas-Chathaoirleach: Yes. As there is no seconder, the amendment lapses.

Chuaigh leasú a 1 i léig.

Amendment No. 1 lapsed.

Níor tairgeadh leasuithe Uimh. 2 agus 3.

Amendments Nos. 2 and 3 not moved.

An Leas-Chathaoirleach: Amendment No. 4 is in the names of Senators Rónán Mullen and Feargal Quinn.

Senator Rónán Mullen: Tairgim leasú a 4:

I leathanach 7, idir línte 3 agus 4, an méid seo a leanas a chur isteach:

“5 Ní cead alt 4 den Airteagal seo a agairt chun oibriú Airteagail 42 nó 44 nó na saoirsí agus na cearta a admhaítear sna hAirteagail sin a thoirmeasc nó a rialú nó a bhac.”.

I leathanach 7, i ndiaidh líne 6, an méid seo a leanas a chur isteach:

“5 Section 4 of this Article shall not be invoked to prohibit, control, or interfere with the operation of Articles 42 or 44 or the freedoms and rights recognised in those Articles.”.

I move amendment No. 4:

In page 6, between lines 3 and 4, to insert the following:

27 March 2015

“5 Ní cead alt 4 den Airteagal seo a agairt chun oibriú Airteagail 42 nó 44 nó na saoirsí agus na cearta a admhaítear sna hAirteagail sin a thoirmeasc nó a rialú nó a bhac.”.

In page 6, after line 6, to insert the following:

“5 Section 4 of this Article shall not be invoked to prohibit, control, or interfere with the operation of Articles 42 or 44 or the freedoms and rights recognised in those Articles.”.

I move the amendment, but, unfortunately, I do not have a seconder.

An Leas-Chathaoirleach: As there is no seconder, the amendment lapses.

Chuaigh leasú a 4 i léig.

Amendment No. 4 lapsed.

An Leas-Chathaoirleach: Is it agreed that the Bill be received for final consideration?

Senator Rónán Mullen: No.

Cuireadh an cheist: “Go nglacfar an Bille chun an breithniú deiridh a dhéanamh air.”

Question put: “That the Bill be received for final consideration.”

The Seanad divided: Tá, 28; Níl, 3.	
Tá	Níl
Bacik, Ivana.	Mullen, Rónán.
Barrett, Sean D.	Quinn, Feargal.
Brennan, Terry.	Walsh, Jim.
Burke, Colm.	
Byrne, Thomas.	
Coghlan, Eamonn.	
Coghlan, Paul.	
Conway, Martin.	
Craughwell, Gerard P.	
Cummins, Maurice.	
Hayden, Aideen.	
Henry, Imelda.	
Mac Conghail, Fiach.	
Moloney, Marie.	
Mooney, Paschal.	
Moran, Mary.	
Mulcahy, Tony.	
Naughton, Hildegard.	
Noone, Catherine.	
Norris, David.	
Ó Clochartaigh, Trevor.	

Seanad Éireann

O'Donnell, Marie-Louise.	
O'Keeffe, Susan.	
Power, Averil.	
van Turnhout, Jillian.	
White, Mary M.	
Wilson, Diarmuid.	
Zappone, Katherine.	

Tellers: Tá, Senators Paul Coghlan and Aideen Hayden; Níl, Senators Rónán Mullen and Feargal Quinn.

Question declared carried.

Faisnéiseadh go rabhthas tar éis glacadh leis an gceist.

Cuireadh an cheist: "Go righfear an Bille anois."

Question put: "That the Bill do now pass."

The Seanad divided: Tá, 29; Níl, 3.	
Tá	Níl
Bacik, Ivana.	Mullen, Rónán.
Barrett, Sean D.	Quinn, Feargal.
Brennan, Terry.	Walsh, Jim.
Burke, Colm.	
Byrne, Thomas.	
Coghlan, Eamonn.	
Coghlan, Paul.	
Conway, Martin.	
Craughwell, Gerard P.	
Cummins, Maurice.	
D'Arcy, Jim.	
Hayden, Aideen.	
Henry, Imelda.	
Mac Conghail, Fiach.	
Moloney, Marie.	
Mooney, Paschal.	
Moran, Mary.	
Mulcahy, Tony.	
Naughton, Hildegarde.	
Noone, Catherine.	
Norris, David.	
Ó Clochartaigh, Trevor.	
O'Brien, Mary Ann.	
O'Keeffe, Susan.	

27 March 2015

Power, Averil.	
van Turnhout, Jillian.	
White, Mary M.	
Wilson, Diarmuid.	
Zappone, Katherine.	

Tellers: Tá, Senators Paul Coghlan and Aideen Hayden; Níl, Senators Rónán Mullen and Feargal Quinn.

Question declared carried.

Faisnéiseadh go rabhthas tar éis glacadh leis an gceist.

Ráiteas faoi Eolas do Vótálaithe: Tairiscint

Statement for Information of Voters: Motion

An Leas-Chathaoirleach: This motion was debated in conjunction with Second Stage.

Senator Maurice Cummins: Tairgim:

GO ndéanfar an ráiteas atá leagtha amach sa Sceideal a ghabhann leis an Rún seo a fhorordú mar eolas do vótálaithe, de bhun alt 23 d’Acht an Reifrinn, 1994 (Uimh. 12 de 1994), i ndáil leis an togra chun an Bunreacht a leasú, atá ar áireamh sa Bhille um an gCeathrú Leasú is Tríocha ar an mBunreacht (Comhionannas Pósta), 2015, agus is ábhar do reifreann bunreachta.

An Sceideal

Fiafraítear díot sa reifreann seo an aontaíonn tú leis an togra chun Airteagal 41 den Bhunreacht a leasú chun a fhoráil go bhféadfaidh beirt pósadh, gan beann ar a ngnéas. Leanfar den phósadh a rialáil le reachtaíocht agus leis an dlí coiteann.

Beartaítear leis an mBille um an gCeathrú Leasú is Tríocha ar an mBunreacht (Comhionannas Pósta), 2015 an t-alt seo a leanas a chur isteach i ndiaidh alt 3 d’Airteagal 41 den Bhunreacht:

‘4 Féadfaidh beirt, gan beann ar a ngnéas, conradh pósta a dhéanamh de réir dlí.’

MÁ THOILÍONN TÚ leis an togra, cuir X os coinne an fhocail TÁ ar an bpáipéar ballóide.

MURA dTOILÍONN TÚ leis an togra, cuir X os coinne an fhocail NÍL ar an bpáipéar ballóide.

I move:

THAT the statement set out in the Schedule to this Resolution be prescribed for the information of voters, pursuant to section 23 of the Referendum Act 1994 (No. 12 of 1994),

in relation to the proposal to amend the Constitution which is contained in the Thirty-fourth Amendment of the Constitution (Marriage Equality) Bill 2015 and is the subject of a constitutional referendum.

Schedule

You are being asked in this referendum if you agree with the proposal to amend Article 41 of the Constitution to provide that two persons may marry without distinction as to their sex. Marriage will continue to be regulated by legislation and the common law.

The Thirty-fourth Amendment of the Constitution (Marriage Equality) Bill 2015 proposes to insert the following section after section 3 of Article 41 of the Constitution:

‘4 Marriage may be contracted in accordance with law by two persons without distinction as to their sex.’

IF YOU APPROVE of the proposal, mark X opposite the word YES on the ballot paper.

IF YOU DO NOT APPROVE of the proposal, mark X opposite the word NO on the ballot paper.

An Leas-Chathaoirleach: Is the motion agreed to? Agreed.

(Interruptions).

Senator Jim Walsh: Has the motion been agreed to?

An Leas-Chathaoirleach: Yes.

Senator Jim Walsh: I said “No.”

An Leas-Chathaoirleach: I did not hear the Senator saying “No”.

Senator Jim Walsh: I said it twice.

An Leas-Chathaoirleach: I was not trying to ignore the Senator, but it is difficult to hear what is going on when Members are chatting.

Senator Jim Walsh: The motion is not agreed. Vótáil.

An Leas-Chathaoirleach: Will the Senators claiming a division, please, rise?

Senators Gerard P. Craughwell, Rónán Mullen, Feargal Quinn and Jim Walsh rose.

An Leas-Chathaoirleach: As fewer than five Members have risen, I declare the question carried. In accordance with Standing Order 61, the names of the Senators dissenting will be recorded in the Journal of Proceedings of the Seanad.

Faisnéiseadh go rabhthas tar éis glacadh leis an gceist.

Question declared carried.

Sitting suspended at 3.45 p.m. and resumed at 4 p.m.

4 o'clock

Children and Family Relationships Bill 2015: Committee Stage (Resumed)

SECTION 35.

Debate resumed on amendment No. 47:

In page 35, line 36, after “birth” to insert the following:

“, medical history, including information in respect of any serious genetically-inherited illnesses that run in their family”.

-(Senator Averil Power).

Amendment, by leave, withdrawn.

Amendments Nos. 48 and 49 not moved.

Section 35 agreed to.

Sections 36 to 40, inclusive, agreed to.

Amendment No. 50 not moved.

Section 41 agreed to.

Section 42 agreed to.

SECTION 43.

Senator Trevor Ó Clochartaigh: I move amendment No. 51:

In page 41, lines 11 to 17, to delete all words from and including “, and” in line 11 down to and including “child” in line 17.

The logic behind this amendment is to ensure all fathers are granted automatic guardianship rights at the moment of birth. This is necessary because, in some cases, cohabitation simply is not possible. Where, for example, a mother remains living with her parents, it is not always appropriate or possible for the father to live there also. This is often the case with teenage or unplanned pregnancies, as I outlined on Second Stage. The parents not living together does not necessarily mean the father is in any way shirking his responsibilities or not stepping up to the mark. The circumstances simply may not be in favour of the couple cohabiting. We should consider, too, fathers who are obliged to work away from home, some of them abroad, to be in a financial position to support their child. We must ensure men in that position are not left out of the loop.

Minister for Justice and Equality (Deputy Frances Fitzgerald): As we discussed on Second Stage, the Bill will substantially improve the position of the many non-marital fathers who are actively and meaningfully involved in their children’s lives. The changes I have agreed in the legislation will ensure more non-marital fathers register because they will be doing so at the same time as the birth certification process. Before we go forward to automatic guardian-

ship in all cases, however, it is vital we consider all the issues. As I have said, further policy work, analysis and consultation are required. I am pleased to bring forward the amendments I have which substantially improve the position.

Question, “That the words proposed to be deleted stand,” put and declared carried.

Amendment declared lost.

Section 43 agreed to.

Sections 44 to 48, inclusive, agreed to.

SECTION 49.

Acting Chairman (Senator Jillian van Turnhout): Amendments Nos. 52 to 55, inclusive, are related and may be discussed together.

Senator Trevor Ó Clochartaigh: I move amendment No. 52:

In page 43, to delete lines 14 to 18 and substitute the following:

“**6B.** (1) A man who is, under *section 5(1)(b)* of the *Act of 2015*, the parent of the child, shall be a guardian of the child.”.

The rationale for this amendment is similar to that underlying amendment No. 51. We are arguing that the Bill should grant automatic guardianship for fathers at birth.

Deputy Frances Fitzgerald: As with amendment No. 51, I cannot support this proposal in the absence of further analysis. However, I acknowledge the spirit in which the Senator has tabled these amendments. In the meantime, I have introduced the other provisions I outlined and I am committed to the necessary policy work. In addition, I am committed to a review of the provisions in two years time.

Senator Averil Power: I share the sentiments expressed on the subject of greater rights for unmarried fathers. We have done a great disservice to unmarried fathers and their children by not giving them any right whatsoever. Our law seems to be based on the requirement that they either prove themselves in court or otherwise to the mother, meaning that it is in her gift to recognise the parentage of the father without consideration of the best interests of the child, which should be the most important aspect.

I had initially planned to table an amendment similar to Senator Trevor Ó Clochartaigh’s to provide for blanket guardianship rights at birth but, having consulted some of the groups with an interest in this issue, I am aware of concerns about a small minority of cases in which there are issues to do with rape or safety which need to be addressed. However, I intend to table an amendment on Report Stage and would like to hear the Minister’s views on providing for a presumption of guardianship for the father which could be displaced in the limited circumstances where there the child was conceived through rape or there was a safety risk to the mother or the child.

Let us presume all fathers should be involved and not penalise all fathers for the actions of a small minority, for whom there should be a proportionate and appropriate system. We do not make the same judgments for marital fathers, every one of whom is regarded as a guardian, regardless of whether he is actually fit for that purpose, for example, where there is serious

domestic violence. The same applies in the case of a mother who, whether she is married or unmarried, automatically has guardianship rights in respect of her child, even though in a minority of cases she should not have them.

There have to be more appropriate ways of dealing with this issue. In the United Kingdom and other countries there is a presumption of guardianship. I am not comfortable with the idea of waiting two years to deal with the issue as it has been an ongoing issue for a long time. I appreciate that the Bill provides for some improvements in respect of those fathers living with the mother, but that remains too focused on the father's relationship with the mother, rather than on the father's relationship with the child, which should be the key interest.

Senator Fidelma Healy Eames: I have some sympathy for this amendment as the presumption of guardianship is a good one. When it is not present, it leads to a very unequal relationship between the father and the mother. However, if there is guardianship for an unmarried father who lives at home with his own family, as opposed to the mother, what is his responsibility as regards maintenance? We must act in the best interests of the child, but with rights come responsibilities. Am I correct that automatic custody comes with guardianship?

Deputy Frances Fitzgerald: I understand the approach of Senators Trevor Ó Clochartaigh and Averil Power to this matter and I am extremely sympathetic to it. I intend very shortly to begin work on the issue of presumptive rights. It is a model we should examine and I am committed to doing so. We all have an obligation in this regard and I have also committed to conducting a public information campaign to ensure people are aware of the need for statutory declarations.

Provisions for maintenance and custody are spelled out in the Bill. Depending on the level of guardianship, there are corresponding obligations on a cohabiting father and it will be up to the courts to make their decisions based on the best interests of the child, as they will do in decisions on custody, access and maintenance. A father who is not living with the mother and the child for at least 12 months, including three months after the birth, is not automatically a guardian. I appreciate the points some Senators have made about anomalies that may arise where there is an ongoing relationship, but the key point is that making a statutory declaration is still open to the person involved. If the mother objects, a father can still establish his rights in court. I encourage every couple and every non-marital father to establish their rights in the first instance by making the statutory declaration. That is the important message until we get to the point where there is automatic guardianship for non-marital fathers.

Senator Trevor Ó Clochartaigh: This issue is quite personal to me because I had a daughter in a situation where I was not married to her mother. My daughter is now 20 years old and her mother and I, thankfully, had a very good relationship which has continued, even though we did not stay together. I can appreciate how a man might feel in such a situation. A statutory declaration has a strong sense of formality and is quite legalistic and could be a problem in a difficult relationship when having to go to court could be a fraught experience. I recognise the bona fides of the Minister, but I believe presumption of guardianship is an important concept and having to wait two years bothers me. I will withdraw the amendment with the option of reintroducing it on Report Stage. As we will have a different Government in two years, it is quite a long time to wait.

Amendment, by leave, withdrawn.

Amendments Nos. 53 to 55, inclusive, not moved.

Acting Chairman (Senator Jillian van Turnhout): Amendments Nos. 56, 57 and 66 are related and may be discussed together, by agreement of the House. Is that agreed? Agreed.

Senator Averil Power: I move amendment No. 56:

In page 43, after line 39, to insert the following:

“(5) The Minister shall, by way of regulation, make provision for the establishment of a national register of joint guardianship statutory declarations.”.

I have already outlined the rationale for this amendment. I appreciate that the Minister gave a commitment to initiate a pilot scheme, but there should be a register of these agreements because pieces of paper are lost and it would be silly if cases were to end up in court unnecessarily just because the father could not put his hands on a piece of paper. At the time of making the declaration there might not have been any conflict between the mother and the father and it might not have seemed a big deal; therefore, the father would have signed it and filed it away, but having clarity would be in everybody’s interest - of both parents, the child and the State - to keep unnecessary cases out of court. It is important to have clarity about guardianship and having a central register would be a simple way of providing for it.

Senator Trevor Ó Clochartaigh: I support the principle behind the amendment and we will be tabling an amendment at a later stage on the same principle. Because of the nature of human relationships, especially those that have broken down, it is important that there be a central register to hold these documents.

Senator David Norris: I fully support this. I am all in favour of the collection of information. It is good to have records in case something happens in order that people know exactly where they were.

Deputy Frances Fitzgerald: On Second Stage when I announced what I was doing in this regard, I made the point that I believed it was important we did not make registration compulsory because it could begin to create a perception that if a person failed to register a declaration, that person could not be a guardian. It is important this does not happen. I am committed in principle to the establishment of a central register. It is surprising we have not had one for guardianship up to now. It simply has not existed. At present, it is up to the person concerned to keep this important document. Some people make the declaration in front of a peace commissioner or a commissioner for oaths. As it stands, it is up to them to keep it. Many Deputies in the other House as well as many Senators have made the point that this is such an important document because it is about parentage and that we should have a central registry.

I have examined the matter and what would be involved. It would be quite a big operation to begin to establish a central registry. I have committed to establishing two pilot projects and I will examine their results. I intend to set them up immediately. We will start with the pilot projects to see the implications of developing it further.

Amendment put and declared lost.

Amendments Nos. 57 and 58 not moved.

Section 49 agreed to.

27 March 2015

Sections 50 to 62, inclusive, agreed to.

SECTION 63.

Acting Chairman (Senator Jillian van Turnhout): Amendment No. 59 has been ruled out of order.

Amendment No. 59 not moved.

Acting Chairman (Senator Averil Power): Amendments Nos. 60 and 63 are related and may be discussed together.

Senator Jillian van Turnhout: I do not intend to move amendment No. 60 because I recognise the point about separation of powers.

Amendment No. 60 not moved.

Acting Chairman (Senator Averil Power): Amendments Nos. 61 and 62 have been ruled out of order.

Amendments Nos. 61 and 62 not moved.

Senator Jillian van Turnhout: I move amendment No. 63:

In page 60, to delete lines 12 and 13 and substitute the following:

“(e) the views of the child, where relevant;”.

I recognise that it was my error in the first amendment and, therefore, I have no difficulty with it being ruled out of order.

I welcome the inclusion of this section which inserts a new Part V in the Guardianship of Infants Act 1964 and provides the first ever detailed definition of the best interests of the child in Irish law. While this will be helpful to the Judiciary, I have some concerns. Some elements of the voice of the child provisions may fall foul of the constitutional requirements if the Supreme Court passes the children’s rights amendment to the Constitution.

As we all know, on 10 November 2013, the people spoke. We still await the decision of the Supreme Court. Article 42A.1 of the Constitution, Supreme Court decision pending, will read: “The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights.” It is clear to me, having actively engaged at all levels of consultation and debate around the wording of the constitutional amendment, that it was the intention of the Legislature and of the people in passing the referendum to enshrine children’s rights in the Constitution and thus safeguard and vindicate their rights in future legislation.

As we know, Ireland ratified the UN Convention on the Rights of the Child in 1992. As far as I am concerned, in the drafting of any Bill which impacts on children’s lives, those of us in the Legislature need to ensure the best interests of the child are paramount, that the views of the child are heard when key decisions are made about their lives and that the evolving capacity of the child is facilitated. As I have said, the best interests of the child provisions in section 3 are strong, and while I am not questioning that, I am keen to ensure they are absolute.

My concern, to which the amendment pertains, relates to the voice and views of the child being heard and represented throughout the judicial procedure. In this regard, section 32(3)(e), section 32(10) and section 32(11) of the Act of 1964, as proposed to be inserted by section 63 of this Bill, must be amended to establish that listening to the views and hearing the voice of the child impacted by the court process is imperative rather than a discretionary provision, as suggested in the current wording, which refers to “may” rather than “shall”. I am proposing that the references to “may” would be bolstered to “shall”, thus mandating the Minister to introduce regulations on the required qualifications and experience held by a child’s view expert, the associated fees and the minimum performance standards. That is why I believe so passionately in this amendment.

Senator Ivana Bacik: On a point of order, I think the Senator is also speaking to amendments Nos. 64 and 65, as well as amendment No. 63.

Senator Jillian van Turnhout: They are interrelated. I appreciate that.

Deputy Frances Fitzgerald: I will take up the last point made by Senator Jillian van Turnhout first. These amendments would make it mandatory for the Minister to make regulations concerning experts to be appointed to convey a child’s views to a report on a question affecting the welfare of that child. I will reply to amendment No. 63 presently, but I wish to make this point. I assure the Senator that, in consultation with the Minister for Children and Youth Affairs, I will be making these regulations. However, there are clear parliamentary drafting norms and provisions about making regulations and they are invariably or almost always couched in permissive rather than directive terms. I hope the Senator will accept my point to the effect that we will be making those regulations.

I have not made mandatory the appointment in respect of the views of the child. This is because in certain circumstances a child of a certain age of maturity may express his or her views directly rather than have those views mediated through an expert. In the relevant subsection (3) I have set out the issues that the court must consider in deciding whether to appoint an expert. The proposed section 32(3)(e) refers to whether the making of the order will assist the expression by the child of his or her own views in proceedings. I take the point Senator Jillian van Turnhout has made in respect of the children’s rights referendum and the associated implications, whenever that will be dealt with. However, the provision, as it stands, is fit for purpose and will enable the court to make the proper and necessary assessment of whether the appointment of an expert is required.

I thank Senator Jillian van Turnhout for the point she made about the best interests. This is the first time that we have a clear definition in legislation as a guide. It is not intended to be exhaustive. The courts will take other points into account, but it does provide a set of criteria as to how the court will determine the best interests of the child.

Amendment, by leave, withdrawn.

Amendments Nos. 64 and 65 not moved.

Question proposed: “That section 63 stand part of the Bill.”

Senator Trevor Ó Clochartaigh: I raise the issue of a court welfare system, which should be considered. We discussed it on Second Stage and the Minister acknowledged the issue around support services in the Courts Service, the pressure on the Courts Service, particularly

family courts, and the thought that we should establish a comprehensive welfare service that would carry out assessments of the child's welfare and best interests, ascertain the views of the child, carry out family risk assessments and ensure, where appropriate, that supports and services are available to the child and family, including mediation and child contact centres. The legislation is very important in itself, but the support services to go with it are also crucial. We will push for this to be done. It is to be hoped the Minister will be able to speak to this.

Senator Averil Power: I echo those comments. It is very important that children's interests are considered in a consistent way in these cases. One of the difficulties is that some judges are very good and very experienced in listening to children, even young children because it is possible to ascertain their views and feelings in an age-appropriate way, while other judges are quite reticent about this. There is a need for judicial training and a support service in this area to ensure consistency, especially where conflict exists. It is much easier for a child to deal with a family break-up if they feel involved and feel they have been listened to. Sometimes the courts will decide that what is in the best interests of the child is not necessarily what the child thinks at that point because it must take a broader view. It is very important that children are heard in an age-appropriate way and that we have a proper support service that is not dependent on means. We might need a publicly funded service. If we had a guardian *ad litem* system in private law cases and parents could afford to pay for it, that is fair enough, but if they cannot, it should not be the case that one would not be appointed or that there would not be an independent person to represent the child. It should be part of a broader legal aid system.

Senator Ivana Bacik: I wish to speak strongly in favour of the inclusion of this very important section. I am glad that we had the opportunity to speak on it on Committee Stage. I know many of us addressed it on Second Stage as well. It is very significant that we are making this provision for the insertion of a new Part in the 1964 Act dealing so specifically with the best interests of the child and setting out the detailed criteria, including issues around household violence and the need to facilitate the free expression by the child of views. I do not know if anyone else in this House has seen the workings of the courts in this area, but as a practitioner, I have represented guardians *ad litem* before the courts and dealt with quite a number of child care cases where the issue of what constitutes the best interests of the child was grappled with by the court. Courts have had difficulty dealing with it in the absence of the clear criteria that are set out now, so this marks real progress in the conduct of proceedings around child care and issues relating to children and the care and welfare of children in the courts.

Deputy Frances Fitzgerald: I thank the Senators for the various comments relating to this. The only further point I wish to make is that the development of family courts will be very important. This is something I intend to bring forward. In respect of the welfare service about which Senators Trevor Ó Clochartaigh, Averil Power, Jillian van Turnhout and Ivana Bacik spoke, there is a critique of the current way that many family law cases are held despite everyone's best efforts. This would make a difference and we need to progress in this direction.

Question put and agreed to.

Sections 64 to 97, inclusive, agreed to.

Amendment No. 66 not moved.

Section 98 agreed to.

Sections 99 to 101, inclusive, agreed to.

Amendment No. 67 not moved.

Section 102 agreed to.

Sections 103 to 105, inclusive, agreed to.

NEW SECTION

An Leas-Chathaoirleach: Amendments Nos. 68, 70, 72, 82 and 83 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Senator Fidelma Healy Eames: I move amendment No. 68:

In page 81, between lines 15 and 16, to insert the following:

“Amendment of section 14 of Principal Act

106. Section 14 of the Principal Act is amended by the insertion of the following paragraph after paragraph (c):

“(d) request from the birth mother or guardian her or his preference, if any, for the category of applicant as outlined under section 33(1)(a)(i), 33(1)(a)(i)(ia), 33(1)(a)(i)(ib), 33(1)(a)(ii) and 33(1)(a)(iii) to which the child shall be placed.””.

This is about amending section 14 of the principal Act. We are talking about adoption. It is the same point I am making with amendment No. 70 which proposes that section 20(4) of the principal Act be amended by the insertion of a paragraph after paragraph (b) relating to the relevant stated preference, if any, indicated under section 14(d). I am requesting that a birth mother or birth parents who are in the process of placing their child for adoption would act with informed consent.

That is a key principle of all adoption placements. The amendment requests that an adoption order be made in accordance with the wishes of the birth mother around the type of family into which her child would be placed. This is not a question of being discriminatory in any shape or form. It is important that, in the long and thorough adoption assessment, all family types be discussed and presented to the birth mother and, if he is part of the process, the birth father, for example, a married man and woman, a man and woman cohabiting, two women cohabiting, two men cohabiting, a single man or a single woman. The types would not necessarily be presented in any hierarchical order. The State would not make the decision. Rather, the birth mother, acting for her most precious gift, the child whom she is giving up in what are invariably difficult circumstances, should be satisfied that her wishes were met.

Given the Minister’s background in this area, she knows that birth mothers or parents are normally encouraged in the assessment process to have a say in how their children will be raised. When Senator Averil Power raised genuine issues yesterday about donor-assisted human reproduction, DAHR, and the wishes of a family, we laughed about how it could be as simple as wanting a child to be raised with music or sport. In the course of the assessment, it is vital that family types be discussed and that the wishes and preferences, if any, of birth mothers or birth parents concerning the family types into which their children will be placed be noted. The types would not be discussed in any specific hierarchical order, but the offering would be made to the birth mothers or birth couples.

27 March 2015

My next point is an important consideration. It would be of major assistance to the adoptive family if, when a child is seven or 14 years of age and asks why he or she is being raised by a single woman, two women, two men or whatever it is, the adoptive parents can say that it was the wish of the child's birth mother or that she had no objection to it. I have discussed this point with a number of gay friends, including two gay men who got married last September. The one of them whom I know best told me about their making a decision at Christmas on whether to have children. I shared the concerns that I am raising now. He asked whether I would like to see a range of family type options during the assessment process. I said, "Yes". He thought that it would be reasonable so long as all options were presented to the birth mother or birth parents, whichever was the case, at the time of assessment. This is my request. It is a sensitive issue, namely, the key principle of informed consent. I ask for the support of the House and the Minister.

Senator David Norris: The overriding concern, as the Minister has stated repeatedly, is the best interest of the child. There is a tiny number of adoptions. The overwhelming number are interfamilial, in which the children are genetically related to the adoptive parents. It is for the Adoption Agency to decide what is in the best interests of the child. The mothers are not always as perfect as Senator Fidelma Healy Eames asserts.

Senator Fidelma Healy Eames: But they are the mothers.

Senator David Norris: They are, but they can be bad mothers, too.

Regarding Senator Jim Walsh's amendment No. 83 to the effect that the authority must act and give preference-----

Senator Jim Walsh: On a point of order, are we on that amendment yet?

Acting Chairman (Senator Jillian van Turnhout): These amendments are grouped, as agreed.

Senator Jim Walsh: With respect, I do not believe they are grouped together.

Senator David Norris: It says it on the board.

Acting Chairman (Senator Jillian van Turnhout): Amendments Nos. 68, 70, 72, 82 and 83 are grouped.

Senator Jim Walsh: Fair enough.

Senator David Norris: The amendment reads: "In making an order the Authority must act in the best interest of the child ... and will give preference, in the first instance to married male-female couples". This seems to disregard the quality of the parenting or adults involved. The quality of the adults and the relationship and the best interest of the child should be paramount.

With the greatest of respect, there is a slight grammatical error in Senator Fidelma Healy Eames's amendment.

Senator Fidelma Healy Eames: Is there?

Senator David Norris: Yes. In speaking, the Senator used the correct grammatical formulation. The amendment reads, "request from the birth mother [reference made to the different relevant sections] to which the child shall be placed". It should read: "into which".

Senator Fidelma Healy Eames: I accept that.

Senator David Norris: It is a minor detail.

Senator Feargal Quinn: I support the amendment. Adoption is one of the crucial elements of the legislation. The amendments have been explained well by Senator Fidelma Healy Eames. The wishes of the birth mother should be taken into account. Under the wording, the mother will be showed a range of options. While I agree with Senator David Norris, some mothers are not necessarily the best adopters either. However, that must be a decision somewhere along the line. This amendment is solely requiring that the wishes of the birth mother be taken into account.

Senator David Norris: No. If I might advise my distinguished colleague, the preference would-----

Acting Chairman (Senator Jillian van Turnhout): Senator Feargal Quinn to continue, without interruption.

Senator Feargal Quinn: I will correct myself. The wishes are not taken into account.

Senator David Norris: “Taken into account” would be fine, with which I would have no problem.

Acting Chairman (Senator Jillian van Turnhout): Please allow Senator Feargal Quinn to contribute.

Senator Feargal Quinn: The preference will be noted and the birth mother should be shown the options. This is a key principle in the legislation. Many people will support the Bill if it is taken into account. I would be concerned if we did not include it. I urge the Minister to give consideration to it.

Senator Rónán Mullen: I will address my amendment and support Senator Fidelma Healy Eames’s amendment. We are discussing the issue that is at the heart of the Bill. It arose yesterday in the context of our debate on DAHR and arises in this debate in the context of adoption. In what circumstances is it okay and accurate for us to claim that, all matters being equal, it is better that a child be raised by his or her father and mother or by a father and mother? When discussing adoption, the emphasis is on the desirability of a father and mother except where the best interests of the child are otherwise.

The current position on adoption is that the law provides two tiers of eligibility, namely, the eligibility and suitability stages of assessment. In the former, the law provides that a married couple, a widow or widower or a single person related to the child in question may apply to adopt. That provision is without qualification.

Senator David Norris: What is this on?

Senator Rónán Mullen: I am referring to the adoption laws, as they stand. The second tier provides that, in the particular circumstances, a single person not related to the child may apply to adopt. This is at the level of determining eligibility.

The question of the child’s best interests, which many people discuss but which some over-use or occasionally misuse, arises in the context of an initial determination of eligibility. It is

clear that the words “in the particular circumstances” mean something as matters stand, that being and to use the Minister’s word, there is some hierarchy or at least an element of exceptional-ity around the categories envisaged in “in the particular circumstances”. My amendment seeks to create an obligation to secure additional consent of relevant persons, for example, a birth mother, to the making of an adoption order where the applicants are not a married couple or the mother, the father or a relative of the child. The amendment would insert a new section 32(a) in the Adoption Act 2010 to give the person or persons, for example, the birth mother, placing a child for adoption a right to know before consenting to the making of an adoption order that the order was not intended to be made in favour either of a married couple or the mother, the father or a relative of the child; in other words, that it was not being made in favour of persons whose eligibility to adopt would not be qualified if the amendment was to be accepted by any additional condition, as it is in the case of other classes of applicant in the particular circum-stances. The amendment would give the person or persons a right to know if the adoption order was to be made in favour of civil partners, cohabitants or a single person other than a single person who was a relative of the child, but it would not require that in such circumstances that the person be told whether it was in favour of civil partners, cohabitants or a single person. It would not facilitate the person or persons choosing between all types of eligible applicant. It would merely facilitate a choice between applicants who were a married couple or the mother, the father or a single relative of the child and applicants who were civil partners, cohabitants or a single unrelated person. This division reflects the different terms on which the eligibility to adopt of these two groups is worded.

Senator Fidelma Healy Eames referred to the concept of discrimination. Some of the con-fusion in this area flows from the idea that discrimination can mean unjust or unlawful dis-crimination or that it can mean the necessary making of distinctions. Having regard to all of the international discussion and, in particular, the UN Convention on the Rights of the Child, to which Senator Jillian van Turnhout alluded in the context of a child’s right to know, much is made of-----

Acting Chairman (Senator Jillian van Turnhout): It is the voice of the child.

Senator Rónán Mullen: My apologies. The context is the voice of the child being heard in proceedings. Much is made of the UN Convention on the Rights of the Child. The Senator took some of us, perhaps without naming us, to task for misquoting or misinterpreting the con-vention. It is she who is misinterpreting the convention, in particular, the *travaux préparatoire*.

Senator David Norris: *Quel accent?*

Senator Rónán Mullen: I studied French for a long time. Article 7 of the convention states children have the right, where possible, to be raised by their parents. The roles playing by a mother and a father are gender specific and important. Their complementary but different nature is vital to the optimum development of the child. Having regard to the disagreement on what constitutes “parents” under the convention which was the focus of Senator Jillian van Turnhout’s criticism of certain unnamed Senators, where there is a conflict regarding interpreta-tion of international law treaty provisions, the Vienna Convention on the Law of Treaties 1969 is invoked. This directs that regard be had to the *travaux préparatoire* of the legal instrument set out in Article 32. These preparatory works are the official record on a negotiation. Regard-ing the UN Convention on the Rights of the Child 1989, we have discussed what a reference to “parents” means. That was the focus of the Senator’s criticism. There was a high horse involved and I thought of Christy Moore.

Acting Chairman (Senator Jillian van Turnhout): The Senator should direct his comments through the Chair and not refer to other Senators.

Senator Rónán Mullen: They are not absent. I thought of the horse “Standing sixteen, one or two. With eyes wild and green”. That was not Senator Jillian van Turnhout but the high horse.

Senator Ivana Bacik: On a point of order, will the Senator, please, stick to the content of the amendments rather than diverting in this way?

Senator Rónán Mullen: For example, the references in Article 18 of the UN convention are critical and central to the issue because we are discussing whether there is a legitimate basis to say preference can be given to a father and a mother when these decisions are being made. The article refers to parents and provides that state parties should take all appropriate measures to ensure the children of working parents have the right to benefit from child care services, etc. What does the term “parents” mean in that article? In the *travaux préparatoire*, UN document ECN4L.1575, paragraph 101, the state parties refer to working “mothers and fathers”. It is there for all to see.

Senator David Norris: So what?

Senator Rónán Mullen: The human rights committee in general comment 17 of the 35th session of the committee in 1989 stated in respect of the International Convention on Civil and Political Rights that “No child should be separated from his or her mother”. We are talking about scenarios in the future involving potential father-father arrangements. Parents, evidently, encompass in that scenario at least a mother.

I am responding to the accusation that there has been a misinterpretation of the UNCRC, but those who made the accusation have misinterpreted it. When read in conjunction with the *travaux préparatoire* I cited, it shows that “parents” was always intended as a reference to the child’s mother and father. It was the criticiser’s research that did not go beyond highlighting points-----

Acting Chairman (Senator Jillian van Turnhout): The Senator should stick to the amendments.

Senator Rónán Mullen: There is further support in international law for the contention that a child should have a mother and a father who are married and in a stable relationship.

Senator Ivana Bacik: On a point of order, I am still struggling to see how this tangent is relevant to the amendments.

Acting Chairman (Senator Jillian van Turnhout): I appreciate the point of order. I will, however, allow Senator Rónán Mullen to continue, but I ask him to focus on the amendments.

Senator Rónán Mullen: I am explaining why international law-----

Acting Chairman (Senator Jillian van Turnhout): I understand that and I am listening carefully, but the Senator should focus on the amendments.

Senator Rónán Mullen: The Hague Convention in dealing with inter-country adoption provides only for adoption by married couples. It appears to view married couples as the gold

standard. The Bill allows cohabiting persons to use donor-assisted human reproduction methods and creates no distinctions in the context of adoption. If it is deemed appropriate in cases of inter-country adoption only for two parents to adopt, why is the Minister proposing to facilitate adoption in all circumstances, except for those exceptional cases in which the best interests of the child require that he or she be deprived of the possibility of being brought up by a father and a mother?

The rationale for the Hague Convention provisions derives from an inherited knowledge of the complementary nature of the sexes and the need for security and burden sharing. These concepts are not dealt with in the legislation. If it is illegal under the Adoption Act 2010 to bring a child into the country where he or she is not being adopted by a married couple, why is there a different standard in the Bill by refusing to acknowledge that there should be a prior element of the child having a father and a mother as being essential to his or her best interests?

Reference has been made to Dr. Geoffrey Shannon's comments.

Acting Chairman (Senator Jillian van Turnhout): I remind the Senator about naming people in the House.

Senator Rónán Mullen: We both have.

Acting Chairman (Senator Jillian van Turnhout): I acknowledge that, but a note was circulated to all Members about this earlier and I am reminding the Senator of it.

Senator Rónán Mullen: I refer to proceedings at the health committee that are essential to this issue. Senator Jillian van Turnhout asked Dr. Shannon whether he had been misunderstood when he said marriage was the gold standard for families. In his response he said he had been misunderstood and that he had been talking about marriage in the context of all citizens having access to it. However, it is clear, given the question the Senator put to him, that he had certainly not been misunderstood on that point because that is precisely what he said.

He was speaking in the context of the civil partnership legislation and saying - arguing for it, in effect - that it would not, to use his own words, "diminish or demean the marital status." He said the civil partnership Bill proposals continued to see married as "the gold standard" and the best predictor of the durability of the relationship. He was talking about that in the context of not all citizens having access. I think those comments were made in 2008 when nobody was talking about same-sex marriage. By the way, Dr. Shannon is part of the reason I am a Member of the Seanad because he once beat me in an election for auditorship of the literary and debating society in NUI Galway, as a result of which I entered student politics.

Acting Chairman (Senator Jillian van Turnhout): May we keep to the amendment, please? The Senator is trying the patience of the Chair.

Senator Rónán Mullen: I understand that. I directly clarified with Dr. Shannon a quotation from the Child Trends brief which refers to the two biological parents in a low-conflict marriage providing the best environment. The claim has been made that that is not applicable to any consideration of a same-sex couple in marriage or a heterosexual couple in marriage. It seems strange to ask us to believe that despite that the international weight of evidence shows strongly the benefits of marriage, as opposed to lone parenting or cohabiting - with great respect and support for people in all those situations - the only situation that can achieve the parity with

marriage is a situation where the child does not have access to the father and mother. That is stretching credibility. None of it takes from the essential proposition. We are certainly not talking about standing in judgment on any person's parenting. On the contrary, we are talking about identifying what works best most of the time. Even that is a separate issue from the core identification of a child's rights, especially the right not to be deprived in advance or deliberately of the complementarity of a father and mother relationship in their lives.

The amendments I have proposed do not seek to rule out any situation. They seek to require a social preference rooted in an authentic understanding of the child's best interests, not the politically correct understanding of the child's best interests I have criticised the children's rights lobby for confining itself to. I have said how I believe it is quite derelict in its duty in this regard, but it is a core element of trying to secure a child's best interests. Both Dr. Shannon's quotations directly confirmed to me by himself, both what he was quoted as saying in 2008 and in the Child Trends brief, various other studies which have examined this issue and a true and thorough analysis of the Convention on the Rights of the Child, not just looking at the bare front page of it but looking at the *travaux préparatoires* behind it, all support the contention that some of us have been making in the Seanad that one cannot simply ignore the right of a child to a father and mother wherever possible. The State should never countenance any interference with it except where the best interests of the child would dictate otherwise.

Senator Averil Power: I wish to pick up on a point made by Senator Rónán Mullen who referred to the Child Trends research. That research was considered by the Constitutional Convention. The author of that research wrote to the chairman of the convention and said his own research could not be used to imply that children reared by same-sex parents do less well than those raised by heterosexual parents. That is not my opinion. That is the opinion of the author of the research. Let us be clear. The convention also looked at this issue and considered other research and heard expert opinion on it and the established view is that the most important thing from a child's point of view is that he or she is brought up in a loving, supportive, low-conflict and stable environment. It is far better from a child's point of view to be brought up by a committed, loving same-sex couple than a family headed by two heterosexual parents in a high-conflict environment. The most important issue is the quality-----

Senator Fidelma Healy Eames: That is-----

Acting Chairman (Senator Jillian van Turnhout): Senator Averil Power to continue, without interruption.

Senator Averil Power: Some of these amendments do because they provide that priority should be given to heterosexual married couples regardless of anything else and regardless of the fact that the children in this situation-----

Senator Rónán Mullen: No.

Acting Chairman (Senator Jillian van Turnhout): May we allow Senator Averil Power to make her contribution, without interruption, please? I ask for some courtesy.

Senator Averil Power: As has been said, the determining factor in making an adoption order is what is in the best interests of the child. No one has a right to adopt under Irish law, and after this legislation passes, no one will have a right to adopt. All any adults will have, be they single or as a couple, is the opportunity to apply. It is then up to the authorities to weigh up all the different factors and decide what is in the best interests of the child. In some circumstances,

that will be for the child to be adopted by a married heterosexual couple where everything else is taken into account. In others, it will manifestly be in the best interests of the child to be adopted by the same-sex couple who have been fostering the child for a long time and have a connection with the child. This will clearly be in the best interests of the child from a continuity of care point of view. All these issues have to be looked at in the round.

Reference has been made to restricting rights to married couples only rather than to cohabitants, civil partners or others. The House of Lords considered this issue *in re P* and decided that restrictions on cohabiting couples fall foul of the European Convention on Human Rights. That is an issue we have to take into account in legislating in this area. The most important aspect overall is the child's best interests. Unfortunately, in some adoption cases, if there is a difficult environment, the parents' view should be taken into account but perhaps should not be determining if child experts and others have a different view on what is in the best interests of the child. The most important thing is what is right for the child and that he or she is brought up in a loving and supportive home. On an adoption issue such as this, I ask people to strip out all the ideologies and prejudice against particular types of families. We should be led by only one thing, that is, what is best for that individual child in these circumstances. It will never be the case that, all things being equal, married family trumps everyone else. Life is not that simple; it is not that black and white; it is not a tick-box list of criteria. It is complex in terms of deciding who should and who should not adopt. We should leave that decision with people who, knowing all the facts of the individual case, are in a position to make a determination on what will give the child the best second chance in life and a second family.

Senator Jim Walsh: My amendment No. 83 reads:

In page 85, between lines 36 and 37, to insert the following:

“(f) by inserting after subsection (7) the following subsection:

“(8) In making an order the Authority must act in the best interest of the child (having a mother and a father) and will give preference, in the first instance to married male-female couples, subject to paragraphs (a), (b), (c) and (d) of section 34.””.

The section 34 referred to in the amendment is in the principal Act lays out very clear criteria which must be applied to anyone seeking to adopt. It is not a situation where one is starting to compare a married couple who may be a little dysfunctional against others who may be very good potential parents. What it provides is that, all things being equal, preference should be given to married couples.

I compliment all those who adopt children. They give them a home, education, values and an opportunity in life. Adopting is admirable and the epitome of good Christianity in practice. Many fine people have been given a blessing, joy and happiness through adopting a child. Obviously, it gives the children love, care and opportunities in education and life that they would not otherwise have. I value adoption greatly. There are many children worldwide who need this.

Acting Chairman (Senator Jillian van Turnhout): The Senator should get back to the amendment.

Senator Jim Walsh: The purpose of the amendment is to give preference in adoption to married mother-father couples, thus providing the child with a mother and father who are mar-

ried to each other. The rationale behind that concerns the ultimate and most binding relationship commitment. Insisting that the adoptive parents be married would ensure adoptive parents could provide the child with a stable arrangement with a mother and father who are legally committed to each other. Complementarity of both genders is important for the best development of the child. Natural human reproduction provides children with an identifiable mother and father. In adoption law, we should try to ensure that adoptees are not denied the rights other children enjoy, including the right to a mother and father. Giving preference in the first instance to married male-female couples would give adoptees the same right to a mother and father as enjoyed by children who live with their biological mother and father. Indeed, in many instances it is because the child has not got that opportunity biologically and naturally that they become available for adoption. Therefore, the State, being *in loco parentis* at that stage, should ensure the child is afforded an opportunity.

I am aware that a great effort is made to reduce the status of marriage and motherhood and to encourage the idea that no matter what the arrangement is, diversity should be welcomed and is all very fine. However, when we discussed this issue five years ago in respect of the civil partnership legislation, the then Minister made the point that the chairman of the Equality Authority, whom he quoted, made a statement welcoming the fact that Marriage Equality, one of the organisations involved, was undertaking a survey and that it would clearly show the benefits, or otherwise, for children in same-sex relationships. That survey was published and widely welcomed. It involved 11 young children who had been interviewed personally, in some instances with the parents present. Nobody would accept that as a scientific study. I have seen surveys and research from the United States. Much of the studies are recent and most have used such small samples that one cannot really draw any sound conclusions from them. One had 520 participants and it raised questions. I will not discuss this study because I do not know it and am not qualified to do so, but I contend we need to be careful in drawing conclusions about the effects on children of all different types of family relationships. When speaking yesterday, I gave evidence - it is well researched and well accepted - that the biggest risks to children are from the relationship of a mother who is cohabiting. In general, children in this category are at much greater risk. There is widespread evidence of that from surveys in various countries.

There is dismissal and, to some extent, an effort to close down debate on this issue. A magistrate in Britain recently expressed the opinion during an adoption case that children ideally need a father and a mother, which accords with what I am saying. The experienced magistrate, from Kent, found himself at the centre of an investigation. England's highest judge and a Cabinet Minister gave him a public scolding, telling him that his Christian views about the family were discriminatory against same-sex couples. He was banned from sitting as a magistrate until he completed a course in equality training.

This proposal is not about equality of adults. If adoption is to be about anything, it ought be about the best interest of the child. We need an open, frank and very honest debate on this, not one that accords with a specific agenda to meet a particular ideology. I take Senator Katherine Zappone's statement that I have my own ideology on many of these issues.

I am taken with the comment made by former Minister Rory O'Hanlon when he dealt with the issue on Committee Stage in the Dáil in 1991. He said:

Everybody will accept it is generally in the best interests of children to be reared in a home where there are two parents. It is not a general thing for a single person to adopt a child, it is only in very exceptional circumstances that it will apply.

27 March 2015

On Second Stage, I quoted the Adoption Authority of Ireland. I am not sure whether I should be saying this, but I met the Minister at a private meeting and she said there was no hierarchy, although the website of the Adoption Authority of Ireland clearly indicates that there is and that not all persons are treated in the same fashion. Obviously, the applicants have to be suitable and meet the criteria, which I accept, but unless there are very particular circumstances involved, sole applicants should not be considered for adoption. That is all to do with the best interest of the child. There is nothing wrong with this.

Adoption should aim to provide a child with something as close to the natural biological family as possible. It should aim to replace what the adoptee has lost, namely, his or her own mother and father. Adoption by a married man and woman would achieve this.

Senator David Norris: If Senators Fidelma Healy Eames and Feargal Quinn rephrased amendment No. 68 slightly, so as to refer to taking into account the wishes of the mother, I would be happy to support it. However, I imagine the authorities already do take the wishes of the mother into account. It would be very foolish to completely ignore them.

Senator Fidelma Healy Eames: I want to hear it from the Minister.

Senator David Norris: Yes. I would have no problem accepting this if rephrased by Senator Fidelma Healy Eames to take into account the views of the mother. Of course they should be taken into account. As that is perfectly obvious, I have no problem with it.

On the question of mothers, fathers and parents, after the passage of this Bill a gay couple or cohabiting couple will be the parents of the child legally. That is that dealt with. All the recent international examinations and scientific studies of parenting demonstrate one point very clearly, namely, that it is the quality of the relationship, not the gender or people involved, that affects the welfare and well-being of the child. I will not refer to all the studies, but I can if Members want.

The gentleman who was referred to, whom I will not name, stated on the wireless the other day that he had been mischievously misquoted. The person who uttered the words should be the person to define what he meant by them. For another person to stand up and impertinently state, "Well, he meant this and I know because I am me-----"

Acting Chairman (Senator Jillian van Turnhout): I ask the Senator to stick to the amendments before us.

Senator David Norris: I am just referring to what was said.

Acting Chairman (Senator Jillian van Turnhout): I appreciate that.

Senator David Norris: I will leave it at that.

I have a question on amendment No. 72, in the names of Senators Rónán Mullen and Feargal Quinn. It is unnecessarily restrictive and, therefore, I oppose it. It states: "other than an applicant or applicants referred to in section 33(1)(a)(i) or section 33(1)(a)(ii)" I assume this refers to section 33 of this Bill, because it does not state otherwise. However, that section deals with registers. It does not seem to have any connection whatever with the applicants. I wonder if somebody could clarify that matter for me. Am I correct in my interpretation that section 33 deals with the register of donor-conceived persons and does not, in fact, deal with applicants for the process? That is as I read it. I would be grateful for some guidance as to whether I am

correct. If I am correct then there is a technical mistake in the amendment and it should be withdrawn.

Acting Chairman (Senator Jillian van Turnhout): We note the question. Perhaps the proposers might get back to Senator David Norris with clarification.

Senator Susan O’Keeffe: I wish to make one remark and one correction to something Senator Jim Walsh said. All children need love, preferably from loving parents, and to have as many people as possible in their lives who can love them. The sex of the parent or parents makes no difference in their capacity to love and care for a child.

Senator Jim Walsh: That is not, in fact, true.

Senator Susan O’Keeffe: You know that it is true.

Acting Chairman (Senator Jillian van Turnhout): Senator Susan O’Keeffe should be allowed to speak without interruption, but she should speak through the Chair.

Senator Susan O’Keeffe: Senator Ivana Bacik has asked me to make an important correction. Senator Rónán Mullen suggested-----

Acting Chairman (Senator Jillian van Turnhout): He is not present in the House. The Senator might say, “It was suggested”.

Senator Susan O’Keeffe: I beg your pardon. He is not present, but I cannot see behind me. It was suggested that the Hague Convention does not permit single people to adopt. It does in fact permit single people to adopt, and there have been a number of inter-country adoptions in Ireland by sole adoptees. It is important to correct the record.

Deputy Frances Fitzgerald: From my experience, in practice the decision on who may adopt a child is primarily that of the birth mother. That is the reality. I think Senator David Norris referred to that point. The birth mother has extensive information on prospective adopters. That is the absolute best practice and that is what happens before she gives her consent. If anything was to develop that she did not like, she would have the opportunity to withdraw her consent also. If, for example, the child is going to somebody with whom she is not happy, there is a period within which she can withdraw consent. It is important to remember this.

There is no doubt that the mother’s decision making includes everything that is of relevance to those who propose to adopt. The birth mother looks at the whole range of factors made available to her about the couple who want to adopt. She would be told details about their lives in general, their gender and whether they are married or single. That is the current practice. In the selection and matching process for domestic adoption in this country, significant consideration is given to the views and wishes of the birth mother in terms of what type of family she wants her child to be raised in. The preferred approach to matching and selection of prospective parents is collaborative with the birth mother and the accredited body, namely, the Child and Family Agency. The aim is to find the best placement available to meet the needs of the child. In fact, there is very little conflict evident in that regard from the statistics to date on adoptions under the 2010 Act. There has not been any disagreement between a birth mother and the agency on the choice of prospective adopters.

The child’s best interests are the paramount consideration, and being in compliance with Hague Convention standards. The ultimate responsibility for the decisions taken in the match-

ing process for children in the adoption process lies with the teams of professional workers managing the adoption services working with the birth mother. The birth mother is assisted to reflect on her wishes and views in regard to the kind of parenting experience she thinks her child will get from the family, the socioeconomic background, the willingness to meet birth parents prior to placement and, increasingly, after placement. As we move towards more open adoption, issues that are considered include sport, community involvement, urban versus rural factors, similarities to her personal social circumstances, religion, health, age, race and culture, and ability to care for the child on a one-to-one basis at home. A mother is given the choice of a number of placements, usually between three and five. Huge consideration and attention is given to what the birth mother wants. The applicant profile information that a mother is given is non-identifying, unless it is a more open adoption.

I do not think it is justified to insert an additional criterion in law when the current practice is already working effectively and is already involving the birth mother appropriately in the selection process. I just do not think it is necessary. There is no need to add it in as an extra criterion, as it is there and one still has the huge consideration of the best interests of the child. The primary and overriding consideration in determining whether an adoption should be facilitated is whether, as many Senators have said, the adoption serves to advance the welfare of the child. This is the guiding principle. I do not agree that adoption should be determined through a process in which there would be a hierarchy of preferred family types, as outlined by Senator Jim Walsh, with opposite-sex couples being given preference. The reason I say that is adoption is a child welfare mechanism and therefore that is what should be at the centre. Decisions on the suitability of potential adopters are not taken on the basis of one criterion, namely, the relationship status of the adopters. What is important is the broad outline and suitability of the potential adopters to address the needs of the child and to provide the child with a loving and stable home. One does not take out one aspect of a person's life and make a decision in regard to that. One looks at all of the issues and one does not establish a hierarchy of family types because that could preclude considering what is in the best interests of the child. The primary and overriding consideration is advancing the welfare of the child.

I have checked with the Adoption Authority of Ireland and I am aware from my own experience as Minister for Children and Youth Affairs of the kind of criteria used for assessment. Following an assessment by Tusla, adopters must be deemed to be suitable to have parental rights and duties in respect of a child. They must be of good moral character and must be in good health and of an age at which they have a reasonable expectation of caring for and supporting the child appropriately throughout his or her childhood, and obviously adequate financial means. Huge consideration is given to the views and wishes of the birth mother as to the kind of family she wants. That is very important. The process is collaborative. The current process is much more suitable for the achievement of the primary objective of safeguarding a child's welfare than one that focuses on relationship status. I would not wish to move to a situation where we would have the hierarchy suggested.

I refer Members to some very interesting research on this issue by Professor Susan Golombok from Cambridge. She has published very widely on how children fare in same-sex families. In fact, she found no difference in the adjustment of children adopted by gay fathers, lesbian mothers or heterosexual parents. She found extremely positive parenting by gay fathers, for example. Senator Averil Power made the point a number of times that the research shows that it is the quality of the relationship between the child and the parents that is most predictive of good outcomes for children and, therefore, it is important to keep the focus wide in terms

of assessing criteria for children. There could be lots of situations where one particular family type or another might be the choice of the birth mother, depending on her own preference, experience and status. That is something on which nobody has commented, but it is important to keep that in mind as well. The wishes of the mother are very important but adoption decisions are primarily about child welfare and making the best decision for the child. I do not think it is essential to make such a change, and one would not do it based on the research and also from an equality perspective or any of the criteria from the point of view of meeting Hague Convention standards and in relation to the ECHR.

Senator Jim Walsh: I thank the Minister for her response, in which she quoted research carried out in Britain. She did not acknowledge, as I did - I did not give details of the research at which I had looked - that the problem was that the numbers were so small that anybody involved in considering the best interests of children in this type of research readily conceded that there were insufficient numbers from which to draw conclusions. The Minister, however, seemed to be quite happy to draw conclusions. The largest number I have seen is in the United States, at 520. It shows a range of areas in which children do not do nearly as well in same-sex couple relationships.

Senator David Norris: Will the Senator give the precise reference?

Senator Jim Walsh: There are a number of them. There are at least three of which I can think and they are as readily available to Senators here as they are to me.

Senator David Norris: I cannot find them. The Senator should give them.

Senator Jim Walsh: There are plenty of them.

Senator Susan O’Keeffe: The Senator should also state who paid for them because that is relevant.

Senator Jim Walsh: When it comes to who paid for them, I have heard Senators talk about the issue of money coming from America. I have debated this issue a number of times in the House. I compliment GLEN on its professionalism and resources. I did not realise it was getting €17 million from Mr. Chuck Feeney’s Atlantic Philanthopies. That money is not available to other groups. The same applies on the issue of abortion. The Irish Council for Civil Liberties, ICCL, has received €7 million or €8 million from the same fund to promote the availability of abortion in this country. When somebody talks about the weighting of funding, it is clear-----

Senator David Norris: On a point of order, I ask the Acting Chairman to request Senator Jim Walsh to withdraw the allegation that the ICCL, on the board of which I served, was set up to promote abortion. No one in this country promotes abortion. We accept the reality in respect of there being specific circumstances.

Acting Chairman (Senator Marie Moloney): That is not a point of order. The Senator should allow Senator Jim Walsh to speak, without interruption.

Senator Jillian van Turnhout: On a point of order, can we go back to the substance of the amendment?

Acting Chairman (Senator Marie Moloney): Can we stick to it?

Senator Jim Walsh: We will do our best.

27 March 2015

Senator Fidelma Healy Eames: The Senator was asked by Senator Susan O’Keeffe to specify.

Senator Jim Walsh: I was.

Senator David Norris: I asked the Senator for the titles of the surveys.

Senator Susan O’Keeffe: On a point of order, the observation made by Senator Jim Walsh on ICCL should be withdrawn, as it is absolutely untrue. Regardless of whether he ought to get back to the amendment, it is untrue.

Acting Chairman (Senator Marie Moloney): Will Senator Jim Walsh, please, keep to the amendment?

Senator Jim Walsh: Absolutely. I am not in the least surprised that Senator David Norris is a director of the ICCL.

Senator David Norris: I am not. I was on the board for a number of years, but I have no connection with it whatsoever now, except that I am a supporter of it.

Acting Chairman (Senator Marie Moloney): Senator Jim Walsh is out of order. It is not relevant to the amendment. There is no need for Senators to start personal attacks. The Senator should stick to the amendment.

Senator Jim Walsh: I will. If I am not provoked, I will stay on the subject matter.

(Interruptions).

Acting Chairman (Senator Marie Moloney): Senators should let Senator Jim Walsh speak. All of the interruptions are doing us no good in the debate. Senators should let Senator Jim Walsh speak and he should keep to the amendment.

Senator Jim Walsh: I say to the Minister that the research is insufficient. There are conflicting conclusions that one can draw, but what is not in dispute in the many pieces of scientific research conducted in other countries is that it is clear that children’s best prospects for development are within married couple family status.

Senator David Norris: It is.

Senator Jim Walsh: When one talks about hierarchy, I am not in the least trying to differentiate between families. Every family, particularly in the current economic climate, regardless of diversity, is finding it extremely difficult. What I will say is that those children who find themselves up for adoption deserve the best placement. The criteria of the adoption authority apply across the board, regardless of the applicant involved or his or her family circumstances. In effect, all I am saying in my amendment - the Minister is being a little disingenuous in trying to say it would apply different criteria - is that, subject to meeting all of the criteria laid down, in which I also take into account the mother’s wishes, and all other things being equal, preference should be given to providing for placement with a married couple. I consider this to be in the best interests of the child because it provides for placement of the child with a mother and a father.

On role models, gender matters. There are Senators who argue that it makes no difference what gender someone is. Gender matters significantly when children are growing up. On

growing up in a household in which there is diversity, it is contradictory for commentators to put forward the argument that diversity is good, but when it comes to children in a family, we will eradicate diversity. That is not a logical argument to make. That is why I will be pressing the amendment.

Senator Fidelma Healy Eames: I am happy with quite a lot of what the Minister has stated in response to my amendment which I tabled to seek the clarification she has offered to me. My amendments, supported by Senator Feargal Quinn, seek to ensure all family types would be discussed and offered as part as the adoption assessment process. I wish to clarify that the birth mother's preference as to family type would be noted. I had presumed everything I was saying would be the case, but it was good to hear it from the Minister. The best interests of the child must be central. The birth mother is the natural mother and her voice has to be heard. When I was assessed to adopt, under the Hague Convention on both occasions, the birth mothers had the total say, which, being honest, I felt was right. We are talking about a life and the adoption assessment should be difficult because one is going to be honoured with a child. I spoke to the adoption authority about this issue and the principle of informed consent was sacrosanct. I accept that there are now only a number of adoptions here, but in the case of all referring countries the adoption assessment is made in Ireland. I have it on good authority that most referring countries, with the exception of South Africa, accede to the birth mother's wishes on family type which I think is interesting and important. It was one aspect that I checked. In the debate on the Adoption (Identity and Information) Bill 2014 Senators Jillian van Turnhout and Averil Power and I spoke about how wonderful it was when the birth mother met the child she had placed for adoption. It would be awful and unreasonable if on that day she were to find out that her child had been placed with a family of a type that was different from what she had indicated she would like for her child.

There have been a few red herrings in this debate. I have looked at research on this issue. While I am not in agreement with everything Senator Jim Walsh is saying, where he is accurate is that research in this area is insufficient. On studies of family type involving gay couples, the numbers are too small to draw conclusions from them. I completely agree that the quality of a relationship matters, but the environment in which a child is being raised also matters. If I was to be bold and quote some stuff I have read about anecdotal accounts of children being raised in same-sex couples and finding it difficult to be heterosexual as they grew up, that would be an example of insufficient research because the numbers are too small to generalise. Is there any possibility that a child might be placed with a heterosexual couple when the birth mother might have said she wanted to place the child with a gay couple or *vice versa*? The answer to these questions will decide whether I will press the amendment.

Deputy Frances Fitzgerald: All of my experience in this area, as somebody who carried out adoption assessments, as a former Minister for Children and Youth Affairs and from my contact with the Adoption Authority of Ireland, is that the views of the mother are a huge factor in placement issues. It is the practice that several families would be discussed with the parent. Clearly, the mother's wishes are very central to the process. There is no question about this. Although obviously I cannot vouch for this 100%, I understand the practice is that every attempt is made at what is called "matching" in terms of the adoptive families who are available. For example, if a mother expresses a wish for a particular family type in the course of the assessment of who is suitable for her child, in the discussions and in the counselling that takes place, that would be part of the discussion, and if there was a change from that I have no doubt it would be discussed with her and she would have the option not to place her child.

27 March 2015

I will clarify something for Senator David Norris. Section 33 mentioned in amendment No. 72 actually refers to section 33 of the Adoption Act.

There is something else I wish to correct; I meant to do it yesterday. I wish to correct the record of the House in regard to the identity issues of the donor conceived child. I have said that the child when seeking a passport when over the age of 18 years would be contacted and informed that there is more information in the national donor conceived person register. That was an error. I intended to say it was when the person sought a birth certificate and I was anxious to clarify that matter. I inadvertently said passport.

Senator Jim Walsh: I thank the Minister for that clarification. Perhaps she might give consideration to having some connection when the person is applying for the passport also, because the person might not be applying for a birth certificate. That might happen only rarely. There could be some other mechanism to trigger the knowledge being given to the person when they apply. Perhaps the Minister might consider this.

Deputy Frances Fitzgerald: One needs to have a birth certificate to apply for a passport.

Senator Jim Walsh: Does one?

Deputy Frances Fitzgerald: Yes; therefore, it is connected.

Senator Jim Walsh: Fair enough. However, a passport lasts ten years.

Deputy Frances Fitzgerald: That is true.

Senator Jim Walsh: The Minister might look at that issue.

Deputy Frances Fitzgerald: Yes.

Acting Chairman (Senator Marie Moloney): Is the amendment being pressed?

Senator Fidelma Healy Eames: I will consider it over the weekend and perhaps table it on Report Stage.

Amendment, by leave, withdrawn.

Sections 106 to 109, inclusive, agreed to.

Amendment No. 69 not moved.

Section 110 agreed to.

Amendment No. 70 not moved.

Section 111 agreed to.

Section 112 agreed to.

Amendment No. 71 not moved.

Section 113 agreed to.

SECTION 114.

Amendments Nos. 72 to 82, inclusive, not moved.

Senator Jim Walsh: I move amendment No. 83:

In page 85, between lines 36 and 37, to insert the following:

“(f) by inserting after subsection (7) the following subsection:

“(8) In making an order the Authority must act in the best interest of the child (having a mother and a father) and will give preference, in the first instance to married male-female couples, subject to paragraphs (a), (b), (c) and (d) of section 34.””.

Amendment put and declared lost.

Question, “That section 114 stand part of the Bill,” put and declared carried.

Amendment No. 84 not moved.

Section 115 agreed to.

Amendment No. 85 not moved.

Section 116 agreed to.

Section 117 agreed to.

Amendments Nos. 86 to 88, inclusive, not moved.

Section 118 agreed to.

Amendment No. 89 not moved.

Section 119 agreed to.

Section 120 agreed to.

Amendments Nos. 90 to 92, inclusive, not moved.

Section 121 agreed to.

Section 122 agreed to.

Amendments Nos. 93 to 101, inclusive, not moved.

Section 123 agreed to.

Amendments Nos. 102 to 104, inclusive, not moved.

Section 124 agreed to.

Sections 125 to 129, inclusive, agreed to.

NEW SECTION

Senator Averil Power: I move amendment No. 105:

In page 89, between lines 17 and 18, to insert the following:

27 March 2015

“Amendment of section 89(2) of Principal Act

130. Section 89(2) of Principal Act is hereby deleted.”.

This amendment is designed to deal with where an adoptive person might not be aware that they are adopted. I understand that prior to the Act being amended in 2010 an adoptive person would get an adoption certificate rather than a birth certificate. In my case, for example, I recall going to the office to seek the first birth certificate to get a passport and being told that they could not give me my birth certificate as I was adopted and that I had to go upstairs to get an adoption certificate. Thankfully, I was aware of it by then as my parents had told me I was adopted, but if I had not been aware of it, I would have found out at that point.

As I understand it, adopted people are given the same birth certificate as anyone else and there is no annotation on the birth certificate that the person is adopted. That runs the risk of people not finding out they are adopted.

I have heard all kinds of horror stories from people who only found out later in life. Years ago people did not travel as much and one did not need a passport or one’s parents got the passport on one’s behalf. I understand that one does not need a birth certificate to renew one’s passport and it is only required to get one’s first passport. There have been examples where people have only found out only very late in life that they were adopted. Perhaps they only found out when a parent passed away. Some individuals I have dealt with have told me that the last thing their mother told them, just before she passed away, was that they were adopted or another family member told them to get the matter off their conscience. Those people felt they could not die without telling the truth to the adopted person. It is at such times that people find out their aunt is their mother or things like that.

I cannot stress enough how distressing this is when it is done late in life. It is essential, therefore, that people are made aware that they are adopted. Ideally, it should be done in a supportive way by one’s parents and at the youngest possible age, which is best practice now. In the past these issues were not really talked about and a lot of secrecy surrounded adoption. As the Minister has said, the emphasis in the system now is on openness and encouraging people to talk to their children about this issue as they grow up, not to make a big deal or issue of it and have open dialogue the whole way. Unfortunately, we still have to cater for worst-case scenarios. It is essential that the State ensures information is conveyed at least when documents are requested. The information will be provided in the AHR-DAHR context. It means that when a person seeks their birth certificate, they will be told additional information is on file which will act as a trigger to make them aware they were donor-conceived. A similar process should be provided for adoptees. My amendment deletes the current section where it states there will not be an annotation on the birth certificate.

Senator Jim Walsh: I support the amendment. I have followed the debate in the House and know that Senator Averil Power who has a personal interest in this matter has brought forward a Bill in the House in this regard. I agree with her that there should be some mechanism. I am unsure at what stage the child should be made aware but it should be done at some stage either in adolescence, at 16 years or 18 years. Within that sphere there should be some mechanism whereby the child becomes aware of being adopted. If that is the case, and it is known, parents will take the preliminary steps to prepare their child for receiving such knowledge. I am aware that in many instances parents will tell their child as they are growing up. They will tell them limited information that can be absorbed at that stage. Such a revelation does a lot to

ensure the avoidance of any dislocation of the relationship with the parents or any psychological effects that might occur when the child finds out at a later age.

I urge the Minister to take a look at this matter to see what might be done. I do not have any great insights into the matter other than to say I agree fully with the principal objective of what has been said. The onus is on the State to ensure the information is conveyed and that it is not just in later life that someone accidentally stumbles across the fact when the discovery can have a fairly traumatic effect on that person.

Deputy Frances Fitzgerald: I know that Senator Averil Power has very strongly held views on this issue and I respect that. I understand the point that the abridged certificate may facilitate parents in some cases to hide from children the fact that they are adopted. There are advantages and I do not know whether she would agree. The argument would be made that the current certificate will also ensure that adopted children need not disclose their status in every situation, such as when seeking a job. It might be neither necessary nor appropriate that the certificate would say so and one would have the option of the current certificate.

The provision in the Adoption Act 2010 allows for the introduction of an abridged version of the adoption certificate which was established to protect the privacy of adopted people and their families. That was the argument made. The 1952 Act provided for the issue of a short-form certificate which was similar to that of a short-form birth certificate. The short-form certificate was the same format for both adoptions and births and did not disclose the fact that a person was adopted. However, as the certificate contained only limited information, its use became less and less acceptable in recent decades. As a consequence, families were forced to obtain an adoption certificate which disclosed the person was adopted.

The Registrar General has indicated that at various meetings with adoption organisations over the years, representations were made to have the option of obtaining a certificate that did not disclose the fact that the person was adopted. Adopted persons and their families have long felt that they were being discriminated against under the old legislation because there was no provision for the issue of such a certificate. As a result, when the 2010 Adoption Act was coming in and being drafted, a recommendation was made that a provision reflecting this be included in the Act. As the Senator will know, the Adoption Act 2010 (Abridged Certificate) Regulations 2011 gives effect to the provision.

The abridged certificate is headed with the words “birth certificate” and nothing contained in the certificate discloses that the person to whom the certificate refers has been adopted. It is the policy of the General Register Office to issue the abridged certificate unless the applicant specifies that he or she wants a certificate of adoption. It is important to note that certificates of adoption are still available as there are certain circumstances in which such certificates are needed. It is important to point out that an adopted person or their parents may obtain either an adoption certificate under section 87 or an abridged certificate under section 89, and I have outlined the differences between them.

I am sure Senator Averil Power will make a counter-argument to my assertion that the existing arrangements give adopted persons and their families control over when and to whom the fact of adoption is disclosed. Were the proposed amendment to be passed into law, some would probably say it was a backward step in terms of the right to privacy. One of the key issues is that adopted people are treated with the least amount of differentiation as possible from people who are not adopted. Some would make the argument, and some young people might make the

argument, that they do not want to stand out as different. Obviously they want to know they are adopted and perhaps that is the Senator's key point in terms of access to the information. The privacy argument was the one that was predominant in 2010 at the time the provision was brought in.

The process of adoption confers all co-relative rights and responsibilities on adoptive parents and their adopted children under the law, the Constitution and international treaties. The Senator's amendment stems from the privacy argument as opposed to the identity argument. These people and their families have the same rights to privacy as all others. It can be argued that the fact of adoption is of no relevance to any person or organisation other than the people involved and that they should retain the right to make any disclosure. Obviously there is recent history, and we have argued in regard to AHR about the importance of identity and of access to identity. I assume the point the Senator is making is primarily about the trigger for awareness. Is it?

Senator Averil Power: There is no other trigger.

Deputy Frances Fitzgerald: Yes, the trigger for awareness.

Senator Averil Power: In the absence of this, there is no trigger.

Deputy Frances Fitzgerald: I understand. I am not in a position to accept the Senator's amendment. As I say, there were obligations. Perhaps when the adoption legislation comes in, that would be the place to have a fuller discussion on this amendment.

Senator Jillian van Turnhout: I was going to make a similar suggestion. We had an extensive debate in this House about the civil registration legislation. I tabled an amendment in the same spirit as the one Senator Power has tabled to this legislation. The difficulty is where to locate the trigger when a parent chooses not to tell. One needs a birth certificate to get a passport. Once a person has his or her passport, the only other life events for which one will need a birth certificate is to buy land or get married, and that is the reason.

I welcome what the Minister has said and her understanding. This matter is a point of principle for me, as I know it is for Senator Averil Power. I would be happy to debate the matter in the wider adoption area. Obviously I am very supportive of what the Senator has proposed.

Senator Averil Power: I welcome the Minister's understanding of the issue. My concern is that in the absence of the provision, there is no trigger.

With regard to passports, my understanding of it is that one's birth certificate is needed for the first passport but if one's parent gets one a passport as a child and one seeks to renew, a birth certificate is not needed for the renewal. These days people travel. When I got a passport at the age of 18 years, which I applied for in my own right, we had never travelled as a family outside the State but that would be unusual now. Unless somebody is getting married, they would look for the birth certificate. In my scenario, and prior to 2010, one would know at least at that point that one was adopted, if one had not been told previously, whereas now there is no trigger whatsoever. That is deeply worrying.

We can return to this issue in regard to the adoption legislation. I become concerned when I hear various Ministers referring to the Government's intended adoption legislation because we have not seen it. I take the opportunity to remind the Minister, although I am sure she needs no

reminding, that this House passed all Stages of our Adoption (Identity and Information) Bill. I know it would be the hope of Members on all sides of this House - Government Members have told me this and have said on the record of the House - that the Government would progress that Bill and not wait to develop the heads of a new Bill and go through that entire process, because we have only a year left to run and there is goodwill on all sides of this House for the adoption identity and information issue to be dealt with. I take the opportunity to mention that because I know the Minister has a personal interest in this area.

Amendment, by leave, withdrawn.

Section 130 agreed to.

Amendments Nos. 106 to 111, inclusive, not moved.

Question, "That section 131 stand part of the Bill," put and declared carried.

Sections 132 to 165, inclusive, agreed to.

SECTION 166.

Question proposed: "That section 166 stand part of the Bill."

Senator Jim Walsh: On the section, this is to do with orders under the Family Law (Maintenance of Spouses and Children) Act. I take a particularly strong view on the issue of maintenance. Unfortunately, as we debated earlier, it is women who are left literally holding the baby and taking full responsibility for the rearing of the child and for all the costs attached to that and it is time for a greater emphasis to be placed on the financial responsibilities on men who father children. There is an obligation in that respect. If I am as strong about the genetic and biological tie I have to be equally strong about the responsibilities, and they are often not fulfilled. I am aware efforts are being made, particularly in the area of social welfare payments, to try to recover some of them from the fathers of those children. I am also aware that there are instances where the mother and the father may be living together but because of the way we have structured our housing and social welfare benefits, it is profitable not to disclose that information. It is not good enough that every other taxpayer has to fund a situation when people are in a position to do it themselves. I do not have difficulty if the parents of the child do not have the financial resources to do it. There is a responsibility on the State in those circumstances to give some level of sustainability to the family and to the child but much more needs to be done, and the State must be far more interested in ensuring that this happens. I do not make an apology to anybody for saying this. Responsibility comes with fathering a child, be it a mother or a father, and that should be fulfilled. It is the Minister's duty, as Minister, and our duty, as legislators, to ensure that is the case. If the Minister can give effect to that, it will mean that the parents will probably take a greater interest and have a greater involvement in the rearing of that child. In terms of the way the system currently operates, the father goes missing intentionally, although in some instances that is not the case, and some fathers are very good. I am aware of cases where the mother and father no longer have a relationship but where they both work together co-operatively to ensure the child has the involvement of both parents in their lives, and they both make a contribution financially to that child, which is as it should be. I am talking about those who do not fulfil that responsibility. Unfortunately, we have become so politically correct and afraid to say anything that will offend anybody because it might lose us votes that we are allowing very bad policies to evolve. The time has come to cry "Halt" in regard to it. I say that in the interests of the children but also in the interests of the hard-pressed

27 March 2015

taxpayers who are paying their taxes with great difficulty. Those taxes should be spent wisely and not in an unnecessary way or to subsidise somebody else who should be making their financial contribution.

Deputy Frances Fitzgerald: The point on maintenance is well made. The position is improving. There are aspects of this Bill to do with maintenance recovery. The family law courts will better assist efficient dealing with maintenance in enforcement applications.

Question put and agreed to.

Sections 167 to 180, inclusive, agreed to.

Amendment No. 112 not moved.

Schedule agreed to.

Title agreed to.

Bill reported without amendment.

Acting Chairman (Senator Marie Moloney): When is it proposed to take Report Stage?

Senator Catherine Noone: Next Monday.

Report Stage ordered for Monday, 30 March 2015.

Acting Chairman (Senator Marie Moloney): When is it proposed to sit again?

Senator Catherine Noone: At 2.30 p.m. on Monday.

The Seanad adjourned at 6.10 p.m. until 2.30 p.m. on Monday, 30 March 2015.