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EQUALITY

RESPECT

PROGRESS



Dáil Debates on **Civil Partnership**



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FOREWORD

We have gathered these Dáil speeches together to celebrate and mark what is an historic law reform for lesbian, gay and bisexual people. The speeches are from the second stage debate of the Civil Partnership Bill in Dáil Eireann in December 2009 and January 2010.

The Civil Partnership Bill, which is strongly supported by all political parties, has rightly been described as ‘the greatest family law reform in a decade’. The Bill will deliver a comprehensive set of protections, rights and obligations for same-sex couples across a wide range of areas including home protections, pensions, taxation, immigration, maintenance, next of kin, social welfare, domestic violence, inheritance, enduring power of attorney and creation of joint tenancies.

The speeches in these second stage debates by TD’s across all political parties are eloquent, moving and insightful. All acknowledge the urgent need for the protections in the Bill. Many highlight the gaps in the legislation, particularly those in relation to children being parented by same-sex couples. This is a critical issue for lesbian and gay people and remains to be addressed. The strong desire and aspiration of lesbian and gay people to full constitutional equality in Civil Marriage was also acknowledged by many of the speakers.

Equally supportive of the need for legal recognition were the speeches, again by politicians from all political parties, when the Labour Party introduced its Civil Unions Bill twice in 2007 and in the Seanad debates on the Civil Partnership Bill introduced by Senator David Norris in 2005. As with the debates on the Labour Party’s Bill, the Public Galleries were packed to overflowing with lesbian and gay people listening intently to the second stage debates reproduced here.

I was with other GLEN activists in the Dáil and Seanad in 1993 for a similar historic law reform measure. There was a great sense of celebration and achievement. With the subsequent Equality and other progressive legislation (such as Unfair Dismissals, the Refugee Act, Prohibition of Incitement to Hatred etc), the enactment of Civil Partnership will move Ireland to being one of the most progressive countries in terms of legal recognition and protection of lesbian and gay people.

The speeches collected here are a powerful demonstration of the commitment of our legislators to implementing radical progress for lesbian and gay people in Ireland.

Kieran Rose

Chair

2. CIVIL PARTNERSHIP BILL 2009 - SECOND STAGE DEBATES

The Government published the Civil Partnership Bill in June 2009 (Bill 44 of 2009). This is the first stage in the Oireachtas processing of a Bill.

The full Bill, as initiated, the series of proposed amendments, the amended Bill, and links to the various debates on the Bill are all available on the Oireachtas website www.oireachtas.ie/viewdoc.asp?DocID=12249

The debate texts have been reproduced from Official record on the Oireachtas website www.oireachtas.ie

2.1 THE SECOND STAGE DEBATES

The Second Stage of the Bill, where the Dáil considers the Bill for the first time began on 3rd December 2009. That Second Stage debate continued over two further dates - 21st January 2010 and 27th January 2010.

The second stage debates are reproduced here.

2.1.1 2ND STAGE DEBATES PART 1: 3RD DECEMBER 2009



Dermot Ahern, T.D.

Minister for Justice, Equality and Law Reform
(Fianna Fail)

I move: 'That the Bill be now read a Second Time.'

The commitment to civil partnership is shared by all parties in this House. It is a core Government commitment and is contained explicitly in the programme for Government negotiated between Fianna Fáil and the Green Party. My own party's 2007 manifesto contained the clear commitment that, 'based on our republican ethos and building on the agenda for equality to which we are committed' Fianna Fáil, if re-elected, would introduce civil partnership legislation in order that same sex couples could live in a supportive and secure legal environment. Today, through the Civil Partnership Bill 2009, the Government responds to these commitments.

[This Bill] is one of the most comprehensive measures to come before the House for debate

Its response, set out in 206 sections and a schedule that contains 119 consequential amendments of existing legislation, is one of the most comprehensive measures to come before the House for debate. The attention to detail required of this Bill has inevitably taken time. However, given the complexity, scope and range of the subject matter, I suggest it has been time well spent in putting the required form and shape on the Bill. For a Bill so large and complex, its Long Title probably comes as a surprise. It simply states:

An Act to provide for the registration of civil partners and for the consequences of that registration, to provide for the rights and obligations of cohabitants and to provide for connected matters.

This Bill takes nothing from anyone but what it gives is profound and is positive.

This Bill takes nothing from anyone but what it gives is profound and is positive.

It creates for the first time in Irish law a scheme under which a same sex couple can formally declare their allegiance to each other, register their partnership under new

provisions in the Civil Registration Act 2004, commit themselves to a range of duties and responsibilities and at the same time be subject under new law to a series of protections in the course of their partnership in the event of a failure of either party to maintain the other and in the event of disputes between them as to ownership of property.

Such a couple will have additional protections in the event of violence between them in their home and new rights to succeed to the property of each other are also being established. In the event of a dissolution of the partnership, there will be considerable protections in place for a dependent partner, where necessary, by way of power to the court to order maintenance, to order financial relief by way of lump sum payment, to redistribute the ownership of property between them and to provide for transfer of rights between them under any pension scheme of which either is a member. Where a person dies after dissolution of a civil partnership, the court may order provision from the estate of the deceased for his or her surviving former partner.

Through these legislative measures, the State clearly has shown that people as individuals are entitled to receive fair and equal treatment whether they are gay, lesbian or heterosexual.

These are highly specific measures that are being provided for in the law for the first time. Up to only a few short years ago they are measures that would have been unheard of in any jurisdiction. In many other respects, however, our laws regarding gay and lesbian persons have been the subject of a modern code. The Prohibition of Incitement to Hatred Act 1989 banned incitement to hatred of a person or a group of people on a range of grounds, including sexual orientation. In 1993, the Criminal Law (Sexual Offences) Act finally decriminalised male homosexual acts. The Employment Equality Act 1998 and the Equal Status Act 2004 made it an offence to discriminate against people in employment or in the provision of goods and services, on a range of grounds, again including sexual orientation. Through these legislative measures, the State clearly has shown that people as individuals are entitled to receive fair and equal treatment whether they are gay, lesbian or heterosexual. The State has put in place the legal infrastructure to safeguard this entitlement to equal treatment. It is now time to move forward and to add to the legal protections in place for persons against discrimination and exclusion. The absence of official recognition and affirmation for same-sex relationships only helps to reinforce prejudice and inequality in society.

‘It is now time to move forward and to add to the legal protections in place for persons against discrimination and exclusion. The absence of official recognition and affirmation for same-sex relationships only helps to reinforce prejudice and inequality in society’.

The Bill will substantially change the legal landscape for same-sex couples. As well as dealing with many vital and pressing legal difficulties experienced by same-sex couples, including maintenance, pension provision, protection of tenancies, their shared home and succession, it will also address very practical matters for same-sex partners. The Bill ensures they will be always entitled to visit if one is hospitalised, can be treated as next-of-kin and on the death of a partner are entitled to notify the death and arrange the funeral. Gay and lesbian organisations deal daily with problems about which most of us never have to think but which routinely arise for gay couples or a surviving partner. These can range from the inability to access State benefits like the carer's allowance to care for a seriously ill partner, to a man's additional grief that his partner is recorded on his death certificate as being single, an official denial of thirty years of life together.

Enactment of the Bill will mean that gay couples will no longer have their relationships ignored. They will have the protection and the recognition of the State in its laws.

These are not hypothetical cases. They are the real experiences of gay Irish couples in recent years and ones more couples will have if we do not reform the law. Enactment of the Bill will mean that gay couples will no longer have their relationships ignored. They will have the protection and the recognition of the State in its laws.

Deputies will appreciate that a Bill of this kind has had to be carefully prepared with the provisions of our Constitution.

Deputies will appreciate that a Bill of this kind has had to be carefully prepared with the provisions of our Constitution. Were the Bill to go beyond what is allowed under the Constitution, it would fundamentally undermine the balance it attempts to achieve. In this complex exercise of trying to achieve balance, I am grateful to the Attorney General and his office for the advices he has provided. I also thank the Colley group for examining the background, taking on board submissions and presenting options for making new provision in our law for same-sex couples and other cohabitants. The recommendations of the Oireachtas Committee on the Constitution have also informed the policy proposed in the Bill.

The Attorney General has advised in particular that to comply with the Constitution, it is necessary to differentiate the recognition being accorded to same-sex couples who register their partnership with the special recognition accorded under the Constitution to persons of the opposite sex who marry. While there is the need to respect the entitlement to equality that same-sex partners enjoy under Article 40.1 of the Constitution, there is also the need to respect the special protection which Article 41 gives to marriage. The Bill, therefore, has been carefully framed to balance any potential conflict between these two rights.

Another key feature of the Bill is that it gives recognition to the fact that the law needs to intervene to offer better protection to vulnerable persons in long-term same-sex or opposite-sex relationships when that relationship ends. At present, cohabiting couples have few legal responsibilities to each other. Many cohabiting couples do not realise just how little protection they are entitled to until things go wrong, whether through the acrimonious break-up of a long relationship or the sudden unexpected death of a partner.

When I launched the general scheme of the Bill, I was asked how the provisions relating to cohabitants differed from common law marriage. Many couples are under a misapprehension that the longevity of a relationship is sufficient to provide them with certain rights and protections in all sorts of areas from common ownership of property to next-of-kin or inheritance rights. Under the law, this is not the case. There is no entitlement to financial support and property rights do not accrue to a cohabiting partner unless he or she is making express financial contributions.

The redress scheme provided for in the Bill is largely as recommended by the Law Reform Commission. It will provide protection in the law to long-term cohabiting couples and a safety net for an economically dependent cohabitant at the end of the relationship on break-up or on death.

The redress scheme provided for in the Bill is largely as recommended by the Law Reform Commission. It will provide protection in the law to long-term cohabiting couples and a safety net for an economically dependent cohabitant at the end of the relationship on break-up or on death.

On break-up, a financially dependent cohabitant may apply to court for maintenance from the other cohabitant, possibly for a pension adjustment order or a property adjustment order. If the relationship ends on death, a dependent cohabitant may apply to court for provision from the estate of the deceased if, as often happens, no provision is made for the surviving cohabitant. The courts will have a substantial discretion in considering such applications.

The Bill recognises the right and capacity of couples to freely choose the legal form their personal relationships will take and the legal consequences of this choice. Some couples will prefer to opt out of the redress scheme. We should respect their autonomy to choose not to regulate their relationships. The Bill addresses this by providing for the legal recognition of cohabitants' agreements made by couples regulating their joint property or financial affairs. At the same time, it is important to achieve a balance between interfering in personal autonomy and protecting vulnerable persons. The Bill strikes that balance by providing that the courts in exceptional circumstances can vary or set aside a cohabitants' agreement where its enforcement would cause serious injustice.

In the registration of a civil partnership, same-sex civil partners will be treated in the same way as spouses under the tax and social welfare codes.

In the registration of a civil partnership, same-sex civil partners will be treated in the same way as spouses under the tax and social welfare codes. The necessary legislative provisions are being provided for in the finance and social welfare Bills that will, on enactment, come into effect at the same time as commencement of the registration provisions in this Bill. There is no question of the same tax and social welfare provisions being extended to cohabitants, be they same-sex or opposite-sex couples.

The general scheme of the Bill, published in June 2008, outlined the Government's policy proposals on immigration issues for registered civil partners or people whose relationships would be recognised as civil partnerships for the purposes of Irish law. The scheme included proposals to amend the Immigration, Residence and Protection Bill 2008 to ensure registered civil partners or equivalent relationships would be treated in the same way as spouses. For timing reasons, this has not been provided in the Civil Partnership Bill as the Immigration, Residence and Protection Bill has not yet been enacted but the appropriate amendments will be moved in due course.

A detailed explanatory memorandum, 28 pages, accompanies the Bill. No doubt a good deal of discussion will be had on Committee Stage about the Bill's various provisions which I will now outline.

The largest Part is concerned with civil partnership for same-sex couples. Part 2 confers power on the courts to make declarations that may be required about the status of a civil partnership where the legal status may be in doubt. It also empowers the Minister for Justice, Equality and Law Reform to prescribe certain categories of relationship contracted in other jurisdictions as entitled to be treated as equivalent to civil partnership under Irish law.

Part 3 inserts a new Part into the Civil Registration Act 2004 to provide for the registration of civil partnerships. Section 16 makes detailed provision for notification of civil partnership registrations, the registration process and objections. Three months notice of an intended registration is required unless, for example, one of the parties is very ill in which case an exemption may be provided. Registration will take place at the office of a registrar, or another approved venue, and a registration ceremony may be conducted if the couple so choose. The minimum age requirement is 18 years.

Part 4 provides protection for the shared home of registered civil partners. It is analogous to the Family Home Protection Act 1976 and prevents the sale of the shared home by one civil partner without the consent of the other.

Part 5 allows a civil partner to apply to court for maintenance from the other civil partner during the course of the relationship, where the other civil partner has failed to maintain the applicant civil partner. These provisions are in general analogous

to Part II of the Family Law (Maintenance of Spouses and Children) Act 1976. Part 6 allows the court to make an attachment of earnings order if it considers it desirable to secure payment under a maintenance order, an interim order, a variation order or a maintenance pending suit order.

Part 7 provides that payments under maintenance orders are made without deduction of income tax, makes such orders enforceable under the Enforcement of Court Orders Act 1940, provides that certain property is joint property and makes unenforceable any provision in agreements which preclude the payment of maintenance by either civil partner to the other. Part 8 provides that for succession purposes on testacy, registered civil partners will have the same entitlements as spouses to a legal right share. So where there is a will, the entitlement is to one half of the estate if the deceased has a civil partner and no issue, and to one third of the estate if the deceased has a civil partner and issue. A child of the deceased may apply under section 117 of the Succession Act 1965 for provision from the estate if the deceased has failed to make proper provision during his or her lifetime. Unlike in existing provision in law for spouses, an order made in favour of a child may reduce the share of the estate available to a civil partner.

Where there is no will, the rules of distribution will operate in the same way for civil partners as they do for spouses. If the deceased dies leaving a civil partner and no issue, the civil partner inherits the whole estate; if the deceased dies leaving a civil partner and issue, the civil partner inherits two thirds of the estate and the remainder is divided between the issue. These rules are modified to provide greater rights to a child of an intestate civil partner. Where a civil partner dies intestate, a child of that civil partner may apply to court for a greater share of the estate. If satisfied that it would be unjust not to make an order, the court may order that a share be provided for that child not exceeding the share to which the child would be entitled if the parent had died with no spouse and no civil partner. Such an order may not reduce the amount to which any other issue of the deceased are entitled and the net effect would be to reduce the share of the surviving civil partner.

Part 9 extends to registered civil partners the range of civil protections for spouses provided under the Domestic Violence Acts. Part 10 provides for a wide range of miscellaneous but nevertheless important legal consequences of registration including in relation to ethics and conflict of interest ó a civil partner will be treated as a 'connected person' or 'connected relative' in determining matters concerning ethics and conflicts of interest and declaration of interest required in regard to a spouse must likewise be made in relation to a civil partner; civil liability ó a civil partner is added to the list of dependents in respect of whom a person may sue for damages for wrongful death; pensions ó a pension scheme which provides a benefit for a spouse is deemed equally to provide a benefit for a civil partner; protection from discrimination ó the term 'civil status' is substituted for 'marital status' throughout the Employment Equality Act 1998 and the Equal Status Act 2000 so that the statutory obligation not to discriminate against a person on the ground that the person is single, married, separated, divorced or widowed is extended to prohibit discrimination against a person based on the person being in a registered civil partnership or formerly in a registered civil partnership which has been dissolved.

Part 11 provides for decrees of nullity of civil partnership and the effect of a decree of nullity. The grounds for nullity are that there was an impediment to the civil partnership at the time of its registration, such as, one or both of the parties being under age at the time of registration or one or both of the parties not having given informed consent. Part 12 makes provision for dissolution of civil partnerships and the effect of a decree of dissolution. To obtain a decree of dissolution the partners must have lived apart for a period of at least two years in the previous three years and the court must be satisfied that proper provision is made for both partners. Jurisdiction in dissolution of civil partnership will lie with the Circuit and High Courts who will have powers to make extensive ancillary financial relief, property and pension orders.

Part 13 provides for matters of jurisdiction in civil partnership law proceedings including, that cases will be heard in camera; proceedings will be as informal as possible; the Circuit Court and High Court have concurrent jurisdiction to hear civil partnership dissolution proceedings and make ancillary relief orders and the District Court has jurisdiction in domestic violence cases and in certain property disputes and maintenance matters. These provisions are similar to jurisdiction in family law proceedings.

Part 14 provides for consequential amendments to other enactments, in particular the Family Law Act 1995 and the Family Law (Divorce) Act 1996. These amendments ensure that if a former spouse registers in a civil partnership, any ancillary relief orders provided to that former spouse under those Acts lapse on registration. This mirrors the position in current family law whereby many of the ancillary relief orders available under those Acts lapse on the remarriage of the spouse for whose benefit the orders were made. Other enactments are amended by means of Schedules to the Bill to confer certain property rights, rights of redress and other miscellaneous rights and responsibilities on civil partners as a consequence of registration.

Part 15 establishes the qualified cohabitants redress scheme for unregistered or unmarried cohabiting couples. As I explained earlier the redress scheme will provide protection to an economically dependent party at the end of a long-term same-sex or opposite-sex relationship. The redress scheme provides a protective mechanism for a financially dependent partner where the couple have not formally regulated their relationship. It is available only to cohabitants defined in the Bill as 'qualified' and may be activated on termination of the relationship whether by break-up or death.

Section 170 provides that a qualified cohabitant is one of a couple who have cohabited in an intimate and committed relationship for at least three years, or two years where there is a child of the relationship. However, where one of the cohabitants is still married neither of the cohabitants may be a qualified cohabitant until the married cohabitant has lived apart from his or her spouse for a period or periods of at least four years during the previous five years, which is the separation period provided in the Constitution for divorce. The reliefs available on termination of the relationship on application to the courts are at the court's discretion and include orders for provision from the estate of a deceased cohabitant, property adjustment orders, compensatory maintenance and pension adjustment orders.

Part 15 also establishes that an agreement between cohabitants regulating their joint financial and property affairs can be enforceable subject to the observation of certain formalities. The court may set aside a provision in an agreement only in exceptional circumstances where its enforceability would cause serious injustice. Finally, Part 15 extends certain statutory protections to cohabiting unmarried opposite-sex and unregistered same-sex couples. The Domestic Violence Acts, the Residential Tenancies Act 2004 and the Civil Liability Act 1961 are amended so that provisions in those Acts which currently apply only to couples defined as 'living together as husband and wife' will apply equally to same-sex couples. A further amendment is made to the Domestic Violence Acts so that a cohabitant may apply for a safety order without a minimum period of cohabitation.

I believe this Bill is as comprehensive as possible consistent with the requirements of the Constitution.

I believe this Bill is as comprehensive as possible consistent with the requirements of the Constitution. The Bill recognises that there are persons who are in committed same-sex relationships who wish to share duties and responsibilities. It affords them an opportunity to register their partnership and to be part of a legal regime that fully protects them in the course of that partnership and, if necessary, on termination of the partnership. The redress scheme is a response in law to a growing need for protection of vulnerable cohabitants. I look forward to debate on the many issues the Bill inevitably raises.

I take this opportunity to again thank the Attorney General and my staff for their intensive work on this Bill. Equally, I thank the groups who have lobbied on this issue in the past number of years. I believe today is a significant milestone for them, some of whom are represented in the Visitors Gallery. I thank them for their understanding in regard to the balance that Government had to achieve in this Bill, in particular in the context of Articles 41 and 40.1 of the Constitution. As far as we on the Government side are concerned, we have fulfilled that balance and this legislation will stand the test of time.

I commend the Bill to the House.



Charles Flanagan T.D.

Opposition Spokesperson on Justice,
Equality and Law Reform (Fine Gael)

On behalf of the Fine Gael party, I am proud to welcome this Bill this evening. We welcome the legislation and will support it. As the Minister stated, the legislation is a milestone and is important. The Bill is long and detailed and includes more than 200 sections, almost 120 pages, and five Schedules. It also amends 130 items of legislation and will require detailed debate on Committee Stage. It is important that certain aspects of the Bill that require amendment or improvement are debated at that Stage.

On behalf of the Fine Gael party, I am proud to welcome this Bill this evening. We welcome the legislation and will support it.

Essentially, the Bill is a hybrid of two separate schemes. For the purposes of this debate, I wish to address each individually beginning with civil partnership. Legislating for civil partnership is a tangible testament to how far Irish society has come. Until recently, this country was characterised by oppression, patriarchy, dogmatism and a particularly rigid and domineering brand of Roman Catholicism with an inflexible set of social rules that meant one either had to conform to or leave. Church and State were intertwined to an inappropriate degree, and religious dogma dominated discourse not only throughout society but in this Legislature. We are only too well aware of the fate of single mothers, enslaved in laundries and socially ostracised for having a child out of wedlock, a 'sin' in the eyes of the church. We now know the harrowing suffering that such girls endured, and these factors must be borne in mind by parliamentarians when we shape legislation.

Legislating for civil partnership is a tangible testament to how far Irish society has come.

In the Ireland of the past, homosexuality was not tolerated to such an extent that it was a criminal offence to engage in homosexual activity. It remained a criminal offence until 1993 when the European Court of Human Rights found Ireland in breach of the European Convention on Human Rights. It is to the credit of Members of the Oireachtas, particularly Senator David Norris and others, that they played a key role in having that law removed from the Statute Book. The Ireland of the past was undoubtedly an extraordinarily difficult place for gay and lesbian citizens. There was virtually no understanding of difference. The way the churches treated homosexuality as a 'sin' and a 'choice' must have led to painful turmoil for gay people in this country. Thankfully, we have made great strides as a nation and we now live in a more tolerant

era, characterised more by reason and science than by bigotry, superstition and fear. This Bill will help us move to a place where tolerance, diversity and inclusivity are more than mere buzz-words, but are characteristics that define our corpus of family law.

This Bill will help us move to a place where tolerance, diversity and inclusivity are more than mere buzz-words, but are characteristics that define our corpus of family law.

In the concluding paragraph of the judgment in the case of *Zappone and Gilligan v. Revenue Commissioners*, Judge Dunne commented:

Undoubtedly people in the position of the plaintiffs, be they same sex couples or heterosexual couples, can suffer great difficulty or hardship in the event of the death or serious illness of their partners It is hoped that the legislative changes to ameliorate these difficulties will not be long in coming. Ultimately, it is for the legislature to determine the extent to which such changes should be made.

The plaintiffs in this case, Katherine Zappone and Ann Louise Gilligan, are a same sex couple who sought a judicial review after the Registrar General and the Revenue Commissioners refused to recognise the validity of their 2003 marriage in Canada. Although the High Court found against the plaintiffs, the comments of the presiding judge on the need for us as legislators to 'ameliorate' the painful difficulties faced by same sex couples in Ireland highlight once again the need for this Bill.

...unfortunately, the Ireland of the today can sometimes reflect an ignorant, bullying prejudice that a majority want to consign to the history books. A comprehensive study by the Gay and Lesbian Equality Network, GLEN, published earlier this year revealed some horrifying statistics.

I have referred to the Ireland of the past being a difficult place for gay and lesbian people but, unfortunately, the Ireland of the today can sometimes reflect an ignorant, bullying prejudice that a majority want to consign to the history books. A comprehensive study by the Gay and Lesbian Equality Network, GLEN, published earlier this year revealed some horrifying statistics. One in four homosexuals has been punched, kicked or beaten in violent homophobic attacks. Almost one-fifth have tried to take their own lives ó with many saying this was related to their sexual identity. A total of 58% of respondents said there was homophobic bullying at school, with more than half saying they had been called abusive names and a quarter saying they had been physically threatened by other students. More than a third said they had heard homophobic comments by teachers, while 8% said they had been called names by them. A third of respondents said they self-harmed over the stress of concealing their

sexual orientation during their teenage years. Some 80% of those surveyed said they had been verbally insulted, while 40% had been threatened with physical violence.

The survey results paint a very bleak picture of life for young gay men and women in our country. We are all well aware that difference can give rise to bullying, whatever that difference may be. I believe we have an important role to play in addressing homophobia in Irish society. Introducing equality measures such as civil partnership legislation sends out the message that there is nothing wrong with being gay and that all our citizens are entitled to live in a society characterised by equality and tolerance.

The Fine Gael Party has long had a proud tradition of promoting social justice. My party's seminal equality and social justice policy, The Just Society, which was launched in the 1960s, has guided our social policies in the years since then. I am proud that it was a Fine Gael-led Government that in the 1980s introduced significant legislation to improve the legal position of women as well as introducing remedies for abuses such as domestic violence. It was a Fine Gael-led Government that introduced divorce. In doing so, we were not seeking to undermine marriage but to give a legal remedy to those whose marriages had broken down and who were left stranded in a legal limbo.

Civil partnership and the cohabitation scheme are about providing legal remedies and rights rather than undermining marriage.

The rationale that informed the decision to legislate for divorce is very evident in the Bill before the House today. Civil partnership and the cohabitation scheme are about providing legal remedies and rights rather than undermining marriage. Similar to divorce, the rights and remedies contained in this Bill will be often the most relevant when people are experiencing difficulties or heartache in life, for example, when there has been a death, when a long-term relationship has broken up or when someone is seriously ill. Fine Gael recognised the need to address the legal difficulties faced by same sex couples in 2002 when we committed to removing legal barriers in areas such as property and inheritance rights. In 2004, we published a more comprehensive policy on civil partnerships, seeking to create an atmosphere of acceptance for gay people in Ireland through a range of measures not limited to civil partnership. I take this opportunity to pay tribute to those involved in framing that policy, particularly, former Senator Sheila Terry and Deputy Alan Shatter.

The process that has led to this Bill being read today in the Dáil has been described by some as a model process due to the raft of significant options papers and reports that preceded it, particularly in the past ten years.

There have been objections to this Bill on the basis of marriage. Some have attempted to portray the Bill as an attack on the institution of marriage. That allegation must be refuted. Marriage is a matter of personal choice and religious conviction and the fact that there are many same-sex couples in Ireland who would like to get married only indicates how popular and desirable marriage is for many people. The process that has led to this Bill being read today in the Dáil has been described by some as a model process due to the raft of significant options papers and reports that preceded it, particularly in the past ten years. The Minister has referred to these, the most significant among them being the Colley report and the report of the Law Reform Commission on cohabittees. Many of the recommendations of the Law Reform Commission report are in this Bill.

We also had the opportunity to examine systems in other countries. Civil partnership for same sex couples is now available in a number of European countries, including Denmark, Iceland, Finland, Germany, Switzerland, the UK and Slovenia. Many countries have gone further and legislated for same sex marriage, including the Netherlands, Belgium, Spain, Sweden, Canada, Norway and South Africa. Ireland is part of a growing trend towards a more rights-driven world that permits and celebrates difference. I am pleased Ireland is moving in that direction.

Ireland is part of a growing trend towards a more rights-driven world that permits and celebrates difference. I am pleased Ireland is moving in that direction.

We will have an opportunity on Committee Stage to deal with the legislation line by line. However, I am very concerned about the glaring omission of children from the civil partnership provisions. Such an omission fails to recognise the *de facto* situation in which an estimated one third of the approximately 2,000 same sex cohabiting couples registered in the 2006 census have children. Failing to take children into account fails these children in an unacceptable way. This was brought home to me just two years ago when a former constituent, Barbara Gill, was knocked down and killed, leaving behind a devastated partner and child. Barbara and her partner comprised a same sex couple, and they had a baby son to whom Barbara's partner had given birth. Barbara did not have a biological link to her son, yet he was her son and she was his parent. When Barbara was killed, her partner and her son were left in a legal quagmire with no relief.

I am very concerned about the glaring omission of children from the civil partnership provisions. Such an omission fails to recognise the *de facto* situation in which an estimated one third of the approximately 2,000 same sex cohabiting couples registered in the

2006 census have children.

I am delighted to welcome Barbara's parents who are in the Visitors Gallery this evening. They were distraught. Having lost Barbara, her loving partner and son were now faced with further trauma, this time caused by the failure of the Oireachtas to legislate to protect the inheritance rights of children in same sex partnerships. Barbara Gill contributed enormously to Ireland during her all too short life. She lectured in the Church of Ireland College of Education and in St. Patrick's College, Drumcondra. She espoused human rights and inter-cultural education before such causes became fashionable. She was a good person and a good parent. We owe it to people like Barbara Gill, her partner and her son to address the vulnerable legal position of children of same sex couples and their non-biological parents.

Studies have shown that children who are raised by same sex couples do just as well as those raised by heterosexual couples. Such studies have been carried out by the UK Royal College of Physicians, the American Academy of Pediatrics and the American Psychological Association. My understanding is that it is unusual not to address the matter of children in a scheme for civil partnership. It is not too late to make significant changes to this Bill and I hope the Minister will commit to addressing the gaping lacuna in the proposed legislation. Otherwise our law will remain out of step with reality and fail to protect the vulnerable.

The second major pillar of this Bill relates to rights and responsibilities for cohabiting couples, both same sex and opposite sex. It might have been more appropriate to introduce measures for cohabitants in a separate Bill. However, in recognising how infrequent it is for a significant Bill overhauling family law to come before the Oireachtas, I accept that there may be merit in including a scheme for cohabitants in this Bill. The scheme for cohabitants is a presumptive scheme and I believe this will give rise to challenges in respect of communicating to people that the law has changed significantly. I would be interested to hear the Minister's comments on how he intends to proceed in that regard. Some legal experts have warned that the presumptive nature of the scheme could give rise to legal challenges and that ambiguities in the Bill regarding the establishment of when cohabitation began may present problems.

I note again that we are following the precedent set elsewhere, in that similar presumptive schemes for qualified cohabitants are in operation in jurisdictions such as Scotland, Austria, France, Hungary, the Netherlands, Portugal, Spain, Sweden, Australia, New Zealand, Canada and the United States. Perhaps the Minister could brief the House on how these schemes operate and whether any significant legal difficulties have arisen.

...we must acknowledge that provisions recognising cohabitants and qualified cohabitants reflect the reality of modern Ireland.

Notwithstanding these technical issues, we must acknowledge that provisions recognising cohabitants and qualified cohabitants reflect the reality of modern Ireland. The 2006 census registered 121,800 cohabiting couples with 74,500 children. The census further recorded more than 2,000 same sex cohabiting couples, one third of which have children. Therefore, it is important that this Bill introduce a mechanism for cohabiting couples to regulate their financial affairs as well as providing a financially vulnerable cohabitant with access to apply for a number of financial reliefs, such as maintenance or a share in the family home.

Non-conjugal couples are omitted from the Bill. In Fine Gael's civil partnership policy paper, we included reliefs for cohabiting couples in non-intimate relations. Speaking as a rural Deputy, there are situations in which two elderly brothers or sisters might have lived together all their lives and wish to look after their siblings should one predecease the other. Both the Colley report and the Law Reform Commission, LRC, report referenced non-conjugal couples, but stated that they had received 'few submissions'. The Government should examine this issue. If we do not allow for relief in this regard, it would appear as if we do not consider the matter raised in those reports as an issue. Perhaps the Bill is not the most appropriate vehicle to address it, but it should be addressed in the context of further legislation. It is hardly surprising that there were few submissions, as the people that Fine Gael is seeking to protect in its policy document are not plugged into any advocacy group of which I am aware. The making of a submission to a Government report would not be easy for them, particularly given that, more often than not, they live in rural and remote parts of the country.

Both reports referred to 'a lack of research in this area'. I assume it is on this basis that non-conjugal couples have been omitted from the Bill or any indicative Government report on further proposals. Difficulties present in terms of inheritance tax, succession rights and family homes. The reports have indicated that there has been insufficient research. Research is required, as some people need greater legal protection. If a lack of research is the primary obstacle to helping them, it is time that it be commissioned.

I welcome the Bill and pledge Fine Gael's support to it. While many welcome it, others believe it does not go far enough. To those people I would say that change is incremental and I hope that full equality is not far away.

I welcome the Bill and pledge Fine Gael's support to it. While many welcome it, others believe it does not go far enough. To those people I would say that change is incremental and I hope that full equality is not far away. Objections have been made and I have received many items of correspondence from people, some of whom may hold a genuine belief that it should be possible to allow for opt-outs in this legislation on the basis of one's religious beliefs or otherwise. This poses a problem, as I do not know how such an opt-out could be framed, particularly for registrars. They perform a variety of statutory functions, namely, the registration of marriages, births, deaths

and still births. They are statutory officers and are required to solemnise and register marriages of, for example, previously divorced people. This did not pose an issue when the divorce legislation was passed, yet people are seeking an opt-out from their responsibilities under the Bill. Were we to allow such an opt-out, we would effectively be dismantling much of our equality and anti-discrimination legislation.

Were we to allow such an opt-out, we would effectively be dismantling much of our equality and anti-discrimination legislation.

To those who oppose the Bill, of whom there are many for a variety of reasons, and to those who have written to me outlining their objections, I would say that we live in a democracy, not a theocracy. As democrats and Members of Parliament, we must recognise and protect the rights of all citizens, not just some. We cannot have a tyranny of the majority. As legislators, we are charged with the responsibility of looking after our citizens. This Bill is a part of that process.

As democrats and Members of Parliament, we must recognise and protect the rights of all citizens, not just some. We cannot have a tyranny of the majority. As legislators, we are charged with the responsibility of looking after our citizens. This Bill is a part of that process.

'Secular' is not a dirty word, as some have tried to assert. Secular, democratic measures have given women equal rights and blown the lid off decades of sexual abuse by religious congregations by conducting important investigations, the most recent of which was the Murphy report of this week. We do not inhabit a flat Earth. We exist in a diverse society where minorities make vital, welcome contributions. As Prime Minister Zapatero, speaking in the Spanish Parliament, stated before the final vote introducing gay marriage in 2005, '...a decent society is one which does not humiliate its members'. I agree with those sentiments and I believe they are appropriate to this Bill. I welcome the legislation and look forward to dealing with its technical, detailed aspects on Committee Stage, perhaps in the new year.



Brendan Howlin T.D.

Leas Ceann Comhairle and Opposition Spokesperson on Justice, Equality and Law Reform (Labour)

This day has been a long time coming. The recent chronology of key events leading up to it has been published in a GLEN document. In recent years, we have quickly come to this conclusion. It is heartening to have a large consensus on what needs to be done on these important social issues.

The recent chronology of key events leading up to it has been published in a GLEN document. In recent years, we have quickly come to this conclusion. It is heartening to have a large consensus on what needs to be done on these important social issues.

Tonight's debate and the Bill comprise an important milestone on the road to equality, but they are not the journey's end. Article 1 of the Universal Declaration of Human Rights states:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

This basic and simple concept has consistently proven to be one of the most difficult principles to put into practice. It was proclaimed by the UN's General Assembly on 10 December 1948. As various debates in the House this week have indicated, we are still struggling as a republic to make that simple and fundamental declaration a reality.

The Labour Party welcomes the Bill. It is not the end of the journey, but it is a long way down the path.

The Labour Party welcomes the Bill. It is not the end of the journey, but it is a long way down the path. It clearly does not go as far as the Labour Party's Civil Unions Bill, which I twice had the honour of introducing into the House, once in the previous Dáil and once in this Dáil. The first time, it was cynically kicked to touch, but I believe it formed a basis for a consensus that has led to tonight. I am proud of my party's role in this regard.

I refer to citizens of our Republic whose essence we have ignored and denied for far too long.

While the Bill before the House does not achieve equality, it gives same sex couples

rights that are long overdue. It gives legal protection and recognition to same sex couples, as well as other non-traditional families. I refer to citizens of our Republic whose essence we have ignored and denied for far too long. The Bill does not provide for same sex marriage, as the Minister has said, nor could it under the Constitution, as it is currently interpreted by the courts. We are not legislating for true equality in this important measure. It is worth reflecting on the words of the Honourable Justice Michael Kirby, of the Australian high court, in his foreword to a report on this Bill produced by the Irish Council of Civil Liberties. He stated:

Marriage is a civil status, created and defined by the law. To it many legal consequences and some benefits attach. Civil partnership is a status, separate but equal, which goes part of the way, but risks leaving neither side very happy. The same-sex partners are then denied true equality which they know is now recognised in other civilised jurisdictions. The conservative traditionalists complain that civil partnership 'mimics' marriage and therefore, in a mysterious but unexplained way, damages that institution for heterosexual couples who are now staying away from it in droves.

The argument against equality is a strange one. How can the extension of the right to marry, to more of our citizens who want to bond themselves with another human being in a loving relationship that is recognised by law, be said to undermine marriage? I assume those who believe that allowing same sex couples to marry would undermine the institution of marriage would not suggest that homosexual citizens of this nation should reconcile themselves to marriage as we understand it under the Constitution today. That would be absurd. Do such people believe that to offer marriage to same sex couples would somehow lure heterosexual people away from marriage? That would be a ludicrous suggestion. The fundamental debate on taking the final step can wait for another day. It is important to point out that this legislation is a step on that journey, rather than the end of the journey.

How can the extension of the right to marry, to more of our citizens who want to bond themselves with another human being in a loving relationship that is recognised by law, be said to undermine marriage?

Given that there is such agreement across the House, I do not want to sound any note of discordance. This Bill has been produced two and a half years into the coalition between Fianna Fáil and the Green Party. I would like to remind Members of what Deputy Cuffe said on 21 February 2007, during the debate on the Labour Party's Civil Unions Bill 2006. I agree with his suggestion that "to relegate same-sex couples to some marriage-like institution is to deny them their human rights, dignity and rights as citizens of the State". It is probable that we could build a consensus to take the final step. I do not think it should be too far away. I am sorry that legislation to provide for the option of taking the final step, even if it meant a constitutional amendment, is not before the House tonight. I do not want to sound discordant, as I have said, because the Bill before the House, which is of profound importance to

thousands of our fellow citizens, should be recognised, applauded and celebrated.

... the Bill before the House, which is of profound importance to thousands of our fellow citizens, should be recognised, applauded and celebrated.

The stated purpose of this legislative measure is to establish a statutory civil partnership registration scheme for same-sex couples. It sets out a range of rights, obligations and protections that are consequent on registration. It prescribes the manner in which civil partnerships may be dissolved and the conditions that may apply. The Bill also establishes a redress scheme for opposite-sex and same-sex cohabiting couples who are neither married nor registered in a civil partnership, as the case may be. The proposed redress scheme has far more limited provisions than the civil partnership provisions, or marriage as we know it. The scheme focuses primarily on addressing a number of areas in which cohabiting couples are vulnerable, such as the protection of residential tenancies and maintenance rights. In general terms, the Labour Party supports these provisions, as detailed in the Bill. It is obvious that the Labour Party will table amendments in this respect on Committee Stage. I agree with some of the points Deputy Charles Flanagan made about the lack of clarity with regard to these provisions of the Bill.

I would like to signal two particular issues that I will pursue during the Committee Stage debate. There is a need for retrospective recognition of foreign civil partnerships if one partner dies before the provisions of section 5 of this Bill become operable. We can debate and tease out the extent to which it should be retrospective ó how far back we should go ó on Committee Stage. Many same-sex couples who live in this jurisdiction have obtained civil partnerships in Northern Ireland since 2005, when such a legal provision was first afforded in that jurisdiction. If one party to a relationship that is legally recognised on one part of this island dies before the provisions of this Bill become law, the surviving partner may be disadvantaged for the purposes of inheritance tax, for example, or may be made ineligible for the survivors' pension. Particular examples have been brought to my attention. I understand that dozens of same-sex couples who live in the Republic have obtained civil partnerships in Northern Ireland. A case in which the older person in a civil partnership has advanced cancer, and could die before the date on which the Minister for Justice, Equality and Law Reform signs this provision into law and thereby makes the partnership legally binding in the Republic, has been brought to the attention of the Human Rights Commission of Ireland and the Northern Ireland Human Rights Commission. If this legislation does not become law before the person in question dies, the partnership will not be recognised and the surviving partner will have no legal rights. That would be a disturbing and unfortunate consequence of our efforts. We should seek to make provision for such cases before we conclude our deliberations.

The second issue to which I would like to alert the House is a potential implication of section 4(2) of this legislation. The Bill as it stands requires at least one of the civil partners hoping to enter into a civil partnership to be domiciled in the State on the date of application. This may exclude some couples from the right to take a court

action in this jurisdiction. I am advised that this residency requirement may affect couples who reside in Northern Ireland ó they may have moved from this jurisdiction to formally legalise their relationship under the 2005 provisions there. If, after this measure has been enacted, they wish to argue for the recognition of their foreign partnership ó the Northern Ireland partnership, in this case ó they may wish to have recourse to the courts in this jurisdiction. These are technical matters we can debate in some detail on Committee Stage.

I am advised that section 2 of the Marriage Act 1972 provides retrospective recognition by the State of 33 services of blessing, namely, non-civil marriages performed in the département des Hautes-Pyrénées in France “ so-called “*Lourdes marriages*” “ between citizens of Ireland which were solemnised at Lourdes between 1953 and 1960 only.

By the provisions of the 1972 Act, these non-civil marriages were deemed always to have been valid marriages and have been recognised as if they had been performed and solemnised in this State. If we can do that for a blessing at Lourdes I believe we can provide legal measures within our own jurisdiction to recognise legally binding civil partnerships entered into by Irish citizens in other jurisdictions where, up to now, those partnerships have been recognised.

I should mention another possible difficulty with section 5 that, again, was pointed out in the submission from the Irish Council for Civil Liberties. In most equivalent foreign recognition provisions, there is a general provision of recognition. For example, the UK legislation expressly provides that same-sex marriages celebrated elsewhere will be recognised as civil partnerships in the United Kingdom. Section 5 of the measure before the House leaves it to the Minister to make that determination, stating, ‘The Minister may, by order, declare that a class of legal relationship, entered into by two parties of the same sex, is entitled to be recognised as a civil partnership if under the law of the jurisdiction in which that legal relationship was entered into’. It enumerates a number of conditions. The essential point, however, is the first sentence, namely, the Minister ‘may’ recognise such civil partners. It is important we should have clarity about the exercise of the authority we will divest to the Minister after the enactment of these provisions.

I will seek to address these issues on Committee Stage. I will address one major argument which Deputy Charles Flanagan touched upon that is in circulation concerning the Bill. This is a matter concerning which most of us received more e-mails than any other. They seem to have been generated because many of them were standardised. The argument was that the Civil Partnership Bill, if enacted, will introduce a law by which those whose religious convictions may prohibit them from being involved in a same-sex partnership will somehow be compelled, under duress of law or for fear of being sued, to aid or assist in a ceremony to which they have a genuine conscientious objection.

People may have regard again to the Labour Party’s Bill. In that Bill we sought to create a formal civil union which, in virtually every respect, mirrored marriage. We proposed that a solemniser would perform that union in the same way that a marriage would be solemnised. For that reason, in section 3(2) of our Bill, we included an opt-

out clause that stated, 'Nothing in this Act requires a registered solemniser who is not registered to solemnise a civil union if the religious body of which he or she is a member has no recognised form of ceremony for the purpose of which he or she has a conscientious objection from so doing'.

The Bill the Minister presented to the House today is quite different in context. It is different in a very significant respect. Under this Bill, a civil partnership can be entered into only in front of a civil registrar. Even if he or she wanted to, a registered solemniser, for example, a priest or minister of religion, would have no competence and no capacity to preside over or register a civil partnership as envisaged in this proposal. Therefore, the question of inserting a conscience clause is moot. It does not arise. That point has been made clear and abundant.

The point was raised by Deputy Charles Flanagan whether those who will be charged with presiding over civil partnerships, namely, officers of the HSE or old officers of the health boards who are registrars should be allowed opt out. My answer is 'Certainly not'. We are not going to have a situation where officers of the State can determine they will perform this function but not that one. It would be like saying that nurses and doctors could no longer give blood transfusions if they became Jehovah's Witnesses. That is not the way a republic operates. Laws are enacted and officers of the State, paid for by the State, carry out the legislation as enacted by this House. I do not see this as being an issue. As Deputy Charles Flanagan rightly pointed out, other issues, for example, the remarriage of divorced persons which is now the civil law of the land, have not been such that people may opt out from them in the future.

In these challenging financial times I do not feel there will be a conscientious impediment among florists or anybody else who provides their wares or services.

There is one other issue in respect of that plethora of odd e-mails we received, namely, whether we should provide a conscience opt-out for florists, bakers or candlestickmakers or anybody else who might be offended. In these challenging financial times I do not feel there will be a conscientious impediment among florists or anybody else who provides their wares or services.

For clarity in this respect, we enacted laws as far back as 2000 to protect against discrimination with regard to orientation. In this Bill, the Minister seeks only to replicate those laws. I see no argument or basis for suggesting that florists, photographers, printers or providers of any service can be allowed to discriminate against any citizen in respect of his or her sexual orientation. I do not see any scope for that point.

...the Bill is largely silent on the rights of children. It does not address in a clear or comprehensive way the rights of children who live with a couple who, in the future, will be civil partners.

I wish to move to one major deficiency, as I see it, in this Bill. Again, Deputy Charles Flanagan properly raised this point, namely, that the Bill is largely silent on the rights of children. It does not address in a clear or comprehensive way the rights of children who live with a couple who, in the future, will be civil partners. Of course, a child has full rights in respect of a person who is his or her biological parent. However, the child's right to the continuing parenting of the civil partner of his or parent is not enshrined in this measure. The very compelling, real and specific human case outlined to the House by Deputy Charles Flanagan underscores the importance of addressing this deficiency. It cannot be that we will allow a Bill to be enacted that is silent on this critical issue, particularly that a child in such a relationship will not be able to seek maintenance from the non-biological parent and will have no succession rights if the civil partner of the child's biological parent dies. The civil partner will not be able to adopt the child jointly. It seems to me a ludicrous notion that under our current adoption law a single person can apply to adopt but a couple, even legal partners recognised by law, will not be in a position after the enactment of this provision to adopt jointly a child, even a biological child of one of the couple. That is a major deficiency.

The Joint Committee on the Constitutional Amendment on Children has focused on a number of issues concerning the safety, well-being and best interests of children. The Minister has attended many of the meetings. It has been a very important learning process on how the Oireachtas can shape better laws to advance the rights of children. God knows that, in light of the reports published this year and previously in the Ferns diocese in my part of the country, we need far more robust protection of children.

The committee sought all-party consensus on recalibrating rights so the well-being and best interest of the child would be at the core of policy. Nobody has the right to adopt a child but a child has the right to be in the best place for himself or herself. That was the core of the Labour Party's Bill. We determined we could not bring legislation to this House without addressing the issue of children. The way we did so was simply to recognise that the best interest of the child should be the only criterion, such that one would not give a right to anybody to adopt but give a right to the child to be in the best place for himself or herself, be that with biological parents, grandparents, foster parents of long standing or a same sex couple who would serve as loving parents to the child. The decision should be made without regard to anything other than the best interest of the child. That is what the Labour Party proposed.

With regard to dependent children, our Civil Unions Bill proposed, 'the rights and obligations of parties to a civil union with respect to a dependent child are the same, *mutatis mutandis*, as those of a married couple with respect to such a child'. A dependent child, according to our definition, was a child adopted by both parties or in relation to whom both spouses are *in local parentis*, or a child of either party or adopted by either party or in relation to whom either party is *in loco parentis* where the other party has treated the child as a member of the family where the child is under 18. The legislation also included children above that age in full-time education with a mental or physical disability 'to such extent that it is not reasonably possible for the child to maintain himself or herself' independently.

A child-centred approach that mirrors the developing conclusions of the all-party

committee is the right approach. I will be interested in hearing the response of the Minister to the debate to learn whether he is open to determining whether we can craft, by consensus, a provision for children in this regard.

I have spoken almost exclusively on same-sex couples but now want to discuss the part of the Bill that deals with cohabitants. The duration proposed for the legislative provisions to have effect is three years, or two if a child has resulted from the relationship. I welcome the provisions in section 171 of the Bill. Qualifying cohabitants may apply to court for a range of orders ó for example, property adjustments, maintenance and pension adjustments ó where the applicant is financially dependent on the other cohabitant and complies with a range of other specified requirements, as set out. This was recommended by the last All-Party Oireachtas Committee on the Constitution in the report it produced in January 2006. There may be some tweaking to be done to ensure we recognise a legal starting point for cohabitation and to ensure there is no confusion in the courts.

In truth, there are many relationships that do not involve standard marriage. We need to provide some form of support when they break down or when one of the cohabitees dies. The provisions are, by and large, good in respect of this issue. One wonders whether it is proper to enshrine them in this legislation rather than address them in conjunction with the issue Deputy Charles Flanagan raised.

Conjugal relationships are unique. It upsets and annoys me when people blur the distinction between a loving conjugal relationship and that of any pair of people living together for convenience or mutual support. It denies the essence of the relationship, which is fundamental. We should be very clear and not obfuscate on that absolute point.

We have come to an important point in the legislative process. As speedily as we can, we should enact this measure. We will crawl ever slowly to be faithful to the first article of the Universal Declaration of Human Rights which recognises the essence of the equality of every individual. We should move to Committee Stage speedily. I hope we will address consensually the issues that have been addressed on this side of the House and provide a basis for acknowledging the fundamental worth of every citizen of this Republic.



Ciaran Cuffe T.D.
(Green Party)

I wish to share my time with Deputy Gogarty.

We do not often talk about love in this House.

We do not often talk about love in this House. In a week dominated by floods, pay talks and the Murphy report, it is good to turn our attention to love for a change. I am pleased we are providing real recognition of the love between adults in a committed relationship. It is enshrined in the Civil Partnership Bill.

One would be forgiven for believing this Bill is unwelcome in some quarters and that its introduction to the House, after a lengthy period of gestation and public debate, is somehow a letdown. There are those in society for whom any formal legal recognition of same-sex partnership offends. They perceive civil partnerships as an affront to religious marriage, a challenge to the traditional family unit of man and woman and as representative of unwise legislating. However, there are members of the gay and lesbian community for whom this Bill is a disappointment in terms of what it does not do, that is, establish full civil marriage for all, regardless of sexual orientation.

I agree with Deputy Howlin that the Bill does not go as far as he or I would like, but neither Fine Gael nor Fianna Fáil has made that commitment. Deputy Flanagan spoke eloquently but I am not aware his thoughts are shared by his party or his leader, Deputy Kenny, in the form of a policy commitment. In that regard, politics is the art of the possible and this Bill heads in the right direction to an end point on which I agree with many Deputies.

Currently, same-sex partners living together in a committed loving relationship have precious little recognition and few rights and obligations.

Before this Bill is labelled as an unnecessary intrusion into traditional marriage or legislative discrimination, let us take a step back and analyse the practical benefits of civil partnerships for gay and lesbian couples. Currently, same-sex partners living together in a committed loving relationship have precious little recognition and few rights and obligations. There is little more recognition in law for such arrangements than there is for flatmates living together.

The Civil Partnership Bill will recognise rights, responsibilities, safeguards and obligations for same-sex couples in a loving relationship where there were none before.

The Civil Partnership Bill will recognise rights, responsibilities, safeguards and obligations for same-sex couples in a loving relationship where there were none before. These are significant, substantial changes which will make a real difference. The Bill amends more than 130 pieces of legislation and stitches the recognition of the unit of civil partnerships into the corpus of our legislation. It creates maintenance rights, so that when one civil partner is financially dependent, the other must provide for him or her. It strengthens our equality legislation and prevents discrimination against civil partners in employment as well as in the provision of goods and services.

These are significant, substantial changes which will make a real difference. The Bill amends more than 130 pieces of legislation and stitches the recognition of the unit of civil partnerships into the corpus of our legislation

When a civil partner presents at a hospital seeking access to see a loved one who has fallen ill, he or she will have the same rights and powers of decision as a husband or wife in such difficult circumstances. When an employer chooses to give special marital leave to newlywed employees, the same arrangements will, by law, have to be given to civil partners. When a pension scheme provides that a benefit accrues to a spouse, the same benefit will extend to a civil partner. This Bill will create legal protection and recognition where there was nothing before.

Civil partnerships will make a significant difference to the law in the area of inheritance. Currently, when a person in a same-sex relationship dies without a will, the non-marital partner has no right of claim on his or her estate. No matter how long they have been together, he or she has no claim on the inheritance of a loved one when he or she dies intestate. Civil partnerships will dramatically improve this situation. Under this Bill, a civil partner will have the same rights to an estate as a widow or widower. They will have an entitlement under law to claim a portion of the estate. This will provide a real and tangible benefit and legal protection and recognition where there was nothing before.

Civil partnerships will transform the treatment of same-sex couples for taxation and social welfare purposes, so that a couple in a civil partnership may share tax credits or a widow's pension can be extended to a civil partner. A civil partnership will cast a legal safety net for couples who break up. It will provide surety and security during the difficult times of an illness of a loved one, when legal protection should be furthest from the mind. It will provide protection for the shared family home and give relief in

cases of domestic violence and provide security of tenure in rented accommodation in succession situations. All of this will be in place where there was nothing before.

Do we not become a little more enlightened as a country which has chosen to open the door to recognition of same-sex relationships? This Bill marks substantial, purposeful progress on our equality agenda. It will be of significant practical benefit to gay and lesbian couples across this country

Many of the rights, obligations and responsibilities spouses enjoy will now be shared by same-sex partners. Some may characterise this Bill as an attack on traditional values or an inadequate solution. Therefore, we must ask if this is a positive development. Do we not become a little more enlightened as a country which has chosen to open the door to recognition of same-sex relationships? This Bill marks substantial, purposeful progress on our equality agenda. It will be of significant practical benefit to gay and lesbian couples across this country.

In addition to the rights it confers, however, the creation of civil partnerships sends important messages to those couples seeking to formalise their relationship, that is, recognition and acceptance.

In addition to the rights it confers, however, the creation of civil partnerships sends important messages to those couples seeking to formalise their relationship, that is, recognition and acceptance. If a couple wishes, their partnership may be brought under the wing of the State, allowing the couple concerned to benefit from its safeguards and grow into the responsibilities it creates. In extending our body of equality legislation like this, we progress our understanding and we mature a little bit as a society.

I have received many letters and telephone calls from those not in favour of civil partnership and who do not wish to grant formal recognition to same-sex civil partnerships. Many people have a religious objection to the recognition of wholly State recognised civil partnerships. Putting aside the lack of religious linkages, I am struck by the distance some of these people put between gay couples and themselves. Are our brothers, sisters, cousins and friends in loving same-sex relationships not deserving of State recognition? Are these people not as much a part of the fabric of our society as heterosexual married couples?

Civil partnership asks for no religious blessing. It does not seek to intrude into that space nor offend its proponents. It is a matter of the State's legal and administrative support of loving same-sex couples. Civil partnerships are not an endpoint but, rather, a significant achievement on the journey toward full marriage equality. I still believe

in that end goal and the words I spoke some three years ago, but I see this Bill as progress.

We await the decision of the Supreme Court in the Zappone and Gilligan case to see in what framework the Oireachtas can proceed to legislate for civil marriage

We await the decision of the Supreme Court in the Zappone and Gilligan case to see in what framework the Oireachtas can proceed to legislate for civil marriage, but separate from this there are political challenges to be overcome in getting support from all sectors of society and from all parties in this House for civil marriage irrespective of gender, a position I and my party fully support and have enshrined in our party's policy document, Valuing Families: A Policy on Marriage and Partnership Rights.

As many of those campaigning for gay marriage will acknowledge, this is not a process that happens overnight. Civil partnerships can be a significant political building block in the move toward full gay marriage; we are not engaged in zero sum game. The Civil Partnership Bill is long and complex, but ultimately it boils down something very simple, that is, the State recognising, protecting and cherishing the love between two adults, be they men or women, and this can only be a good thing.

As a Green Party member, I applaud the work my colleagues, in particular Roderic O'Gorman, put into pushing the party's policies forward. As a campaigner I applaud the many organisations, including the Gay and Lesbian Equality Network and the Irish Council for Civil Liberties, for the work they have done to advance the cause of equality. As a legislator, I thank the Minister, Deputy Dermot Ahern, and his Department for the hard work which has brought us here. As a father, I am proud of the recognition we are giving to loving relationships, regardless of sexual orientation.

I would like to say I was a florist but Deputy Howlin got there first. All florists, if they were here this evening, would be pleased with the Bill before the House. As a liberal I am proud of the staging post we have reached on the journey towards full equality. I commend the Bill to the House.



Paul Gogarty T.D.
(Green Party)

I will not admonish Deputy Cuffe, given the integral role he played in the party. I will not repeat what he said about the Civil Partnership Bill. I agree with his comments wholeheartedly and acknowledge the progress that has been made to date and his role as justice spokesperson for the Green Party in pushing this process forward for many years. I also welcome the Minister's key role in bringing this Bill before the House.

The Bill is ... a significant milestone.

The Bill is, as Deputy Cuffe said, a significant milestone. As he outlined, it will provide new legal protection and recognition for same-sex couples. However, as the Green Party acknowledges, the legislation, while welcomed by many, does not go far enough. The Bill is not solely concerned with same-sex rights. It also establishes a redress scheme for opposite-sex and same-sex cohabiting couples, which was alluded to by the Minister, and makes provision for the recognition of various financial agreements.

In the eyes of the media, the Civil Partnership Bill is a key step in implementing the Government's commitment in the programme for Government to legislate for civil partnership at the earliest possible opportunity. It is about lesbian, gay, bisexual and transgender rights and I welcome the Bill from that perspective. However, I am realistic enough to acknowledge for that tonight, this year and perhaps several years to come, the process of equal rights for same-sex couples has reached a plateau.

Even allowing for the progress made, I know and acknowledge that this causes frustration, hurt and bitter disappointment for some who would have liked the Bill to go further. I empathise with the hurt and sense of dismay at what is after all only a partial validation of people and their humanity. How long we stay at this point depends on the will of those with the power to effect legal change or to at least give people the power to effect such legal change. While there are obstacles to full marriage, these obstacles are far more political than they are legal or social. These obstacles can and should be overcome and Ireland should and will take its place as a country that cherishes all of its citizens equally regardless of sexual orientation to join progressive countries that have already done so such as The Netherlands, Belgium, Spain, Canada and South Africa.

I am disappointed that some in Government and some in Opposition would prefer that this legislation should be as far as it goes. However, same sex marriage is still very much on the agenda. I am sure this is a view shared by other colleagues in the Green Party, Fianna Fáil and across the House.

The case taken by Dr. Katherine Zappone and Dr. Ann Louise Gilligan is still before the

Supreme Court, so it is still too early to tell what constitutional barriers exist terms of how marriage and family are defined under articles 40 and 41 of Bunreacht na hÉireann. However, these articles are not set in stone. It is up to those who cherish civil rights and equality to push the boundaries, to propose sensible amendments to the Constitution as required after careful deliberations and to persuade the people that such constitutional change should be supported in a referendum. This cannot happen overnight as I stated, but it would be helpful if a public commitment was given by all parties and individuals in these Houses to work together in a non-partisan way to bring about full marriage rights on an equality basis.

Progress has been painful and slow, but in today's enlightened society it should not be. In 1983 the Supreme Court upheld the constitutionality of Ireland's sodomy laws citing Article 41.3.1°, which states: "The State pledges itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack." Homosexuality was a criminal offence until 1993 when it was decriminalised thanks to pressure from Europe and action by the then Minister for Justice, Ms Máire Geoghegan-Quinn. The Equality Act 1998 included gay men and lesbians in its groups to be protected against discrimination. In 2001 the Law Reform Commission recommended equal taxation and inheritance rights for same-sex couples. Now, a long and lonely eight years later, we have this Bill.

I am glad that no solace has been given to those who want to discriminate against same-sex couples on the grounds of their differing moral or religious beliefs

As this is a Second Stage debate I want to refer to conscientious objection clause that others have mentioned. I am glad that no solace has been given to those who want to discriminate against same-sex couples on the grounds of their differing moral or religious beliefs. Any beliefs expressed in such a public way would be in breach of the Equal Status Act in any event. While Christianity, Islam or other religions can refuse to marry a couple in the eyes of God, no one should or can refuse to provide registration functions in a civil capacity or any services at a civil ceremony. Deputy Howlin dealt with that matter in some detail. Some Members in these Houses may table amendments and I hope they are given short shrift.

Speaking of religion, we could have come much further were it not for the views of religious organisations. For example, the Catholic church has long opposed homosexuality and lesbian, gay, bisexual and transgender rights. Cardinal Seán Brady of the Archdiocese of Armagh has gone so far as to threaten the State with legal action if it proceeded with the Civil Partnership Bill. He has stated that "those who are committed to the probity of the Constitution, to the moral integrity of the Word of God and to the precious human value of marriage between a man and a woman as the foundation of society may have to pursue all avenues of legal and democratic challenge to the published legislation". It is a pity that at this time the same moral integrity, probity and tenaciousness was not put into tackling the systematic abuse by those in the institution of the Catholic church.

However, let us give credit where it is due. I was not in a position to contribute to statements on the Murphy report, but I welcome Archbishop Martin's unequivocal statements regarding those who have questions to answer. I was also happy that Cardinal Brady this week said that he was shocked and ashamed by details of what happened in the Dublin Archdiocese. He apologised to all those who were hurt and extended the apology to all the people of Ireland that the abuse was covered up to protect the reputation of the Church. He said:

I am deeply sorry and I am ashamed... No one is above the law in this country. Every Catholic should comply fully with their obligations to the civil law.

This obligation to the civil law by Catholics should also apply to any civil laws passed in this House and no obstruction should be put in the way of bringing civil marriage into Ireland. The same empathy and concern for shown for sexual abuse victims this week should also extend to the other victims in society. Deputy Cuffe spoke of our brothers and sisters and other family members who were born with homosexuality, bisexuality or transgender. I believe that is the way they are born and that should be respected. Everyone should be equal under the eyes of the State. If a person is born with a certain inclination, that should be respected. Unfortunately it has not been respected under the eyes of the church and has put pressure on those who are Catholic legislators to be obstructionist. In that context the bible quotes Jesus as saying 'Render unto Caesar the things that are Caesar's, and unto God the things that are God's'. If people believe that same-sex marriage is wrong in the eyes of God, let not the church marry people under the eyes of God. However, the State is different and people should have the right to be equal under the eyes of the State if we value our brethren. Therefore it is not hypocritical for the church to take a more Christian view. I believe it is a truly Christian thing to do.

As I stated earlier I welcome the Bill, but it should be a short-term sticking plaster. How quick it is improved upon depends on the level of basic respect and charity shown by those whose religious convictions lead them to believe that homosexuality "the way people are born" is somehow wrong. The question also remains as to whether our society is mature enough to amend our Constitution to allow for same-sex couples to marry in the eyes of the State. We have come a long way on this matter and much more needs to be done. At this stage the people are sufficiently mature and human to allow for same-sex marriage. Whether people are given such a choice in a referendum very much depends on political will. Whatever constitutional issues exist can be overcome if there is the political will. I urge all elected representatives in the Dáil and Seanad to press for further progress to introduce same-sex marriage as quickly as possible.



Catherine Byrne T.D.
(Fine Gael)

I welcome the Bill, which has been a long time coming. The road to equality for cohabiting couples, and for the gay and lesbian community in Ireland has been a long one, and this is another important step in the right direction. Getting to this stage has been a tough battle and, for me, it represents a watershed in Irish society.

I welcome the Bill, which has been a long time coming. The road to equality for cohabiting couples, and for the gay and lesbian community in Ireland has been a long one, and this is another important step in the right direction.

There has been considerable debate and protest about this Bill, and we need to clarify that this legislation is about giving legal recognition to cohabiting couples of same sex and of opposite sex, and allowing for the registration of civil partnerships as well as home protection, succession and pension rights.

When we look at the current system, and the lack of real recognition given to cohabiting couples by the State, we have to admit that elements of this Bill are ground-breaking. It makes great advances as regards protections for cohabiting couples, which are long overdue. Modern Ireland is a very different place and cohabitation has become the norm. There are currently more than 120,000 cohabiting couples in Ireland but legally, they have very few rights. These men and women have little or no legal protection when it comes to the break-up of a relationship or death of a partner. That is why it is so important to legislate for civil partnerships. It will help to resolve complex legal issues which face many cohabitants, whether they are same-sex or opposite sex. It will help them to regulate their financial affairs and benefit from pension schemes in respect of their civil partners, which was only ever available to a spouse in the past. The Bill also gives civil partners protection under domestic violence legislation, which is a very welcome addition.

When we look at the current system, and the lack of real recognition given to cohabiting couples by the State, we have to admit that elements of this Bill are ground-breaking.

While I commend this Bill for what it sets out to achieve, I believe it also neglects

some very important aspects of civil partnership. Although the Bill will give a surviving civil partner the same succession or inheritance rights as a spouse, it does not address the issue of friends or siblings living together and does not give them any legal protections. This is a lost opportunity to help many family members to sort out complicated financial affairs. To give one example, there are many elderly siblings sharing a family home in this country without any proper legal claim over the property. This is especially relevant in rural areas, where farms are passed down through generations and the names on the deeds may never have been changed. There have been cases in which the death of one sibling has left major uncertainty about inheritance and ownership. This needs to be regulated in order to avoid bitter legal battles between relatives over property.

The UN Commission on Human Rights has voiced its concern about the lack of detail concerning the tax and social welfare implications of this Bill. I understand the Bill will allow cohabiting couples to avail of the same legal rights and entitlements as married couples in the areas of taxation and social welfare. However, this is not a money bill, and therefore separate legislation is needed in the form of new finance and social welfare Bills to give a legal basis to the new tax and social welfare entitlements for couples in civil partnerships. There can be no delay in implementing this legislation. These people have waited long enough.

The Bill does not refer in any real way to the custody and guardianship of children of cohabiting couples. There is no legal certainty regarding where these children stand if their parents split up and maintenance is to be paid, or if a parent dies. The majority of these children are in loving homes and their happiness and welfare must be a priority. This is a complex area which needs to be dealt with and which will throw up a wide variety of problems for children and parents in years to come if their status is not addressed in a legal context now.

Although this Bill is not about marriage, I can understand the argument made by many different interest groups for same-sex marriage. Many people feel the provision of civil partnership does not go far enough, and this is frustrating for many couples who love each other and feel this Bill does not grant them full equality through marriage. However, the Bill is a legal text. Sadly, it does not concern itself with feelings, love or the commitment made by one person to another. When it comes to love and commitment, who am I, and who are we in this House, to judge how people live their private lives or what is deemed to be acceptable? We are all entitled to our privacy and cohabiting couples in committed same-sex relationships deserve as much respect as heterosexual couples.

It is important to realise that the Bill is a major step forward in recognising the increasing number of same-sex couples in Ireland.

It is important to realise that the Bill is a major step forward in recognising the increasing number of same-sex couples in Ireland. I do not agree with the claim that this Bill only goes halfway towards equality for gay couples. Given the fact that this

country that has traditionally been very conservative about homosexuality, we must take one step at a time while ensuring that equal rights are always at the top of our agenda. Countries such as Sweden, Norway, Belgium and the Netherlands introduced civil partnerships a number of years before civil marriage. This happened gradually, and has been very successful.

Some people feel strongly that the failure to introduce same-sex marriage in the Bill is discrimination. I wish to make it clear that I and the Fine Gael Party do not support discrimination in any form, nor do we support any measures which would allow discrimination and marginalisation to exist in our society. Furthermore, I do not agree with people who say the Bill undermines the institution of the family and the values surrounding having children. They need to realise that it is not who we love but how we love that is important.

I recently met a man who had lost his life partner. They had been together for more than 30 years. Sadly, the man's partner had a massive heart attack and was rushed to hospital. At his bedside, the man asked whether he had the legal right to switch off his partner's life support machine and was told he did not. A long-lost relative had to be found in Australia and brought home to make the decision that this man's partner, a man with whom he had shared his life, his business and a loving relationship, had no right to make.

If the Bill is passed without amendments and without including the missing aspects I have just outlined, it will deny cohabiting couples many of the basic human and civil rights that I as a married woman enjoy. Therein lies the real inequality.

Debate adjourned.

2.1.2 2ND STAGE DEBATES PART (II): 21ST JANUARY 2010

The 2nd Stage debates continued in the main Dáil Chamber on the 21st January 2010. These debates can be found on the Oireachtas website at



Michael Fitzpatrick T.D.
(Fianna Fail)

I welcome the opportunity to speak on this ground breaking legislation, which shows that Fianna Fáil delivers on its promises when it is in government. My party's commitment to civil partnership was set out in its pre-election manifesto and affirmed in the 2007 programme for Government. This Bill has far-reaching consequences for same-sex couples. For the first time in Irish law, gay and lesbian relationships will be given official recognition. This new legal status is accompanied by a range of rights and responsibilities, including pension rights, succession rights, maintenance obligations and protections in the event of domestic violence. It would be unacceptable in a modern society to continue to ignore same-sex relationships. The over-riding aim of the Bill before the House is to bring about positive changes to same-sex relationships, on profound and practical levels. Some of the provisions in the Bill that have received less publicity are also important. The Bill will introduce financial protections for cohabiting couples in same-sex and opposite-sex relationships. It will make a redress scheme available to unmarried opposite-sex couples and unregistered same-sex couples, so that financially dependent people can enjoy some protection at the end of a long-term cohabiting relationship. The cohabitants' scheme will put in place a legal safety net for people in long-term relationships who may otherwise be financially vulnerable at the end of a relationship, whether through break-up or bereavement. The Bill gives legal recognition to cohabiting agreements, thereby enabling cohabitants to regulate their joint financial and property affairs.

It would be unacceptable in a modern society to continue to ignore same-sex relationships. The over-riding aim of the Bill before the House is to bring about positive changes to same-sex relationships, on profound and practical levels.

It provides legal certainty on the status of cohabitation agreements made by couples who wish to regulate their financial and property affairs but do not wish to marry or enter into a civil partnership and do not want to be included in the redress scheme. These provisions are particularly important in light of the recent surge in cohabiting couples, which have become the fastest growing form of family unit in the State. Currently, cohabiting couples lack a number of legal protections even where they have been together for years. Contrary to common belief, common law or de facto marriage has no legal standing in Irish law and does not offer legal protection to either partner in the event of a break up of a relationship or the death of a partner.

Contrary to common belief, common law or de facto marriage has no legal standing in Irish law and does not offer legal protection to either partner in the event of a break up of a relationship or the death of a partner.

The civil partnership provisions raise complex legal issues. The Bill has been carefully framed to balance any conflict between the Constitution's special protection for marriage and the rights enshrined in Article 41. Certain material distinctions between civil partnership and marriage therefore remain. For example, there is no provision for the adoption of children by civil partners or for religious ceremonies as the basis for registration of a civil partnership. Were the provisions of the Constitution not addressed, the Bill would have been vulnerable to legal challenge.

The Bill will improve the rights of same sex couples without weakening anyone else's.

The Bill will improve the rights of same sex couples without weakening anyone else's. The Minister for Justice, Equality and Law Reform put it best when he stated: 'This Bill takes nothing from anyone but what it gives is profound and is positive.' Calls have been made to include a clause in the legislation to provide for freedom of religious conscience. This would be a broad provision which would give an absolute right to discriminate against people who are registered as civil partners. Providing such an exemption could lead to serious unintended consequences and the withholding of services. A bank could refuse to allow a couple to operate a joint account, a restaurant could refuse to take a booking for two men or a person may be unable to visit his partner in a hospital run by a religious order. As such outcomes would be contrary to public policy, an exemption based on freedom of conscience could not be contemplated.

Fianna Fáil is the republican party and it is our aim to build a republic founded on the ideals of equality and dignity of every member of the human family. My party stands for an open and inclusive society.

Fianna Fáil is the republican party and it is our aim to build a republic founded on the ideals of equality and dignity of every member of the human family. My party stands for an open and inclusive society. Over the past two decades, as Irish society has become more open, Fianna Fáil has been to the forefront of reforming legal discrimination on the basis of sexual orientation. In 1989, a Fianna Fáil Government steered through the Oireachtas the Prohibition of Incitement to Hatred Act 1989, which makes it an offence to distribute material or use words and behaviour that is threatening or abusive or likely to foment hatred against persons on certain specified grounds, including sexual orientation. This principle was subsequently extended into the area of broadcasting. Fianna Fáil brought forward the Criminal Law (Sexual Offences) Act 1993, which finally brought an end to the unfair criminalisation of homosexual practices. The Employment Equality Act 1998 and the Equal Status Act 2004 made it an offence to discriminate against people in employment or in the provision of goods and services on a range of grounds, including sexual orientation. Through these legislative means the State has clearly indicated that individuals are entitled to receive fair and equal treatment, whether they are gay, lesbian or heterosexual.

As the law stands, same sex couples have no way of formalising their relationships in the eyes of the State or society. They obtain no benefits from our tax, welfare and inheritance regimes and cannot assume legally binding obligations to one another. These significant lacunae will be addressed by the Bill before us

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Chris Andrews T.D.
(Fianna Fail)

I am delighted to have an opportunity to speak on this Bill. I am proud to be a member of a party which has advocated legal reform in this area. Credit is due to the Minister, Deputy Dermot Ahern. The Bill will have no negative impact because it builds on previous equality legislation introduced by Fianna Fáil. It deals with the issue of freedom of conscience and our legislation is sufficiently robust to address any issues that arise.

The Bill will have no negative impact because it builds on previous equality legislation introduced by Fianna Fáil.

I have met the Irish Council for Civil Liberties and the Gay and Lesbian Equality Network to discuss the Bill. It is clear that both organisations recognise it as progressive legislation. The Government's efforts to bring the Bill before the House demonstrate that we remain active on social issues even while we continue to focus on our economic and financial problems. The media think that everything starts and ends with finance but a significant body of legislation on other matters is being progressed.

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Irish society and the traditional family unit have changed dramatically over the past 20 years. A one size fits all approach can no longer be taken because provision must be made to protect people in loving same sex relationships and couples who choose to cohabit rather than marry.

Irish society and the traditional family unit have changed dramatically over the past 20 years. A one size fits all approach can no longer be taken because provision must be made to protect people in loving same sex relationships and couples who choose to cohabit rather than marry.

According to the excellent brief prepared by the Oireachtas Library and Research Service, cohabiting couples are the fastest growing form of family unit. The 2006 census revealed that cohabiting couples account for 12% of all family units, compared to 8% in 2002. The number of cohabiting same sex couples is also on the rise, having grown from 1,300 couples in 2002 to more than 2,000 in 2006. The law as it stands does not give any legal protection to cohabiting couples, even where they have lived together for many years. Many couples may not realise their vulnerability until they experience break up or the death of a partner. This Bill seeks to address these concerns. Given past difficulties in Irish society, it is difficult to understand why anybody could object to this positive proposal, the overarching objective of which is to encourage and support loving relationships. It is irrelevant whether those relationships are same sex or otherwise.

The Bill will rectify the unacceptable situation where a broad section of society was thus far unprotected legally. For same sex couples it establishes a new status of relationship which is legally recognised by the State. It provides for a scheme of registration of civil partnerships for same sex couples, together with a range of rights and duties following registration to include shared home protection and succession and pension rights. It will also allow cohabitees, whether opposite or same sex, to regulate their own financial matters and will provide for a limited redress scheme where a cohabitee is left economically dependent. Under the Bill, legislation relating to mental health, immigration and domestic violence, for example, will be amended to ensure the same provision for same sex partners as for spouses in opposite sex marriages.

Although the Bill is extremely progressive, I acknowledge that it does not offer an equivalent to marriage for same sex couples and, for this reason, it will not satisfy everybody. However, it would be churlish not to acknowledge that it is a major step forward

Although the Bill is extremely progressive, I acknowledge that it does not offer an equivalent to marriage for same sex couples and, for this reason, it will not satisfy everybody. However, it would be churlish not to acknowledge that it is a major step forward which, for the first time, offers recognition and protection to those in same sex relationships. That said, the legislation should include greater reference to children of civil partners. I accept that there are constitutional barriers, as referred to by other speakers, which must be addressed. I am certain, as sure as night follows day, that legislation will be introduced in due course which offers children of same sex couples the same status and protection as those of opposite sex relationships. In the meantime I am concerned that children of same sex couples are left somewhat isolated and vulnerable as a consequence of this omission in this legislation. However, it is not appropriate to deal with these issues in this Bill. These concerns will inevitably be addressed in future legislation.

I am certain, as sure as night follows day, that legislation will be introduced in due course which offers children of same sex couples the same status and protection as those of opposite sex relationships.

Since the Bill was flagged some time ago, I have met several couples in loving same sex relationships and found that they were, broadly speaking, pleased with the proposals. Many gay people had been of the view that this type of legislation would never be introduced. I spoke recently to a friend raising a child with her same sex partner and she was extremely sceptical that these measures would become law. I will be pleased to send her the transcript of today's debate. Many gay and lesbian people were not confident this day would ever come. In this context it is important to acknowledge the commitment of the Government not only to economic issues but to social policies. I warmly welcome the Bill, which represents an enormous step forward for our society.



Alan Shatter T.D.
(Fine Gael)

Like other Deputies, I welcome the publication of this Bill and the opportunity for a serious and considered debate on its provisions. Although I broadly support its intentions, I propose to address some of the issues that have given rise to public debate and controversy outside the House and to outline my concerns with the Bill as drafted. There is a myriad of legal anomalies derived by the Bill that may result in its provisions not impacting as beneficially as may be intended by the Government and the Deputies speaking in favour of it. The Bill highlights in different ways the oddity of many of the family law provisions that currently apply to married couples and the need for reform. It is ironic that when enacted this Bill will clarify areas of law with regard to gay couples that are not addressed by legislation in respect of heterosexual couples.

There is broad support from the gay community for the legislation, but there are some who are disappointed that it refers to civil registration and civil partnership as opposed to marriage. If, instead of using the formula 'civil partnership', the Bill referred to marriage

simpliciter, there would have been a serious risk of a constitutional challenge to the legislation and therefore a substantial delay in its enactment.

I will begin by addressing the main issue that resulted in demonstrations outside this House following the publication of the Bill before Christmas. There is broad support from the gay community for the legislation, but there are some who are disappointed that it refers to civil registration and civil partnership as opposed to marriage. I accept that the Minister had to address the issue in the way he has because of Article 41 of the Constitution which protects the family based on marriage. If, instead of using the formula 'civil partnership', the Bill referred to marriage *simpliciter*, there would have been a serious risk of a constitutional challenge to the legislation and therefore a substantial delay in its enactment. Alternatively, that constitutional challenge might have come following the enactment of the Bill and its signature by the President, or the latter may have decided to refer it to the Supreme Court. We might have had litigation going through the High Court and Supreme Court and one or two years would elapse before clarity could be applied to the legal situation. The Minister therefore had no choice other than to use the formula in the legislation.

In other words, the relationship is marriage in everything but name.

Those in the gay community who are concerned that their relationship is not referred to as marriage should note that in practical terms, the provisions that apply to the celebration of a civil marriage ceremony between a heterosexual couple are exactly the same provisions which apply to the celebration of a civil partnership ceremony between a gay couple. In other words, the relationship is marriage in everything but name. The Bill plays with semantics in the hope it is constitutionally on the right side of Article 41. It is not beyond possibility that when the legislation is enacted, somebody may challenge its constitutionality. If so, I hope that challenge is unsuccessful. I hope it does not arise because it will create difficulties of a temporary nature for people. I welcome the fact that a gay couple in a permanent, intimate relationship can have afforded to them under the legislation recognition of that relationship such as that which now extends to many gay couples in other countries across the world.

I welcome the fact that a gay couple in a permanent, intimate relationship can have afforded to them under the legislation recognition of that relationship such as that which now extends to many gay couples in other countries across the world.

There are, however, anomalies in the legislation that bear some reference. For example, section 105 is headed 'Nullity of Civil Partnership'. As well as dealing with certain aspects of nullity that apply to married couples that form part of existing statute law, section 105 sets out all the grounds on which a civil partnership can be annulled. It was in or about 1975 that the first report was published detailing the reason that we need legislation on nullity for heterosexual couples. The irony is that large parts of the nullity civil law applied by the High Court and Circuit Court to heterosexual couples is law as prescribed by the matrimonial courts of the Church of Ireland and inherited by the civil courts as part of Church of Ireland canon law all the way back to 1870.

Since the foundation of the State, this Parliament has never enacted a single statute setting out clearly to the courts the grounds on which a marriage between heterosexual couples can be annulled. Over the years those grounds have changed and varied as the Judiciary has sought in the pre-divorce era to develop them to facilitate couples to extricate themselves from relationships that were clearly a disaster from day one until more recently when the Supreme Court was perhaps trying to restrain the enthusiasm of judges in lower courts from granting annulments in the civil area. They are less sought now that divorce is available. I say to the Minister that I welcome the fact there is clarity in the Bill as to the circumstances in which a civil partnership may be declared a nullity. It is about time the Government recognised that there should be similar clarity for the vast majority of the heterosexual community who enter into civil marriages. It is extraordinary. We must be the only country in Europe which has no legislation that details clearly all of the circumstances in which a civil, heterosexual marriage can be annulled.

A particular anomaly relates to something Deputy Chris Andrews quite correctly referred to. This applies to both gay couples and to cohabitees. The Bill is entirely blind and in denial when it comes to children. There are cohabitees, both gay and heterosexual, in long-term relationships who have children, and who live in such relationships, have done for decades and will continue to do so. If they are cohabitees, following the enactment of the Bill they may qualify for various protections in the law that they can utilise. In the context of gay couples, the legislation prescribes all sorts of legal protections, extends various important statutory provisions to them and sets out the legal remedies available when the relationship breaks up. With regard to cohabitees, equally, it sets out the legal arrangements that apply and the orders the courts can make when the relationship breaks up.

The Bill is apparently in denial that there are gay couples who have children. One may have a gay couple who has gone through a civil partnership registration and within the relationship there might be a child from a previous relationship that they both parent for many years. An issue arises about whether the non-

biological parent has any obligations to that child in the same way as in a marriage a husband may be regarded as having obligations to a child fathered by someone else prior to the marriage taking place.

There is nothing about children. The Bill does not recognise that when a relationship of cohabitants breaks up, provision may have to be made for children just as there is following the break up of a marriage. The Bill is apparently in denial that there are gay couples who have children. One may have a gay couple who has gone through a civil partnership registration and within the relationship there might be a child from a previous relationship that they both parent for many years. An issue arises about whether the non-biological parent has any obligations to that child in the same way as in a marriage a husband may be regarded as having obligations to a child fathered by someone else prior to the marriage taking place.

The Bill, in the same way as the Government and its various predecessors, is in denial about the availability of methods of assisted reproduction. We have no legislation in this House on this area. We had a major Supreme Court judgment on the matter prior to Christmas involving a heterosexual couple, but we also had a Supreme Court judgment only in December on a dispute between a gay father whose sperm was used to facilitate a party to a lesbian relationship to have a child.

I cannot understand the proposed legislation. The Government has had the wisdom to bring the legislation before the House. We have had a myriad of family law legislation that recognises that when marriages break up and when the courts are addressing the consequences of the break up, they must not only provide protection for spouses, particularly dependent spouses, but also for dependent children. Why does the legislation ignore the position of dependent children? This is not a political critique. This is simply an area that the legislation does not address, but which, as Deputy Andrews indicated, was ably and succinctly addressed by the Oireachtas Library and Research Service.

Under the heading 'Parental Rights' on page 16 of its brief it states:

The Bill contains few references to children of civil partners or cohabitants, and makes no provision as to custody, guardianship, adoption or affiliation. [I presume 'affiliation' means supports.] In general, Civil Partnerships are treated in terms of the partners only.

It further states:

Similarly, the provisions on dissolution do not generally require the court to consider whether proper provision has been made for any dependent children. Section 127 of the Bill sets out the general considerations to be taken into account when making maintenance or other orders on dissolution. [That is dissolution of a civil partnership.] The clearest of these is 'the rights of . . . any child to whom either of the civil partners have an obligation of support'.

What objection is there to recognising reality? Are we trying to pretend that gay couples whose relationships break up do not have children? We have an obligation to ensure that those children are treated equally to any other child in the State.

In other words, the court must have regard to that, but the court can make no support order for such child. It can only make a support order for the partner. If we take the contrast, when a decree of dissolution or divorce of a marriage is granted, the courts have an obligation to make 'proper provision' under the Family Law (Divorce) Act 1996 for spouses and children. Under that legislation the courts have an obligation to make 'proper provision', the same phraseology, for the gay partner who requires it, but there is silence as to children. What objection is there to recognising reality? Are we trying to pretend that gay couples whose relationships break up do not have children? We have an obligation to ensure that those children are treated equally to any other child in the State.

No child should ever be discriminated against because of the circumstances of their parents or because of the nature of the status of their parents or their parents' relationship.

The committee of which I am a member has been labouring for two years on the rights of children. The Minister of State, Deputy Barry Andrews, is a member of the committee and the Minister, Deputy Dermot Ahern, has dropped in two or three times but beyond that we have not seen him. I appreciate he has a lot of other obligations. I do not mean that in a snide way but if he had been at those meetings more comprehensively he might have understood that. We intend to propose a constitutional amendment to ensure that all children are treated equally but, at the same time, we are introducing legislation in this House which is intended not to treat equally children of gay civil partnerships and cohabittees. I do not understand why. Is there a fear that there would be some public backlash because we acknowledged reality? People engage in a myriad of different relationships of various natures and children in all circumstances should be treated equally. No child should ever be discriminated against because of the circumstances of their parents or because of the nature of the status of their parents or their parents' relationship. We will come back to this on Committee Stage, I hope, and I hope the Minister will consider addressing the issue.

I wish to refer to the provisions relating to cohabittees. There is a need to provide for recognition given that, when people cohabit in relationships and the relationship breaks up, there are often issues that have to be addressed which are similar to those which have to be addressed when marriages break up. I can only describe some of what is contained in the legislation addressing this as bizarre. It will give rise to

extraordinary court cases of great difficulty and will result, I believe, in the provision of minimal real protection for the people concerned.

Section 170(1) states: 'a cohabitant is one of 2 adults (whether of the same or the opposite sex) who live together as a couple in an intimate and committed relationship' ó this is the definition. Section 170(3) states: 'For the avoidance of doubt a relationship does not cease to be an intimate relationship for the purpose of this section merely because it is no longer sexual in nature.' Let us assume that after living together for five years, the relationship breaks up and a cohabitee ó we will presume it is the female cohabitee because most often that is the person who is at most economic disadvantage ó goes to the courts to look for some sort of support order or property adjustment order under this provision. What will happen? The other cohabitee ó the man ó who does not want to make any provision, will want to ask the court to examine the minutiae of the intimacy that they engaged in. Will we have judges being asked to examine the number of occasions per week, month or year in which people engaged in sexual intercourse? Will men and women have to give explicit detail under cross-examination of the nature of their sexual interactions? Will they be put through this sort of degradation? Will we leave it to the subjective assessment of judges to determine what level of sexual interaction amounts to sufficient intimacy and at what point need it stop?

We are told in subsection (3) that sexual relations, seizing of themselves, would not exclude a person. It would have to be first established that there were some intimate relations. What if one was intimate for four years, not intimate for three years and then the relationship broke up? Does one qualify? If it was the other way around and one was intimate for two years and continued living together for four years, does one qualify? I have no idea, and neither will anyone else. The other criteria in section 170 are quite reasonable but I ask the Minister to reconsider the issue of the duration of the period people have resided together.

I have said all along that the legislation ignores children. It does a very weird thing in regard to cohabitees. One is a qualified cohabitee if one was in a relationship of cohabitation with another adult for two years and have given birth to a dependent child. However, if one has not had a child, one does not qualify unless the couple have been living together for three years. Why the difference? The fact one has a child under this legislation gives one no entitlement to claim support for the child in any case. Why introduce this? I do not understand it.

There is a decision of the High Court with regard to a couple who lived together for some years, a child was born and they broke up. Under existing law, which is defective, the mother sought adequate provision by way of a lump sum for the child. The court held that, for constitutional reasons, because the father was still married, though he and his wife had not lived together for many years, one could not provide a lump sum for the benefit of that child but one could do so for marital children in similar circumstances.

The law in this area is riddled with problems and this Bill will exacerbate it. In the context of children born outside marriage to couples who resided together, or even just generally born outside marriage, this legislation affords an opportunity to address the

anomalies that have arisen as a consequence of a judgment delivered by Mr. Justice Sheehan in the McE case ó I should make a declaration of interest because I appeared for one of the parties in the courts in that case. That judgment has turned the law back substantially from where we thought it was, and it needs to be addressed in this Bill.

To conclude, all of the provisions in sections 170 and 171 relating to cohabittees need very substantial rewording and consideration. All the focus on this Bill has essentially been on the provisions relating to civil partnership and gay couples but there are enormous anomalies with regard to couples cohabiting. There is a failure to provide the proper protection that is necessary when cohabiting relationships break up. For some reason, instead of ensuring that when they do break up, to use the phrase of the legislation in other areas, proper provision is made for the dependent person, there is a sort of redress scheme which ensures, and is designed to ensure, that only some assistance is given to someone who is economically dependent. That creates an anomaly. If a man and a woman live together for 30 years, most of the assets are in the man's name but the woman has been intimately involved in that man's family life and business life, and they have cohabited. If she has some degree of income of her own but the man is left with ownership of substantially more of the property, under these provisions, the woman will get nothing.

The final problem is, of course, that none of these provisions apply to anyone whose relationship under cohabitation breaks up before the Bill commences. That is a little time-bomb ticking away that could create disaster in the lives of many people. My suggestion is that this provision should be amended to ensure these provisions and amended provisions apply, in so far as there is any value in them, as and from the date of publication of the Bill rather than as and from the date of the Bill's commencement. Otherwise, we could have hundreds of individuals very badly affected by some persons extricating themselves from relationships to avoid meeting their financial obligations to others with whom they have lived for many years.



Martin Mansergh T.D.
Minister of State at the
Department of Finance
(Fianna Fail)

This is landmark legislation, which I welcome. The Minister for Justice, Equality and Law Reform is justified in claiming it as an example of civic republicanism at work. I believe he can say this with more conviction than might have been possible in the past. As in 1993, when homosexuality was decriminalised, he has decided to go the whole way, with the obvious caveat of the status of marriage. Other than that, it is a thorough-going piece of legislation.

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One could also say that, as in 1993, the legislation is a demonstration of the benefits of coalition Government. Undoubtedly, the decriminalisation of homosexuality was pushed up the agenda by the formation of a coalition with the Labour Party. Without detracting from the initiative and policy of my own party and Minister, the Green Party is entitled to a sense of co-ownership of this legislation. My belief is that this legislation provides the substance of equality, though the status of marriage is missing. There are two groups of critics. On one hand are those from the gay and lesbian community who complain that it does not include conferral of the status of marriage. On the other side critics say the legislation, to all intents and purposes and in substance, amounts to marriage and they oppose it for that reason.

There is common ground in our understanding of the Constitution that a constitutional referendum would be required to introduce the status of same-sex marriage. It is better to take this step now.

There is common ground in our understanding of the Constitution that a constitutional referendum would be required to introduce the status of same-sex marriage. It is better to take this step now. In the successful divorce legislation of the mid-1990s, rather than the unsuccessful legislation in 1986, all the ground work had been done in the Judicial Separation and Family Law Reform Bill introduced by Deputy Shatter in the late 1980s, in which details of substance were largely dealt with. Divorce became a form of final marital separation, leaving only limited modalities to be addressed. If a decision is made by the people at some point in the future the vast majority of practical questions will have been dealt with in this legislation, such as in the areas of taxation and inheritance.

The argument was made that divorce would alter the nature of marriage as a life-long commitment. The people listened to that argument but decided, albeit by a very narrow majority, to override it. In a registry office in England recently I heard it stated that marriage under the laws of that state was between one man and one woman. This dealt not only with same-sex marriage but the issue of polygamy, which is permitted by certain religions.

A view which has some backing from the wisdom of ages is the one that marriage as we understand it today is probably the best framework for procreating and rearing children. A same-sex marriage or partnership cannot procreate children. I am aware that children of heterosexual marriages may endure appalling circumstances and that children of same-sex partnerships may have a near-ideal upbringing but I am talking about the average situation. It will ultimately be for the people to decide if the differences which exist are vital and overriding factors or whether the status of

marriage should be conferred on same-sex couples. Under the 1938 Constitution such fundamental socio-moral issues have generally been reserved to the direct judgment of the people as a matter of direct democracy, as opposed to the representative democracy which deals with most other questions.

Deputy Shatter dealt with the issue of children where there is a separation involving a same-sex couple, which I am sure will be teased out on Committee Stage. In such a situation the primary responsibility of the biological parent is clear and one can imagine very few situations where responsibility for the child would be conferred on the non-biological member of the couple.

All of us on the other side of the fence will have received correspondence and e-mails opposing this legislation, in the vast majority of cases on religious grounds. There has been reference to Sodom and Gomorrah and I reread the verses this morning. The iniquity of the inhabitants of Sodom and Gomorrah is not actually closely specified. The word 'sodomy' has a certain meaning but there is nothing in the Bible to specify the conduct or relationship to which it normally refers. We are living in the aftermath of the disastrous earthquake in Haiti and, notwithstanding the use of the phrase 'acts of God' by insurance companies we are long past thinking of natural disasters as some form of divine retribution for wickedness or iniquity. Some non-natural disasters can be linked to bad human behaviour but that is a separate issue.

We have been reminded by a certain Northern saga in recent weeks of a passage in Leviticus but, except for such things as the Ten Commandments, we rarely assign a lasting validity to or are guided by the Mosaic law of a nomadic people of thousands of years ago. When the civil partnership legislation was published I happened to be in church the following Sunday and the verse of the lament of David for Jonathan was read out, which I would like to read into the record. The verse reads:

I am distressed for thee, my brother Jonathan; very pleasant hast thou been with me, thy love to me was wonderful, passing the love of women. How are the mighty fallen . . .

If one studies the Bible closely, one will note that Jonathan was married. No specifics are given of the precise nature of the relationship between Jonathan and David but if one is to refer to the Old Testament, that passage is at least as striking as the passage on Sodom and Gomorrah. Therefore, one cannot draw any definitive conclusions. I am not aware nor have I seen quoted anywhere any statement by Christ on the subject of gay relationships. They are statements on adultery and so on. There are one or two passages from St. Paul but they are not stronger than his inveighing against fornication in general and various types of non-regular relationships. At one point he said it would be better to be celibate but if one has to, then get married.

Some proposals have been made for what would in effect amount to discrimination, namely, that offices of the State should be allowed to withhold or not participate in civil partnership ceremonies. My view

is that if one takes up a public appointment, one must carry out the duties that the law prescribes and those duties will change from time to time as the law changes. We should not give sanction effectively to homophobia for conscientious reasons.

The issue is nonetheless one on which churches have taken what can only be described as a very strong position; the Catholic position is well known. We know that the issue of homosexuality has been hugely divisive in the Anglican communion. Most of us look on in horror where Sharia law in other parts of the world leads young men, in particular, to be executed for homosexual acts.

Some proposals have been made for what would in effect amount to discrimination, namely, that offices of the State should be allowed to withhold or not participate in civil partnership ceremonies. My view is that if one takes up a public appointment, one must carry out the duties that the law prescribes and those duties will change from time to time as the law changes. We should not give sanction effectively to homophobia for conscientious reasons.

Like Deputy Flanagan, I would have some regret concerning the matter to which he referred, but I also accept the argument that perhaps this is not the appropriate context to address it. Perhaps another context should be chosen to address issues regarding the situation of siblings, they being a brother and sister who have a certain status. I refer in particular to the inheritance tax position of people who have lived together for a long time in a sibling but non-intimate relationship. There is a loose end in this respect that may need to be tidied up. When I spoke on this matter on a previous occasion, the Leas-Ceann Comhairle took grave exception to any equation of siblings with same sex partners. So be it, and I respect that argument but that area needs to be examined. The Colley report did refer to it.

This is a very important Bill and one that will be remembered as having been passed by this Dáil.

I look forward to a detailed and intensive debate on Committee Stage. This is the type of legislation for which sufficient time should be allowed. I am sure the Minister will be open to constructive suggestions for its improvement and amendment in this and in the other House. This is a very important Bill and one that will be remembered as having been passed by this Dáil.



Ciaran Lynch T.D.
(Labour)

Some 17 years ago this House decriminalized homosexuality in Ireland and today we are debating legislation to give legitimacy to those relationships in a proper civil code. This debate marks a coming of age and maturity of a modern Ireland. In essence, this Bill is a milestone, as Ireland moves from a theocracy to a democracy. It was interesting to listen to the Minister of State, Deputy Mansergh, metaphysically struggling with aspects of the Bill. I recall a time when Ministers brought legislation to Archbishop McQuaid for his approval before it was passed in this House. I would not envy the task of a Minister if he had to bring this Bill to Archbishop McQuaid and the response to it he would likely get. This legislation is a milestone and I am pleased Fianna Fáil in particular and the Green Party have brought it forward.

This debate marks a coming of age and maturity of a modern Ireland.

It should be noted that it was the Labour Party in government that decriminalised homosexuality and that it was a Private Members' Bill introduced by my Labour Party colleague, Deputy Howlin, at the start of this Dáil term, that instigated this issue coming onto the legislative programme. I remember the Minister at the time gave a commitment to bring forward legislation in response to the Labour Party's Bill in 2007.

Therefore, I see merit in this legislation for those members of the gay community who cannot wait for a time when these circumstances change, particularly for gay and lesbian couples who need the protection of the law now, rather than the consolation of an ideal further down the road, irrespective of whether that be a constitutional referendum on this issue.

There are many contexts, interpretations and opinions about the Bill. There is a strong opinion that it is the gay community's aspiration to have full legal equality with their heterosexual peers, as that is as it should be. That is the policy of the Labour Party, as stated in this House and affirmed at our Labour Party conference. However, the best is often the enemy of the good. The introduction of full civil marriage for the gay community would require a constitutional referendum, as has been indicated by other speakers. This is the advice of the Attorney-General and our party's legal advice. At

present there is far from a majority of this House in favour of putting this issue to the people, let alone surety that such a referendum would be carried. While a criticism of this Bill might be that it is a stagist approach, I do not view that as a bad thing. Therefore, I see merit in this legislation for those members of the gay community who cannot wait for a time when these circumstances change, particularly for gay and lesbian couples who need the protection of the law now, rather than the consolation of an ideal further down the road, irrespective of whether that be a constitutional referendum on this issue.

I also see merit in the provision for a couple, one partner of whom is ill and the other who has no recognised rights as next of kin and is fearful of losing the family home or shared tenancy in the context of the legislation as it is currently structured. This Bill will provide for the rights of a survivor of a relationship to inherit the home in which the partners have lived all their lives. It will allow them to benefit on the same terms as their peers from their partner's hard work by giving them access to pension entitlements. All these measures are to be welcomed.

Another point I welcome is the nature of the scheme set out for gay and lesbian couples. At the beginning of this debate when Senator Norris first published his Bill there was much talk of allowing for non-conjugal same-sex unions, for example, two unmarried sisters who live in the same home and for other situations. This Bill makes quite clear that the parties to a civil partnership must be of the same sex and in a conjugal relationship. This is welcome because to put the committed, loving relationship of a gay or lesbian couple on a par with two siblings in terms of the standing offered to it in law was a fudge in the first instance and did not recognize the significance of those in gay relationships looking for proper legal protections in their relationships. We have yet to see tax and social welfare provisions to complement this legislation, but the Government has assured us these will reflect the principle of equality and will be introduced in the near future. We certainly hope so. It is important that these matters are ironed out when we come to Committee and Report Stages. It would be a dreadful pity if, this time next year when the Finance and Social Welfare Bills are going through the House, there are anomalies still hanging over that will mean the Bills need to be significantly redrafted. It is important that this Bill achieves its intentions and that when future Social Welfare and Finance Bills are introduced, as well as other matters relating to taxation for same-sex couples, we do not find ourselves in an ongoing redrafting process.

The Bill has comprehensively failed to deliver with regard to the children of individual parents in same-sex relationships. Deputy Shatter also mentioned this in his contribution. The Labour Party addressed this issue in its Civil Unions Bill by proposing a significant change in the law relating to children. Our legislation would have made the best interests of the child the primary criterion for the courts in family law cases; this would address a number of the points made by earlier speakers.

This Bill, however, fails the children of same-sex parents in several crucial ways. Any child of a parent party to a civil partnership will not be able to seek

maintenance from the non-biological parent and will have no rights of succession if the civil partner of the child's biological parent dies.

This Bill, however, fails the children of same-sex parents in several crucial ways. Any child of a parent party to a civil partnership will not be able to seek maintenance from the non-biological parent and will have no rights of succession if the civil partner of the child's biological parent dies. The non-biological parent, moreover, cannot seek guardianship or custody of the child during the lifetime of the biological parent. Bizarrely, civil partners will not be able to be considered for joint adoption of a child, although this is rendered nonsense by the fact that either civil partner, regardless of sexuality, may apply to adopt individually under current law. Thus, it makes no sense that an arrangement in which the stability of a couple relationship is offered to an adopted child is prohibited. This will also require significant and detailed examination on Committee and Report Stages.

I refer to the redress scheme for cohabitants. Although the issue of civil partnership has been the subject of much of the public debate on the Bill, the second part – namely, that dealing with cohabitants – will probably affect many more people, irrespective of sexuality. The scheme is a long-overdue update to Irish family law which was recommended by the Law Reform Commission several years ago. There will be a significant change whereby two people who are in a relationship and have been living together for three years, or two years where a child has resulted from the relationship, will automatically be termed qualified cohabitants. As a result, they will be conferred with a number of rights and duties.

This scheme [cohabitation] will provide legal protections to a large portion of the population.

This scheme will provide legal protections to a large portion of the population. The most recent available data note that there are 120,000 people in cohabiting relationships, a third of whom have children. The arrangement will offer particular protection to a group that is currently very vulnerable: stay-at-home unmarried partners, who are currently in a complete legal limbo. Part 15 of the Bill also allows qualified cohabitants to seek various remedies, such as maintenance, property and pension adjustment orders, provided certain conditions are met. A qualified cohabitant may also claim provision from the estate of his or her deceased cohabitant, subject to stated conditions.

One weakness of the Bill that the Minister might be willing to address is with regard to the rights of civil partners of whom one has become a qualified cohabitant since the civil union was formed. Dr. Fergus Ryan pointed out an anomaly in the legislation, which is that a property adjustment order or pension adjustment order in favour of a qualified cohabitant cannot be made in such a way as to affect the rights of a spouse or former spouse. Similarly, an order for provision from the estate of a deceased qualified cohabitant cannot affect the legal right of a surviving spouse. However, no

such safeguards apply where a qualified cohabitant is or was a civil partner. In effect, the court can make an order in favour of the qualified cohabitant even if these orders affect the entitlements of a civil partner. I ask the Minister to indicate in his closing comments whether he would be willing to consider an amendment to correct this on Committee Stage.

There is a separation between theocracy and democracy, and a civil partnership registration is a secular event, not a religious one. It should be well within the functions of registrars to perform this as a secular service.

The purpose of the Bill is to introduce equality into Irish society. However, this cannot be a type of equality that is separated into components or is based on only one Act. I listened to the Minister of State, Deputy Mansergh, talk about this earlier. A concern is beginning to surface whose motivation and intent I would question. I refer to the commentary on the possibility of adding a conscience clause to the Bill with regard to civil registrars who object to presiding over civil partnership registrations due to their religious or other convictions. It has been suggested that an opt-out clause be inserted for civil servants and others who are obliged to perform public duties in accordance with the law. To my mind, either the legislation guarantees equality or it does not. Whether a person is a member of a local authority or the HSE or is working for the State in a registrar's office, the law which will apply as a result of the passage of this Bill compels that person to carry out his or her duties. There should be no opt-out clause. If a person is a public servant, he or she has functions to perform. There is a separation between theocracy and democracy, and a civil partnership registration is a secular event, not a religious one. It should be well within the functions of registrars to perform this as a secular service.

The purpose of this Bill is to ensure that those who wish to have the responsibility of a civil union are provided with the right to do so. The success of the civil partnership Bill will be measured by how it resolves issues of property, inheritance and entitlement; how it gives recognition and a sense of place to those who are currently disenfranchised; and, ultimately, how we as society define ourselves and the type of Ireland in which we wish to live.

I and other speakers made mention of the phrase "gay community". Who are the gay community? They are family members, relatives, work colleagues, colleagues in the House, and members of our society who should have the same legal entitlements as any other member. When this issue was being debated previously in the House, in the form of a Labour Party Private Members' Bill, my children asked me when I returned from the Dáil at the end of the week what I had done in work. When I explained to them that we had been debating the Civil Unions Bill, their response was that surely such legislation was in place already. Irish society has moved on; the children of Ireland have moved on. This House is playing catch-up with the type of modern society in which most Irish people now live.

It is natural and necessary that people form unions with each other. This Bill recognizes the rights and responsibilities that must be established to cater for those relationships that are currently outside the existing legislative framework. People in relationships wish for, and are entitled to, the legal security that can be granted by the State. Nobody should be deprived of that right because of his or her sexuality.



Sean Barratt T.D.
(Fine Gael)

I listened to the contributions of previous speakers and I wish to refer to the points made by Deputy Shatter regarding what he rightly pointed out should be improvements to this legislation, with particular reference to the rights of children. In statistics supplied by the Central Statistics Office, I came across a startling fact on the increase in the number of cohabiting couples in the ten-year period between 1996 and 2006. In 1996, there were 34,300 cohabiting couples with 23,000 children, while ten years later the corresponding figures were 121,800 and 74,500, respectively. During that same period between 1996 and 2006, the number of cohabiting same-sex couples increased from 150 to 2,090.

I have always stated that in so far as is humanly possible, when introducing such legislation one should always try to respect the views of all members of society. People genuinely hold views that differ from those I might hold, possibly on religious grounds or whatever, and I try at all times to accept this to be a fact.

The previous speaker commented that society is changing and it surely has changed. For many people in our society, for religious reasons in particular, many such changes have been difficult to accept. In the 29 years since I first was elected to this House, I have been through the entire gamut of changes, ranging from contraception to divorce and to the famous referendum on so-called abortion. It is flippant to state that this caused a great deal of unrest in society because it caused huge problems. I saw Members of this House grappling with their conscience in respect of many of these issues, particularly during my period as Government Chief Whip from 1982. I have always stated that in so far as is humanly possible, when introducing such legislation one should always try to respect the views of all members of society. People genuinely hold views that differ from those I might hold, possibly on religious grounds or whatever, and I try at all times to accept this to be a fact.

Nevertheless, our society has changed greatly on foot of our membership of the European Union with 26 other member states. As for different religions, the population now includes people who adhere to all types of religions and in some cases to none. Members' role as legislators is to make certain that civil rights exist and that they are protected. It is to face reality in order that in circumstances in which someone dies or there is a break-up, society can deal with the division of the spoils in respect of homes, properties, pensions or whatever. Members are now moving to deal with the fact that the number of cohabiting couples, both same-sex and heterosexual, has increased greatly. This legislation constitutes a genuine attempt to deal with this. While I will support the Bill, it is important for the Government to be open to changes. Those who are listening on the Minister's behalf should accept good ideas introduced on Committee Stage and the Government should be open to changes, particularly those that would be beneficial to children in such relationships.

I wish to deal with one aspect of this legislation on which I am sure many Members have received the same correspondence as have I. It pertains to the concept of penalties imposed if someone does not agree to the civil partnership arrangements on genuine grounds of conscience. Section 23 deals with this issue and provides that a registrar who, without reasonable cause, fails or refuses to issue a civil partnership form shall, on summary conviction, be liable to a fine of up to €2,000 or imprisonment of up to six months. While I do not believe this will ever happen, it can cause a great deal of unnecessary upset. I do not believe that someone who has a genuine religious difficulty with his or her conscience should be imprisoned for six months and to do so would be ridiculous in this day and age. Moreover, as I noted, this will never happen. I have heard arguments to the effect that unless such a provision was included, people in hotels would refuse to rent out a room or that people would refuse to serve meals. However, this is a ridiculous argument because at present gay couples stay in hotels and have meals like anyone else and are entitled to so do. I have never come across an instance of anyone being refused. Consequently, putting up such arguments is ridiculous. Although I am certain this issue will never arise, but why create the problem?

I note that in Britain, the former Lord Chancellor, Lord Mackay, introduced an amendment in the House of Lords to deal with this issue there, the wording of which has been forwarded to me. I suggest that the Minister should consider this matter and ascertain whether it is possible to make a provision in cases in which there are genuine conscientious objections, in order that this matter can be dealt with. As the amendment was introduced to the House of Lords by Lord Mackay, a former Lord Chancellor, it is easily obtainable. My point is that it should be considered.

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...

Deputy Seán Barrett: No. However, our equal status legislation rightly bans discrimination and creates an offence of discrimination. Therefore, someone who wishes to discriminate can be dealt with under existing legislation. People should be educated into believing that one should not interfere with the religious rights of others, which are their own business. The job of Members is to deal with human situations in which circumstances such as a break-up, death or whatever dictate that people's property rights should be protected. This also is the purpose of this Bill, particularly in respect of cohabiting couples and in particular to the rights of the children. Were we to educate society into thinking like this rather than always thinking of such matters in religious terms, we would have a far better society. Sticking people into jail for six months will only make martyrs out of them and I do not discern a necessity for such a legislative provision. As I noted, legislation already exists to deal with any form of discrimination and the Equal Status Act can be used to deal with that issue at any time. However, it would be worthwhile to try to understand other people's points of view and to relieve them of any difficulties they may have with regard to their own conscience.

I welcome the fact that this legislation deals with same-sex relationships. People are living together perfectly happily, which is their business. Members' business as politicians is to ensure that if something happens, such as a break-up or a death of one of the parties, there is protection for the other partner. This is what this legislation endeavours to do

I welcome the fact that this legislation deals with same-sex relationships. People are living together perfectly happily, which is their business. Members' business as politicians is to ensure that if something happens, such as a break-up or a death of one of the parties, there is protection for the other partner. This is what this legislation endeavours to do. Unfortunately, cohabiting couples do not have rights currently and if one of the partners dies, particularly the income earner, this can result in a horrific scenario for the surviving partners and children. There is no such thing as common law marriage and, therefore, there are no legal rights. The Bill endeavours to deal with this issue and not before time because I have dealt with too many cases where surviving partners and their children have suffered greatly.

There is cross-party support for the legislation but on Committee Stage if we can deal with people's fear in a rational and reasonable way while, at the same time, making sure we do not encourage any form of discrimination, we should do so. Amendments may be tabled to strengthen the rights of children. In 2006, cohabiting couples had 74,500 children. That is a significant number and it is probably nearer 100,000 today. They are human beings and their rights must be protected at all costs. I wish the legislation well and I hope people understand our job, as legislators, is to protect people's rights regarding property and so on.

During the divorce referendum debate I was confronted by a priest outside a church who said I should have been ashamed of myself because I supported divorce. I asked him what problems he had with divorce. He said, 'It is contrary to the teachings of the church'. I put the following simple question to him: 'If I arrived to your church with my partner and said I wanted to get married and you arranged and performed the religious ceremony and then invited me to sign the register, which is the civil part of the marriage and I said, 'No, Father, I am not interested', would I be married?'. He said I would be married in the eyes of God. I asked him whether I would be married in the eyes of the State and he said I would not. I explained to him that all we were doing was allowing the civil aspect of marriage to cease under certain conditions. We were not interfering with the religious marriage, as it was up to each individual to decide whether he or she should remarry following a divorce. I said that was his business and that our business was to deal with the civil aspect of marriage.

The rights and wrongs of cohabiting couples, whether they are gay or heterosexual, is a matter for each individual. Our duty is to ensure where there is a break up, death and so on, safeguards are in place, particularly where children are affected.

The same argument applies in principle to this legislation. The rights and wrongs of cohabiting couples, whether they are gay or heterosexual, is a matter for each individual. Our duty is to ensure where there is a break up, death and so on, safeguards are in place, particularly where children are affected. If that message can be understood by people who are concerned about this legislation on religious grounds, we will have done a good job. However, in Great Britain, an amendment proposed by Lord Mackay provides that where somebody has a genuine conscientious objection, they should not be put in prison. Plenty of others can perform what has to be performed and a big issue should not be made of this because all it will do is divide society. I ask that we discuss the possibility of adopting a similar amendment on Committee Stage.



Aengus Ó'Snodaigh T.D.
(Sinn Féin)

I am glad to have the opportunity to contribute to the debate. For too long people have been in same sex and cohabiting relationships without enjoying the same protections under the law as married couples. This derives from a failure of the Government to recognise the legitimacy of their relationships and the changing attitude in modern society in this regard. This has led to inequities in the way same sex couples and thousands of unmarried and cohabiting heterosexual couples have been treated by the State, including partners being unable to visit loved ones in hospitals on occasion, problems with inheritance and property rights and issues under the tax and social welfare codes. Many other problems are faced by such couples for which the State has not made adequate legal provision to date.

My party and I believe equality and civil liberty are cornerstones of republicanism and they are among the most important ideals we, as legislators, must uphold in this society.

My party and I believe equality and civil liberty are cornerstones of republicanism and they are among the most important ideals we, as legislators, must uphold in this society. With this in mind, I welcome the change in attitude of the Government reflected in this legislation but the Bill stills falls short of being a comprehensive solution to the problems faced by same sex and cohabiting couples. Legal eagles suggest traditional civil marriages have the protection of the Constitution, which is not afforded to the types of relationships being recognised in the Bill. The legal protections I seek to be included in the legislation will, therefore, not be guaranteed under the Constitution. I do not agree with the legal experts because I have read the Constitution on a number of occasions recently and it makes no reference to 'husband and wife'. It refers to 'spouses' regarding the dissolution of a marriage and to the importance of the woman in the home. That is discriminatory language, which needs to be amended.

For too long people have been in same sex and cohabiting relationships without enjoying the same protections under the law as married couples.

There is no reason we cannot legislate for civil marriage for all couples. The 1916 Proclamation, which was supposedly the guiding document for the Constitution, calls on us to cherish all the children of the nation equally and that is often quoted. The

spirit, theory and practice of republicanism should be to promote equality and, in that spirit, this issue needs to be revisited properly and constitutional protection needs to be afforded to the reforms I seek. These reforms should be included in this Bill or another Bill dealing with proper civil marriage for all. A constitutional referendum should be held to deal with discriminatory language, which implies the woman's place is in the home. A committee of the House has dealt with the need to insert defined children's rights in the Constitution and that would be appropriate in the context of this legislation.

The Bill falls short regarding social welfare entitlements, inheritance rights, child maintenance and adoption and I will return to these issues later. I am sure many Members, like myself, have received a great deal of correspondence in recent weeks and months from concerned constituents regarding the legislation. Some were concerned that it has not delivered the full and proper recognition of civil partnership that they were promised and some were concerned that it does not give full rights to marriage. Civil partnership recognition in the Bill does not go far enough and does not adequately give the protection required. There is inequality between the protections and rights given for marriage as it exists at present and to those who will be in civil partnership unions.

Many people are also worried about the effect this legislation will have on the institution of marriage and the traditional family unit. We received many queries from members of the clergy, religious orders and lay people from various denominations expressing concern that the Bill may interfere with their moral obligations or religious practices. Sinn Féin recognises that the maintenance of a strong and stable family unit is and always will be an essential component in raising the youth of our nation and in turn assuring the prosperity of our country in the future. We also acknowledge that religious organisations have the right to hold particular views on the definition of marriage and what constitutes a legitimate relationship as long as this does not infringe on the public good. The definitions of State marriage and religious marriage are different; they involve different duties and responsibilities and this needs to be recognised.

I am assured that while the provisions of the Bill do not go far enough, they do not interfere in any way with the traditional forms of marriage and family. The Bill expressly states that its aim is not to change the definition of marriage as protected in the Constitution. I regret that because there is a need for a proper definition and clarity on exactly what is a family. This needs to be contained in either legislation or the Constitution. Is the unit of an abusive father who beats his wife more deserving of constitutional protection than a loving same-sex couple with children or a single parent raising a number of children? The Constitution should protect all equally but in particular it needs to define children's rights so they have primary consideration and protections.

This Bill will go some way towards belatedly filling a hole in Irish family law and can only be positive to society as a whole.

As I stated earlier, the Constitution does not mention husband and wife; it only mentions a mother with regard to her place within the home and spouses in the case of dissolution of marriage. A broader definition should be allowed to be legislated for through a constitutional amendment. Far from having a negative effect on traditional families in Ireland, I believe the Bill will have a positive effect on families that have previously not been fully protected under Irish law. This Bill will go some way towards belatedly filling a hole in Irish family law and can only be positive to society as a whole. I cannot see how full civil marriage for same-sex couples is contrary to the constitution and I will return to this point.

In much the same way as it would be a dereliction of duty for parents not to care for and nurture their children, or for a religious organisation not to advocate its beliefs and care for the moral needs of its congregation, it would be a dereliction of duty on our part as legislators not to embrace the concept of equality for all and acknowledge the realities of modern society and provide appropriate legal protections for all citizens. It is the Government's role to ensure that all people are protected under the law.

Co-habitant couples are the fastest growing form of family unit in Ireland. Earlier, I heard somebody mention the significant jump in the number of those living in such relationships as reflected in the recent census. It is also just and right that our society no longer sees same-sex relationships as a crime, but rather as a legitimate way of life. When it comes to the family unit, however, legislation has once again fallen behind social reform. It is our duty to redress this situation, and the Bill goes some way towards this although not far enough.

If there is a threat to the traditional family unit, it does not come from progressive legislation of this kind but from the harsh policies of the Green Party and Fianna Fáil Government. Negative equity, huge mortgage repayments related to the property boom, the unfair tax burden on lower-income families, the over-reliance on two incomes to make ends meet, cuts to benefit payments, increases in the cost of medical care, prescriptions and child care, high unemployment and the slow but sure erosion of fair conditions and hours of work all contribute to a threat to the family unit as traditionally perceived. These are what are putting an enormous strain on people trying to maintain relationships and create a stable family environment in which to raise their children. Sinn Féin has been outspoken in our opposition to policies that we believe are detrimental to the economic and social wellbeing of families and communities. We believe it is by helping families cope with the realities of these tough economic times that we can best ensure that they stay together and prosper.

People have also expressed concern that there may be legal or employment issues emanating from a refusal to provide services based on moral objections to the new types of relationships suggested in the Bill. Our answer to this concern is simple: discrimination law should apply in these cases. In the same way as it is illegal for people to discriminate against clients based on race or religion, it would also be illegal for people to discriminate against clients based on sexual orientation or family type. It is the responsibility of all people, particularly those performing a public function, to provide a satisfactory service to their clients or to ensure that another party is brought in to provide that service to a satisfactory standard. The onus is on them to provide the service if they are public servants.

Another issue many people raised was that the Bill fails to address non-intimate relationships, for example, those of a carer or two siblings living together. While I recognise these may be covered by other legislation, it would be helpful to conduct a review to ascertain whether they receive fair and equitable treatment under the law and whether there is a need for amendments that could be tabled on Committee Stage.

I stated that I would return to the shortfalls of the Bill. Prior to Christmas, I attended a protest outside the House organised by MarriageEquality. I was surprised to hear about the number of rights which will still not be enjoyed by couples after the Civil Partnership Bill has passed. There will be a difference between the rights of those who are married under the current law and those who will be in civil partnerships. More than 220 rights will not transfer equally to those involved in civil partnerships. There is no equity. If a married person leaves a will, his or her surviving partner will receive at least one third of the inheritance regardless of what is in the will. However, in the case of civil partners, children can apply to the courts to have that share reduced. The same applies if a person does not leave a will; children can apply to reduce the amount to which a surviving partner is entitled. A civil partner in the same situation must apply for each order separately.

In respect of registering a partnership, all couples need to give three months' notice before marrying or obtaining a civil partnership. One can apply for an exemption to this rule, for example, if the person is terminally ill. The conditions on these exemptions are different for marrying couples and civil partners. There are also differences in providing free and informed consent. There are differences when relationships end and people split up. There are differences in issues in the home, providing for children and the dissolution of partnerships and marriages.

A foreign same-sex marriage is not treated in the same way as a civil marriage here, nor are foreign same-sex divorces and dissolutions. There are also equality issues for transgender people. There is also a range of inequalities in the tax and social welfare code. One of the ways to deal with these issues is to allow same-sex couples marry in a civil ceremony, where all rights are equal across the board. Another way is to change the legal definition as to what constitutes a family, and to change the Constitution to allow for legislation in that area. We could change the Interpretation Act 2005 for tax and social welfare purposes to ensure it clarifies marriage as including civil partnerships. The term 'child' could be altered to include the child of a civil partner.

As Members of this House, we will try to tease these issues out with the Minister to ensure that the Bill is the best possible. I am realistic enough to understand that this Government will not go as far as I would like to see it go on civil partnership. However, there are anomalies that are not addressed and which need to be tightened up to ensure that the Bill will progress. Even though the Bill does not go far enough, I will not oppose it. I am disappointed that we are not dealing with a civil marriages Bill that gives full rights to same sex marriages, but an inadequate Civil Partnership Bill 2009. I will not oppose it, but I will try my best to attend on Committee Stage. As I am not a member of the committee, I cannot put amendments down in my name. I can raise them and deal with them on Report Stage, but this hampers Members in trying to deal with Bills in a positive way and play as full a role as possible.

This Bill is a step forward. We have gone a long way and I recognise that. I commend the Government for having taken this step, but I regret that it did not go the whole way.

This Bill is a step forward. We have gone a long way and I recognise that. I commend the Government for having taken this step, but I regret that it did not go the whole way. We will be back here again much sooner than people think. The Bill will throw up other anomalies, which when challenged in court, will lead us to dealing with this issue. We should look at our EU partners that have the same traditional associations with Christian churches that have taken the full step, and this has not affected those countries. The social fabric of Spain and Portugal has not collapsed and the naysayers should look at that. This is a positive Bill, but it does not go far enough.



James Reilly T.D.
(Fine Gael)

I am very pleased to contribute to this debate and I congratulate the Government on bringing this Bill forward. I know that some speakers do not feel it goes far enough, but it is useful to remind ourselves from whence we have come. It is well within living memory when homosexuality was a crime in this country. Before that, it was even considered to be an illness. Awareness and enlightenment has slowly come, but it has come nonetheless. This is not about a liberal agenda, but about a human right. The same rights afforded to heterosexual couples should be afforded to same sex couples.

I feel very strongly about this because we have seen some tragedies. I have seen them in my own community, where people have fallen ill and their partners have not been afforded visiting rights to the hospital. This is deeply upsetting for both the patient and his or her partner.

Awareness and enlightenment has slowly come, but it has come nonetheless. This is not about a liberal agenda, but about a human right. The same rights afforded to heterosexual couples should be afforded to same sex couples.

This is a welcome move by the Government and the Bill enshrines in law rights that should be available to everybody in our country. Couples who are together for years are

treated differently by the tax man. They do not have security of the home they have built together, which is deeply disturbing. Therefore, the Bill is welcome as it will end this injustice. If a partner dies prematurely and his or her wish to be a donor is not expressed in writing, the surviving partner is not able to express the opinion of his or her loved one and this is another wrong. The wrongs are myriad and this Bill seeks to address that, which is very welcome.

It has been pointed out that the issue of children and their rights may not be fully covered in this Bill, which is something that should be examined on Committee Stage. Deputy Flanagan referred to the case of a same sex couple where the mother died and the remaining partner did not have any rights over the child, and that was extremely upsetting for all concerned. There are always two sides to the people involved. There is security for the surviving partner in terms of property rights and the ability to continue to nurture a child, while there is a peace of mind for the person who is passing on, as that person knows that his or her partner cares for the child as much as he or she does and will be there to continue on, without being obstructed by the law.

The Bill is not clear on co-habiting non-conjugal couples. I am talking here about siblings living together for many years, which is not an uncommon situation in Ireland. These people should be included in this Bill for the purposes of treatment under the tax laws.

The main thrust of the Bill is to right a wrong that we have allowed happen to people who are in same sex relationships. I am pleased to take part in this debate and delighted that, at long last, we will have true equality for same sex couples. Outstanding issues in the area of same sex marriage and civil unions can be addressed at a later date. This legislation is progress and all progress is welcome, although it often comes incrementally and not quick enough for those who seek it. Nevertheless, progress has come. I hope all sides will support the Bill.



Ruairi Quinn T.D.
(Labour)

I listened with interest to my colleague, Deputy Reilly, state that change has come. It has been my experience in this republic and Chamber that change does not come but is driven by the passion and energy of citizens who want to be free. It is dragged through against the resistance of conservatives who believe that anything other than the order they have inherited cannot stand because any change would lead to the entire edifice falling down around their feet. This change has not come, nor has it matured or found its place in the sun because today is different from yesterday. What is different today is that a reluctant, so-called republican Government, which more properly earns the title of 'publicans' Government', has been forced to bow to the inevitable but it has not bowed far enough.

This is a fundamentally bad Bill. While it introduces some necessary changes, these changes could have been introduced many years ago. I recall, as an Opposition spokesperson for finance in 1991 and 1992, making proposals in this Chamber to at least harmonise the tax code for the non-conjugal couples to whom Deputy Reilly referred and the cohabiting couples to whom Deputy Ó Snodaigh referred. I was told on the floor of the House and in friendly off-the-record exchanges with officials and the Minister for Finance that the tax code does not anticipate social change. This was an unwritten law within the Department of Finance. While this is not an unreasonable observation given that it is not the duty of the Department or a Finance Bill to anticipate or promote change, the Department has an obligation to reflect change.

It is necessary in this discourse to recognise that what cannot be achieved today should not get in the way of making as much progress as possible or serve as an excuse for doing nothing.

This State is six years away from the centenary of the declaration of the republic in 1916. While we have come a long way in terms of time, we have an awful long journey to travel if we are to make the republic a reality. In any republic, on any continent of the globe the fundamental principle is that all citizens are free and equal before the law. If and when this legislation is enacted, whether in the current or an amended form, we will not be able to say we have a republic in 2010 because all citizens will not be free and equal before the law. There will be those of us who are free citizens and happen to enjoy the status of being married, those of us who are free and able to enjoy the status of having a civil partner, those of us who are able to have children naturally, with medical assistance or by adoption and those of us in loving relationships who will not have that right. This is not republican legislation. It does not deliver and does not go far enough.

The Labour Party has been to the fore in promoting liberation in this area and other areas. In the time remaining to me, I will address those who express a concern that we have a secular agenda. In the words of various commentators in the media, my party is anti-religious, has no respect for the belief systems of other citizens in this republic and wants to drive some form of secularisation of the State to the point at which religion would have no place. None of this is true. The place in the western world where religion flourishes most is the United States, a republic where there is a complete and absolute separation between church and state. The places where the church languishes either in irrelevance, dispute or abandonment are the countries in which it used to dominate, namely, Italy, Spain, Portugal and even Poland.

I need not mention where we, in this island, are today. Next month we will have the spectacle of the Irish bishops, who have been summoned to another country by the head of another state who happens to be the head of their religion, answering for their behaviour in this country. We do not know what will be the outcome of this development. There was, however, a time when these same officeholders would have told this assembly what to legislate for and how to legislate and that we could not

trespass beyond the boundaries they had set for us. That day has gone and will not return in my lifetime and, I hope, the lifetime of my grandchildren. They will, I hope, be republican citizens who will be free to choose to believe and practise whatever they want and, when summoned before a court, will be equal in the eyes of the republican Constitution, both as believers and non-believers.

Let me say this on the issue of belief. Everybody is a believer. There is no such thing as a non-believer, just as there is no such thing as a non-national, non-Catholic or non-person. There are citizens who believe different things. Some people believe in God, while others believe in atheism, humanism or agnosticism. We all believe and need the protection and security of a republican state and its constitution to give equality in terms of the rights of belief and to behave in a manner informed by our conscience. We need the laws and courts of the land and the enforcers of those laws to ensure that the manner in which we behave and act out our beliefs does not impinge on the liberties, rights and beliefs of our neighbours.

Attempts to argue there are those among us who have a destructive, secular agenda are the sting of a dying wasp. This claim is not true. We have a liberating republican agenda which seeks to complete the task commenced 94 years ago in this city on this island when the republic was proclaimed. The ringing poetry of the Proclamation is not echoed in the words of our Constitution which does not treat all the children of the nation equally and, as a consequence, does not treat all citizens of the nation equally. Some day the words of the Proclamation will come true. Members of this House will make them law but we will not do so today or for as long as a Bill of this temerity, timidity and inadequacy is put before us by a Government which claims to be the republican party when its better boast is to be the publicans' party.

It is necessary in this discourse to recognise that what cannot be achieved today should not get in the way of making as much progress as possible or serve as an excuse for doing nothing. What cannot be achieved today cannot be used as an excuse for not remembering that while we will only be able to do some business because of the conservative majority on the Government side, the majority will have the full and final word on how far this assembly can go.

There is a wonderful inscription on the base of the Parnell Monument at the top of O'Connell Street, a beautiful piece of sculpture, architecture and design. Among the many phrases Parnell uttered to the greatest imperial power at that time were the immortal words:

[N]o man has the right to set limits to the march of our nation. No man has the right to say [. . .] "Thus far shall thou go and no further"

We will go as far as the Constitution allows us to go, but that is not the end destination. Until such time as we arrive, this will not be the Republic signed up to in the Proclamation of 1916. That task remains to be done.

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Debate adjourned.

2.1.3 2ND STAGE DEBATES PART (III):

27TH JANUARY 2010

The 2nd Stage debates continued in the main Dáil Chamber, for the third and final part of this second stage on the 27th January 2010. These debates can be found on the Oireachtas website at



Joanna Tuffy T.D.
(Labour)

I and the Labour Party welcome this Bill. It represents progress on the rights of same sex couples and unmarried couples. There has been progress on this issue over the last number of years. That progress has been incremental, as progress should be, rather than happening all at once. The Bill is not perfect but it is progress on which we can build for the future, just as we built on legislation that was passed regarding same sex couples and unmarried couples in the 1990s.

The Bill is not perfect but it is progress on which we can build for the future, just as we built on legislation that was passed regarding same sex couples and unmarried couples in the 1990s.

I will speak later about some of the people who have played a part in the progress on this issue. The Gay and Lesbian Equality Network, GLEN, has welcomed the legislation and Dr. Fergus Ryan, who prepared a paper for GLEN on the legislation, commented that the Bill represents a robust and comprehensive step in the right direction and that both practically and symbolically these measures will, if implemented, represent real and substantial progress in the recognition and protection of non-traditional families.

The paper prepared by Dr. Fergus Ryan, who is head of the law department in the Dublin Institute of Technology, is a substantial study of the legal provisions in the Bill. I read it last night. It is a very comprehensive analysis of the Bill and I hope some of the comments made on it will be taken on board by the Minister, the Minister of State and the Department. Some important points are made regarding silences in the Bill and improvements which could be made to it, some of which I hope could take place on Committee Stage and Report Stage and as it progresses through the Seanad. Dr. Ryan also says that the Bill represents the most far-reaching reform of family law in a

generation and affects 130 pieces of legislation, many of which are very complex and historic, such as the Succession Act and various pieces of family law legislation which give rise to decisions regarding the family home and so on.

A number of points need to be made on what issues need to be addressed as the Bill progresses through the House or in separate pieces of legislation. We should not lose sight of the fact that this is called the Civil Partnership Bill, but it also deals with the rights of cohabitants. There is not a lot of awareness of that fact. Many people who are cohabitants, because of the way the Bill has been publicised, are not aware that it also affects them. The Government needs to have a campaign of public awareness because when it comes to cohabitants the rights are applied to them without their having to register their relationship. It is important that cohabitants are made aware of the provisions in this Bill.

I am very thankful for Dr. Fergus Ryan's paper because it is a very informative analysis. He makes the point that the effect of this Bill is more significant in terms of the rights and obligations conferred on cohabitants because of the number of families involved. He refers to the 2006 census which estimated that there are more than 120,000 cohabiting couples in the State, some one third of whom have dependent children residing with them. There are 120,000 couples but there are also some 40,000 children who will be affected by this Bill. There is speculation that after the Bill is passed changes will then be made to the legislation on tax and social welfare.

I am interested to know if those changes will also apply to cohabitants because, in terms of how they are currently treated by the law, they are in a catch-22 situation. The social welfare legislation applies to them and treats them as if they are a unit. At the same time the tax legislation, from which they could benefit, does not. Very often cohabitants are negatively impacted upon by social welfare legislation. For example, one member of the couple cannot qualify for jobseeker's allowance because he or she is means tested on the basis of the income of his or her partner, but the couple does not receive the tax advantages of a married couple. I hope the tax benefits married couples receive would also apply to civil partners and cohabitants. The Minister of State might let us know what Government's plans are in that regard.

Dr. Fergus Ryan makes the point that the Bill is largely silent on the children of the couples affected by the Bill. There is a need to do something about unmarried fathers and their rights. We are well behind other countries in that regard. We are making progress, but one area in which we are not making progress is the issue of unmarried fathers. If there are 40,000 children and 120,000 couples, and all the other couples who do not live together, some of whom are in same-sex relationships, something needs to be done about the rights of unmarried fathers. They need to be given automatic guardianship or something similar to the arrangements in Scotland and other countries in Britain where, if one's name is on the birth certificate, one automatically gets guardianship rights. At the very least, we should introduce such a measure here.

Dr. Ryan's paper for GLEN refers to omissions or silences in the Bill. He speculates on whether the Bill will apply in the same way as it does to married couples, but the Bill is silent so there is no clarity in that regard. Those issues need to be explored on

Committee Stage and Report Stage because if important areas are left silent, they could become loopholes and people could not be protected in areas in which they need to be.

He also makes some points regarding children, namely, that the relationship between the children of a civil partner and the other civil partner is one which is not generally acknowledged for the purposes of the Bill. He discusses how, despite that, the Bill will contain protections for children, such as the section which asks the courts to have regard to the rights of any other person. He says this may include the child of either civil partner. I take the position GLEN, many others and public opinion would take, that is, we need to make sure our laws protect children. If we do not deal with that in this Bill, we will have to deal with it ultimately, the sooner the better. I hope the Minister will accept amendments to the Bill which will improve the rights of the children of civil partners and cohabittees.

We have to reflect the reality of same-sex partners and cohabittees who have children and recognise it is a large part of the picture on the ground in terms of family formation. It always has been, but it is so now more than ever. Public opinion is well ahead of the Government in that regard.

If that is not done, when the Bill is passed we will have to grapple with the issue because if we do not there will be problems down the line. We have to reflect the reality of same-sex partners and cohabittees who have children and recognise it is a large part of the picture on the ground in terms of family formation. It always has been, but it is so now more than ever. Public opinion is well ahead of the Government in that regard.

I wish to refer briefly to those who have contributed to this Bill. Groups such as GLEN and individuals have campaigned for this over the years. People have taken brave decisions, including the former Minister, Máire Geoghegan-Quinn, in 1993. I remember being here for that debate. It was a significant step at the time and yet, when we look back now, the opinions then were out of date compared to now. It was a very brave move on the part of all those who supported it at the time. It was a very important and significant step which has, in effect, paved the way for this Bill.

I was in the Seanad in 2004 when Senator David Norris had a Bill on this issue. He has played a huge role, as a Senator and an individual, in campaigning for the rights of homosexuals and same-sex partners, something on which he needs to be commended. The Seanad has produced fine Senators, has been very progressive and has been an important part of our Legislature. Other individuals were also involved. This Bill is another step and we will need to make further progress when it, it is to be hoped, is passed very soon.



Mary O'Rourke T.D.
(Fianna Fail)

I am pleased to have an opportunity to speak to the Bill. From what I have picked up from the contributions of previous speakers, it is receiving a relatively approving passage in the House. Nevertheless, as with the Criminal Law (Sexual Offences) Act 1993, this is landmark legislation. I was a Member of the House when the then Minister, Ms Máire Geoghegan-Quinn, introduced the Bill decriminalising homosexuality in 1993. She took a major step at that time but did so with calmness and a clear sense of direction. I recall that the debate on the Bill was also relatively tempered and was conducted with moderation. I was glad that was the case.

As a republican party, Fianna Fáil is committed to equality, which is a fundamental tenet of republicanism.

When the Civil Partnership Bill was first mooted I, like many Deputies, was approached by constituents to discuss the issue. I have no doubt the individuals in question were well meaning and did not have ulterior motives. They expressed fear and foreboding about whether, for example, a registrar would refuse to perform his or her civil duties when a same-sex couple gave notice that they proposed to be registered. They asked what would happen if the registrar decided he or she would not preside over a civil partnership ceremony. We also heard about the possibility of photographers refusing requests to photograph same-sex couples and bakers refusing to bake cakes for same-sex registrations. In that case, one could do without the cake. These were facile arguments which had no bearing on the issue for which we proposed to legislate. My response, therefore, was that I did not anticipate any difficulties. As the Minister for Justice, Equality and Law Reform, Deputy Dermot Ahern, stated at the time, one leaves one's religion outside this Chamber. That was a fair comment.

Shortly after Christmas, someone asked me whether I was aware that break-ups were much more common among same-sex couples. I responded that I was not aware that was the case but all types of families break, regardless of the nature of the sexual relationship. People enter relationships with high hopes and with their hearts full of love, commitment and fidelity. They hope to preserve these attributes but regrettably fidelity does not always last. If a relationship does not work out or there is infidelity in it, the couple will break up. To imply, however, that same-sex relationships are more likely to break up than male-female relationships is, in my view, to engage in the spreading of unfounded rumour.

In introducing the Bill, the Minister stated:

This Bill takes nothing from anyone but what it gives is profound and is positive.

It creates for the first time in Irish law a scheme under which a same sex couple can formally declare their allegiance to each other, register their partnership under new provisions in the Civil Registration Act 2004, commit themselves to a range of duties and responsibilities and at the same time be subject under new law to a series of protections in the course of their partnership in the event of a failure of either party to maintain the other and in the event of disputes between them as to ownership of property.

This is practical legislation and I commend the Minister on the alacrity with which he set about bringing it before the House.

In 2007, the Fianna Fáil Party election manifesto made a clear commitment to introduce legislation on same-sex relationships. This commitment was renewed in the programme for Government agreed with the Green Party and is now being implemented in legislation.

As a republican party, Fianna Fáil is committed to equality, which is a fundamental tenet of republicanism. It is noteworthy that, in addition to this Bill and the 1993 Act, Fianna Fáil Ministers introduced the Prohibition of Incitement to Hatred Act 1989, Employment Equality Act 1998 and Equal Status Act 2004. Those who, in their wilder moments, seek to label Fianna Fáil Party members as backwoods men and women should reflect on the fact that Fianna Fáil Ministers have shown a determination to wipe out, in as far as possible, inequality in society. I do not make this point for political purposes. It is amazing, however, that people seek to attribute a characteristic to my party which is not borne out by the actions of its members.

I cannot see how anyone could object to enabling love, commitment and fidelity to flower in a relationship, as this Bill will do.

I cannot see how anyone could object to enabling love, commitment and fidelity to flower in a relationship, as this Bill will do. It will also provide certainty that various duties and responsibilities attach to such relationships and if a relationship does not work, due deference will be paid to the party who has been damaged. In a world fraught with difficulties and which is daily witness to hatred in places such as Iraq and Afghanistan and even in the talks under way nearer home, surely we should support simple legislation giving certainty to couples of the same sex who wish to express their devotion and fidelity and give shape to their relationship. This Bill will allow such couples to gain a sense that they truly belong to one another, as has been evidently the case in their relationships heretofore.

...surely we should support simple legislation giving certainty to couples of the same sex who wish to express their devotion and fidelity and give shape to their relationship.

I applaud the motives and determination behind this simple yet complex legislation. Amendments will be made to many Acts to take account of the changing nature of relationships, particularly by changing the terminology used in much legislation. I hope there will be scope for making amendments to the Bill on Committee Stage. I am sure the Minister will see fit to ponder proposed amendments tabled and accept those which he deems suitable.

I am pleased this fine Bill is being introduced and hope it will put an end to the inequality experienced by same-sex couples as they go forward into their future together.



Beverley Flynn T.D.
(Fianna Fail)

I welcome the opportunity to speak on this important Bill, which reflects the new reality in this country. Figures for 2006 show that 120,000 or 12% of couples are cohabiting and that, combined, they have 74,500 children. Statistics show that 1.71% of those couples are same-sex couples but I believe the actual number is higher because that census did not pose the appropriate question to produce the correct figure. I am certain it is more than the 2,000 plus reflected in the statistics.

This is the new reality in Ireland today. Many of these couples are living together without any financial certainty or any provisions in respect of succession or property rights. It is extremely important that the Minister has brought the Bill before the House at this time in order to provide certainty for couples in the future. I welcome that so much public debate has taken place on this issue. There was the Law Reform Commission report, the considerations of the all-party Joint Committee on the Constitution and submissions from various interested groups including the Irish Council for Civil Liberties and the Gay and Lesbian Equality Network, GLEN. In addition, public opinion on the issue was sought through market research.

Some sections of our society have raised concerns but I believe those concerns are unfounded. Marriage has constitutional protection in Ireland today. It is the only legal intimate relationship recognised under our law and is legally binding and dissolvable only in a court of law. However, just because marriage is the only relationship with

legal standing in the Constitution, this does not preclude our offering that protection to other cohabiting couples, whether of the same or opposite sex, or to people who wish to enter into a civil partnership.

I welcome this Bill and what it is trying to achieve. I welcome the fact that a new legal status will be provided for same-sex couples that will be legally recognised by the State...

I welcome this Bill and what it is trying to achieve. I welcome the fact that a new legal status will be provided for same-sex couples that will be legally recognised by the State and dissolvable only by a court or by death. I welcome this and other provisions in the Bill. There are some shortcomings but the Bill is an enormous step in the right direction and that has been recognised as evidenced in the public reaction to its publication. It has been recognised by many people and interested parties as a giant step in the right direction for many couples, which I welcome.

This provides great security to many cohabiting couples in regard to the regulation of their financial affairs and in the provision of a redress scheme.

I also welcome the provisions in respect of cohabitants. This applies to same-sex persons and cohabitants of opposite sexes, excluding siblings and people in a non-intimate relationship that does not come under the definition provided within the Bill. This provides great security to many cohabiting couples in regard to the regulation of their financial affairs and in the provision of a redress scheme. This is very important. However, although the civil partnership and the registration of such a partnership applies only to same sex couples there are many cohabiting couples in the State. The Minister's view is that a cohabiting couple who are of opposite sex have the option of availing of marriage, with all the security and legal rights it provides. Many cohabiting couples in the State are trapped, however, and are not in a position to be able to avail of marriage because of the nature of our divorce legislation. Persons must be living apart for four of the previous five years; the resulting delay in obtaining a divorce means there are many couples in cohabiting relationships. Those couples are without any financial security and do not have the option to marry because of legal constraints. The sections of the Bill that deal with cohabitants and provision for the economic security of a dependent cohabitant are very welcome and I am delighted to see them.

Part 2 of the Bill provides for the recognition of foreign relationships which is important for people who have entered into legally binding contracts in other jurisdictions. Where these are similar to a civil partnership they will be recognised in this country as that. The registration formalities covered under Part 3 of the Bill are very similar to the registration process one must go through when one marries in this country, namely, the provision of three months' notice, the requirement to be over

18 years of age and the requirement for the marriage to take place in the office of a registrar or in an approved venue. I welcome all of that.

However, more important is Part 10 of the Bill which confers legal consequences as a result of registration. In particular it confers the protection of legislation on domestic violence, in addition to civil liability and pensions. This is a very large issue, particularly for many couples at this time when many pension schemes make provision for a spouse but do not allow such provision to be made for a civil partner. This is a massive step forward and is of huge concern. Many civil partners to whom I have spoken in recent times desperately need this type of security. I am delighted to see it covered in the Bill. It is important.

Although I recognise the Bill does not deal with social welfare or tax issues, which will be dealt with in future social welfare and tax legislation, it is important that it clarifies the issue of pensions and provides the provision that civil partners must be provided for in the future.

Part 8 of the Bill deals with succession and provides that the surviving civil partner will have the same succession rights under the Succession Act of 1965 as are provided for a surviving spouse. That is very welcome.

Part 11 of the Bill deals with nullity, which, again, is similar to the situation that pertains when a marriage is nullified in the courts. It effectively means that the civil partnership did not exist and that both parties are free to marry or enter into another civil partnership. The provisions under Part 12 with regard to protection and maintenance are of critical importance.

There has been reference to the issue of children and this is something that concerns me. When a marriage breaks up there is specific mention of children and how they will be dealt with. Even in regard to the situation of cohabitants to whom financial provision is made, section 171 of the Bill makes specific reference to children. However, in the case of civil partnerships it is almost as if the entire issue of children has been avoided at all costs. This seems to be the precise case within the legislation and I am concerned about it. We have a responsibility to protect every child in this country and to see that economic support and provision is made for them. Although there is an indirect reference to this in the Bill, it is my view that the legislation does not go far enough. It is something we must look at in the future. This is not in any way to take from the Bill, which is a huge leap forward. Clearly, however, there is a feeling on the part of the Minister that children must be looked after and provided for because this indirect reference is included. It could be safeguarded and made more specific. The reality is that many same-sex couples have children and are responsible for them and we cannot avoid this reality. We must deal with it appropriately and I ask the Minister to consider this issue again. It is certain that we must give it consideration in the future.

The reality is that many same-sex couples have children and are responsible for them and we cannot avoid this reality. We must deal with it appropriately and I ask the Minister to consider this issue again

It is important that under this Bill civil partners will get protection similar to that provided to spouses under the Family Home Protection Act and that a non-owning civil partner may prevent the sale of a house if he or she does not consent to the sale. This is a very important measure and again is something that will provide a great deal of security to many couples. In addition, a civil partner can apply to the courts for maintenance and that on the dissolution of a civil partnership there can be maintenance orders, lump sum payments, pension payments and division of properties as is the case in divorce. Just as in a divorce case, when a dissolution takes place a person will be precluded from making further claims against a former civil partner especially if he or she goes on to enter into another marriage or relationship.

The measures in the Bill are a huge leap forward. The idea that we are giving legal status to civil partnerships is hugely welcome. The measures have been broadly welcomed in this House and it is clear from the market research available that public opinion is very much on the side of dealing with the new reality in Ireland today. That is in no way to minimise the constitutional protection afforded to marriage or the equality of individuals in the State which is upheld within the Constitution. We are not trying to weaken those provisions in any way by giving legal status to civil partnerships. There are differences between that legal relationship and the protection given under marriage and the benefits and rights also conferred by marriage in this country.

I do not believe this is an area in which people should feel threatened in any way and it is important that we recognise people have rights in society. Whether couples are same-sex or cohabitants, they also have responsibilities, concerns and financial considerations that must be addressed. It is important that we be open-minded enough to be able to deal with all of these issues in society and that at least we be fair and confer equality to people across the board. From that point of view, I welcome this legislation wholeheartedly.

I welcome comments made in the course of the debate and welcome the thinking of the Minister concerning the issue of parental rights and dealing with the matter of children. Whether they are brought into a marriage, a civil partnership or to a cohabiting couple, children are innocents who need to be protected. It is vital that this fact be recognised and that the position of children be of paramount importance. I would be interested in hearing the Minister's views on that particular aspect.



Brian Hayes T.D.
(Fine Gael)

I welcome the opportunity to contribute to the debate on this Bill. Deputy Flynn articulated the position of the great majority of people in respect of this issue and indicated that they want the Bill to be enacted in order that all citizens ó irrespective of their sexual orientation or whether theirs is a traditional or non-traditional family ó will have the same rights. It is for this that the legislation must provide.

It is amazing that the Bill has been in gestation for the past nine years. The first joint seminar in respect of this matter ó hosted by the Law Reform Commission and the Gay and Lesbian Network, GLEN ó took place in 2000. After much toing and froing in the interim, we have reached the point where a Bill dealing with this issue has been placed before the Oireachtas.

The State's ultimate responsibility is to support people as they are and not to cast value judgments on their relationships.

The State's ultimate responsibility is to support people as they are and not to cast value judgments on their relationships. Society must be informed that it is in the interests of the State to have people in loving and protective long-term relationships, irrespective of the nature of such relationships. The State has an absolute interest in ensuring that provision be made for those who wish to live in loving, long-term relationships. It must be in everyone's interests for people to live together, to share things, provide for each other in times of illness and in times of good health, protect each other and provide for their retirement. These are natural instincts among all members of society. The State has a vested interest in ensuring that laws should be put in place to facilitate that which I have outlined.

I am currently reading Andrew Marr's book on the history of modern Britain which covers the period from Clement Attlee's election as Prime Minister following the Second World War to the end of Tony Blair's term in office. There is a wonderful section in the book which describes the purge that took place against the gay community in Britain in the 1950s. Much of the discrimination perpetrated against the members of that community in the 1950s and 1960s in Britain was reflected in the hostile and prejudicial reaction to lesbian and gay citizens in this State.

I would not underestimate the degree to which this legislation, when it is placed on the Statute Book, will greatly assist people in believing that they are citizens

of this country, that they have a stake in it and that their notion of citizenship is fostered and respected in the same way as that of others.

In the 1980s and 1990s, I had many gay and lesbian friends who did not have the confidence to come out or to speak about the nature of their sexuality. We have come a long way in ten or 15 years. I would not underestimate the degree to which this legislation, when it is placed on the Statute Book, will greatly assist people in believing that they are citizens of this country, that they have a stake in it and that their notion of citizenship is fostered and respected in the same way as that of others.

As my party's spokesperson on education, I am aware of the great difficulties young people, particularly those at post-primary level, have in coming to terms with their sexuality. I know the kind of bullying to which they are subjected at school and the fact that the spectre of suicide haunts some of them. However, I also know the sense of discovery they harbour. We should not underestimate the degree to which the Bill will state that people's place in society and their rights are respected. The latter will be a by-product of this legislation's passage into law.

I wish to place on record my thanks to a former Fine Gael Senator, Ms Sheila Terry, who published my party's first position paper on partnership legislation in 2004. In the lead up to the most recent general election, my party, in its manifesto, indicated that it would "whether in government or in opposition" support the introduction of partnership legislation during the lifetime of the 30th Dáil. We, therefore, clearly outlined to the electorate our support for legislation of this nature during the period from the publication of former Senator Terry's position paper to our 2007 election manifesto.

It is important that there be cross-party support in respect of this matter and that it should not be turned into a party-political squabble. There must be broad-based support ó such support exists among citizens in general ó among politicians for the provisions of the Bill.

When one considers the transformation of Irish society over a short period, one can see the necessity for legislation of this nature. In 1996 there were some 34,000 cohabiting couples in the State. The census of 2006 indicated that in ten years the number of such couples had radically increased to over 121,000. Cohabiting couples had 23,000 children in 1996, whereas today some 75,000 children are members of what have loosely been described as non-traditional families. The position with regard to same-sex couples is similar. In 1996 only 150 couples described themselves as being same-sex couples, whereas in 2006 there were over 2,000 such couples. Like Deputy Flynn, I suspect that the number of such couples living together in long-term relationships is well in excess of that figure.

Many myths relating to the nature of the legislation have been circulating in the public domain. In short, the Bill is an attempt to regulate the position of new families which require protection in law. People want to protect both themselves and their partners in a way that provides some certainty. As already indicated, it makes eminent

sense that the State should encourage them to do so. People should be encouraged to ensure their affairs are in order and protection should be afforded to them.

I am aware of the outrageous situation whereby members of gay and lesbian couples are not recognised within the hospital system as being their partners' next of kin. These individuals are not recognised as being involved in a long-term, loving relationship with another person. That is an absolute scandal. Another appalling example in this regard relates to someone involved in a long-term relationship whose partner is dying and who is left with no protection either in the context of pension provision or in a legal sense.

This matter is not merely about the extension of rights to those couples, it also relates to the extension of responsibilities. In the context of the law, we are stating that it is important that the relationships of people in the group to which I refer be recognised and we are outlining the rights that accompany that recognition. Equally, however, we are also outlining the responsibilities which accompany it. The position is the same as that which applies in respect of those who are involved in traditional marriages.

One of the myths that has been circulated is that the Bill will downgrade the position of marriage. I wish to refute that assertion because I do not believe marriage will be downgraded at all.

One of the myths that has been circulated is that the Bill will downgrade the position of marriage. I wish to refute that assertion because I do not believe marriage will be downgraded at all. The clear protection afforded to marriage under Article 40 of the Constitution is absolute. That protection can be changed only on foot of a referendum and it cannot be altered by an Act of Parliament. That was made abundantly clear in the remarks of Ms Justice Dunne in the High Court in the case taken by Dr. Zappone and Dr. Gilligan, in which they attempted to have recognised a marriage of their union in Canada in Irish domestic law. It is worth putting on the record what Ms Justice Dunne said in that case, which, I understand, is still under appeal in the Supreme Court. She said:

I think one has to bear in mind all of the provisions of Article 41 and Article 42 in considering the definition of marriage. Read together, I find it very difficult to see how the definition of marriage could, having regard to the ordinary and natural meaning of the words used, relate to a same sex couple. . .

The definition of marriage to date has always been understood as being opposite sex marriage. How then can it be argued that in the light of prevailing ideas and concepts that definition be changed to encompass same sex marriage?

Having regard to the clear understanding of the meaning of marriage as set out in the numerous authorities opened to the Court from this jurisdiction

and elsewhere, I do not see how marriage can be redefined by the Court to encompass same sex marriage . . .

Marriage was understood under the 1937 Constitution to be confined to persons of the opposite sex.

In no way will the passage of this Bill downgrade or undermine marriage because absolute and clear protection is given in Articles 40 and 41 to marriage as an act between persons of opposite sex. I am not saying that in the future that could not change. However, the only way it could change is if there is a referendum. It is the people who will decide whether that definition of marriage as expressed in Bunreacht na hÉireann can change. I reject the notion that in some way the Bill downgrades marriage because absolute and fundamental constitutional protection is given to marriage in Articles 40 and 41.

The other myth that has been put about is that there should be a freedom of conscience clause. In other words, if I am so appalled by the notion of a gay or lesbian couple having their relationship recognised under civil partnership legislation, I should have the right to opt out of the provisions of the Bill on the basis that this in some way runs counter to my view of the world. If we accept that principle, we would be accepting some kind of sharia law. We would be accepting that religious views of the world would dominate over the laws of the Republic. We cannot have that. Given that a registrar will be given rights under this legislation to perform a ceremony, if it is the choice of the couple concerned, the primary law cannot give a right to a registrar to opt out of that because he or she is an officer of the State. The notion that under freedom of conscience an officer of the State could effectively be allowed to discriminate against a gay or lesbian couple because of his or her religious beliefs is fundamentally opposed to the existing constitutional provision that applies.

It is worth considering the Employment Equality Act 1998. As Members will know, that Act effectively gave the right of opt-out to denominational schools when it came to certain practices. It certainly gave the right to positively discriminate. I refer to this Act to advance my argument that it is spurious to claim that people have a right to opt out of the legislation if they so choose. I argue that they do not. I wish to put on the record the views of the Supreme Court on the Employment Equality Act 1998, which makes the provisions therein absolutely clear. Section 37 of the Act states:

A religious, educational or medical institution which is under the direction or control of a body established for religious purposes or whose objectives include the provision of services in an environment which promotes certain religious values shall not be taken to discriminate against a person for the purposes of this Part or Part II if—

(a) it gives more favourable treatment, on the religion ground, to an employee or a prospective employee over that person where it is reasonable to do so in order to maintain the religious ethos of the institution, or

(b) it takes action which is reasonably necessary to prevent an

employee or a prospective employee from undermining the religious ethos of the institution.

I know the teaching unions have a very fundamental view about that section, which I understand. However, it provides that a religious, educational or medical institution can effectively take into consideration things which would ensure that the religious ethos of the institution be upheld and also can prevent employees from undermining the religious ethos of the institution. Under Article 26 of the Constitution, then President Mary Robinson referred the section to the Supreme Court for consideration. The Supreme Court gave a very significant ruling in agreeing that it was constitutional but it put parameters on the constitutionality of section 37. The then Chief Justice stated:

No serious criticism can however be advanced against s. 37, sub-s. 2 which entitles an institution to prefer a particular candidate on the grounds of his or her religion if in fact being of that religion is an occupational qualification for the post in question. The attack has been directed more against sub-s. 1 which entitles an institution to give more favourable treatment, on the religion ground, to an employee or a prospective employee "where it is reasonable to do so in order to maintain the religious ethos of the institution" or to take action "which is reasonably necessary to prevent an employee or a prospective employee from undermining the religious ethos of the institution.

The Supreme Court found that 'it was constitutionally permissible to make distinctions or discriminations on grounds of religious profession belief or status insofar as this may be necessary to give life and reality to the guarantee of the free profession and practice of religion contained in the Constitution'. The Supreme Court found that religious groups and denominations are recognised and nothing can be advanced in law that prevents people coming together, professing their faith or ensuring that that faith is upheld.

The ruling of the Supreme Court on this issue has a direct relationship to the question of a freedom of conscience cause related directly to the idea of the institution of the religious group itself. It did not allow the State to positively discriminate one way or the other. It simply stated that the religious groups have fundamental rights and nothing should be advanced to undermine their rights as religious groups in the context of the institution. It does not give a right to registrars to opt out. If this Bill comes before the Supreme Court, which it may, I believe the court will rule forcefully again that officers of the State cannot allow themselves to opt in or opt out of the legislation. I believe the Supreme Court ruling clearly directs that registrars, as officers of the State, must enforce this.

I ask people, in the spirit in which the legislation has come about, to recognise that this a good day for the country and for those who are looking for recognition of their rights to be upheld by the State

In a traditional marriage, of course, the priest, rector or whoever performs a dual function of the civil marriage and the religious marriage. Under the civil partnership legislation this would not be possible because it recognises the role of the religious in terms of the marriage. I do not believe there is justification for the argument some groups have made that we can allow a freedom of conscience clause in this legislation. I do not believe it holds up to scrutiny. It is abhorrent to the Supreme Court ruling relating to the Employment Equality Act. It should be emphasised that the narrower part of section 37 was looked at in the context of the President referring the Act to the Supreme Court for its consideration.

To those seeking a freedom of conscience clause in this legislation, I do not believe that, constitutionally, it holds water, and neither do I believe it would be supported were the matter to come before the Supreme Court again. I ask people, in the spirit in which the legislation has come about, to recognise that this is a good day for the country and for those who are looking for recognition of their rights to be upheld by the State, and for people to give this a fair wind when the Bill is ultimately passed by both Houses of the Oireachtas.



Damien English T.D.
(Fine Gael)

I am grateful for the opportunity to say a few words on this very important Bill, which is a step in the right direction. The Bill means progress for same-sex and cohabiting couples in their relationships. Its purpose is to establish a statutory civil partnership registration scheme for same-sex partnerships together with a range of rights, entitlements and protections consequent on registration, and to set out the manner in which such partnerships may be dissolved.

The Bill also establishes a redress scheme for opposite-sex and same-sex couples who are not married or registered as in a civil partnership, as the case may be. It also provides for the recognition of cohabitant agreements which regulate the shared financial affairs of couples and enables them to opt out of the application to them of the redress scheme. However, it does not deal with the whole issue affecting non-conjugal couples. This was addressed by Fine Gael in its discussion document. Deputies will be familiar with cases involving brothers and sisters who have lived together all their life and might share assets. However, the law does not really protect them, or at least needs to be further amended in this regard.

We accept that this area may not be appropriate for this Bill, but it needs to be addressed expeditiously. There is no reason that it cannot be dealt with, and I am glad the Minister of State with responsibility for housing is in the House because it is very often in his area that such problems will arise. We should be able, in our discussions

on this Bill, to make a commitment regarding a timeframe for having this matter addressed. Some of the Government's reports in the area of civil partnership actually refer to it, yet we are being told sufficient research has not been carried out to justify legislation in this area. I cannot accept this, but if it is true, a motion should be tabled to the effect that the research will be done within the next six months, when it will then be possible to legislate. We tend to complicate matters in the Oireachtas over too long a period of time, even in the case of this Bill. That is a problem with the procedures of the House, especially when the Government is unwilling to recognise the work done by Opposition parties.

For many, the Bill does not go far enough, but I believe it is, at least, a step in the right direction and will help many same-sex and opposite-sex couples who do not opt to marry.

Fine Gael published policy documents in this area, the Labour Party published Bills on it and Bills were introduced in the Seanad by Senator Norris over many years. However, almost 20 years after Denmark legislated for this, Ireland is taking the initiative. We are far too slow and this is unnecessary. There is general public agreement, even among those who oppose the concept of this legislation, that something has to be done. Such people will still argue against parts of the proposed legislation and it might go against their beliefs, but they understand that it has to be done. Nonetheless, it still takes years for such matters to be legislated for. For many, the Bill does not go far enough, but I believe it is, at least, a step in the right direction and will help many same-sex and opposite-sex couples who do not opt to marry. This will be a useful Bill and will help in relation to many matters, such as recognising relationships as well as providing for the problems that may occur when they fall apart.

It is a very good Bill and there were some very good debates on it. There was a great discussion recently in the AV room, to which Deputies were invited, where family law experts gave us a breakdown of the legislation and warned about the complications that would arise in the absence of such a Bill. That was very interesting and informative and reminded us, as Deputies, that sometimes laws can cause great difficulties for people for the wrong reasons. That is why clarity is crucial in respect of legislation such as this which sets out people's rights and entitlements.

Apart from same-sex couples, a very important part of the Bill is that it recognises cohabiting couples. It is now quite common for couples to live together before marriage, or they might decide not to get married. That is their prerogative. As a Catholic, I believe in marriage and have no problem in saying that, but many people do not want to go down this road. Cardinal Brady also understands that not everyone wants to choose this course. For whatever reason people do not want to get married, we have a duty to recognise and respect this, and to cater for it in law. We must respect this situation as best we can, especially in regard to assets, the rights of children and so on. I will come back to the issue of children which is not dealt with in as much detail as it should be.

However, the Bill is right. The figures from the 2006 census showed that there were 121,000 cohabiting couples. There are many more now, in addition to the 2,000 people in same-sex relationships. That was quite a sizeable number, and I believe it is now considerably larger. It is only right that we deal with the situation.

From personal experience, I know of an unmarried couple who shared assets. Matters got very complicated when one of them died in an untimely manner. The situation became very awkward and caused great difficulty and hardship for both families. Certainly, such situations can give rise to massive delays, so proper recognition of rights in such circumstances, by agreement, is important and I believe the Bill achieves this end.

When the law comes into force, some couples might not know that their relationships are formally recognised, so there is a duty on the State to inform people about the legislation. We seem to assume in the House that when a law is passed, everyone knows about it. A couple might be living together and not discover for three years or more that the relationship could have new rights under this legislation. While it is right that the Bill should be passed, the public also has a right to be made aware of it. It is the duty of the Oireachtas to ensure that such developments are publicised. That example holds true also for young people growing up regarding their knowledge of the age of consent to sex and so on. Not everyone knows that, and young people of 15 or 16 may have no knowledge of the law in this regard. It is the last thing on their mind, so education is necessary across the board.

Most political parties have recognised the need for such legislation and brought forward policy positions in this regard, in varying degrees. Some of gone further than others. My colleague, Deputy Brian Hayes, said we needed to have cross-party support on this Bill. It is generally the case, I believe, that there is consensus at least regarding this Bill. Some parties want more, but at least we can have agreement on the legislation before the House, put it on the Statute Book and move on. It is interesting to note that when the Green Party was in opposition, it demanded a great deal more, yet when in Government it is prepared to settle for what it can get.

I do not want to sidetrack the debate, but I have a problem in general with this approach by the Green Party. People become disillusioned with politics and the various parties over the years, when, for example, they may have believed that the Green Party was different because it was not an old established entity like the others, trammelled with history and so on, but when it went into Government, it became the same as the other parties. It lost that freshness and people have been let down and disappointed. That causes a problem for the rest of us because people tend to assume that Fine Gael, as soon as it gets into Government will do the same as the Greens. I have a problem with that. Political parties in opposition need to hold their views and beliefs when they get into power, not change them overnight, because that gives a bad image of politics in general and damages us all. This Bill is yet another of example of where the Greens have virtually done a full U-turn on what they stand for and that is a pity.

There has been a good deal of debate on the freedom of conscience amendment and I understand the difficulties. To insert a freedom of conscience amendment sets a serious precedent for the future, but I believe the issue could be disposed of with a degree of common sense.

There has been a good deal of debate on the freedom of conscience amendment and I understand the difficulties. To insert a freedom of conscience amendment sets a serious precedent for the future, but I believe the issue could be disposed of with a degree of common sense. I ask the Minister of State to see whether a suitable wording could be agreed to get us over this obstacle. I can understand the position of somebody who might have very strong Catholic beliefs and who has a problem with this but, nonetheless, the onus is on public servants to carry out the laws of the State. That is the way it has to be and I do not think it can be amended, although perhaps the punishment can be. I have tried to check this matter, but I believe there is talk that if one does not carry out a duty one could face a prison sentence. Perhaps one could lose or be removed from one's job, but is a prison sentence a bit too strong? Am I reading that wrongly? Perhaps there is some other way of dealing with it. We need to address that difficulty as best we can with some common sense. We want to have a Bill that most people can agree with so that we can make progress in this area. It has to be done because we do not want to get stuck on some small matter.

Deputy O'Rourke referred earlier to photographers and cake providers having a problem with this, but that is their own business. They have a choice and people do not have to employ them if they do not wish to do so. The situation concerning parish halls, however, does need to be clarified. In this context, I presume that a parish hall belongs exclusively to the Catholic Church and in that case I do not think they should be forced to make that hall available to somebody with whom they disagree. If it is a community hall, however, that is a separate matter. If a parish hall belongs to the Catholic Church which does not agree with same-sex marriages, should the law force it to allow the building to be used for such a ceremony? I personally do not think it should. I am not convinced that this Bill actually says it should be, but that matter needs to be addressed. If it is any other community or State-funded building, it is open to everybody and that is the way it should be. I would like that matter to be clarified, however, so it will not drag on and cause a problem.

I note the comments by Deputies Alan Shatter and Charles Flanagan that the Bill fails children. I have a serious problem with that because all parties have a duty to protect children whenever possible, regardless of their circumstances. If there is any way this Bill can be thus amended, then it should be done. Deputy Shatter said the legislation is blind to children and I am concerned about that aspect.

The Bill does not recognise that when a relationship between co-habitees breaks up, provision may have to be made for children just as if it is a marriage break-up. Deputy

Shatter is right in that respect because it is the same situation. We need to examine the Bill from the viewpoint of protecting children. Another question raised was that if one partner in a same-sex couple has a child from a previous relationship, what will happen as regards the responsibilities towards that child? If the same-sex couple are recognised in a civil partnership, what are their duties to the child who might also be part of that relationship? That needs to be discussed and set out because it is a serious area. If the law is unclear, the child may suffer because it will not obtain its rightful entitlements or because it will have to go through cumbersome legal procedures. We must protect the child involved as best we can.

The situation concerning couples who are not in a formal relationship, but are living together, needs to be addressed. In modern society, it is generally an elderly couple who end up in this situation. They may not have access to the necessary legal information or perhaps cannot afford to go to court. If one of them passes away, the remaining partner may find it complicated to obtain justice due to costs because the matter was not dealt with properly and clearly in legislation. A recent discussion on this legislation threw up many awkward legal situations that may take a long time to resolve. While we do have laws, we do not always have justice because the system is not geared for modern times. It is slow, outdated and costly. I realise that this Bill is a step in the right direction, but we must work on making the law more affordable to everyone regardless of income. We will be told that there is free legal aid, but it is not the same. Let us call a spade a spade. They do their best with minimal resources, but one does not get the same service as if one could afford to pay a top barrister. We must address that because the law should apply in the same way across the board regardless of a person's financial situation. People do not receive the same treatment under the law, however, and it is far too slow. It should not take years to get justice, along with all the horror and suffering involved, especially in family law cases.

I want to deal with some other aspects of the Bill before us. There is a four-year delay before divorce proceedings can be initiated, but under the provisions of this Bill the period is two years. I wonder what the logic is behind that provision. Is there some reason that was done? Does the Minister believe the chance of a break-up is more likely in such cases? It does not seem right, so I would like to have the matter clarified, although perhaps there is a good reason for it.

Fine Gael will be tabling amendments to the Bill. We have all had a lot of contact from those for and against the Bill. It is important legislation so hopefully it will be dealt with speedily and will not be delayed on Committee Stage. Ireland is way behind the rest of Europe in dealing with legislation on same-sex partnerships. We must fast-track it and grow up as a country. I know it is difficult for all of us, but we have to do what is right by the people. The law must respect their choices and rights. It is not a question of people's religious beliefs, but of their legal entitlements.



Sean Power T.D.
(Fianna Fail)

I am glad to speak on this Bill, which has been promised for a long time. It would appear to have widespread support among Deputies. As a young Deputy in the early 1990s, I recall the former Minister, Mrs. Máire Geoghegan-Quinn, introducing legislation to decriminalise homosexuality. I was the only Government backbencher to speak in support of that measure at the time. Some people thought for a while that I might have had two heads, but it was wonderful that we had a woman Minister who was prepared to do the right thing despite the opposition that existed then. Over the past 20 years, Ireland has changed in many respects and we have become a much more mature country. There is certainly not the same resistance to this type of legislation now as there was 20 years ago. The Bill before us is long overdue, but I am glad it is being debated today. I acknowledge the contribution and continuous focus that the Labour Party, and Deputy Brendan Howlin in particular, gave to this matter. We discussed this issue on a number of occasions when he presented Private Members' Bills, which ensured that the Government did not rest on its laurels. We fulfilled the promises given, although it did not come about as quickly as most would have wished. It was a difficult Bill to draft, however, as a number of legal issues had to be addressed. I am still unhappy with certain aspects of it, so amendments will have to be tabled at a later stage.

The Government is acknowledging a reality that exists in this country. Many same-sex couples throughout the country live in real, meaningful and loving relationships, but for far too long we have turned our backs on these people and have found it easier to ignore them. By doing that, we have denied them their rights and rightful entitlements.

I acknowledge the role played by the Labour Party in this respect, and that of Deputy Howlin in particular. It is with pleasure that I wish to comment on the Bill. In many respects, while the legislation itself is important and necessary, the Government is acknowledging a reality that exists in this country. Many same-sex couples throughout the country live in real, meaningful and loving relationships, but for far too long we have turned our backs on these people and have found it easier to ignore them. By doing that, we have denied them their rights and rightful entitlements. This Bill is about rectifying that and giving them what they deserve. The Bill will provide protection and security to same-sex couples. It will provide entitlements many of us

take for granted but which have been denied to these people for most of their lives. In bringing forward this legislation, we are making a clear statement to the country and to those in same-sex relationships that the State values their relationships and realises what these relationships mean to them. It realises this is an issue that must be dealt with professionally and given a place on our Statute Book.

The publication of the Bill appears to have widespread support not just in the Oireachtas, but outside it. However, there are those, and most of us have received correspondence from them, who are totally opposed to the introduction of this legislation and who see it as a bad move for the country. They are entitled to their opinions and that is what democracy is all about. I strongly support what we are doing, but it is a pity it has taken as long as it has to get to this stage. I warmly welcome it.

Many gay and lesbian people have endured unnecessary hardship as a result of living here. They have suffered hardship on a daily basis in trying to live a normal life. This is something many people outside the gay community do not understand. Discrimination has been a common experience for gay and lesbian people. Many of them were alienated, jeered and bullied and had, in many cases, to suffer in silence. For many of them coming out created enormous pressures, particularly with regard to how their families and work colleagues would react. Unless one has had a family member or friend who has gone through that experience, it is difficult to appreciate or understand the enormity of this challenge for gay and lesbian people. The delay by the Government in providing the necessary legislation for gay and lesbian couples has allowed that type of discrimination, hardship and abuse to continue.

In many same-sex relationships, one of the members is the parent of child living with the partners. The legislation makes no clear provision for such children in the case of the death of the parent, despite the fact the remaining living partner has acted as a parent to the child for a number of years.

We all need to love and to be loved. This legislation acknowledges that people in same-sex relationships can have a loving, fulfilling and rewarding relationship and it is important we recognise that. The publication of the Bill is welcome. However, I have a serious concern with regard to an aspect of it which has been mentioned by some of my colleagues, namely, where children are part of those relationships. In many same-sex relationships, one of the members is the parent of child living with the partners. The legislation makes no clear provision for such children in the case of the death of the parent, despite the fact the remaining living partner has acted as a parent to the child for a number of years. Once that parent dies, it is as if the relationship of the remaining partner with the child must end. This is something we should not tolerate. It is important we deal with that issue now. It would be ironic that if in bringing in the Civil Partnership Bill to deal with discrimination against same-sex couples, we created

further discrimination against children.

I thank the Minister for bringing forward the legislation, which will have widespread support in the House. However, we must be seriously concerned about the issue of the children in these relationships and I hope this can be dealt with on Committee Stage



Joan Burton T.D.
(Labour)

I wish to recall for the House that Deputy Seán Power was one of those who supported a Bill for the decriminalisation of homosexuality, as it was then described, which was introduced to the Dáil by the then Minister for Justice, Mrs. Máire Geoghegan Quinn, as part of an agreement for Government between Fianna Fáil and the Labour Party. He supported it at a time when the issue was much more contentious than today. Many people felt threatened by the Bill then, but for many gay people it was a time when they began to feel they were on the long march to being full citizens in their own republic.

The Labour Party is disappointed that the passage of this Bill, although its arrival here has been negotiated on foot of a coalition agreement between Fianna Fáil, the Green Party and what were the Progressive Democrats, has taken so long. In many ways, and perhaps this is to do with the character of the Minister, this is not a brave Bill. Instead, it takes a minimalist approach which sets out the minimum recognition that is now widely given throughout the European Union to same-sex partnerships. Nonetheless, the Labour Party welcomes the Bill as a step forward, although we do not feel the measure is complete and have some criticisms to make on it.

However, we should bear in mind that while this legislation is incomplete, it is a stepping stone. As such, we accept it as a progressive move that is welcomed by many gay people and people who identify themselves as part of a wider and active gay community, but it is not necessarily the last step

It is important to remember that in 2010 we begin a decade that celebrates the 100th anniversary of 1916, and we see the busts of all the signatories to the 1916 Proclamation each time we walk through the lobbies for a vote. We should remember, as we move towards celebrating a number of important 100th anniversaries in the formation of the State, that the people involved in the creation of our new State were, for the most part, neither narrow-minded nor harshly judgmental. We do not

know much about their sexual orientation, because many of them died young and we never got to know much about their sexuality. The culture at the time was more confessional and private than now. However, we should bear in mind that while this legislation is incomplete, it is a stepping stone. As such, we accept it as a progressive move that is welcomed by many gay people and people who identify themselves as part of a wider and active gay community, but it is not necessarily the last step. Many people in the gay community aspire to a full expression of their relationships in marriage in the same way as heterosexual couples.

I want to encourage the Minister. Countries that have as much of a Catholic tradition and presence as we have, such as Spain and Portugal, have now legalised same-sex marriage and the sky has not fallen in. Those countries do not appear to be in any greater moral dilemma or in any greater state of moral perfection than this State. They recognised that a significant number of their citizens believed this issue should be addressed in their parliaments and they did address it. Countries such as Belgium, Sweden, Norway and the Netherlands recognise gay marriage.

For many, including fundamentalist and evangelical Christians, gay marriage can be a very difficult concept. However, it is not an unreasonable objective to secure the right of somebody to express his sexuality, see it fulfilled or have his relationship acknowledged, honoured and legally protected in the same way as is generally provided for in law. Many people, both gay and straight, wonder why anybody would bother getting married and ask why partners should not just live together. When children are involved or when people reach a slightly more mature age, having a legal framework for a relationship, be it established through civil union or marriage, provides certainty, solidity and extremely important legal rights to the two parties involved.

On the whole, it suggests many older gay people strongly supported the Labour Party's Civil Unions Bill and strongly support the legislation before the House. It allows people in long-standing relationships to have legal protections. These protections become vital as one becomes older.

Bearing in mind the talks taking place today in Northern Ireland, we should note the Good Friday Agreement commits the Republic and the North to maintain equivalent rights. The United Kingdom, and therefore Northern Ireland, has had civil partnership since 2005. While Northern Ireland is a society with a committed number of evangelical Christians, I am not aware there has been much objection to civil partnership there, except on occasions, one of which we heard about recently. There may be people who do not care for it but they have accepted it as the legal right of people who wish to exercise that option.

I, and I am sure many other Members, received much correspondence on this issue. I received correspondence from constituents in Dublin West, including Castleknock,

Blanchardstown and Mulhuddart. On the whole, it suggests many older gay people strongly supported the Labour Party's Civil Unions Bill and strongly support the legislation before the House. It allows people in long-standing relationships to have legal protections. These protections become vital as one becomes older.

We all encountered circumstances in which the long-standing, loving partner of someone who became ill lacked status, even in regard to vital life-and-death decisions or obtaining information. In an intensive care unit, the biological family of the person in care takes precedence over the person's partner. It can be very shocking for a person to find himself shut out from the medical process and to be prevented from being with a seriously ill or dying partner, despite what their commitment and relationship would lead one to believe would be allowed. Occasionally, family members do not come to terms with the fact that children or grandchildren are gay. They feel that, as parents, grandparents or siblings, they take precedence over the gay person's partner. I saw this occur on a couple of occasions and it was very difficult.

Circumstances for younger gay people are obviously different. None-the-less, over the past couple of years in my constituency, I came across a number of cases in which gay people, particularly younger gay men, were very badly harassed as a consequence of general anti-social behaviour in their neighbourhoods. Since the Garda is not able to deal with gangland crime, it is very often unable to assist a young gay man who is the subject of persistent anti-social behaviour and homophobic bullying.

In my constituency, I know of several youngish men who are almost prisoners in their own homes. Although they have very friendly contact with the Garda, by telephone and otherwise, there is a general absence of Garda patrols in their communities and a lack of awareness of how difficult and horrible homophobic bullying can be. While the Garda, in general, recognises acts of racism and domestic violence and responds quite strongly thereto, even in the circumstances of its limited resources, homophobic bullying has not received as much attention as it should have.

One effect of this legislation will be that, by strengthening the civil rights of people in gay relationships, we will acknowledge more strongly the fact that somebody who is gay is the equal of other citizens and has the same right to pursue happiness and liberty as anybody else. I hope one outcome of this legislation will be that respect for gay people as equal citizens before the law will be strengthened. This will assist the Garda in considering more strenuously the issue of homophobic bullying.

I received a letter from a 27 year old constituent from Castleknock who came out when he was approximately 19. He wrote to say he believes that, in spite of recent progress, homosexuality is still very much stigmatised in Irish society and that such stigmatisation, ranging from the swear words used by school children to the general attitude of citizens, is reinforced through the inequality of our legal system. He asks why a schoolchild should deem a gay or lesbian pupil to be equal to him or her when, in the eye of the law, the pupil is not. I welcome this legislation because it moves a step further in this regard. I hope it informs the thinking of the Department of Justice, Equality and Law Reform and the Garda in respect of their broad approach to anti-social behaviour and homophobic bullying.

I received correspondence from the INTO Lesbian, Gay and Bisexual Teachers' Group, as I am sure did other Members. All the parties in this House and society in general must address the issue raised. Why is it that, even among relatively young children, be it in school or on the street, the terms of abuse most frequently directed at other young kids, or in an anti-social behaviour context at older people, concern sexual orientation? To hear such abuse is quite horrifying. It is particularly strong among young children and it is so unhealthy. Although one can say some children who use homophobic terms of abuse do not really understand what they are saying because they are too young, the fact that homophobic abuse has such currency means life can be made very difficult for a young person exploring his or her sexuality and who may be gay. The man I spoke about earlier is effectively a prisoner in his own home. Even if he just goes out in the evening to the shops, he is subject to derogatory commentary from anti-social individuals. It is like hunting in a pack. When they sense a weakness they go for it, expressing it in the most hurtful and demeaning way possible.

Significant numbers of children are now born outside traditional marriage relationships, whether it is to a straight or gay couple. The lack of legal structure for these children, particularly if there is a sudden death of a parent, creates legal difficulties.

The position of children in partnerships should have been addressed in the legislation and I hope the Minister will address it on Committee Stage. Significant numbers of children are now born outside traditional marriage relationships, whether it is to a straight or gay couple. The lack of legal structure for these children, particularly if there is a sudden death of a parent, creates legal difficulties. We also have the simple situation of when a heterosexual couple has a child outside of marriage, the father's name is often not on the birth certificate or a guardianship agreement entered into. If the relationship breaks down, a father will have to go to desperate attempts to arrange a structure to co-parent or meet his children, often incurring heavy legal expenses. As more gay couples have or parent children, inevitably some of these relationships will be sundered either because of a breakdown in the relationship or death.

It is important the House gives some thought as to how to provide for the children in such circumstances. These children are, however, no different from any others. I hope the Minister will give some consideration to this matter on Committee Stage. I accept it is a sensitive and difficult issue with a variety of views on it. Every child is entitled to know who are his or her parents. Every parent and person in a parenting position is entitled to have a formal recognition of their relationship to their child. There will always be special circumstances but the law is there to provide a legal framework and maximum protection for children in the best possible way.

I look forward to the legislation being implemented. The Labour Party will be tabling amendments on Committee Stage to address specific areas. It has taken much time for the Bill to be introduced in the Dáil. I believe the Labour Party's Bill on civil

partnerships is better, stronger and more realistic for current times. For those in Fianna Fáil and the Minister who are concerned about introducing this legislation, they should think about Spain and Portugal, both rather conservative countries once like Ireland, who decided to open up the doors and offer full freedom to all of their citizens on an equal basis.



Deirdre Clune T.D.

(Fine Gael)

I am glad to contribute to the debate on this Bill. It is an important step forward in family law legislation, recognising same-sex couples, their rights as well as their responsibilities and the State's obligation to them. There is a strong consensus with and welcoming of the Bill's provisions. All parties have put forward proposals in this area such as former Fine Gael Senator, Sheila Terry, who introduced civil partnership proposals in 2004.

I have received much communication from constituents on the Bill's provisions. Although it is broadly welcomed, some believe it does not go far enough while others recognise it is an important step forward. The 2006 census estimated there were 2,090 same-sex cohabiting couples, one third of whom had children. I am sure that figure has risen somewhat since then. Existing law makes little provision for the increasing number of cohabiting same-sex couples. Ireland is not unique or the first to introduce civil partnership legislation. In 2005, the UK and Northern Ireland introduced legislation recognising civil partnerships while Denmark, Iceland, Finland, Germany, Switzerland and Slovenia introduced similar legislation. Some countries have gone further by legislating for same-sex marriage.

This issue is a concern for some people. The Minister stated: 'The Attorney General has advised in particular that to comply with the Constitution, it is necessary to differentiate the recognition being accorded to same-sex couples who register their partnership with the special recognition accorded under the Constitution to persons of the opposite sex who marry.' Some people who have contacted me believe the legislation does not go far enough and they ultimately want to see same-sex marriage introduced.

The legislation, however, is an important step forward in giving same-sex couples who have committed to one another the opportunity to declare their commitment before the law and the State. It will grant rights as well as obligations under civil law.

The legislation, however, is an important step forward in giving same-sex couples who have committed to one another the opportunity to declare their commitment before the law and the State. It will grant rights as well as obligations under civil law. While introducing the civil partnership registration scheme, it also introduces a cohabitation scheme. This provision has not been widely acknowledged, overshadowed as it is by the former provision.

[The debate adjourned for other Seanad business, and was resumed later that day. This continuation of the debate is available at: <http://debates.oireachtas.ie/DDebate.aspx?F=DAL20100127.xml&Page=1&Ex=H11#H11>]

I wish to focus on the part of the Bill which relates to unmarried or unrelated cohabitants, whether they be of the same sex or the opposite sex. This relates to people who are in intimate and committed relationships and it provides rights in respect of succession, and so on. Qualified cohabitants who have lived together for three years, or two years if they have a child, will have extra financial rights if the relationship ends or if a partner dies. This provision will impact on a much greater number of people than did the civil partnership scheme.

According to census data, there were 120,000 cohabiting couples in the State in 2006 and one third of these had dependent children. I am sure this number has increased significantly in the interim. I wish to focus on this part of the Bill because it has not received a great deal of attention. There are people who have been residing together for two years or more who are not aware of the legal obligations placed on them. An article by Carol Coulter in today's edition of *The Irish Times* outlines a possible scenario in respect of a couple moving in together at 19 years of age and breaking up a few years later. Ms Coulter refers to the female in the relationship contributing a great deal and the male being unaware of his legal obligations. In that context, there are those who do not realise that they may have significant legal and financial obligations at quite a young age. This is an important change as it will give rights to certain individuals.

However, there is an obligation on us all to send the message that the situation has changed and could change for many people. The point has been made that this is such a significant step that it should be in separate legislation. None the less it is in the Bill now and I am sure the Committee Stage debate will expand on this matter further. It is extremely important and must be highlighted. If the couple is aware of the potential scenario they have the option to prepare a written agreement ó prenuptial would be the wrong word. Nevertheless it is an important step and should be flagged as it could have implications for many relationships, notwithstanding the merits of the proposal.

I welcome the civil partnership registration scheme. It is an important statement for this country and signifies where we are at present. Much has been said about the difficulty for gay and lesbian people living here given the social stigma that can be attached. The statement that the introduction of the Bill makes will help to overcome the difficulties gay and lesbian people face. A survey by the Gay and Lesbian Equality Network, GLEN, found that one in four homosexuals has been punched, kicked or beaten in violent homophobic attacks. Almost one-fifth have tried to take their

own lives, with many saying this was related to their sexual identity. Some 58% of respondents said there was homophobic bullying at school which is very serious given that it is among young people. Perhaps many young people are not aware of the implications of the bullying nature of their carry-on or the language they use. It can have serious detrimental effects on the recipient of the bullying.

The survey found that more than half said they had been called abusive names and a quarter said they had been physically threatened by other students. More than one third said they had heard homophobic comments by teachers, while 8% said they had been called names by them. Those are extremely worrying statistics as we depend on teachers and other adults in a position of responsibility to respect equally all those for whom they have responsibility. If such a statement is true ó I have no doubt it is ó it is a very serious situation. One third of respondents said they self-harmed over the stress of concealing their sexual orientation during their teenage years. Some 80% of those surveyed said they had been verbally insulted, while 40% had been threatened with physical violence.

I hope that the legislation going through the House will help to bridge the gap and help people to understand that people being gay or lesbian is a natural phenomenon, and that the State recognises their existence and confers legal rights and obligations on them.

That is the reality for many people and the theme of young people runs through those statistics. I hope that the legislation going through the House will help to bridge the gap and help people to understand that people being gay or lesbian is a natural phenomenon, and that the State recognises their existence and confers legal rights and obligations on them. I hope it will represent a step forward because it is a very serious situation. People have come to my clinic seeking to move house because they have been subject to bullying owing to their sexual orientation, which is unacceptable. However, I compliment the housing officer in the city council who was very receptive and sympathetic, which helped the individual in the case. The statistics highlight how difficult it can be for people to come out if that is the kind of society in which we all live.

Like others I voice my concern about the children of a couple in a civil partnership. The legislation is silent on the position of such children

Like others I voice my concern about the children of a couple in a civil partnership. The legislation is silent on the position of such children. For instance the Family Home Protection Act will not apply to children of a couple in a civil partnership. If a home is being divided the needs and rights of the children will not be taken into account.

In the event of a dissolution of the partnership, it can proceed without regard to the child or children, whereas in the case of a married couple a divorce can only be granted if the children of that relationship are provided for. The Bill does not provide that a court be obliged to have regard to the care of the children when granting dissolution. The cost of caring for the children or the time and involvement that one or other parent may have given over the years of the partnership towards nurturing and rearing the children is not considered, whereas in a divorce it would be taken into account. If the partnership were dissolved, the children could be financially disadvantaged and the Bill makes no provision in that regard. Based on what we have heard in the Chamber today, the situation of children will command considerable attention during Committee Stage.

I do not know much about the children of same-sex partnerships. While I have read considerable negative comment about children of same-sex partnerships, from my experience and what I understand, children need security and a loving environment and it does not matter who provides it. It can be a single parent, two parents of the same sex or two parents of opposite sex. The most important thing is for children to have security, know who is picking them up from school, know where they are sleeping at night and be loved. Children will survive and thrive provided those circumstances are in place.

I believe it was mentioned earlier that some 2,000 children are looked after by people in same-sex partnerships. There may be a biological parent in that partnership, including possibly as a result of sperm donation. However, there are many such children and their situation needs to be recognised and the law needs to protect them at all costs. Many organisations have commented that provision for children is not addressed in the Bill, which will cause problems at some stage if not rectified. A child looked after by people in a civil partnership could be seriously disadvantaged should the partnership dissolve or should one of the parents pass away, which would give rise to a legal limbo. Now is the time to recognise the situation and make provision to rectify it.

Provision for non-conjugal couples is omitted from the Bill.

Provision for non-conjugal couples is omitted from the Bill. I had done some reading over the years which led me to expect that under such a Bill, brother and sister or perhaps an uncle and nephew living together or whatever would be recognised in this part of the Bill in terms of succession rights, taxation, next-of-kin rights and so on. Those are very important and I had expected them to be included in this Bill. I am surprised that they are not.

I know of many individuals living together. My maternal grandfather was one of 12, eight of whom did not marry. Four of them lived near us, two brothers and two sisters in the one house. The situation was similar on my father's side of the family, and I believe such situations were quite common. These people are elderly now, but it is not unusual for brothers and sisters to live together. I am surprised that provision is not being made for them in this Bill.

On the whole I welcome the Bill. It is an important step forward, we have many questions about it and I am sure they will be thrashed out on Committee Stage. I notice that taxation and social welfare rights will apply to the partners in a civil partnership. That is very welcome and has been described as being similar to the rights available to spouses. It is important that this be extended to the provisions of the Finance Bill and the Social Welfare Bill.

This is an important step forward. It is complex legislation, given the implications it will have for other legislation. It will be a slow and significant process as we tease matters out on Committee Stage. I look forward to the Minister's comments, in the event, on the various points that have been raised in this debate.



Joe Costello T.D.
(Labour)

I am pleased to have the opportunity to speak on the Civil Partnership Bill 2009, and want to compliment the Minister on introducing it. While we may crib about the detail, it is a very substantial step in the right direction.

The Bill's proposals have been in gestation, one way or another, over the past ten years, with various reports, documents and debates. My colleague, Deputy Brendan Howlin, in 2006 produced the Civil Union Bill, which was something of a catalyst in getting the ball rolling and in terms of putting pressure on the Government to act on the various discussions that had taken place. The purpose of Deputy Howlin's Bill was to give legal recognition to the relationship that exists between two people of the same sex, and allow an equivalent status relationship for those people as well as recognising and approximating, as closely as possible, the rules of law that exist for marriage. Under the Constitution, of course, the marriage of same-sex couples is not allowed and to change that would require a referendum.

That was the thrust of that particular Bill, and this legislation covers some of the same ground, as well as some different aspects as well. It provides for a statutory registration scheme for the civil partnership of same-sex couples and a range of rights obligations and protections consequential on such registration. It also provides for a redress scheme for same-sex couples and opposite-sex couples in cohabitation but not in a marriage arrangement or not registered in a civil partnership.

It does not cover an area dealt with in Deputy Howlin's Bill, namely, adoption, which is a pity. More than anything else, as has been referred to, it does not deal with children in either the same-sex relationship category, where they can be involved as result of particular family relationships, or as regards cohabiting couples, where very large numbers of children are involved. That children are not part and parcel of the legislation, as drafted, is a conspicuous oversight, but I am sure the Minister will be open to amendments in this regard.

It is our duty, then, as legislators to make provision through the legislation introduced in the Dáil and Seanad to address the issues whereby inequalities arise in the treatment of gay and lesbian citizens.

The original proposals that sparked off the legislation in terms of same-sex gay and lesbian citizens derive from a straightforward and basic principle, namely, that all citizens in this country are equal, and gay and lesbian citizens are no different. They are entitled, therefore, that the State will provide the same basic rights to them as to all other citizens. It is our duty, then, as legislators to make provision through the legislation introduced in the Dáil and Seanad to address the issues whereby inequalities arise in the treatment of gay and lesbian citizens. We have a duty to address the constitutional bar on the marriage of same-sex couples, with the consequent denial of a host of rights, privileges and benefits, on the one hand, and a host of obligations, penalties and sanctions, on the other.

The status relationship conferred by the Civil Partnership 2009 Bill provides an avenue for progress, approximating to some degree the rights of gay and lesbian couples within the Constitution, but of course this does not extend to full rights for such couples.

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The situation that pertains means that while a considerable degree of equality is being given, we are not giving full equality. Nonetheless, I believe we should recognise that this Bill is a milestone on the road to our desired destination. It seems the next step is to consider the issue of full equality and how this may be achieved. This is something that merits some level of discussion in the context of the Bill before the House.

Ireland, as many people have said in this Chamber, has changed considerably over the years, but still has a long way to go to become a fully fledged pluralist and egalitarian society, despite the principles that exist in that respect. The 1916 Proclamation was a ringing endorsement of that, full of idealism, declaring a Republic and stating categorically that all the country's citizens would be treated equally and cherished as such. That particular Proclamation is, perhaps, the anchor we might start with. It was followed by the Democratic Programme of the First Dáil in 1919, which built on the ideals and principles enshrined therein. We are now only six years away from the centenary of the Proclamation and we might usefully examine a checklist as regards how the ideals of the Republic declared on that occasion have been dealt with. The commemoration of the centenary of 1916 might be usefully looked at in terms of rights, principles, values, the way in which our culture has gone and the degree to which Ireland has become a pluralist society with every category of citizen

being facilitated in the enjoyment of his or her rights. As regards that checklist, we must see what needs to be done within the next six years to ensure those legal and constitutional rights are fully granted. Some interesting issues might come to light when we make a thorough assessment of the situation.

After 1916, the character and culture of the country was blighted by the bitterness of the civil war, the economic gloom visited on the country for many decades and ó probably more than anything else ó by a powerful and triumphant church that came into existence simultaneously with the new State. As a result of all that, the ideals that were proclaimed in 1916 were often lost sight of. We can see the situation that has arisen now with the Ferns, Ryan and Murphy reports. Instead of cherishing the children of the country equally, we found that both State and church had in many ways connived and conspired to abuse, neglect and institutionalise vulnerable children. Therefore, rather than doing what was proclaimed in 1916, the new State that emerged often did the opposite. It did not recognise or cherish many of those vulnerable children, but allowed them to be abused. It happened with relative impunity for half a century and only now when it is coming to light in an open, transparent and meaningful fashion, is any level of redress taking place.

In commemorating the centenary of 1916, we will have to examine closely what has happened concerning the rights of children. We did not see fit to write the rights of children into the Constitution, so they are not recorded there as such. That might be one way of moving forward towards commemorating the centenary. The least we can do at this point is to correct that omission with a constitutional amendment. Hopefully, that will be coming in the not too distant future, given the work of the committee currently dealing with children's rights.

In the context of child abuse, which has poisoned our society, it would be wrong to exclude from this legislation measures to extend legal protection regarding the new statutory entitlements we are providing to same-sex and co-habiting couples. The children of such relationships must be also included. How can we remain silent on these issues and not make such provisions? These children are legal dependants of the couples about whom we are talking and therefore they should be covered within the legislation. In his reply, perhaps the Minister will explain that omission, as well as indicating to what degree he will accept amendments in that direction. Does he propose to introduce such amendments himself? To my mind, this is the most glaring omission in the Bill, given the parameters within which the legislation is to operate. It would be worthwhile therefore to deal with the role and place of children within the context of the Bill.

The other side of the coin is that within our Constitution there is a presumption of heterosexuality in the provisions on the family. That presumption flows from the constitutional provisions on marriage between a man and a woman only, and the character of the nuclear family. The core message of the Constitution is that men and women marry to procreate. The State gives constitutional protection to the mother and to the family arising from marriage, which is the context of Article 41 covering the family. Therefore, religious tenets rather than secular pluralism are uppermost in the current constitutional provisions dealing with the family and marriage. In this respect, there is no recognition of addressing anything other than heterosexuality. The very

fact that heterosexuality is addressed, however, means that, by omission, there is no consideration of any other sexual orientation. Therefore our Constitution is neglectful, which is a glaring omission.

By recognising the statutory registration of same-sex relationships in this Bill, the State is accepting that it has been neglectful of the rights of its citizens who are not heterosexual. In fact, the Bill is a recognition that there has been neglect within the panoply of rights granted in the Constitution in terms of other sexual orientation. It is accepting same-sex relationships and granting them the protection of the law. Likewise, similar protection is now being granted to co-habiting heterosexual couples who do not choose to marry. These are areas that our Constitution did not even envisage as being part and parcel of what might be provided for when it was framed in the 1930s.

The Bill represents a considerable step forward considering the statutory status that existed back in 1994 when the law defined homosexuality as criminal. We have now moved to give legal status and protection to gay and lesbian relationships. The next logical step is to look at the right to marriage between same-sex couples;

The Bill represents a considerable step forward considering the statutory status that existed back in 1994 when the law defined homosexuality as criminal. We have now moved to give legal status and protection to gay and lesbian relationships. The next logical step is to look at the right to marriage between same-sex couples; that would be a full civil union between two citizens in a stable loving relationship. Otherwise, our Constitution will continue to reflect a two-tier discriminatory system based on sexual orientation. It would not be the end of the road, as some people might be inclined to believe. Quite a number of other European countries have already gone down this route. For example, Spain and Portugal, which are strongly religious countries, have legislated for marriage between same-sex couples. To my mind, that is the next step that must be contemplated by legislators here. It has been already contemplated by quite a number of commentators. In 2006, the working group on domestic partnerships reported to the then Tánaiste and Minister for Justice, Equality and Law Reform. On the option of full civil partnership, the group commented as follows:

Full civil partnership falls short of full equality for same-sex couples as it excludes such families from the protection given to the family in the Constitution.

It clearly recognised that full rights are not available under the particular option we are now discussing. I am sure the Minister will be glad to know that no less a person than our former Taoiseach, Deputy Bertie Ahern, made the following enlightened statement in April 2006:

Our sexual orientation is not an incidental attribute. It is an essential part of who and what we are. All citizens, regardless of sexual orientation cannot stand equal in the eyes of the law. Sexual orientation cannot and must not be the basis of a second class citizenship. Our laws have changed and will continue to change to reflect this principle.

Clearly, Deputy Bertie Ahern, who was the Taoiseach at that time, was indicating that this was a work in progress and was moving down the road towards providing certain rights for cohabiting and same-sex couples and that this was right and proper within the context of our legislative framework. It was clear we were by no means coming to the end of the process, but were moving along the road with the process. That is the vein in which the Labour Party looks at the legislation. We accept it for what it is, a major step forward, but recognise it is not the final stage of the work. We will consider it and consider how it can be improved and expanded upon to provide further rights for those, particularly children, omitted from its provisions.

We accept it for what it is, a major step forward, but recognise it is not the final stage of the work. We will consider it and consider how it can be improved and expanded upon to provide further rights for those, particularly children, omitted from its provisions.

The legislation proper provides for a process of registration which is much the same as that for marriage and for the amendment of the Civil Registration Act 2004 to include civil partnerships, dissolutions, nullity decrees and so on. An issue that has arisen is the place of registration and the person to conduct the registration. Incidentally, it was interesting to read in today's newspapers that Croke Park can now be a venue for civil marriage ceremonies. Croke Park has been quite ecumenical in its approach to sport in recent times and besides being open to hurling and Gaelic football, it has been open to rugby, soccer and Australian football. I have no doubt the GAA will be just as ecumenical with regard to civil partnership ceremonies and I see no reason that there should be any problem with registration of such ceremonies there. It is only proper that people whose function it is to perform marriage or civil registration ceremonies should be willing to perform civil partnership ceremonies between same-sex couples. This is something they should not, willy nilly, refuse to do.

I welcome the legislation which the Labour Party accepts with its various faults and omissions. We hope it will improve during its progress through the House and that we take the extra step forward towards full equality for gay and lesbian people.



Michael D'Arcy T.D.
(Fine Gael)

I consider this Bill a welcome opportunity to afford rights to the gay community. These are rights that all married couples enjoy without question, including rights to fairer rates of tax, pensions, inheritance and for basic status of next-of-kin. Homosexuality was rightly decriminalised by the State in 1993, but some people are still being punished in the context of the rights of a couple in same-sex partnerships. It is time to end this punishment and this is the opportunity to do so. This is an opportunity for Ireland to join the 15 other states worldwide that recognise the rights of same-sex couples to enjoy the tax benefits of married couples and to remove itself from the unfortunate position of being among the last two major western states that do not have some legal provision for recognising same-sex relationships.

I consider this Bill a welcome opportunity to afford rights to the gay community.

I welcome the Bill because it will ease the lives of the many same-sex couples in this country. It will bring these couples in from the cold, give them security and ease their worries in times of grief, illness and financial insecurity as a result of unforeseen circumstances. I received a large number of e-mails supporting the legislation, but, strangely enough, not as many as I did when the Labour Party proposed its Bill in late 2007. These are Irish citizens who must be afforded the protection of legislation and they have outlined their wish for this Bill to be passed. Many unfortunate circumstances were outlined to me in these e-mails, too many to relate here. The Bill reflects Fine Gael policy and gives us the opportunity to complete the debate, which was cynically postponed by the Government in the run up to the dissolution of the Dáil prior to the last general election. Fine Gael has been seeking this opportunity since it was the first party in Dáil Éireann to publish a comprehensive civil partnership plan in 2004, following a commitment in the Visible Justice document of 2002.

As I said earlier, the Labour Party moved a Private Members' Bill in late 2007, but it was defeated. Therefore, it is good, even if it is somewhat later than many people would have liked, to bring closure to this legal loophole. We can only assume from party manifestos that the Government will bring all its might to bear to ensure that this Bill passes as quickly and comfortably as possible. Fianna Fail stated in its manifesto that it would address the need to provide a legal framework that supports the rights of same-sex couples, including by extending State recognition to civil partnerships between such persons, so that they could live in a supportive and secure legal environment. The Green Party similarly promised to remove all gender specific terms from the current legislation and regulations governing the granting of marriage to allow same-sex couples enjoy the rights and responsibilities of civil marriage

and that it would recommend the creation of a new category of civil partnership, an institution that could be created and dissolved with more ease than marriage. This would be available to both heterosexual and same-sex couples. If these are the policies of the Government parties, this is the belated opportunity for them to finally fulfil them.

Senator David Norris introduced a Bill on this issue in November 2005. The Government dismissed his Bill and promised it would introduce its own. That Bill did not materialise. When the Labour Party introduced a Bill in late 2007, the Government defeated it. In the programme for Government, Fianna Fáil, the Green Party and the then Progressive Democrats pledged that they would legislate for civil partnerships at the earliest possible date in the lifetime of the Government. We have just completed the first half of a five-year term and are no longer in the earliest part of the Government's time, but the time has come now to deal with the issue. There has been considerable comment from some quarters that the Bill provides for same-sex marriage. It does not. That will only be decided following a referendum by the citizens. The people will decide on that matter, not the small number of elected representatives in the Oireachtas. If those who promote same-sex marriage are not satisfied that we need a referendum, there is nothing any public representative can do as it is a constitutional matter.

I feel the legislation is a reasonable attempt to find a balance between both sides. I do not often compliment the Minister on legislation, but he has the right principles at heart on this occasion.

I am certain the more conservative elements in our society are not pleased with the legislation, but it is a step in the right direction. Equally, more liberal minded people believe that the Bill does not go far enough. They will not be satisfied with anything less than same-sex marriage. I feel the legislation is a reasonable attempt to find a balance between both sides. I do not often compliment the Minister on legislation, but he has the right principles at heart on this occasion. Improvements could be made. I hope the Minister will be co-operative in respect of accepting Opposition amendments on Committee and Report Stages.

We have now moved into the second decade of the 21st century. This is not the 1970s, 1980s or 1990s when homosexuality was illegal. This Bill would end discrimination against the gay community and afford its members the rights they need and deserve.

I agree with other speakers that there is a significant lack of knowledge regarding the fact that this Bill deals with cohabiting couples. The information that would benefit such couples is not available. I appeal to the Minister to ensure the existence of an information programme, administered by his Department and the Department of Social and Family Affairs, to ensure couples, including same-sex couples, be they cohabiting or otherwise, will not be left behind because they do not know their rights have changed.

The subject of fathers' rights is fraught with difficulty and should be dealt with. To do nothing is unfair to the fathers and children of the State. I will not pretend I know what needs to be done but I appeal to the Minister to ensure that the relevant Oireachtas committee considers the issue. Following a focused, considered discussion including input from family lawyers, fathers' groups and other relevant groups, a position could be found to help those who are in legal limbo.

It cannot be easy to be gay in Ireland. We still live in a very conservative society. Members of the gay community have been subject to significant abuse over the years, as touched upon by some Deputies. We need closure in this regard, in a way that is satisfactory to the gay community. We cannot allow *à la carte* equality.

The question of children is unclear and must be sorted out in the subsequent Stages of the Bill.

With regard to the question of civil ceremonies being conducted by members of the Civil Service, there can be no choice. It is their job and what they are paid to do. They cannot choose to do portions of their job as they see fit.

I do not have any gay or lesbian neighbours and do not believe there are gay and lesbian citizens in the same way as I do not believe there are heterosexual citizens. They are not gay, lesbian or heterosexual; they are just neighbours. The more we comment to the contrary, the more people become isolated. We are all citizens of the State and our sexuality is irrelevant. It would be better if one's sexuality were left unsaid.



Leo Varadkar T.D.
(Fine Gael)

The purpose of the Bill is to establish a statutory civil partnership registration scheme for same-sex couples. Fine Gael will be supporting the Bill, which is broadly in line with Fine Gael policy, as enunciated by former Senator Sheila Terry in 2004. The Bill is warranted for a number of reasons, particularly to recognise that there is a significant number of citizens in long-term same-sex relationships. Issues arise as a consequence and, at present, there is inadequate protection.

As a medical practitioner, I came across at least one case in which a next-of-kin issue involving a gay couple arose. Although the couple lived together for a very long time and were very much husband and husband, as it were, it was not possible to obtain consent for an emergency operation because the partners were not legally next of kin. Ultimately, the person deemed next of kin turned out to be a nephew who did not particularly like his uncle or approve of his lifestyle. This is a very practical example of why I believe the Bill is warranted, at least in principle. It is certainly warranted

where the death of an individual who had been in a long-term relationship leaves a dependant without deeds to the house or an income. This can be resolved under existing law but the Bill sets out an appropriate way to achieve this.

The Bill is warranted for a number of reasons, particularly to recognise that there is a significant number of citizens in long-term same-sex relationships. Issues arise as a consequence and, at present, there is inadequate protection.

Such difficulties can arise after the separation of a couple in a long-term relationship that involved an element of dependency, although the circumstances may be more complicated. They can also arise in respect of pensions and domestic violence. Domestic violence in relationships, be they straight or gay, is often not spoken about. It is very much under-reported and the Bill provides some protection in this regard. In this sense, it is very warranted.

It is on the basis that I have outlined that my party and I will be able to vote for the Bill with a clear conscience. That is not to say I do not have concerns. There are some omissions and points that should be taken into account. The first omission is that the Bill provides no facility for a brother and sister, two sisters or two brothers to register a civil partnership of the kind envisaged. Such people, if living in local authority housing or in an isolated rural community, would be covered by the cohabitation provisions of the Bill but could not form a civil partnership thereunder. That is a mistake. The Bill should recognise the circumstances of people in a dependent, but not sexual, relationship. All the issues that pertain to intimate relationships apply in respect of such people, including next-of-kin considerations and issues concerning pension supports and inheritance.

There are some omissions and points that should be taken into account. The first omission is that the Bill provides no facility for a brother and sister, two sisters or two brothers to register a civil partnership of the kind envisaged.

Having said that, I may sound a little contradictory in outlining my position on cohabitation rights, which are to come into effect after two years. Two years is a very short period. The relationships of many people who were going out together during the boom and who were encouraged to buy a house together have broken down. Those concerned are in a very difficult position, largely because the properties in which they invested are in negative equity. They are not in a position to sell because both parties would incur a serious loss from doing so. The Bill may change this dynamic, in a way that has not been considered fully, by giving cohabitation rights to one party or the other on foot of one party claiming those rights. This matter needs to be fleshed out in a little more detail.

The same difficulty arises in circumstances where two friends, male or female, have bought a house together and are co-owners. One may want to get married or leave but cannot do so because the house is now not worth very much. It will be up to the party who considers himself or herself to be aggrieved to claim cohabitation rights under this Bill. I am not satisfied this has been considered properly.

A Member with more experience than me once said we never debate one Bill in the House but two ó the Bill before us and the law of unintended consequences. The Civil Partnership Bill may have a number of unintended consequences.

It is important to talk about the status of the family. Tax issues are not dealt with in the Bill but there will be follow-on tax implications in the next or subsequent finance Bills. I have a problem in this regard. I am single and live alone. Being single, I pay a lot of tax. I do not wish to be poor-mouthing but must state I probably pay 40% of my income in tax. As a result I have to pay the mortgage and utility bills on my own, which is the same for the many hundreds of thousands of single people in the State. Ironically, if I were to marry someone earning less than €25,000, I would be able to share the costs of living and reduce my tax bill by €7,000. It seems to be somewhat unfair that as a single person I am essentially paying more tax to subsidise other married people who may earn more than me. This anomaly of the tax system is designed to support marriage. This issue will also arise with civil partnership in that the Finance Acts will be amended to offer the same benefit for those who enter a civil partnership. Single people will effectively be subsidising the lifestyles of married people.

Why should single people have to pay €7,000 more in tax? I accept an issue arises where there is a family. However, in a family there must be children. We should consider changing the system so that those rights apply to families with dependent children. It is somewhat unfair that some Members with the same income as mine, who have stay-at-home wives who chose not to work but spend the day on the golf course or lunching, pay less tax than I do. I do not have an objection to their choice but I object to single people having to pay more tax so that other people have that choice. This anomaly needs to be addressed in our tax system.

Where we do give tax concessions to couples, they should not be based on the fact that a man and a woman, a man and a man or a woman and a woman are living together in a sexual relationship. They should be solely based on the fact that they are a family unit. The tax advantages should be given to the family unit and not that they are married. This will need to be addressed in the Finance Acts.

The same applies to inheritance and capital gains tax, areas where there could be potential abuses. Marriage is already abused with couples splitting up to go live in Italy for six months in order to avoid capital gains tax. Recently it was reported a business was established to bring women from the Baltic states to marry men from the Indian subcontinent to secure legal rights. We would be very naive not to factor these into our considerations of the possibility that people will use civil partnership in the same way marriage is abused for residency and tax purposes. For example, two male business partners may decide to divorce their wives and form a civil partnership to avoid paying millions of euro in capital gains tax. Then they may dissolve the civil

partnership and remarry their wives. All these issues will arise.

I am sure I will be attacked for raising these matters but it would be a bad Parliament if these consequences were not considered on Second and Committee Stages. If one is introducing legislation in this area, one has to consider these matters to get it right so another Bill will not have to be introduced later.

A civil registrar should not be allowed to use their conscience or any excuse to refuse to recognise a civil partnership if it is allowed by the law of the State. However, I do not believe they should be imprisoned as it would not be the place for civil registrars with excessive religious views.

I have considered the issue concerning conscience. The job of a civil registrar is to register births, marriages and deaths. If this Bill is passed, they will be required to register civil partnerships. If one does not like that, then he or she should resign. I do not accept that a public servant employed by the State with such a job has the right to choose who they will or will not register. One is not allowed not to register a child because one does not like the parents or a marriage because it is between a Muslim and a Catholic. A civil registrar should not be allowed to use their conscience or any excuse to refuse to recognise a civil partnership if it is allowed by the law of the State. However, I do not believe they should be imprisoned as it would not be the place for civil registrars with excessive religious views. A fine and dismissal from employment is okay but Mountjoy is going too far. This provision should be removed from the Bill.

It has been suggested in some quarters that there should be an opt-out from this legislation for people with problems due to their conscience. I initially thought it was a good idea but, having discussed it, I now consider it a poor provision. For example, a hotelier should not be able to tell a same-sex couple that he will not accommodate them in a single bed. If that was allowed, where does it stop? The hotelier could extend this to a single mother or an interracial couple. Another example would be of a female photographer, who is a left-wing extremist feminist, deciding she does not want to photograph a Muslim wedding because the women are covered at it. There is no case for any form of conscientious opt-out from this legislation. We are not asking people to go to war and stand in the trenches. We are asking them to recognise the law of the State. If they do not like that, they can get lost.

Room for exception will arise for members of the clergy and religious bodies and properties, excluding schools and hospitals funded by the State. There are not many gay couples who will seek to impose themselves on a church or church hall without being welcomed. However, there are the Peter Tatchells of the world who may create cases and *cause célèbre* which should not be allowed. We must recognise and accept there is a religious conscience issue for the clergy and churches, temples, synagogues and so forth.

The question of adoption is ignored in this Bill because it is contentious. Sooner or later, it will have to be addressed. Every child has a father and a mother. Two men or two women cannot have a child together. A single person cannot have a child on their own unless they procure the pre-products of conception from an alternative source. This is an undeniable fact. Unfortunately, sometimes in children's lives one of the parents is not interested in them or dies. Where a child is an orphan, the State should replace their mother and father. Every child has the right to a mother and father and, as much as is possible, the State should vindicate that right. That is a much more important right than that of two men or women having a family. That is the principle that should underline our laws regarding children and adoption. I am also uncomfortable about adoption by single people regardless of their sexual orientation. I do not believe I as a single man should adopt a child. The child should go to parents, a mother and father, to replace what the child had before.

There are exceptions to every rule and difficult cases. There may be a case of where a man previously had a child from a heterosexual marriage, the mother is off the scene and he and his gay partner have now entered a civil partnership. That type of relationship will have to be recognised. A similar situation may arise in respect of a lesbian woman who may have had a child for various reasons, later became involved in a same sex relationship which became a civil partnership and died and the only person the child knows as a parent is the other woman to whom he or she is not related by blood. That is an exception. These issues will have to be addressed. It is our duty as a Legislature and that of Government to address them. I do not know what is the solution. It may be for the Adoption Board to determine particular exceptional cases like that while upholding the principle that every child has a mother and father and is entitled inasmuch as possible to same.

I wish to discuss some specific points of the legislation. While I may be wrong on these issues it is important the Minister or Minister of State clarifies their purpose and reason for inclusion. I note that the term 'marital status' is to be removed from the Employment Equality Acts. For example, under section 101 the term 'civil status' will be substituted for the term 'marital status.' I do not understand the reason for this. If we want to reassure people that marriage is not being downgraded why then are we removing the term 'marital status' from the Employment Equality Acts? Why not state 'marital status' and 'civil status' or 'marriage status' and 'civil partnership status?' I do not understand the reason that term is being removed. If people are protected on the basis of their gender, membership of the travelling community or sexual orientation why is the term 'marriage' now being removed and replaced with 'civil status?'

Another issue arises in respect of civil partnership, which appears to be much easier to dissolve than a conventional civil marriage, the reason for which I do not understand. If the argument is that civil partnership is necessary to recognise and give legal status to long-term same sex relationships, why should it be any easier to dissolve than civil marriage? If it is the case that we are saying that this institution is therefore lesser than marriage, which is what section 108 effectively states, then why should opposite sex couples not be able to avail of marriage light, which is essentially what is being proposed if that section stands. Section 170 deals with the cohabitation issue. If I am

correct, cohabitation arises after two years. I am comfortable with that. Two years is not a long time for people to be cohabiting for all sorts of reasons as outlined earlier. I believe we should perhaps provide a lengthier period in this regard.

Fine Gael supports this Bill for the reasons outlined, namely, there are many long-term loving relationships involving same sex couples which deserve the protection of law, which this Bill seeks to do. I stand over my concerns as outlined and look forward to hearing the Minister's response to the Second Stage debate.



Lucinda Creighton T.D.
(Fine Gael)

I am pleased to have an opportunity to address the House on this important and long overdue legislation. I support the Bill. Like Deputy Varadkar, I lament the exclusion of heterosexual cohabiting people from the civil partnership provisions of this legislation, which I believe to be a mistake. I urge the Government to at some point reconsider this matter. While I accept that it may not be possible to address this issue on Committee Stage, perhaps it could be done at a later stage in the life of this Government.

It is often tempting and easy for the Legislature to shroud itself in an air of fantasy and to ignore the reality of a modern evolving society and to refuse to acknowledge the changing environment in which we live. We are all well acquainted with gay couples and individuals who, like all members of society, live normal lives. They are no different from anybody else and are in most cases accepted and embraced in their communities, local environments and by their families. It is easy to forget it is only as recently as 1993 that homosexuality was decriminalised in this country, which is quite extraordinary. It was only then that archaic legislation such as the Offences Against the Person Act 1861 and Criminal Law (Amendment) Act 1885 were finally repealed following a lengthy decade-long campaign by Senator David Norris, Mary Robinson and others.

The step in 1993 to remove the categorisation of homosexuality as a criminal offence was opposed tooth and nail by people who were terrified of change and who were determined to oppose any severance with or departure from traditional Irish society as they knew it regardless of how rational or right it may be. It has taken a considerable amount of time for us to reach a point whereby the Legislature and the society which it reflects in this Parliament can finally and with confidence create laws which protect the interests of citizens in this country who have for far too long been isolated, exposed and ultimately treated as second-class citizens and human beings in our society.

This legislation is extremely important for a number of reasons. Obviously, we urgently need to legislate to reflect the reality of Irish society but we also need to

legislate to ensure adequate protection for all citizens without judgment, ridicule, disdain or label. Gay life and gay relationships are a reality and normal part of Irish life. It is imperative that we as legislators introduce legislation that affords gay people the dignity, respect and basic human rights to which all citizens and members of society are entitled.

It is often tempting and easy for the Legislature to shroud itself in an air of fantasy and to ignore the reality of a modern evolving society and to refuse to acknowledge the changing environment in which we live.

There are complex constitutional issues associated with this issue. I am conscious that other countries that do not have the type of constitutional restrictions we have, which make it difficult to navigate on some occasions, have introduced legislation in this area. I do not believe we can ignore some of the constitutional issues that arise.

While the Bill does circumvent some of these issues it would be remiss of me to do likewise. There are two particular matters of constitutional significance which I would like to address, the first being the protection of the special status of the family, as provided for in Article 41 of Bunreacht na hÉireann and alluded to throughout and, the protection of the child, which is a central issue, one to which some of my colleagues have referred. Taking the issue of the special status of the family in the Constitution, it is clear from the traditional construction of Bunreacht na hÉireann that the traditional family is defined in the context of a father and mother and whatever children they may bear. Deputy Varadkar also alluded to this issue. I do not dispute the special protection which is afforded to the family in the Constitution. Rather, I believe it is right and proper and I very much support it. I believe it is an important pillar of our society and is an essential aspect of the fundamental rights of children. We should not, as a society, be afraid on occasion to uphold some of the traditional values of our society, many of which are contained in our Constitution while at the same time advancing new protections that need to be provided under the law. I do not believe these two objectives need be mutually exclusive.

Civil partnership, as envisaged in this legislation, is a distinct institution and in my view, it is one which ought not challenge or compete with the institution of marriage. These institutions can be mutually complimentary and mutually supportive. They need not be in competition with each other,

Civil partnership, as envisaged in this legislation, is a distinct institution and in my view, it is one which ought not challenge or compete with the institution of marriage.

These institutions can be mutually complimentary and mutually supportive. They need not be in competition with each other, or one need not be judged on the basis of the other. No doubt couples who commit to each other in a loving way through the new civil partnership legal channels deserve the same protections and legal rights as other couples, but this is not to say that the institutions need challenge each other or that the institution must challenge a more traditional form of union between heterosexual couples. The two institutions, while being distinctive and, by necessity, somewhat different, can afford much needed protections for couples who are committed to each other, irrespective of their sexual orientation.

While the creation of legal civil unions is a new legislative departure which will serve to achieve equality, freedom and dignity before the law for many gay people in the State which each citizen is entitled to and deserves in any free democracy, it will also ensure that the traditional family, which has been the linchpin of our society for far longer than this State has held its freedom, will also be protected, preserved and respected. This is no humble achievement.

The other constitutional issue I wish to address is that relating to the protection of children, which is relevant to this debate on Second Stage. Deputy Shatter raised this in his contribution in this House last week. He pointed out that the Bill, as framed, fails in the context of child protection. It ignores the plight of children who are born to cohabiting parents and denies them the sort of protections and rights that children born in a traditional family environment are afforded. We must ask ourselves why this is the case. They are no lesser children with no lesser needs, and certainly no lesser vulnerabilities, and I strongly believe that they are worthy of every protection and security that can be afforded them by the law. I am conscious that there is likely to be a referendum this year on the protection of children and the placing of the child at the heart of the Constitution, but it is a missed opportunity to not secure the protection of children in this legislation.

The rights and needs of children also apply to children who are brought up by a gay couple. I fully agree with the points put forward by Deputy Varadkar in this regard. It is clearly preferable that the biological parents should always be the obvious guardians of a child. They should be the people who raise a child and look out for and protect his or her needs. That is the duty of a parent; it is the duty of a mother and father. Of course, we live in a society where the ideal is not always possible and in a society and world where the vagaries of reality must be borne in mind and taken into consideration.

...but I think there is a way in which the needs of such a child can be protected where there is a loco parentis situation and where it is clear that the paramount best interests of the child would be to remain in the stable and secure environment, to which he or she has become accustomed and in which he or she has been raised.

In the context of a child who, for example, is being reared by a gay couple, the question is, when one parent is absent should the needs of the child be ignored or how are those needs to be prioritised. What about the possibility that one parent passes away? It is unfortunate that this legislation does not provide any legal protections for a child in those circumstances to ensure that he or she remains in a safe and secure environment for that child. The Bill is remiss in this regard, and I would urge the Minister to look at this and reflect on this discrepancy on Committee Stage. I do not have a particular amendment at this point, but I think there is a way in which the needs of such a child can be protected where there is a *loco parentis* situation and where it is clear that the paramount best interests of the child would be to remain in the stable and secure environment, to which he or she has become accustomed and in which he or she has been raised. It is a fear for many couples in that position and a genuine concern where there is a child involved. I would urge the Minister to look at this and to consider the issue of custody and guardianship as this Bill moves through this and the other House.

The issue of conscientious objectors is a difficult and contentious one. We must try to debate this rationally and consider the implications of the legislation. Much has been made of the suggestion that an amendment be tabled to reflect the religious beliefs of some members of society in some circumstances and whatever objections those people may have. Section 23 is not a rational or balanced approach to dealing with somebody who refuses on religious, faith or conscience grounds to register a civil partnership. It would not be just or correct to hand down a custodial sentence to a registrar on that basis. There are procedures in place throughout the public and civil service to deal with those who do not perform their duties. I am not sure that, on summary conviction, imprisonment of the legislation, in section 23, provides for up to six months imprisonment is a balanced or rational way to go about this. It is excessive and disproportionate. If someone, on personal conscience grounds, does not wish to carry out a civil registration, then it should be dealt with through the appropriate channels, as would happen in the case of any civil servant not carrying out his or her duty or function as he or she should. In some ways it would fly in the face of the concept of freedom and choice. I am not in any way suggesting that such behaviour should be condoned, but I do not believe that the appropriate response is a six-month custodial sentence. Again, I would advocate that this section of the Bill be looked at seriously by the Minister and his officials to come up with a better and more suitable response.

On the case for the idea of an amendment to the legislation on an opt-out for conscientious objectors or people with particular religious views who do not want to participate or play any part in a civil partnership ceremony, the attendant celebrations or whatever afterwards, I tend to agree with the point put forward by Deputies Varadkar and D'Arcy. It is a difficult one and I do not pretend to have any clear solution to it. Certainly, one could not allow a situation of it would be completely contradictory to the Equality Act 2004 and the Equal Status Act 2000 of where people were entitled to refuse access, for example, to a hotel, a restaurant, etc. That would not be a wise or constructive provision to include in this legislation.

However, the issue of religious institutions and the use of their properties and

premises is slightly different. The point is well made, that a gay couple about to get married would not want to impose themselves on a Catholic church, a synagogue or whatever. That is an unlikely scenario but we should not be hostages to fortune either and we should not allow a situation to arise whereby it could become an inflammatory issue. In some ways it is reasonable that religious institutions would be able to opt out, or at least to allow for the exclusion of their properties and premises, such as church halls or whatever, from use in terms of carrying out a civil union. Perhaps this is something for which an appropriate wording could be found or something the Minister might consider. No form of discrimination should be condoned in any way, certainly that is not the point I am attempting to make. However, we should consider some way in which a fair and rational opt out could be arrived at for religious institutions and the clergy.

My concerns regarding the fate of conscientious objectors and religious institutions under the proposed legislation do not in any way detract from my belief that this is necessary, imperative legislation that, I hope sincerely, will put the rights and protections to which same sex couples and co-habiting couples are entitled at the very centre of Irish policy making.

My concerns regarding the fate of conscientious objectors and religious institutions under the proposed legislation do not in any way detract from my belief that this is necessary, imperative legislation that, I hope sincerely, will put the rights and protections to which same sex couples and co-habiting couples are entitled at the very centre of Irish policy making. Yesterday, I listened to an interview with Bishop Willie Walsh on RTE radio. I was struck by the tone and genuine goodness of his words. He was questioned about his views on homosexuality and gay relationships. He stated, correctly, that categorising and pigeonholing people is something we should not do and he is absolutely correct in this regard. Many people will oppose this legislation on grounds of religion, Christian faith or other forms of faith. The irony, at least in respect of Christianity, is that faith is about accepting people without judgment and with complete compassion. It is about embracing people not simply in spite of their differences but because of them. This is a lesson all of us can and should learn. More important, it is one we should all practice.



Jan O'Sullivan T.D.
(Labour)

I welcome very much the opportunity to participate in this debate and to mark the introduction of the Civil Partnership Bill as a step forward. This is one of the many sometimes painful steps that we have taken in Irish society to give freedom and equality to all our citizens. I welcome the Bill in the context of moving forward in terms of rights of people who live in the country. In many ways I agree with the last point made by Deputy Creighton. We need a new morality in this country. We should judge people by what they do and how they treat fellow citizens, rather than put labels on people and judge them by such labels.

We should adopt such a new morality in Ireland in the context of all that we have learned about what took place in past decades, when, simply because someone had the label of being a priest or a senior person in society, one could get away with scandalous and criminal behaviour against weaker citizens. As a result of a title or the role carried out, such people were held in high esteem and were able to get away with practices with which no society should have to put up.

This is one of the many sometimes painful steps that we have taken in Irish society to give freedom and equality to all our citizens.

Recently, I listened to a programme about Hilton Edwards and Micheál MacLiamóir. Those two wonderful men carried out great work for Ireland in the arts, including the foundation of the Gate Theatre, placing the theatre and the arts in a central place in Ireland, their interpretation of plays for the public in Ireland and so on. They were labelled as criminals at the same time that other men, protected by the fact that they were religious or held certain titles, were abusing children. We have emerged from a past in which we allowed people to behave in ways totally unacceptable and criminal, simply because of their title and the power they held in society. Slowly, we have come out of that era and we have learned a good deal about it in the recent past as a result of various reports. We must learn also to look at people for what they are and how they behave and how they treat fellow citizens rather than because of any label they carry.

While I welcome the Bill, I believe we should move towards allowing full, equal rights to same sex couples. I realise it is probable we cannot do so under the Constitution at present.

While I welcome the Bill, I believe we should move towards allowing full, equal rights to same sex couples. I realise it is probable we cannot do so under the Constitution at present. However, assuming the Constitution must be changed and the people agree to any changes, we should move to full, equal civil rights for gay couples, including marriage.

I welcome the historic step being taken today but we should acknowledge the steps taken in the past, especially the decriminalisation of homosexuality in 1993. I congratulate the former Minister, Ms Máire Geoghegan-Quinn and the Fianna Fáil “ Labour Government which initiated that legislation and brought it through the Houses of the Oireachtas. I was in the Seanad at the time. Despite many objections the legislation got rid of a label that should have disappeared long before 1993, but unfortunately, still existed in our laws up to then. Also, I commend Senator David Norris, who introduced a Civil Partnership Bill to the Seanad in 2004 and my colleague, Deputy Brendan Howlin, who introduced a Civil Union Bill in 2006. I now congratulate the Minister for Justice, Equality and Law Reform who has moved the process forward further from his position as Minister.

We should give these rights to couples who in many cases have been living together for years and who have committed to each other, in some cases through very difficult circumstances. For example, there are cases where one partner has been ill and the other partner has not been declared next of kin in terms of the right to consent to medical treatment. There are matters of inheritance and taxation issues and a variety of other issues where this legislation will make a real difference.

I wish well all the same sex couples who are waiting for this legislation to be enacted such that they can solemnise ó if that is the correct word, although probably it is not because it is a religious word ó or have their union recognised in a civil sense. I wish them a very happy union together.

I trust this legislation will make a difference in terms of society. Gay people have many difficulties in Ireland. I have a report before me entitled Proud Voices. It is an exploration study into the needs of lesbian, gay, bisexual and transgender young people in the counties of Limerick, Clare and Tipperary. I attended the launch of the document in the University of Limerick last year. It was carried out jointly by Rainbow Support Services in Limerick and the University of Limerick. It examined young people throughout the mid-west region and put questions about their experiences of finding out they were gay, addressing that fact, talking to their families, their experiences in schools, informing their friends and how they were treated across a range of areas. It is very enlightening and shows the difficulties gay people still have in Irish society, especially in schools. There is a serious issue of bullying in schools. While some schools are great at dealing with it and will confront the issue and support the young person having problems, other schools are not as quick to deal with these issues.

By taking this step, the Oireachtas is affirming the fact that we have a range of people living in our society and we must acknowledge their rights and

the need for equality within our society. Not only will it provide practical measures in respect of taxation and inheritance, but we will send out a broader message about the way in which society values and treats all people

By taking this step, the Oireachtas is affirming the fact that we have a range of people living in our society and we must acknowledge their rights and the need for equality within our society. Not only will it provide practical measures in respect of taxation and inheritance, but we will send out a broader message about the way in which society values and treats all people. I have, however, a particular concern about young people. There are problems with homophobic bullying in schools. We must address that, specifically through the Department of Education and Science but also through the wider society.

The issue of children has been raised by many Deputies. There is a need for comprehensive legislation not only on the rights of children generally, but also on the rights of children in situations where their families are not what one would describe as the ideal family, that is, where there is a mother and a father. The reality is that, generally, we need protective laws for the many children who do not live in the ideal situation, where the relationships between their parents are not firm and solid, where the parents are not living together and so forth. The Labour Party Civil Union Bill attempted to address some of the issues relating to children, not just those of gay couples, but those of couples in general. That is not done in this legislation. I accept that there will be a constitutional referendum on the issue but public representatives collectively must ensure that the rights of children are protected in all types of situations.

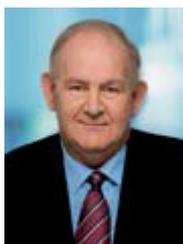
As Deputy Varadkar said, children are living with gay couples, be they the natural children of women in a gay partnership or of men in a gay partnership. There could be other circumstances as well. Those children have the right to the protection of the law, to recognition of their circumstances by the law and to rights equal to those of other children. I recall attending a conference on this issue at a venue near this House. It was also attended by Deputy Seán Power, who was representing Fianna Fáil. A Canadian legislator gave a speech in which he referred to the reaction when the Canadian Government introduced marriage equality. He told of a child who was living with two men “ he was the natural son of one of the men “ in a gay household who asked him: “Does that mean that I live in a real family?” That child was securing recognition as a result of the Canadian legislation. We must recognise the rights of those children as well as the rights of other children. While the ideal family is in marriage and, of course, we must protect marriage under the Constitution, we must also recognise that children who live in other types of relationships have as great a right to be protected as children who are living in safe and secure marriages. We have a duty, as legislators, to address that.

Section 23 was discussed by both Deputy Varadkar and Deputy Creighton. I am

inclined to agree with Deputy Varadkar's view that there must be sanctions when somebody is a public servant and is required to fulfil their duty under the law. I do not believe they should not have to do it because of religious objections. There must be a standard whereby public servants implement the law, and that must be clear. However, the suggestion that somebody would be imprisoned because they have not fulfilled their duty is not appropriate. I do not know if that provision can be amended. While there is a valid concern about the idea of somebody going to prison for not carrying out their duties, I am certain that there should be some form of sanction. Our laws must be implemented. The equality legislation must be implemented and people must be treated equally.

I wish to raise another issue which other Members might have raised. There is an article in *The Irish Times* today, which the Minister might have read, which suggests that an amendment might be required to the cohabiting couples section. I think the article was written by Carol Coulter. The article refers to younger people who cohabit. The intention of the cohabiting section is to provide for the rights of somebody who has been in a long-term relationship, perhaps in a caring role in the home, and whose partner leaves, leaving them with financial difficulties and so forth. I agree that those people's rights should be protected. However, the example given in the article is two 19 year olds who live together for a period and then separate. It made the valid point that there might be a need to amend the section to avoid doing something that was not intended in the Bill. The article raises a valid issue and there will be time on the other Stages to examine it. If the Minister has not read the article, he should do so before Committee Stage and ascertain if it makes a valid point.

I welcome the progress made in this Bill. I am sure it will be supported by all sides of the House and that there will be amendments to it. It is important that we take this historic step forward.



Seymour Crawford T.D.
(Fine Gael)

I am grateful for the opportunity to speak on the Bill. To put it bluntly, people have not been knocking down my door asking for this Bill to be introduced. However, I accept that there is a group that wanted this legislation and, in that context, I accept that the Bill will be passed by the House. The issue is how we deal with it as it goes through the system and whether necessary amendments are made to make it more acceptable and workable. I have received a great deal of correspondence on this issue, both very nice personal letters and e-mails. One e-mail might be asking when this will happen and saying it cannot happen soon enough, while the next might say it should not happen at all. Another might raise questions about the legislation and how it can be amended. That demonstrates the difficulties there are with the Bill.

However, times have changed and it is obvious that the Bill will be passed to provide for legal civil unions of gay and lesbian couples. This will clarify their situation with regard to inheritance and so forth.

On a personal basis, I support the Constitution. It recognises the family as the natural primary and fundamental unit of society and as a moral institution, and states that the State guarantees to protect the family as the necessary basis of social order and as indispensable to the welfare of the nation and the State. That is extremely important. However, times have changed and it is obvious that the Bill will be passed to provide for legal civil unions of gay and lesbian couples. This will clarify their situation with regard to inheritance and so forth. I understand the reasons for that and am aware of the serious situations in which some people might find themselves after years of being together. Under current law they do not have the right to decide what should or should not happen if the partner is in hospital or in some other situation. Those are the reasons for this Bill.

However, why does the Bill not go further, given that we are legislating for same-sex couples to be dealt with in this way? There are many brothers and brothers, brothers and sisters and sisters and sisters living together, especially in rural areas, with property in common. While I appreciate that their home is dealt with in legislation, the amount of property the brother or sister can inherit from their sibling is approximately €41,410. It was actually reduced in the last budget. It is strange that two strangers who come together through love or whatever and who remain together for three years or more will now be in a position legally to inherit everything, whereas others who have lived together for 30 or 40 years are not. As somebody who lives in rural Ireland, I come across that a lot and it is a major problem. It can mean the wealth of a family can disappear or will not exist to hand on to somebody else.

Surely, in civil structures people are entitled to have freedom of conscience. If they do not want to perform particular duties and they make that clear in a nice way, there is no reason other people cannot be found to do it.

The other issue which has been already referred to by my colleague, Deputy Creighton, and to which I wish to again refer is section 23. I fully understand some of the logic behind it but the reality is a different story. It is difficult for me to understand why somebody should be fined or sent to prison because he or she is not prepared to deal with this, when in any other part of the Civil Service an alternative would be found. There has to be a provision for freedom of conscience in this Bill. People have said this is not a church matter; it is a civil matter. Surely, in civil structures people are entitled to have freedom of conscience. If they do not want to perform particular duties and they make that clear in a nice way, there is no reason other people cannot be found to

do it.

I am aware of a case involving a county solicitor who did not want to get involved in a case for obvious reasons and the next county provided the personnel to facilitate the case. There are practical ways in which this can be done without getting all tied up in knots and making it unacceptable. This issue was not raised by Catholics alone. It has been raised by people of all denominations, including Baptists, Reformed Presbyterians and different groups, who are genuinely worried about the situation and cannot understand why we cannot allow a level of freedom in this area. I understand it was discussed at other party meetings, apart from ours, and that there were suggestions that an amendment would be tabled. I urge the Minister to examine the issue and every effort be made to ensure this Bill, which will never be acceptable to all, creates less problems than it does in its current form.

If the Bill is amended, it will be acceptable to many more people. If it is not amended, for the first time in the history of the State, Christians will be in a vulnerable position whereby they can be prosecuted for acting on their beliefs in traditional marriages in a way deemed discriminatory towards gay couples. That is the view of many individuals who have written and spoken to me about this issue. I urge the Minister to deal with that matter. The rights of others who are living together should be examined in the context of inheritance. We have moved down the road from the marriage structure to this point.

In our jobs as politicians we come across some very strange situations. This Bill will resolve some of them. Recently I met a woman who had lost her husband as I was told some weeks earlier and who wanted to know her rights. A private conversation, however, revealed that a marriage had not taken place. In the good old days the couple lived together in the United Kingdom or somewhere else, had a family together and moved back to Ireland, but they did not get married. In that context, the woman concerned had no rights. Her partner paid a full contributory pension but when I contacted the social welfare authorities, they did not want to know. It is important that such matters be rectified. I understand this Bill will bring about some rationale in that regard. Another case concerned a young couple with four children who had returned from England. The man was killed in a tragic accident. They had never been married and the widow, to all intents and purposes, had no rights. As a State we need to recognise these situations and try to bring some logic to them.

While some people tell us we should do nothing, we have to move forward and accept situations as they are today.

While some people tell us we should do nothing, we have to move forward and accept situations as they are today. However, we should not discriminate against others who should have freedom of conscience. I urge the Minister to deal with section 23 as it is a very important issue which will alleviate concerns, not just for me and some of my colleagues on this side of the House but, I understand, for many of the Government backbenchers.



Simon Coveney, T.D.
(Fine Gael)

I wish to make a number of points. I welcome the Bill. It represents progressive legislation for a modern, tolerant society. I welcome the fact it has finally come before the House. It is worth noting, as other speakers have, that my party produced a very similar policy document through Sheila Terry in 2004 which virtually mirrors this Bill, in terms of what it proposed. I recall the debates within the parliamentary party at that time which were difficult, with different views on the proposed policy at the time, but we decided to endorse it after a prolonged debate. I recognise that the Minister also comes from a catch-all party which has a series of different views on this Bill. It is also worth noting that the Labour Party introduced a Private Members' Bill which is also very similar to this Bill.

We know what is being proposed. The Bill will give legal recognition in Ireland to a relationship for same-sex couples. It will establish a registration scheme for civil partnerships for same-sex couples and it will provide a range of rights and responsibilities which I will discuss later following registration, including succession rights, pension rights, shared rights regarding property and so on. I presume the Finance Bill will contain provisions regarding financial rights regarding taxation which will be also passed into law.

There is a difference between two people committing to spend the rest of their lives together because they love each other and may want to have a family together, and two people who live together because of financial necessity.

There are also provisions to protect cohabitants in instances where a cohabiting dependant may find himself or herself vulnerable upon the death of another cohabiting relation, friend or whatever. Again, it is a difficult balance. One will hear people say we should give the same cohabiting rights to couples, whether they are a brother and sister, two men or two women, as we are now proposing to give to same-sex couples. I can understand why the Minister has not done that. There is a difference between two people committing to spend the rest of their lives together because they love each other and may want to have a family together, and two people who live together because of financial necessity.

My view on this has wavered as I have heard different arguments but, on balance, it would be wrong to introduce a Civil Partnership Bill whereby every cohabiting couple in the country would be able to apply on the basis that they live under the same roof.

There has to be an emotional commitment to one another as a qualifying criterion to get married, in the case of a man and a woman as it is defined in the Constitution, or to avail of the new civil partnership proposals we are debating here.

I want to address some of the concerns expressed in favour of and against the Bill. I join Deputy Jan O'Sullivan in extending good wishes to the thousands of same-sex couples who are officially cohabiting and others who have been waiting for this legislation to enable them to secure legal recognition for already emotionally cemented relationships. I hope these couples will enjoy the legal benefits and supports they secure as a result of the enactment of this Bill. Figures from the 2006 census show 121,800 cohabiting couples form family units, of which 2,090 are same-sex couples.

Many same-sex couples have been living in legal limbo for a long time. This has had tragic consequences in cases where one of the partners died. In other cases involving persons who have been injured in road traffic accidents, decisions on whether to switch off a life support machine have been taken not by the same-sex partner to whom the person is closest, but by blood relatives with whom he or she no longer has an emotional relationship. This is a human rights issue. People who want to commit the rest of their lives to another person and provide emotional and financial support should be afforded the protection of law, irrespective of whether they are of the same or the opposite sex.

People who want to commit the rest of their lives to another person and provide emotional and financial support should be afforded the protection of law, irrespective of whether they are of the same or the opposite sex.

The legislation is a significant step in the right direction. I am one of those who have changed their minds on whether to take a further step and provide for same-sex marriage. I no longer have concerns about introducing a form of same-sex marriage, although I do not believe it is likely under this legislation. While I am aware that such a step would give rise to constitutional issues and complications regarding children and adoption, these matters have been addressed in various ways by other countries.

People who wish to commit their lives to one another should receive full recognition in the eyes of the law.

People who wish to commit their lives to one another should receive full recognition in the eyes of the law. I refer to civil rather than church marriage because many people confuse religion with marriage. Civil marriage is a recognition by the State of a union of two people. The State also recognises the institution of the family. Separate from this is the recognition of marriage in the eyes of the church. While church recognition of one's marriage is important to many people, including me, it should not determine how we legislate.

I do not accept the argument that this legislation is a threat to the status of marriage or the family. The status of marriage is clearly defined in the Constitution and is unaffected by the legislation. I understand the view that the State should try to support the nuclear family, that is, a mother and father and their children, because many of us were fortunate to grow up in this kind of stable environment influenced by a father and mother. The family structure has, however, been undergoing constant change. We cannot legislate to prevent such change. Our responsibility is to do everything in our power, through the institutions of the State and legislation, to support the different types of family entity in Ireland. These include lone parents, cohabiting couples who have chosen not to marry and same-sex couples, some of whom have children living at home, whether from previous relationships or for other reasons. Our focus should be on asking what we can do in legislation or by means of State structures to support and solidify family units, that is, relationships between two people of the same sex or both sexes.

The assumption that this legislation proposes to give same-sex couples a series of rights without asking them to make a serious commitment on the back of these rights is false. Signing up to a civil partnership is a significant commitment which cannot be undone unless one partner dies or a court issues an order dissolving the partnership. A civil partnership involves a series of commitments which will encourage people to stay together and be supportive of one another. For the first time, the State will support same-sex couples. This is a positive development and should be supported because it encourages commitment.

I propose to address the issue of children. While the Minister deserves recognition for introducing this legislation, his efforts to address the difficult and delicate issue of children are inadequate. The Bill makes few references to children, children's rights, adoption, guardianship or custody. We must do more in subsequent Stages of the Bill to ensure the rights of children are protected.

However, in most cases involving children, the reality is that the same-sex couple is seeking the right of guardianship or custody ó or in some cases the right to adopt ó of children who are already in the relationship and part of the home.

Many people reduce the issue of children to the argument that same-sex couples should not be allowed to adopt. This is an incredibly ignorant position which fails to address the complexity of the issue. There are two sides to the argument that same-sex couples should not be allowed to go through the adoption assessment procedure and adopt a baby. However, in most cases involving children, the reality is that the same-sex couple is seeking the right of guardianship or custody ó or in some cases the right to adopt ó of children who are already in the relationship and part of the home. One may have a divorced or separated woman who lives with her child and has entered a same-sex relationship. The new family structure consists of the biological mother, her child and another woman. Under this legislation, the couple will be able to secure

recognition through a civil partnership if they choose to do so. In such circumstances, what would be the legal rights of the child in the event that the biological mother passes away and the biological father lives in a different country and no longer has a relationship with the child? Will custody or guardianship transfer to the new entrant in the family unit who has legal recognition in terms of her relationship with the mother but no such recognition in terms of her relationship with the child? That is a very real scenario which occurs in Irish homes and we must deal with it in this legislation.

There is also the issue of adoption; the bringing of a child into a family from outside. One may look at how countries such as the Netherlands, Belgium, Spain, Sweden, Canada, Norway and South Africa, all of which have introduced full same-sex marriage, deal with adoption. They do so in slightly different ways. In some cases a child can be adopted only if it is the biological son or daughter of one of the same-sex couple. In others applications for adoption are allowed but only within the state concerned. Foreign adoptions are not allowed because there are complications with regard to recognition of same-sex marriage in other states.

There is a range of ways in which we can deal with the issue but we cannot ignore it. We must put in place a legal structure for this circumstance. Perhaps I missed it, perhaps it is included. We must establish a structure to protect children in the family unit of a same-sex couple whose civil partnership breaks up. In the same way that children and the welfare of the child take primary position in cases of marriage breakdown we must have provision to protect children who may find themselves part of such an evolving family unit. I ask the Minister to consider that issue. I recognise it is a very difficult area but we have responsibility for it and must deal with it.

I disagree with some of my colleagues about conscientious objection. This is a classic example of the need to separate church and State in terms of policy. If we pass a Bill which gives a legal right to same-sex couples under civil partnership legislation those couples have the right to expect that the State will deliver the services it has signed up to deliver under the Bill. This is a question of the law not of a person's religious beliefs. It is important to say this. The Minister spoke of the potential for discrimination, perhaps on the basis of deeply held religious beliefs, but the law has an obligation to ensure that the protection of people against discrimination overrides those concerns. In the same way we must protect other minorities in Ireland, whether they wear a headscarf or have a different skin colour, religious belief or tradition. This is about ensuring that everybody is seen as equal in the eyes of the law and that the relationships we support through the civil partnership Bill cannot be discriminated against when this legislation is passed.

We must ensure that even if people have a conscientious objection they will not be able to discriminate against a same-sex couple because they do not approve of their behaviour.

I try to keep religion out of this debate. I consider myself to be a practising Catholic and the basis of Christianity is about tolerance and respect for the diversity of others. In my view, it should be about taking a liberal and tolerant view on issues such as this. We must protect the people for whom we are legislating in this Bill. We must ensure that even if people have a conscientious objection they will not be able to discriminate against a same-sex couple because they do not approve of their behaviour.

This is not an ideological stance, one way or another. I am sure the Minister has heard both sides of this argument in his party as I have in mine. I do not espouse a Fine Gael position but give my personal viewpoint.

There is still some work to do on the legislation, particularly in the areas of children's rights and support for families. There is work to be done, too, in improving the support mechanisms to be provided for cohabiting couples in the Bill. I do not suggest we give them the legal recognition we propose for civil partnerships but we could go a little bit further in terms of financial supports and establishing rights in the areas of inheritance, wills, decision-making, property and so on. The Minister will see the tabling of amendments to reflect that.

I look forward to Committee Stage of the Bill where we can explore in more detail some of these issues.



Dermot Ahern, T.D.

Minister for Justice, Equality
and Law Reform
(Fianna Fail)

I thank all the Deputies who made contributions concerning this important legislation. There was a high level of cross-party support for the Bill and I very much welcome that. I was struck by the quality of the debate. It says a lot for the way in which we, as a society, have moved on. Many Deputies referred to what was termed a 'new reality' and this legislation is indicative of the dramatic changes that have taken place in our society in the past ten to 20 years.

However, when the Bill was published, it was clear it did not satisfy everybody. There were those who said it did not go far enough and others who said it went much too far. As I indicated in my speech at outset of this Second Stage debate, in drafting the legislation I appreciate that other parties made contributions in its regard. I will make one point lest anybody thinks my party was dragged into this legislation. In our manifesto, long before there was any talk of our being in Government with any other party before the last election, my party indicated clearly that if we were re-elected to Government we would move on this legislation as quickly as possible. We have done so.

Returning to those references about what other parties contributed, the reality is they did this work in the luxury of Opposition. This is very detailed complex legislation and any political parties in Government must deal with all types of legislation on the basis of advice from the Attorney General, his office and that of the Parliamentary Counsel. They have an absolute obligation under the Constitution to ensure that any legislation which is brought forward is constitutionally sound. They cannot merely write it on the back of an envelope. I do not say this to criticise the Opposition. We were in Opposition too in our day.

...[interaction between Charles Flanagan and the Minister]

Parties in Opposition have a much broader sense of possibility and a much more lax approach to drafting legislation. They do not have the same constraint as Government parties.

... As I said at the outset of this Second Stage debate, I and the Government were obliged to deal with the balance required in our Constitution, namely, the balance between the special recognition of marriage as laid down in Article 41, on the one hand, which has been enunciated in many Supreme Court and court decisions regarding the status of marriage and the actual concept of marriage, particularly in its heterosexual guise and, on the other hand, the balance Article 40.1 of the Constitution which refers to equality. Again, this must be balanced with Article 41.

With regard to the many contributors who said that amendments would be required to the legislation, in its drafting we were obliged to take that balance very much into account. Concerning amendments that the Government or the Opposition might bring forward we must maintain that balance.

In the true spirit of republicanism, we brought forward this legislation.

I appreciate the cross-party support afforded to the Bill. However, many Deputies on the opposite side of the House made political points about what their parties have done in respect of this issue. I could not put it any better than Deputy O'Rourke who stated that the entire ethos of our party is republicanism. In the true spirit of republicanism, we brought forward this legislation. We have a good record in respect of the issue of equality. All of the equality infrastructure that has been put in place in the State during the past 20 years was brought forward by Fianna Fáil-led Governments. All of the legislation relating to equality which is currently on the Statute Book was brought forward by those Governments. One need only consider our record on this issue and Deputies on all sides recognised the work done by our current EU Commissioner when she held my position. Thankfully, my party and I are following our traditional line in this regard.

While Deputies supported the general measures relating to maintenance, ownership of the family home, pensions and succession, some of the issues to which they referred are not contemplated in the Bill. Several of them indicated the difficulties they have with regard to omissions from the Bill and a number pointed out the absence of provisions relating to children in the context of civil partnerships. In

formulating the civil registration scheme for same-sex partnerships, the Government was mindful of the implications for children, be they the children of one or both partners. An extensive body of law relating to the welfare of children ó in the context of guardianship, maintenance, access, custody ó is already in place. Different persons, regardless of whether they are married, are obliged to deal with many of the issues to which I refer.

It has been suggested that the Bill is silent in respect of children. As already stated, however, there is already a wide-ranging body of law relating to children's rights in place and this will be available to the children of same-sex couples, regardless of whether the legislation is passed.

It has also been suggested that the Bill should make express provision for the rights of same-sex partners in respect of children. In the context of any debate on rights relating to children, I would refer Deputies to the decision of the Supreme Court on 10 December last in the case of *J. McD. v. P. L. and B. M.* The court made it clear that in the first instance 'The child's best interests are the first and paramount consideration in any case to do with a child's future under section 3 of the Guardianship of Infants Act 1964.' The court also held that:

... the mere fact that the law could be said to be silent as regards a specific situation does not necessarily mean that it is unaffected by the law or the Constitution. Silence of the law may speak volumes for the legal status to be accorded or not to be accorded to a particular subject matter or situation.

In view of the legal complexity of legal relationships between children and their parents, a comprehensive review of the law in this area by the Law Reform Commission is under way. This should, in due course, help to inform policy decisions on rights in general in respect of children, partners and others. The commission published a consultation paper in September 2009 on the legal aspects of family relationships and has invited submissions from interested parties on its provisional recommendations. The final report, which will contain the commission's recommendations, is expected later this year. This report will deal with the issue of children in the context of different family relationships not least in respect of separated fathers and how they are dealt with in terms of custody of their children, etc.

In view of the legal complexity of legal relationships between children and their parents, a comprehensive review of the law in this area by the Law Reform Commission is under way.

It was never intended that the Bill should develop principles that would inevitably have wider implications than those relating to same-sex partners. In reply to Deputy Shatter, I wish to state that the Minister for Health and Children intends to bring to Government later in the year proposals relating to legislation to govern the area of assisted human reproduction and related practices.

Deputies Charles Flanagan, Catherine Byrne and Barrett referred to the omission of reference in the Bill to siblings or other persons who live together and whose relationships could benefit from the regulation of what should happen in the event of disputes or that of hardship resulting from their being in a position of vulnerability. As with the position relating to children, I do not believe it would be appropriate to use the Bill for the purpose of establishing particular rights and obligations for a wider range of persons.

...[interaction between Charles Flanagan and the Minister]

Giving the courts power to make orders in respect of maintenance, pensions and property would constitute an unwarranted intrusion into normal societal and familial relationships. It would be inappropriate to require siblings, family members or those sharing houses to pay maintenance to each other simply because a relationship or friendship has broken down. In addition, giving the courts the power to make orders restricting or mandating the sale of property would again be an undue interference with constitutional property rights. This issue is extremely complex but I accept that it could be addressed at a later date. Dealing with it in this legislation would inevitably delay what we require to be delivered in a relatively short period, namely, the registration of same-sex civil partnerships.

I agree with the view that there is no basis for providing a right to discriminate against a class of persons on the grounds of freedom of religion or conscience. It would also be against public policy to prevent State officials to choose not to perform certain of their official functions on the grounds that to do so would be contrary to their religious beliefs.

Many Members who contributed to the debate on the Bill rejected calls for the inclusion of freedom of religion provision and also a provision relating to conscientious exemption for registrars and service providers in respect of, for example, the rental of church property. I agree with the view that there is no basis for providing a right to discriminate against a class of persons on the grounds of freedom of religion or conscience. It would also be against public policy to prevent State officials to choose not to perform certain of their official functions on the grounds that to do so would be contrary to their religious beliefs. A number of Deputies referred to sections 22 and 23 in respect of this matter and stated that the provisions contained therein are new. That is not the case. They are already contemplated in the 2004 Act.

Deputy Crawford and others referred to imprisonment. This is already contemplated in the legislation in the context of the refusal by State officials to perform their other duties in respect of the registration of normal marital situations. In effect, all we are doing is extending that provision in respect of civil partnerships.

I wish to refer to some unintended consequences that could result from the inclusion of a freedom of religious conscience clause in the legislation. What would be the consequences if we were to allow officials to choose the parts of their job they would not do on the basis of their religious beliefs? In this regard, a registrar could refuse to register the marriage of a person who has been divorced. This matter has not arisen since the introduction of our divorce legislation and no registrar has indicated that he or she might have any particular problems with the Bill before the House. Other possible consequences could include a court clerk refusing to issue divorce orders; a science teacher refusing to teach about evolution; a fundamentalist Christian Garda refusing to arrest a husband who is breaching a safety order on the basis that he is entitled to chastise his wife; a judge refusing to register a power of attorney in favour of a person's civil partner; a Muslim or Mormon accident and emergency doctor refusing to treat someone presenting with alcohol poisoning; an official of the Department of Social and Family Affairs refusing to pay carer's allowance to a person's civil partner; or a probate officer refusing to issue a grant of administration to a deceased person's civil partner.

If we were to put in place a freedom of conscience clause, it would have completely unintended consequences. In addition, it would run completely contrary to policy to allow public servants to pick and choose in respect of the view of either the Oireachtas or the Executive regarding duties which must be carried out. As Deputies on both sides correctly pointed out, anyone is entitled to know that the services in respect of which provision is made in legislation will be provided without fear or favour. I cannot accept any amendments on that issue.

Providing exemptions on freedom of conscience grounds in the supply of goods and services would roll back the very extensive equality legislation introduced by successive Governments and supported by the House in the past dozen years.

I wish to clarify for Deputy Barrett, who raised the issue, that the offences outlined in sections 22 and 23 are not new. These provisions extend to civil partnerships the exact penalties already provided for in the Civil Registration Act 2004 for the failure on the part of the registrar to perform statutory duties regarding the registration of marriages. Providing exemptions on freedom of conscience grounds in the supply of goods and services would roll back the very extensive equality legislation introduced by successive Governments and supported by the House in the past dozen years. The conscientious objection amendment to the Equality Bill in the UK mentioned by Deputy Barrett was actually opposed in the House of Lords and was subsequently withdrawn by its proposer.

Deputy Charles Flanagan sought information on the operation of schemes for the protection of cohabitants in other jurisdictions. This matter was examined and reported on by the Law Reform Commission, which recommended the redress scheme in its 2006 report on the rights and duties of cohabitants. The Colley group also

examined what are referred to as 'presumptive schemes' in other jurisdictions and these are described in the options paper also published in 2006. The Deputy also drew attention to the need to raise awareness of cohabitants to the new obligations arising under the Bill. This matter will be addressed before the commencement of the cohabitants scheme.

The Deputy commented that legal experts have warned that the presumptive nature of the cohabitants redress scheme could give rise to legal challenges and that ambiguities in the Bill regarding the establishment of when cohabitation began may present problems. I shall, of course, take into account his remarks for further consideration. However, section 170 expressly defines the periods of cohabitation required to qualify under the redress scheme and provisions already exist in the Domestic Violence Act 1996, for example, that prescribe periods of cohabitation for the purpose of that Act. I do not believe that establishing the duration of cohabitation under the provisions in the Bill will be a particularly difficult matter, although there are certain necessary variations in a case where either of the cohabitants has been married to another person during the period of cohabitation. This is consistent with the Attorney General's advice that we must ensure that in such cases the spouse, being a party to a marriage, must take priority over the potential claims of any other cohabitant.

Deputy Shatter also raised a number of points on the cohabitants redress scheme. His first point was that the scheme would only provide minimal real protection. However, in formulating the provisions for cohabitants I was conscious of the necessity to protect the autonomy of those who choose not to marry and indeed those who in due course choose not to register as civil partners. The Bill's redress scheme is not designed to redistribute the property or finances of a couple who split up; it is designed to mitigate hardship where a relationship ends leaving one former cohabitant financially vulnerable. The Government has no proposals to widen the provisions for cohabitants in a way that would serve to undermine the institution of marriage.

The Deputy questioned the policy behind the shorter timeframe necessary to become a qualified cohabitant, where there is a child of a relationship. In its recommendation the Law Reform Commission acknowledged that the provision for a shorter timeframe would be desirable where there is a child of the relationship and the Government agrees with this recommendation. The law does not treat everyone in the same way regardless of his or her circumstances. There is a clear case for different circumstances warranting some differences in treatment in the Bill. The Deputy suggested that the redress scheme should apply from the date of the publication of the Bill so as not to encourage people in the meantime to extricate themselves from relationships with a view to avoiding obligations of one to another. There may be difficulties in seeking to apply the financial and property obligations arising under the Bill before its enactment, but we can return to the issue on Committee Stage.

Deputy Ciarán Lynch asked if it was intended to introduce an amendment on Committee Stage to provide that an order made in favour of a qualified cohabitant could not affect the entitlement of a civil partner. I refer the Deputy to section 206 of the Bill, which obliges the court when making orders under the Bill to have regard to

the rights of others with an interest in the matter including a civil partner or a former civil partner.

Deputy Howlin sought to provide in the Bill for retrospective recognition of foreign civil partnerships if one partner dies before the provisions of section 5 become operable. I am very conscious that some people in committed long-term relationships, whether they have entered into a civil partnership elsewhere or not may, sadly, not live long enough to have their relationships recognised under Irish law. However, the Deputy will be aware that the issue of providing retrospective recognition has always presented a difficulty in legislation. Providing for it would introduce profound uncertainty into succession, pension and tax law. Where pragmatic solutions can be achieved without creating this uncertainty, I am very willing to consider them, but blanket retrospection of entitlements is simply unworkable. The Lourdes marriage provision in the Marriage Act 1972 does not provide a precedent if only because those who married in Lourdes believed themselves to be fully legally married under Irish law as it then applied. Couples who have registered civil partnerships or same-sex marriages abroad can have no such expectation regarding those relationships.

Several Deputies indicated that they would propose amendments on Committee Stage and I look forward to examining and debating these. Regarding Government amendments, a certain amendment to the Domestic Violence Act 1996 was not carried through consistent with the policy that was proposed in the general scheme. I propose to introduce this provision by means of a Committee Stage amendment. The proposal will allow a person to apply for a safety order against a person with whom he or she had a child in common even if the couple concerned never lived together. The occasion of access to children can be difficult and safety issues often arise. While it is in the best interest of the child to ensure that he or she can develop a relationship with both of his or her parents, this should not be at the expense of the safety or well-being of either of the parents. That is detrimental to everyone, including the child who may be caught in the middle. Making safety orders available in law, if necessary, in such circumstances sets down a clear marker that violent and intimidating behaviour is not acceptable. I hope to introduce an amendment to ensure the Bill is not found wanting in this regard.

The Civil Partnership Bill will put in place a legal regime that reflects many forms of partnerships in modern Irish society. It provides legal protection for cohabiting couples and essential State and societal affirmation of same-sex couples.

The Civil Partnership Bill will put in place a legal regime that reflects many forms of partnerships in modern Irish society. It provides legal protection for cohabiting couples and essential State and societal affirmation of same-sex couples. I thank all the Deputies for the very considered contributions they made on the Bill. I look forward to the debate on Committee Stage when we can tease out these issues in more detail.

Question put and agreed to.

I move:

That the Bill be referred to the Select Committee on Justice, Equality and Women's Rights, in accordance with Standing Order 122(1) and paragraph 1(a)(i) of the Orders of Reference of that committee.

Question put and agreed to.

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**Civil Partnership:
An Overview**



Dr. Fergus Ryan
Head, Department of Law, Dublin Institute of Technology

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**Submission to the Law
Reform Commission on Legal
Aspects of Family
Relationship**

from GLEN – Gay and Lesbian Equality Network

January 2010



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**Civil Partnership:
Your Questions Answered**
A comprehensive analysis of the Civil Partnership Bill



Dr. Fergus Ryan
Head, Department of Law, Dublin Institute of Technology

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GLEN Campaign for Legal Recognition
of Same-sex Relationships and Families:
A CHRONOLOGY OF KEY EVENTS

